

Introduced by

Judiciary Committee

(At the request of the Supreme Court)

1 A BILL for an Act to create and enact chapter 27-20.1 of the North Dakota Century Code,
2 relating to guardianships of children; to amend and reenact subsection 11 of section 27-20-02,
3 section 27-20-03, subsection 1 of section 27-20-06, sections 27-20-46, 27-20-48.1, and
4 subsection 1 of section 27-20-49 of the North Dakota Century Code, relating to guardianships of
5 children; and to repeal sections 27-20-48.2, 27-20-48.3, and 27-20-48.4 of the North Dakota
6 Century Code, relating to guardianships of children.

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

8 **SECTION 1. AMENDMENT.** Subsection 11 of section 27-20-02 of the North Dakota Century
9 Code is amended and reenacted as follows:

10 11. "Fit and willing relative or other appropriate individual" means a relative or other
11 individual who has been determined, after consideration of an assessment that
12 includes a criminal history record investigation under chapter 50-11.3, to be a qualified
13 person under ~~chapter~~ chapters 27-20.1 and 30.1-27, and who consents in writing to act
14 as a legal guardian.

15 **SECTION 2. AMENDMENT.** Section 27-20-03 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **27-20-03. Jurisdiction.**

18 1. The juvenile court has exclusive original jurisdiction of the following proceedings,
19 which are governed by this chapter:
20 a. Proceedings in which a child is alleged to be delinquent, unruly, or deprived;
21 b. Proceedings for the termination of parental rights except when a part of an
22 adoption proceeding;
23 c. Proceedings arising under section 27-20-30.1; and

- 1 d. Civil forfeiture proceedings arising under chapter 19-03.1 or section 29-31.1-04
2 for which a child is alleged to have possessed forfeitable property. The juvenile
3 court shall conduct the proceedings in accordance with the procedures provided
4 for under sections 19-03.1-36 through 19-03.1-37.
- 5 2. The juvenile court also has exclusive original jurisdiction of the following proceedings,
6 which are governed by the laws relating thereto without regard to the other provisions
7 of this chapter:
- 8 a. Proceedings to obtain judicial consent to the marriage, employment, or
9 enlistment in the armed services of a child, if consent is required by law;
- 10 b. Proceedings under the interstate compact on juveniles;
- 11 c. Proceedings under the interstate compact on the placement of children; and
- 12 d. Proceedings arising under section 50-06-06.13 to obtain a judicial determination
13 that the placement of a severely emotionally disturbed child in an out-of-home
14 treatment program is in the best interests of the child.
- 15 ~~3. The juvenile court has concurrent jurisdiction with the district court of proceedings for
16 the appointment of a guardian for a minor which, if originated under this chapter, are
17 governed by this chapter and chapter 30.1-27.~~

18 **SECTION 3. AMENDMENT.** Subsection 1 of section 27-20-06 of the North Dakota Century
19 Code is amended and reenacted as follows:

- 20 1. For the purpose of carrying out the objectives and purposes of this chapter and
21 subject to the limitations of this chapter or imposed by the court, a director shall:
- 22 a. Make investigations, reports, and recommendations to the juvenile court.
- 23 b. Receive and examine complaints and charges of delinquency or unruly conduct
24 or deprivation of a child for the purpose of considering the commencement of
25 proceedings under this chapter.
- 26 c. Supervise and assist a child placed on probation for delinquency or unruly
27 conduct, or both.
- 28 d. Make appropriate referrals to other private or public agencies of the community if
29 their assistance appears to be needed or desirable.
- 30 e. Issue a temporary custody order concerning a child who is referred to the
31 director's supervision or care as a delinquent, unruly, or deprived child. Except as

- 1 provided by this chapter, a director does not have the powers of a law
2 enforcement officer.
- 3 f. Administer oaths.
- 4 g. Take acknowledgments of instruments for the purpose of this chapter.
- 5 h. Make such temporary order not to exceed ninety-six hours for the custody and
6 control of a child alleged to be deprived as may be deemed appropriate. The
7 order must be reduced to writing within twenty-four hours, excluding holidays and
8 weekends.
- 9 i. Perform all other functions designated by this chapter or under section 27-05-30
10 or by order of the court pursuant thereto, including, if qualified, those of a referee.
- 11 j. Issue an order to a law enforcement authority to transport a child to and from a
12 specified location.
- 13 k. Receive and examine petitions to establish, modify, or terminate a guardianship
14 of a minor under chapter 27-20.1.

15 **SECTION 4. AMENDMENT.** Section 27-20-46 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **27-20-46. Effect of order terminating parental rights or appointing a legal guardian.**

18 4. An order terminating parental rights of a parent terminates all the parent's rights and
19 obligations with respect to the child and of the child to or through the parent arising from the
20 parental relationship. The parent is not thereafter entitled to notice of proceedings for the
21 adoption of the child by another nor has the parent any right to object to the adoption or
22 otherwise to participate in the proceedings.

23 ~~2. An order appointing a legal guardian terminates any authority of a parent that is~~
24 ~~granted to the legal guardian under that order. A parent subject to such an order is~~
25 ~~entitled to treatment as a party at any subsequent juvenile court proceeding regarding~~
26 ~~the child.~~

27 **SECTION 5. AMENDMENT.** Section 27-20-48.1 of the North Dakota Century Code is
28 amended and reenacted as follows:

29 **27-20-48.1. Appointment of legal guardian of a child.**

30 The court may establish a guardianship under chapter 27-20.1 as a dispositional alternative
31 if a child has been adjudicated as deprived, unruly, or delinquent.

1 **SECTION 6. AMENDMENT.** Subsection 1 of section 27-20-49 of the North Dakota Century
2 Code is amended and reenacted as follows:

- 3 1. The following expenses are a charge upon the funds of the county upon certification
4 thereof by the court:
- 5 a. The cost of medical and other examinations and treatment of a child ordered by
6 the court.
 - 7 b. The cost of care and support of a child committed by the court to the legal
8 custody of a public agency other than an institution for delinquent children or to a
9 private agency or individual other than a parent.
 - 10 c. The cost of any necessary transportation for medical and other examinations and
11 treatment of a child ordered by the court unless the child is in the legal custody of
12 a state agency.
 - 13 d. The cost of an attorney guardian ad litem under subsection 5 of section
14 27-20.1-16 or subsection 1 of section 30.1-27-06 or the cost of an attorney under
15 subsection 6 of section 27-20.1-16 if the court finds the parent's or child's estate
16 is insufficient to meet the cost.

17 **SECTION 7.** Chapter 27-20.1 of the North Dakota Century Code is created and enacted as
18 follows:

19 **27-20.1-01. Definitions.**

20 The definitions set forth in section 27-20-02 are applicable to this chapter.

21 **27-20.1-02. Jurisdiction.**

22 The juvenile court has exclusive original jurisdiction of proceedings to grant, modify, or
23 terminate guardianship for a child, except the testamentary appointment of a guardian for a
24 minor governed by chapter 30.1-27.

25 **27-20.1-03. Transfer from district court.**

26 If a court does not approve acceptance of a testamentary guardian of a minor under chapter
27 30.1-27, the court shall immediately transfer the guardianship portion of the case to the juvenile
28 court and order the child be taken to the juvenile court immediately or to a place of shelter care
29 designated by the juvenile court, or release the child to the custody of the child's custodian,
30 relative, or other responsible adult able and willing to assume custody of the child, to be brought
31 to the juvenile court at a time designated by the court. The juvenile court shall immediately

1 reappoint the attorney guardian ad litem who served in the probate case whenever possible, or
2 shall immediately appoint a lay guardian ad litem.

3 **27-20.1-04. Venue.**

4 Except as otherwise provided by this section, a proceeding under this chapter must be
5 commenced in the county in which the child resides. If deprivation is alleged, the proceeding
6 may be brought in the county in which the child is present when it is commenced, the county in
7 which the child has resided for the majority of the thirty days prior to the date of the alleged
8 deprivation, or the county where the alleged deprivation has occurred. The court shall determine
9 the appropriate venue for a deprivation action based on the best interest of the child.

10 **27-20.1-05. Petition - Who may file.**

11 A petition to establish, modify, or terminate a guardianship order, other than one that has
12 been transferred by the district court under chapter 30.1-27, may be filed by any person
13 interested in the welfare of the child who has knowledge of the facts alleged or has information
14 and belief that the facts are true.

15 **27-20.1-06. Contents of petition to appoint guardian of a child.**

- 16 1. The petition must state that an order to appoint a guardian of a child is requested and
17 the effect will be as stated in section 27-20.1-13.
- 18 2. The petition must also contain information required by rule 3 of the North Dakota
19 Rules of Juvenile Procedure and include:
- 20 a. The name, address, and telephone number of the petitioner and the petitioner's
21 relationship to the child;
- 22 b. The full legal name and date of birth of the child, accompanied by a certified copy
23 of the child's birth certificate unless the petitioner shows good cause for why the
24 child's birth certificate is unavailable;
- 25 c. The name, last known address, and telephone number of the mother and the
26 name, last known address, and telephone number of the father, alleged father, or
27 presumed father;
- 28 d. If the name, last known address, or telephone number of the parents is not
29 included, detailed information concerning the efforts made to locate the parents;

- 1 e. The name, last known address, and telephone number of the persons having
2 parental rights or visitation rights and the name, address, and telephone number
3 of the persons or entity having the care, custody, or control of the child;
- 4 f. The names, current addresses, and telephone numbers of the persons with
5 whom the child currently lives;
- 6 g. The names, addresses, and telephone numbers of the persons with whom the
7 child has lived during the last five years;
- 8 h. The names of any siblings or half-siblings of the child and with whom each sibling
9 and half-sibling currently lives;
- 10 i. The name and address of the proposed guardian, if different from the petitioner;
- 11 j. The occupation and qualifications of the proposed guardian;
- 12 k. The names, addresses, and telephone numbers of the spouse, parents, adult
13 children, any adult siblings of the proposed guardian, and any adult who resides
14 with or may reside with the proposed guardian;
- 15 l. A brief description and the approximate value of the real and personal property
16 and income of the child, so far as they are known to the petitioner;
- 17 m. A brief description and the approximate value of any anticipated income of the
18 child;
- 19 n. A statement regarding each parent that:
- 20 (1) The parent is deceased, accompanied by a copy of the death certificate;
- 21 (2) The parent consents to the guardianship, accompanied by an affidavit of the
22 parent indicating consent and any limitations on the guardian's duties under
23 section 27-20.1-15;
- 24 (3) The parent's rights have been previously terminated, accompanied by a
25 certified copy of the court order terminating parental rights; or
- 26 (4) The parent has deprived the child as that term is defined under section
27 27-20-02.
- 28 o. A statement whether the petitioner:
- 29 (1) Has participated, as a party, a witness, or in any other capacity, in any other
30 proceeding concerning the custody of or visitation with the child and, if so,

- 1 identify the court, the case number, and the date of the child custody
2 determination, if any; and
3 (2) Knows of any proceeding that could affect the current proceeding, including
4 proceedings for child support enforcement and proceedings relating to
5 domestic violence protective orders, termination of parental rights, and
6 adoptions and, if so, identify the court, the case number, and the nature of
7 the proceeding.
- 8 p. A statement setting forth the reasons why the petition is in the child's best
9 interests; and
- 10 q. A statement of whether the child is an Indian child as defined under Public
11 Law 95-608 [92 Stat. 3069; 25 U.S.C.1903]. If the child is an Indian child, the
12 petition must comply with the requirements of Public Law 95-608 [92 Stat. 3071;
13 25 U.S.C. 1911 et seq.].

14 **27-20.1-07. Procedure upon filing of petition.**

- 15 1. A supporting affidavit establishing the basis for the guardianship under subdivision n of
16 subsection 2 of section 27-20.1-06, and that the guardianship is in the best interest of
17 the child, must be filed with the petition. Where deprivation is alleged under
18 paragraph 4 of subdivision n of subsection 2 of section 27-20.1-06, the petition must
19 contain sufficient statements to establish deprivation unless the child has resided in
20 the home of the proposed guardian for at least one year before the filing date of the
21 petition.
- 22 2. A petition under this chapter must be reviewed by the court to determine whether the
23 contents of the petition comply with section 27-20.1-06.
- 24 3. If a petition alleges deprivation, the petition will be reviewed by the court to determine
25 whether there has been a sufficient showing of deprivation.
- 26 4. If the petitioner has made an insufficient showing of deprivation, the court, without oral
27 argument or an evidentiary hearing shall issue an order denying the petition. If the
28 petitioner has made a sufficient showing of deprivation justifying a guardianship, the
29 court shall set a date for an evidentiary hearing.

1 **27-20.1-08. Procedure upon approval of petition.**

2 1. The court shall issue a summons in accordance with rule 5 of the North Dakota Rules
3 of Juvenile Procedure and appoint a lay guardian ad litem upon the approval of the
4 petition.

5 2. An initial hearing must be set in accordance with rule 2 of the North Dakota Rules of
6 Juvenile Procedure.

7 3. For a petition filed under paragraphs 1, 2, or 3 of subdivision n of subsection 2 of
8 section 27-20.1-06:

9 a. The petitioner may request the court waive the hearing requirement.

10 b. The petition must state any person interested in the welfare of the child who
11 opposes the appointment of the proposed guardian shall file an objection to the
12 appointment and a demand for hearing within ten days of the service of the
13 petition. If an objection is not filed within ten days, the court may order the
14 appointment of a guardian for the child without a hearing upon review of the
15 guardian ad litem's report.

16 c. If the petition is unopposed, the court may order appointment of a guardian on
17 the strength of the pleadings, including the report of the guardian ad litem, if
18 satisfied that the conditions of paragraphs 1, 2, or 3 of subdivision n of
19 subsection 2 of section 27-20.1-06 have been met, or may conduct a hearing and
20 require proof of the matters necessary to support the order sought. Before
21 appointment of the guardian, the court shall consider whether the child has or will
22 have significant excess assets and determine whether a conservatorship is
23 necessary under chapter 30.1-29.

24 d. The guardian ad litem shall file a report in accordance with rule 17 of the North
25 Dakota Rules of Juvenile Procedure, within twenty days after appointment.

26 **27-20.1-09. Right to counsel.**

27 1. If, at any time in the proceeding, the court determines the interests of the child are or
28 may be inadequately represented, the court may appoint an attorney to represent the
29 child.

30 2. At a proceeding commenced under this chapter, a parent who is indigent and unable
31 to employ legal counsel is entitled to counsel at public expense. If a parent appears

1 without counsel the court shall ascertain whether the parent knows the parent may be
2 represented by counsel and that the parent is entitled to counsel at public expense if
3 indigent. The court may continue the proceeding to enable the parent to obtain
4 counsel and, subject to this section, counsel must be provided for an unrepresented
5 indigent parent upon the parent's request and the court's determination that the parent
6 is indigent.

7 3. An indigent parent is one who meets the definition of indigent under the guidelines
8 adopted by the commission on legal counsel for indigents.

9 **27-20.1-10. Conduct of hearings.**

10 1. A hearing under this chapter must be conducted by the court without a jury, in an
11 informal but orderly manner, and separately from other proceedings not included in
12 section 27-20-03 or section 27-20.1-02.

13 2. The proceedings must be recorded by stenographic notes or by electronic,
14 mechanical, or other appropriate means.

15 3. The petitioner shall present the evidence in support of any allegations of the petition
16 not admitted.

17 4. The general public must be excluded from the hearing and only the parties, their
18 counsel, witnesses, victims, and any other persons the court finds to have an interest
19 in the proceedings may be admitted. The court may temporarily exclude the child or
20 other person from the hearing if, after being warned by the court that disruptive
21 conduct will cause removal from the courtroom, the child or other person persists in
22 conduct justifying removal from the courtroom.

23 5. If the child has or will have significant excess assets, the court shall determine
24 whether a conservatorship is necessary under chapter 30.1-29.

25 **27-20.1-11. Appointment of guardian of a child.**

26 1. The court may appoint a guardian of a child if the court finds by clear and convincing
27 evidence that the appointment is in the child's best interest and:

28 a. Both parents are deceased or the surviving parent's rights have been terminated
29 by a previous court order, but there has been no appointment of a guardian for
30 the child by will, the court has transferred the case to juvenile court without

1 appointment of a guardian, or the testamentary guardian failed to accept the
2 appointment under chapter 30.1-27;

3 b. The parents have consented in writing by affidavit;

4 c. All parental rights have been previously terminated; or

5 d. The child is a deprived child as defined under section 27-20-02.

6 2. The court may appoint as guardian any fit and willing person whose appointment
7 would be in the best interest of the child. If the court finds by clear and convincing
8 evidence that the child is of sufficient maturity to make a sound judgment, or the child
9 is age fourteen or older, the court may give substantial weight to the preference of the
10 child. The court shall give due consideration to other factors that may have affected
11 the child's preference, including whether the child's preference was based on
12 undesirable or improper influences.

13 3. The court may appoint a guardian as a dispositional alternative if a child has been
14 adjudicated as deprived, unruly, or delinquent under chapter 27-20.

15 **27-20.1-12. Findings on petition to appoint guardian of a child - Order of appointment.**

16 1. After hearing the evidence on the petition or after a waiver of the hearing, the court
17 shall make and file its findings as to whether the requirements of section 27-20.1-06
18 have been met, whether the guardian is a fit and willing person, and whether the
19 appointment of the guardian is in the child's best interest.

20 2. Upon finding that the requirements of section 27-20.1-06 have been met, the guardian
21 is a fit and willing person, and the appointment of the guardian is in the child's best
22 interest, the court shall order the appointment. The order must contain:

23 a. The name, address, and telephone number of the guardian.

24 b. Notice of the right to appeal the guardianship appointment and of the right to
25 seek modification or termination of the guardianship at any time.

26 c. If appropriate and in the child's best interest, the court shall determine the nature
27 and extent, if any, of any contact, sharing of information, and visitation between
28 the parents and the child, and the child and any other interested person.

29 d. A requirement that the guardian provide, within ninety days from the date of the
30 order, a beginning inventory of any assets owned by the child or in which the
31 child has an interest. The guardian shall file with the court and serve a copy of

- 1 the beginning inventory on the child if the child is fourteen years of age or older,
2 and any interested persons designated by the court in its order.
3 e. The date on which the first annual report is due and the requirement to file
4 annually thereafter.
5 f. The length of time the order is effective. An order appointing or reappointing a
6 guardian under this chapter is effective for up to one year unless the court, upon
7 a showing of good cause, sets a different time frame. An order may not be
8 effective for more than three years.

9 **27-20.1-13. Effect of order appointing a guardian.**

- 10 1. An order appointing a guardian of a child suspends any authority of a parent that is
11 granted to the guardian under that order. A parent subject to such an order is entitled
12 to treatment as a party at any subsequent juvenile court proceeding regarding the
13 child.
14 2. While a guardianship is in effect, the parent has the following rights:
15 a. Parenting time, contact, and information, to the extent delineated in the
16 guardianship order issued by the court. A parent may petition the court for
17 specific enforcement provisions of the order relating to contact, parenting time, or
18 information; and
19 b. Inheritance from the child.
20 3. The parent has the primary responsibility to financially support the child.

21 **27-20.1-14. Acceptance of appointment - Consent to jurisdiction - Letters of**
22 **guardianship.**

- 23 1. By accepting the appointment, a guardian submits personally to the jurisdiction of the
24 court in any proceeding relating to the guardianship that may be instituted by any
25 interested person.
26 2. By accepting the appointment, a guardian acknowledges the duty to file an annual
27 report under section 27-20.1-15.
28 3. Upon the guardian's acceptance of the appointment, the court shall issue letters of
29 guardianship. The letters of guardianship must contain:
30 a. The name, address, and telephone number of the guardian;
31 b. The full name of the child;

- 1 c. Any limitations on the guardian's authority to make decisions on behalf of the
2 child;
3 d. The expiration date of the appointment; and
4 e. The date by which the guardian must file the annual report required under section
5 27-20.1-15.

6 **27-20.1-15. Powers and duties of guardian of a child.**

- 7 1. A guardian of a child has the powers and responsibilities of a legal custodian if there is
8 a parent with remaining parental rights. If there is no parent with remaining parental
9 rights, the guardian has the rights of a legal custodian and the authority to consent to
10 the child's adoption, marriage, enlistment in the armed forces of the United States, and
11 surgical and other medical treatment. A guardian is not liable to third persons by
12 reason of the parental relationship for acts of the child.
13 2. A guardian has the following powers and duties:
14 a. The guardian must take reasonable care of the child's personal effects and
15 commence protective proceedings if necessary to protect other property of the
16 child.
17 b. The guardian may receive money payable for the support of the child to the
18 child's parent, guardian, or custodian under the terms of any statutory benefit or
19 insurance system, or any private contract, devise, trust, conservatorship, or
20 custodianship.
21 (1) The guardian may receive money or property of the child paid or delivered
22 by virtue of section 30.1-26-03. Any sums received must be applied to the
23 child's current needs for support, care, and education.
24 (2) The guardian must exercise due care to conserve any excess sum for the
25 child's future needs unless a conservator has been appointed for the estate
26 of the child, in which case the excess sum must be paid over at least
27 annually to the conservator. Sums so received by the guardian are not to be
28 used for compensation for the guardian's services except as approved by
29 order of the court or as determined by a duly appointed conservator other
30 than the guardian.

1 (3) The guardian may not use funds from the child's estate for room and board
2 that the guardian or the guardian's spouse have furnished to the child
3 unless a charge for the service is approved by order of the court made upon
4 notice to at least one of the child's next of kin, if notice is possible.

5 (4) A guardian may institute proceedings to compel the performance by any
6 person of a duty to support the child or to pay sums for the welfare of the
7 child.

8 c. To facilitate the child's education, social, or other activities.

9 d. To authorize medical or other professional care, treatment, or advice. A guardian
10 is not liable by reason of this consent for injury to the child resulting from the
11 negligence or acts of third persons unless it would have been illegal for a parent
12 to have consented.

13 e. A guardian shall file an annual report with the court regarding the exercise of
14 powers and duties under this subsection.

15 (1) The report must describe the status or condition of the child, including any
16 change of residence and reasons for the change, any medical treatment
17 received by or withheld from the child, the child's educational progress, any
18 expenditure and income affecting the child, and any exercise of legal
19 authority by the guardian affecting the child.

20 (2) The report must include changes that have occurred since the previous
21 reporting period and an accounting of the child's estate.

22 (3) The guardian shall report whether the child continues to require a
23 guardianship.

24 (4) The report must be filed with the court.

25 (5) The filing of the report does not constitute an adjudication or a determination
26 of the merits of the report nor does the filing of the report constitute the
27 court's approval of the report.

28 (6) The court shall review the report and a hearing may be set.

29 (7) The office of the state court administrator shall provide forms that may be used
30 to fulfill reporting requirements. Any report must be similar in substance to
31 the state court administrator's form.

1 (8) Copies of the guardian's annual report and of any other reports required by
2 the court must be mailed to the child, if the child is age fourteen or older, the
3 child's parents, unless the parents' rights have been terminated or the
4 parents are deceased, and any interested persons designated by the court
5 in its order.

6 (9) If a guardian fails to file a complete annual report as required by this
7 subdivision, fails to file a report at other times as the court may direct, or
8 fails to provide an accounting of an estate, the court, upon its own motion or
9 upon petition of any interested person, may issue an order compelling the
10 guardian to show cause why the guardian should not immediately make and
11 file the report or account, or be found in contempt for failure to comply. A
12 copy of the order to show cause must be provided to the child, if the child is
13 age fourteen or older, the child's parents, unless the parents' rights have
14 been terminated or the parents are deceased, any interested persons
15 designated by the court in its order, and the juvenile court director.

16 f. The guardian shall inform the court of any change in the child's residence within
17 thirty days of the change, but must seek prior authorization of the court to
18 establish or move the child's residence outside of the state.

19 g. In determining what is in the child's best interest, the guardian shall take into
20 account the child's preferences to the extent actually known or reasonably
21 ascertainable by the guardian.

22 h. To the extent reasonable, the guardian shall delegate to the child responsibilities
23 for decisions affecting the child's well-being.

24 i. The guardian may not delegate authority as a guardian under a power of attorney
25 without prior approval from the court.

26 **27-20.1-16. Procedure for modification, resignation, or termination of a guardianship.**

27 1. A guardian may petition for permission to resign. A petition for permission to resign
28 must include a request for appointment of a successor guardian unless continuation of
29 the guardianship is no longer necessary. Resignation of a guardian does not terminate
30 the guardianship unless specifically ordered by the court.

- 1 2. Any party to the proceeding in which the child's status was adjudicated, the director,
2 the child, if fourteen or more years of age, or any interested person, may petition for
3 removal or modification of a guardian on the grounds the removal or modification
4 would be in the best interest of the child. A petition for removal or modification must
5 include a request for appointment of a successor guardian unless continuation of the
6 guardianship is no longer necessary.
- 7 3. Any party to the proceeding in which the child's status was adjudicated, the director,
8 the child, if fourteen or more years of age, or any interested person, may petition for
9 termination of the guardianship due to:
- 10 a. The child's death, adoption, marriage, or attainment of majority;
11 b. The withdrawal of the parent's consent; or
12 c. The basis for the guardianship no longer exists.
- 13 4. The person seeking modification, resignation, removal, or termination of the
14 guardianship shall file a supporting affidavit with the petition demonstrating the basis
15 for the petition, and serve the petition and affidavit on the child, if the child is age
16 fourteen or older, the child's parents, unless the parents' rights have been terminated
17 or the parents are deceased, and any interested persons designated by the court in its
18 order. The petition must be reviewed by the court to determine whether to set an
19 evidentiary hearing. If an insufficient showing has been made, the court shall issue an
20 order denying the petition.
- 21 5. If, at any time in the proceeding, the court determines it is in the best interest of the
22 child, the court may appoint a guardian ad litem.
- 23 6. If, at any time in the proceeding, the court determines the interests of the child are or
24 may be inadequately represented, the court may appoint an attorney to represent the
25 child.

26 **27-20.1-17. Expiration and termination of guardianship of a child.**

- 27 1. An order appointing or reappointing a guardian under this chapter is effective for up to
28 one year unless the court, upon a finding of good cause, sets a different time frame.
29 An order may not be effective for more than three years. At least sixty days before the
30 expiration of the initial order of appointment or any following order of reappointment,
31 the court shall request and consider information submitted by the guardian, the child, if

1 fourteen years of age or older, the child's attorney, if any, the child's parents, and any
2 interested persons regarding whether the need for a guardianship continues to exist.
3 The court, at its discretion, may appoint a guardian ad litem in accordance with section
4 27-20.1-08, before the hearing. The court shall hold a hearing on whether the
5 guardianship should continue. Following the hearing and consideration of submitted
6 information, the court may:

7 a. Terminate the guardianship if shown by clear and convincing evidence that the
8 circumstances that led to the guardianship no longer exist;

9 b. Reappoint the guardian for up to three years; or

10 c. Appoint a new guardian.

11 2. A guardian's authority and responsibility terminates upon the death, resignation, or
12 removal of the guardian, or upon the child's death, adoption, marriage, or attainment
13 of majority, but termination does not affect the guardian's liability for prior acts or the
14 guardian's obligation to account for funds and assets of the child. For cases arising
15 under section 27-20-30.1, the age of majority is age twenty-one.

16 3. The supreme court, by rule or order, shall provide for the regular review of
17 guardianships in existence on August 1, 2019.

18 **27-20.1-18. Appointment of emergency guardian of a child.**

19 1. Upon petition by a person interested in the child's welfare, the court may appoint an
20 emergency guardian if the court finds that compliance with the procedures of this
21 chapter will likely result in substantial harm to the child's health, safety, or welfare.
22 Immediately upon receipt of the petition for an emergency guardian, the court shall
23 appoint a guardian ad litem to advocate for the best interests of the child.

24 2. An emergency guardian may be appointed without hearing or notice to the child, the
25 child's parent or legal custodian, or the child's guardian ad litem only if the court finds
26 from affidavit or other sworn testimony that the child will be substantially harmed
27 before a hearing can be held. If the court appoints an emergency guardian without
28 hearing or notice to the child, the child's parent or legal custodian, or the child's
29 guardian ad litem, the child, the child's parent or legal custodian, and the child's
30 guardian ad litem must be given notice of the emergency appointment by the petitioner
31 within forty-eight hours after the emergency appointment. The court shall hold a

1 hearing on the appropriateness of the emergency appointment within ninety-six hours
2 after the emergency appointment or filing of the petition.

3 3. Reasonable notice, either oral or written, stating the time, place, and purpose of the
4 hearing must be given to the child, if fourteen years of age or older, and, to the child's
5 parents or legal custodian, if they can be found. If oral notice is provided, the petitioner
6 must file an affidavit stating that oral notice including the time, place, and purpose of
7 the hearing has been provided.

8 4. The court shall determine if there is probable cause to believe the emergency
9 appointment is in the best interest of the child and one of the provisions of
10 subsection 1 of section 27-20.1-11 is met.

11 5. If the emergency guardian is found to be appropriate, the court may order the
12 emergency guardian remain in place for no more than sixty days from the date of the
13 hearing. The court may extend the emergency order for up to six months.

14 6. A request for an emergency guardian may be included in a petition for appointment of
15 a guardian of a child under section 27-20.1-05.

16 **27-20.1-19. Attorney's fees.**

17 If the court determines an action brought under section 30.1-27-07 or this chapter is
18 frivolous, the court may award reasonable, actual, and statutory costs, including reasonable
19 attorney's fees, incurred by or on behalf of the child.

20 **27-20.1-20. Protective order.**

21 1. At any stage of the proceedings, upon application of a party or on the court's own
22 motion, the court may make an order restraining or otherwise controlling the conduct
23 of an individual if the court finds the conduct:

24 a. Is or may be detrimental or harmful to the child; or

25 b. Will tend to defeat the execution of an order of disposition; and

26 2. Due notice of the application or motion and the grounds therefor and an opportunity to
27 be heard have been given to the person against whom the order is directed.

28 **27-20.1-21. Orders for evaluation.**

29 1. The court may order a party or a proposed guardian to submit to a chemical
30 dependency, parental capacity, mental health, domestic violence, anger management,
31 or other relevant evaluation by a suitably licensed or certified examiner. The court may

1 request other persons having regular contact with the child submit to a chemical
2 dependency, parental capacity, mental health, domestic violence, anger management,
3 or other relevant evaluation by a suitably licensed or certified examiner. Failure to
4 submit to an evaluation will be taken into consideration by the court.

5 2. The order may be made only on motion for good cause by a party or guardian ad
6 litem, or on the court's own motion, and on notice to all parties and the person to be
7 evaluated. The order must:

8 a. Specify the type of evaluation and the type of professional or entity to perform the
9 evaluation;

10 b. Include the deadline for performing the evaluation;

11 c. Include the date by which the evaluation must be filed with the court; and

12 d. Specify the party that must pay the costs of the evaluation. If the party is unable
13 to pay the costs, the court may direct the costs to be paid, in whole, or in part, by
14 the county. The court may direct the party to reimburse the county, in whole or in
15 part, for the payment.

16 3. The evaluation must be in writing and must set out in detail the evaluator's findings,
17 including diagnoses, conclusions, and the results of any tests. The evaluator must file
18 a copy with the court.

19 4. The evaluation reports and any addendums are confidential. The public or the parties
20 may not read or copy the evaluation reports or addendums unless the court, in its
21 discretion, gives permission. The guardian ad litem may read the evaluation reports
22 and addendums but may not copy the evaluation reports and addendums unless the
23 court, in its discretion, gives permission. A party, proposed guardian, or other person
24 requested to submit to an evaluation by the court under this section is entitled to a
25 copy of the report of evaluation and any addendum, upon request.

26 **27-20.1-22. Confidentiality.**

27 Except as provided by section 27-20-51, all files and records under this chapter are closed
28 to the public and confidential.

29 **SECTION 8. REPEAL.** Sections 27-20-48.2, 27-20-48.3, and 27-20-48.4 of the North
30 Dakota Century Code are repealed.