

Subject: Change in Delinquency Age.

Principal Issues: Statutory increase in delinquency age; Minn. Stat. §§ 260C.175, 260B.175, 260C.181, 260B.181; protective custody; temporary placement.

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Introduction:

On August 1, 2026, the age at which a child can be petitioned or adjudicated as delinquent or as a juvenile petty offender increased from 10 to 13. This means that children 12 years of age and under who engage in delinquent behaviors or petty offenses have been statutorily reclassified as children in need of protection.

As background, Minnesota has two sets of laws that deal explicitly with persons under the age of 18. One is the **delinquency code**, found in Minnesota Statutes chapter 260B. The other is the **child protection laws** found in chapter 260C. Under previous law, ten-year-old children could be charged with delinquency and juvenile petty offenses. But in 2024, lawmakers approved a measure that raised the age to 13.¹ They set August 1, 2026, as the effective date to allow time to prepare for the change.

¹ Johathan Mohr, *Proposal Would Raise ‘Age of Delinquency’ by Three Years*, Minnesota House of Representatives website, Session Daily Home, <https://www.house.mn.gov/SessionDaily/Story/18145> (March 7, 2024).

² Beatriz Luna, *The Relevance of Immaturities in the Juvenile Brain to Culpability and Rehabilitation*, Hastings Law, 63(6), at 1469-1486 (2017), available at <https://pubmed.ncbi.nlm.nih.gov/29093605/>; Laurence Steinberg, et al., *Age Differences in Future Orientation and Delay Discounting*, Child Development, Volume 80, Issue 1, at 28-44, (2009), available at <https://doi.org/10.1111/j.1467-8624.2008.01244.x>; Kerstin Konrad, et al., *Brain development during adolescence: neuroscientific insights into this developmental period*, Dtsch Arztebl Int. 110(25), at 425-31 (2013), available at

Increasing the age of delinquency acknowledges that children’s brains differ from those of adults. Imaging studies show that children have a tougher time than adults activating the control center of their brain, making it more difficult for adolescents to resist rewards, avoid risks and impulses, and display emotional control.² Being arrested as a tween has been found to correlate with a number of negative outcomes, including physical and mental health problems.³ Counterintuitively, some research has also found that early contact with the criminal justice system can lead some children to adopt the “criminal” label, leading to further bad behavior down the line.⁴

The legislation raises the delinquency age by amending the definitions of “delinquent child” and “juvenile petty offender” so that they exclude any child who is not yet 13 years of age.⁵ Lawmakers also amended the child protection laws so that the definition of a child in need of protection or services now includes one who commits a delinquent act or juvenile petty offense before turning 13.⁶

This memo assumes you already have some familiarity with juvenile procedures. It will focus mainly on working with children under the age of 13 whom you believe have committed serious

<https://pmc.ncbi.nlm.nih.gov/articles/PMC3705203/>.

³ Destiny G. Tolliver, et al., *United States Youth Arrest and Health Across the Life Course: A Nationally Representative Longitudinal Study*, Acad Pediatr, 23(4), at 722-730 (2023), available at <https://pubmed.ncbi.nlm.nih.gov/36055448/>.

⁴ Ryan T. Motz, et al., *Does Contact with the Justice System Deter or Promote Future Delinquency? Results From a Longitudinal Study of British Adolescent Twins*, Criminology, 58(2), at 307-335 (2020), available at <https://pubmed.ncbi.nlm.nih.gov/32612292/>; Erica Ackerman, et al., *Systematic Review: Impact of Juvenile Incarceration*, Child Protection and Practice, Volume 3, 100083 (2024), available at <https://doi.org/10.1016/j.chipro.2024.100083>.

⁵ 2024 Minn. Laws Ch. 123, art. 4, secs. 2 and 3.

⁶ 2024 Minn. Laws Ch. 123, art. 4, sec. 5.

offenses but who will no longer be subject to the delinquency code or delinquency proceedings.⁷ It will discuss your authority to place these children in protective custody; where they may be held while in protective custody; and coordination with social services or child protection. The memo will conclude with brief discussions concerning your authority to conduct pat searches and use force toward children who are under the age of delinquency.

Protective Custody:

The child protection laws, specifically section 260C.175, subdivision 1, permit you, as a peace officer, to take children into immediate custody if “found in surroundings or conditions which endanger the child’s health or welfare or which [you] reasonably believe[] will endanger the child’s health or welfare.”⁸ The courts have held that a juvenile’s involvement in the commission of an offense may—depending on the circumstances—pose a danger to the child’s health and welfare and therefore justify taking the child into protective custody.⁹ You should evaluate the issue of endangerment based on the totality of the circumstances.¹⁰

When you take a child into custody under the child protection laws, you must release the child to their parent, guardian, or other suitable relative unless there is reason to believe that:

- 1) The child would endanger self or others;
- 2) The child would not appear for a court hearing; or
- 3) The child’s health or welfare would be immediately endangered if released to the parent, guardian, or relative.¹¹

⁷ Effective August 1, children under 13 are legally incapable of committing an offense for which the law provides a punishment, so they cannot be taken into custody “in accordance with the laws relating to arrests” under the authority of section 260B.175. *E.g.*, *State v. Martin*, 253 N.W.2d 404, 405-06 (Minn. 1977) (Rule 6.01, Minn. R. Crim. P., does not permit a custodial arrest for an offense not punishable by incarceration).

⁸ Minn. Stat. § 260C.175, subd. 1 (2026).

⁹ *In re M.A.R.*, 718 N.W.2d 480 (Minn. Ct. App. 2006); *In re S.D.N.*, No. C3-02-1958, 2003 Minn. App. LEXIS

If an officer determines that it is not appropriate to release a child to a parent, guardian, or other suitable relative based on these criteria, the alternative is to detain the child for up to 72 hours pending a court hearing.¹² Maintaining custody of a child on this basis is often referred to as a 72-hour hold.

Place for Temporary Custody:

Sections 260B.181 and 260C.181 govern where a child under protective custody may be placed.¹³ The information in the statutes is important and worth a careful read. The statutes can be found [here](#) and [here](#).

Not in a jail or lockup: Section 260B.181, subdivision 4, flatly prohibits holding children under the age of 14 in a “jail, lockup or other facility used for the confinement of adults who have been charged with or convicted of a crime.”¹⁴ This forecloses placing children under 13 in an adult jail or lockup.

Placement with a relative or in shelter care: When you take a child into custody under section 260C.175 and rule out placement with the child’s parent or guardian, you may place the child with a relative or in shelter care. If you do so, you must inform the child’s parent or custodian, and the child if over age 10, that they may request placement with a relative.¹⁵ If relative placement is requested, you must coordinate the placement with social services or child protection.¹⁶ In practice, you are apt to find that social services/child protection will be the one to arrange any placement with a relative or shelter care facility. If you place the child in shelter care, section 260C.176, subdivision 3, lists several points of information that must be provided to the

577 (Minn. Ct. App. May 13, 2003).

¹⁰ *K.D. v. Cnty. of Crow Wing*, No. 03-6466 (DWF/RLE), 2005 U.S. Dist. LEXIS 7254, at *15 (D. Minn. Apr. 25, 2005).

¹¹ Minn. Stat. § 260C.176, subd. 1.

¹² *Id.* § 260C.176, subd. 2(b).

¹³ *Id.* § 260C.181, subd. 1.

¹⁴ *Id.* § 260C.181, subd. 4.

¹⁵ *Id.* § 260C.175, subd. 2(a).

¹⁶ *Id.* § 260C.175, subd. 2(b).

child and their parent, guardian, or custodian.

Secure juvenile detention facility: In some circumstances, temporary placement in a secure juvenile detention facility may be appropriate. In July 2026, the Minnesota Department of Children, Youth, and Families (DCYF) issued guidance regarding the placement of a child in a secure detention facility in light of the new increased age of delinquency.¹⁷ DCYF advises that “[s]ecure custody or a secure detention facility may only be used for a child taken into immediate custody for no more than 24 hours.”¹⁸ Once that 24-hour period has expired, the child “must be released or moved.”¹⁹

Least restrictive setting: Section 260C.181, subdivision 2, requires that placement must be in the least restrictive setting consistent with the child’s health and welfare, and the placement must be in the closest proximity to the child’s family as possible.²⁰ As the placing officer, you must document why you chose a particular placement and why a less restrictive setting was or was not in the child’s best interests.²¹

The statutes regarding placement are detailed, so please consult with your county attorney and social services department about temporary placements and follow their guidance!

Examples:

1. Milo, age 12, stole a neighbor’s pickup truck and took it on a joyride. You find Milo and stop the vehicle without incident. Although Milo cannot be charged with delinquency for this behavior, you could reasonably believe that Milo has placed himself in circumstances that endanger his health and welfare. You may take him into custody pursuant to section 260C.175, subdivision 1.

What will you do with Milo? Under section 260C.176, subdivision 1, you must release him to a parent, guardian, or another suitable relative unless there is reason to believe that he would endanger self or

others, not appear for court, or that Milo’s health and welfare would be immediately endangered. Consider the following branches to the scenario:

- Assume that you take Milo home and meet with his parents. They demonstrate considerable concern over the situation. The parents indicate they will be instituting close supervision of Milo and working with a family counselor to address the situation. There is nothing in these facts that contraindicates releasing Milo to his parents, and doing so would probably be required.
- But now assume that when you take Milo home, his parents are intoxicated. Rather than concern, they display anger toward Milo. The father is extremely upset and makes veiled remarks about teaching Milo a “lesson he won’t forget.” If you have reason to believe the parents might harm Milo after you leave, that would be a sound reason for placing Milo elsewhere.
- Finally, assume this time that Milo has been involved in an escalating series of thefts and joyriding incidents in the recent past, and they are occurring with greater frequency. You have come to learn that his parents are gone most evenings and do not provide Milo with much structure or supervision. Unless there is reason to believe that his parents will become more engaged this time, you could reasonably be concerned that Milo will continue to become involved in situations that endanger his health and welfare. Placing Milo outside the home might be appropriate.

¹⁷ Dep’t of Child., Youth & Fams., DCYS Bull. No. 26-68-13, *Raising Age of Delinquency Initial Guidance* (July 31, 2026), available at [DCYF Bulletin 26-68-13-RaisingAgeofDelinquency-7-31-26_Acapproved\(3\).pdf](#).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Minn. Stat. § 260C.181, subd. 2.

²¹ *Id.*

Section 260C.175, subdivision 2 comes into play if you decide to place Milo outside the home on a 72-hour hold. It requires that you notify Milo's parent or custodian, and Milo (because he is older than 10), that any of them may request that the placement be with a relative instead of a shelter care facility. Legally, you will need to coordinate any relative placement with the local child protection/social services agency. As a practical matter, you may also need to work with child protection or social services to arrange shelter care. You will also need to complete the required reports promptly, so they are available before any court hearing and to facilitate a response from child protection or social services.

2. Ada, age 11, brought a handgun to school in her backpack. She showed the gun to a classmate and said she wanted to shoot a mean girl in her class. Ada is in the principal's office when you arrive at the school. Ada has placed herself in circumstances that endanger her health and welfare. You may take her into custody pursuant to section 260C.175, subdivision 1.

Section 260C.176 requires that you release Ada to a parent, guardian, or other suitable relative unless there is reason to believe she would endanger herself or others, or that her health or welfare would be immediately endangered if returned to a parent or guardian.

Options for handling Ada's situation could potentially include:

- Seeing if her parent or guardian would agree to an immediate, voluntary mental health assessment to evaluate whether she poses a danger to self or others. If the parent or guardian do not agree to an assessment, then consider whether there are grounds for a peace officer transport hold under section 253B.01, to have Ada assessed.

- Assess whether Ada could be safely placed with a parent, guardian, or other suitable relative. You might consider obtaining real-time assistance from a child protection or social worker to help conduct this evaluation. You can read more about this below, under Recommendation #3.
- You should know if your county attorney approves of detaining nondelinquent children under 13 brought into custody under section 260C.175 in a secure juvenile detention facility before you consider this as a placement option.

Recommendations:

1. *Communicate, coordinate, and watch for more guidance:* If your agency hasn't already done so, then open a dialogue with your county attorney's office, local child protection staff, and other appropriate stakeholders about how to work with the change in the delinquency age. Also, keep an eye out for any guidance from the state on implementation of these changes.
2. *Report "delinquent" behavior to child protection and the county attorney:* Law enforcement officers/agencies are responsible for reporting suspected maltreatment of children to the local child protection team or agency.²² As noted earlier, children under 13 who engage in unlawful behaviors are now designated as being in need of protection.²³ If your jurisdiction has not issued different guidance, then a good practice may be to routinely forward reports involving delinquency and petty offenses by children under 13 to both the county attorney and child protection. While not all of these children are likely to meet the legal standard for "maltreatment," a good many may. Routine reporting will also give the local child protection team a

²² *Id.* §§ 260E.06, subd. 1; 260E.12, subd. 1.

²³ *Id.* § 260C.007, subd. 6(18).

chance to review and screen these cases more promptly.

3. *Learn about placement and safety issues from your child protection team.* The change in the delinquency age may have you making more decisions about whether children who have engaged in unlawful behaviors can safely be released to a parent, guardian, or other suitable relative. Child protection workers are apt to have considerable experience with these situations. While your skillset centers around detecting and investigating crimes, theirs centers more closely around spotting dangers and finding ways to avoid them.

For example, in the hypothetical with Ada, a major safety consideration will be to determine where she obtained the firearm so steps can be taken to restrict her access going forward. Was it left unsecured at home? Did someone in her household store it negligently? Are there grounds for a charge against a parent? Can the situation at home be managed such that Ada will not have further access to firearms if she is released to her parents?

Alternatively, imagine that a 12-year-old engaged in unlawful sexual conduct. Do the circumstances suggest that the child came into these behaviors by being victimized at home or elsewhere? Can the child be returned to his or her home without being in danger, and without putting other children in danger?

Training, discussions, and collaboration with child protection professionals can help you become even more familiar with the appropriate considerations in evaluating safety and making decisions about placing children outside the home.

Pat-down Searches:

Section 260C.175, subdivision 3, permits you to conduct a protective pat-down search of a child who you are bringing into custody for health or welfare reasons.²⁴ The Minnesota Court of Appeals has held that if there is a reasonable basis to bring a child into custody for health and safety reasons, *and* to place the child in your vehicle for transport, then it is reasonable to conduct a pat-search of the child for officer safety before doing so.²⁵

Use of Force:

One of the factors that officers must consider when deciding on an appropriate level of force is the severity of the crime at issue.²⁶ This factor speaks mainly to the strength of the government's interest in capturing or controlling a suspect who is attempting to flee or physically resist arrest. But when a subject is not suspected of committing *any* crime, then the government has a diminished interest in using force for the purpose of effecting capture or control.²⁷

The change in the delinquency age signals that Minnesota is no longer asserting an interest in punishing children under 13 for violating the law. As outlined above, there may be grounds to bring a child under 13 into custody under the child protection laws if their health or welfare is endangered. But the purpose of taking a child into custody under these circumstances is to protect them. As one federal appellate court has explained,

Where a seizure's sole justification is preventing harm to the subject of the seizure, the government has little interest in using force to effect that seizure. Rather, using force likely to harm the subject is manifestly contrary to the government's interest in initiating that seizure.²⁸

²⁴ *Id.* § 260C.175, subd. 3.

²⁵ *In re M.A.R.*, 718 N.W.2d 480; *In re S.D.N.*, 2003 Minn. App. LEXIS 577.

²⁶ *Graham v. Connor*, 490 U.S. 386, 396 (1989).

²⁷ *Evans v. Krook*, 680 F. Supp. 3d 1080, 1097 (D. Minn. 2023) (citing cases); *Ludwig v. Anderson*, 54 F.3d 465,

471 (8th Cir. 1995) (“When . . . the person seized is not a suspect, has committed no crime when the police approach . . . the importance of the governmental interests alleged to justify the intrusion is necessarily diminished.” (internal quotation marks omitted)).

²⁸ *Estate of Armstrong v. Vill. of Pinehurst*, 810 F.3d

This is the same logic at issue when effecting a transport hold on someone in crisis who poses a danger only to themselves: you are there to help. Because of that, you should try to avoid using force that inflicts pain or injury.

These considerations, however, concern your authority to use force for purposes of control. The age change should not diminish your authority to use objectively reasonable force to defend yourself, or to protect others who face an immediate threat due to the dangers posed by a child under 13.