

**PROPOSED AMENDMENTS TO**

Sixty-ninth  
Legislative Assembly  
of North Dakota

**SENATE BILL NO. 2036**

Introduced by

Legislative Management  
(Juvenile Justice Committee)

1 A BILL for an Act to create and enact chapter 27-20.5 of the North Dakota Century Code,  
2 relating to fitness to proceed and remediation of juveniles; to amend and reenact section  
3 12.1-04-01, ~~subsection~~ subsections 4 and 5 of section 12.1-04-08, subsection 5 of section  
4 27-20.3-01, and section 27-20.4-15 of the North Dakota Century Code, relating to the age of an  
5 offender, suspension or dismissal of proceedings, predispositional assessment, and the  
6 definition of a child in need of protection; to provide an appropriation; and to provide an effective  
7 date.

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

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

11 **12.1-04-01. Juveniles.**

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

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

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

20 4. If the court determines the defendant currently lacks fitness to proceed and the  
21 defendant may attain fitness to proceed under subsection 12, the court may enter an  
22 order for a course of treatment considering the least restrictive form of treatment  
23 therapeutically appropriate.

- 1           a. Unless excused by the court, in a proceeding to determine therapy in an attempt
- 2           to attain fitness, the defendant shall be represented by trial counsel.
- 3           b. If the court finds the individual is not able to retain the services of a tier 1a mental
- 4           health professional and that those services are otherwise available, the court
- 5           shall authorize reasonable expenditures from public funds to examine the
- 6           individual.
- 7           c. In a motion hearing to resume prosecution, the state prosecuting authority must
- 8           show by a preponderance of the evidence the defendant has attained fitness to
- 9           proceed.

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

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

30           **SECTION 4. AMENDMENT.** Subsection 5 of section 27-20.3-01 of the North Dakota  
 31 Century Code is amended and reenacted as follows:

- 32           5. "Child in need of protection" means a child who:

- 1           a. Is without proper parental care or control, subsistence, education as required by
- 2                       law, or other care or control necessary for the child's physical, mental, or
- 3                       emotional health, or morals, and the need for services or protection is not due
- 4                       primarily to the lack of financial means of the child's parents, guardian, or other
- 5                       custodian;
- 6           b. Has been placed for care or adoption in violation of law;
- 7           c. Has been abandoned by the child's parents, guardian, or other custodian;
- 8           d. Is without proper parental care, control, or education as required by law, or other
- 9                       care and control necessary for the child's well-being because of the physical,
- 10                      mental, emotional, or other illness or disability of the child's parent or parents,
- 11                      and that such lack of care is not due to a willful act of commission or act of
- 12                      omission by the child's parents, and care is requested by a parent;
- 13           e. Is in need of treatment and whose parents, guardian, or other custodian have
- 14                      refused to participate in treatment as ordered by the juvenile court;
- 15           f. Was subject to prenatal exposure to chronic or severe use of alcohol or any
- 16                      controlled substance as defined in chapter 19-03.1 in a manner not lawfully
- 17                      prescribed by a practitioner;
- 18           g. Is present in an environment subjecting the child to exposure to a controlled
- 19                      substance, chemical substance, or drug paraphernalia as prohibited by section
- 20                      19-03.1-22.2; or
- 21           h. Is a victim of human trafficking as defined in title 12.1; or
- 22           i. Was found to lack fitness to proceed by a court in a delinquency case and the
- 23                      delinquency case was dismissed within the six months preceding the filing of the
- 24                      petition.

25           **SECTION 5. AMENDMENT.** Section 27-20.4-15 of the North Dakota Century Code is  
26 amended and reenacted as follows:

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

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

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

27           **SECTION 6.** Chapter 27-20.5 of the North Dakota Century Code is created and enacted as  
28 follows:

29           **27-20.5-01. Definitions.**

- 30            1. "Fitness to proceed" means sufficient present ability to consult with counsel and assist
- 31            in preparing the minor's defense with a reasonable degree of rational understanding or
- 32            a rational and factual understanding of the nature of the offense and delinquency

1 proceedings against the minor. A lack of fitness to proceed may result from the  
2 presence of any condition, including mental illness, mental disorder, developmental  
3 disability, or developmental immaturity. Except as specifically provided otherwise, this  
4 definition applies to a minor who is alleged to be under the court's jurisdiction in  
5 accordance with section 27-20.2-03.

6 2. "Minor" means an individual who is:

- 7 a. Under the age of eighteen years and is not married; or  
8 b. Eighteen years of age or older with respect to a delinquent act committed while  
9 under the age of eighteen years, and not married, unless an offense is  
10 transferred under section 27-20.4-21.

11 3. "Remediation" means the process of providing learning opportunities, services, and  
12 support to achieve fitness to proceed.

13 4. "Remediation provider" means an individual certified with the department of health and  
14 human services to provide remediation services for minors.

15 5. "Tier 1a mental health professional" is a psychiatrist licensed under chapter 43-17 or a  
16 psychologist licensed under chapter 43-32.

17 **27-20.5-02. Age.**

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

22 **27-20.5-03. Motion for fitness to proceed examination.**

- 23 1. The court may order on its own motion, or at the request of the minor, the minor's  
24 parent, legal guardian, legal custodian, or attorney, or the prosecuting attorney, a  
25 fitness to proceed examination to determine whether the minor is fit to proceed if the  
26 minor is the subject of a delinquency petition in the court or if the minor is under the  
27 court's jurisdiction under section 27-20.2-03. The minor's fitness to proceed may be  
28 raised by the court before which the proceedings are pending or being held, or by  
29 motion of a party, at any time during the proceeding.  
30 2. If the minor's fitness to proceed is raised, adjudication may not occur until after a  
31 determination is made on the fitness of the minor to proceed in accordance with this  
32 chapter.

1 **27-20.5-04. Use of previous findings and records - Deflection.**

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

6 **27-20.5-05. Due process.**

- 7 1. If the minor's fitness to proceed is raised, adjudication may not occur until after a  
8 determination is made except the filing of a delinquency petition, until counsel is  
9 appointed and notified in accordance with section 27-20.2-12 and the minor is found to  
10 have the mental capacity to proceed.
- 11 2. After the case proceeds to adjudication or the minor is found to lack fitness to proceed,  
12 the court shall order all of the reports that are submitted under this chapter to be  
13 closed to the public. The court may order the reports be opened for inspection only:
  - 14 a. For further fitness to proceed or criminal responsibility examination;
  - 15 b. For statistical analysis;
  - 16 c. If the records are considered to be necessary to assist in mental health treatment  
17 ordered according to the mental health code;
  - 18 d. For data gathering;
  - 19 e. For scientific study or other legitimate research;
  - 20 f. To the state's attorney or minor's counsel for the purpose of an active court case  
21 subject to the prior evaluation; and
  - 22 g. To an employee or agent of the division of juvenile services or the department of  
23 health and human services, if necessary in the performance of the employee's or  
24 agent's duty.
- 25 3. If the court orders a report to be open for the purpose of de-identified statistical  
26 analysis, data gathering, or scientific study, the report must remain confidential.
- 27 4. Any incriminating statement made by a minor to the tier 1a mental health professional  
28 as part of a fitness to proceed examination may not be used against the minor over  
29 objection in any proceeding.

30 **27-20.5-06. Fitness to proceed examination.**

- 31 1. If there is reason to doubt the minor's fitness to proceed, the court shall order the  
32 minor to be examined by a tier 1a mental health professional.



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



- 1                   (a) The ability to disclose to an attorney a reasonably coherent  
2                               description of facts and events pertaining to the charge, as perceived  
3                               by the minor;
- 4                   (b) The ability to consider the impact of the minor's action on others;
- 5                   (c) Verbal articulation abilities or the ability to express himself or herself in  
6                               a reasonable and coherent manner;
- 7                   (d) Logical decisionmaking abilities, including multifaceted problem  
8                               solving or the ability to take several factors into consideration in  
9                               making a decision;
- 10                  (e) The ability to reason about available options by weighing the  
11                               consequences, including distinguishing between a not guilty and guilty  
12                               plea, weighing pleas, dispositions, waivers, and strategies; and
- 13                  (f) The ability to display appropriate courtroom behavior and testify  
14                               relevantly.

15       9. The tier 1a mental health professional shall provide the court with a written report  
16       about the minor's fitness to proceed. If the tier 1a mental health professional  
17       determines the minor lacks fitness to proceed, the tier 1a mental health professional  
18       shall comment on the nature of any psychiatric or psychological disorder or cognitive  
19       impairment, the prognosis, and the available services needed to remediate the minor  
20       to fitness, if possible, within a projected time frame.

21       10. The court shall provide copies of the written report to the minor's attorney, the  
22       prosecuting attorney, the parents' attorney and any guardian ad litem for the minor as  
23       soon as possible.

24       **27-20.5-07. Fitness to proceed hearing.**

25       1. The court shall hold a hearing to determine if the minor is fit to proceed no later than  
26       ten days after the report is filed under section 27-20.5-06. At the hearing, the  
27       prosecution and defense have the right to summon and cross-examine any individual  
28       responsible for the report and introduce other evidence regarding the minor's mental  
29       condition or may submit the matter by written stipulation based on the filed report.

30       2. If the court finds the minor lacks fitness to proceed and that there is a substantial  
31       likelihood the minor will not attain fitness during the period of the remediation order,  
32       the court shall proceed to disposition under section 27-20.5-09.

1       3. The tier 1a mental health professional may appear via reliable electronic means  
2           unless objected to by the parties.

3       4. If the court finds the minor is fit to proceed, the delinquency proceedings must  
4           proceed.

5       **27-20.5-08. Remediation.**

6       1. If the minor lacks fitness to proceed but the court finds the minor may be remediated  
7           to fitness to proceed within the period of the remediation order:

8           a. The matter must be dismissed if the offense is an infraction or a class B  
9           misdemeanor, except a class B misdemeanor under chapter 12.1-17; or

10          b. The court may dismiss the matter or suspend the proceedings against the minor  
11          if the offense is a felony, class A misdemeanor, or class B misdemeanor under  
12          chapter 12.1-17.

13       2. If the proceedings are suspended because the minor lacks fitness to proceed but the  
14          court finds the minor may be remediated to fitness within the period of the remediation  
15          order, then:

16          a. Before issuing a remediation order, the court shall hold a hearing to determine  
17          the least restrictive available environment for completion of the remediation.

18          b. The court may issue a remediation order that is valid for sixty days from the date  
19          of the court order finding the child incompetent or until one of the following  
20          occurs, whichever occurs first:

21            (1) The tier 1a mental health professional, based on information provided by the  
22            remediation provider, submits a report that the minor has regained fitness or  
23            there is no substantial likelihood the minor will regain fitness within the  
24            period of the order; or

25            (2) The delinquency proceedings are dismissed.

26          c. Following issuance of the remediation order, the remediation provider, who must  
27          be separate and distinct from the tier 1a mental health professional, shall submit  
28          a report to the court and the tier 1a mental health professional which includes the  
29          information required under section 27-20.5-06. The report must be submitted to  
30          the court and the tier 1a mental health professional no later than fourteen days  
31          before the expiration of the sixty-day order or sooner if:

- 1                   (1) The remediation provider determines the minor no longer lacks fitness to  
2                                 proceed; or
- 3                   (2) The remediation provider determines there is no substantial probability the  
4                                 minor will be fit to proceed within the period of the order.
- 5           3. No later than fourteen days before the expiration of the initial sixty-day order, the  
6                   remediation provider may recommend to the court and the tier 1a mental health  
7                   professional that the remediation order be renewed by the court for another sixty days,  
8                   if there is a substantial probability the minor will be fit to proceed within the period of  
9                   that renewed remediation order. The remediation provider shall include a report of  
10                   progress a minor made in remediation services which demonstrates the minor is likely  
11                   to be found fit to proceed if a renewal is ordered. The remediation order and any  
12                   renewed remediation order may not exceed a total of one hundred twenty days.

13           **27-20.5-09. Disposition.**

- 14           1. Except as otherwise provided in this section, upon receipt of a report by the tier 1a  
15                   mental health professional that the minor lacks fitness to proceed and there is a  
16                   substantial likelihood the minor is unable to be remediated within the period of the  
17                   remediation order, the court may:
- 18                   a. Dismiss the delinquency proceedings and release the minor to the minor's  
19                                 parent, legal guardian, or legal custodian; or
- 20                   b. Retain jurisdiction and release the minor to the minor's parent, legal guardian, or  
21                                 legal custodian subject to mental health treatment or services under  
22                                 subsection 2.
- 23           2. The court may in its discretion order mental health services or other available services  
24                   from a mental health provider be provided to the minor by a community mental health  
25                   services program, the department of health and human services, or another  
26                   appropriate mental health services provider, subject to the availability of inpatient or  
27                   outpatient care, for a period not to exceed sixty days.
- 28                   a. The court retains jurisdiction over the minor throughout the duration of the order  
29                                 and the juvenile court officer may assist with referrals, the assessment process,  
30                                 and reporting to the court.
- 31                   b. The entity providing services under this subsection shall determine necessary  
32                                 mental health treatment or services and continue to provide mental health

1                   treatment or services for the duration of the period of mental health treatment or  
2                   services ordered by the court.

3           3. No later than fourteen days before the expiration of the order for mental health  
4           treatment or services under this subsection or subsection 2, a report must be provided  
5           to the court regarding the minor. The court shall review the report and:

6           a. Renew the order for another period of mental health treatment or services not to  
7           exceed sixty days. The order for mental health treatment or services and any  
8           renewed order may not exceed a total of one hundred twenty days; or

9           b. Determine custody of the minor and dismiss the delinquency proceedings against  
10           the minor.

11           4. If release to the minor's parent, legal guardian, or legal custodian is determined  
12           inappropriate under subsection 1, the court may dismiss the delinquency proceeding  
13           and enter an order directing a child in need of protection petition to be filed, order a  
14           shelter care hearing be held, or enter a shelter care order.

15           **SECTION 7. APPROPRIATION - DEPARTMENT OF HEALTH AND HUMAN**

16           **SERVICES - JUVENILE FITNESS TO PROCEED MENTAL HEALTH SERVICES.** There is  
17           appropriated out of any moneys in the general fund in the state treasury, not otherwise  
18           appropriated, the sum of \$4,580,000, or so much of the sum as may be necessary, and the sum  
19           of \$1,000,000 from other funds derived from federal funds, or so much of the sum as may be  
20           necessary, to the department of health and human services for the purpose of defraying the  
21           costs associated with implementing and administering section 5 of this Act, for the biennium  
22           beginning July 1, 2025, and ending June 30, 2027.

23           **SECTION 8. EFFECTIVE DATE.** Section 5 of this Act becomes effective on August 1, 2026.