

2015 SENATE JUDICIARY

SB 2028

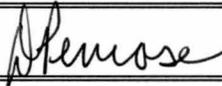
2015 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2028
1/12/2015
21826

- Subcommittee
 Conference Committee

Committee Clerk Signature



Minutes:

#1

Ch. Hogue: We will open the hearing on SB 2028.

Jay Buringrud, Commission Secretary: Support (see attachment #1).

Ch. Hogue: Thank you. Further testimony in support.

John Bjornson, Legislative Council: This bill was brought to the Interim Alternatives to Incarceration Commission by Justice Maring. It was her opinion that there were a number of juveniles being transferred to adult court on drug possession or other drug related cases and it was unnecessary to have an automatic transfer to adult court on those types of cases. This bill eliminates that automatic transfer and still has the ability to transfer the juveniles in drug cases to adult court, but the automatic transfer be eliminated for those types of cases; drug possession, drug manufacturer, delivery.

Ch. Hogue: Thank you. Further testimony in support.

Lisa Bjergaard, Director of the ND Division of Juvenile Services, DOCR: I just wanted to make sure that the Division of Juvenile Services is on record supporting this bill.

Ch. Hogue: Thank you. Further testimony in support. Testimony in opposition. Neutral testimony. We will close the hearing.

2015 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee

Fort Lincoln Room, State Capitol

SB 2028

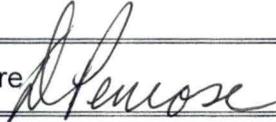
1/21/2015

22311

Subcommittee

Conference Committee

Committee Clerk Signature



Minutes:

Ch. Hogue: We will take a look at SB 2028. What are the committee's wishes?

Sen. Armstrong: I move a Do Pass on SB 2028.

Sen. Grabinger: Second the motion.

Sen. C. Nelson: Basically this takes the drug manufacturer for kids out of the transfer rule.

Sen. Armstrong: Mandatory transfer rule, yes. They can still transfer, if you are 17 and dealing meth they can still transfer you to adult court. It takes away the mandatory transfer rule.

Ch. Hogue: It's the discretion of the court to keep the juveniles in juvenile court, for the overstruck offenses; less than a lb. of marijuana.

Sen. Casper: If someone is 15 years old and gets caught with a 1/2 lb. of marijuana, it would up to the discretion of the judge or prosecutor to decide to take that to adult court instead of juvenile court.

Sen. Armstrong: The way it works for juvenile offenders, for a lot of significant crimes except for what is in the statute, depending on age, the number of times they've been in trouble with juvenile court, you will see a prosecutor petition to move them into adult court. The reasoning is because they have been in juvenile court for the last 8 years and we can't do anything for him. This law requires anyone over 14 to be transferred. That's what this amendment does.

6 YES 0 NO 0 ABSENT

DO PASS

CARRIER: Sen. C. Nelson

Date: 1/21/2015
 Roll Call Vote #: 1

**2015 SENATE STANDING COMMITTEE
 ROLL CALL VOTE
 BILL/RESOLUTION NO. SB 2028**

Senate _____ **JUDICIARY** _____ Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Sen. Armstrong Seconded By Sen. Grabinger

Senators	Yes	No	Senators	Yes	No
Chairman Hogue	/		Sen. Grabinger	/	
Sen. Armstrong	/		Sen. C. Nelson	/	
Sen. Casper	/				
Sen. Luick	/				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen. Nelson

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2028: Judiciary Committee (Sen. Hogue, Chairman) recommends DO PASS
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2028 was placed on the
Eleventh order on the calendar.

2015 HOUSE JUDICIARY

SB 2028

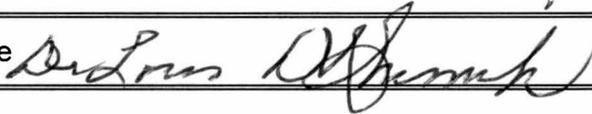
2015 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

SB 2028
3/4/2015
24319

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to transfers from juvenile to adult court.

Minutes:

Chairman K. Koppelman: Opened the hearing for testimony in support.

John Bjornson, Legislative Counsel: Neutral testimony. This bill comes from the Commission from Alternatives to Incarceration which is a statutory committee that works as most of the other interim committee work with a few exceptions. This commission is made up of citizen members and six legislators and about 26 citizen members representing the judiciary law enforcement counties, prosecutors and a defense attorney on there and they are appointed by the governor. The main purpose is to look for alternatives to incarceration. Part of the directive this interim was specifically to look at mandatory sentences with respect to nonviolent drug offenses. This bill came to the commission as a recommendation from a former Supreme Court Justice. Under the current law juveniles are mandatorily transferred to adult court for certain drug offenses. During the interim the discussion was this particular provision wasn't necessary since the court would still have the option to have a transfer to an adult court if necessary. This would eliminate one of the mandatory transfers. The judiciary was supportive of this idea that there not be a mandatory transfer for drug offenses and that is the intent of the bill.

Rep. K. Wallman: We heard testimony from folks in the department of corrections and rehabilitation that sometimes what happens is when people go to prison they actually come out better criminals than when they went in. Mandatory transfers might do more harm than good. Is that the rationale behind this?

John Bjornson: The purpose was the former Supreme Court justice thought it was not necessary to move these cases into adult court and that maybe part of the reason that was done. She was a member of the commission and then brought it to the commission stating they have the ability to transfer to adult court if they believe it is necessary, but it should be mandatory.

Rep. D. Larson: Here is some history on transferring juveniles to adult court. Some years ago they changed the minimum age to 14; but after the Newgabauer case where he murdered his parents they changed the age to say there are some automatic transfers and it is up to the child in those cases to prove that they are amenable to treatment in the juvenile system. Once they are an adjudicated delinquent in these situations if they are sentenced to prison as a juvenile they go to the youth correctional center and they are held until they are 18. I think this particular portion is just based on the fact that drug dealers are sometimes not necessarily ones are going to be a continued danger to society so they are looking at this maybe not one that is ready for a mandatory transfer. The court could still say this child is not amenable to treatment in the juvenile system so it could probably still be done.

Rep. Kretschmar: Who makes the decision whether a child should go to the district court?

John Bjornson: In these cases that we are talking about I am assuming it would be a mandatory transfer. In the other cases it probably would go before the juvenile court and the decision would be made to whether it should go before the adult court.

Rep. Kretschmar: Is there more to this statute in the century code than we see here because there is an or?

John Bjornson: Yes it does. You raise a good question whether we need to have that or.

Chairman K. Koppelman: Based on what Rep. Larson shared before this there was an option to transfer to adult court but it wasn't mandatory in these cases?

John Bjornson: This would return the drug offenses to an option?

Chairman K. Koppelman: So there would be a burden of proof necessary. What would that be?

John Bjornson: I think whether they are amenable to treatment.

Chairman K. Koppelman: The acquiesced found guilty was tried in an adult court the juvenile would still go to the juvenile detention facility until they turned 18. Is that correct?

John Bjornson: This is addressing the court aspect of it.

Rep. D. Larson: They are not in the juvenile system; they are just held in a juvenile facility rather than a penitentiary until they are 18 then they are transferred to the pen.

Chairman K. Koppelman: If they were adjudicated in juvenile court they would never go to the penitentiary even though they turn 18?

Rep. L. Klemin: Juvenile court is the district court. There is a subdivision I c which goes on and testifies of a number of other things so that is why we need the or.

Opposition: None

Hearing closed.

Chairman K. Koppelman: It would be nice to get some of that additional background for this bill is all?

Rep. D. Larson: Before the juvenile court when there were certain egregious things would be able to transfer to adult court, but that was actually even back in the 70s and 80s when that one foster child went in and murdered his parents there wasn't an ability to try a juvenile as an adult at that point. He was 16 and when he was 18 his sentence was over. They said there are certain crimes if you do as a juvenile you are old enough and responsible enough that we can transfer you to an adult court and sentence you as an adult and it will be on your adult record. This puts the burden of proof onto the defendant that they are amenable for treatment in the juvenile system, instead of a burden of the court to prove that they are not. For certain crimes there is an automatic transfer and then the burden of proof is on the defendant and their attorney to say they are amenable to treatment in the juvenile system and if they can prove that they can still get that.

Chairman K. Koppelman: Reopened the hearing for more neutral information testimony.

Rep. L. Klemin: Everything Rep. Larson is saying is in the rest of this particular section that is being amended here.

Chairman K. Koppelman: What do you see the impact of this change being?

Cory Pederson, Director of Juvenile Court in Bismarck, ND: When they are mandatory transfers it is a probably cause hearing in front of the juvenile judge or district judge. If they are prove a probable cause that this has happened it is automatically sent to the district court. This would take the drug piece out of the automatic probable cause hearing and keep the murder and other offenses in. For a drug offense if the state's attorney felt if this child still needed to go to the adult system there is a mechanism to do that; it is just a higher burden of proof at that point.

Chairman K. Koppelman: A defendant in juvenile court who is automatically moved to adult court could move it back to juvenile court based on what Rep. Larson said if they could prove they are amenable?

Cory Pederson: The States Attorney has to prove beyond a reasonable doubt that this child is not amenable to treatment and needs to transfer to district court.

Chairman K. Koppelman: What is the situation now? Once they move it to district court it is there.

Hearing closed.

Do Pass Motion Made by Rep. Maragos; Seconded by Rep. D. Larson:

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

Date: 3-4-15
Roll Call Vote #: 1

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2028

House JUDICIARY Committee

Subcommittee Conference Committee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
Other Actions: Reconsider _____

Motion Made By Rep. Maragos Seconded By Rep. Larson

Representative	Yes	No	Representative	Yes	No
Chairman K. Koppelman	✓		Rep. Pamela Anderson	✓	
Vice Chairman Karls	✓		Rep. Delmore	✓	
Rep. Brabandt	✓		Rep. K. Wallman	✓	
Rep. Hawken	✓				
Rep. Mary Johnson	✓				
Rep. Klemin	✓				
Rep. Kretschmar	✓				
Rep. D. Larson	✓				
Rep. Maragos	✓				
Rep. Paur	✓				

Total (Yes) 12 No 0

Absent 1

Floor Assignment Rep. Larson

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2028: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends DO PASS
(12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2028 was placed on the
Fourteenth order on the calendar.

2015 TESTIMONY

SB 2028

NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS – NORTH DAKOTA COMMISSION ON UNIFORM STATE LAWS

Purpose of the National Conference

In 1892 the Uniform Law Commission (ULC/National Conference of Commissioners on Uniform State Laws), was organized to promote uniformity in laws by voluntary action of each state government. In August 1892 the first National Conference of Commissioners on Uniform State Laws convened. North Dakota has participated in the National Conference since 1893. By 1912 every state was participating in the National Conference. Currently, every state, the District of Columbia, Puerto Rico, and the United States Virgin Islands participate in the National Conference.

The ULC promotes uniformity of law among the several states on subjects as to which uniformity is desirable and practicable. With the development of interstate transportation and electronic transactions, the States have become increasingly interdependent socially and economically so that a single transaction may cross many state lines and involve citizens in many States. Different laws among the several States may present, in some fields, a deterrent to the free flow of goods, credit, services, and persons among the States; restrain full economic and social development; disrupt personal planning; and generate pressures for federal intervention to compel uniformity. The ULC seeks to alleviate these problems in areas of law traditionally left to the States, thus preserving the federal system.

Operation of the ULC/National Conference

The ULC meets annually as a national conference for a period of eight days to consider drafts of proposed uniform legislation. Proposals that Uniform Acts be drafted, received from many sources, are referred to a Committee on Scope and Program that makes an investigation, sometimes hears interested parties or recommends a further study, and reports to the ULC whether the subject is one on which it is desirable and feasible to draft a uniform law.

If the ULC decides to accept a subject, a special committee of commissioners is appointed to prepare a draft of an Act. A Drafting Committee meets during the interim between annual meetings of the ULC. A draft Act must be discussed and considered section-by-section by the entire ULC at normally no fewer than two annual meetings before the ULC may decide by a vote of states whether to promulgate the draft as a Uniform Act. Each state is entitled to one vote, and an Act is not promulgated unless at least 20 jurisdictions have approved the draft.

The national conference consists of approximately 389 commissioners.

A staff located in Chicago operates the office of the ULC. The office handles meeting arrangements, publications, legislative liaison, and general administration.

The ULC maintains official liaison with the American Bar Association, the American Law Institute, the Council of State Governments, and the National Conference of State Legislatures. Liaison and activities may be conducted with other associations as interests and activities necessitate.

North Dakota Commission on Uniform State Laws

North Dakota Century Code (NDCC) Section 54-55-01 specifies the membership of the North Dakota Commission on Uniform State Laws:

- An individual engaged in the practice of law in this state (Jacob Rodenbiker);
- The dean or a full-time member of the faculty of the law school of the University of North Dakota (Bradley Myers);
- A law-trained judge of a court of record in this state (District Judge Gail Hagerty);
- A member of the House of Representatives (Representative Lawrence R. Klemm);
- A member of the Senate of the Legislative Assembly (Senator David Hogue);
- A member of the Legislative Council staff (Timothy Dawson);
- Any residents of this state who, because of long service in the cause of uniformity of state legislation, have been elected life members of the ULC (Owen L. Anderson; Jay E. Buringrud); and
- Any residents of this state who have been previously appointed to at least five years of service on the commission (Representative William E. Kretschmar; former Senator David Nething; former Law School representative Candace Zierdt).

The commission chairman is William Kretschmar, and the commission secretary is Jay Buringrud.

Uniform Acts in North Dakota

Approximately 59 Uniform Acts are in effect in North Dakota. The exact count varies, depending on consolidation of Uniform Acts and whether consideration is given to enactment of amended versions of Uniform Acts or of laws substantially similar to the provisions of Uniform Acts. Examples of Uniform Acts in effect in North Dakota

ta include:

- Anatomical Gift.
- Athlete Agents.
- Child Custody Jurisdiction and Enforcement.
- Uniform Commercial Code.
- Controlled Substances.
- Determination of Death.
- Electronic Transactions.
- Partnership.
- Principal and Income.
- Adult Guardianship and Protective Proceedings (UPC).
- TOD Security Registration (UPC).
- Transfers to Minors.

Recommendations to 64th Legislative Assembly

The commission has introduced five recommendations to the 64th Legislative Assembly under Joint Rule 208, which allows executive agencies to file bills for introduction by the appropriate standing committee of the House or Senate:

- **Senate Bill No. 2106** – The Uniform Fiduciary Access to Digital Assets Act, which was approved by the national conference in 2014. In the modern world, documents are stored in electronic files rather than in file cabinets, e.g., photographs are uploaded to websites rather than printed on paper. Under this Act, if a fiduciary would have access to a tangible asset, that fiduciary will also have access to a similar type of digital asset. The Act governs four common types of fiduciaries: personal representatives of a deceased person's estate; guardians or conservators of a protected person's estate; agents under a power of attorney; and trustees. The Act defers to an accounts holder's privacy choices as expressed in a document, e.g., a will or trust or by an online affirmative act.
- **Senate Bill No. 2107** – The Uniform Act on Prevention of and Remedies for Human Trafficking. The Act was initiated as the result of a proposal by the American Bar

Association Center for Human Rights in 2010. The Act was approved by the national conference in July 2013 and by the ABA House of Delegates in August 2013. To date in 2014, the Act has been introduced in 12 states and enacted in two.

• **House Bill No. 1134** – An amendment to Uniform Commercial Code Article 4A (4A-108), which was approved by the national conference in 2012. The amendment provides that Article 4A does apply to a remittance transfer that is not an electronic funds transfer under the Federal Electronic Funds Transfer Act. Without this amendment, neither state nor federal law will apply to transfers that may involve mistaken addresses or payees and other issues beyond the initial sending of the transfer. To date, the amendment has been enacted in 41 states, including Minnesota, South Dakota, and Montana.

• **House Bill No. 1135** – Amendments to the Uniform Fraudulent Transfer Act, which were adopted by the national conference in 2014. The conference renamed the Act the Uniform Voidable Transactions Act, which more closely reflects the Act. The amendments address narrowly-defined issues, e.g., choice of law rules and burden of proof rules for claims under the Act.

• **House Bill No. 1136** – The Revised Uniform Limited Liability Company Act, which was recommended by the national conference in 2006. The revised Act was the subject of a 2009-10 interim Judiciary Committee study, which recommended continued study during the 2011-12 interim while Minnesota was working on the revised Act for adoption in Minnesota. In 2014 the Minnesota Legislature adopted the revised Act, which was signed by the Governor in April. To date, the Revised Act has been adopted in 11 states, including Minnesota and South Dakota.

Jay Buringrud, Secretary
ND Commission on Uniform State Laws
January 2015