

Bill Draft relating to juvenile court proceedings, collateral consequences the juvenile court may order, delinquent acts, and child registration requirements

Senate Judiciary Committee

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Testimony of Travis W. Finck in support of SB 2037

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N.D.C.C. 12.1-04: Criminal Responsibility

☐ Sections 1: page 1

- ☐ Clearly provides a child ten years of age or older may be assessed for criminal responsibility

3. An individual ten years of age or older may be assessed for criminal responsibility under this chapter.

☐ Section 2: page 2

- ☐ Allows for the Juvenile Court to retain jurisdiction of a child who is found to not be adjudicated by reason of lack of criminal responsibility

1. Unless earlier discharged by order of the court pursuant to section 12.1-04.1-22, 12.1-04.1-24, or 12.1-04.1-25, an individual found not guilty by reason of lack of criminal responsibility is subject to the jurisdiction of the court for a period equal to the maximum term of imprisonment that could have been imposed for the most serious crime of which the individual was charged but found not guilty by reason of lack of criminal responsibility. In a juvenile proceeding, a child not adjudicated by reason of lack of criminal responsibility is subject to the jurisdiction of the court for one year.
2. Upon expiration of its jurisdiction under this chapter or earlier discharge by its order, the court may order that a proceeding for involuntary commitment be initiated pursuant to chapter 25-03.1. In a juvenile proceeding, the court may order an investigation into whether a child in need of protection proceedings should be initiated.

N.D.C.C 12.1-17-01.2: Domestic Violence

Section 3: page 2

5. This section does not apply to an individual under the age of eighteen unless the victim is or was in a dating relationship with the individual.

Change makes Domestic Violence no longer apply as an offense to juveniles unless the victim is or was in a dating relationship with the individual

Reason for this change is that the Domestic Violence offense is commonly used in situations for juveniles where it doesn't apply the same way for adults

Juveniles are often taken to detention for this offense when other options would be appropriate

N.D.C.C. 12.1-17-07.2(2): Distribution of Intimate Images

□ Section 4: page 3

2. A person commits the offense of distribution of intimate images if the person knowingly or intentionally distributes to any third party any intimate image of an individual ~~eighteen years of age or older~~, if:

□ Takes away age requirement of the victim being over the age of eighteen

□ Distribution of intimate images only applied to images of an adult, this would now equally prohibit this conduct whether the victim is a juvenile or an adult

N.D.C.C. 12.1-20-01(1) and (4): Gross Sexual Imposition

□ Section 5: page 3-4

□ Subsection (1) is just a grammatical to match the rest of this section

1. When ~~the criminality of conduct~~ depends on a ~~child's~~child being below the age of fifteen, it is no defense that the actor did not know the child's age, or reasonably believed the child to be older than fourteen.

□ Subsection (4) allows for children under and around the age of fifteen to not being charged with a felonies for engaging in consensual sexual conduct if they are within a three-year age gap.

4. When criminality depends on the victim being below the age of fifteen, and the actor is a minor, the actor is guilty of an offense only if the actor is at least three years older than the victim.

N.D.C.C. 12.1-31-03(2) and (6): Tobacco

Section 6: page 4

2. ~~It is a noncriminal offense for an individual under twenty-one~~eighteen to twenty years of age, and an infraction for an individual fourteen to seventeen years of age, to purchase, possess, smoke, or use cigarettes, cigars, cigarette papers, snuff, tobacco

Changes offense level for minor possessing tobacco from a noncriminal offense to an infraction

- Changes jurisdiction from adult court to juvenile court

Section 7: page 4-5 : clarifies subsection (1), states where to send cases and what the penalties are for adults

6. ~~An individual fourteen years of age or older must pay a fee of twenty-five dollars~~has committed an infraction and must be sent to juvenile court. An individual eighteen years of age or older found to have violated subsection 2 or 4 must pay a fee of twenty-five dollars.

N.D.C.C. 12.1-32-15: Offender Registration

□ Section 8, Page 5-6: Juveniles have been treated very similar to adults for registering as sexual offender, which often was mandatory

- a. ~~Has pled guilty or nolo contendere to, or been found guilty as a felonious sexual offender or an attempted felonious sexual offender, including juvenile delinquent adjudications of equivalent offenses unless the offense is listed in subdivision e.~~

□ Page 11 lines 3-8: Courts were allowed to deviate, but presumption was to register

- c. ~~Is a juvenile found delinquent under subdivision d of subsection 1 of section 12.1-20-03, subdivision a of subsection 2 of section 12.1-20-03, or as a sexual offender for a misdemeanor. The court may deviate from requiring the juvenile to register if the court first finds the juvenile has not previously been convicted as a sexual offender or for a crime against a child, and the juvenile did not exhibit mental abnormality or predatory conduct in the commission of the offense.~~

N.D.C.C. 12.1-32-15: Sexual Offender Registration Cont. (section 8)

Page 8 Provides the New language:

Sexual offender registration would now always be discretionary for juveniles

e. Is a child who has been adjudicated delinquent of an offense which would classify the child as a sexual offender, the prosecutor requested the court to consider sexual offender registration, and the court determines the child:

(1) Exhibited a mental abnormality or predatory conduct in the commission of the offense; or

(2) Previously has been adjudicated as a sexual offender.

Page 8 line 30: This will also take away administrative registration for when a court hasn't ordered someone to register in North Dakota

b. Has pled guilty or nolo contendere to, ~~or been adjudicated for or found guilty of,~~ an offense in a court of this state for which registration is mandatory under this section or an offense from another court in the United States, a tribal court, or court of another country equivalent to those offenses set forth in this section; or

N.D.C.C. 12.1-32-15: Child and discretionary registration

- Section 10: page 8 lines 4-5 and lines 11-12
- Children will no longer be required to register an offender against children
 - ~~e.~~ Has pled guilty or nolo contendere to, or been found guilty of, a crime against a child or an attempted crime against a child, ~~including juvenile delinquent adjudications of equivalent offenses.~~ Except if the offense is described in section
- Children will no longer be required to register for offenses that are not sexual in nature
 - ~~e.d.~~ Has pled guilty or nolo contendere, or been found guilty, ~~or been adjudicated delinquent~~ of any crime against another individual which is not otherwise specified in this section if the court determines that registration is warranted by the nature of the crime and therefore orders registration for the individual. If the

N.D.C.C. 15-09-33.4: Student Misconduct

□ Section 9: page 15

□ School board were required to suspend kids from participating in activities if the committed certain crimes, now will be discretionary:

1. The board of a school district ~~shall~~ may prohibit a student from participating in any extracurricular activity if:
 - a. The student has pled guilty to or been convicted of a criminal offense and sentenced under section 12.1-32-02.1 or pled guilty or been convicted of an offense specified in subsection 1 of section 12.1-32-09.1;

□ Added that school boards can suspend a student if there is a judicial no contact order

- (4) Any other order issued against the student prohibiting contact with a student or employee of the school which is signed by a district judge or a judicial referee within a delinquency or criminal case;

Driving Privileges in Juvenile Adjudications

□ Section 10: page 16-17

- Cleans up driving privileges reference. For any juvenile adjudications, collateral consequences will all be in new section of law created in section of 16 of this bill, rather than referring to other chapters

“For a driving-related offense, the conditions may include a restriction on the child's driving privileges as authorized under section 27-20.4-1916 of this Act.”

□ Section 13: this is similar to Section 10 except it is in the informal agreements

“An informal agreement may not extend beyond six months from the day the agreement was agreed upon. An extension may be granted by the court for an additional period not to exceed six months. An extension may not authorize the detention of the child if not otherwise permitted by this chapter. For a driving-related offense, the agreement may include a restriction on the child's driving privileges as allowed under section ~~27-20.4-1916~~ of this Act.”

New N.D.C.C. section titled Petition

□ Section 11: page 17

□ Reorganized and combined sections, substantive change is in subsection (3) that petitions would no longer contain the adult classification level

1. A petition alleging delinquency under this chapter must be reviewed by the director, the court, or other person designated by the director and authorized by the court to determine whether the filing of the petition is in the best interest of the public and the child.
2. The state's attorney shall prepare, file, and serve a petition alleging delinquent conduct on the parties. The juvenile court shall conduct an inquiry into and provide the last known address of the parents or legal guardian of the child in the referral to the state's attorney.
3. A petition alleging delinquent conduct may not include the adult class level of the offense unless the offense level is a necessary element of the delinquent conduct.

New N.D.C.C. section requiring the Court to ascertain the Child is Fit and Criminally Responsible

□ Section 12: page 17

Fitness to proceed - Lack of criminal responsibility.

In any juvenile court proceeding, the court shall determine whether the child;

1. Is fit to proceed in accordance with title 27; and
2. Lacked criminal responsibility for the commission of an offense in accordance with chapter 12.1 - 04.1.

We have an amendment on this after further conversation with the DHHS, and it has been submitted:

In any juvenile court proceeding **where fitness to proceed or criminal responsibility are at issue**, the court shall determine whether the child;

Clean Up Provisions

□ Section 14: page 18

- This change simply corrects a previous error in referring back to the consequences section referencing probation for adjudications in delinquent matters

“A probation order entered by the court must place the child under the supervision of the director, unless the child is over eighteen years of age and the child's risk and needs require supervision by the department of corrections and rehabilitation under subsection 13 of section ~~27-20.4-15~~ 27-20.4-17.”

□ Section 15: Page 18

- Again, this is a simple clean up pushing the reference for paying restitution in the potential consequence of juvenile adjudications.

“In addition to a child being ordered to make restitution under section ~~27-20.4-16~~ 27-20.4-17, a parent of a child adjudged delinquent may be ordered to make restitution on the child's behalf in an amount not exceeding five thousand dollars.

New N.D.C.C section: Collateral Consequences

- ❑ Section 16: page 18
- ❑ New consolidated century code section in the juvenile code where collateral consequences are found:
 - ❑ A child may be ordered to register as a sexual offender under section 12.1 - 32 -15
 - ❑ A child may be prohibited from possessing a firearm in accordance with section 62.1 - 02 - 01
 - ❑ If a child is adjudicated delinquent of an offense that would be a class A misdemeanor or a felony if the offense were committed by an adult, the juvenile court may suspend the child's driving privileges
 - ❑ A child may be prohibited from participating in extracurricular activities in accordance with section 15.1 - 09 - 33.4 .

N.D.C.C. 62.1-02-01: Firearms

Section 17: page 19-21

Creates new subsections to define when a juvenile who committed a crime loses their firearms rights

Substantive change is that a juvenile who commits a non-violent felony will not lose their firearm rights

e. A child who has been adjudicated delinquent of a felony offense involving violence or intimidation in violation of chapters 12.1-16 through 12.1-25 or an equivalent felony offense of another state or the federal government is prohibited from owning a firearm or having one in possession from the date of adjudication and continuing for ten years after the date of adjudication.

f. A child who has been adjudicated of a class A misdemeanor offense involving violence or intimidation in violation of chapters 12.1-16 through 12.1-25 or an equivalent offense of another state or the federal government, and the offense was committed while using or possessing a firearm, a dangerous weapon, a destructive device, or an explosive is prohibited from owning a firearm or having one in possession from the date of adjudication and continuing for five years after the date of adjudication.

Repealed

- ❑ Section 18: page
- ❑ Removes the following sections:
 - ❑ 27-20.4-12 : This is the current section about the contents of the petition. The new section above when implemented renders this provision repealed
 - ❑ 27-20.4-13: This is the current section about who files and serves the petition. Again, this is consolidated into one section in the new provisions
 - ❑ 27-20.4-19: This is the current section dealing with the restrictions on driving privileges for a juvenile. This is replaced in this bill and put all in one collateral consequence section rendering this chapter repealed.

Juvenile Collateral Consequences: A Review of What's Changing

Main consequences addressed:

- Age based sex offenses
- Sexual offender registration
- Child offender registration
- Domestic violence laws
- Tobacco laws
- School consequences
- Petition language
- Firearm consequences
- Driving consequences
- Criminal responsibility

Age based sex offenses:

OLD:

- Any sexual contact with a minor under the age of 15 was considered GSI (Class A Felony)
 - 16-year-old and 14-year-old having consensual sexual intercourse would result in the 16-year-old getting a Class A Felony.

NEW:

- Consensual sexual contact with someone under 15 will only be a GSI if there is over a three-year age gap between the suspect and the victim
 - 16-year-old and 14-year-old having consensual sexual intercourse would result in the 16-year-old not getting charged.
 - 17-year-old and 12-year-old having sexual intercourse would still result in the 17-year-old committing a Class A Felony.
- Important note: unwanted sexual contact is still chargeable in the same manner as before

Sexual Offender Registration

OLD:

- Juvenile were required to register as a sexual offender in the same manner as adults
 - Resulted in registration being mandatory for all sexual offenses
- Only difference for juveniles was a Court could not require registration for certain offenses (aged based GSIs and misdemeanor cases) if the juvenile did not have a prior sexual offense and the juvenile also did not exhibit a mental abnormality or predatory conduct in the commission of the offense

NEW:

- Registration is discretionary
- Prosecutor can request or not request the court address registration
 - If not requested, then no registration
- If requested: Court will then have to determine that either 1) juvenile had a previous sexual offense, or 2) juvenile exhibited a mental abnormality or predatory conduct in the commission of the offense for that juvenile to have to register

Child Offender Registration

OLD:

- A juvenile was required to register as an offender against a child in the same manner as an adult
 - Resulted in registration as a child offender being mandatory
 - Some deviation was allowed for certain offenses if the court made specific findings

NEW:

- A juvenile will never register as an offender against a child

Domestic Violence

OLD:

- Domestic violence laws applied the same to juvenile and adults
 - Domestic violence was used frequently for charging a juvenile hitting a parent or sibling

NEW:

- Domestic Violence law will only apply to juvenile if:
 - Juvenile was in a dating relationship with the victim
 - Juvenile has a child in common with the victim

Tobacco Laws

OLD:

- Tobacco offenses were classified as non-criminal offenses which caused them to be seen on public court records
- City's attorneys/municipal judges were often handling these offenses

NEW:

- Tobacco offenses will be classified as criminal infractions
- Changing to an infractions brings the offense into the jurisdiction of juvenile court
- Juvenile court/state's attorney will be handling these matters

School Consequences:

OLD:

- School District were required to prohibit students from participating in extracurricular activities if a juvenile committed certain offenses

NEW:

- School districts will now have discretion on whether to prohibit a juvenile from participating in an extracurricular activity

Petition Language

OLD:

- Petitions would include the adult offense level
- For example: the petition would state: “The juvenile committed theft of property by stealing a vehicle belonging to John Doe. This offense if committed by an adult would be a Class C Felony.”

NEW:

- Petitions will no longer include the adult offense level language
- Petition will now just say: “The juvenile committed theft of property by stealing a vehicle belonging to John Doe.”

Firearm consequences

OLD:

- Juvenile would lose the right to possess a firearm in the same manner as an adult
- Right to possess firearm was lost for adjudications for non-violent felonies

NEW:

- Juvenile is treated the same as adult and lose the right to possess a firearm if they are adjudicated for a violent felony or misdemeanor
- Does not lose right to possess firearms for adjudications for non-violent felonies

Criminal Responsibility

OLD:

- Children can be evaluated for criminal responsibility in the same manner as adults

NEW:

- Same as before. Just created language to clarify process and brought some language from the juvenile code to the adult criminal responsibility section.
- Done because language for this process was contained in multiple places and made the process confusing. Criminal responsibility will now all be handled under 12.1-04.1.