

Sixty-seventh  
Legislative Assembly  
of North Dakota

## ENGROSSED HOUSE BILL NO. 1035

Introduced by

Legislative Management

(Judiciary Committee)

1 A BILL for an Act to create and enact chapters 27-20.2, 27-20.3, and 27-20.4 of the North  
2 Dakota Century Code, relating to the Juvenile Court Act; to amend and reenact subsection 16 of  
3 section 11-16-01, section 12.1-32-15, subsections 1 and 3 of section 12.1-41-12, subsection 2  
4 of section 14-02.1-03.1, subsection 2 of section 14-02.1-08, subdivision c of subsection 2 of  
5 section 14-07.1-18, section 14-15-11, subsections 1 and 2 of section 15.1-09-33.4, sections  
6 15.1-19-15, 20.1-13.1-01, 20.1-15-01, 26.1-36-20, and 26.1-40-11.1, subsection 2 of section  
7 27-05-30, section 27-20.1-01, paragraph 4 of subdivision n of subsection 2 of section  
8 27-20.1-06, subsection 1 of section 27-20.1-10, subdivision d of subsection 1 of section  
9 27-20.1-11, subsection 3 of section 27-20.1-11, subsection 2 of section 27-20.1-17, section  
10 27-20.1-22, section 27-20.3-05 as created by section 23 of this Act, section 27-20.4-06 as  
11 created by section 25 of this Act, subsections 2 and 3 of section 27-21-02, subsection 3 of  
12 section 27-21-02.1, section 27-21-09, subsections 2 and 5 of section 27-21-12, section  
13 30.1-27-02, subsection 3 of section 30.1-27-06, section 39-06-32.1, subsection 2 of section  
14 39-20-01, section 39-24.1-01, subsection 5 of section 50-06-05.1, subdivision a of subsection 4  
15 of section 50-06-43.2, subsection 1 of section 50-11.3-01, sections 50-25.1-02 and 50-25.1-06,  
16 subsection 4 of section 50-25.1-15, subsection 2 of section 54-12-34, and sections 54-23.4-17  
17 and 62.1-02-01 of the North Dakota Century Code, relating to juvenile justice; to repeal chapter  
18 27-20 and section 27-21-03 of the North Dakota Century Code, relating to the Uniform Juvenile  
19 Court Act; to provide a penalty; to provide an appropriation; to provide a legislative management  
20 report; and to provide an effective date.

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

22 **SECTION 1. AMENDMENT.** Subsection 16 of section 11-16-01 of the North Dakota Century  
23 Code is amended and reenacted as follows:

- 1       16.    Institute and defend proceedings under sections 14-09-12 and 14-09-19 and chapters  
2           14-15, ~~27-2027-20.2, 27-20.3, 27-20.4~~, and 50-01 upon consultation with the human  
3           service zone director or the executive director of the department of human services.

4       **SECTION 2. AMENDMENT.** Section 12.1-32-15 of the North Dakota Century Code is  
5 amended and reenacted as follows:

6       **12.1-32-15. Offenders against children and sexual offenders - Sexually violent**  
7 **predators - Registration requirement - Penalty.** ~~(Contingent effective date -~~ [See note](#))

8       1.    As used in this section:

- 9       a.    ~~"A crime against a child" means a violation of chapter 12.1-16, section-~~  
10           ~~12.1-17-01.1 if the victim is under the age of twelve, 12.1-17-02, 12.1-17-04,-~~  
11           ~~subdivision a of subsection 6 of section 12.1-17-07.1, section 12.1-18-01,-~~  
12           ~~12.1-18-02, 12.1-18-05, chapter 12.1-29, or section 14-09-22, subsection 3 of~~  
13           ~~section 12.1-41-02, subsection 3 of section 12.1-41-03, or an equivalent offense-~~  
14           ~~from another court in the United States, a tribal court, or court of another country,~~  
15           ~~in which the victim is a minor or is otherwise of the age required for the act to be~~  
16           ~~a crime or an attempt or conspiracy to commit these offenses.~~
- 17       b.    ~~"Department" means the department of corrections and rehabilitation.~~
- 18       c.    ~~"Homeless" means an individual who is physically present in this state, but is~~  
19           ~~living in a park, under a bridge, on the streets, in a vehicle or camper, or is~~  
20           ~~otherwise without a traditional dwelling, and also one who resides in this state but~~  
21           ~~does not maintain a permanent address. The term does not include individuals~~  
22           ~~who are temporarily domiciled or individuals residing in public or private shelters~~  
23           ~~that provide temporary living accommodations.~~
- 24       d.    ~~"Mental abnormality" means a congenital or acquired condition of an individual~~  
25           ~~that affects the emotional or volitional capacity of the individual in a manner that~~  
26           ~~predisposes that individual to the commission of criminal sexual acts to a degree~~  
27           ~~that makes the individual a menace to the health and safety of other individuals.~~
- 28       e.    ~~"Predatory" means an act directed at a stranger or at an individual with whom a~~  
29           ~~relationship has been established or promoted for the primary purpose of~~  
30           ~~victimization.~~

- 1           f. ~~"Sexual offender" means a person who has pled guilty to or been found guilty,~~  
2           ~~including juvenile delinquent adjudications, of a violation of section 12.1-20-03,~~  
3           ~~12.1-20-03.1, 12.1-20-04, 12.1-20-05, 12.1-20-05.1, 12.1-20-06, 12.1-20-06.1,~~  
4           ~~12.1-20-07 except for subdivision a of subsection 1, 12.1-20-11, 12.1-20-12.1,~~  
5           ~~12.1-20-12.2, 12.1-20-12.3 except for subdivision a of subsection 1 and~~  
6           ~~subdivision b of subsection 1 if the offense involves only a demand for money,~~  
7           ~~chapter 12.1-27.2, subsection 2 of section 12.1-22-03.1, subdivision b of~~  
8           ~~subsection 1 of section 12.1-41-02, section 12.1-41-04, 12.1-41-05, or~~  
9           ~~12.1-41-06, or an equivalent offense from another court in the United States, a~~  
10          ~~tribal court, or court of another country, or an attempt or conspiracy to commit~~  
11          ~~these offenses.~~
- 12          g. ~~"Sexually dangerous individual" means an individual who meets the definition-~~  
13          ~~specified in section 25-03.3-01.~~
- 14          h. ~~"Temporarily domiciled" means staying or being physically present in this state for~~  
15          ~~more than thirty days in a calendar year or at a location for longer than ten~~  
16          ~~consecutive days, attending school for longer than ten days, or maintaining~~  
17          ~~employment in the jurisdiction for longer than ten days, regardless of the state of~~  
18          ~~the residence.~~
- 19          2. ~~The court shall impose, in addition to any penalty provided by law, a requirement that~~  
20          ~~the individual register, within three days of coming into a county in which the individual~~  
21          ~~resides, is homeless, or within the period identified in this section that the individual~~  
22          ~~becomes temporarily domiciled. The individual must register with the chief of police of~~  
23          ~~the city or the sheriff of the county if the individual resides, attends school, or is~~  
24          ~~employed in an area other than a city. A homeless individual shall register every three~~  
25          ~~days with the sheriff or chief of police of the jurisdiction in which the individual is~~  
26          ~~physically present. The court shall require an individual to register by stating this~~  
27          ~~requirement on the court records, if that individual:~~
- 28               a. ~~Has pled guilty or nolo contendere to, or been found guilty as a felonious sexual~~  
29               ~~offender or an attempted felonious sexual offender, including juvenile delinquent~~  
30               ~~adjudications of equivalent offenses unless the offense is listed in subdivision c.~~

- 1           b. ~~Has pled guilty or nolo contendere to, or been found guilty as a sexual offender~~  
2           ~~for, a misdemeanor or attempted misdemeanor. The court may deviate from~~  
3           ~~requiring an individual to register if the court first finds the individual is no more~~  
4           ~~than three years older than the victim if the victim is a minor, the individual has~~  
5           ~~not previously been convicted as a sexual offender or of a crime against a child,~~  
6           ~~and the individual did not exhibit mental abnormality or predatory conduct in the~~  
7           ~~commission of the offense.~~
- 8           e. ~~Is a juvenile found delinquent under subdivision d of subsection 1 of section~~  
9           ~~12.1-20-03, subdivision a of subsection 2 of section 12.1-20-03, or as a sexual~~  
10           ~~offender for a misdemeanor. The court may deviate from requiring the juvenile to~~  
11           ~~register if the court first finds the juvenile has not previously been convicted as a~~  
12           ~~sexual offender or for a crime against a child, and the juvenile did not exhibit~~  
13           ~~mental abnormality or predatory conduct in the commission of the offense.~~
- 14           d. ~~Has pled guilty or nolo contendere to, or been found guilty of, a crime against a~~  
15           ~~child or an attempted crime against a child, including juvenile delinquent~~  
16           ~~adjudications of equivalent offenses. Except if the offense is described in section~~  
17           ~~12.1-29-02, or section 12.1-18-01 or 12.1-18-02 and the person is not the parent~~  
18           ~~of the victim, the court may deviate from requiring an individual to register if the~~  
19           ~~court first finds the individual has not previously been convicted as a sexual~~  
20           ~~offender or for a crime against a child, and the individual did not exhibit mental~~  
21           ~~abnormality or predatory conduct in the commission of the offense.~~
- 22           e. ~~Has pled guilty or nolo contendere, been found guilty, or been adjudicated~~  
23           ~~delinquent of any crime against another individual which is not otherwise~~  
24           ~~specified in this section if the court determines that registration is warranted by~~  
25           ~~the nature of the crime and therefore orders registration for the individual. If the~~  
26           ~~court orders an individual to register as an offender under this section, the~~  
27           ~~individual shall comply with all of the registration requirements in this chapter.~~
- 28           3. ~~If a court has not ordered an individual to register in this state, an individual who~~  
29           ~~resides, is homeless, or is temporarily domiciled in this state shall register if the~~  
30           ~~individual:~~

- 1           a. ~~Is incarcerated or is on probation or parole after July 31, 1995, for a crime~~  
2           ~~against a child described in section 12.1-29-02, or section 12.1-18-01 or~~  
3           ~~12.1-18-02 if the individual was not the parent of the victim, or as a sexual~~  
4           ~~offender;~~
- 5           b. ~~Has pled guilty or nolo contendere to, or been adjudicated for or found guilty of,~~  
6           ~~an offense in a court of this state for which registration is mandatory under this~~  
7           ~~section or an offense from another court in the United States, a tribal court, or~~  
8           ~~court of another country equivalent to those offenses set forth in this section; or~~
- 9           c. ~~Has pled guilty or nolo contendere to, or has been found guilty of, a crime against~~  
10          ~~a child or as a sexual offender for which registration is mandatory under this~~  
11          ~~section if the conviction occurred after July 31, 1985.~~
- 12          4. ~~In its consideration of mental abnormality or predatory conduct, the court shall~~  
13          ~~consider the age of the offender, the age of the victim, the difference in ages of the~~  
14          ~~victim and offender, the circumstances and motive of the crime, the relationship of the~~  
15          ~~victim and offender, and the mental state of the offender. The court may order an~~  
16          ~~offender to be evaluated by a qualified counselor, psychologist, or physician before~~  
17          ~~sentencing. Except as provided under subdivision e of subsection 2, the court shall~~  
18          ~~state on the record in open court its affirmative finding for not requiring an offender to~~  
19          ~~register.~~
- 20          5. ~~When an individual is required to register under this section, the official in charge of a~~  
21          ~~facility or institution where the individual required to register is confined, or the~~  
22          ~~department, shall, before the discharge, parole, or release of that individual, inform the~~  
23          ~~individual of the duty to register pursuant to this section. The official or the department~~  
24          ~~shall require the individual to read and sign a form as required by the attorney general,~~  
25          ~~stating that the duty of the individual to register has been explained to that individual.~~  
26          ~~The official in charge of the place of confinement, or the department, shall obtain the~~  
27          ~~address where the individual expects to reside, attend school, or work upon discharge,~~  
28          ~~parole, or release and shall report the address to the attorney general. The official in~~  
29          ~~charge of the place of confinement, or the department, shall give three copies of the~~  
30          ~~form to the individual and shall send three copies to the attorney general no later than~~  
31          ~~forty-five days before the scheduled release of that individual. The attorney general~~

1 shall forward one copy to the law enforcement agency having jurisdiction where the  
2 individual expects to reside, attend school, or work upon discharge, parole, or release,  
3 one copy to the prosecutor who prosecuted the individual, and one copy to the court in  
4 which the individual was prosecuted. All forms must be transmitted and received by  
5 the law enforcement agency, prosecutor, and court thirty days before the discharge,  
6 parole, or release of the individual.

7 6. An individual who is required to register pursuant to this section who is released on  
8 probation or discharged upon payment of a fine must, before the release or discharge,  
9 be informed of the duty to register under this section by the court in which that  
10 individual is convicted. The court shall require the individual to read and sign a form as  
11 required by the attorney general, stating that the duty of the individual to register under  
12 this section has been explained to that individual. The court shall obtain the address  
13 where the individual expects to reside, attend school, or work upon release or  
14 discharge and shall report the address to the attorney general within three days. The  
15 court shall give one copy of the form to the individual and shall send two copies to the  
16 attorney general. The attorney general shall forward one copy to the appropriate law  
17 enforcement agency having jurisdiction where the individual expects to reside, attend  
18 school, or work upon discharge, parole, or release.

19 7. Registration consists of a written statement signed by the individual, giving the  
20 information required by the attorney general, and the biometric data and photograph of  
21 the individual. An individual who is not required to provide a sample of blood and other  
22 body fluids under section 31-13-03 or by the individual's state or court of conviction or  
23 adjudication shall submit a sample of blood and other body fluids for inclusion in a  
24 centralized database of DNA identification records under section 31-13-05. The  
25 collection, submission, testing and analysis of, and records produced from, samples of  
26 blood and other body fluids, are subject to chapter 31-13. Evidence of the DNA profile  
27 comparison is admissible in accordance with section 31-13-02. A report of the DNA  
28 analysis certified by the state crime laboratory is admissible in accordance with section  
29 31-13-05. A district court shall order an individual who refuses to submit a sample of  
30 blood or other body fluids for registration purposes to show cause at a specified time  
31 and place why the individual should not be required to submit the sample required

1 under this subsection. Within three days after registration, the registering law  
2 enforcement agency shall forward the statement, biometric data, and photograph to  
3 the attorney general and shall submit the sample of the individual's blood and body  
4 fluids to the state crime laboratory. If an individual required to register under this  
5 section has a change in vehicle or computer online identity, the individual shall  
6 register, within three days after the change, with the law enforcement agency with  
7 which that individual last registered of the individual's new vehicle or computer online  
8 identity. If an individual required to register pursuant to this section has a change in  
9 name, school, or residence or employment address, that individual shall register, at  
10 least ten days before the change, with the law enforcement agency with which that  
11 individual last registered of the individual's new name, school, residence address, or  
12 employment address. A change in school or employment address includes the  
13 termination of school or employment for which an individual required to register under  
14 this section, the individual shall register within three days of the termination with the  
15 law enforcement agency with which the individual last registered. The law enforcement  
16 agency, within three days after receipt of the information, shall forward it to the  
17 attorney general. The attorney general shall forward the appropriate registration data  
18 to the law enforcement agency having local jurisdiction of the new place of residence,  
19 school, or employment. Upon a change of address, the individual required to register  
20 shall also register within three days at the law enforcement agency having local  
21 jurisdiction of the new place of residence, school, or employment. The individual  
22 registering under this section shall periodically confirm the information required under  
23 this subsection in a manner and at an interval determined by the attorney general. A  
24 law enforcement agency that has previously registered an offender may omit the  
25 biometric data portion of the registration if that agency has a set of biometric data on  
26 file for that individual and is personally familiar with and can visually identify the  
27 offender. These provisions also apply in any other state that requires registration.  
28 8. An individual required to register under this section shall comply with the registration  
29 requirement for the longer of the following periods:

- 1           a. ~~A period of fifteen years after the date of sentence or order deferring or~~  
2           ~~suspending sentence upon a plea or finding of guilt or after release from~~  
3           ~~incarceration, whichever is later;~~
- 4           b. ~~A period of twenty five years after the date of sentence or order deferring or~~  
5           ~~suspending sentence upon a plea or finding of guilt or after release from~~  
6           ~~incarceration, whichever is later, if the offender is assigned a moderate risk by the~~  
7           ~~attorney general as provided in subsection 12; or~~
- 8           e. For the life of the individual, if that individual:
- 9           (1) ~~On two or more occasions has pled guilty or nolo contendere to, or been~~  
10           ~~found guilty of a crime against a child or as a sexual offender. If all qualifying~~  
11           ~~offenses are misdemeanors, this lifetime provision does not apply unless a~~  
12           ~~qualifying offense was committed after August 1, 1999;~~
- 13           (2) ~~Pleads guilty or nolo contendere to, or is found guilty of, an offense~~  
14           ~~committed after August 1, 1999, which is described in subdivision a of~~  
15           ~~subsection 1 of section 12.1-20-03, section 12.1-20-03.1, or subdivision d of~~  
16           ~~subsection 1 of section 12.1-20-03 if the person is an adult and the victim is~~  
17           ~~under age twelve, or section 12.1-18-01 if that individual is an adult other~~  
18           ~~than a parent of the victim, or an equivalent offense from another court in~~  
19           ~~the United States, a tribal court, or court of another country; or~~
- 20           (3) ~~Is assigned a high risk by the attorney general as provided in subsection 12.~~
- 21       9. ~~An individual required to register under this section who violates this section is guilty of~~  
22       ~~a class C felony. The failure of a homeless individual to register as required in~~  
23       ~~subsections 2 and 3 is prima facie evidence of a violation of this section. The clerk of~~  
24       ~~court shall forward all warrants issued for a violation of this section to the county~~  
25       ~~sheriff, who shall enter all such warrants into the national crime information center~~  
26       ~~wanted person file. A court may not relieve an individual, other than a juvenile, who~~  
27       ~~violates this section from serving a term of at least ninety days in jail and completing~~  
28       ~~probation of one year.~~
- 29       10. ~~When an individual is released on parole or probation and is required to register~~  
30       ~~pursuant to this section, but fails to do so within the time prescribed, the court shall~~



1           ~~order the probation, or the parole board shall order the parole, of the individual~~  
2           ~~revoked.~~

3       41. ~~If an individual required to register pursuant to this section is temporarily sent outside~~  
4       ~~the facility or institution where that individual is confined under conviction or sentence,~~  
5       ~~the local law enforcement agency having jurisdiction over the place where that~~  
6       ~~individual is being sent must be notified within a reasonable time period before that~~  
7       ~~individual is released from the facility or institution. This subsection does not apply to~~  
8       ~~any individual temporarily released under guard from the facility or institution in which~~  
9       ~~that individual is confined.~~

10      42. ~~The attorney general, with the assistance of the department and the juvenile courts,~~  
11      ~~shall develop guidelines for the risk assessment of sexual offenders who are required~~  
12      ~~to register, with a low-risk, moderate-risk, or high-risk level being assigned to each~~  
13      ~~offender as follows:~~

14           a. ~~The department shall conduct a risk assessment of sexual offenders who are~~  
15           ~~incarcerated in institutions under the control of the department and sexual~~  
16           ~~offenders who are on supervised probation. The department, in a timely manner,~~  
17           ~~shall provide the attorney general any information, including the offender's level~~  
18           ~~of risk and supporting documentation, concerning individuals required to be~~  
19           ~~registered under this section who are about to be released or placed into the~~  
20           ~~community.~~

21           b. ~~The attorney general shall conduct a risk assessment of sexual offenders who~~  
22           ~~are not under the custody or supervision of the department. The attorney general~~  
23           ~~may adopt a law enforcement agency's previous assignment of risk level for an~~  
24           ~~individual if the assessment was conducted in a manner substantially similar to~~  
25           ~~the guidelines developed under this subsection.~~

26           c. ~~The juvenile courts or the agency having legal custody of a juvenile shall conduct~~  
27           ~~a risk assessment of juvenile sexual offenders who are required to register under~~  
28           ~~this section. The juvenile courts or the agency having legal custody of a juvenile~~  
29           ~~shall provide the attorney general any information, including the offender's level~~  
30           ~~of risk and supporting documentation, concerning juveniles required to register~~  
31           ~~and who are about to be released or placed into the community.~~

1           d.    The attorney general shall notify the offender of the risk level assigned to that  
2           offender. An offender may request a review of that determination with the attorney  
3           general's sexual offender risk assessment committee and may present any  
4           information that the offender believes may lower the assigned risk level.

5       13.    Relevant and necessary conviction and registration information must be disclosed to  
6       the public by a law enforcement agency if the individual is a moderate or high risk and  
7       the agency determines that disclosure of the conviction and registration information is  
8       necessary for public protection. The attorney general shall develop guidelines for  
9       public disclosure of offender registration information. Public disclosure may include  
10       internet access if the offender:

- 11           a.    Is required to register for a lifetime under subsection 8;  
12           b.    Has been determined to be a high risk to the public by the department, the  
13           attorney general, or the courts, according to guidelines developed by those  
14           agencies; or  
15           c.    Has been determined to be a high risk to the public by an agency of another state  
16           or the federal government.

17       If the offender has been determined to be a moderate risk, public disclosure must  
18       include, at a minimum, notification of the offense to the victim registered under chapter  
19       12.1-34 and to any agency, civic organization, or group of persons who have  
20       characteristics similar to those of a victim of the offender. Upon request, law  
21       enforcement agencies may release conviction and registration information regarding  
22       low-risk, moderate-risk, or high-risk offenders.

23       14.    A state officer, law enforcement agency, or public school district or governing body of a  
24       nonpublic school or any appointee, officer, or employee of those entities is not subject  
25       to civil or criminal liability for making risk determinations, allowing a sexual offender to  
26       attend a school function under section 12.1-20-25, or for disclosing or for failing to  
27       disclose information as permitted by this section.

28       15.    If a juvenile is adjudicated delinquent and required or ordered to register as a sexual  
29       offender or as an offender against a child under this section, the juvenile shall comply  
30       with the registration requirements in this section. Notwithstanding any other provision  
31       of law, a law enforcement agency shall register a juvenile offender in the same manner

1           ~~as adult offenders and may release any relevant and necessary information on file to~~  
2           ~~other law enforcement agencies, the department of human services, or the public if~~  
3           ~~disclosure is necessary to protect public health or safety. The law enforcement agency~~  
4           ~~shall release any relevant and necessary information on file to the superintendent or~~  
5           ~~principal of the school the juvenile attends. The school administration shall notify~~  
6           ~~others in similar positions if the juvenile transfers to another learning institution in or~~  
7           ~~outside the state.~~

8       16. ~~If an individual has been required to register as a sexual offender or an offender~~  
9       ~~against a child under section 12.1-32-15 or 27-20-52.1 before August 1, 1999, the~~  
10       ~~individual may petition the court to be removed from the offender list if registration is~~  
11       ~~no longer mandatory for that individual. In considering the petition, the court shall~~  
12       ~~comply with the requirements of this section.~~

13       17. ~~A sexual offender who is currently assigned a moderate or high-risk level by the~~  
14       ~~attorney general may not use a state park of this state as a residence or residential~~  
15       ~~address to comply with the registration requirements of this section. Before arriving at~~  
16       ~~a state park for overnight lodging or camping, a sexual offender who is assigned a~~  
17       ~~moderate or high-risk level by the attorney general shall notify a parks and recreation~~  
18       ~~department law enforcement officer at the state park where the sexual offender will be~~  
19       ~~staying.~~

20       18. ~~When an individual who is required to register pursuant to this section plans to travel~~  
21       ~~outside of the United States, at least twenty one days before the intended travel, the~~  
22       ~~individual shall inform the agency with which the individual last registered the~~  
23       ~~individual's residence address the details of the intended travel. Upon receipt of the~~  
24       ~~information from the registering law enforcement agency, the attorney general shall~~  
25       ~~report the travel to the United States marshal service.~~

26           ~~**Offenders against children and sexual offenders – Sexually violent predators –**~~  
27       ~~**Registration requirement – Penalty. (Contingent effective date – [See note](#))**~~

- 28           1. As used in this section:
- 29           a. "A crime against a child" means a violation of chapter 12.1-16, section
- 30                       12.1-17-01.1 if the victim is under the age of twelve, 12.1-17-02, 12.1-17-04,
- 31                       subdivision a of subsection 6 of section 12.1-17-07.1, section 12.1-18-01,

1 12.1-18-02, 12.1-18-05, chapter 12.1-29, or section 14-09-22, subsection 3 of  
2 section 12.1-41-02, subsection 3 of section 12.1-41-03, or an equivalent offense  
3 from another court in the United States, a tribal court, or court of another country,  
4 in which the victim is a minor or is otherwise of the age required for the act to be  
5 a crime or an attempt or conspiracy to commit these offenses.

- 6 b. "Department" means the department of corrections and rehabilitation.
- 7 c. "Homeless" means an individual who is physically present in this state, but is  
8 living in a park, under a bridge, on the streets, in a vehicle or camper, or is  
9 otherwise without a traditional dwelling, and also one who resides in this state but  
10 does not maintain a permanent address. The term does not include individuals  
11 who are temporarily domiciled or individuals residing in public or private shelters  
12 that provide temporary living accommodations.
- 13 d. "Mental abnormality" means a congenital or acquired condition of an individual  
14 that affects the emotional or volitional capacity of the individual in a manner that  
15 predisposes that individual to the commission of criminal sexual acts to a degree  
16 that makes the individual a menace to the health and safety of other individuals.
- 17 e. "Predatory" means an act directed at a stranger or at an individual with whom a  
18 relationship has been established or promoted for the primary purpose of  
19 victimization.
- 20 f. "Reside" means to live permanently or be situated for a considerable time in a  
21 home or a particular place.
- 22 g. "Sexual offender" means a person who has pled guilty to or been found guilty,  
23 including juvenile delinquent adjudications, of a violation of section 12.1-20-03,  
24 12.1-20-03.1, 12.1-20-04, 12.1-20-05, 12.1-20-05.1, 12.1-20-06, 12.1-20-06.1,  
25 12.1-20-07 except for subdivision a of subsection 1, 12.1-20-11, 12.1-20-12.1,  
26 12.1-20-12.2, 12.1-20-12.3 except for subdivision a of subsection 1 and  
27 subdivision b of subsection 1 if the offense involves only a demand for money,  
28 chapter 12.1-27.2, subsection 2 of section 12.1-22-03.1, subdivision b of  
29 subsection 1 of section 12.1-41-02, section 12.1-41-04, 12.1-41-05, or  
30 12.1-41-06, or an equivalent offense from another court in the United States, a

1                   tribal court, or court of another country, or an attempt or conspiracy to commit  
2                   these offenses.

3           h. "Sexually dangerous individual" means an individual who meets the definition  
4                   specified in section 25-03.3-01.

5           i. "Temporarily domiciled" means staying or being physically present in this state for  
6                   more than thirty days in a calendar year or at a location for longer than ten  
7                   consecutive days, attending school for longer than ten days, or maintaining  
8                   employment in the jurisdiction for longer than ten days, regardless of the state of  
9                   the residence.

10          2. The court shall impose, in addition to any penalty provided by law, a requirement that  
11             the individual register, within three days of coming into a county in which the individual  
12             resides, is homeless, or within the period identified in this section that the individual  
13             becomes temporarily domiciled. The individual must register with the chief of police of  
14             the city of the individual's place of residence, or the sheriff of the county if the  
15             individual resides in an area other than a city. A homeless individual shall register  
16             every three days with the sheriff or chief of police of the jurisdiction in which the  
17             individual is physically present. The court shall require an individual to register by  
18             stating this requirement on the court records, if that individual:

19           a. Has pled guilty or nolo contendere to, or been found guilty as a felonious sexual  
20                   offender or an attempted felonious sexual offender, including juvenile delinquent  
21                   adjudications of equivalent offenses unless the offense is listed in subdivision c.

22           b. Has pled guilty or nolo contendere to, or been found guilty as a sexual offender  
23                   for, a misdemeanor or attempted misdemeanor. The court may deviate from  
24                   requiring an individual to register if the court first finds the individual is no more  
25                   than three years older than the victim if the victim is a minor, the individual has  
26                   not previously been convicted as a sexual offender or of a crime against a child,  
27                   and the individual did not exhibit mental abnormality or predatory conduct in the  
28                   commission of the offense.

29           c. Is a juvenile found delinquent under subdivision d of subsection 1 of section  
30                   12.1-20-03, subdivision a of subsection 2 of section 12.1-20-03, or as a sexual  
31                   offender for a misdemeanor. The court may deviate from requiring the juvenile to

- 1 register if the court first finds the juvenile has not previously been convicted as a  
2 sexual offender or for a crime against a child, and the juvenile did not exhibit  
3 mental abnormality or predatory conduct in the commission of the offense.
- 4 d. Has pled guilty or nolo contendere to, or been found guilty of, a crime against a  
5 child or an attempted crime against a child, including juvenile delinquent  
6 adjudications of equivalent offenses. Except if the offense is described in section  
7 12.1-29-02, or section 12.1-18-01 or 12.1-18-02 and the person is not the parent  
8 of the victim, the court may deviate from requiring an individual to register if the  
9 court first finds the individual has not previously been convicted as a sexual  
10 offender or for a crime against a child, and the individual did not exhibit mental  
11 abnormality or predatory conduct in the commission of the offense.
- 12 e. Has pled guilty or nolo contendere, been found guilty, or been adjudicated  
13 delinquent of any crime against another individual which is not otherwise  
14 specified in this section if the court determines that registration is warranted by  
15 the nature of the crime and therefore orders registration for the individual. If the  
16 court orders an individual to register as an offender under this section, the  
17 individual shall comply with all of the registration requirements in this chapter.
- 18 3. If a court has not ordered an individual to register in this state, an individual who  
19 resides, is homeless, or is temporarily domiciled in this state shall register if the  
20 individual:
- 21 a. Is incarcerated or is on probation or parole after July 31, 1995, for a crime  
22 against a child described in section 12.1-29-02, or section 12.1-18-01 or  
23 12.1-18-02 if the individual was not the parent of the victim, or as a sexual  
24 offender;
- 25 b. Has pled guilty or nolo contendere to, or been adjudicated for or found guilty of,  
26 an offense in a court of this state for which registration is mandatory under this  
27 section or an offense from another court in the United States, a tribal court, or  
28 court of another country equivalent to those offenses set forth in this section; or
- 29 c. Has pled guilty or nolo contendere to, or has been found guilty of, a crime against  
30 a child or as a sexual offender for which registration is mandatory under this  
31 section if the conviction occurred after July 31, 1985.

- 1           4. In its consideration of mental abnormality or predatory conduct, the court shall  
2           consider the age of the offender, the age of the victim, the difference in ages of the  
3           victim and offender, the circumstances and motive of the crime, the relationship of the  
4           victim and offender, and the mental state of the offender. The court may order an  
5           offender to be evaluated by a qualified counselor, psychologist, or physician before  
6           sentencing. Except as provided under subdivision e of subsection 2, the court shall  
7           state on the record in open court its affirmative finding for not requiring an offender to  
8           register.
- 9           5. When an individual is required to register under this section, the official in charge of a  
10          facility or institution where the individual required to register is confined, or the  
11          department, shall, before the discharge, parole, or release of that individual, inform the  
12          individual of the duty to register pursuant to this section. The official or the department  
13          shall require the individual to read and sign a form as required by the attorney general,  
14          stating that the duty of the individual to register has been explained to that individual.  
15          The official in charge of the place of confinement, or the department, shall obtain the  
16          address where the individual expects to reside, attend school, or work upon discharge,  
17          parole, or release and shall report the address to the attorney general. The official in  
18          charge of the place of confinement, or the department, shall give three copies of the  
19          form to the individual and shall send three copies to the attorney general no later than  
20          forty-five days before the scheduled release of that individual. The attorney general  
21          shall forward one copy to the law enforcement agency having jurisdiction where the  
22          individual expects to reside, attend school, or work upon discharge, parole, or release,  
23          one copy to the prosecutor who prosecuted the individual, and one copy to the court in  
24          which the individual was prosecuted. All forms must be transmitted and received by  
25          the law enforcement agency, prosecutor, and court thirty days before the discharge,  
26          parole, or release of the individual.
- 27          6. An individual who is required to register pursuant to this section who is released on  
28          probation or discharged upon payment of a fine must, before the release or discharge,  
29          be informed of the duty to register under this section by the court in which that  
30          individual is convicted. The court shall require the individual to read and sign a form as  
31          required by the attorney general, stating that the duty of the individual to register under

1           this section has been explained to that individual. The court shall obtain the address  
2           where the individual expects to reside, attend school, or work upon release or  
3           discharge and shall report the address to the attorney general within three days. The  
4           court shall give one copy of the form to the individual and shall send two copies to the  
5           attorney general. The attorney general shall forward one copy to the appropriate law  
6           enforcement agency having jurisdiction where the individual expects to reside, attend  
7           school, or work upon discharge, parole, or release.

- 8           7. Registration consists of a written or electronic statement signed by the individual,  
9           giving the information required by the attorney general, and the biometric data and  
10          photograph of the individual. An individual who is not required to provide a sample of  
11          blood and other body fluids under section 31-13-03 or by the individual's state or court  
12          of conviction or adjudication shall submit a sample of blood and other body fluids for  
13          inclusion in a centralized database of DNA identification records under section  
14          31-13-05. The collection, submission, testing and analysis of, and records produced  
15          from, samples of blood and other body fluids, are subject to chapter 31-13. Evidence  
16          of the DNA profile comparison is admissible in accordance with section 31-13-02. A  
17          report of the DNA analysis certified by the state crime laboratory is admissible in  
18          accordance with section 31-13-05. A district court shall order an individual who refuses  
19          to submit a sample of blood or other body fluids for registration purposes to show  
20          cause at a specified time and place why the individual should not be required to  
21          submit the sample required under this subsection. Within three days after registration,  
22          the registering law enforcement agency shall forward the statement, biometric data,  
23          and photograph to the attorney general and shall submit the sample of the individual's  
24          blood and body fluids to the state crime laboratory. If an individual required to register  
25          under this section has a change in vehicle or computer online identity, the individual  
26          shall register, within three days after the change, with the law enforcement agency  
27          having local jurisdiction of the individual's place of residence of the individual's new  
28          vehicle or computer online identity. If an individual required to register pursuant to this  
29          section has a change in name, school, or residence or employment address, that  
30          individual shall register, at least ten days before the change, with the law enforcement  
31          agency having local jurisdiction of the individual's place of residence of the individual's



1 new name, school, residence address, or employment address. A change in school or  
2 employment address includes the termination of school or employment for which an  
3 individual required to register under this section, the individual shall register within  
4 three days of the termination with the law enforcement agency having local jurisdiction  
5 of the individual's place of residence. The law enforcement agency, within three days  
6 after receipt of the information, shall forward it to the attorney general. The attorney  
7 general shall forward the appropriate registration data to the law enforcement agency  
8 having local jurisdiction of the new place of residence, school, or employment. Upon a  
9 change of address, the individual required to register also shall register within three  
10 days at the law enforcement agency having local jurisdiction of the new place of  
11 residence. If an individual required to register in North Dakota, including in a tribal  
12 registry, resides in another state or on tribal lands, that individual shall register  
13 employment and school addresses and any changes in required registration  
14 information with the law enforcement agency having local jurisdiction over the school  
15 or employment address. The individual registering under this section shall periodically  
16 confirm the information required under this subsection in a manner and at an interval  
17 determined by the attorney general. A law enforcement agency that has previously  
18 registered an offender may omit the biometric data portion of the registration if that  
19 agency has a set of biometric data on file for that individual and is personally familiar  
20 with and can visually identify the offender. These provisions also apply in any other  
21 state that requires registration.

- 22 8. An individual required to register under this section shall comply with the registration  
23 requirement for the longer of the following periods:
- 24 a. A period of fifteen years after the date of sentence or order deferring or  
25 suspending sentence upon a plea or finding of guilt or after release from  
26 incarceration, whichever is later;
  - 27 b. A period of twenty-five years after the date of sentence or order deferring or  
28 suspending sentence upon a plea or finding of guilt or after release from  
29 incarceration, whichever is later, if the offender is assigned a moderate risk by the  
30 attorney general as provided in subsection 12; or
  - 31 c. For the life of the individual, if that individual:

- 1           (1) On two or more occasions has pled guilty or nolo contendere to, or been  
2           found guilty of a crime against a child or as a sexual offender. If all qualifying  
3           offenses are misdemeanors, this lifetime provision does not apply unless a  
4           qualifying offense was committed after August 1, 1999;
- 5           (2) Pleads guilty or nolo contendere to, or is found guilty of, an offense  
6           committed after August 1, 1999, which is described in subdivision a of  
7           subsection 1 of section 12.1-20-03, section 12.1-20-03.1, or subdivision d of  
8           subsection 1 of section 12.1-20-03 if the person is an adult and the victim is  
9           under age twelve, or section 12.1-18-01 if that individual is an adult other  
10          than a parent of the victim, or an equivalent offense from another court in  
11          the United States, a tribal court, or court of another country; or
- 12          (3) Is assigned a high risk by the attorney general as provided in subsection 12.
- 13    9. An individual required to register under this section who violates this section is guilty of  
14    a class C felony. The failure of a homeless individual to register as required in  
15    subsections 2 and 3 is prima facie evidence of a violation of this section. The clerk of  
16    court shall forward all warrants issued for a violation of this section to the county  
17    sheriff, who shall enter all such warrants into the national crime information center  
18    wanted person file. A court may not relieve an individual, other than a juvenile, who  
19    violates this section from serving a term of at least ninety days in jail and completing  
20    probation of one year.
- 21    10. When an individual is released on parole or probation and is required to register  
22    pursuant to this section, but fails to do so within the time prescribed, the court shall  
23    order the probation, or the parole board shall order the parole, of the individual  
24    revoked.
- 25    11. If an individual required to register pursuant to this section is temporarily sent outside  
26    the facility or institution where that individual is confined under conviction or sentence,  
27    the local law enforcement agency having jurisdiction over the place where that  
28    individual is being sent must be notified within a reasonable time period before that  
29    individual is released from the facility or institution. This subsection does not apply to  
30    any individual temporarily released under guard from the facility or institution in which  
31    that individual is confined.

- 1       12. The attorney general, with the assistance of the department and the juvenile courts,  
2       shall develop guidelines for the risk assessment of sexual offenders who are required  
3       to register, with a low-risk, moderate-risk, or high-risk level being assigned to each  
4       offender as follows:
- 5       a. The department shall conduct a risk assessment of sexual offenders who are  
6       incarcerated in institutions under the control of the department and sexual  
7       offenders who are on supervised probation. The department, in a timely manner,  
8       shall provide the attorney general any information, including the offender's level  
9       of risk and supporting documentation, concerning individuals required to be  
10      registered under this section who are about to be released or placed into the  
11      community.
- 12      b. The attorney general shall conduct a risk assessment of sexual offenders who  
13      are not under the custody or supervision of the department. The attorney general  
14      may adopt a law enforcement agency's previous assignment of risk level for an  
15      individual if the assessment was conducted in a manner substantially similar to  
16      the guidelines developed under this subsection.
- 17      c. The juvenile courts or the agency having legal custody of a juvenile shall conduct  
18      a risk assessment of juvenile sexual offenders who are required to register under  
19      this section. The juvenile courts or the agency having legal custody of a juvenile  
20      shall provide the attorney general any information, including the offender's level  
21      of risk and supporting documentation, concerning juveniles required to register  
22      and who are about to be released or placed into the community.
- 23      d. The attorney general shall notify the offender of the risk level assigned to that  
24      offender. An offender may request a review of that determination with the attorney  
25      general's sexual offender risk assessment committee and may present any  
26      information that the offender believes may lower the assigned risk level.
- 27      13. An individual assessed as a high-risk sexual offender in accordance with  
28      subsection 12, may not reside within five hundred feet [152.4 meters] of a public or  
29      nonpublic preschool or elementary, middle, or high school.
- 30      14. Relevant and necessary conviction and registration information must be disclosed to  
31      the public by a law enforcement agency if the individual is a moderate or high risk and

1 the agency determines that disclosure of the conviction and registration information is  
2 necessary for public protection. The attorney general shall develop guidelines for  
3 public disclosure of offender registration information. Public disclosure may include  
4 internet access if the offender:

- 5 a. Is required to register for a lifetime under subsection 8;
- 6 b. Has been determined to be a high risk to the public by the department, the  
7 attorney general, or the courts, according to guidelines developed by those  
8 agencies; or
- 9 c. Has been determined to be a high risk to the public by an agency of another state  
10 or the federal government.

11 If the offender has been determined to be a moderate risk, public disclosure must  
12 include, at a minimum, notification of the offense to the victim registered under chapter  
13 12.1-34 and to any agency, civic organization, or group of persons who have  
14 characteristics similar to those of a victim of the offender. Upon request, law  
15 enforcement agencies may release conviction and registration information regarding  
16 low-risk, moderate-risk, or high-risk offenders.

17 15. A state officer, law enforcement agency, or public school district or governing body of a  
18 nonpublic school or any appointee, officer, or employee of those entities is not subject  
19 to civil or criminal liability for making risk determinations, allowing a sexual offender to  
20 attend a school function under section 12.1-20-25, or for disclosing or for failing to  
21 disclose information as permitted by this section.

22 16. If a juvenile is adjudicated delinquent and required or ordered to register as a sexual  
23 offender or as an offender against a child under this section, the juvenile shall comply  
24 with the registration requirements in this section. Notwithstanding any other provision  
25 of law, a law enforcement agency shall register a juvenile offender in the same manner  
26 as adult offenders and may release any relevant and necessary information on file to  
27 other law enforcement agencies, the department of human services, or the public if  
28 disclosure is necessary to protect public health or safety. The law enforcement agency  
29 shall release any relevant and necessary information on file to the superintendent or  
30 principal of the school the juvenile attends. The school administration shall notify

1 others in similar positions if the juvenile transfers to another learning institution in or  
2 outside the state.

3 17. If an individual has been required to register as a sexual offender or an offender  
4 against a child under section 12.1-32-15 or former section 27-20-52.1 before August 1,  
5 1999, the individual may petition the court to be removed from the offender list if  
6 registration is no longer mandatory for that individual. In considering the petition, the  
7 court shall comply with the requirements of this section.

8 18. A sexual offender who is currently assigned a moderate or high-risk level by the  
9 attorney general may not use a state park of this state as a residence or residential  
10 address to comply with the registration requirements of this section. Before arriving at  
11 a state park for overnight lodging or camping, a sexual offender who is assigned a  
12 moderate or high-risk level by the attorney general shall notify a parks and recreation  
13 department law enforcement officer at the state park where the sexual offender will be  
14 staying.

15 19. When an individual who is required to register pursuant to this section plans to travel  
16 outside of the United States, at least twenty-one days before the intended travel, the  
17 individual shall inform the agency with which the individual last registered the  
18 individual's residence address the details of the intended travel. Upon receipt of the  
19 information from the registering law enforcement agency, the attorney general shall  
20 report the travel to the United States marshal service.

21 **SECTION 3. AMENDMENT.** Subsections 1 and 3 of section 12.1-41-12 of the North Dakota  
22 Century Code are amended and reenacted as follows:

- 23 1. If the individual was a minor at the time of the offense and committed the offense as a  
24 direct result of being a victim, the individual is not criminally liable or subject to a  
25 juvenile delinquency proceeding under chapter ~~27-20~~27-20.4 for:
- 26 a. Prostitution under section 12.1-29-03;
  - 27 b. Misdemeanor forgery under section 12.1-24-01;
  - 28 c. Misdemeanor theft offenses under chapter 12.1-23;
  - 29 d. Insufficient funds or credit offenses under section 6-08-16;
  - 30 e. Manufacture or possession of a controlled or counterfeit substance offenses  
31 under section 19-03.1-23; and

1 f. Drug paraphernalia offenses under chapter 19-03.4.

2 3. An individual who has engaged in commercial sexual activity is not criminally liable or  
3 subject to a juvenile delinquency proceeding under chapter ~~27-20~~27-20.4 for  
4 prostitution if the individual was a minor at the time of the offense.

5 **SECTION 4. AMENDMENT.** Subsection 2 of section 14-02.1-03.1 of the North Dakota  
6 Century Code is amended and reenacted as follows:

7 2. Any pregnant woman under the age of eighteen or next friend is entitled to apply to  
8 the juvenile court for authorization to obtain an abortion without parental consent. All  
9 proceedings on such application must be conducted in the juvenile court of the county  
10 of the minor's residence before a juvenile judge or referee, if authorized by the juvenile  
11 court judge in accordance with the provisions of chapter 27-05, except that the  
12 parental notification requirements of ~~chapter 27-20~~rules 3, 4, and 5 of the North  
13 Dakota Rules of Juvenile Procedure are not applicable to proceedings under this  
14 section. A court may change the venue of proceedings under this section to another  
15 county only upon finding that a transfer is required in the best interests of the minor. All  
16 applications in accordance with this section must be heard by a juvenile judge or  
17 referee within forty-eight hours, excluding Saturdays and Sundays, of receipt of the  
18 application. The juvenile judge or referee shall find by clear and convincing evidence:

19 a. Whether or not the minor is sufficiently mature and well informed with regard to  
20 the nature, effects, and possible consequences of both having an abortion and  
21 bearing her child to be able to choose intelligently among the alternatives.

22 b. If the minor is not sufficiently mature and well informed to choose intelligently  
23 among the alternatives without the advice and counsel of her parents or  
24 guardian, whether or not it would be in the best interests of the minor to notify her  
25 parents or guardian of the proceedings and call in the parents or guardian to  
26 advise and counsel the minor and aid the court in making its determination and to  
27 assist the minor in making her decision.

28 c. If the minor is not sufficiently mature and well informed to choose intelligently  
29 among the alternatives and it is found not to be in the best interests of the minor  
30 to notify and call in her parents or guardian for advice and counsel, whether an  
31 abortion or some other alternative would be in the best interests of the minor.

1       **SECTION 5. AMENDMENT.** Subsection 2 of section 14-02.1-08 of the North Dakota  
2 Century Code is amended and reenacted as follows:

- 3       2. Whenever an unborn child who is the subject of abortion is born alive and is viable, it  
4 becomes an abandoned child and ~~deprived~~ a child in need of protection, unless:
- 5       a. The termination of the pregnancy is necessary to preserve the life of the mother;  
6       or
- 7       b. The mother and her spouse, or either of them, have agreed in writing in advance  
8 of the abortion, or within seventy-two hours thereafter, to accept the parental  
9 rights and responsibilities for the unborn child if it survives the abortion  
10 procedure.

11       **SECTION 6. AMENDMENT.** Subdivision c of subsection 2 of section 14-07.1-18 of the  
12 North Dakota Century Code is amended and reenacted as follows:

- 13       c. A court of competent jurisdiction orders the disclosure after an in camera review  
14 and a written finding by the court that the information directly and specifically  
15 relates to a determination of child abuse and neglect under chapter 50-25.1 or  
16 termination of parental rights under sections 14-15-19, ~~27-20-44, 27-20-45,~~  
17 ~~27-20-46, 27-20-47~~ 27-20.3-20, 27-20.3-21, 27-20.3-22, 27-20.3-23, and  
18 ~~27-20-48~~ 27-20.3-24; or

19       **SECTION 7. AMENDMENT.** Section 14-15-11 of the North Dakota Century Code is  
20 amended and reenacted as follows:

21       **14-15-11. Notice of petition - Investigation and hearing.**

- 22       1. a. After the filing of a petition to adopt a minor, the court shall fix a time and place  
23 for hearing the petition. At least twenty days before the date of hearing, notice of  
24 the filing of the petition and of the time and place of hearing must be given by the  
25 petitioner to the department and human service zone; any agency or individual  
26 whose consent to the adoption is required by this chapter but who has not  
27 consented; an individual whose consent is dispensed with upon any ground  
28 mentioned in subdivisions a, b, f, h, i, and j of subsection 1 of section 14-15-06  
29 but who has not consented; any appropriate Indian tribe; and any individual  
30 identified by the court as a biological parent or a possible biological parent of the  
31 minor, upon making inquiry to the extent necessary and appropriate, as in

- 1                   proceedings under section ~~27-20-45~~27-20.3-22, unless the individual has
- 2                   relinquished parental rights or the individual's parental rights have been
- 3                   previously terminated by a court. The notice to the department and human
- 4                   service zone must be accompanied by a copy of the petition.
- 5           b.   Notice of the filing of a petition to adopt an adult must be given by the petitioner
- 6                   at least twenty days before the date of the hearing to each living parent of the
- 7                   adult to be adopted.
- 8           2.   An investigation must be made by a licensed child-placing agency to inquire into the
- 9                   conditions and antecedents of a minor sought to be adopted and of the petitioner for
- 10                  the purpose of ascertaining whether the adoptive home is a suitable home for the
- 11                  minor and whether the proposed adoption is in the best interest of the minor.
- 12           3.   A written report of the investigation must be filed with the court by the investigator
- 13                  before the petition is heard.
- 14           4.   The report of the investigation must contain a review of the child's history; a
- 15                  preplacement adoption assessment of the petitioner, including a criminal history record
- 16                  investigation of the petitioner; and a postplacement evaluation of the placement with a
- 17                  recommendation as to the granting of the petition for adoption and any other
- 18                  information the court requires regarding the petitioner or the minor.
- 19           5.   An investigation and report is not required in cases in which a stepparent is the
- 20                  petitioner or the individual to be adopted is an adult. The department and human
- 21                  service zone, when required to consent to the adoption, may give consent without
- 22                  making the investigation. If the petitioner is a relative other than a stepparent of the
- 23                  minor, the minor has lived with the petitioner for at least nine months, no allegations of
- 24                  abuse or neglect have been filed against the petitioner or any member of the
- 25                  petitioner's household, and the court is satisfied that the proposed adoptive home is
- 26                  appropriate for the minor, the court may waive the investigation and report required
- 27                  under this section.
- 28           6.   The department and human service zone, when required to consent to the adoption,
- 29                  may request the licensed child-placing agency to conduct further investigation and to
- 30                  make a written report thereof as a supplemental report to the court.



1           7. After the filing of a petition to adopt an adult, the court by order shall direct that a copy  
2           of the petition and a notice of the time and place of the hearing be given to any  
3           individual whose consent to the adoption is required but who has not consented and to  
4           each living parent of the adult to be adopted. The court may order an appropriate  
5           investigation to assist it in determining whether the adoption is in the best interest of  
6           the individuals involved.

7           8. Notice must be given in the manner appropriate under the North Dakota Rules of Civil  
8           Procedure for the service of process in a civil action in this state or in any manner the  
9           court by order directs. Proof of the giving of the notice must be filed with the court  
10          before the petition is heard.

11          **SECTION 8. AMENDMENT.** Subsections 1 and 2 of section 15.1-09-33.4 of the North  
12          Dakota Century Code are amended and reenacted as follows:

13          1. The board of a school district shall prohibit a student from participating in any  
14          extracurricular activity if:

15           a. The student has pled guilty to or been convicted of a criminal offense and  
16           sentenced under section 12.1-32-02.1 or pled guilty or been convicted of an  
17           offense specified in subsection 1 of section 12.1-32-09.1;

18           b. The student has:

19           (1) An order prohibiting contact issued against the student at the request of  
20           another student or employee of the school under section 12.1-31.2-02;

21           (2) A disorderly conduct restraining order issued against the student at the  
22           request of another student or employee of the school under section  
23           12.1-31.2-01, except a temporary restraining order under subsection 4 of  
24           section 12.1-31.2-01; or

25           (3) A protection order issued against the student at the request of another  
26           student or employee of the school, except a temporary protection order  
27           under section 14-07.1-03;

28           c. The principal of the school receives information pertaining to an offense or order  
29           included under this section as provided in ~~subsection 2 of section~~  
30           ~~27-20-51~~section 27-20.2-21; or

1           d. The victim of the offense or the subject of the order notifies the principal of the  
2           offense or order.

3           2. For purposes of this section, a representative of the juvenile court system may notify  
4           the principal of a school regarding the existence of files or records of the juvenile court  
5           pertaining to a student of the school which are open to inspection by the principal  
6           under ~~subsection 2 of section 27-20-51~~ section 27-20.2-21.

7           **SECTION 9. AMENDMENT.** Section 15.1-19-15 of the North Dakota Century Code is  
8           amended and reenacted as follows:

9           **15.1-19-15. Record retention.**

10          Records regarding a student obtained by a school under section 15.1-19-14, section  
11          ~~27-20-51~~27-20.2-21, or section ~~27-20-52~~27-20.4-21 must be destroyed when the student  
12          reaches the age of eighteen or no longer attends the school, whichever occurs later.

13          **SECTION 10. AMENDMENT.** Section 20.1-13.1-01 of the North Dakota Century Code is  
14          amended and reenacted as follows:

15          **20.1-13.1-01. Implied consent to determine alcohol concentration and presence of**  
16          **drugs.**

17          Any individual who operates a motorboat or vessel in this state is deemed to have given  
18          consent, and shall consent, subject to this chapter, to a chemical test, or tests, of the blood,  
19          breath, or urine for the purpose of determining the alcohol concentration or presence of other  
20          drugs, or combination thereof, in the individual's blood, breath, or urine. As used in this chapter,  
21          "operates" means to be in motion, en route, but not at anchor or aground; "vessel" means any  
22          watercraft used or designed to be used for navigation on the water such as a boat operated by  
23          machinery, either permanently or temporarily affixed, a sailboat other than a sailboard, an  
24          inflatable manually propelled boat, a canoe, kayak, or rowboat, but does not include an inner  
25          tube, air mattress, or other water toy; "drug" means any drug or substance or combination of  
26          drugs or substances which renders an individual incapable of safely operating a motorboat or  
27          vessel; and "chemical test" means any test or tests to determine the alcohol concentration or  
28          presence of other drugs, or combination thereof, in the individual's blood, breath, or urine,  
29          approved by the director of the state crime laboratory or the director's designee under this  
30          chapter. The chemical test must be administered at the direction of a game warden or a law  
31          enforcement officer only after placing the individual, except individuals mentioned in section

1 20.1-13.1-04, under arrest and informing that individual that the individual is or will be charged  
2 with the offense of operating a motorboat or vessel while under the influence of intoxicating  
3 liquor, drugs, or a combination thereof. For the purposes of this chapter, the taking into custody  
4 of a minor under section ~~27-20-13~~27-20.4-05 satisfies the requirement of an arrest. The game  
5 warden or law enforcement officer shall also inform the individual charged that refusal of the  
6 individual to submit to the chemical test determined appropriate will result in that individual  
7 being prohibited from operating a motorboat or vessel for up to three years. The game warden  
8 or law enforcement officer shall determine the chemical test to be used. When a minor is taken  
9 into custody for violating section 20.1-13-07, the game warden or law enforcement officer shall  
10 diligently attempt to contact the minor's parent or legal guardian to explain the cause for the  
11 custody and the implied consent chemical testing requirements. Neither the game warden or  
12 law enforcement officer's efforts to contact, nor any consultation with, a parent or legal guardian  
13 may be permitted to interfere with the administration of chemical testing requirements under this  
14 chapter.

15 **SECTION 11. AMENDMENT.** Section 20.1-15-01 of the North Dakota Century Code is  
16 amended and reenacted as follows:

17 **20.1-15-01. Implied consent to determine alcohol concentration and presence of**  
18 **drugs.**

19 Any individual who is afield with a gun or other firearm or a bow and arrow is deemed to  
20 have given consent, and shall consent, subject to this chapter, to a chemical test of the blood,  
21 breath, or urine for the purpose of determining the alcohol concentration or presence of other  
22 drugs, or combination thereof, in the individual's blood, breath, or urine. As used in this chapter,  
23 "drug" means any drug or substance or combination of drugs or substances which renders an  
24 individual incapable of safely hunting or being afield with a gun or other firearm or a bow and  
25 arrow, and "chemical test" means any test or tests to determine the alcohol concentration or  
26 presence of other drugs, or combination thereof, in the individual's blood, breath, or urine,  
27 approved by the director of the state crime laboratory or the director's designee under this  
28 chapter. The chemical test must be administered at the direction of a game warden or a law  
29 enforcement officer only after placing the individual, except individuals mentioned in section  
30 20.1-15-04, under arrest and informing that individual that the individual is or will be charged  
31 with the offense of being afield with a gun or other firearm or a bow and arrow while under the

1 influence of intoxicating liquor, drugs, or a combination thereof. For the purposes of this chapter,  
2 the taking into custody of a minor under section ~~27-20-13~~27-20.4-05 satisfies the requirement of  
3 an arrest. The game warden or law enforcement officer shall also inform the individual charged  
4 that refusal of the individual to submit to the chemical test determined appropriate will result in a  
5 revocation for up to four years of the individual's hunting privileges. The game warden or law  
6 enforcement officer shall determine the chemical test to be used. When a minor is taken into  
7 custody for violating section 20.1-01-06, the game warden or law enforcement officer shall  
8 diligently attempt to contact the minor's parent or legal guardian to explain the cause for the  
9 custody and the implied consent chemical testing requirements. Neither the game warden or  
10 law enforcement officer's efforts to contact, nor any consultation with, a parent or legal guardian  
11 may be permitted to interfere with the administration of chemical testing requirements under this  
12 chapter.

13 **SECTION 12. AMENDMENT.** Section 26.1-36-20 of the North Dakota Century Code is  
14 amended and reenacted as follows:

15 **26.1-36-20. Juvenile's accident and health coverage to continue - Conditions.**

16 Insurance companies and nonprofit health service corporations licensed in this state shall  
17 continue coverage of a juvenile insured under an accident and health insurance policy or a  
18 health service contract while the legal custody of the juvenile has been given by a court, under  
19 ~~chapter 27-20~~chapters 27-20.3 and 27-20.4, to any public institution or agency, to the same  
20 extent as the general public is covered as long as the juvenile meets all the other usual  
21 qualifications for insurability and continues to pay the policy or contract premiums. A juvenile's  
22 incarceration may not be a basis for cancellation of the juvenile's accident and health insurance  
23 policy or health service contract.

24 **SECTION 13. AMENDMENT.** Section 26.1-40-11.1 of the North Dakota Century Code is  
25 amended and reenacted as follows:

26 **26.1-40-11.1. Juvenile's suspension of driving privileges - Nontraffic delinquent**  
27 **conduct.**

28 Insurers are prohibited from using or relying on a nontraffic delinquent juvenile's suspension  
29 of driving privileges under section ~~27-20-31.1~~27-20.4-16 as a reason for canceling, denying, or  
30 nonrenewing the automobile insurance policy of the nontraffic delinquent juvenile offender or  
31 the parents of the nontraffic delinquent juvenile offender.

1       **SECTION 14. AMENDMENT.** Subsection 2 of section 27-05-30 of the North Dakota  
2 Century Code is amended and reenacted as follows:

3       2. In accordance with rules of the supreme court, the presiding judge may assign a  
4 referee to preside in any case or proceeding provided for in chapter 12.1-31.2, title 14,  
5 sections 20.1-01-28 and 20.1-01-29, ~~chapter 27-20, chapter chapters 27-20.2, 27-20.3,~~  
6 27-20.4, and 28-25, subsection 6 of section 50-09-08.6, and subsection 2 of section  
7 50-09-14.

8       **SECTION 15. AMENDMENT.** Section 27-20.1-01 of the North Dakota Century Code is  
9 amended and reenacted as follows:

10       **27-20.1-01. Definitions.**

11       ~~The definitions set forth in section 27-20-02 are applicable to this chapter.~~As used in this  
12 chapter:

13       1. "Abandon" means:

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

16       (1) To communicate with the child; or

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

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

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

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

25       (3) Willfully fail to furnish food, shelter, clothing, or medical attention reasonably  
26 sufficient to meet the child's needs.

27       2. "Abandoned infant" means a child who has been abandoned before reaching the age  
28 of one year.

29       3. "Child in need of protection" means a child who:

30       a. Is without proper parental care or control, subsistence, education as required by  
31 law, or other care or control necessary for the child's physical, mental, or

- 1           emotional health, or morals, and the need for services or protection is not due  
2           primarily to the lack of financial means of the child's parents, guardian, or other  
3           custodian;
- 4           b. Has been placed for care or adoption in violation of law;  
5           c. Has been abandoned by the child's parents, guardian, or other custodian;  
6           d. Is without proper parental care, control, or education as required by law, or other  
7           care and control necessary for the child's well-being because of the physical,  
8           mental, emotional, or other illness or disability of the child's parent or parents,  
9           and that such lack of care is not due to a willful act of commission or act of  
10           omission by the child's parents, and care is requested by a parent;
- 11           e. Is in need of treatment and whose parents, guardian, or other custodian have  
12           refused to participate in treatment as ordered by the juvenile court;
- 13           f. Was subject to prenatal exposure to chronic or severe use of alcohol or any  
14           controlled substance as defined in chapter 19-03.1 in a manner not lawfully  
15           prescribed by a practitioner;
- 16           g. Is present in an environment subjecting the child to exposure to a controlled  
17           substance, chemical substance, or drug paraphernalia as prohibited by section  
18           19-03.1-22.2; or
- 19           h. Is a victim of human trafficking as defined in title 12.1.
- 20           5. "Custodian" means a person, other than a parent or legal guardian, that stands in loco  
21           parentis to the child and a person that has been given legal custody of the child by  
22           order of a court.
- 23           6. "Fit and willing person" means a relative or other individual who has been determined,  
24           after consideration of an assessment that includes a criminal history record  
25           investigation under chapter 50-11.3, to be a qualified individual under this chapter and  
26           chapter 30.1-27, and who consents in writing to act as a legal guardian.
- 27           7. "Relative" means:
- 28           a. The child's grandparent, great-grandparent, sibling, half-sibling, aunt, great-aunt,  
29           uncle, great-uncle, nephew, niece, or first cousin;
- 30           b. An individual with a relationship to the child, derived through a current or former  
31           spouse of the child's parent, similar to a relationship described in subdivision a;

- 1           c. An individual recognized in the child's community as having a relationship with  
2           the child similar to a relationship described in subdivision a;  
3           d. The child's stepparent; or  
4           e. An extended family member as defined by the law or custom of an Indian child's  
5           tribe.

6           **SECTION 16. AMENDMENT.** Paragraph 4 of subdivision n of subsection 2 of section  
7 27-20.1-06 of the North Dakota Century Code is amended and reenacted as follows:

- 8           (4) The parent has ~~deprived the~~ a child in need of protection as that term is  
9           defined under section ~~27-20-02~~27-20.1-01;

10          **SECTION 17. AMENDMENT.** Subsection 1 of section 27-20.1-10 of the North Dakota  
11 Century Code is amended and reenacted as follows:

- 12          1. A hearing under this chapter must be conducted by the court without a jury, in an  
13          informal but orderly manner, and separately from other proceedings not included in  
14          section ~~27-20-03~~27-20.2-03 or section 27-20.1-02.

15          **SECTION 18. AMENDMENT.** Subdivision d of subsection 1 of section 27-20.1-11 of the  
16 North Dakota Century Code is amended and reenacted as follows:

- 17          d. The child is a ~~deprived~~ child in need of protection as defined under section  
18          ~~27-20-02~~27-20.1-01.

19          **SECTION 19. AMENDMENT.** Subsection 3 of section 27-20.1-11 of the North Dakota  
20 Century Code is amended and reenacted as follows:

- 21          3. The court may appoint a guardian as a dispositional alternative if a child has been  
22          adjudicated as ~~deprived~~ a child in need of protection, unruly, or delinquent under  
23          chapter ~~27-20~~27-20.2, 27-20.3, or 27-20.4.

24          **SECTION 20. AMENDMENT.** Subsection 2 of section 27-20.1-17 of the North Dakota  
25 Century Code is amended and reenacted as follows:

- 26          2. A guardian's authority and responsibility terminates upon the death, resignation, or  
27          removal of the guardian, or upon the child's death, adoption, marriage, or attainment  
28          of majority, but termination does not affect the guardian's liability for prior acts or the  
29          guardian's obligation to account for funds and assets of the child. For cases arising  
30          under section ~~27-20-30.4~~27-20.3-16, the age of majority is age twenty-one.

1       **SECTION 21. AMENDMENT.** Section 27-20.1-22 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3       **27-20.1-22. Confidentiality.**

4       Except as provided by section ~~27-20-51~~27-20.2-21, all files and records under this chapter  
5 are closed to the public and confidential.

6       **SECTION 22.** Chapter 27-20.2 of the North Dakota Century Code is created and enacted  
7 as follows:

8       **27-20.2-01. Definitions.**

9       As used in this chapter, unless the context requires otherwise:

10      1. "Abandon" means:

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

13             (1) To communicate with the child; or

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

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

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

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

22             (3) Willfully fail to furnish food, shelter, clothing, or medical attention reasonably  
23             sufficient to meet the child's needs.

24      2. "Abandoned infant" means a child who has been abandoned before reaching the age  
25         of one year.

26      3. "Child" means an individual who is:

27          a. Under the age of eighteen years and is not married; or

28          b. Under the age of twenty years with respect to a delinquent act committed while  
29             under the age of eighteen years and not married.

30      4. "Child in need of protection" means a child who:



- 1           a. Is without proper parental care or control, subsistence, education as required by  
2           law, or other care or control necessary for the child's physical, mental, or  
3           emotional health, or morals, and the need for services or protection is not due  
4           primarily to the lack of financial means of the child's parents, guardian, or other  
5           custodian;
- 6           b. Has been placed for care or adoption in violation of law;
- 7           c. Has been abandoned by the child's parents, guardian, or other custodian;
- 8           d. Is without proper parental care, control, or education as required by law, or other  
9           care and control necessary for the child's well-being because of the physical,  
10          mental, emotional, or other illness or disability of the child's parent or parents,  
11          and that such lack of care is not due to a willful act of commission or act of  
12          omission by the child's parents, and care is requested by a parent;
- 13          e. Is in need of treatment and whose parents, guardian, or other custodian have  
14          refused to participate in treatment as ordered by the juvenile court;
- 15          f. Was subject to prenatal exposure to chronic or severe use of alcohol or any  
16          controlled substance as defined in chapter 19-03.1 in a manner not lawfully  
17          prescribed by a practitioner;
- 18          g. Is present in an environment subjecting the child to exposure to a controlled  
19          substance, chemical substance, or drug paraphernalia as prohibited by section  
20          19-03.1-22.2; or
- 21          h. Is a victim of human trafficking as defined in title 12.1.
- 22        5. "Child in need of services" means a child who in any of the foregoing instances is in  
23        need of treatment or rehabilitation:
- 24           a. Is habitually and without justification truant from school subject to compulsory  
25           school attendance and is absent from school without an authorized excuse more  
26           than three days during a school year;
- 27           b. Is habitually disobedient of the reasonable and lawful commands of the child's  
28           parent, guardian, or other custodian, including running away, and is ungovernable  
29           or who is willfully in a situation dangerous or injurious to the health, safety, or  
30           morals of the child or others;

- 1           c. Has committed an offense applicable only to a child, except for an offense  
2           committed by a minor fourteen years of age or older under subsection 2 of  
3           section 12.1-31-03 or an equivalent local ordinance or resolution; or
- 4           d. Is under the age of fourteen years and has purchased, possessed, smoked, or  
5           used tobacco, a tobacco-related product, an electronic smoking device, or an  
6           alternative nicotine product in violation of subsection 2 of section 12.1-31-03. As  
7           used in this subdivision, "electronic smoking device" and "alternative nicotine  
8           product" have the same meaning as in section 12.1-31-03; and
- 9           e. In any of the foregoing instances is in need of treatment or rehabilitation.
- 10          6. "Custodian" means a person, other than a parent or legal guardian, which stands in  
11          loco parentis to the child and a person that has been given legal custody of the child  
12          by order of a court.
- 13          7. "Delinquent act" means an act designated a crime under the law, including local  
14          ordinances or resolutions of this state, or of another state if the act occurred in that  
15          state, or under federal law.
- 16          8. "Delinquent child" means a child who has committed a delinquent act and is in need of  
17          treatment or rehabilitation.
- 18          9. "Director" means the director of juvenile court or the director's designee.
- 19          10. "Diversion" means an intervention strategy that redirects a child away from formal  
20          processing in the juvenile justice system, while still holding the child accountable for  
21          that child's actions.
- 22          11. "Facility" means buildings, structures, or systems, including those for essential  
23          administration and support, which are used to provide residential treatment for  
24          children.
- 25          12. "Host county" means the county within the human service zone in which the human  
26          service zone administrative office is located and in which the human service zone  
27          team members are employed.
- 28          13. "Human service zone" means a county or consolidated group of counties  
29          administering human services within a designated area in accordance with an  
30          agreement or plan approved by the department of human services.
- 31          14. "Juvenile court" means the district court of this state.

- 1        15. "Juvenile drug court" means a program established by the supreme court which is a  
2            post-petition or post-adjudication program aimed at intervening in substance use  
3            disorders through intense supervision and participation in recovery services.
- 4        16. "Proceeding" means any hearing conducted before a juvenile court or a referral for  
5            service.
- 6        17. "Qualified residential treatment program" means a licensed or approved residence  
7            providing an out-of-home treatment placement for children, including a  
8            trauma-informed model.
- 9        18. "Relative" means:
- 10        a. The child's grandparent, great-grandparent, sibling, half-sibling, aunt, great-aunt,  
11            uncle, great-uncle, nephew, niece, or first cousin;
- 12        b. An individual with a relationship to the child, derived through a current or former  
13            spouse of the child's parent, similar to a relationship described in subdivision a;
- 14        c. An individual recognized in the child's community as having a relationship with  
15            the child similar to a relationship described in subdivision a; or
- 16        d. The child's stepparent.
- 17        19. "Restorative justice" means a system of justice which focuses on the rehabilitation of  
18            offenders through reconciliation with victims and the community at large.
- 19        20. "Shelter care" means temporary care of a child in physically unrestricted facilities.
- 20        21. "The court" means the district courts as designated by the North Dakota supreme  
21            court which includes juvenile court as a subset of district court.
- 22        22. "Willfully" has the meaning provided in section 12.1-02-02.
- 23        **27-20.2-02. Presumption of age.**
- 24        1. In determining an individual's age for purposes of this chapter, the individual's date of  
25            birth as provided by any of the following is presumed to be the individual's legal date  
26            of birth:
- 27        a. A state government in the form of a birth certificate, other state-issued  
28            identification, or a certified copy of a birth certificate that includes the individual's  
29            date of birth.
- 30        b. The United States government in the form of a tribal identification document,  
31            military identification, passport, passport card, permanent resident card,

- 1 certificate of United States citizenship, certificate of naturalization, border  
2 crossing card, visa, or other entry document that includes the individual's date of  
3 birth.
- 4 c. A foreign government in the form of a passport, driver's license, or other foreign  
5 government-issued identity document that includes the individual's date of birth. If  
6 there is a conflict between government-issued forms, a government-issued birth  
7 certificate or a certified copy of a birth certificate takes precedence.
- 8 2. The presumption in subsection 1 may be rebutted by clear and convincing evidence to  
9 the contrary.

10 **27-20.2-03. Jurisdiction.**

- 11 1. The juvenile court has exclusive original jurisdiction of the following proceedings,  
12 which are governed by this chapter:
- 13 a. Proceedings in which a child is alleged to be delinquent, a child in need of  
14 services, or a child in need of services or protection under this chapter or chapter  
15 27-20.4;
- 16 b. Proceedings for the termination of parental rights except if a part of an adoption  
17 proceeding under chapter 27-20.3;
- 18 c. Proceedings arising under section 27-20.3-16;
- 19 d. Civil forfeiture proceedings arising under chapter 19-03.1 or section 29-31.1-04  
20 for which a child is alleged to have possessed forfeitable property. The juvenile  
21 court shall conduct the proceedings in accordance with the procedures provided  
22 for under sections 19-03.1-36 through 19-03.1-37; and
- 23 e. Proceedings for the guardianship of a child under chapter 27-20.1, except the  
24 testamentary appointment of a guardian for a minor governed by chapter  
25 30.1-27.
- 26 2. The juvenile court also has exclusive original jurisdiction of the following proceedings,  
27 which are governed by the laws relating to those proceedings without regard to the  
28 other provisions of this chapter:
- 29 a. Proceedings to obtain judicial consent to the marriage, employment, or  
30 enlistment in the armed services of a child, if consent is required by law;
- 31 b. Proceedings under the interstate compact on juveniles;

- 1           c. Proceedings under the interstate compact on the placement of children; and  
2           d. Proceedings arising under section 50-06-06.13 to obtain a judicial determination  
3           that the placement of a severely emotionally disturbed child in an out-of-home  
4           treatment program is in the best interests of the child.

5           **27-20.2-04. Juvenile court personnel.**

- 6           1. The supreme court may provide for the appointment by administrative and personnel  
7           rules of the necessary juvenile court officers, clerical personnel, and other specialized  
8           personnel within the limits of legislative appropriations to assist the juvenile court in  
9           carrying out the juvenile probation and supervisor functions of the juvenile court.  
10          2. Detention center facilities and personnel must be funded by the county.  
11          3. All salaries, per diem, and other compensation payable to juvenile court personnel, all  
12          necessary books, forms, stationery, office supplies and equipment, postage,  
13          telephone, and travel, and other necessary expenses incurred in carrying out the  
14          provisions of this chapter must be borne by the state, except for suitable quarters for  
15          conducting official business and lights and fuel which must be funded by the county  
16          and except as provided by subsection 1 of section 27-20.2-19.

17          **27-20.2-05. Powers and duties of the director of juvenile court.**

- 18          1. For the purpose of carrying out the objectives and purposes of this chapter and  
19          subject to the limitations of this chapter or imposed by the court, a director shall:  
20           a. Make investigations, reports, and recommendations to the juvenile court.  
21           b. Receive and examine referrals and charges of delinquency, a child in need of  
22           services, or a child in need of protection for the purpose of considering the  
23           commencement of proceedings under this chapter.  
24           c. Make a determination upon intake of referrals regarding the appropriate manner  
25           to handle delinquent conduct, or a child in need of services or a child in need of  
26           protection by use of nonjudicial adjustments or formal court processes.  
27           d. Supervise and assist a child placed on probation for delinquency or a child in  
28           need of services, or both.  
29           e. Make appropriate referrals to other private or public agencies of the community if  
30           assistance of the agencies appears to be needed or desirable.

- 1           f. Issue a temporary custody order concerning a child who is referred to the  
2           director's supervision or care as a delinquent or a child in need of services or  
3           protection. Except as provided by this chapter, a director does not have the  
4           powers of a law enforcement officer.
- 5           g. Take acknowledgments of instruments for the purpose of this chapter.
- 6           h. Make such temporary order not to exceed ninety-six hours for the custody and  
7           control of a child alleged to be in need of services or protection as may be  
8           deemed appropriate. The order must be reduced to writing within twenty-four  
9           hours, excluding holidays and weekends.
- 10          i. Perform all other functions designated by this chapter or under section 27-05-30  
11          or by order of the court pursuant to such law, including, if qualified, the order of a  
12          referee.
- 13          j. Issue an order to a law enforcement authority to transport a child to and from a  
14          specified location.
- 15          k. Receive and examine requests for review of a child's placement at a qualified  
16          residential treatment program under the federal Family First Prevention Services  
17          Act [Pub. L. 115-123; 132 Stat. 64; 42 U.S.C. 675].
- 18          l. Receive and examine petitions to establish, modify, or terminate a guardianship  
19          of a minor under chapter 27-20.1.
- 20          2. Any of the foregoing functions may be performed in another state if authorized by the  
21          court of this state and permitted by the laws of the other state.

22          **27-20.2-06. Commencement of proceedings.**

23          A proceeding under this chapter may be commenced:

- 24          1. By transfer of a case from another court as provided in section 27-20.2-07; or
- 25          2. In other cases by the filing of a petition as provided in this chapter. The petition and all  
26          other documents in the proceeding must be entitled "In the interest of  
27          \_\_\_\_\_ , a child". If a child is in shelter care, the petition must be filed within  
28          thirty days of the shelter care, this is the date on which the child was removed both  
29          physically and legally from the parents, legal guardians, or custodians.

1        **27-20.2-07. Transfer from other courts.**

2        If it appears to the court in a criminal proceeding, except for an offense transferred under  
3 section 27-20.4-20, that the defendant is a child subject to the jurisdiction of the juvenile court,  
4 the court immediately shall transfer the case to the juvenile court together with a copy of the  
5 accusatory pleading and other papers, documents, and transcripts of testimony relating to the  
6 case. The court shall order that the defendant be taken immediately to the juvenile court or to a  
7 place of detention designated by the juvenile court, or release the defendant to the custody of  
8 the defendant's parent, guardian, custodian, or other person legally responsible for the  
9 defendant, to be brought before the juvenile court at a time designated by that court. The  
10 accusatory pleading may serve in lieu of a petition in the juvenile court unless that court directs  
11 the filing of a petition.

12        **27-20.2-08. Nonjudicial adjustment - Diversion.**

13        Before an informal adjustment is held or a petition filed, the director of juvenile court or  
14 designee may impose requirements in lieu of further proceedings for the conduct and control of  
15 the child with a diversion.

16        **27-20.2-09. Nonjudicial adjustment - Informal adjustment.**

- 17        1. Before a petition is filed, the director of juvenile court or designee may give counsel  
18 and advice to the parties and impose conditions for the conduct and control of the  
19 child in lieu of further proceedings with a view to an informal adjustment if it appears:  
20        a. The admitted facts bring the case within the jurisdiction of the court;  
21        b. Information, advice, and conditions, if any, for the conduct and control of the child  
22 without an adjudication would be in the best interest of the public and the child;  
23        and  
24        c. The child and the child's parents, guardian, or other custodian consent to the  
25 counsel and advice with knowledge that consent is not obligatory.  
26        2. If a victim is identified in the referral, the court must give reasonable written notice of  
27 the informal adjustment to the victim.  
28        3. The giving of information and advice and any conditions imposed for the conduct and  
29 control of the child may not extend beyond six months from the day commenced  
30 unless extended by the court for an additional period not to exceed six months and  
31 does not authorize the detention of the child if not otherwise permitted by this chapter.

1           If the child admits to driving or being in actual physical control of a vehicle in violation  
2           of section 39-08-01 or an equivalent ordinance, the child may be required to pay a fine  
3           as a condition imposed under this section.

4           4. An incriminating statement made by a child to the juvenile court officer or designee  
5           giving information and advice incident to the giving of counsel and advice may not be  
6           used against the child over objection in any proceeding or as part of a risk and need  
7           screening or assessment process.

8           **27-20.2-10. Venue.**

9           Except as provided in sections 27-20.3-03 and 27-20.4-03, a proceeding in this chapter  
10          may be commenced in the county in which the child resides or the county in which the acts  
11          constituting the alleged conduct occurred.

12          **27-20.2-11. Transfer to another juvenile court within the state.**

13          If the child resides in a county of the state and the proceeding is commenced in a court of  
14          another county, the court, on motion of a party or on motion of the court made before final  
15          disposition and in consultation with the court in the other county, may transfer the proceeding to  
16          the county of the child's residence for further action. Like transfer may be made if the residence  
17          of the child changes pending the proceeding. The proceeding must be transferred if the child  
18          has been adjudicated delinquent or a child in need of services and other proceedings involving  
19          the child are pending in the juvenile court of the county of the child's residence.

20          **27-20.2-12. Right to counsel.**

21          1. Except as provided in section 27-20.1-09, a child alleged to be within the jurisdiction of  
22          the court in an action arising under chapters 27-20.1, 27-20.2, 27-20.3, and 27-20.4  
23          has the right to be represented by counsel in all proceedings in which a petition has  
24          been filed. Counsel for the child must be appointed, regardless of income, unless  
25          counsel is retained for the juvenile, in any proceeding in which the juvenile is alleged  
26          to be:

27               a. Delinquent;

28               b. A child in need of services; or

29               c. A child in need of protection if the child is of sufficient age and competency to  
30               assist counsel.



- 1       2. A child may waive the right to counsel in a juvenile delinquency proceeding if the child,  
2       who is fourteen years of age or older and the court has determined the waiver is  
3       knowing, voluntary, and intelligent. The waiver must be made on the record. If a child  
4       waives counsel for a hearing, the child must be informed of the right to revoke the  
5       waiver and request counsel at all subsequent hearings.
- 6       3. The court shall require payment for reimbursement of counsel appointed pursuant to  
7       this section from a person that has legal care, custody, or control of the child. The  
8       court must include this finding in the findings of fact and order for disposition.
- 9       4. A child's parent, legal guardian, or custodian is entitled to counsel upon the filing of an  
10      application for counsel and a determination of indigency. If a party appears without  
11      counsel, the court shall determine whether the party knows the party may be  
12      represented by counsel and that the party is entitled to counsel at public expense if  
13      indigent. The court may continue the proceeding to enable a party to obtain counsel. A  
14      child's parent, legal guardian, or custodian determined to be indigent is entitled to  
15      counsel:
- 16      a. At a detention hearing;  
17      b. At the dispositional stage of a juvenile delinquency matter;  
18      c. At all proceedings in a child in need of services or protection; or  
19      d. In a permanency or review of an order entered in any of the proceedings under  
20      subdivision a, b, or c.
- 21      5. The child may elect to be represented by counsel for a nonjudicial adjustment.

22      **27-20.2-13. Other basic rights.**

- 23      1. A party is entitled to the opportunity to introduce evidence and otherwise be heard in  
24      the party's own behalf and to cross-examine adverse witnesses.
- 25      2. A child charged with a delinquent act need not be a witness against or otherwise  
26      incriminate oneself. An extrajudicial statement, if obtained in the course of violation of  
27      this chapter or which would be constitutionally inadmissible in a criminal proceeding,  
28      may not be used against a child. Evidence illegally seized or obtained may not be  
29      received over objection to establish the allegations made against a child. A confession  
30      validly made by a child out of court is insufficient to support an adjudication of

1 delinquency unless the confession is corroborated in whole or in part by other  
2 evidence.

3 **27-20.2-14. Orders directed to parents or guardians.**

4 Every parent or guardian has an obligation and must participate in any treatment of the  
5 parent's or guardian's child as ordered by the juvenile court.

6 **27-20.2-15. Indian child welfare - Active efforts and procedures.**

7 1. As used in this section:

8 a. "Active efforts" means affirmative, active, thorough, and timely efforts intended  
9 primarily to maintain or reunite an Indian child with the child's family. Active efforts  
10 are required if the federal Indian Child Welfare Act of 1978 [25 U.S.C. 1901  
11 through 1963] applies or may apply, including during the verification process. If  
12 an agency is involved in the child-custody proceeding, active efforts must involve  
13 assisting the parent or parents or Indian custodian through the steps of a case  
14 plan and with accessing or developing the resources necessary to satisfy the  
15 case plan. To the maximum extent possible, active efforts should be provided in a  
16 manner consistent with the prevailing social and cultural conditions and way of  
17 life of the Indian child's tribe and should be conducted in partnership with the  
18 Indian child and the Indian child's parents, extended family members, Indian  
19 custodians, and tribe. Active efforts are to be tailored to the facts and  
20 circumstances of the case. The term includes:

- 21 (1) Conducting a comprehensive assessment of the circumstances of the  
22 Indian child's family, with a focus on safe reunification as the most desirable  
23 goal, with ongoing timely assessment to determine if the threat is resolved  
24 and placement of the child can be returned to the custodian;  
25 (2) Identifying appropriate services and helping the parents to overcome  
26 barriers, including actively assisting the parents in obtaining such services;  
27 (3) Identifying, notifying, and inviting representatives of the Indian child's tribe to  
28 participate in providing support and services to the Indian child's family and  
29 in family team meetings, permanency planning, and resolution of placement  
30 issues;

- 1           (4) Conducting or causing to be conducted a diligent search for the Indian  
2           child's extended family members, and contacting and consulting with  
3           extended family members to provide family structure and support for the  
4           Indian child and the Indian child's parents;
- 5           (5) Offering and employing available and culturally appropriate family  
6           preservation strategies and facilitating the use of remedial and rehabilitative  
7           services provided by the child's tribe;
- 8           (6) Taking steps to keep siblings together whenever possible;
- 9           (7) Supporting regular visits with parents or Indian custodians in the most  
10          natural setting possible as well as trial home visits of the Indian child during  
11          any period of removal, consistent with the need to ensure the health, safety,  
12          and welfare of the child;
- 13          (8) Identifying community resources including housing, financial, transportation,  
14          mental health, substance abuse, and peer support services and actively  
15          assisting the Indian child's parents or, if appropriate, the child's family, in  
16          utilizing and accessing those resources;
- 17          (9) Monitoring progress and participation in services;
- 18          (10) Considering alternative ways to address the needs of the Indian child's  
19          parents and if appropriate, the family, if the optimum services do not exist or  
20          are not available; and
- 21          (11) Providing post-reunification services and monitoring.

- 22          b. "Extended family member" means a relationship defined by the law or custom of  
23          the Indian child's tribe or, in the absence of such law or custom, means an  
24          individual who has reached the age of eighteen and who is the Indian child's  
25          grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece  
26          or nephew, first or second cousin, or stepparent.
- 27          c. "Indian" means an individual who is a member of an Indian tribe, or who is a  
28          native and a member of a regional corporation as defined in 43 U.S.C.1606.
- 29          d. "Indian child" means an unmarried individual who is under the age of eighteen  
30          and is either a member of an Indian tribe or is eligible for membership in an  
31          Indian tribe and is the biological child of a member of an Indian tribe.

- 1           e. "Indian child's tribe" means the Indian tribe in which an Indian child is a member  
2           or eligible for membership or, in the case of an Indian child who is a member of or  
3           eligible for membership in more than one tribe, the Indian tribe with which the  
4           Indian child has the more significant contacts.
- 5           f. "Indian custodian" means any Indian individual who has legal custody of an  
6           Indian child under tribal law or custom or under state law or to whom temporary  
7           physical care, custody, and control has been transferred by the parent of the  
8           child.
- 9           g. "Indian tribe" means an Indian tribe, band, nation, or other organized Indian  
10          group or community of Indians recognized as eligible for services provided to  
11          Indians by the United States secretary of the interior because of their status as  
12          Indians, including any Alaska native village as defined in 43 U.S.C.1602(c).
- 13          h. "Parent" means any biological parent or parents of an Indian child or any Indian  
14          individual who has lawfully adopted an Indian child, including adoptions under  
15          tribal law or custom. The term does not include the unwed father if paternity has  
16          not been acknowledged or established.
- 17          i. "Termination of parental rights" means any action resulting in the termination of  
18          the parent-child relationship. The term does not include a placement based upon  
19          an act by an Indian child which, if committed by an adult, would be deemed a  
20          crime or a placement upon award of custody to one of the child's parents in a  
21          divorce proceeding.
- 22          2. Before removal of an Indian child from the custody of a parent or Indian custodian for  
23          purposes of involuntary foster care placement or the termination of parental rights over  
24          an Indian child, the court shall find that active efforts have been made to provide  
25          remedial services and rehabilitative services designed to prevent the breakup of the  
26          Indian family and that these efforts have proved unsuccessful. The court may not  
27          order the removal unless evidence of active efforts shows there has been a vigorous  
28          and concerted level of casework beyond the level that would constitute reasonable  
29          efforts under section 27-20.3-26. Reasonable efforts may not be construed to be  
30          active efforts. Active efforts must be made in a manner that takes into account the  
31          prevailing social and cultural values, conditions, and way of life of the Indian child's

1 tribe. Active efforts must utilize the available resources of the Indian child's extended  
2 family, tribe, tribal and other relevant social service agencies, and individual Indian  
3 caregivers.

4 3. The court may order the removal of the Indian child for involuntary foster case  
5 placement only if the court determines, by clear and convincing evidence, that  
6 continued custody of the child by the parent or Indian custodian is likely to result in  
7 serious emotional or physical damage or harm to the child. Evidence must show a  
8 causal relationship between the particular conditions in the home and the likelihood  
9 that continued custody of the child will result in serious emotional or physical damage  
10 or harm to the particular child who is the subject of the proceeding. Poverty, isolation,  
11 custodian age, crowded or inadequate housing, substance use, or nonconforming  
12 social behavior does not by itself constitute clear and convincing evidence of imminent  
13 serious emotional or physical damage or harm to the child. As soon as the threat has  
14 been removed and the child is no longer at risk, the state should terminate the  
15 removal, by returning the child to the parent while offering a solution to mitigate the  
16 situation that gave rise to the need for emergency removal and placement.

17 4. The court may only order the termination of parental rights over the Indian child if the  
18 court determines, by evidence beyond a reasonable doubt, that continued custody of  
19 the child by the parent or Indian custodian is likely to result in serious emotional or  
20 physical damage or harm to the child.

21 5. In considering whether to involuntarily place an Indian child in foster care or to  
22 terminate the parental rights of the parent of an Indian child, the court shall require that  
23 a qualified expert witness must be qualified to testify regarding whether the child's  
24 continued custody by the parent or Indian custodian is likely to result in serious  
25 emotional or physical damage or harm to the child and should be qualified to testify as  
26 to the prevailing social and cultural standards of the Indian child's tribe. An individual  
27 may be designated by the Indian child's tribe as being qualified to testify to the  
28 prevailing social and cultural standards of the Indian child's tribe. The court or any  
29 party may request the assistance of the Indian child's tribe or the bureau of Indian  
30 affairs office serving the Indian child's tribe in locating individuals qualified to serve as  
31 expert witnesses. The social worker regularly assigned to the Indian child may not

1 serve as a qualified expert witness in child-custody proceedings concerning the child.  
2 The qualified expert witness should be someone familiar with the particular child and  
3 have contact with the parents to observe interaction between the parents, child, and  
4 extended family members. The child welfare agency and courts should facilitate  
5 access to the family and records to facilitate accurate testimony.

6 **27-20.2-16. Order of adjudication - Noncriminal.**

- 7 1. An order of disposition or other adjudication in a proceeding under this chapter is not a  
8 conviction of crime and does not impose any civil disability ordinarily resulting from a  
9 conviction or operate to disqualify the child in any civil service application or  
10 appointment. A child may not be committed or transferred to a penal institution or other  
11 facility used primarily for the execution of sentences of individuals convicted of a  
12 crime.
- 13 2. The disposition of a child and evidence adduced in a hearing in juvenile court may not  
14 be used against the child in any proceeding in any court other than a juvenile court,  
15 whether before or after reaching majority, except for impeachment or in dispositional  
16 proceedings after conviction of a felony for the purposes of a presentence  
17 investigation and report.

18 **27-20.2-17. Rights and duties of legal custodian.**

- 19 1. As used in this section, "sibling of the child entering foster care" means:
- 20 a. A brother or sister who has at least one biological or adoptive parent in common;  
21 b. A fictive brother or sister with a significant bond as identified by the child or  
22 parent; or  
23 c. A child who would have been considered a sibling but for the termination or other  
24 disruption of parental rights, including a death of a parent.
- 25 2. A legal custodian has:
- 26 a. The right to the physical custody of the child and the right to determine the nature  
27 of the care, placement, and treatment of the child, including ordinary medical  
28 care as well as medical or surgical treatment for a serious physical condition or  
29 illness that in the opinion of a licensed physician requires prompt treatment,  
30 except for any limits the court may impose.

1           b. The right and duty to provide for the care, protection, training, and education and  
2           the physical, mental, and moral welfare of the child, subject to the conditions and  
3           limitations of the order and to the remaining rights and duties of the child's  
4           parents or guardian.

5           c. A duty within thirty days after the removal of a child from the custody of the  
6           parent or parents of the child for the purpose of placement into foster care, to  
7           exercise due diligence to identify and provide notice to the following relatives: all  
8           parents of a sibling of the child entering foster care who have legal custody of the  
9           sibling, all adult grandparents, and any other adult suggested by the parents,  
10          subject to exceptions due to family or domestic violence, that:

11          (1) Specifies that the child has been or is being removed from the custody of  
12          the parent or parents of the child;

13          (2) Explains the options the relative has under federal, state, and local law to  
14          participate in the care and placement of the child, including any options that  
15          may be lost by failing to respond to the notice;

16          (3) Describes the requirements and standards to become a foster family home  
17          and the additional services and supports that are available for children  
18          placed in that home; and

19          (4) Describes how the relative of the child may enter an agreement with the  
20          department of human services and human service zone to receive a  
21          subsidized guardianship payment.

22          **27-20.2-18. Guardian ad litem - Immunity.**

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

1        **27-20.2-19. Costs and expenses for care of child.**

2        1. The following expenses are a charge upon the funds of the county or human service  
3        zone upon certification of the expenses by the court:

4        a. The cost of medical and other examinations and treatment of a child ordered by  
5        the court.

6        b. The cost of care and support of a child committed by the court to the legal  
7        custody of a public agency other than an institution for delinquent children or to a  
8        private agency or individual other than a parent.

9        c. The cost of any necessary transportation for medical and other examinations and  
10       treatment of a child ordered by the court unless the child is in the legal custody of  
11       a state agency.

12       d. The cost of a guardian ad litem under subsection 5 of section 27-20.1-16 or  
13       section 30.1-27-06 or the cost of an attorney under subsection 6 of section  
14       27-20.1-16 if the court finds the parent's or child's estate is insufficient to meet  
15       the cost.

16       2. The commission on legal counsel for indigents shall pay reasonable compensation for  
17       services and related expenses of counsel provided at public expense for a party and  
18       the supreme court shall pay reasonable compensation for a guardian ad litem. The  
19       attorney general shall pay the witness fees, mileage, and travel expense of witnesses  
20       incurred in the proceedings under this chapter in the amount and at the rate provided  
21       for in section 31-01-16, except the commission on legal counsel for indigents shall pay  
22       the witness fees, mileage, and travel expenses of witnesses subpoenaed by counsel  
23       employed by or contracted with the commission for proceedings under this chapter in  
24       the amount and at the rate provided for in section 31-01-16. Expenses of the state  
25       include the cost of any necessary transportation for medical and other examinations  
26       and treatment of a child ordered by the court if the child is in the legal custody of a  
27       state agency in which case the cost must be reimbursed to the county or human  
28       service zone by that state agency at the state mileage rate, excluding meals and  
29       lodging, plus twenty-nine cents per mile.

30       3. If, after due notice to the parents or other persons legally obligated to care for and  
31       support the child, and to a child over the age of eighteen, and after affording the



1 parents, other persons, and children over eighteen years of age an opportunity to be  
2 heard, the court finds that the parents, other persons, or a child over eighteen years of  
3 age is financially able to pay all or part of the costs and expenses stated in  
4 subsection 1, and expenses payable by the supreme court under subsection 2, the  
5 court may order the party to pay the same and prescribe the manner of payment.  
6 Unless otherwise ordered, payment shall be made to the clerk of court for remittance  
7 to the person to which compensation is due, or if the costs and expenses have been  
8 paid by the county, human service zone, or the state to the county treasurer of the  
9 county, the county treasurer of the host county, or to the state treasurer.

10 4. Unless the court finds there is no likelihood the party is or will be able to pay attorney's  
11 fees and expenses, the court, in the order or judgment following a hearing under this  
12 chapter, shall order the parents or other persons legally obligated to care for and  
13 support the child, and the child if over the age of eighteen, to reimburse the presumed  
14 amount of indigent defense costs and expenses, as determined by the commission on  
15 legal counsel for indigents, and shall notify the party of the right to a hearing on the  
16 reimbursement amount. If the party or the state requests a hearing within thirty days of  
17 receiving notice under this subsection, the court shall schedule a hearing at which the  
18 actual amount of attorney's fees and expenses must be shown. In determining the  
19 amount of reimbursement and method of payment, the court shall consider the  
20 financial resources of the party and the nature of the burden that reimbursement of  
21 costs and expenses will impose.

22 5. A party who is required to reimburse indigent defense costs and expenses and who is  
23 not willfully in default in that reimbursement may at any time petition the court to waive  
24 reimbursement of all or any portion of the attorney's fees and expenses. If the court is  
25 satisfied reimbursement of the amount due will impose undue hardship on the party or  
26 the party's immediate family, the court may waive reimbursement of all or any portion  
27 of the amount due or modify the method of payment.

28 **27-20.2-20. Protective order.**

29 At any stage of the proceedings, upon application of a party or on the court's own motion,  
30 the court may make an order restraining or otherwise controlling the conduct of a person if:

31 1. The court finds that the conduct:

- 1           a. Is or may be detrimental or harmful to the child; or
- 2           b. Will tend to defeat the execution of an order of disposition; and
- 3        2. Notice of the application or motion and the grounds for the appropriate motion and an
- 4           opportunity to be heard have been given to the person against which the order is
- 5           directed.

6        **21-20.2-21. Inspection of court files and records - Penalty.**

- 7        1. Except as provided in this section, all files and records of the juvenile court, whether in
- 8           the office of the clerk of court or juvenile court, of a proceeding under this chapter are
- 9           closed to the public. Juvenile court files and records are open to inspection only by:
- 10        a. The judge and staff of the juvenile court.
- 11        b. The parties to the proceeding or the parties' counsel or the guardian ad litem of
- 12           any party.
- 13        c. A public or private agency or institution providing supervision or having custody of
- 14           the child under order of the juvenile court which must be given a copy of the
- 15           findings and order of disposition when the agency or institution receives custody
- 16           of the child. If a case involves the federal Indian Child Welfare Act of 1978 [25
- 17           U.S.C. 1901 through 1963], the agency or institution having custody of the child
- 18           shall serve the appropriate Indian Child Welfare Act service agent, tribe or tribal
- 19           designee, or an Indian Child Welfare Act qualified expert witness with the findings
- 20           and order of disposition.
- 21        d. Any court and the court's probation and other officials or professional staff and
- 22           the attorney for the defendant for use in preparing a presentence report in a
- 23           criminal case in which the defendant is convicted and who, before the criminal
- 24           case, had been a party to the proceeding in juvenile court.
- 25        e. The professional staff of the uniform crime victims compensation program if
- 26           necessary for the discharge of the duties of the staff pursuant to chapter 54-23.4.
- 27        f. A staff member of the division of children and family services of the department of
- 28           human services or a law enforcement officer if necessary for the performance of
- 29           that staff member's duties under section 50-11.1-06.2 or the federal National
- 30           Child Protection Act of 1993 [Pub. L. 103-209; 107 Stat. 2490; 42 U.S.C. 5119
- 31           et seq.].

- 1           g. An employee or agent of the department of human services if necessary for  
2           performance of that individual's duty under chapter 50-11 or 50-11.1 to  
3           investigate the background of an individual living or working in the facility, home,  
4           or residence for which licensure is sought.
- 5           h. A criminal justice agency if the juvenile is required to register under section  
6           12.1-32-15.
- 7           i. The staff of a children's advocacy center if the juvenile or a victim of the child has  
8           been referred for or has received services at the children's advocacy center.
- 9           j. A victim of the delinquent child or the victim's guardian. All records including  
10          medical, educational, and school information must be redacted before inspection.  
11          For purposes of this subdivision, only records pertaining to the specific offense  
12          between the victim and the delinquent child may be inspected.
- 13          2. Juvenile court files and records are also open to inspection with written leave of a  
14          juvenile court judge or judicial referee to whom juvenile court matters have been  
15          referred:
- 16           a. Upon a showing in writing of a legitimate interest in a proceeding or in the work of  
17           the juvenile court, but only to the extent necessary to respond to the legitimate  
18           interest; and
- 19           b. By the principal of any public or private school that is a member of the North  
20           Dakota high school activities association, or the superintendent of any school  
21           district that has one or more schools involved in the association, but only to the  
22           extent necessary to enforce the rules and regulations of the North Dakota high  
23           school activities association.
- 24          3. In a proceeding under this chapter, if the juvenile court finds a child committed a  
25          delinquent act that constitutes a violation of a law or local ordinance governing the  
26          operation of a motor vehicle or a delinquent act of manslaughter or negligent homicide  
27          caused by the child's operation of a motor vehicle, the juvenile court shall report the  
28          finding to the director of the department of transportation within ten days.
- 29          4. Following an adjudication of delinquency for an offense that would be a felony if  
30          committed by an adult, the child's school principal, chief administrative officer, or  
31          designated school guidance counselor, if requested, must be allowed access to the

1 disposition order. Any other juvenile court files and records of a child may be disclosed  
2 to a superintendent or principal of the school in which the child is currently enrolled or  
3 in which the child wishes to enroll if the child's documented behavior appears to  
4 present a danger to self or to the students or staff of the school.

5 5. Following an adjudication of delinquency for an offense that results in the prohibitions  
6 included in subsection 1 or 2 of section 62.1-02-01, if requested, a law enforcement  
7 officer must be allowed access to the disposition order.

8 6. The juvenile court may notify a referring agency of the disposition of a case.

9 7. Notwithstanding that juvenile court records are closed to the public, nothing in this  
10 section may be construed to limit the release upon request of general information not  
11 identifying the identity of any juvenile, witness, or victim in any proceeding under this  
12 chapter. Files in the clerk of court's office are open to public inspection if the related  
13 hearing was open to the public under section 27-20.3-13.

14 8. To the extent necessary to provide victim services or benefits under chapter 12.1-41,  
15 the judge and staff of the juvenile court may disclose information to refer a child, who  
16 may be a victim of human trafficking, to a program for runaway and homeless children  
17 located in the state and approved by the juvenile court of jurisdiction. Information  
18 disclosed under this subsection must remain confidential.

19 9. An individual with access or authorization to inspect juvenile court files and records  
20 under this section may not share the information contained in the files and records  
21 with any other person not authorized by law. An individual who violates this subsection  
22 is guilty of a class B misdemeanor.

23 **27-20.2-22. Disclosure of information needed to apprehend child.**

24 Notwithstanding any other provision of law, the name, photographs, fingerprints, or other  
25 identifying information of a child who is alleged to have committed a delinquent act involving  
26 actual or threat of serious bodily injury which would constitute a felony if committed by an adult  
27 or who left without authorization from a secure detention facility may be released by law  
28 enforcement, the division of juvenile services, or the juvenile court for purposes of  
29 apprehending the child.

1        **27-20.2-23. Law enforcement and correctional facility records.**

- 2        1. Unless a charge of delinquency is transferred for criminal prosecution under section  
3        27-20.4-20, the interest of national security requires, or the court otherwise orders in  
4        the interest of the child, the law enforcement and correctional facility records and files  
5        of a child alleged or found to be delinquent or in need of services or protection are not  
6        open to public inspection; but inspection of these records and files is permitted by:
- 7        a. A juvenile court having the child before the court in any proceeding;  
8        b. Counsel for a party to the proceeding;  
9        c. The officers of public institutions or agencies to whom the child is or may be  
10       committed;  
11       d. Law enforcement officers of other jurisdictions if necessary for the discharge of  
12       official duties of the officers;  
13       e. A court in which the child is convicted of a criminal offense for the purpose of a  
14       presentence report or other dispositional proceeding, or by officials of correctional  
15       facilities to which the child is detained or committed, or by the parole board, the  
16       governor, or the pardon advisory board, if one has been appointed, in considering  
17       the child's parole or discharge or in exercising supervision over the child;  
18       f. The professional staff of the uniform crime victims compensation program if  
19       necessary for the discharge of the duties of the professional staff pursuant to  
20       chapter 54-23.4; and  
21       g. A superintendent, assistant superintendent, principal, or designee of the school in  
22       which the child is currently enrolled or of a school in which the child wishes to  
23       enroll.
- 24       2. Notwithstanding that law enforcement records and files of a child alleged or found to  
25       be delinquent or in need of services or protection are not open to public inspection,  
26       this section does not limit the release of general information that does not identify the  
27       identity of the child.

28       **27-20.2-24. Children's fingerprints, photographs.**

- 29       1. A child under fourteen years of age may not be fingerprinted in the investigation of a  
30       crime except as provided in this section. Fingerprints of a child who is referred to the  
31       court may be taken and filed by law enforcement officers in investigating the

1 commission of the following crimes: murder, manslaughter, gross sexual imposition,  
2 robbery, aggravated assault, burglary, theft, forgery, and unlawful possession or use of  
3 a handgun.

4 2. Fingerprint files of children must be kept separate from those of adults. Copies of  
5 fingerprints known to be those of a child may be maintained locally and copies may be  
6 sent to a central state depository but may not be sent to a federal depository unless  
7 needed in the interest of national security.

8 3. Fingerprint files of children may be inspected by law enforcement officers if necessary  
9 for the discharge of official duties of law enforcement officers. Other inspections may  
10 be authorized by the court in individual cases upon a showing it is necessary in the  
11 public interest.

12 4. Fingerprints of a child are considered a part of the child's juvenile or adult investigative  
13 file and must be removed from the state and local files and destroyed in accordance  
14 with section 27-20.2-25.

15 5. If latent fingerprints are found during the investigation of an offense and a law  
16 enforcement officer has probable cause to believe the latent fingerprints are those of a  
17 particular child, the officer may fingerprint the child regardless of age or offense for  
18 purposes of immediate comparison with the latent fingerprints. If the comparison is  
19 negative, the fingerprint card and other copies of the fingerprints taken must be  
20 destroyed immediately. If the child is not referred to the court, the fingerprints must be  
21 destroyed immediately.

22 6. A child may be photographed by a law enforcement officer at the time of arrest for the  
23 crimes of murder, manslaughter, gross sexual imposition, robbery, aggravated assault,  
24 burglary, theft, forgery, or unlawful possession or use of a handgun. The photograph  
25 must be destroyed if the child is not referred to the juvenile court. If a court finds facts  
26 that would justify a finding that a child at least fourteen years of age at the time of the  
27 offense is delinquent and the finding involves the unlawful use or possession of a  
28 handgun or the commission of an act proscribed by the criminal laws of this state and  
29 punishable as a felony or a class A misdemeanor committed for the benefit of, at the  
30 direction of, or in association or affiliation with any criminal street gang, with the intent  
31 to promote, further, or assist in the activities of a criminal gang, the juvenile court shall

1 order upon the request of the state's attorney the taking and retention of a photograph  
2 of the child for purposes of identification. Photographs of children under this  
3 subsection may be maintained on a local basis and sent to a central state depository  
4 but must be maintained separate from those of adults and must be destroyed in  
5 accordance with section 27-20.2-25.

6 **27-20.2-25. Destruction of juvenile court records.**

- 7 1. Except as otherwise required under section 25-03.3-04, all juvenile court records must  
8 be retained and disposed of pursuant to rules and policies established by the North  
9 Dakota supreme court.
- 10 2. Upon the final destruction of a file or record, the proceeding must be treated as if the  
11 proceeding never occurred. The juvenile court shall notify each agency named in the  
12 file or record of the destruction. All index references, except those which may be made  
13 by the attorney general and the directors of the department of transportation, the  
14 department of human services, the department of corrections and rehabilitation, the  
15 commission on legal counsel for indigents and its public defender offices, law  
16 enforcement agencies, and human service zones, must be deleted. Each agency,  
17 except the attorney general and the directors of the department of transportation, the  
18 department of human services, the department of corrections and rehabilitation, the  
19 commission on legal counsel for indigents and its public defender offices, law  
20 enforcement agencies, and human service zones, upon notification of the destruction  
21 of a file or record, shall destroy all files, records, and references to the child's  
22 apprehension, detention, and referral to the juvenile court and any record of  
23 disposition made by the juvenile court. The attorney general, the department of human  
24 services, the department of corrections and rehabilitation, the commission on legal  
25 counsel for indigents and its public defender offices, law enforcement agencies, and  
26 human service zones may not keep a juvenile file or record longer than is required by  
27 the records retention policy of that official, department, or agency. Upon inquiry in any  
28 matter the child, the court, and representatives of agencies, except the attorney  
29 general and the directors of the department of transportation, the department of  
30 human services, the department of corrections and rehabilitation, law enforcement

1            agencies, and human service zones, properly shall reply that no record exists with  
2            respect to the child.

3            **27-20.2-26. Appeals.**

- 4            1. An aggrieved party, including the state or a subdivision of the state, may appeal from a  
5            final order, judgment, or decree of the juvenile court to the supreme court by filing  
6            written notice of appeal within thirty days after entry of the order, judgment, or decree,  
7            or within any further time the supreme court grants, after entry of the order, judgment,  
8            or decree. The appeal must be heard by the supreme court upon the files, records,  
9            and minutes or transcript of the evidence of the juvenile court, giving appreciable  
10           weight to the findings of the juvenile court. The name of the child may not appear on  
11           the record on appeal.
- 12           2. The appeal does not stay the order, judgment, or decree appealed from, but the  
13           supreme court may otherwise order on application and hearing consistent with this  
14           chapter if suitable provision is made for the care and custody of the child. If the order,  
15           judgment, or decree appealed from grants the custody of the child to, or withholds  
16           custody of the child from, one or more of the parties to the appeal, the appeal must be  
17           heard at the earliest practicable time.

18           **27-20.2-27. Rules of court.**

19           The North Dakota supreme court may adopt rules of procedure governing proceedings  
20           under this chapter.

21           **27-20.2-28. In-state placement of juveniles - Exception.**

22           Except for cases in which the specific necessary treatment is unavailable in the state or  
23           cases in which the appropriate treatment or services cannot be provided in a timely manner in  
24           the state, all juveniles in need of residential treatment or residential care placement must be  
25           placed in in-state residential facilities.

26           **SECTION 23.** Chapter 27-20.3 of the North Dakota Century Code is created and enacted  
27           as follows:

28           **27-20.3-01. Definitions.**

29           As used in this chapter:

- 30           1. "Abandon" means:



- 1           a. As to a parent of a child not in the custody of that parent, failure by the  
2           noncustodial parent significantly without justifiable cause:  
3           (1) To communicate with the child; or  
4           (2) To provide for the care and support of the child as required by law; or  
5           b. As to a parent of a child in that parent's custody:  
6           (1) To leave the child for an indefinite period without making firm and agreed  
7           plans, with the child's immediate caregiver, for the parent's resumption of  
8           physical custody;  
9           (2) Following the child's birth or treatment at a hospital, to fail to arrange for the  
10          child's discharge within ten days after the child no longer requires hospital  
11          care; or  
12          (3) Willfully to fail to furnish food, shelter, clothing, or medical attention  
13          reasonably sufficient to meet the child's needs.  
14          2. "Abandoned infant" means a child who has been abandoned before reaching the age  
15          of one year.  
16          3. "Aggravated circumstances" means circumstances in which a parent:  
17          a. Abandons, tortures, chronically abuses, or sexually abuses a child;  
18          b. Fails to make substantial, meaningful efforts to secure treatment for the parent's  
19          addiction, mental illness, behavior disorder, or any combination of those  
20          conditions for one year;  
21          c. Engages in conduct prohibited under sections 12.1-20-01 through 12.1-20-08 or  
22          chapter 12.1-27.2, in which a child is the victim or intended victim;  
23          d. Engages in conduct that constitutes one of the following crimes, or of an offense  
24          under the laws of another jurisdiction which requires proof of substantially similar  
25          elements:  
26          (1) A violation of section 12.1-16-01, 12.1-16-02, 12.1-16-03, or 14-09-22 in  
27          which the victim is another child of the parent;  
28          (2) Aiding, abetting, attempting, conspiring, or soliciting a violation of section  
29          12.1-16-01, 12.1-16-02, or 12.1-16-03 in which the victim is a child of the  
30          parent; or

- 1           (3) A violation of section 12.1-17-02 in which the victim is a child of the parent  
2                     and has suffered serious bodily injury;
- 3           e. Engages or attempts to engage in conduct, prohibited under sections 12.1-17-01  
4                     through 12.1-17-04, in which a child is the victim or intended victim;
- 5           f. In the case of a child age nine or older, has been incarcerated under a sentence  
6                     for which the latest release date after the child's age of majority;
- 7           g. Subjects the child to prenatal exposure to chronic or severe use of alcohol or any  
8                     controlled substance as defined in chapter 19-03.1 in a manner not lawfully  
9                     prescribed by a practitioner; or
- 10          h. Allows the child to be present in an environment subjecting the child to exposure  
11                     to a controlled substance, chemical substance, or drug paraphernalia as  
12                     prohibited by section 19-03.1-22.2.
- 13          4. "Attendant care" means a nonsecure holdover site for children in need of services who  
14                     are in the custody of law enforcement and need constant short-term supervision on a  
15                     preadjudicatory basis.
- 16          5. "Child in need of protection" means a child who:
- 17           a. Is without proper parental care or control, subsistence, education as required by  
18                     law, or other care or control necessary for the child's physical, mental, or  
19                     emotional health, or morals, and the need for services or protection is not due  
20                     primarily to the lack of financial means of the child's parents, guardian, or other  
21                     custodian;
- 22           b. Has been placed for care or adoption in violation of law;
- 23           c. Has been abandoned by the child's parents, guardian, or other custodian;
- 24           d. Is without proper parental care, control, or education as required by law, or other  
25                     care and control necessary for the child's well-being because of the physical,  
26                     mental, emotional, or other illness or disability of the child's parent or parents,  
27                     and that such lack of care is not due to a willful act of commission or act of  
28                     omission by the child's parents, and care is requested by a parent;
- 29           e. Is in need of treatment and whose parents, guardian, or other custodian have  
30                     refused to participate in treatment as ordered by the juvenile court;

- 1           f. Was subject to prenatal exposure to chronic or severe use of alcohol or any  
2           controlled substance as defined in chapter 19-03.1 in a manner not lawfully  
3           prescribed by a practitioner;
- 4           g. Is present in an environment subjecting the child to exposure to a controlled  
5           substance, chemical substance, or drug paraphernalia as prohibited by section  
6           19-03.1-22.2; or
- 7           h. Is a victim of human trafficking as defined in title 12.1.
- 8        6. "Child in need of services" means a child who:
- 9           a. Is habitually and without justification truant from school subject to compulsory  
10          school attendance and is absent from school without an authorized excuse more  
11          than three days during a school year;
- 12          b. Is habitually disobedient of the reasonable and lawful commands of the child's  
13          parent, guardian, or other custodian, including running away, and is ungovernable  
14          or who is willfully in a situation dangerous or injurious to the health, safety, or  
15          morals of the child or others;
- 16          c. Has committed an offense applicable only to a child, except for an offense  
17          committed by a minor fourteen years of age or older under subsection 2 of  
18          section 12.1-31-03 or an equivalent local ordinance or resolution; or
- 19          d. Is under the age of fourteen years and has purchased, possessed, smoked, or  
20          used tobacco, a tobacco-related product, an electronic smoking device, or an  
21          alternative nicotine product in violation of subsection 2 of section 12.1-31-03. As  
22          used in this subdivision, "electronic smoking device" and "alternative nicotine  
23          product" have the same meaning as in section 12.1-31-03; and
- 24          e. In any of the foregoing instances is in need of treatment or rehabilitation.
- 25        7. "Custodian" means a person, other than a parent or legal guardian, which stands in  
26          loco parentis to the child and a person to which legal custody of the child has been  
27          given by order of a court.
- 28        8. "Diversion" means an intervention strategy that redirects a child away from formal  
29          processing in the juvenile justice system, while still holding the child accountable for  
30          that child's actions.

- 1       9. "Fit and willing relative or other appropriate individual" means a relative or other  
2       individual who has been determined, after consideration of an assessment that  
3       includes a criminal history record investigation under chapter 50-11.3, to be a qualified  
4       individual under chapters 27-20.1 and 30.1-27, and who consents in writing to act as a  
5       legal guardian.
- 6       10. "Home" as used in the phrase "to return home" means the abode of the child's parent  
7       with whom the child formerly resided.
- 8       11. "Human service zone" means a county or consolidated group of counties  
9       administering human services within a designated area in accordance with an  
10       agreement or plan approved by the department of human services.
- 11       12. "Permanency hearing" means a hearing, conducted with respect to a child who is in  
12       foster care, to determine the permanency plan for the child which includes the  
13       following:
- 14       a. Whether and, if applicable, when the child will be returned to the parent.  
15       b. Whether and, if applicable, when the child will be placed for adoption and the  
16       state will file a petition for termination of parental rights.  
17       c. Whether and, if applicable, when a fit and willing relative or other appropriate  
18       individual will be appointed as a legal guardian.  
19       d. Whether and, if applicable, to place siblings in the same foster care, relative,  
20       guardianship, or adoptive placement, unless it is determined that the joint  
21       placement would be contrary to the safety or well-being of any of the siblings.  
22       e. Whether and, if applicable, in the case of siblings removed from the home of the  
23       siblings who are not jointly placed, to provide for frequent visitation or other  
24       ongoing interaction between the siblings, unless it is determined to be contrary to  
25       the safety or well-being of any of the siblings.  
26       f. In cases in which a compelling reason has been shown that it would not be in the  
27       child's best interests to return home, to have parental rights terminated, to be  
28       placed for adoption, to be placed with a fit and willing relative, or to be placed  
29       with a legal guardian, whether and, if applicable, when the child, aged sixteen or  
30       older, will be placed in another planned permanent living arrangement. The court  
31       shall:

- 1           (1) Ask the child whether the child has a desired permanency outcome of  
2                     another planned permanent living arrangement;
- 3           (2) Make a judicial determination explaining why another planned permanent  
4                     living arrangement is the best permanency plan for the child; and
- 5           (3) Identify the compelling reasons it continues not to be in the best interest of  
6                     the child to return home, be placed for adoption, be placed with a legal  
7                     guardian, or be placed with a fit and willing relative.
- 8           g. In the case of a child who has been placed in foster care outside the state in  
9                     which the home of the parents is located, or if the parents maintain separate  
10                    homes, outside the state in which the home of the parent who was the child's  
11                    primary caregiver is located, whether out-of-state placements have been  
12                    considered. If the child is currently in an out-of-state placement, the court shall  
13                    determine whether the placement continues to be appropriate and in the child's  
14                    best interests.
- 15           h. In the case of a child who has attained age fourteen, the services needed to  
16                    assist the child to make the transition to successful adulthood.
- 17        13. "Qualified residential treatment programs" mean residential child care facilities that  
18                    provide a higher level of care which must use a trauma-informed treatment model and  
19                    employ registered or licensed nursing staff and other licensed clinical staff to meet the  
20                    treatment needs of children in out-of-home placement.
- 21        14. "Referral" means a written report submitted to the director of juvenile court or the  
22                    director of the human service zone concerning behavior without an arrest or taking into  
23                    custody having occurred and the child remains in the parental home to be notified of  
24                    any action taken by the director or human service zone as authorized in this chapter.
- 25        15. "Relative" means:
- 26           a. The child's grandparent, great-grandparent, sibling, half-sibling, aunt, great-aunt,  
27                    uncle, great-uncle, nephew, niece, or first cousin;
- 28           b. An individual with a relationship to the child, derived through a current or former  
29                    spouse of the child's parent, similar to a relationship described in subdivision a;
- 30           c. An individual recognized in the child's community as having a relationship with  
31                    the child similar to a relationship described in subdivision a; or

1           d. The child's stepparent.

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

3       **27-20.3-02. Jurisdiction.**

4       Jurisdiction as set forth in section 27-20.2-03 is applicable to this chapter.

5       **27-20.3-03. Venue.**

6       Except as otherwise provided by this section, a proceeding under this chapter must be  
7 commenced in the county in which the child resides. If the need for services or protection are  
8 alleged, the proceeding may be brought in the county in which the child is present at the time  
9 the proceeding is commenced, the county in which the child has resided for the majority of the  
10 thirty days before the date of the alleged need for services or protection, or the county in which  
11 the alleged need for services or protection has occurred. The court shall determine the  
12 appropriate venue for a child in need of services or a child in need of protection based on the  
13 best interest of the child.

14       **27-20.3-04. Powers and duties of director of juvenile court.**

- 15       1. For the purpose of carrying out the objectives and purposes of this chapter and  
16 subject to the limitations of this chapter or imposed by the court, a director shall:
- 17       a. Make investigations, reports, and recommendations to the juvenile court.
  - 18       b. Receive and examine referrals of a child in need of services or child in need of  
19 protection for the purpose of considering diversion of services.
  - 20       c. Make a determination upon intake of referrals regarding the appropriate manner  
21 to handle delinquent conduct, a child in need of services, or a child in need of  
22 protection under this chapter.
  - 23       d. Make appropriate referrals to other private or public agencies of the community if  
24 their assistance appears to be needed or desirable.
  - 25       e. Issue a temporary custody order concerning a child who is referred to the  
26 director's supervision or care as a child in need of services or a child in need of  
27 protection. Except as provided by this chapter, a director does not have the  
28 powers of a law enforcement officer.
  - 29       f. Take acknowledgments of instruments for the purpose of this chapter.
  - 30       g. Make such temporary order not to exceed ninety-six hours for the custody and  
31 control of a child alleged to be in need of services or protection as may be

1 deemed appropriate. The order must be reduced to writing within twenty-four  
2 hours, excluding holidays and weekends.

3 h. Perform all other functions designated by this chapter or under section 27-05-30  
4 or by order of the court, including, if qualified, those of a referee.

5 i. Issue an order to a law enforcement authority to transport a child to and from a  
6 specified location.

7 j. Receive and examine requests for review of a child's placement at a qualified  
8 residential treatment program under the Family First Prevention Services Act  
9 [Pub. L. 115-123; 132 Stat. 64; 42 U.S.C. 675].

10 2. Any of the foregoing functions may be performed in another state if authorized by the  
11 court of this state and permitted by the laws of the other state.

12 **27-20.3-05. Method of making a child in need of services referral.**

13 1. A referral alleging a child is a child in need of services may be made by a parent,  
14 guardian or other custodian, a law enforcement officer, a school official, or any other  
15 person that has knowledge of the facts alleged and believes such facts are true.

16 2. A referral alleging a child is a child in need of services under section 27-20.2-01 must  
17 be sent to the juvenile court.

18 3. The referral must be set forth in writing and must set forth the following:

19 a. The name, date of birth, and residence address of the child alleged to be a child  
20 in need of services;

21 b. The names and residence addresses of the parent, guardian or legal custodian,  
22 any other family members, or any other individuals living within the child's home;

23 c. The name of any public institution or agency having the responsibility or ability to  
24 supply services alleged to be needed by the child; and

25 d. Whether any of the matters required by this subsection are unknown.

26 4. If a school official is filing a referral alleging a child is a child in need of services,  
27 information must be included which shows:

28 a. The legally responsible school district has sought to resolve the expressed  
29 problem through all appropriate and available educational approaches; and

- 1           b. The school district has sought to engage the parent, guardian, or legal custodian  
2           of such child in solving the problem but such person has been unwilling or unable  
3           to do so, that the problem remains, and that court intervention is needed.
- 4        5. If a school official is filing a complaint alleging a child is a child in need of services  
5        involving a child who is eligible or suspected to be eligible for services under the  
6        federal Individuals with Disabilities Education Act of 1990 [20 U.S.C. 1400 et seq.] or  
7        Section 504 of the federal Rehabilitation Act of 1973 [29 U.S.C. 725], information must  
8        be included which demonstrates that the legally liable school district:
- 9           a. Has determined the child is eligible or suspected to be eligible under the federal  
10          Individuals with Disabilities Education Act of 1990 [20 U.S.C. 1400 et seq.] or  
11          Section 504 of the federal Rehabilitation Act of 1973 [29 U.S.C. 725]; and
- 12          b. Has reviewed for appropriateness the child's current individualized education  
13          program and placement and has made modifications as appropriate.

14        **27-20.3-06. Taking into protective custody.**

- 15        1. A child alleged to be in need of protection may be taken into protective custody:
- 16           a. Pursuant to an order of the court under this chapter;
- 17           b. By a law enforcement officer or designee if there are reasonable grounds to  
18           believe:
- 19                (1) The child is suffering from illness or injury or is in immediate danger from  
20                the child's surroundings, and the child's removal is necessary; or
- 21                (2) The child has run away from the child's parents, guardian, or other  
22                custodian; or
- 23           c. By order of the director made pursuant to section 27-20.3-04.
- 24        2. The taking of a child into protective custody is not an arrest, except for the purpose of  
25        determining the validity of the arrest under the Constitution of North Dakota or the  
26        United States Constitution.
- 27        3. A law enforcement officer may transport a child to and from attendant care.
- 28        4. Without a compelling reason to the contrary, a court order transferring a child into  
29        custody must provide a reasonable period of time to facilitate a beneficial transition for  
30        the child and other parties involved.



1       **27-20.3-07. Shelter care of child.**

2       A child taken into protective custody may not be placed in shelter care before the hearing  
3 on the petition unless the child's care is required to protect a person or property of others or of  
4 the child or because the child may abscond or be removed from the jurisdiction of the court or  
5 because the child has no parent, guardian or custodian, or other person able to provide  
6 supervision and care for the child and return the child to the court if required, or an order for the  
7 child's shelter care has been made by the court pursuant to this chapter.

8       **27-20.3-08. Release or delivery to court.**

- 9       1. A person taking a child into protective custody, with all reasonable speed and without  
10 first taking the child elsewhere, shall:
- 11       a. Release the child to the child's parent, guardian, custodian, or other responsible  
12 adult able and willing to assume custody of the child, upon that person's promise  
13 to bring the child before the court if requested by the court, unless the child's  
14 shelter care is warranted or required; or
- 15       b. Bring the child before the court or deliver the child to a shelter care facility  
16 designated by the court or to a medical facility if the child is believed to suffer  
17 from a serious physical condition or illness that requires prompt treatment. The  
18 person taking the child into custody promptly shall give notice of taking the child  
19 into custody, together with a statement of the reason for taking the child into  
20 custody, to a parent, guardian, or other custodian and to the court. Any  
21 questioning of the child necessary to comply with this subdivision must conform  
22 to the procedures and conditions prescribed by this chapter and rules of court.
- 23       2. If a parent, guardian, or other custodian, when requested, fails to bring the child before  
24 the court as provided in subsection 1, the court may issue a temporary custody order  
25 directing the child be taken into custody and brought before the court.
- 26       3. If the petition is not filed, the child must be released from shelter care.

27       **27-20.3-09. Place of shelter care.**

28       A child alleged to be in need of shelter care may be placed only in:

- 29       1. A licensed foster home or a home approved by the court;  
30       2. A facility operated by a licensed child welfare agency; or

1       3. Any other suitable place or facility, including a medical facility for the treatment of  
2       mental illness, alcoholism, or drug addiction, designated by the court.

3       **27-20.3-10. Release from shelter care - Hearing - Conditions of release.**

4       1. If a child is brought before the court or delivered to a shelter care facility designated by  
5       the court, the director, an intake officer, or other authorized officer of the court or  
6       human service zone immediately shall make an investigation and release the child  
7       unless it appears that the child's shelter care is warranted or required under section  
8       27-20.3-07. If there is reason to believe the child may be an Indian child and the  
9       federal Indian Child Welfare Act of 1978 [25 U.S.C. 1901 through 1963] may apply, the  
10       judge or referee may order the child be placed under the custody of the human service  
11       zone for a maximum of thirty days from the date of the emergency removal upon  
12       finding:

13       a. A return of the child to the parent or Indian custodian would subject the child to  
14       imminent danger or harm;

15       b. The court has been unable to transfer the proceeding to the appropriate Indian  
16       tribe; or

17       c. Holding an adjudicatory hearing is not possible.

18       2. If the child is not released, a judge or referee shall hold a shelter care hearing  
19       promptly and not later than ninety-six hours after the child is placed in shelter care to  
20       determine whether there is probable cause to believe that the child is in need of  
21       protection and whether the child's shelter care is required under section 27-20.3-07.  
22       Reasonable notice, either oral or written, stating the time, place, and purpose of the  
23       shelter care hearing must be given to the child and, if able to be found, to the child's  
24       parents, guardian, or other custodian. Before the commencement of the hearing, the  
25       court shall inform the parties of the rights of the parties to counsel and to counsel at  
26       public expense if the parties are indigent .

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

30       4. As a condition to the child's release from shelter care, the court may order a parent,  
31       guardian, custodian, or any other member of the household in which the child resides

1 to vacate the child's residence if probable cause exists to believe that the parent,  
2 guardian, custodian, or other member of the household has committed a sexual  
3 offense with or against the child, pursuant to sections 12.1-20-03 through 12.1-20-07  
4 or section 12.1-20-11, and the presence of the alleged sexual offender in the child's  
5 residence presents a danger to the child's life or physical, emotional, or mental health.  
6 The court may order that the parent, guardian, or custodian not allow contact with an  
7 identified person if the court determines the order is in the best interests of the child.

8 5. If the child is not released and a parent, guardian, or custodian has not been notified  
9 of the hearing, did not appear or waive appearance at the hearing, and files an  
10 affidavit showing these facts, the court shall rehear the matter without unnecessary  
11 delay and order the child's release, unless it appears from the hearing that the child's  
12 shelter care is required under section 27-20.3-07.

13 **27-20.3-11. Diversion.**

14 A child in need of services may be diverted.

15 **27-20.3-12. Petition - Who may prepare and file - Review.**

16 A petition alleging a child in need of protection must be prepared, filed, and served upon the  
17 parties by the state's attorney. A petition may also be prepared by any other person, including a  
18 law enforcement officer, which has knowledge of the facts alleged or is informed and believes  
19 the facts are true. A petition prepared by any person other than a state's attorney may not be  
20 filed unless the director or the court has determined the filing of the petition is in the best  
21 interest of the public and the child.

22 **27-20.3-13. Conduct of child in need of protection hearings.**

- 23 1. A hearing under this chapter must be conducted by the court without a jury, in an  
24 informal but orderly manner and separately from other proceedings not included in  
25 section 27-20.2-03 and in accordance with the rules of North Dakota juvenile  
26 procedure.
- 27 2. If the hearing has not been held within the time limit, or any extension of the time limit,  
28 required by supreme court rule, the petition must be dismissed.
- 29 3. The state's attorney shall present the evidence in support of any allegations of the  
30 petition not admitted and otherwise conduct the proceedings on behalf of the state.

- 1       4. The proceedings must be recorded by stenographic notes or by electronic,  
2       mechanical, or other appropriate means.
- 3       5. Juvenile court hearings are closed to the public even if the purpose of the hearing is to  
4       declare a person in contempt of court. The general public must be excluded from other  
5       hearings under this chapter. In hearings from which the general public is excluded,  
6       only the parties, counsel of the parties, witnesses, victims, and any other persons the  
7       court finds have a proper interest in the proceedings may be admitted by the court.  
8       The court may temporarily exclude the child or other person from the hearing if, after  
9       being warned by the court that disruptive conduct will cause removal from the  
10      courtroom, the child or other person persists in conduct that justifies removal from the  
11      courtroom.

12      **27-20.3-14. Adjudication.**

- 13      1. If the court finds from clear and convincing evidence that the child is in need of  
14      protection, the court shall proceed immediately or at a postponed hearing to make a  
15      proper disposition of the case.
- 16      2. After hearing the evidence on the petition, the court shall make and file findings as to  
17      whether the child is in need of protection. If the court finds the child is not in need of  
18      protection, the court shall dismiss the petition and order the child discharged from any  
19      restriction previously ordered in the proceeding.
- 20      3. In hearings under this section, all evidence helpful in determining the questions  
21      presented, including oral and written reports, may be received by the court and relied  
22      upon to the extent of the probative value of the evidence even though not otherwise  
23      competent in the hearing on the petition. The parties or the counsel of the parties must  
24      be afforded an opportunity to examine and controvert written reports so received and  
25      to cross-examine individuals making the reports. Sources of confidential information  
26      need not be disclosed.
- 27      4. On motion of the court or that of a party, the court may continue the hearings under  
28      this section for a reasonable period to receive reports and other evidence bearing on  
29      the disposition. In scheduling investigations and hearings the court shall give priority to  
30      proceedings in which a child has otherwise been removed from the child's home  
31      before an order of disposition has been made.

1       **27-20.3-15. Disposition of a child in need of protection.**

- 2       1. If a child is found to be a child in need of protection, the court may make any of the  
3       following orders of disposition best suited to the protection and physical, mental, and  
4       moral welfare of the child:
- 5       a. Permit the child to reside with the child's parents, guardian, or other custodian,  
6       subject to conditions and limitations as the court prescribes, including supervision  
7       as directed by the court for the protection of the child.
- 8       b. Subject to conditions and limitations as the court prescribes, transfer temporary  
9       legal custody to any of the following:
- 10       (1) An agency or other private organization licensed or otherwise authorized by  
11       law to receive and provide care for the child.
- 12       (2) The director of the human service zone or other public agency authorized by  
13       law to receive and provide care for the child.
- 14       c. Require the parents, guardian, or other custodian to participate in treatment.
- 15       d. Appoint a fit and willing relative or other appropriate individual as the child's legal  
16       guardian under section 27-20.1-11.
- 17       e. In cases in which a compelling reason has been shown that it would not be in the  
18       child's best interests to return home, to have parental rights terminated, to be  
19       placed for adoption, to be placed with a fit and willing relative, or to be placed  
20       with a legal guardian, establish, by order, some other planned permanent living  
21       arrangement.
- 22       2. Without a compelling reason to the contrary, a court order that transfers the child from  
23       the current protective placement to a parent or other biological family must provide a  
24       reasonable period of time to facilitate a beneficial transition for the child and other  
25       parties involved.
- 26       3. A child in need of protection may not be placed in a residential facility that houses  
27       delinquent children.

28       **27-20.3-16. Disposition of child needing continued foster care services.**

- 29       1. As used in this section, "child" means an individual between the ages of eighteen and  
30       twenty-one years who is in need of continued foster care services.

- 1       2. A petition to commence an action under this section must contain information as  
2       required by supreme court rule along with an affidavit either prepared by the  
3       administrative human service zone, as determined by the department of human  
4       services, or prepared by an agency or tribal council of a recognized Indian reservation  
5       in this state.
- 6       3. The court shall issue a summons upon the filing of a petition and affidavit.
- 7       4. If a child is in need of continued foster care services as determined by the human  
8       service zone or the department of human services and as set forth in a continued  
9       foster care agreement, the court shall make the following judicial determination:
- 10      a. That the child is not in need of services or protection or delinquent, but is in need  
11      of continued foster care services;
- 12      b. That the child will remain in or will return to foster care pursuant to the child's  
13      continued foster care agreement;
- 14      c. That the child's continued foster care agreement has been willfully entered  
15      between:
- 16          (1) The human service zone or the department of human services or its agent,  
17          the child, and the foster care provider; or
- 18          (2) An agency or tribal council of a recognized Indian reservation in the state if  
19          the child is not subject to the jurisdiction of the state, the child, and the  
20          foster care provider;
- 21      d. That it is in the best interest of the child to remain in or return to foster care;
- 22      e. That reasonable efforts were made in accordance with subsection 7 of section  
23      27-20.3-18;
- 24      f. That the child has attained the age of eighteen or older but does not exceed the  
25      age of twenty-one years;
- 26      g. That the child has satisfied the education, employment, or disability requirements  
27      under the federal Fostering Connections to Success and Increasing Adoptions  
28      Act of 2008 [Pub. L. 110-351] and as set forth by the department of human  
29      services;
- 30      h. That the human service zone, as determined by the department of human  
31      services, or that an agency or tribal council of a recognized Indian reservation in

- 1           the state, shall continue foster care case management, unless otherwise agreed  
2           to or required by the department of human services;  
3           i. That the human service zone or an agency or tribal council of a recognized  
4           Indian reservation in the state must have care and placement responsibility of the  
5           child;  
6           j. That permanency hearing must be as set forth in section 27-20.3-24; and  
7           k. That there are no grounds to file a petition to terminate parental rights under  
8           section 27-20.3-20.  
9           5. Pursuant to rule 16 of the North Dakota Rules of Juvenile Procedure, a court may  
10           modify or vacate the judicial determination made under subsection 4.

11           **27-20.3-17. Human service zone to report to committing juvenile court.**

- 12           1. A human service zone shall develop a family case plan and file the plan with the  
13           committing juvenile court within sixty days.  
14           2. A human service zone shall review each placement of a child found to be in need or  
15           protection with custody ordered to a human service zone and shall review the current  
16           status of each child every three months to determine whether a change in placement  
17           or program is necessary for continued efforts toward reunification and permanency of  
18           the child, and shall report the findings to the committing juvenile court.

19           **27-20.3-18. Reasonable efforts to prevent removal or to reunify - When required.**

- 20           1. As used in this section, "reasonable efforts" means the exercise of due diligence, by  
21           the agency granted authority over the child under this chapter, to use appropriate and  
22           available services to meet the needs of the child and the child's family in order to  
23           prevent removal of the child from the child's family or, after removal, to use appropriate  
24           and available services to eliminate the need for removal, to reunite the child and the  
25           child's family, and to maintain family connections. In determining reasonable efforts to  
26           be made with respect to a child under this section, and in making reasonable efforts,  
27           the child's health and safety must be the paramount concern.  
28           2. Except as provided in subsection 4, reasonable efforts must be made to preserve  
29           families, reunify families, and maintain family connections:  
30           a. Before the placement of a child in foster care, to prevent or eliminate the need for  
31           removing the child from the child's home;

- 1           b. To make it possible for a child to return safely to the child's home;
- 2           c. Whether and, if applicable, to place siblings in the same foster care, relative,
- 3           guardianship, or adoptive placement, unless it is determined that such a joint
- 4           placement would be contrary to the safety or well-being of any of the siblings;
- 5           and
- 6           d. In the case of siblings removed from the home of the siblings who are not jointly
- 7           placed, to provide for frequent visitation or other ongoing interaction between the
- 8           siblings, unless it is contrary to the safety or well-being of any of the siblings.
- 9        3. If the court or the child's custodian determined that continuation of reasonable efforts,
- 10       as described in subsection 2, is inconsistent with the permanency plan for the child,
- 11       reasonable efforts must be made to place the child in a timely manner in accordance
- 12       with the permanency plan and to complete steps that are necessary to finalize the
- 13       permanent placement of the child.
- 14       4. Reasonable efforts of the type described in subsection 2 are not required if:
- 15       a. A court of competent jurisdiction has determined a parent has subjected a child to
- 16       aggravated circumstances; or
- 17       b. The parental rights of the parent, with respect to another child of the parent, have
- 18       been involuntarily terminated.
- 19       5. Efforts to place a child for adoption, with a fit and willing relative or other appropriate
- 20       individual as a legal guardian, or in another planned permanent living arrangement,
- 21       may be made concurrently with reasonable efforts of the type described in
- 22       subsection 2.
- 23       6. Removal of a child from the child's home for placement in foster care must be based
- 24       on judicial findings stated in the court's order, and determined on a case-by-case basis
- 25       in a manner that complies with the requirements of titles IV-B and IV-E of the federal
- 26       Social Security Act [42 U.S.C. 620 et seq. and 42 U.S.C. 6701 et seq.], as amended,
- 27       and federal regulations adopted under this federal Act, provided that this subsection
- 28       may not provide a basis for overturning an otherwise valid court order.
- 29       7. For the purpose of section 27-20.3-19, reasonable efforts were made under this
- 30       section to meet the child's needs before a foster care placement for a child remaining
- 31       in care for continued foster care purposes.



1       **27-20.3-19. Indian child welfare - Active efforts and procedures.**

2       1. As used in this section:

3       a. "Active efforts" means affirmative, active, thorough, and timely efforts intended  
4       primarily to maintain or reunite an Indian child with the child's family. Active efforts  
5       required of the federal Indian Child Welfare Act of 1978 [25 U.S.C. 1901 through  
6       1963] apply or may apply, including during the verification process. If an agency  
7       is involved in the child-custody proceeding, active efforts must involve assisting  
8       the parent or parents or Indian custodian through the steps of a case plan and  
9       with accessing or developing the resources necessary to satisfy the case plan. To  
10       the maximum extent possible, active efforts should be provided in a manner  
11       consistent with the prevailing social and cultural conditions and way of life of the  
12       Indian child's tribe and should be conducted in partnership with the Indian child  
13       and the Indian child's parents, extended family members, Indian custodians, and  
14       tribe. Active efforts are to be tailored to the facts and circumstances of the case.

15       The term includes:

- 16       (1) Conducting a comprehensive assessment of the circumstances of the  
17       Indian child's family, with a focus on safe reunification as the most desirable  
18       goal, with ongoing timely assessment to determine when the threat is  
19       resolved and placement of the child can be returned to the custodian.
- 20       (2) Identifying appropriate services and helping the parents to overcome  
21       barriers, including actively assisting the parents in obtaining such services.
- 22       (3) Identifying, notifying, and inviting representatives of the Indian child's tribe to  
23       participate in providing support and services to the Indian child's family and  
24       in family team meetings, permanency planning, and resolution of placement  
25       issues.
- 26       (4) Conducting or causing to be conducted a diligent search for the Indian  
27       child's extended family members, and contacting and consulting with  
28       extended family members to provide family structure and support for the  
29       Indian child and the Indian child's parents.

- 1           (5) Offering and employing available and culturally appropriate family  
2           preservation strategies and facilitating the use of remedial and rehabilitative  
3           services provided by the child's tribe.
- 4           (6) Taking steps to keep siblings together, if possible.
- 5           (7) Supporting regular visits with parents or Indian custodians in the most  
6           natural setting possible as well as trial home visits of the Indian child during  
7           any period of removal, consistent with the need to ensure the health, safety,  
8           and welfare of the child.
- 9           (8) Identifying community resources, including housing, financial,  
10          transportation, mental health, substance abuse, and peer support services  
11          and actively assisting the Indian child's parents or, as appropriate, the  
12          child's family, in utilizing and accessing those resources.
- 13          (9) Monitoring progress and participation in services.
- 14          (10) Considering alternative ways to address the needs of the Indian child's  
15          parents and where appropriate, the family, if the optimum services do not  
16          exist or are not available.
- 17          (11) Providing post-reunification services and monitoring.
- 18          b. "Extended family member" means a relationship defined by the law or custom of  
19          the Indian child's tribe or, in the absence of such law or custom, means an  
20          individual who has reached the age of eighteen and who is the Indian child's  
21          grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece  
22          or nephew, first or second cousin, or stepparent.
- 23          c. "Indian" means an individual who is a member of an Indian tribe, or who is a  
24          native and a member of a regional corporation as defined under 43 U.S.C. 1606.
- 25          d. "Indian child" means any unmarried individual who is under the age of eighteen  
26          and is either a member of an Indian tribe or is eligible for membership in an  
27          Indian tribe and is the biological child of a member of an Indian tribe.
- 28          e. "Indian child's tribe" means the Indian tribe in which an Indian child is a member  
29          or eligible for membership or, in the case of an Indian child who is a member of or  
30          eligible for membership in more than one tribe, the Indian tribe with which the  
31          Indian child has the more significant contacts.

- 1           f. "Indian custodian" means any Indian individual who has legal custody of an  
2           Indian child under tribal law or custom or under state law or to whom temporary  
3           physical care, custody, and control has been transferred by the parent of the  
4           child.
- 5           g. "Indian tribe" means an Indian tribe, band, nation, or other organized Indian  
6           group or community of Indians recognized as eligible for services provided to  
7           Indians by the United States secretary of the interior because of their status as  
8           Indians, including any Alaska native village as defined in 43 U.S.C. 1602(c).
- 9           h. "Parent" means any biological parent or parents of an Indian child or any Indian  
10          individual who has lawfully adopted an Indian child, including adoptions under  
11          tribal law or custom. The term does not include the unwed father if paternity has  
12          not been acknowledged or established.
- 13          i. "Termination of parental rights" means any action resulting in the termination of  
14          the parent-child relationship. It does not include a placement based upon an act  
15          by an Indian child which, if committed by an adult, would be deemed a crime or a  
16          placement upon award of custody to one of the child's parents in a divorce  
17          proceeding.
- 18          2. Before removal of an Indian child from the custody of a parent or Indian custodian for  
19          purposes of involuntary foster care placement or the termination of parental rights over  
20          an Indian child, the court shall find that active efforts have been made to provide  
21          remedial services and rehabilitative services designed to prevent the breakup of the  
22          Indian family and that these efforts have proved unsuccessful. The court may not  
23          order the removal unless evidence of active efforts shows there has been a vigorous  
24          and concerted level of casework beyond the level that would constitute reasonable  
25          efforts under section 27-20.3-26. Reasonable efforts may not be construed to be  
26          active efforts. Active efforts must be made in a manner that takes into account the  
27          prevailing social and cultural values, conditions, and way of life of the Indian child's  
28          tribe. Active efforts must utilize the available resources of the Indian child's extended  
29          family, tribe, tribal and other relevant social service agencies, and individual Indian  
30          caregivers.

- 1       3. The court may order the removal of the Indian child for involuntary foster care  
2       placement only if the court determines, by clear and convincing evidence, that  
3       continued custody of the child by the parent or Indian custodian is likely to result in  
4       serious emotional or physical damage to the child. Evidence must show a causal  
5       relationship between the particular conditions in the home and the likelihood that  
6       continued custody of the child will result in serious emotional or physical damage to  
7       the particular child who is the subject of the proceeding. Poverty, isolation, custodian  
8       age, crowded or inadequate housing, substance use, or nonconforming social  
9       behavior does not by itself constitute clear and convincing evidence of imminent  
10       serious emotional or physical damage to the child. As soon as the threat has been  
11       removed and the child is no longer at risk, the state should terminate the removal, by  
12       returning the child to the parent while offering a solution to mitigate the situation that  
13       gave rise to the need for emergency removal and placement.
- 14       4. The court may only order the termination of parental rights over the Indian child if the  
15       court determines, by evidence beyond a reasonable doubt that continued custody of  
16       the child by the parent or Indian custodian is likely to result in serious emotional or  
17       physical damage to the child.
- 18       5. In considering whether to involuntarily place an Indian child in foster care or to  
19       terminate the parental rights of the parent of an Indian child, the court shall require that  
20       a qualified expert witness must be qualified to testify regarding whether the child's  
21       continued custody by the parent or Indian custodian is likely to result in serious  
22       emotional or physical damage to the child and should be qualified to testify as to the  
23       prevailing social and cultural standards of the Indian child's tribe. An individual may be  
24       designated by the Indian child's tribe as being qualified to testify to the prevailing  
25       social and cultural standards of the Indian child's tribe. The court or any party may  
26       request the assistance of the Indian child's tribe or the bureau of Indian affairs office  
27       servicing the Indian child's tribe in locating individuals qualified to serve as expert  
28       witnesses. The social worker regularly assigned to the Indian child may not serve as a  
29       qualified expert witness in child-custody proceedings concerning the child. The  
30       qualified expert witness should be someone familiar with the particular child and have  
31       contact with the parents to observe interaction between the parents, child, and

1 extended family members. The child welfare agency and courts should facilitate  
2 access to the family and records to facilitate accurate testimony.

3 **27-20.3-20. Termination of parental rights.**

4 1. The court by order may terminate the parental rights of a parent with respect to the  
5 parent's child if:

6 a. The parent has abandoned the child;

7 b. The child is subjected to aggravated circumstances;

8 c. The child is in need of protection and the court finds:

9 (1) The conditions and causes of the need for protection are likely to continue  
10 or will not be remedied and for that reason the child is suffering or will  
11 probably suffer serious physical, mental, moral, or emotional harm; or

12 (2) The child has been in foster care, in the care, custody, and control of the  
13 department or human service zone for at least four hundred fifty out of the  
14 previous six hundred sixty nights;

15 d. The written consent of the parent acknowledged before the court has been given;  
16 or

17 e. The parent has pled guilty or nolo contendere to, or has been found guilty of  
18 engaging in a sexual act under section 12.1-20-03 or 12.1-20-04, the sexual act  
19 led to the birth of the parent's child, and termination of the parental rights of the  
20 parent is in the best interests of the child.

21 2. If the court does not make an order of termination of parental rights, it may grant an  
22 order under section ~~27-02.3-15~~27-20.3-15 if the court finds from clear and convincing  
23 evidence that the child is in need of protection.

24 **27-20.3-21. Petition for termination of parental rights.**

25 1. As used in this section:

26 a. "A finding that the child has been subjected to child abuse or neglect" means:

27 (1) A finding of a child in need of protection made under this chapter; or

28 (2) A conviction of a person, responsible for a child's welfare, for conduct  
29 involving the child, under chapter 12.1-16 or sections 12.1-17-01 through  
30 12.1-17-04 or 12.1-20-01 through 12.1-20-08.

31 b. "Compelling reason" means a recorded statement that reflects consideration of:

- 1           (1) The child's age;
- 2           (2) The portion of the child's life spent living in the household of a parent of the
- 3           child;
- 4           (3) The availability of an adoptive home suitable to the child's needs;
- 5           (4) Whether the child has special needs; and
- 6           (5) The expressed wishes of a child age ten or older.
- 7        c. "Department" means the department of human services.
- 8        d. "Human service zone" means a county or consolidated group of counties
- 9           administering human services within a designated area in accordance with an
- 10          agreement or plan approved by the department.
- 11       2. A petition for termination of parental rights must be prepared, filed, and served upon
- 12          the parties by the state's attorney. A petition may also be prepared by any other
- 13          person that is not the court, including a law enforcement officer, who has knowledge of
- 14          the facts alleged or is informed and believes that they are true. A petition prepared by
- 15          any person other than a state's attorney may not be filed unless the director or the
- 16          court, has determined the filing of the petition is in the best interest of the public and
- 17          the child.
- 18       3. Except as provided in subsection 4, a petition for termination of parental rights must be
- 19          filed:
- 20          a. If the child has been in foster care, in the custody of the department, human
- 21             service zone, or, in cases arising out of an adjudication by the court of a child in
- 22             need of services, the division of juvenile services, for at least four hundred fifty
- 23             out of the previous six hundred sixty nights;
- 24          b. Within sixty days after the court has found the child to be an abandoned infant; or
- 25          c. Within sixty days after the court has convicted the child's parent of one of the
- 26             following crimes, or of an offense under the laws of another jurisdiction which
- 27             requires proof of substantially similar elements:
- 28             (1) A violation of section 12.1-16-01, 12.1-16-02, or 12.1-16-03, or subsection 1
- 29             of section 14-09-22 in which the victim is another child of the parent;

- 1                   (2) Aiding, abetting, attempting, conspiring, or soliciting a violation of section  
2                   12.1-16-01, 12.1-16-02, or 12.1-16-03 in which the victim is a child of the  
3                   parent; or
- 4                   (3) A violation of section 12.1-17-02 in which the victim is a child of the parent  
5                   and has suffered serious bodily injury.
- 6           4. A petition for termination of parental rights need not be filed if:
- 7           a. The child is being cared for by a relative approved by the department and human  
8           service zone;
- 9           b. The department or human service zone has documented in the case plan a  
10           compelling reason for determining that filing such a petition would not be in the  
11           child's best interests and has notified the court that the documentation is  
12           available for review by the court; or
- 13           c. The department or the human service zone has determined:
- 14           (1) Reasonable efforts to preserve and reunify the family are required under  
15           section 27-20.3-26 to be made with respect to the child;
- 16           (2) The case plan provides such services are necessary for the safe return of  
17           the child to the child's home; and
- 18           (3) Such services have not been provided consistent with time periods  
19           described in the case plan.
- 20           5. For purposes of subsection 3, a child in foster care entered foster care on the earlier  
21           of:
- 22           a. The date of the court's order if the court:
- 23           (1) Made a finding that the child has been subjected to child abuse or neglect;  
24           (2) Determined that it is unsafe or contrary to the welfare of the child to remain  
25           in the home; and
- 26           (3) Granted custody of the child to the department or human service zone or, in  
27           cases arising out of an adjudication by the court that a child is in need of  
28           services, the division of juvenile services; or
- 29           b. The date that is sixty days after:
- 30           (1) The date of a hearing under section 27-20.3-10 which results in maintaining  
31           a child in shelter care;

1                   (2) The date of an order in a dispositional hearing under which a child is placed  
2                   in foster care; or

3                   (3) The date a child is placed in foster care voluntarily and with the consent of  
4                   the child's parent.

5           6. For purposes of subsection 3, a child leaves foster care at the time:

6           a. The court enters an order:

7                   (1) Denying a petition to grant care, custody, and control of the child to the  
8                   human service zone or the division of juvenile services;

9                   (2) Terminating an order that granted custody of the child to the human service  
10                  zone or the division of juvenile services; or

11                  (3) Appointing a legal guardian under chapter 27-20.1;

12           b. The court order under which the child entered foster care ends by operation of  
13                  law;

14           c. The child is placed in a parental home by the court or a legal custodian other  
15                  than the division of juvenile services and the legal custodian lacks authority to  
16                  remove the child without further order of the court; or

17           d. The child is placed in a parental home by the division of juvenile services.

18           7. For purposes of subsection 3, a child is not in foster care on any night during which  
19                  the child is:

20           a. On a trial home visit;

21           b. Receiving services at the youth correctional center pursuant to an adjudication of  
22                  delinquency; or

23           c. Absent without leave from the place in which the child was receiving foster care.

24           **27-20.3-22. Proceeding for termination of parental rights.**

25           1. The petition must contain information required by the North Dakota Rules of Juvenile  
26                  Procedure and state clearly that an order for termination of parental rights is requested  
27                  and that the effect will be as stated in section 27-20.3-23.

28           2. If both of the biological parents of the child are not named in the petition either as  
29                  petitioner or as respondent, the court shall cause inquiry to be made of the petitioner  
30                  and other appropriate persons in an effort to identify an unnamed parent. The inquiry  
31                  must include, to the extent necessary and appropriate, all of the following:



- 1           a. Whether any man is presumed to be the father of the child under chapter 14-20.
- 2           b. Whether the biological mother of the child was cohabiting with a man at the time
- 3                 of conception or birth of the child.
- 4           c. Whether the biological mother of the child has received from any man support
- 5                 payments or promises of support with respect to the child or in connection with
- 6                 the pregnancy.
- 7           d. Whether any individual has formally or informally acknowledged or declared that
- 8                 individual's possible parentage of the child.
- 9           e. Whether any individual claims any right to custody of the child.
- 10         3. The court shall add as respondent to the petition and cause to be served with a
- 11                 summons any individual identified by the court as an unnamed parent, unless the
- 12                 individual has relinquished parental rights, or parental rights have been previously
- 13                 terminated by a court.
- 14         4. If the court, after inquiry, is unable to identify an unnamed parent and no individual has
- 15                 appeared in the proceeding claiming to be an unnamed parent of the child or to have
- 16                 any right of custody of the child, the court shall enter an order terminating all parental
- 17                 rights of the unnamed parent with reference to the child and the parent and child
- 18                 relationship.
- 19         5. If a petition for termination of parental rights is made by a parent of the child under this
- 20                 section or if a parent consents to termination of parental rights, that parent is entitled
- 21                 to legal counsel during all stages of a proceeding to terminate the parent and child
- 22                 relationship.
- 23         6. Subject to the disposition of an appeal, upon the expiration of thirty days after an order
- 24                 terminating parental rights is issued under this section, the order may not be
- 25                 questioned by any person, including the petitioner, in any manner, or upon any
- 26                 ground, including fraud, misrepresentation, failure to give any required notice, or lack
- 27                 of jurisdiction of the parties or of the subject matter, unless the person retained
- 28                 custody of the child.
- 29         7. At least ten days before the petition is heard, the clerk of district court or juvenile court
- 30                 shall provide a copy of the petition and summons, if any, to the director of the human
- 31                 service zone.

1        **27-20.3-23. Effect of order terminating parental rights or appointing a legal guardian.**

2        An order terminating parental rights of a parent terminates all the parent's rights and  
3 obligations with respect to the child and of the child to or through the parent arising from the  
4 parental relationship. Following the order terminating parental rights, the parent is not entitled to  
5 notice of proceedings for the adoption of the child by another nor has the parent any right to  
6 object to the adoption or otherwise to participate in the proceedings.

7        **27-20.3-24. Disposition upon termination of parental rights.**

8        1. If, upon entering an order terminating the parental rights of a parent, there is no parent  
9 having parental rights, the court shall:

10        a. Commit the child to the custody of the human service zone director or a licensed  
11 child-placing agency willing to accept custody for the purpose of placing the child  
12 for adoption or, in the absence of such an agreement, in a foster home;

13        b. Appoint a fit and willing relative or other appropriate individual as the child's legal  
14 guardian; or

15        c. Establish some other planned permanent living arrangement.

16        2. The custodian has the rights of a legal custodian and authority to consent to the child's  
17 adoption, marriage, enlistment in the armed forces of the United States, and surgical  
18 and other medical treatment.

19        3. If the child is not placed for adoption within twelve months after the date of the order  
20 and a legal guardianship or other planned permanent living arrangement for the child  
21 has not been established by a court of competent jurisdiction, the child must be  
22 returned to the court issuing the original termination order for entry of further orders for  
23 the care, custody, and control of the child.

24        **27-20.3-25. Court order required for removal of child.**

25        An order of disposition or other adjudication in a proceeding under this chapter, in those  
26 cases in which a child is removed from the home of a parent, custodian, or guardian for the  
27 reason that continuation in such home would be contrary to the welfare of such child, must  
28 specifically state that a continuation of the child in the home of the parent, custodian, or  
29 guardian would be contrary to the welfare of the child.

30        **27-20.3-26. Limitations of time on orders of disposition.**

31        1. An order terminating parental rights is without limit as to duration.

- 1       2. An order of disposition requiring services for the family without the removal of custody  
2       may not exceed twelve months from disposition unless extended by the court. The  
3       human service zone may request two extensions of up to four months each for the  
4       family to complete the treatment goals of the court order and the case plan.
- 5       3. Except as provided in subsection 2, an order of disposition pursuant to which a child is  
6       placed in foster care may not continue in force for more than twelve months after the  
7       child is considered to have entered foster care. Before the extension of any court order  
8       limited under this subsection, a permanency hearing must be conducted. Any other  
9       order of disposition may not continue in force for more than twelve months.
- 10      4. Except after a termination of parental rights finding, the court may terminate an order  
11      of disposition before the expiration of the order or extend its duration for further  
12      periods. An 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 on  
14      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 order.
- 21      5. The court may terminate an order of disposition or extension before its expiration, on  
22      or without an application of a party, if it appears to the court the purposes of the order  
23      have been accomplished. If a party may be affected adversely by the order of  
24      termination, the order may be made only after reasonable notice and opportunity to be  
25      heard have been given to the party.
- 26      6. Except as provided in subsection 1, when the child attains the age of twenty years, all  
27      orders affecting the child then in force terminate and the child is discharged from  
28      further obligation or control.
- 29      7. If an order of disposition is made with respect to a child under the age of ten years  
30      pursuant to which the child is placed in foster care without terminating parental rights  
31      and the parent and child relationship, the court, before extending the duration of the

1           order, shall determine upon the extension hearing whether the child is adoptable and  
2           whether termination of those rights and that relationship is warranted under section  
3           27-20.3-03.1 and is in the best interest of the child. In that case the notice of the  
4           extension hearing also must inform the parties affected that the court will determine  
5           whether the child is adoptable and whether termination of their parental rights and the  
6           parent and child relationship is warranted and in the best interest of the child and that  
7           a further order of disposition may be made by the court placing the child with a view to  
8           adoption. If the court determines the child is adoptable and termination of parental  
9           rights and the parent and child relationship is warranted and is in the best interest of  
10           the child, the court shall make a further order of disposition terminating those rights  
11           and that relationship and committing the child under section 27-20.3-09.

12           **SECTION 24.** Section 27-20.3-05 of the North Dakota Century Code, as created by  
13 section 23 of this Act, is amended and reenacted as follows:

14           **27-20.3-05. Method of making a child in need of services referral.**

- 15           1. A referral alleging a child is a child in need of services may be made by a parent,  
16           guardian or other custodian, a law enforcement officer, a school official, or any other  
17           person that has knowledge of the facts alleged and believes such facts are true.
- 18           2. A referral alleging a child is a child in need of services under section 27-20.2-01 must  
19           be sent to the juvenile court.
- 20           3. The referral must be set forth in writing and must set forth the following:
- 21           a. The name, date of birth, and residence address of the child alleged to be a child  
22           in need of services;
- 23           b. The names and residence addresses of the parent, guardian or legal custodian,  
24           any other family members, or any other individuals living within the child's home;
- 25           c. The name of any public institution or agency having the responsibility or ability to  
26           supply services alleged to be needed by the child; and
- 27           d. Whether any of the matters required by this subsection are unknown.
- 28           4. If a school official is filing a referral alleging a child is a child in need of services,  
29           information must be included which shows:
- 30           a. The legally responsible school district has sought to resolve the expressed  
31           problem through all appropriate and available educational approaches; and

- 1           b. The school district has sought to engage the parent, guardian, or legal custodian  
2           of such child in solving the problem but such person has been unwilling or unable  
3           to do so, that the problem remains, and that court intervention is needed.
- 4           5. If a school official is filing a complaint alleging a child is a child in need of services  
5           involving a child who is eligible or suspected to be eligible for services under the  
6           federal Individuals with Disabilities Education Act of 1990 [20 U.S.C. 1400 et seq.] or  
7           Section 504 of the federal Rehabilitation Act of 1973 [29 U.S.C. 725], information must  
8           be included which demonstrates that the legally liable school district:
- 9           a. Has determined the child is eligible or suspected to be eligible under the federal  
10           Individuals with Disabilities Education Act of 1990 [20 U.S.C. 1400 et seq.] or  
11           Section 504 of the federal Rehabilitation Act of 1973 [29 U.S.C. 725]; and
- 12           b. Has reviewed for appropriateness the child's current individualized education  
13           program and placement and has made modifications as appropriate.
- 14           6. A referral alleging that a child is a child in need of services under section 27-20.2-01  
15           must be sent to the applicable human service zone.

16           **SECTION 25.** Chapter 27-20.4 of the North Dakota Century Code is created and enacted  
17 as follows:

18           **27-20.4-01. Definitions.**

19           As used in this chapter:

- 20           1. "Accountability" means that after a child is determined to have committed delinquent  
21           behavior, by admission or adjudication, the child is held responsible for the behavior  
22           through individualized and structured consequences or sanctions for the loss,  
23           damage, or injury suffered and proportionate to the offense.
- 24           2. "Arrest" means a taking into custody of a child by law enforcement in the manner  
25           authorized by law to answer for the commission of a delinquent offense.
- 26           3. "Attendant care" is a nonsecure holdover site for delinquent children or children in  
27           need of services who have been picked up by law enforcement and need constant  
28           short-term supervision on a preadjudicatory basis.
- 29           4. "Child" means an individual who is:
- 30           a. Under the age of eighteen years and is not married; or

- 1            b. Under the age of twenty years with respect to a delinquent act committed while  
2            under the age of eighteen years and not married.
- 3            5. "Community-based program" means a nonresidential program.
- 4            6. "Custodian" means a person, other than a parent or legal guardian, which stands in  
5            loco parentis to the child and a person that has been given legal custody of the child  
6            by order of a court.
- 7            7. "Delinquent act" means an act designated a crime under the law, including local  
8            ordinances or resolutions of this state, or of another state if the act occurred in that  
9            state, or under federal law.
- 10           8. "Delinquent child" means a child who has committed a delinquent act and is in need of  
11           treatment or rehabilitation.
- 12           9. "Detention" means a physically secure facility with locked doors. The term does not  
13           include shelter care, attendant care, or home confinement.
- 14           10. "Director" means the director of juvenile court services.
- 15           11. "Dispositional stage" means any proceeding after adjudication for a delinquent  
16           offense.
- 17           12. "Diversion" means an intervention strategy made by a person with authority which  
18           directs the child away from formal court processing to a specifically designed program  
19           or activity to hold the child accountable for the actions of the child and prevents further  
20           involvement in the formal legal system.
- 21           13. "Division" means the division of juvenile services.
- 22           14. "Evidence-based" means a program or practice that has had multiple randomized  
23           control studies demonstrating the program or practice is effective for a specific  
24           population, has been researched, and has been rated as effective by a standardized  
25           program evaluation tool.
- 26           15. "Facility" means buildings, structures, or systems, including those for essential  
27           administration and support, which are used to provide residential treatment for  
28           children.
- 29           16. "Fit and willing relative or other appropriate individual" means a relative or other  
30           individual who has been determined, after consideration of an assessment that  
31           includes a criminal history record investigation under chapter 50-11.3, to be a qualified

- 1            individual under chapters 27-20.1 and 30.1-27, and who consents in writing to act as a  
2            legal guardian.
- 3        17.    "Graduated sanctions" means a calibrated system of sanctions designed to ensure  
4            that children face timely and consistent consequences that correspond to the  
5            frequency and nature of a child's noncompliant behaviors, public safety risk, and  
6            engagement in supervision and services.
- 7        18.    "Home" when used in the phrase "to return home" means the abode of the child's  
8            parent with whom the child formerly resided.
- 9        19.    "Home confinement" means predisposition or post-disposition temporary placement of  
10           a child in the child's home, or a surrogate home with the consent of the child's parent,  
11           guardian, or custodian for supervision.
- 12       20.    "Human service zone" means a county or consolidated group of counties  
13           administering human services within a designated area in accordance with an  
14           agreement or plan approved by the department of human services.
- 15       21.    "Incentives" means calibrated system of rewards designed so that children receive  
16           immediate and consistent feedback that supports appropriate behavior and follow  
17           through with probation conditions.
- 18       22.    "Informal adjustment" means a meeting held by the director of juvenile court or  
19           designee to resolve a low-level delinquent referral and is an alternative to the filing of a  
20           petition for formal court processing.
- 21       23.    "Intensive supervision probation program" means a community-based alternative that  
22           provides a higher degree of supervision and use of graduated incentives and  
23           sanctions over a child, post-adjudication, to ensure public safety and applies to  
24           children who are at high risk to reoffend.
- 25       24.    "Juvenile court" means the district court of this state.
- 26       25.    "Juvenile drug court" means a program established by the supreme court which is a  
27           post-petition or post-adjudication program aimed at intervening in substance use  
28           disorders through intense supervision and participation in recovery services.
- 29       26.    "Pick up and hold order" means an order of the court to take a child into custody  
30           based upon an allegation of delinquency or failure to appear for court.

- 1        27. "Predisposition assessment" means an investigation, assessment, and written report  
2        to the court based on the results of risk and need screening and assessment tools  
3        regarding a disposition for a delinquent child.
- 4        28. "Proceeding" means any hearing or informal adjustment conducted before a court.
- 5        29. "Qualified residential treatment program" means a licensed or approved residence  
6        providing an out-of-home treatment placement for children including a trauma-  
7        informed model.
- 8        30. "Referral" means a written report of alleged delinquent behavior of a child which is  
9        received by the director of juvenile court.
- 10       31. "Relative" means:
- 11       a. The child's grandparent, great-grandparent, sibling, half-sibling, aunt, great-aunt,  
12       uncle, great-uncle, nephew, niece, or first cousin;
- 13       b. An individual with a relationship to the child, derived through a current or former  
14       spouse of the child's parent, similar to a relationship described in subdivision a;
- 15       c. An individual recognized in the child's community as having a relationship with  
16       the child similar to a relationship described in subdivision a; or
- 17       d. The child's stepparent.
- 18       32. "Risk factors" means characteristics and behaviors that, when addressed or changed,  
19       affect a child's risk for committing delinquent acts.
- 20       33. "Shelter care" means temporary care of a child in physically unrestricted facilities.
- 21       34. "Treatment" means targeting interventions that focus on risk factors, improved mental  
22       health, and improved positive youth outcomes.

23        **27-20.4-02. Jurisdiction.**

24        Jurisdiction as set forth in section 27-20.2-03 is applicable to this chapter.

25        **27-20.4-03. Venue.**

26        A proceeding under this chapter may be commenced in the county in which the child  
27        resides. If delinquent conduct is alleged, the proceeding is commenced in the county in which  
28        the acts constituting the alleged delinquent conduct occurred. If delinquent conduct is alleged in  
29        part in one county and in part in another county, the venue is in either of the counties.



1       **27-20.4-04. Powers and duties of director of juvenile court.**

- 2       1. For the purpose of carrying out the objectives and purposes of this chapter and  
3       subject to the limitations of this chapter or imposed by the court, a director shall:
- 4       a. Make investigations, reports, and recommendations to the juvenile court.
  - 5       b. Receive and examine complaints, referrals, and charges of delinquency for the  
6       purpose of considering the commencement of proceedings under this chapter.
  - 7       c. Make a determination upon intake of referrals regarding the appropriate manner  
8       to handle a child in need of services or a child in need of protection by use of  
9       nonjudicial commencement of proceedings under this chapter.
  - 10      d. Supervise and assist a child placed on probation for delinquency.
  - 11      e. Make appropriate referrals to other private or public agencies of the community if  
12      their assistance appears to be needed or desirable.
  - 13      f. Issue a temporary custody order concerning a child who is referred to the  
14      director's supervision or care as a delinquent child. Except as provided by this  
15      chapter, a director does not have the powers of a law enforcement officer.
  - 16      g. Take acknowledgments of instruments for the purpose of this chapter.
  - 17      h. Perform all other functions designated by this chapter, under section 27-05-30, or  
18      by order of the court, including, if qualified, those of a referee.
  - 19      i. Issue an order to a law enforcement authority to transport a child to and from a  
20      specified location.
  - 21      j. Receive and examine requests for review of a child's placement at a qualified  
22      residential treatment program under the Family First Prevention Services Act  
23      [Pub. L. 115-123; 132 Stat. 64; 42 U.S.C. 675].
- 24      2. Any of the foregoing functions may be performed in another state if authorized by the  
25      court of this state and permitted by the laws of the other state.

26      **27-20.4-05. Taking into custody.**

- 27      1. A child may be taken into custody:
- 28      a. Pursuant to a pick up and hold order or other order of the court under this  
29      chapter;
  - 30      b. Pursuant to the laws of arrest and as authorized after scoring of the detention  
31      screening tool; or

- 1           c. For preadjudicatory supervision in attendant care or shelter care.
- 2           2. The taking of a child into custody is not an arrest, except for the purpose of
- 3           determining the validity of the arrest under the Constitution of North Dakota or the
- 4           United States Constitution.
- 5           3. A law enforcement officer shall transport a child if necessary as determined by the
- 6           court.

7           **27-20.4-06. Detention - Nonsecure care of child.**

- 8           1. A child taken into custody may not be detained or placed in nonsecure care before the
- 9           hearing on the petition unless the child's detention or nonsecure care is required to
- 10          protect the person or property of others or of the child or because the child may
- 11          abscond or be removed from the jurisdiction of the court or because the child has no
- 12          parent, guardian, or custodian or other person able to provide supervision and care for
- 13          the child and return the child to the court if required, or an order for the child's
- 14          detention or nonsecure care has been made by the court pursuant to this chapter.
- 15          2. Law enforcement, juvenile court staff, and division staff shall use a detention
- 16          screening tool to assure the appropriate use of detention and whether the child is a
- 17          public safety risk. The juvenile court shall establish the detention screening tool, which
- 18          must include objective factors to aid in the decision of placement of the child. Law
- 19          enforcement, court records, and division records must include data on detention
- 20          screening scores and, if the score does not authorize detention, the explanation for the
- 21          override resulting in placing the juvenile in detention.
- 22          3. The court may place a juvenile in detention before adjudication only if the court finds
- 23          releasing the child would pose an unreasonable risk to public safety and that all **less**
- 24          restrictive alternatives have been considered.
- 25          4. A juvenile may be placed in a secure detention facility if one or more of the following
- 26          conditions are met:
- 27           a. The child is alleged to have committed an offense that if committed by an adult
- 28           would constitute a felony against person, felony weapon, or felony drug
- 29           distribution;
- 30           b. The child has a record of failure to appear in court or there is probable cause to
- 31           believe that the child will flee the jurisdiction of the court;

- 1           c. The child has violated the terms of detention release on home confinement or  
2           electronic monitoring;
- 3           d. There is oral or written verification that the child is an alleged delinquent child  
4           sought for an offense in another jurisdiction or that the child left a juvenile  
5           detention facility without authorization.
- 6           e. The child is an out-of-state runaway subject to the rules of the interstate  
7           commission on juveniles;
- 8           f. The child meets criteria for secure detention on the detention screening tool; or
- 9           g. The child meets criteria for an override on the detention screening tool.
- 10          h. If a child is participating in a juvenile drug court program as a result of an  
11          adjudication for a delinquent offense, the court may order the child detained in a  
12          juvenile detention center operated pursuant to chapter 12-44.1. The child may be  
13          detained twice during the child's participation in the program with the total period  
14          of detention under this section not to exceed four days in a one-year period.
- 15          5. A child may not be placed in detention solely due to lack of supervision alternatives or  
16          due to the community's inability to provide appropriate treatment or services.
- 17          6. Alternatives to secure detention may be utilized to include home confinement,  
18          electronic monitoring, and parental or guardian supervision if the court determines  
19          there is no unreasonable risk to public safety.
- 20          7. A child placed in detention must have a mental health and trauma screening tool  
21          completed by the juvenile detention center or by juvenile court upon entry and provide  
22          that information to the juvenile court before release or detention hearing.

23          **27-20.4-07. Release or delivery to court.**

- 24          1. A person taking a child into custody, with all reasonable speed and without first taking  
25          the child elsewhere, shall:
- 26               a. Complete the detention screening instrument and use the results in making a  
27               release or hold decision. Release options include allowing a child to return home  
28               with parental supervision and a promise to appear for court if notified, or release  
29               with limited supervision, such as an electronic monitoring device or conditions for  
30               home confinement.

- 1           b. Release the child to the child's parent, guardian, custodian, or other responsible  
2           adult able and willing to assume custody of the child, upon that individual's  
3           promise to bring the child before the court if requested by the court, unless the  
4           child's detention warranted or required under section 27-20.4-05; or  
5           c. Bring the child before the court or deliver the child to a detention facility  
6           designated by the court or to a medical facility if the child is believed to suffer  
7           from a serious physical condition or illness that requires prompt treatment. The  
8           person taking the child into custody promptly shall give notice of taking the child  
9           into custody, together with a statement of the reason for taking the child into  
10           custody, to a parent, guardian, or other custodian and to the court. Any temporary  
11           detention or questioning of the child necessary to comply with this subdivision  
12           must conform to the procedures and conditions prescribed by this chapter and  
13           rules of court.  
14           2. If a parent, guardian, or other custodian, if requested, fails to bring the child before the  
15           court as provided in subsection 1, the court may issue a pick up and hold order  
16           directing that the child be taken into custody and brought before the court.  
17           3. If the petition is not filed within five days after the date of the detention hearing, the  
18           child must be released from detention.

19           **27-20.4-08. Place of detention.**

20           A child alleged to be delinquent may be detained only in:

- 21           1. A licensed foster home or a home approved by the court;  
22           2. A facility operated by a licensed child welfare agency;  
23           3. A detention home or center for delinquent children which is under the direction or  
24           supervision of the court or other public authority or of a private agency approved by  
25           the court:  
26           a. Any other suitable place or facility, including a medical facility for the treatment of  
27           mental illness, alcoholism, or drug addiction, designated by the court; or  
28           b. A jail or other facility for the detention of adults only if the facility ~~in subdivision c-~~  
29           is not available, the detention is in a room separate and removed from those for  
30           adults, it appears to the satisfaction of the court, the director, or designee, that  
31           public safety and protection reasonably require detention, and it is so authorized.

1        **27-20.4-09. Release from detention or nonsecure care - Hearing - Conditions of**  
2 **release.**

- 3        1. If a child is brought before the court or delivered to a detention or nonsecure care  
4 facility designated by the court, the director, the intake officer, or other authorized  
5 officer of the court immediately shall make an investigation and release the child  
6 unless it appears that the child's detention is warranted or required under section  
7 27-20.4-05.
- 8        2. Reasonable notice of the release from detention must be provided to any victim as  
9 required by subsection 19 of section 12.1-34-02.
- 10       3. If the child is not released, reasonable notice, either oral or written, stating the time,  
11 place, and purpose of the detention or shelter care must be given to the child and, if  
12 able to be found, to the child's parents, guardian, or other custodian. If the child is not  
13 represented by counsel at a proceeding, the court shall inform the child of the right to  
14 counsel, regardless of income. Before the commencement of the hearing, the court  
15 shall inform the child's parents, legal guardian, or custodian of the right to counsel at  
16 public expense at the dispositional stage if the parent, guardian, or custodian applies  
17 and is determined to be indigent and of the child's right to remain silent with respect to  
18 any allegations of delinquent conduct.
- 19       a. If the child is not released from detention, a judge or referee shall hold a  
20 detention hearing within twenty-four hours after the time the child is placed in  
21 detention, excluding weekends or legal holidays, to determine whether there is  
22 probable cause to believe the child has committed the delinquent act alleged,  
23 and whether the child's detention is required under section 27-20.4-05. In  
24 determining whether a child requires detention, the court shall consider the  
25 results of the detention screening tool.
- 26       b. If the child is not released from nonsecure care, a judge or referee shall hold a  
27 hearing promptly and not later than ninety-six hours after the child is placed in  
28 nonsecure care to determine whether there is probable cause to believe the child  
29 has committed a delinquent act and whether the child's shelter care is required.
- 30       4. If the child is not released and a parent, guardian, or custodian has not been notified  
31 of the hearing, did not appear or waive appearance at the hearing, and files an

1           affidavit showing these facts, the court shall rehear the matter without unnecessary  
2           delay and order the child's release, unless it appears from the hearing that the child's  
3           detention is required under section 27-20.4-05.

4           5. If the parents cannot be found or fail to appear for the detention or nonsecure care  
5           hearing and the child does not pose a substantial risk to the community and needs to  
6           be detained, the human service zone is notified and a child in need of protection or  
7           services care hearing is held.

8           6. If it appears that any child being held in detention or shelter care may have an  
9           intellectual or developmental disability, the court or detention personnel shall refer the  
10           child to the department of human services for an eligibility determination for intellectual  
11           or developmental disabilities program management services and a level of care  
12           assessment and the results of the eligibility determination must be filed with the court  
13           upon completion. The department of human services shall provide status updates to  
14           the court within the time required by the court.

15           7. If it appears that any child being held in detention or nonsecure care appears to have  
16           a serious and persistent mental health disorder illness, the detention staff or court  
17           intake officer shall request that the court order a mental health hospital placement  
18           prescreening diagnostic assessment that includes a recommendation for necessary  
19           level of care that must be conducted within twenty-four forty-eight hours after the  
20           court's order and. The person conducting the diagnostic assessment shall file the  
21           results must be filed with the court.

22           8. If an individual who is or appears to be a child is received at a jail facility or other  
23           facility for the detention of adult offenders or individuals charged with a crime, the  
24           official in charge of the facility immediately shall inform the court and bring the  
25           individual before the court upon request or deliver the individual to a detention or  
26           nonsecure facility designated by the court.

27           9. If a case is transferred to another court for criminal prosecution, the child may be  
28           transferred to the appropriate officer or detention facility in accordance with the law  
29           governing the detention of persons charged with crime.

1       **27-20.4-10. Diversion.**

- 2       1. Before an informal adjustment is held or a petition is filed, the director of juvenile court  
3       or designee may determine that no further action is required or impose conditions in  
4       lieu of further proceedings for the conduct and control of the child with a diversion to a  
5       community-based program or service.
- 6       2. A child referred to the court may be considered for diversion if any of the following  
7       criteria are met:
- 8       a. The referral is for a delinquent act that is not an offense requiring a notification to  
9       be sent to the department of transportation;
- 10      b. The referral is for a delinquent act that has not been previously diverted more  
11      than twice by the juvenile court within the last twelve months; or
- 12      c. The referral is not an offense that could require sex offender registration.
- 13      3. Effective August 1, 2023, except for a drug-related offense, simple assault under  
14      chapter 12.1-17-01, or domestic violence under chapter 12.1-17-01.2, a child who  
15      commits an infraction or misdemeanor offense on school grounds during hours of  
16      operation may not be referred to the juvenile court.

17      **27-20.4-11. Informal adjustment.**

- 18      1. Before a petition is filed, the director of juvenile court, or other officer of the court  
19      designated by the court, subject to direction of the court may give counsel and advice  
20      to the parties and impose conditions for the conduct and control of the child in lieu of  
21      further proceedings with a view to an informal adjustment if it appears:
- 22      a. The admitted facts bring the case within the jurisdiction of the court;
- 23      b. Counsel, advice, and conditions, if any, for the conduct and control of the child  
24      without an adjudication would be in the best interest of the public and the child;  
25      and
- 26      c. The child and the child's parents, guardian, or other custodian consent to the  
27      conditions with knowledge that consent is not obligatory.
- 28      2. A child referred to the court may be considered for informal adjustment if any of the  
29      following criteria are met:
- 30      a. The child has no prior formal court adjudications for a similar case type within the  
31      last twelve months;

- 1           b. The referral is for a delinquent act and the child has not been previously diverted  
2           more than twice by the juvenile court;
- 3           c. A formal petition was filed but an informal adjustment has been requested by the  
4           state's attorney as part of an agreement with defense counsel or was ordered by  
5           the court in dismissing a formal petition;
- 6           d. The referral is a sex offense referral that could require sex offender registration  
7           but both the state's attorney and the victim have agreed to an informal  
8           adjustment to address the matter; or
- 9           e. The referral is from the division.
- 10          3. Reasonable written notice of the informal adjustment is given by the court to the victim  
11          if one is identified on the referral.
- 12          4. Upon an admission to the referred offense, the director of juvenile court or designee  
13          will conduct a preliminary risk and needs assessment and the results must be made  
14          available to the child and family. The results of the risk and needs assessment are  
15          used to inform the outcome of the informal adjustment. Individuals conducting the risk  
16          and needs screening tool must receive training on the appropriate delivery and use of  
17          the tool.
- 18          5. An informal agreement may not extend beyond six months from the day the  
19          agreement was agreed upon. An extension may be granted by the court for an  
20          additional period not to exceed six months. An extension may not authorize the  
21          detention of the child if not otherwise permitted by this chapter. If the child admits to  
22          driving or being in actual physical control of a vehicle in violation of section 39-08-01  
23          or an equivalent ordinance, the child may be required to pay a fine as a condition  
24          imposed under this section.
- 25          6. An incriminating statement made by a child to the juvenile court director or designee  
26          giving counsel, advice, or as part of the risk and need screening and assessment  
27          process, may not be used against the child over objection in any proceeding.

28          **27-20.4-12. Petition - Preliminary determination.**

29          A petition alleging delinquency under this chapter must be reviewed by the director, the  
30          court, or other person designated by the director and authorized by the court to determine  
31          whether the filing of the petition is in the best interest of the public and the child.



1        **27-20.4-13. Petition - Who may prepare and file - Review.**

2        A petition alleging delinquent conduct must be prepared, filed, and served upon the parties  
3 by the state's attorney. The juvenile court shall conduct an inquiry into and provide the last  
4 known addresses of the parents and guardians of the child in the referral to the state's attorney.

5        **27-20.4-14. Conduct of hearings.**

- 6        1. Hearings under this chapter must be conducted by the court without a jury, in an  
7 informal but orderly manner and separately from other proceedings not included in  
8 section 27-20.2-03 and in accordance with the North Dakota Rules of Juvenile  
9 Procedure.
- 10       2. If the hearing has not been held within the time limit, or any extension of the time limit,  
11 required by the North Dakota Rules of Juvenile Procedure, the petition must be  
12 dismissed.
- 13       3. The state's attorney shall present the evidence in support of any allegations of the  
14 petition not admitted and otherwise conduct the proceedings on behalf of the state.
- 15       4. Except for informal adjustments under section 27-20.4-10, the proceedings must be  
16 recorded by stenographic notes or by electronic, mechanical, or other appropriate  
17 means.
- 18       5. The general public must be excluded from all hearings under this chapter. During  
19 hearings, only the parties, the parties' counsel, witnesses, victims, and any other  
20 persons the court finds have a proper interest in the proceedings may be admitted by  
21 the court. The court may temporarily exclude the child or other person from the  
22 hearing if, after being warned by the court that disruptive conduct will cause removal  
23 from the courtroom, the child or other person persists in conduct that justifies removal  
24 from the courtroom.

25       **27-20.4-15. Predispositional assessment.**

- 26       1. Before the disposition hearing, the court shall direct the director or designee, to  
27 conduct a predisposition assessment and to prepare a written report for the court,  
28 unless waived by the court.
- 29       2. The predisposition assessment must consist of a risk and needs assessment together  
30 with any other appropriate screenings.
- 31       3. During the pendency of any proceeding the court may order:

- 1           a. The child to be examined at a suitable place by a physician, psychologist, or  
2           certified addiction counselor;
- 3           b. The child to be tested by appropriate forensic methods to determine whether the  
4           child has been exposed to a controlled substance or other substance considered  
5           injurious to the child's health;
- 6           c. Medical or surgical treatment of a child who is suffering from a serious physical  
7           condition or illness, or alcohol or drug abuse, which in the opinion of a licensed  
8           physician requires prompt treatment, even if the parent, guardian, or other  
9           custodian has not been given notice of a hearing, is not available, or without  
10          good cause informs the court of that person's refusal to consent to the treatment;
- 11          d. An evidence-based risk and needs assessment, mental health screening, or  
12          trauma screening; or
- 13          e. The child to be examined to determine the child's competence or criminal  
14          responsibility. If the child is found to lack competency or criminal responsibility the  
15          court may:
  - 16               (1) Dismiss the delinquency proceedings against the child and order the  
17               release of the child to the child's parent, guardian, or legal custodian upon  
18               conditions considered appropriate by the court;
  - 19               (2) Suspend the delinquency proceedings against the child for a period of up to  
20               one year and order services be provided to the child as an outpatient or  
21               inpatient, by commitment to an institution for persons with intellectual  
22               disabilities or mental illness; or
  - 23               (3) Dismiss the delinquency proceedings and direct that child in need of  
24               protection proceedings be initiated.

25          **27-20.4-16. Adjudication.**

- 26          1. If the court finds by proof beyond a reasonable doubt that the child committed the acts  
27          by reason of which the child is alleged to be delinquent, the court shall proceed  
28          immediately or at a postponed hearing to hear evidence as to whether the child is in  
29          need of treatment or rehabilitation and to make and file findings. In the absence of  
30          evidence to the contrary, evidence of the commission of which constitute a felony is  
31          sufficient to sustain a finding that the child is in need of treatment or rehabilitation. If

1 the court finds that the child is not in need of treatment or rehabilitation, the court shall  
2 dismiss the proceeding and discharge the child from any detention or other restriction  
3 previously ordered.

4 2. After hearing the evidence on the petition, the court shall make and file findings as to  
5 whether the child is delinquent and whether the acts ascribed to the child were  
6 committed by the child. If the court finds the allegations of delinquent conduct have not  
7 been established, the court shall dismiss the petition and order the child discharged  
8 from any detention or other restriction previously ordered in the proceeding.

9 3. In hearings under subsection 1, all evidence helpful in determining the questions  
10 presented, including the predisposition assessment and any other oral and written  
11 reports, may be received by the court and relied upon to the extent of its probative  
12 value even though not otherwise competent in the hearing on the petition. The parties  
13 or the counsel of the parties must be afforded an opportunity to examine and  
14 controvert written reports so received and to cross-examine individuals making the  
15 reports. Sources of confidential information need not be disclosed.

16 4. On motion of the court or that of a party, the court may continue the hearings under  
17 this section for a reasonable period to receive reports and other evidence bearing on  
18 the disposition or the need for treatment or rehabilitation. In this event the court shall  
19 make an appropriate order for detention of the child or the child's release from  
20 detention subject to supervision of the court during the period of the continuance. In  
21 scheduling investigations and hearings the court shall give priority to proceedings in  
22 which a child is in detention or has otherwise been removed from the child's home  
23 before an order of disposition has been made.

24 **27-20.4-17. Disposition of a delinquent child.**

25 1. If the child is found to be a delinquent child, the court shall make findings and include  
26 in the order of disposition any actions or steps necessary to ensure:

- 27 a. The child receives the treatment or rehabilitation the court deems most  
28 appropriate;  
29 b. Repairing harm caused to the victim or community; and  
30 c. Safety of the community.

- 1       2. If the child is found to be a delinquent child, the court may order probation with  
2           conditions best suited to the child's individual need for treatment, rehabilitation, and  
3           welfare.
- 4       3. If the court cannot find a less restrictive alternative, the court may commit a child to the  
5           division of juvenile services. A risk and need assessment must be the basis for the  
6           determination of commitment to the division of juvenile services. The court only may  
7           commit a child to the division for a new delinquent offense. Unless all probation  
8           extensions have been exhausted, the child's risk and treatment needs continue to be  
9           high and the child is refusing to comply with the terms of probation, the court may not  
10          commit a child for a violation of the terms of probation.
- 11       4. The court may:
- 12           a. Order the child to make monetary restitution to the victim of the offense or to  
13           complete a specified number of hours of community service as determined by the  
14           court, or both;
- 15           b. Order the periodic testing for the use of illicit drugs or alcohol; or
- 16           c. Order the child's participation in a juvenile drug court program.
- 17       5. If the delinquent act committed by the child was a sexual offense, the court shall  
18           ensure the child is assessed in a timely manner, not to exceed thirty days, with  
19           age-appropriate social assessments to determine the appropriate level of required  
20           treatment.

21       **27-20.4-18. Probation of a delinquent child.**

- 22       1. A probation order entered by the court must place the child under the supervision of  
23           the director.
- 24       2. The conditions of probation must be specifically stated in writing and provided to the  
25           child.
- 26       3. Probation conditions must relate to the individual child's risk and needs assessment  
27           and the adjudicated offense.
- 28       4. Violations of probation conditions may be sanctioned by the juvenile director, or  
29           designee utilizing graduated sanctions and incentives.
- 30       5. Formal probation orders may not exceed twelve months from disposition.

- 1       6. The court may release a child from probation or modify the terms and conditions of the  
2       probation at any time, but the court shall release a child who has complied  
3       satisfactorily with the terms, conditions, and duration of probation and the court shall  
4       terminate the court's jurisdiction.
- 5       7. The director of juvenile court shall establish procedures regarding graduated sanctions  
6       and incentives. The graduated sanctions program may include a program of home  
7       confinement or electronic monitoring but may not include a secure detention stay.
- 8       8. The director or assigned probation court officer may request two extensions up to four  
9       months each or one extension up to four months for intensive supervised probation  
10      programs for failure to comply or meet the treatment goals of the court order and case  
11      plan.
- 12      9. Probation may not be extended solely to collect restitution. If probation is terminated  
13      with restitution owing the victim, court procedure governs continued collection or  
14      motion for civil judgment against the parents, if appropriate.

15      **27-20.4-19. Delinquent children - Suspension of driving privileges.**

- 16      1. If a child is adjudicated delinquent of an offense that would be a class A misdemeanor  
17      or a felony if the offense were committed by an adult, the juvenile court may order the  
18      suspension of the child's driving privileges for a period of up to six months for the first  
19      offense. For a second or subsequent offense, the juvenile court may order the  
20      suspension of the child's driving privileges for up to one year. As a condition to the  
21      return of driving privileges, the juvenile court may order the successful completion of  
22      an appropriate driver's examination.
- 23      2. If the juvenile court orders the suspension of a child's driving privileges, the juvenile  
24      court immediately shall take possession of the child's driver's license or permit and  
25      send copies of the court's order to the director of the department of transportation who  
26      shall make notation of the child's suspension of driving privileges.
- 27      3. The record of the child's suspension of driving privileges under this section must be  
28      kept confidential and may not be released except to law enforcement personnel in  
29      connection with law enforcement activities. The record of a child's suspension of  
30      driving privileges under this section may not be disclosed to or shared with the  
31      licensing officials of any other state or jurisdiction. At the end of the six-month or

1           one-year period, the director shall remove and destroy all record of the child's  
2           suspension of driving privileges under this section.

3           4. This section may not be construed to limit consensual agreements between the  
4           juvenile court and the child restricting the driving privileges of the child.

5           **27-20.4-20. Restitution.**

6           1. In addition to a child being ordered to make restitution under section 27-20.4-16, a  
7           parent of a child adjudged delinquent may be ordered to make restitution on the child's  
8           behalf in an amount not exceeding five thousand dollars.

9           2. Before ordering parental restitution under this section, the court shall hold a hearing on  
10           the matter with notice given to all interested parties as to the nature and amount of the  
11           parental restitution. In determining whether to order parental restitution, the court shall  
12           take the following factors into account:

13           a. The ability of the parent or parents to pay monetary restitution and the care and  
14           control exercised by the parents.

15           b. The ability of the child to pay monetary restitution.

16           c. Whether ordering parental restitution would detract from the child's treatment,  
17           rehabilitation, or welfare.

18           d. The number of delinquent acts, if any, previously committed by the child.

19           3. A parental order of restitution must be limited to those damages directly related to the  
20           delinquent act and expenses actually incurred as a result of the delinquent act.

21           4. Unless the court directs otherwise, any order of restitution under this section or section  
22           27-20.4-16 may be filed, transcribed, and enforced by the juvenile court or person  
23           entitled to the restitution in the same manner as civil judgments rendered by the courts  
24           of this state may be enforced. A child against whose parents a judgment may be  
25           entered under this section is jointly and severally liable with that child's parents for the  
26           amounts up to five thousand dollars and solely liable for any amounts over that  
27           amount. Any judgment rendered under this section may not be discharged in  
28           bankruptcy and is not subject to the statutes of limitation provided for in chapter 28-01  
29           and the judgment may not be canceled under section 28-20-35.

1       **27-20.4-21. Transfer to other courts.**

2       1. After a petition has been filed alleging delinquency based on conduct that is  
3       designated a crime or public offense under the laws, including local ordinances or  
4       resolutions of this state, the court before hearing the petition on the merits shall  
5       transfer the offense for prosecution to the appropriate court having jurisdiction of the  
6       offense if:

7       a. The child is over sixteen years of age and requests the transfer;

8       b. The child was fourteen years of age or more at the time of the alleged conduct  
9       and the court determines that there is probable cause to believe the child  
10      committed the alleged delinquent act and the delinquent act involves the offense  
11      of murder or attempted murder; gross sexual imposition or the attempted gross  
12      sexual imposition of a victim by force or by threat of imminent death, serious  
13      bodily injury, or kidnapping; or

14      c. (1) The child was fourteen or more years of age at the time of the alleged  
15      conduct;

16      (2) A hearing on whether the transfer should be made is held in conformity with  
17      sections 27-20.2-12, 27-20.2-13, and 27-20.4-14;

18      (3) Notice in writing of the time, place, and purpose of the hearing is given to  
19      the child and the child's parents, guardian, or other custodian at least three  
20      days before the hearing; and

21      (4) The court finds that there are reasonable grounds to believe:

22      (a) The child committed the delinquent act alleged;

23      (b) The child is not amenable to treatment or rehabilitation as a child  
24      through available programs;

25      (c) The child is not treatable in an institution for individuals who are  
26      intellectually disabled or who are mentally ill;

27      (d) The interests of the community require that the child be placed under  
28      legal restraint or discipline; and

29      (e) If the child is fourteen or fifteen years old, the child committed a  
30      delinquent act involving the infliction or threat of serious bodily harm.

- 1        2. The burden of proving reasonable grounds to believe that a child is amenable to  
2        treatment or rehabilitation as a child through available programs is on the child in  
3        those cases in which the alleged delinquent act involves the offense of manslaughter,  
4        aggravated assault, robbery, arson involving an inhabited structure, or escape  
5        involving the use of a firearm, destructive device, or other dangerous weapon or in  
6        cases in which the alleged delinquent act involves an offense that if committed by an  
7        adult would be a felony and the child has two or more previous delinquency  
8        adjudications for offenses that would be a felony if committed by an adult.
- 9        3. In determining a child's amenability to treatment and rehabilitation, the court shall  
10       consider and make specific findings on the following factors:
- 11       a. Age;  
12       b. Mental capacity;  
13       c. Maturity;  
14       d. Degree of criminal sophistication exhibited;  
15       e. Previous record;  
16       f. Success or failure of previous attempts to rehabilitate;  
17       g. Whether the child can be rehabilitated before expiration of juvenile court  
18       jurisdiction;  
19       h. Any psychological, probation, or institutional reports;  
20       i. The nature and circumstances of the acts for which the transfer is sought;  
21       j. The prospect for adequate protection of the public; and  
22       k. Any other relevant factors.
- 23       4. A child subject to the jurisdiction of the juvenile court, either before or after reaching  
24       eighteen years of age, may not be prosecuted for an offense previously committed  
25       unless the case has been transferred as provided in this section.
- 26       5. Statements made by the child at a hearing under this section are not admissible  
27       against the child over objection in the criminal proceedings following the transfer  
28       except for impeachment.
- 29       6. If the case is not transferred, the judge who conducted the hearing may not over  
30       objection of an interested party preside at the hearing on the petition. If the case is



1           transferred to a court of which the judge who conducted the hearing is also a judge,  
2           the judge likewise is disqualified over objection from presiding in the prosecution.  
3        7. An individual at least twenty years of age who committed an offense while a child and  
4           was not adjudicated for the offense in juvenile court may be prosecuted in district court  
5           as an adult, unless the state intentionally delayed the prosecution to avoid juvenile  
6           court jurisdiction. The district court has original and exclusive jurisdiction for the  
7           prosecution under this subsection.

8        **27-20.4-22. Court order required for removal of child.**

9           An order of disposition or other adjudication in a proceeding under this chapter, in cases in  
10       which a child is removed from the home of a parent, custodian, or guardian for the reason that  
11       continuation in such home would be contrary to the welfare of the child, must specifically state  
12       that a continuation of the child in the home of the parent, custodian, or guardian would be  
13       contrary to the welfare of the child.

14       **27-20.4-23. Limitations of orders of disposition.**

- 15        1. An order of disposition may not exceed twelve months from disposition unless  
16           extended by the court. The director or designee may request two extensions up to four  
17           months each for the child to complete the treatment goals of the court order and the  
18           case plan.
- 19        2. An order of disposition committing a delinquent child to the division of juvenile services  
20           may not exceed twelve months. The court may extend the order for an additional  
21           twelve-month period, if:
- 22           a. A hearing is held upon motion of the division, or on the court's own motion, prior  
23           to the expiration of the order;
- 24           b. Reasonable notice of the hearing and an opportunity to be heard are given to the  
25           child and the parent, guardian, or other custodian;
- 26           c. The court finds the extension is necessary for the treatment or rehabilitation of  
27           the child and has determined that such treatment cannot be provided in their  
28           home community; and
- 29           d. The extension does not exceed twelve months from the expiration of an order  
30           limited by subsection 3 or two years from the expiration of any other limited order.

- 1       3. Except as provided in subsection 2, an order of disposition pursuant to which a child is  
2       placed in foster care may not continue for more than twelve months after the child is  
3       considered to have entered foster care. A permanency hearing must be conducted  
4       before the extension of any court order limited under this subsection. Any other order  
5       of disposition may not continue in force for more than twelve months.
- 6       4. The court may terminate an order of disposition before the expiration of the order.
- 7       5. Except as provided in subsection 2, the court may terminate an order of disposition or  
8       extension before its expiration, on or without an application of a party, if it appears to  
9       the court the purposes of the order have been accomplished. If a party may be  
10      adversely affected by the order of termination, the order may be made only after  
11      reasonable notice and opportunity to be heard have been given to the party.
- 12      6. When the child attains the age of twenty years, all orders affecting the child then in  
13      force terminate and the child is discharged from further obligation or control.

14      **27-20.4-24. Reasonable efforts to prevent removal or to reunify - When required.**

- 15      1. As used in this section, "reasonable efforts" means the exercise of due diligence, by  
16      the agency granted authority over the child under this chapter, to use appropriate and  
17      available services to meet the needs of the child and the child's family in order to  
18      prevent removal of the child from the child's family or, after removal, to use appropriate  
19      and available services to eliminate the need for removal, to reunite the child and the  
20      child's family, and to maintain family connections. In determining reasonable efforts to  
21      be made with respect to a child under this section, and in making reasonable efforts,  
22      the child's health and safety must be the paramount concern.
- 23      2. Except as provided in subsection 4, reasonable efforts must be made to preserve  
24      families, reunify families, and maintain family connections:
- 25      a. Before the placement of a child in foster care, to prevent or eliminate the need for  
26      removing the child from the child's home;
- 27      b. To make it possible for a child to return safely to the child's home;
- 28      c. Whether and, if applicable, to place siblings in the same foster care, relative,  
29      guardianship, or adoptive placement, unless it is determined that such a joint  
30      placement would be contrary to the safety or well-being of any of the siblings;  
31      and

- 1           d. In the case of siblings removed from the home of the siblings who are not jointly  
2           placed, to provide for frequent visitation or other ongoing interaction between the  
3           siblings, unless it is contrary to the safety or well-being of any of the siblings.
- 4        3. If the court or the child's custodian determined that continuation of reasonable efforts,  
5        as described in subsection 2, is inconsistent with the permanency plan for the child,  
6        reasonable efforts must be made to place the child in a timely manner in accordance  
7        with the permanency plan and to complete whatever steps are necessary to finalize  
8        the permanent placement of the child.
- 9        4. Reasonable efforts of the type described in subsection 2 are not required if:
- 10       a. A court of competent jurisdiction has determined a parent has subjected a child to  
11       aggravated circumstances; or
- 12       b. The parental rights of the parent, with respect to another child of the parent, have  
13       been involuntarily terminated.
- 14       5. Efforts to place a child for adoption, with a fit and willing relative or other appropriate  
15       individual as a legal guardian, or in another planned permanent living arrangement,  
16       may be made concurrently with reasonable efforts of the type described in  
17       subsection 2.
- 18       6. Removal of a child from the child's home for placement in foster care must be based  
19       on judicial findings stated in the court's order, and determined on a case-by-case basis  
20       in a manner that complies with the requirements of titles IV-B and IV-E of the federal  
21       Social Security Act [42 U.S.C. 620 et seq. and 42 U.S.C. 6701 et seq.], as amended,  
22       and federal regulations adopted under those federal laws, provided that this  
23       subsection may not provide a basis for overturning an otherwise valid court order.
- 24       7. For the purpose of section 27-20.3-17, reasonable efforts were made under this  
25       section to meet the child's needs before a foster care placement for a child remaining  
26       in care for continued foster care purposes.

27       **27-20.4-25. Law enforcement and correctional facility records.**

- 28       1. Unless a charge of delinquency is transferred for criminal prosecution under section  
29       27-20.4-20, the interest of national security requires, or the court otherwise orders in  
30       the interest of the child, the law enforcement and correctional facility records and files

1 of a child alleged or found to be delinquent or in need of services or protection are not  
2 open to public inspection; but inspection of these records and files is permitted by:

- 3 a. A juvenile court having the child before the court in any proceeding;  
4 b. Counsel for a party to the proceeding;  
5 c. The officers of public institutions or agencies to whom the child is or may be  
6 committed;  
7 d. Law enforcement officers of other jurisdictions if necessary for the discharge of  
8 official duties of the officers;  
9 e. A court in which the child is convicted of a criminal offense for the purpose of a  
10 presentence report or other dispositional proceeding, or by officials of correctional  
11 facilities to which the child is detained or committed, or by the parole board, the  
12 governor, or the pardon advisory board, if one has been appointed, in considering  
13 the child's parole or discharge or in exercising supervision over the child;  
14 f. The professional staff of the uniform crime victims compensation program if  
15 necessary for the discharge of the duties of the professional staff pursuant to  
16 chapter 54-23.4; and  
17 g. A superintendent, assistant superintendent, principal, or designee of the school in  
18 which the child is currently enrolled or of a school in which the child wishes to  
19 enroll.

20 2. Notwithstanding that law enforcement records and files of a child alleged or found to  
21 be delinquent or in need of services or protection are not open to public inspection,  
22 this section does not limit the release of general information that does not identify the  
23 identity of the child.

24 **27-20.4-26. Substance use programming.**

- 25 1. If a child is subject to nonjudicial adjustments under this chapter and is found to be  
26 delinquent under section 27-20.4-16, or is found to be in need of services or protection  
27 under section 27-20.3-16, the juvenile court may require a substance use screening  
28 and subsequent programming to appropriately address:  
29 a. A child who is found to have violated section 39-08-01 or equivalent; or

- 1            b. If a child is found to have an alcohol concentration of at least two one-hundredths  
2            of one percent by weight at the time of performance of a test within two hours  
3            after driving or being in physical control of a motor vehicle.
- 4            2. If a child is subject to informal adjustment under this chapter and is required to  
5            participate in the twenty-four seven sobriety program, the period of participation may  
6            not exceed six months.
- 7            3. If a child required to participate in the twenty-four seven sobriety program under this  
8            section fails to comply with program requirements without being excused, the testing  
9            site shall notify the juvenile court and refer the child to the juvenile court for further  
10           disposition. The child may not be detained or otherwise taken into custody without  
11           authorization from the juvenile court.
- 12           4. If the juvenile court requires the child to participate in a juvenile drug court program,  
13           the juvenile court may waive the participation in the twenty-four seven sobriety  
14           program requirements of this section.

15           **SECTION 26.** Section 27-20.4-06 of the North Dakota Century Code, as created by section  
16 25 of this Act, is amended and reenacted as follows:

17           **27-20.4-06. Detention - Nonsecure care of child.**

- 18           1. A child taken into custody may not be detained or placed in nonsecure care before the  
19           hearing on the petition unless the child's detention or nonsecure care is required to  
20           protect the person or property of others or of the child or because the child may  
21           abscond or be removed from the jurisdiction of the court or because the child has no  
22           parent, guardian, or custodian or other person able to provide supervision and care for  
23           the child and return the child to the court if required, or an order for the child's  
24           detention or nonsecure care has been made by the court pursuant to this chapter.
- 25           2. Law enforcement, juvenile court staff, and division staff shall use a detention  
26           screening tool to assure the appropriate use of detention and whether the child is a  
27           public safety risk. The juvenile court shall establish the detention screening tool, which  
28           must include objective factors to aid in the decision of placement of the child. Law  
29           enforcement, court records, and division records must include data on detention  
30           screening scores and, if the score does not authorize detention, the explanation for the  
31           override resulting in placing the juvenile in detention.

- 1           3. The court may place a juvenile in detention before adjudication only if the court finds  
2           releasing the child would pose an unreasonable risk to public safety and that all  
3           restrictive alternatives have been considered.
- 4           4. A juvenile may be placed in a secure detention facility if one or more of the following  
5           conditions are met:
- 6           a. The child is alleged to have committed an offense that if committed by an adult  
7           would constitute a felony against person, felony weapon, or felony drug  
8           distribution;
- 9           b. The child has a record of failure to appear in court or there is probable cause to  
10          believe that the child will flee the jurisdiction of the court;
- 11          c. The child has violated the terms of detention release on home confinement or  
12          electronic monitoring;
- 13          d. There is oral or written verification that the child is an alleged delinquent child  
14          sought for an offense in another jurisdiction or that the child left a juvenile  
15          detention facility without authorization.
- 16          e. The child is an out-of-state runaway subject to the rules of the interstate  
17          commission on juveniles;
- 18          f. The child meets criteria for secure detention on the detention screening tool; or
- 19          g. The child meets criteria for an override on the detention screening tool.
- 20          ~~h. If a child is participating in a juvenile drug court program as a result of an~~  
21          ~~adjudication for a delinquent offense, the court may order the child detained in a~~  
22          ~~juvenile detention center operated pursuant to chapter 12-44.1. The child may be~~  
23          ~~detained twice during the child's participation in the program with the total period~~  
24          ~~of detention under this section not to exceed four days in a one year period.~~
- 25          5. ~~A child may not be placed in detention solely due to lack of supervision alternatives or~~  
26          ~~due to the community's inability to provide appropriate treatment or services.~~A child  
27          may not be placed in detention by law enforcement or juvenile court, including drug  
28          court solely:
- 29          a. Due to a lack of supervision alternatives, service options, or more appropriate  
30          facilities.
- 31          b. Due to the community's inability to provide treatment or services.

- 1           c. Due to a lack of supervision in the home or community.  
2           d. In order to allow a parent, guardian, or legal custodian to avoid his or her legal  
3           responsibility.  
4           e. Due to a risk of the juvenile's self-harm.  
5           f. In order to attempt to punish, treat, or rehabilitate the child.  
6           g. Due to a request by a victim, law enforcement, or the community.  
7           h. In order to permit more convenient administrative access to the juvenile.  
8         6. Alternatives to secure detention may be utilized to include home confinement,  
9         electronic monitoring, and parental or guardian supervision if the court determines  
10        there is no unreasonable risk to public safety.  
11        7. A child placed in detention must have a mental health and trauma screening tool  
12        completed by the juvenile detention center or by juvenile court upon entry and provide  
13        that information to the juvenile court before release or detention hearing.

14        **SECTION 27. AMENDMENT.** Subsections 2 and 3 of section 27-21-02 of the North Dakota  
15 Century Code are amended and reenacted as follows:

- 16        2. Placement in the care of the North Dakota youth correctional center ~~or in a career and~~  
17        ~~technical education, training, or other treatment and rehabilitation institution for~~  
18        ~~children or young adults within this state;~~ or  
19        3. Placement in the care of a career and technical education, training, or other treatment  
20        and rehabilitation institution for children or young adults within this state or in another  
21        state in the event that adequate facilities for the child's treatment and rehabilitation are  
22        not available within this state and the committing juvenile court concurs in the  
23        placement.

24        **SECTION 28. AMENDMENT.** Subsection 3 of section 27-21-02.1 of the North Dakota  
25 Century Code is amended and reenacted as follows:

- 26        3. The division may conduct a permanency hearing, as authorized by section  
27        ~~27-20-36~~27-20.4-23, if an appropriate permanency plan may be carried out without  
28        exceeding the division's authority.

29        **SECTION 29. AMENDMENT.** Section 27-21-09 of the North Dakota Century Code is  
30 amended and reenacted as follows:

1           **27-21-09. Cooperation with other agencies and departments of the state - Right to**  
2 **inspect facilities of state institutions - Right to examine children.**

3           1. The division of juvenile services may enter contracts with service providers as  
4 necessary to meet the mission of the division.

5           2. The division of juvenile services shall cooperate with and receive the cooperation of  
6 the department of human services, the department of public instruction, the  
7 department of career and technical education, the juvenile courts, the state  
8 department of health, and such other agencies and departments of the state as may  
9 be necessary to carry out the objectives of this chapter.

10          3. The division of juvenile services may inspect at all reasonable times the facilities of  
11 those institutions within the state it is authorized to utilize under this chapter, and may  
12 examine any child it has placed in the care of such institution, and may contract with  
13 public and private agencies to provide services for them or to retain from them  
14 required services to meet the purpose and objective of this chapter.

15          **SECTION 30. AMENDMENT.** Subsections 2 and 5 of section 27-21-12 of the North Dakota  
16 Century Code are amended and reenacted as follows:

17          2. Notwithstanding any other provisions of law relating to confidentiality, except for the  
18 confidentiality requirements of federal drug and alcohol treatment and rehabilitation  
19 laws, the division may disclose all or part of a juvenile's files and records, including  
20 juvenile court orders, medical, psychological, education, and treatment and counseling  
21 records, to individuals employed by the following if the knowledge is reasonably  
22 necessary in the best interest of the juvenile and for the protection of others:

23           a. The district court or juvenile court.

24           b. A parent or legal guardian of the juvenile, the parent's or legal guardian's  
25 counsel, or the juvenile's counsel, when the juvenile court has committed the  
26 juvenile to the custody of the division of juvenile services, and the records are  
27 relevant to a proceeding under chapter ~~27-20~~27-20.4 or to a placement hearing  
28 under section 27-21-02.1, or when disclosure is necessary for the juvenile's  
29 treatment and rehabilitation plan. If the juvenile court determines that it is against  
30 the best interests of the juvenile to disclose records to a parent or legal guardian,



- 1                   the juvenile court may issue an order prohibiting disclosure and describing the  
2                   records that may not be disclosed.
- 3                   c. An employee or agent of any division of the department of corrections and  
4                   rehabilitation when necessary to carry out the duties of the department.
- 5                   d. The department of human services or a human service zone.
- 6                   e. A licensed hospital or medical facility, a public or private treatment facility, or a  
7                   residential care or treatment facility, when necessary for the evaluation,  
8                   treatment, or care of a juvenile in the custody of the division of juvenile services.
- 9                   f. A law enforcement agency when the division has reasonable grounds to believe  
10                  the juvenile has committed a delinquent act or has threatened to commit a  
11                  delinquent act involving serious bodily injury, or when the juvenile is required to  
12                  register, or is registered, under section 12.1-32-15.
- 13                  g. A school district or multidistrict special education program in which the juvenile is  
14                  enrolled.
- 15                  h. The office of the attorney general.
- 16                  i. The risk management division of the office of management and budget and  
17                  investigators, consultants, or experts retained by the state for the purpose of  
18                  investigating and defending claims under chapter 32-12.2.
- 19                  5. The division may disclose the files and records of a juvenile under ~~subdivision f or g of~~  
20                  ~~subsection 1 of section 27-20-51~~section 27-20.2-21.

21                  **SECTION 31. AMENDMENT.** Section 30.1-27-02 of the North Dakota Century Code is  
22                  amended and reenacted as follows:

23                  **30.1-27-02. (5-202) Testamentary appointment of guardian of minor.**

24                  The parent of a minor may appoint by will a guardian of an unmarried minor. A testamentary  
25                  appointment becomes effective upon filing the guardian's acceptance in the court in which the  
26                  will is probated and remains effective upon approval by the court either after or without a  
27                  hearing, if, before acceptance, both parents are dead or the surviving parent's rights have been  
28                  terminated by prior court order. If both parents are dead, an effective appointment by the parent  
29                  who died later has priority. This state recognizes a testamentary appointment effected by filing  
30                  the guardian's acceptance under a will probated in another state which is the testator's domicile  
31                  and upon approval by the court either after or without a hearing. Upon acceptance of

1 appointment, written notice of acceptance must be given by the guardian to the minor and to the  
2 person having the minor's care or to the minor's nearest adult relative under section ~~27-20-02-~~  
3 27-20.3-02. Within forty-five days of the filing of acceptance, the testamentary guardian must  
4 file with the court a criminal history record check report and affidavit stating whether the  
5 proposed guardian has been investigated for offenses related to theft, fraud, or the abuse,  
6 neglect, or exploitation of an adult or child and shall provide a release authorizing access to any  
7 record information maintained by an agency in this or another state or a federal agency.

8 **SECTION 32. AMENDMENT.** Subsection 3 of section 30.1-27-06 of the North Dakota  
9 Century Code is amended and reenacted as follows:

10 3. The guardian ad litem shall serve a copy of the report on the minor if the minor is  
11 fourteen years of age or older, the testamentary guardian, the person having the  
12 minor's care or the minor's nearest adult relative under section ~~27-20-02~~27-20.3-02,  
13 and the personal representative of the deceased parent's estate.

14 **SECTION 33. AMENDMENT.** Section 39-06-32.1 of the North Dakota Century Code is  
15 amended and reenacted as follows:

16 **39-06-32.1. Suspension of child's driving privileges.**

17 Upon receipt of a copy of an order of a juvenile court ordering the suspension of a child  
18 operator's license, the director shall suspend the operator's license and make notation of the  
19 length of time of the suspension. During the time of the suspension, an application for a class D  
20 instruction permit may not be accepted from the child. For purposes of this section, "child" is  
21 defined by section ~~27-20-02~~27-20.4-02.

22 **SECTION 34. AMENDMENT.** Subsection 2 of section 39-20-01 of the North Dakota  
23 Century Code is amended and reenacted as follows:

24 2. The test or tests must be administered at the direction of a law enforcement officer  
25 only after placing the individual under arrest for violation of section 39-08-01 or an  
26 equivalent offense. For the purposes of this chapter, the taking into custody of a child  
27 under section ~~27-20-13~~27-20.4-05 or an individual under twenty-one years of age  
28 satisfies the requirement of an arrest. The law enforcement officer shall determine  
29 which of the tests is to be used.

30 **SECTION 35. AMENDMENT.** Section 39-24.1-01 of the North Dakota Century Code is  
31 amended and reenacted as follows:

1           **39-24.1-01. Implied consent to determine alcohol concentration and presence of**  
2 **drugs.**

3           An individual who operates a snowmobile on any public land or private land with public  
4 access is deemed to have given consent, and shall consent, subject to this chapter, to a  
5 chemical test, or tests, of the blood, breath, or urine for the purpose of determining the alcohol  
6 concentration or presence of other drugs, or combination thereof, in the individual's blood,  
7 breath, or urine. As used in this chapter, the definitions in section 39-24-01 apply, and in  
8 addition, "chemical test" means any test or tests to determine the alcohol concentration or  
9 presence of other drugs, or combination thereof, in the individual's blood, breath, or urine,  
10 approved by the director of the state crime laboratory or the director's designee under this  
11 chapter; and "drug" means any drug or substance or combination of drugs or substances which  
12 renders an individual incapable of safely operating a snowmobile. The chemical test must be  
13 administered at the direction of a law enforcement officer only after placing the individual,  
14 except individuals mentioned in section 39-24.1-04, under arrest and informing that individual  
15 that the individual is or will be charged with the offense of operating a snowmobile while under  
16 the influence of intoxicating liquor, drugs, or a combination thereof. For the purposes of this  
17 chapter, the taking into custody of a minor under section ~~27-20-1327-20.4-05~~ satisfies the  
18 requirement of an arrest. The law enforcement officer shall also inform the individual charged  
19 that refusal of the individual to submit to the chemical test determined appropriate will result in  
20 that individual being prohibited from operating a snowmobile for up to three years. The law  
21 enforcement officer shall determine the chemical test to be used. When a minor is taken into  
22 custody for violating subdivision c of subsection 5 of section 39-24-09, the law enforcement  
23 officer shall diligently attempt to contact the minor's parent or legal guardian to explain the  
24 cause for the custody and the implied consent chemical testing requirements. Neither the law  
25 enforcement officer's efforts to contact, nor any consultation with, a parent or legal guardian  
26 may be permitted to interfere with the administration of chemical testing requirements under this  
27 chapter.

28           **SECTION 36. AMENDMENT.** Subsection 5 of section 50-06-05.1 of the North Dakota  
29 Century Code is amended and reenacted as follows:

30           5. To provide for the study, and to promote the well-being, of ~~deprived~~ a child in need of  
31 protection, unruly a child in need of services, and delinquent children.

1       **SECTION 37. AMENDMENT.** Section 50-25.1-02 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3       **50-25.1-02. Definitions.**

4       In this chapter, unless the context or subject matter otherwise requires:

- 5       1. "A person responsible for the child's welfare" means an individual who has  
6           responsibility for the care or supervision of a child and who is the child's parent, an  
7           adult family member of the child, any member of the child's household, the child's  
8           guardian, or the child's foster parent; or an employee of, or any person providing care  
9           for the child in, a public or private school or child care setting.
- 10      2. "Abuse of alcohol", "alcohol abuse", or "abused alcohol" means alcohol use disorder  
11           as defined in the current edition of the "Diagnostic and Statistical Manual of Mental  
12           Disorders" published by the American psychiatric association or a maladaptive use of  
13           alcohol with negative medical, sociological, occupational, or familial effects.
- 14      3. "Abused child" means an individual under the age of eighteen years who is suffering  
15           from abuse as defined in section 14-09-22 caused by a person responsible for the  
16           child's welfare and "sexually abused child" means an individual under the age of  
17           eighteen years who is subjected by a person responsible for the child's welfare, or by  
18           any individual, including a juvenile, who acts in violation of sections 12.1-20-01  
19           through 12.1-20-07, sections 12.1-20-11 through 12.1-20-12.3, or chapter 12.1-27.2.
- 20      4. "Alternative response assessment" means a child protection response involving  
21           substance exposed newborns which is designed to:
  - 22           a. Provide referral services to and monitor support services for a person responsible  
23               for the child's welfare and the substance exposed newborn; and
  - 24           b. Develop a plan of safe care for the substance exposed newborn.
- 25      5. "Authorized agent" means the human service zone, unless another entity is  
26           designated by the department.
- 27      6. "Child in need of services" means a child who in any of the following instances is in  
28           need of treatment or rehabilitation:
  - 29           a. Is habitually and without justification truant from school or absent from school  
30               without an authorized excuse for more than five days during a school year;

1           **b.** Is habitually disobedient of the reasonable and lawful commands of the child's  
2           parent, guardian, or other custodian including runaway and is ungovernable or  
3           who is willfully in a situation that is dangerous or injurious to the health, safety, or  
4           morals of the child or others;

5           **c.** Except for an offense committed by a minor who is fourteen years of age or older  
6           under subsection 2 of section 12.1-31-03 or an equivalent local ordinance or  
7           resolution, has committed an offense applicable only to a child; or

8           **d.** Is under fourteen years of age and has purchased, possessed, smoked, or used  
9           tobacco, a tobacco-related product, an electronic smoking device, or an  
10          alternative nicotine product in violation of subsection 2 of section 12.1-31-03. As  
11          used in this subdivision, "electronic smoking device" and "alternative nicotine  
12          product" have the same meaning as in section 12.1-31-03.

13          **7.** "Child protection assessment" means a factfinding process designed to provide  
14          information that enables a determination to be made that services are required to  
15          provide for the protection and treatment of an abused or neglected child and an  
16          evidence-based screening tool.

17          ~~7-8.~~ "Children's advocacy center" means a full or associate member of the national  
18          children's alliance which assists in the coordination of the investigation in response to  
19          allegations of child abuse by providing a dedicated child-friendly location at which to  
20          conduct forensic interviews, forensic medical examinations, and other appropriate  
21          services and which promotes a comprehensive multidisciplinary team response to  
22          allegations of child abuse. The team response may include forensic interviews,  
23          forensic medical examinations, mental health and related support services, advocacy,  
24          and case review.

25          ~~8-9.~~ "Citizen review committee" means a committee appointed by the department to review  
26          the department's provision of child welfare services.

27          ~~9-10.~~ "Department" means the department of human services or its designee.

28          ~~10-11.~~ "Family services assessment" means a child protection services response to reports of  
29          suspected child abuse or neglect in which the child is determined to be at low risk and  
30          safety concerns for the child are not evident according to guidelines developed by the  
31          department and an evidence-based screening tool.

- 1 ~~11.12.~~ "Institutional child abuse or neglect" means situations of known or suspected child  
2 abuse or neglect when the institution responsible for the child's welfare is a residential  
3 child care facility, a treatment or care center for individuals with intellectual disabilities,  
4 a public or private residential educational facility, a maternity home, or any residential  
5 facility owned or managed by the state or a political subdivision of the state.
- 6 ~~12.13.~~ "Local child protection team" means a multidisciplinary team consisting of the  
7 designee of the human service zone director who shall serve as presiding officer,  
8 together with such other representatives as that director might select for the team. All  
9 team members, at the time of their selection and thereafter, must be staff members of  
10 the public or private agencies they represent or shall serve without remuneration. An  
11 attorney member of the child protection team may not be appointed to represent the  
12 child or the parents at any subsequent court proceeding nor may the child protection  
13 team be composed of fewer than three members. The department may coordinate the  
14 organization of local child protection teams on a human service zone basis.
- 15 ~~13.14.~~ "Near death" means an act that, as certified by a physician, places a child in serious or  
16 critical condition.
- 17 ~~14.15.~~ "Neglected child" means a child who, due to the action or inaction of a person  
18 responsible for the child's welfare:
- 19 a. Is without proper care or control, subsistence, education as required by law, or  
20 other care or control necessary for the child's physical, mental, or emotional  
21 health, or morals, and is not due primarily to the lack of financial means of a  
22 person responsible for the child's welfare;
  - 23 b. Has been placed for care or adoption in violation of law;
  - 24 c. Has been abandoned;
  - 25 d. Is without proper care, control, or education as required by law, or other care and  
26 control necessary for the child's well-being because of the physical, mental,  
27 emotional, or other illness or disability of a person responsible for the child's  
28 welfare, and that such lack of care is not due to a willful act of commission or act  
29 of omission, and care is requested by a person responsible for the child's welfare;
  - 30 e. Is in need of treatment and a person responsible for the child's welfare has  
31 refused to participate in treatment as ordered by the juvenile court;

1 f. Was subject to prenatal exposure to chronic or severe use of alcohol or any  
2 controlled substance as defined in chapter 19-03.1 in a manner not lawfully  
3 prescribed by a practitioner;

4 g. Is present in an environment subjecting the child to exposure of a controlled  
5 substance, chemical substance, or drug paraphernalia as prohibited by section  
6 19-03.1-22.2; or

7 h. Is a victim of human trafficking as defined in title 12.1.

8 ~~45.16.~~ "Prenatal exposure to a controlled substance" means use of a controlled substance as  
9 defined in chapter 19-03.1 by a pregnant woman for a nonmedical purpose during  
10 pregnancy as evidenced by withdrawal symptoms in the child at birth, results of a  
11 toxicology test performed on the mother at delivery or the child at birth, or medical  
12 effects or developmental delays during the child's first year of life that medically  
13 indicate prenatal exposure to a controlled substance.

14 ~~46.17.~~ "Protective services" includes services performed after an assessment of a report of  
15 child abuse or neglect has been conducted, such as social assessment, service  
16 planning, implementation of service plans, treatment services, referral services,  
17 coordination with referral sources, progress assessment, monitoring service delivery,  
18 and direct services.

19 ~~47.18.~~ "State child protection team" means a multidisciplinary team consisting of the  
20 designee of the department and, where possible, of a physician, a representative of a  
21 child-placing agency, a representative of the state department of health, a  
22 representative of the attorney general, a representative of the superintendent of public  
23 instruction, a representative of the department of corrections and rehabilitation, one or  
24 more representatives of the lay community, and, as an ad hoc member, the designee  
25 of the chief executive official of any institution named in a report of institutional abuse  
26 or neglect. All team members, at the time of their selection and thereafter, must be  
27 staff members of the public or private agency they represent or shall serve without  
28 remuneration. An attorney member of the child protection team may not be appointed  
29 to represent the child or the parents at any subsequent court proceeding nor may the  
30 child protection team be composed of fewer than three persons.

1 ~~48-19.~~ "Substance exposed newborn" means an infant younger than twenty-eight days of age  
2 at the time of the initial report of child abuse or neglect and who is identified as being  
3 affected by substance abuse or withdrawal symptoms or by a fetal alcohol spectrum  
4 disorder.

5 **SECTION 38. AMENDMENT.** Section 50-25.1-06 of the North Dakota Century Code is  
6 amended and reenacted as follows:

7 **50-25.1-06. Protective and other services to be provided.**

8 1. The department shall provide protective services for the abused or neglected child and  
9 other children under the same care as may be necessary for their well-being and shall  
10 provide other appropriate social services, as the circumstances warrant, to the  
11 parents, custodian, or other persons serving in loco parentis with respect to the child  
12 or the other children. The department may discharge the duties described in this  
13 section through an authorized agent.

14 2. The department shall provide appropriate services to a child referred as a child in  
15 need of services and shall provide appropriate services to the person responsible for  
16 the child's welfare and the children under the same care as may be necessary for the  
17 well-being and safety of the children.

18 **SECTION 39. AMENDMENT.** Subdivision a of subsection 4 of section 50-06-43.2 of the  
19 North Dakota Century Code is amended and reenacted as follows:

20 a. Review ~~chapter 27-20~~chapters 27-20.1, 27-20.2, 27-20.3, and 27-20.4;

21 **SECTION 40. AMENDMENT.** Subsection 1 of section 50-11.3-01 of the North Dakota  
22 Century Code is amended and reenacted as follows:

23 1. Before appointment as a legal guardian under ~~chapter 27-20~~27-20.1, the individual to  
24 be appointed legal guardian must be subject to an assessment that includes the result  
25 of a criminal history record investigation made under this section. In addition, any adult  
26 living in the household of the individual to be appointed legal guardian must be subject  
27 to a criminal history record investigation made under this section.

28 **SECTION 41. AMENDMENT.** Subsection 4 of section 50-25.1-15 of the North Dakota  
29 Century Code is amended and reenacted as follows:

30 4. If an infant is left at a hospital, the hospital shall provide the parent or the agent with a  
31 numbered identification bracelet to link the parent or the agent to the infant, unless



1 due to birth of the infant, the infant and parent currently have an identification bracelet.  
2 Possession of an identification bracelet does not entitle the bracelet holder to take  
3 custody of the infant on demand. If an individual possesses a bracelet linking the  
4 individual to an infant left at a hospital under this section and parental rights have not  
5 been terminated, possession of the bracelet creates a presumption that the individual  
6 has standing to participate in a protection services action brought under this chapter or  
7 chapter ~~27-20~~27-20.3. Possession of the bracelet does not create a presumption of  
8 maternity, paternity, or custody.

9 **SECTION 42. AMENDMENT.** Subsection 2 of section 54-12-34 of the North Dakota Century  
10 Code is amended and reenacted as follows:

11 2. The criminal justice data information sharing system may be accessed only in  
12 accordance with rules adopted under this section. Any law enforcement record in the  
13 possession of the attorney general through the criminal justice data information  
14 sharing system is an exempt record. Criminal justice data information about an offense  
15 committed by a child if the offense has not been transferred under  
16 section ~~27-20-34~~27-20.4-21 to another court having jurisdiction of the offense and  
17 information about a child victim or witness is confidential.

18 **SECTION 43. AMENDMENT.** Section 54-23.4-17 of the North Dakota Century Code is  
19 amended and reenacted as follows:

20 **54-23.4-17. Confidentiality of records.**

21 Juvenile or law enforcement records obtained under chapter ~~27-20~~27-20.4 may be released  
22 to the parties, their counsel, and representatives of the parties in proceedings before the  
23 division and must be sealed at the conclusion of the proceedings. All other records of the  
24 division concerning the application for or award of compensation under this chapter are  
25 confidential and are not open to public disclosure. Inspection of these records, however, must  
26 be permitted by:

- 27 1. Law enforcement officers when necessary for the discharge of their official duties.  
28 2. Representatives of a claimant, whether an individual or an organization, who may  
29 review a claim file or receive specific information from the file upon the presentation of  
30 the signed authorization of the claimant.

- 1       3.   Physicians or health care providers treating or examining persons claiming benefits  
2           under this title, or physicians giving medical advice to the division regarding any claim,  
3           at the discretion of the division.
- 4       4.   Any person who is rendering assistance to the division at any stage of the proceedings  
5           on any matter pertaining to the administration of this chapter.
- 6       5.   Juvenile or law enforcement records obtained under chapter ~~27-20~~27-20.4 may be  
7           released to the parties, their counsel, and representatives in proceedings before the  
8           division and must be sealed at the conclusion of the proceedings.

9       **SECTION 44. AMENDMENT.** Section 62.1-02-01 of the North Dakota Century Code is  
10   amended and reenacted as follows:

11       **62.1-02-01. Persons who are not to possess firearms - Penalty.**

- 12       1.   a.   A person who has been convicted anywhere of a felony offense involving  
13           violence or intimidation in violation of chapters 12.1-16 through 12.1-25 or an  
14           equivalent felony offense of another state or the federal government is prohibited  
15           from owning a firearm or having one in possession or under control from the date  
16           of conviction and continuing for a period of ten years after the date of conviction  
17           or the date of release from incarceration, parole, or probation, whichever is latest.
- 18       b.   A person who has been convicted anywhere of a felony offense of this or another  
19           state or the federal government not provided for in subdivision a or who has been  
20           convicted of a class A misdemeanor offense involving violence or intimidation in  
21           violation of chapters 12.1-16 through 12.1-25 or an equivalent offense of another  
22           state or the federal government and the offense was committed while using or  
23           possessing a firearm, a dangerous weapon, or, as defined in section 12.1-01-04,  
24           a destructive device or an explosive, is prohibited from owning a firearm or  
25           having one in possession or under control from the date of conviction and  
26           continuing for a period of five years after the date of conviction or the date of  
27           release from incarceration, parole, or probation, whichever is latest.
- 28       c.   A person who is or has ever been diagnosed and confined or committed to a  
29           hospital or other institution in this state or elsewhere by a court of competent  
30           jurisdiction, other than a person who has had the petition that provided the basis  
31           for the diagnosis, confinement, or commitment dismissed under section

1           25-03.1-17, 25-03.1-18, or 25-03.1-19, or equivalent statutes of another  
2           jurisdiction, as a person requiring treatment as defined in section 25-03.1-02, or  
3           as a mentally deficient individual, is prohibited from purchasing a firearm or  
4           having one in possession or under control. This limitation does not apply to a  
5           person who has not suffered from the disability for the previous three years or  
6           who has successfully petitioned for relief under section 62.1-02-01.2.

- 7           d. A person under the age of eighteen years may not possess a handgun except  
8           that such a person, while under the direct supervision of an adult, may possess a  
9           handgun for the purposes of firearm safety training, target shooting, or hunting.

10          A person who violates subdivision a or b is guilty of a class C felony, and a person who  
11          violates subdivision c or d is guilty of a class A misdemeanor.

- 12          2. For the purposes of this section, "conviction" means a determination that the person  
13          committed one of the above-mentioned crimes upon a verdict of guilt, a plea of guilty,  
14          or a plea of nolo contendere even though:

- 15          a. The court suspended execution of sentence in accordance with subsection 3 of  
16          section 12.1-32-02;  
17          b. The court deferred imposition of sentence in accordance with subsection 4 of  
18          section 12.1-32-02;  
19          c. The court placed the person on probation;  
20          d. The person's conviction has been reduced in accordance with subsection 9 of  
21          section 12.1-32-02 or section 12.1-32-07.1;  
22          e. Sentence dispositions, sentence reductions, or offense determinations equivalent  
23          to this section were imposed or granted by a court, board, agency, or law of  
24          another state or the federal government; or  
25          f. The person committed an offense equivalent to an offense described in  
26          subdivision a or b of subsection 1 when that person was subject to juvenile  
27          adjudication or proceedings and a determination of a court under chapter  
28          ~~27-2027-20.4~~ or of a court of another state or the federal government was made  
29          that the person committed the delinquent act or offense.

- 1           3. A felon who is not sentenced under section 12.1-32-09.1 may possess a rifle that has  
2           a barrel sixteen inches [40.72 centimeters] or longer or a shotgun that has a barrel  
3           eighteen inches [45.72 centimeters] or longer and which is one of the following:
- 4           a. A firearm, including any firearm with a matchlock, flintlock, percussion cap, or  
5           similar type of ignition system, manufactured before 1899.
- 6           b. A replica of any firearm described in subdivision a, if the replica is not designed  
7           or redesigned for using rimfire or conventional centerfire fixed ammunition or  
8           uses rimfire or conventional centerfire fixed ammunition that is no longer  
9           manufactured in the United States and which is not readily available in the  
10          ordinary channels of commercial trade.
- 11          c. A muzzleloading rifle or muzzleloading shotgun designed to use black powder or  
12          a black powder substitute and which cannot use fixed ammunition.

13           **SECTION 45. REPEAL.** Chapter 27-20 and section 27-21-03 of the North Dakota Century  
14          Code are repealed.

15           **SECTION 46. APPROPRIATION - LEGISLATIVE MANAGEMENT REPORT - LEGAL**  
16          **COUNSEL SERVICES FOR JUVENILES.** There is appropriated out of any moneys in the  
17          general fund in the state treasury, not otherwise appropriated, the sum of \$325,000, or so much  
18          of the sum as may be necessary, to the commission on legal counsel for indigents for the  
19          purpose of providing legal counsel for juveniles, for the biennium beginning July 1, 2021, and  
20          ending June 30, 2023. During the 2021-22 interim, the commission on legal counsel for  
21          indigents shall report to the legislative management by July 1, 2022, regarding:

- 22           1. Actual costs incurred to date and expected costs to be incurred for the 2021-23  
23           biennium to provide legal counsel and related services to indigent juveniles;
- 24           2. Actual costs incurred to date and expected costs to be incurred for the 2021-23  
25           biennium to provide legal counsel and related services to nonindigent juveniles; and
- 26           3. Any amounts collected from those financially able to pay all or part of the cost of  
27           providing legal counsel and related services for juveniles.

28           **SECTION 47. EFFECTIVE DATE.** Sections 24 and 26 of this Act become effective on  
29          August 1, 2022.