

JUDICIAL BRANCH OF GOVERNMENT

CHAPTER 296

SENATE BILL NO. 2211

(Senators Bekkedahl, Larson, Hogue)
(Representatives Ista, Schneider, Klemm)

AN ACT to amend and reenact sections 27-02.2-01, 27-02.2-02, 27-02.2-03, 27-02.2-04, 27-02.2-05, 27-02.2-06, 27-02.2-09, 27-02.2-10, and 27-02.2-11 of the North Dakota Century Code, relating to the attorney recruitment and retention program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 27-02.2-01 of the North Dakota Century Code is amended and reenacted as follows:

27-02.2-01. Attorney recruitment and retention program - Participation - Assessment.

1. The supreme court may establish a program to assist rural counties and municipalities in recruiting and retaining attorneys.
2. A county or municipality interested in participating in the program shall apply to the supreme court. After determining eligibility, the supreme court shall conduct an assessment of the applicant to evaluate the applicant's need for an attorney and the ability of the applicant to sustain and support an attorney.
3. In making the selection of an eligible applicant, the supreme court shall consider the assessment and:
 - a. The demographic of the county or municipality;
 - b. The age and number of the members of the county or local bar association;
 - c. The recommendation of the presiding district court judge;
 - d. The economic development programs within the county or municipality;
 - e. The geographical location of the county or municipality in comparison to other counties or municipalities participating in the program; and
 - f. Any prior participation in the program by the county or municipality.
4. The supreme court shall maintain a list of counties and municipalities that have been assessed and are selected for participation in the recruitment and retention assistance program.

5. The supreme court may revise the assessment of any county or municipality or conduct a new assessment as necessary to reflect a change in conditions.

SECTION 2. AMENDMENT. Section 27-02.2-02 of the North Dakota Century Code is amended and reenacted as follows:

27-02.2-02. County eligibility.

A county is eligible to participate in the recruitment and retention assistance program if the county:

1. Has ~~a population of sixteen thousand five~~ or fewer licensed attorneys residing in the county;
2. Agrees to provide the county's portion of the incentive payment as required under section 27-02.2-06; and
3. Is determined to be eligible by the supreme court.

SECTION 3. AMENDMENT. Section 27-02.2-03 of the North Dakota Century Code is amended and reenacted as follows:

27-02.2-03. Municipality eligibility.

A municipality is eligible to participate in the recruitment and retention assistance program if the municipality:

1. Has a population of five thousand or fewer;
2. Agrees to provide the municipality's portion of the incentive payment as required under section 27-02.2-06; and
3. Is determined to be eligible by the supreme court.

SECTION 4. AMENDMENT. Section 27-02.2-04 of the North Dakota Century Code is amended and reenacted as follows:

27-02.2-04. Attorney eligibility.

An attorney licensed to practice in the state who meets all requirements set by the supreme court may participate in the recruitment and retention assistance program. An attorney participating in the program shall practice in a supreme court-selected county or municipality for at least five consecutive years. No more than eight attorneys may participate in the program at any given time.

SECTION 5. AMENDMENT. Section 27-02.2-05 of the North Dakota Century Code is amended and reenacted as follows:

27-02.2-05. Incentive payment to participating attorneys.

An attorney selected by the supreme court to participate in the recruitment and retention assistance program is entitled to receive an incentive payment of forty-five thousand dollars to be paid in five equal annual installments.

SECTION 6. AMENDMENT. Section 27-02.2-06 of the North Dakota Century Code is amended and reenacted as follows:

27-02.2-06. Agreement for payment of recruitment and retention assistance - Repayment.

1. An agreement for the payment of recruitment and retention assistance under this chapter must require the county or municipality served by the attorney to provide thirty-five percent of the total amount of the incentive payment in five equal installments.
2. The state bar association of North Dakota, the North Dakota bar foundation, or any other legal association in North Dakota shall pay fifteen percent of the annual installment to the supreme court.
3. After the county or municipality certifies to the supreme court that the county or municipality has paid the attorney the annual amount and the state bar association of North Dakota, the North Dakota bar foundation, or any other legal association in North Dakota has paid its installment to the supreme court, the supreme court shall pay the attorney the remaining balance of the annual installment.
4. Subject to appropriation by the legislative assembly, the supreme court shall pay the required amount of funds pursuant to this chapter and the funds received from the state bar association of North Dakota, the North Dakota bar foundation, or any other legal association in North Dakota, as required under this chapter, to an attorney participating in the program.
5. If an attorney breaches the agreement, the attorney shall repay all funds received under this chapter and under the terms and conditions set by the supreme court. Failure to repay the funds is grounds for discipline by the supreme court.

SECTION 7. AMENDMENT. Section 27-02.2-09 of the North Dakota Century Code is amended and reenacted as follows:

27-02.2-09. Attorney recruitment and retention assistance program fund - Continuing appropriation.

The attorney recruitment and retention assistance program fund is established in the state treasury. Payments collected under section 27-02.2-08 must be deposited in the attorney recruitment and retention assistance program fund. The funds deposited in the attorney recruitment and retention assistance program fund are appropriated to the judicial branch on a continuing basis for the purpose of making attorney payments under the recruitment and retention assistance program.

SECTION 8. AMENDMENT. Section 27-02.2-10 of the North Dakota Century Code is amended and reenacted as follows:

27-02.2-10. Filing and approval of recruitment and retention assistance agreement.

A recruitment and retention assistance agreement entered under this chapter becomes effective when the agreement is filed with and approved by the supreme court. The agreement must require the attorney to practice law full-time in the eligible county or municipality for at least five consecutive years.

SECTION 9. AMENDMENT. Section 27-02.2-11 of the North Dakota Century Code is amended and reenacted as follows:

27-02.2-11. Ineligibility for participation in other program.

If an individual has previously participated in an attorney recruitment and retention program under this chapter, or any other state or federal scholarship, loan repayment, or tuition reimbursement program requiring the individual to provide attorney services within an underserved area, the individual may not participate in another attorney recruitment and retention program under this chapter.

Approved March 18, 2025

Filed March 18, 2025

CHAPTER 297

SENATE BILL NO. 2057

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

AN ACT to amend and reenact subsection 6 of section 12.1-32-08 and sections 27-03-05, 27-05.2-03, and 29-26-22 of the North Dakota Century Code, relating to court fees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹¹⁵ **SECTION 1. AMENDMENT.** Subsection 6 of section 12.1-32-08 of the North Dakota Century Code is amended and reenacted as follows:

6. When the restitution ordered by the court under subsection 1 is the result of a finding that the defendant issued a check or draft without sufficient funds or without an account, the court shall impose as costs the greater of the sum of ~~ten~~^{twenty} dollars or an amount equal to twenty-five percent of the amount of restitution ordered. The costs imposed under this subsection, however, may not exceed one thousand dollars. The state-employed clerks of district court shall remit the funds collected as costs under this subsection to the state treasurer for deposit in the restitution collection assistance fund. The funds deposited into the restitution collection assistance fund are appropriated to the judicial branch on a continuing basis for the purpose of defraying expenses incident to the collection of restitution, including operating expenses and the compensation of additional necessary personnel. The state's attorneys and county-employed clerks of district court shall remit the funds collected as costs under this subsection to the county treasurer to be deposited in the county general fund.

SECTION 2. AMENDMENT. Section 27-03-05 of the North Dakota Century Code is amended and reenacted as follows:

27-03-05. Fees to be charged and collected by clerk of supreme court.

The clerk of the supreme court shall charge and collect in advance a fee of ~~one hundred twenty-five~~^{two hundred fifty} dollars upon the filing in the supreme court of the record in any cause upon appeal or upon the filing in the court of a petition in any cause seeking the exercise of the original court's jurisdiction. In addition to the fee required by this section, the clerk of the supreme court shall charge and collect any electronic filing processing fee established by court rule for any matter filed in an electronic format.

SECTION 3. AMENDMENT. Section 27-05.2-03 of the North Dakota Century Code is amended and reenacted as follows:

¹¹⁵ Section 12.1-32-08 was also amended by section 5 of House Bill No. 1417, chapter 120.

27-05.2-03. Fees to be charged by the clerk of the district court.

1. A clerk of the district court shall charge and collect the following fees in civil cases:
 - a. For filing a case for decision that is not a ~~small claims action~~ under subdivision b or e, eightyone hundred sixty dollars.
 - (1) ~~Fifteen~~Thirty dollars of this fee must be paid by the clerk of court to the state treasurer for deposit in the civil legal services fund. Any fees collected under this paragraph which exceed ~~seven hundred fifty thousand~~nine hundred thousand dollars in any biennium must be paid by the clerk of court to the state treasurer for deposit in the state general fund.
 - (2) ~~For the filing of a petition for dissolution of marriage, annulment, or separation from bed and board, fifty dollars of this fee must be paid by the clerk of court to the state treasurer for deposit in the displaced homemaker account created by section 14-06.1-14 and fifteen dollars of this fee must be paid by the clerk of court to the state treasurer for deposit in the state general fund.~~
 - (3) ~~For all other filings, sixty five~~One hundred thirty dollars of this fee must be paid by the clerk of court to the state treasurer for deposit in the state general fund.
 - b. For filing a petition for dissolution of marriage, annulment, or separation, one hundred sixty dollars.
 - (1) Thirty dollars of this fee must be paid by the clerk of court to the state treasurer for deposit in the civil legal services fund. Any fees collected under this paragraph which exceed nine hundred thousand dollars in any biennium must be paid by the clerk of court to the state treasurer for deposit in the state general fund.
 - (2) One hundred dollars of this fee must be paid by the clerk of court to the state treasurer for deposit in the displaced homemaker account under section 14-06.1-14.
 - (3) Thirty dollars of this fee must be paid by the clerk of court to the state treasurer for deposit in the state general fund.
 - c. For filing an answer to a case ~~that is not a small claims action~~other than under subdivision d or e, fiftyone hundred dollars. The clerk shall deposit this fee with the state treasurer for deposit in the general fund in the state treasury.
 - d. For filing a motion to modify an order for spousal support, property division, child support, parental rights and responsibilities, residential responsibility, parenting time, one hundred sixty dollars. For filing an answer to a motion to modify an order for spousal support, property division, child support, parental rights and responsibilities, residential responsibility, or parenting time, one hundred dollars. The clerk shall deposit this fee with the state treasurer for deposit in the general fund of the state treasury.

- ~~e-e.~~ For filing a small claims action in district court, ~~ten~~twenty dollars.
 - ~~d-f.~~ For filing any matter authorized to be filed in the office of the clerk of court other than under subdivision a, b, or c, ~~ten~~twenty dollars.
 - ~~e-g.~~ For preparing, certifying, issuing, or transmitting any document, ~~ten~~twenty dollars, or a lesser fee as may be set by the state court administrator.
 - ~~f.~~ ~~For filing a motion or an answer to a motion to modify an order for alimony, property division, child support, or child custody, thirty dollars. The clerk shall deposit this fee with the state treasurer for deposit in the general fund of the state treasury.~~
2. Section 27-01-07 applies to fees charged under this section. The clerk of court may not charge or collect any fee, prescribed by this or any other section, from the state or an agency thereof or from a political subdivision or agency thereof.

¹¹⁶ **SECTION 4. AMENDMENT.** Section 29-26-22 of the North Dakota Century Code is amended and reenacted as follows:

29-26-22. Judgment for fines - Court administration fee - Community service supervision fee - Special funds - Docketing and enforcement. (Retroactive application - See note)

1. In all criminal cases except infractions, upon a plea or finding of guilt, the court shall impose a court administration fee in lieu of the assessment of court costs. The court administration fee must include a fee of one hundred twenty-five dollars for a class B misdemeanor, two hundred dollars for a class A misdemeanor, four hundred dollars for a class C felony, six hundred fifty dollars for a class B felony, and nine hundred dollars for a class A or AA felony.
2. In addition, in all criminal cases except infractions, ~~the court administration fee must include the court shall impose an indigent defense and court facilities fee~~ of one hundred dollars. Of the additional one hundred dollar court administration fee, the first seven hundred fifty thousand dollars collected per biennium must be deposited in the indigent defense administration fund, which must be used for indigent defense services in this state, and the next four hundred sixty thousand dollars collected per biennium must be deposited in the court facilities improvement and maintenance fund. After the minimum thresholds have been collected, one-half of the additional court administration fee must be deposited in each fund.
3. In addition to any ~~court administration~~ fees that may be imposed under subsections 1 and 2, the court shall impose upon each defendant who receives a sentence that includes community service a community service supervision fee of twenty-five dollars. The community service supervision fee must be deposited in the community service supervision fund. The fees deposited in this fund must be used to provide community service supervision grants subject to legislative appropriations.

¹¹⁶ Section 29-26-22 was also amended by section 9 of House Bill No. 1030, chapter 301.

4. A court may waive the court administration fee, indigent defense and court facilities fee, or community service supervision fee upon a showing of indigency as provided in section 25-03.1-13. District court administration fees, exclusive of amounts deposited in the indigent defense administration fund and the court facilities and improvement fund, and forfeitures must be deposited in the state general fund. A judgment that the defendant pay a fine or fees, or both, may be docketed and if docketed constitutes a lien upon the real estate of the defendant in like manner as a judgment for money rendered in a civil action. The court may allow the defendant to pay any assessed administration fee or community service supervision fee in installments. When a defendant is assessed administration fees or a community service supervision fee, the court may not impose at the same time an alternative sentence to be served if the fees are not paid.
5. Upon successful completion of an approved adult drug court program, a court may waive all unpaid fines, fees, and costs imposed in the criminal judgment sentencing the defendant to the drug court program, except for restitution. For purposes of this subsection, "approved drug court program" means a district court-supervised treatment program approved by the supreme court.

Approved April 7, 2025

Filed April 8, 2025

CHAPTER 298

HOUSE BILL NO. 1347

(Representatives Satrom, Ostlie)
(Senators Conley, Dwyer)

AN ACT to create and enact a new section to chapter 27-05 of the North Dakota Century Code, relating to district court supervised treatment programs approved by the supreme court.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 27-05 of the North Dakota Century Code is created and enacted as follows:

District court supervised treatment programs - Roles and responsibilities.

Under a district court supervised treatment program:

1. The department of corrections and rehabilitation shall supervise offenders sentenced to supervised probation according to the policies and procedures of the department of corrections and rehabilitation.
2. The department of health and human services shall oversee treatment services according to the policies, procedures, and best practices of the department of health and human services.
3. The district court shall provide judicial direction, guidance, and coordination within all approved treatment and compliance related specialized dockets.

Approved March 26, 2025

Filed March 27, 2025

CHAPTER 299

SENATE BILL NO. 2053

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

AN ACT to amend and reenact section 27-11-17 of the North Dakota Century Code, relating to the state bar admission fee.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 27-11-17 of the North Dakota Century Code is amended and reenacted as follows:

27-11-17. Fee payable by all applicants for admission to bar - Disposition of fees.

The state board of law examiners is entitled to receive a fee to be determined by the board with the approval of the supreme court of an amount not to exceed ~~one hundred fifty~~ two hundred dollars from each applicant for admission to the bar of this state who submits to examination by the board and a fee to be determined by the board with the approval of the supreme court of an amount not to exceed four hundred dollars from each applicant for admission to the bar of this state who seeks admission upon motion in accordance with state law or supreme court rule. All fees received must be deposited and disbursed in accordance with section 54-44-12.

Approved March 14, 2025

Filed March 14, 2025

CHAPTER 300

HOUSE BILL NO. 1564

(Representatives Davis, Beltz, Brown, Finley-DeVile, Holle)
(Senators Cleary, Cory, Hogan, Lee, Weston)

AN ACT to amend and reenact sections 27-19.1-01 and 27-19.1-02, subsection 1 of section 27-19.1-03, subsection 1 of section 27-19.1-04, and sections 27-19.1-05 and 27-19.1-06 of the North Dakota Century Code, relating to Indian child welfare.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 27-19.1-01 of the North Dakota Century Code is amended and reenacted as follows:

27-19.1-01. Active efforts and procedures - Definitions.

1. As used in this chapter, ~~unless context requires otherwise:~~

- a. "Active efforts" means affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite an Indian child with the Indian child's family. If an agency is involved in the child custody proceeding, active efforts must involve assisting the parent or a parent or Indian custodian with the steps of a case plan and including accessing or developing the resources necessary to satisfy the case plan. To the maximum extent possible, active efforts should be provided in a manner consistent with the prevailing social and cultural conditions and way of life of the Indian child's tribe and should be conducted in partnership with the Indian child and the Indian child's parents, extended family members, Indian custodians, and tribe. Active efforts are to be tailored to the facts and circumstances of the case. The term includes:
 - (1) Conducting a comprehensive assessment of the circumstances of the Indian child's family, with a focus on safe reunification as the most desirable goal, with ongoing timely assessment to determine when the threat is resolved and placement of the Indian child can be returned to the custodian.
 - (2) Identifying appropriate services and helping a parent or Indian custodian to overcome barriers, including actively assisting a parent or Indian custodian in obtaining such services.
 - (3) Identifying, notifying, and inviting representatives of the Indian child's tribe to participate in providing support and services to the Indian child's family and in family team meetings, permanency planning, and resolution of placement issues.
 - (4) Conducting or causing to be conducted a diligent search for the Indian child's extended family members, and contacting and consulting with extended family members to provide family structure and support for the Indian child and the Indian child's parent or Indian custodian.

- (5) Offering and employing available and culturally appropriate family preservation strategies and facilitating the use of remedial and rehabilitative services provided by the Indian child's tribe.
 - (6) Taking steps to keep siblings together, if possible.
 - (7) Supporting regular visits with a parent or Indian custodian in the most natural setting possible as well as trial home visits of the Indian child during any period of removal, consistent with the need to ensure the health, safety, and welfare of the Indian child.
 - (8) Identifying community resources, including housing, financial, transportation, mental health, substance abuse, and peer support services and actively assisting the Indian child's parent or Indian custodian or, as appropriate, the Indian child's family, in utilizing and accessing those resources.
 - (9) Monitoring progress and participation in services.
 - (10) Considering alternative ways to address the needs of the Indian child's parent or Indian custodian and where appropriate, the family, if the optimum services do not exist or are not available.
 - (11) Providing post-reunification services and monitoring.
- b. "Adoptive placement" means the permanent placement of an Indian child for adoption.
 - c. "Extended family member" means a relationship defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, means an individual who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent.
 - d. "Foster care or ~~non-foster care~~ placement" means the removal of an Indian child from the home of his or her parent or Indian custodian for temporary placement in a foster home, qualified residential treatment program, residential care center for Indian children and youth, or certified shelter care facility, in the home of a relative other than a parent or Indian custodian, or in the home of a guardian, from which placement the parent or Indian custodian cannot have the Indian child returned upon demand. The term does not include an adoptive placement, a preadoptive placement, and an emergency change in placement under section 27-20.3-06, or holding an Indian child in custody a placement pursuant to a criminal or delinquency proceeding.
 - e. "Indian" means an individual who is a member of an Indian tribe, or who is a native and a member of a regional corporation as defined under 43 U.S.C. 1606.
 - f. "Indian child" means any unmarried individual who is under the age of eighteen and is either a member of an Indian tribe or is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

- g. "Indian child custody proceeding" means a proceeding brought by the state involving:
 - (1) Foster care ~~or nonfoster care~~ placement;
 - (2) A preadoptive placement;
 - (3) An adoptive placement; or
 - (4) A termination of parental rights under section 27-20.3-20 for an Indian child.
 - h. "Indian child's tribe" means the Indian tribe in which an Indian child is a member or eligible for membership or, in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts.
 - i. "Indian custodian" means any Indian individual who has legal custody of an Indian child under tribal law or custom or under state law or to whom temporary physical care, custody, and control has been transferred by the parent of the Indian child.
 - j. "Indian tribe" means an Indian tribe, band, nation, or other organized Indian group or community of Indians recognized as eligible for services provided to Indians by the United States secretary of the interior because of their status as Indians, including any Alaska native village as defined in 43 U.S.C. 1602(c).
 - k. "Parent" means a biological parent or parents of an Indian child or an Indian individual who has lawfully adopted an Indian child, including adoptions under tribal law or custom. The term does not include the unwed father if paternity has not been acknowledged or established.
 - l. "Preadoptive placement" means the temporary placement of an Indian child in a foster home, home of a relative other than a parent or Indian custodian, or home of a guardian after a termination of parental rights but before or in lieu of an adoptive placement, but does not include an emergency change in placement under section 27-20.3-06.
 - m. "Termination of parental rights" means any action resulting in the termination of the parent-child relationship. It does not include a placement based upon an act by an Indian child which, if committed by an adult, would be deemed a crime or a placement upon award of custody to one of the Indian child's parents in a divorce proceeding.
2. Before removal of an Indian child from the custody of a parent or Indian custodian for purposes of involuntary foster care placement or the termination of parental rights over an Indian child, the court shall find that active efforts have been made to provide remedial services and rehabilitative services designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful. The court may not order the removal unless evidence of active efforts shows there has been a vigorous and concerted level of casework beyond the level that would constitute reasonable efforts under section 27-20.3-26. Reasonable efforts may not be construed to be active efforts. Active efforts must be made in a manner that takes into account

the prevailing social and cultural values, conditions, and way of life of the Indian child's tribe. Active efforts must utilize the available resources of the Indian child's extended family, tribe, tribal and other relevant social service agencies, and individual Indian caregivers.

3. The court may order the removal of the Indian child for involuntary foster care placement only if the court determines, by clear and convincing evidence, that continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child. Evidence must show a causal relationship between the particular conditions in the home and the likelihood that continued custody of the Indian child will result in serious emotional or physical damage to the particular Indian child who is the subject of the proceeding. Poverty, isolation, custodian age, crowded or inadequate housing, substance use, or nonconforming social behavior does not by itself constitute clear and convincing evidence of imminent serious emotional or physical damage to the Indian child. ~~As soon as the threat has been removed and the Indian child is no longer at risk, the state should terminate the removal, by returning the Indian child to the parent or Indian custodian while offering a solution to mitigate the situation that gave rise to the need for emergency removal and placement.~~
4. The court may order the termination of parental rights over the Indian child only if the court determines, by evidence beyond a reasonable doubt that continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child.
5. In considering whether to involuntarily place an Indian child in foster care or to terminate the parental rights of the parent of an Indian child, the court shall require that a qualified expert witness must be qualified to testify regarding whether the Indian child's continued custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child and should be qualified to testify as to the prevailing social and cultural standards of the Indian child's tribe. An individual may be designated by the Indian child's tribe as being qualified to testify to the prevailing social and cultural standards of the Indian child's tribe. If the parties stipulate in writing and the court is satisfied the stipulation is made knowingly, intelligently, and voluntarily, the court may accept a declaration or affidavit from a qualified expert witness in lieu of testimony. If one or more parties have been found to be in default under the North Dakota Rules of Juvenile Procedure, the court may accept a declaration or affidavit from a qualified expert witness without a stipulation in writing from the defaulted parties. The court or any party may request the assistance of the Indian child's tribe or the bureau of Indian affairs office serving the Indian child's tribe in locating individuals qualified to serve as expert witnesses. The social worker regularly assigned to the Indian child may not serve as a qualified expert witness in child custody proceedings concerning the Indian child. The qualified expert witness should be someone familiar with the particular Indian child and have contact with the parent or Indian custodian to observe interaction between the parent or Indian custodian, Indian child, and extended family members. The child welfare agency and courts should facilitate access to the family and records to facilitate accurate testimony.
6. If a court order authorizes the emergency removal of the Indian child from the parent or Indian custodian of the child under state law, the order must be accompanied by a declaration from the child welfare agency that includes:

- a. The name, tribal affiliation, and address of the Indian child, each parent of the Indian child, and the Indian custodian of the child, as applicable; and
 - b. A detailed account of the circumstances that led the agency responsible for emergency removal of the child to take action.
7. An emergency removal or placement of an Indian child under state law must terminate immediately when the removal or placement is no longer necessary to prevent imminent physical damage or harm to the Indian child. If removal or placement is determined to be no longer necessary, the child welfare agency shall terminate the removal by returning the Indian child to the parent or Indian custodian and offer a solution to mitigate the situation that gave rise to the need for emergency removal and placement.
- 7-8. If an Indian child is the subject of a shelter care hearing, the party initiating the hearing shall provide the court with a declaration that includes the specific actions that have been taken to assist the parent or Indian custodian since the emergency removal so the child may be safely returned to the custody of the parent or Indian custodian, and the specific actions the initiating party intends to take so the Indian child may be returned safely without initiating an Indian child custody proceeding.
9. To facilitate the intent of this chapter, the agency, in cooperation with the Indian child's tribe of affiliation, unless a parent objects, shall take steps to enroll the Indian child in the tribe with the goal of finalizing enrollment before termination.

SECTION 2. AMENDMENT. Section 27-19.1-02 of the North Dakota Century Code is amended and reenacted as follows:

27-19.1-02. Jurisdiction over custody proceedings.

1. This chapter includes requirements that apply if an Indian child is the subject of:
 - a. A child custody proceeding, including:
 - (1) An involuntary proceeding; ~~and~~
 - (2) A voluntary proceeding that could prohibit the parent or Indian custodian from regaining custody of the Indian child upon demand; and
 - (3) A proceeding involving status offenses if any part of the proceeding results in the need for out-of-home placement of the child, including a foster care, preadoptive or adoptive placement, or termination of parental rights.
 - b. An emergency proceeding ~~other than:~~
 - (1) ~~A tribal~~
2. This chapter does not apply to:
 - a. A tribal court proceeding; ~~or~~
 - (2)~~b.~~ A proceeding regarding a delinquent act;

- c. An award of custody of the Indian child to one of the parents, including an award in a divorce proceeding; or
- d. A voluntary placement that either parent, both parents, or the Indian custodian has, of his or her or their free will, without a threat of removal by a state agency, chosen for the Indian child and that does not operate to prohibit the Indian child's parent or Indian custodian from regaining custody of the Indian child upon demand.

2-3. If a proceeding under subsection 1 concerns an Indian child, this chapter applies to that proceeding. In determining whether this chapter applies to a proceeding, the state court may not consider factors such as the participation of a parent or the Indian child in tribal cultural, social, religious, or political activities; the relationship between the Indian child and the Indian child's parent; whether the parent ever had custody of the Indian child; or the Indian child's blood quantum.

3-4. If this chapter applies at the commencement of a proceeding, this chapter does not cease to apply solely because the Indian child reaches age eighteen during the pendency of the proceeding.

~~4-5. In an Indian child custody proceeding under this chapter involving an Indian child who is not residing or domiciled within the reservation of the Indian child's tribe, the court assigned to exercise jurisdiction under this chapter, upon the petition of the Indian child's parent, Indian custodian, or tribe, shall transfer the proceeding to the jurisdiction of the tribe unless either of the following applies:~~

~~a. A parent of the Indian child objects to the transfer.~~

~~b. An Indian tribe has exclusive jurisdiction over an Indian child custody proceeding involving an Indian child who resides or is domiciled within the reservation of the tribe, except if that jurisdiction is otherwise vested in the state by federal law. If an Indian child is a ward of a tribal court, the Indian tribe retains exclusive jurisdiction regardless of the residence or domicile of the Indian child.~~

5-6. In an Indian child custody proceeding under this chapter involving an Indian child who is not residing or domiciled within the reservation of the Indian child's tribe, the court assigned to exercise jurisdiction under this chapter, upon the petition of the Indian child's parent, Indian custodian, or tribe, shall transfer the proceeding to the jurisdiction of the tribe unless any of the following apply:

a. A parent of the Indian child objects to the transfer.

b. The Indian child's tribe does not have a tribal court, or the tribal court of the Indian child's tribe declines jurisdiction.

c. The court determines good cause exists to deny the transfer. In determining whether good cause exists to deny the transfer, the court may not consider any perceived inadequacy of the tribal social services department or the tribal court of the Indian child's tribe. The court may determine good cause exists to deny the transfer only if the person opposing the transfer shows by clear and convincing evidence the

evidence or testimony necessary to decide the case cannot be presented in tribal court without undue hardship to the parties or the witnesses and that the tribal court is unable to mitigate the hardship by making arrangements to receive the evidence or testimony by use of telephone or live audiovisual means, by hearing the evidence or testimony at a location that is convenient to the parties and witnesses, or by use of other means permissible under the tribal court's rules of evidence.

~~6-7.~~ An Indian child's tribe may intervene at any point in an Indian child custody proceeding.

~~7-8.~~ The state shall give full faith and credit to the public acts, records, and judicial proceedings of an Indian tribe which are applicable to an Indian child custody proceeding to the same extent that the state gives full faith and credit to the public acts, records, and judicial proceedings of any other governmental entity.

SECTION 3. AMENDMENT. Subsection 1 of section 27-19.1-03 of the North Dakota Century Code is amended and reenacted as follows:

1. In a proceeding involving the foster care ~~or nonfoster care~~ placement of or termination of parental rights to an Indian child whom the court knows or has reason to know may be an Indian child, the party seeking the foster care ~~or nonfoster care~~ placement or termination of parental rights, for the first hearing of the proceeding, shall notify the Indian child's parent, Indian custodian, and tribe, by registered mail, return receipt requested, of the pending proceeding and of the parties' right to intervene in the proceeding and shall file the return receipt with the court. Notice of subsequent hearings in a proceeding must be in writing and may be given by mail, personal delivery, facsimile transmission, or electronic mail. If the identity or location of the Indian child's parent, Indian custodian, or tribe cannot be determined, that notice shall be given to the United States secretary of the interior in like manner. The first hearing in the proceeding may not be held until at least ten days after receipt of the notice by the parent, Indian custodian, and tribe or until at least fifteen days after receipt of the notice by the United States secretary of the interior. On request of the parent, Indian custodian, or tribe, the court shall grant a continuance of up to twenty additional days to enable the requester to prepare for that hearing.

SECTION 4. AMENDMENT. Subsection 1 of section 27-19.1-04 of the North Dakota Century Code is amended and reenacted as follows:

1. A voluntary consent by a parent or Indian custodian to a foster care ~~or nonfoster care~~ placement of an Indian child is not valid unless the consent or delegation is executed in writing, recorded before a judge, and accompanied by a written certification by the judge that the terms and consequences of the consent or delegation were fully explained in detail to and were fully understood by the parent or Indian custodian. The judge also shall certify the parent or Indian custodian fully understood the explanation in English or that the explanation was interpreted into a language the parent or Indian custodian understood. Any consent or delegation of powers given under this subsection before or within ten days after the birth of the Indian child is not valid. A parent or Indian custodian who has executed a consent or delegation of powers under this subsection may withdraw the consent or delegation for any reason at any time, and the Indian child must be returned to the parent or Indian custodian. A parent or Indian custodian who has executed a consent or delegation of powers under this subsection also may move to invalidate the out-of-home care placement.

SECTION 5. AMENDMENT. Section 27-19.1-05 of the North Dakota Century Code is amended and reenacted as follows:

27-19.1-05. ~~Placements~~Placement preferences.

1. Subject to subsections 3 and 4, in placing an Indian child for adoption or in delegating powers, as described in a lawful executed power of attorney regarding an Indian child, preference must be given, in the absence of good cause, as described in subsection 6, to the contrary, to a placement with or delegation to one of the following, in the order of preference listed:
 - a. The tribe's statutory adopted placement preference, if applicable;
 - b. An extended family member of the Indian child;
 - ~~b-c.~~ Another member of the Indian child's tribe;
 - ~~c-d.~~ Another Indian family with whom the Indian child has a relationship or an Indian family from a tribe that is culturally similar to or linguistically connected to the Indian child's tribe; or
 - ~~d-e.~~ The tribe's statutory adopted placement preferencesAnother Indian family.
2. An Indian child who is accepted for a foster care ~~or nonfoster care~~ placement or a preadoptive placement must be placed in the least restrictive setting that most approximates a family that meets the Indian child's special needs, if any, and which is within reasonable proximity to the Indian child's home, taking into account those special needs. Subject to subsections 4 and 6, in placing an Indian child in a foster care ~~or nonfoster care~~ placement or a preadoptive placement, preference must be given, in the absence of good cause, as described in subsection 6, to the contrary, to a placement in one of the following, in the order of preference listed:
 - a. The tribe's statutory adopted placement preference, if applicable;
 - b. The home of an extended family member of the Indian child;
 - ~~b-c.~~ A foster home licensed, approved, or specified by the Indian child's tribe;
 - ~~c-d.~~ An Indian foster home licensed or approved by the department; or
 - ~~d-e.~~ A qualified residential treatment facility or residential care center for children and youth approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the needs of the Indian child.
3. An Indian child who is the subject of an emergency removal or placement under a child custody determination under section 27-20.3-06 must be placed in compliance with foster care ~~or nonfoster care~~ placement or preadoptive placement preferences, unless the person responsible for determining the placement finds good cause, as described in subsection 6, for departing from the order of placement preference under subsection 2 or finds that emergency conditions necessitate departing from that order. When the reason for departing from that order is resolved, the Indian child must be placed in compliance with the order of placement preference under subsection 2.

4. In placing an Indian child under subsections 1 and 2 regarding an Indian child under subsection 1, if the Indian child's tribe has established, by resolution, an order of preference that is different from the order specified in subsection 1 or 2, the order of preference established by that tribe must be followed, in the absence of good cause, as described in subsection 6, to the contrary, so long as the placement under subsection 1 is appropriate for the Indian child's special needs, if any, and the placement under subsection 2 is the least restrictive setting appropriate for the Indian child's needs as specified in subsection 2.
5. The standards to be applied in meeting the placement preference requirements of this subsection must be the prevailing social and cultural standards of the Indian community in which the Indian child's parent, Indian custodian, or extended family members reside or with which the Indian child's parent, Indian custodian, or extended family members maintain social and cultural ties.
6.
 - a. If a party asserts that good cause not to follow the placement preferences exists, the reasons for that belief or assertion must be stated orally on the record or provided in writing to the parties to the child custody proceeding and the court.
 - b. The party seeking departure from the placement preferences bears the burden of proving by clear and convincing evidence that there is good cause to depart from the placement preferences.
 - c. A court's determination of good cause to depart from the placement preferences must be made on the record or in writing and must be based on one or more of the following considerations:
 - (1) The request of the Indian child's parent, if they attest that they have reviewed the placement options, if any, that comply with the order of preference.
 - (2) The request of the Indian child, if the Indian child is of sufficient age and capacity to understand the decision being made.
 - (3) The presence of a sibling attachment that can be maintained only through a particular placement.
 - (4) The extraordinary physical, mental, or emotional needs of the Indian child, such as specialized treatment services that may be unavailable in the community where families who meet the placement preferences live.
 - (5) The unavailability of a suitable placement after a determination by the court that a diligent search was conducted to find suitable placements meeting the preference criteria, but none has been located. For purposes of this analysis, the standards for determining whether a placement is unavailable must conform to the prevailing social and cultural standards of the Indian community in which the Indian child's parent, Indian custodian, or extended family resides or with which the Indian child's parent, Indian custodian, or extended family members maintain social and cultural ties.

- d. A placement may not depart from the preferences based on the socioeconomic status of any placement relative to another placement.
 - e. A placement may not depart from the preferences based solely on ordinary bonding or attachment that flowed from time spent in a nonpreferred placement that was made in violation of this chapter.
 - f. The burden of establishing good cause to depart from the order of placement preference is on the party requesting that departure.
7. The department or a child welfare agency shall maintain a record of each adoptive placement, foster care ~~or nonfoster care~~ placement, preadoptive placement, and delegation of powers, made of an Indian child, evidencing the efforts made to comply with the placement preference requirements specified in this section, and shall make that record available at any time on the request of the United States secretary of the interior or the Indian child's tribe.

SECTION 6. AMENDMENT. Section 27-19.1-06 of the North Dakota Century Code is amended and reenacted as follows:

27-19.1-06. Adoptee information.

1. The state court entering a final adoption decree or order in any voluntary or involuntary Indian child adoptive placement must furnish a copy of the decree or order within thirty days to the Bureau of Indian Affairs, ~~Chief, Division of Human Services, 1849 C Street NW, Mail Stop 3645 MIB, Washington, DC 20240~~ as prescribed by the Bureau of Indian Affairs, along with the following information, in an envelope marked "Confidential":
 - a. The birth name and birth date of the Indian child, and tribal affiliation and name of the Indian child after adoption;
 - b. The names and addresses of the biological parents;
 - c. The names and addresses of the adoptive parents;
 - d. The name and contact information for any agency having files or information relating to the adoption;
 - e. Any affidavit signed by the biological parent or parents requesting the parent's identity remain confidential; and
 - f. Any information relating to tribal membership or eligibility for tribal membership of the adopted Indian child.
2. The court shall give the birth parent of an Indian child the opportunity to file an affidavit indicating that the birth parent wishes the United States secretary of the interior to maintain the confidentiality of the birth parent's identity. If the birth parent files that affidavit, the court shall include the affidavit with the information provided to the United States secretary of the interior under subsection 1, and that secretary shall maintain the confidentiality of the birth parent's identity.

Approved April 10, 2025

Filed April 11, 2025

CHAPTER 301

HOUSE BILL NO. 1030

(Legislative Management)
(Judiciary Committee)

AN ACT to amend and reenact subdivision i of subsection 1 of section 12.1-32-02, sections 15.1-19-13 and 19-03.1-23, subsection 6 of section 19-03.4-03, subsection 17 of section 27-20.2-01, subsection 26 of section 27-20.4-01, subdivision c of subsection 4 of section 27-20.4-17, subsection 4 of section 27-20.4-26, subsection 5 of section 29-26-22, section 39-06-36.1, subsection 9 of section 39-06.1-11, subdivision f of subsection 5 of section 39-08-01, and sections 39-08-01.5 and 54-12-27.1 of the North Dakota Century Code relating to changing drug court to treatment court.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹¹⁷ **SECTION 1. AMENDMENT.** Subdivision i of subsection 1 of section 12.1-32-02 of the North Dakota Century Code is amended and reenacted as follows:

- i. DrugTreatment court program. A drugtreatment court is a district court supervised treatment program approved by the supreme court which combines judicial supervision with alcohol and drug testing and substance use disorder treatment in a licensed treatment program. The supreme court may adopt rules, including rules of procedure, for drugtreatment court programs.

SECTION 2. AMENDMENT. Section 15.1-19-13 of the North Dakota Century Code is amended and reenacted as follows:

15.1-19-13. Alcohol or controlled substance - Use or possession by student - Notification of principal - Exception.

If a teacher knows or has reason to believe that a student is using, is in possession of, or is delivering alcohol or a controlled substance while the student is on school property, involved in a school-related activity, or in attendance at a school-sponsored event, the teacher shall notify the student's principal. The notification requirement in this section does not apply to a teacher or administrator who participates in a juvenile drugtreatment court program and receives confidential information regarding a student as a result of participation in the program. This section does not prevent a teacher or any other school employee from reporting to a law enforcement agency any violation of law occurring on school property, at a school-related activity, or at a school-sponsored event.

¹¹⁸ **SECTION 3. AMENDMENT.** Section 19-03.1-23 of the North Dakota Century Code is amended and reenacted as follows:

¹¹⁷ Section 12.1-32-02 was also amended by section 1 of House Bill No. 1313, chapter 134, and section 2 of House Bill No. 1336, chapter 135.

¹¹⁸ Section 19-03.1-23 was also amended by section 1 of House Bill No. 1367, chapter 212.

19-03.1-23. Prohibited acts - Penalties.

1. Except as authorized by this chapter, it is unlawful for a person to willfully, as defined in section 12.1-02-02, manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance, or to deliver, distribute, or dispense a controlled substance by means of the internet, but a person who violates section 12-46-24 or 12-47-21 may not be prosecuted under this subsection. A person who violates this subsection with respect to:
 - a. A controlled substance classified in schedule I or II which is a narcotic drug, or methamphetamine, is guilty of a class B felony.
 - b. Any other controlled substance classified in schedule I, II, or III, or a controlled substance analog, except marijuana or tetrahydrocannabinol is guilty of a class B felony.
 - c. Marijuana, tetrahydrocannabinol, or a substance classified in schedule IV, is guilty of a class C felony.
 - d. A substance classified in schedule V, is guilty of a class A misdemeanor.
2. A prior misdemeanor conviction under subsection 7 or a prior conviction under subsection 3 or 4 of section 19-03.4-03 may not be considered a prior offense under subsection 1.
3. Except as authorized by this chapter, it is unlawful for any person to willfully, as defined in section 12.1-02-02, create, deliver, distribute, or dispense a counterfeit substance by means of the internet or any other means, or possess with intent to deliver, a counterfeit substance by means of the internet or any other means, but any person who violates section 12-46-24 or 12-47-21 may not be prosecuted under this subsection. Any person who violates this subsection with respect to:
 - a. A counterfeit substance classified in schedule I, II, or III, is guilty of a class B felony.
 - b. A counterfeit substance classified in schedule IV, is guilty of a class C felony.
 - c. A counterfeit substance classified in schedule V, is guilty of a class A misdemeanor.
4. A person at least eighteen years of age who solicits, induces, intimidates, employs, hires, or uses a person under eighteen years of age to aid or assist in the manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance for the purpose of receiving consideration or payment for the manufacture or delivery of any controlled substance is guilty of a class B felony. It is not a defense to a violation of this subsection that the defendant did not know the age of a person protected under this subsection.
5. Except for a prior conviction equivalent to a misdemeanor violation of subsection 7 or a prior conviction under subsection 3 or 4 of section 19-03.4-03, a violation of this title or a law of another state or the federal government which is equivalent to an offense with respect to the manufacture, delivery, or intent to deliver a controlled substance under this title committed while the offender was an adult and which resulted in a plea or finding of guilt

must be considered a prior offense under subsection 1. The prior offense must be alleged in the complaint, information, or indictment. The plea or finding of guilt for the prior offense must have occurred before the date of the commission of the offense or offenses charged in the complaint, information, or indictment.

6. It is unlawful for a person to willfully, as defined in section 12.1-02-02:
- Serve as an agent, intermediary, or other entity that causes the internet to be used to bring together a buyer and seller to engage in the delivery, distribution, or dispensing of a controlled substance in a manner not authorized by this chapter; or
 - Offer to fill or refill a prescription for a controlled substance based solely on a consumer's completion of an online medical questionnaire.

A person who violates this subsection is guilty of a class C felony.

7. a. It is unlawful for any person to willfully, as defined in section 12.1-02-02, possess a controlled substance or a controlled substance analog unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of the practitioner's professional practice, or except as otherwise authorized by this chapter, but any person who violates section 12-46-24 or 12-47-21 may not be prosecuted under this subsection.
- b. Except as otherwise provided in this subsection, any person who violates this subsection is guilty of a class A misdemeanor for the first offense under this subsection and a class C felony for a second or subsequent offense under this subsection.
- c. If, at the time of the offense the person is in or on the real property comprising a public or private elementary or secondary school or a public career and technical education school, the person is guilty of a class B felony, unless the offense involves marijuana or tetrahydrocannabinol.
- d. A person who violates this subsection by possessing:

(1) Marijuana:

- In an amount of less than one-half ounce [14.175 grams] is guilty of an infraction.
- At least one-half ounce [14.175 grams] but not more than 500 grams of marijuana is guilty of a class B misdemeanor.
- More than 500 grams of marijuana is guilty of a class A misdemeanor.

(2) Tetrahydrocannabinol:

- In an amount less than two grams is guilty of an infraction.
- At least two grams but not more than six grams of tetrahydrocannabinol is guilty of a class B misdemeanor.

- (c) More than six grams of tetrahydrocannabinol is guilty of a class A misdemeanor.
- e. If an individual is sentenced to the legal and physical custody of the department of corrections and rehabilitation under this subsection, the department may place the individual in a drug and alcohol treatment program designated by the department. Upon the successful completion of the drug and alcohol treatment program, the department shall release the individual from imprisonment to begin any court-ordered period of probation.
 - f. If the individual is not subject to any court-ordered probation, the court shall order the individual to serve the remainder of the sentence of imprisonment on supervised probation subject to the terms and conditions imposed by the court.
 - g. Probation under this subsection may include placement in another facility, treatment program, ~~drugtreatment~~ court, mental health court, or veterans treatment docket. If an individual is placed in another facility or treatment program upon release from imprisonment, the remainder of the sentence must be considered as time spent in custody.
 - h. An individual incarcerated under this subsection as a result of a second probation revocation is not eligible for release from imprisonment upon the successful completion of treatment.
 - i. A person who violates this subsection regarding possession of five or fewer capsules, pills, or tablets of a schedule II, III, IV, or V controlled substance or controlled substance analog is guilty of a class A misdemeanor.
8. Except as provided by section 19-03.1-45, a court may order a person who violates this chapter or chapter 19-03.4 to undergo a drug addiction evaluation by a licensed addiction counselor. The evaluation must indicate the prospects for rehabilitation and whether addiction treatment is required. If ordered, the evaluation must be submitted to the court before imposing punishment for a felony violation or a misdemeanor violation.
 9. If a person pleads guilty or is found guilty of a first offense regarding possession of one ounce [28.35 grams] or less of marijuana or two grams or less of tetrahydrocannabinol and a judgment of guilt is entered, a court, upon motion, shall seal the court record of that conviction if the person is not subsequently convicted within two years of a further violation of this chapter. Once sealed, the court record may not be opened even by order of the court.
 10. Upon successful completion of a ~~drugtreatment~~ court program, mental health court program, or veterans treatment docket, a person who has been convicted of a felony under this section and sentenced to ~~drugtreatment~~ court, mental health court, or veterans treatment docket is deemed to have been convicted of a misdemeanor.
 11. If a person convicted of a misdemeanor under this section is sentenced to ~~drugtreatment~~ court, mental health court, or veterans treatment docket and successfully completes a ~~drugtreatment~~ court program, mental health court, or veterans treatment docket, the court shall dismiss the case and seal the file in accordance with section 12.1-32-07.2.

12. If an individual under the age of twenty-one pleads guilty or is found guilty of a first offense regarding possession of one-half ounce [14.175 grams] or less of marijuana, the court also may sentence the individual to an evidence-based alcohol and drug education program operated under rules adopted by the department of health and human services under section 50-06-44. For a second or subsequent offense regarding possession of one-half ounce [14.175 grams] or less of marijuana, the court also shall sentence the individual to an evidence-based alcohol and drug education program operated under rules adopted by the department of health and human services under section 50-06-44.

¹¹⁹ **SECTION 4. AMENDMENT.** Subsection 6 of section 19-03.4-03 of the North Dakota Century Code is amended and reenacted as follows:

6. Probation under this section may include placement in another facility, treatment program, or drugtreatment court. If the person is placed in another facility or treatment program upon release from imprisonment, the remainder of the sentence must be considered as time spent in custody.

¹²⁰ **SECTION 5. AMENDMENT.** Subsection 17 of section 27-20.2-01 of the North Dakota Century Code is amended and reenacted as follows:

17. "Juvenile drugtreatment court" means a program established by the supreme court which is a post-petition or post-adjudication program aimed at intervening in substance use disorders through intense supervision and participation in recovery services.

SECTION 6. AMENDMENT. Subsection 26 of section 27-20.4-01 of the North Dakota Century Code is amended and reenacted as follows:

26. "Juvenile drugtreatment court" means a program established by the supreme court which is a post-petition or post-adjudication program aimed at intervening in substance use disorders through intense supervision and participation in recovery services.

SECTION 7. AMENDMENT. Subdivision c of subsection 4 of section 27-20.4-17 of the North Dakota Century Code is amended and reenacted as follows:

- c. Order the child's participation in a juvenile drugtreatment court program.

SECTION 8. AMENDMENT. Subsection 4 of section 27-20.4-26 of the North Dakota Century Code is amended and reenacted as follows:

4. If the juvenile court requires the child to participate in a juvenile drugtreatment court program, the juvenile court may waive the participation in the twenty-four seven sobriety program requirements of this section.

¹¹⁹ Section 19-03.4-03 was also amended by section 2 of House Bill No. 1367, chapter 212.

¹²⁰ Section 27-20.2-01 was also amended by section 10 of Senate Bill No. 2037, chapter 302.

¹²¹ **SECTION 9. AMENDMENT.** Subsection 5 of section 29-26-22 of the North Dakota Century Code is amended and reenacted as follows:

5. Upon successful completion of an approved adult ~~drugtreatment~~ court program, a court may waive all unpaid fines, fees, and costs imposed in the criminal judgment sentencing the defendant to the ~~drugtreatment~~ court program, except for restitution. For purposes of this subsection, "approved ~~drugtreatment~~ court program" means a district court-supervised treatment program approved by the supreme court.

SECTION 10. AMENDMENT. Section 39-06-36.1 of the North Dakota Century Code is amended and reenacted as follows:

39-06-36.1. Restoration of revoked or suspended licenses - Successful completion of ~~drugtreatment~~ court.

Upon an individual's successful completion of an approved adult ~~drugtreatment~~ court program, if ordered by the district court, the director shall reinstate the driving privileges of the individual for any noncommercial license suspension or revocation imposed under law. A reinstatement fee is not required for reinstatement of driving privileges under this section.

¹²² **SECTION 11. AMENDMENT.** Subsection 9 of section 39-06.1-11 of the North Dakota Century Code is amended and reenacted as follows:

9. If an offender is participating in an approved ~~drugtreatment~~ court program, the court may order issuance of a temporary restricted license. Upon application by the offender, the director shall issue a temporary restricted license to the participant subject to conditions specified by the court.
 - a. The application must be accompanied by proof of financial responsibility, the court's order, and the designated reinstatement fee.
 - b. For purposes of this subsection, "approved ~~drugtreatment~~ court program" means a district court-supervised treatment program approved by the supreme court.

¹²³ **SECTION 12. AMENDMENT.** Subdivision f of subsection 5 of section 39-08-01 of the North Dakota Century Code is amended and reenacted as follows:

- f. If the offense is subject to subdivision a or b, a municipal court or district court may not suspend a sentence, but may convert each day of a term of imprisonment to ten hours of community service for an offense subject to paragraph 2 of subdivision a. If the offense is subject to subdivision c, the district court may suspend a sentence, except for sixty days' imprisonment, under subsection 3 of section 12.1-32-02 on the condition that the defendant first undergo and complete an evaluation for alcohol and substance abuse treatment and rehabilitation. If the offense is subject

¹²¹ Section 29-26-22 was also amended by section 4 of Senate Bill No. 2057, chapter 297.

¹²² Section 39-06.1-11 was also amended by section 1 of House Bill No. 1316, chapter 363.

¹²³ Section 39-08-01 was also amended by section 2 of House Bill No. 1313, chapter 134, and section 3 of House Bill No. 1336, chapter 135.

to subdivision d, the district court may suspend a sentence, except for one year's imprisonment, under subsection 3 of section 12.1-32-02 on the condition that the defendant first undergo and complete an evaluation for alcohol and substance abuse treatment and rehabilitation. If the defendant is found to be in need of alcohol and substance abuse treatment and rehabilitation, the district court may order the defendant placed under the supervision and management of the department of corrections and rehabilitation and is subject to the conditions of probation under section 12.1-32-07. The district court may require the defendant to complete alcohol and substance abuse treatment and rehabilitation under the direction of the ~~drugtreatment~~ court program as a condition of probation in accordance with rules adopted by the supreme court. The district court may terminate probation under this section when the defendant completes the drug treatment program. If the district court finds that a defendant has failed to undergo an evaluation or complete treatment or has violated any condition of probation, the district court shall revoke the defendant's probation and shall sentence the defendant in accordance with this subsection.

¹²⁴ **SECTION 13. AMENDMENT.** Section 39-08-01.5 of the North Dakota Century Code is amended and reenacted as follows:

39-08-01.5. Partial suspension of sentence for ~~drugtreatment~~ court program, mental health court program, or veterans treatment docket completion.

1. Notwithstanding section 39-08-01:
 - a. All but ten days of the minimum mandatory sentence required for a defendant charged with a third or subsequent violation of section 39-08-01 may be suspended on the condition the defendant successfully completes a ~~drugtreatment~~ court program, mental health court program, or veterans treatment docket approved by the supreme court.
 - b. If the ~~drugtreatment~~ court determines a defendant participating in a ~~drugtreatment~~ court program has substantially complied with the requirements of the ~~drugtreatment~~ court program, the ~~drugtreatment~~ court may suspend the defendant's electronic alcohol monitoring and sobriety breath testing requirement under the twenty-four seven sobriety program for the six months preceding completion of the ~~drugtreatment~~ court program.
2. Upon successful completion of a ~~drugtreatment~~ court program, mental health court program, or veterans treatment docket, a defendant convicted of a felony under section 39-08-01 and sentenced to ~~drugtreatment~~ court, mental health court, or veterans treatment docket is deemed to have been convicted of a misdemeanor.
3. If a defendant convicted of a misdemeanor under section 39-08-01 is sentenced to ~~drugtreatment~~ court, mental health court, or veterans treatment docket and successfully completes a ~~drugtreatment~~ court program, mental health court, or veterans treatment docket, the court shall dismiss the case and seal the file in accordance with section 12.1-32-07.2.

¹²⁴ Section 39-08-01.5 was also amended by section 1 of House Bill No. 1364, chapter 367.

SECTION 14. AMENDMENT. Section 54-12-27.1 of the North Dakota Century Code is amended and reenacted as follows:

54-12-27.1. Twenty-four seven sobriety program - Partial suspension for ~~drug~~treatment court program participants.

1. For purposes of this section, "approved ~~drug~~treatment court program" means a district court-supervised treatment program approved by the supreme court.
2. A district court may suspend any ordered period of participation in the twenty-four seven sobriety program, including mandatory participation required by law, for an offender participating in an approved ~~drug~~treatment court program while under supervised probation with the department of corrections and rehabilitation.
3. A district court suspending participation in the twenty-four seven sobriety program shall issue a certificate of waiver of twenty-four seven sobriety program participation.
4. For purposes of issuance of a temporary restricted operator's license under section 39-06.1-11, the director of the department of transportation shall treat a court certificate of waiver of twenty-four seven sobriety program participation as if the offender was participating in the twenty-four seven sobriety program.

Approved March 14, 2025

Filed March 14, 2025

CHAPTER 302

SENATE BILL NO. 2037

(Legislative Management)
(Juvenile Justice Committee)

AN ACT to create and enact three new sections to chapter 27-20.4 of the North Dakota Century Code, relating to juvenile court petitions, fitness to proceed in juvenile court proceedings, and collateral consequences the juvenile court may order; to amend and reenact sections 12.1-04.1-01, 12.1-04.1-20, and 12.1-17-01.2, subsection 2 of section 12.1-17-07.2, section 12.1-20-01, subsections 2 and 6 of section 12.1-31-03, sections 12.1-32-15 and 15.1-09-33.4, subsection 6 of section 27-20.2-01, subsection 3 of section 27-20.2-09, subsection 5 of section 27-20.4-11, subsection 1 of section 27-20.4-18, subsection 1 of section 27-20.4-20, and section 62.1-02-01 of the North Dakota Century Code, relating to lack of criminal responsibility, court jurisdiction, distribution of intimate images without consent, domestic violence, criminality of a child regarding sex offenses, sale and use of tobacco by an individual under the age of twenty-one, child registration requirements, restitution, probation of a delinquent child, extracurricular activities for students, and persons not allowed to possess a firearm; to repeal sections 27-20.4-12, 27-20.4-13, and 27-20.4-19 of the North Dakota Century Code, relating to delinquency; to provide an appropriation; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-04.1-01 of the North Dakota Century Code is amended and reenacted as follows:

12.1-04.1-01. Standard for lack of criminal responsibility.

1. An individual is not criminally responsible for criminal conduct if, as a result of mental disease or defect existing at the time the conduct occurs:
 - a. The individual lacks substantial capacity to comprehend the harmful nature or consequences of the conduct, or the conduct is the result of a loss or serious distortion of the individual's capacity to recognize reality; and
 - b. It is an essential element of the crime charged that the individual act willfully.
2. For purposes of this chapter, repeated criminal or similar antisocial conduct, or impairment of mental condition caused primarily by voluntary use of alcoholic beverages or controlled substances immediately before or contemporaneously with the alleged offense, does not constitute in itself mental illness or defect at the time of the alleged offense. Evidence of the conduct or impairment may be probative in conjunction with other evidence to establish mental illness or defect.
3. An individual ten years of age or older may be assessed for criminal responsibility under this chapter.

SECTION 2. AMENDMENT. Section 12.1-04.1-20 of the North Dakota Century Code is amended and reenacted as follows:

12.1-04.1-20. Jurisdiction of court.

1. Unless earlier discharged by order of the court pursuant to section 12.1-04.1-22, 12.1-04.1-24, or 12.1-04.1-25, an individual found not guilty by reason of lack of criminal responsibility is subject to the jurisdiction of the court for a period equal to the maximum term of imprisonment that could have been imposed for the most serious crime of which the individual was charged but found not guilty by reason of lack of criminal responsibility. In a juvenile proceeding, a child not adjudicated by reason of lack of criminal responsibility is subject to the jurisdiction of the court for one year.
2. Upon expiration of its jurisdiction under this chapter or earlier discharge by its order, the court may order that a proceeding for involuntary commitment be initiated pursuant to chapter 25-03.1. In a juvenile proceeding, the court may order an investigation into whether a child in need of protection proceedings should be initiated under chapter 27-20.3.

SECTION 3. AMENDMENT. Section 12.1-17-01.2 of the North Dakota Century Code is amended and reenacted as follows:

12.1-17-01.2. Domestic violence.

1. For purposes of this section "family or household member" means family or household member as defined in section 14-07.1-01.
2. A person is guilty of an offense if that person willfully causes:
 - a. Bodily injury to the actor's family or household member;
 - b. Substantial bodily injury to the actor's family or household member; or
 - c. Serious bodily injury to the actor's family or household member.
3. The offense is:
 - a. A class B misdemeanor for the first offense under subdivision a of subsection 2 and a class A misdemeanor for a second or subsequent offense under this section or sections 12.1-17-01, 12.1-17-01.1, or 12.1-17-02 involving the commission of domestic violence, as defined in section 14-07.1-01. For purposes of this subdivision, a prior conviction includes a conviction of any assault offense in which a finding of domestic violence was made under a law or ordinance of another state which is equivalent to this section.
 - b. A class A misdemeanor for an offense under subdivision b of subsection 2 and a class C felony for an offense under subdivision c of subsection 2.
 - c. A class B felony for an offense under subdivision b or c of subsection 2 if the victim is under twelve years of age.
4. A person charged with an offense under this section must be prosecuted in district court.

5. This section applies to an individual under the age of eighteen if the:
- a. Victim is or was in a dating relationship with the individual; or
 - b. Individual has a child in common with the victim.

SECTION 4. AMENDMENT. Subsection 2 of section 12.1-17-07.2 of the North Dakota Century Code is amended and reenacted as follows:

- 2. A person commits the offense of distribution of intimate images if the person knowingly or intentionally distributes to any third party any intimate image of an individual ~~eighteen years of age or older~~, if:
 - a. The person knows that the depicted individual has not given consent to the person to distribute the intimate image;
 - b. The intimate image was created by or provided to the person under circumstances in which the individual has a reasonable expectation of privacy; and
 - c. Actual emotional distress or harm is caused to the individual as a result of the distribution under this section.

SECTION 5. AMENDMENT. Section 12.1-20-01 of the North Dakota Century Code is amended and reenacted as follows:

12.1-20-01. General provisions.

In sections 12.1-20-03 through 12.1-20-08:

- 1. When ~~the criminality of conduct~~ depends on a child's child being below the age of fifteen, it is no defense that the actor did not know the child's age, or reasonably believed the child to be older than fourteen.
- 2. When criminality depends on the victim being a minor, it is an affirmative defense that the actor reasonably believed the victim to be an adult.
- 3. When criminality depends on the victim being a minor fifteen years of age or older, the actor is guilty of an offense only if the actor is at least three years older than the minor.
- 4. When criminality depends on the victim being below the age of fifteen, and the actor is a minor, the actor is guilty of an offense only if the actor is at least three years older than the victim.

¹²⁵ **SECTION 6. AMENDMENT.** Subsection 2 of section 12.1-31-03 of the North Dakota Century Code is amended and reenacted as follows:

- 2. It is a noncriminal offense for an individual ~~under twenty-one~~eighteen years of age or older but under twenty-one years of age, and an infraction for an individual ~~fourteen years of age or older but under eighteen years of age~~, to purchase, possess, smoke, or use cigarettes, cigars, cigarette papers, snuff, tobacco in any other form in which it may be utilized for smoking or chewing,

¹²⁵ Section 12.1-31-03 was also amended by section 7 of Senate Bill No. 2037, chapter 302.

electronic smoking devices, or alternative nicotine products. However, an individual under twenty-one years of age may purchase and possess tobacco, electronic smoking devices, or alternative nicotine products as part of a compliance survey program when acting with the permission of the individual's parent or guardian and while acting under the supervision of any law enforcement authority. A state agency, city, county, board of health, tobacco, electronic smoking devices, or alternative nicotine products retailer, or association of tobacco, electronic smoking devices, or alternative nicotine products retailers may also conduct compliance surveys, after coordination with the appropriate local law enforcement authority.

¹²⁶ **SECTION 7. AMENDMENT.** Subsection 6 of section 12.1-31-03 of the North Dakota Century Code is amended and reenacted as follows:

6. An individual fourteen years of age or older but under eighteen years of age found to have violated subsection 2 or 4 ~~must pay a fee of twenty-five dollars~~ has committed an infraction and must be sent to juvenile court. An individual eighteen years of age or older but under twenty-one years of age found to have violated subsection 2 or 4 must pay a fee of twenty-five dollars.
- a. Any individual who has been cited for a violation of subsection 2 or 4 may appear before a court of competent jurisdiction and pay the fee by the time scheduled for a hearing, or if bond has been posted, may forfeit the bond by not appearing at the scheduled time. An individual appearing at the time scheduled in the citation may make a statement in explanation of that individual's action and the judge may waive, reduce, or suspend the fee or bond, or both. If the individual cited follows the procedures of this subdivision, that individual has admitted the violation and has waived the right to a hearing on the issue of commission of the violation. The bond required to secure appearance before the court must be identical to the fee. This subdivision does not allow a citing officer to receive the fee or bond.
- b. If an individual cited for a violation of subsection 2 or 4 does not choose to follow the procedures provided under subdivision a, that individual may request a hearing on the issue of the commission of the violation cited. The hearing must be held at the time scheduled in the citation or at some future time, not to exceed ninety days later, set at that first appearance. At the time of a request for a hearing on the issue on commission of the violation, the individual cited shall deposit with the court an appearance bond equal to the fee for the violation cited.
- c. The failure to post bond or to pay an assessed fee is punishable as a contempt of court, except an individual may not be imprisoned for the contempt.

¹²⁷ **SECTION 8. AMENDMENT.** Section 12.1-32-15 of the North Dakota Century Code is amended and reenacted as follows:

¹²⁶ Section 12.1-31-03 was also amended by section 6 of Senate Bill No. 2037, chapter 302.

¹²⁷ Section 12.1-32-15 was also amended by section 2 of House Bill No. 1031, chapter 64.

12.1-32-15. Offenders against children and sexual offenders - Sexually violent predators - Registration requirement - Penalty.**1. As used in this section:**

- a. "A crime against a child" means a violation of chapter 12.1-16, section 12.1-17-01.1 if the victim is under the age of twelve, 12.1-17-02, 12.1-17-04, subdivision a of subsection 6 of section 12.1-17-07.1, section 12.1-18-01, 12.1-18-02, 12.1-18-05, chapter 12.1-29, or section 14-09-22, subsection 3 of section 12.1-41-02, subsection 3 of section 12.1-41-03, or an equivalent offense from another court in the United States, a tribal court, or court of another country, in which the victim is a minor or is otherwise of the age required for the act to be a crime or an attempt or conspiracy to commit these offenses.
- b. "Department" means the department of corrections and rehabilitation.
- c. "Homeless" means an individual who is physically present in this state, but is living in a park, under a bridge, on the streets, in a vehicle or camper, or is otherwise without a traditional dwelling, and also one who resides in this state but does not maintain a permanent address. The term does not include individuals who are temporarily domiciled or individuals residing in public or private shelters that provide temporary living accommodations.
- d. "Mental abnormality" means a congenital or acquired condition of an individual that affects the emotional or volitional capacity of the individual in a manner that predisposes that individual to the commission of criminal sexual acts to a degree that makes the individual a menace to the health and safety of other individuals.
- e. "Predatory" means an act directed at a stranger or at an individual with whom a relationship has been established or promoted for the primary purpose of victimization.
- f. "Reside" means to live permanently or be situated for a considerable time in a home or a particular place.
- g. "Sexual offender" means a person who has pled guilty to or been found guilty, including juvenile delinquent adjudications, of a violation of section 12.1-20-03, 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, 12.1-20-07 except for subdivision a of subsection 1, 12.1-20-11, 12.1-20-12.1, 12.1-20-12.2, 12.1-20-12.3 except for subdivision a of subsection 1 and subdivision b of subsection 1 if the offense involves only a demand for money, chapter 12.1-27.2, ~~subsection 2 of section 12.1-22-03.1~~, subdivision b of subsection 1 of section 12.1-41-02, section 12.1-41-04, 12.1-41-05, or 12.1-41-06, or an equivalent offense from another court in the United States, a tribal court, or court of another country, or an attempt or conspiracy to commit these offenses.
- h. "Sexually dangerous individual" means an individual who meets the definition specified in section 25-03.3-01.
- i. "Temporarily domiciled" means staying or being physically present in this state for more than thirty days in a calendar year or at a location for longer than ten consecutive days, attending school for longer than ten days, or maintaining employment in the jurisdiction for longer than ten days, regardless of the state of the residence.

2. The court shall impose, in addition to any penalty provided by law, a requirement that the individual register, within three days of coming into a county in which the individual resides, is homeless, or within the period identified in this section that the individual becomes temporarily domiciled. The individual must register with the chief of police of the city of the individual's place of residence, or the sheriff of the county if the individual resides in an area other than a city. A homeless individual shall register every three days with the sheriff or chief of police of the jurisdiction in which the individual is physically present. The court shall require an individual to register by stating this requirement on the court records, if that individual:
- a. Has pled guilty or nolo contendere to, or been found guilty as a felonious sexual offender or an attempted felonious sexual offender, ~~including juvenile delinquent adjudications of equivalent offenses unless the offense is listed in subdivision e.~~
 - b. Has pled guilty or nolo contendere to, or been found guilty as a sexual offender for, a misdemeanor or attempted misdemeanor. The court may deviate from requiring an individual to register if the court first finds the individual is no more than three years older than the victim if the victim is a minor, the individual has not previously been convicted as a sexual offender or of a crime against a child, and the individual did not exhibit mental abnormality or predatory conduct in the commission of the offense.
 - c. ~~Is a juvenile found delinquent under subdivision d of subsection 1 of section 12.1-20-03, subdivision a of subsection 2 of section 12.1-20-03, or as a sexual offender for a misdemeanor. The court may deviate from requiring the juvenile to register if the court first finds the juvenile has not previously been convicted as a sexual offender or for a crime against a child, and the juvenile did not exhibit mental abnormality or predatory conduct in the commission of the offense.~~
 - d. Has pled guilty or nolo contendere to, or been found guilty of, a crime against a child or an attempted crime against a child, ~~including juvenile delinquent adjudications of equivalent offenses.~~ Except if the offense is described in section 12.1-29-02, or section 12.1-18-01 or 12.1-18-02 and the person is not the parent of the victim, the court may deviate from requiring an individual to register if the court first finds the individual has not previously been convicted as a sexual offender or for a crime against a child, and the individual did not exhibit mental abnormality or predatory conduct in the commission of the offense.
 - e.d. Has pled guilty or nolo contendere, ~~or been found guilty, or been adjudicated delinquent~~ of any crime against another individual which is not otherwise specified in this section if the court determines that registration is warranted by the nature of the crime and therefore orders registration for the individual. If the court orders an individual to register as an offender under this section, the individual shall comply with all of the registration requirements in this chapter.
 - e. Is a child who has been adjudicated delinquent of an offense which would classify the child as a sexual offender, the prosecutor requested the court to consider sexual offender registration, and the court determines the child:

- (1) Exhibited a mental abnormality or predatory conduct in the commission of the offense; or
 - (2) Previously has been adjudicated as a sexual offender.
3. If a court has not ordered an individual to register in this state, an individual who resides, is homeless, or is temporarily domiciled in this state shall register if the individual:
 - a. Is incarcerated or is on probation or parole after July 31, 1995, for a crime against a child described in section 12.1-29-02, or section 12.1-18-01 or 12.1-18-02 if the individual was not the parent of the victim, or as a sexual offender;
 - b. Has pled guilty or nolo contendere to, or ~~has been adjudicated for or~~ found guilty of, an offense in a court of this state for which registration is mandatory under this section or an offense from another court in the United States, a tribal court, or court of another country equivalent to those offenses set forth in this section; or
 - c. Has pled guilty or nolo contendere to, or has been found guilty of, a crime against a child or as a sexual offender for which registration is mandatory under this section if the conviction occurred after July 31, 1985.
4. In its consideration of mental abnormality or predatory conduct, the court shall consider the age of the offender, the age of the victim, the difference in ages of the victim and offender, the circumstances and motive of the crime, the relationship of the victim and offender, and the mental state of the offender. The court may order an offender to be evaluated by a qualified counselor, psychologist, or physician before sentencing. Except as provided under subdivision ~~ed~~ of subsection 2, the court ~~shall~~may state on the record in open court its affirmative finding for not requiring an offender to register.
5. When an individual is required to register under this section, the official in charge of a facility or institution where the individual required to register is confined, or the department, shall, before the discharge, parole, or release of that individual, inform the individual of the duty to register pursuant to this section. The official or the department shall require the individual to read and sign a form as required by the attorney general, stating that the duty of the individual to register has been explained to that individual. The official in charge of the place of confinement, or the department, shall obtain the address where the individual expects to reside, attend school, or work upon discharge, parole, or release and shall report the address to the attorney general. The official in charge of the place of confinement, or the department, shall give three copies of the form to the individual and shall send three copies to the attorney general no later than forty-five days before the scheduled release of that individual. The attorney general shall forward one copy to the law enforcement agency having jurisdiction where the individual expects to reside, attend school, or work upon discharge, parole, or release, one copy to the prosecutor who prosecuted the individual, and one copy to the court in which the individual was prosecuted. All forms must be transmitted and received by the law enforcement agency, prosecutor, and court thirty days before the discharge, parole, or release of the individual.

6. An individual who is required to register pursuant to this section who is released on probation or discharged upon payment of a fine must, before the release or discharge, be informed of the duty to register under this section by the court in which that individual is convicted. The court shall require the individual to read and sign a form as required by the attorney general, stating that the duty of the individual to register under this section has been explained to that individual. The court shall obtain the address where the individual expects to reside, attend school, or work upon release or discharge and shall report the address to the attorney general within three days. The court shall give one copy of the form to the individual and shall send two copies to the attorney general. The attorney general shall forward one copy to the appropriate law enforcement agency having jurisdiction where the individual expects to reside, attend school, or work upon discharge, parole, or release.
7. Registration consists of a written or electronic statement signed by the individual, giving the information required by the attorney general, and the biometric data and photograph of the individual. An individual who is not required to provide a sample of blood and other body fluids under section 31-13-03 or by the individual's state or court of conviction or adjudication shall submit a sample of blood and other body fluids for inclusion in a centralized database of DNA identification records under section 31-13-05. The collection, submission, testing and analysis of, and records produced from, samples of blood and other body fluids, are subject to chapter 31-13. Evidence of the DNA profile comparison is admissible in accordance with section 31-13-02. A report of the DNA analysis certified by the state crime laboratory is admissible in accordance with section 31-13-05. A district court shall order an individual who refuses to submit a sample of blood or other body fluids for registration purposes to show cause at a specified time and place why the individual should not be required to submit the sample required under this subsection. Within three days after registration, the registering law enforcement agency shall forward the statement, biometric data, and photograph to the attorney general and shall submit the sample of the individual's blood and body fluids to the state crime laboratory. If an individual required to register under this section has a change in vehicle or computer online identity, the individual shall register, within three days after the change, with the law enforcement agency having local jurisdiction of the individual's place of residence of the individual's new vehicle or computer online identity. If an individual required to register pursuant to this section has a change in name, school, or residence or employment address, that individual shall register, at least ten days before the change, with the law enforcement agency having local jurisdiction of the individual's place of residence of the individual's new name, school, residence address, or employment address. A change in school or employment address includes the termination of school or employment for which an individual required to register under this section, the individual shall register within three days of the termination with the law enforcement agency having local jurisdiction of the individual's place of residence. The law enforcement agency, within three days after receipt of the information, shall forward it to the attorney general. The attorney general shall forward the appropriate registration data to the law enforcement agency having local jurisdiction of the new place of residence, school, or employment. Upon a change of address, the individual required to register also shall register within three days at the law enforcement agency having local jurisdiction of the new place of residence. If an individual required to register in North Dakota, including in a tribal registry, resides in another state or on tribal lands, that individual shall register employment and school addresses and any changes in required

registration information with the law enforcement agency having local jurisdiction over the school or employment address. The individual registering under this section shall periodically confirm the information required under this subsection in a manner and at an interval determined by the attorney general. A law enforcement agency that has previously registered an offender may omit the biometric data portion of the registration if that agency has a set of biometric data on file for that individual and is personally familiar with and can visually identify the offender. These provisions also apply in any other state that requires registration.

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

11. If an individual required to register pursuant to this section is temporarily sent outside the facility or institution where that individual is confined under conviction or sentence, the local law enforcement agency having jurisdiction over the place where that individual is being sent must be notified within a reasonable time period before that individual is released from the facility or institution. This subsection does not apply to any individual temporarily released under guard from the facility or institution in which that individual is confined.
12. The attorney general, with the assistance of the department and the juvenile courts, shall develop guidelines for the risk assessment of sexual offenders who are required to register, with a low-risk, moderate-risk, or high-risk level being assigned to each offender as follows:
 - a. The department shall conduct a risk assessment of sexual offenders who are incarcerated in institutions under the control of the department and sexual offenders who are on supervised probation. The department, in a timely manner, shall provide the attorney general any information, including the offender's level of risk and supporting documentation, concerning individuals required to be registered under this section who are about to be released or placed into the community.
 - b. The attorney general shall conduct a risk assessment of sexual offenders who are not under the custody or supervision of the department. The attorney general may adopt a law enforcement agency's previous assignment of risk level for an individual if the assessment was conducted in a manner substantially similar to the guidelines developed under this subsection.
 - c. The juvenile courts or the agency having legal custody of a juvenile shall conduct a risk assessment of juvenile sexual offenders who are required to register under this section. The juvenile courts or the agency having legal custody of a juvenile shall provide the attorney general any information, including the offender's level of risk and supporting documentation, concerning juveniles required to register and who are about to be released or placed into the community.
 - d. The attorney general shall notify the offender of the risk level assigned to that offender. An offender may request a review of that determination with the attorney general's sexual offender risk assessment committee and may present any information that the offender believes may lower the assigned risk level.
13. An individual assessed as a high-risk sexual offender in accordance with subsection 12, may not reside within five hundred feet [152.4 meters] of a public or nonpublic preschool or elementary, middle, or high school.
14. Relevant and necessary conviction and registration information must be disclosed to the public by a law enforcement agency if the individual is a moderate or high risk and the agency determines that disclosure of the conviction and registration information is necessary for public protection. The attorney general shall develop guidelines for public disclosure of offender registration information. Public disclosure may include internet access if the offender:

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

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

15. A state officer, law enforcement agency, or public school district or governing body of a nonpublic school or any appointee, officer, or employee of those entities is not subject to civil or criminal liability for making risk determinations, allowing a sexual offender to attend a school function under section 12.1-20-25, or for disclosing or for failing to disclose information as permitted by this section.
16. If a juvenile is adjudicated delinquent and required or ordered to register as a sexual offender or as an offender against a child under this section, the juvenile shall comply with the registration requirements in this section. Notwithstanding any other provision of law, a law enforcement agency shall register a juvenile offender in the same manner as adult offenders and may release any relevant and necessary information on file to other law enforcement agencies, the department of health and human services, or the public if disclosure is necessary to protect public health or safety. The law enforcement agency shall release any relevant and necessary information on file to the superintendent or principal of the school the juvenile attends. The school administration shall notify others in similar positions if the juvenile transfers to another learning institution in or outside the state.
17. If an individual has been required to register as a sexual offender or an offender against a child under section 12.1-32-15 or former section 27-20-52.1 before August 1, 1999, the individual may petition the court to be removed from the offender list if registration is no longer mandatory for that individual. In considering the petition, the court shall comply with the requirements of this section.
18. A sexual offender who is currently assigned a moderate or high-risk level by the attorney general may not use a state park of this state as a residence or residential address to comply with the registration requirements of this section. Before arriving at a state park for overnight lodging or camping, a sexual offender who is assigned a moderate or high-risk level by the attorney general shall notify a parks and recreation department law enforcement officer at the state park where the sexual offender will be staying.
19. When an individual who is required to register pursuant to this section plans to travel outside of the United States, at least twenty-one days before the intended travel, the individual shall inform the agency with which the individual

last registered the individual's residence address the details of the intended travel. Upon receipt of the information from the registering law enforcement agency, the attorney general shall report the travel to the United States marshal service.

¹²⁸ **SECTION 9. AMENDMENT.** Section 15.1-09-33.4 of the North Dakota Century Code is amended and reenacted as follows:

15.1-09-33.4. Student misconduct - Prohibition against participation in extracurricular activities.

1. The board of a school district ~~shall~~may prohibit a student from participating in any extracurricular activity if:
 - a. The student has pled guilty to or been convicted of a criminal offense and sentenced under section 12.1-32-02.1 or pled guilty or been convicted of an offense specified in subsection 1 of section 12.1-32-09.1;
 - b. The student has:
 - (1) An order prohibiting contact issued against the student at the request of another student or employee of the school under section 12.1-31.2-02;
 - (2) A disorderly conduct restraining order issued against the student at the request of another student or employee of the school under section 12.1-31.2-01, except a temporary restraining order under subsection 4 of section 12.1-31.2-01; ~~or~~
 - (3) A protection order issued against the student at the request of another student or employee of the school, except a temporary protection order under section 14-07.1-03; or
 - (4) Any other order issued against the student prohibiting contact with a student or employee of the school which is signed by a district judge or a judicial referee within a delinquency or criminal case;
 - c. The principal of the school receives information pertaining to an offense or order included under this section as provided in section 27-20.2-21; or
 - d. The victim of the offense or the subject of the order notifies the principal of the offense or order.
2. For purposes of this section, a representative of the juvenile court system may notify the principal of a school regarding the existence of files or records of the juvenile court pertaining to a student of the school which are open to inspection by the principal under section 27-20.2-21.

¹²⁹ **SECTION 10. AMENDMENT.** Subsection 6 of section 27-20.2-01 of the North Dakota Century Code is amended and reenacted as follows:

¹²⁸ Section 15.1-09-33.4 was also amended by section 12 of House Bill No. 1489, chapter 145.

¹²⁹ Section 27-20.2-01 was also amended by section 5 of House Bill No. 1030, chapter 301.

6. "Child in need of services" means a child who in any of the foregoing instances is in need of treatment or rehabilitation:
- Is habitually and without justification truant from school subject to compulsory school attendance and is absent from school without an authorized excuse more than three days during a school year;
 - Is habitually disobedient of the reasonable and lawful commands of the child's parent, guardian, or other custodian, including running away, and is ungovernable or who is willfully in a situation dangerous or injurious to the health, safety, or morals of the child or others;
 - Has committed an offense applicable only to a child, except for an offense committed by a minor fourteen years of age or older under subsection 2 of section 12.1-31-03 or an equivalent local ordinance or resolution; or
 - Is under the age of fourteen years and has purchased, possessed, smoked, or used tobacco, a tobacco-related product, an electronic smoking device, or an alternative nicotine product ~~in violation of subsection 2 of section 12.1-31-03~~. As used in this subdivision, "electronic smoking device" and "alternative nicotine product" have the same meaning as in section 12.1-31-03; and
 - In any of the foregoing instances is in need of treatment or rehabilitation.

SECTION 11. AMENDMENT. Subsection 3 of section 27-20.2-09 of the North Dakota Century Code is amended and reenacted as follows:

- The giving of information and advice and any conditions imposed for the conduct and control of the child may not extend beyond six months from the day commenced unless extended by the court for an additional period not to exceed six months and does not authorize the detention of the child if not otherwise permitted by this chapter. For a driving-related offense, the conditions may include a restriction on the child's driving privileges as authorized under section ~~27-20.4-1917~~ of this Act.

SECTION 12. A new section to chapter 27-20.4 of the North Dakota Century Code is created and enacted as follows:

Petition.

- A petition alleging delinquency under this chapter must be reviewed by the director, the court, or other person designated by the director and authorized by the court to determine whether the filing of the petition is in the best interest of the public and the child.
- The state's attorney shall prepare, file, and serve a petition alleging delinquent conduct on the parties. The juvenile court shall conduct an inquiry into and provide the last known address of the parents or legal guardian of the child in the referral to the state's attorney.
- A petition alleging delinquent conduct may not include the adult class level of the offense unless the offense level is a necessary element of the delinquent conduct.

SECTION 13. A new section to chapter 27-20.4 of the North Dakota Century Code is created and enacted as follows:

Fitness to proceed - Lack of criminal responsibility.

In a juvenile court proceeding involving the issue of fitness to proceed or criminal responsibility, the court shall determine whether the child:

1. Is fit to proceed in accordance with title 27; and
2. Lacked criminal responsibility for the commission of an offense in accordance with chapter 12.1-04.1.

SECTION 14. AMENDMENT. Subsection 5 of section 27-20.4-11 of the North Dakota Century Code is amended and reenacted as follows:

- An informal agreement may not extend beyond six months from the day the agreement was agreed upon. An extension may be granted by the court for an additional period not to exceed six months. An extension may not authorize the detention of the child if not otherwise permitted by this chapter. For a driving-related offense, the agreement may include a restriction on the child's driving privileges as allowed under section ~~27-20.4-19~~17 of this Act.

SECTION 15. AMENDMENT. Subsection 1 of section 27-20.4-18 of the North Dakota Century Code is amended and reenacted as follows:

- A probation order entered by the court must place the child under the supervision of the director, unless the child is over eighteen years of age and the child's risk and needs require supervision by the department of corrections and rehabilitation under subsection ~~43~~ of section ~~27-20.4-15~~27-20.4-17.

SECTION 16. AMENDMENT. Subsection 1 of section 27-20.4-20 of the North Dakota Century Code is amended and reenacted as follows:

- In addition to a child being ordered to make restitution under section ~~27-20.4-16~~27-20.4-17, a parent of a child adjudged delinquent may be ordered to make restitution on the child's behalf in an amount not exceeding five thousand dollars.

SECTION 17. A new section to chapter 27-20.4 of the North Dakota Century Code is created and enacted as follows:

Collateral consequences - Registration - Firearms - Driving privileges.

- A child may be ordered to register as a sexual offender under section 12.1-32-15.
- A child may be prohibited from possessing a firearm in accordance with section 62.1-02-01.
- If a child is adjudicated delinquent of an offense that would be a class A misdemeanor or a felony if the offense were committed by an adult, the juvenile court may suspend the child's driving privileges for a period of up to six months for the first offense, and up to one year for a second or subsequent offense. The juvenile court may order the successful completion of an appropriate driver's examination as a condition for reinstating the child's driving privileges.

- a. If the juvenile court suspends a child's driving privileges, the court immediately shall take possession of the child's driver's license or permit and send a copy of the court's order to the director of the department of transportation who shall make notation of the child's suspended driving privileges.
 - b. The record of the child's suspension of driving privileges under this section:
 - (1) Must be kept confidential;
 - (2) May not be released except to law enforcement personnel in connection with law enforcement activities; and
 - (3) May not be disclosed to or shared with the licensing officials of any other state or jurisdiction.
 - c. At the end of the six-month or one-year suspension period, the director shall remove and destroy all records of the child's suspension of driving privileges under this section.
4. A child may be prohibited from participating in extracurricular activities in accordance with section 15.1-09-33.4.

SECTION 18. AMENDMENT. Section 62.1-02-01 of the North Dakota Century Code is amended and reenacted as follows:

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

1. a. A person who has been convicted anywhere of a felony offense involving violence or intimidation in violation of chapters 12.1-16 through 12.1-25 or an equivalent felony offense of another state or the federal government is prohibited from owning a firearm or having one in possession from the date of conviction and continuing for ten years after the date of conviction or the date of release from incarceration, parole, or probation, whichever is latest.
- b. A person who has been convicted anywhere of a felony offense of this or another state or the federal government not provided for in subdivision a or who has been convicted of a class A misdemeanor offense involving violence or intimidation in violation of chapters 12.1-16 through 12.1-25 or an equivalent offense of another state or the federal government and the offense was committed while using or possessing a firearm, a dangerous weapon, or, as defined in section 12.1-01-04, a destructive device or an explosive, is prohibited from owning a firearm or having one in possession from the date of conviction and continuing for five years after the date of conviction or the date of release from incarceration, parole, or probation, whichever is latest.
- c. A person who is or has ever been diagnosed and confined or committed to a hospital or other institution in this state or elsewhere by a court of competent jurisdiction, other than a person who has had the petition that provided the basis for the diagnosis, confinement, or commitment dismissed under section 25-03.1-17, 25-03.1-18, or 25-03.1-19, or equivalent statutes of another jurisdiction, as a person requiring treatment as defined in section 25-03.1-02, or as a mentally deficient individual, is

prohibited from purchasing a firearm or having one in possession. This limitation does not apply to a person who has not suffered from the disability for the previous three years or who has successfully petitioned for relief under section 62.1-02-01.2.

- d. A person under the age of eighteen years may not possess a handgun except that such a person, while under the direct supervision of an adult, may possess a handgun for the purposes of firearm safety training, target shooting, or hunting.
- e. A child who has been adjudicated delinquent of a felony offense involving violence or intimidation in violation of chapters 12.1-16 through 12.1-25 or an equivalent felony offense of another state or the federal government is prohibited from owning a firearm or having one in possession from the date of adjudication and continuing for ten years after the date of adjudication.
- f. A child who has been adjudicated of a class A misdemeanor offense involving violence or intimidation in violation of chapters 12.1-16 through 12.1-25 or an equivalent offense of another state or the federal government, and the offense was committed while using or possessing a firearm, a dangerous weapon, a destructive device, or an explosive is prohibited from owning a firearm or having one in possession from the date of adjudication and continuing for five years after the date of adjudication.

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

- 2. For the purposes of this section, "conviction" means a determination that the person committed one of the above-mentioned crimes upon a verdict of guilt, a plea of guilty, or a plea of nolo contendere even though:
 - a. The court suspended execution of sentence in accordance with subsection 3 of section 12.1-32-02;
 - b. The court deferred imposition of sentence in accordance with subsection 4 of section 12.1-32-02;
 - c. The court placed the person on probation;
 - d. The person's conviction has been reduced in accordance with subsection 9 of section 12.1-32-02 or section 12.1-32-07.1;
 - e. Sentence dispositions, sentence reductions, or offense determinations equivalent to this section were imposed or granted by a court, board, agency, or law of another state or the federal government; or
 - f. The person committed an offense equivalent to an offense described in subdivision ~~a or b~~ a or f of subsection 1 when that person was subject to juvenile adjudication or proceedings and a determination of a court under chapter 27-20.4 or of a court of another state or the federal government was made that the person committed the delinquent act or offense.

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

SECTION 19. REPEAL. Sections 27-20.4-12, 27-20.4-13, and 27-20.4-19 of the North Dakota Century Code are repealed.

SECTION 20. APPROPRIATION - DEPARTMENT OF HEALTH AND HUMAN SERVICES - CONTRACT SERVICES - GENERAL FUND - ONE-TIME FUNDING. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$300,000, or so much of the sum as may be necessary, to the department of health and human services for the purpose of contracting for juvenile lack of criminal responsibility evaluation services, for the biennium beginning July 1, 2025, and ending June 30, 2027. The funding in this section is considered a one-time funding item.

Approved April 21, 2025

Filed April 22, 2025

CHAPTER 303

SENATE BILL NO. 2055

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

AN ACT to amend and reenact subsection 1 of section 27-20.2-23 of the North Dakota Century Code, relating to release of juvenile records.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 27-20.2-23 of the North Dakota Century Code is amended and reenacted as follows:

1. Unless a charge of delinquency is transferred for criminal prosecution under section ~~27-20.4-2027-20.4-21~~, the interest of national security requires, or the court otherwise orders in the interest of the child, the law enforcement and correctional facility records and files of a child alleged or found to be delinquent or in need of services or protection are not open to public inspection; but inspection of these records and files is permitted by:
 - a. A juvenile court having the child before the court in any proceeding;
 - b. Counsel for a party to the proceeding;
 - c. The officers of public institutions or agencies to whom the child is or may be committed;
 - d. Law enforcement officers of other jurisdictions if necessary for the discharge of official duties of the officers;
 - e. A court in which the child is convicted of a criminal offense for the purpose of a presentence report or other dispositional proceeding, or by officials of correctional facilities to which the child is detained or committed, or by the parole board, the governor, or the pardon advisory board, if one has been appointed, in considering the child's parole or discharge or in exercising supervision over the child;
 - f. The professional staff of the uniform crime victims compensation program if necessary for the discharge of the duties of the professional staff pursuant to chapter 54-23.4; and
 - g. A superintendent, assistant superintendent, principal, or designee of the school in which the child is currently enrolled or of a school in which the child wishes to enroll.

Approved March 17, 2025

Filed March 18, 2025

CHAPTER 304

HOUSE BILL NO. 1556

(Representatives Stemen, Beltz, Hagert, O'Brien, Ostlie, Dockter, Nelson)
(Senators Lee, Roers, Davison)

AN ACT to amend and reenact subsection 5 of section 27-20.3-01, and sections 27-20.3-15 and 27-20.3-21 of the North Dakota Century Code, relating to a child in need of protection and termination of parental rights; to create a workgroup under the children's cabinet to study out-of-home placement or treatment of children with behavioral health issues; to provide for a report; to provide an expiration date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 27-20.3-01 of the North Dakota Century Code is amended and reenacted as follows:

5. "Child in need of protection" means a child who:
 - a. Is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for the child's physical, mental, or emotional health, or morals, and the need for services or protection is not due primarily to the lack of financial means of the child's parents, guardian, or other custodian;
 - b. Has been placed for care or adoption in violation of law;
 - c. Has been abandoned by the child's parents, guardian, or other custodian;
 - d. Is without proper parental care, control, or education as required by law, or other care and control necessary for the child's well-being because of the physical, mental, emotional, or other illness or disability of the child's parent or parents, and that such lack of care is not due to a willful act of commission or act of omission by the child's parents, and care is requested by a parent;
 - e. Is in need of treatment and whose parents, guardian, or other custodian have refused to participate in treatment as ordered by the juvenile court;
 - f. Was subject to prenatal exposure to chronic or severe use of alcohol or any controlled substance as defined in chapter 19-03.1 in a manner not lawfully prescribed by a practitioner;
 - g. Is present in an environment subjecting the child to exposure to a controlled substance, chemical substance, or drug paraphernalia as prohibited by section 19-03.1-22.2; ~~or~~
 - h. Is a victim of human trafficking as defined in title 12.1; or
 - i. Is in need of care and treatment and:

- (1) Has been diagnosed with a severe mental health condition or behavioral health disorder by a licensed child psychologist or psychiatrist;
- (2) Has committed an act of a violent or sexual nature against another family member living in the household, which if committed by an adult would be considered a crime under the laws of this state, and if the criteria under section 27-20.4-11 are met, has at minimum been considered for informal adjustment; and
- (3) Whose parent is unable to provide proper control of the child and is in fear for the safety of a family member living in the same household as the child.

SECTION 2. AMENDMENT. Section 27-20.3-15 of the North Dakota Century Code is amended and reenacted as follows:

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

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

SECTION 3. AMENDMENT. Section 27-20.3-21 of the North Dakota Century Code is amended and reenacted as follows:

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

1. As used in this section:

- a. "A finding that the child has been subjected to child abuse or neglect" means:
 - (1) A finding of a child in need of protection made under this chapter, except as provided in subdivision i of subsection 5 of section 27-20.3-01; or
 - (2) A conviction of a person, responsible for a child's welfare, for conduct involving the child, under chapter 12.1-16 or sections 12.1-17-01 through 12.1-17-04 or 12.1-20-01 through 12.1-20-08.
- b. "Compelling reason" means a recorded statement that reflects consideration of:
 - (1) The child's age;
 - (2) The portion of the child's life spent living in the household of a parent of the child;
 - (3) The availability of an adoptive home suitable to the child's needs;
 - (4) Whether the child has special needs; and
 - (5) The expressed wishes of a child age ten or older.
- c. "Department" means the department of health and human services.
- d. "Human service zone" means a county or consolidated group of counties administering human services within a designated area in accordance with an agreement or plan approved by the department.

2. A petition for termination of parental rights must be prepared, filed, and served upon the parties by the state's attorney. A petition may also be prepared by any other person that is not the court, including a law enforcement officer, who has knowledge of the facts alleged or is informed and believes that they are true. A petition prepared by any person other than a state's attorney may not be filed unless the director or the court has determined the filing of the petition is in the best interest of the public and the child.

3. Except as provided in subsection 4, a petition for termination of parental rights must be filed:

- a. If the child has been in foster care, in the custody of the department, human service zone, or, in cases arising out of an adjudication by the court of a child in a delinquency case, the division of juvenile services, for at least four hundred fifty out of the previous six hundred sixty nights;
- b. Within sixty days after the court has found the child to be an abandoned infant; or

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- c. Within sixty days after the court has convicted the child's parent of one of the following crimes, or of an offense under the laws of another jurisdiction which requires proof of substantially similar elements:
 - (1) A violation of section 12.1-16-01, 12.1-16-02, or 12.1-16-03, or subsection 1 of section 14-09-22 in which the victim is another child of the parent;
 - (2) Aiding, abetting, attempting, conspiring, or soliciting a violation of section 12.1-16-01, 12.1-16-02, or 12.1-16-03 in which the victim is a child of the parent; or
 - (3) A violation of section 12.1-17-02 in which the victim is a child of the parent and has suffered serious bodily injury.
 - 4. A petition for termination of parental rights need not be filed if:
 - a. The child is being cared for by a relative approved by the human service zone;
 - b. The human service zone has documented in the case plan a compelling reason for determining that filing such a petition would not be in the child's best interests and has notified the court that the documentation is available for review by the court; or
 - c. The human service zone has determined:
 - (1) Reasonable efforts to preserve and reunify the family are required under section 27-20.3-26 to be made with respect to the child;
 - (2) The case plan provides such services are necessary for the safe return of the child to the child's home; and
 - (3) Such services have not been provided consistent with time periods described in the case plan.
 - 5. For purposes of subsection 3, a child in foster care entered foster care on the earlier of:
 - a. The date of the court's order if the court:
 - (1) Made a finding that the child has been subjected to child abuse or neglect or the child is in need of protection under subdivision i of subsection 5 of section 27-20.3-01;
 - (2) Determined that it is unsafe or contrary to the welfare of the child to remain in the home; and
 - (3) Granted custody of the child to the human service zone or, in cases arising out of an adjudication by the court that a child is in need of services, the division of juvenile services; or
 - b. The date that is sixty days after:
 - (1) The date of a hearing under section 27-20.3-10 which results in maintaining a child in shelter care;

- (2) The date of an order in a dispositional hearing under which a child is placed in foster care; or
 - (3) The date a child is placed in foster care voluntarily and with the consent of the child's parent.
6. For purposes of subsection 3, a child leaves foster care at the time:
- a. The court enters an order:
 - (1) Denying a petition to grant care, custody, and control of the child to the human service zone or the division of juvenile services;
 - (2) Terminating an order that granted custody of the child to the human service zone or the division of juvenile services; or
 - (3) Appointing a legal guardian under chapter 27-20.1;
 - b. The court order under which the child entered foster care ends by operation of law;
 - c. The child is placed in a parental home by the court or a legal custodian other than the division of juvenile services and the legal custodian lacks authority to remove the child without further order of the court; or
 - d. The child is placed in a parental home by the division of juvenile services.
7. For purposes of subsection 3, a child is not in foster care on any night during which the child is:
- a. On a trial home visit;
 - b. Receiving services at the youth correctional center pursuant to an adjudication of delinquency; or
 - c. Absent without leave from the place in which the child was receiving foster care.

SECTION 4. CHILDREN'S CABINET - WORKGROUP - OUT-OF-HOME PLACEMENT OR TREATMENT OF CHILDREN WITH BEHAVIORAL HEALTH ISSUES - REPORT.

- 1. During the 2025-26 interim, the children's cabinet shall establish a workgroup to study the out-of-home placement or treatment of children with serious behavioral health issues. The study must include consideration of children who also are involved in juvenile court proceedings due to criminal activity.
- 2. The workgroup shall develop and implement a system of care for children with serious behavioral health issues, who may be involved in juvenile court proceedings due to criminal activity, and who are in need of out-of-home placement or treatment.
- 3. The workgroup must be led by a consultant with expertise in navigating and managing the intersecting systems involved in the out-of-home placement and treatment processes for children with serious behavioral health issues and children involved in juvenile court proceedings due to criminal activity.

4. The workgroup shall provide bimonthly reports to the children's cabinet on the assessment of needs, resources, challenges, options, and solutions.

SECTION 5. EXPIRATION DATE. Sections 1, 2, and 3 of this Act are effective through July 31, 2027, and after that date are ineffective.

SECTION 6. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 23, 2025

Filed April 23, 2025

CHAPTER 305

HOUSE BILL NO. 1328

(Representatives Heinert, Hauck, Jonas, Meier, Wagner)
(Senators Larson, Schaible)

AN ACT to amend and reenact section 27-20.4-05.1 of the North Dakota Century Code, relating to delinquency referrals to juvenile court.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 27-20.4-05.1 of the North Dakota Century Code is amended and reenacted as follows:

27-20.4-05.1. Method of making a delinquency referral to juvenile court.

1. A referral alleging a child has committed a delinquent act may be made to the juvenile court by an employee of a public or nonpublic school attended by the child or a law enforcement officer who has reasonable grounds and knowledge of the facts alleged and believes such facts are true.
2. If a child is taken into custody on the alleged delinquent act, the law enforcement officer shall send the referral to the juvenile court within twenty-four hours after the time in which the minor is taken into custody under section 27-20.4-05.
3. A child who commits an infraction or misdemeanor offense on school property may not be referred to the juvenile court unless school interventions have been unsuccessful and documentation of internal or external consultations is included with the referral indicating which interventions or educational approaches were attempted. A school shall exhaust all school discipline policies before referring a child to juvenile court.
 - a. A school is not required to engage in interventions before referring a case for the following misdemeanor offenses:
 - (1) Drug-related offenses under title 19;
 - (2) Offenses against a person under chapter 12.1-17, 12.1-31.2, or 14-07.1;
 - (3) Sex offenses under chapters 12.1-20, 12.1-27.1, 12.1-27.2, and 12.1-29; and
 - (4) Any offense involving a firearm, weapon, or dangerous weapon as defined in section 62.1-01-01.
 - b. A law enforcement officer may:
 - (1) Investigate possible delinquent offenses and conduct occurring at a school, including conducting probable cause searches;

- (2) Consult with school staff about the conduct of a child enrolled in a school;
- (3) Refer a child to the juvenile court for a delinquent offense occurring on school grounds or on school property as allowed by this section;
- (4) Transport a child enrolled in a school to a location permitted by law;
- (5) Take temporary custody of a child in accordance with section 27-20.4-05 or protective custody of a child in accordance with section 27-20.3-06; and
- (6) Protect the safety of students and the school community.

Approved March 19, 2025

Filed March 20, 2025

CHAPTER 306

SENATE BILL NO. 2036

(Legislative Management)
(Juvenile Justice Committee)

AN ACT to create and enact chapter 27-20.5 of the North Dakota Century Code, relating to fitness to proceed and remediation of juveniles; to amend and reenact section 12.1-04-01, subsections 4 and 5 of section 12.1-04-08, and section 27-20.4-15 of the North Dakota Century Code, relating to the age of an offender, suspension or dismissal of proceedings, and predispositional assessment; to provide an appropriation; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-04-01 of the North Dakota Century Code is amended and reenacted as follows:

12.1-04-01. Juveniles.

1. ~~An individual under the age of ten years is deemed incapable of commission of an offense defined by the constitution or statutes of this state. The prosecution of an individual as an adult is barred if the offense was committed while the individual was less than fourteen years of age.~~

2. ~~An individual ten years of age or older may be assessed for mental fitness or capacity under this chapter.~~

¹³⁰ **SECTION 2. AMENDMENT.** Subsection 4 of section 12.1-04-08 of the North Dakota Century Code is amended and reenacted as follows:

4. If the court determines the defendant currently lacks fitness to proceed and the defendant may attain fitness to proceed under subsection 4~~2~~, the court may enter an order for a course of treatment considering the least restrictive form of treatment therapeutically appropriate.
 - a. Unless excused by the court, in a proceeding to determine therapy in an attempt to attain fitness, the defendant shall be represented by trial counsel.
 - b. If the court finds the individual is not able to retain the services of a tier 1a mental health professional and that those services are not otherwise available, the court shall authorize reasonable expenditures from public funds to examine the individual.
 - c. In a motion hearing to resume prosecution, the state or prosecuting authority must show by a preponderance of the evidence the defendant has attained fitness to proceed.

¹³⁰ Section 12.1-04-08 was also amended by section 3 of Senate Bill No. 2036, chapter 306.

¹³¹ **SECTION 3. AMENDMENT.** Subsection 5 of section 12.1-04-08 of the North Dakota Century Code is amended and reenacted as follows:

5. If the court orders the defendant committed to a treatment facility in an attempt to attain fitness to proceed under subsection 4~~2~~, the court shall provide the special custody and commitment terms in the order. The special terms of commitment must include an order for the defendant to accept all nonexperimental, generally accepted medical, psychiatric, or psychological treatment recommended by the treatment facility, including the use of involuntary treatment with prescribed medication without the need for a separate commitment under chapter 25-03.1.
 - a. If the order does not indicate the terms of commitment, the director or superintendent of the treatment facility may determine the nature of the constraints necessary within the treatment facility to carry out the order of the court.
 - b. If the court orders an individual committed for therapeutic treatment to attain fitness to proceed, the court shall set a date consistent with the timeline established in this section for a review of the defendant's fitness to proceed. At least sixty days before the date specified for review, the director or director's designee or the superintendent of the treatment facility shall inquire as to whether the individual is represented by counsel and file a written report of the facts ascertained with the court.

SECTION 4. AMENDMENT. Section 27-20.4-15 of the North Dakota Century Code is amended and reenacted as follows:

27-20.4-15. Predispositional assessment.

1. Before the disposition hearing, the court shall direct the director or designee, to conduct a predisposition assessment and to prepare a written report for the court, unless waived by the court.
2. The predisposition assessment must consist of a risk and needs assessment together with any other appropriate screenings.
3. During the pendency of any proceeding the court may order:
 - a. The child to be examined at a suitable place by a physician, psychologist, or certified addiction counselor;
 - b. The child to be tested by appropriate forensic methods to determine whether the child has been exposed to a controlled substance or other substance considered injurious to the child's health;
 - c. Medical or surgical treatment of a child who is suffering from a serious physical condition or illness, or alcohol or drug abuse, which in the opinion of a licensed physician requires prompt treatment, even if the parent, guardian, or other custodian has not been given notice of a hearing, is not available, or without good cause informs the court of that person's refusal to consent to the treatment; or

¹³¹ Section 12.1-04-08 was also amended by section 2 of Senate Bill No. 2036, chapter 306.

- d. An evidence-based risk and needs assessment, mental health screening, or trauma screening; ~~or~~
- e. ~~The child to be examined to determine the child's competence or criminal responsibility. If the child is found to lack competency or criminal responsibility the court may:~~
 - (1) ~~Dismiss the delinquency proceedings against the child and order the release of the child to the child's parent, guardian, or legal custodian upon conditions considered appropriate by the court;~~
 - (2) ~~Suspend the delinquency proceedings against the child for a period of up to one year and order services be provided to the child as an outpatient or inpatient, by commitment to an institution for persons with intellectual disabilities or mental illness; or~~
 - (3) ~~Dismiss the delinquency proceedings and direct that child in need of protection proceedings be initiated.~~

SECTION 5. Chapter 27-20.5 of the North Dakota Century Code is created and enacted as follows:

27-20.5-01. Definitions.

- 1. "Fitness to proceed" means sufficient present ability to consult with counsel and assist in preparing the minor's defense with a reasonable degree of rational understanding or a rational and factual understanding of the nature of the offense and delinquency proceedings against the minor. A lack of fitness to proceed may result from the presence of any condition, including mental illness, mental disorder, developmental disability, or developmental immaturity.
- 2. "Minor" means an individual who is:
 - a. Under the age of eighteen years and is not married; or
 - b. Eighteen years of age or older with respect to a delinquent act committed while under the age of eighteen years, and not married, unless an offense is transferred under section 27-20.4-21.
- 3. "Remediation" means the process of providing learning opportunities, services, and support to achieve fitness to proceed.
- 4. "Remediation provider" means an individual providing remediation services for minors.
- 5. "Tier 1a mental health professional" is a psychiatrist licensed under chapter 43-17 or a psychologist licensed under chapter 43-32.

27-20.5-02. Age.

- 1. An individual under the age of ten years is deemed incapable of commission of an offense defined by the constitution or statutes of this state.
- 2. An individual ten years of age or older may be assessed for mental fitness or capacity under this chapter.

27-20.5-03. Motion for fitness to proceed examination.

1. If there is reason to doubt the minor's fitness to proceed, the court may order on its own motion, or at the request of the minor, the minor's parent, legal guardian, legal custodian, or attorney, or the prosecuting attorney, a fitness to proceed examination to determine whether the minor is fit to proceed if the minor is the subject of a delinquency petition in the court. The minor's fitness to proceed may be raised by the court before which the proceedings are pending or being held, or by motion of a party, at any time during the proceeding.
2. If there is reason to doubt the minor's fitness to proceed, adjudication may not occur until after a determination is made on the fitness of the minor to proceed in accordance with this chapter.

27-20.5-04. Use of previous findings and records - Deflection.

A minor who is found to lack fitness to proceed due to previous judicial findings of lack of fitness to proceed or considerations from school, medical, or other records within the last twelve months may have the delinquency proceedings dismissed before a fitness to proceed examination or remediation services are administered.

27-20.5-05. Due process.

1. If there is reason to doubt the minor's fitness to proceed, adjudication may not occur until after a determination is made except the filing of a delinquency petition, until counsel is appointed and notified in accordance with section 27-20.2-12 and the minor is found to have the mental capacity to proceed.
2. After the case proceeds to adjudication or the minor is found to lack fitness to proceed, the court shall order all of the reports that are submitted under this chapter to be closed to the public. The court may order the reports be opened for inspection only:
 - a. For further fitness to proceed or criminal responsibility examination;
 - b. For statistical analysis;
 - c. If the records are considered to be necessary to assist in mental health treatment ordered;
 - d. For data gathering;
 - e. For scientific study or other legitimate research;
 - f. To the state's attorney or minor's counsel for the purpose of an active court case subject to the prior evaluation; and
 - g. To an employee or agent of the division of juvenile services or the department of health and human services, if necessary in the performance of the employee's or agent's duty.
3. If the court orders a report to be open for the purpose of de-identified statistical analysis, data gathering, or scientific study, the report must remain confidential.

4. Any incriminating statement made by a minor to the tier 1a mental health professional as part of a fitness to proceed examination may not be used against the minor over objection in any proceeding.

27-20.5-06. Fitness to proceed examination.

1. If there is reason to doubt the minor's fitness to proceed, the court shall order the minor to be examined by a tier 1a mental health professional.
2. This section does not prohibit any party from retaining the party's own qualified tier 1a mental health professional to conduct additional evaluations at the party's own expense.
3. The fitness to proceed examination must be conducted in the least restrictive environment and may not be conducted in a treatment facility as defined in section 25-03.1-02.
4. The court shall order the prosecuting attorney, minor's attorney, and juvenile court staff to submit any information considered relevant to the fitness to proceed examination to the tier 1a mental health professional, including:
 - a. The names and addresses of all attorneys involved;
 - b. Information about the alleged offense; and
 - c. Any information about the minor's background which is in the prosecuting attorney's possession.
5. Except as prohibited by federal law, the court shall require the attorneys and juvenile court staff to provide any available records regarding the minor and any other information relevant to the examination to the tier 1a mental health professional, including:
 - a. Psychiatric records;
 - b. School records;
 - c. Medical records; and
 - d. Child protective services records.
6. The requirement to provide records or information under subsections 4 and 5 does not limit, waive, or abrogate the work product doctrine or the attorney-client privilege, and release of records and information under subsections 4 and 5 is subject to the work product doctrine and the attorney-client privilege.
7. The fitness to proceed examination must occur within twenty days from receipt of materials identified in subsections 4 and 5 and notice of entry of the order served on the tier 1a mental health professional.
 - a. The court may grant up to an additional fifteen days to complete the examination if good cause is shown.
 - b. The materials required in subsections 4 and 5 must be disclosed contemporaneously with the order.

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- c. The tier 1a mental health professional shall notify the court and request any missing or additional information within seventy-two hours upon discovery of the missing information or receiving this information, and the attorneys and juvenile court staff have seven days to send the information to the tier 1a mental health professional.
8. A tier 1a mental health professional who conducts a fitness to proceed examination shall submit a written report to the court no later than fifteen days from completing the fitness to proceed examination. The report must include:
- a. A description of the nature, content, and extent of the examination, including:
- (1) A description of the assessment procedure, technique, and test used;
 - (2) Medical, educational, and court records reviewed; and
 - (3) Social, clinical, developmental, and available legal history.
- b. A clinical assessment that includes:
- (1) A mental status examination;
 - (2) The diagnosis and functional impact of mental illness, developmental disability, or cognitive impairment. If the minor is taking medication, the impact of the medication on the minor's mental state and behavior;
 - (3) An assessment of the minor's intelligence and maturity level, when relevant;
 - (4) The minor's age, developmental state, and decisionmaking abilities; and
 - (5) Whether the minor has any other factor that affects fitness to proceed.
- c. A description of abilities and deficits in the following mental competency functions related to the minor's fitness to proceed:
- (1) The ability to factually and rationally understand and appreciate the nature and object of the proceedings, including the ability to:
 - (a) Understand the role of the participants in the court process, including the roles of the judge, the minor's attorney, the prosecuting attorney, the probation officer, witnesses, and the jury, and to understand the adversarial nature of the process;
 - (b) Appreciate the offense and understand the seriousness of the offense;
 - (c) Understand and realistically appraise the likely outcomes; and
 - (d) Extend thinking into the future.
 - (2) The ability to render meaningful assistance to the minor's attorney in the preparation of the case, including:

- (a) The ability to disclose to an attorney a reasonably coherent description of facts and events pertaining to the charge, as perceived by the minor;
 - (b) The ability to consider the impact of the minor's action on others;
 - (c) Verbal articulation abilities or the ability to express himself or herself in a reasonable and coherent manner;
 - (d) Logical decisionmaking abilities, including multifactorial problem solving or the ability to take several factors into consideration in making a decision;
 - (e) The ability to reason about available options by weighing the consequences, including distinguishing between a not guilty and guilty plea, weighing pleas, dispositions, waivers, and strategies; and
 - (f) The ability to display appropriate courtroom behavior and testify relevantly.
- 9. The tier 1a mental health professional shall provide the court with a written report about the minor's fitness to proceed. If the tier 1a mental health professional determines the minor lacks fitness to proceed, the tier 1a mental health professional shall comment on the nature of any psychiatric or psychological disorder or cognitive impairment, the prognosis, and the available services needed to remediate the minor to fitness, if possible, within a projected time frame.
- 10. The court shall provide copies of the written report to the minor's attorney, the prosecuting attorney, the parents' attorney and any guardian ad litem for the minor as soon as possible.

27-20.5-07. Fitness to proceed hearing.

- 1. The court shall hold a hearing to determine if the minor is fit to proceed no later than ten days after the report is filed under section 27-20.5-06. At the hearing, the prosecution and defense have the right to summon and cross-examine any individual responsible for the report and introduce other evidence regarding the minor's mental condition or may submit the matter by written stipulation based on the filed report.
- 2. If the court finds the minor lacks fitness to proceed and that there is a substantial likelihood the minor will not attain fitness during the period of the remediation order, the court shall proceed to disposition under section 27-20.5-09.
- 3. The tier 1a mental health professional may appear via reliable electronic means unless objected to by the parties.
- 4. If the court finds the minor is fit to proceed, the delinquency proceedings must proceed.

27-20.5-08. Remediation.

1. If the minor lacks fitness to proceed but the court finds the minor may be remediated to fitness to proceed within the period of the remediation order:
 - a. The matter must be dismissed if the offense is an infraction or a class B misdemeanor, except a class B misdemeanor under chapter 12.1-17; or
 - b. The court may dismiss the matter or suspend the proceedings against the minor if the offense is a felony, class A misdemeanor, or class B misdemeanor under chapter 12.1-17.
2. If the proceedings are suspended because the minor lacks fitness to proceed but the court finds the minor may be remediated to fitness within the period of the remediation order, then:
 - a. Before issuing a remediation order, the court shall hold a hearing to determine the least restrictive available environment for completion of the remediation. The least restrictive available environment may not be at the state hospital or the life skills and transition center.
 - b. The court may issue a remediation order that is valid for sixty days from the date of the court order finding the child incompetent or until one of the following occurs, whichever occurs first:
 - (1) The minor has regained fitness or there is no substantial likelihood the minor will regain fitness within the period of the order; or
 - (2) The delinquency proceedings are dismissed.
 - c. Following issuance of the remediation order, the remediation provider shall submit a report to the court regarding the progress a minor made in remediation services. The report must be submitted to the court no later than fourteen days before the expiration of the sixty-day order or sooner if:
 - (1) The remediation provider determines the minor no longer lacks fitness to proceed; or
 - (2) The remediation provider determines there is no substantial probability the minor will be fit to proceed within the period of the order.
3. No later than fourteen days before the expiration of the initial sixty-day order, the remediation provider may recommend to the court that the remediation order be renewed by the court for another sixty days, if there is a substantial probability the minor will be fit to proceed within the period of that renewed remediation order. The remediation provider shall include a report of progress a minor made in remediation services which demonstrates the minor is likely to be found fit to proceed if a renewal is ordered. The remediation order and any renewed remediation order may not exceed a total of one hundred twenty days.

27-20.5-09. Disposition.

1. Except as otherwise provided in this section, upon receipt of a report by the tier 1a mental health professional that the minor lacks fitness to proceed and there is a substantial likelihood the minor is unable to be remediated within the period of the remediation order, the court may:

- a. Dismiss the delinquency proceedings and release the minor to the minor's parent, legal guardian, or legal custodian; or
 - b. Retain jurisdiction and release the minor to the minor's parent, legal guardian, or legal custodian subject to mental health treatment or services under subsection 2.
2. The court may in its discretion order mental health services or other available services from a mental health provider be provided to the minor by a community mental health services program, the department of health and human services, or another appropriate mental health services provider, subject to the availability of inpatient or outpatient care, for a period not to exceed sixty days.
 - a. The court retains jurisdiction over the minor throughout the duration of the order and the juvenile court officer may assist with referrals, the assessment process, and reporting to the court.
 - b. The entity providing services under this subsection shall determine necessary mental health treatment or services.
3. No later than fourteen days before the expiration of the order for mental health treatment or services under this subsection or subsection 2, a report by the juvenile court officer must be provided to the court regarding the minor. The court shall review the report and:
 - a. Renew the order for another period of mental health treatment or services not to exceed sixty days. The order for mental health treatment or services and any renewed order may not exceed a total of one hundred twenty days; or
 - b. Determine custody of the minor and dismiss the delinquency proceedings against the minor.
4. If release to the minor's parent, legal guardian, or legal custodian is determined inappropriate under subsection 1, the court may dismiss the delinquency proceeding and direct proceedings under chapter 27-20.3.

SECTION 6. APPROPRIATION - DEPARTMENT OF HEALTH AND HUMAN SERVICES - JUVENILE FITNESS TO PROCEED MENTAL HEALTH SERVICES.

There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$500,000, or so much of the sum as may be necessary, to the department of health and human services for the purpose of defraying the costs associated with implementing and administering section 5 of this Act, for the biennium beginning July 1, 2025, and ending June 30, 2027.

SECTION 7. EFFECTIVE DATE. Sections 4 and 5 of this Act become effective on January 2, 2027.

Approved April 17, 2025

Filed April 17, 2025

CHAPTER 307

HOUSE BILL NO. 1034

(Legislative Management)
(Juvenile Justice Committee)

AN ACT to create and enact a new chapter to title 27 of the North Dakota Century Code, relating to the re-establishment of parental rights and responsibilities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new chapter to title 27 of the North Dakota Century Code is created and enacted as follows:

Definitions.

As used in this chapter:

1. "Child" means an individual under the age of eighteen.
2. "Custodian" means a person, other than a genetic parent or legal guardian, which stands in loco parentis to the child and to which legal custody of the child has been given by the court.
3. "Department" means the department of health and human services.
4. "Division of juvenile services" means the division within the department of corrections and rehabilitation established in chapter 27-21.
5. "Genetic parent" means the biological mother or adjudicated mother of the child, or the presumed father or adjudicated father of the child under chapter 14-20.
6. "Human service zone" means a county or consolidated group of counties administering human services within a designated area in accordance with an agreement or plan approved by the department.
7. "Parental rights and responsibilities" means all rights and responsibilities a genetic parent has concerning the parent's child.
8. "Re-establishment of the legal parent and child relationship" means the physical reunification of a child under the custody of the human service zone or division of juvenile services, and a previously terminated genetic parent, and restoration of all rights, powers, privileges, immunities, duties, and obligations that were severed and terminated by the court under section 27-20.3-20.

Jurisdiction.

The juvenile court has exclusive original jurisdiction over all proceedings for re-establishment of the legal parent and child relationship which are governed by this chapter.

Venue - Inconvenient forum.

1. Except as otherwise provided in this section, a proceeding under this chapter must be commenced in the county in which the child resides.
2. A proceeding for re-establishment of parental rights and responsibilities must be brought in the court in the county in which the child subject of the petition resides or in which the agency having the care, custody, or control of the child is located, at the time of filing or granting the petition.
3. If the court finds in the interest of substantial justice the matter should be heard in another forum, the court may transfer, stay, or dismiss the proceeding in whole or in part on any condition that is just.

Petition - Who may prepare and file.

A petition for re-establishment of the legal parent and child relationship may be filed by any interested party from the original termination of parental rights proceeding if:

1. The state's attorney receives a copy of the petition and the responsible custodian and the state's attorney agree re-establishment of the legal parent and child relationship is in the child's best interests;
2. The genetic parent is willing and has the capability to provide day-to-day care and maintain the health, safety, and welfare of the child;
3. At least twelve months have elapsed following a final order terminating parental rights and the child remains in foster care;
4. There is no pending litigation or appeal pertaining to the original termination of parental rights proceeding;
5. The child has not been adopted; and
6. The child is not the subject of a written adoption placement agreement between the responsible custodian and the prospective adoptive parent.

Contents of petition.

A petitioner for re-establishment of the legal parent and child relationship shall sign the petition under oath and the petition must include:

1. The full name, date of birth, address, and all other legal names and aliases by which the genetic parents have been known at any time;
2. The full name and date of birth of each child for whom reunification is sought;
3. The petitioner's relationship to each child for whom reunification is sought;
4. To which genetic parent or parents the rights are sought to be re-established;
5. The reasons for seeking reunification and why reunification is in the child's best interest;

6. The details of the termination of parental rights for which reunification is sought, including the date and jurisdiction of the order, and the court file number and date of any previous order terminating parental rights;
7. The details of any other active juvenile court case in which the genetic parent is a named party, including the case's court file number;
8. The steps the genetic parent has taken toward personal rehabilitation since the order terminating parental rights, including treatment, work, or other personal history demonstrating rehabilitation;
9. How the genetic parent whose rights are sought to be re-established has corrected the condition leading to the order terminating parental rights for which reunification is sought;
10. The reason the genetic parent is willing and capable to provide day-to-day care and maintain the health, safety, and welfare of the child; and
11. Any previous request by any party, whether for the present order terminating parental rights or for any other order terminating parental rights, whether granted or not.

Petition may not be brought in certain circumstances.

A petition for the re-establishment of the legal parent and child relationship may not be brought if the genetic parent whose rights are the subject of the petition for re-establishment previously has had parental rights terminated based on a:

1. Finding of sexual abuse; or
2. Conviction for intentional conduct that resulted in the substantial bodily injury or death of a minor.

Right to appointed counsel.

1. A child within the jurisdiction of the court in an action arising under this chapter has the right to be represented by counsel in all proceedings in which a petition has been filed. The court shall appoint counsel to represent the child, regardless of income, unless counsel is retained for the child, in any proceeding in which the child is of sufficient age and competency to assist counsel.
2. A child who is fourteen years of age or older may waive the right to counsel. The waiver must be made on the record and the court shall determine if the waiver is knowing, voluntary, and intelligent. If a child waives counsel for a hearing, the court shall inform the child of the right to revoke the waiver and request counsel at all subsequent hearings.
3. A genetic parent is entitled to counsel upon the filing of an application for counsel and a determination of indigency. If a party appears without counsel, the court shall determine whether the party knows the party may be represented by counsel and the party is entitled to counsel at public expense if indigent. The court may continue the proceeding to enable a party to obtain counsel.

Appointment of guardian ad litem for child - Immunity.

In a proceeding under this chapter, the court shall appoint a guardian ad litem for a child who is a party to the proceeding upon motion of the court or by motion or agreement of the parties. The guardian ad litem shall serve as an advocate of the child's best interests. A guardian ad litem appointed under this section is immune from civil liability for damages for any act or omission arising out of the guardian ad litem's duties and responsibilities, unless the act or omission constitutes gross or willful negligence or gross or willful misconduct.

Prima facie review of petition.

1. Upon filing of a petition for the re-establishment of the legal parent and child relationship, the court shall consider the petition without oral argument or evidentiary hearing and shall deny the petition unless the court finds the petitioner has established a prima facie case justifying that re-establishment of parental rights is in the child's best interest. If a prima facie case is not established, the court shall dismiss the petition.
2. If a prima facie case is established, the court shall set a date for an evidentiary hearing. The clerk of district court or juvenile court shall provide a copy of the petition and summons to any interested party.

Trial home placement.

1. After the petition is filed, the court may order the necessary parties to create a transition plan. The plan must provide for the health and safety of the child and outline the transition services to the genetic parent, as well as the conditions and supervisions required by the human service zone for transitioning the child into the home on a trial basis, with the ultimate goal being full reunification before the hearing on the petition.
2. The human service zone shall monitor the genetic parent during the implementation of the plan and shall identify and assist the genetic parent in using appropriate family preservation strategies and accessing community resources to provide for the health and safety of the child.
3. During the time of transition, the human service zone shall remove the child from the genetic parent's home upon any abuse or neglect allegation. If the child is removed, the human service zone shall notify the court of the removal and the court shall deny the petition as provided for in this chapter.

Hearing.

1. The petitioner has the burden of proof at the hearing.
2. At the hearing, the court may grant the petition ordering the re-establishment of the legal parent and child relationship only if the court finds by clear and convincing evidence that:
 - a. Re-establishment of the legal parent and child relationship is in the child's best interests;
 - b. There is no pending litigation or appeal pertaining to the original termination of parental rights proceeding;

- c. The genetic parent whose rights are sought to be re-established is not named in any other active juvenile court case;
 - d. The child has not been adopted;
 - e. The child is not the subject of a written adoption placement agreement between the responsible social services agency and the prospective adoptive parent;
 - f. At least twelve months have elapsed following a final order terminating parental rights and the child remains in foster care;
 - g. The genetic parent has corrected the condition that led to the order terminating parental rights; and
 - h. The genetic parent is willing and has the capability to provide day-to-day care and maintain the health, safety, and welfare of the child.
3. In determining whether to grant a petition under this chapter, the court shall consider the child's age, maturity, and ability to express a preference and may consider the child's preference regarding the re-establishment as one factor, along with any other relevant factor.

Order re-establishing parental rights - Effect.

1. In granting a petition for re-establishment of the legal parent and child relationship, the court shall enter its finding in a written order providing that from the date of the order of re-establishment of parental rights, the child is the child of the genetic parent whose rights were terminated and must be accorded all the same rights as existed before the order terminating parental rights, including inheritance rights. The order must include that all legal rights, powers, privileges, immunities, duties, and obligations to each other as genetic parent and child are re-established.
2. As of the effective date of a court order providing for the re-establishment of the legal parent and child relationship:
 - a. The child is the legal child of the genetic parent;
 - b. The genetic parent whose rights were terminated under a previous order of the court is restored to the status of legal parent of the child and all rights, powers, privileges, immunities, duties, and obligations that were severed and terminated by the court under section 27-20.3-20 are restored;
 - c. The order placing the child under the care, custody, and control of the human service zone or division of juvenile services is terminated; and
 - d. Permanent legal and physical custody of the child is awarded to the genetic parent.
3. An order re-establishing the legal parent and child relationship as to one genetic parent of the child has no effect on:
 - a. The legal rights of any other genetic parent whose rights to the child have been terminated by the court; or

- b. The legal sibling relationship between the child and any other children of the genetic parent.

Denial - Subsequent petitions.

If the court denies a petition under this chapter after a hearing, the court may issue a written order barring the filing of a subsequent petition by the genetic parent. The court shall provide the length of time the genetic parent is barred from filing a subsequent petition, make written findings in support of the order, and evaluate the best interests of the child.

Approved March 17, 2025

Filed March 18, 2025