

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1358

2001 HOUSE JUDICIARY

HB 1358

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1358

House Judiciary Committee

☐ Conference Committee

Hearing Date 01-29-01

| Tape Number | Side A | Side B | Meter # |
|---|--------|--------|--------------|
| TAPE III | X | | 3661 to 6244 |
| TAPE III | | X | 01 to 78 |
| Committee Clerk Signature <i>Jean Diers</i> | | | |

Minutes: Chairman DeKrey opened the hearing on HB 1358. Relating to definitions, filing petitions, duties of juvenile supervisors, informal adjustments, continue shelter care, termination of parental rights and disposition of a delinquent child under the Uniform Juvenile Court Act.

Rep Mahoney: District 33. Introduced the bill dealing with juveniles.

Greg Wallace: Assistant State Court Administrator for Trial Courts for the North Dakota Supreme Court. (see attached testimony)

Chairman DeKrey: Are there any other questions, if not thank you for appearing. Anyone else wishing to testify.

Susan Beehler: married and working mother of five (see testimony attached)

TAPE III SIDE B

Susan Beehler's testimony continues.

Chairman DeKrey: Are there any questions, if not thank you for appearing. Is there anyone else wishing to testify. If not we will close the hearing on HB 1358.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1358a

House Judiciary Committee

☐ Conference Committee

Hearing Date 02-12-01

| Tape Number | Side A | Side B | Meter # |
|---|--------|--------|------------|
| TAPE II | | x | 574 to 764 |
| | | | |
| Committee Clerk Signature <i>Joan Deere</i> | | | |

Minutes: Chairman DeKrey calls the committee to order on HB 1358.

DISCUSSION

Rep Mahoney explains the amendments 18297.0101. These would put these in conformity with a realistic time table as far as having hearings with juveniles. I would move a DO PASS.

Rep Eckre: There are a bunch of different amendments.

Rep Mahoney: OK, then I withdraw my motion.

Rep Delmore: There were some detailed amendments.

More discussion was held on the amendments that different people had proposed. Rep Mahoney will take a look at all the amendments and put them together.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1358b

House Judiciary Committee

☐ Conference Committee

Hearing Date 02-14-01

| Tape Number | Side A | Side B | Meter # |
|--|--------|--------|--------------|
| TAPE I | X | | 4898 to 6200 |
| | | | |
| | | | |
| Committee Clerk Signature <i>Joan D. [Signature]</i> | | | |

Minutes: Chairman DeKrey called the committee to order and took up HB 1358.

Gregg Wallace (State Administrators Office) explains amendments 18297.0101

DISCUSSION ON THE AMENDMENTS

COMMITTEE ACTION

Rep Mahoney moved the amendments, Vice Chr Kretschmar seconded.

DISCUSSION

Chairman DeKrey: What are the wishes of the committee? Vice Chr Kretschmar move a DO PASS as amend on HB 1358, Rep Grande seconded. The clerk will call the roll on a DO PASS as amend on HB 1358. The motion passes with 13 YES, 0 NO and 2 ABSENT. Carrier Rep Mahoney.

VR
2/14/01
1082

HOUSE AMENDMENTS TO HB 1358 HOUSE JUDICIARY 02-15-01
Page 1, line 2, remove "subsection 1 of"

Page 1, line 3, replace the first "section" with "sections", remove "sections", and after
"27-20-25" insert a comma

HOUSE MENDMENTS TO HB 1358 HOUSE JUDICIARY 02-15-01
Page 2, line 18, remove the overstrike over "or" and after "or" insert "subdivision a of
subsection 1 of section"

HOUSE AMENDMENTS TO HB 1358 HOUSE JUDICIARY 02-15-01
Page 10, line 4, remove the overstrike over "or" and after "or" insert "subdivision a of
subsection 1 of section"

Page 10, line 11, replace "Subsection 1 of section" with "Section"

Page 10, after line 12, insert:

"27-20-22. Summons."

Page 10, after line 28, insert:

- "2. The court may endorse upon the summons an order directing the parents, guardian, or other custodian of the child to appear personally at the hearing and directing the person having the physical custody or control of the child to bring the child to the hearing.
3. If it appears from affidavit filed or from sworn testimony before the court that the conduct, condition, or surroundings of the child are endangering ~~he~~ the child's health or welfare or those of others, or that ~~he~~ the child may abscond or be removed from the jurisdiction of the court or will not be brought before the court, notwithstanding the service of the summons, the court may endorse upon the summons an order that a law enforcement officer shall serve the summons and take the child into immediate custody and bring ~~him forthwith~~ the child before the court.
4. The summons ~~shall~~ must state that a party is entitled to counsel in the proceedings and that the court will appoint counsel if the party is unable without undue financial hardship to employ counsel.
5. A party, other than the child, may waive service of summons by written stipulation or by voluntary appearance at the hearing. If the child is present at the hearing, ~~he~~ the child's counsel, with the consent of the parent, guardian, or other custodian, or guardian ad litem, may waive service of summons in ~~he~~ the child's behalf.
6. When a child is in detention or shelter care and good cause is shown why service was not completed upon an absent or noncustodial parent, the court may proceed with the hearing on the petition in order to comply with any time limitations under this chapter.

Date: 02-14-01
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB-1358

House JUDICIARY Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as amend

Motion Made By VC Kretschmar Seconded By Rep Grande

| Representatives | Yes | No | Representatives | Yes | No |
|-----------------------------|-----|----|-----------------|-----|----|
| CHR - Duane DeKrey | ✓ | | | | |
| VICE CHR -- Wm E Kretschmar | ✓ | | | | |
| Rep Curtis E Brekke | ✓ | | | | |
| Rep Lois Delmore | ✓ | | | | |
| Rep Rachael Disrud | ✓ | | | | |
| Rep Bruce Eckre | ✓ | | | | |
| Rep April Fairfield | ✓ | | | | |
| Rep Bette Grande | ✓ | | | | |
| Rep G. Jane Gunter | ✓ | | | | |
| Rep Joyce Kingsbury | ✓ | | | | |
| Rep Lawrence R. Klemin | ✓ | | | | |
| Rep John Mahoney | ✓ | | | | |
| Rep Andrew G Maragos | | | | | |
| Rep Kenton Onstad | ✓ | | | | |
| Rep Dwight Wrangham | | | | | |

Total (Yes) 13 No 0

Absent 2

Floor Assignment Rep Mahoney

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1358: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1358 was placed on the Sixth order on the calendar.

Page 1, line 2, remove "subsection 1 of"

Page 1, line 3, replace the first "section" with "sections", remove "sections", and after "27-20-25" insert a comma

Page 2, line 18, remove the overstrike over "or" and after "or" insert "subdivision a of subsection 1 of section"

Page 10, line 4, remove the overstrike over "or" and after "or" insert "subdivision a of subsection 1 of section"

Page 10, line 11, replace "Subsection 1 of section" with "Section"

Page 10, after line 12, insert:

"27-20-22. Summons."

Page 10, after line 28, insert:

- "2. The court may endorse upon the summons an order directing the parents, guardian, or other custodian of the child to appear personally at the hearing and directing the person having the physical custody or control of the child to bring the child to the hearing.
3. If it appears from affidavit filed or from sworn testimony before the court that the conduct, condition, or surroundings of the child are endangering ~~he~~ the child's health or welfare or those of others, or that ~~he~~ the child may abscond or be removed from the jurisdiction of the court or will not be brought before the court, notwithstanding the service of the summons, the court may endorse upon the summons an order that a law enforcement officer shall serve the summons and take the child into immediate custody and bring ~~him forthwith~~ the child before the court.
4. The summons ~~shall~~ must state that a party is entitled to counsel in the proceedings and that the court will appoint counsel if the party is unable without undue financial hardship to employ counsel.
5. A party, other than the child, may waive service of summons by written stipulation or by voluntary appearance at the hearing. If the child is present at the hearing, ~~he~~ the child's counsel, with the consent of the parent, guardian, or other custodian, or guardian ad litem, may waive service of summons in ~~he~~ the child's behalf.
6. When a child is in detention or shelter care and good cause is shown why service was not completed upon an absent or noncustodial parent, the court may proceed with the hearing on the petition in order to comply with any time limitations under this chapter."

Renumber accordingly

2001 SENATE JUDICIARY

HB 1358

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1358

Senate Judiciary Committee

☐ Conference Committee

Hearing Date March 13th, 2001

| Tape Number | Side A | Side B | Meter # |
|---------------------------|--------|--------|-----------|
| 1 | x | | 36-end |
| | | x | 0-15.4 |
| 2 | | X | 30.7-38.5 |
| March 21 tape 1 | x | | 30.2-39.7 |
| Committee Clerk Signature | | | |

Minutes: **Senator Traynor**, opened the hearing on HB 1358.

Greg Wallace, Assistant State Court Administrator for Trial Courts for the North Dakota Supreme Court, testifies in support of the bill. (testimony attached)

Senator Traynor, so your doing what the supreme court wanted.

Greg Wallace, yes. We are asking that the judge give a temporary order for sixty days.

Senator Traynor, were is that in the bill.

Greg Wallace, on page six line 19; ninety days, page 9 line 4-6; the sixty days.

Senator Traynor, shelter care is defined in the bill?

Greg Wallace, in the child care provision.

Senator Traynor, defined presently on line 5 page 7.

Greg Wallace, continues to read from testimony.

Senator Traynor, the parents can reopen the matter?

Greg Wallace, yes. They would like to be involved in the disposition.

Greg Wallace, on page 2 line 16 and 17, agreement circumstances have been added. Goes over amendments listed on page 2-3.

Senator Trenbeath, I don't agree with what it does. On page 3 line 6, we begin to define a delinquent act and exempts out a traffic offense. One number 7 we say however, that a child admits to a 3900801 it automatically becomes an offense for some reason and then we can fine him. Is that what I'm reading?

Greg Wallace, yes. We moved the language.

Senator Trenbeath, all I'm asking is where does that appear other than this new language. The problem I have is that it provides for a criminal penalty for a non criminal offense. A crime committed by a juvenile is a delinquent act not a criminal offense.

Greg Wallace, it is a traffic related offense. Maybe we need to work on language.

Side B

Senator Trenbeath, on page 12, do you think the deletion over does it. Wouldn't it better to include language that a child doesn't need to be present at a certain age?

Greg Wallace, we received last minute amendments that are attached to my testimony.

Rep. Mahoney, district 33, bill has been explained. Its a cleanup bill.

Senator Trenbeath, How about my comments on juvenile sanctions?

Rep. Mahoney, I'm not sure if we can find DUI's in juvenile court? I would have no objections.

Susan Beehler, mother from mandan, (testimony attached) neutral on the bill. Felony abuse isn't readily done in our state. This bill could address problems in my family.

Senator Traynor, closed the hearing on HB 1358.

DISCUSSION

Page 3
Senate Judiciary Committee
Bill/Resolution Number 1358
Hearing Date March 13th, 2001

**SENATOR WATNE MOTIONED TO MOVE GREG WALLACE'S AMENDMENTS
INTRODUCED TO THE COMMITTEE ON MARCH 19TH, SECONDED BY SENATOR
TRENBEATH. VOTE INDICATED 7 YEAS, 0 NAYS AND 0 ABSENT AND NOT
VOTING. SENATOR WANTE MOTIONED TO DO PASS AS AMENDED SECONDED
BY SENATOR BERCIER. VOTE INDICATED 7 YEAS, 0 NAYS AND 0 ABSENT AND
NOT VOTING. SENATOR WATNE VOLUNTEERED TO CARRY THE BILL.**

[Handwritten initials and date]
3-21-01

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1358

remove
Page 1, line 3, replace the second "subsection" with "subsections 2 and"

Page 12, line 2, "and"

Page 12, line 10, remove the "as over"; and "

Page 12, line 11, remove the overstrike over "e", after "The" insert "If the", remove the overstrike over "child is" and insert immediately thereafter "of sufficient age and understanding to comprehend the proceedings, the child must be", and remove the overstrike over "personally before the court at the provisional hearing."

Page 14, line 5, replace "Subsection" with "Subsections 2 and"

Page 14, line 4, replace "is" with "are"

Page 14, after line 6, insert:

- " 2. An order of disposition committing a delinquent or unruly child to the division of juvenile services continues in force for not more than two years, excluding any period of time the child is on parole from an institution, or until the child is sooner discharged by an institution.
 - a. The court which made the order may extend its duration for additional two-year periods subject to like discharge, if:
 - (1) A hearing is held upon motion of the division, or on the court's own motion, prior to the expiration of the order;
 - (2) Reasonable notice of the hearing and an opportunity to be heard are given to the child and the parent, guardian, or other custodian; and
 - (3) The court finds that the extension is necessary for the treatment or rehabilitation of the child.
 - b. A permanency hearing must be conducted within thirty days after a court determines that reasonable efforts aggravated circumstances of the type described in subdivisions a, c, d, or e of subsection 2 3 of section ~~27-20-32.2~~ are not required 27-20-02 exist, or within twelve months after a child, subject to an order of disposition under this subsection, is considered to have entered foster care, or is continued in foster care following a previous permanency hearing. The permanency hearing may be conducted:
 - (1) By the division of juvenile services as a placement hearing under chapter 27-21; or
 - (2) By the court, if the court requires, or if it appears that an appropriate permanency plan could not be carried out without exceeding the authority of the division of juvenile services."

Renumber accordingly

Date: 3/21/01
Roll Call Vote #: 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1358

Senate Judiciary Committee

☐ Subcommittee on _____

or

☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Move Greg's Amendments from 3/19/01

Motion Made By Watne Seconded By Trenbeath

| Senators | Yes | No | Senators | Yes | No |
|-------------------------|-----|----|-------------|-----|----|
| Traynor, J. Chairman | X | | Bercier, D. | X | |
| Watne, D. Vice Chairman | X | | Nelson, C. | X | |
| Dever, D. | X | | | | |
| Lyson, S. | X | | | | |
| Trenbeath, T. | X | | | | |
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Total (Yes) 7 No 0

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 3/21/01
Roll Call Vote #: 2

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1358

| | | |
|---------------|------------------|------------------|
| Senate | Judiciary | Committee |
|---------------|------------------|------------------|

☐ Subcommittee on _____
or _____

☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken DPA

Motion Made By Watne Seconded By Berrier

[illegible]

Total (Yes) 7 No 0

Absent

Floor Assignment Watne

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1358, as engrossed: Judiciary Committee (Sen. Traynor, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1358 was placed on the Sixth order on the calendar.

Page 1, line 3, replace the second "subsection" with "subsections 2 and"

Page 12, line 2, remove "and"

Page 12, line 10, remove the overstrike over "~~and~~"

Page 12, line 11, remove the overstrike over "~~e~~", after "~~The~~" insert "If the", remove the overstrike over "~~child is~~" and insert immediately thereafter "of sufficient age and understanding to comprehend the proceedings, the child must be", and remove the overstrike over "~~personally before the court at the provisional hearing~~"

Page 14, line 5, replace "Subsection" with "Subsections 2 and"

Page 14, line 6, replace "is" with "are"

Page 14, after line 6, Insert:

- "2. An order of disposition committing a delinquent or unruly child to the division of juvenile services continues in force for not more than two years, excluding any period of time the child is on parole from an institution, or until the child is sooner discharged by an institution.
 - a. The court which made the order may extend its duration for additional two-year periods subject to like discharge, if:
 - (1) A hearing is held upon motion of the division, or on the court's own motion, prior to the expiration of the order;
 - (2) Reasonable notice of the hearing and an opportunity to be heard are given to the child and the parent, guardian, or other custodian; and
 - (3) The court finds that the extension is necessary for the treatment or rehabilitation of the child.
 - b. A permanency hearing must be conducted within thirty days after a court determines that ~~reasonable efforts~~ aggravated circumstances of the type described in subdivisions a, c, d, or e of subsection 2 3 of section 27-20-32.2 are not required 27-20-02 exist, or within twelve months after a child, subject to an order of disposition under this subsection, is considered to have entered foster care, or is continued in foster care following a previous permanency hearing. The permanency hearing may be conducted:
 - (1) By the division of juvenile services as a placement hearing under chapter 27-21; or
 - (2) By the court, if the court requires, or if it appears that an appropriate permanency plan could not be carried out without exceeding the authority of the division of juvenile services."

REPORT OF STANDING COMMITTEE (410)
March 22, 2001 9:17 a.m.

Module No: SR-50-6367
Carrier: Watne
Insert LC: 18297.0201 Title: .0300

Renumber accordingly

2001 TESTIMONY

HB 1358




KEITH E. NELSON
STATE COURT ADMINISTRATOR

State of North Dakota
OFFICE OF STATE COURT ADMINISTRATOR

January 29, 2001

SUPREME COURT
Judicial Wing, 1st Floor
600 E Boulevard Ave Dept 180
BISMARCK, ND 58505-0530
(701) 328-4216
(FAX) 701-328-4480

TO: House Judiciary Committee

FROM: Greg Wallace 

SUBJECT: House Bill 1358

My name is Greg Wallace. I am the Assistant State Court Administrator for Trial Courts for the North Dakota Supreme Court. House Bill 1358 is the result of a task force set up by the Chief Justice and the Director of the Department of Human Services to oversee implementation of the federal Adoption and Safe Families Act.

Overview of Substantive Change

1. Timeframes for children held in shelter care.

The bill draft will require that, if a child is held in shelter care, a petition must be filed within 30 days of the initial shelter care hearing and that the hearing on the petition be held within sixty days of the initial shelter care hearing.

Under current law, the petition must be filed promptly -- promptly is not defined. A hearing on the petition must be held within 30 days of the filing of the petition. However, because of the language, some interpret that the hearing must be held within 14 days of entering shelter care, others place no timeframe on when the hearing must take place.

2. Temporary Custody Order.

Under current law, a juvenile supervisor can issue a 30 day temporary order for the care and custody of suspected deprived children. A shelter care hearing must then be held within 96 hours by a judge or judicial referee. If the child needs continued shelter care, caselaw states that the judge or referee can issue a 14 day custody order or confirm the 30 day temporary custody order of the juvenile supervisor.

The draft will provide that the juvenile supervisor's order will be valid for 96 hours. After the shelter care hearing, the judge or referee will be authorized to issue a custody order of up to 60 days. However, the draft provides that the petition on the charges must be filed within 30 days or the child must be released.

3. Interlocutory Orders.

Under current law, the juvenile courts are required to serve all parties to proceedings, including absentee parents.

This can be a very lengthy process if service has to be accomplished by publication in the newspaper. This is especially troubling if the child is being held in detention or shelter care pending an adjudicatory hearing which is being held up for service. Most courts will hold hearings and issue an interlocutory order, which is valid but under which the case can be reopened on request of the party who has not been served. However, some read the law to say that service of process must be completed before the court can invoke the interlocutory process. The bill draft will clarify that the interlocutory process can be used while service of process is being accomplished by publication.

4. Aggravated Circumstances

Under current law, social services must make reasonable efforts to prevent removal of a child or reunite a family unless "aggravated circumstances" exist. This draft includes on the list of aggravated circumstances the finding that a parent has to be found guilty of felony child abuse. The change does not prohibit reunification efforts, it simply clarifies that the agency does not have to prove that it made reasonable efforts if aggravated circumstances exist.

Detailed Listing of Amendments

Page 2, lines 18-19 - Adds felony child abuse to aggravated circumstances.

Page 3, line 11 - Corrects references to definitions.

Page 3, line 28-29 - Adds definition of detention.

Page 6, line 19 - Changes the length of temporary custody order from issued by juvenile supervisor from 30 days to 96 hours. *Note:* Current law requires a shelter care hearing in 96 hours. The order of the judge or referee will take effect from that point.

Page 6, line 22 - Clarifies that temporary custody order must be reduced to writing within 24 hours, exclusive of holidays and weekends.

Page 6, lines 25-27 - Deletes references to the lay judicial referees. All have retired.

Representative John Mahoney
January 29, 2001
Page 3

Page 7, lines 8-10 - Requires petition to be filed within 30 days of a shelter care hearing if a child is held in shelter care and requires release if the petition is not filed.

Page 7, lines 28-30 - Current law allows the fines for certain traffic offenses in an informal adjustment. This moves the authorization to the appropriate section of the Juvenile Court Act.

Page 8, lines 14-15 - Deleted to coincide with amendments to 27-20-08 (page 10, lines 19-21).

Page 8, lines 22-30 - Deleted and moved to page 13, lines 15-21 for stylistic reasons.

Page 9, lines 3-5 - Allows a judge or referee to issue a shelter care order for up to 60 days.

Page 9, lines 6-13 - Language moved from page 8, line 22-30 for stylistic reasons.

Page 10, line 5 - Adds felony child abuse to reason for filing a petition for termination of parental rights.

Page 10, lines 14-18 - Clarifies that if a child is kept in detention the initial appearance must take place within 14 days of detention and that the adjudicatory hearing must take place within 60 days if a child is in shelter care.

Page 11, line 14 - Removes the requirement that the child be personally before the court. If appropriate child is before the court, age of child may affect whether appearance is appropriate.

Page 11, lines 18-19 and lines 26-27 - Service of process and interlocutory orders.

Page 11, lines 31 - Deleted to clarify fines in informal adjustment.

Page 13, line 5 - Clarifies that aggravated circumstances against any child are reasons for not requiring unification efforts.

Page 13, lines 21-31 - Deleted to conform with federal law.

GW/es
Attachment

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1358

Page 1, line 2, delete "subsection 1 of"

Page 1, line replace the first "section" with "sections", delete "sections", and after "27-20-25" insert a comma

Page 2, line 18, remove the overstrike over "or" and after "or" insert "subdivision a of subsection 1 of section"

Page 10, line 4, remove the overstrike over "or" and after "or" insert "subdivision a of subsection 1 of section"

Page 10, line 11, replace "Subsection 1 of section" with "Section" and replace lines 13 through 28 with:

"27-20-22. Summons.

1. After the petition has been filed, the court shall fix a time for hearing ~~thereon, which, Except as otherwise provided in this subsection, the hearing~~ may not be later than thirty days after the filing of the petition. If the child is in detention, the time for the initial hearing may not be later than fourteen days after the child has been taken into custody. If a child is in shelter care, the hearing on the petition must be held within sixty days of the initial shelter care hearing. The court may extend the time for hearing for good cause shown. The court shall direct the issuance of a summons to the parents, guardian, or other custodian, a guardian ad litem, and any other persons as appear to the court to be proper or necessary parties to the proceeding, requiring them to appear before the court at the time fixed to answer the allegations of the petition. The summons must also be directed to the child if he is fourteen or more years of age or is alleged to be a delinquent or unruly child. A copy of the petition must accompany the summons unless the summons is served by publication in which case the published summons must indicate the general nature of the allegations and where a copy of the petition can be obtained.

2. The court may endorse upon the summons an order directing the parents, guardian, or other custodian of the child to appear personally at the hearing and directing the person having the physical custody or control of the child to bring the child to the hearing.
3. If it appears from affidavit filed or from sworn testimony before the court that the conduct, condition, or surroundings of the child are endangering his health or welfare or those of others, or that he may abscond or be removed from the jurisdiction of the court or will not be brought before the court, notwithstanding the service of the summons, the court may endorse upon the summons an order that a law enforcement officer shall serve the summons and take the child into immediate custody and bring him forthwith before the court.
4. The summons shall state that a party is entitled to counsel in the proceedings and that the court will appoint counsel if the party is unable without undue financial hardship to employ counsel.
5. A party, other than the child, may waive service of summons by written stipulation or by voluntary appearance at the hearing. If the child is present at the hearing, his counsel, with the consent of the parent, guardian, or other custodian, or guardian ad litem, may waive service of summons in his behalf.
6. When a child is in detention or shelter care, and good cause is shown why service was not completed upon an absent or non-custodial parent, the court may proceed with the hearing on the petition in order to comply with any time limitations under this chapter. "

Renumber accordingly

Testimony HB 1358

Tuesday January 29, 2001 Judiciary Committee

Prairie Room 2:00 PM

Good afternoon Chairman DeKrey and members of the committee

My name is Susan Beehler; I am married and a working mother of five children from Mandan.

I do not have a real position on this bill for or against.

But I do think it could address a problem my family had, maybe.

In 1998 my husband's ex moved abruptly in one night from Mandan to Fargo taking his daughter with her. His ex was an addict and had started using again. She went for treatment twice during this period. After overdosing for the second time, In July 1999 social services finally stepped in and removed my stepdaughter and another daughter of hers from the home. His ex was committed to Jamestown from July to October. My stepdaughter came to live with us and the other daughter went into foster care. We were making motions for custody but jurisdiction became a problem, the ex was living in Fargo and currently residing in Jamestown, upon her release the ex moved back to Mandan leaving her daughter in Fargo in foster care. We had an attorney in Fargo and one in Bismarck.

After being out of the state hospital about a week the ex wanted to see my stepdaughter, like idiots we let her go, the ex refused to bring her back social services in Burleigh County would not intervene and Cass County said it was out of their hands. Where was the protection for the child?

In this bill is there some way to automatically give temporary custody to a parent or relative without having to put them in foster care? Maybe under section 2 e or h on page 6. The temporary custody would be in effect until an official hearing on child custody could be heard in the correct jurisdiction.

On page 6 under line 19, 96 hours does not seem long enough. For us it would have meant another trip to Fargo for a 10-minute hearing to continue the shelter care of my stepdaughter. As it was we appeared in court monthly from July till October and in December. The Cass county Judges refused to do anything about the abduction, the police could do nothing either. We went from seeing my stepdaughter every day to not being able to even hardly being able to talk to her once the mom had her back. That is a lot of expense and hardship on our family traveling to and from, arranging child care for our school aged children.

Page 9 If the offender has confessed to or plea-bargained out of child abuse charges I don't think they "may" be left in the household. The child needs to be protected and leaving it to a judge may not insure that protection. Even though my stepdaughter was found to be deprived by her mother, the judge let her stay with her mom, because of the "happy" defense, as long as my stepdaughter appeared to be happy she could stay with her abuser. To me that was appalling.

On page 8 line 22 really leaves it wide open, if they can be found. Thankfully my husband has a good relationship with his daughter and out of our concern we were able to follow up on the events that transpired. We were not notified of the girls being taken into custody, we searched until we found out what happened and where they were. The other father was not notified until his daughter was already in foster care.

We asked the prosecutor to please put our stepdaughter into the system if necessary to protect her, because we had no legal right to protect here under the current custody laws. The prosecutor said it was not in our best interest, but it was not ourselves we were worried about it was our child.

To this day I have a hard time believing what happened, the offending parents rights were protected but little regard was given to the child.

If this happened to my family it could happen to someone else's is there any way HB1358 could stop this from happening?

Our state has been tough on drug crimes but what about the victims of the abuse that goes along with it. The other daughter stayed in foster care for almost a year, my stepdaughter stayed with her mom, a custody hearing was held while the other daughter was still in foster care, and the Judge said to the mom quit neglecting the kids and she retained custody. We are not allowed to take my stepdaughter to a counselor because her visitation schedule does not include times we could go for counseling, her mother refuses to take her.

Susan Beehler
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If the custodial parent is incarcerated, committed to a in-patient, treatment program, on probation or supervised release, or a shelter care hearing has been requested by Social Services, any court may grant temporary custody to the non-custodial parent, unless the court finds another custody arrangement is in the best interests of the child. To return the child to the parent the burden of proof will be on that parent that it is offending parent. The temporary order will be in effect until a permanent custody order can be heard. At the time temporary order is made if suitable a visitation schedule will be included or a protection order will be granted to the child/parent. The temporary order cannot be violated upon release of the parent.

If a non-custodial parent is incarcerated, committed to a in-patient treatment program, on probation or supervised release, or a shelter care hearing has been requested by Social Services any court may review the visitation or parenting plan or terminate rights temporarily until a new order can be granted.



KEITHE E. NELSON
STATE COURT ADMINISTRATOR

State of North Dakota
OFFICE OF STATE COURT ADMINISTRATOR

March 13, 2001

SUPREME COURT
Judicial Wing, 1st Floor
600 E. Boulevard Ave. Dept. 180
BISMARCK, ND 58505-0530
(701) 328-4216
(FAX) 701-328-4480

TO: Senate Judiciary Committee

FROM: Greg Wallace

SUBJECT: House Bill 1358

My name is Greg Wallace. I am the Assistant State Court Administrator for Trial Courts for the North Dakota Supreme Court. House Bill 1358 is the result of a task force set up by the Chief Justice and the Director of the Department of Human Services to oversee implementation of the federal Adoption and Safe Families Act. The draft includes several technical corrections to the Juvenile Court Act and a few substantive changes.

Overview of Substantive Change

1. Timeframes for children held in shelter care.

The bill draft will require that, if a child is held in shelter care, a petition must be filed within 30 days of the initial shelter care hearing and that the hearing on the petition be held within sixty days of the initial shelter care hearing.

Under current law, the petition must be filed "promptly" – however, promptly is not defined. A hearing on the petition must be held within 30 days of the filing of the petition. However, because "promptly" is not defined, some interpret that the hearing must be held within 14 days of entering shelter care, others place no timeframe on when the petition must be filed and thus no timeframe on when the hearing must take place.

2. Temporary Custody Order.

Under current law, a juvenile court officer may issue a 30 day temporary order for the care and custody of children suspected of being deprived. A shelter care hearing must then be held within 96 hours by a judge or judicial referee. If the child needs continued shelter care, caselaw states that the judge or referee can issue a 14 day custody order. Thus, a court officer actually has more authority than a judge.

The bill will provide that the juvenile court officer's order will be valid for 96 hours. After the shelter care hearing, the judge or referee will be authorized to issue a custody order of up to 60

days. However, the draft provides that the petition on the charges must be filed within 30 days or the child must be released.

3. Interlocutory Orders.

Under current law, the juvenile courts are required to serve all parties to proceedings, including absentee parents.

This can be a very lengthy process if service has to be accomplished by publication in the newspaper. This is especially troubling if the child is being held in detention or shelter care pending an adjudicatory hearing which is being held up for service. Most courts will hold hearings and issue an interlocutory order, which is valid but under which the case can be reopened on request of the party who has not been served. However, some read the law to say that service of process must be completed before the court can invoke the interlocutory process. The bill draft will clarify that the interlocutory process can be used while service of process is being accomplished by publication.

4. Aggravated Circumstances

Under current law, social services must make reasonable efforts to prevent removal of a child or reunite a family unless "aggravated circumstances" exist. This draft includes on the list of aggravated circumstances, the finding that a parent has to be found guilty of felony child abuse. The change does not prohibit reunification efforts, it simply clarifies that the agency does not have to prove that it made reasonable efforts if aggravated circumstances exist.

Detailed Listing of Amendments

Page 2, lines 16-17 - Adds felony child abuse to aggravated circumstances.

Page 3, line 9 - Corrects references to definitions.

Page 3, lines 26-27 - Adds definition of detention.

Page 6, line 19 - Changes the length of temporary custody order from issued by juvenile supervisor from 30 days to 96 hours. **Note:** Current law requires a shelter care hearing in 96 hours. The order of the judge or referee will take effect from that point.

Page 6, lines 21-22 - Clarifies that temporary custody order must be reduced to writing within 24 hours, exclusive of holidays and weekends.

Senate Judiciary Committee

March 13, 2001

Page 3

Page 6, lines 25-27 - Deletes references to the lay judicial referees. All have retired.

Page 7, lines 8-10 - Requires petition to be filed within 30 days of a shelter care hearing if a child is held in shelter care and requires release if the petition is not filed.

Page 7, line 22 - Stylistic change.

Page 7, lines 28-30 - Current law allows the fines for certain traffic offenses in an informal adjustment. This moves the authorization to the appropriate section of the Juvenile Court Act.

Page 8, lines 15-16 - Deleted to coincide with amendments to 27-20-22 (page 10, lines 19-21).

Page 8, lines 24-31 - Deleted and moved to page 9, lines 7-14 for stylistic reasons.

Page 9, lines 4-6 - Allows a judge or referee to issue a shelter care order for up to 60 days.

Page 9, lines 7-14 - Language moved from page 8, line 24-31 for stylistic reasons.

Page 10, line 5 - Adds felony child abuse to reason for filing a petition for termination of parental rights.

Page 10, lines 15-20 - Clarifies that if a child is kept in detention the initial appearance must take place within 14 days of detention and that the adjudicatory hearing must take place within 60 days if a child is in shelter care.

Page 11, lines 6, 7, 11, 13, 18, 19 - Stylistic changes.

Page 11, lines 21-26 - Allows the court to proceed with a hearing prior to completion of service of process on an absent parent if good cause is shown why service hasn't been accomplished.

Page 11, line 28 - Allows proceedings with an interlocutory order while service is being accomplished.

Page 12, line 11 - Removes the requirement that the child be personally before the court. If appropriate child is before the court, age of child may affect whether appearance is appropriate.

Senate Judiciary Committee
March 13, 2001
Page 4

Page 12, lines 23 and 24 - Relate to service of process.

Page 12, line 28 - Deleted to clarify fines in informal adjustment.

Page 13, line 5 - Clarifies that aggravated circumstances against any child are reasons for not requiring unification efforts.

Page 14, lines 18-28 - Deleted to conform with federal law.

Page 15, line 4 - Added to clarify venue question.

GW/cs
Attachment



KEITHE E. NELSON
STATE COURT ADMINISTRATOR

State of North Dakota
OFFICE OF STATE COURT ADMINISTRATOR

March 13, 2001

SUPREME COURT
Judicial Wing, 1st Floor
600 E. Boulevard Ave. Dept 180
BISMARCK, ND 58505-0530
(701) 328-4216
(FAX) 701-328-4480

TO: Senator Jack Traynor
Members of the Senate Judiciary Committee

FROM: Greg Wallace (328-4269)

SUBJECT: House Bill 1358

After hearing the concern of the Senate Judiciary Committee relating to a child being present at a hearing, I would suggest the attached amendments.

The Committee also questioned the amendments found on page 7, lines 28-30. The amendments intended to clarify the authority to fine those who admit to DUI or actual physical control violations in the informal adjustment process.

It is our belief that we currently have that authority. Previously, the Legislature gave the juvenile courts the authority to impose fines for certain traffic related offense including manslaughter resulting from the operation of a motor vehicle, negligent homicide, DUI, and physical control violations when the case was processed formally. When considering fines for the formal process, language was amended into the bill authorizing fines for "traffic related offenses" in the informal process. Since the juvenile courts do not have jurisdiction over "traffic offenses" the offenses listed in the section relating to formal cases have been considered "traffic related".

We believe that the intent of the Legislature was to allow fines in these cases. Unfortunately, the current language could appear to give a juvenile court officer the authority to commit a child to the Youth Correctional Center for "traffic related" offenses, or it could be read to not even give the authority to fine.

The amendments found on page 7, lines 28-30, are intended to clarify existing law and not to extend any current authority.

Finally, a witness spoke to the need for "protection orders". I believe that this authority already exists under N.D.C.C. §27-20-50 (attached).

GW/cs
Attachment

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1358

Page 12, line 11, remove the overstrike over "e", after "The" insert "If the", remove the overstrike over "~~child is~~" and insert immediately thereafter "of sufficient age and understanding to comprehend the proceedings, the child must be", and remove the overstrike over "~~personally before the court at the provisional hearing.~~"

Renumber accordingly

27-20-50. Protective order. On 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. An order of disposition of a delinquent, unruly, or deprived child has been or is about to be made in a proceeding under this chapter;
2. The court finds that the conduct (a) is or may be detrimental or harmful to the child and (b) will tend to defeat the execution of the order of disposition; and
3. Due notice of the application or motion and the grounds therefor and an opportunity to be heard thereon have been given to the person against whom the order is directed.

Testimony HB 1358**March 13, 2001 Judiciary Committee****Port Lincoln Room 10:00 am****Good afternoon Chairman Tranyor and members of the committee**

My name is Susan Beehler; I am married and a working mother of five children from Mandan.

My position is neutral on this bill. In the engrossed bill they have changed it from abuse to felony abuse, I feel this is not broad enough and preferred the original way.

But I do think it could address a problem my family had, maybe.

In 1998 my husband's ex moved abruptly in one night from Mandan to Fargo taking his daughter with her. His ex was an addict and had started using again. She went for treatment twice during this period. After overdosing for the second time, In July 1999 social services finally stepped in and removed my stepdaughter and another daughter of hers from the home. His ex was committed to Jamestown from July to October. My stepdaughter came to live with us and the other daughter went into foster care. We were making motions for custody but jurisdiction became a problem, the ex was living in Fargo and currently residing in Jamestown, upon her release the ex moved back to Mandan leaving her one daughter in Fargo in foster care. We had an attorney in Fargo and one in Bismarck.

After being out of the state hospital about a week the ex wanted to see my stepdaughter, like idiots we let her go, the ex refused to bring her back social services in Burleigh County would not intervene and Cass County said it was out of their hands. Where was the protection for the child?

In this bill is there some way to automatically give temporary custody to a parent or relative without having to put them in foster care? Maybe under section 2 e or h on page 6. The temporary custody would be in effect until an official hearing on child custody could be heard in the correct jurisdiction.

On page 6 under line 19, 96 hours does not seem long enough. For us it would have meant another trip to Fargo for a 10-minute hearing to continue the shelter care of my stepdaughter. As it was we appeared in court monthly from July till October and in December. The Cass county Judges refused to do anything about the abduction, the police could do nothing either. We went from seeing my stepdaughter every day to not being able to even hardly being able to talk to her once the mom had her

back. That is a lot of expense and hardship on our family traveling to and from, arranging child care for our school aged children.

Page 9 If the offender has confessed to or plea-bargained out of child abuse charges I don't think they "may" be left in the household. The child needs to be protected and leaving it to a judge may not insure that protection. Even though my stepdaughter was found to be deprived by her mother, the judge let her stay with her mom, because of the "happy" defense, as long as my stepdaughter appeared to be happy she could stay with her abuser. To me that was appalling.

On page 8 line 22 really leaves it wide open, if they can be found. Thankfully my husband has a good relationship with his daughter and out of our concern we were able to follow up on the events that transpired. We were not notified of the girls being taken into custody, we searched until we found out what happened and where they were. The other father was not notified until his daughter was already in foster care.

We asked the prosecutor to please put our stepdaughter into the system if necessary to protect her, because we had no legal right to protect here under the current custody laws. The prosecutor said it was not in our best interest, but it was not ourselves we were worried about it was our child.

To this day I have a hard time believing what happened, the offending parents rights were protected but little regard was given to the child.

If this happened to my family it could happen to someone else's is there any way HB1358 could stop this from happening?

Our state has been tough on drug crimes but what about the victims of the abuse that goes along with it. The other daughter stayed in foster care for almost a year, my stepdaughter stayed with her mom, a custody hearing was held while the other daughter was still in foster care, and the Judge said to the mom quit neglecting the kids and she retained custody. We have not been allowed to take my stepdaughter to a counselor because her visitation schedule does not include times we could go for counseling, her mother refuses to take her. We have finally after two years found a counselor that can work with our schedule and my stepdaughter will be able to go. For my stepdaughter it was very traumatic and she is finally starting to open up and talk about what went on. Just this weekend she told us she couldn't get into her security apartment in Fargo because her mom was passed out, so her and her sister climbed over the balcony let themselves in, finding there mom passed out in

her vomit. They did the smart thing and called their aunt who came and got them. This aunt did not tolerate the abuse or cover it up like family members did in Indian.

The safety of the children needs to be put first, if two children are removed from the home and a shelter care hearing is held, one is put in foster care and another released to a relative or parent, that person needs to have a temporary protection custody order otherwise the child is not protected and can be removed by the offending parent. My stepdaughter's mom was not ready to take her daughter back. My stepdaughter was traumatized by the situation. Her mother did not allow her to see her dad. One night during this time, my step-daughter called crying, begging to come see her dad, her mom wouldn't let her, my husband called back to check on her and they would not answer the phone. We were frightened that her mom and boyfriend were fighting. My husband drove by their house to see if a light was on and vehicles were home, they were. They were home. I panicked I called the police to do a welfare check. I forgot the ex's boyfriend had a police scanner, they knew the cops were coming. When the police arrived my stepdaughter told them she had not called her dad. Nothing seemed amiss the cops left. A few months later my stepdaughter told me she was so frightened that night her mom and boyfriend were fighting, she wanted to leave. I believe the boyfriend has an extremely bad temper, the girls have told us another time they hid in a closet while he trashed their mom's house. Our stepdaughter also has suffered with passive aggressive behavior, she threw her kitten in the toilet, but now I wonder if the mom's boyfriend did it to scare her, she also has kicked a hole in her wall at home, because of her anger. We had my step-daughter for 6 weeks in the summer, during that time her sister was released from foster care, I felt sorry for her because she was left home alone, she was 11 but just coming out of foster care I thought it was not right. Social Services would not intervene.

Please in passing this bill attach an amendment that will allow a parent or relative outside the foster care system to protect a child until a custody hearing or a social worker can confirm the offending parent has taken necessary steps as if the child is in the foster care system. Please protect the child

Susan Beehler
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KATHIE E. NELSON
STATE COURT ADMINISTRATOR

State of North Dakota
OFFICE OF STATE COURT ADMINISTRATOR

March 13, 2001

SUPREME COURT
Judicial Wing - 1st Floor
600 E. Boulevard Ave Dept. 100
BISMARCK, ND 58105-0100
(701) 328-4210
FAX: (701) 328-4486

TO: Senate Judiciary Committee

FROM: Greg Wallace 

SUBJECT: Proposed Amendments to House Bill 1358

Attached please find proposed amendments to House Bill 1358. The amendments serve to simplify what is currently required by state law. Federal regulations requires "permanency hearings" with 30 days if a finding that aggravated circumstances exists.

North Dakota law requires the permanency hearing within 30 days of a finding that "reasonable efforts" are not required. The language is much broader than what is required under federal law and regulation and has the potential of adding several hearings to a case.

We ask that you support his clarification to the law.

GW/es
Attachment

**PROPOSED AMENDMENTS
TO
ENGROSSED HOUSE BILL NO. 1358**

Page 1, line 3, replace the second "subsection" with "subsections 2 and"

Page 14, line 5, replace "Subsection" with "Subsections 2 and"

Page 14, after line 6, insert:

- "2. An order of disposition committing a delinquent or unruly child to the division of juvenile services continues in force for not more than two years, excluding any period of time the child is on parole from an institution, or until the child is sooner discharged by an institution.
- a. The court which made the order may extend its duration for additional two-year periods subject to like discharge, if:
- (1) A hearing is held upon motion of the division, or on the court's own motion, prior to the expiration of the order;
 - (2) Reasonable notice of the hearing and an opportunity to be heard are given to the child and the parent, guardian, or other custodian; and
 - (3) The court finds that the extension is necessary for the treatment or rehabilitation of the child.
- b. A permanency hearing must be conducted within thirty days after a court determines that ~~reasonable efforts~~ aggravated circumstances of the type described in subdivisions a, c, d, or e of subsection 2 3 of section ~~27-20-32-2~~ are not required 27-20-02 exist, or within twelve months after a child, subject to an order of disposition under this subsection, is considered to have entered foster care, or is continued in foster care following a previous permanency hearing. The permanency hearing may be conducted:
- (1) By the division of juvenile services as a placement hearing under chapter 27-21; or
 - (2) By the court, if the court requires, or if it appears that an appropriate permanency plan could not be carried out without exceeding the authority of the division of juvenile services."

Renumber accordingly



KATHIE E. NELSON
STATE COURT ADMINISTRATOR

State of North Dakota
OFFICE OF STATE COURT ADMINISTRATOR

March 19, 2001

SUPREME COURT
Judicial Wing, 3rd Floor
601 E. Broadway Ave. Dept. 10
BISMARCK, ND 58505-0001
PHONE: 328-4269
FAX: 328-4269

TO: Senator Jack Traynor
Members of the Senate Judiciary Committee

FROM: Greg Wallace (328-4269) *GW*

SUBJECT: House Bill 1358

The Committee asked that two sets of amendments I had proposed be combined. They have been, in the attached document.

The suggested amendments for lines 11 on page 12 were drafted to respond to concerns raised by Committee members. Under the proposed amendments, the court could proceed with a hearing proceeding with or without the child being present, if the child is too young to comprehend the proceeding.

The amendments to line 6, on page 14, were presented at the hearing. They relate to holding a permanency hearing after "aggravated circumstances" have been found. The amendments are designed to eliminate some duplicative hearings.

GW/es
Attachment

**PROPOSED AMENDMENTS
TO
ENGROSSED HOUSE BILL NO. 1358**

Page 1, line 3, replace the second "subsection" with "subsections 2 and"

Page 12, line 11, remove the overstrike over "e:", after "The" insert "[f] the", remove the overstrike over "child-is" and insert immediately thereafter "of sufficient age and understanding to comprehend the proceedings, the child must be", and remove the overstrike over "personally before the court at the provisional hearing:"

Page 14, line 5, replace "Subsection" with "Subsections 2 and"

Page 14, after line 6, insert:

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 - a. The court which made the order may extend its duration for additional two-year periods subject to like discharge, if:
 - (1) A hearing is held upon motion of the division, or on the court's own motion, prior to the expiration of the order;
 - (2) Reasonable notice of the hearing and an opportunity to be heard are given to the child and the parent, guardian, or other custodian; and
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 - (1) By the division of juvenile services as a placement hearing under chapter 27-21; or
 - (2) By the court, if the court requires, or if it appears that an appropriate permanency plan could not be carried out without exceeding the authority of the division of juvenile services."

Renumber accordingly