



# North Dakota Legislative Council

Prepared for the Juvenile Justice Committee  
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## JUVENILE DELINQUENCY OFFENSE CODE - BACKGROUND MEMORANDUM

House Bill No. 1195 (2023) ([appendix](#)) directs the Legislative Management to study the criminal code to ensure equitable application to youths charged with juvenile delinquencies. The study must be carried out in collaboration with the Commission on Juvenile Justice and include consideration of the desirability and feasibility of a separate juvenile delinquency offense code, whether a separate and unique classification of criminal offenses for juveniles should be created, and which criminal offenses should receive a distinct classification for juvenile offenders, if any.

### HOUSE BILL NO. 1195

Testimony received for House Bill No. 1195 indicated the historical purpose of creating the juvenile court in the United States in 1899 was to separate children from the abuses and consequences of adult criminal procedure. However, the juvenile system still looks to the adult criminal offense codes and adult crime classifications as the basis for the charging document in juvenile court. The classification of offenses for adults is a daily point of discussion in charging youth, disposing of juvenile cases, assigning offender risk levels, and considering the transfer of youth into the adult system for the most serious crimes.

The legislative history of House Bill No. 1195 indicates the purpose of the study stemmed from the often difficult and unintentional inequitable application of the adult criminal code to youth charged with juvenile delinquency. The focus in most criminal code sections usually is to prohibit a certain type of adult behavior. The varied manner in which those criminal sections apply in juvenile court can result in extreme consequences in some cases.

### JUVENILE JUSTICE AND COURT PROCEDURE Background

North Dakota Century Code Section 12.1-04-01 provides the age of criminal responsibility begins at age 10. When a child ages 10 to 17 allegedly violates the criminal laws of this state, all proceedings concerning that child must be conducted in juvenile court according to the Juvenile Court Act, Chapter 27-20.2, and the companion chapter on delinquency, Chapter 27-20.4. These chapters do not contain juvenile-specific criminal offenses, but rather the definition of "delinquent act," which refers to acts "...designated a crime under law." This has been the case since the juvenile courts in North Dakota were first established.

Juvenile courts were established in North Dakota in 1911 and encompass a small subset of the district courts. The juvenile court protects the best interests of children and addresses the unique characteristics and needs of children that come before the court. The juvenile court handles cases involving:

- Proceedings for the guardianship of a child.
- Children in need of services due to behavior which is adverse to their own well-being.
- Children in need of protection or where termination of parental rights is sought.
- Children between the ages of 10 and 17 accused of delinquent acts or behavior which if committed by an adult would be considered a crime.
- Children who are subject to the Interstate Compact on Juveniles or Interstate Compact on the Placement of Children.
- Children seeking judicial consent to marriage, employment, enlistment in the armed services, or certain medical procedures, but only if consent by the court is required by law.

The mission of the juvenile court in a delinquency case is to promote public safety, hold juvenile offenders accountable, and increase the capacity of juveniles to contribute productively to their community.

Section 27-20.2-03 provides the juvenile court with exclusive original jurisdiction over a variety of proceedings, including when a child is alleged to be delinquent, a child in need of services, or a child in need of services or protection under Chapter 27-20.4. Under Chapter 27-20.2, "child" means an individual who is under the age of 18 and is not married or under the age of 20 with respect to a delinquent act committed while under the age of 18. Section 27-20.4-21 authorizes the court to transfer a juvenile proceeding to another court depending on various factors, such as the age of the child at the time of the alleged conduct, the age of the child at the time of the transfer request, and the child's amenability to treatment and rehabilitation. Juvenile court receives the majority of the court's delinquency referrals from law enforcement agencies. Referrals regarding child in need of protection cases are received from the human service zones. Guardianship of a minor child cases begin with a filing of documents with the local clerk of court.

Section 27-21-01 creates the Division of Juvenile Services within the Department of Corrections and Rehabilitation (DOCR), which operates the Youth Correctional Center and eight regional community-based services offices. The community services staff provide comprehensive case management and community-based correctional services to youth in the state while juvenile corrections specialists provide community services and correctional case management across eight regions.

Section 27-21-02 provides "the division of juvenile services is the administrative agency which shall take custody of delinquent and unruly children committed to its care by the juvenile courts." Section 27-21-02 requires the division, upon taking custody of a child or before receiving custody of a child, to complete diagnostic testing and evaluate the child to develop an individualized treatment and rehabilitation plan. The plan may include placement in the care of the child's parent, relative, guardian, placement in a foster home, or placement in the care of the Youth Correctional Center, a career or technical education program, or other treatment and rehabilitation institution. Section 12-52-01 authorizes the division, with the approval of the Director of DOCR, to provide a juvenile aftercare program and other treatment and rehabilitation programs and to contract with public and private agencies to provide services for individuals committed to the division.

In 2020, the total referrals to the North Dakota juvenile courts decreased to 8,877, a decrease of 1,223 referrals, or 12 percent, as compared to the previous year, with deprivation referrals accounting for 11 percent of the decrease. Schools and other social services providers typically account for a large portion of referrals and as a result, the closure of in-person classes in March 2020 correlates with the decline of referrals in 2020. Of the delinquent referrals received in 2020, 84 percent were misdemeanors, 14 percent were felonies, and 2 percent were infractions. Of the unruly referrals received in 2020, 27 percent were runaways, 26 percent were for ungovernable behavior, 24 percent were referrals of unlawful possession or consumption of alcohol, 10 percent were for school truancy, 9 percent were for curfew violations, and 4 percent were for tobacco violations. Deprivation referrals resulted in a formal petition in 39 percent of the cases, 9 percent involved the filing of a termination of parental rights petition, and less than 1 percent of cases were youth from 18 to 21 years of age who chose to remain in foster care. In 51 percent of cases referred, families cooperated with services or the matters were otherwise diverted by human service zones from the formal court system.

### **Court Procedure**

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 child referred to the court may be considered for diversion if any of the following criteria are met:

- The referral is for a delinquent act that is not an offense requiring a notification to be sent to the Department of Transportation;
- The referral is for a delinquent act that has not been diverted previously more than twice by the juvenile court within the last 12 months; or
- The referral is not an offense that could require sex offender registration.

A second option, which is known as an informal adjustment under Section 27-20.2-09, 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 to 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.

## **DISTINCT OFFENSES FOR JUVENILE CODE**

### **Background**

The Commission on Juvenile Justice provided testimony on House Bill No. 1195 indicating for the most basic offenses, such as theft or assault, one can imagine the elements of the crime might remain the same regardless of the age of the actor. However, there are criminal offenses for which the age of the victim is an aggravating factor or the location of the crime, meaning there is a heightened severity of classification for the adult defendant because of the type of victim or the place of the offense. Examples of this would be the statutory domestic violence provisions as applied to sibling or parent-child conflicts, assault offenses, and sexual offenses where both the offender and victim are under the age of 18. Many of the offenses carry collateral consequences, which can impact a youth well beyond the age of legal adulthood. Examples of collateral consequences include barriers to entering the military, pursuing certain types of careers, or obtaining financial aid or public housing. Collateral consequences of past juvenile adjudications impacting occupational licensing can add to workforce shortages in areas like home health, day care, nursing homes, and education.

When adult crime definitions, elements, and classifications are difficult to interpret, apply, and follow based on common childhood behaviors, a prosecutor may make charging decision to an alternative offense, stipulate to a lesser offense, or decline to prosecute altogether. These decisions can vary by region of the state and depending on the knowledge or familiarity the particular prosecutor has with adolescent behavior, juvenile delinquency, or the impact of collateral consequences on youth offenders. As a result, offenders are treated differently for reasons other than the offense conduct.

Currently, when a child commits a delinquent act, the juvenile petition refers to the criminal code. The adult criminal code often focuses more on the age of the victim rather than on the person who is alleged to have committed the act. For example, the age of the alleged perpetrator is not considered in an allegation of terrorizing against a child. The only age-related consideration is whether the alleged victim is a child. An offender who is found guilty of terrorizing against a child is required to register as an offender against children under Section 12.1-32-15(1)(a). Thus, the law disregards whether it is a 10-year-old child frustrated at recess who threatens to kill his classmate, whether or not the 10-year-old child truly intended on killing their classmate, or an adult who threatens to kill the same child on the playground.

### **Offenses**

The following is a partial list of offenses where either the age of the victim is considered, but not the age of the actor, and offenses where the actor's age may be relevant in relation to the offense committed.

#### **Gross Sexual Imposition**

Section 12.1-20-03(1)(d) provides a person who engages in a sexual act with another, or who causes another to engage in a sexual act, is guilty of gross sexual imposition if the victim is less than 15 years old. However, Section 12.1-20-01(3) provides when criminality depends on the victim being a minor 15 years of age or older, the actor is guilty of an offense only if the actor is at least 3 years older than the minor.

#### **Domestic Violence**

Under Section 12.1-17-01.2, the offense of domestic violence occurs when a person willfully causes either bodily injury, substantial bodily injury, or serious bodily injury to the actor's family or household member. The offense is a Class B felony if the actor causes substantial or serious bodily injury and the victim is under the age of 12. The maximum penalty for a Class B felony is 10 years' imprisonment, a fine of \$20,000, or both.

#### **Simple Assault, Assault, and Aggravated Assault**

The offenses of simple assault, assault, and aggravated assault are codified as Sections 12.1-17-01, 12.1-17-01.1, and 12.1-17-02, respectively. Simple assault does not consider the age of the actor or the victim but "simply" requires a person to willfully cause bodily injury to another human being.

Assault and aggravated assault have increased penalties if the victim is under the age of 12. Assault occurs when a person willfully causes substantial bodily injury to another human being and the penalty increases from a Class A misdemeanor to Class C felony if the victim is under 12 years old. Aggravated assault occurs when a person willfully causes serious bodily injury to another human being or knowingly causes bodily injury or substantial bodily injury to another human being with a dangerous weapon or other weapon. The offense is a Class C felony but increases to Class B felony if the victim is under 12 years old. A Class C felony has a maximum penalty of 5 years' imprisonment, a fine of \$10,000, or both.

**Terrorizing**

Terrorizing is codified as Section 12.1-17-04 and is a Class C felony level offense. The offense occurs when a person threatens to commit any crime of violence or act dangerous to human life with the intent to place another human being in fear for that human being's or another's safety or to cause evacuation of a building, place of assembly, or facility of public transportation, or otherwise to cause serious disruption or public inconvenience, or in reckless disregard of the risk of causing such terror, disruption, or inconvenience.

**Possession of Child Pornography**

Section 12.1-27.2-04.1 prohibits a person from knowingly possessing any motion picture, photograph, or other visual representation that includes sexual conduct by a minor. A violation of the section is Class C felony.

**Unauthorized Use of a Vehicle**

A person commits the offense of unauthorized use of a vehicle under Section 12.1-23-06 if the person takes, operates, or exercises control over an automobile, train, aircraft, motorcycle, motorboat, or other motor-propelled vehicle of another, knowing that the person does not have the consent of the owner. The offense is designated a Class A misdemeanor unless the vehicle is an aircraft or the value of the use of the vehicle and the cost of retrieval and restoration exceeds \$1,000, in which case the penalty for the violation is a Class C felony. The maximum penalty for a Class A misdemeanor is imprisonment for 360 days, a fine of \$3,000, or both.

**SUGGESTED STUDY APPROACH**

The committee may wish to invite members of the Commission on Juvenile Justice, the juvenile court, and the Attorney General's office and representatives from the North Dakota State's Attorneys' Association, the Commission on Legal Counsel for Indigents, and the North Dakota Peace Officers Association for testimony regarding the desirability of a separate juvenile delinquency offense code and the practical feasibility of having a separate and unique classification of criminal offenses for juveniles. In addition, the committee may wish to seek technical assistance from the Council of State Governments' Justice Center.

ATTACH:1