

FIRST ENGROSSMENT

ENGROSSED SENATE BILL NO. 2036

Introduced by

Legislative Management

(Juvenile Justice Committee)

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

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

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

10 **12.1-04-01. Juveniles.**

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

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

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

19 4. If the court determines the defendant currently lacks fitness to proceed and the
20 defendant may attain fitness to proceed under subsection ~~4~~2, the court may enter an
21 order for a course of treatment considering the least restrictive form of treatment
22 therapeutically appropriate.

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

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

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

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

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

26 **SECTION 5. AMENDMENT.** Section 27-20.4-15 of the North Dakota Century Code is

27 amended and reenacted as follows:

28 **27-20.4-15. Predispositional assessment.**

- 29 1. Before the disposition hearing, the court shall direct the director or designee, to
- 30 conduct a predisposition assessment and to prepare a written report for the court,
- 31 unless waived by the court.

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

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

27-20.5-01. Definitions.

1. "Fitness to proceed" means sufficient present ability to consult with counsel and assist in preparing the minor's defense with a reasonable degree of rational understanding or a rational and factual understanding of the nature of the offense and delinquency proceedings against the minor. A lack of fitness to proceed may result from the presence of any condition, including mental illness, mental disorder, developmental disability, or developmental immaturity. Except as specifically provided otherwise, this definition applies to a minor who is alleged to be under the court's jurisdiction in accordance with section 27-20.2-03.
2. "Minor" means an individual who is:
 - a. Under the age of eighteen years and is not married; or
 - b. Eighteen years of age or older with respect to a delinquent act committed while under the age of eighteen years, and not married, unless an offense is transferred under section 27-20.4-21.
3. "Remediation" means the process of providing learning opportunities, services, and support to achieve fitness to proceed.
4. "Remediation provider" means an individual certified with the department of health and human services to provide remediation services for minors.
5. "Tier 1a mental health professional" is a psychiatrist licensed under chapter 43-17 or a psychologist licensed under chapter 43-32.

27-20.5-02. Age.

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

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

1. The court may order on its own motion, or at the request of the minor, the minor's parent, legal guardian, legal custodian, or attorney, or the prosecuting attorney, a fitness to proceed examination to determine whether the minor is fit to proceed if the minor is the subject of a delinquency petition in the court or if the minor is under the court's jurisdiction under section 27-20.2-03. The minor's fitness to proceed may be

1 raised by the court before which the proceedings are pending or being held, or by
2 motion of a party, at any time during the proceeding.

3 2. If the minor's fitness to proceed is raised, adjudication may not occur until after a
4 determination is made on the fitness of the minor to proceed in accordance with this
5 chapter.

6 **27-20.5-04. Use of previous findings and records - Deflection.**

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

11 **27-20.5-05. Due process.**

12 1. If the minor's fitness to proceed is raised, adjudication may not occur until after a
13 determination is made except the filing of a delinquency petition, until counsel is
14 appointed and notified in accordance with section 27-20.2-12 and the minor is found to
15 have the mental capacity to proceed.

16 2. After the case proceeds to adjudication or the minor is found to lack fitness to proceed,
17 the court shall order all of the reports that are submitted under this chapter to be
18 closed to the public. The court may order the reports be opened for inspection only:

- 19 a. For further fitness to proceed or criminal responsibility examination;
20 b. For statistical analysis;
21 c. If the records are considered to be necessary to assist in mental health treatment
22 ordered according to the mental health code;
23 d. For data gathering;
24 e. For scientific study or other legitimate research;
25 f. To the state's attorney or minor's counsel for the purpose of an active court case
26 subject to the prior evaluation; and
27 g. To an employee or agent of the division of juvenile services or the department of
28 health and human services, if necessary in the performance of the employee's or
29 agent's duty.

30 3. If the court orders a report to be open for the purpose of de-identified statistical
31 analysis, data gathering, or scientific study, the report must remain confidential.

1 4. Any incriminating statement made by a minor to the tier 1a mental health professional
2 as part of a fitness to proceed examination may not be used against the minor over
3 objection in any proceeding.

4 **27-20.5-06. Fitness to proceed examination.**

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

7 2. This section does not prohibit any party from retaining the party's own qualified tier 1a
8 mental health professional to conduct additional evaluations at the party's own
9 expense.

10 3. The fitness to proceed examination must be conducted in the least restrictive
11 environment.

12 4. The court shall order the prosecuting attorney, minor's attorney, and juvenile court staff
13 to submit any information considered relevant to the fitness to proceed examination to
14 the tier 1a mental health professional, including:

15 a. The names and addresses of all attorneys involved;

16 b. Information about the alleged offense; and

17 c. Any information about the minor's background which is in the prosecuting
18 attorney's possession.

19 5. Except as prohibited by federal law, the court shall require the attorneys and juvenile
20 court staff to provide any available records regarding the minor and any other
21 information relevant to the examination to the tier 1a mental health professional,
22 including:

23 a. Psychiatric records;

24 b. School records;

25 c. Medical records; and

26 d. Child protective services records.

27 6. The requirement to provide records or information under subsections 4 and 5 does not
28 limit, waive, or abrogate the work product doctrine or the attorney-client privilege, and
29 release of records and information under subsections 4 and 5 is subject to the work
30 product doctrine and the attorney-client privilege.

- 1 7. The fitness to proceed examination must occur within fifteen days from receipt of
2 materials identified in subsections 4 and 5 and notice of entry of the order served on
3 the tier 1a mental health professional.
- 4 a. The court may grant an additional seven days to complete the examination if
5 good cause is shown.
- 6 b. The materials required in subsections 4 and 5 must be disclosed
7 contemporaneously with the order.
- 8 c. The tier 1a mental health professional shall notify the court and request any
9 missing or additional information within seventy-two hours of receiving this
10 information, and the attorneys and juvenile court staff have seven days to send
11 the information to the tier 1a mental health professional.
- 12 8. A tier 1a mental health professional who conducts a fitness to proceed examination
13 shall submit a written report to the court no later than fifteen days from completing the
14 fitness to proceed examination. The report must include:
- 15 a. A description of the nature, content, and extent of the examination, including:
16 (1) A description of the assessment procedure, technique, and test used;
17 (2) Medical, educational, and court records reviewed; and
18 (3) Social, clinical, developmental, and available legal history.
- 19 b. A clinical assessment that includes:
20 (1) A mental status examination;
21 (2) The diagnosis and functional impact of mental illness, developmental
22 disability, or cognitive impairment. If the minor is taking medication, the
23 impact of the medication on the minor's mental state and behavior;
24 (3) An assessment of the minor's intelligence and maturity level, when relevant;
25 (4) The minor's age, developmental state, and decisionmaking abilities; and
26 (5) Whether the minor has any other factor that affects fitness to proceed.
- 27 c. A description of abilities and deficits in the following mental competency functions
28 related to the minor's fitness to proceed:
29 (1) The ability to factually and rationally understand and appreciate the nature
30 and object of the proceedings, including the ability to:

- 1 (a) Understand the role of the participants in the court process, including
2 the roles of the judge, the minor's attorney, the prosecuting attorney,
3 the probation officer, witnesses, and the jury, and to understand the
4 adversarial nature of the process;
5 (b) Appreciate the offense and understand the seriousness of the offense;
6 (c) Understand and realistically appraise the likely outcomes; and
7 (d) Extend thinking into the future.

8 (2) The ability to render meaningful assistance to the minor's attorney in the
9 preparation of the case, including:

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

- 24 9. The tier 1a mental health professional shall provide the court with a written report
25 about the minor's fitness to proceed. If the tier 1a mental health professional
26 determines the minor lacks fitness to proceed, the tier 1a mental health professional
27 shall comment on the nature of any psychiatric or psychological disorder or cognitive
28 impairment, the prognosis, and the available services needed to remediate the minor
29 to fitness, if possible, within a projected time frame.

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

27-20.5-07. Fitness to proceed hearing.

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

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

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

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

27-20.5-08. Remediation.

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

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

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

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

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

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

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

(2) The delinquency proceedings are dismissed.

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

(1) The remediation provider determines the minor no longer lacks fitness to proceed; or

(2) The remediation provider determines there is no substantial probability the minor will be fit to proceed within the period of the order.

3. No later than fourteen days before the expiration of the initial sixty-day order, the remediation provider may recommend to the court and the tier 1a mental health professional that the remediation order be renewed by the court for another sixty days, if there is a substantial probability the minor will be fit to proceed within the period of that renewed remediation order. The remediation provider shall include a report of progress a minor made in remediation services which demonstrates the minor is likely to be found fit to proceed if a renewal is ordered. The remediation order and any renewed remediation order may not exceed a total of one hundred twenty days.

27-20.5-09. Disposition.

1. Except as otherwise provided in this section, upon receipt of a report by the tier 1a mental health professional that the minor lacks fitness to proceed and there is a substantial likelihood the minor is unable to be remediated within the period of the remediation order, the court may:

- 1 a. Dismiss the delinquency proceedings and release the minor to the minor's
2 parent, legal guardian, or legal custodian; or
- 3 b. Retain jurisdiction and release the minor to the minor's parent, legal guardian, or
4 legal custodian subject to mental health treatment or services under
5 subsection 2.
- 6 2. The court may in its discretion order mental health services or other available services
7 from a mental health provider be provided to the minor by a community mental health
8 services program, the department of health and human services, or another
9 appropriate mental health services provider, subject to the availability of inpatient or
10 outpatient care, for a period not to exceed sixty days.
- 11 a. The court retains jurisdiction over the minor throughout the duration of the order
12 and the juvenile court officer may assist with referrals, the assessment process,
13 and reporting to the court.
- 14 b. The entity providing services under this subsection shall determine necessary
15 mental health treatment or services and continue to provide mental health
16 treatment or services for the duration of the period of mental health treatment or
17 services ordered by the court.
- 18 3. No later than fourteen days before the expiration of the order for mental health
19 treatment or services under this subsection or subsection 2, a report must be provided
20 to the court regarding the minor. The court shall review the report and:
- 21 a. Renew the order for another period of mental health treatment or services not to
22 exceed sixty days. The order for mental health treatment or services and any
23 renewed order may not exceed a total of one hundred twenty days; or
- 24 b. Determine custody of the minor and dismiss the delinquency proceedings against
25 the minor.
- 26 4. If release to the minor's parent, legal guardian, or legal custodian is determined
27 inappropriate under subsection 1, the court may dismiss the delinquency proceeding
28 and enter an order directing a child in need of protection petition to be filed, order a
29 shelter care hearing be held, or enter a shelter care order.

30 **SECTION 7. APPROPRIATION - DEPARTMENT OF HEALTH AND HUMAN SERVICES -**
31 **JUVENILE FITNESS TO PROCEED MENTAL HEALTH SERVICES.** There is appropriated out

1 of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of
2 \$4,580,000, or so much of the sum as may be necessary, and the sum of \$1,000,000 from other
3 funds derived from federal funds, or so much of the sum as may be necessary, to the
4 department of health and human services for the purpose of defraying the costs associated with
5 implementing and administering section 6 of this Act, for the biennium beginning July 1, 2025,
6 and ending June 30, 2027.

7 **SECTION 8. EFFECTIVE DATE.** Sections 5 and 6 of this Act become effective on
8 January 2, 2027.