

LEGISLATIVE JUDICIARY COMMITTEE MEETING**SB 2305****JULY 26, 2011**

Mr. Chairman, Members of the Committee:

My name is Haley Wamstad and I am an Assistant State's Attorney for Grand Forks County. I have been assigned to prosecute juvenile crimes for the past 3½ years. I am speaking to you today in support of extended juvenile court jurisdiction.

As you are most likely aware, the objective in Juvenile Court is treatment and rehabilitation of the child, rather than punishment. Oftentimes, we are asked to tailor the disposition of a case to the particular needs of the child. We can do so by looking to prior efforts that have been made for treatment and rehabilitation of the child and whether they have been successful. This is particularly important when the proposed disposition is more drastic, such as a transfer of the case to adult court.

Under the current transfer statute (NDCC § 27-20-34) there are certain offenses that are mandatorily transferred to adult court, such as certain types of GSI, drug offenses, or murder. This "mandatory transfer" provision takes away the ability of the juvenile court to assess what type of treatment or rehabilitation is best for the child, but rather deems the mere commission of these offenses an automatic transfer to adult court upon a showing of probable cause. For example, under the current statute, if a 16-year-old child sold one hydrocodone pain reliever pill to a friend, that offense must be automatically transferred to adult court. In addition, any offense that child may commit after that transfer, such as a minor in possession or consumption, that offense would also have to be handled in adult court. This is a significant sanction for a relatively minor offense.

Extended juvenile court jurisdiction is an extra tool for juvenile court to assess each case individually. Rather than sending a child directly to adult court, the extended jurisdiction would give a child one last chance for treatment in juvenile court before facing the significant sanctions of adult court. The Juvenile Court would have the ability to first attempt to treat the child in Juvenile Court. Then if, after a period of time, Juvenile Court determined that the disposition attempted was not successful, they could revoke that disposition and sentence the child as an adult. Under the current law, we have to decide if juvenile court or adult court is appropriate before adjudication. After the child has been adjudicated of the offense, we cannot then transfer the case to another court.

For example, this past year, I was assigned a case in which a 17 ½-year-old child committed the offense of Gross Sexual Imposition. Under the current law, this offense is an automatic transfer to adult court. The child charged with this offense had no record in juvenile court, was a good student, and his treatment needs were unknown to the court at that time. If this case was transferred to adult court, the child would face a 20-year minimum mandatory sentence with lifetime registration as a sex offender. If the case was adjudicated in juvenile court, he would face a disposition of 1-year of either probation or custody to the Division of Juvenile Services. It is likely that the one-year juvenile court disposition would not be sufficient to treat the child and that the adult sentence would be excessive punishment. This is an example where extended juvenile court jurisdiction would be beneficial. We could give this child one opportunity to be treated as a juvenile. If the child failed to comply with the juvenile disposition, he could then be sentenced as an adult under the extended jurisdiction. But rather under the current law, we are required to decide if juvenile court or adult court would be more appropriate – all before adjudicating the case or knowing anything about the child.

In addition, the juvenile court can only maintain jurisdiction over a child until their 20th birthday. And the avenues for treatment are significantly limited for a child between the ages of 18 to 20-years-old. Essentially, for a child between 18 and 20, the only types of treatment juvenile court can provide are probation, community supervision, or detention at the Youth Correctional Center. Also, due to the fact that the child's order has to expire on their 20th birthday, if the child fails to comply with the order when they are nearing their 20th birthday, there is often little to nothing that the juvenile court can do because they lose jurisdiction over the child.

I would note that under the proposed law in SB 2305, the most serious offenses of murder or attempted murder would still be an automatic transfer to adult court. A child charged with this offense would not have the opportunity for the extended juvenile court jurisdiction. For other serious offenses, such as Gross Sexual Imposition and certain drug offenses, the court would have the option of either transferring the case directly to adult court or to offer the child the extended juvenile court jurisdiction. In addition, this law would provide the ability to transfer other offenses, which are not transferrable under the current law, unless the court makes a finding that the child is not amenable to treatment in juvenile court. For example, if a 17 1/2-year-old child committed felony theft of property, that offense would not be transferrable unless we could show the child is not amenable to treatment in juvenile court. With extended juvenile court jurisdiction, we could provide the child the opportunity to comply with treatment in juvenile court and then transfer the case to adult court if he fails to comply with the

juvenile disposition. So, this law would not be limiting the options for disposition, but rather providing additional tools for the court to adequately treat and rehabilitate the child.

Therefore, I would encourage this committee to support and recommend legislation on extended juvenile court jurisdiction. Prior to the introduction of this bill, it was discussed with the Juvenile Policy Board. Due to time constraints, it is my understanding that the Juvenile Policy Board was not able to make recommendations on the bill. I would encourage this committee to work with the Juvenile Policy Board to draft the appropriate legislation. In addition, I have spoken with a number of individuals involved in juvenile court proceedings and they have expressed their support of this legislation as well. I also would encourage this committee to gather the recommendations from Juvenile Court personnel.

Thank you for your time and consideration. I would happy to answer any questions.

Thank you,

Haley L. Wamstad
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