MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M

ROLL NUMBER

DESCRIPTION

1092

2007 HOUSE JUDICIARY

HB 1092

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1092

House Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 1/10/07

Recorder Job Number: #842, 847

Committee Clerk Signature DRenose

Minutes:

Chairman DeKrey: We will open the hearing on HB 1092.

Deb Kleven, NE Central Judicial District in Grand Forks, ND, Chair of Juvenile Policy Board: Support (see attached testimony).

Chairman DeKrey: Why is the four days on a juvenile limited to once in a one year period?

Deb Kleven: It was a compromise. There was a little sentiment out there that juveniles never be detained for any reason. It was a compromise, as juvenile drug court judges we don't want to just say that we're locking you up forever because you violated our rules.

Chairman DeKrey: My thought was that juveniles catch on pretty fast, and once they've done their four days, that they are good for another 365 days.

Deb Kleven: I should tell you, in that instance we probably wouldn't say that it's four days straight. We would probably say, this Saturday night you are not going to that party, you'll be in detention.

Rep. Klemin: I have two questions. The first question deals with the definition section and the definition of aggravated circumstances and specifically I'm looking on page 4, line 19, subsection 3g. There it talks about aggravated circumstances, in which a parent allows the child to be subjected to prenatal exposure to chronic and severe use of alcohol, etc. I guess I

am questioning the use of the word prenatal because your definition of child doesn't include a fetus. Is this something that should be included in the definition of a child, or is it intended only supposed to apply to prenatal exposure or is it also intended to apply to exposure after a child is born, please clarify?

Deb Kleven: I think the discussion was more after the child is born and they were subjected to the chronic and severe use of alcohol that, at that point, it really pertains to termination of parental rights. The doctors have said that this child was exposed in the womb that gives Social Services a reason to go in, which they do anyway. They can go in and take custody of the child right from the hospital, but this would be the triggering effect of the termination of parental rights.

Rep. Klemin: Maybe the problem is that it uses the present tense and what you are talking about is something that's occurred in the past. I guess the way I am reading it, it allows the child to be subjected to prenatal exposure, and it seems to say that, I am wondering if that could be interpreted as being applied before the child is born.

Deb Kleven: I don't know, I think the intent is that if you allow the child to be exposed before they are born, then that may trigger termination of parental rights as an aggravating circumstance.

Rep. Klemin: Would it make more sense to say, "has allowed the child that has been subjected to prenatal.

Deb Kleven: I understand, okay, that makes sense. Because here we are saying that it's in the present tense, you're saying that we have to look back. Obviously the child is already born. I think your suggestion is good.

Rep. Klemin: I think if we change the tense there somehow, then we're not talking about situation where the child has not yet been born yet.

Deb Kleven: No.

Rep. Klemin: My second question goes to page 21, line 27, section 4, where it is talking about the standard of proof being evidence beyond a reasonable doubt.

Deb Kleven: Those active efforts come right out of the Federal ICWA.

Rep. Klemin: I guess my question is why are we, as I understood it, evidence beyond a reasonable doubt was a criminal standard of proof. For example, up in the previous section in line 24, we are talking about clear and convincing evidence, which I always understood was the highest standard of proof for civil proceeding. On line 28, we've gone beyond that beyond a reasonable doubt.

Deb Kleven: That comes right from the Federal ICWA act. That's where that came from.

Rep. Klemin: Do you think that is appropriate.

Deb Kleven: I would say yes, because we need to comply with ICWA. It triggers a lot of funding into the Dept. of Human Services, is my understanding. I think the ICWA provision triggers federal funding.

Rep. Koppelman: In following along with what Rep. Klemin is asking, on page 14, top of the page, 27-20-20 as to who can prepare a petition, it looks like existing law allows the state's attorney or anyone else and this clarifies that in this proposed amendment to include a law enforcement officer, etc. to prepare a petition. The underscored line sentence at the end of the current law there, on lines 4-7, seems to subject the preparation of a petition to the judgment of someone, the director, the court or other person authorized by the court to determine whether it is in the best interest of the public and the child. I guess my question is, it sounds to me like it requires a judgment to be made before the petition is filed, rather than the petition to be judged by the court on its merits. Aren't you putting the cart before the horse.

Deb Kleven: I will explain. Actually this part of the law needs a lot more clarification. There is going to be a bill introduced to ask for a study resolution to determine who is responsible for what. Because if you look at the Juvenile Court Act, there is very little involvement that is required by the state's attorney. In fact there is really no prosecutor out there for juvenile actions. Someone has to decide what is the state's responsibility versus what the county's responsibility. That is the purpose of the study resolution. Right now, before a petition can be filed in juvenile court, our juvenile supervisors do have to review that. What this clarifies is that if a state's attorney, and you will usually find in your larger cities or counties, that the state's attorney is doing a good portion of the juvenile court work. Our position is, if a state's attorney is preparing that petition, why do we need a juvenile supervisor to look at it and say this is okay. That's their job. But we still want to limit it, because in some counties the state's attorney isn't doing this work. Anyone off the street can come in and file a petition against a child. Well, that's the whole purpose of juvenile court is to determine what is in the best interests of a child. If a petition has no merit, we want to stop it there. If it's not going to be judge or the referee that is making that determination, it will be a trained juvenile supervisor.

Rep. Koppelman: As I read the current statutory language, it says that, and I have no problem with the state's attorney preparing the petition, I think that is very appropriate and I understand what you are saying. However, current law seems to allow a petition to be prepared by anyone, which says including a law enforcement officer who has knowledge of the facts alleged or is informed and believes they are true and, now we're essentially tacking on something to that that states that, well they might have knowledge of the facts, they might believe they are true, but unless the gatekeeper says this is in the best interests of the child, that petition may not go anywhere. Is that is the best interests of the child.

Deb Kleven: It is a gate keeping function, and Dave McGeary from Juvenile Court is here, as a supervisor. I think he probably has some strong comments on that, but to answer your question, it is a gate keeping function and we should keep it that way.

Rep. Charging: What did we do before we had Section 19 regarding the Indian child.

Deb Kleven: The Indian Child Welfare Act, that is a federal mandate. ND requires reasonable efforts before you remove a child from the home. The Indian Child Welfare Act increased that to Active Efforts, which is more than reasonable efforts. We didn't have that provision before, now we will have it in federal law.

Rep. Charging: When you say your Board had a consensus, was there a lot of Tribal interest.

Deb Kleven: We had met with Teresa Snyder, who is here today, was with us for two or three meetings. I will tell you that she doesn't necessarily agree, she wants some stronger language in there. I think her position is that we should adopt the Iowa statute, which follows that, but we have people saying that they don't even have all the tools available to us in ND, so we can't accomplish each one of them as stated in the Iowa statute. In the past, in the Court, we just looked at what they have done and then made that determination; whether that was reasonable efforts. Now we make the determination after they have made active efforts. There really isn't any concern across the board when you look at all the states as to what active efforts are. In fact, Iowa has gone the furthest in defining what they say are active efforts.

Rep. Charging: But Iowa has gone the furthest.

Deb Kleven: Yes.

Rep. Charging: This is a big step, especially when you define that.

Deb Kleven: Those definitions were taken right out of the federal bill.

Chairman DeKrey: Thank you for appearing. Further testimony in support of HB 1092.

Terry Traynor, Assistant Director, ND Association of Counties: Support (see attached testimony).

Chairman DeKrey: Thank you for appearing this morning. Further testimony in support of HB 1092.

Lisa Bjergaard, Dir. ND Division of Juvenile Services: (see attached testimony).

Rep. Meyer: By detention, do we mean jail?

Lisa Bjergaard: Yes, in the sense that the juvenile is in secure confinement.

Rep. Meyer: Like in our rural and smaller counties, we don't have a separate facility for juveniles.

Lisa Bjergaard: This is for a drug court measure, so it would be in those areas that have a drug court operating. This is what this line speaks to, is the use of detention for drug court participants.

Rep. Meyer: But if we did have a youth in drug court in a rural county, he would have to be taken to a juvenile jail.

Lisa Bjergaard: Any youth that would be detained from a rural county would likely not be in that program.

Rep. Klemin: Referring to your written testimony, you refer to lines 15-18, which page is that.

Lisa Bjergaard: Page 11, lines 15-18.

Rep. Klemin: What you're saying is that it is your position that this provision on detention be removed from the bill.

Lisa Bjergaard: It is our position that you use detention as a sanction, that's how detention has been used and defined in ND before and that is under jurisdiction where detention has

been used as a sanction or punishment, it is not proven to be effective. It has had a poor outcome.

Rep. Klemin: So, you would like to see an amendment to this bill, to delete this language out.

Lisa Bjergaard: We would like to see you very carefully consider that, yes.

Rep. Delmore: I can understand your concerns, but haven't we for many years sent juveniles, many of them drug related to the detention center in Mandan and that was part of the process of getting them there. This is a much more limited time and I'm sure it would be used with children who are pretty incorrigible and pretty hard into drugs and alcohol.

Lisa Bjergaard: Youth who are committed to the custody of the Division of Juvenile Services certainly do have substance abuse needs. Certainly for those kids for whom substance abuse and dependency give them a criminogenic need. In other words, when they are using and high in their offending behavior, certain substance abuse treatments a part of what happened to some of those kids who are getting treatment at the Youth Correctional Centers. For kids who are committing offenses, along a progression or path, where custody is eventually removed from the parents and they are placed in the very institutional system, which is the DOCR and Division of Juvenile Services, that the using needs are very clearly tied to their offending behavior. In that case, you are using Youth Correctional Center based on the need for public safety as well as safety to the child.

Rep. Delmore: But there is intention within the detention center as well that is used for some of the youth who may need that type of treatment, they are in the detention center where they are also locked up by themselves in isolation, than it was one of the treatments they have at the detention center, is it not.

Lisa Bjergaard: Are you talking about the Youth Correctional Center.

Rep. Delmore: The detention center, but they also have isolation and very restrictively used with some of the children who were there, that's my understanding.

Lisa Bjergaard: The only thing I can think of, that you must be referring to is the Special Management Program, that we do use with chronic repeat offenders after an escape. But we don't use isolation as a regular part of the treatment. There is a disciplinary process where, if for children's safety, after there has been physical aggression, and that type of thing, where they do go to their rooms. That certainly isn't the equivalent of isolation.

Rep. Delmore: But disciplinary and those types of things, you don't think any of that enters in.

Lisa Bjergaard: I'm not speaking to using sanctions here. I think that graduated detention is a very important part of any behavioral management program with kids. I am speaking to the use of detention as a sanction.

Rep. Charging: What is the time frame for a youth sent to YCC.

Lisa Bjergaard: That is a question for DOCR. We don't place them in detention.

Rep. Charging: I am referring to the 4 days.

Lisa Bjergaard: Children are placed in detention after being taken into custody, which is for public safety.

Rep. Charging: Where are the detention centers.

Lisa Bjergaard: They are only asking in relation to drug court.

Rep. Kretschmar: Keeping this provision about the four days in the bill, is that in any way affecting federal funds that are coming into ND for these drug court purposes.

Lisa Bjergaard: If a youth were in the drug court program who was adjudicated as an unruly person, unruly child, then potentially. But I don't know that that will happen. I don't know the number of kids in the Drug Court program that are adjudicated as unruly vs. delinquent.

Rep. Wolf: You testified that you don't think the 4 day detention works as a deterrent. What alternatives are you suggesting instead.

Lisa Bjergaard: I would not want to say what sanctions the court could impose. I am assuming that the Drug Court people do not believe anything short of this is making an impact, or they wouldn't ask for it. They are saying that they aren't doing what we need them to do. However, I am saying that the National Juvenile Detention Association has seen other jurisdictions begin to use detention as a sanction and when that happens the outcomes they were looking for typically are not the results that you get. So it may be something we think will work, the research says it doesn't, so that is our position, that we need to look at that. I don't know what the Drug Court has available to them.

Rep. Delmore: I am curious whether the research, as I think a couple of us have asked, does follow the same type of guidelines, is it 4 days, is it 2 weeks. There can be a great deal of difference in what research proves. You've got some very good rudimentary things here, but that doesn't go into the details I think we need to see, with whether or not it's the same type of detention that we're being asked to do.

Lisa Bjergaard: I certainly could have included more research. The National Juvenile Detention Association pulls out on their list, the specific state funding from the national research. We certainly could provide you with that.

Rep. Delmore: Does that parallel this bill with the same number of days within a years' time. Does the research you have parallel exactly what this bill does.

Lisa Bjergaard: No, I'm saying that the research says that when you begin to use detention for a purpose other than taking into custody in those situations, the research is not good, that's not specifically related to drug court on this bill. It's related to an overall use of detention as a sanction, has proven to be a bad alternative.

Rep. Klemin: Looking at Judge Kleven's written testimony, on page 2, it is talking about section 8, it says, "it is a sanction that is widely available to other successful juvenile drug courts throughout the United States." You dispute that, or do you have any comments about this being widely available to other successful drug courts.

Lisa Bjergaard: No I don't. I don't know the drug court literature. Our position was to make sure that it was pointed out to you that in general the National Juvenile Detention Association does not support the use of detention as a sanction.

Rep. Klemin: I wonder if it is being done throughout the United States, whether successful drug courts are there, whether the National Juvenile Detention Association that you referred to, wouldn't they have the same complaint about all of these other drug courts.

Lisa Bjergaard: Drug court is not the only situation which other jurisdictions have adopted the use of detention. So the research would be based on a very broad look at other jurisdictions who have used detention as a sanction. The concept of using detention as a sanction or punishment, not this specific environment that the National Detention Assoc bases their position on.

Rep. Klemin: I guess what you're saying is you wouldn't have any statistics specifically relating to drug court cases.

Lisa Bjergaard: The National Juvenile Detention Association might, I don't know if they considered this in a position paper. I know some of the research, I would assume that some of that would be in there. I don't know what the drug court people have in terms of sanctions.

Chairman DeKrey: Further support of HB 1092.

Tara Lea Muhlhauser, Dep. Dir. Of Children and Family Svcs Div and Prog. Admin. For Child Protective Services, DHS: (see attached testimony and proposed amendment).

Rep. Delmore: Were there other things beside low birth weight in the examples you gave, as actual indicators of fetal alcohol syndrome.

Tara Lea Muhlhauser: As I recall from the facts of this situation, Child Protective Services social worker, who did the assessment in the case, those were the most significant factors that she found, they were the basis for the mother's appeal of this decision. There were actually two children in the home but the finding was actually only attached to one of the children because of the low birth weight and vulnerability of the infant.

Chairman DeKrey: Thank you. Further testimony in support, testimony in opposition. We will close the hearing.

(Reopened later in the same session)

Chairman DeKrey: When we were hearing the support for the bill, which kind of sounded like opposition, I was wondering, were all these people included in this process, and how many of these amendments that were protested, would jeopardize what you're trying to do here, if any of them. The counties seem to have a pretty legitimate argument, I was wondering?

Deb Kleven: I'll just make a comment to that. I talk with Terry quite often. I think his main concern is that we're going to go back to this, I am assuming the days of the '60s and '70s, where minors were picked up and thrown in jail. That doesn't happen anymore that I know of. Dave McGeary is still here as a Juvenile Supervisor. We have juvenile detention centers all over. I don't know of anyone who says "you pick up a juvenile, for a minor in possession, minor in consumption, you call and go to the detention center". They don't do that, because your counties are contracting with juvenile detention centers. The county pays for it, and so their law enforcement is trained. You just don't throw those kids in juvenile detention because they've been consuming alcohol. You call the parents. I think that Terry Traynor is just afraid that they are just going to be dropping them off at detention, you can throw kids in detention.

If there is a legitimate reason that, if that is happening in ND, that they will lose their juvenile justice funds, that doesn't jeopardize our bill, if you want to say that no, minors in possession are classified as unruly, we could live with that.

Chairman DeKrey: I would like to go back to the four days. That doesn't seem like a big deal. I'm curious as to the discussion you had in your committee, as to why it finally ended up in the bill, and obviously there are still people opposed to it. What made you put that 4 days in there.

Deb Kleven: The four days was a compromise. You have to be in the drug court program to even be subject to this, it is not for everything. We arrived at the four days as a compromise, we wanted to be reasonable here. Just throwing juveniles in detention is not the answer, and I think is what is behind their objections. We, as a committee, the only ones opposed to it on our policy board, it was the Division of Juvenile Services. They just don't us, as judges, thinking to offer that to everybody else.

Chairman DeKrey: The only thing Rep. Delmore and I have heard is that drug courts are working.

Rep. Delmore: I think you've made it clear. We as a committee, or as a body, respect the judiciary as well, and that you do need certain tools. We read about it in the papers, that some kids are just beyond unruly and sometimes the reality is one night, just to say, that we're serious about this, you've got a problem, you're working with some very troubled people, but some of them that just go beyond that, might work.

Deb Kleven: I can tell you that the kids you're dealing with in juvenile drug court don't work with the normal juvenile probation. They probably don't follow the rules, or it's more than substance issues. They aren't so far gone that we want to ship them off to the Division of Juvenile Services. We've got kids that we feel that there is hope for. Sometimes they don't

get the message, and then we do have sanctions for them, and they're graduated and maybe they do their detention at school, they do community service, we put them on the electronic monitoring. Some of them have parents that are in there rescuing them all the time. The minute they are in detention, because the parent called because they are unruly, there are moms and dads that within two-four hours, say I can't let my kid sit there. If the judge says you're going to detention and you have that ticket for the concert tonight, you can give it away, because you won't be there and you're going to sit there. It works.

Rep. Koppelman: So Judge, the compromise would not include, obviously Lisa and her group.

Deb Kleven: They did take the position at our policy board that no, we don't ever want detention as a sanction.

Rep. Klemin: One question goes back to the minor in possession/consumption. I don't think I heard the reason why you want to delete that out of the definition of unruly child.

Deb Kleven: It was a pretty simple fix, every time we have changes in laws, it's hard to know, what is an unruly offense, what's a delinquent offense. So let's just make it clear so we can train law enforcement. If it is a crime as an adult, it is a delinquent offense as a juvenile. If it is not a crime as an adult, such as absconding from school, that's an unruly offense. It was a clean up to just clarify that you would just know right off the bat what is going to be charged.

Rep. Klemin: As I understand what you previously said, you don't have any problem amending this to leave that in.

Deb Kleven: It's not going to change our overall purpose. We can work with it. Tara is really concerned that this is going to affect our funding. There are many states that classify minors in possession as a much less offense, not a status offense. I don't know that they are losing their funds.

Rep. Klemin: That relates to the third amendment that was proposed, by Tara Muhlhauser, under the definitions of whether the child was subjected to prenatal exposure, it says to chronic and severe use of alcohol. Their amendment was chronic or severe. Do you have a response to that.

Deb Kleven: We had this discussion and I'll tell you that it was Tara who opposed it, on the behalf of social workers, let's work with these people, let's give them a chance so that they have to show chronic and severe. Well, she just told me that she is asking for the amendment for chronic or severe. This actually came to us from a foster parent out of Fargo, who happens to be a law student and they foster a child from a meth addict. She proposed this amendment, she wanted it "or".

Rep. Klemin: What is your position on it. Is "or" okay.

Deb Kleven: "Or" is fine. It's actually a much easier for the prosecutor to establish the deprivation if you have "or". If you have "and" you're going to have the burden of establishing both the chronic and the severe.

Rep. Klemin: So you would accept that amendment.

Deb Kleven: Yes.

Rep. Koppelman: Back on the issue of Mr. Traynor's suggested amendment, he did mention something that I thought did have some merit. That was the issue of people who might be arrested, who are over 18 but under 21. In other words, you are not part of the juvenile system anymore; but you are still charged as a minor in possession because they're not 21. I think his amendment would be substantive in that regard, because it would remove those people from the juvenile system.

Deb Kleven: They aren't in the juvenile system. He was just getting at the fact that when we prescribe what an unruly act is, in the sense that you wouldn't commit as an adult.

Rep. Koppelman: His point was that you could commit that offense.

Deb Kleven: Right, the reality of it is, if you're a UND student, and you get a minor in possession, there are times that you are hauled to jail.

Chairman DeKrey: I do have one other question, you said that the Native American lady was here and she didn't get up to testify, so I'm wondering just exactly what their position was. As long it mirrored federal law, they weren't going to protest it.

Deb Kleven: I was surprised that Teresa Snyder didn't get up and say something. This does mirror federal law, but federal ICWA law, which we do need to adopt doesn't describe what is "active efforts". So when Iowa adopted their statute, they looked to the Bureau of Indian Affairs guidelines and what constitutes active efforts and they said you have to do all of these. Then there has been a decision in Iowa court, that upheld that the legislature said you have to establish that all of these activities were offered. I think that is her position. There is a committee, and I know that Judge Christopherson is on it, too.

Chairman DeKrey: Thank you for appearing today. We're not going to act on this bill today because I've been asked to hold it at least one day, so that means we'll take it up on Monday. That will give you all weekend to mull it over.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1092

House Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 1/15/07

Recorder Job Number: 1125

Committee Clerk Signature DPenrose

Minutes:

Chairman DeKrey: We will take a look at HB 1092.

Rep. Delmore: I move the amendments.

Rep. Griffin: Seconded.

Rep. Klemin: We did talk about the changes to pg 4, line 19, replace "allows the child to be subjected" with "subjects the child" and replace "and" with "or"; pg 5, line 24, overstrike "and" and insert immediately thereafter "or".

Chairman DeKrey: That is included in your amendment, Rep. Delmore. We will try a voice vote. Motion carried.

Rep. Koppelman: I would also move page 8, line 6, remove the overstrike over "has committed an offense in violation of section" and remove the overstrike over "5-01-08; or"; pg 8, line 7, after "f" insert "e"; pg 8, line 10, replace "e" with "f".

Rep. Delmore: Second.

Chairman DeKrey: We will try a voice vote. Motion carried. We now have the bill before us.

Rep. Delmore: I move a Do Pass as amended.

Rep. Wolf: Second.

14 YES 0 NO 0 ABSENT DO PASS AS AMENDED CARRIER: Rep. Kretschmar

FISCAL NOTE

Requested by Legislative Council
03/06/2007

Amendment to: Engrossed HB 1092

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill relates to proceedings under the Uniform Juvenile Court Act and is procedural only. There is no fiscal impact associated with this bill.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*
   A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

   B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

   C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name:	Susan Sisk	**Agency:**	ND Supreme Court
Phone Number:	328-3509	**Date Prepared:**	03/06/2007

FISCAL NOTE

Requested by Legislative Council
12/27/2006

Bill/Resolution No.: HB 1092

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill relates to proceedings under the Uniform Juvenile Court Act and is procedural only. There is no fiscal impact associated with this bill.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*
   A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

   B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

   C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name:	Susan Sisk	**Agency:**	Supreme Court
Phone Number:	328-3509	**Date Prepared:**	01/03/2007

County Amend

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1092

Page 4, line 19, replace "and" with "or"

Page 5, line 24, overstrike "and" and insert immediately thereafter "or"

Renumber accordingly

& pg 8, line 6

Adopted by the Judiciary Committee
January 15, 2007

House Amendments to HB 1092 (78089.0101) - Judiciary Committee 01/16/2007

Page 4, line 19, replace "Allows the child to be subjected" with "Subjects the child" and replace "and" with "or"

House Amendments to HB 1092 (78089.0101) - Judiciary Committee 01/16/2007

Page 5, line 24, overstrike "and" and insert immediately thereafter "or"

House Amendments to HB 1092 (78089.0101) - Judiciary Committee 01/16/2007

Page 8, line 6, remove the overstrike over "~~Has committed an offense in violation of section~~" and remove the overstrike over "~~5-01-08; or~~"

Page 8, line 7, after "~~f.~~" insert "e."

Page 8, line 10, replace "e." with "f."

Renumber accordingly

Date: 1/15/07
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1092

House JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Do Pass as Amended

Motion Made By Rep. Delmore Seconded By Rep. Wolf

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Griffin	✓	
Rep. Boehning	✓		Rep. Meyer	✓	
Rep. Charging	✓		Rep. Onstad	✓	
Rep. Dahl	✓		Rep. Wolf	✓	
Rep. Heller	✓				
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				

Total (Yes) 14 No 0

Absent ∅

Floor Assignment Rep. Kretschmar

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1092: Judiciary Committee (Rep. DeKrey, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1092 was placed on the Sixth order on the calendar.

Page 4, line 19, replace "Allows the child to be subjected" with "Subjects the child" and replace "and" with "or"

Page 5, line 24, overstrike "and" and insert immediately thereafter "or"

Page 8, line 6, remove the overstrike over "~~Has committed an offense in violation of section~~" and remove the overstrike over "~~5-01-08; or~~"

Page 8, line 7, after "~~f.~~" insert "e."

Page 8, line 10, replace "e." with "f."

Renumber accordingly

2007 SENATE JUDICIARY

HB 1092

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **HB 1092**

Senate **Judiciary Committee**

☐ Check here for Conference Committee

Hearing Date: February 26, 2007

Recorder Job Number: 3653

Committee Clerk Signature Mona L Galloway

Minutes: Relating to active efforts in juvenile proceedings regarding Indian children and legal guardianship for children.

Senator David Nething, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following hearing:

Testimony in Favor of the Bill:

Jim Gange, Office of the State Court Administrator with the Supreme Court, Introduced the bill and presented testimony from **Judge Debbie Kleven** – Att. #1 He spoke of the boards expansion and highlighted the changes.

Sen. Nelson asked for the definition of child. (meter 4:50) It is under the age of 21 unless in the national guard, that qualifies them as an adult.

Mr. Gange continued by reviewing the bill by each section. The board modeled section 19 off of Iowa's statue while still following Federal Law, currently ND has no law.

Sen. Nething questioned section 14, in reference to council at the public expense, what is the problem? The problem is identifying when the state is obligated to provide appointed councel. When a child comes into juvenile court, the staff is still able to sit down with the parent (as an

informal participant for the child) before it goes any farther. At that time there is no need for the appointment for legal council for the parent and child.

Sen. Lyson asked who is going to pay? The expense (meter 14:39) would be handled as they are now. The cost would be minimal. This is limited to a total of 4 days and twice a year at the most. If a county does not have a facility they have to bring them to the YCC at the cost of $200 ad day. They discussed there only being three drug courts and all three have these facilities. If this is expanded to areas that do not have the specialized JV facilities along with the traveling back and forth it could become expensive.

Mr. Gange discussed when "expert testimony" must be provided (meter 18:22) **Sen. Fiebiger** questioned section 3, letter G, "in-vetro controlled substance. At what point is that a factor. How far is the "pre-natal" time frame. **Mr. Gange** referred to the current law use of the language. We are only putting it into one more section.

Sen. Fiebiger asked on pate 11, "4 days" time, explain why you picked this number? This was the result of a general discussion of those involved with the system. This is an "attention" getter for the kids not participating. While we did not want to go overboard either. We thought it would be a balance. **Sen. Fiebiger** question page 19, section 19 – the "cumulative" portion (meter 23:22) refers to the Iowa statute. Who decides what the accumulative amount should be? The Judge decides, he may pick one or an accumulation of several.

Spoke of submitted testimony from **Michelle Kommer**, 3rd year law student UND – Att. #2

Tara Lea Muhlhauser, Deputy Dir. of the Children and Family Services Div. (meter 28:00) gave her testimony – Att. #3 and asked for an amendment regarding the chronic "and" verses "or" severe. Told of an example of an administrative law judge for appeals stated that chronic

and severe have no been clearly identified in law so he used the dictionaries definition. What is considered "severe" proof was unknown and that the threshold was to high to prove.

Testimony Against the bill:

None

Testimony Neutral to the bill:

Vincent Gillette, Director of Sioux County Social Services (meter 33:00) Gave testimony Att. #4. Also stating that the Iowa law is 17 pages long and ours is 2 ½. He stated that the dept of human services should establish protocols for the counties and the lack of consistencies. He also spoke of the I.C.W.A. standards – Att. #5

Sen. Nelson asked him if the proposed amendment – Att. #5b was passed would you be in agreement. Yes.

Terry Traynor, Assoc. of Counties, spoke of the facilities and the requirements for juvenile courts. His concern is that once a door opens, sometimes it opens too wide.

Sen. Nething stated that the bill does not require or mandate the option of to do. No they do not.

Senator David Nething, Chairman closed the hearing.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **HB 1092**

Senate **Judiciary Committee**

☐ Check here for Conference Committee

Hearing Date: February 27, 2007

Recorder Job Number: 4000

Committee Clerk Signature Mona L Solberg

Minutes: Relating to active efforts in juvenile proceedings regarding Indian children and legal guardianship for children.

Senator David Nething, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following hearing:

Sen. Nething discussed the amendment will hold the bill under the directive of Federal Law. He spoke of the complexity of the subject and the importance of making it a study. Sen. Nelson and Sen. Nething spoke of e-mails sent to them. Sen. Lyson discussed the issues regarding transient residence on the reservations. The original Iowa initiative is 17 pages and this one is 2 ½, we obviously need to continue looking at this.

Senator David Nething, Chairman closed the hearing.

Sen. Lyson made the motion to Do Pass Amendment – Att. #5b and a Study Resolutions **Sen. Nelson** seconded the motion. All members were in favor and the motion passes.

Sen. Nelson made the motion to Do Pass HB 1092 as amended and **Sen. Marcellais** seconded the motion. All members were in favor and the motion passes.

Carrier: **Sen. Nelson**

Senator David Nething, Chairman closed the hearing.

78089.0201
Title.0300

Adopted by the Judiciary Committee
February 27, 2007

3-1-7

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1092

Page 1, line 11, remove the second "and"

Page 1, line 13, after "proceedings" insert "; and to provide for a legislative council study"

Page 19, line 23, remove "**regarding Indian child**"

Page 19, replace lines 24 through 29 with "When an agency is seeking to effect a foster care placement of, or termination of parental rights to an Indian child, the court shall require active efforts as set forth in 25 U.S.C. section 1912(d)."

Page 20, remove lines 1 through 31

Page 21, remove lines 1 through 31

Page 22, remove lines 1 through 10

Page 30, after line 31, insert:

"**SECTION 37. LEGISLATIVE COUNCIL STUDY - INDIAN CHILD WELFARE.** During the 2007-08 interim, the legislative council shall consider studying the application of and the desirability of changing the law relating to the welfare of Indian children when placed in the care of individuals other than parents and the effect of the Indian Child Welfare Act on state law. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly."

Renumber accordingly

Date: 2-27-07

Roll Call Vote # 1 of 2

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1092

Senate Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Amend 5b + Study Resolution

Motion Made By Sen. Lyson Seconded By Sen. Nelson

Senators	Yes	No	Senators	Yes	No
Sen. Nething	\		Sen. Fiebiger	\	
Sen. Lyson	\		Sen. Marcellais	\	
Sen. Olafson	\		Sen. Nelson	\	

Total Yes 6 No 0

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 2-27-07
Roll Call Vote # 2 of 2

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1092

Senate Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass As Amended.

Motion Made By Sen. Nelson Seconded By Sen. Marcellais

Senators	Yes	No	Senators	Yes	No
Sen. Nething	✓		Sen. Flebiger	✓	
Sen. Lyson	✓		Sen. Marcellais	✓	
Sen. Olafson	✓		Sen. Nelson	✓	

Total Yes _____ No _____

Absent _____

Floor Assignment Sen. Nelson

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1092, as engrossed: Judiciary Committee (Sen. Nething, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1092 was placed on the Sixth order on the calendar.

Page 1, line 11, remove the second "and"

Page 1, line 13, after "proceedings" insert "; and to provide for a legislative council study"

Page 19, line 23, remove "**regarding Indian child**"

Page 19, replace lines 24 through 29 with "When an agency is seeking to effect a foster care placement of, or termination of parental rights to an Indian child, the court shall require active efforts as set forth in 25 U.S.C. section 1912(d)."

Page 20, remove lines 1 through 31

Page 21, remove lines 1 through 31

Page 22, remove lines 1 through 10

Page 30, after line 31, insert:

"**SECTION 37. LEGISLATIVE COUNCIL STUDY - INDIAN CHILD WELFARE.** During the 2007-08 interim, the legislative council shall consider studying the application of and the desirability of changing the law relating to the welfare of Indian children when placed in the care of individuals other than parents and the effect of the Indian Child Welfare Act on state law. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly."

Renumber accordingly

2007 HOUSE JUDICIARY

CONFERENCE COMMITTEE

HB 1092

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1092

House Judiciary Committee

☒ Check here for Conference Committee

Hearing Date: 3/28/07

Recorder Job Number: 5593

Committee Clerk Signature D Penrose

Minutes:

Rep. Kretschmar: We will open the conference committee. All members are present. Perhaps the Senate can explain why the difference.

Sen. Nething: The reason we amended it is that we heard from quite a few county Social Services directors that they were really concerned about the one provision in the bill that related to the Indian children. As a result of their input, the committee felt that, we didn't understand totally how the relationship would be with the current bill as it was, because there are some major changes going on with the bill. We thought that in view of their concerns about it, and I don't know if they didn't appear with you folks at the time of the House hearing, but that was the reason that we did it and we thought that the best thing to do would be to have the study so that we could learn more about that relationship and how they integrate together. That's pretty much where we are now.

Rep. Delmore: We were curious about that as well on the House side, but one of the individuals who was here, it was my understanding sat in on the Bar Association meetings, and had nothing to say, objections, support, or whatever. That's why the bill was left as it was. I don't know how much time has been spent studying the issue that was the concern of our committee.

Sen. Nething: I don't think the legislature has studied it. I do know that this other group spent quite a bit of time on the whole area, and I don't know if there were any legislators on that group or not, I think we asked, and the answer was no. That also gave us an inkling that on that part of the bill, and I don't know what the outcome would be either.

Rep. Delmore: When you replaced lines 24-29 with the language referring to another section of the code, can you tell me a) exactly what that does; and b) why you did not mandate that study.

Sen. Nething: The chairman of the Legislative Council has encouraged us not to mandate the studies and to use our influence on the council members to study it. I think Sen. Nelson; you were the carrier of the bill.

Sen. Nelson: I carried the bill, and there really wasn't a problem except for section 19, which was the ICWA language and we were a bit concerned that when we asked where it came from, they said it came from Iowa. You just don't take a 17 page bill from Iowa and fit it into this bill in 2½ pages, without a lot of studying. That's why we wanted to take a look at this, such as what are the federal rules, what are our rules, what's going on out here, because people do hop from one reservation to another, and they don't all live on the reservation that they are enrolled members of. We wanted to take a look at what was going on. There were some concerns about the financial impact that section 19 would have on counties. There were two main things that we really wanted to study. We would like to have mandated it, but we couldn't.

Rep. Delmore: Rep. Dahl has got the information, I wasn't sure of the reference and she does have that. It might be helpful to have her explain and look at what the Code says.

Sen. Nething: I just wanted to finish the answer to that question; 25 USC Section 19-12d, that's in effect today. That was the reason that the county directors felt that they knew what they were doing now, and not being a county director, I don't know what they are doing. But they would rather keep that for now, than to change it, because they work with it.

Rep. Dahl: The section d, says any party seeking to effect a foster care placement of, or termination of parental rights to an Indian child under state law, shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family, and that these efforts have proved unsuccessful. So it's a pretty broad statement, they certainly don't define active efforts the way we had really narrowed it down to, to factors and those types of things. So I guess I liked the bill in its original form, in that it gives us some guidance as what to look for in those active efforts, and I would suppose that by just referring to this, you would then have to look to case law to determine what active efforts are.

Sen. Lyson: I had a call last night from our director in our county, and she can't live with this the way it is written. She said that there is no way they can live with it.

Rep. Delmore: Can you tell me when they talk about active efforts, is it stated in here, did they go through the process that they are currently using when there is a problem with a child in an Indian home, that there seems to be reasons to remove.

Sen. Lyson: In Williams County, about a 1/3 of our county is trust land in the Turtle Mountain Reservation. We have at any given time, she says, Indian children living in the county that are enrolled in four different reservations. She says that there is no way to get things taken care of.

Rep. Kretschmar: My recollection of the hearing and our discussion on the bill was that we wanted to get something into the statute that the federal regulations say that the state is

required to provide active efforts to families. I think this is based on a statute that the state of Iowa had, I think the House Judiciary committee wanted to get some language into the statute to describe or define these active efforts. But that may be causing a lot of trouble in the local counties.

Sen. Lyson: When you talk about reservations here and there and trust lands here and there, but now we have this new thing coming up, it's Indian Country and that's starting to throw a hammer in there.

Rep. Dahl: Were there any particular provisions that they absolutely could not live with, but the rest of it was perhaps palatable, or they just didn't want any, and felt that the entire section here was unworkable.

Sen. Nething: As I recall, the whole section was the one that they felt that it was too much for them. They just can't figure this out. They said they kind of know where they are, even though they said there were problems, they didn't deny that it wasn't perfect. So we tried to keep it the same, we didn't want to totally not mention anything on it, but that was about as brief as we could be with that. As far as talking about this specific exception, it was my impression that when they came and said there were problems, it was good enough for me. We didn't really dig in and say what is your problem with it, because we didn't know what questions to ask.

Sen. Lyson: One of the things that I got from Micha was that in section 19, if we leave that in there, the cost of this is going to be horrendous. She said that there should be a fiscal note on this, because we are going to be placing children in foster homes all the time, waiting for a tribe down in Ft. Yates to do something, to get to the courts in Williston, and the ones in Turtle Mountain are going to have kids coming and going from all the reservations.

Rep. Kretschmar: My recollection is that we didn't have any of that in the House committee.

Sen. Nething: I wouldn't be surprised.

Sen. Lyson: Micha did say to me that they dropped the ball and didn't know that.

Sen. Nelson: We got some testimony from Vince Gillette who was representing the ND County Director's Association (copies distributed). He talked about the Iowa ICWA laws and the section patterned after 17 pages long, ND's is 2.5 pages long, so obviously some things have been left out. There is confusion in my mind, does ND law mean that we only be required to follow this law if it were passed and disregard the federal law.

Rep. Delmore: I'd like to talk to Judge Kleven from Grand Forks as well. I have one other question, is there a difference when we deal on the reservation versus off the reservation with foster children.

Sen. Lyson: If you are enrolled, certainly is a difference. The problem is that we have all these reservations and not all of them have the same rules.

Rep. Delmore: I'm just wondering if we can get a little more information about that as well for our next meeting. I would like to look at it a little bit more.

Sen. Lyson: I would get back to Micha Sax, Williams County Social Services Director, and have her get something to me that is in black and white, so we know what she is talking about.

Rep. Kretschmar: We will continue this, after we get the additional information.

Sen. Nething: I do recall that these amendments were offered by Mr. Gillette, not the study but the other amendment.

Rep. Kretschmar: You put the study in.

Sen. Nething: We put the study in, because we weren't satisfied to just leave it, we felt that we needed to continue to study it, it is a work in progress.

Rep. Kretschmar: We will adjourn for now.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1092

House Judiciary Committee

☒ Check here for Conference Committee

Hearing Date: 4/2/07

Recorder Job Number: 5651

Committee Clerk Signature DPenrose

Minutes:

Rep. Kretschmar: We will call the conference committee meeting to order. All members are present.

Rep. Delmore: I contacted Deb Kleven over the weekend, she was the one who presented the bill in its entirety to us from a committee she served on. I just wanted to know what her feelings were about removing all of the sections you did and replacing it with a study. She had a couple of concerns, 1) that it could be in the next two years challenged in court, and there's really nothing in place that we have except reference to federal law and however it's complied with by the counties; and 2) she wasn't sure that because there was an agreement within the committee, there was not agreement in the first place, she wasn't sure whether this even went far enough. It models the Iowa law, but it's not in its entirety. She is concerned that if there would be a challenge, that as a legislative body we've set up nothing including permissive language, which is one of the things that we talked about earlier in here, so there is some type of guidelines with what to follow besides a vague reference to federal law.

Sen. Nething: Who was this.

Rep. Delmore: Deb Kleven, a district judge in Grand Forks, and I don't believe she was here for the Senate hearing, but she was here on the House side.

Sen. Nething: That's what happens when you don't have a chance to talk to the witness, when they just submit written testimony, you can't learn anything from them and that's unfortunate.

Rep. Kretschmar: Is there anyone present that wants to talk about this.

Rep. Dahl: Tara Lea Muhlhauser is here from Dept. of Human Services.

Rep. Kretschmar: We did have some information from the Human Services Dept. from Tara Muhlhauser (see attached testimony). Would you like to come up and explain to us what you think.

Tara Muhlhauser: Do you have specific questions or need general information.

Rep. Kretschmar: Just talk generally and then we'll see if there are questions.

Tara Muhlhauser: This bill emerged as a result of the Juvenile Policy Board, they worked hard on this, we worked with an expanded group of people at the table, including county directors, tribal representatives, Teresa Snyder, who is the tribal liaison for the department, sat with us for 2 or 3 meetings, Jim Gange was our staff person who did most of the drafting. We looked at a variety of different kinds of provisions, including the actual ICWA law, and then we took a look at some various state options. Iowa was the favorite option and as I recall, Justice Maring had a particular interest in looking at the Iowa statute, because the Iowa statute has had some litigation in regard to it. We looked at some drafting language that came from the court improvement subcommittee that worked on ICWA and sort of co-mingled that particular draft language with some of the provisions from the Iowa statute. I think at the outset, the idea was from the Juvenile Policy Board that we really needed to have some kind of guidance in state statute for this active efforts component. Everybody agreed at the table and we can certainly notice that since 1978 we have the burden to comply with active efforts. I think as we have been looking at cases and looking at situations across the state, and the high number of

Native children who are in the state foster care system, we have believed that we have not always done our due burden for those children and provided them active efforts to maintain those tribal connections, for us to maintain their connection with relatives or family or tribal. That was, in fact, the mission of the Juvenile Policy Board to say, let's localize it a bit more, let's bring some guidelines forward, so that we really have some protocol around our already established federal burden to provide active efforts. Just as kind of a parallel to this, when we have non-native children placed in foster care or placed outside their parents' custody, we have something called reasonable efforts that we have to comply with at the federal burden. So when I do training for social workers or for court personnel, typically I describe active efforts as reasonable efforts plus. It is one step up that we have and they are focused efforts based on a child's tribe affiliation, connection and not only connection to tribal customs, but connections to people and relative care providers. In a nutshell, that's how we think about active efforts as we apply it in the field, sort of child by child, or case by case. Without this language that we're looking at today, the counties still have the same burden. It doesn't lessen their burden. They still have the burden of active efforts. When we did the drafting of this language from the Juvenile Policy Board perspective, we put the language in there as guidelines and it has helped to counties in knowing better how they can focus their active efforts to meet the needs of the particular children they have. But they have the same burden, regardless of the language. It's still there.

Rep. Kretschmar: Any questions.

Rep. Delmore: It doesn't sound like a lot of states, besides Iowa have put into Code, exactly what active efforts are, am I correct in that. My other concern is that it is an unfunded mandate to counties if we spell out specific procedures that have to be followed and we don't fund it. This bill has no funding mechanism that I see. Please address those two issues.

Jim Gange, Supreme Court: Iowa certainly has, NE has adopted the ICWA as a state law, OR I believe has adopted court rules. Iowa, I think, is the only state that I know of that actually went to the step of articulating what the components of active efforts might be. SD, I believe, did have some proposed legislation but did not enact it for a variety of reasons.

Rep. Delmore: They have permissive language now.

Jim Gange: Typically what you find in those states that have addressed that statutory requirement by court rule, will be a simple carte blanche statement that in any proceeding involving an Indian child, the requirements of the ICWA shall apply. But it doesn't tell anybody how to do that, so that the Policy board in looking at it, and the judge members on the policy board were supportive in the sense that this language would give them the guidance to think about the kinds of things that active efforts might be. As far as the unfunded mandate, I know you didn't ask that question of me, but I don't understand that objection. The funding issue was raised to the Juvenile Policy board, where it looked at the initial draft of this, which would have made for the suggested draft, which would have made all of these factors obligatory in their entirety by a social services board. In other words, all the factors that are set out in Section 19, if it were a social services board seeking termination of a foster care placement, they would have to prove every one of those and the Policy board said no, that would be too potentially financially burdensome on the counties, so what they did instead was made the list, made each one an individual criteria that could be involved in determination of active efforts, but it did not obligate the county to do all of them; it just said these are the things that might be active efforts, consider them. That's why the exceptions are structured the way it is, that is identifying active efforts as including the things on the list, which of course, is not an exclusive list, and by getting an "or" structure, that you can have this or that, etc. and it could be anything else that the county would like to argue, that we think this satisfies the active efforts, even

though it is not on the statutory list, we think this satisfies that requirement, it would be up to the court to decide whether that's true or not.

Rep. Delmore: You think the language in here is permissive now.

Jim Gange: Absolutely yes.

Rep. Delmore: To allow people to do that.

Jim Gange: It was drafted that way to respond specifically to the concerns raised about the burden, if you made that list mandatory.

Sen. Nething: I have two questions. What happens if we let the Senate amendments stand and the second question is whether or not we need the bill at all. Because that would be a possibility.

Jim Gange: In the Senate amendments, you essentially require the court to require active efforts, but it doesn't tell you what active efforts are, and there are reams of case law around the country where courts look at everything that occurred in the case to determine on a case by case basis what active efforts were and whether they satisfied what the court thinks is that requirement.

Sen. Nething: Basically we don't change anything.

Jim Gange: You wouldn't change anything except that you would remove whatever guidance this sets forth.

Sen. Nething: But we don't have any guidance now.

Jim Gange: Other than case law, no.

Sen. Nething: So the situation would go back. Second question, what if we just didn't have the bill at all and just do a study, that way legislators would be involved.

Jim Gange: If you didn't have section 19, it would essentially leave it at the status quo.

Sen. Nething: What if we just killed the bill and just put in the study on the Indian part.

Jim Gange: If you kill the entire bill, then you will essentially throw out all of the changes to the Juvenile Court Act that don't apply to Indian cases, which the Juvenile Policy Board thought were necessary clarifications out of that board.

Sen. Nething: But everything stayed the same.

Jim Gange: Everything would stay the same with the same degree of uncertainty and confusion about certain parts of the Juvenile Court Act.

Sen. Nething: So we really don't like to have to go there, but that's an option, not for you, but for us.

Jim Gange: There is always a legislative option for you.

Tara Muhlhauser: I would like to come back to the unfunded mandate.

Rep. Kretschmar: I would like to hear it.

Rep. Delmore: I think we also need to hear from Terry Traynor, from the ND Association of Counties' side, because I think that also is part of the story.

Tara Muhlhauser: From the Department's perspective about the unfunded mandate, there's been a tremendous amount written and litigated and since 1978, we have been struggling with the face that this was a federal law that did not come with resources, no funding. So I think if we were to look at unfunded mandates that happened in 1978. The reality that we have, which is here, and we have a general burden to provide these kinds of efforts to Native children in our state foster care system. So having been on notice that they have had this burden since 1978, what we hope to do with this language is provide guidelines and I guess, informal protocol, if you will, about ways in which counties could meet this burden; ways in which our judicial partners could have a dialog, if you will, in a courtroom with our case workers and supervisors and county directors about how they would meet this burden for Native kids in the state foster care system. I hesitate, because I can't argue with you that it is an unfunded

mandate, although I think that term is woefully overused and if there was an unfunded mandate it really happened to us many, many years ago. I know that counties feel a burden. The comment that I heard was that if we have children in Fargo who need to participate in a sweat lodge, do we have to drive them to New Town for the weekend. Our comments are, no, you find cultural resources where you can find cultural resources. That means that you can go to the urban Native population in Fargo, you can look for resources in that city, you can look for resources around where the child is living It doesn't mean that you have to drive them to New Town to participate in sweats. It might mean that four times a year you do take the child, or relatives take the child back to that tribal community to participate in activities on-site, but that's not a prescription; that's an option. Again, the reality is that we have a piece of federal law that we have to comply with, and our feet are held to the fire as far as Human Services goes, it is a compliance issues. We also have to work with our county partners and our judicial partners to make sure that we are meeting our burden for this Native kid in the state foster care system.

Terry Traynor, ND Association of Counties: Although it is really more guidance in statute than a mandate, the feeling of the county social service directors was that by putting it in law, we are really making that more of a standard rather than DHS policy or guidelines or something issued by them. The feeling is, particularly when we are talking in there about active efforts involving family members, we're really maybe creating an expectation that there is going to be a lot more involvement of family members than the counties would be doing, or how that will affect them on a budgetary level is really the issue that was raised to us. The feeling that, maybe it doesn't need to be in state law, maybe it could be guidance from the Dept. of Human Services or something like that, that would have the same effect that would create that dialog with the court and the county social service workers and it would move us along there. That was why the social service directors recommended the change to put in a

requirement that we would meet active efforts according to federal law, and leave it more general and something that we could work out with the Department and the court as we move forward.

Sen. Nething: Obviously, the focus of the problem is the amendment that the Senate made. If the Senate decided in its wisdom that they didn't want any of the bill at all, if we can't exclude this, because we think the exclusion is so important, what would be your position about the rest of the bill. Rather than have that provision taken out, supposing the bill goes totally.

Terry Traynor: I would hope that if you did that, the observations that are addressed in the bill, would also be included in the study so the legislature could take a look at those things as well. If that were the decision of the committee, I think we could live with that.

Rep. Kretschmar: Thank you. The Senate group has another conference committee at 11:00 a.m. Is there any wish that we would get some amendments prepared for this committee to look at.

Sen. Nething: Would you like me to get things moving and make a motion, or let things digest.

Rep. Kretschmar: I would just like to wait and we will meet again. Let's see if there are amendments that we can look at. We will adjourn the meeting.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1092

House Judiciary Committee

☒ Check here for Conference Committee

Hearing Date: 4/4/07

Recorder Job Number: 5732

Committee Clerk Signature D. Penrose

Minutes:

Rep. Kretschmar: Called the Conference Committee meeting to order. All members were present. After our last meeting, I had the Legislative Council prepare some amendments, that had the Dept of Human Services adopt rules for whatever active efforts are, and since that time, we've received information from the Department via email that they aren't so enthusiastic about making rules. I would entertain any motion.

Rep. Delmore: I move that the House accede to the Senate amendments.

Rep. Dahl: Second.

Rep. Kretschmar: It has been moved and seconded, any discussion. Clerk will call the roll.

6 YES 0 NO 0 ABSENT

Rep. Kretschmar: Motion carried. Conference committee is adjourned.

REPORT OF CONFERENCE COMMITTEE
(ACCEDE/RECEDE)

Bill Number 1092 (, as (re)engrossed): Date: 3/28/07

Your Conference Committee House Judiciary

For the Senate:	YES	NO	**For the House:**	YES	NO
Sens. Nething			Reps. Kretschmar		
Lyson			Dahl		
Nelson			Delmore		

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)

the (Senate/House) amendments on (SJ/HJ) page(s) _____ -- _____

____, and place _____ on the Seventh order.

____, adopt (further) amendments as follows, and place _____ on the Seventh order:

____, having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) _____ was placed on the Seventh order of business on the calendar.

DATE: _____
CARRIER: _____

LC NO. of amendment
LC NO. of engrossment
Emergency clause added or deleted
Statement of purpose of amendment

MOTION MADE BY: _____

SECONDED BY: _____

VOTE COUNT ___ **YES** ___ **NO** ___ **ABSENT**

Revised 4/1/05

No Action Taken!

REPORT OF CONFERENCE COMMITTEE
(ACCEDE/RECEDE)

Bill Number 1092 (, as (re)engrossed): Date: 4/2/07

Your Conference Committee House Jud

For the Senate:	YES / NO		**For the House:**	YES / NO	
Sen Nething			Reps. Kretschmar		
Lyson			Dahl		
Nelson			Delmore		

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)

the (Senate/House) amendments on (SJ/HJ) page(s) _____ -- _____

____, and place _____ on the Seventh order.

____, adopt (further) amendments as follows, and place _____ on the Seventh order:

____, having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) _____ was placed on the Seventh order of business on the calendar.

DATE: _____
CARRIER: _____

LC NO. of amendment
LC NO. of engrossment
Emergency clause added or deleted
Statement of purpose of amendment

MOTION MADE BY: _____

SECONDED BY: _____

VOTE COUNT ___ **YES** ___ **NO** ___ **ABSENT**

Revised 4/1/05

No Action Taken!

REPORT OF CONFERENCE COMMITTEE
(ACCEDE/RECEDE)

Bill Number 1092 (, as (re)engrossed): Date: 4/4/07

Your Conference Committee House Judiciary

For the Senate:	YES / NO		**For the House:**	YES / NO	
Sen. Nothing	✓		Rep. Kretschmar	✓	
Sen. Lyson	✓		Rep. Dahl	✓	
Sen. Nelson	✓		Rep. Delmore	✓	

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)

the (Senate/House) amendments on (SJ/HJ) page(s) 907 -- 908

✓, and place 1092 on the Seventh order.

____, adopt (further) amendments as follows, and place _____ on the Seventh order:

____, having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) 1092 was placed on the Seventh order of business on the calendar.

DATE: 4/4/07
CARRIER: Rep. Kretschmar

LC NO. of amendment
LC NO. of engrossment
Emergency clause added or deleted
Statement of purpose of amendment

MOTION MADE BY: Rep. Delmore

SECONDED BY: Rep. Dahl

VOTE COUNT 6 **YES** 0 **NO** 0 **ABSENT**

Revised 4/1/05

REPORT OF CONFERENCE COMMITTEE

HB 1092, as engrossed: Your conference committee (Sens. Nething, Lyson, Nelson and Reps. Kretschmar, Dahl, Delmore) recommends that the **HOUSE ACCEDE** to the Senate amendments on HJ pages 907-908 and place HB 1092 on the Seventh order.

Engrossed HB 1092 was placed on the Seventh order of business on the calendar.

2007 TESTIMONY

HB 1092

HOUSE BILL NO.1092
BACKGROUND AND SUMMARY

The Juvenile Policy Board is established by the North Dakota Supreme Court under Administrative Rule 35 and is charged with the general responsibility of studying and reviewing the operation of the juvenile court process. In 2004, Chief Justice Gerald W. VandeWalle tasked the Board with a general review of N.D.C.C. Ch. 27-20, the Uniform Juvenile Court Act, to determine whether statutory changes were necessary. The Board was also asked to consider the development of appropriate rules governing juvenile court proceedings. To assist in this project, the Board's membership was expanded to include representatives from various professional disciplines involved in juvenile court actions. At the conclusion of the statutory review stage of its work, the Board approved proposed legislation for submission to the Supreme Court. The proposed legislation was introduced as House Bill No. 1092 and attempts to clarify issues identified by the Board with respect to the operation of various statutes affecting juvenile court.

House Bill No. 1092 - Summary of Provisions

Section 1 is essentially a technical revision to Section 12-46-14 which would replace the current reference to "juvenile supervisor"with "director of juvenile court". The latter designation accurately reflects judicial system personnel job titles and descriptions. There are several similar technical revisions in subsequent sections in the proposed legislation: Sections 2, 5, 22, 23, 24, and 35. Section 3 of the proposed legislation adds a definition of "director" to Section 27-20-02.

Section 3 proposes several changes to Section 27-20-02 - the definitional statute for the Juvenile Court Act. Briefly summarized, the changes are: 1) revising the definition of "aggravated circumstances to include a reference to the child of the parent being the victim with respect to certain criminal offenses (this change reflects current federal law and regulation) and to add exposing the child to chronic or severe use of alcohol or a controlled substance or allowing the child to be present in an environment that exposes the child to controlled substances; 2) clarifying one definition of "child" as being under the age of 18 and not married (without reference to being in the military); 3) including a definition of "juvenile drug court"; and 4) revising the definition of "permanency hearing" to reflect recent federal law changes.

A more notable proposed change is with respect to definitions relating to traffic offenses. The changes (revisions to subsection 6, deletion of subsection 17, and revisions to subsection 18 [renumbered as 19]) would essentially result in criminal traffic offenses being heard in juvenile court, while non-criminal traffic offenses would be heard in adult court.

Section 4 would amend Section 27-20-06 (the duties of the director of juvenile court). The proposed revisions would clarify the director's supervision responsibilities with respect to children placed on probation for delinquency or unruly conduct; remove trigger events relating to issuance of a temporary custody order with respect to a delinquent, unruly, or deprived child, thereby expanding the authority to issue such orders; and would provide authority to issue an order to law

enforcement to transport a child to a specified location.

Section 6 would amend Section 27-20-12 (transfer to another juvenile court) to require a court to consult with the court in the county to which a juvenile is to be transferred.

Section 7 would amend Section 27-20-13 (children taken into custody) to clearly provide that law enforcement may transport a child to and from detention. The section would also be amended to make technical revisions concerning references to "juvenile supervisor".

Section 8 would amend Section 27-20-14 (detention of a child) to provide a juvenile drug court exception to general limitations concerning when a child may be detained. The proposed amendment would permit a drug court to order a child participating in drug court to be detained twice during the period of participation, but for no more than 4 days in a one year period.

Section 9 would amend Section 27-20-15 (release or delivery to court) to provide that the general notice required when a child is taken into custody is not required if the child is ordered detained by a juvenile drug court - as provided in the amendment set out in Section 8.

Section 10 would amend Section 27-20-17 (release from detention or shelter care) to provide that a hearing is not required if the child is ordered detained by a juvenile drug court, and to provide that, as a condition of release from shelter care, the court may order that the parent, guardian, or custodian not allow contact with an identified person if the restriction is considered in the best interest of the child.

Section 11 would amend Section 27-20-19 (review of juvenile court petitions). The proposed revisions would limit review of petitions by the director of juvenile court, or other court personnel, to petitions alleging delinquency or unruliness. The current limitation that the petition could not be filed without the review would be removed, but resurrected, in part, in amendments to Section 27-20-20.

Section 12 would amend Section 27-20-20, (preparation and filing of petitions). The proposed revisions would clarify that a petition may be prepared and filed by the state's attorney, but that a petition prepared by any other person must be reviewed by the director or other court personnel before filing to determine if filing the petition would be in the best interest of the public and child.

Section 13 would amend Section 27-20-24 (conduct of hearings). The proposed amendments except informal adjustments from the general requirement that proceedings must be recorded. The proposed amendments would also provide, similar to the Rules of Criminal Procedure, that the child or other person could be removed from the proceedings if, after being warned by the court, the child or person persists in conduct that justifies removal.

Section 14 would amend Section 27-20-26 (right to counsel). The proposed amendments clarify the availability of counsel at public expense for indigent parties in juvenile court and provides

two exceptions to the availability of appointed counsel. Only a child, if determined to be indigent, would be entitled to appointed counsel during informal adjustments, and an indigent parent, legal guardian, or custodian would be entitled to counsel only during the dispositional stage if a petition alleges delinquency or unruliness.

Section 15 would amend Section 27-20-28 (investigations and report) to provide that the court, during the pendency of a proceeding, may order the child tested by appropriate methods to determine exposure to a controlled substance or other substance injurious to the child's health.

Section 16 would amend Section 27-20-30 (disposition of deprived child) to remove, with respect to the transfer of legal custody, language concerning transfer to any individual found qualified to receive and care for the child and transfer to an individual in another state.

Section 17 would amend Section 27-20-31 (disposition of delinquent child) to remove, as an unnecessary reference, language regarding placement of the child in an institution, camp, or other facility for delinquent children and remove language requiring delivery of the child's driver's license or permit to the juvenile supervisor. The latter requirement is addressed in Section 27-20-31.1. The proposed amendments would also add ordering the child's participation in a juvenile drug court program as an available disposition.

Section 18 would amend Section 27-20-32.1 (removal of child) to clarify that removal from the home is with respect to the home of a parent, custodian, or guardian.

Section 19 would create new Section 27-20-32.3 to address the federal ICWA requirement that "active efforts" to preserve the Indian family must be demonstrated before a court may order the involuntary foster care placement of an Indian child or order the termination of parental rights with respect to an Indian child. The proposed statute is generally patterned after a similar provision enacted in Iowa and defines the kinds of activities that may be considered to constitute "active efforts". The list of activities is not exclusive. A notable difference between the proposed statute and the Iowa statute is that the proposed statute would allow active efforts to be demonstrated by any one or all of the listed activities (and others that are not explicitly listed), while the Iowa statute appears to require that every activity must be demonstrated to satisfy the burden of showing active efforts. The proposed statute also incorporates relevant definitions from the federal ICWA statute. The proposed statute also would require that the court consider the testimony of a "qualified expert witness" in determining whether continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child - a requirement that reflects federal law. The qualified expert witness must have specific knowledge of the child's Indian tribe and must testify regarding the tribe's family organization and child-rearing practices and whether the tribe's culture, customs, and laws would support placement of the child in foster care or termination of parental rights.

Section 20 would amend subsection (4) of Section 27-20-34 (transfer to other courts) to clarify that <u>any</u> transfer terminates jurisdiction over the child with respect to future offenses if the

child is convicted of the offense leading to the transfer.

Section 21 would amend subsections (2) and (3) of Section 27-20-36 (time limitations on orders of disposition) to change time limitations of initial orders and extensions of orders from 24 months to 12 months.

Section 25 would amend Section 27-20-44 (termination of parental rights) to include aggravated circumstances as grounds for termination. Language concerning a parent's conviction of certain offenses as grounds for termination would be deleted as the language is included in the definition of aggravated circumstances.

Section 26 would amend subsection (2) of Section 27-20-45 to make a relatively technical revision - replacing the general reference to the Uniform Parentage Act with the more specific statutory reference.

Section 27 would amend Section 27-20-48 (guardian ad litem) to clarify that the court must appoint a lay guardian ad litem in certain circumstances.

Section 28 would amend Section 27-20-48.1 (appointment of legal guardian) to provide simply that a court may establish a guardianship as a dispositional alternative if a child is determined to be delinquent, unruly, or deprived. Some of the language to be removed from the section is relocated to proposed new sections regarding the powers of a guardian (Section 29).

Sections 29, 30, and 31 would create new statutes governing the powers and duties of a legal guardian, termination of the appointment of a guardian, and resignation or removal proceedings concerning a guardian. The new statutes are essentially the same as Sections 30.1-27-09, 30.1-27-10, and 30.1-27-12 of the Uniform Probate Code concerning guardianships for minors/wards, with modifications to reflect that the subject of the legal guardianship is a "child" rather than a "ward".

Section 32 would amend Section 27-20-50 to provide that a protective order may be imposed at any stage of a proceeding, without respect to whether an order of disposition has been or is about to be made.

Section 33 would amend Section 27-20-54 (destruction of juvenile court records) to essentially clarify language in the statute and to reflect the extended retention requirement of records relevant to sexual predator commitment proceedings under Ch. 25-03.3.

Section 34 would amend Section 27-20-59 (short title) to change the title of Ch. 27-20 to remove the reference to "Uniform" as the Juvenile Court Act has been amended substantially since its initial adoption as a "uniform" act and few states have adopted or retained the uniform act in its original form.

Section 36 would repeal three sections relating to juvenile court. Section 27-05-29 discusses

juvenile supervisors appointed by district judges and allows the assignment of additional duties to the supervisor. The statute would be repealed since it is in conflict with current administrative rules and personnel policies. Section 27-20-01 serves as a statement of legislative intent and would be repealed as unnecessary. Section 27-20-35 regarding the disposition of mentally ill or alcohol or drug abusing children would be repealed as unnecessary and unused.

House Bill 1092
Testimony before House Judiciary Committee of Debbie Kleven
January 10, 2007

Chairman DeKrey and members of the committee:

My name is Debbie Kleven. I am a judge in the Northeast Central Judicial District in Grand Forks, North Dakota, and also chair of the Juvenile Policy Board, a committee of the Supreme Court. I am here to testify in favor of House Bill 1092. The Juvenile Policy Board membership was expanded by Chief Justice VandeWalle in September of 2004, for the purpose of reviewing the Uniform Juvenile Court Act. The Board has met quarterly since that time with the majority of our time being spent on reviewing Chapter 27-20 of the North Dakota Century Code. The expanded Juvenile Court Policy Board includes a representative from the Department of Human Services, county social services, the Division of Juvenile Services, an attorney for the defense, two prosecutors, Juvenile Court staff, judges and referees. The Board extensively reviewed the Uniform Juvenile Court Act and HB 1092 contains our recommended changes to the Act. It is my intention today to highlight what I think are the more substantive changes that this bill will make to the Uniform Juvenile Court Act.

Section 3 of HB 1092 proposes several changes to a number of definitions set forth in Sections 27-20-02 of the Juvenile Court Act:

1. "Aggravated circumstances" is changed to include a reference to the child of the parent being the victim with respect to certain criminal offenses. This is in accordance with federal law and regulation. Also the definition is expanded to include the act of exposing a child to chronic or severe use of alcohol or a controlled substance or allowing the child to be present in an environment that

exposes the child to controlled substance. When "aggravated circumstances" exist, a court may terminate parental rights under Section 27-20-44.

2. "Child" has been clarified to mean a person under the age of 18 and not married, and any reference to being in the military is eliminated. This will eliminate the confusion that currently results when a 17 year old enlists in the National Guard.

3. "Traffic offenses" has been eliminated as a definition and "Delinquent act" has been revised. As a result, non-criminal traffic offenses such as speeding and disregarding a stop sign will be handled in adult court and criminal traffic offenses such as Driving Under the Influence, Driving Under Suspension, Reckless Driving, etc. will be heard in juvenile court.

Section 8 amends Section 27-20-14 to allow a juvenile drug court to order a child participating in drug court to be detained twice during the period of participation, but for no more than 4 days in a one year period. This will be an exception to the limitation on when a child may be detained. This request came to us through the Juvenile Drug Court team members. From my experience as a judge presiding over Juvenile Drug Court, it will be a helpful sanction to use occasionally and it is a sanction that is widely available to other successful juvenile drug courts throughout the United States.

Section 14 amends Section 27-20-26 (right to counsel). This provision will change the current law so that only a child, if determined indigent, will be entitled to appointed counsel during informal adjustments and an indigent parent will be entitled to counsel only during the dispositional stage if a petition alleges delinquency or unruliness. It does not change the requirement that an indigent parent is entitled to counsel at all stages if deprivation is alleged.

Section 19 creates a new Section 27-20-32.3 to address the federal Indian Child Welfare Act

requirement that "active efforts" to preserve the Indian family be shown before a court may place an Indian child in foster care or terminate parental rights with respect to an Indian child. This proposed statute was patterned after the Iowa statute but this statute allows "active efforts" to be demonstrated by any one or all of the activities listed, plus other activities not listed. Iowa, on the other hand, requires that every activity in the list must be demonstrated in order to meet the burden of complying with "active efforts". The Juvenile Policy Board spent a significant amount of time discussing this section and it was the consensus of the board that the Iowa statute places a higher burden on the social services agencies than what is required under ICWA and that if the Iowa version is adopted, it will result in a significant expense to the State of North Dakota.

Sections 28, 29, 30 & 31 allow the court to establish a guardianship for a child if a child is found to be delinquent, unruly, or deprived and these sections set forth the procedures for establishing and terminating the guardianship. This is an effective method to establish a permanent planned living arrangement for older children who are in foster care. In many cases, the foster parents are willing to assume legal guardianship for the child and accept the child into their home on a permanent basis but for many reasons, including financial, do not feel they are in the position to adopt the child. Also, in many cases an older child who is in foster care still wants to maintain a relationship with their biological family but the biological family is not in the position to care for the child. A guardianship can give the child a sense of permanency with his/her guardians.

On behalf of the Juvenile Policy Board I urge you to recommend a "do pass" on HB 1092. Thank you for your time in considering this bill.

Testimony To The
HOUSE JUDICIARY COMMITTEE
Prepared January 10, 2007 by the
North Dakota Association of Counties
Terry Traynor, Assistant Director

CONCERNING HOUSE BILL 1092

Chairman DeKrey and members of the Committee, I am here today to request that you consider a small but very important amendment (below) to House Bill 1092.

Under current North Dakota law, as in most every state in the country, a juvenile found to have committed a crime that an adult could commit, is adjudicated as "delinquent". Also, as with most states, those violations that only juveniles can commit, such as truancy, running away, ungovernable behavior, are separated out and termed (in North Dakota) "unruly offenses". These are often termed "status offenses" in other States and by the federal government.

In HB1092 as proposed, line 6 on page 8, removes from the definition of "unruly child" the offenses of "open container" (39-08-18) and alcohol possession/consumption and being in a liquor establishment as a minor (5-01-08). While it is very appropriate to reclassify "open container" as a delinquent offense, removing 5-01-08 will have the effect of reclassifying over 1,200 juvenile arrests annually (almost 20% of total juvenile arrests) from "unruly" to "delinquent". This would make North Dakota law inconsistent with federal regulation and would likely have detrimental effects to North Dakota's juvenile justice system.

NDCC 27-20-16(5) was amended (effective January 1, 1988) to specifically prohibit the detention of an unruly child in an adult jail. This is consistent with the federal Juvenile Justice and Delinquency Prevention (JJDP) Act's [223(a)(13)(A)] absolute prohibition on the jailing of "*status offenders*" (definition below).

Section 223(a)(11)(A) of the JJDP Act further restricts the placement of *"juveniles who are charged with or who have committed an offense that would not be criminal if committed by an adult*" in secure juvenile detention to no more than 24 hours.

While reclassifying this large group of "unruly" (status) offenders as "delinquent" would not in itself violate the JJDP Act, the placement of <u>only one</u> MIP/MIC offender in an adult jail or the <u>practice</u> of detaining such offenders for longer than 24 hours in a juvenile detention center would place North Dakota in noncompliance.

Although noncompliance, on the surface, is a financial issue – jeopardizing up to $750,000 in federal funds used for a variety of State court and corrections and county programming – noncompliant incidents increase both state and local government liability.

As the JJDP Act has become the recognized standard and states have received JJDP Act funding for over 20 years, federal courts have ruled that a private cause of action against states and local governments has been created. (Hendrickson v. Griggs). From a best practices standpoint, research also suggests that the secure detention of minor offenders increases the likelihood of reoffending. (Zeidenberg, J. and B. Holman, The Dangers of Detention 2004, The Justice Policy Institute, Washington, DC)

Obviously, our most immediate concern is the placement of a MIP/MIC offender in a county jail – which would be permissible under State law if this change is enacted. Although simply prohibiting the jailing of all delinquent youth would solve this problem, this is not currently a practical solution. Even the JJDP Act, while suggesting that the jailing of delinquent offenders should not be allowed, does permit the very short-term (separate) use of jails for delinquent (federally defined) offenders in rural areas.

History has shown that what is permitted by law, and convenient, often becomes practice. Our fear is that making MIP/MIC delinquent offenses would place North Dakota out of compliance within a year. We are convinced that North Dakota has been able to maintain its compliance with the JJDP Act since January 1, 1988 largely because of the current classification of MIP/MIC arrests, the statutory jailing prohibition of unruly offenders, and the availability of non-secure alternatives (funded by federal JJDP Act grants).

We are hopeful that the "5-01-08" portion of this subsection can be retained as part of the definition of an unruly child.

---

28 CFR 31.304(h) contains the following definition: **Status offender**. A juvenile offender who has been charged with or adjudicated for conduct which would not, under the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult.

The JJDP Act Compliance Monitoring Guidelines issued by the Department of Justice further states: The following are examples of status offenses:

Truancy,
Violations of Curfew,
Runaway,
Underage possession and/or consumption of tobacco products,
Underage alcohol offenses.

PROPOSED AMENDMENTS TO HOUSE BILL No. 1092

Page 8, line 6 remove the overstrike over "~~e. Has committed an offense in violation of section~~" and remove the over overstrike over "~~5-01-08; or~~"

Renumber accordingly

Testimony To The
HOUSE JUDICIARY COMMITTEE
Prepared January 10, 2007 by the
North Dakota Division of Juvenile Services
Lisa Bjergaard, Director

CONCERNING HOUSE BILL 1092

Chairman DeKrey and members of the Committee, I am here today to request that you consider the following information relative to House Bill 1092.

In HB1092 as proposed, Page 11 lines 15-18 would allow a child who is participating in a juvenile court drug court program to be detained up to two times during their participation in the program, not to exceed four days per year.

Research is not positive about the effectiveness of detention as a sanction. In fact, most of the research appears to suggest that the outcome of detention as a sanction is often negative in both treatment success and recidivism.

The National Juvenile Detention Association (NJDA) has maintained a position statement for almost ten years that states that NJDA "supports the prohibition of the use of juvenile detention as a dispositional option."

I have attached a copy of that position paper for you.

National Juvenile Detention Association | NJDA

Position Statement

Executive Board Adoption Date: October 27, 1997

JUVENILE DETENTION AS A DISPOSITION

STATEMENT OF THE ISSUE:

The purpose of juvenile detention has historically been for the temporary and safe custody of juveniles who are *accused* of conduct subject to the jurisdiction of the court who require a restricted environment for their own or the community s protection. (Definition of Juvenile Detention, adopted by NJDA Executive Board on 10-31-90). However, use of juvenile detention by the court as a sentence has increased in recent years. This increase has been accompanied in many jurisdictions with statutory changes authorizing such use. This shift in detention use has resulted from the court s desire for additional sanctions which may be imposed on youth who violate the law or a court order.

NATURE OF THE ISSUE:

- Use of juvenile detention as a dispositional option emphasizes punishment over behavior change.
- Use of juvenile detention as a dispositional option mixes populations and may adversely affect treatment or programming.
- Use of juvenile detention as a dispositional option may aggravate overcrowding in juvenile detention centers.
- Use of juvenile detention as a dispositional option is often utilized simply because other, more preferable, alternatives are not available.
- Use of juvenile detention as a dispositional option discourages the development of more appropriate, less costly alternatives.
- Use of juvenile detention as a dispositional option may result in the negative influence of institutionalization and deny the opportunity for positive experiences in the community (i.e. school, religious activities, sports, family involvement).

POSITION STATEMENT:

In accordance with the Definition of Juvenile Detention adopted by the Executive Board of NJDA, the National Juvenile Detention Association supports the prohibition of the use of juvenile detention as a dispositional option. The NJDA supports the development of more appropriate and less costly alternatives in order to eliminate the use of juvenile detention as a disposition.

Testimony

House Bill 1092 – Department of Human Services

House Judiciary Committee

Representative Duane L. DeKrey, Chairman

January 10, 2007

Chairman DeKrey, members of the House Judiciary Committee, I am Tara Lea Muhlhauser, Deputy Director of the Children and Family Services Division and Program Administrator for Child Protective Services, of the Department of Human Services. I am here today to offer an amendment to House Bill 1092.

Section 3 of this bill, under subsection "g" of NDCC Chapter 27-20-02 (Definition for Aggravated Circumstances) sets forth the standard for children subjected to prenatal exposure to use of alcohol or controlled substances. The standard as set forth in this provision is "chronic and severe". I am requesting that this language be amended to read "chronic or severe".

This proposed language in this bill, as well as the current existing language in the definition of deprived child, NDCC 27-20-02 (8)(f), that is similar language, creates an unreasonably high burden for Child Protection Services. This unreasonably high burden necessary for us to sustain a finding of "services required" in a child abuse and neglect situation interferes with our ability to protect children in these situations.

To give you an example, in a very recent child abuse and neglect appeal of a "Services Required" for Physical Neglect finding, the

Administrative Law Judge ruled against our finding, reasoning that we hadn't met the "chronic and severe" threshold. In this case, a pregnant woman, by her own admission, used somewhere between 304 beers and as many as 760 beers during the course of her pregnancy, 38 weeks. She stated that she consumed two to four beers, four to five times a week. She also stated that her intoxication level generally occurred at 5-6 beers. In this case the child was also born with an unusually low birth weight.

Because "chronic and severe" is not defined in our statutory scheme, the Administrative Law Judge in this opinion used the dictionary definition to create the measure for "chronic and severe". We were unable to meet the threshold to maintain a finding of "services required" for child neglect in this instance given the extent of the admitted substance abuse of the mother.

Admittedly, this issue needs greater discussion in a multi-disciplinary context to better position us to protect children and provide evaluations, treatment, and other services to parents. However, this small change I'm proposing today in these two sections can bring us forward in our ability to protect our most vulnerable children born to parents with either chronic or severe use of alcohol.

With this change, the Child Protection field will still be required to offer substantial proof of drug and alcohol use, but the change will lower the threshold we face in these cases so that we can be assured that we can provide and require child abuse and neglect services where needed.

Thank you for your time today. I have prepared an amendment for the good of the process, attached to this testimony. Are there any questions?

AH #1
2-26-07

Engrossed House Bill 1092
Testimony before Senate Judiciary Committee of Debbie Kleven
February 26, 2007

Chairman Nething and members of the committee:

My name is Debbie Kleven. I am a judge in the Northeast Central Judicial District in Grand Forks, North Dakota, and also chair of the Juvenile Policy Board, a committee of the Supreme Court. I am here to testify in favor of House Bill 1092. The Juvenile Policy Board membership was expanded by Chief Justice VandeWalle in September of 2004, for the purpose of reviewing the Uniform Juvenile Court Act. The Board has met quarterly since that time with the majority of our time being spent on reviewing Chapter 27-20 of the North Dakota Century Code. The expanded Juvenile Court Policy Board includes a representative from the Department of Human Services, county social services, the Division of Juvenile Services, an attorney for the defense, two prosecutors, an Assistant Attorney General, Juvenile Court staff, judges and referees. The Board extensively reviewed the Uniform Juvenile Court Act and HB 1092 contains our recommended changes to the Act. It is my intention today to highlight what I think are the more substantive changes that this bill will make to the Uniform Juvenile Court Act.

Section 3 of HB 1092 proposes several changes to a number of definitions set forth in Sections 27-20-02 of the Juvenile Court Act:

1. "Aggravated circumstances" is changed to include a reference to the child of the parent being the victim with respect to certain criminal offenses. This is in accordance with federal law and regulation. Also the definition is expanded to include the act of exposing a child to chronic or severe use of alcohol or a controlled substance or allowing the child to be present in an environment that

exposes the child to controlled substance. When "aggravated circumstances" exist, a court may terminate parental rights under Section 27-20-44.

2. "Child" has been clarified to mean a person under the age of 18 and not married, and any reference to being in the military is eliminated. This will eliminate the confusion that currently results when a 17 year old enlists in the National Guard.

3. "Traffic offenses" has been eliminated as a definition and "Delinquent act" has been revised. As a result, non-criminal traffic offenses such as speeding and disregarding a stop sign will be handled in adult court and criminal traffic offenses such as Driving Under the Influence, Driving Under Suspension, Reckless Driving, etc. will be heard in juvenile court. The charge of Minor in Possession or Consumption will remain an unruly offense.

Section 8 amends Section 27-20-14 to allow a juvenile drug court to order a child participating in drug court to be detained twice during the period of participation, but for no more than 4 days in a one year period. This will be an exception to the limitation on when a child may be detained. This request came to us through the Juvenile Drug Court team members. From my experience as a judge presiding over Juvenile Drug Court, it will be a helpful sanction to use occasionally and it is a sanction that is widely available to other successful juvenile drug courts throughout the United States.

Section 14 amends Section 27-20-26 (right to counsel). This provision will change the current law so that only a child, if determined indigent, will be entitled to appointed counsel during informal adjustments and an indigent parent will be entitled to counsel only during the dispositional stage if a petition alleges delinquency or unruliness. It does not change the requirement that an indigent parent is entitled to counsel at all stages if deprivation is alleged.

Section 19 creates a new Section 27-20-32.3 to address the federal Indian Child Welfare Act requirement that "active efforts" to preserve the Indian family be shown before a court may place an Indian child in foster care or terminate parental rights with respect to an Indian child. This proposed statute was patterned after the Iowa statute but this statute allows "active efforts" to be demonstrated by any one or all of the activities listed, plus other activities not listed. Iowa, on the other hand, requires that every activity in the list must be demonstrated in order to meet the burden of complying with "active efforts". The Juvenile Policy Board spent a significant amount of time discussing this section and it was the consensus of the board that the Iowa statute places a higher burden on the social services agencies than what is required under ICWA and that if the Iowa version is adopted, it will result in a significant expense to the State of North Dakota.

Sections 28, 29, 30 & 31 allow the court to establish a guardianship for a child if a child is found to be delinquent, unruly, or deprived and these sections set forth the procedures for establishing and terminating the guardianship. This is an effective method to establish a permanent planned living arrangement for older children who are in foster care. In many cases, the foster parents are willing to assume legal guardianship for the child and accept the child into their home on a permanent basis but for many reasons, including financial, do not feel they are in the position to adopt the child. Also, in many cases an older child who is in foster care still wants to maintain a relationship with their biological family but the biological family is not in the position to care for the child. A guardianship can give the child a sense of permanency with his/her guardians.

On behalf of the Juvenile Policy Board I urge you to recommend a "do pass" on Engrossed House Bill 1092. Thank you for your time in considering this bill.

AH #2
2-26-07

Engrossed House Bill 1092
Submitted by Michelle L. Kommer
February 26, 2007

Chair Nething and members of the Senate Judiciary Committee:

My name is Michelle Kommer and I am a 3rd-year law student at the University of North Dakota. I have had the privilege of assisting Judge Kleven and the Juvenile Policy Board in its review of the Uniform Juvenile Court Act (UJCA) for the past year.

I am particularly interested in the juvenile justice system in North Dakota because of my personal involvement with it. My husband and I became licensed foster parents in 1999. Since that time, we have foster-parented twelve children. We are blessed and fortunate to have adopted one of our foster daughters, and consequently, have had first-hand experience with several of the provisions within the Juvenile Court Act. Because of our experience, specifically with the process for terminating parental rights, I made a promise to our past and future foster children that I would do something to make a difference for them. I had no idea what I meant by that, or how fortunate I would be to actually have the opportunity to keep my promise.

I first became aware of the mission of the Juvenile Policy Board while conducting research for my law review article, which examines the termination of parental rights process in North Dakota. As part of my research, I interviewed Judge Kleven, and during this interview, I learned about her role as chairperson of the Board, and how the Board had been asked to review and revise the Uniform Juvenile Court Act. I implored Judge Kleven to permit me to take part in the process. She graciously agreed to sponsor an independent study that would permit me to support the Board's endeavor while earning academic credit. In the three semesters that followed, I was able to attend the Board

meetings, providing administrative support and conducing legal research and writing at the Board's request.

I am here today to support the passage of Engrossed House Bill 1092 because I believe that the changes proposed by the Board significantly advance the quality of the juvenile justice system in North Dakota by clarifying expectations and streamlining processes. Both as a student and as a North Dakotan, I am thankful for the opportunity to have observed the tremendous effort that was contributed to this project, and the care that was taken to ensure that the viewpoints of all stakeholders were represented. The Board went to great lengths to conduct thoughtful analysis with regard to each and every recommendation, and provide a stellar example of "the system working right" for the benefit of all North Dakotans. I am proud to have been associated with it. For these reasons, I have great confidence in the final recommendations of the Board, and I enthusiastically support of the bill before you.

Sincerely,

Michelle Kommer

Att #3
2-26-07

Testimony
House Bill 1092 – Department of Human Services
Senate Judiciary Committee
Senator Dave Nething, Chairman
February 26, 2007

Chairman Nething, members of the Senate Judiciary Committee, I am Tara Lea Muhlhauser, Deputy Director of the Children and Family Services Division and Program Administrator for Child Protective Services, of the Department of Human Services. I am here today to offer support for this bill.

We participated in the Juvenile Policy Board and were actively involved in drafting various sections of this bill. Our relationship with the legal system and process, specifically Juvenile Court, is integral to our ability to protect children, provide permanency for children and address their well-being. The changes proposed allow us additional tools to achieve these goals with greater efficiency and in conformity with federal requirements and federal law (Indian Child Welfare Act).

When this bill was heard in the House we offered an amendment that is now included into this engrossed bill. I would be available to address any questions about this section, or any other questions you have. Thank you for this opportunity.

Att # 4
2-26-07

Testimony to Senate Judiciary Committee
HB 1092

Good Morning, My Name is Vincent Gillette, and I am the Director of Sioux County Social Services, Ft Yates, ND and I am here representing the ND County Director's Association. I am here to talk about the Indian Child Welfare Act portion of this bill, specifically NDCC 27-20-32.3 starting on page 19 of this bill and ending on page 22. While I applaud the Legislature's attempt to better define active efforts and Qualified Expert Witness under ICWA, it adds to the confusion around ICWA. The Iowa ICWA Law that this section is patterned after is 17 pages long. ND's is 2 ½ pages long so obviously some things have been left out. The confusion in my mind is does the ND law mean that we would only be required to follow this law, if it were passed, and disregard the federal law? The Bureau of Indian Affairs wrote guidelines for ICWA in 1979 to try and clear up questions and explain congressional intent of the law, so clarification of terms really doesn't seem necessary.

This bill in its current form is potentially a huge unfunded mandate. I am speaking specifically of #2 on page 21, the last sentence which states, "Active efforts must utilize the available resources of the Indian Child's extended family, tribe, tribal and other relevant social service agencies, and relevant Indian care givers." Now look at the definition of Active Efforts on page 19 & 20. Let's take #1 and 4, for discussion sake. #1 says that you try and convene tribal resolution, which to me means that you have the child go through some type of ceremony. #4 says that the child visit frequently in their home and the homes of their extended relatives. Consider that about 30% of the Foster Care in the state is native children. This leaves about 200 native children in the County custody factoring out the DJS kids and the IV E kids in the custody of the tribe, now consider about Cass County. Cass is 300 miles from Ft Berthold, 265 miles from Standing Rock, 150 miles from Spirit Lake and 260 miles from Turtle Mountain. If the county were able to get the foster youth in some tribal ceremony this can literally be a weekly occurrence. Think what it would cost Cass in staff time, mileage, per diem to do frequent visits to homes of extended families and to get foster youth tribal ceremonies. Think about Burleigh County who averages 40-50 native kids, a month, in care. Burleigh County has United Tribes Technical College, which is a native college serving Indians nation wide. I was just at something at United Tribes and they said they had 70 tribes nationwide, attending school this year; tribes from AZ, CA, WA, OK, just to name a few states. I couldn't even make a good estimate what it might cost

to provide the active efforts under this law, for even one foster care case out of state. The other thing that hasn't been considered is jurisdiction. If a County Social Worker takes an Indian Child back to the reservation for whatever reason and the child's parents refuse to let the child go with the social worker, the worker has no recourse because of jurisdiction. The State court Order giving the county custody is not valid on the reservation, so the worker wouldn't be able to get tribal police to have the child picked up, which of course would cause all kinds of problems. Don't get the counties wrong, we think it is a great idea to try an implement these ideas, but with out full funding to provide those services, we would ask that the ICWA language in this be bill be changed to, "The State of North Dakota with comply with the Indian Child Welfare Act of 1978."

County Social Services are committed to complying with ICWA. The way we believe that this needs to start is that DHS must lead us. Because North Dakota is a state supervised, county administered system, DHS must establish protocols as to how ICWA should work in North Dakota. DHS needs to establish MOA's with the Tribes in ND relative to ICWA. As it stands now, 53 counties must re-invent the ICWA wheel, every time they need to work with a tribe.

I thank you for listening and I would try and answer any questions.

Att #5
2-26-07

What is ICWA?

The Indian Child Welfare Act (ICWA), passed by Congress in 1978, and was intended to limit the historical practice of removing Native American children from their tribes and families and placing them in nonnative families or institutions. Congress was of the opinion that this was being done by both public and private agencies.

What are the goals of ICWA?

The intent of Congress under ICWA was to "[p]rotect the best interests of Indian children and to promote the stability and security of Indian tribes and families. (925 U.S.C. § 1902)

How are those goals accomplished?

When a child is and "Indian child", and is involved in state child custody proceedings, other than divorce/custody proceedings, the tribe has standing to participate in the case, including the right to request that the case be transferred to tribal court. Additionally, the Act requires that tribes receive notice of court involvement with Indian Children, sets higher standards of proof in cases, requires a higher level of effort to prevent removal of Indian children from their families and to return the children, and provides for placement preferences if placement out of the home is necessary.

What are "active efforts?"

States are required to provide active efforts to families, and the court will be asked to determine whether active efforts have been made. The definition of "active efforts" is left open in the Indian Child Welfare Act, to accommodate individual case decisions. However, federal guidelines do exist (Federal Register, Vol. 44, No. 228, Monday, November 26, 1979):

1. to provide services to the family to prevent removal of an Indian child from his or her parent or Indian custodian
2. to reunify and Indian child with his or her parent or Indian custodian after removal

A cornerstone in the application of active efforts is active and early participation and consultation with the child's tribe in all case planning decisions. Additionally, active efforts require that the work done by the social service agency must be more intensive than "reasonable efforts." For example, reasonable efforts might be only a referral for services, but active efforts would be to arrange for the best-fitting services and help families engage in those services. The federal guidelines reference above applies whether or not the child's tribe is involved in the custody proceedings.

Having noted this, the North Dakota Supreme Court has also noted, in the case, In re M.S., 2001 ND 89, 624 N.W.2d 678 that "[w]hile the federal law requires legitimate efforts to prevent the breakup of an Indian family, it does not impose upon social service agencies a duty to persist in efforts that can only be destined for failure...parental cooperation, or a lack thereof, is a pertinent factor in determining whether a child's deprivation will continue." (Citations omitted)

HB 1092 increases the obligations of social service agencies in the State of North Dakota, expanding ICWA, yet does not provide additional funding or resources to accomplish this expansion.

If passed as drafted HB 1092, would elevates not only the tribe's interest in the child protection case, but expand the standing of family members even in the absence of tribal intervention and participation. Additionally, there would be a requirement that the social service agency "exhaust" alternatives. This is a significantly higher burden and grants rights to parties other than the tribes. As a result of this expansion, the law would increase the responsibilities of county social service agencies, and expands the rights provided under the federal law. The proposed language requires that the social services agency provide visitation and participation to individuals regardless of tribal participation.

ICWA was and is concerned with tribal connections, and gave the *tribe* of an Indian child certain rights – the proposals in HB1092 go beyond that.

Many of the children our agency works with are both Indian children, while also being white and members of another cultural group. While ICWA was intended to protect the integrity of Native American Tribes, this law would require that if a child is an Indian Child, the agency would provide enhanced services to "extended family members", including visitation and consultation – regardless of whether that is native or not. This is not narrowly structured to promote the goals of ICWA – as ICWA provided rights to a child's tribe and that was the conduit for the family to engage in the process.

5.b
2-26-07

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1092

Page 19, line 21, remove "regarding Indian child"

Page 19, line 22, replace "1. As used in this section:" with "When an agency is seeking to effect a foster care placement of, or termination of parental rights to, an Indian child, the court shall require active efforts as set forth in 25 U.S.C. §1912(d)."

Page 19, remove lines 23 through 30

Page 20, remove lines 1 through 31

Page 21, remove lines 1 through 30

Page 22, remove lines 1 through 8

Renumber accordingly

Lyson, Stanley

From: Michon C. Sax [53saxm@nd.gov]
Sent: Wednesday, March 28, 2007 12:55 PM
To: Lyson, Stanley
Subject: HB 1092

Dear Senator Lyson:

HB 1092 has a direct impact on the county operation of Children and Family Services in many areas. Of primary concern is the section of the bill pertaining to ICWA. The requirements of ICWA that speak to active efforts as opposed to reasonable efforts take the county into another area of operation. All counties currently meet the ICWA requirements in terms of identifying Indian children who meet the requirements of the Indian Child Welfare Act, contacting the appropriate Tribe and working with the Tribe in terms of intervention, contacting family members and looking at familial placements.

The ICWA requirements could cause a county to have increased travel costs, increased worker time and a need for more staff to accommodate all the requirements of ICWA. If a county had a family with children from four different Tribes there would be visits to all family members in four different areas, worker time for supervision and probably pursuing enrollment, if a child qualified. Although we do that now the expanded verbage could cause the worker time to be more intense and travel intensive. Counties are not staffed to meet the expanded requirements of the efforts.

The study of ICWA and its requirements is supported by the counties as it would give us time to prepare.

Michon C. Sax
County Director III
McKenzie/Williams County Social Services

Lyson, Stanley

From: Edward D. Forde [36fore@nd.gov]
Sent: Wednesday, March 28, 2007 1:02 PM
To: Lyson, Stanley
Subject: HB 1092 - ICWA

Dear Senator Lyson;

I am the County Director for three ND counties; Ramsey, Benson, and Towner. All service Native American families. Benson is the site of the Spirit Lake Tribe and Ramsey and Towner sit between Spirit Lake and the Turtle Mountain Tribe.

Our concern is that HB-1092 may contain requirements for Indian child welfare practices that may exceed those of the federal government. While Benson receives some state assistance through SWAP to service its Native American population neither Towner or Ramsey receive any special funding from the state for this purpose and they serve a foster care caseload where Native American children are present in numbers that are disproportionate to the general population. We respect the federal ICWA regulation and do our best to see that the spirit of ICWA is met, but we feel that it is unnecessary to establish a standard in ND that is greater that the federal standard in this regard. We would perceive this action as an unfunded mandate.

The tribal governments are not bound by ICWA, so why should county government be bound by restrictions that are greater than those imposed by the federal law? At least the issue should be studied before stricter guidelines are imposed.

Edward Forde County Director, Ramsey, Benson, Towner County Social Services, Devils Lake ND

Lyson, Stanley

From: Beverly J. Mathiason [40matb@nd.gov]
Sent: Wednesday, March 28, 2007 1:23 PM
To: Lyson, Stanley
Subject: HB 1092

Dear Senator Lyson,

I am the director of Rolette County Social Services at Rolla. I am writing with my concerns regarding HB 1092. As I understand, there is concern that the study may be deleted from the bill.

As you know, Rolette County is a county poor in resources but rich in population. I would estimate that over 90% of the children currently in the custody of the county are Native American. We feel that it is necessary to determine if adopting more stringent regulations in regards to ICWA would actually improve the quality of services Native American children already receive under the current federal ICWA guidelines, and how those additional requirements would be funded. Our concerns with the bill included how we locate all that extended family prior to removal when natural parents are uncooperative, how we find resources to meet staff time and travel costs with the additional burden placed on us, who is responsible to identify the Qualified Expert Witnesses to testify at hearings, who pays them, etc.

We feel our staff do their best currently to follow ICWA requirements and we are always mindful that we need to provide the best services we can to all children in our custody. We feel it would create an undue burden to place even more stringent requirements than the federal regulations require.

Thank you.

Beverly Mathiason, Director Rolette County Social Services

Lyson, Stanley

From: Kathy L. Hogan [09hogk@nd.gov]
Sent: Wednesday, March 28, 2007 1:28 PM
To: Lyson, Stanley; Nelson, Carolyn C.; Nething, David E.; Kretschmar, William E.; Dahl, Stephen B.; Delmore, Lois M.
Subject: Re: 1092

I understand that the conference committee will meet today on HB 1092. We strongly support the senate version of the bill with the removal of the the extra-ordinary ICWA requirements.

Counties face many federal and state mandates without funding. The ICWA language in the original HB 1092 exceeds the federal requirements and we are concerned that adding additional requirements in a time when we are trying to limit property tax increases doesn't make sense. We believe that we follow the current federal law and that system should be maintained as the standard.

The revisions on ICWA may be the best practice model in the nation but without funding how is the law to be implemented.

Lyson, Stanley

From: Vincent N. Gillette [43gilv@nd.gov]
Sent: Wednesday, March 28, 2007 2:21 PM
To: Lyson, Stanley
Subject: HB 1092

Sen Lyson;

I understand that the original ICWA language of 1092 has been brought back for review. As I explained in my testimony the potential huge unfunded mandate this would be on counties, to provide transportation of native foster children to extended families, is very admirable, but the protection of extended families visitation rights is not something that is covered under ICWA. The children, Tribe's and parent/Indian Custodian's rights are protected under ICWA, not the extended families rights. If the legislature would like this done, counties would need a substantial amount of money to provide this. As I explained in my testimony, about 200 native children, on the average, are in the care of counties each month. If it cost $5000 a child, which I believe is a low estimate, considering if Cass County took a child to Ft Berthold and back, using the State mileage rate, would cost $3285, for one year, to provide a once a month visit, in MILEAGE alone. Using 200 native foster children times $5000 a low amount, that would be a million dollars a year.

Another huge issue is jurisdiction. If a worker was to take a child to visit on the reservation and the child or relative refused to let the child go with the worker, the worker would not be able to go to the tribal police and have the police pick the child up because the state court order is no valid on the reservation, which I am sure you are aware of. So what would they do? I don't know. That brings me back to ND being a State supervised, county administered system. The Dept of Human Services NEEDS to establish MOU's with tribes around jurisdictional issues like I mentioned, around notification requirements, who, from the tribe can refuse intervention, time frames around court hearings, because time frames are different in ICWA and the State courts, to name a few things. These MOU's need to be established first. As it stands right now, we have no direction from the Dept of Human Services, relative to ICWA and every county is left to work with individual Tribes. It would only seem to make sense that the Dept of Human Services establish ONE protocol with each tribe, rather than having the tribe develop 53 protocols, with each county.

While I think it is admirable to establish definitions like the original ICWA language in 1092 attempted to do, the Bureau of Indian Affairs did this in 1979, one year after ICWA as passed. I believe that if the Dept of Human Services were to establish protocols and policy around ICWA this language would not be necessary.

Thanks;

Vincent Gillette

Lyson, Stanley

From: Daniel P. Richter [51ricd@nd.gov]
Sent: Wednesday, March 28, 2007 2:38 PM
To: Lyson, Stanley; Nelson, Carolyn C.; Nething, David E.; Kretschmar, William E.; Dahl, Stephen B.; Delmore, Lois M.
Subject: HB1092

I am writing in support of the Senate version of this bill with the elimination of the additional ICWA requirements. Counties have been required to implement numerous state and federal child welfare requirements in recent years without in most instances additional state or federal funding. I understand the additional requirements exceed federal requirements and may be "best practice" but program complicance will be difficult to achieve at a time of decreased federal funding and the goal of limiting property tax increases.

I have additional concerns that counties will be able to meet these new requirements with the upcoming federal Children and Family Services Review in April 2008.

MEMORANDUM

TO: Representative W. Kretschmar, Chair
Representative S. Dahl
Representative L. Delmore
Senator D. Nething
Senator S. Lyson
Senator C. Nelson

FROM: Tara Muhlhauser, Deputy Director, Children & Family Services Division, ND Department of Human Services

RE: HB 1092

DATE: March 29, 2007

My understanding is that some questions were raised in regard to the Senate amendments to HB1092 yesterday in Conference Committee. Thank you for providing the opportunity to provide information in regard to these amendments and the original bill.

The original bill heard in the House Judiciary Committee in January included language that addressed "active efforts", a requirement of the federal law under the Indian Child Welfare Act (ICWA), passed in 1978. The Juvenile Policy Board (JPB) of the ND Supreme Court drafted this language, after much consideration and discussion. This group includes representatives of the court (including a Supreme Court Justice, District Court Judges, Juvenile Court Referees, and Juvenile Court Directors and supervisors). Also included in this group are representatives of the Department of Human Services, the Department of Corrections, Cass County Social Services, County Directors Association, Indigent Defense, and the States Attorneys Association. Judge Kleven chairs the Juvenile Policy Board. She provided testimony in the House; although inclement weather prevented her from attending the hearing in the Senate Judiciary Committee. During the primary discussion of this language (and concepts) in the JPB, we invited Theresa Snyder (Tribal Liaison for the Department of Human Services) and several other guests representing various tribal interests. The JPB took official action by vote to include this language in proposed HB 1092. The language drafted in the original bill (HB1092) by the work of the Juvenile Policy Board was removed by the Senate in amendments offered during the hearing in that chamber.

The sections that were amended out of the Senate version of HB 1092 directly addressed the "active efforts" required of states in regard to compliance with the Indian Child Welfare Act when children are removed from parental custody and placed in foster care. Under this federal law, agencies shoulder the burden of making "active efforts" to reunify children with their parents, their tribal communities and maintain connections to their tribal heritage. This has been part of the law and has been required of all states in the country since 1978. This was an issue taken up by the Juvenile Policy Board based

on evidence that compliance with ICWA in regard to "active efforts" required attention. This was based on work done by the ND Supreme Court Improvement Committee.

Much of the language we discussed and drafted into HB1092 in this section was taken from current statutory provisions in Iowa. The Iowa statutes were chosen as the basis for our proposed language as they withstood an appeal in that state, fulfill the requirements of the federal law, and present helpful guidelines for ICWA compliance for foster care case managers, attorneys, and judges. We participated in discussion, in drafting these sections, testified in support of the bill in both chambers, and currently advocate for the reinstatement of the active efforts language into HB1092. We believe that the inclusion of this language into the Uniform Juvenile Court Act (NDCC 27-20) is crucial to our compliance with the federal law and will assist us in achieving better results for Native American children in the state foster care system. In addition, the presence of this language will assist our state with maintaining practice in compliance with the Indian Child Welfare Act, and with monitoring compliance with this Act.

Finally, it is important to recognize that our compliance with this federal law is required of the state whether or not this language appears in NDCC 27-20. However, inclusion of this language will help us meet requirements by giving agencies and courts guidance and protocols to assist in determining what is needed and how we can meet our responsibility to provide "active efforts".

Thank you. I would be available to present any additional information you request, or to answer any questions.

Tara Muhlhauser, J.D.
Deputy Director
Children & Family Services Division
ND Department of Human Services
W: 701-328-3587
C: 218-779-8386