

Sixty-second
Legislative Assembly
of North Dakota

SENATE BILL NO. 2305

Introduced by

Senator Nelson

Representatives Hawken, Mock

1 A BILL for an Act to create and enact a new section to chapter 27-20 of the North Dakota
2 Century Code, relating to transfers to extended jurisdiction juvenile court; and to amend and
3 reenact subsection 5 of section 27-20-24 and section 27-20-34 of the North Dakota Century
4 Code, relating to juvenile transfers to adult courts.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1. AMENDMENT.** Subsection 5 of section 27-20-24 of the North Dakota Century
7 Code is amended and reenacted as follows:

8 5. Hearings are open to the public if the purpose of the hearing is to declare a person in
9 contempt of court or to consider a petition alleging an offense identified under
10 ~~subdivisions~~ subdivisions b and c of subsection 1 of section 27-20-34 or subsection 2 of
11 section 27-20-34. The general public must be excluded from other hearings under this
12 chapter. In hearings from which the general public is excluded, only the parties, their
13 counsel, witnesses, victims, and any other persons the court finds have a proper
14 interest in the proceedings may be admitted by the court. The court may temporarily
15 exclude the child or other person from the hearing if, after being warned by the court
16 that disruptive conduct will cause removal from the courtroom, the child or other
17 person persists in conduct that justifies removal from the courtroom.

18 **SECTION 2. AMENDMENT.** Section 27-20-34 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **27-20-34. Transfer to ~~other~~ adult courts.**

21 1. After a petition has been filed alleging delinquency based on conduct which is
22 designated a crime or public offense under the laws, including local ordinances or
23 resolutions of this state, the court before hearing the petition on its merits shall transfer

1 the offense for prosecution to the appropriate~~adult~~ court having jurisdiction of the
2 offense if:

- 3 a. The child is over sixteen or more years of age and requests the transfer;
- 4 b. The child was fourteen years of age or more at the time of the alleged conduct
5 and the court determines that there is probable cause to believe the child
6 committed the alleged delinquent act ~~and the delinquent act involves the offense~~
7 ~~of murder or attempted murder; gross sexual imposition or the attempted gross~~
8 ~~sexual imposition of a victim by force or by threat of imminent death, serious~~
9 ~~bodily injury, or kidnapping; or the manufacture, delivery, or possession with~~
10 ~~intent to manufacture or deliver a controlled substance in violation of~~
11 ~~subdivision a or b of subsection 1 of section 19-03.1-23, except for the~~
12 ~~manufacture, delivery, or possession with intent to manufacture or deliver~~
13 ~~marijuana in an amount less than one pound [.45 kilogram]; or the gratuitous~~
14 ~~delivery of a controlled substance not a narcotic drug or methamphetamine which~~
15 ~~is a singular and isolated event involving an amount of controlled substance~~
16 ~~sufficient solely for a single personal use; or~~
- 17 c. A request is made by the prosecution to transfer the prosecution of the offense to
18 adult court, the child was fourteen years of age or more at the time of the alleged
19 conduct, and the court determines that there is probable cause to believe the
20 child committed the alleged delinquent act and the delinquent act involves the
21 offense of gross sexual imposition or the attempted gross sexual imposition of a
22 victim by force or by threat of imminent death, serious bodily injury, or kidnapping;
23 the manufacture, delivery, or possession with intent to manufacture or deliver of a
24 controlled substance in violation of subdivision a or b of subsection 1 of section
25 19-03.1-23, except for the manufacture, delivery, or possession with intent to
26 manufacture or deliver marijuana in an amount less than one pound [.45
27 kilogram]; or the gratuitous delivery of a controlled substance not a narcotic drug
28 or methamphetamine which is a singular and isolated event involving an amount
29 of controlled substance sufficient solely for a single personal use; or
- 30 d. (1) The child was fourteen or more years of age at the time of the alleged
31 conduct;

- 1 (2) A hearing on whether the transfer should be made is held in conformity with
2 sections 27-20-24, 27-20-26, and 27-20-27;
- 3 (3) Notice in writing of the time, place, and purpose of the hearing is given to
4 the child and the child's parents, guardian, or other custodian at least three
5 days before the hearing; and
- 6 (4) The court finds that there ~~are reasonable grounds~~ is probable cause to
7 believe that:
- 8 (a) The child committed the delinquent act alleged;
- 9 (b) The child is not amenable to treatment or rehabilitation as a juvenile
10 through available programs;
- 11 (c) The child is not treatable in an institution for the mentally retarded or
12 mentally ill;
- 13 (d) The interests of the community require that the child be placed under
14 legal restraint or discipline; and
- 15 (e) If the child is fourteen or fifteen years old, the child committed a
16 delinquent act involving the infliction or threat of serious bodily harm.
- 17 2. The burden of proving ~~reasonable grounds~~ probable cause to believe that a child is
18 amenable to treatment or rehabilitation as a juvenile through available programs is on
19 the child in those cases in which the alleged delinquent act involves the offense of
20 manslaughter, aggravated assault, robbery, arson involving an inhabited structure, or
21 escape involving the use of a firearm, destructive device, or other dangerous weapon
22 or in cases in which the alleged delinquent act involves an offense which if committed
23 by an adult would be a felony and the child has two or more previous delinquency
24 adjudications for offenses which would be a felony if committed by an adult.
- 25 3. In determining a child's amenability to treatment and rehabilitation, the court shall
26 consider and make specific findings on the following factors:
- 27 a. Age;
- 28 b. Mental capacity;
- 29 c. Maturity;
- 30 d. Degree of criminal sophistication exhibited;
- 31 e. Previous record;

- 1 f. Success or failure of previous attempts to rehabilitate;
- 2 g. Whether the juvenile can be rehabilitated prior to expiration of juvenile court
- 3 jurisdiction;
- 4 h. Any psychological, probation, or institutional reports;
- 5 i. The nature and circumstances of the acts for which the transfer is sought;
- 6 j. The prospect for adequate protection of the public; and
- 7 k. Any other relevant factors.
- 8 4. Any transfer operates to terminate the juvenile court's jurisdiction over the child with
- 9 respect to any future offense if the child is ultimately convicted of the offense giving
- 10 rise to the transfer.
- 11 5. No child subject to the jurisdiction of the juvenile court, either before or after reaching
- 12 eighteen years of age, may be prosecuted for an offense previously committed unless
- 13 the case has been transferred as provided in this section.
- 14 6. Statements made by the child at the hearing under this section are not admissible
- 15 against the child over objection in the criminal proceedings following the transfer
- 16 except for impeachment.
- 17 7. If the case is not transferred, the judge who conducted the hearing may not over
- 18 objection of an interested party preside at the hearing on the petition. If the case is
- 19 transferred to a court of which the judge who conducted the hearing is also a judge,
- 20 the judge likewise is disqualified over objection from presiding in the prosecution.
- 21 8. A person at least twenty years of age who committed an offense while a child and was
- 22 not adjudicated for the offense in juvenile court may be prosecuted in district court as
- 23 an adult, unless the state intentionally delayed the prosecution to avoid juvenile court
- 24 jurisdiction. The district court has original and exclusive jurisdiction for the prosecution
- 25 under this subsection.

26 **SECTION 3.** A new section to chapter 27-20 of the North Dakota Century Code is created
27 and enacted as follows:

28 **Transfer to extended jurisdiction juvenile court.**

- 29 1. A proceeding involving a child alleged to have committed a delinquent act is an
30 extended jurisdiction juvenile prosecution if:

1 a. The child was fourteen years of age or more at the time of the alleged offense,
2 the prosecutor requested an extended jurisdiction juvenile prosecution, a transfer
3 hearing was held on the issue, and the court designated the proceeding an
4 extended jurisdiction juvenile prosecution; or

5 b. The child was fourteen years of age or more at the time of the alleged offense;
6 the court, at a hearing, finds there is probable cause to believe the child
7 committed the offense of gross sexual imposition or the attempted gross sexual
8 imposition of a victim by force or by threat of imminent death, serious bodily
9 injury, or kidnapping; the manufacture, delivery, or possession with intent to
10 manufacture or deliver of a controlled substance in violation of subdivision a or b
11 of subsection 1 of section 19-03.1-23, except for the manufacture, delivery, or
12 possession with intent to manufacture or deliver marijuana in an amount less
13 than one pound [.45 kilogram]; or the gratuitous delivery of a controlled
14 substance not a narcotic drug or methamphetamine which is a singular and
15 isolated event involving an amount of controlled substance sufficient solely for a
16 single personal use; and the prosecutor designated in the delinquency petition
17 that the proceeding is an extended jurisdiction juvenile prosecution.

18 2. When a prosecutor requests extended jurisdiction juvenile prosecution under
19 subdivision a of subsection 1, the court shall hold a transfer hearing to consider the
20 request. The transfer hearing must be held within thirty days of the filing of the
21 request, unless good cause is shown by the prosecution or the child as to why the
22 transfer hearing should not be held within this period in which case the transfer
23 hearing shall be held within ninety days of the filing of the request. If the prosecutor
24 shows that there is probable cause to believe the child committed the delinquent act
25 alleged and public safety is served by extended jurisdiction juvenile prosecution, the
26 court shall grant the request for transfer. In determining whether public safety is
27 served, the court may consider the factors specified in subsection 3 of section
28 27-20-34. The court shall decide whether to designate the proceeding an extended
29 jurisdiction juvenile prosecution within fifteen days after the transfer hearing is
30 completed, unless additional time is needed, in which case the court may extend the
31 period up to another fifteen days.

- 1 3. A child who is the subject of an extended jurisdiction juvenile prosecution has the right
- 2 to a trial by jury and to the effective assistance of counsel.