

2023 HOUSE JUDICIARY

HB 1160

2023 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Room JW327B, State Capitol

HB 1160
1/18/2023

Relating to delinquent children; and to declare an emergency.

Chairman Klemin opened the hearing on HB 1160 at 10:48 AM.

Members present: Chairman Klemin, Vice Chairman Karls, Rep. Bahl, Rep. Christensen, Rep. Cory, Rep. Henderson, Rep. S. Olson, Rep. Rios, Rep. S. Roers Jones, Rep. Satrom, Rep. Schneider, Rep. VanWinkle, Rep. Vetter

Discussion Topics:

- Monitoring juveniles
- Definition of a child
- Accountability and rehabilitation

Rep. Shannon Roers Jones: Introduced the bill

Mark Friese: Vogel Law Firm. In support. Went through the bill. Online. Testimony (#13590)

Travis Finck, Executive Director NDCLCI: In support. No written testimony

Karen Kringlie, Director of Juvenile Court in the East and Southeast Judicial Courts. Neutral Testimony (#13856)

Hearing closed at 11:09 am

Rep. Shannon Roers Jones moved to amend according to 23.0472.01001;

Seconded by Rep. Satrom

Representatives	Vote
Representative Lawrence R. Klemin	Y
Representative Karen Karls	Y
Representative Landon Bahl	Y
Representative Cole Christensen	Y
Representative Claire Cory	Y
Representative Donna Henderson	Y
Representative SuAnn Olson	Y
Representative Nico Rios	Y
Representative Shannon Roers Jones	Y
Representative Bernie Satrom	Y
Representative Mary Schneider	Y
Representative Lori VanWinkle	Y
Representative Steve Vetter	Y

Roll Call Vote: 13 Yes 0 No 0 Absent

Rep. Henderson moved a **Do Pass As Amended** motion; Seconded by Rep. Schneider

Representatives	Vote
Representative Lawrence R. Klemin	y
Representative Karen Karls	Y
Representative Landon Bahl	Y
Representative Cole Christensen	N
Representative Claire Cory	Y
Representative Donna Henderson	Y
Representative SuAnn Olson	Y
Representative Nico Rios	Y
Representative Shannon Roers Jones	Y
Representative Bernie Satrom	Y
Representative Mary Schneider	Y
Representative Lori VanWinkle	Y
Representative Steve Vetter	Y

Roll Call Vote: 12 Yes 1 No 0 Absent Carrier: Rep. Henderson

Meeting closed at 11:19 AM

Delores Shimek, Committee Clerk By: Leah Kuball

January 18, 2023

H 1/18/23

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1160

Page 2, line 8, replace "subsection 3" with "subsection 1"

Page 2, line 8, replace "27-20.4-17" with "27-20.4-15"

Page 2, line 9, remove "an"

Page 2, line 10, replace "extension" with "extensions"

Page 2, line 10, remove the overstrike over "~~four months each~~"

Page 2, line 11, remove "one year"

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1160: Judiciary Committee (Rep. Klemin, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). HB 1160 was placed on the Sixth order on the calendar.

Page 2, line 8, replace "subsection 3" with "subsection 1"

Page 2, line 8, replace "27-20.4-17" with "27-20.4-15"

Page 2, line 9, remove "an"

Page 2, line 10, replace "extension" with "extensions"

Page 2, line 10, remove the overstrike over "~~four months each~~"

Page 2, line 11, remove "one year"

Renumber accordingly

2023 SENATE JUDICIARY

HB 1160

2023 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

HB 1160
3/21/2023

A bill relating to the duties of the director of the department of corrections and rehabilitation.
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8:59 AM Chairman Larson opened the meeting.

Chairman Larson and Senators Myrdal, Luick, Estenson, Sickler, Paulson and Braunberger are present.

Discussion Topics:

- Delayed prosecutions
- Brain development
- Juvenile Court
- District Court

8:59 AM Representative Roers Jones introduced the bill and testified. #26026

9:02 AM Mark Friese, Attorney, testified in favor of the bill. #25933

9:12 AM Karen Kringlie, Director, Juvenile Court, East Central and Southeast Judicial Districts, testified in favor of the bill. #25869

9:19 AM Chairman Larson closed the public hearing.

9:19 AM Senator Myrdal moved to Do Pass the bill. Motion seconded by Senator Luick.

9:19 AM Roll call vote was taken.

Senators	Vote
Senator Diane Larson	Y
Senator Bob Paulson	Y
Senator Jonathan Sickler	Y
Senator Ryan Braunberger	Y
Senator Judy Estenson	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

Motion passed 7-0-0.

Senator Larson will carry the bill.

This bill does not affect workforce development.

9:20 AM Chairman Larson closed the meeting.

NOTE: The committee reconsidered actions on March 29, 2023 at 8:31 AM.

Rick Schuchard, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee Peace Garden Room, State Capitol

HB 1160
3/29/2023

A bill relating to the duties of the director of the department of corrections and rehabilitation

Chairman Larson opened the meeting. Chairman Larson and Senators Luick, Estenson, Sickler, Paulson and Braunberger were present.

Discussion Topics:

- Amendments

8:31 AM Representative Roers Jones discussed amendment LC.23.0472.02002. #26958, 26959.

8:34 AM Senator Larson moved to reconsider the action that was previously taken on the bill. Motion seconded by Senator Myrdal.

8:34 AM Roll call vote was taken.

Senators	Vote
Senator Diane Larson	Y
Senator Bob Paulson	Y
Senator Jonathan Sickler	Y
Senator Ryan Braunberger	Y
Senator Judy Estenson	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

Motion passes 7-0-0.

8:34 AM Senator Larson moved to adopt amendment LC. 23.0472.02002.
Motion seconded by Senator Myrdal.

8:35 AM Roll call vote was taken.

Senators	Vote
Senator Diane Larson	Y
Senator Bob Paulson	Y
Senator Jonathan Sickler	Y
Senator Ryan Braunberger	Y
Senator Judy Estenson	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

Motion passes 7-0-0.

8:35 AM Senator Larson moved to Do Pass the bill as Amended.
Motion seconded by Senator Estenson.

8:35 AM Roll call vote was taken.

Senators	Vote
Senator Diane Larson	Y
Senator Bob Paulson	Y
Senator Jonathan Sickler	Y
Senator Ryan Braunberger	Y
Senator Judy Estenson	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

Motion passes 7-0-0.

Senator Larson will carry the bill.

This bill does not affect workforce development.

8:37 AM Chairman Larson closed the meeting.

Rick Schuchard, Committee Clerk

AG
3-29-23
(1-1)

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1160

Page 2, line 9, remove the overstrike over "~~two extensions~~"

Page 2, line 10, remove "extensions"

Page 4, line 27, remove the overstrike over "~~two extensions up to four~~"

Page 4, line 28, remove the overstrike over "~~months each~~"

Page 4, line 28, remove "an extension up to one year"

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1160, as engrossed: Judiciary Committee (Sen. Larson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1160 was placed on the Sixth order on the calendar. This bill does not affect workforce development.

Page 2, line 9, remove the overstrike over "~~two extensions~~"

Page 2, line 10, remove "extensions"

Page 4, line 27, remove the overstrike over "~~two extensions up to four~~"

Page 4, line 28, remove the overstrike over "~~months each~~"

Page 4, line 28, remove "an extension up to one year"

Renumber accordingly

TESTIMONY

HB 1160



Phone: 701.237.6983
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mfriese@vogellaw.com

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*

House Bill No. 1160
House Judiciary Committee

Testimony Presented by
Karen Kringlie, Director of Juvenile Court
January 18, 2023

For the record, my name is Karen Kringlie and I am the Director of Juvenile Court in the East Central and Southeast Judicial Districts of North Dakota. I am appearing today on House Bill 1160 to offer neutral testimony from the prospective of the juvenile court.

In addition to other statutorily assigned duties and case types, the juvenile court has jurisdiction over youth up to the age of 20 for alleged delinquent acts that occurred prior to the child's 18th birthday. North Dakota juvenile courts have had that upper limit of the age of 20 years, because the legislature recognized that it would be unjust to allow a youth to commit a delinquent act shortly before their 18th birthday and simply "age out" of the court's jurisdiction without being held accountable. These two additional years has given young people the age-appropriate protections of the juvenile court process while allowing the juvenile court staff time to work with the young adult. For example, a youth found to have committed a drug related offense very close to their 18th birthday can continue on juvenile probation and participate in a juvenile drug court up to their 20th birthday. This is good for the youth and allows them to continue to receive juvenile rehabilitative services while holding them accountable for their actions in a way that recognizes that they were a kid when the law violation occurred. Keep in mind that current law allows youth to be transferred to adult court for extremely serious acts and nothing in this bill would change that ability for serious crimes to be addressed through a transfer to adult court.

What this bill does is remove the upper limit of the age of 20 in determining juvenile court jurisdiction. It unifies the concept long held that child acts should be handled by a specialized juvenile court by basing the jurisdictional age on the age at the time of the offense instead of the age at the time of the legal proceedings. Other states have ensured this method of conferring jurisdiction. Kentucky and Missouri are two recent examples. These states created statutes that clearly create juvenile court jurisdiction over all individuals alleged to have committed a delinquent act prior to reaching the age of 18, regardless of their age at the time the legal case is filed.

The states attorney would still have the ability to file a motion for transfer to adult court in cases where they believe the individual is not amenable to treatment in the juvenile system. The bill lays out that the court has the authority to have the Department of Corrections perform the probation supervision for individuals age 20 or more, which makes sense as the Department is more experienced in supervising older, young adults than the court's juvenile probation staff who are experts in youth age 20 and younger.

From the court's perspective, we would anticipate a small number of cases would fall into this category of individuals over the age of 20. I will stand for any questions.

House Bill No. 1160
Senate Judiciary Committee

Testimony Presented by
Karen Kringlie, Director of Juvenile Court
March 21, 2023

For the record, my name is Karen Kringlie and I am the Director of Juvenile Court in the East Central and Southeast Judicial Districts of North Dakota. I am appearing today on House Bill 1160 to offer neutral testimony from the prospective of the juvenile court.

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From the court's perspective, we would anticipate a small number of cases would fall into this category of individuals over the age of 20.

Thank you for the opportunity to provide testimony. I stand for any questions.



Phone: 701.237.6983
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mfriese@vogellaw.com

March 20, 2023

The Honorable Diane Larson
Chair, ND Senate Judiciary Committee
600 East Boulevard Avenue
Bismarck, ND 58505

Submitted electronically only:

Re: Testimony in support of HB 1160

Dear Chairman Larson and members of the Senate 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.

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 number 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 would 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, which has been considered by this Committee and returned to the House with amendments. During the interim, I was invited to participate in discussion regarding the reform package, providing comments to Karen Kringlie, Unit 2 Juvenile Court Director, and her senior staff. Among other things, that discussion identified the issue before you.

Subsequently, I met with Ms. Kringlie and Cass County juvenile court prosecutor Derek Steiner. I additionally spoke with lawmakers with expertise and interest in juvenile justice. The result of that collaboration is 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. The order will typically impose probation, treatment, counseling, restitution, community service, or other obligations. The obligations are 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, juvenile 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. Instead, 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 while district court proceedings and records are open to the public.
- Absent a court order or limited exception, juvenile court records are protected from disclosure. For this same offense, a district court cannot defer imposition of sentence (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. Registration is seldom ordered in juvenile cases due to treatment amenability and adverse impacts of registration. But for this same offense, 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 of this disparate treatment extends beyond 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 linked 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.

(emphasis added). 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. The House overwhelmingly passed this measure on a vote of 89 to 3. 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*

HB 1160 – Juvenile Courts
Senate Judiciary
March 21, 2023
Rep. Shannon Roers Jones

This bill provides that if a child commits a crime while they are a minor, that barring circumstances that would typically move a case to adult court, the case should be tried in juvenile court even if it doesn't go to trial until that person is an adult.

The basis of this bill is equitable treatment for offenders. People who commit the same crime, at the same age, should not be treated differently just because prosecution may be delayed.

There are several elements of juvenile court that are specifically tailored for offenders who lack maturity and brain development of an adult. The current status of the law is arbitrary and harms defendants by dragging cases that should be handled privately in juvenile court into the public forum of district court.

There are a couple of supporters of this change who will be coming after me who will be able to share in detail the background and application of the changes proposed in the bill. Mark Friese is a Fargo attorney who works on both adult and juvenile cases, and Karen Kringlie is the Director of Juvenile Court for the East Central and Southeast Judicial Districts.

I am happy to answer any of the committee's high level questions, but you may want to wait to hear from the experts as I believe their testimony will answer most of the questions you may have.

23.0472.02002
Title.

Prepared by the Legislative Council staff for
Representative Roers Jones
March 24, 2023

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1160

Page 2, line 9, remove the overstrike over "~~two extensions~~"

Page 2, line 10, remove "extensions"

Page 4, line 27, remove the overstrike over "~~two extensions up to four~~"

Page 4, line 28, remove the overstrike over "~~months each~~"

Page 4, line 28, remove "an extension up to one year"

Renumber accordingly

23.0472.02002

FIRST ENGROSSMENT

Sixty-eighth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1160

Introduced by

Representatives Roers Jones, Klemin, Satrom

Senators Hogue, Larson, Sickler

1 A BILL for an Act to create and enact a new subsection to section 54-23.3-04 of the North
2 Dakota Century Code, relating to the duties of the director of the department of corrections and
3 rehabilitation; to amend and reenact subsection 4 of section 27-20.4-01, subsection 3 of section
4 27-20.4-17, subsections 1 and 8 of section 27-20.4-18, section 27-20.4-21, and section
5 27-20.4-23 of the North Dakota Century Code, relating to delinquent children; and to declare an
6 emergency.

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

8 **SECTION 1. AMENDMENT.** Subsection 4 of section 27-20.4-01 of the North Dakota
9 Century Code is amended and reenacted as follows:

- 10 4. "Child" means an individual who is:
 - 11 a. Under the age of eighteen years and is not married; or
 - 12 b. ~~Under the age of twenty~~ Eighteen years of age or older with respect to a
 - 13 delinquent act committed while under the age of eighteen years and not married,
 - 14 unless an offense is transferred under section 27-20.4-21.

15 **SECTION 2. AMENDMENT.** Subsection 3 of section 27-20.4-17 of the North Dakota
16 Century Code is amended and reenacted as follows:

- 17 3. ~~If the court cannot find a less restrictive alternative, the~~The court may commit a child
18 to the division of juvenile services. ~~A risk and needs assessment must be the basis for~~
19 ~~the determination of commitment to the division of juvenile services. The court only~~
20 ~~may commit a child to the division for a new delinquent offense. Unless all probation~~
21 ~~extensions have been exhausted, the child's risk and treatment needs continue to be~~
22 ~~high and the child is refusing to comply with the terms of probation, the court may not~~
23 ~~commit a child for a violation of the terms of probation, or may order a child over~~

1 eighteen years of age to serve a term of probation under the supervision of the
2 department of corrections and rehabilitation.

3 **SECTION 3. AMENDMENT.** Subsections 1 and 8 of section 27-20.4-18 of the North Dakota
4 Century Code are amended and reenacted as follows:

5 1. A probation order entered by the court must place the child under the supervision of
6 the director, unless the child is over eighteen years of age and the child's risk and
7 needs require supervision by the department of corrections and rehabilitation under
8 subsection 1 of section 27-20.4-15.

9 8. The director or assigned probation court officer may request **two extensions**
10 ~~extensions~~ up to four months each ~~or one extension up to four months for intensive-~~
11 ~~supervised probation programs~~ for failure to comply or meet the treatment goals of the
12 court order and case plan.

13 **SECTION 4. AMENDMENT.** Section 27-20.4-21 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **27-20.4-21. Transfer to other courts.**

16 1. After a petition has been filed alleging delinquency based on conduct that is
17 designated a crime or public offense under the laws, including local ordinances or
18 resolutions of this state, the court before hearing the petition on the merits shall
19 transfer the offense for prosecution to the appropriate court having jurisdiction of the
20 offense if:

21 a. The child is over sixteen years of age and requests the transfer;

22 b. The child was fourteen years of age or more at the time of the alleged conduct
23 and the court determines that there is probable cause to believe the child
24 committed the alleged delinquent act and the delinquent act involves the offense
25 of murder or attempted murder; gross sexual imposition or the attempted gross
26 sexual imposition of a victim by force or by threat of imminent death, serious
27 bodily injury, or kidnapping; or

28 c. (1) The child was fourteen or more years of age at the time of the alleged
29 conduct;

30 (2) A hearing on whether the transfer should be made is held in conformity with
31 sections 27-20.2-12, 27-20.2-13, and 27-20.4-14;

- 1 (3) Notice in writing of the time, place, and purpose of the hearing is given to
2 the child and the child's parents, guardian, or other custodian at least three
3 days before the hearing; and
- 4 (4) The court finds that there are reasonable grounds to believe:
- 5 (a) The child committed the delinquent act alleged;
- 6 (b) The child is not amenable to treatment or rehabilitation as a child
7 through available programs;
- 8 (c) The child is not treatable in an institution for individuals who are
9 intellectually disabled or who are mentally ill;
- 10 (d) The interests of the community require that the child be placed under
11 legal restraint or discipline; and
- 12 (e) If the child is fourteen or fifteen years old, the child committed a
13 delinquent act involving the infliction or threat of serious bodily harm.
- 14 2. The burden of proving reasonable grounds to believe that a child is amenable to
15 treatment or rehabilitation as a child through available programs is on the child ~~in~~
16 ~~these cases in which:~~
- 17 a. If the alleged delinquent act involves the offense of manslaughter, aggravated
18 assault, robbery, arson involving an inhabited structure, or escape involving the
19 use of a firearm, destructive device, or other dangerous weapon ~~or in cases in~~
20 ~~which:~~
- 21 b. If the alleged delinquent act involves an offense that if committed by an adult
22 would be a felony and the child has two or more previous delinquency
23 adjudications for offenses that would be a felony if committed by an adult; or
- 24 c. If the child is twenty-five years of age or older.
- 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 child can be rehabilitated before 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. A child subject to the jurisdiction of the juvenile court, either before or after reaching
 - 9 eighteen years of age, may not be prosecuted for an offense previously committed
 - 10 unless the case has been transferred as provided in this section.
 - 11 5. Statements made by the child at a hearing under this section are not admissible
 - 12 against the child over objection in the criminal proceedings following the transfer
 - 13 except for impeachment.
 - 14 6. If the case is not transferred, the judge who conducted the hearing may not over
 - 15 objection of an interested party preside at the hearing on the petition. If the case is
 - 16 transferred to a court of which the judge who conducted the hearing is also a judge,
 - 17 the judge likewise is disqualified over objection from presiding in the prosecution.
 - 18 ~~7. An individual at least twenty years of age who committed an offense while a child and~~
 - 19 ~~was not adjudicated for the offense in juvenile court may be prosecuted in district court~~
 - 20 ~~as an adult, unless the state intentionally delayed the prosecution to avoid juvenile~~
 - 21 ~~court jurisdiction. The district court has original and exclusive jurisdiction for the~~
 - 22 ~~prosecution under this subsection.~~

23 **SECTION 5. AMENDMENT.** Section 27-20.4-23 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **27-20.4-23. Limitations of orders of disposition.**

- 26 1. An order of disposition may not exceed twelve months from disposition unless
- 27 extended by the court. The director or designee may request **two extensions up to four**
- 28 **months each** ~~an extension up to one year~~ for the child to complete the treatment goals
- 29 of the court order and the case plan.

- 1 2. An order of disposition committing a delinquent child to the division of juvenile services
2 may not exceed twelve months. The court may extend the order for an additional
3 twelve-month period, if:
- 4 a. A hearing is held upon motion of the division, or on the court's own motion, prior
5 to the expiration of the order;
- 6 b. Reasonable notice of the hearing and an opportunity to be heard are given to the
7 child and the parent, guardian, or other custodian;
- 8 c. The court finds the extension is necessary for the treatment or rehabilitation of
9 the child and has determined that such treatment cannot be provided in their
10 home community; and
- 11 d. The extension does not exceed twelve months from the expiration of an order
12 limited by subsection 3 or two years from the expiration of any other limited order.
- 13 3. Except as provided in subsection 2, an order of disposition pursuant to which a child is
14 placed in foster care may not continue for more than twelve months after the child is
15 considered to have entered foster care. A permanency hearing must be conducted
16 before the extension of any court order limited under this subsection. Any other order
17 of disposition may not continue in force for more than twelve months.
- 18 4. The court may terminate an order of disposition before the expiration of the order.
- 19 5. Except as provided in subsection 2, the court may terminate an order of disposition or
20 extension before its expiration, on or without an application of a party, if it appears to
21 the court the purposes of the order have been accomplished. If a party may be
22 adversely affected by the order of termination, the order may be made only after
23 reasonable notice and opportunity to be heard have been given to the party.
- 24 6. ~~When the child attains the age of twenty years, all orders affecting the child then in-~~
25 ~~force terminate and the child is discharged from further obligation or control.~~

26 **SECTION 6.** A new subsection to section 54-23.3-04 of the North Dakota Century Code is
27 created and enacted as follows:

28 To employ personnel and to establish policies and procedures to supervise a child
29 when a court orders supervision and management by the department under
30 subsection 1 of section 27-20.4-18.

31 **SECTION 7. EMERGENCY.** This Act is declared to be an emergency measure.