

JUDICIAL BRANCH OF GOVERNMENT

CHAPTER 226

HOUSE BILL NO. 1108

(Judiciary Committee)
(At the request of the Supreme Court)

AN ACT to amend and reenact sections 27-02.1-01, 27-02.1-02, 27-02.1-03, 27-02.1-04, 27-02.1-05, 27-02.1-06, 27-02.1-07, 27-02.1-08, and 27-02.1-09 of the North Dakota Century Code, relating to the temporary court of appeals; to provide an effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 27-02.1-01 of the North Dakota Century Code is amended and reenacted as follows:

27-02.1-01. (Effective through January 1, ~~2012~~2016) Temporary court of appeals established - Jurisdiction - Writ authority - Administration.

A temporary court of appeals is established to exercise appellate and original jurisdiction as delegated by the supreme court. Panels of the temporary court of appeals may issue original and remedial writs necessary to properly exercise jurisdiction in cases assigned to them. The panels of the temporary court of appeals are subject to administration by the supreme court pursuant to sections 3 and 8 of article VI of the Constitution of North Dakota.

SECTION 2. AMENDMENT. Section 27-02.1-02 of the North Dakota Century Code is amended and reenacted as follows:

27-02.1-02. (Effective through January 1, ~~2012~~2016) Number, assignment, and compensation of judges.

1. The supreme court may provide for the assignment of active or retired district court judges, retired justices of the supreme court, and lawyers, to serve on three-judge panels of the temporary court of appeals if the chief justice certifies to the governor that the supreme court has disposed of two hundred fifty cases in the twelve months preceding September first of any year. Assignments may be made for a time certain, not to exceed one year from the date of assignment, or specifically for one or more cases on the docket of the supreme court.
2. An active or retired district court judge serving on the temporary court of appeals may not be assigned to hear cases in which the judge participated while serving on the district court. An active district court judge may not be assigned to hear cases that originated in the judicial district of the judge.

3. An active district court judge serving on the temporary court of appeals is not entitled to additional compensation, but is entitled to reimbursement for expenses as provided by sections 44-08-04 and 54-06-09.
4. Retired justices of the supreme court, retired district court judges, and lawyers serving as judges on panels of the temporary court of appeals are entitled to receive as compensation for each day of service in the performance of duties pursuant to the assignment an amount equal to five percent of the gross monthly salary as provided for a regularly elected or appointed justice of the supreme court, or one-half of the daily compensation for services of one-half day or less. The compensation must be paid upon certification by the judge that the services were performed for the number of days shown on the certificate and must be paid in the same manner as the salaries of the regularly elected or appointed judges are paid.

SECTION 3. AMENDMENT. Section 27-02.1-03 of the North Dakota Century Code is amended and reenacted as follows:

27-02.1-03. (Effective through January 1, ~~2012~~2016) Assignment and reassignment of cases - Quorum for decision of cases - Authority in furtherance of jurisdiction.

1. Panels of the temporary court of appeals have jurisdiction to hear and to decide all cases assigned by the supreme court.
2. The supreme court may order reassignment of any case from a panel of the temporary court of appeals to the supreme court.
3. A majority of the three judges of a panel of the temporary court of appeals hearing a case is necessary to pronounce a decision.
4. When a judgment or order is reversed, modified, or confirmed by a panel of the temporary court of appeals, the reasons must be concisely stated in writing, signed by the judges concurring, filed in the office of the clerk of the supreme court, and preserved with the record of the case. Any judge concurring or dissenting may give the reasons for the judge's concurrence or dissent in writing over the judge's signature.

SECTION 4. AMENDMENT. Section 27-02.1-04 of the North Dakota Century Code is amended and reenacted as follows:

27-02.1-04. (Effective through January 1, ~~2012~~2016) Administration - Employees and clerical assistance - Court of record - Place of sessions.

1. The clerk of the supreme court shall provide clerk services to panels of the temporary court of appeals.
2. Panels of the temporary court of appeals may hold court in any place the panel considers convenient and efficient for conducting its business.
3. All proceedings of the panels of the temporary court of appeals must be pursuant to the rules adopted by the supreme court.

SECTION 5. AMENDMENT. Section 27-02.1-05 of the North Dakota Century Code is amended and reenacted as follows:

27-02.1-05. (Effective through January 1, ~~2012~~2016) Chief judge.

The chief justice of the supreme court shall designate a chief judge of each panel of the temporary court of appeals who shall preside pursuant to rules of the supreme court.

SECTION 6. AMENDMENT. Section 27-02.1-06 of the North Dakota Century Code is amended and reenacted as follows:

27-02.1-06. (Effective through January 1, ~~2012~~2016) Review of decisions of panels.

Any party in interest who is aggrieved by a judgment or order of a panel of the temporary court of appeals may petition the supreme court for review of the judgment or order pursuant to rules of the supreme court. Upon the filing of a petition for review by the supreme court, the order or judgment and mandate of the panel of the temporary court of appeals is stayed pending action of the supreme court. The supreme court has discretion to grant or deny the petition.

SECTION 7. AMENDMENT. Section 27-02.1-07 of the North Dakota Century Code is amended and reenacted as follows:

27-02.1-07. (Effective through January 1, ~~2012~~2016) Right to appeal not created.

This chapter does not provide or create a right of appeal if that right is not otherwise provided by law. An appeal assigned to a panel of the temporary court of appeals fulfills the right of appeal provided by section 28-27-02.

SECTION 8. AMENDMENT. Section 27-02.1-08 of the North Dakota Century Code is amended and reenacted as follows:

27-02.1-08. (Effective through January 1, ~~2012~~2016) Unitary appeal - Filing of appeal - Filing fee.

All appeals must be treated as one appeal process under the jurisdiction of the supreme court. In any appeal there may be only one filing and one filing fee required. The filing fee is as prescribed by section 27-03-05.

SECTION 9. AMENDMENT. Section 27-02.1-09 of the North Dakota Century Code is amended and reenacted as follows:

27-02.1-09. (Effective through January 1, ~~2012~~2016) Publication of opinions.

Opinions of the panels of the temporary court of appeals may be published pursuant to rules of the supreme court.

Approved March 28, 2011
Filed March 28, 2011

CHAPTER 227

SENATE BILL NO. 2192

(Senators J. Lee, Dever, Heckaman)
(Representatives Devlin, Holman, Weisz)

AN ACT to create and enact section 27-20-30.1 of the North Dakota Century Code, relating to the disposition of a child needing continued foster care services after the age of eighteen and under the age of twenty-one; to amend and reenact sections 27-20-03, 27-20-11, 27-20-21, 27-20-22, 27-20-26, 27-20-32.2, and 27-20-36 of the North Dakota Century Code, relating to jurisdiction, venue, contents of petition, summons, right to counsel, reasonable efforts to prevent removal or to unify, and limitations of time on orders of disposition; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 27-20-03 of the North Dakota Century Code is amended and reenacted as follows:

27-20-03. Jurisdiction.

1. The juvenile court has exclusive original jurisdiction of the following proceedings, which are governed by this chapter:
 - a. Proceedings in which a child is alleged to be delinquent, unruly, or deprived;
 - b. Proceedings for the termination of parental rights except when a part of an adoption proceeding; ~~and~~
 - c. Proceedings arising under sections 27-20-39 through 27-20-42-;
 - d. Proceedings arising under section 27-20-30.1; and
 - e. Civil forfeiture proceedings arising under chapter 19-03.1 or section 29-31.1-04 for which a child is alleged to have possessed forfeitable property. The juvenile court shall conduct the proceedings in accordance with the procedures provided for under sections 19-03.1-36 through 19-03.1-37.
2. The juvenile court also has exclusive original jurisdiction of the following proceedings, which are governed by the laws relating thereto without regard to the other provisions of this chapter:
 - a. Proceedings to obtain judicial consent to the marriage, employment, or enlistment in the armed services of a child, if consent is required by law;
 - b. Proceedings under the interstate compact on juveniles;
 - c. Proceedings under the interstate compact on the placement of children; and

- d. Proceedings arising under section 50-06-06.13 to obtain a judicial determination that the placement of a severely emotionally disturbed child in an out-of-home treatment program is in the best interests of the child.
3. The juvenile court has concurrent jurisdiction with the district court of proceedings for the appointment of a guardian for a minor which, if originated under this chapter, are governed by this chapter and chapter 30.1-27.

SECTION 2. AMENDMENT. Section 27-20-11 of the North Dakota Century Code is amended and reenacted as follows:

27-20-11. Venue.

A proceeding under this chapter may be commenced in the county in which the child resides. A proceeding under section 27-20-30.1 must be commenced in the administrative county, as determined by the department of human services. If delinquent or unruly conduct is alleged, the proceeding may be commenced in the county in which the acts constituting the alleged delinquent or unruly conduct occurred. If deprivation is alleged, the proceeding may be brought in the county in which the child is present when it is commenced, the county in which the child has resided the majority of the thirty days prior to the date of the alleged deprivation, or the county where the alleged deprivation has occurred. The court shall determine the appropriate venue for a deprivation action based upon the best interests of the child.

SECTION 3. AMENDMENT. Section 27-20-21 of the North Dakota Century Code is amended and reenacted as follows:

27-20-21. Contents of petition.

The petition must be verified and may be on information and belief. It must set forth plainly:

1. The facts which bring the child within the jurisdiction of the court, with a statement that it is in the best interest of the child and the public that the proceeding be brought and, if delinquency or unruly conduct is alleged, that the child is in need of treatment or rehabilitation;
2. The name, age, and residence address, if any, of the child on whose behalf the petition is brought;
3. The names and residence addresses, if known to petitioner, of the parents, guardian, or custodian of the child and of the child's spouse, if any. If none of the child's parents, guardian, or custodian resides or can be found within the state, or if their respective places of residence address are unknown, the name of any known adult relative residing within the county, or, if there be none, the known adult relative residing nearest to the location of the court, This subsection does not apply to an action commenced under section 27-20-30.1; and
4. Whether the child is in custody and, if so, the place of the child's detention and the time the child was taken into custody.

SECTION 4. AMENDMENT. Section 27-20-22 of the North Dakota Century Code is amended and reenacted as follows:

27-20-22. Summons.

1. After the petition has been filed, the court shall fix a time for hearing, except if a petition has been filed under section 27-20-30.1, the court may fix a time for hearing, if necessary. 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 in proceedings not commenced under section 27-20-30.1 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 the child 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.
2. ~~The~~In a proceeding commenced under section 27-20-30.1, the court may order the child to appear personally. In all other proceedings, the court may endorse upon the summons an order directing the parents, guardian, or other custodian of the child to appear personally at the hearing and directing the person having the physical custody or control of the child to bring the child to the hearing.
3. If it appears from an affidavit filed or from sworn testimony before the court in a proceeding not commenced under section 27-20-30.1 that the conduct, condition, or surroundings of the child are endangering the child's health or welfare or those of others, or that the child may abscond or be removed from the jurisdiction of the court or will not be brought before the court, notwithstanding the service of the summons, the court may endorse upon the summons an order that a law enforcement officer shall serve the summons and take the child into immediate custody and bring the child before the court.
4. The summons must state that a party is entitled to counsel in the proceedings and that counsel will be provided at public expense if the party is indigent.
5. A party, other than the child, may waive service of summons by written stipulation or by voluntary appearance at the hearing. If the child is present at the hearing, the child's counsel, with the consent of the parent, guardian, or other custodian, or guardian ad litem, may waive service of summons in the child's behalf. This subsection does not apply in a proceeding commenced under section 27-20-30.1.
6. When a child is in detention or shelter care and good cause is shown why service was not completed upon an absent or noncustodial parent, the court may proceed with the hearing on the petition in order to comply with any time limitations under this chapter.

SECTION 5. AMENDMENT. Section 27-20-26 of the North Dakota Century Code is amended and reenacted as follows:

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

1. Except as otherwise provided in this section, a party who is indigent and unable to employ legal counsel is entitled to counsel at public expense at proceedings commenced under section 27-20-30.1, and at custodial, post-petition, and informal adjustment stages of proceedings under this chapter. During the informal adjustment stage of a proceeding or in a proceeding commenced under section 27-20-30.1 only the child, if determined to be indigent, is entitled to counsel at public expense. In proceedings regarding allegations of unruliness or delinquency, a child's parent, legal guardian, or custodian, if determined to be indigent, is entitled to counsel at public expense only during the dispositional stage of the proceedings. If a party appears without counsel the court shall ascertain whether the party knows the party may be represented by counsel and that the party is entitled to counsel at public expense if indigent. The court may continue the proceeding to enable a party to obtain counsel and, subject to this section, counsel must be provided for an unrepresented indigent party upon the party's request. Counsel must be provided for a child who is under the age of eighteen years and is not represented by the child's parent, guardian, or custodian at custodial, post-petition, and informal adjustment stages of proceedings under this chapter. If the interests of two or more parties conflict, separate counsel must be provided for each of them.
2. An indigent party is one who at the time of requesting counsel is unable, without undue financial hardship, to provide for full payment of legal counsel and all other necessary expenses for representation. A child who, at the time of the proceeding, is under the age of eighteen years is not to be considered indigent under this section if the child's parent can, without undue financial hardship, provide full payment for legal counsel and other expenses of representation. Any parent of a child who is under the age of eighteen and is involved in a proceeding under this chapter is, unless undue financial hardship would ensue, responsible for providing legal counsel and for paying other necessary expenses of representation for the parent's child. The court may enforce performance of this duty by appropriate order.
3. For purposes of this section and section 27-20-49, "party" means the child and the child's parent, legal guardian, or custodian, and includes "child" as defined in subsection 1 of section 27-20-30.1.

SECTION 6. Section 27-20-30.1 of the North Dakota Century Code is created and enacted as follows:

27-20-30.1. Disposition of child needing continued foster care services.

1. For purposes of this section, "child" means an individual between the ages of eighteen and twenty-one years who is in the need of continued foster care services.
2. A petition to commence an action under this section must contain information required under section 27-20-21 along with an affidavit prepared by the administrative county, as determined by the department of human services.
3. The court shall issue a summons in accordance with section 27-20-22 upon the filing of a petition and affidavit.

4. If a child is in need of continued foster care services as determined by the department of human services and as set forth in a continued foster care agreement, the court shall make the following judicial determination:
 - a. That the child is not deprived, delinquent, or unruly but is in need of continued foster care services;
 - b. That the child will remain in or will return to foster care pursuant to the child's continued foster care agreement;
 - c. That the child's continued foster care agreement has been willfully entered between the department of human services or its agent, the child, and the foster parent;
 - d. That it is in the best interest of the child to remain in or return to foster care;
 - e. That reasonable efforts were made in accordance with subsection 7 of section 27-20-32.2;
 - f. That the child has attained the age of eighteen or older but does not exceed the age of twenty-one years;
 - g. That the child has satisfied the education, employment, or disability requirements under the Fostering Connections to Success and Increasing Adoptions Act of 2008 [Pub. L. 110-351] and as set forth by the department of human services;
 - h. That the administrative county, as determined by the department, shall continue foster care case management, unless otherwise agreed to or required by the department;
 - i. That the administrative county or division of juvenile services must have care and placement responsibility of the child;
 - j. That permanency hearing must be as set forth in section 27-20-36; and
 - k. That there are no grounds to file a petition to terminate parental rights under chapter 27-20.
5. Pursuant to section 27-20-37, a court may modify or vacate the judicial determination made under subsection 4.

SECTION 7. AMENDMENT. Section 27-20-32.2 of the North Dakota Century Code is amended and reenacted as follows:

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

1. As used in this section, "reasonable efforts" means the exercise of due diligence, by the agency granted authority over the child under this chapter, to use appropriate and available services to meet the needs of the child and the child's family in order to prevent removal of the child from the child's family or, after removal, to use appropriate and available services to eliminate the need for removal, to reunite the child and the child's family, and to maintain family connections. In determining reasonable efforts to be made with respect to a

- child under this section, and in making reasonable efforts, the child's health and safety must be the paramount concern.
2. Except as provided in subsection 4, reasonable efforts must be made to preserve families, reunify families, and maintain family connections:
 - a. Prior to the placement of a child in foster care, to prevent or eliminate the need for removing the child from the child's home;
 - b. To make it possible for a child to return safely to the child's home;
 - c. To place siblings in the same foster care, relative, guardianship, or adoptive placement, unless it is determined that such a joint placement would be contrary to the safety or well-being of any of the siblings; and
 - d. In the case of siblings removed from their home who are not jointly placed, to provide for frequent visitation or other ongoing interaction between the siblings, unless it is contrary to the safety or well-being of any of the siblings.
 3. If the court or the child's custodian determined that continuation of reasonable efforts, as described in subsection 2, is inconsistent with the permanency plan for the child, reasonable efforts must be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child.
 4. Reasonable efforts of the type described in subsection 2 are not required if:
 - a. A court of competent jurisdiction has determined that a parent has subjected a child to aggravated circumstances; or
 - b. The parental rights of the parent, with respect to another child of the parent, have been involuntarily terminated.
 5. Efforts to place a child for adoption, with a fit and willing relative or other appropriate individual as a legal guardian, or in another planned permanent living arrangement, may be made concurrently with reasonable efforts of the type described in subsection 2.
 6. Removal of a child from the child's home for placement in foster care must be based on judicial findings stated in the court's order, and determined on a case-by-case basis in a manner that complies with the requirements of titles IV-B and IV-E of the Social Security Act [42 U.S.C. 620 et seq. and 42 U.S.C. 6701 et seq.], as amended, and federal regulations adopted thereunder, provided that this subsection may not provide a basis for overturning an otherwise valid court order.
 7. For the purpose of section 27-20-30.1, reasonable efforts were made under this section to meet the child's needs before a foster care placement for a child remaining in care for continued foster care purposes.

SECTION 8. AMENDMENT. Section 27-20-36 of the North Dakota Century Code is amended and reenacted as follows:

27-20-36. Limitations of time on orders of disposition.

1. An order terminating parental rights or establishing a legal guardianship is without limit as to duration.
2. An order of disposition committing a delinquent or unruly child to the division of juvenile services continues in force for not more than twelve months, excluding any period of time the child is on parole from an institution, or until the child is sooner discharged by an institution.
 - a. The court which made the order may extend its duration for additional twelve-month periods subject to like discharge, if:
 - (1) A hearing is held upon motion of the division, or on the court's own motion, prior to the expiration of the order;
 - (2) Reasonable notice of the hearing and an opportunity to be heard are given to the child and the parent, guardian, or other custodian; and
 - (3) The court finds that the extension is necessary for the treatment or rehabilitation of the child.
 - b. A permanency hearing must be conducted within thirty days after a court determines that aggravated circumstances of the type described in subdivisions a, c, d, or e of subsection 3 of section 27-20-02 exist, or within twelve months after a child, subject to an order of disposition under this subsection, is considered to have entered foster care, or is continued in foster care following a previous permanency hearing, including a hearing conducted on a petition filed under section 27-20-30.1. The permanency hearing may be conducted:
 - (1) By the division of juvenile services as a placement hearing under chapter 27-21; or
 - (2) By the court, if the court requires, or if it appears that an appropriate permanency plan could not be carried out without exceeding the authority of the division of juvenile services.
3. Except as provided in subsection 2, an order of disposition pursuant to which a child is placed in foster care may not continue in force for more than twelve months after the child is considered to have entered foster care. Before the extension of any court order limited under this subsection, a permanency hearing must be conducted. Any other order of disposition may not continue in force for more than twelve months.
4. Except as provided in subsection 1, the court may terminate an order of disposition before the expiration of the order or extend its duration for further periods. An order of extension may be made if:
 - a. A hearing is held before the expiration of the order upon motion of a party or on the court's own motion;
 - b. Reasonable notice of the hearing and opportunity to be heard are given to the parties affected;

- c. The court finds the extension is necessary to accomplish the purposes of the order extended; and
 - d. The extension does not exceed twelve months from the expiration of an order limited by subsection 3 or two years from the expiration of any other limited order.
5. Except as provided in subsection 2, the court may terminate an order of disposition or extension prior to its expiration, on or without an application of a party, if it appears to the court that the purposes of the order have been accomplished. If a party may be adversely affected by the order of termination, the order may be made only after reasonable notice and opportunity to be heard have been given to the party.
 6. Except as provided in subsection 1, when the child attains the age of twenty years, all orders affecting the child then in force terminate and the child is discharged from further obligation or control.
 7. If an order of disposition is made with respect to a child under the age of ten years pursuant to which the child is placed in foster care without terminating parental rights and the parent and child relationship, the court, before extending the duration of the order, shall determine upon the extension hearing whether the child is adoptable and whether termination of those rights and that relationship is warranted under section 27-20-44 and is in the best interest of the child. In that case the notice of the extension hearing must also inform the parties affected that the court will determine whether the child is adoptable and whether termination of their parental rights and the parent and child relationship is warranted and in the best interest of the child and that a further order of disposition may be made by the court placing the child with a view to adoption. If the court determines that the child is adoptable and that termination of parental rights and the parent and child relationship is warranted and is in the best interest of the child, the court shall make a further order of disposition terminating those rights and that relationship and committing the child under section 27-20-47.

SECTION 9. EFFECTIVE DATE. This Act becomes effective on January 1, 2012.

Approved April 19, 2011
Filed April 19, 2011

CHAPTER 228

SENATE BILL NO. 2087

(Human Services Committee)

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

AN ACT to amend and reenact section 27-20-38 of the North Dakota Century Code, relating to the rights and duties of a legal custodian.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 27-20-38 of the North Dakota Century Code is amended and reenacted as follows:

27-20-38. Rights and duties of legal custodian.

A custodian to whom legal custody has been given by the court under this chapter has:

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

Approved April 25, 2011
Filed April 25, 2011

CHAPTER 229

HOUSE BILL NO. 1078

(Representatives S. Meyer, Weisz, Delmore)
(Senators J. Lee, Mathern)

AN ACT to amend and reenact section 27-20-48 of the North Dakota Century Code, relating to the immunity of a guardian ad litem.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 27-20-48 of the North Dakota Century Code is amended and reenacted as follows:

27-20-48. Guardian ad litem - Immunity.

The court at any stage of a proceeding under this chapter, on application of a party or on its own motion, shall appoint a lay guardian ad litem for a child who is a party to the proceeding if the child has no parent, guardian, or custodian appearing on the child's behalf or their interests conflict with the child's or in any other case in which the interests of the child require a guardian. A party to the proceeding or that party's employee or representative may not be appointed. A guardian ad litem appointed under this section is immune from civil liability for damages for any act or omission arising out of that individual's duties and responsibilities as a guardian ad litem, unless the act or omission constitutes gross or willful negligence or gross or willful misconduct.

Approved March 28, 2011

Filed March 28, 2011

CHAPTER 230

HOUSE BILL NO. 1155

(Representatives Klemin, DeKrey, Kingsbury)
(Senators Lyson, Nething, Olafson)

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

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

Approved April 26, 2011
Filed April 26, 2011