

JUDICIAL BRANCH OF GOVERNMENT

CHAPTER 261

SENATE BILL NO. 2121

(Judiciary Committee)

(At the request of the Supreme Court)

AN ACT to provide an appropriation for defraying expenses of the judicial branch of state government related to the establishment of two additional district court judgeships; and to amend and reenact sections 27-05-01 and 27-05-02.1 of the North Dakota Century Code, relating to the number of district court judges and vacancies in judicial office.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$875,094, or so much of the sum as may be necessary, to the judicial branch for the purpose of establishing two additional district court judgeships as provided in section 2 of this Act, for the biennium beginning July 1, 2009, and ending June 30, 2011.

SECTION 2. AMENDMENT. Section 27-05-01 of the North Dakota Century Code is amended and reenacted as follows:

27-05-01. Judicial districts - Number of judges.

4. The judicial districts in this state and the number of judges in each of the judicial districts are as designated by rule of the supreme court. The number of judges in each of the judicial districts is as follows:
 - a. The northwest judicial district shall have five judges.
 - b. The northeast judicial district shall have three judges.
 - c. The northeast central judicial district shall have four judges.
 - d. The east central judicial district shall have four judges.
 - e. The southeast judicial district shall have three judges.
 - f. The south central judicial district shall have five judges.
 - g. The southwest judicial district shall have three judges.
2. Each judicial district has that number of additional judges as designated by rule of the supreme court pursuant to subsection 3 of section 27-05-00.1. The supreme court shall reduce the number of district judges pursuant to section 27-05-02.1 to forty-two before January 2, 2001.

SECTION 3. AMENDMENT. Section 27-05-02.1 of the North Dakota Century Code is amended and reenacted as follows:

27-05-02.1. Vacancy in office of district judge - Transfer of judgeships - Abolition of offices - Hearing.

1. Notwithstanding section 44-02-03, when a vacancy occurs in the office of district court judge, the supreme court shall determine, within ninety days of receiving notice of the vacancy from the governor and in consultation with the judges and attorneys in the affected judicial district, whether that office is necessary for effective judicial administration or whether a the district judgeship may be transferred to the another location to fulfill a need for judicial services. The supreme court may, consistent with that determination, order that:
 - a. The vacancy be filled in the manner provided pursuant to chapter 27-25; or
 - b. The vacant office be abolished, with or without transfer of a district judgeship as provided by subsection 5; or
 - e. The vacant office be transferred to a judicial district in which an additional judge is necessary for effective judicial administration, and that the vacancy be filled in the manner provided pursuant to chapter 27-25 with respect to that judicial district.
2. Subject to subsection 3, the supreme court may, after consultation with district court judges and attorneys in the affected judicial district, abolish one or more offices of district court judge if the supreme court determines that the office is not necessary for effective judicial administration and abolition of the office is necessary to reduce the number of district court judges as required in subsection 2 of section 27-05-01. At least one year before the end of the term of office of a district court judge holding the judgeship, the supreme court shall notify the judges of the affected judicial district of a determination that the judgeship will be abolished. The abolition of an office of district court judge under this subsection is effective at the end of the term of office of the district court judge holding that judgeship. The district court judge holding the judgeship to be abolished may petition the supreme court, within thirty days after receiving notice that the judgeship will be abolished, for a hearing on the determination. The supreme court shall hold the hearing within thirty days after receipt of the petition. Within thirty days after the hearing, the supreme court shall affirm, reverse, or modify its previous determination.
3. The authority conferred upon the supreme court in subsection 2 may be exercised:
 - a. From July 1, 1995, until June 30, 1997, if on July 1, 1995, the number of district court judges is more than forty-eight;
 - b. From July 1, 1997, until June 30, 1999, if on July 1, 1997, the number of district court judges is more than forty-six; and
 - e. From July 1, 1999, until December 31, 2000, if on July 1, 1999, the number of district court judges is more than forty-two.

4. For purposes of subsection 1, a vacancy is also only deemed to have occurred in the office of district judge if the judge in the affected office declares the intention not to seek reelection or if a judge fails to timely file a petition for candidacy with the secretary of state pursuant to section 16.1-11-06. The secretary of state shall immediately notify the supreme court if a judge fails to timely file a petition. The supreme court may establish by rule procedures for providing notice of the intention not to seek reelection. The supreme court, within ninety days of receiving notice of a judge's intention not to seek reelection or within twenty-one days of receiving notice that a judge has failed to timely file a petition for candidacy, shall determine whether the office is necessary for effective judicial administration. The supreme court shall consult with the judges and attorneys of the affected judicial district in making the determination. The supreme court, consistent with that determination, may order any disposition available under subsection 1. The supreme court shall notify the secretary of state of its determination. ~~If the vacant office is abolished, an election for that office may not be held. This subsection applies to notice given by or the failure to timely file a petition for candidacy by a district judge otherwise eligible for reelection to the office of district judge or by a county judge otherwise eligible for election in 1994 to the district judgeship replacing the county judgeship.~~
- 5- 3. The supreme court may transfer a district judgeship to any location in which a judge is necessary for effective judicial administration.
- 6- 4. The supreme court shall notify the governor of its determinations made pursuant to this section.

SECTION 4. DISTRICT JUDGES. The appropriation provided in section 1 of this Act provides for two additional district court judges to be assigned pursuant to section 10 of article VI of the Constitution of North Dakota in the northwest and southeast judicial districts, and to be assigned to chambers by the supreme court. Within thirty days after January 1, 2010, the judgeship vacancies created by this section shall be filled in accordance with section 13 of article VI of the Constitution of North Dakota.

Approved April 22, 2009
Filed April 23, 2009

CHAPTER 262**SENATE BILL NO. 2069**
(Senators Lyson, Warner, Nelson, J. Lee)
(Representative Delmore)

AN ACT to amend and reenact subsection 1 of section 27-05.2-03 of the North Dakota Century Code, relating to fees collected by the clerk of district court for deposit in the civil legal services fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 27-05.2-03 of the North Dakota Century Code is amended and reenacted as follows:

1. A clerk of the district court shall charge and collect the following fees in civil cases:
 - a. For filing a case for decision that is not a small claims action, eighty dollars.
 - (1) Fifteen dollars of this fee must be paid by the clerk of court to the state treasurer for deposit in the civil legal services fund. Any fees collected under this paragraph which exceed ~~four~~ six hundred fifty thousand dollars in any biennium must be paid by the clerk of court to the state treasurer for deposit in the state general fund.
 - (2) For the filing of a petition for dissolution of marriage, annulment, or separation from bed and board, fifty dollars of this fee must be paid by the clerk of court to the state treasurer for deposit in the displaced homemaker account created by section 14-06.1-14 and fifteen dollars of this fee must be paid by the clerk of court to the state treasurer for deposit in the state general fund.
 - (3) For all other filings, sixty-five dollars of this fee must be paid by the clerk of court to the state treasurer for deposit in the state general fund.
 - b. For filing an answer to a case that is not a small claims action, fifty dollars. The clerk shall deposit this fee with the state treasurer for deposit in the general fund in the state treasury.
 - c. For filing a small claims action in district court, ten dollars.
 - d. For filing any matter authorized to be filed in the office of the clerk of court other than under subdivision a, b, or c, ten dollars.
 - e. For preparing, certifying, issuing, or transmitting any document, ten dollars, or a lesser fee as may be set by the state court administrator.

- f. For filing a motion or an answer to a motion to modify an order for alimony, property division, child support, or child custody, thirty dollars. The clerk shall deposit this fee with the state treasurer for deposit in the general fund of the state treasury.

Approved April 30, 2009

Filed May 1, 2009

CHAPTER 263**HOUSE BILL NO. 1296**

(Representatives Grande, Dosch, Glassheim)
(Senators Dotzenrod, Grindberg, Hogue)

AN ACT to amend and reenact subsection 1 of section 27-08.1-01 and section 27-08.1-03 of the North Dakota Century Code, relating to limits on small claims court actions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 27-08.1-01 of the North Dakota Century Code is amended and reenacted as follows:

1. All judges of the district courts may exercise the jurisdiction conferred by this chapter, and while sitting in the exercise of that jurisdiction must be known and referred to as the "small claims court". The jurisdiction of this court is confined to cases for recovery of money, or the cancellation of any agreement involving material fraud, deception, misrepresentation, or false promise, when the value of the agreement or the amount claimed by the plaintiff or the defendant does not exceed ~~five~~ ten thousand dollars.

SECTION 2. AMENDMENT. Section 27-08.1-03 of the North Dakota Century Code is amended and reenacted as follows:

27-08.1-03. Informal hearing - Answer and counterclaim - Filing and service fees - Examination of debtor. No formal pleadings other than the claim affidavit and order for appearance ~~shall~~ may be required, and the hearing and disposition of actions ~~shall~~ must be informal. ~~No~~ A court reporter ~~shall~~ be ~~is~~ not required to be present to take the testimony unless arranged for and paid for by one of the parties to the action. The defendant may file an answer, and file a claim affidavit setting forth any new matter constituting a counterclaim, not to exceed ~~five~~ ten thousand dollars, which must be served upon the plaintiff by a person of legal age, not a party to or interested in the action, or mailed to the plaintiff by certified mail, not later than forty-eight hours before the hearing set for the appearance of the defendant. The compulsory counterclaim rule does not apply to counterclaims in excess of ~~five~~ ten thousand dollars. At the hearing, the plaintiff and the defendant may appear without counsel. The court will conduct the proceedings and may make its own inquiry before, during, or after the hearing. After the court has found that money is owing by any party to the proceeding, the court may, in the presence of the prevailing party, inquire of the debtor as to plans for payment of the debt. The court may examine the debtor concerning the property owned by the debtor, at the hearing, as would be made under chapter 28-25. The examination may be made without first having issued an execution against the property of the debtor and without further notice as otherwise provided in chapter 28-25. A trial by jury ~~shall~~ is not ~~be~~ allowed in small claims court. A fee as prescribed in subdivision c of subsection 1 of section 27-05.2-03 must be charged for filing the claim affidavit.

Approved April 8, 2009

Filed April 9, 2009

CHAPTER 264**SENATE BILL NO. 2120**
(Judiciary Committee)
(At the request of the Supreme Court)

AN ACT to amend and reenact subdivision a of subsection 2 of section 27-09.1-08 and section 29-01-06 of the North Dakota Century Code, relating to selection of jurors and defendants' rights.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision a of subsection 2 of section 27-09.1-08 of the North Dakota Century Code is amended and reenacted as follows:

- a. Is not a citizen of the United States and a resident of the state and county in the jury pool;

SECTION 2. AMENDMENT. Section 29-01-06 of the North Dakota Century Code is amended and reenacted as follows:

29-01-06. Rights of defendant. In all criminal prosecutions the party accused has the right:

1. To appear and defend in person and with counsel;
2. To demand and be informed of the nature and cause of the accusation;
3. To meet the witnesses against the party face to face;
4. To have the process of the court to compel the attendance of witnesses in the party's behalf; and
5. To a speedy and public trial, and by an impartial jury ~~of~~ in the county in which the offense is alleged to have been committed or is triable, but subject to the right of the state to have a change of the place of trial for any of the causes for which the party accused may obtain the same.

Approved March 19, 2009
Filed March 19, 2009

CHAPTER 265**SENATE BILL NO. 2118**
(Judiciary Committee)
(At the request of the Supreme Court)

AN ACT to amend and reenact section 27-09.1-14 of the North Dakota Century Code, relating to compensation of jurors.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 27-09.1-14 of the North Dakota Century Code is amended and reenacted as follows:

27-09.1-14. Mileage and compensation of jurors. A juror must be paid mileage at the rate provided for state employees in section 54-06-09. A juror must be compensated at the rate of ~~twenty-five dollars for the first day and~~ fifty dollars for each ~~subsequent~~ day of required attendance at sessions of the district court ~~and unless the juror is in attendance for four hours or less on the first day, in which case compensation for the first day is twenty-five dollars.~~ A juror must be compensated at the rate of ten dollars for each day of required attendance at sessions of a coroner's inquest. The mileage and compensation of jurors must be paid by the state for jurors at sessions of the district court. Jurors at coroner's inquests must be paid by the county.

Approved April 8, 2009
Filed April 9, 2009

CHAPTER 266

HOUSE BILL NO. 1207

(Representatives Froseth, Clark, Onstad)
(Senators Andrist, Warner)

AN ACT to create and enact a new subsection to section 6-08.1-02 and a new section to chapter 27-13 of the North Dakota Century Code, relating to an exemption to bank confidentiality requirements for attorney trust account overdrafts and to the conduct of attorneys.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 6-08.1-02 of the North Dakota Century Code is created and enacted as follows:

A disclosure made to the disciplinary board of the North Dakota supreme court or another state's authority with responsibility for enforcing rules of professional conduct for lawyers regarding dishonor of an instrument issued against any trust account maintained by an attorney or law firm, as these terms are defined in section 6-08-16.2.

SECTION 2. A new section to chapter 27-13 of the North Dakota Century Code is created and enacted as follows:

Attorney for attorney fiduciary required - Exception. An attorney who serves as a fiduciary of an estate, trust, or conservatorship must be represented by another attorney. The attorney who serves as fiduciary or the attorney's law firm may not serve as attorney for the fiduciary. This section does not apply to United States bankruptcy court proceedings or to matters in which the decedent, trustor, beneficiary, or protected individual is a spouse, child, grandchild, parent, grandparent, or sibling of the attorney serving as a fiduciary.

Approved April 21, 2009
Filed April 22, 2009

CHAPTER 267**HOUSE BILL NO. 1094**

(Human Services Committee)

(At the request of the Department of Human Services)

AN ACT to amend and reenact subsection 15 of section 27-20-02, sections 27-20-32.2 and 27-20-38, and subsection 5 of section 50-11-00.1 of the North Dakota Century Code, relating to placement of siblings in foster care and a guardian's duty to exercise due diligence.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 15 of section 27-20-02 of the North Dakota Century Code is amended and reenacted as follows:

15. "Permanency hearing" means a hearing, conducted with respect to a child who is in foster care, to determine the permanency plan for the child which includes:
 - a. Whether and, if applicable, when the child will be returned to the parent;
 - b. Whether and, if applicable, when the child will be placed for adoption and the state will file a petition for termination of parental rights;
 - c. Whether and, if applicable, when a fit and willing relative or other appropriate individual will be appointed as a legal guardian;
 - d. Whether and, if applicable, to place siblings in the same foster care, relative, guardianship, or adoptive placement, unless it is determined that the joint placement would be contrary to the safety or well-being of any of the siblings;
 - e. Whether and, if applicable, in the case of siblings removed from their home who are not jointly placed, to provide for frequent visitation or other ongoing interaction between the siblings, unless it is determined to be contrary to the safety or well-being of any of the siblings;
 - f. In cases in which a compelling reason has been shown that it would not be in the child's best interests to return home, to have parental rights terminated, to be placed for adoption, to be placed with a fit and willing relative, or to be placed with a legal guardian, whether and, if applicable, when the child will be placed in another planned permanent living arrangement;
 - e- g. In the case of a child who has been placed in foster care outside the state in which the home of the parents is located, or if the parents maintain separate homes, outside the state in which the home of the parent who was the child's primary caregiver is located, whether out-of-state placements have been considered. If

the child is currently in an out-of-state placement, the court shall determine whether the placement continues to be appropriate and in the child's best interests; and

- f. h. In the case of a child who has attained age sixteen, the services needed to assist the child to make the transition from foster care to independent living.

SECTION 2. AMENDMENT. Section 27-20-32.2 of the North Dakota Century Code is amended and reenacted as follows:

27-20-32.2. Reasonable efforts to prevent removal or to reunify - When required.

1. As used in this section, "reasonable efforts" means the exercise of due diligence, by the agency granted authority over the child under this chapter, to use appropriate and available services to meet the needs of the child and the child's family in order to prevent removal of the child from the child's family or, after removal, to use appropriate and available services to eliminate the need for removal ~~and~~, to reunite the child and the child's family, and to maintain family connections. In determining reasonable efforts to be made with respect to a child under this section, and in making reasonable efforts, the child's health and safety must be the paramount concern.
2. Except as provided in subsection 4, reasonable efforts must be made to preserve ~~and~~ families, reunify families, and maintain family connections:
 - a. Prior to the placement of a child in foster care, to prevent or eliminate the need for removing the child from the child's home; ~~and~~
 - b. To make it possible for a child to return safely to the child's home;
 - c. To place siblings in the same foster care, relative, guardianship, or adoptive placement, unless it is determined that such a joint placement would be contrary to the safety or well-being of any of the siblings; and
 - d. In the case of siblings removed from their home who are not jointly placed, to provide for frequent visitation or other ongoing interaction between the siblings, unless it is contrary to the safety or well-being of any of the siblings.
3. If the court or the child's custodian determined that continuation of reasonable efforts, as described in subsection 2, is inconsistent with the permanency plan for the child, reasonable efforts must be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child.
4. Reasonable efforts of the type described in subsection 2 are not required if:
 - a. A court of competent jurisdiction has determined that a parent has subjected a child to aggravated circumstances; or

- b. The parental rights of the parent, with respect to another child of the parent, have been involuntarily terminated.
5. Efforts to place a child for adoption, with a fit and willing relative or other appropriate individual as a legal guardian, or in another planned permanent living arrangement, may be made concurrently with reasonable efforts of the type described in subsection 2.
6. Removal of a child from the child's home for placement in foster care must be based on judicial findings stated in the court's order, and determined on a case-by-case basis in a manner that complies with the requirements of titles IV-B and IV-E of the Social Security Act [42 U.S.C. 620 et seq. and 42 U.S.C. 6701 et seq.], as amended, and federal regulations adopted thereunder, provided that this subsection may not provide a basis for overturning an otherwise valid court order.

SECTION 3. AMENDMENT. Section 27-20-38 of the North Dakota Century Code is amended and reenacted as follows:

27-20-38. Rights and duties of legal custodian. A custodian to whom legal custody has been given by the court under this chapter has ~~the~~:

1. The right to the physical custody of the child and the right to determine the nature of the care, placement, and treatment of the child, including ordinary medical care as well as medical or surgical treatment for a serious physical condition or illness which in the opinion of a licensed physician requires prompt treatment, except for any limits the court may impose. ~~The custodian also has the~~
2. The right and duty to provide for the care, protection, training, and education and the physical, mental, and moral welfare of the child, subject to the conditions and limitations of the order and to the remaining rights and duties of the child's parents or guardian.
3. A duty within thirty days after the removal of a child from the custody of the parent or parents of the child, to exercise due diligence to identify and provide notice to all parents, grandparents, and any other adult relative suggested by the parents and grandparents, subject to exceptions due to family or domestic violence, that:
 - a. Specifies that the child has been or is being removed from the custody of the parent or parents of the child;
 - b. Explains the options the relative has under federal, state, and local law to participate in the care and placement of the child, including any options that may be lost by failing to respond to the notice;
 - c. Describes the requirements and standards to become a foster family home and the additional services and supports that are available for children placed in that home; and
 - d. Describes how the relative of the child may enter into an agreement with the department to receive a subsidized guardianship payment.

SECTION 4. AMENDMENT. Subsection 5 of section 50-11-00.1 of the North Dakota Century Code is amended and reenacted as follows:

5. "Family foster home for children" means an occupied private residence in which foster care for children is regularly provided by the owner or lessee thereof to no more than four children, unless all the children in foster care are related to each other by blood or marriage or unless the department approves otherwise for the placement of siblings, in which case ~~such~~ the limitation in this subsection does not apply.

Approved April 8, 2009
Filed April 9, 2009

CHAPTER 268**HOUSE BILL NO. 1333**

(Representatives Griffin, Delmore, Klemin)
(Senators Lyson, Olafson, Schneider)

AN ACT to create and enact a new subdivision to subsection 1 of section 27-20-03 of the North Dakota Century Code, relating to the jurisdiction of the juvenile court.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subdivision to subsection 1 of section 27-20-03 of the North Dakota Century Code is created and enacted as follows:

Civil forfeiture proceedings arising under chapter 19-03.1 or section 29-31.1-04 for which a child is alleged to have possessed forfeitable property. The juvenile court shall conduct the proceedings in accordance with the procedures provided for under sections 19-03.1-36 through 19-03.1-37.

Approved April 24, 2009
Filed April 29, 2009

CHAPTER 269**SENATE BILL NO. 2159**

(Senators Lyson, Robinson, Flakoll, Nelson)
(Representative Delmore)

AN ACT to amend and reenact subsection 2 of section 27-20-14 of the North Dakota Century Code, relating to the detention of a child participating in a juvenile drug court program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 27-20-14 of the North Dakota Century Code is amended and reenacted as follows:

2. If a child is participating in a juvenile drug court program as a result of an adjudication for a delinquent offense, the drug court may order the child detained in a juvenile detention center operated pursuant to chapter 12-44.1. The child may be detained twice during the child's participation in the program but the total period of detention under this subsection may not exceed four days in a one-year period.

Approved April 8, 2009
Filed April 9, 2009

CHAPTER 270**HOUSE BILL NO. 1108**

(Representative DeKrey)

(Senator Lyson)

(At the request of the Commission on Legal Counsel for Indigents)

AN ACT to amend and reenact section 27-20-26 of the North Dakota Century Code, relating to the right to counsel under the Juvenile Court Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 27-20-26 of the North Dakota Century Code is amended and reenacted as follows:

27-20-26. Right to counsel - Exceptions.

1. Except as otherwise provided in this section, a party who is indigent and unable to employ legal counsel is entitled to counsel at public expense at custodial, post-petition, and informal adjustment stages of proceedings under this chapter. During the informal adjustment stage of a proceeding only the child, if determined to be indigent, is entitled to counsel at public expense. In proceedings regarding allegations of unruliness or delinquency, a child's parent, legal guardian, or custodian, if determined to be indigent, is entitled to counsel at public expense only during the dispositional stage of the proceedings. If a party appears without counsel the court shall ascertain whether the party knows the party may be represented by counsel and that the party is entitled to counsel at public expense if indigent. The court may continue the proceeding to enable a party to obtain counsel and, subject to this section, counsel must be provided for an unrepresented indigent party upon the party's request. Counsel must be provided for a child who is under the age of eighteen years and is not represented by the child's parent, guardian, or custodian at custodial, post-petition, and informal adjustment stages of proceedings under this chapter. If the interests of two or more parties conflict, separate counsel must be provided for each of them.
2. An indigent party is one who at the time of requesting counsel is unable, without undue financial hardship, to provide for full payment of legal counsel and all other necessary expenses for representation. A child who, at the time of the proceeding, is under the age of eighteen years is not to be considered indigent under this section if the child's parent can, without undue financial hardship, provide full payment for legal counsel and other expenses of representation. Any parent ~~entitled to the custody~~ of a child who is under the age of eighteen and is involved in a proceeding under this chapter is, unless undue financial hardship would ensue, responsible for providing legal counsel and for paying other necessary expenses of representation for the parent's child. The court may enforce performance of this duty by appropriate order.

3. For purposes of this section and section 27-20-49, "party" means the child and the child's parent, legal guardian, or custodian.

Approved March 5, 2009

Filed March 5, 2009

CHAPTER 271**SENATE BILL NO. 2169**

(Senators J. Lee, Lyson)

(Representatives DeKrey, Delmore, Gruchalla)

AN ACT to amend and reenact section 27-20-52 of the North Dakota Century Code, relating to the law enforcement or correctional facility records of a child.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 27-20-52 of the North Dakota Century Code is amended and reenacted as follows:

27-20-52. Law enforcement and correctional facility records. ~~Law enforcement and correctional facility records and files of a child alleged or found to be delinquent, unruly, or deprived must be kept separate from the records and files of arrests of adults.~~

1. Unless a charge of delinquency is transferred for criminal prosecution under section 27-20-34, the interest of national security requires, or the court otherwise orders in the interest of the child, ~~these records and files may~~ the law enforcement and correctional facility records and files of a child alleged or found to be delinquent, unruly, or deprived are not be open to public inspection; but inspection of these records and files is permitted by:
 1. a. A juvenile court having the child before it in any proceeding;
 2. b. Counsel for a party to the proceeding;
 3. c. The officers of public institutions or agencies to whom the child is or may be committed;
 4. d. Law enforcement officers of other jurisdictions when necessary for the discharge of their official duties;
 5. e. A court in which the child is convicted of a criminal offense for the purpose of a presentence report or other dispositional proceeding, or by officials of correctional facilities to which the child is detained or committed, or by the parole board, the governor, or the pardon advisory board, if one has been appointed, in considering the child's parole or discharge or in exercising supervision over the child;
 6. f. The professional staff of the uniform crime victims compensation program when necessary for the discharge of its duties pursuant to chapter 54-23.4; and
 7. g. A superintendent or principal of the school in which the child is currently enrolled or of a school in which the child wishes to enroll.

2. Notwithstanding that law enforcement records and files of a child alleged or found to be delinquent, unruly, or deprived are not open to public inspection, ~~nothing in this section may be construed to~~ does not limit the release of general information ~~not identifying~~ that does not identify the identity of the child.

Approved April 8, 2009

Filed April 9, 2009

CHAPTER 272**HOUSE BILL NO. 1159**

(Judiciary Committee)

(At the request of the Department of Human Services)

AN ACT to amend and reenact section 27-20-54 of the North Dakota Century Code, relating to the destruction of juvenile court records.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 27-20-54 of the North Dakota Century Code is amended and reenacted as follows:

27-20-54. Destruction of juvenile court records.

1. Except as otherwise required under section 25-03.3-04, all juvenile court records must be retained and disposed of pursuant to rules and policies established by the North Dakota supreme court.
2. Upon the final destruction of a file or record, the proceeding must be treated as if it never occurred. The juvenile court shall notify each agency named in the file or record of the destruction. All index references, except those which may be made by the ~~director~~ attorney general and the directors of the department of transportation, the department of human services, the department of corrections and rehabilitation, and county social service agencies, must be deleted. Each agency, except the ~~director~~ attorney general and the directors of the department of transportation, the department of human services, the department of corrections and rehabilitation, and county social service agencies, upon notification of the destruction of a file or record, shall destroy all files, records, and references to the child's apprehension, detention, and referral to the juvenile court and any record of disposition made by the juvenile court. The attorney general, the department of human services, the department of corrections and rehabilitation, and county social service agencies may not keep a juvenile file or record longer than is required by the records retention policy of that official, department, or agency. Upon inquiry in any matter the child, the court, and representatives of agencies, except the ~~director~~ attorney general and the directors of the department of transportation, the department of human services, the department of corrections and rehabilitation, and county social service agencies, shall properly reply that no record exists with respect to the child.

Approved April 8, 2009

Filed April 9, 2009

CHAPTER 273**HOUSE BILL NO. 1089**

(Human Services Committee)

(At the request of the Department of Corrections and Rehabilitation)

AN ACT to create and enact a new subsection to section 27-21-02 and two new subsections to section 27-21-12 of the North Dakota Century Code, relating to the powers and duties and files and records of the division of juvenile services; to amend and reenact sections 12-46-04, 12-46-09, 12-46-10, 12-46-10.1, 12-46-18, and 12-46-19 of the North Dakota Century Code, relating to the North Dakota youth correctional center; and to repeal sections 12-46-03, 12-46-05, 12-46-06, 12-46-11, 12-46-20, and 12-46-22 of the North Dakota Century Code, relating to the North Dakota youth correctional center.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-46-04 of the North Dakota Century Code is amended and reenacted as follows:

12-46-04. Appointment and removal of officers. ~~The director of the division of juvenile services with the approval of the director of the department of corrections and rehabilitation shall appoint the superintendent. The superintendent may be removed by the director of the division of juvenile services with the approval of the director of the department of corrections and rehabilitation for misconduct, neglect of duty, incompetency, or other proper cause showing an inability or refusal to properly perform the duties of the office. All other officers and employees must be appointed by the superintendent, subject to the approval of the director of the division of juvenile services. The superintendent shall show in the record of any officer or employee who is discharged by the superintendent the reason therefor is the administrator of the North Dakota youth correctional center. The director may designate officers or employees of the North Dakota youth correctional center to carry out the administrator's duties.~~

SECTION 2. AMENDMENT. Section 12-46-09 of the North Dakota Century Code is amended and reenacted as follows:

12-46-09. Superintendent Administrator may make rules.

1. ~~The superintendent, subject to the approval of the director of the division of juvenile services, shall administrator may~~ make rules and regulations not in conflict with the laws of this state:
4. a. For the admission of visitors.
2. b. For the government of officers and employees of the North Dakota youth correctional center.
3. c. For the conduct of ~~students~~ children committed to the North Dakota youth correctional center.

2. A printed copy of the rules and regulations must be furnished to each ~~student child~~ committed to the North Dakota youth correctional center at the time the ~~student child~~ is received and to each officer or employee at the time of hire. Two copies of such rules must be furnished to the state law library for the use of the state officials and the public.

SECTION 3. AMENDMENT. Section 12-46-10 of the North Dakota Century Code is amended and reenacted as follows:

12-46-10. Records of institutional transactions, complaints, and rule infractions. The ~~superintendent~~ administrator shall ~~cause to be kept maintain~~ a correct record of all the transactions of the office and a correct account of all the ~~superintendent's doings.~~ The superintendent shall keep a memorandum of every ~~complaint of cruel and unjust treatment of any officer or other person; and also of any infraction of the rules and regulations of the school by any of the students committed thereto; naming the student; and specifying the offense and the punishment; if any; inflicted therefor; and such record and memorandum must be laid before the director of the division of juvenile services upon request~~ North Dakota youth correctional center.

SECTION 4. AMENDMENT. Section 12-46-10.1 of the North Dakota Century Code is amended and reenacted as follows:

12-46-10.1. Disciplinary committee - Members - Duties. The ~~superintendent of the North Dakota youth correctional center~~ administrator shall appoint a disciplinary committee. ~~The membership of this committee should include, including one cottage supervisor; and one member of the professional staff; and may include one student and one member of the general public, as determined by the superintendent.~~ The committee shall hear all charges of ~~serious breach of discipline violations of North Dakota youth correctional center rules and regulations and recommend to the superintendent administrator what disciplinary action, if any, should be administered.~~ The committee shall maintain records of its actions. These records are subject to review by the director of the ~~division of juvenile services department of corrections and rehabilitation, the attorney general, or any legislative committee upon request.~~ ~~Nothing in this section may be construed to prevent the superintendent from placing a child under close supervision immediately after that child commits a serious breach of discipline; however, within forty-eight hours the disciplinary committee shall hear the case and make its recommendations to the superintendent concerning further action to be taken, if any.~~

SECTION 5. AMENDMENT. Section 12-46-18 of the North Dakota Century Code is amended and reenacted as follows:

12-46-18. Employment and compensation of persons committed children. Every ~~person child~~ committed to the custody of the division of juvenile services and ~~transferred to placed at~~ the North Dakota youth correctional center or its ~~auxiliary facilities~~ may receive a stipend as determined by the ~~superintendent; and approved by the director of the division of juvenile services administrator,~~ within the limits of appropriations made by the legislative assembly for such purpose.

SECTION 6. AMENDMENT. Section 12-46-19 of the North Dakota Century Code is amended and reenacted as follows:

12-46-19. Disposition of moneys earned received. The ~~superintendent administrator~~ of the North Dakota youth correctional center shall keep a ~~students' account ledger, in which shall be opened an account with each student~~ an account

for each child placed at the North Dakota youth correctional center. The earnings of each student money in each child's account may be used for the child's personal needs as approved by the ~~superintendent~~ administrator.

SECTION 7. A new subsection to section 27-21-02 of the North Dakota Century Code is created and enacted as follows:

If the division of juvenile services receives any money on behalf of a child committed to its custody and care under this section for child support, payments in excess of foster care maintenance payments, or money received from the social security administration, the division may establish an account for the child and use the money in a manner it determines will serve the best interests of the child, including setting aside any amounts for the child's future needs or making all or part of the money available to the person responsible for meeting the child's daily needs to be used for the child's benefit.

SECTION 8. Two new subsections to section 27-21-12 of the North Dakota Century Code are created and enacted as follows:

The records of the division relating to an individual who is or has been in the custody of the division may be disclosed to any court or probation staff for use in conducting a presentence investigation in a criminal case in which the individual is a defendant.

The records of the division relating to an individual who is or has been in the custody of the division may be disclosed to the United States social security administration upon written authorization for disclosure by the individual's parent or legal guardian if the individual is a child, or if the individual is no longer a child, by the individual.

SECTION 9. REPEAL. Sections 12-46-03, 12-46-05, 12-46-06, 12-46-11, 12-46-20, and 12-46-22 of the North Dakota Century Code are repealed.

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