

Testimony of Travis Finck, Executive Director, N.D.C.L.C.I
In Support of Senate Bill 2036
Senate Judiciary Committee
January 14, 2025



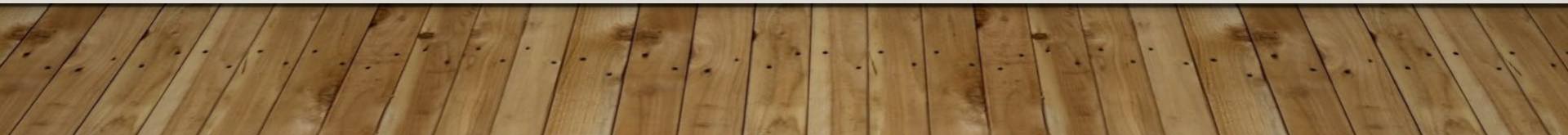
HIGHLIGHTS

- Old law had no definitions specific to juveniles and we simply used the adult code, so we added a section to the juvenile code to specifically address the unique terms used in juvenile court.
- New statute sets definitive timetables for when an evaluation must be completed, reports issued to the court, and hearing held by the court along with instructions to make sure the discovery is received by evaluator
- New statute allows the court to deflect cases based upon prior determinations a child lacks fitness
- Due process rights are codified for the child
- For the first time ever, there is a clear method of competency remediation, the challenge remains getting someone in the state to do the remediations

In Depth Changes by Each Section

Section I: Clean UP

- Section I of the bill simply removes the language deeming a minor under the age of ten from being able to commit a crime (it is replaced in the new section of code in the juvenile court section)
- This section also removes the section allowing for an individual 10 years of age or older to be assessed for fitness
- These sections are moved to the juvenile code, NDCC 27-20 that deals with juvenile court.
 - This is done for the ease of the parties and to stop referring to adult criminal code when dealing with juvenile cases.



SECTION 2: CLEAN UP IN ADULT COMPETENCY

- When the rewrite to the Adult competency was written, it was amended several times during the session.
- During one of the amendments, the numbering became different which led to an inaccuracy in code.
- This section simply refers back to the correct section of code
- We also have an amendment to propose after reviewing with the State Court Administrator's office.
 - The amendment would simply rectify the same problem in section 4 that exists in section 5.

A BILL for 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, ~~subsection~~ subsections 4 and 5 of section 12.1-04-08, subsection 5 of section 27-20.3-01, and section 27-20.4-15 of the North Dakota Century Code, relating to the age of an offender, suspension or dismissal of proceedings, predispositional assessment, and the definition of a child in need of protection; to provide an appropriation; and to provide an effective date.

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.

Section 3: Addition to the CHIPS Code

- Amends 27-20.3-01 by adding new subsection (i) to modify the definition of a Child in Need of Protection for any child alleged to have committed a delinquent act and found to have lacked fitness and was not able to be remediated.
 - This allows another avenue for services to be provided to a child after the delinquency petition is dismissed

Section 4: More Clean up with to move to new chapter

- This removes the predisposition assessment option under the delinquency chapter to evaluate fitness as we have a whole new chapter that deals with the means and mode of the evaluation.

Section 5: New Chapter 27-20.5.01

27-20.5-01. DEFINITIONS

- (1) "Fitness to proceed" means sufficient present ability to consult with the individual's counsel with a reasonable degree of **rational understanding** and a rational as well as **factual understanding** of the proceedings against the individual.
- (2) Defining what a minor, under age 18 and not married, or after last session, 18 yoa or older with respect to an act committed while under 18
- (3) "Remediation" means the process of providing learning opportunities, services, and support to achieve fitness to proceed.
- (4) "Remediation provider" is a person certified by the department to do remediation work
- (5) Defines a tier I a mental health professional who are authorized under the chapter to conduct the evaluations.

27-20.5-02.AGE

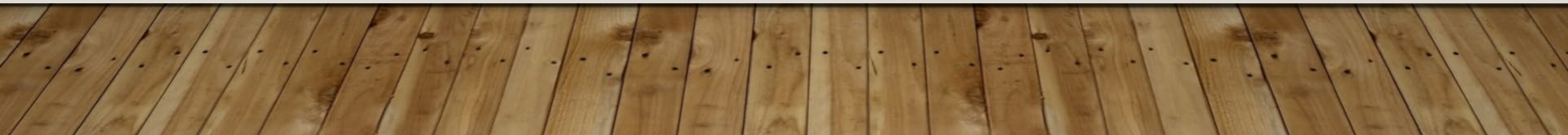
1. An individual under the age of ten years is deemed incapable of commission of an offense defined by the constitution or statutes of this state.
2. Thus, only someone 10 or older can be assessed for fitness
 - This is not new language; this is what was adopted by the legislature as part of the justice reinvestment groups

27-20.5-03. MOTION

- 1) Parties that can bring a motion to review fitness in front of the juvenile court
 - Prosecutor
 - The Minor, or counsel for the Minor, or Parents/legal guardians
 - Or the Court on its own motion
- 2) Due Process prevents the court from adjudicating the Minor once fitness is raised
 - This is not new language, and is part of the adult statutory change enacted in the last few sessions

27-20.5-04. DEFLECTION

- This allows for a court to take judicial notice of a prior judicial finding a minor lacks fitness, and can dismiss without requiring an additional evaluation
- This section also allows for the court to dismiss a proceeding against a minor for lacking fitness by considering school, medical or other records.
 - This is NEW, and is a best practice provided to us by CSG Justice Center



27-20.5-05. DUE PROCESS

1. If the minor's fitness is raised, due process rights attach. The first subsection deals with the Right to Counsel and codifies adjudication may not occur until after minor is found fit
2. Closes the records of all the fitness reports to the public, and specifies when the reports may be made available;
 - a) for further fitness or criminal responsibility examination;
 - b) for statistical analysis;
 - c) if necessary to assist in mh treatment;
 - d) for data gathering;
 - e) for scientific study or other legitimate research;
 - f) to the prosecutor or defense attorney for an active case;
 - g) DJS or DHHS, if necessary to perform their official duty
3. If the court orders a report open for statistical analysis, the report must remain confidential.
4. Any statements made during or for the purpose of evaluation may not be used against the minor over objection.

→ The Due Process rights of a minor in juvenile court accused of a crime are not new, how we chose to protect the records of the report is.

27-20.5-06: EXAMINATION

- 1) If any reason to doubt fitness, court must order the examination, which must be conducted by Tier Ia mental health professional. (This is defined in the definition section)
- 2) Allows for either party to obtain their own evaluation at their own expense as long as tier Ia professional
- 3) Must be constructed in least restrictive environment
- 4) Deals with how the discovery materials must be disclosed to evaluator to assist in preparing the evaluation.
- 5) Codifies what records should be sent to evaluator for purposes of conducting exam
- 6) Ensures work-product and attorney client privilege remain intact
- 7) Exam must occur within **15 days** of receipt of materials identified in section 4 and 5
 - This is the same time frame as an adult fitness evaluation 12.1-04-01(2)
 - a) The Court may grant **additional 7 days** for good cause shown
 - b) Materials must be disclosed contemporaneously with the order
 - c) Provides for notice and requests to be made if all information needed is not received
 - The time frames are not new, but the process for ensuring adequate records is new
- 8) Report to be submitted to the court within 15 days of evaluation
 - It is 30 days for the adults, and this section provides much more detail of what should be in the reports
 - Reports must include:
 - a) description of the examination;
 - b) clinical assessment; and
 - c) description of abilities and deficits

27-20.5-06. continued...

- 9) Report issued shall make a finding regarding the minor's fitness to proceed, and make comments as to possible treatments to remediate fitness within the provided statutory time frames
- 10) Provides where copies should be sent

27-20.5-07. HEARING

- 1) Court holds a hearing within **10 days** of receiving the report and provides procedure for attorneys during the hearing
- 2) Options for the court: Lacks Fitness and not able to be remediated, proceed to disposition under section 09
- 3) Allows for tier 1a professional to appear via zoom
- 4) If found fit to proceed, resume proceedings

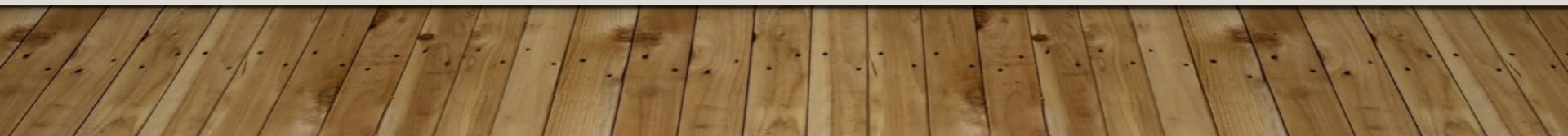
→ This is essentially identical to adult law, except provides timeframe for holding the hearing

27-20.5-08. REMEDIATION

This section of the code provides the options for remediation and how the court is to proceed under each option

- 1) Minor lacks fitness, but likely to be remediated within time frame of the order
 - a) If infraction or equivalent to a class b misdemeanor if committed by an adult, the matter is dismissed, unless assaultive behavior
 - b) If felony or class misdemeanor if committed by an adult, the matter may be dismissed or suspended.

→ this is new in allowing a felony and a misdemeanor to be dismissed



27-20.5-08. REMEDIATION continued...

- 2) If the proceedings are suspended to attempt remediation, the following occurs:
 - a) court holds a hearing to determine least restrictive available environment
 - b) court may issue an order for 60 days or until one of the following occurs:
 - 1) tier 1a mental health provider, based upon information from remediation provider, submits report minor has regained fitness or will never regain fitness; or
 - 2) the proceedings are dismissed.
 - c) remediation provider sends report to tier 1a and the court no later than **14 days** before expiration of the 60 day order
- 3) Remediation provider may seek additional 60 day remediation order if substantial probability the minor will be remediated.

→ Similar to adult process

27-20.5-09 DISPOSITION

- 1) If minor lacks fitness and can not be remediated, the court may:
 - a) dismiss the delinquency proceedings and release the minor to parents or legal /custodian; or
 - b) retain jurisdiction and release the minor subject to treatment and/or services
- 2) Court may order services to be provided to the juvenile and retain jurisdiction for 60 days
 - a) court retains jurisdiction so juvenile court officers may assist in referrals, assessments and reports to the court
- 3) 14 days before the expiration of the 60 treatment order, a report must be provided to the court on the status of the treatment. Court can renew for 60 days or dismiss the case.
- 4) If dismissal and release is deemed inappropriate, the court may dismiss delinquency petition and enter an order directing a CHIPS petition be filed.

Child is alleged to have committed delinquent act

Fitness Raised

Evaluation Order
entered

Necessary materials
sent

Examination conducted
within 15 days (+7 for
GCS)

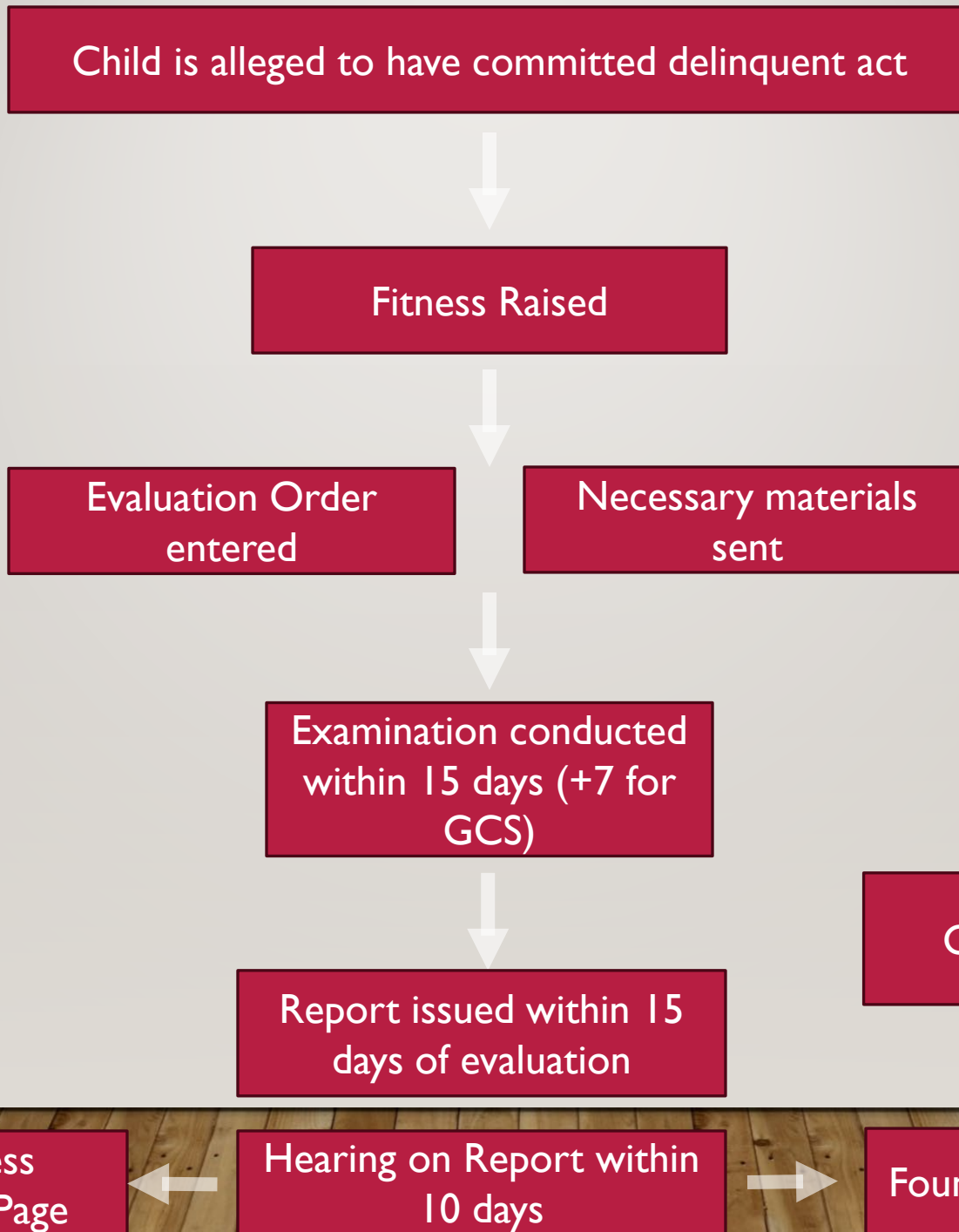
Report issued within 15
days of evaluation

Case Resumes

Lacks Fitness
Go to Nex Page

Hearing on Report within
10 days

Found Fit to proceed



Child is found to lack fitness to proceed, is the child able to be remediated with timeframe?

Yes

No

If class A mis. or felony, court may:

If B misdemeanor not assaultive

Proceed to disposition

Suspend proceedings for 60 days to remediate

Hearing held to determine least restrictive means

Restored, resume case

60 day remediation order entered

Report 14 days prior

Not restored

60 days

Disposition when found to lack fitness, no remediation or remediation has not worked

Dismiss and release minor child

Retain Jurisdiction and release minor child

Order mental health services for 60 days

If Successful, case is dismissed

Unsuccessful

Dismiss and determine custody

Renew for 60 additional days

If release is determined inappropriate, order CHIPS petition filed