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Sixty-seventh
Legislative Assembly
of North Dakota

**FIRST ENGROSSMENT
with Senate Amendments
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; and to provide an effective date.

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

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

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;