

*This opinion is nonprecedential except as provided by  
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A23-0903**

In the Matter of the Welfare of: J. J. B., Child.

**Filed February 5, 2024  
Affirmed  
Ede, Judge**

Stearns County District Court  
File No. 73-JV-22-9210

Cathryn Middlebrook, Chief Appellate Public Defender, Chang Y. Lau, Assistant Public Defender, St. Paul, Minnesota (for appellant J.J.B.)

Keith Ellison, Attorney General, St. Paul, Minnesota; and

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Considered and decided by Ede, Presiding Judge; Worke, Judge; and Bjorkman, Judge.

**NONPRECEDENTIAL OPINION**

**EDE, Judge**

This is an appeal from an order certifying appellant for prosecution as an adult on charges of first-degree criminal sexual conduct. Appellant challenges the district court's findings that the fifth and sixth public-safety factors—which concern the adequacy of programming in the juvenile system and the available dispositional options, and which are set forth in Minnesota Statutes section 260B.125, subdivision 4 (2022)—favor certification. Appellant maintains that, because the district court misapplied the fifth and

sixth public-safety factors, the district court's adult-certification order was an abuse of discretion. Because we conclude that the district court did not clearly err in finding that the fifth and sixth public-safety factors support certification and that the district court did not abuse its discretion in ordering adult certification, we affirm.

## **FACTS**

In November 2022, respondent State of Minnesota charged appellant J.J.B. with two counts of first-degree criminal sexual conduct, in violation of Minnesota Statutes section 609.342, subdivision 1a(e) (Supp. 2021). The charges concern J.J.B.'s involvement in the sexual assault of a 9-year-old girl, on two separate occasions in 2021 and 2022, when he was 17 years old.

The state moved the district court for presumptive certification of J.J.B. for adult prosecution and filed a memorandum in support of finding probable cause. The district court found that probable cause existed to believe J.J.B. committed the charged offense and the court ordered a certification study.

### ***Certification Studies***

J.J.B. participated in three certification studies. One study was completed by Dr. Frank Weber, a licensed psychologist; another was completed by Dr. Jennifer Weigelt, also a licensed psychologist; and the third was completed by Robert Hastings, a senior agent with Stearns County Community Corrections. At the time of the studies, J.J.B. was 18 years old.

The certification studies examined six public-safety factors, which are set forth in Minnesota Statutes section 260B.125, subdivision 4, and which the district court must

consider “[i]n determining whether the public safety is served by certifying the matter.” Minn. Stat. § 260B.125, subd. 4. These six public-safety factors are: (1) “the seriousness of the alleged offense in terms of community protection, including the existence of any aggravating factors recognized by the Sentencing Guidelines, the use of a firearm, and the impact on any victim”; (2) “the culpability of the child in committing the alleged offense, including the level of the child’s participation in planning and carrying out the offense and the existence of any mitigating factors recognized by the Sentencing Guidelines”; (3) “the child’s prior record of delinquency”; (4) “the child’s programming history, including the child’s past willingness to participate meaningfully in available programming”; (5) “the adequacy of the punishment or programming available in the juvenile justice system”; and (6) “the dispositional options available for the child.” *Id.*; *see also* Minn. R. Juv. Delinq. P. 18.06, subd. 3. By statute, the district court must “give greater weight to the seriousness of the alleged offense and the child’s prior record of delinquency than to the other factors.” Minn. Stat. § 260B.125, subd. 4.

After evaluating the six public-safety factors, Dr. Weber and Dr. Weigelt recommended that J.J.B. be designated an extended jurisdiction juvenile (EJJ), while Hastings recommended that J.J.B. be certified as an adult. As relevant to the challenged factors at issue in this appeal, the certification studies stated as follows.

As to the fifth public-safety factor—the adequacy of the punishment or programming available in the juvenile justice system—Dr. Weber reported that J.J.B.

would turn 19 seven months after Dr. Weber’s evaluation,<sup>1</sup> which “is simply not enough time for him to address his sexually abusive behavior if he is convicted” because the Minnesota “Department of Corrections [(DOC)] indicates that the average length of treatment” in all Minnesota treatment programs is two years. Dr. Weigelt suggested that treatment in the juvenile system was better suited for J.J.B. because his “developmental maturity is behind what would be expected of a typical 18-year-old.” She believed that “[i]t [was] important that [J.J.B.] receive developmentally appropriate interventions that [could] match the unique needs of an emerging adult.” In his report, Hastings outlined several programs available to J.J.B., such as sex-specific treatment at West Central Regional Juvenile Center. Hastings also noted the outpatient treatment programs available to J.J.B., like CORE Professional Services and Alpha Emergence Behavioral Health.

As for the sixth public-safety factor—the dispositional options available for the child—Dr. Weber identified adult certification as an option but reported that J.J.B. “could potentially work through his issues by the time he turned 21.” Dr. Weber, however, also noted that “[t]ypically, progress in treatment begins when the offender” takes responsibility for his offense. And because J.J.B. has not taken responsibility for the assaults, Dr. Weber opined that J.J.B. required more than two years to complete treatment. Dr. Weigelt concluded that, if J.J.B. was designated EJJ, he would have “adequate time to complete treatment programming by his 21st birthday.” But Dr. Weigelt acknowledged that, if J.J.B. is certified as an adult, he could be placed on probation, which “has no limitation connected

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<sup>1</sup> J.J.B. turned 19 in August 2023.

to age” and “allows for longer terms of supervision and an extended period of time to complete treatment directives if ordered by the court.” Even so, Dr. Weigelt opined that J.J.B.’s “developmental and treatment needs would likely not be adequately addressed via certification.” Hastings noted that, if J.J.B. was designated EJJ, he would have “a limited amount of time to complete a treatment directive if ordered by the court.” But Hastings stated that, if J.J.B. was certified as an adult, he could be placed on community supervision, which has no limitation connected to the age of the probationer and allows for “an extended period of time to complete treatment directives.”

### ***Contested Certification Hearing***

In May 2023, the district court held an adult-certification hearing. The court heard from five witnesses: Dr. Weber; Hastings; Dr. Weigelt; Dr. Holly Booth, the executive director at Prairie Lakes Youth Program; and Dustin Berg, a program director at West Central Regional Juvenile Center.

Dr. Weber testified that, although it had been several months since he completed his assessment of J.J.B., his EJJ recommendation remained the same. But, as time passed, he grew nervous about J.J.B.’s ability to complete treatment under an EJJ timeline. One factor that could affect the length of J.J.B.’s treatment was J.J.B.’s denial of responsibility for the assaults. Dr. Weber explained that studies show that people who deny responsibility for the offense take longer to complete treatment.

Hastings testified that, under EJJ, J.J.B. would “have 27 months as of today’s court date . . . to complete a treatment program, and . . . to potentially have a multitude of other things” to manage. Hastings also stated that, if J.J.B. was certified as an adult, he “would

have a longer period of time due to the fact that there's longer forms of probation in the adult system." Hastings testified that this timeline supported adult certification, even though Dr. Weber and Dr. Weigelt believed otherwise. Reporting that all programs require sobriety before treatment begins, Hastings also expressed his concern that 27 months was not enough time given J.J.B.'s chemical-dependency needs.

Dr. Weigelt testified that there were programs available in the juvenile system that would meet J.J.B.'s needs and that she believed that J.J.B. would have sufficient time to complete treatment before he turned 21. But when she discussed residential treatment centers, Dr. Weigelt testified that many aspects of those centers can resemble a school setting and that J.J.B. had reported struggling in school.

Dr. Booth testified about the Prairie Lakes Program. She testified that, if a 19-year-old was referred to the program, staff at Prairie Lakes would have to apply for a waiver from the DOC because the age range of individuals admitted to Prairie Lakes is 10 to 19 years old. Dr. Booth stated that, in the last two years, Prairie Lakes only submitted one waiver for an individual over 19, and the DOC denied that waiver. On cross-examination, the state questioned Dr. Booth about a recommendation by evaluators that J.J.B. be prohibited from having unsupervised contact with females under the age of 16. When asked if such a condition could be problematic for some programs offered by Prairie Lakes, Dr. Booth conceded that it would be problematic. Lastly, Dr. Booth testified that Prairie Lakes was struggling with bed availability, meaning that there could be a delay in admitting someone into the program.

Dustin Berg testified about West Central Regional Juvenile Center. Berg explained that West Central must also obtain a waiver from the DOC to allow J.J.B. into the program and likewise noted a lack of open beds at the facility.

The district court filed an order granting adult certification. The district court considered the six public-safety factors, determining that factors one (the seriousness of the alleged offense in terms of community protection), two (the culpability of the child in committing the alleged offense), five (the adequacy of the punishment or programming available in the juvenile justice system), and six (the dispositional options available for the child) favored adult certification.<sup>2</sup> The district court concluded that J.J.B. did not present clear and convincing evidence “to overcome the presumption of certification.”

This appeal follows.

## **DECISION**

J.J.B. challenges the district court’s findings that public-safety factors five and six favor adult certification. More specifically, J.J.B. argues that, had the district court properly applied those factors, it would have correctly concluded that he proved by clear and convincing evidence that his case should remain in juvenile court. The state counters that J.J.B. failed to rebut the presumption of certification by clear and convincing evidence.<sup>3</sup> We agree with the state.

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<sup>2</sup> The district court found that factors three (the child’s prior record of delinquency) and four (the child’s programming history) favored retaining the matter under EJJ.

<sup>3</sup> The state also argues that, in analyzing J.J.B.’s programming history under the fourth public-safety factor, the district court misapplied *In re Welfare of J.H.*, 844 N.W.2d 28, 39 (Minn. 2014), by disregarding J.J.B.’s lack of compliance with a Benton County CHIPS-

“When a child is alleged to have committed, after becoming 14 years of age, an offense that would be a felony if committed by an adult, the [district] court may enter an order certifying the proceeding for action under the laws and court procedures controlling adult criminal violations.” Minn. Stat. § 260B.125, subd. 1 (2022). “A district court has considerable latitude in deciding whether to certify a case for adult prosecution.” *In re Welfare of P.C.T.*, 823 N.W.2d 676, 681 (Minn. App. 2012) (quotation omitted), *rev. denied* (Minn. Feb. 19, 2013). A presumption in favor of certification exists if the child was at least 16 years old at the time of the alleged offense and the offense is one that would result in a presumptive commitment to prison. *See* Minn. Stat. § 260B.125, subd. 3 (2022). The child bears the burden of rebutting this presumption by “clear and convincing evidence that retaining the proceeding in the juvenile court serves public safety.” *Id.*

As discussed above, to determine whether certifying a child for adult prosecution serves public safety, the district court must consider six public-safety factors. *See* Minn. Stat. § 260B.125, subd. 4. In considering the public-safety factors, the district court must take the factual allegations set forth in the juvenile-delinquency petition as true. *See In re Welfare of J.H.*, 844 N.W.2d 28, 38 (Minn. 2014). Public-safety factors five and six—

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Truancy file and related court-ordered interventions aimed at improving J.J.B.’s school attendance. Although we need not reach this issue because we affirm on other grounds, we note that the supreme court explained in *J.H.* that “[g]enerally, a school does not fall within the broad definition of programming . . . because its purpose is to provide children with basic education, not to address specific behavioral or social issues of a child relevant to juvenile delinquency.” 844 N.W.2d at 39. Because the purpose of the truancy intervention file was to assist J.J.B. in reducing his school absences and obtaining an education, we discern no abuse of discretion in the district court’s application of the law to the fourth public-safety factor.



which are the focus of J.J.B.’s appeal—concern: “(5) the adequacy of the punishment or programming available in the juvenile justice system; and (6) the dispositional options available for the child.” Minn. Stat. § 260B.125, subd. 4. In analyzing public-safety factors five and six, we have explained that “insufficient time for rehabilitation under the juvenile system is an appropriate consideration when deciding whether to refer the juvenile to adult court.” *In re Welfare of U.S.*, 612 N.W.2d 192, 197 (Minn. App. 2000). And, in a nonprecedential opinion, we concluded that, “if the outcome of treatment or other programming in the juvenile system is unlikely or equivocal, then public-safety factors five and six favor certification.” *In re Welfare of J.A.S.*, No. A10-584, 2010 WL 3547210, at \*5 (Minn. App. Sept. 14, 2010).<sup>4</sup>

Appellate courts “review the juvenile court’s decision to certify a child to adult court for an abuse of discretion.” *J.H.*, 844 N.W.2d at 34. This court “will not disturb a finding about whether public safety would be served by retaining the proceeding in juvenile court unless it is clearly erroneous.” *Id.* at 35. “In determining whether the juvenile court’s findings are clearly erroneous, [appellate courts] view the record in the light most favorable to the juvenile court’s findings.” *Id.* “A finding is clearly erroneous only if there is no reasonable evidence to support the finding or when an appellate court is left with the definite and firm conviction that a mistake occurred.” *Id.* (quotation omitted).

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<sup>4</sup> This nonprecedential opinion is not binding. We cite it as persuasive authority. *See* Minn. R. Civ. App. P. 136.01, subd. 1(c).

Here, a presumption in favor of certification exists because J.J.B. was charged with an offense that would result in a presumptive commitment to prison and he was at least 16 years old at the time of the offense. And viewing the record in the light most favorable to the district court's findings, we discern no clear error in the district court's determinations that public-safety factors five and six favored certification. *See J.H.*, 844 N.W.2d at 35.

In deciding whether to refer J.J.B. to adult court, the district court appropriately considered whether there was insufficient time for rehabilitation under the juvenile system. *See U.S.*, 612 N.W.2d at 197. Dr. Weber testified that, as time passed, he grew more hesitant about J.J.B.'s ability to complete treatment because of long waitlists and J.J.B.'s "added struggles with motivation and chemical dependency." Hastings likewise expressed his concern that the time available to J.J.B. under EJJ was inadequate given J.J.B.'s chemical-dependency needs and the items he would need to complete in treatment. Hastings also stated that the longer period that would be allotted to J.J.B. under adult probation supported certification.

The record evidence furthermore reflects that J.J.B. would face barriers to entering juvenile treatment programs. Based on J.J.B.'s age, Prairie Lakes Youth Program and West Central Regional Juvenile Center required waivers from the DOC to admit J.J.B. According to Dr. Booth, only one such waiver was submitted for Prairie Lakes in the two years preceding the certification hearing, and the DOC denied that waiver. Additionally, the fact that J.J.B. could be prohibited from having unsupervised contact with females under the age of 16 would be problematic for some programs available at Prairie Lakes. Lastly, the evidence indicated a lack of available beds at both Prairie Lakes and West Central.

Because the record amply demonstrates that the outcome of treatment or other programming in the juvenile system was unlikely or equivocal, *see J.A.S.*, 2010 WL 3547210, at \*5, we conclude there was reasonable evidence to support the district court’s findings that public-safety factors five and six favored adult certification, and we are not left with the definite and firm conviction that a mistake occurred, *see J.H.*, 844 N.W.2d at 35. The district court’s findings were not clearly erroneous, and we therefore will not disturb them. *See id.* Based on those findings and the record as a whole,<sup>5</sup> J.J.B. did not carry his burden of rebutting the presumption in favor of certification by “clear and convincing evidence that retaining the proceeding in the juvenile court serves public safety.” Minn. Stat. § 260B.125, subd. 3. Thus, the district court did not abuse its discretion in deciding to certify J.J.B. to adult court. *See J.H.*, 844 N.W.2d at 35.

**Affirmed.**

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<sup>5</sup> We note that the undisputed evidence underlying the district court’s unchallenged determination that factors one (the seriousness of the alleged offense in terms of community protection) and two (the culpability of the child in committing the alleged offense) favored adult certification also supports our conclusion that the district court did not abuse its discretion in certifying J.J.B. for adult prosecution. Indeed, under Minnesota Statutes section 260B.125, subdivision 4, the district court had to “give greater weight to the seriousness of the alleged offense and the child’s prior record of delinquency than to the other [public-safety] factors.” And, despite the district court’s finding that J.J.B.’s prior record of delinquency favored retaining the matter under EJJ, we also note that the supreme court has held that a district court’s adult-certification order in a criminal-sexual-conduct case was not an abuse of discretion, where the youth’s prior record of delinquency favored EJJ but the seriousness of the alleged offense favored certification. *See J.H.*, 844 N.W.2d at 36–37.