

House Bill No. 1195
House Judiciary Committee

Testimony Presented by
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For the record, my name is Karen Kringlie and I am the Director of Juvenile Court and the Chief Justice's appointment to the Commission on Juvenile Justice. I am providing information and support for House Bill 1195, a proposal to study the desirability and feasibility of a legislative creation of a juvenile delinquency offense code.

During the past three years of study and drafting to repeal and replace the fifty-year-old Uniform Juvenile Court Act, the Commission on Juvenile Justice began discussing whether the adult criminal code is at times difficult to apply and unintentionally inequitable in its application to youth charged with juvenile delinquency. The focus in most criminal code sections is primarily with prohibiting a certain type of adult behavior. How these statutes play out in juvenile court application can be uneven and result in too extreme of consequences in some cases. The proposal of this bill is a specific study of the criminal code as it affects youth in juvenile court as well as consideration of whether a separate juvenile code should be created. This could include a distinct and intentional classification of prohibited behaviors and all of this study framed by what we know about adolescent development and the effectiveness of government interventions on certain types of delinquent behavior.

As members of the Committee are well aware, the North Dakota Criminal Code, Title 12.1 (as well as portions of Title 19, Title 20.1, Title 39, and Title 62.1) defines what crimes are in North Dakota and also specifies the severity or classification of the offense for purposes of sentencing in adult courts. (12.1-32-01 N.D.C.C.)

The legislature determines the age of criminal responsibility and in North Dakota it is deemed to begin at ten years of age. (12.1-04-01 N.D.C.C.) When children ages 10 to 17 allegedly violate the criminal laws of this state, all proceedings concerning them are required to be conducted in juvenile court and according to the laws set forth in the Juvenile Court Act, Chapter 27-20.2, and the companion chapter on delinquency, Chapter 27-20.4. These chapters do not contain juvenile specific criminal offenses, but rather the definition of "delinquent act" refers to acts "...designated a crime under law" (27-20.4-01(7) N.D.C.C.) This has been the case since the beginning of juvenile court in North Dakota in 1911.

Even though the historical aim of the creation of the juvenile court in the United States in 1899 was to separate children from the abuses and consequences of adult criminal procedure (in particular or most dramatically, jail confinement with adult offenders), the juvenile system to this day still looks back to the adult criminal offense codes and adult crime classifications as the basis for the charging document in juvenile court. The classification of offenses for adults is still a daily point of discussion in charging youth, disposing of juvenile cases, assigning offender risk levels, and consideration of transferring youth into the adult system for the most serious crimes.

Certainly, for the most basic offenses such as theft or assault one can imagine that the elements of the "crime" might remain the same regardless of the age of the actor. What the Commission on Juvenile Justice discussed was that there are criminal offenses for which age of the victim is an aggravating factor or the location of the crime – meaning there is a heightened severity of classification for the adult defendant because of the type of victim or the place of the offense. This is quite understandable when it comes to adults taking advantage of or harming a vulnerable child or committing crimes at schools but should there be that same distinctions and aggravating factors for children?

Some examples that we believe could use more focused study are domestic violence statutes as applied to sibling or parent/child conflicts, assault offenses and sexual offenses where both the offender and victim are under the age of 18. As an example, an adult distributing an illicit photograph of a minor may differ from a minor distributing the same photo.

Many of the offenses carry with them collateral consequences that can impact a youth well beyond the age of legal adulthood. Examples of collateral consequences can be barriers to entering the military, pursuing certain types of careers, or obtaining financial aid or public housing. There can be occupational licensing issues because of past juvenile adjudications that can add to workforce issues in areas like home health aides, day care, nursing home workers, and in education. Youth adjudicated of certain types of felonies can be prohibiting well into adulthood from possession of a firearm. A 2022 North Dakota Supreme Court case had in its concurrence a recommendation that the legislature look into the impact of the prohibition on possession of firearms as pertains to juvenile adjudications.

When adult crime definitions, elements, and classifications are difficult to interpret, apply, and follow based on common childhood behaviors, the prosecutor may make charging decision to an alternative offense, stipulate to a lesser offense, or decline to prosecute altogether. These decisions can vary by region of the state depending on the knowledge or familiarity that the particular prosecutor has with adolescent behavior, juvenile delinquency, or the impact of collateral consequences on youth offenders. As result, offenders are treated differently for reasons other than the offense conduct.

Below is a partial list of offenses that raise some of the questions expressed above:

- child abuse contributing to the delinquency of a minor
- gross sexual imposition (by age, not force) and fornication
- domestic violence, assault, terrorizing against a child
- creation, possession, or dissemination of child pornography and possession of certain materials prohibited
- unauthorized use of a motor vehicle (when the vehicle is owned by a parent or family member)
- certain drug offenses that take place within so many feet of a school
- disturbance of a public school (when the actor is a student of that school)

A study of juvenile delinquency code and classification would ensure that North Dakota intentionally sets out which youth behaviors are prohibited by law and the level of seriousness at which the behavior should be addressed by government action. This would lead to enhanced public safety and more effective use of public resources. It would also reduce the impact of negative collateral consequences for juvenile offenders – action that is currently designed for adult behavior.

Thank you for the opportunity to address you today. I will stand for any questions.