

SENATE BILL NO. 2035

Introduced by

Legislative Management

(Judiciary Committee)

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 extended jurisdiction juvenile proceedings; and to amend and reenact
3 subsections 1 and 5 of section 27-20-24, sections 27-20-33 and 27-20-34, and subsection 6 of
4 section 27-20-36 of the North Dakota Century Code, relating to juvenile transfers to adult court.

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

6 **SECTION 1. AMENDMENT.** Subsections 1 and 5 of section 27-20-24 of the North Dakota
7 Century Code are amended and reenacted as follows:

8 1. Hearings under this chapter must be conducted by the court without a jury, in an
9 informal but orderly manner, ~~and except that a child subject to an extended jurisdiction~~
10 juvenile proceeding has the right to a jury trial on the issue of guilt. Hearings under this
11 chapter must be conducted separately from other proceedings not included in section
12 27-20-03.

13 5. Hearings are open to the public if the purpose of the hearing is to declare a person in
14 contempt of court or to consider a petition alleging an offense identified under
15 subdivision b or c of subsection 1 of section 27-20-34 ~~or~~ subsection 2 of section
16 27-20-34, or section 4 of this Act. The general public must be excluded from other
17 hearings under this chapter. In hearings from which the general public is excluded,
18 only the parties, their counsel, witnesses, victims, and any other persons the court
19 finds have a proper interest in the proceedings may be admitted by the court. The
20 court may temporarily exclude the child or other person from the hearing if, after being
21 warned by the court that disruptive conduct will cause removal from the courtroom, the
22 child or other person persists in conduct that justifies removal from the courtroom.

23 **SECTION 2. AMENDMENT.** Section 27-20-33 of the North Dakota Century Code is
24 amended and reenacted as follows:

1 **27-20-33. Order of adjudication - Noncriminal.**

2 1. ~~An~~Subject to any disposition under section 4 of this Act, an order of disposition or
3 other adjudication in a proceeding under this chapter is not a conviction of crime and
4 does not impose any civil disability ordinarily resulting from a conviction or operate to
5 disqualify the child in any civil service application or appointment. A child may not be
6 committed or transferred to a penal institution or other facility used primarily for the
7 execution of sentences of persons convicted of a crime unless an adult sentence is
8 imposed pursuant to section 27-20-34 or section 4 of this Act.

9 2. ~~The~~Subject to any disposition under section 4 of this Act, the disposition of a child and
10 evidence adduced in a hearing in juvenile court may not be used against the child in
11 any proceeding in any court other than a juvenile court, whether before or after
12 reaching majority, except for impeachment or in dispositional proceedings after
13 conviction of a felony for the purposes of a presentence investigation and report.

14 **SECTION 3. AMENDMENT.** Section 27-20-34 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **27-20-34. Transfer to ~~other courts~~adult court.**

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

- 22 a. The child is over sixteen or more years of age and requests the transfer;
- 23 b. The child was fourteen years of age or more at the time of the alleged conduct
24 and the court determines that there is probable cause to believe the child
25 committed the alleged delinquent act and the delinquent act involves the offense
26 of murder or attempted murder; ~~gross sexual imposition or the attempted gross~~
27 ~~sexual imposition of a victim by force or by threat of imminent death, serious~~
28 ~~bodily injury, or kidnapping; or the manufacture, delivery, or possession with~~
29 ~~intent to manufacture or deliver a controlled substance in violation of~~
30 ~~subdivision a or b of subsection 1 of section 19-03.1-23, except for the~~
31 ~~manufacture, delivery, or possession with intent to manufacture or deliver~~

1 marijuana in an amount less than one pound [.45 kilogram]; or the gratuitous
2 delivery of a controlled substance not a narcotic drug or methamphetamine which
3 is a singular and isolated event involving an amount of controlled substance
4 sufficient solely for a single personal use; or

5 c. Unless a request for extended jurisdiction is made and granted under section 4 of
6 this Act, the child was fourteen years of age or more at the time of the alleged
7 conduct and the court determines that there is probable cause to believe the child
8 committed the alleged delinquent act and the delinquent act involves the offense
9 of gross sexual imposition or the attempted gross sexual imposition of a victim by
10 force or by threat of imminent death, serious bodily injury, or kidnapping; or the
11 manufacture, delivery, or possession with intent to manufacture or deliver a
12 controlled substance in violation of subdivision a or b of subsection 1 of section
13 10-03.1-23, except for the manufacture, delivery, or possession with intent to
14 manufacture or deliver marijuana in an amount less than one pound
15 [.45 kilogram]; or the gratuitous delivery of a controlled substance not a narcotic
16 drug or methamphetamine which is a singular and isolated event involving an
17 amount of controlled substance sufficient solely for a single personal use; or

- 18 d. (1) The child was fourteen or more years of age at the time of the alleged
19 conduct;
- 20 (2) A hearing on whether the transfer should be made is held in conformity with
21 sections 27-20-24, 27-20-26, and 27-20-27;
- 22 (3) Notice in writing of the time, place, and purpose of the hearing is given to
23 the child and the child's parents, guardian, or other custodian at least three
24 days before the hearing; and
- 25 (4) The court finds that there are reasonable grounds is probable cause to
26 believe that:
- 27 (a) The child committed the delinquent act alleged;
- 28 (b) The child is not amenable to treatment or rehabilitation as a juvenile
29 through available programs;
- 30 (c) The child is not treatable in an institution for individuals who are
31 intellectually disabled or who are mentally ill;

- 1 (d) The interests of the community require that the child be placed under
2 legal restraint or discipline; and
- 3 (e) If the child is fourteen or fifteen years old, the child committed a
4 delinquent act involving the infliction or threat of serious bodily harm.
- 5 2. ~~The~~Unless a request for extended juvenile jurisdiction is made and granted under
6 section 4 of this Act, the burden of proving ~~reasonable grounds~~probable cause to
7 believe that a child is amenable to treatment or rehabilitation as a juvenile through
8 available programs is on the child in those cases in which the alleged delinquent act
9 involves the offense of manslaughter, aggravated assault, robbery, arson involving an
10 inhabited structure, or escape involving the use of a firearm, destructive device, or
11 other dangerous weapon or in cases in which the alleged delinquent act involves an
12 offense which if committed by an adult would be a felony and the child has two or
13 more previous delinquency adjudications for offenses which would be a felony if
14 committed by an adult.
- 15 3. In determining a child's amenability to treatment and rehabilitation, the court shall
16 consider and make specific findings on the following factors:
- 17 a. Age;
- 18 b. Mental capacity;
- 19 c. Maturity;
- 20 d. Degree of criminal sophistication exhibited;
- 21 e. Previous record;
- 22 f. Success or failure of previous attempts to rehabilitate;
- 23 g. Whether the juvenile can be rehabilitated prior to expiration of juvenile court
24 jurisdiction;
- 25 h. Any psychological, probation, or institutional reports;
- 26 i. The nature and circumstances of the acts for which the transfer is sought;
- 27 j. The prospect for adequate protection of the public; and
- 28 k. Any other relevant factors.
- 29 4. Any transfer operates to terminate the juvenile court's jurisdiction over the child with
30 respect to any future offense if the child is ultimately convicted of the offense giving
31 rise to the transfer.

- 1 5. No child subject to the jurisdiction of the juvenile court, either before or after reaching
2 eighteen years of age, may be prosecuted for an offense previously committed unless
3 the case has been transferred as provided in this section.
- 4 6. Statements made by the child at the hearing under this section are not admissible
5 against the child over objection in the criminal proceedings following the transfer
6 except for impeachment.
- 7 7. If the case is not transferred, the judge who conducted the hearing may not over
8 objection of an interested party preside at the hearing on the petition. If the case is
9 transferred to a court of which the judge who conducted the hearing is also a judge,
10 the judge likewise is disqualified over objection from presiding in the prosecution.
- 11 8. A person at least twenty years of age who committed an offense while a child and was
12 not adjudicated for the offense in juvenile court may be prosecuted in district court as
13 an adult, unless the state intentionally delayed the prosecution to avoid juvenile court
14 jurisdiction. The district court has original and exclusive jurisdiction for the prosecution
15 under this subsection.

16 **SECTION 4.** A new section to chapter 27-20 of the North Dakota Century Code is created
17 and enacted as follows:

18 **Extended jurisdiction juvenile proceeding - Hearing - Disposition - Revocation -**
19 **Appeal.**

- 20 1. Upon the motion of any party, including the child's parent or guardian, or upon the
21 court's own motion, a proceeding involving a child alleged to have committed a
22 delinquent act may be considered for designation as an extended jurisdiction juvenile
23 proceeding if:
 - 24 a. The child is over sixteen or more years of age and requests the transfer; or
 - 25 b. The child was fourteen years of age or more at the time of the alleged offense
26 and the alleged delinquent act involves the offense of gross sexual imposition or
27 the attempted gross sexual imposition of a victim by force or by threat of
28 imminent death, serious bodily injury, or kidnapping; or the manufacture, delivery,
29 or possession with intent to manufacture or deliver a controlled substance in
30 violation of subdivision a or b of subsection 1 of section 19-03.1-23; or one of the
31 offenses of manslaughter, aggravated assault, robbery, arson involving an

1 inhabited structure, or escape involving the use of a firearm, destructive device,
2 or other dangerous weapon or in cases in which the alleged delinquent act
3 involves an offense that if committed by an adult would be a felony and the child
4 has two or more previous delinquency adjudications for offenses which would be
5 a felony if committed by an adult.

6 2. When request for extended juvenile jurisdiction is made, the court shall hold a hearing
7 to consider the request. The hearing must be held within thirty days of the filing of the
8 request unless good cause is shown by the state's attorney or the child as to why the
9 hearing should not be held within this period in which case the transfer hearing must
10 be held within ninety days of the filing of the request. If there is probable cause to
11 believe the child committed the delinquent act alleged and public safety is served by
12 an extended jurisdiction juvenile proceeding, the court shall grant the request. In
13 determining whether public safety is served, the court may consider the factors
14 specified in subsection 3 of section 27-20-34. The court shall decide whether to
15 designate an extended jurisdiction juvenile proceeding within fifteen days after the
16 hearing is completed, unless additional time is needed, in which case the court may
17 extend the period up to another fifteen days.

18 3. After designation as an extended jurisdiction juvenile proceeding, a hearing under
19 section 27-20-29 must be held. The judge or judicial referee who conducted the
20 hearing under subsection 2 may not preside at the hearing under this subsection. The
21 hearing must be held before a jury if requested by the child and must be conducted in
22 accordance with chapters 29-16 and 29-17 and applicable rules of criminal procedure.
23 The child and other parties to the proceeding are entitled to representation by counsel
24 as provided in section 27-20-26. If the child admits to or is adjudicated to have
25 committed an offense alleged in the petition, the court shall impose a single judgment
26 consisting of:
27 a. One or more dispositions under section 27-20-31; and
28 b. Any sentence allowed by the statute that establishes the penalty for the offense
29 the child is adjudicated to have committed and that would be permissible if the
30 offender were an adult. Execution of the sentence imposed under this subdivision

1 must be suspended on the condition that the child not violate the provisions of
2 the disposition order and not commit a new offense.

3 4. The jurisdiction of the court, with respect to the offense to which the child admits or is
4 adjudicated to have committed, extends until the offender becomes twenty years of
5 age unless jurisdiction is terminated before that date.

6 5. If the child violates the conditions of the suspended sentence imposed under
7 subdivision a or b of subsection 3 or is alleged to have committed a new offense, the
8 court, without notice, may direct that the child be taken into immediate custody. The
9 court shall notify the child, the child's counsel, and the child's parents, guardian, or
10 custodian in writing of the alleged bases for revocation of the suspended sentence.

11 6. The court shall hold a revocation hearing at which the child is entitled to receive
12 written notice of the alleged violation; evidence of the alleged violation; an opportunity
13 to be heard in person and to present witnesses and evidence; the right to
14 cross-examine witnesses unless the court finds good cause for not allowing
15 confrontation; and representation by counsel in accordance with section 27-20-26.

16 7. If the court finds, based upon a preponderance of the evidence, after the revocation
17 hearing that the conditions of the sentence have been violated or that the child has
18 committed a new offense, the court may order execution of the sentence suspended
19 under subdivision b of subsection 1 or may amend the disposition initially imposed
20 under subdivision a of subsection 1.

21 8. Upon imposition of the suspended sentence imposed pursuant to subdivision b of
22 subsection 1, the child's extended jurisdiction status terminates and the case must be
23 transferred to adult court. Upon transfer, the juvenile court's jurisdiction over the child
24 terminates and the adult court has jurisdiction for any subsequent proceedings or
25 future offenses.

26 9. A determination by the court or jury under subsection 1 may be appealed in the same
27 manner as an appeal is taken in a criminal case.

28 10. After designation as an extended jurisdiction juvenile proceeding under this section,
29 any subsequent offense alleged to have been committed by the child must be handled
30 as an extended jurisdiction juvenile proceeding or in adult court. If a child's extended
31 juvenile jurisdiction status has been revoked pursuant to subsection 8, the juvenile

1 court's jurisdiction over the child with respect to any subsequent offense is terminated
2 and the subsequent offense must be prosecuted in adult court.

3 11. The assignment of a judicial officer to conduct a hearing under this section must be
4 decided in accordance with rules adopted by the supreme court.

5 **SECTION 5. AMENDMENT.** Subsection 6 of section 27-20-36 of the North Dakota Century
6 Code is amended and reenacted as follows:

7 6. Except as provided in subsection 1 and subsection 4 of section 4 of this Act, when the
8 child attains the age of twenty years, all orders affecting the child then in force
9 terminate and the child is discharged from further obligation or control.