

LETTER OPINION
95-L-278

November 30, 1995

Mr. Owen K. Mehrer
Stark County State's Attorney
PO Box 130
Dickinson, ND 58602-0130

RE: N.D.C.C. § 12.1-34-02(18)

Dear Mr. Mehrer:

Thank you for your letter asking whether informal adjustment dispositions heard before a juvenile supervisor are considered "proceedings" or "juvenile delinquency proceedings" giving effect to the rights of victims pursuant to N.D.C.C. § 12.1-34-02(18).

N.D.C.C. § 12.1-34-02(18) provides:

Victims and witnesses of crimes committed by juveniles are entitled to the same rights under this chapter in juvenile delinquency proceedings as in any other proceeding. In addition, every victim or a witness who is a minor is entitled to have that person's spouse, parent, guardian, and no more than two other designated adults present with that person during any juvenile delinquency proceedings.

This section was adopted as section 6 of Senate Bill 2264 by the 1995 Legislative Assembly as a part of the comprehensive juvenile law revisions. See 1995 N.D. Sess. Laws ch. 124. This section reaffirms and clarifies victim and witness rights and responsibilities in juvenile delinquency proceedings.

N.D.C.C. ch. 12.1-34 relating to fair treatment of victims and witnesses has applied to juveniles' offenses which may result in delinquency adjudication since its adoption in 1987. Many of the rights and responsibilities of victims and witnesses listed in that chapter are not dependent on the commencement of adult or juvenile court proceedings.

N.D.C.C. § 12.1-34-01(8) defines a "victim" as:

a natural person who has suffered direct or threatened physical, financial, or emotional harm where there is probable cause to believe that the harm has been caused by the commission of a criminal act. The term "victim" includes the family members of a minor, incompetent, incapacitated, or deceased person.

In addition, N.D.C.C. § 12.1-34-01(9) defines a "witness" as:

any person who has been or is expected to be summoned to testify for the prosecution whether or not any action or proceeding has yet been commenced.

These definitions of persons within the protections of N.D.C.C. ch. 12.1-34 are also not dependent on commencement of adult or juvenile court proceedings.

N.D.C.C. § 27-20-08 defines the commencement of proceedings in juvenile court.

A proceeding under this chapter may be commenced:

1. By transfer of a case from another court as provided in section 27-20-09;
2. By the court accepting jurisdiction as provided in section 27-20-40 or accepting supervision of a child as provided in section 27-20-42; or
3. In other cases by the filing of a petition as provided in this chapter. The petition and all other documents in the proceeding must be entitled "In the interest of _____, a child".

An informal adjustment under N.D.C.C. § 27-20-10, is a pre-charge diversion procedure available to the juvenile supervisor or officer of the court to intercede with a juvenile offender prior to the filing of a petition. Unless juvenile court proceedings have been commenced under N.D.C.C. § 27-20-08, no proceeding has been commenced in a juvenile court when the informal adjustment procedure is utilized.

The fact that a proceeding may not have been commenced pursuant to N.D.C.C. § 27-20-08 through use of the informal adjustment procedures

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does not mean the provisions of N.D.C.C. ch. 12.1-34 do not apply to victims and witnesses of delinquent acts committed by a juvenile offender. Those rights and responsibilities applicable to non-juvenile delinquency offenses also apply to victims and witnesses of those delinquency offenses which may be chargeable in a juvenile court. Therefore, determining what rights and responsibilities a victim or witness of an offense committed by a juvenile offender may have under N.D.C.C. ch. 12.1-34 requires a review of what rights and responsibilities a victim or witness of an offense committed by an adult offender, or an offense not within N.D.C.C. ch. 27-20 such as a traffic offense, may have.

Since an informal adjustment under N.D.C.C. § 27-20-10 is not a "proceeding" in juvenile court, this procedure is analogous to precharge diversion of a non-juvenile delinquency offense. Like a charge in adult court, a juvenile petition will trigger additional rights and responsibilities of victims and witnesses not present prior to the initiation of the petition. However, those rights and responsibilities of victims and witnesses enumerated in N.D.C.C. ch. 12.1-34 not dependent upon the initiation of a charge or petition will remain. These rights may include, but are not limited to, information regarding the status of the investigation, pretrial release, the services available to the victim or witness, return of property, and a notice of final disposition.

In addition, child victims and witnesses of an offense committed by a juvenile offender may be entitled to additional rights or services under N.D.C.C. ch. 12.1-35. Like N.D.C.C. ch. 12.1-34, these rights and services may not be dependent on the charging of an offender in adult or juvenile court.

In conclusion, although informal dispositions under N.D.C.C. § 27-20-10 are not "proceedings" it is my opinion that certain rights and responsibilities of victims and witnesses under N.D.C.C. chs. 12.1-34 and 12.1-35 would still exist.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

rpb/vkk