

## CHAPTER 27-20.2 JUVENILE COURT ACT

### **27-20.2-01. Definitions.**

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

1. "Abandon" means:
  - a. As to a parent of a child not in the custody of that parent, failure by the noncustodial parent significantly without justifiable cause:
    - (1) To communicate with the child; or
    - (2) To provide for the care and support of the child as required by law; or
  - b. As to a parent of a child in that parent's custody:
    - (1) To leave the child for an indefinite period without making firm and agreed plans, with the child's immediate caregiver, for the parent's resumption of physical custody;
    - (2) Following the child's birth or treatment at a hospital, to fail to arrange for the child's discharge within ten days after the child no longer requires hospital care; or
    - (3) Willfully fail to furnish food, shelter, clothing, or medical attention reasonably sufficient to meet the child's needs.
2. "Abandoned infant" means a child who has been abandoned before reaching the age of one year.
3. "Certified shelter care" means a nonsecure permanent dwelling operated by an agency certified by the department of health and human services, where employees offer safe shelter, food, and a structured routine, and which is available twenty-four hours a day to a resident in need of emergency placement, not to exceed seven days, unless otherwise approved by the department.
4. "Child" means an individual who is:
  - a. Under the age of eighteen years and is not married; or
  - b. Under the age of twenty years with respect to a delinquent act committed while under the age of eighteen years and not married.
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.
6. "Child in need of services" means a child who in any of the foregoing instances is in need of treatment or rehabilitation:

- a. 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;
  - b. 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;
  - c. 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
  - d. 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
  - e. In any of the foregoing instances is in need of treatment or rehabilitation.
7. "Custodian" means a person, other than a parent or legal guardian, which stands in loco parentis to the child and a person that has been given legal custody of the child by order of a court.
  8. "Delinquent act" means an act designated a crime under the law, including local ordinances or resolutions of this state, or of another state if the act occurred in that state, or under federal law.
  9. "Delinquent child" means a child who has committed a delinquent act and is in need of treatment or rehabilitation or is a child subject to proceedings arising under the interstate compact on juveniles.
  10. "Director" means the director of juvenile court or the director's designee.
  11. "Diversion" means an intervention strategy that redirects a child away from formal processing in the juvenile justice system, while still holding the child accountable for that child's actions.
  12. "Facility" means buildings, structures, or systems, including those for essential administration and support, which are used to provide residential treatment for children.
  13. "Host county" means the county within the human service zone in which the human service zone administrative office is located and in which the human service zone team members are employed.
  14. "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 of health and human services.
  15. "Individual justice planning" means a process to identify, accommodate, and develop appropriate consequences for behaviors caused by or related to an individual's mental or cognitive impairment.
  16. "Juvenile court" means the district court of this state.
  17. "Juvenile drug 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.
  18. "Proceeding" means any hearing conducted before a juvenile court or a referral for service.
  19. "Qualified residential treatment program" means a licensed or approved residence providing an out-of-home treatment placement for children, including a trauma-informed model.
  20. "Relative" or "kinship relative" means:
    - a. The child's grandparent, great-grandparent, sibling, half-sibling, aunt, great-aunt, uncle, great-uncle, nephew, niece, or first cousin;
    - b. An individual with a relationship to the child, derived through a current or former spouse of the child's parent, similar to a relationship described in subdivision a;

- c. An individual recognized in the child's community as having a relationship with the child similar to a relationship described in subdivision a; or
  - d. The child's stepparent.
21. "Restorative justice" means a system of justice which focuses on the rehabilitation of offenders through reconciliation with victims and the community at large.
  22. "Shelter care" means temporary care during which a child needs a safe bed outside the home, in a shelter care site or certified shelter care site managed by an agency or licensed foster care facility.
  23. "The court" means the district courts as designated by the North Dakota supreme court which includes juvenile court as a subset of district court.
  24. "Willfully" has the meaning provided in section 12.1-02-02.

**27-20.2-02. Presumption of age.**

1. In determining an individual's age for purposes of this chapter, the individual's date of birth as provided by any of the following is presumed to be the individual's legal date of birth:
  - a. A state government in the form of a birth certificate, other state-issued identification, or a certified copy of a birth certificate that includes the individual's date of birth.
  - b. The United States government in the form of a tribal identification document, military identification, passport, passport card, permanent resident card, certificate of United States citizenship, certificate of naturalization, border crossing card, visa, or other entry document that includes the individual's date of birth.
  - c. A foreign government in the form of a passport, driver's license, or other foreign government-issued identity document that includes the individual's date of birth. If there is a conflict between government-issued forms, a government-issued birth certificate or a certified copy of a birth certificate takes precedence.
2. The presumption in subsection 1 may be rebutted by clear and convincing evidence to the contrary.

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

1. The juvenile court has exclusive original jurisdiction of the following proceedings, which are governed by this chapter:
  - a. Proceedings in which a child is alleged to be delinquent, or a child in need of protection under this chapter or chapters 27-20.3 and 27-20.4;
  - b. Proceedings for the termination of parental rights except if a part of an adoption proceeding;
  - c. Proceedings arising under section 27-20.3-16;
  - d. Civil forfeiture proceedings arising under chapter 19-03.1 or section 29-31.1-04 for which a child is alleged to have possessed forfeitable property. The juvenile court shall conduct the proceedings in accordance with the procedures provided for under sections 19-03.1-36 through 19-03.1-37; and
  - e. Proceedings for the guardianship of a child under chapter 27-20.1, except the testamentary appointment of a guardian for a minor governed by chapter 30.1-27.
2. The juvenile court also has exclusive original jurisdiction of the following proceedings, which are governed by the laws relating to those proceedings without regard to the other provisions of this chapter:
  - a. Proceedings to obtain judicial consent to the marriage, employment, or enlistment in the armed services of a child, if consent is required by law;
  - b. Proceedings under the interstate compact on juveniles;
  - c. Proceedings under the interstate compact on the placement of children; and
  - d. Proceedings arising under section 50-06-06.13 to obtain a judicial determination that the placement of a severely emotionally disturbed child in an out-of-home treatment program is in the best interests of the child.

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

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

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

1. For the purpose of carrying out the objectives and purposes of this chapter and subject to the limitations of this chapter or imposed by the court, a director shall:
  - a. Make investigations, reports, and recommendations to the juvenile court.
  - b. Receive and examine referrals and charges of delinquency or a child in need of protection for the purpose of considering the commencement of proceedings under this chapter.
  - c. Make a determination upon intake of referrals regarding the appropriate manner to handle delinquent conduct or a child in need of protection by use of nonjudicial adjustments or formal court processes.
  - d. Supervise and assist a child placed on probation for delinquency.
  - e. Make appropriate referrals to other private or public agencies of the community if assistance of the agencies appears to be needed or desirable.
  - f. Issue a temporary custody order concerning a child who is referred to the director's supervision or care as a delinquent or a child in need of protection. Except as provided by this chapter, a director does not have the powers of a law enforcement officer.
  - g. Take acknowledgments of instruments for the purpose of this chapter.
  - h. Make such temporary order not to exceed ninety-six hours for the custody and control of a child alleged to be in need of protection as may be deemed appropriate. The order must be reduced to writing within twenty-four hours, excluding holidays and weekends.
  - i. Perform all other functions designated by this chapter or under section 27-05-30 or by order of the court pursuant to such law, including, if qualified, the order of a referee.
  - j. Issue an order to a law enforcement authority to transport a child to and from a specified location.
  - k. Receive and examine requests for review of a child's placement at a qualified residential treatment program under the federal Family First Prevention Services Act [Pub. L. 115-123; 132 Stat. 64; 42 U.S.C. 675].
  - l. Receive and examine petitions to establish, modify, or terminate a guardianship of a minor under chapter 27-20.1.
  - m. Make a referral for the child's participation in the individual justice planning process.
2. Any of the foregoing functions may be performed in another state if authorized by the court of this state and permitted by the laws of the other state.

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

A proceeding under this chapter may be commenced:

1. By transfer of a case from another court as provided in section 27-20.2-07; or
2. In other cases by the filing of a petition as provided in this chapter. The petition and all other documents in the proceeding must be entitled "In the interest of \_\_\_\_\_, a child". If a child is in shelter care, the petition must be filed within

thirty days of the shelter care, this is the date on which the child was removed both physically and legally from the parents, legal guardians, or custodians.

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

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

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

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

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

1. Before a petition is filed, the director of juvenile court or designee may give counsel and advice to the parties and impose conditions for the conduct and control of the child in lieu of further proceedings with a view to an informal adjustment if it appears:
  - a. The admitted facts bring the case within the jurisdiction of the court;
  - b. Information, advice, and conditions, if any, for the conduct and control of the child without an adjudication would be in the best interest of the public and the child; and
  - c. The child and the child's parents, guardian, or other custodian consent to the counsel and advice with knowledge that consent is not obligatory.
2. If a victim is identified in the referral, the court must give reasonable written notice of the informal adjustment to the victim.
3. 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 27-20.4-19.
4. An incriminating statement made by a child to the juvenile court officer or designee giving information and advice incident to the giving of counsel and advice may not be used against the child over objection in any proceeding or as part of a risk and need screening or assessment process.

**27-20.2-10. Venue.**

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

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

If the child resides in a county of the state and the proceeding is commenced in a court of another county, the court, on motion of a party or on motion of the court made before final disposition and in consultation with the court in the other county, may transfer the proceeding to the county of the child's residence for further action. Like transfer may be made if the residence of the child changes pending the proceeding. The proceeding must be transferred if the child

has been adjudicated delinquent or a child in need of services and other proceedings involving the child are pending in the juvenile court of the county of the child's residence.

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

1. Except as provided in section 27-20.1-09, a child alleged to be within the jurisdiction of the court in an action arising under chapters 27-20.1, 27-20.2, 27-20.3, and 27-20.4 has the right to be represented by counsel in all proceedings in which a petition has been filed. Counsel for the child must be appointed, regardless of income, unless counsel is retained for the juvenile, in any proceeding in which the juvenile is alleged to be:
  - a. Delinquent; or
  - b. A child in need of protection if the child is of sufficient age and competency to assist counsel.
2. A child may waive the right to counsel in a juvenile delinquency proceeding if the child, who is fourteen years of age or older and the court has determined the waiver is knowing, voluntary, and intelligent. The waiver must be made on the record. If a child waives counsel for a hearing, the child must be informed of the right to revoke the waiver and request counsel at all subsequent hearings.
3. The court may require payment for reimbursement of counsel appointed pursuant to this section from a person that has legal care, custody, or control of the child. The court must include a finding regarding reimbursement in the findings of fact and order for disposition.
4. A child's parent, legal guardian, or custodian 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 that the party is entitled to counsel at public expense if indigent. The court may continue the proceeding to enable a party to obtain counsel. A child's parent, legal guardian, or custodian determined to be indigent is entitled to counsel:
  - a. At a detention hearing;
  - b. At the dispositional stage of a juvenile delinquency matter;
  - c. At all proceedings in a child in need of protection; or
  - d. In a permanency or review of an order entered in any of the proceedings under subdivision a, b, or c.
5. The child may elect to be represented by counsel for a nonjudicial adjustment.

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

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

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

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

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

1. As used in this section:

- a. "Active efforts" means affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite an Indian child with the child's family. Active efforts are required if the federal Indian Child Welfare Act of 1978 [25 U.S.C. 1901 through 1963] applies or may apply, including during the verification process. If an agency is involved in the child-custody proceeding, active efforts must involve assisting the parent or parents or Indian custodian through the steps of a case plan and with 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 if the threat is resolved and placement of the child can be returned to the custodian;
  - (2) Identifying appropriate services and helping the parents to overcome barriers, including actively assisting the parents 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 parents;
  - (5) Offering and employing available and culturally appropriate family preservation strategies and facilitating the use of remedial and rehabilitative services provided by the child's tribe;
  - (6) Taking steps to keep siblings together whenever possible;
  - (7) Supporting regular visits with parents or Indian custodians 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 child;
  - (8) Identifying community resources, including housing, financial, transportation, mental health, substance abuse, and peer support services and actively assisting the Indian child's parents or, if appropriate, the 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 parents and if appropriate, the family, if the optimum services do not exist or are not available; and
  - (11) Providing post-reunification services and monitoring.
- b. "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.
- c. "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 in 43 U.S.C. 1606.
- d. "Indian child" means an 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.
- e. "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.
- f. "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 child.
  - g. "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).
  - h. "Parent" means any biological parent or parents of an Indian child or any 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.
  - i. "Termination of parental rights" means any action resulting in the termination of the parent-child relationship. The term 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 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 child by the parent or Indian custodian is likely to result in serious emotional or physical damage or harm to the child. Evidence must show a causal relationship between the particular conditions in the home and the likelihood that continued custody of the child will result in serious emotional or physical damage or harm to the particular 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 or harm to the child. As soon as the threat has been removed and the child is no longer at risk, the state should terminate the removal, by returning the child to the parent while offering a solution to mitigate the situation that gave rise to the need for emergency removal and placement.
  4. The court may only order the termination of parental rights over the Indian child if the court determines, by evidence beyond a reasonable doubt, that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage or harm to the 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 child's continued custody by the parent or Indian custodian is likely to result in serious emotional or physical damage or harm to the child and should be qualified to testify as 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. 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. 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 child. The qualified expert witness should be someone familiar with the particular child and have contact with the parents to observe interaction between the parents, child, and extended family members. The child welfare agency and courts should facilitate access to the family and records to facilitate accurate testimony.

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

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

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

1. As used in this section, "sibling of the child entering foster care" means:
  - a. A brother or sister who has at least one biological or adoptive parent in common;
  - b. A fictive brother or sister with a significant bond as identified by the child or parent; or
  - c. A child who would have been considered a sibling but for the termination or other disruption of parental rights, including a death of a parent.
2. A legal custodian has:
  - a. The right to the physical custody of the child and the right to determine the nature of the care, placement, and treatment of the child, including ordinary medical care as well as medical or surgical treatment for a serious physical condition or illness that in the opinion of a licensed physician requires prompt treatment, except for any limits the court may impose.
  - b. The right and duty to provide for the care, protection, training, and education and the physical, mental, and moral welfare of the child, subject to the conditions and limitations of the order and to the remaining rights and duties of the child's parents or guardian.
  - c. A duty within thirty days after the removal of a child from the custody of the parent or parents of the child for the purpose of placement into foster care, to exercise due diligence to identify and provide notice to the following relatives: all parents of a sibling of the child entering foster care who have legal custody of the sibling, all adult grandparents, and any other adult suggested by the parents, subject to exceptions due to family or domestic violence, that:
    - (1) Specifies that the child has been or is being removed from the custody of the parent or parents of the child;
    - (2) Explains the options the relative has under federal, state, and local law to participate in the care and placement of the child, including any options that may be lost by failing to respond to the notice;
    - (3) Describes the requirements and standards to become a foster family home and the additional services and supports that are available for children placed in that home; and

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

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

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

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

1. The following expenses are a charge upon the funds of the county or human service zone upon certification of the expenses by the court:
  - a. The cost of medical and other examinations and treatment of a child ordered by the court.
  - b. The cost of care and support of a child committed by the court to the legal custody of a public agency other than an institution for delinquent children or to a private agency or individual other than a parent.
  - c. The cost of any necessary transportation for medical and other examinations and treatment of a child ordered by the court unless the child is in the legal custody of a state agency.
  - d. The cost of a guardian ad litem under subsection 5 of section 27-20.1-16 or section 30.1-27-06 or the cost of an attorney under subsection 6 of section 27-20.1-16 if the court finds the parent's or child's estate is insufficient to meet the cost.
2. The commission on legal counsel for indigents shall pay reasonable compensation for services and related expenses of counsel provided at public expense for a party and the supreme court shall pay reasonable compensation for a guardian ad litem. The attorney general shall pay the witness fees, mileage, and travel expense of witnesses incurred in the proceedings under this chapter in the amount and at the rate provided for in section 31-01-16, except the commission on legal counsel for indigents shall pay the witness fees, mileage, and travel expenses of witnesses subpoenaed by counsel employed by or contracted with the commission for proceedings under this chapter in the amount and at the rate provided for in section 31-01-16. Expenses of the state include the cost of any necessary transportation for medical and other examinations and treatment of a child ordered by the court if the child is in the legal custody of a state agency in which case the cost must be reimbursed to the county or human service zone by that state agency at the state mileage rate, excluding meals and lodging, plus twenty-nine cents per mile.
3. If, after due notice to the parents or other persons legally obligated to care for and support the child, and to a child over the age of eighteen, and after affording the parents, other persons, and children over eighteen years of age an opportunity to be heard, the court finds that the parents, other persons, or a child over eighteen years of age is financially able to pay all or part of the costs and expenses stated in subsection 1, and expenses payable by the supreme court under subsection 2, the court may order the party to pay the same and prescribe the manner of payment. Unless otherwise ordered, payment shall be made to the clerk of court for remittance to the person to which compensation is due, or if the costs and expenses have been paid by the county, human service zone, or the state to the county treasurer of the county, the county treasurer of the host county, or to the state treasurer.

4. Unless the court finds there is no likelihood the party is or will be able to pay attorney's fees and expenses, the court, in the order or judgment following a hearing under this chapter, shall order the parents or other persons legally obligated to care for and support the child, and the child if over the age of eighteen, to reimburse the presumed amount of indigent defense costs and expenses, as determined by the commission on legal counsel for indigents, and shall notify the party of the right to a hearing on the reimbursement amount. If the party or the state requests a hearing within thirty days of receiving notice under this subsection, the court shall schedule a hearing at which the actual amount of attorney's fees and expenses must be shown. In determining the amount of reimbursement and method of payment, the court shall consider the financial resources of the party and the nature of the burden that reimbursement of costs and expenses will impose.
5. A party who is required to reimburse indigent defense costs and expenses and who is not willfully in default in that reimbursement may at any time petition the court to waive reimbursement of all or any portion of the attorney's fees and expenses. If the court is satisfied reimbursement of the amount due will impose undue hardship on the party or the party's immediate family, the court may waive reimbursement of all or any portion of the amount due or modify the method of payment.

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

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

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

**27-20.2-21. Inspection of court files and records - Penalty.**

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

- g. An employee or agent of the department of health and human services if necessary for performance of that individual's duty under chapter 50-11 or 50-11.1 to investigate the background of an individual living or working in the facility, home, or residence for which licensure is sought.
  - h. A criminal justice agency if the juvenile is required to register under section 12.1-32-15.
  - i. The staff of a children's advocacy center if the juvenile or a victim of the child has been referred for or has received services at the children's advocacy center.
  - j. A victim of the delinquent child or the victim's guardian. All records including medical, educational, and school information must be redacted before inspection. For purposes of this subdivision, only records pertaining to the specific offense between the victim and the delinquent child may be inspected.
  - k. The information technology department to the extent authorized by the supreme court for use in the statewide longitudinal data system.
  - l. The staff of a juvenile detention center or the staff of a juvenile intake and assessment center designated by the court to assist in performing and scoring the detention screening tool.
  - m. The information technology department to the extent authorized by the supreme court for use in the statewide longitudinal data system.
2. Juvenile court files and records are also open to inspection with written leave of a juvenile court judge or judicial referee to whom juvenile court matters have been referred:
    - a. Upon a showing in writing of a legitimate interest in a proceeding or in the work of the juvenile court, but only to the extent necessary to respond to the legitimate interest; and
    - b. By the principal of any public or private school that is a member of the North Dakota high school activities association, or the superintendent of any school district that has one or more schools involved in the association, but only to the extent necessary to enforce the rules and regulations of the North Dakota high school activities association.
  3. In a proceeding under this chapter, if the juvenile court finds a child committed a delinquent act that constitutes a violation of a law or local ordinance governing the operation of a motor vehicle or a delinquent act of manslaughter or negligent homicide caused by the child's operation of a motor vehicle, the juvenile court shall report the finding to the director of the department of transportation within ten days.
  4. Following an adjudication of delinquency for an offense that would be a felony if committed by an adult, the child's school principal, chief administrative officer, or designated school guidance counselor, if requested, must be allowed access to the disposition order. Any other juvenile court files and records of a child may be disclosed to a superintendent or principal of the school in which the child is currently enrolled or in which the child wishes to enroll if the child's documented behavior appears to present a danger to self or to the students or staff of the school.
  5. Following an adjudication of delinquency for an offense that results in the prohibitions included in subsection 1 or 2 of section 62.1-02-01, if requested, a law enforcement officer must be allowed access to the disposition order.
  6. The juvenile court may notify a referring agency of the disposition of a case.
  7. Notwithstanding that juvenile court records are closed to the public, nothing in this section may be construed to limit the release upon request of general information not identifying the identity of any juvenile, witness, or victim in any proceeding under this chapter. Files in the clerk of court's office are open to public inspection if the related hearing was open to the public under section 27-20.3-13.
  8. To the extent necessary to provide victim services or benefits under chapter 12.1-41, the judge and staff of the juvenile court may disclose information to refer a child, who may be a victim of human trafficking, to a program for runaway and homeless children located in the state and approved by the juvenile court of jurisdiction. Information disclosed under this subsection must remain confidential.

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

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

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

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

1. Unless a charge of delinquency is transferred for criminal prosecution under section 27-20.4-20, 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.
2. Notwithstanding that law enforcement 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, this section does not limit the release of general information that does not identify the identity of the child.

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

1. A child under fourteen years of age may not be fingerprinted in the investigation of a crime except as provided in this section. Fingerprints of a child who is referred to the court may be taken and filed by law enforcement officers in investigating the commission of the following crimes: murder, manslaughter, gross sexual imposition, robbery, aggravated assault, burglary, theft, forgery, and unlawful possession or use of a handgun.
2. Fingerprint files of children must be kept separate from those of adults. Copies of fingerprints known to be those of a child may be maintained locally and copies may be sent to a central state depository but may not be sent to a federal depository unless needed in the interest of national security.
3. Fingerprint files of children may be inspected by law enforcement officers if necessary for the discharge of official duties of law enforcement officers. Other inspections may

be authorized by the court in individual cases upon a showing it is necessary in the public interest.

4. Fingerprints of a child are considered a part of the child's juvenile or adult investigative file and must be removed from the state and local files and destroyed in accordance with section 27-20.2-25.
5. If latent fingerprints are found during the investigation of an offense and a law enforcement officer has probable cause to believe the latent fingerprints are those of a particular child, the officer may fingerprint the child regardless of age or offense for purposes of immediate comparison with the latent fingerprints. If the comparison is negative, the fingerprint card and other copies of the fingerprints taken must be destroyed immediately. If the child is not referred to the court, the fingerprints must be destroyed immediately.
6. A child may be photographed by a law enforcement officer at the time of arrest for the crimes of murder, manslaughter, gross sexual imposition, robbery, aggravated assault, burglary, theft, forgery, or unlawful possession or use of a handgun. The photograph must be destroyed if the child is not referred to the juvenile court. If a court finds facts that would justify a finding that a child at least fourteen years of age at the time of the offense is delinquent and the finding involves the unlawful use or possession of a handgun or the commission of an act proscribed by the criminal laws of this state and punishable as a felony or a class A misdemeanor committed for the benefit of, at the direction of, or in association or affiliation with any criminal street gang, with the intent to promote, further, or assist in the activities of a criminal gang, the juvenile court shall order upon the request of the state's attorney the taking and retention of a photograph of the child for purposes of identification. Photographs of children under this subsection may be maintained on a local basis and sent to a central state depository but must be maintained separate from those of adults and must be destroyed in accordance with section 27-20.2-25.

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

1. Except as otherwise required under section 25-03.3-04, all juvenile court records must be retained and disposed of pursuant to rules and policies established by the North Dakota supreme court.
2. Upon the final destruction of a file or record, the proceeding must be treated as if the proceeding never occurred. The juvenile court shall notify each agency named in the file or record of the destruction. All index references, except those which may be made by the attorney general and the directors of the department of transportation, the department of health and human services, the department of corrections and rehabilitation, the commission on legal counsel for indigents and its public defender offices, law enforcement agencies, and human service zones, must be deleted. Each agency, except the attorney general and the directors of the department of transportation, the department of health and human services, the department of corrections and rehabilitation, the commission on legal counsel for indigents and its public defender offices, law enforcement agencies, and human service zones, upon notification of the destruction of a file or record, shall destroy all files, records, and references to the child's apprehension, detention, and referral to the juvenile court and any record of disposition made by the juvenile court. The attorney general, the department of health and human services, the department of corrections and rehabilitation, the commission on legal counsel for indigents and its public defender offices, law enforcement agencies, and human service zones may not keep a juvenile file or record longer than is required by the records retention policy of that official, department, or agency. Upon inquiry in any matter the child, the court, and representatives of agencies, except the attorney general and the directors of the department of transportation, the department of health and human services, the department of corrections and rehabilitation, law enforcement agencies, and human service zones, properly shall reply that no record exists with respect to the child.

**27-20.2-26. Appeals.**

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

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

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

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

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