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FISCAL IMPACT REPORT

ORIGINAL DATE 2/1/17

SPONSOR Youngblood **LAST UPDATED** _____ **HB** 115

SHORT TITLE Youthful Offender Transfers to Adult Sentence **SB** _____

ANALYST Sánchez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		\$150.0		\$150.0	Nonrecurring	General Fund
Total		Indeterminate Increase See Fiscal Implications	Indeterminate Increase See Fiscal Implications	Indeterminate Increase See Fiscal Implications	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorneys (AODA)
 Public Defender Department (PDD)
 Attorney General’s Office (AGO)
 New Mexico Corrections Department (NMCD)
 Children, Youth and Families Department (CYFD)
 New Mexico Sentencing Commission (NMSC)

SUMMARY

Synopsis of Bill

House Bill 115 proposes to amend Section 32A-2-6 NMSA 1978, the Delinquency Act, to authorize alternative dispositions a judge may consider if the youthful offender is found to be amenable to treatment. The bill authorizes the imposition of a juvenile disposition and an adult criminal sentence, the execution of which (adult criminal sentence) shall be stayed on the condition that the offender not violate the provisions of the disposition order and not commit a new offense. The bill also provides for adult sentences if the juvenile violates any conditions of the stayed sentence or is alleged to have committed a new offense.

FISCAL IMPLICATIONS

The Administrative Office of the Courts (AOC) reports that analysis and reconfiguration of its case management system could cost as much as \$150 thousand to comply with the requirements of this bill. It goes on to state that because a youth may oppose a petition to revoke the stay of an adult sentence, it is likely that more hearings will require court time and resources. These hearings will have to be placed on already busy children's court dockets. Moreover, the youth must be represented by counsel, which would then also increase costs of representation. Under dual sentencing, the consequences of violating conditions of disposition or committing a new offence carry more stringent penalties; it is also likely that more cases will go to trial. This would result in more court time and resources.

A single change to a criminal statute may have minimal fiscal impact; however, an increase of these cases may require additional resources. Although it is difficult to accurately estimate the cost of increased trials because of this or similar legislation, it is important to note that the average salaries, benefits and other costs yearly (in thousands) for the district courts, public defenders and district attorneys are as follow:

- District Attorneys: \$195.4
- District Courts: \$335.6
- Public Defenders: \$202.7

SIGNIFICANT ISSUES

The Children, Youth and Families Department (CYFD) reports that dual sentencing is a component of the Missouri Model upon which it based *Cambiar New Mexico*. This bill provides the opportunity to more fully assess an offender's response to treatment programming over time, instead of having to predict rehabilitative amenability at the disposition phase of the juvenile justice process. The bill, both promotes public safety, by diverting those who are not amenable, and offers the best opportunity for rehabilitation of young offenders, as the amenability prediction need no longer be made before the offender can be placed in treatment. Of the 332 CYFD clients charged as youthful offenders between FY07 and FY16, 95 received adult sanctions and were considered not amenable to treatment. The majority or 71.4 percent were considered amenable to treatment.

According to the Public Defender Department (PDD), the creation of this blended sentencing scheme (sections 5 and 6 of the bill) goes against the unique scheme New Mexico devised to deal with serious offenses committed by children. It reverses the default position of New Mexico law that is supported by science that recognizing the differences between youth and adults compel a different, and often more protective, treatment for youth. *See State v. Jones*, 2010-NMSC-012, ¶ 10, 148 N.M. 1, 9 (“We interpret this legislative history as evidence of an evolving concern that children be treated as children so long as they can benefit from the treatment and rehabilitation provided for in the Delinquency Act.”) It also is contrary to the current trend in law that recognizes the unique vulnerabilities of children. *See e.g., Miller v. Alabama*, 132 S.Ct. 2455 (2012); *Graham v. Florida*, 130 S.Ct. 2011 (2010); *Roper v. Simmons*, 543 U.S. 551 (2005). While the current scheme has passed constitutional scrutiny, the scheme in HB115 will require additional litigation to determine its constitutionality. *See State v. Rudy B.*, 2010-NMSC-045.

AOC states that HB115 may offer an important middle ground for a judge attempting to predict how a child will respond to treatment in the limited time available under the Delinquency Act. And it further notes that the bill could provide children’s court judges a significant sentencing alternative, if the proper procedural rights and safeguards in place.

The Administrative Office of the District Attorneys (AODA) opines that the imposition of a stayed adult sentence in HB115 makes it a powerful deterrent, and an intermediate sanction between juvenile sanctions and adult sanctions.

PERFORMANCE IMPLICATIONS

This bill may have an impact performance measures at the district courts, CYFD, district attorneys and the public defenders.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB115 relates to HB13 Three Strikes Law and HB16 Delinquency Act Terms and Absconders

TECHNICAL ISSUES

According to the AOC, the completion of a successful juvenile disposition would result in an order for release. However, there is nothing in HB115 that addresses the disposal of a suspended sentence. For adult criminals, a suspended sentence that is not executed will still appear on their criminal record. For a juvenile to carry that same stigma contravenes the purpose of the Delinquency Act.

PPD notes that the intent of HB115 needs to be clarified because it appears that an offender who has honored the provisions of the disposition order and has not committed any new offense may still be ordered to complete the adult sentence if the court, after considering the factors set out in the statute, determines that the offender was not amendable to treatment or rehabilitation as a child in available facilities.

OTHER SUBSTANTIVE ISSUES

NMCD reports that the number of juvenile offenders in its custody has historically been very low, an average of one to four, and juvenile judges have historically been very reluctant to send juveniles to NMCD prisons. Judges may be more likely under the new provisions of the bill to place youthful offenders on adult probation in lieu of NMCD incarceration, but they still may not be very likely to send youthful offenders to NMCD prison.

The New Mexico Sentencing Commission (NMSC) provides an excerpt taken from an article entitled, “*A Decade of National Center for State Courts Research on Blended Sentencing of Juvenile Offenders: What Have We Learned About Who Gets a Second Chance?*” (Cheesman) (2011). Blended sentencing enables some courts to impose juvenile or adult correctional sanctions (or both) on certain young offenders (Sickmund, Snyder, and Poe-Yamagata, 1997). Blended sentencing emerged during a period of steadily increasing violent juvenile crime as a compromise between those who wanted to

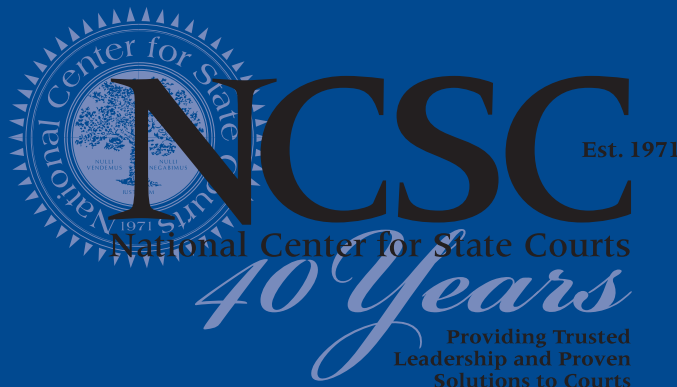
emphasize public safety, punishment, and accountability of juvenile offenders and those who wanted to maintain or strengthen the traditional juvenile justice system. It offers a means of resolving these disparate views because blended sentencing combines opportunities for rehabilitation in the juvenile justice system with the possibility of sanctions in the adult criminal justice system. Blended sentencing offers juvenile offenders a “last chance” within the juvenile system by providing “an incentive to respond to treatment in order to avoid the consequences of an adult sentence” (Redding and Howell, 2000: 147).

ABS/al/jle

FUTURE TRENDS IN STATE COURTS

2011

Special Focus on Access to Justice



*A Decade of NCSC
Research on Blended
Sentencing of Juvenile
Offenders: What Have
We Learned About
"Who Gets a Second
Chance*

Fred Cheesman

A DECADE OF NCSC RESEARCH ON BLENDED SENTENCING OF JUVENILE OFFENDERS: WHAT HAVE WE LEARNED ABOUT “WHO GETS A SECOND CHANCE?”

Fred Cheesman

Principal Court Research Consultant, National Center for State Courts

Blended sentencing enables some courts to impose juvenile or adult sanctions (or both) on certain juveniles. Extralegal factors (race in particular) influenced the probability of a blended sentence and transfer to adult criminal court, even though both are rarely imposed, and objective risk-and-needs assessment information should inform decisions in these cases.

During the early 1990s, many state legislatures made sweeping changes in the dispositional and sentencing options available to juvenile courts, including the introduction of a new juvenile sentencing innovation, *blended sentencing*.¹ Blended sentencing enables some courts to impose juvenile or adult correctional sanctions (or both) on certain young offenders (Sickmund, Snyder, and Poe-Yamagata, 1997). While 16 states had blended-sentencing statutes in place at the end of 1995, at least 26 did so at the end of 2004, encompassing 60 percent of the nation’s juvenile population aged 10 to 17, according to data from the 2000 census. Thus, at least 60 percent of the nation’s juvenile population is subject to a blended sentence.

Blended sentencing emerged during a period of steadily increasing violent juvenile crime as a compromise between those who wanted to emphasize public safety, punishment, and accountability of juvenile offenders and those who wanted to maintain or strengthen the traditional juvenile justice system. It offers a means of resolving these disparate views because blended sentencing combines opportunities for rehabilitation in the juvenile justice system with the possibility of sanctions in the adult criminal justice system. Blended sentencing offers juvenile offenders a “last chance” within the juvenile system by providing “an incentive to respond to treatment in order to avoid the consequences of an adult sentence” (Redding and Howell, 2000: 147).

This article describes the results of two research studies conducted by NCSC between 1999 and 2010 that examined blended sentencing in three states. The first study examined blended sentencing in Minnesota and was funded by the State Justice Institute and the Office of Juvenile Justice and Delinquency Prevention. The second, funded by the National Institute of Justice and conducted in partnership with the National Center for Juvenile Justice (NCJJ), examined blended sentencing in Ohio and Vermont.

NCJJ has developed a widely used typology of blended-sentencing practices in the states (Torbet et al., 1996; see table). Of the 20 states with blended-sentencing laws at the end of 1997, nine gave blended-sentencing authority to *juvenile* court judges for cases involving some specified category of juvenile offender adjudicated delinquent. In nine other states, *criminal* court judges exercise blended-sentencing authority following a juvenile’s conviction. Two states, Colorado and Michigan, gave blended-sentencing options to both juvenile and criminal court judges.

Regardless of the forum in which it is exercised, blended-sentencing authority may be *exclusive* or *inclusive*, and under some circumstances, it may be *contiguous* (Torbet et al., 2000):

- An *exclusive* blended-sentencing model allows a judge to impose either a juvenile or an adult sanction and makes that sanction effective immediately.
- Under an *inclusive* blended-sentencing model a judge may impose *both* a juvenile and an adult sanction, with the latter usually remaining suspended and becoming effective only in the event of a subsequent violation.
- Finally, some states have enacted *contiguous* blended-sentencing laws, under which a juvenile court may impose a sanction that begins in the juvenile system but lasts beyond the maximum age of extended juvenile court jurisdiction, at which time the offender must be moved into the adult correctional system to serve the remainder of the sentence.

Minnesota has been practicing a form of juvenile-inclusive blended sentencing (i.e., the juvenile court imposes both juvenile and stayed adult sentences, the latter of which can be imposed at the discretion of the juvenile court) since 1994. In 2002 Ohio implemented juvenile-inclusive blended sentencing, based largely on the

Varieties of Blended Sentencing Used Across States

Type	Description	Adopted By	In Year
Juvenile-Exclusive Blend	The juvenile court imposes either juvenile (delinquency) or adult (criminal) sanctions.	New Mexico	1995
Juvenile-Inclusive Blend	The juvenile court imposes both juvenile and adult sanctions, typically suspending the adult sanction.	Illinois, Kansas South Dakota Minnesota Alaska, Arkansas, Connecticut Michigan, Montana, Vermont Ohio	1990 1993 1994 1995 1997 2002
Juvenile-Contiguous	The juvenile court imposes a juvenile sanction that would be in force beyond the age of its extended jurisdiction. At that point, the juvenile court determines whether the remainder of that sanction should be served in an adult criminal corrections system.	Texas Massachusetts, Rhode Island Colorado South Carolina	1987 1990 1993 1994
Criminal-Exclusive Blend	The criminal court imposes either juvenile or criminal sanctions.	Virginia, West Virginia Colorado Florida California, Idaho Michigan Oklahoma	1985 1993 1994 1995 1997 1998
Criminal-Inclusive Blend	The criminal court imposes both juvenile and criminal sanctions, typically suspending the criminal sanction.	Virginia Florida Arkansas, Michigan Iowa	1985 1994 1995 1997

Minnesota model. Vermont, while technically practicing juvenile-inclusive blended sentencing since 1998, provides a contrast because of the crucial role that adult criminal court judges play in the decision-making process.

In an effort to redress the absence of empirical data about the practice of blended sentencing, we next examine the results of the studies of blended sentencing in the three states.

Minnesota

Blended sentencing in Minnesota is referred to as “Extended Jurisdiction Juvenile,” or EJJ. EJJs are initially sentenced as juveniles although they receive all adult criminal procedural safeguards, including the right to a jury trial. Juveniles disposed EJJ receive a juvenile court disposition and a “stayed” adult prison

sentence, based upon the Minnesota Sentencing Guidelines for adult felons. Juvenile court jurisdiction lasts until age 21, hence the term “Extended Jurisdiction Juvenile.”

A random sample of 564 juvenile offenders (EJJs and transfers were oversampled due to their low frequency) was used to analyze the factors that differentiate EJJs from transfers to the adult criminal justice system and from juveniles processed through the juvenile justice system exclusively (“conventional” juvenile cases). The analysis was rigorous—a two-stage probit controlling for selection bias.

Important findings from this study include:

- EJJs and transfers occur infrequently. The Minnesota District Court disposes of approximately 10,000 juvenile felons annually, but only 2,400 of these meet the presumptive certification criteria that identifies a serious juvenile offender subject to transfer to the adult criminal justice system. Further, only 100 juveniles are transferred annually, and about 300 juveniles receive a blended sentence (about 1 percent and 3 percent of all juvenile felon cases disposed, respectively).
- The judicial district where the case was disposed influenced the probability of motioning (either for transfer or EJJ) and the type of dispositional alternative sentenced: transfer, EJJ, or conventional juvenile.
- The offender’s race influenced the probability of motioning and the type of dispositional alternative selected. Minorities were more likely to be motioned by the prosecutor for transfer or EJJ than white juvenile offenders and, among motioned cases, were more likely to receive a transfer than EJJ.
- EJJs had more serious charges than transfers, raising doubts about whether transfer was being reserved for the “worst of the worst” and blended-sentencing cases for the “least worst of the worst” (Feld, 1995). Consequently, it is not clear that EJJs and transfers were targeting their intended offender population.

Ohio

To compare the alternative processing tracks, NCSC collected data on the use of processing alternatives for juvenile offenders adjudicated for felony offenses between 2002 and 2004 from five counties in Ohio (Cuyahoga, Hamilton, Lucas, Summit, and Delaware). Although the sample from these counties does not constitute a random sample of juvenile adjudications across all counties in Ohio (N=28,628), it should be noted that these five counties accounted for a very significant proportion (75 percent) of Ohio's statewide juvenile adjudications between 2002 and 2004. The final sample included all blended-sentencing and transfer cases from the five counties, adjudicated or sentenced between 2002 and 2004 (139 and 164 cases, respectively). NCSC also drew a proportionate random sample of 340 conventional juveniles from each of the five participating counties.²

As was the case in Minnesota, we sought to analyze the factors that differentiate blended-sentencing cases (referred to as "Serious Youthful Offenders," or SYOs) from transfers from conventional juvenile cases in Ohio. A two-stage probit identified factors differentiating blended-sentencing cases from conventional juvenile cases and from cases transferred to the adult criminal court in Ohio.

The initial selection model revealed that factors differentiating conventional juvenile cases from cases selected for nonconventional processing (i.e., SYO or transfer) were principally legal, including offense seriousness and number of prior Ohio Department of Youth Services placements, although age and gender were also significant influences.

The second-stage probit identified factors differentiating transfers from SYOs, controlling for the probability of selection for nonconventional processing. Age, gender, and race were significant predictors of processing track. Minorities were significantly more likely than whites to be processed as transfers rather than as SYOs, suggesting possible bias in decision making.

As was the case in Minnesota, jurisdiction also influenced the selection of dispositional alternative. The odds of a blended sentence were higher in Delaware County than in Cuyahoga. The odds of transfer were much higher for juvenile offenders from Hamilton County than any of the other counties.

Just as in Minnesota, blended sentencing and transfer are rare occurrences. The ratio of SYOs to conventional adjudications was about 205 to 1, while the ratio for transfers was 174 to 1 in the five counties.

Vermont

Blended sentencing in Vermont combines elements of both criminal- and juvenile-inclusive blended sentencing. Blended-sentencing cases (referred to as "Youthful Offenders," or YOs) originate in the district court where a decision is made whether to grant a petition (usually filed by defense) to have a juvenile offender declared a YO, whereupon they become eligible for transfer to the family court for a blended sentence. Juvenile offenders whose cases were filed in district court may also be transferred to family court by means of a "reverse waiver," which is entirely at the discretion of the district court judge.

It is almost universal practice in Vermont to direct any juvenile case involving an offender 16 years or older to district court. The YO designation provides an opportunity to redirect certain offenders whose cases were directly filed in district court to the family court, where they are more likely to receive treatment.

We attempted to collect data on all YO and reverse-waiver cases from 1998 through 2006. A random sample of transfers that occurred during this period was obtained. Data were eventually collected on 106 YO cases, 170 reverse-waiver cases, and 185 transfers to the adult correctional system.

Data from Vermont samples could not support a multivariate analysis, but offered some interesting insights. First, blended sentences are rare in Vermont, just as they were in Minnesota and Ohio. Second, as was also the case in Minnesota and Ohio, geography influences the probability of receiving particular types of sentences. Third, as was the case in Minnesota and Ohio, transfers are significantly older than

Blended sentencing has the potential to be an important step in a juvenile justice system that provides a "graduated" response to juvenile offending.

blended-sentencing cases. Fourth, YOs had a much higher probability of being charged with property theft than any other type of case, while transfers and reverse waivers had a much higher probability of being charged for a civil disturbance. Fifth, YOs had a significantly larger number of convictions than reverse waivers and transfers.

Discussion

By providing the juvenile justice system with an intermediary response to juvenile offending, (i.e., between conventional juvenile processing and transfer to the adult criminal court), blended sentencing has the potential to be an important step in a juvenile justice system that provides a “graduated” response to juvenile offending (National Criminal Justice Association, 1997). However, to be effective in this capacity, blended sentencing must be free from bias and used in a manner consistent with public safety. Our research, however, suggests that in states employing juvenile-inclusive blended sentencing, minorities will be disproportionately overrepresented among transfers, the most punitive of the processing tracks, and underrepresented among blended sentences, the latter providing the last chance for treatment in the juvenile justice system.

The most promising solution to “rationalize” the use of blended sentencing and to avoid disparities in its use is to incorporate the principles of “risk and needs” in its application. A growing number of experts have advocated the incorporation of the risk principle throughout the criminal and juvenile justice systems to rationalize decision making and increase effectiveness (e.g., Warren, 2007). Objective risk assessment can reduce or eliminate undesirable bias in decision making (Coordinating Council on Juvenile Justice and Delinquency Prevention, 1996).³

Juvenile judges are currently making informal determinations as to offender needs and risk, but formal risk-and-needs-assessment procedures can improve the validity and fairness of such determinations (Silver and Chow-Martin, 2006). Consequently, our principal recommendation is that objective risk-and-needs assessments be used to identify the most suitable candidates for blended sentences and adult transfer. Use of objective risk-and-needs assessments to make these determinations will not completely eliminate risks to public safety, but should reduce them by better informing what have heretofore been predominately subjective decisions.

Who would be the best candidates for blended sentencing and transfer to the adult criminal justice system? Adult transfer would be reserved for a few of the oldest, most serious juvenile offenders that present the greatest risk to public safety and who are least amenable to treatment in the juvenile justice system, identified by objective assessments. The profile of juvenile offenders given blended sentences would be similar to that for transfers except that they would be younger (but older than most conventional juvenile court cases), would present less of a risk to public safety, and would have the greatest need for and potential to respond to treatment in the juvenile justice system, again identified by objective assessments.

Both transfer and blended sentences should remain very low frequency occurrences because most juvenile offenders are amenable to treatment in the conventional juvenile justice system. However, the use of blended sentencing should be expanded at the expense of transfers to avoid the transfer of inappropriate juvenile offenders to the adult criminal justice system, keeping more juvenile offenders in the juvenile justice system while also holding them accountable. The recommendations generated by the risk-and-needs assessments should not be binding on the juvenile court but will better inform the decision-making process.

Our second recommendation is to provide enhanced services and supervision to juvenile offenders given blended sentences. Given that these juvenile offenders are potentially subject to adult penalties (in addition to whatever requirements are imposed by the juvenile court) and that they have been determined to be amenable to treatment in the juvenile justice system, it follows that they should receive services designed to reduce their probability of reoffending, above and beyond those received by conventional juvenile offenders. As Vincent, Terry, and Maney (2009) point out, “Arguably, the most dangerous youths should receive the most punitive sanctions and the most intensive interventions” (p. 388).

Objective risk-and-needs assessments should be used to identify the most suitable candidates for blended sentences and adult transfer.

ENDNOTES

¹ Between 1992 and 1995, 41 states changed their laws to make waiver to adult court easier, 16 states modified or added statutes requiring mandatory minimum periods of incarceration for certain violent or serious offenders, and 12 states extended the maximum age of the juvenile court's continuing jurisdiction over juvenile offenders—most often to age 21 (Sickmund, Snyder, and Poe-Yamagata, 1997).

² That is, the randomly selected sample of conventional juvenile offenders was proportionately distributed among the five counties according to the proportion that each county represented of the total 2002-04 adjudications.

³ Objective risk-assessment instruments were created to minimize subjectivity and unreliability associated with clinical decision making. Objective tools evaluate all offenders using the same set of criteria and information that can be factually verified. The results are then tabulated in some fashion, and predetermined uniform decision functions, such as cutting scores or decision trees, decide the outcome.

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