

HOUSE BILL NO. 1358

Introduced by

Representatives Mahoney, Keiser

Senators Holmberg, C. Nelson

1 A BILL for an Act to amend and reenact section 27-20-02, subsection 1 of section 27-20-06,
2 sections 27-20-08, 27-20-10, and 27-20-17, subsection 2 of section 27-20-20.1, subsection 1 of
3 section 27-20-22, sections 27-20-25 and 27-20-31, subsection 4 of section 27-20-32.2,
4 subsection 4 of section 27-20-36, and subsection 3 of section 27-20-47, relating to definitions,
5 filing petitions, duties of juvenile supervisors, informal adjustments, continued shelter care,
6 termination of parental rights, and disposition of a delinquent child under the Uniform Juvenile
7 Court Act.

8 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

9 **SECTION 1. AMENDMENT.** Section 27-20-02 of the 1999 Supplement to the North
10 Dakota Century Code is amended and reenacted as follows:

11 **27-20-02. Definitions.** As used in this chapter:

12 1. "Abandon" means:

13 a. As to a parent of a child not in the custody of that parent, failure by the
14 noncustodial parent significantly without justifiable cause:

15 (1) To communicate with the child; or

16 (2) To provide for the care and support of the child as required by law; or

17 b. As to a parent of a child in that parent's custody:

18 (1) To leave the child for an indefinite period without making firm and
19 agreed plans, with the child's immediate caregiver, for the parent's
20 resumption of physical custody;

21 (2) Following the child's birth or treatment at a hospital, to fail to arrange for
22 the child's discharge within ten days after the child no longer requires
23 hospital care; or

- 1 (3) To willfully fail to furnish food, shelter, clothing, or medical attention
2 reasonably sufficient to meet the child's needs.
- 3 2. "Abandoned infant" means a child who has been abandoned before reaching the
4 age of one year.
- 5 3. "Aggravated circumstances" means circumstances in which a parent:
6 a. Abandons, tortures, chronically abuses, or sexually abuses a child;
7 b. Fails to make substantial, meaningful efforts to secure treatment for the
8 parent's addiction, mental illness, behavior disorder, or any combination of
9 those conditions for a period equal to the lesser of:
10 (1) One year; or
11 (2) One-half of the child's lifetime, measured in days, as of the date a
12 petition alleging aggravated circumstances is filed;
13 c. Engages in conduct prohibited under sections 12.1-20-01 through 12.1-20-08
14 or chapter 12.1-27.2, in which a child is the victim or intended victim;
15 d. Engages in conduct that constitutes one of the following crimes, or of an
16 offense under the laws of another jurisdiction which requires proof of
17 substantially similar elements:
18 (1) A violation of section 12.1-16-01, 12.1-16-02, ~~or~~ 12.1-16-03, or
19 14-09-22;
20 (2) Aiding, abetting, attempting, conspiring, or soliciting a violation of
21 section 12.1-16-01, 12.1-16-02, or 12.1-16-03; or
22 (3) A violation of section 12.1-17-02 in which the victim has suffered
23 serious bodily injury;
24 e. Engages or attempts to engage in conduct, prohibited under sections
25 12.1-17-01 through 12.1-17-04, in which a child is the victim or intended
26 victim; or
27 f. Has been incarcerated under a sentence for which the latest release date is:
28 (1) In the case of a child age nine or older, after the child's majority; or
29 (2) In the case of a child, after the child is twice the child's current age,
30 measured in days.
- 31 4. "Child" means an individual who is:

- 1 a. Under the age of eighteen years and is neither married and cohabiting with
- 2 spouse nor in the military service of the United States; or
- 3 b. Under the age of twenty years with respect to a delinquent act committed
- 4 while under the age of eighteen years.
- 5 5. "Custodian" means a person, other than a parent or legal guardian, who stands in
- 6 loco parentis to the child or a person to whom legal custody of the child has been
- 7 given by order of a court.
- 8 6. "Delinquent act" means an act designated a crime under the law, including local
- 9 ordinances or resolutions of this state, or of another state if the act occurred in that
- 10 state, or under federal law, and the crime does not fall under subdivision c of
- 11 subsection ~~16~~ 18 and is not a traffic offense as defined in subsection ~~15~~ 17.
- 12 7. "Delinquent child" means a child who has committed a delinquent act and is in
- 13 need of treatment or rehabilitation.
- 14 8. "Deprived child" means a child who:
- 15 a. Is without proper parental care or control, subsistence, education as required
- 16 by law, or other care or control necessary for the child's physical, mental, or
- 17 emotional health, or morals, and the deprivation is not due primarily to the
- 18 lack of financial means of the child's parents, guardian, or other custodian;
- 19 b. Has been placed for care or adoption in violation of law;
- 20 c. Has been abandoned by the child's parents, guardian, or other custodian;
- 21 d. Is without proper parental care, control, or education as required by law, or
- 22 other care and control necessary for the child's well-being because of the
- 23 physical, mental, emotional, or other illness or disability of the child's parent or
- 24 parents, and that such lack of care is not due to a willful act of commission or
- 25 act of omission by the child's parents, and care is requested by a parent; or
- 26 e. Is in need of treatment and whose parents, guardian, or other custodian have
- 27 refused to participate in treatment as ordered by the juvenile court.
- 28 9. "Detention" means a physically secure facility with locked doors and does not
- 29 include shelter care, attendant care, or home detention.
- 30 10. "Fit and willing relative or other appropriate individual" means a relative or other
- 31 individual who has been determined, after consideration of an assessment that

includes a criminal history record investigation under chapter 50-11.3, to be a qualified person under chapter 30.1-27, and who consents in writing to act as a legal guardian.

~~10.~~ 11. "Home" when used in the phrase "to return home" means the abode of the child's parent with whom the child formerly resided.

~~11.~~ 12. "Juvenile court" means the district court of this state.

~~12.~~ 13. "Permanency hearing" means a hearing, conducted with respect to a child who is in foster care, to determine the permanency plan for the child which includes:

- a. Whether and, if applicable, when the child will be returned to the parent;
- b. Whether and, if applicable, when the child will be placed for adoption and the state will file a petition for termination of parental rights;
- c. Whether and, if applicable, when a fit and willing relative or other appropriate individual will be appointed as a legal guardian;
- d. In cases in which a compelling reason has been shown that it would not be in the child's best interests to return home, to have parental rights terminated, to be placed for adoption, to be placed with a fit and willing relative, or to be placed with a legal guardian, whether and, if applicable, when the child will be placed in another planned permanent living arrangement;
- e. In the case of a child who has been placed in foster care outside the state in which the home of the parents is located, or if the parents maintain separate homes, outside the state in which the home of the parent who was the child's primary caregiver is located, whether the out-of-state placement continues to be appropriate and in the child's best interests; and
- f. In the case of a child who has attained age sixteen, the services needed to assist the child to make the transition from foster care to independent living.

~~13.~~ 14. "Protective supervision" means supervision ordered by the court of children found to be deprived or unruly.

~~14.~~ 15. "Relative" means:

- a. The child's grandparent, great-grandparent, sibling, half-sibling, aunt, great-aunt, uncle, great-uncle, nephew, niece, or first cousin;

- b. An individual with a relationship to the child, derived through a current or former spouse of the child's parent, similar to a relationship described in subdivision a;
- c. An individual recognized in the child's community as having a relationship with the child similar to a relationship described in subdivision a; or
- d. The child's stepparent.

~~15.~~ 16. "Shelter care" means temporary care of a child in physically unrestricted facilities.

~~16.~~ 17. "Traffic offense" means a violation of a law or local ordinance or resolution governing the operation of a vehicle upon the highways of this state, or the waterways within or adjoining this state, by a child who has been issued a valid operator's license or permit if one is required, other than manslaughter resulting from the operation of a motor vehicle in violation of section 12.1-16-02; negligent homicide in violation of section 12.1-16-03; and driving or being in actual physical control of a vehicle in violation of section 39-08-01, or an equivalent ordinance.

~~17.~~ 18. "Unruly child" means a child who:

- a. Is habitually and without justification truant from school;
- b. Is habitually disobedient of the reasonable and lawful commands of the child's parent, guardian, or other custodian and is ungovernable; or who is willfully in a situation dangerous or injurious to the health, safety, or morals of the child or others;
- c. Has committed an offense applicable only to a child;
- d. Has committed a noncriminal traffic offense without ever having been issued an operator's license or permit if one was required; or
- e. Has committed an offense in violation of section 39-08-18 or 5-01-08; and
- f. In any of the foregoing instances is in need of treatment or rehabilitation.

~~18.~~ 19. "Willfully" has the meaning provided in section 12.1-02-02.

SECTION 2. AMENDMENT. Subsection 1 of section 27-20-06 of the North Dakota Century Code is amended and reenacted as follows:

- 1. For the purpose of carrying out the objectives and purposes of this chapter and subject to the limitations of this chapter or imposed by the court, a juvenile supervisor shall:

- a. Make investigations, reports, and recommendations to the juvenile court.
- b. Receive and examine complaints and charges of delinquency, unruly conduct, or deprivation of a child for the purpose of considering the commencement of proceedings under this chapter.
- c. Supervise and assist a child placed on probation or in his protection, supervision, or care by order of the court or other authority of law.
- d. Make appropriate referrals to other private or public agencies of the community if their assistance appears to be needed or desirable.
- e. Take into custody and detain a child who is under his supervision or care as a delinquent, unruly, or deprived child if he has reasonable cause to believe that the child's health or safety is in imminent danger, or that he may abscond or be removed from the jurisdiction of the court, or when ordered by the court pursuant to this chapter. Except as provided by this chapter, a juvenile supervisor does not have the powers of a law enforcement officer. He may not conduct accusatory proceedings under this chapter against a child who is or may be under his care or supervision.
- f. Administer oaths.
- g. Take acknowledgments of instruments for the purpose of this chapter.
- h. Make such temporary order not to exceed ~~thirty days~~ ninety-six hours for the custody and control of a child alleged to be deprived as may be deemed appropriate. ~~Such an~~ The order must be reduced to writing within twenty-four hours, excluding holidays and weekends.
- i. Perform all other functions designated by this chapter or under section 27-05-30 or by order of the court pursuant thereto, including, if qualified, those of a referee. ~~Juvenile supervisors who were serving as juvenile commissioners on July 1, 1969, may perform the functions of a referee under this chapter without being members of the bar.~~
- j. Perform such functions relating to domestic relations matters as directed by his appointing district judge, acting in accordance with section 27-05-29.

SECTION 3. AMENDMENT. Section 27-20-08 of the North Dakota Century Code is amended and reenacted as follows:

1 **27-20-08. Commencement of proceedings.** A proceeding under this chapter may be
2 commenced:

- 3 1. By transfer of a case from another court as provided in section 27-20-09;
- 4 2. By the court accepting jurisdiction as provided in section 27-20-40 or accepting
5 supervision of a child as provided in section 27-20-42; or
- 6 3. In other cases by the filing of a petition as provided in this chapter. The petition
7 and all other documents in the proceeding must be entitled "In the interest of
8 _____, a child". If a child is in shelter care, the petition must be filed
9 within thirty days of the shelter care hearing under section 27-20-17. If the petition
10 is not filed, the child must be released from shelter care.

11 **SECTION 4. AMENDMENT.** Section 27-20-10 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **27-20-10. Informal adjustment.**

- 14 1. Before a petition is filed, the juvenile supervisor or other officer of the court
15 designated by it, subject to its direction, may give counsel and advice to the parties
16 and impose conditions for the conduct and control of the child with a view to an
17 informal adjustment if it appears:
 - 18 a. The admitted facts bring the case within the jurisdiction of the court;
 - 19 b. Counsel, advice and conditions, if any, for the conduct and control of the child
20 without an adjudication would be in the best interest of the public and the
21 child; and
 - 22 c. The child and ~~his~~ the child's parents, guardian, or other custodian consent
23 thereto with knowledge that consent is not obligatory.
- 24 2. The giving of counsel and advice and any conditions imposed for the conduct and
25 control of the child cannot extend beyond nine months from the day commenced
26 unless extended by the court for an additional period not to exceed six months and
27 does not authorize the detention of the child if not otherwise permitted by this
28 chapter. If the child admits to driving or being in actual physical control of a vehicle
29 in violation of section 39-08-01 or an equivalent ordinance, the child may be
30 required to pay a fine as a condition imposed under this section.

3. An incriminating statement made by a participant to the person giving counsel or advice and in the discussions or conferences incident thereto may not be used against the declarant over objection in any hearing except in a hearing on disposition in a juvenile court proceeding or in a criminal proceeding against him after conviction for the purpose of a presentence investigation.

SECTION 5. AMENDMENT. Section 27-20-17 of the North Dakota Century Code is amended and reenacted as follows:

27-20-17. Release from detention or shelter care - Hearing - Conditions of release.

1. If a child is brought before the court or delivered to a detention or shelter care facility designated by the court, the juvenile supervisor, the intake officer, or other authorized officer of the court shall immediately make an investigation and release the child unless it appears that the child's detention or shelter care is warranted or required under section 27-20-14.
2. If the child is not released, a ~~petition under section 27-20-21 must be promptly made and presented to the court.~~ A judge or referee shall hold a detention or shelter care hearing promptly and not later than ninety-six hours after the child is placed in detention or shelter care to determine whether there is probable cause to believe the child has committed the delinquent or unruly acts alleged, or the child is deprived and whether the child's detention or shelter care is required under section 27-20-14. Reasonable notice thereof, either oral or written, stating the time, place, and purpose of the detention or shelter care hearing must be given to the child and, if they can be found, to the child's parents, guardian, or other custodian. ~~As a condition to the child's release from shelter care, the court may order a parent, guardian, custodian, or any other member of the household in which the child resides to vacate the child's residence if probable cause exists to believe that the parent, guardian, custodian, or other member of the household has committed a sexual offense with or against the child, pursuant to sections 12.1-20-03 through 12.1-20-07 or section 12.1-20-11, and the presence of the alleged sexual offender in the child's residence presents a danger to the child's life or physical, emotional, or mental health.~~ Prior to the commencement of the hearing, the court shall inform the parties of their right to counsel and to appointed counsel if they are needy

persons, and of the child's right to remain silent with respect to any allegations of delinquency or unruly conduct.

3. If continued shelter care is required, the judge or referee may order that the child be kept in shelter care for no more than sixty days from the date of the shelter care hearing.

4. As a condition to the child's release from shelter care, the court may order a parent, guardian, custodian, or any other member of the household in which the child resides to vacate the child's residence if probable cause exists to believe that the parent, guardian, custodian, or other member of the household has committed a sexual offense with or against the child, pursuant to sections 12.1-20-03 through 12.1-20-07 or section 12.1-20-11, and the presence of the alleged sexual offender in the child's residence presents a danger to the child's life or physical, emotional, or mental health.

5. If the child is not released and a parent, guardian, or custodian has not been notified of the hearing, did not appear or waive appearance at the hearing, and files an affidavit showing these facts, the court shall rehear the matter without unnecessary delay and order the child's release, unless it appears from the hearing that the child's detention or shelter care is required under section 27-20-14.

SECTION 6. AMENDMENT. Subsection 2 of section 27-20-20.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. Except as provided in subsection 3, a petition for termination of parental rights must be filed:

a. If the child has been in foster care, in the custody of the department, or, in cases arising out of an adjudication by the court that a child is an unruly child, the division of juvenile services, for at least four hundred fifty out of the previous six hundred sixty nights;

b. Within sixty days after a court of competent jurisdiction has found the child to be an abandoned infant; or

c. Within sixty days after a court of competent jurisdiction has convicted the child's parent of one of the following crimes, or of an offense under the laws of another jurisdiction which requires proof of substantially similar elements:

- (1) A violation of section 12.1-16-01, 12.1-16-02, ~~or~~ 12.1-16-03, or 14-09-22 in which the victim is another child of the parent;
- (2) Aiding, abetting, attempting, conspiring, or soliciting a violation of section 12.1-16-01, 12.1-16-02, or 12.1-16-03 in which the victim is a child of the parent; or
- (3) A violation of section 12.1-17-02 in which the victim is a child of the parent and has suffered serious bodily injury.

SECTION 7. AMENDMENT. Subsection 1 of section 27-20-22 of the North Dakota Century Code is amended and reenacted as follows:

1. After the petition has been filed, the court shall fix a time for hearing ~~thereon, which.~~ Except as otherwise provided in this subsection, the hearing may not be later than thirty days after the filing of the petition. If the child is in detention, the time for the initial hearing may not be later than fourteen days after the child has been taken into custody. If a child is in shelter care, the hearing on the petition must be held within sixty days of the initial shelter care hearing. The court may extend the time for hearing for good cause shown. The court shall direct the issuance of a summons to the parents, guardian, or other custodian, a guardian ad litem, and any other persons as appear to the court to be proper or necessary parties to the proceeding, requiring them to appear before the court at the time fixed to answer the allegations of the petition. The summons must also be directed to the child if he is fourteen or more years of age or is alleged to be a delinquent or unruly child. A copy of the petition must accompany the summons unless the summons is served by publication in which case the published summons must indicate the general nature of the allegations and where a copy of the petition can be obtained.

SECTION 8. AMENDMENT. Section 27-20-25 of the North Dakota Century Code is amended and reenacted as follows:

27-20-25. Service by publication - Interlocutory order of disposition.

- 1 1. If service of summons upon a party is being or will be made by publication, the
2 court may conduct a provisional hearing upon the allegations of the petition and
3 enter an interlocutory order of disposition if:
 - 4 a. The petition alleges delinquency, unruly conduct, or deprivation of the child;
5 and
 - 6 b. The summons served upon any party (1) states that prior to the final hearing
7 on the petition designated in the summons a provisional hearing thereon will
8 be held at a specified time and place, (2) requires ~~the~~ any party who is served
9 other than by publication to appear and answer the allegations of the petition
10 at the provisional hearing, (3) states further that findings of fact and orders of
11 disposition made pursuant to the provisional hearing will become final at the
12 final hearing unless the party served by publication appears at the final
13 hearing, and (4) otherwise conforms to section 27-20-22; ~~and~~
 - 14 c. ~~The child is personally before the court at the provisional hearing.~~
- 15 2. All provisions of this chapter applicable to a hearing on a petition, to orders of
16 disposition, and to other proceedings dependent thereon apply under this section,
17 but findings of fact and orders of disposition have only interlocutory effect pending
18 the final hearing on the petition. The rights and duties of the party served, who is
19 being served, or who will be served by publication are not affected except as
20 provided in subsection 3.
- 21 3. If the party served by publication fails to appear at the final hearing on the petition,
22 the findings of fact and interlocutory orders made become final without further
23 evidence and are governed by this chapter as if made at the final hearing. If the
24 party appears at the final hearing, the findings and orders must be vacated and
25 disregarded and the hearing must proceed upon the allegations of the petition
26 without regard to this section, unless otherwise agreed to by the party who had
27 been served by publication.

28 **SECTION 9. AMENDMENT.** Section 27-20-31 of the 1999 Supplement to the North
29 Dakota Century Code is amended and reenacted as follows:

30 **27-20-31. Disposition of delinquent child.** If the child is found to be a delinquent
31 child, ~~or admits to a traffic-related offense in an informal adjustment hearing,~~ the court may

- 1 make any of the following orders of disposition best suited to the child's treatment,
- 2 rehabilitation, and welfare:
 - 3 1. Any order authorized by section 27-20-30 for the disposition of a deprived child;
 - 4 2. Placing the child on probation under the supervision of the juvenile supervisor,
 - 5 probation officer, or other appropriate officer of the court or of the court of another
 - 6 state as provided in section 27-20-41 or the director of the county social service
 - 7 board under conditions and limitations the court prescribes;
 - 8 3. Ordering the child to pay a fine if the delinquent act committed by the child
 - 9 constitutes manslaughter resulting from the operation of a motor vehicle in violation
 - 10 of section 12.1-16-02; negligent homicide in violation of section 12.1-16-03; or
 - 11 driving or being in actual physical control of a vehicle in violation of section
 - 12 39-08-01, or an equivalent ordinance. The court may suspend the imposition of a
 - 13 fine imposed pursuant to this subsection upon such terms and conditions as the
 - 14 court may determine. Fines collected pursuant to this subsection must be paid into
 - 15 the county treasury for disposition pursuant to section 29-27-02.1;
 - 16 4. Placing the child in an institution, camp, or other facility for delinquent children
 - 17 operated under the direction of the court or other local public authority;
 - 18 5. Committing the child to the division of juvenile services or to another state
 - 19 department to which commitment of delinquent or unruly children may be made.
 - 20 When necessary, the commitment order may provide that the child initially be
 - 21 placed in a secure facility;
 - 22 6. Ordering the child to make monetary restitution to the victim of the offense or to
 - 23 complete a specified number of hours of community service as determined by the
 - 24 court, or both;
 - 25 7. Ordering the periodic testing for the use of illicit drugs or alcohol pursuant to rules
 - 26 or policies adopted by the supreme court; or
 - 27 8. Under section 27-20-31.1, order the driver's license or permit of the child to be
 - 28 delivered to the juvenile supervisor, probation officer, or other appropriate officer of
 - 29 the court and to inform the director of the department of transportation of the child's
 - 30 suspension of driving privileges and the duration of the suspension of privileges.

1 **SECTION 10. AMENDMENT.** Subsection 4 of section 27-20-32.2 of the 1999
2 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 3 4. Reasonable efforts of the type described in subsection 2 are not required if:
- 4 a. A court of competent jurisdiction has determined that a parent has subjected
5 ~~the~~ a child to aggravated circumstances; or
- 6 b. The parental rights of the parent, with respect to another child of the parent,
7 have been involuntarily terminated.

8 **SECTION 11. AMENDMENT.** Subsection 4 of section 27-20-36 of the 1999
9 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 10 4. Except as provided in subsection 1, the court may terminate an order of disposition
11 before the expiration of the order or extend its duration for further periods. An
12 order of extension may be made if:
- 13 a. A hearing is held before the expiration of the order upon motion of a party or
14 on the court's own motion;
- 15 b. Reasonable notice of the hearing and opportunity to be heard are given to the
16 parties affected;
- 17 c. The court finds the extension is necessary to accomplish the purposes of the
18 order extended; and
- 19 d. The extension does not exceed twelve months from the expiration of an order
20 limited by subsection 3 or two years from the expiration of any other limited
21 order. ~~However, the court may order that the child permanently remain in~~
22 ~~foster care with a specified caregiver and that the duration of the order be left~~
23 ~~to the determination of the court if the court determines that:~~
- 24 (1) ~~All reasonable efforts have been made to reunite the child with the~~
25 ~~child's family;~~
- 26 (2) ~~The deprivation is likely to continue;~~
- 27 (3) ~~With respect to a child under the age of ten, termination of parental~~
28 ~~rights and subsequent adoption would not be in the best interests of the~~
29 ~~child; and~~
- 30 (4) ~~The placement of the child in permanent foster care is in the best~~
31 ~~interests of the child.~~

- 1 **SECTION 12. AMENDMENT.** Subsection 3 of section 27-20-47 of the 1999
2 Supplement to the North Dakota Century Code is amended and reenacted as follows:
- 3 3. If the child is not placed for adoption within twelve months after the date of the
4 order and a legal guardianship or other planned permanent living arrangement for
5 the child has not been established by a court of competent jurisdiction, the child
6 must be returned to the court issuing the original termination order for entry of
7 further orders for the care, custody, and control of the child.