**2023 HOUSE JUDICIARY**

**HB 1263**

# 2023 HOUSE STANDING COMMITTEE MINUTES

**Judiciary Committee**
Room JW327B, State Capitol

HB 1263
1/24/2023

| Relating to the Juvenile Court Act definitions. |
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Chairman Klemin opened the hearing on HB 1263 at 11:02 AM. Members present: Chairman Klemin, Vice Chairman Karls, Rep. Bahl, Rep. Christensen, Rep. Cory, Rep. Henderson, Rep. S. Olson, Rep. Rios, Rep. S. Roers Jones, Rep. Satrom, Rep. Schneider, Rep. VanWinkle, Rep. Vetter

**Discussion Topics:**

- Abandon definition
- Implementation
- Diagnosis
- Mental evaluation

Daniel Gulya, Attorney, ND Protection and Advocacy Project: Testimony #15837

Travis Finck: Executive Director, NDCLCI. Testimony #15722

Hearing closed at 11:23 AM.

Delores Shimek, Committee Clerk

# 2023 HOUSE STANDING COMMITTEE MINUTES

**Judiciary Committee**
Room JW327B, State Capitol

HB 1263
1/30/2023

| Relating to the Juvenile Court Act definitions. |
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Chairman Klemin opened the meeting on HB 1263 at 3:45 PM. Members present: Chairman Klemin, Vice Chairman Karls, Rep. Bahl, Rep. Christensen, Rep. Cory, Rep. Henderson, Rep. S. Olson, Rep. Rios, Rep. S. Roers Jones, Rep. Satrom,, Rep. Schneider, Rep. VanWinkle, Rep. Vetter

**Discussion Topics:**

- Individual justice planning

Rep. Schneider moved a Do Pass;
Seconded by Rep. Shannon Roers Jones

| Representatives | Vote |
|---|---|
| Representative Lawrence R. Klemin | Y |
| Representative Karen Karls | Y |
| Representative Landon Bahl | Y |
| Representative Cole Christensen | N |
| Representative Claire Cory | Y |
| Representative Donna Henderson | Y |
| Representative SuAnn Olson | Y |
| Representative Nico Rios | Y |
| Representative Shannon Roers Jones | Y |
| Representative Bernie Satrom | Y |
| Representative Mary Schneider | Y |
| Representative Lori VanWinkle | N |
| Representative Steve Vetter | N |

Roll Call Vote 10 Yes 3 No 0 Absent Carrier: Rep. Schneider

Hearing closed at 3:49 PM.

Delores Shimek, Committee Clerk

**REPORT OF STANDING COMMITTEE**

**HB 1263: Judiciary Committee (Rep. Klemin, Chairman)** recommends **DO PASS** (10 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). HB 1263 was placed on the Eleventh order on the calendar.

**2023 SENATE JUDICIARY**

**HB 1263**

# 2023 SENATE STANDING COMMITTEE MINUTES

**Judiciary Committee**
Peace Garden Room, State Capitol

HB 1263
4/3/2023

A bill relating to the powers of the director of juvenile court; relating to the Juvenile Court Act definitions.

9:30 AM Chairman Larson opened the meeting.
Chairman Larson and Senators Myrdal, Luick, Estenson, Sickler, Paulson and Braunberger are present.

**Discussion Topics:**

- Juvenile dispositions
- Juvenile Court directors
- Juvenile services
- Juvenile interventions

9:30 AM Daniel Gulya, Protection and Advocacy of North Dakota, introduced the bill and provided written testimony #27178.

9:36 AM Carlotta McCleary, Executive Director, Mental Health America of North Dakota, and Executive Director of the North Dakota Federation of Families for Children's Mental Health, testified in favor of the bill and provided written testimony #27217.

9:43 AM Travis Finck, Executive Director, North Dakota Commission on Legal Counsel for Indigents, testified in favor of the bill and provided written testimony #27189.

9:44 AM Chairman Larson closed the public hearing.

9:44 AM Senator Estenson moved to Do Pass the bill. Motion is seconded by Senator Myrdal.
9:44 AM Roll call vote was taken.

| Senators | Vote |
|---|---|
| Senator Diane Larson | Y |
| Senator Bob Paulson | Y |
| Senator Jonathan Sickler | Y |
| Senator Ryan Braunberger | Y |
| Senator Judy Estenson | Y |
| Senator Larry Luick | Y |
| Senator Janne Myrdal | Y |

Motion passes 7-0-0.

Senator Larson will carry the bill.
This bill does not affect workforce development.
9:43 AM Chairman Larson closed the meeting.

*Rick Schuchard, Committee Clerk*

**REPORT OF STANDING COMMITTEE**

**HB 1263: Judiciary Committee (Sen. Larson, Chairman)** recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1263 was placed on the Fourteenth order on the calendar. This bill does not affect workforce development.

**TESTIMONY**

**HB 1263**

HB 1263
68th Legislative Assembly
House Judiciary Committee
January 24, 2023
Testimony of Travis W. Finck, Executive Director, NDCLCI

Chairman Klemin, Vice Chair Karls, my name is Travis Finck and I am the Executive Director for the North Dakota Commission on Legal Counsel for Indigents. The Commission is the state agency responsible for delivery of public defense services in North Dakota.

The Commission rises in support of HB 1263. Individualized Justice Plans have been used to assist children. Individualized Justice Plans provide the juvenile court with another tool to help achieve the goals of the juvenile court, which is rehabilitation. The Commission has provided training to our attorneys on Individualized Justice Plans and our attorneys have found success in helping clients with these plans.

Chairman Klemin, members of the House Judiciary, for the reasons stated herein, the Commission on Legal Counsel urges a DO PASS recommendation.

Respectfully Submitted:

Travis W. Finck
Executive Director, NDCLCI

House Judiciary Committee

House Bill 1263 – January 24, 2023

Testimony of Daniel Gulya, North Dakota Protection and Advocacy Project (P&A)

Greetings, Chair Klemin and members of the House Judiciary Committee. My name is Dan Gulya and I'm an attorney with the North Dakota Protection and Advocacy Project (P&A). P&A protects the human, civil and legal rights of people with disabilities. The agency's programs and services seek to make positive changes for people with disabilities where we live, learn, work and play.

I am here to testify about our request to include the Individual Justice Plan process, or the IJP (as we call it), in the Juvenile Court Act. The IJP is a voluntary, collaborative tool to create a plan to address the behaviors of persons with cognitive or functional disabilities, when their disabilities manifest in a way that might lead or has lead to involvement with the justice system. Over the past two years, P&A has modernized our informational manual and gave over 20 presentations statewide to raise awareness of the IJP process, and we urge you to support this bill to give it a continuing presence in the justice system beyond constant involvement from P&A.

The IJP is used for juveniles with cognitive disabilities. The youth's disability(ies) must be tied to the at-risk behavior or behavior presenting as delinquent (criminal) or identifying

the youth as a Child in Need of Services (CHINS). Eligibility for an IJP is based upon a mental/cognitive impairment presenting in a youth with a:

- Developmental disability
- Brain injury
- Neurodevelopmental disorder that affects brain function
- Mental illness

The IJP planning process brings together a team of individuals involved in a juvenile's life. Depending on circumstances and need, this may be family, the educational system, social services, or law enforcement. The planning process starts by identifying and assessing the root of behavior, then creates recommendations utilizing the least restrictive, most effective alternative, with an identifiable outcome and review process.

For the past biennium, P&A has been involved in an effort to modernize our IJP materials and raise awareness. The IJP was developed in the developmental disability community in the 1980s to address the behaviors of persons with disabilities, when their disabilities manifest in a way that might lead to involvement with the justice system. In 2004, ND P&A initiated a collaborative effort to revise the manual with a statewide group including DHS, DOCR, the AG's office, and the State Bar. In 2021, P&A revised the informational manual, and did a series of presentations to groups that reached 514 individuals in the broad spectrum of parties interested in juvenile justice, from education

and social services into the justice system, including to the 2021-2023 Interim Judiciary Committee in March 2022.

P&A believes that the IJP process adds value at the intersection of the educational and human services systems with the justice system, by tying together services and outlining a proactive path for the diversion of individuals with disabilities who manifest disruptive behaviors due to that disability.

I can give you concrete examples of how this process helps people.

a) One of our juvenile clients with Disruptive Mood Dysregulation Disorder and ADHD was charged with a C felony for assaulting emergency personnel at an emergency room. The client was referred to Protection and Advocacy for assistance with an Individual Justice Plan (IJP). When the client appeared in court, the attorney informed the court that the client was working with Protection and Advocacy on developing an Individual Justice Plan. The client agreed to work with an agency to monitor the IJP, which will be in effect for a year, and the charge was modified to a misdemeanor.
As a result of the IJP, the client has an individualized plan of action, court fees were waived, the charge was reduced, and consequences resulted for the crime that are in alignment with the mental health condition and the client's abilities. In addition, the client will have access to supports and services to meet their mental health needs and assist them in avoiding further engagement in criminal activity.

b) P&A received a referral regarding a Native American juvenile who had become involved in the juvenile justice system as a result of disability-related behavior. The juvenile has a neurological impairment related to a brain tumor. Services were provided to the juvenile to address behavioral support needs that were primarily stemming from challenges at school. P&A supported the juvenile's team to complete an IJP assessment, which identified that additional support would be helpful to the juvenile, along with the formal development of an individual justice plan (IJP). The juvenile's IJP was accepted by the court as an appropriate remedy and the formal charges were dismissed. Juvenile court staff did identify a need for the child to remain engaged with services as a condition of the dismissal.

These results may not occur without the IJP as a roadmap to suggest how and who to coordinate services. This bill aims to find a permanent home for this concept and to express its potential importance in helping to plan the diversion of juveniles from justice services to social services. My previous job as a public defender for the State of North Dakota opened my eyes to the number of persons with cognitive disabilities that become justice-involved, and how that system is often challenged to figure out how to appropriately divert them. During five years of working indigent public defense and three years of prosecuting, I never heard of the IJP process.

Despite P&A's efforts to raise awareness, the utilization of IJPs in many cases depends on the individual actors in systems that often are somewhat siloed. Over the past year,

P&A has worked on over 90 adult and juvenile requests for assistance on IJPs. While that is a tremendous step forward, the statistics on juvenile referrals from the Department of Public Instruction indicate that on average 30% of juveniles referred are SPED students or have IEPs. From your other testimony you know that the CHINS and delinquency referral numbers are thousands per year, which tells us there is a population that might benefit from increased awareness of this process. This bill, in conjunction with our prior efforts, will hopefully give the IJP process a lasting presence in your efforts to properly address some of the behavior of youth with cognitive disabilities.

I respectfully request the Committee support HB 1263. Thank you for your time and I'd be happy to address any questions.

Daniel Gulya, Attorney, Protection & Advocacy Project

danigulya@nd.gov

**Senate Judiciary Committee**

**House Bill 1263 – April 3, 2023**

Testimony of Daniel Gulya, North Dakota Protection and Advocacy Project (P&A)

Greetings, Chair Larson and members of the Senate Judiciary Committee. My name is Dan Gulya and I'm an attorney with the North Dakota Protection and Advocacy Project (P&A). P&A protects the human, civil and legal rights of people with disabilities.

P&A would like your support for this bill which includes the Individual Justice Plan process, or the IJP as we call it, in the Juvenile Court Act. The IJP is a voluntary, collaborative tool to create a plan to address the behaviors of persons with diagnosed cognitive or functional disabilities when their disabilities manifest in a way that might lead or has led to at-risk behavior. The IJP is used for juveniles with cognitive disabilities tied to behavior presenting as delinquent (criminal) or identifying the youth as a Child in Need of Services (CHINS). Eligibility for an IJP is based upon a mental/cognitive impairment presenting in a youth with a:

- Developmental disability; or
- Brain injury; or
- Neurodevelopmental disorder that affects brain function; or
- Mental illness.

The IJP process brings together a team involved in a juvenile's life. Depending on circumstances and need, this could include family, educators, social services case managers, medical professionals- anyone in the areas of a juvenile's life touched by this behavior. The process starts by assessing the impairment at the root of the behavior,

then creates recommendations from that with an identifiable outcome and a review process.

For the past biennium, P&A has been involved in an effort to modernize our IJP educational materials and raise awareness. In 2021and 2022, P&A revised the informational manual and did presentations that reached 514 individuals in the broad spectrum of parties interested in juvenile justice, from education to social services to the justice system, including to the 2021-2023 Interim Judiciary Committee.

P&A believes that the IJP process adds value at the intersection of the educational and human services systems with the justice system, by tying together services and outlining a proactive path for the diversion of individuals with disabilities who manifest disruptive behaviors due to that disability.

I can give you concrete examples of how this process helps people.

a) One of our juvenile clients with Disruptive Mood Dysregulation Disorder and ADHD was charged with a C felony for assaulting emergency personnel at an emergency room. The client was referred to Protection and Advocacy for assistance with an Individual Justice Plan (IJP). When the client appeared in court, the attorney informed the court that the client was working with Protection and Advocacy on developing an Individual Justice Plan. The client agreed to work with an agency to monitor the IJP, which will be in effect for a year, and the charge was modified to a misdemeanor.
As a result of the IJP, the client has an individualized plan of action, and consequences resulted for the crime that are in alignment with the mental health condition. In addition, the client will have access to supports and services to meet their mental health needs and assist them in avoiding further engagement in criminal activity.

b) P&A received a referral regarding a Native American juvenile who had become involved in the juvenile justice system as a result of disability-related behavior. The juvenile has a neurological impairment related to a brain tumor. Services were provided

to the juvenile to address behavioral support needs that were primarily stemming from challenges at school. P&A supported the juvenile's team to complete an IJP assessment, which identified additional supports that would be helpful to the juvenile, along with the formal development of an individual justice plan (IJP). The continuing services plan in the juvenile's IJP was accepted by the court as an appropriate remedy and the formal charges were dismissed.

These results may not occur without the IJP as a roadmap to suggest how and who to coordinate services. This bill aims to find a permanent home for this concept and to express its potential importance in helping to plan the diversion of juveniles from justice services to social services.

Despite P&A's efforts to raise awareness, the utilization of IJPs in many cases depends on the individual actors in systems that often are somewhat siloed. Over the past year, P&A has worked on over 90 adult and juvenile requests for assistance on IJPs. While that is a tremendous step forward, the statistics on juvenile referrals from the Department of Public Instruction indicate that on average 30% are special education students or have IEPs. From your other work, you know that the CHINS and delinquency referral numbers are thousands per year, which tells us there is a population that might benefit from increased awareness of this process. This bill, in conjunction with our prior efforts, will hopefully give the IJP process a lasting presence in efforts to properly address some of the behavior of youth with cognitive disabilities.

I respectfully request the Committee support HB 1263. Thank you for your time and I'd be happy to address any questions.

Daniel Gulya, Attorney, Protection & Advocacy Project

danigulya@nd.gov

ENGROSSED HOUSE BILL 1263
68th Legislative Assembly
Senate Judiciary Committee
April 3, 2023
Testimony of Travis W. Finck, Executive Director, NDCLCI

Madam Chair Larson, members of the Committee, my name is Travis Finck and I am the Executive Director for the North Dakota Commission on Legal Counsel for Indigents. The Commission is the state agency responsible for delivery of public defense services in North Dakota.

The Commission rises in support of HB 1263. Individualized Justice Plans have been a valuable tool used to assist children. Individualized Justice Plans provide the juvenile court with another tool to help achieve the goals of the juvenile court, which is rehabilitation. The Commission has provided training to our attorneys on Individualized Justice Plans and our attorneys have found success in helping clients with these plans.

Madam Chair, members of the Senate Judiciary Committee, for the reasons stated herein, the Commission on Legal Counsel urges a DO PASS recommendation.

Respectfully Submitted:

Travis W. Finck
Executive Director, NDCLCI

Mental Health Advocacy Network

Consumer & Family Network
Mental Health America of ND
Youth Move Beyond
The Arc of Bismarck
Fraser, Ltd.
Federation of Families for Children's Mental Health
Protection & Advocacy Project
ND Association of Community Providers
Individual Consumers & Families

**Senate Judiciary Committee**
**HB 1263 Testimony**
**April 4, 2023**
**Senator Larson, Chair**

Good morning, Chairman Larson and Members of the Senate Judiciary Committee. I am Carlotta McCleary, Executive Director of Mental Health America of North Dakota and Executive Director of the North Dakota Federation of Families for Children's Mental Health. Today I speak on behalf of the Mental Health Advocacy Network (MHAN). MHAN advocates for a consumer/family driven mental health system of care that provides an array of service choices that are timely, responsive and effective. Our vision is for every North Dakotan to have access to the right service—whether it be preventative, treatment, or recovery; at the right time—when the service is needed; and at the right place—as near his or her home as possible. MHAN is testifying in support of HB 1263. MHAN has continued to echo the findings of two Schulte Reports (2014, 2022) and two HSRI reports (2018, 2022) that North Dakota has a mental health systems crisis stemming from a lack of services, especially community-based services. Since 2003, North Dakota has served fewer and fewer children with serious mental health issues. That problem has accelerated over the last decade. We can see the impact of the destruction of the children's mental health system. While North Dakota was providing services to fewer children, over time those children were funneled into the juvenile justice and child welfare systems. From 2011 to 2017, the composition of children in the juvenile justice system radically changed. Although the prevalence rate for children with serious mental health issues (Serious Emotional Disorders, or SED) is only 10% of all children (over 18,000 in ND), in 2011 they constituted 49% of all children in juvenile corrections. By 2017 they represented 79%. We have made improvements to reduce the number of children with SED in the juvenile justice system, but it is not because we are providing mental health services to children.

In the last year, the state served 1,101 children with SED (or roughly 1/18th the prevalence rate), but only 135 of them received ongoing services and support. As such, it would be fair to suggest that improvements are being made in spite of the current state of affairs in our children's mental health system.

A frequent consequence of community service shortages are juveniles coming into contact with law enforcement and the juvenile justice system. Our law enforcement and juvenile justice system partners are often at a loss for what to do with individuals who are presenting with significant mental health needs, or may not even be aware of an individual's needs. As we are collaborating on CIT trainings with our law enforcement community, we have been hearing from them and other first responders that they have a better handle on those who have substance use issues and how to help them but are caught unaware of those with mental health and/or brain injury issues.

As Dan Gulya, Attorney from North Dakota Protection & Advocacy Project (P&A) previously testified, the Individual Justice Plan (IJP) model originated in the developmental disability community as a means to divert those individuals from involvement with the justice system when issues arise from behaviors that are as a result of their cognitive disabilities. For a number of years, MHAN's member organizations have partnered with P&A to promote the IJP model and the updated materials that P&A has created. We have continued to see the IJP model as having great promise for addressing the needs of people with mental illness, brain injuries, and their families.

For a number of years, Mental Health America of North Dakota and the North Dakota Federation of Families for Children's Mental Health have partnered with local law enforcement and first responder agencies to provide CIT training to their and other related workforces through a consumer panel. This panel provides CIT trainees the opportunity to listen to people with lived experience with mental health needs, brain injuries, and/or addiction issues discuss their story and provide information about how they perceive events during a crisis. The intention is for our law enforcement and first responder workforce to have greater awareness of the needs of these citizens and help them better interact with persons who have a behavioral health needs or cognitive difficulties due to a brain injury or a developmental disability.

During these interactions, it has been common for this workforce to be unaware of the existence of IJPs. It has also been common for this workforce to be enthusiastic about the prospect of having such a tool to utilize before they even arrive on scene with someone who has a behavioral health disorder or a brain injury. Not only would they have a better idea of how to interact with them, they would have a better idea of how to better serve them. They also believe that through the IJP process, there are a number of individuals who would not need to be criminally charged in the first place.

In North Dakota, we have over 30,000 adults with Serious Mental Illness (SMI) and over 18,000 children with Serious Emotional Disorders. That's nearly 50,000 North Dakotans, the overwhelming majority of whom are not receiving community-based mental health services. When individuals are not receiving the help they need, they tend to have increased contact with law enforcement and are involved in the justice system. Over the last decade, North Dakota saw that in both the adult and juvenile corrections systems. While most people with serious mental health issues do not need IJPs, there are many who could benefit from them. We urge the passage of HB 1263.

Thank you and I would be happy to respond to any questions you may have.

Carlotta McCleary
Spokesperson
Mental Health Advocacy Network
Phone: (701) 222-3310
E-mail: cmccleary@ndffcmh.com