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January 13, 2023

The Honorable Lawrence R. Klemin
Chair, ND House Judiciary Committee
600 East Boulevard Avenue
Bismarck, ND 58505

Submitted electronically only:

Re: Testimony in support of HB 1160

Dear Chairman Klemin and members of the House Judiciary Committee,

I write individually in support of HB1160. I am an attorney in private practice in Fargo. Among other things, I represent adults and juveniles accused of criminal offenses. I am a lifelong North Dakota resident, currently residing in Legislative District 45. Prior to law school, I served as a Bismarck Police officer. I retired from the North Dakota Army National Guard after serving twenty-four years, the last eight of which were with the Judge Advocate General Corps.

Since 2011, I have served as an adjunct instructor at the University of North Dakota School of Law, instructing a trial skills course. From 2007 to 2019, I served as an adjunct instructor at North Dakota State University. I taught a course entitled Judicial Process, providing an analysis of the American judicial system. In preparing and maintaining the course curriculum, I conducted substantial analysis of juvenile court systems. Additionally contributing to my interest, I have had the previous privilege of working with the Chairman and members of the Assembly as a citizen member of the Interim Commission on Alternatives to Incarceration.

SHORT EXPLANATION

Current law provides offenses committed as a juvenile are prosecuted in state district court rather than juvenile court if the juvenile offender reaches the age of 20 before initiation of prosecution. Simply, our state prosecutes juvenile offenses based on the offender's age at the time of the initiation of prosecution, rather than based on the offender's age at the time of the commission of the offense. Scholars, commentators, and an increasing majority of states

conclude the offender's age at the time of the offense, not the offender's age at the time of prosecution, should control.

If adopted, except for the most serious offenses (murder or attempted murder; gross sexual imposition or attempted gross sexual imposition when committed by force, threat, or kidnapping) offenses committed by minors would start in juvenile court, even if the offense is not prosecuted until the offender is an adult, and even if the offender is older than twenty. If the juvenile court determines the adult is not amenable to treatment in the juvenile court, the matter will be prosecuted in district court.

DETAILED BACKGROUND

The professionals who administer and operate North Dakota Juvenile Courts lead the nation in employing evidence-based practices. Studies recognize many juvenile offenses result from immaturity. Youthful offenders lack full cognitive development and are therefore generally less culpable, and more deserving of juvenile court protections.

Juvenile Courts are typified by accountability, rehabilitation, and recidivism avoidance. Juvenile proceedings are individualized, confidential, and result in "adjudication" rather than "conviction." Unlike convictions, adjudication protects against lifelong adverse employment, housing, and educational impacts.

Last session, the Assembly passed a comprehensive reform package to the Juvenile Court Act. During the interim, stakeholders continued to study and compile recommendations, resulting in HB1137, also under consideration by this Committee. I was invited to that discussion, and provided comments to Karen Kringlie, Unit 2 Juvenile Court Director, and her senior staff.

Following discussion last fall, I drafted a short proposal to remedy the inequity of existing law. Ms. Kringlie, who is also a licensed lawyer, reviewed the proposal and shared it with Derek Steiner, a longtime juvenile court prosecutor in Cass County. Additional meetings followed, and I incorporated recommendations and commentary from Ms. Kringlie and Mr. Steiner, resulting in the proposal before you.

A. Section 1

Under current law, an offender who has reached age 20 is no longer eligible for juvenile court services. Accordingly, an offender may still be undergoing ordered treatment as they reach age 20, but the juvenile court loses authority to compel completion. Section 1 eliminates the arbitrariness of divesting juvenile court jurisdiction when an offender reaches age 20.

Likewise, under current law, if prosecution is not initiated before an offender turns 20 years old, the juvenile court lacks jurisdiction to initiate proceedings. Any prosecution must then

commence in district court. Under current law, adults 18-20 receive the benefit of juvenile court case processing, but adults over 20 do not.

Section 1 of the bill would amend existing law to define a “child” to eliminate this inequity. This would result in continuing authority of the juvenile court to order, monitor, and compel completion of treatment of offenders even after they turn 20. Likewise, this would permit prosecution in juvenile court for most offenses committed as a juvenile.

The bill proposes incorporating existing law to automatically transfer serious cases to district court, and to permit discretionary transfer of offenders who are not suitable for juvenile court adjudication. Current law provides that the most serious offenses are automatically transferred to district court. Existing law also provides transfer of cases in which the offender is not amenable to treatment and rehabilitation in juvenile court. In determining amenability, statute provides a list of factors (age, maturity, mental capacity, prior record, protection of the public, etc.) to guide a reviewing court. The proposed amendment would incorporate existing law, automatically transferring serious cases, and permitting discretionary transfer if warranted.

B. Sections 2 and 3

Sections 2 and 3 are interrelated. Section 2 provides authority to the Department of Corrections to supervise adults adjudicated for commission of juvenile offenses. Section 3 permits a juvenile court to order supervision. The proposal preserves a juvenile court’s authority to order supervision by court officers or the Department of Juvenile Services.

This proposal incorporates amendments contained in HB1137, outlining the preference for supervision and treatment of offenders by local juvenile court authorities, but providing a juvenile court additional options for atypical cases. For example, a 22-year-old who is adjudicated for a drug offense occurring at age 17 may be much better suited for an adult drug treatment program administered by the Department of Corrections rather than a program administered by the juvenile court.

This is a cost-neutral recommendation. Existing juvenile cases transferred to district court which result in supervision are already handled by the Department of Corrections. Because the Department of Corrections has specialized treatment programs and resources which may not be available to juvenile courts, this section would provide a wider range of options for juvenile authorities.

C. Section 4

This section would eliminate exclusive jurisdiction for district courts when juvenile offenders are not prosecuted prior to age twenty. This section would also provide that a juvenile offender, age 25 or older, would have the burden to prove amenability to treatment and rehabilitation in juvenile court.

Studies generally agree full brain development usually occurs by age 25. The ultimate purpose of this bill is to protect youthful offenders from lifelong impacts of youthful decisions. This

section recognizes that offenders who have reached full maturity should bear the burden of proving their cases should be adjudicated in juvenile court.

D. Section 5

Juvenile court adjudications result in an order of disposition, imposing probation, treatment, counseling, restitution, community service, or other obligations, typically monitored by local juvenile authorities. Existing law provides those orders may not exceed twelve months, with up to two four-month extensions. This section would allow juvenile authorities to seek an extension of up to one year when necessary to complete treatment goals. This would match the same period of disposition and extension currently authorized for cases referred to the division of juvenile services.

E. Section 6

This section would provide statutory authorization for the Director of the Department of Corrections to supervise an adult probationer adjudicated delinquent and ordered to serve supervised probation with the Department of Corrections. This would occur in an unusual case, where juvenile courts lack suitable treatment or programming. As noted, this is cost-neutral: the Department of Corrections is already likely supervising this category of offender.

APPLICABILITY

Ms. Kringlie provided me a link to the following scholarly article which addresses the benefits of determining juvenile court jurisdiction based on the age of the offender at the time of the commission of the offense rather than the offender's age at the time of prosecution: E. Fitzgerald, *Put the Juvenile Back in Juvenile Court*, New England Law, Boston Research Paper No. 22-14 (July, 2022). The article is available at the following link: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4205935#). I urge the Committee to review its informed analysis.

This proposal would impact a small portion of the juvenile caseload, but the benefits for individual offenders will be profound. Offenders nearing completion of treatment should not be cut off simply because they turn 20. Likewise, offenders should not be prosecuted in district court simply because they turn 20. Cases prosecuted in district court for offenders aged 20 or older are largely in two categories: 1.) those with longer or delayed statutes of limitations (juvenile sex offenses or theft-related offenses not discovered until years later); and 2.) cases in which the offender has left the state and returned (tolling the statute of limitations). Often delays in prosecution are no fault of the offender: authorities, parents, victims, or others may know about the offense but have failed to report it. Parents may move their children to another state, and when the child returns as an adult, the offense is prosecuted.

Perhaps most dramatic may be the exploratory sexual assault case in which a juvenile who is more than three years old than the victim engages in inappropriate sexual contact while another

minor. This is a common case in juvenile court, and the results of treatment and rehabilitation in juvenile court are usually profoundly positive.

In this type of offense, if the parents of those involved address the incident without involving authorities, a disclosure to a mandated reporter a decade later will result in the offender being prosecuted in district court. A comparison for this offense shows the stark inequity for the same offense by the same aged offender, simply because prosecution was delayed:

- In juvenile court, the records and proceedings remain confidential, district court proceedings and records are open to the public;
- Absent a court order or limited exception, juvenile court records are protected from disclosure; a district court cannot defer imposition of sentence for this offense (i.e., the offender will have a lifelong open record of conviction for the juvenile offense);
- A juvenile court has discretion to order sex offender registration (seldom ordered in juvenile cases due to treatment amenability and adverse impacts of registration); a district court must order the offender to register as a sex offender for a minimum of fifteen years and up to life;
- Juvenile court focuses on accountability and rehabilitation; district court focuses on punishment.

The impact is not only borne by the offender. Victims whose identities are protected in juvenile proceedings are subject to examination in open court. Good parents of the offender and victim who made the wrong decision to handle the matter without involving the authorities are often guilt-ridden for life. Their children suffer from the parents' decision.

CONCLUSION

As outlined in the attached scholarly article by Ms. Fitzgerald, “stakeholders can no longer afford to ignore the patently unfair denial of” access to the juvenile court system “merely because [the offender] reached the age of majority prior to the institution of legal proceedings.” Developmental deficiencies which render juvenile offenders less culpable, and actions attributable to adults who fail to report juvenile offenses result in similarly situated offenders being treated completely differently. The results are tragic, and the consequences are lifelong. As Ms. Fitzgerald aptly summarizes:

Fortunately, there is a simple solution. Because the jurisdiction of juvenile courts is conferred by statute, state legislatures have the power to change the jurisdictional statutes to address issues and inequities. Legislatures can simply amend the language of their states' jurisdictional statutes to make it clear that the jurisdiction of the juvenile court must be determined based upon a juvenile offender's age at the time of the alleged offense, not at the time of proceedings.

This proposal does just that—making clear that except in limited circumstances, juvenile court jurisdiction is determined based on the offender's age at the time of the offense. The proposal has the additional benefit of providing additional time for juvenile authorities to ensure

completion of treatment and rehabilitation rather than arbitrarily divesting authority when an offender reaches age 20. I respectfully urge the Committee to recommend “Do Pass.”

Respectfully submitted,

/s/ Mark A. Friese

Mark A. Friese

MAF:hs

cc: Sen. Ronald Sorvaag, *via email only*
Rep. Carrie McLeod, *via email only*
Rep. Scott Wagner, *via email only*