

**Sixty-eighth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 3, 2023**

HOUSE BILL NO. 1160
(Representatives Roers Jones, Klemin, Satrom)
(Senators Hogue, Larson, Sickler)

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

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

3. ~~If the court cannot find a less restrictive alternative, the~~The court may commit a child to the division of juvenile services. ~~A risk and needs assessment must be the basis for the determination of commitment to the division of juvenile services. The court only may commit a child to the division for a new delinquent offense. Unless all probation extensions have been exhausted, the child's risk and treatment needs continue to be high and the child is refusing to comply with the terms of probation, the court may not commit a child for a violation of the terms of probation, or may order a child over eighteen years of age to serve a term of probation under the supervision of the department of corrections and rehabilitation.~~

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

1. A probation order entered by the court must place the child under the supervision of the director, unless the child is over eighteen years of age and the child's risk and needs require supervision by the department of corrections and rehabilitation under subsection 1 of section 27-20.4-15.
8. The director or assigned probation court officer may request two extensions up to four months each ~~or one extension up to four months for intensive supervised probation programs~~ for failure to comply or meet the treatment goals of the court order and case plan.

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

27-20.4-21. Transfer to other courts.

1. After a petition has been filed alleging delinquency based on conduct that is designated a crime or public offense under the laws, including local ordinances or resolutions of this state,

the court before hearing the petition on the merits shall transfer the offense for prosecution to the appropriate court having jurisdiction of the offense if:

- a. The child is over sixteen 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
 - 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 27-20.2-12, 27-20.2-13, and 27-20.4-14;
 - (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:
 - (a) The child committed the delinquent act alleged;
 - (b) The child is not amenable to treatment or rehabilitation as a child 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.
2. The burden of proving reasonable grounds to believe that a child is amenable to treatment or rehabilitation as a child through available programs is on the child ~~in these cases in which:~~
- a. If the alleged delinquent act involves the offense of manslaughter, aggravated assault, robbery, arson involving an inhabited structure, or escape involving the use of a firearm, destructive device, or other dangerous weapon ~~or in cases in which:~~
 - b. If the alleged delinquent act involves an offense that if committed by an adult would be a felony and the child has two or more previous delinquency adjudications for offenses that would be a felony if committed by an adult; ~~or~~
 - c. If the child is twenty-five years of age or older.
3. In determining a child's amenability to treatment and rehabilitation, the court shall consider and make specific findings on the following factors:
- a. Age;
 - b. Mental capacity;
 - c. Maturity;
 - d. Degree of criminal sophistication exhibited;

- e. Previous record;
 - f. Success or failure of previous attempts to rehabilitate;
 - g. Whether the child can be rehabilitated before expiration of juvenile court jurisdiction;
 - h. Any psychological, probation, or institutional reports;
 - i. The nature and circumstances of the acts for which the transfer is sought;
 - j. The prospect for adequate protection of the public; and
 - k. Any other relevant factors.
4. A child subject to the jurisdiction of the juvenile court, either before or after reaching eighteen years of age, may not be prosecuted for an offense previously committed unless the case has been transferred as provided in this section.
 5. Statements made by the child at a hearing under this section are not admissible against the child over objection in the criminal proceedings following the transfer except for impeachment.
 6. If the case is not transferred, the judge who conducted the hearing may not over objection of an interested party preside at the hearing on the petition. If the case is transferred to a court of which the judge who conducted the hearing is also a judge, the judge likewise is disqualified over objection from presiding in the prosecution.
 7. ~~An individual at least twenty years of age who committed an offense while a child and was not adjudicated for the offense in juvenile court may be prosecuted in district court as an adult, unless the state intentionally delayed the prosecution to avoid juvenile court jurisdiction. The district court has original and exclusive jurisdiction for the prosecution under this subsection.~~

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

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

1. An order of disposition may not exceed twelve months from disposition unless extended by the court. The director or designee may request two extensions up to four months each for the child to complete the treatment goals of the court order and the case plan.
2. An order of disposition committing a delinquent child to the division of juvenile services may not exceed twelve months. The court may extend the order for an additional twelve-month period, if:
 - a. A hearing is held upon motion of the division, or on the court's own motion, prior to the expiration of the order;
 - b. Reasonable notice of the hearing and an opportunity to be heard are given to the child and the parent, guardian, or other custodian;
 - c. The court finds the extension is necessary for the treatment or rehabilitation of the child and has determined that such treatment cannot be provided in their home community; and
 - d. The extension does not exceed twelve months from the expiration of an order limited by subsection 3 or two years from the expiration of any other limited order.
3. Except as provided in subsection 2, an order of disposition pursuant to which a child is placed in foster care may not continue for more than twelve months after the child is considered to have entered foster care. A permanency hearing must be conducted before the extension of

any court order limited under this subsection. Any other order of disposition may not continue in force for more than twelve months.

4. The court may terminate an order of disposition before the expiration of the order.
5. Except as provided in subsection 2, the court may terminate an order of disposition or extension before its expiration, on or without an application of a party, if it appears to the court the purposes of the order have been accomplished. If a party may be adversely affected by the order of termination, the order may be made only after reasonable notice and opportunity to be heard have been given to the party.
6. ~~When the child attains the age of twenty years, all orders affecting the child then in force terminate and the child is discharged from further obligation or control.~~

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

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

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

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-eighth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1160 and that two-thirds of the members-elect of the House of Representatives voted in favor of said law.

Vote: Yeas 87 Nays 5 Absent 2

Speaker of the House

Chief Clerk of the House

This certifies that two-thirds of the members-elect of the Senate voted in favor of said law.

Vote: Yeas 43 Nays 1 Absent 3

President of the Senate

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2023.

Approved at _____ M. on _____, 2023.

Governor

Filed in this office this _____ day of _____, 2023,
at _____ o'clock _____ M.

Secretary of State