

JUVENILE COURT JURISDICTION STUDY - BACKGROUND MEMORANDUM

Section 1 of 2011 Senate Bill No. 2305 (attached as [Appendix A](#)) directs the Legislative Management to study the issue of juvenile court jurisdiction and the adult court transfer process and whether any additional juvenile court jurisdictional extensions would serve the best interests of the child and the public in cases in which the child is close to the age of majority.

JUVENILE COURT SYSTEMS IN THE UNITED STATES

Almost every state in the United States has established a juvenile court system to handle the legal matters of minors. Typically, these legal matters fall into one of three categories--criminal matters, abuse and neglect cases, and truancy or delinquency cases.

It is thought that minors can be more easily rehabilitated than adults and that minors are not always responsible for their actions because they lack the mental capabilities of an adult. For these reasons, juvenile courts were established to hear the cases of minors accused of crimes. The age of children who are eligible to be tried under the juvenile court system varies from state to state. Typically, however, children under the age of seven are found to be too young to be in either the juvenile or the adult court system. Similarly, sometime between ages 14 and 19, most states find that the accused are able to stand trial in adult court. Most states will automatically process anyone under age 18 who is accused of a crime as a juvenile. A few states set that age limit at 16, and other states make the age limit contingent on the seriousness of the alleged crime committed.

The disposition of a case in juvenile court depends on the state where the alleged crime was committed, the seriousness of the alleged crime, and the strength of the evidence against the alleged offender. Usually, a juvenile judge and prosecutor will consider the seriousness of the crime, the alleged offender's age, the alleged offender's criminal record, and the ability of the parents to control the child.

If a judge finds that the allegations against the minor have been proven, the judge will find the minor to be a youthful offender. The judge then decides the disposition of the case. If the minor is found not to be a threat to others, the minor may receive probation. If the minor, however, has been found to have committed a serious crime, the minor will likely be sent to a juvenile correction facility. Juvenile correction facilities are intended to provide an education and rehabilitation services for youthful offenders.

In 2005 the United States Supreme Court in *Roper v. Simmons*, 542 U.S. 551 (2005), held that states may not impose the death sentence on youthful offenders under the age of 17 because to do so would

constitute cruel and unusual punishment. This reversed an earlier court ruling that permitted the death penalty for youthful offenders.

In general, the goal of juvenile court systems is to provide the best possible future life for the children in its system regardless of whether the children are youthful offenders, victims of abuse or neglect, or delinquents in need of protection from themselves.

NORTH DAKOTA JUVENILE COURT SYSTEM Background

The North Dakota juvenile court system involves a number of state and local agencies; however, it is largely defined through the role of the juvenile court under North Dakota Century Code Chapter 27-20. This chapter, which is known as the Uniform Juvenile Court Act, establishes the juvenile court as a division of the district court. The district courts serve as the juvenile courts in the state and have exclusive and original jurisdiction over children. As defined by Section 27-20-02, "child" means an individual who is under the age of 18 years and is not married; or under the age of 20 years with respect to a delinquent act committed while under the age of 18 years. This chapter further defines the jurisdiction of the juvenile court with regard to deprived, delinquent, and unruly children. Section 27-20-02 defines a "delinquent child" as a "child who has committed a delinquent act and is in need of treatment or rehabilitation"; and an "unruly child" as a child who:

- Is habitually and without justification truant from school;
- Is habitually disobedient of the reasonable and lawful commands of the child's parent, guardian, or other custodian and is ungovernable or who is willfully in a situation dangerous or injurious to the health, safety, or morals of the child or others;
- Has committed an offense applicable only to a child;
- Has manufactured, purchased, consumed, or is under the influence of, or in possession of, or furnished money for the purchase of an alcoholic beverage or entered a licensed premise where alcoholic beverages are being sold or displayed;
- Is under the age of 14 years and has purchased, possessed, smoked, or used tobacco or tobacco-related products; and
- In any of the foregoing instances is in need of treatment or rehabilitation.

Under North Dakota law, children under the age of seven cannot be charged with delinquent or unruly acts.

The administration of the juvenile court in North Dakota has been divided into four administrative units. There are four juvenile court directors who oversee offices in Grand Forks, Devils Lake, Bottineau, Grafton, Fargo, Jamestown, Valley City, Wahpeton, Bismarck, Dickinson, Minot, and Williston.

Most of the referrals to juvenile court are made by law enforcement through an arrest. There are, however, some referrals that come from non-law enforcement personnel such as parents, schools, or social service agencies. The majority of youth who are arrested are released with a warrant to appear in court at a later date. Depending upon the circumstances and severity of the offense, some youth need to be held either for release to a parent or guardian or to await a court appearance. For youth who are detained, Section 27-20-06 requires that they have a court hearing within 96 hours. However, Rule 2 of the North Dakota Rules of Juvenile Procedure clarifies the statutory 96-hour time limit by stating that the court must hold hearings for juveniles detained within 24 hours, excluding weekends and holidays.

Disposition of Delinquent Child Cases

The juvenile court has several options for handling or disposing of delinquent child cases. One option, which is known as diversion, allows for the referral of the juvenile to a private agency or program. A second option, which is known as an informal adjustment under Section 27-20-10, allows the child and parents to enter an informal adjustment agreement that sets conditions for the child to be accountable for the charges through informal court probation. Informal adjustment offers an opportunity to admit the charge and accept conditions of probation without formal charges or a conviction being entered.

A third option is a formal adjudication in which a petition is filed in the district court and the case proceeds through the court system. The decision on the option selected is based on the seriousness of the offense, the age of the juvenile, previous offense history, and reliability of evidence.

Section 27-20-34, which deals with the transfers to other courts, provides that after a petition has been filed alleging delinquency based on conduct that is designated a crime or public offense, the court, before hearing the petition on its merits, is required to transfer the offense for prosecution to the appropriate court having jurisdiction of the offense if:

- a. The child is over sixteen or more years of age and requests the transfer;
- b. The child was fourteen years of age or more at the time of the alleged conduct and the court determines that there is probable cause to believe the child committed the alleged delinquent act and the delinquent act involves the offense of murder or attempted murder; gross sexual imposition or the attempted gross sexual imposition of a victim by force or by threat

of imminent death, serious bodily injury, or kidnapping; or the manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance in violation of subdivision a or b of subsection 1 of section 19-03.1-23, except for the manufacture, delivery, or possession with intent to manufacture or deliver marijuana in an amount less than one pound [.45 kilogram]; or the gratuitous delivery of a controlled substance not a narcotic drug or methamphetamine which is a singular and isolated event involving an amount of controlled substance sufficient solely for a single personal use; or

- c. (1) The child was fourteen or more years of age at the time of the alleged conduct;
- (2) A hearing on whether the transfer should be made is held in conformity with Sections 27 20-24, 27-20-26, and 27-20-27;
- (3) Notice in writing of the time, place, and purpose of the hearing is given to the child and the child's parents, guardian, or other custodian at least three days before the hearing; and
- (4) The court finds that there are reasonable grounds to believe that:
 - (a) The child committed the delinquent act alleged;
 - (b) The child is not amenable to treatment or rehabilitation as a juvenile through available programs;
 - (c) The child is not treatable in an institution for individuals who are intellectually disabled or who are mentally ill;
 - (d) The interests of the community require that the child be placed under legal restraint or discipline; and
 - (e) If the child is fourteen or fifteen years old, the child committed a delinquent act involving the infliction or threat of serious bodily harm.

Juvenile Caseload Data

According to the 2010 annual report of the North Dakota court system, the 2010 data shows a decrease in juvenile offenses. Overall referrals decreased 5 percent after decreasing 4 percent from 2008 to 2009. The report indicated that offenses against persons made up 7 percent of the juvenile court caseload, while status offenses--those offenses that only a child can commit--made up 38 percent of the caseload. Property offenses comprised 22 percent; deprivation, 8 percent; traffic offenses, 4 percent; and other delinquency, 37 percent.

According to the report, based on primary charges, the largest percentage--39 percent--of juvenile charges were disposed of through the informal adjustment process. Only 12 percent of juvenile charges were processed through a formal petition.

2011 SENATE BILL NO. 2305

Senate Bill No. 2305, as introduced, (attached as [Appendix B](#)) would have provided a process for the transfer of juvenile cases to adult court for certain offenses and a process for the transfer to extended jurisdiction juvenile court. The testimony on Senate Bill No. 2305 indicates that the bill was modeled after a similar law in Minnesota.

The introduced bill would have amended Section 27-20-34 to provide for a specific procedure for the transfer to adult court of a juvenile who is alleged to commit certain offenses. This section would have provided that the court, before hearing a petition on its merits, would be required to transfer the offense for prosecution to adult court if:

- The child is over 16 years of age and requests the transfer;
- The child was 14 years of age or more at the time of the alleged conduct and the court determines that there is probable cause to believe the child committed the alleged delinquent act of murder or attempted murder;
- A request is made by the prosecution to transfer the prosecution of the offense to adult court, the child was 14 years of age or older at the time of the alleged conduct, and the court determines there is probable cause to believe the child committed the alleged delinquent act and the delinquent act involved the offense of gross sexual imposition or the attempted gross sexual imposition of a victim by force or by threat of imminent death, serious bodily injury, or kidnapping or the manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance in violation of Section 19-03.1-23, with certain exceptions; or
- The court finds there is probable cause to believe that the child committed the alleged delinquent act; the child is not amenable to treatment or rehabilitation as a juvenile through available programs; the child is not treatable in an institution for the mentally retarded or mentally ill; the interests of the community require that the child be placed under legal restraint or discipline; and, if the child is 14 years old or 15 years old, the child committed a delinquent act involving the infliction or threat of serious bodily harm.

The bill would have created a new section to Chapter 27-20 relating to a process for a transfer to extended jurisdiction juvenile court. This new section would have provided that a proceeding involving a child alleged to have committed a delinquent act is an extended jurisdiction juvenile prosecution if:

- The child was 14 years of age or more at the time of the alleged offense, the prosecutor requested an extended jurisdiction juvenile prosecution, a transfer hearing was held on the issue, and the court designated the proceeding an extended jurisdiction juvenile prosecution; or
- The child was 14 years of age or more at the time of the alleged offense; the court, at a hearing, finds there is probable cause to believe the child committed the offense of gross sexual imposition or the attempted gross sexual imposition of a victim by force or by threat of imminent death, serious bodily injury, or kidnapping or the manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance in violation of certain offenses under Section 19-03.1-23, with certain exceptions; and the prosecutor designated in the delinquency petition that the proceeding is an extended jurisdiction juvenile prosecution.

This new section also would have provided that when a prosecutor requests extended jurisdiction under this section, the court would be required to hold a transfer hearing to consider the request. If the prosecution shows that there is probable cause to believe the child committed the delinquent act, this new section would have provided that the court would be required to grant the request for transfer. Finally, this new section would have provided that a child who is the subject of an extended jurisdiction juvenile prosecution has the right to a trial by jury and to the effective assistance of counsel.

Testimony in explanation of the bill indicated that the bill would have provided a procedure for the transfer to adult court for the most serious of crimes committed by juveniles. The testimony also explained that the bill also set forth a discretionary procedure to a transfer to extended jurisdiction juvenile court for those juveniles who are close to the age of majority who commit certain acts. The testimony indicated that the intent of the extended jurisdiction juvenile court procedure was to allow for more time to work with the juvenile.

Testimony from the North Dakota Association of Counties in opposition to the bill indicated that some of the provisions in the bill, which were modeled after Minnesota law, do not mesh with North Dakota law, including the granting of jury trial rights to juveniles. The testimony indicated that the bill raised some good issues, but that an in-depth study of the issues is needed. Testimony from the State Court Administrator's office indicated that the Supreme Court Juvenile Policy Board had a number of concerns with the bill. The testimony supported a study of the issues.

In response to the testimony, Senate Bill No. 2305 was amended to call for a study of juvenile court jurisdiction and the adult court transfer process.

SUGGESTED STUDY APPROACH

The committee, in its study of the issue of juvenile court jurisdiction and the adult court transfer process and whether any additional juvenile court jurisdictional extensions would serve the best interests of the child and the public in cases in which the child is close to the age of majority, may wish to approach this study as follows:

- Request information and testimony regarding the current juvenile court process, the issues and problems facing the juvenile court process, and the need for reforms to the process;
- Request information and testimony from the Supreme Court Juvenile Policy Board, the Attorney General, the North Dakota Association of Counties, the North Dakota State's Attorneys Association, the North Dakota Juvenile Court Association, the Department of Corrections and Rehabilitation, and other interested parties regarding the juvenile court jurisdiction and the need for additional juvenile court jurisdictional extensions; and
- Develop recommendations and prepare legislation necessary to implement the recommendations.

ATTACH:2

SECTION 1. LEGISLATIVE MANAGEMENT STUDY - JUVENILE COURT JURISDICTION. The legislative management shall consider studying, during the 2011-12 interim, the issue of juvenile court jurisdiction and the adult court transfer process and whether any additional juvenile court jurisdictional extensions would serve the best interests of the child and the public in cases in which the child is close to the age of majority. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-third legislative assembly.

11.0646.01000

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.

Sixty-second
Legislative Assembly

- 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.