

SB 2186 (2025)**Child Custody Review Task Force
December 11, 2025
Testimony of Sally Holewa
State Court Administrator**

Chairman Clemens and members of the task force, my name is Sally Holewa. I am the North Dakota State Court Administrator. I am here today at your invitation to discuss the mechanics of establishing a dedicated family court in North Dakota.

I had the opportunity to review the video from the first task force meeting. At that meeting, there was some very moving testimony offered, including from some members of this task force. I do not discount the emotional and financial toll that happens when families implode and children are caught in the middle. But, I do think it is important to put some numbers around the issue before we can begin discussing the three options that were put forward at the last meeting. As I understand them, those options were (1) to create a separate family court that could potentially include juvenile cases, (2) adding additional referees to the court system, and (3) reassigning some existing general jurisdiction judgeships to serve exclusively as family court judges.

On any given day, a district court judge carries an average caseload of 1,164 open cases and a referee is carrying an average caseload of 1,085 open cases. North Dakota has adopted time standards for when cases filed in district court should reach disposition. Statewide, our judges are meeting those standards in 97% of all cases. Overall, our courts are doing an extraordinarily good job of getting cases into court timely and our judges are making decisions promptly.

Family law cases, which we define as divorce (including both those with and without minor children), separation, paternity, and parenting responsibility cases, make up a small percent of the overall caseload. All of those case types combined have an average annual statewide filing rate of 3,800. This represents just 2 percent of the total cases filed in an average year.

Eighty-seven percent of family law cases are never re-opened after the final judgment is issued. In raw numbers that means, that on an annual statewide basis, there are an average of 646 family cases reopened each year. Many of those cases will be re-opened to address a single issue and then we don't hear from them again. However, among those re-opened cases there are also a fair number of high-conflict cases that come back to the court year after year, and sometimes more than once a year, in an attempt to resolve ongoing issues. While 646 sounds like a high number, it averages out to about 10 cases per judicial officer per year.

While we understand the frustration litigants rightly have with delays, as you can tell by our docket currency numbers and the small percentage of our case load related to domestic cases, the creation of a family court is a solution seeking to address an extremely small number of cases that fall outside the norm. And, when we look at those cases more closely, we discover that most

delays, even in the rare case with delays, the delay is not the judicial system but is typically initiated by the litigants. Litigants in those cases ask for more time to negotiate a settlement and their attorneys may not agree on a hearing date. Finally, there a number of cases in which the litigants themselves choose conflict over resolution. In summary, a specialized family law court would be addressing an extremely limited number of cases and within that limited number the specialized court would not change the current situation. And, as I will discuss shortly, creation of a specialized family law court would require significant resources.

Family Court: We were asked to provide information on implementing a family court. I have attached an estimate which includes creating two new judgeships per district for a total of 16 judges plus staff at a cost of \$14,697,456. The estimate also includes operating and education expenses for these new positions. It does not include the cost to add additional clerk of court staff to record proceedings and assist in the courtroom nor does it include estimated costs to the counties for providing additional courtrooms, judicial chambers and offices.

There was some discussion of pulling juvenile cases out of the district court to create a family court. Juvenile cases are assigned to judicial referees in the 3 districts in which we have referees and handled by district court judges in the remaining 5 judicial districts. On average, there are 766 child in need of services, 231 termination cases. The combined average annual filing rate statewide is 1,582 cases. Those numbers represent approximately 1% of our case load. If the family court included both family cases and juvenile cases, it would be an increase of over twenty percent of the number of judgeships to handle only 3% of our case load.

Let me explain why we settled on the number of 16 judges.

I will start with jurisdiction. North Dakota has elected judges who have jurisdiction over cases filed within the geographical boundaries of the district to which they are elected. The chief justice can provide for temporary assignment of a judge elsewhere but to have a judge get elected to one district but then be permanently assigned to serve elsewhere would be a disservice to the voters.

Next, we have the issues of automatic removal of judges. In North Dakota, every litigant has the right to an automatic removal of an assigned judge as long as the demand is made within the timelines allowed. That means that for every judge assigned as a family law judge there must be at least one other judge available to take a case that needs to be re-assigned. Because the whole point of creating a family court is to have judges who are specialist in this area, using general jurisdiction judges as backups in case of removal defeats the purpose of the new court.

Along those lines, is the issue of using referees instead of judges. Here we have the same issues along with two new complications. Referees are not elected and they are not judges. They are state employees appointed by the presiding judge of a district. They only have jurisdiction to work in the same district as their presiding judge. Because they are not judges, parties have the automatic right to request that a district court judge hear their case rather than the referee. For the same reason, parties have the right to require that a district court judge review a decision made by a referee. Because the vision for family court is that the judicial officers are specialized in that area, having general jurisdiction judges stepping in as required to take over cases or to provide reviews of referee decisions again defeats the purpose of specialization.

Adding additional referees: It has been suggested that adding referees is a more cost-effective solution than adding judges. That is true but to a lesser extent than might be expected. A referee is paid 80% of the salary that a district court judge is entitled to but remains under the PERS main plan, rather than the PERS judge plan, so the total difference in salary and fringe for the biennium is \$122,361.

We currently have 5 referees working in 3 judicial districts. We don't have them in all 8 districts because there is not enough of the type of work they are authorized to do to have them in those other 5 districts. It is also important to remember that they are not specialized judicial officers. While they do have expertise in juvenile matters, referees may also preside over many types of civil and family proceedings as well as non-criminal violations. In addition, since all of our referees are also appointed to serve as a magistrate they can handle probate and mental health hearings, as well as being able to issue warrants and set bail in criminal matters. I've attached a complete list of the proceedings to which they can be assigned.

Creating new referee positions but restricting them to just family and juvenile caseloads might increase the speed at which hearings are scheduled but it would also create heavier caseloads for the district court judges who would be forced to pick up the cases that referees would no longer be allowed to handle.

Reassigning existing judgeships: Since 1996, we have used weighted caseload studies to determine how many judges we need statewide and where they should be located. We just completed a comprehensive study in 2025 which shows that right now we have exactly the number of judges and referees we need and that they are in the correct locations.

If we were to pull some of those judges out of the general rotation and assign them only family and juvenile cases we would be causing delay for every other case type. Because there is not enough family and juvenile cases filed in any district to justify restricting a judge's workload to just those case types, we would be recreating the "idle judge" and "windshield judge" issues which were the driving elements behind the state's decision to unify the county and district courts in 1995. We would also be recreating systems that have been used and discarded by the court in the past.

Between 1995 and the mid-2000s, there were some judicial districts whose judge assignments were based on a multi-year rotation between criminal and civil/family cases. All of them have since discontinued that style of judge rotation due to the inefficiencies and delays caused by pigeon-holing judge work. Additionally, Grand Forks County did have a specialized family "court". "Court" in that sense is used to designate a specialized docket (calendar) within the district court in the same way that the names juvenile court, drug court and other types of treatment courts are used. The purpose of the Grand Forks family court was to assign all cases, regardless of case type, that involved a family member to the same judge. The assigned judge was to require families assigned to the court to appear regularly before the court to attempt to reach resolution of all pending cases and then to monitor compliance by the various family members with the conditions imposed in each individual case. There were a number of reasons why this concept proved to be unworkable and the court was dissolved in 2009.

There are other options the legislature could consider.

Convert existing referee positions to judgeships: One of the reasons why the court is interested in converting the current referee positions to judgeships is to be able to gain the lost efficiency caused by the restrictions on what types of proceedings they can preside over and the issues caused by the right to refuse assignment to a referee and the right to demand review of a referee's decision. This would increase the capacity of the court to schedule cases more quickly at a relatively low cost, since there would be no need to add additional FTEs, staff or facilities to accommodate the change.

Court-Sponsored Family Mediation Program: Since 2010, the court has had a court-sponsored family mediation program. All newly filed cases involving parenting time or parenting responsibility are required to go through the program which provides up to 6 hours of mediation at no cost to the parties. The court contracts with mediators at a rate of \$220/hour for these services. When cases are re-opened due to issues involving parenting time or parenting responsibilities, judges have the option of sending parties to additional mediation sessions. Since its inception, 10,071 cases have gone through the program. It has been very successful in resolving issues with an average annual settlement rate for newly filed cases of 74% and 79% for re-opened cases. The historical average satisfaction rate from participants is 87%. After we implemented the program, the average annual re-opened case rate for family cases went from 27% to 17%. Because so many cases are now sent to mediation on post-judgment motions and funding for this program was held level for this biennium, we are anticipating a shortfall of approximately \$194,150.00. When funding runs out, we have to reduce the number of re-opened cases referred to the program since that is not a mandatory part of the program.

Court-Sponsored Expedited Family Mediation Program: In 2020, the court created the expedited family mediation program. Unlike our regular program, participation in expedited mediation is voluntary and is available to parties without them having to file a motion or get permission from the court. The only requirement is that there is an active North Dakota parenting time, parenting plan or parenting responsibility order in place. Because the program is voluntary, 60% of parties decline to participate. The original goal of the expedited program was to complete the mediation within 7 days of referral. That has proven unrealistic due to scheduling issues and our new target is 30 days. To date, 308 cases have gone through the program and it has an historical average settlement rate of 63%.

Parenting Coordinator: The legislature created the parenting coordinator position in 2009. As you heard in your last meeting, parenting coordinators can be assigned in high conflict cases and have authority to mediate issues consistent with the court order. By statute, a parenting coordinator can:

- 1) assess whether there has been a violation of an existing court order and recommend further court proceedings;
- 2) be appointed to resolve a one-time dispute or provide ongoing dispute resolution services; and
- 3) attempt to resolve a dispute by facilitating negotiations between the parties to promote settlement, and if it becomes apparent that the dispute cannot be resolved by an agreement of the parties, then make a decision to resolve the dispute.

The statute sets expedited timelines for the parenting coordinator to confer with the parties to attempt to resolve the issue. An agreement reached by the parties or a decision made by the parenting coordinator is binding on the parties until further order of the court.

This is an under-utilized resource and part of the reason is cost. The legislation is very clear that this service is only available to those who can afford to pay for it. There are 11 parenting coordinators in the state. Their average hourly rate ranges from \$200/hour to \$375/hour, with the most common rate of \$350/hour. In 2024, a parenting coordinator was assigned in 35 cases. In 2025, that number was 32 cases. Whether some taxpayer dollars should go toward resolving these disputes is a policy question. To fund 15 hours of parenting coordinator time for 300 cases per year would cost the state around \$3,150,000 for the biennium.

Parenting Education Classes: Some states require that both parents take a parenting education class when a divorce that involves children is filed. North Dakota has not taken that step. We surveyed our judges in 2024 and 12 responded that they have ordered parties to take a parenting education class. Of those 12, three responded that they sometimes or rarely do so, while others routinely incorporate that requirement. One of the reasons they don't order the class is the cost. The cost for the various programs runs around \$125 per person. The other reason is effective enforcement of the order if an individual refuses to enroll or to complete a class. One option that I've considered is adapting the Arizona courts video for parents involved in high-conflict cases and providing access to it through our website. The cost to adapt that would be around \$15,000.

Statutory deadlines: Another option is to enact statutory time standards for contempt of court motions alleging violations of parenting time or parenting responsibility orders. Due process requires that individuals are provided notice of a hearing, the opportunity to file a response, and adequate time to prepare a defense. It also requires that the time for a hearing can be delayed for good cause. All of these things would need to be considered when setting an expedited time standard. Right now, the minimum number of days the moving party is required to wait for a response is 21 days after service on the other party has been completed.

I will stand for any questions.

Authority of a Judicial Referee (Administrative Rule 13)

- (1) N.D.C.C. ch. 12.1-31.2; Disorderly Conduct Restraining Orders
 - (2) N.D.C.C. 12.1-31-01.2; Sexual Assault Restraining Orders
 - (3) N.D.C.C. title 14, except contested divorce trials; This is the Domestic Relations chapter which includes divorce, separation, annulment, paternity, uniform custody and parentage act, adoptions, and civil protection orders
 - (4) N.D.C.C. §§ 20.1-01-28 and 20.1-01-29; Game and Fish Violations
 - (5) N.D.C.C. ch. 27-08.1; Small Claims Court
 - (6) N.D.C.C. chs. 27-20.1, 27-20.2, 27- 20.3, 27-20.4; Guardianship of a child and juvenile proceedings including child in need of protection, juvenile delinquency and termination of parental rights
 - (7) N.D.C.C. ch. 28-25; Civil collections actions
 - (8) N.D.C.C. ch. 30.1-28; Guardianship of an Adult
 - (9) N.D.C.C. ch. 30.1-29; Guardianship of Persons under Disability and Minors
 - (10) N.D.C.C. §§ 50-09-08.6(6) and 50-09-14(2); Actions brought for suspension of licenses for non-payment of child support and reviews of child support actions
 - (11) N.D.C.C. 47-32. Evictions
- And, if also appointed as a magistrate, N.D.C.C. § 39-06.1-03. Traffic Violations

Authority of a Magistrate (Administrative Rule 20)

- (1) to issue search warrants under N.D.C.C. § 29-29-01 and N.D.R.Crim.P. 41;
- (2) to issue administrative search warrants under N.D.C.C. § 29-29.1-01;
- (3) to approve complaints and to issue summonses or warrants under N.D.C.C. ch. 29-05 and N.D.R.Crim.P. 3 and 4;
- (4) to hold initial appearance under N.D.R.Crim.P. 5, and to set bail under N.D.C.C. ch. 29-08 and N.D.R.Crim.P. 46;
- (5) to conduct preliminary examinations under N.D.R.Crim.P. 5.1;
- (6) to make individual determinations of eligibility for appointment of indigent defense counsel under N.D.C.C. § 54-61-01;
- (7) to perform registrar and clerk duties under the Uniform Probate Code, N.D.C.C. tit. 30.1, particularly N.D.C.C. §§ 30.1-14-02 and 30.1-14-07 in informal probate proceedings and N.D.C.C. § 30.1-15-05 in uncontested formal probate proceedings;
- (8) to conduct preliminary mental health commitment proceedings under N.D.C.C. § 25-03.1-09, notwithstanding and consistent with § 25-03.1-02(4) and (10);
- (9) to issue temporary domestic violence protection orders under N.D.C.C. ch. 14-07.1;
- (10) to issue temporary disorderly conduct restraining orders under N.D.C.C. ch. 12.1-31.2; and
- (11) to issue temporary sexual assault restraining orders under N.D.C.C. § 12.1-31-01.2.

FAMILY COURT PROGRAM COST ESTIMATE

	<u>Judge</u>	<u>Staff Attorney</u>	<u>Total</u>
Salary	\$368,732	\$246,192	\$614,924
Fringe	<u>\$155,777</u>	<u>\$97,290</u>	<u>\$253,067</u>
Total salaries and wages	\$524,509	\$343,482	\$867,991 <i>Cost for a biennium</i>

Travel	\$5,550	\$2,900	\$8,450	<i>New judge training, SBAND, Judicial Conference, in-state travel, etc.</i>
Professional development	\$3,250	\$1,000	\$4,250	<i>New judge training, SBAND, association, etc.</i>
Office furniture	\$12,000	\$5,500	\$17,500	<i>Chambers, workstations, chairs, etc.</i>
IT equipment	\$3,000	\$3,000	\$6,000	
IT software, DP, phone	\$4,800	\$4,800	\$9,600	
Office supplies, postage, etc.	<u>\$2,400</u>	<u>\$2,400</u>	<u>\$4,800</u>	
Total operating costs	\$31,000	\$19,600	\$50,600	
Total per position	\$555,509	\$363,082	\$918,591	
Number of FTE positions	<u>16.00</u>	<u>16.00</u>	<u>16.00</u>	
Total cost	\$8,888,144	\$5,809,312	\$14,697,456	

	<u>Referee</u>	<u>Staff Attorney</u>	<u>Total</u>
Salary	\$294,984	\$246,192	\$541,176
Fringe	<u>\$107,164</u>	<u>\$97,290</u>	<u>\$204,454</u>
Total salaries and wages	\$402,148	\$343,482	\$745,630 <i>Cost for a biennium</i>

Judge and staff attorney	\$524,509	\$343,482	\$867,991
Referee and staff attorney	<u>\$402,148</u>	<u>\$343,482</u>	<u>\$745,630</u>
Variance	\$122,361	\$0	\$122,361
Number of FTE positions	<u>16.00</u>	<u>16.00</u>	<u>16.00</u>
Total salaries savings	\$1,957,776	\$0	\$1,957,776

Parenting coordinator:

15 hours per case	15
Hourly rate	<u>\$350</u>
Cost per case	\$5,250
Cases per biennium	<u>600</u>
Total cost	\$3,150,000