2025 SENATE JUDICIARY

SB 2036

2025 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

SB 2036
1/14/2025
9:00 a.m.

Relating to the age of an offender, suspension or dismissal of proceedings, predispositional assessment, and the definition of a child in need of protection; to provide an appropriation; and to provide an effective date.

9:00 a.m. Chair Larson opened the hearing.

Members Present: Chair Larson, Vice-Chair Paulson, Senators Braunberger, Castaneda, Cory, Luick, Myrdal.

Discussion Topics:

- Juvenile Code
- Definitive Timetables on Evaluations
- Case Deflection
- Due Process Rights
- CHIPS Definition
- Service Needs
- Workforce Needs

9:00 a.m. Senator Cory introduced the bill and testified in favor.

9:01 a.m. Travis Finck, NDCLCI Executive Director, testified in favor and submitted testimony #28818.

9:29 a.m. Lynn Flieth, RSR Human Service Zone Director, testified in favor and submitted testimony #28556.

9:40 a.m. Austin Gunderson, Counsel for Legislative Council, testified as neutral.

9:41 a.m. Shauna Eberhardt, Policy Clinical Director with the Department of Health and Human Services, testified as neutral and submitted testimony #28886.

9:49 a.m. Sara Behrens, Staff Attorney at State Court Administrators Office, testified as neutral and submitted testimony #29043.

9:51 a.m. Chair Larson closed the hearing.

Kendra McCann, Committee Clerk

Testimony Prepared for the
Senate Judiciary Committee
January 14, 2025
By: Lynn Flieth, RSR Human Service Zone Director

RE: SB 2036: Relating to Juvenile Fitness to Proceed and Remediation of Juveniles, and definition of a Child In Need of Protection

Chair Larson, and members of the Senate Judiciary Committee, my name is Lynn Flieth. I am the Director for the RSR Human Service Zone, which includes the counties of Ransom, Sargent and Richland, and am a member of the Human Service Zone Directors Association. I am here today to provide testimony regarding SB 2036 relating to changes in the Juvenile Court Act surrounding Fitness to proceed and remediation, as well as the definition of a Child In Need of Protective Services (CHIPS).

Human Service Zones are mandated to provide economic assistance and child welfare services, including child protection, foster care, in home case management as well as receive CHINS (Child In Need of Services) referrals. Human Service Zone Directors are also the legal custodian to children in zone public custody, primarily the CHIPS population.

During the interim, much work was completed to establish parameters and procedures to determine whether a juvenile is fit to proceed through the court process. This bill amends the current Child Welfare -Child In Need of Protective Services definition (NDCC 27-20.3-01) to include a juvenile who has been found to lack fitness to proceed in court with a delinquency case and the delinquency case was dismissed. Dispositional options for a CHIPS juvenile commonly include placing care, custody and control with the Director of the Human Service Zone. We recognize and support the unique needs of this population and agree that these youth are more appropriately designated in the juvenile court system as a Child In Need of Protective Services. This is the right thing to do legally for these youth.

Youth identified as lacking fitness to proceed, are likely to have extensive and complex behavioral health needs. These youth will likely have low or borderline intellectual functioning, significant, unstable and/or untreated mental health diagnoses. Human Service Zones currently do have youth with similar complex needs in custody. This bill would increase that number. These youth, although small in numbers, require extensive time and effort in locating services and when necessary, placement. There is an extremely limited number placement options for these youth in North Dakota and there is risk for those who may be placed at the incorrect level of care, due to a lack of availability of appropriate service options.

For remediation options, or youth who may return to the parental home which we feel is often the best, we must be confident that the community services are available to address the youth and ultimately the family's needs. Without a spectrum of statewide service options, children's needs are not met, families are adversely impacted, and treatment is delayed and, in some cases, completely absent. As a system, we need to continue to build statewide comprehensive child services, to include emergency assessment, stabilization and placement, for at-risk and complex needs youth. While there are services available to meet these needs on some level, we don't always have them when and where we need them.

Currently there is a fiscal note attached to this bill to allow for the hiring of staff to implement these changes, however I am not sure this is enough to build our service delivery system to the level that may be required.

Given the anticipated increased workload, as well as the need to build a more robust array of services to meet the unique and complicated needs of this population, we would also respectfully request delaying implementation for 1 year to more fully prepare our agencies, communities and service providers.

Thank you for your consideration of my testimony regarding Senate Bill 2036. I stand for questions from the committee.

Testimony of Travis Finck, Executive Director, N.D.C.L.C.I
In Support of Senate Bill 2036
Senate Judiciary Committee
January 14, 2025

HIGHLIGHTS

- Old law had no definitions specific to juveniles and we simply used the adult code, so we added a section to the juvenile code to specifically address the unique terms used in juvenile court.
- New statute sets definitive timetables for when an evaluation must be completed, reports issued to the court, and hearing held by the court along with instructions to make sure the discovery is received by evaluator
- New statute allows the court to deflect cases based upon prior determinations a child lacks fitness
- Due process rights are codified for the child
- For the first time ever, there is a clear method of competency remediation, the challenge remains getting someone in the state to do the remediations

In Depth Changes by Each Section
Section 1: Clean UP

- Section 1 of the bill simply removes the language deeming a minor under the age of ten from being able to commit a crime (it is replaced in the new section of code in the juvenile court section)
- This section also removes the section allowing for an individual 10 years of age or older to be assessed for fitness
- These sections are moved to the juvenile code, NDCC 27-20 that deals with juvenile court.
  - This is done for the ease of the parties and to stop referring to adult criminal code when dealing with juvenile cases.

SECTION 2: CLEAN UP IN ADULT COMPETENCY

- When the rewrite to the Adult competency was written, it was amended several times during the session.
- During one of the amendments, the numbering became different which led to an inaccuracy in code.
- This section simply refers back to the correct section of code
- We also have an amendment to propose after reviewing with the State Court Administrator's office.
    - The amendment would simply rectify the same problem in section 4 that exists in section 5.

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

4. If the court determines the defendant currently lacks fitness to proceed and the defendant may attain fitness to proceed under subsection ~~1~~2, the court may enter an order for a course of treatment considering the least restrictive form of treatment therapeutically appropriate.

Section 3: Addition to the CHIPS Code

- Amends 27-20.3-01 by adding new subsection (i) to modify the definition of a Child in Need of Protection for any child alleged to have committed a delinquent act and found to have lacked fitness and was not able to be remediated.
    - This allows another avenue for services to be provided to a child after the delinquency petition is dismissed

Section 4: More Clean up with to move to new chapter

- This removes the predisposition assessment option under the delinquency chapter to evaluate fitness as we have a whole new chapter that deals with the means and mode of the evaluation.

Section 5: New Chapter 27-20.5.01

27-20.5-01. DEFINITIONS

(1) "Fitness to proceed" means sufficient present ability to consult with the individual's counsel with a reasonable degree of **rational understanding** and a rational as well as **factual understanding** of the proceedings against the individual.

(2) Defining what a minor, under age 18 and not married, or after last session, 18 yoa or older with respect to an act committed while under 18

(3) "Remediation" means the process of providing learning opportunities, services, and support to achieve fitness to proceed.

(4) "Remediation provider" is a person certified by the department to do remediation work

(5) Defines a tier 1 a mental health professional who are authorized under the chapter to conduct the evaluations.

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. Thus, only someone 10 or older can be assessed for fitness

→ This is not new language; this is what was adopted by the legislature as part of the justice reinvestment groups

27-20.5-03. MOTION

1) Parties that can bring a motion to review fitness in front of the juvenile court
   - Prosecutor
   - The Minor, or counsel for the Minor, or Parents/legal guardians
   - Or the Court on its own motion

2) Due Process prevents the court from adjudicating the Minor once fitness is raised

→ This is not new language, and is part of the adult statutory change enacted in the last few sessions

27-20.5-04. DEFLECTION

- This allows for a court to take judicial notice of a prior judicial finding a minor lacks fitness, and can dismiss without requiring an additional evaluation
- This section also allows for the court to dismiss a proceeding against a minor for lacking fitness by considering school, medical or other records.

→ This is NEW, and is a best practice provided to us by CSG Justice Center

27-20.5-05. DUE PROCESS

1. If the minor's fitness is raised, due process rights attach. The first subsection deals with the Right to Counsel and codifies adjudication may not occur until after minor is found fit
2. Closes the records of all the fitness reports to the public, and specifies when the reports may be made available;
   a) for further fitness or criminal responsibility examination;
   b) for statistical analysis;
   c) if necessary to assist in mh treatment;
   d) for data gathering;
   e) for scientific study or other legitimate research;
   f) to the prosecutor or defense attorney for an active case;
   g) DJS or DHHS, if necessary to perform their official duty
3. If the court orders a report open for statistical analysis, the report must remain confidential.
4. Any statements made during or for the purpose of evaluation may not be used against the minor over objection.

→ The Due Process rights of a minor in juvenile court accused of a crime are not new, how we chose to protect the records of the report is.

27-20.5-06: EXAMINATION

1) If any reason to doubt fitness, court must order the examination, which must be conducted by Tier1a mental health professional. (This is defined in the definition section)
2) Allows for either party to obtain their own evaluation at their own expense as long as tier 1a professional
3) Must be constructed in least restrictive environment
4) Deals with how the discovery materials must be disclosed to evaluator to assist in preparing the evaluation.
5) Codifies what records should be sent to evaluator for purposes of conducting exam
6) Ensures work-product and attorney client privilege remain intact
7) Exam must occur within **15 days** of receipt of materials identified in section 4 and 5
   - This is the same time frame as an adult fitness evaluation 12.1-04-01(2)
   a) The Court may grant **additional 7 days** for good cause shown
   b) Materials must be disclosed contemporaneously with the order
   c) Provides for notice and requests to be made if all information needed is not received

→ The time frames are not new, but the process for ensuring adequate records is new

8) Report to be submitted to the court within 15 days of evaluation

- It is 30 days for the adults, and this section provides much more detail of what should be in the reports

Reports must include:

a) description of the examination;
b) clinical assessment; and
c) description of abilities and deficits

27-20.5-06. continued…

9) Report issued shall make a finding regarding the minor's fitness to proceed, and make comments as to possible treatments to remediate fitness within the provided statutory time frames

10) Provides where copies should be sent

27-20.5-07. HEARING

1) Court holds a hearing within **10 days** of receiving the report and provides procedure for attorneys during the hearing
2) Options for the court: Lacks Fitness and not able to be remediated, proceed to disposition under section 09
3) Allows for tier 1a professional to appear via zoom
4) If found fit to proceed, resume proceedings

→ This is essentially identical to adult law, except provides timeframe for holding the hearing

27-20.5-08. REMEDIATION

This section of the code provides the options for remediation and how the court is to proceed under each option

1) Minor lacks fitness, but likely to be remediated within time frame of the order
    a) If infraction or equivalent to a class b misdemeanor if committed by an adult, the matter is dismissed, unless assaultive behavior
    b) If felony or class misdemeanor if committed by an adult, the matter may be dismissed or suspended.

→ this is new in allowing a felony and a misdemeanor to be dismissed

27-20.5-08. REMEDIATION continued…

2) If the proceedings are suspended to attempt remediation, the following occurs:
   a) court holds a hearing to determine least restrictive available environment
   b) court may issue an order for 60 days or until one of the following occurs:
      1) tier 1a mental health provider, based upon information from remediation provider, submits report minor has regained fitness or will never regain fitness; or
      2) the proceedings are dismissed.
   c) remediation provider sends report to tier 1a and the court no later than **14 days** before expiration of the 60 day order

3) Remediation provider may seek additional 60 day remediation order if substantial probability the minor will be remediated.

→ Similar to adult process

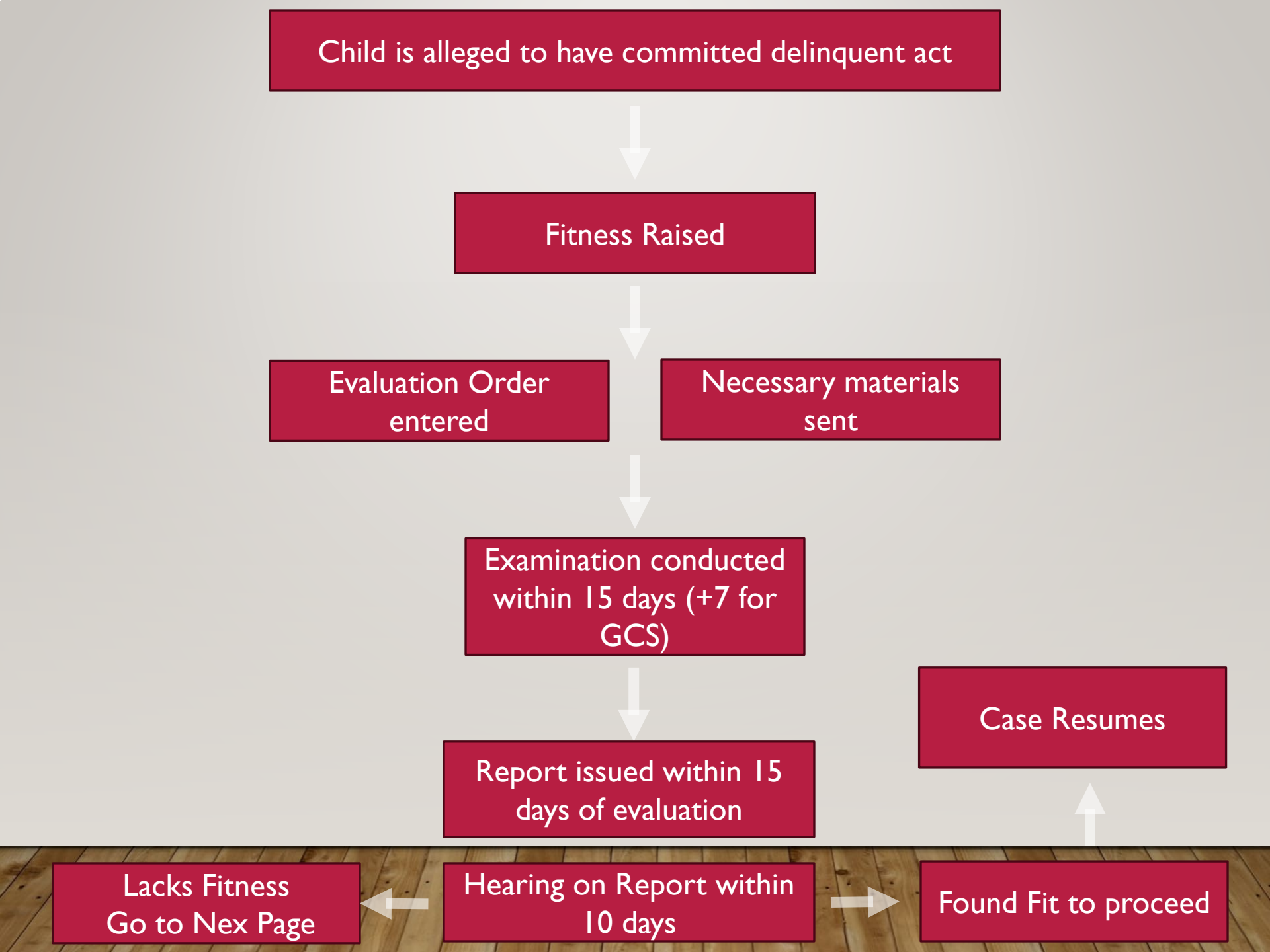
27-20.5-09 DISPOSITION

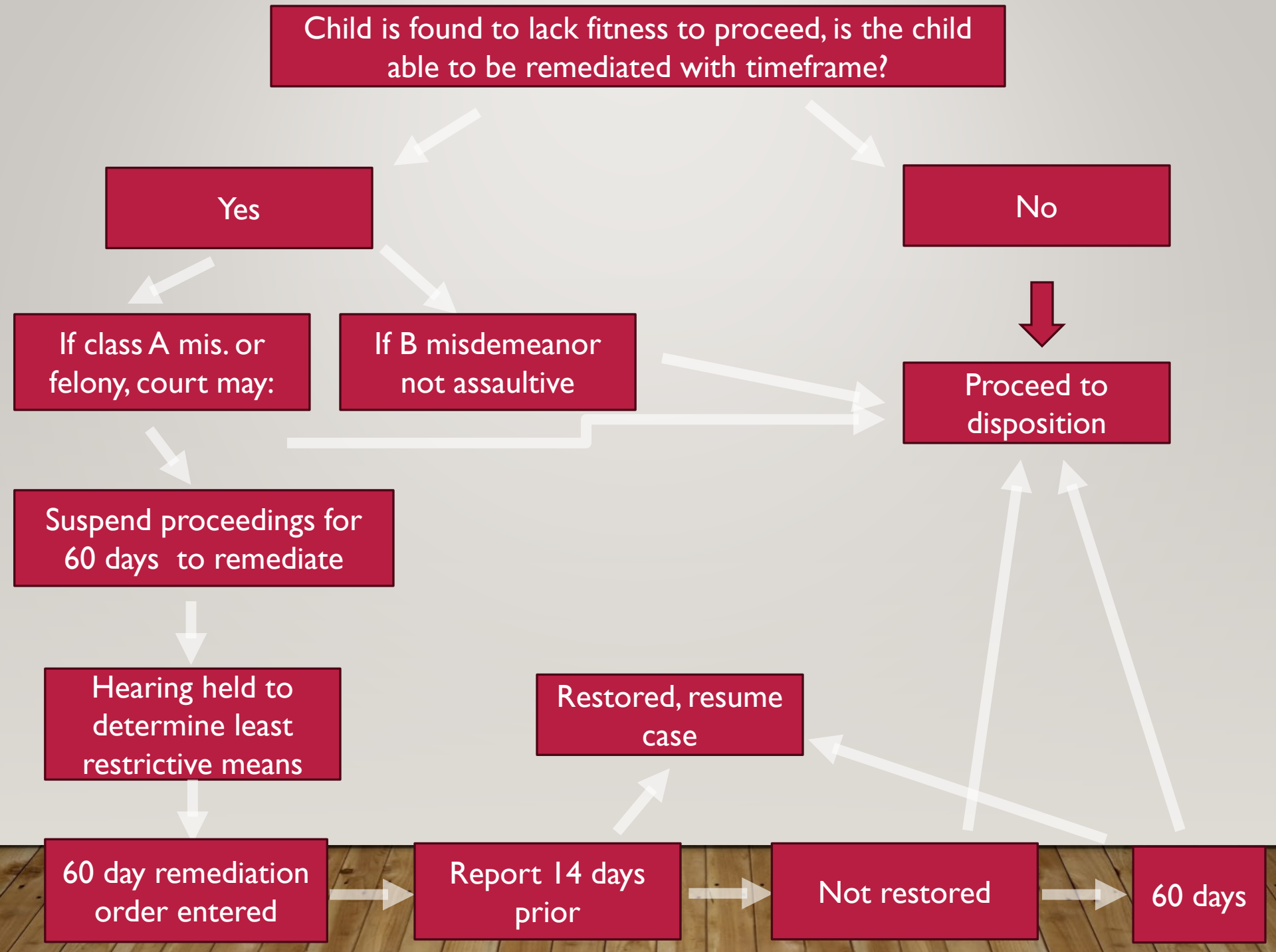
1) If minor lacks fitness and can not be remediated, the court may:
   a) dismiss the delinquency proceedings and release the minor to parents or legal /custodian; or
   b) retain jurisdiction and release the minor subject to treatment and/or services

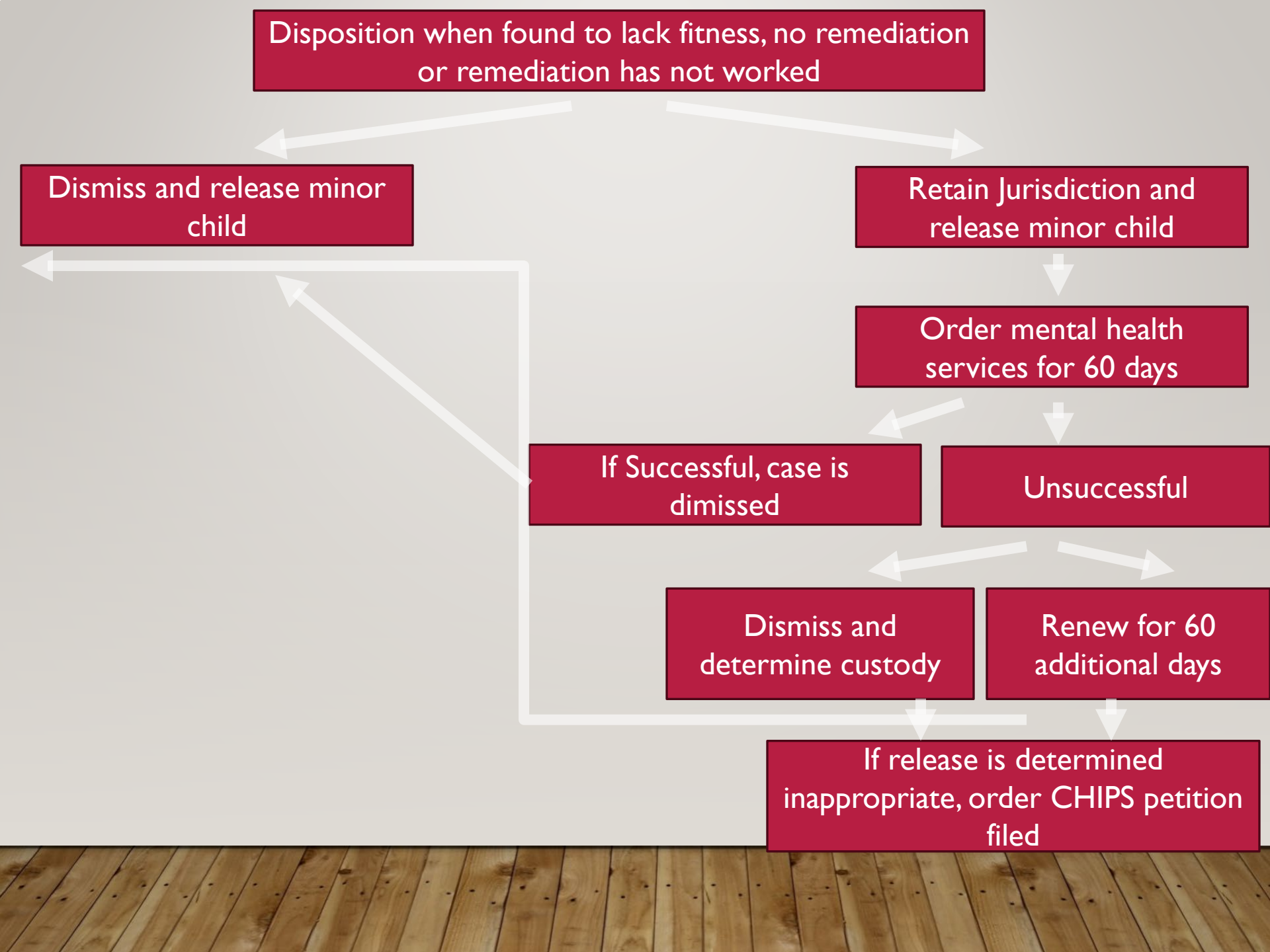
2) Court may order services to be provided to the juvenile and retain jurisdiction for 60 days
   a) court retains jurisdiction so juvenile court officers may assist in referrals, assessments and reports to the court

3) 14 days before the expiration of the 60 treatment order, a report must be provided to the court on the status of the treatment. Court can renew for 60 days or dismiss the case.

4) If dismissal and release is deemed inappropriate, the court may dismiss delinquency petition and enter an order directing a CHIPS petition be filed.


Child is alleged to have committed delinquent act
Fitness Raised
Evaluation Order entered
Necessary materials sent
Examination conducted within 15 days (+7 for GCS)
Report issued within 15 days of evaluation
Lacks Fitness Go to Nex Page
Hearing on Report within 10 days
Found Fit to proceed
Case Resumes


Child is found to lack fitness to proceed, is the child able to be remediated with timeframe?
Yes
No
If class A mis. or felony, court may:
If B misdemeanor not assaultive
Proceed to disposition
Suspend proceedings for 60 days to remediate
Hearing held to determine least restrictive means
Restored, resume case
60 day remediation order entered
Report 14 days prior
Not restored
60 days


Disposition when found to lack fitness, no remediation or remediation has not worked
Dismiss and release minor child
Retain Jurisdiction and release minor child
Order mental health services for 60 days
If Successful, case is dimissed
Unsuccessful
Dismiss and determine custody
Renew for 60 additional days
If release is determined inappropriate, order CHIPS petition filed

NORTH Dakota Be Legendary. | Health & Human Services

Testimony
Senate Bill No. 2036
Senate Judiciary Committee
Senator Diane Larson, Chairman

January 14, 2025

Chairman Larson, and members of the Senate Judiciary Committee, I am Dr. Shauna Eberhardt, Policy Clinical Director with the Department of Health and Human Services, Behavioral Health Division. I am here to provide neutral testimony on Senate Bill No. 2036, of which the appropriation is not in the Governor's budget.

Section 5, creates a new chapter to the North Dakota Century Code. Section 27-20.5-01. adds the definition, "Fitness to proceed." In the state of North Dakota, a Tier 1a mental health professional with specialized training in forensic assessment may complete a fitness to proceed examination. A fitness to proceed examination explores an individual's ability to understand the court process and take part in their own defense. This examination differs from a criminal responsibility examination, which explores an individual's state of capacity at the time of the alleged crime. Many factors may contribute to an individual's inability to take part in their own defense including developmental considerations, and mental health conditions. The assessment itself includes the review of the individual's current state based upon notes from juvenile justice staff, arrest records, case history, any current mental health records. Next, an in-depth clinical interview is conducted to assess their understanding of the justice system, the charges they are facing, and their ability to assist in their own defense. The assessor will observe the individual's behavior, demeanor, and response to questions. The assessor will complete a battery of standardized psychological tests to assess cognitive abilities, mental state, and psychological functioning.

Additional tools and observations may explore mental health conditions and related impairment. Lastly, the assessor will collect collateral information including medical records and interviews with family members. Once this information is collected, the assessor will compile a comprehensive report detailing their findings. The time to finalize an assessment varies significantly due to a variety of factors which may include the time spent to access and review records, consistency of the individual to make and keep the appointment as well as functional capacity to tolerate the process and testing.

The findings of an assessment may include: fit to proceed or unfit to proceed. An unfit to proceed finding may result in treatment recommendations to address an individual's mental health, dismissal of charges if fitness (competency) cannot be restored, or recommended competency restoration services, known as "remediation," in the care of juveniles. Remediation refers to services directed at building or restoring the capacity to understand the legal process and assist in an individual's own defense. Other states who have implemented juvenile remediation services, often contract with public sector behavioral health providers to complete these services due the specialized nature of the assessment and remediation practices. For example, Wisconsin contracts with Behavioral Consultants, Inc. Their specialized team employs a variety of doctoral level staff as well as mental health therapists with specialized training in remediation practices. They provide remediation services based upon specialized curriculum including the topics of factual and rational understanding of the allegations, roles of court principals (e.g., judge, district attorney, defense attorney), plea options and potential consequences of them, problem-solving skills, the delinquency process, skills for aiding in one's defense, and sentencing options. This remediation may also include connection to

additional behavioral health supports such as therapy for a specific mental health condition, case management, and psychiatric medications.

Currently employed by the Department of Health and Human Services, there are four psychologists who complete these assessments for adults and youth across the state, and two inpatient restoration staff who work with adults only, all within North Dakota State Hospital. In the month of December 2024, there were 53 orders for forensic assessments, with January 2025 already seeing 20 orders for forensic assessments. The Department reasonably anticipates that this Bill will impact the number of individuals required by the court to receive a fitness to proceed examinations, thus creating a need for additional psychologists to conduct the forensic assessments. Currently, the Department does not have staff capacity to conduct additional forensic assessments due to the increases that it has seen over years with adult criminal defendants.

As the change requested in section 27-20.5-08 outlines remediation should take place in the least restrictive environment, if the Department were to provide or contract for this service, staff will need to be hired and trained to provide services on an outpatient basis as this service for youth does not currently exist in North Dakota.

In conclusion, as fitness to proceed assessments and remediation are considered specialized services, in order to meet the needs as outlined in this Bill, there would be need for additional Tier 1 mental health professionals to carry out the increase in assessment demand, as well as the remediation staff to provide services to youth found unfit to proceed.

On Page 5, Line 4, under the definition of remediation, it is identified a provider would need to be certified. As a national certification does not exist, there would be need to develop a certification process for remediation

specialists to ensure consistency and competency in the area of juvenile remediation. Finally, there would be need for additional resource to adequately track individuals and outcomes. Section 6 includes an appropriation to implement and administer Section 5. Section 7 has a delayed effective date for Section 5 as the Department will need time to contract or hire staff and establish the certification and remediation services.

We would like to offer an amendment:

PROPOSED AMENDMENTS TO SENATE BILL NO. 2036

SECTION 7. EFFECTIVE DATE.

Section 5 of this Act becomes effective on January 2, 2027.

This concludes my testimony. I would be happy to try to answer any questions the committee may have. Thank you.

PROPOSED AMENDMENTS TO

SENATE BILL NO. 2036

Sixty-ninth
Legislative Assembly
of North Dakota

Introduced by

Legislative Management

(Juvenile Justice Committee)

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

12.1-04-01. Juveniles.

~~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.~~ The prosecution of an individual as an adult is barred if the offense was committed while the individual was less than fourteen years of age.

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

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

4. If the court determines the defendant currently lacks fitness to proceed and the defendant may attain fitness to proceed under subsection ~~1~~2, the court may enter an order for a course of treatment considering the least restrictive form of treatment 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 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 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 ~~1~~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:

5. "Child in need of protection" means a child who:

a. Is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for the child's physical, mental, or emotional health, or morals, and the need for services or protection is not due primarily to the lack of financial means of the child's parents, guardian, or other custodian;

b. Has been placed for care or adoption in violation of law;

c. Has been abandoned by the child's parents, guardian, or other custodian;

d. Is without proper parental care, control, or education as required by law, or other care and control necessary for the child's well-being because of the physical, mental, emotional, or other illness or disability of the child's parent or parents, and that such lack of care is not due to a willful act of commission or act of omission by the child's parents, and care is requested by a parent;

e. Is in need of treatment and whose parents, guardian, or other custodian have refused to participate in treatment as ordered by the juvenile court;

f. Was subject to prenatal exposure to chronic or severe use of alcohol or any controlled substance as defined in chapter 19-03.1 in a manner not lawfully prescribed by a practitioner;

g. Is present in an environment subjecting the child to exposure to a controlled substance, chemical substance, or drug paraphernalia as prohibited by section 19-03.1-22.2; ~~or~~

h. Is a victim of human trafficking as defined in title 12.1; or

i. Was found to lack fitness to proceed by a court in a delinquency case and the delinquency case was dismissed within the six months preceding the filing of the petition.

SECTION 5. AMENDMENT. Section 27-20.4-15 of the North Dakota Century Code is amended and reenacted as follows:

27-20.4-15. Predispositional assessment.

1. Before the disposition hearing, the court shall direct the director or designee, to conduct a predisposition assessment and to prepare a written report for the court, 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 raised by the court before which the proceedings are pending or being held, or by motion of a party, at any time during the proceeding.

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

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

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

27-20.5-05. Due process.

1. If the minor's fitness to proceed is raised, adjudication may not occur until after a determination is made except the filing of a delinquency petition, until counsel is appointed and notified in accordance with section 27-20.2-12 and the minor is found to have the mental capacity to proceed.
2. After the case proceeds to adjudication or the minor is found to lack fitness to proceed, the court shall order all of the reports that are submitted under this chapter to be closed to the public. The court may order the reports be opened for inspection only:
   a. For further fitness to proceed or criminal responsibility examination;
   b. For statistical analysis;
   c. If the records are considered to be necessary to assist in mental health treatment ordered according to the mental health code;
   d. For data gathering;
   e. For scientific study or other legitimate research;
   f. To the state's attorney or minor's counsel for the purpose of an active court case subject to the prior evaluation; and
   g. To an employee or agent of the division of juvenile services or the department of health and human services, if necessary in the performance of the employee's or agent's duty.
3. If the court orders a report to be open for the purpose of de-identified statistical analysis, data gathering, or scientific study, the report must remain confidential.
4. Any incriminating statement made by a minor to the tier 1a mental health professional as part of a fitness to proceed examination may not be used against the minor over objection in any proceeding.

27-20.5-06. Fitness to proceed examination.

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

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

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

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

   a. The names and addresses of all attorneys involved;

   b. Information about the alleged offense; and

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

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

   a. Psychiatric records;

   b. School records;

   c. Medical records; and

   d. Child protective services records.

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

7. The fitness to proceed examination must occur within fifteen days from receipt of materials identified in subsections 4 and 5 and notice of entry of the order served on the tier 1a mental health professional.

   a. The court may grant an additional seven days to complete the examination if good cause is shown.

   b. The materials required in subsections 4 and 5 must be disclosed contemporaneously with the order.

c. The tier 1a mental health professional shall notify the court and request any missing or additional information within seventy-two hours of receiving this information, and the attorneys and juvenile court staff have seven days to send the information to the tier 1a mental health professional.

8. A tier 1a mental health professional who conducts a fitness to proceed examination shall submit a written report to the court no later than fifteen days from completing the fitness to proceed examination. The report must include:

a. A description of the nature, content, and extent of the examination, including:

(1) A description of the assessment procedure, technique, and test used;

(2) Medical, educational, and court records reviewed; and

(3) Social, clinical, developmental, and available legal history.

b. A clinical assessment that includes:

(1) A mental status examination;

(2) The diagnosis and functional impact of mental illness, developmental disability, or cognitive impairment. If the minor is taking medication, the impact of the medication on the minor's mental state and behavior;

(3) An assessment of the minor's intelligence and maturity level, when relevant;

(4) The minor's age, developmental state, and decisionmaking abilities; and

(5) Whether the minor has any other factor that affects fitness to proceed.

c. A description of abilities and deficits in the following mental competency functions related to the minor's fitness to proceed:

(1) The ability to factually and rationally understand and appreciate the nature and object of the proceedings, including the ability to:

(a) Understand the role of the participants in the court process, including the roles of the judge, the minor's attorney, the prosecuting attorney, the probation officer, witnesses, and the jury, and to understand the adversarial nature of the process;

(b) Appreciate the offense and understand the seriousness of the offense;

(c) Understand and realistically appraise the likely outcomes; and

(d) Extend thinking into the future.

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

(a) The ability to disclose to an attorney a reasonably coherent description of facts and events pertaining to the charge, as perceived by the minor;

(b) The ability to consider the impact of the minor's action on others;

(c) Verbal articulation abilities or the ability to express himself or herself in a reasonable and coherent manner;

(d) Logical decisionmaking abilities, including multifactored problem solving or the ability to take several factors into consideration in making a decision;

(e) The ability to reason about available options by weighing the consequences, including distinguishing between a not guilty and guilty plea, weighing pleas, dispositions, waivers, and strategies; and

(f) The ability to display appropriate courtroom behavior and testify relevantly.

9. The tier 1a mental health professional shall provide the court with a written report about the minor's fitness to proceed. If the tier 1a mental health professional determines the minor lacks fitness to proceed, the tier 1a mental health professional shall comment on the nature of any psychiatric or psychological disorder or cognitive impairment, the prognosis, and the available services needed to remediate the minor 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:

   a. Dismiss the delinquency proceedings and release the minor to the minor's parent, legal guardian, or legal custodian; or

   b. Retain jurisdiction and release the minor to the minor's parent, legal guardian, or legal custodian subject to mental health treatment or services under subsection 2.

2. The court may in its discretion order mental health services or other available services from a mental health provider be provided to the minor by a community mental health services program, the department of health and human services, or another appropriate mental health services provider, subject to the availability of inpatient or outpatient care, for a period not to exceed sixty days.

   a. The court retains jurisdiction over the minor throughout the duration of the order and the juvenile court officer may assist with referrals, the assessment process, and reporting to the court.

   b. The entity providing services under this subsection shall determine necessary mental health treatment or services and continue to provide mental health

treatment or services for the duration of the period of mental health treatment or services ordered by the court.

3. No later than fourteen days before the expiration of the order for mental health treatment or services under this subsection or subsection 2, a report must be provided to the court regarding the minor. The court shall review the report and:

   a. Renew the order for another period of mental health treatment or services not to exceed sixty days. The order for mental health treatment or services and any renewed order may not exceed a total of one hundred twenty days; or

   b. Determine custody of the minor and dismiss the delinquency proceedings against the minor.

4. If release to the minor's parent, legal guardian, or legal custodian is determined inappropriate under subsection 1, the court may dismiss the delinquency proceeding and enter an order directing a child in need of protection petition to be filed, order a shelter care hearing be held, or enter a shelter care order.

SECTION 7. APPROPRIATION - DEPARTMENT OF HEALTH AND HUMAN SERVICES - JUVENILE FITNESS TO PROCEED MENTAL HEALTH SERVICES. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of $4,580,000, or so much of the sum as may be necessary, and the sum of $1,000,000 from other funds derived from federal funds, or so much of the sum as may be necessary, to the department of health and human services for the purpose of defraying the costs associated with implementing and administering section 5 of this Act, for the biennium beginning July 1, 2025, and ending June 30, 2027.

SECTION 8. EFFECTIVE DATE. Section 5 of this Act becomes effective on August 1, 2026.

2025 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

SB 2036
1/14/2025
11:04 a.m.

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

11:04 a.m. Chair Larson opened the hearing.

Members Present: Chair Larson, Vice-Chair Paulson, Senators Braunberger, Castaneda, Cory, Luick, Myrdal.

Discussion Topics:

- Committee Action

11:05 a.m. Senator Luick moved to adopt the amendment LC 25.0324.02000 version, previous testimony #29043.

11:05 a.m. Senator Myrdal seconded the motion.

Senators	Vote
Senator Diane Larson	Y
Senator Bob Paulson	Y
Senator Ryan Braunberger	Y
Senator Jose L. Casteneda	Y
Senator Claire Cory	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

Motion Passed 7-0-0.

11:09 a.m. Senator Myrdal moved to further amend by extending the effective date to January 2nd, 2027.

11:09 a.m. Senator Cory seconded the motion.

Senators	Vote
Senator Diane Larson	Y
Senator Bob Paulson	Y
Senator Ryan Braunberger	Y
Senator Jose L. Casteneda	Y
Senator Claire Cory	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

Motion Passed 7-0-0.

11:12 a.m. Senator Luick moved a Do Pass as Amended.

11:13 a.m. Senator Cory seconded the motion.

Senators	Vote
Senator Diane Larson	Y
Senator Bob Paulson	Y
Senator Ryan Braunberger	Y
Senator Jose L. Casteneda	Y
Senator Claire Cory	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

Motion Passed 7-0-0.

Senator Cory will carry the bill.

11:14 a.m. Chair Larson closed the hearing.

Kendra McCann, Committee Clerk

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25.0324.02001
Title.03000

Adopted by the Judiciary Committee

January 14, 2025

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO

SENATE BILL NO. 2036

Introduced by

Legislative Management

(Juvenile Justice Committee)

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

12.1-04-01. Juveniles.

~~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.~~ The prosecution of an individual as an adult is barred if the offense was committed while the individual was less than fourteen years of age.

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

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

4. If the court determines the defendant currently lacks fitness to proceed and the defendant may attain fitness to proceed under subsection ~~1~~2, the court may enter an

order for a course of treatment considering the least restrictive form of treatment 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 ~~1~~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:

5. "Child in need of protection" means a child who:

a. Is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for the child's physical, mental, or emotional health, or morals, and the need for services or protection is not due primarily to the lack of financial means of the child's parents, guardian, or other custodian;

b. Has been placed for care or adoption in violation of law;

c. Has been abandoned by the child's parents, guardian, or other custodian;

d. Is without proper parental care, control, or education as required by law, or other care and control necessary for the child's well-being because of the physical, mental, emotional, or other illness or disability of the child's parent or parents, and that such lack of care is not due to a willful act of commission or act of omission by the child's parents, and care is requested by a parent;

e. Is in need of treatment and whose parents, guardian, or other custodian have refused to participate in treatment as ordered by the juvenile court;

f. Was subject to prenatal exposure to chronic or severe use of alcohol or any controlled substance as defined in chapter 19-03.1 in a manner not lawfully prescribed by a practitioner;

g. Is present in an environment subjecting the child to exposure to a controlled substance, chemical substance, or drug paraphernalia as prohibited by section 19-03.1-22.2; ~~or~~

h. Is a victim of human trafficking as defined in title 12.1; or

i. Was found to lack fitness to proceed by a court in a delinquency case and the delinquency case was dismissed within the six months preceding the filing of the petition.

SECTION 5. AMENDMENT. Section 27-20.4-15 of the North Dakota Century Code is amended and reenacted as follows:

27-20.4-15. Predispositional assessment.

1. Before the disposition hearing, the court shall direct the director or designee, to conduct a predisposition assessment and to prepare a written report for the court, 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 raised by the court before which the proceedings are pending or being held, or by motion of a party, at any time during the proceeding.
2. If the minor's fitness to proceed is raised, adjudication may not occur until after a determination is made on the fitness of the minor to proceed in accordance with this chapter.

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

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

27-20.5-05. Due process.

1. If the minor's fitness to proceed is raised, adjudication may not occur until after a determination is made except the filing of a delinquency petition, until counsel is appointed and notified in accordance with section 27-20.2-12 and the minor is found to have the mental capacity to proceed.
2. After the case proceeds to adjudication or the minor is found to lack fitness to proceed, the court shall order all of the reports that are submitted under this chapter to be closed to the public. The court may order the reports be opened for inspection only:
   a. For further fitness to proceed or criminal responsibility examination;
   b. For statistical analysis;
   c. If the records are considered to be necessary to assist in mental health treatment ordered according to the mental health code;
   d. For data gathering;
   e. For scientific study or other legitimate research;

f. To the state's attorney or minor's counsel for the purpose of an active court case subject to the prior evaluation; and

g. To an employee or agent of the division of juvenile services or the department of health and human services, if necessary in the performance of the employee's or agent's duty.

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

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

27-20.5-06. Fitness to proceed examination.

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

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

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

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

a. The names and addresses of all attorneys involved;

b. Information about the alleged offense; and

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

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

a. Psychiatric records;

b. School records;

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c. Medical records; and

d. Child protective services records.

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

7. The fitness to proceed examination must occur within fifteen days from receipt of materials identified in subsections 4 and 5 and notice of entry of the order served on the tier 1a mental health professional.

a. The court may grant an additional seven days to complete the examination if good cause is shown.

b. The materials required in subsections 4 and 5 must be disclosed contemporaneously with the order.

c. The tier 1a mental health professional shall notify the court and request any missing or additional information within seventy-two hours of receiving this information, and the attorneys and juvenile court staff have seven days to send the information to the tier 1a mental health professional.

8. A tier 1a mental health professional who conducts a fitness to proceed examination shall submit a written report to the court no later than fifteen days from completing the fitness to proceed examination. The report must include:

a. A description of the nature, content, and extent of the examination, including:

(1) A description of the assessment procedure, technique, and test used;

(2) Medical, educational, and court records reviewed; and

(3) Social, clinical, developmental, and available legal history.

b. A clinical assessment that includes:

(1) A mental status examination;

(2) The diagnosis and functional impact of mental illness, developmental disability, or cognitive impairment. If the minor is taking medication, the impact of the medication on the minor's mental state and behavior;

(3) An assessment of the minor's intelligence and maturity level, when relevant;

(4) The minor's age, developmental state, and decisionmaking abilities; and

(5) Whether the minor has any other factor that affects fitness to proceed.

c. A description of abilities and deficits in the following mental competency functions related to the minor's fitness to proceed:

(1) The ability to factually and rationally understand and appreciate the nature and object of the proceedings, including the ability to:

(a) Understand the role of the participants in the court process, including the roles of the judge, the minor's attorney, the prosecuting attorney, the probation officer, witnesses, and the jury, and to understand the adversarial nature of the process;

(b) Appreciate the offense and understand the seriousness of the offense;

(c) Understand and realistically appraise the likely outcomes; and

(d) Extend thinking into the future.

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

(a) The ability to disclose to an attorney a reasonably coherent description of facts and events pertaining to the charge, as perceived by the minor;

(b) The ability to consider the impact of the minor's action on others;

(c) Verbal articulation abilities or the ability to express himself or herself in a reasonable and coherent manner;

(d) Logical decisionmaking abilities, including multifactored problem solving or the ability to take several factors into consideration in making a decision;

(e) The ability to reason about available options by weighing the consequences, including distinguishing between a not guilty and guilty plea, weighing pleas, dispositions, waivers, and strategies; and

(f) The ability to display appropriate courtroom behavior and testify relevantly.

9. The tier 1a mental health professional shall provide the court with a written report about the minor's fitness to proceed. If the tier 1a mental health professional determines the minor lacks fitness to proceed, the tier 1a mental health professional

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shall comment on the nature of any psychiatric or psychological disorder or cognitive impairment, the prognosis, and the available services needed to remediate the minor 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:

a. Dismiss the delinquency proceedings and release the minor to the minor's parent, legal guardian, or legal custodian; or

b. Retain jurisdiction and release the minor to the minor's parent, legal guardian, or legal custodian subject to mental health treatment or services under subsection 2.

2. The court may in its discretion order mental health services or other available services from a mental health provider be provided to the minor by a community mental health services program, the department of health and human services, or another appropriate mental health services provider, subject to the availability of inpatient or outpatient care, for a period not to exceed sixty days.

a. The court retains jurisdiction over the minor throughout the duration of the order and the juvenile court officer may assist with referrals, the assessment process, and reporting to the court.

b. The entity providing services under this subsection shall determine necessary mental health treatment or services and continue to provide mental health treatment or services for the duration of the period of mental health treatment or services ordered by the court.

3. No later than fourteen days before the expiration of the order for mental health treatment or services under this subsection or subsection 2, a report must be provided to the court regarding the minor. The court shall review the report and:

a. Renew the order for another period of mental health treatment or services not to exceed sixty days. The order for mental health treatment or services and any renewed order may not exceed a total of one hundred twenty days; or

b. Determine custody of the minor and dismiss the delinquency proceedings against the minor.

4. If release to the minor's parent, legal guardian, or legal custodian is determined inappropriate under subsection 1, the court may dismiss the delinquency proceeding and enter an order directing a child in need of protection petition to be filed, order a shelter care hearing be held, or enter a shelter care order.

SECTION 7. APPROPRIATION - DEPARTMENT OF HEALTH AND HUMAN SERVICES - JUVENILE FITNESS TO PROCEED MENTAL HEALTH SERVICES. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of $4,580,000, or so much of the sum as may be necessary, and the sum of $1,000,000 from other funds derived from federal funds, or so much of the sum as may be necessary, to the department of health and human services for the purpose of defraying the costs associated with implementing and administering section ~~5~~6 of this Act, for the biennium beginning July 1, 2025, and ending June 30, 2027.

SECTION 8. EFFECTIVE DATE. ~~Section~~Sections 5 and 6 of this Act ~~becomes~~become effective on ~~August 1, 2026~~January 2, 2027.

REPORT OF STANDING COMMITTEE
SB 2036

Judiciary Committee (Sen. Larson, Chairman) recommends **AMENDMENTS (25.0324.02001)** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2036 was placed on the Sixth order on the calendar. This bill does not affect workforce development.

2025 SENATE APPROPRIATIONS

SB 2036

2025 SENATE STANDING COMMITTEE MINUTES

Appropriations - Human Resources Division
Harvest Room, State Capitol

SB 2036
1/28/2025

Relating to fitness to proceed and remediation of juveniles; relating to the age of an offender, suspension or dismissal of proceedings, pre-dispositional assessment, and the definition of a child in need of protection; to provide an appropriation; and to provide an effective date.

9:00 a.m. Chairman Dever opened the meeting.

Members Present: Chairman Dever, Senators Cleary, Davison, Magrum and Mathern

Discussion Topics:

- Policy Expense - Full-Time Employee
- Clinics Expense - Full-Time Employee
- Legal Division Expense
- Child In Need of Protection or Services (CHIPS)
- Juvenile Cases
- Best Practices for Juveniles
- Juvenile Remediations Services & Providers
- Forensic Evaluation
- Appropriations Breakdown
- Age of Offender
- Dismissal or Suspension
- Predispositional Assessment

9:03 a.m. Senator Cory, ND District 42, Vice Chair of the Interim Juvenile Justice Committee, testified in favor and submitted testimony #32113.

9:06 a.m. Shawna Eberhardt, Policy Legal Director, Department of Health and Human Services (DHHS), testified in favor and submitted testimony #32130.

9:09 a.m. Jonathan Alm, Chief Legal Officer, DHHS, testified in favor.

9:13 a.m. Lyndon Jahner, Budget Manager, DHHS, testified in favor.

9:15 a.m. Maurice Hardy, Director, Dakota Central Service Zone, testified in favor and submitted testimony #31556.

9:26 a.m. Travis Finck, Executive Director, ND Commission on Legal Counsel for Indigents, testified in favor.

9:35 Chairman Devers closed the hearing.

Joan Bares, Committee Clerk

Testimony Prepared for the
Senate Appropriations Committee
January 28, 2025
By: Maurice Hardy; LBSW, MRC, Dakota Central Human Service Zone Director

RE: SB 2036: Relating to Juvenile Fitness to Proceed and Remediation of Juveniles, and definition of a Child In Need of Protection

Chair Bekkedahl, and members of the Senate Appropriations Committee, my name is Maurice Hardy. I am the Director for Dakota Central Human Service Zone, which includes the counties of McLean, Mercer, Sheridan, and am a member of the Human Service Zone Directors Association. I am here today to provide testimony regarding SB 2036 relating to changes in the Juvenile Court Act surrounding Fitness to proceed and remediation, as well as the definition of a Child In Need of Protective Services (CHIPS).

Human Service Zones are mandated to provide economic assistance and child welfare services, including child protection, foster care, in home case management as well as receive CHINS (Child In Need of Services) referrals. Human Service Zone Directors are also the legal custodian to children in zone public custody, primarily the CHIPS population.

During the interim, much work was completed to establish parameters and procedures to determine whether a juvenile is fit to proceed through the court process. This bill amends the current Child Welfare -Child In Need of Protective Services definition (NDCC 27-20.3-01) to include a juvenile who has been found to lack fitness to proceed in court with a delinquency case and the delinquency case was dismissed. Dispositional options for a CHIPS juvenile commonly include placing care, custody and control with the Director of the Human Service Zone. We recognize and support the unique needs of this population and agree that these youth are more appropriately designated in the juvenile court system as a Child In Need of Protective Services. This is the right thing to do legally for these youth.

Youth identified as lacking fitness to proceed, are likely to have extensive and complex behavioral health needs. These youth will likely have low or borderline intellectual functioning, significant, unstable and/or untreated mental health diagnoses. Human Service Zones currently do have youth with similar complex needs in custody. It is estimated that this bill would impact approximately 25 youth annually, increasing the number of complex need youth in Human Service Zone custody. These youth, although small in numbers, require extensive time and effort in locating services and when necessary, placement. There is an extremely limited number placement options for these youth in North Dakota and there is risk for those who may be placed at the incorrect level of care, due to a lack of availability of appropriate service options.

For remediation options, or youth who may return to the parental home which we feel is often the best, we must be confident that the community services are available to address the youth and ultimately the family's needs. Without a spectrum of statewide service options, children's needs are not met, families are adversely impacted, and treatment is delayed and, in some cases, completely absent. As a system, we need to continue to build statewide comprehensive child services, to include emergency assessment, stabilization and placement, for at-risk and complex needs youth. While there are services available to meet these needs on some level, we don't always have them in the right place at the right time.

The appropriation attached to this bill to allow to provide services and the hiring of staff to implement these changes. This funding is absolutely critical to meet the needs of this population, whether they are placed with their families or in the custody of the Human Service Zone.

Given the anticipated increased workload, as well as the need to build a more robust array of services to meet the unique and complicated needs of this population

Thank you for your consideration of my testimony regarding Senate Bill 2036. I stand for questions from the committee.

SB 2036
1-28-25

TESTIMONY IN SUPPORT OF SENATE BILL 2036

SENATE APPROPS COMMITTEE

JANUARY 28, 2025

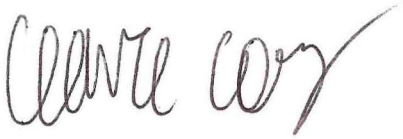
Good Morning Senate Judiciary Committee Members. My name is Claire Cory. I am a North Dakota State Senator representing District 42, which includes northwest Grand Forks and the Grand Forks Air Force Base. I appear by way of vice chair of the Interim Juvenile Justice Committee of Senate Bill 2036 asking for your support.

SB 2036 is a bill that was recommended out of the interim juvenile justice committee last interim. The Judiciary Committee recommended a do pass as amended with a unanimous 7-0 vote. The bill creates a new section of the juvenile code to deal with those kids who lack fitness to proceed. Currently, juvenile cases are handled under the adult century code provisions in NDCC. This not only moves it to the juvenile code but updates language and implements best practices for juveniles The fiscal note was drafted by the department of health and human services. The dollar amount in the note is to provide juvenile remediation services.

Currently, if a child in a delinquency action lacks competency, the case is dismissed as there are no remediation services available.

Chairman Dever, I will stand for your question.

Respectfully submitted,



Claire Cory

SB 2036
1-28-25

Policy and admin

FTE-$240,000-106
Would need to write admin code
Would need to build certification process
Would need to research best practice
Technology certification platform development and maintenance-$300,000

1. Need to develop the certification process for the remediation provider and monitor. (Need appeal rights, legal representation from the AG's for any appeals, and pay the OAH – costs are factored into Legal's Budget).

Clinics, NDSH and LSTC

Remediation FTE-$215,000 x 8=$1,720,000
Psychologist FTE-$310,000 x3=$930,000
Admin Support FTE-$125,000x2=$250,000
Training Material for programming, certification costs-$100,000

1. HHS will need to hire and train remediation providers to provide remediation services for minors, remediation provider is required to submit reports to the court and to the tier 1a mental health professional, and remediation provider may recommend to the court and the tier 1a mental health professional that the remediation order be renewed beyond the initial 60 days. A remediation provider could be HHS staff or a private provider.
2. HHS would need to conduct forensic evaluations, draft and finalize reports, and file reports. This is currently being done at NDSH and LSTC. However, I strongly believe that with the law change the requests will increase, like what we have seen with the adult population.
3. HHS will need to use staff time to search for and obtain material/information for the forensic evaluator to write his or her report as the information is not being provided to the forensic evaluator. The proposed bill draft allows the forensic evaluator to raise the issue with the court, but this also takes staff time and money.
4. HHS also needs to account for the need to supplement the filed forensic examination report after it receives additional material. This will take additional time and resources.
5. HHS staff that conducted the examination might be required to attend the fitness to proceed hearing in person if any party objects to them appearing by electronic means, thus taking time away from conducting examinations and filing reports.

Legal Division

Would need to pay additional funds to the Office of Attorney General for legal services-$22,500 (12 months)
Would need funds to pay OAH: $10,000 (12 months)

Commented [PC1]: talk with Sarah O to see if this is enough

Commented [AJE2R1]: FYI - the general funds total was $4,580,000 and the federal funds was $100,000 based on the current numbers as of 9/3. Thank you,

Commented [PC3]: look at current to see if ...

Commented [PC4]: SO

Legal Division staff would need to review additional court orders (fitness, contempt, status) and create rules-$5,o00 for workload increase (12 months) and $2,500 for publication costs for administrative rules.

Children and Family Services/HSZ

CHIP FTE–$250,000 x 8 =$2,000,000

Commented [PC5]: EH to see if thats reasonable

Office of Attorney General

Unknown if they would need an FTE or not.

The language used in the proposed draft states that the fitness to proceed examination shall be conducted in the least restricted environment. However, I suspect we will receive some court orders that order the individual to NDSH or LSTC, which will require an appeal or supervisory writ. Currently, we would not have the right to appeal (not a party to the action) unless we are held in contempt of court.

The forensic evaluators and the HSC treatment team (remediation provider) will need to have conversation and a plan regarding what services are available to a minor who is not fit to proceed. The draft is currently written to address "available services", so we need to all be on the same page as to what is available from the State.

2025 SENATE STANDING COMMITTEE MINUTES

Appropriations - Human Resources Division
Harvest Room, State Capitol

SB 2036
2/11/2025

Relating to fitness to proceed and remediation of juveniles; relating to the age of an offender, suspension or dismissal of proceedings, predispositional assessment, and the definition of a child in need of protection; to provide an appropriation; and to provide an effective date.

8:30 a.m. Chairman Dever opened the hearing.

Members Present: Chairman Dever, Senators Cleary, Davison, Magrum and Mathern

Discussion Topics:

- Juvenile Justice Process
- Youth Referral for Assessment
- Remediation Services to become Fit to Proceed for Court
- 8 Regionalized Services
- 22 Full-Time Employees
- Provider Certification Process

8:32 a.m. Antonia Berning Scilley, Director of Operational Development & Compliance, Department of Health and Human Services (DHHS), testified in neutral and submitted testimony #37044.

8:40 a.m. Pamela Sagness, Executive Director, Behavioral Health Division, DHHS, testified in neutral.

9:02 a.m. Jonathan Alm, Chief Legal Officer, DHHS, answered questions.

9:25 a.m. Grant Gader, Fiscal Analyst, LC, answered questions .

9:27 a.m. Chairman Dever closed the hearing.

Joan Bares, Committee Clerk

HB 2036
2-11-25

Item Request	FTE	Cost for given for the 8/1/2026 intital bill	Per Month	flat rate cost
Certification	1	$ 240,000.00	$ 21,818.18	
Technology	0	$ 300,000.00		$ 300,000.00
Remidation	8	$ 1,720,000.00	$ 156,363.64	
Psych	3	$ 930,000.00	$ 84,545.45	
Admin	2	$ 250,000.00	$ 22,727.27	
Materials	0	$ 100,000.00		$ 100,000.00
Chins	8	$ 2,000,000.00	$ 181,818.18	
AG Office	0	$ 22,500.00	$ 2,045.45	
OA	0	$ 10,000.00	$ 909.09	
Legal	0	$ 5,000.00	$ 454.55	
publication	0	$ 2,500.00		$ 2,500.00
			Total Cost/Month	Total Flat Rate Cost
			$ 470,681.82	$ 402,500.00
		Total for 8/1/2026 Start	Subtotal with Jan 1, 2027 start	Total with Jan 1, 2027 Start
		$ 5,580,000.00	$ 2,824,090.91	$ 3,226,590.91

2025 SENATE STANDING COMMITTEE MINUTES

Appropriations - Human Resources Division
Harvest Room, State Capitol

SB 2036
2/12/2025

Relating to fitness to proceed and remediation of juveniles; relating to the age of an offender, suspension or dismissal of proceedings, predispositional assessment, and the definition of a child in need of protection; to provide an appropriation; and to provide an effective date.

11:34 a.m. Chairman Dever opened the hearing.

Members Present: Chairman Dever, Senators Cleary, Davison, Magrum, Mathern

Discussion Topics:

- Full Time Equivalent (FTE) Request

11:34 a.m. Senator Cleary started discussion regarding the request for 21 FTE's.

11:36 a.m. Senator Davison continued discussion.

11:38 a.m. Senator Mathern joined discussion.

11:40 a.m. Senator Mathern will work on an amendment and bring it back to committee.

11:44 a.m. Chairman Dever closed the hearing.

Joan Bares, Committee Clerk

2025 SENATE STANDING COMMITTEE MINUTES

Appropriations - Human Resources Division
Harvest Room, State Capitol

SB 2036
2/14/2025

Relating to fitness to proceed and remediation of juveniles; relating to the age of an offender, suspension or dismissal of proceedings, predispositional assessment, and the definition of a child in need of protection; to provide an appropriation; and to provide an effective date.

8:32 a.m. Chairman Dever opened the hearing.

Members Present: Chairman Dever, Senators Cleary, Davison, Magrum, Mathern

Discussion Topics:

- Appropriation Reduction
- Program Reduction

8:34 a.m. Senator Mathern introduced the bill and the amendment LC 25.0324.03002 and submitted testimony #37736.

8:37 a.m. Senator Mathern moved amendment.

8:38 a.m. Senator Davison seconded.

8:39 a.m. Voice Vote - Motion passed.

8:39 a.m. Senator Mathern Moved Do Pass as Amended.

8:39 a.m. Senator Davison seconded.

Senators	Vote
Senator Dick Dever	Y
Senator Sean Cleary	Y
Senator Kyle Davison	Y
Senator Jeffery J. Magrum	Y
Senator Tim Mathern	Y

Motion Passed 5-0-0.

Senator Mathern will carry the bill.

8:41 a.m. Chairman Dever closed the hearing.

Joan Bares, Committee Clerk

25.0324.03002
Title.

Prepared by the Legislative Council staff for Senator Mathern
February 14, 2025

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO FIRST ENGROSSMENT

ENGROSSED SENATE BILL NO. 2036

Introduced by

Legislative Management

(Juvenile Justice Committee)

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

12.1-04-01. Juveniles.

~~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.~~ The prosecution of an individual as an adult is barred if the offense was committed while the individual was less than fourteen years of age.

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

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

4. If the court determines the defendant currently lacks fitness to proceed and the defendant may attain fitness to proceed under subsection ~~1~~2, the court may enter an

order for a course of treatment considering the least restrictive form of treatment 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 ~~1~~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:~~

~~5. "Child in need of protection" means a child who:~~

~~a. Is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for the child's physical, mental, or emotional health, or morals, and the need for services or protection is not due primarily to the lack of financial means of the child's parents, guardian, or other custodian;~~

~~b. Has been placed for care or adoption in violation of law;~~

~~c. Has been abandoned by the child's parents, guardian, or other custodian;~~

~~d. Is without proper parental care, control, or education as required by law, or other care and control necessary for the child's well-being because of the physical, mental, emotional, or other illness or disability of the child's parent or parents, and that such lack of care is not due to a willful act of commission or act of omission by the child's parents, and care is requested by a parent;~~

~~e. Is in need of treatment and whose parents, guardian, or other custodian have refused to participate in treatment as ordered by the juvenile court;~~

~~f. Was subject to prenatal exposure to chronic or severe use of alcohol or any controlled substance as defined in chapter 19-03.1 in a manner not lawfully prescribed by a practitioner;~~

~~g. Is present in an environment subjecting the child to exposure to a controlled substance, chemical substance, or drug paraphernalia as prohibited by section 19-03.1-22.2; or~~

~~h. Is a victim of human trafficking as defined in title 12.1; or~~

~~i. Was found to lack fitness to proceed by a court in a delinquency case and the delinquency case was dismissed within the six months preceding the filing of the petition.~~

SECTION 4. AMENDMENT. Section 27-20.4-15 of the North Dakota Century Code is amended and reenacted as follows:

27-20.4-15. Predispositional assessment.

1. Before the disposition hearing, the court shall direct the director or designee, to conduct a predisposition assessment and to prepare a written report for the court, 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 5. 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~~providing 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~~If there is reason to doubt the minor's fitness to proceed, 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 raised by the court before which the proceedings are pending or being held, or by motion of a party, at any time during the proceeding.

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

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

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

27-20.5-05. Due process.

1. If there is reason to dobut the minor's fitness to proceed ~~is raised~~, adjudication may not occur until after a determination is made except the filing of a delinquency petition, until counsel is appointed and notified in accordance with section 27-20.2-12 and the minor is found to have the mental capacity to proceed.
2. After the case proceeds to adjudication or the minor is found to lack fitness to proceed, the court shall order all of the reports that are submitted under this chapter to be closed to the public. The court may order the reports be opened for inspection only:
   a. For further fitness to proceed or criminal responsibility examination;
   b. For statistical analysis;
   c. If the records are considered to be necessary to assist in mental health treatment ordered ~~according to the mental health code~~;
   d. For data gathering;
   e. For scientific study or other legitimate research;
   f. To the state's attorney or minor's counsel for the purpose of an active court case subject to the prior evaluation; and

g. To an employee or agent of the division of juvenile services or the department of health and human services, if necessary in the performance of the employee's or agent's duty.

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

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

27-20.5-06. Fitness to proceed examination.

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

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

3. The fitness to proceed examination must be conducted in the least restrictive environment and may not be conducted in a treatment facility as defined in section 25-03.1-02.

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

a. The names and addresses of all attorneys involved;

b. Information about the alleged offense; and

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

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

a. Psychiatric records;

b. School records;

c. Medical records; and

d. Child protective services records.

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

7. The fitness to proceed examination must occur within ~~fifteen~~twenty days from receipt of materials identified in subsections 4 and 5 and notice of entry of the order served on the tier 1a mental health professional.

a. The court may grant up to an additional ~~seven~~fifteen days to complete the examination if good cause is shown.

b. The materials required in subsections 4 and 5 must be disclosed contemporaneously with the order.

c. The tier 1a mental health professional shall notify the court and request any missing or additional information within seventy-two hours upon discovery of the missing information or receiving this information, and the attorneys and juvenile court staff have seven days to send the information to the tier 1a mental health professional.

8. A tier 1a mental health professional who conducts a fitness to proceed examination shall submit a written report to the court no later than fifteen days from completing the fitness to proceed examination. The report must include:

a. A description of the nature, content, and extent of the examination, including:

(1) A description of the assessment procedure, technique, and test used;

(2) Medical, educational, and court records reviewed; and

(3) Social, clinical, developmental, and available legal history.

b. A clinical assessment that includes:

(1) A mental status examination;

(2) The diagnosis and functional impact of mental illness, developmental disability, or cognitive impairment. If the minor is taking medication, the impact of the medication on the minor's mental state and behavior;

(3) An assessment of the minor's intelligence and maturity level, when relevant;

(4) The minor's age, developmental state, and decisionmaking abilities; and

(5) Whether the minor has any other factor that affects fitness to proceed.

c. A description of abilities and deficits in the following mental competency functions related to the minor's fitness to proceed:

(1) The ability to factually and rationally understand and appreciate the nature and object of the proceedings, including the ability to:

(a) Understand the role of the participants in the court process, including the roles of the judge, the minor's attorney, the prosecuting attorney, the probation officer, witnesses, and the jury, and to understand the adversarial nature of the process;

(b) Appreciate the offense and understand the seriousness of the offense;

(c) Understand and realistically appraise the likely outcomes; and

(d) Extend thinking into the future.

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

(a) The ability to disclose to an attorney a reasonably coherent description of facts and events pertaining to the charge, as perceived by the minor;

(b) The ability to consider the impact of the minor's action on others;

(c) Verbal articulation abilities or the ability to express himself or herself in a reasonable and coherent manner;

(d) Logical decisionmaking abilities, including multifactored problem solving or the ability to take several factors into consideration in making a decision;

(e) The ability to reason about available options by weighing the consequences, including distinguishing between a not guilty and guilty plea, weighing pleas, dispositions, waivers, and strategies; and

(f) The ability to display appropriate courtroom behavior and testify relevantly.

9. The tier 1a mental health professional shall provide the court with a written report about the minor's fitness to proceed. If the tier 1a mental health professional determines the minor lacks fitness to proceed, the tier 1a mental health professional

shall comment on the nature of any psychiatric or psychological disorder or cognitive impairment, the prognosis, and the available services needed to remediate the minor 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. The least restrictive available environment may not be at the state hospital or the life skills and transition center.

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~~regarding the progress a minor made in remediation services. 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:
   a. Dismiss the delinquency proceedings and release the minor to the minor's parent, legal guardian, or legal custodian; or
   b. Retain jurisdiction and release the minor to the minor's parent, legal guardian, or legal custodian subject to mental health treatment or services under subsection 2.
2. The court may in its discretion order mental health services or other available services from a mental health provider be provided to the minor by a community mental health services program, the department of health and human services, or another appropriate mental health services provider, subject to the availability of inpatient or outpatient care, for a period not to exceed sixty days.
   a. The court retains jurisdiction over the minor throughout the duration of the order and the juvenile court officer may assist with referrals, the assessment process, and reporting to the court.
   b. The entity providing services under this subsection shall determine necessary mental health treatment or services ~~and continue to provide mental health treatment or services for the duration of the period of mental health treatment or services ordered by the court~~.
3. No later than fourteen days before the expiration of the order for mental health treatment or services under this subsection or subsection 2, a report by the juvenile court officer must be provided to the court regarding the minor. The court shall review the report and:
   a. Renew the order for another period of mental health treatment or services not to exceed sixty days. The order for mental health treatment or services and any renewed order may not exceed a total of one hundred twenty days; or
   b. Determine custody of the minor and dismiss the delinquency proceedings against the minor.

4. If release to the minor's parent, legal guardian, or legal custodian is determined inappropriate under subsection 1, the court may dismiss the delinquency proceeding and ~~enter an order directing a child in need of protection petition to be filed, order a shelter care hearing be held, or enter a shelter care order~~direct proceedings under chapter 27-20.3.

SECTION 6. APPROPRIATION - DEPARTMENT OF HEALTH AND HUMAN SERVICES - JUVENILE FITNESS TO PROCEED MENTAL HEALTH SERVICES. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of ~~$4,580,000~~$500,000, or so much of the sum as may be necessary~~, and the sum of $1,000,000 from other funds derived from federal funds, or so much of the sum as may be necessary,~~ to the department of health and human services for the purpose of defraying the costs associated with implementing and administering section ~~6~~5 of this Act, for the biennium beginning July 1, 2025, and ending June 30, 2027.

SECTION 7. EFFECTIVE DATE. Sections ~~5~~4 and ~~6~~5 of this Act become effective on January 2, 2027.

2025 SENATE STANDING COMMITTEE MINUTES

Appropriations Committee
Harvest Room, State Capitol

SB 2036
2/17/2025

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

3:42 p.m. Chairman Bekkedahl opened the hearing.

Members Present: Chairman Bekkedahl, Vice-Chairman Erbele, and Senators Burckhard, Cleary, Conley, Davison, Dever, Dwyer, Magrum, Mathern, Schaible, Sorvaag, Thomas, Wanzek.
Members Absent: Senators Meyer, Sickler.

Discussion Topics:

- Committee Action

3:43 p.m. Senator Mathern introduced the bill.

3:45 p.m. Senator Mathern moved amendment LC 25.0324.03002 (#37918).

3:45 p.m. Senator Dever seconded the motion.

Senators	Vote
Senator Brad Bekkedahl	Y
Senator Robert Erbele	Y
Senator Randy A. Burckhard	Y
Senator Sean Cleary	Y
Senator Cole Conley	Y
Senator Kyle Davison	Y
Senator Dick Dever	Y
Senator Michael Dwyer	Y
Senator Jeffery J. Magrum	Y
Senator Tim Mathern	Y
Senator Scott Meyer	A
Senator Donald Schaible	Y
Senator Jonathan Sickler	A
Senator Ronald Sorvaag	Y
Senator Paul J. Thomas	Y
Senator Terry M. Wanzek	Y

Motion Passed 14-0-2.

3:47 p.m. Senator Mathern moved a Do Pass as Amended.

3:47 p.m. Senator Dever seconded the motion.

Senators	Vote
Senator Brad Bekkedahl	Y
Senator Robert Erbele	Y
Senator Randy A. Burckhard	Y
Senator Sean Cleary	A
Senator Cole Conley	Y
Senator Kyle Davison	Y
Senator Dick Dever	Y
Senator Michael Dwyer	Y
Senator Jeffery J. Magrum	N
Senator Tim Mathern	Y
Senator Scott Meyer	A
Senator Donald Schaible	Y
Senator Jonathan Sickler	A
Senator Ronald Sorvaag	Y
Senator Paul J. Thomas	Y
Senator Terry M. Wanzek	Y

Motion Passed 12-1-3.

Senator Mathern will carry the bill.

3:49 p.m. Chairman Bekkedahl closed the hearing.

Elizabeth Reiten, Committee Clerk

25.0324.03002
Title.04000

Prepared by the Legislative Council
staff for Senator Mathern
February 14, 2025

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO
FIRST ENGROSSMENT

MB
2/17/25
1 of 13

ENGROSSED SENATE BILL NO. 2036

Introduced by

Legislative Management

(Juvenile Justice Committee)

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

12.1-04-01. Juveniles.

~~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.~~ The prosecution of an individual as an adult is barred if the offense was committed while the individual was less than fourteen years of age.

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

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

4. If the court determines the defendant currently lacks fitness to proceed and the defendant may attain fitness to proceed under subsection ~~1~~2, the court may enter an

order for a course of treatment considering the least restrictive form of treatment 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 ~~1~~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:~~

~~5. "Child in need of protection" means a child who:~~

~~a. Is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for the child's physical, mental, or emotional health, or morals, and the need for services or protection is not due primarily to the lack of financial means of the child's parents, guardian, or other custodian;~~

~~b. Has been placed for care or adoption in violation of law;~~

~~c. Has been abandoned by the child's parents, guardian, or other custodian;~~

~~d. Is without proper parental care, control, or education as required by law, or other care and control necessary for the child's well-being because of the physical, mental, emotional, or other illness or disability of the child's parent or parents, and that such lack of care is not due to a willful act of commission or act of omission by the child's parents, and care is requested by a parent;~~

~~e. Is in need of treatment and whose parents, guardian, or other custodian have refused to participate in treatment as ordered by the juvenile court;~~

~~f. Was subject to prenatal exposure to chronic or severe use of alcohol or any controlled substance as defined in chapter 19-03.1 in a manner not lawfully prescribed by a practitioner;~~

~~g. Is present in an environment subjecting the child to exposure to a controlled substance, chemical substance, or drug paraphernalia as prohibited by section 19-03.1-22.2; or~~

~~h. Is a victim of human trafficking as defined in title 12.1; or~~

~~i. Was found to lack fitness to proceed by a court in a delinquency case and the delinquency case was dismissed within the six months preceding the filing of the petition.~~

SECTION 4. AMENDMENT. Section 27-20.4-15 of the North Dakota Century Code is amended and reenacted as follows:

27-20.4-15. Predispositional assessment.

1. Before the disposition hearing, the court shall direct the director or designee, to conduct a predisposition assessment and to prepare a written report for the court, 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 5. 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~~providing 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~~If there is reason to doubt the minor's fitness to proceed, 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 raised by the court before which the proceedings are pending or being held, or by motion of a party, at any time during the proceeding.
2. If there is reason to doubt the minor's fitness to proceed ~~is raised~~, adjudication may not occur until after a determination is made on the fitness of the minor to proceed in accordance with this chapter.

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

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

27-20.5-05. Due process.

1. If there is reason to doubt the minor's fitness to proceed ~~is raised~~, adjudication may not occur until after a determination is made except the filing of a delinquency petition, until counsel is appointed and notified in accordance with section 27-20.2-12 and the minor is found to have the mental capacity to proceed.
2. After the case proceeds to adjudication or the minor is found to lack fitness to proceed, the court shall order all of the reports that are submitted under this chapter to be closed to the public. The court may order the reports be opened for inspection only:
   a. For further fitness to proceed or criminal responsibility examination;
   b. For statistical analysis;
   c. If the records are considered to be necessary to assist in mental health treatment ordered ~~according to the mental health code~~;
   d. For data gathering;
   e. For scientific study or other legitimate research;

f. To the state's attorney or minor's counsel for the purpose of an active court case subject to the prior evaluation; and

g. To an employee or agent of the division of juvenile services or the department of health and human services, if necessary in the performance of the employee's or agent's duty.

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

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

27-20.5-06. Fitness to proceed examination.

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

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

3. The fitness to proceed examination must be conducted in the least restrictive environment and may not be conducted in a treatment facility as defined in section 25-03.1-02.

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

a. The names and addresses of all attorneys involved;

b. Information about the alleged offense; and

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

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

a. Psychiatric records;

b. School records;

c. Medical records; and

d. Child protective services records.

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

7. The fitness to proceed examination must occur within ~~fifteen~~twenty days from receipt of materials identified in subsections 4 and 5 and notice of entry of the order served on the tier 1a mental health professional.

a. The court may grant up to an additional ~~seven~~fifteen days to complete the examination if good cause is shown.

b. The materials required in subsections 4 and 5 must be disclosed contemporaneously with the order.

c. The tier 1a mental health professional shall notify the court and request any missing or additional information within seventy-two hours upon discovery of the missing information or receiving this information, and the attorneys and juvenile court staff have seven days to send the information to the tier 1a mental health professional.

8. A tier 1a mental health professional who conducts a fitness to proceed examination shall submit a written report to the court no later than fifteen days from completing the fitness to proceed examination. The report must include:

a. A description of the nature, content, and extent of the examination, including:

(1) A description of the assessment procedure, technique, and test used;

(2) Medical, educational, and court records reviewed; and

(3) Social, clinical, developmental, and available legal history.

b. A clinical assessment that includes:

(1) A mental status examination;

(2) The diagnosis and functional impact of mental illness, developmental disability, or cognitive impairment. If the minor is taking medication, the impact of the medication on the minor's mental state and behavior;

(3) An assessment of the minor's intelligence and maturity level, when relevant;

(4) The minor's age, developmental state, and decisionmaking abilities; and

(5) Whether the minor has any other factor that affects fitness to proceed.

c. A description of abilities and deficits in the following mental competency functions related to the minor's fitness to proceed:

(1) The ability to factually and rationally understand and appreciate the nature and object of the proceedings, including the ability to:

(a) Understand the role of the participants in the court process, including the roles of the judge, the minor's attorney, the prosecuting attorney, the probation officer, witnesses, and the jury, and to understand the adversarial nature of the process;

(b) Appreciate the offense and understand the seriousness of the offense;

(c) Understand and realistically appraise the likely outcomes; and

(d) Extend thinking into the future.

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

(a) The ability to disclose to an attorney a reasonably coherent description of facts and events pertaining to the charge, as perceived by the minor;

(b) The ability to consider the impact of the minor's action on others;

(c) Verbal articulation abilities or the ability to express himself or herself in a reasonable and coherent manner;

(d) Logical decisionmaking abilities, including multifactored problem solving or the ability to take several factors into consideration in making a decision;

(e) The ability to reason about available options by weighing the consequences, including distinguishing between a not guilty and guilty plea, weighing pleas, dispositions, waivers, and strategies; and

(f) The ability to display appropriate courtroom behavior and testify relevantly.

9. The tier 1a mental health professional shall provide the court with a written report about the minor's fitness to proceed. If the tier 1a mental health professional determines the minor lacks fitness to proceed, the tier 1a mental health professional shall comment on the nature of any psychiatric or psychological disorder or cognitive impairment, the prognosis, and the available services needed to remediate the minor 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. The least restrictive available environment may not be at the state hospital or the life skills and transition center.

   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~~regarding the progress a minor made in remediation services. 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:
   a. Dismiss the delinquency proceedings and release the minor to the minor's parent, legal guardian, or legal custodian; or
   b. Retain jurisdiction and release the minor to the minor's parent, legal guardian, or legal custodian subject to mental health treatment or services under subsection 2.
2. The court may in its discretion order mental health services or other available services from a mental health provider be provided to the minor by a community mental health services program, the department of health and human services, or another appropriate mental health services provider, subject to the availability of inpatient or outpatient care, for a period not to exceed sixty days.
   a. The court retains jurisdiction over the minor throughout the duration of the order and the juvenile court officer may assist with referrals, the assessment process, and reporting to the court.
   b. The entity providing services under this subsection shall determine necessary mental health treatment or services ~~and continue to provide mental health treatment or services for the duration of the period of mental health treatment or services ordered by the court~~.
3. No later than fourteen days before the expiration of the order for mental health treatment or services under this subsection or subsection 2, a report by the juvenile court officer must be provided to the court regarding the minor. The court shall review the report and:

a. Renew the order for another period of mental health treatment or services not to exceed sixty days. The order for mental health treatment or services and any renewed order may not exceed a total of one hundred twenty days; or

b. Determine custody of the minor and dismiss the delinquency proceedings against the minor.

4. If release to the minor's parent, legal guardian, or legal custodian is determined inappropriate under subsection 1, the court may dismiss the delinquency proceeding and ~~enter an order directing a child in need of protection petition to be filed, order a shelter care hearing be held, or enter a shelter care order~~direct proceedings under chapter 27-20.3.

SECTION 6. APPROPRIATION - DEPARTMENT OF HEALTH AND HUMAN SERVICES - JUVENILE FITNESS TO PROCEED MENTAL HEALTH SERVICES. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of ~~$4,580,000~~$500,000, or so much of the sum as may be necessary, ~~and the sum of $1,000,000 from other funds derived from federal funds, or so much of the sum as may be necessary,~~ to the department of health and human services for the purpose of defraying the costs associated with implementing and administering section ~~6~~5 of this Act, for the biennium beginning July 1, 2025, and ending June 30, 2027.

Keep ✓

SECTION 7. EFFECTIVE DATE. Sections ~~5~~4 and ~~6~~5 of this Act become effective on January 2, 2027.

REPORT OF STANDING COMMITTEE
ENGROSSED SB 2036

Appropriations Committee (Sen. Bekkedahl, Chairman) recommends **AMENDMENTS (25.0324.03002)** and when so amended, recommends **DO PASS** (12 YEAS, 1 NAY, 3 ABSENT OR EXCUSED AND NOT VOTING). SB 2036 was placed on the Sixth order on the calendar. This bill does not affect workforce development.

2-17-25

25.0324.03002
Title.

Prepared by the Legislative Council
staff for Senator Mathern
February 14, 2025

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO
FIRST ENGROSSMENT

ENGROSSED SENATE BILL NO. 2036

Introduced by

Legislative Management

(Juvenile Justice Committee)

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

12.1-04-01. Juveniles.

~~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.~~ The prosecution of an individual as an adult is barred if the offense was committed while the individual was less than fourteen years of age.

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

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

4. If the court determines the defendant currently lacks fitness to proceed and the defendant may attain fitness to proceed under subsection ~~1~~2, the court may enter an

order for a course of treatment considering the least restrictive form of treatment 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 ~~1~~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:~~

~~5. "Child in need of protection" means a child who:~~

~~a. Is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for the child's physical, mental, or emotional health, or morals, and the need for services or protection is not due primarily to the lack of financial means of the child's parents, guardian, or other custodian;~~

~~b. Has been placed for care or adoption in violation of law;~~

~~c. Has been abandoned by the child's parents, guardian, or other custodian;~~

~~d. Is without proper parental care, control, or education as required by law, or other care and control necessary for the child's well-being because of the physical, mental, emotional, or other illness or disability of the child's parent or parents, and that such lack of care is not due to a willful act of commission or act of omission by the child's parents, and care is requested by a parent;~~

~~e. Is in need of treatment and whose parents, guardian, or other custodian have refused to participate in treatment as ordered by the juvenile court;~~

~~f. Was subject to prenatal exposure to chronic or severe use of alcohol or any controlled substance as defined in chapter 19-03.1 in a manner not lawfully prescribed by a practitioner;~~

~~g. Is present in an environment subjecting the child to exposure to a controlled substance, chemical substance, or drug paraphernalia as prohibited by section 19-03.1-22.2; or~~

~~h. Is a victim of human trafficking as defined in title 12.1; or~~

~~i. Was found to lack fitness to proceed by a court in a delinquency case and the delinquency case was dismissed within the six months preceding the filing of the petition.~~

SECTION 4. AMENDMENT. Section 27-20.4-15 of the North Dakota Century Code is amended and reenacted as follows:

27-20.4-15. Predispositional assessment.

1. Before the disposition hearing, the court shall direct the director or designee, to conduct a predisposition assessment and to prepare a written report for the court, 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 5. 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~~providing 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~~If there is reason to doubt the minor's fitness to proceed, 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 raised by the court before which the proceedings are pending or being held, or by motion of a party, at any time during the proceeding.

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

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

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

27-20.5-05. Due process.

1. If there is reason to dobut the minor's fitness to proceed ~~is raised~~, adjudication may not occur until after a determination is made except the filing of a delinquency petition, until counsel is appointed and notified in accordance with section 27-20.2-12 and the minor is found to have the mental capacity to proceed.
2. After the case proceeds to adjudication or the minor is found to lack fitness to proceed, the court shall order all of the reports that are submitted under this chapter to be closed to the public. The court may order the reports be opened for inspection only:
   a. For further fitness to proceed or criminal responsibility examination;
   b. For statistical analysis;
   c. If the records are considered to be necessary to assist in mental health treatment ordered ~~according to the mental health code~~;
   d. For data gathering;
   e. For scientific study or other legitimate research;
   f. To the state's attorney or minor's counsel for the purpose of an active court case subject to the prior evaluation; and

g. To an employee or agent of the division of juvenile services or the department of health and human services, if necessary in the performance of the employee's or agent's duty.

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

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

27-20.5-06. Fitness to proceed examination.

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

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

3. The fitness to proceed examination must be conducted in the least restrictive environment and may not be conducted in a treatment facility as defined in section 25-03.1-02.

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

   a. The names and addresses of all attorneys involved;

   b. Information about the alleged offense; and

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

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

   a. Psychiatric records;

   b. School records;

   c. Medical records; and

d. Child protective services records.

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

7. The fitness to proceed examination must occur within ~~fifteen~~twenty days from receipt of materials identified in subsections 4 and 5 and notice of entry of the order served on the tier 1a mental health professional.

a. The court may grant up to an additional ~~seven~~fifteen days to complete the examination if good cause is shown.

b. The materials required in subsections 4 and 5 must be disclosed contemporaneously with the order.

c. The tier 1a mental health professional shall notify the court and request any missing or additional information within seventy-two hours upon discovery of the missing information or receiving this information, and the attorneys and juvenile court staff have seven days to send the information to the tier 1a mental health professional.

8. A tier 1a mental health professional who conducts a fitness to proceed examination shall submit a written report to the court no later than fifteen days from completing the fitness to proceed examination. The report must include:

a. A description of the nature, content, and extent of the examination, including:

(1) A description of the assessment procedure, technique, and test used;

(2) Medical, educational, and court records reviewed; and

(3) Social, clinical, developmental, and available legal history.

b. A clinical assessment that includes:

(1) A mental status examination;

(2) The diagnosis and functional impact of mental illness, developmental disability, or cognitive impairment. If the minor is taking medication, the impact of the medication on the minor's mental state and behavior;

(3) An assessment of the minor's intelligence and maturity level, when relevant;

(4) The minor's age, developmental state, and decisionmaking abilities; and

(5) Whether the minor has any other factor that affects fitness to proceed.

c. A description of abilities and deficits in the following mental competency functions related to the minor's fitness to proceed:

(1) The ability to factually and rationally understand and appreciate the nature and object of the proceedings, including the ability to:

(a) Understand the role of the participants in the court process, including the roles of the judge, the minor's attorney, the prosecuting attorney, the probation officer, witnesses, and the jury, and to understand the adversarial nature of the process;

(b) Appreciate the offense and understand the seriousness of the offense;

(c) Understand and realistically appraise the likely outcomes; and

(d) Extend thinking into the future.

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

(a) The ability to disclose to an attorney a reasonably coherent description of facts and events pertaining to the charge, as perceived by the minor;

(b) The ability to consider the impact of the minor's action on others;

(c) Verbal articulation abilities or the ability to express himself or herself in a reasonable and coherent manner;

(d) Logical decisionmaking abilities, including multifactored problem solving or the ability to take several factors into consideration in making a decision;

(e) The ability to reason about available options by weighing the consequences, including distinguishing between a not guilty and guilty plea, weighing pleas, dispositions, waivers, and strategies; and

(f) The ability to display appropriate courtroom behavior and testify relevantly.

9. The tier 1a mental health professional shall provide the court with a written report about the minor's fitness to proceed. If the tier 1a mental health professional determines the minor lacks fitness to proceed, the tier 1a mental health professional

shall comment on the nature of any psychiatric or psychological disorder or cognitive impairment, the prognosis, and the available services needed to remediate the minor 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. The least restrictive available environment may not be at the state hospital or the life skills and transition center.

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~~regarding the progress a minor made in remediation services. 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:
   a. Dismiss the delinquency proceedings and release the minor to the minor's parent, legal guardian, or legal custodian; or
   b. Retain jurisdiction and release the minor to the minor's parent, legal guardian, or legal custodian subject to mental health treatment or services under subsection 2.
2. The court may in its discretion order mental health services or other available services from a mental health provider be provided to the minor by a community mental health services program, the department of health and human services, or another appropriate mental health services provider, subject to the availability of inpatient or outpatient care, for a period not to exceed sixty days.
   a. The court retains jurisdiction over the minor throughout the duration of the order and the juvenile court officer may assist with referrals, the assessment process, and reporting to the court.
   b. The entity providing services under this subsection shall determine necessary mental health treatment or services ~~and continue to provide mental health treatment or services for the duration of the period of mental health treatment or services ordered by the court~~.
3. No later than fourteen days before the expiration of the order for mental health treatment or services under this subsection or subsection 2, a report by the juvenile court officer must be provided to the court regarding the minor. The court shall review the report and:
   a. Renew the order for another period of mental health treatment or services not to exceed sixty days. The order for mental health treatment or services and any renewed order may not exceed a total of one hundred twenty days; or
   b. Determine custody of the minor and dismiss the delinquency proceedings against the minor.

4. If release to the minor's parent, legal guardian, or legal custodian is determined inappropriate under subsection 1, the court may dismiss the delinquency proceeding and ~~enter an order directing a child in need of protection petition to be filed, order a shelter care hearing be held, or enter a shelter care order~~direct proceedings under chapter 27-20.3.

SECTION 6. APPROPRIATION - DEPARTMENT OF HEALTH AND HUMAN SERVICES - JUVENILE FITNESS TO PROCEED MENTAL HEALTH SERVICES. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of ~~$4,580,000~~$500,000, or so much of the sum as may be necessary~~, and the sum of $1,000,000 from other funds derived from federal funds, or so much of the sum as may be necessary~~, to the department of health and human services for the purpose of defraying the costs associated with implementing and administering section ~~6~~5 of this Act, for the biennium beginning July 1, 2025, and ending June 30, 2027.

SECTION 7. EFFECTIVE DATE. Sections ~~5~~4 and ~~6~~5 of this Act become effective on January 2, 2027.

2025 HOUSE JUDICIARY

SB 2036

2025 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Room JW327B, State Capitol

SB 2036
3/10/2025

Relating to the age of an offender, suspension or dismissal of proceedings, and predispositional assessment; to provide an appropriation; and to provide an effective date.

9:00 a.m. Chairman Klemin called the meeting to order.

Members Present: Chairman Klemin, Vice-Chairman Karls, Vice-Chairman Vetter, Representatives Christianson, Henderson, Hoverson, Johnston, McLeod, S. Olson, Satrom, Tveit, VanWinkle, Wolff, Schneider

Discussion Topics:

- Fitness to proceed in juvenile court
- Mental health evaluation findings

9:01 a.m. Travis Finck, Executive Director North Dakota Commission on Legal Counsel for Indigents, testified in favor and provided testimony #39790.

9:54 a.m. Derek Steiner, Assistant Cass County State's Attorney, testified in favor and provided testimony #39706.

10:04 a.m. Lynn Flieth, Director of the RSR Human Service Zone, testified in favor and provided testimony #39781.

10:09 a.m. Dr. Dan Cramer, Clinical Director with the Department of Health and Human Services, testified in favor and provided testimony #39748.

10:13 a.m. Chairman Klemin closed the hearing.

Wyatt Armstrong, Committee Clerk

Testimony in Support of Senate Bill 2036 and Request for Amendment

House Judiciary Committee - March 10, 2025

House Judiciary Committee Members:

My name is Derek Steiner. I am an Assistant State's Attorney for Cass County. I have served on numerous statewide juvenile committees including the Commission on Juvenile Justice, the Juvenile Justice State Advisory Group, and a Juvenile Competency and Criminal Responsibility task force. During my time on these committees, I have had the opportunity to use my experience in the juvenile justice field to play a role in drafting multiple bills which have been passed in prior legislative sessions and multiple bills currently being heard in this session.

One of the bills I worked on for this session is Senate Bill 2036. The task force that worked on this bill included myself, a defense attorney, a district court judge, court administration, multiple representatives from the Department of Health and Human Services, as well as people with expertise in this specific area from the Council of State Governments Justice Center. This bill was a product of months of meetings to determine the best way to handle juvenile delinquency cases where there are competency issues. As of now, this State does not have clear guidance on how to handle competency issues or what should happen when a juvenile is found not fit to proceed. As originally written, this bill had the Department of Health and Human Services providing competency evaluations and remediation services and then allowed the Department of Health and Human Services / Human Services Zones to be involved with the juvenile if ultimately the juvenile could not be adjudicated due to being found not fit to proceed.
The single biggest issue, in my opinion, that needed to be addressed in this bill was what should happen with juveniles who commit delinquent offenses but cannot be adjudicated because the juvenile is not fit to proceed. In adult cases, an individual can be appointed a guardian / conservator, be civilly committed, and/or referred to other services. However, there is currently a gap in the law for what should happen in juvenile cases. The best decision was determined to create what would end up being "Section 4" in the First Engrossment of 2036. Section 4 created an additional definition of what classified a juvenile as a Child in Need of Protection (CHIPS) which stated that a juvenile meets the CHIPS definition if the juvenile was found not fit to proceed within a delinquency case. This additional definition provides clear statutory allowance for the Department of Health and Human Services / Human Services Zones to be involved with juveniles who commit delinquent acts but cannot be adjudicated delinquent because they are not fit to proceed.

2036 passed the Senate Judiciary Committee with a 7-0-0 do pass recommendation. 2036 originally had $4,580,000 appropriation and allowed the use of $1,000,000 derived from other federal funds, so it was referred to Senate Appropriations. During the Senate Appropriations Committee process, Section 4 was deleted and the appropriation was reduced to $500,000. It should be noted that 2036 originally had a delayed implementation date on August 1, 2026, but was amended in the First Engrossment to have an even later delayed implementation date of January 2, 2027. Ultimately, the Second Engrossment as amended in Senate Appropriations passed the Senate floor with a 41-1-0 vote.

If Section 4 is not placed back in this bill, North Dakota will still have a gap within the confines of the juvenile justice system. There is a need for Section 4 to be returned to this bill because without it, if a juvenile commits an offense and is evaluated and determined to not be fit to proceed there are a lack of options. If that juvenile does not otherwise meet the statutory criteria for being a Child in Need of Protection, that case would be dismissed without any other services or government involvement. By adding that the finding of not being fit to proceed, by itself, meets the definition of being a Child in Need of Protection allows the Department of Health and Human Services / Human Services Zones to be involved with those juveniles who are found not fit to be adjudicated delinquent and will allow services to be accessed for the juveniles. I am not a proponent of keeping the State unnecessarily involved with juveniles and their families, but I do think at a minimum there should be a clear statutory framework for when State involvement is necessary in certain circumstances. Therefore, I would respectfully request this committee amend this bill to return Section 4.

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

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

Respectfully submitted,

Derek Steiner

Derek Steiner

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Testimony
Engrossed Senate Bill No. 2036
House Judiciary Committee
Representative Lawrence R. Klemin, Chairman

March 10, 2025

Chairman Klemin, and members of the House Judiciary Committee, I am Dr. Dan Cramer, Clinical Director with the Department of Health and Human Services, Behavioral Health Division. I am here to provide testimony in support on Senate Bill No. 2036, of which the appropriation is not in the Governor's budget.

Section 5, creates a new chapter to the North Dakota Century Code. Section 27-20.5-01. adds the definition, "Fitness to proceed." In the state of North Dakota, a Tier 1a mental health professional with specialized training in forensic evaluation may complete a fitness to proceed examination. A fitness to proceed examination explores an individual's ability to understand the court process and take part in their own defense. This examination differs from a criminal responsibility examination, which explores an individual's state of capacity at the time of the alleged crime. Many factors may contribute to an individual's inability to take part in their own defense including developmental considerations, and mental health conditions. The evaluation itself includes the review of the individual's current state based upon notes from juvenile justice staff, arrest records, case history, any current mental health records. Next, an in-depth clinical interview is conducted to assess their understanding of the justice system, the charges they are facing, and their ability to assist in their own defense. The assessor will observe the individual's behavior, demeanor, and response to questions. The assessor will complete a battery of standardized psychological tests to assess cognitive abilities, mental state, and psychological functioning.

Additional tools and observations may explore mental health conditions and related impairment. Lastly, the assessor will collect collateral information including medical records and interviews with family members. Once this information is collected, the assessor will compile a comprehensive report detailing their findings. The time to finalize an evaluation varies significantly due to a variety of factors which may include the time spent to access and review records, consistency of the individual to make and keep the appointment as well as functional capacity to tolerate the process and testing.

The findings of an evaluation may include: fit to proceed or unfit to proceed. An unfit to proceed finding may result in a dismissal of the delinquency proceeding if fitness (competency) cannot be restored, or recommended competency restoration services, known as "remediation," in the care of juveniles. Remediation refers to services directed at building or restoring the capacity to understand the legal process and assist in an individual's own defense. Remediation services are provided based upon specialized curriculum including the topics of factual and rational understanding of the allegations, roles of court principals (e.g., judge, district attorney, defense attorney), plea options and potential consequences of them, problem-solving skills, the delinquency process, skills for aiding in one's defense, and sentencing options. This remediation may also include connection to additional behavioral health supports such as therapy for a specific mental health condition, case management, and psychiatric medications.

Section 6 includes an appropriation to implement and administer Section 5. The Department of Health and Human Services does not employ or have staff capacity to perform remediation services for juveniles or have staff capacity to conduct additional evaluations.

The appropriation request of $500,000 is to be used to contract examinations and remediation program, which currently does not exist in the State of North Dakota, outlined in Section 5 in the least restrictive setting as outlined in 27-20.5-08. Section 7 has a delayed effective date for Section 5 as the Department of Health and Human Services will need time to contract for services that will need to be developed in North Dakota.

This concludes my testimony. I would be happy to try to answer any questions the committee may have. Thank you.

Testimony Prepared for the **House Judiciary Committee**
SB 2037 – Relating to Juvenile Court Petitions and Fitness to Proceed
March 10, 2025
Lynn Flieth, RSR Human Service Zone Director

Chair Klemin, and members of the House Judiciary Committee, my name is Lynn Flieth. I am the Director for the RSR Human Service Zone, which includes the counties of Ransom, Sargent, and Richland, and I am a member of the Human Service Zone Directors Association. I am here to testify regarding SB 2036, which relates to changes in the Juvenile Court Act surrounding Fitness to proceed.

Human Service Zones are mandated to provide economic assistance and child welfare services, including child protection, foster care, in-home case management, and referral intake for CHINS (Child In Need of Services). Human Service Zone Directors are also the legal custodian of children in public custody, primarily the CHIPS (Child In Need of Protection) population.

Extensive work has been done to establish parameters and procedures to determine whether a juvenile is fit to proceed through the court process. Senate Bills 2036 and 2037 clarify the procedure to determine fitness to proceed. The Human Service Zone Directors recognize the unique needs of this population, and we concur that legal remediation and disposition options are necessary to provide youth with just and fair treatment.

However, there are two specific areas which have drawn concern from the Human Service Zone Director's Association.

1. **Availability of Services.** Legal remediation and disposition options (outlined on pages 9-11) include court-ordered "mental health or other available services."

Youth in juvenile court, particularly those lacking fitness to proceed, are likely to have extensive and complex behavioral health needs. They may have unstable or untreated mental health diagnoses, learning disabilities, or low intellectual functioning that hinders their participation in

school and social activities, in addition to their inability to assist in their own defense. For remediation and dispositional services to be actionable, we must be confident that the community services are available to address the youth and ultimately the family's needs. Without a spectrum of statewide service options, children's needs are not met, families are adversely impacted, and treatment is delayed and, in some cases, completely absent. As a system, we need to continue to build statewide comprehensive child services, to include emergency assessment, stabilization and placement, for at-risk and complex needs youth. While there are services available to meet these needs on some level, we don't always have them in the right place at the right time. A CHIPS petition does not automatically open the door for services that youth need.

2. **Unnecessary Child In Need of Protection Findings:** Senate Bill 2036 establishes that "the court may dismiss the delinquency proceeding and direct proceedings under chapter 27-20.3" (page 11, lines 23-25). This chapter of Century Code identifies Juvenile Court Jurisdiction, including CHIPS proceedings.

Dispositional options for a CHIPS juvenile commonly include placing care, custody, and control with the Director of the Human Service Zone. While Human Service Zones currently do have some of these youth in custody, this bill would increase that number, when practice begins to be followed statewide, which presents several concerns and challenges.

First, there is an extremely limited number of placement options for these youth in North Dakota — especially placement options that provide the appropriate level of care for these youth. Therefore, this bill could increase the risk of an incorrect level of care for youth, while simultaneously diverting placement resources away from youth who urgently need them. Given that this bill does not increase the availability of placement options, that risk is even higher. It is also worth noting that regardless of whether a youth is a Child In Need of Services, a Child In Need of Protection, or has been adjudicated as Delinquent, the service and placement availability for any of those populations is ***no different***. The only exception is incarceration at the Youth Correction Center, which is rightly reserved for the most severe offenses.

With that said, North Dakota offers families access to an array of service and placement options that are nearly identical to those used by public custodial entities, such as the Human Service Zones, Division of Juvenile Services. These options include psychiatric and residential facilities, which are voluntary in that they do not require families to relinquish custody of their

children to a public agency. There also are a variety of family preservation services available through IV-E funding, including in-home family therapy and behavioral health navigation through the Behavioral Health Division of Health and Human Services. Therefore, a CHIPS petition is not necessary for youth and families to access the available placement and service options.

Related to unnecessary CHIPS petitions, another concern is that Zones have limited capacity and resources to support the custodial increases that will result from expanding the definition and/or use of CHIPS petitions and designations. Important juvenile justice reforms have been developed and implemented over the past several years in our state, and Zones support reduced incarceration in favor of restorative justice, residential treatment, and other remediation and disposition options wherever they are appropriate. However, some of these reforms continue to shift work with populations previously served by the juvenile justice system to the Human Service Zone's child welfare system. There has not been any shift in the allocation of resources to the Human Service Zones to absorb or offset the increased workload. It requires extensive time and effort to locate appropriate services and placement for youth in custody, particularly for delinquent youth who complex mental health and behavioral needs.

In conclusion, the Human Service Zone Directors Association supports many of the juvenile justice enhancements that are outlined in SB 2036, nonetheless we are concerned about the increased workload that Human Service Zones will experience as the result of shifting additional workload from the juvenile justice system to the child welfare system. Therefore, we urge you to remove the allowance for the court to "direct proceedings under chapter 27-20.3" (page 11, lines 23-25) as an alternative to delinquency proceedings.

Thank you for considering my testimony regarding SB 2036. I stand for questions from the committee.

Testimony of Travis Finck, Executive Director, N.D.C.L.C.I
In Support of Senate Bill 2036
House Judiciary Committee
March 9, 2025

HIGHLIGHTS

- Old law had no definitions specific to juveniles and we simply used the adult code, so we added a section to the juvenile code to specifically address the unique terms used in juvenile court.
- New statute sets definitive timetables for when an evaluation must be completed, reports issued to the court, and hearing held by the court along with instructions to make sure the discovery is received by evaluator
- New statute allows the court to deflect cases based upon prior determinations a child lacks fitness
- Due process rights are codified for the child
- For the first time ever, there is a clear method of competency remediation, the challenge remains getting someone in the state to do the remediations

In Depth Changes by Each Section
Section 1: Clean UP

- Section 1 of the bill simply removes the language deeming a minor under the age of ten from being able to commit a crime (it is replaced in the new section of code in the juvenile court section)
- This section also removes the section allowing for an individual 10 years of age or older to be assessed for fitness
- These sections are moved to the juvenile code, NDCC 27-20 that deals with juvenile court.
  - This is done for the ease of the parties and to stop referring to adult criminal code when dealing with juvenile cases.

SECTION 2: CLEAN UP IN ADULT COMPETENCY

- When the rewrite to the Adult competency was written, it was amended several times during the session.
- During one of the amendments, the numbering became different which led to an inaccuracy in code.
- This section simply refers back to the correct section of code

SECTION 3: EXACT SAME, CLEAN UP PROPER REFERENCE

Section 4: More Clean up with to move to new chapter

- This removes the predisposition assessment option under the delinquency chapter to evaluate fitness as we have a whole new chapter that deals with the means and mode of the evaluation.

Section 5: New Chapter 27-20.5.01

27-20.5-01. DEFINITIONS

(1) "Fitness to proceed" means sufficient present ability to consult with the individual's counsel with a reasonable degree of **rational understanding** and a rational as well as **factual understanding** of the proceedings against the individual.

(2) Defining what a minor, under age 18 and not married, or after last session, 18 yoa or older with respect to an act committed while under 18

(3) "Remediation" means the process of providing learning opportunities, services, and support to achieve fitness to proceed.

(4) "Remediation provider" is a person certified by the department to do remediation work

(5) Defines a tier 1 a mental health professional who are authorized under the chapter to conduct the evaluations.

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. Thus, only someone 10 or older can be assessed for fitness

→ This is not new language; this is what was adopted by the legislature as part of the justice reinvestment groups

27-20.5-03. MOTION

1) Parties that can bring a motion to review fitness in front of the juvenile court
   - Prosecutor
   - The Minor, or counsel for the Minor, or Parents/legal guardians
   - Or the Court on its own motion

2) Due Process prevents the court from adjudicating the Minor once fitness is raised

→ This is not new language, and is part of the adult statutory change enacted in the last few sessions

27-20.5-04. DEFLECTION

- This allows for a court to take judicial notice of a prior judicial finding a minor lacks fitness, and can dismiss without requiring an additional evaluation
- This section also allows for the court to dismiss a proceeding against a minor for lacking fitness by considering school, medical or other records.

→ This is NEW, and is a best practice provided to us by CSG Justice Center

27-20.5-05. DUE PROCESS

1. If the minor's fitness is raised, due process rights attach. The first subsection deals with the Right to Counsel and codifies adjudication may not occur until after minor is found fit
2. Closes the records of all the fitness reports to the public, and specifies when the reports may be made available;
   a) for further fitness or criminal responsibility examination;
   b) for statistical analysis;
   c) if necessary to assist in mh treatment;
   d) for data gathering;
   e) for scientific study or other legitimate research;
   f) to the prosecutor or defense attorney for an active case;
   g) DJS or DHHS, if necessary to perform their official duty
3. If the court orders a report open for statistical analysis, the report must remain confidential.
4. Any statements made during or for the purpose of evaluation may not be used against the minor over objection.

→ The Due Process rights of a minor in juvenile court accused of a crime are not new, how we chose to protect the records of the report is.

27-20.5-06: EXAMINATION

1) If any reason to doubt fitness, court must order the examination, which must be conducted by Tier1a mental health professional. (This is defined in the definition section)
2) Allows for either party to obtain their own evaluation at their own expense as long as tier 1a professional
3) Must be constructed in least restrictive environment
4) Deals with how the discovery materials must be disclosed to evaluator to assist in preparing the evaluation.
5) Codifies what records should be sent to evaluator for purposes of conducting exam
6) Ensures work-product and attorney client privilege remain intact
7) Exam must occur within ~~**15 days**~~ **20 days** of receipt of materials identified in section 4 and 5
   - This is the same time frame as an adult fitness evaluation 12.1-04-01(2)
   a) The Court may grant **additional** ~~**7**~~ **15 days** for good cause shown
   b) Materials must be disclosed contemporaneously with the order
   c) Provides for notice and requests to be made if all information needed is not received

→ The time frames are not new, but the process for ensuring adequate records is new

8) Report to be submitted to the court within 15 days of evaluation

- It is 30 days for the adults, and this section provides much more detail of what should be in the reports

Reports must include:

a) description of the examination;
b) clinical assessment; and
c) description of abilities and deficits

27-20.5-06. continued…

9) Report issued shall make a finding regarding the minor's fitness to proceed, and make comments as to possible treatments to remediate fitness within the provided statutory time frames

10) Provides where copies should be sent

27-20.5-07. HEARING

1) Court holds a hearing within **10 days** of receiving the report and provides procedure for attorneys during the hearing
2) Options for the court: Lacks Fitness and not able to be remediated, proceed to disposition under section 09
3) Allows for tier 1a professional to appear via zoom
4) If found fit to proceed, resume proceedings

→ This is essentially identical to adult law, except provides timeframe for holding the hearing

27-20.5-08. REMEDIATION

This section of the code provides the options for remediation and how the court is to proceed under each option

1) Minor lacks fitness, but likely to be remediated within time frame of the order
    a) If infraction or equivalent to a class b misdemeanor if committed by an adult, the matter is dismissed, unless assaultive behavior
    b) If felony or class misdemeanor if committed by an adult, the matter may be dismissed or suspended.

→ this is new in allowing a felony and a misdemeanor to be dismissed

27-20.5-08. REMEDIATION continued…

2) If the proceedings are suspended to attempt remediation, the following occurs:
   a) court holds a hearing to determine least restrictive available environment
   b) court may issue an order for **60** days or until one of the following occurs:
      1) tier 1a mental health provider, based upon information from remediation provider, submits report minor has regained fitness or will never regain fitness; or
      2) the proceedings are dismissed.
   c) remediation provider sends report to tier 1a and the court no later than **14 days** before expiration of the 60 day order

3) Remediation provider may seek additional 60 day remediation order if substantial probability the minor will be remediated.

→ Similar to adult process

27-20.5-09 DISPOSITION

1) If minor lacks fitness and can not be remediated, the court may:
   a) dismiss the delinquency proceedings and release the minor to parents or legal /custodian; or
   b) retain jurisdiction and release the minor subject to treatment and/or services

2) Court may order services to be provided to the juvenile and retain jurisdiction for 60 days
   a) court retains jurisdiction so juvenile court officers may assist in referrals, assessments and reports to the court

3) 14 days before the expiration of the 60 treatment order, a report must be provided to the court on the status of the treatment. Court can renew for 60 days or dismiss the case.

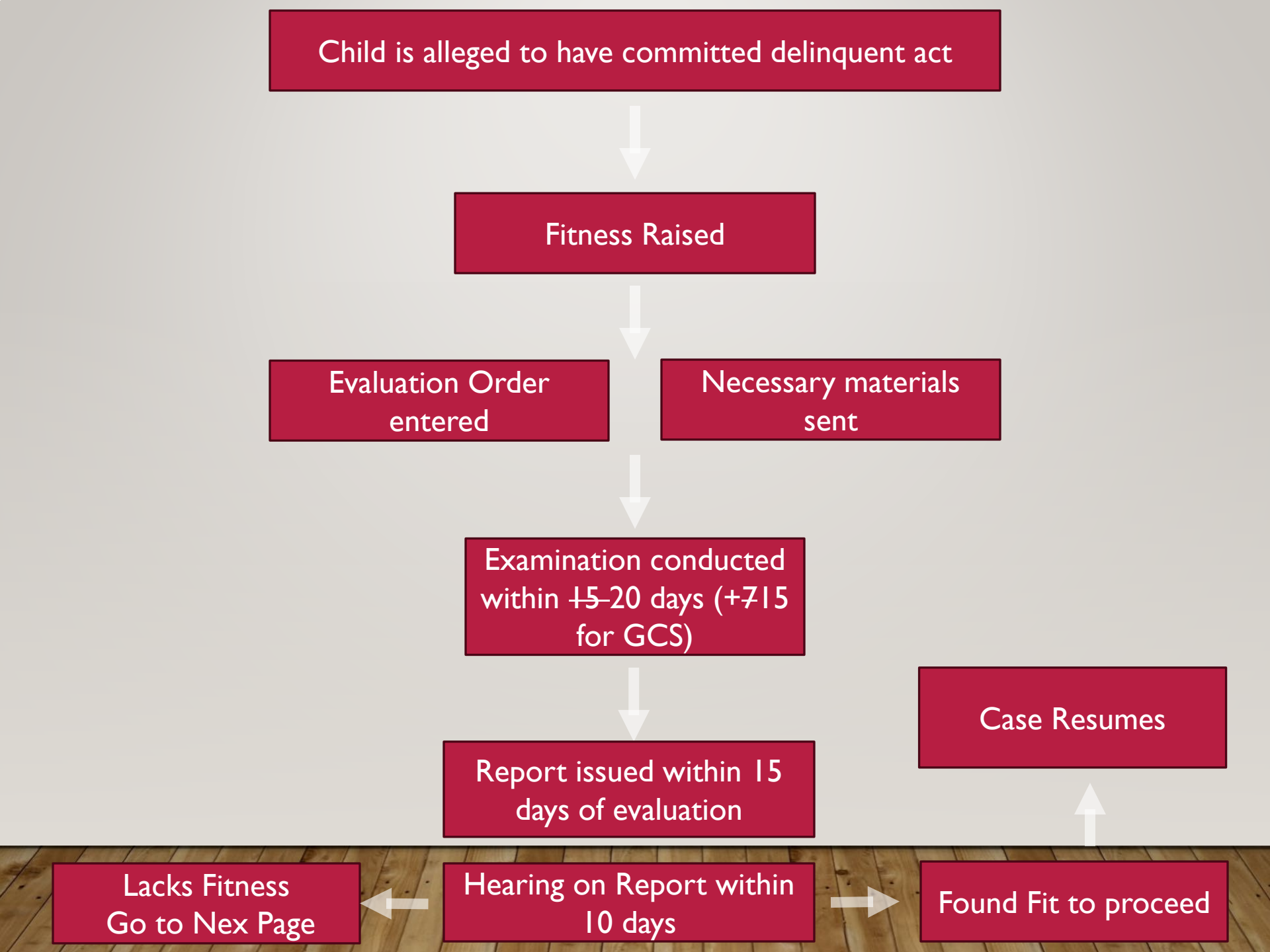
4) If dismissal and release is deemed inappropriate, the court may dismiss delinquency petition and direct proceedings under 27-20.3.

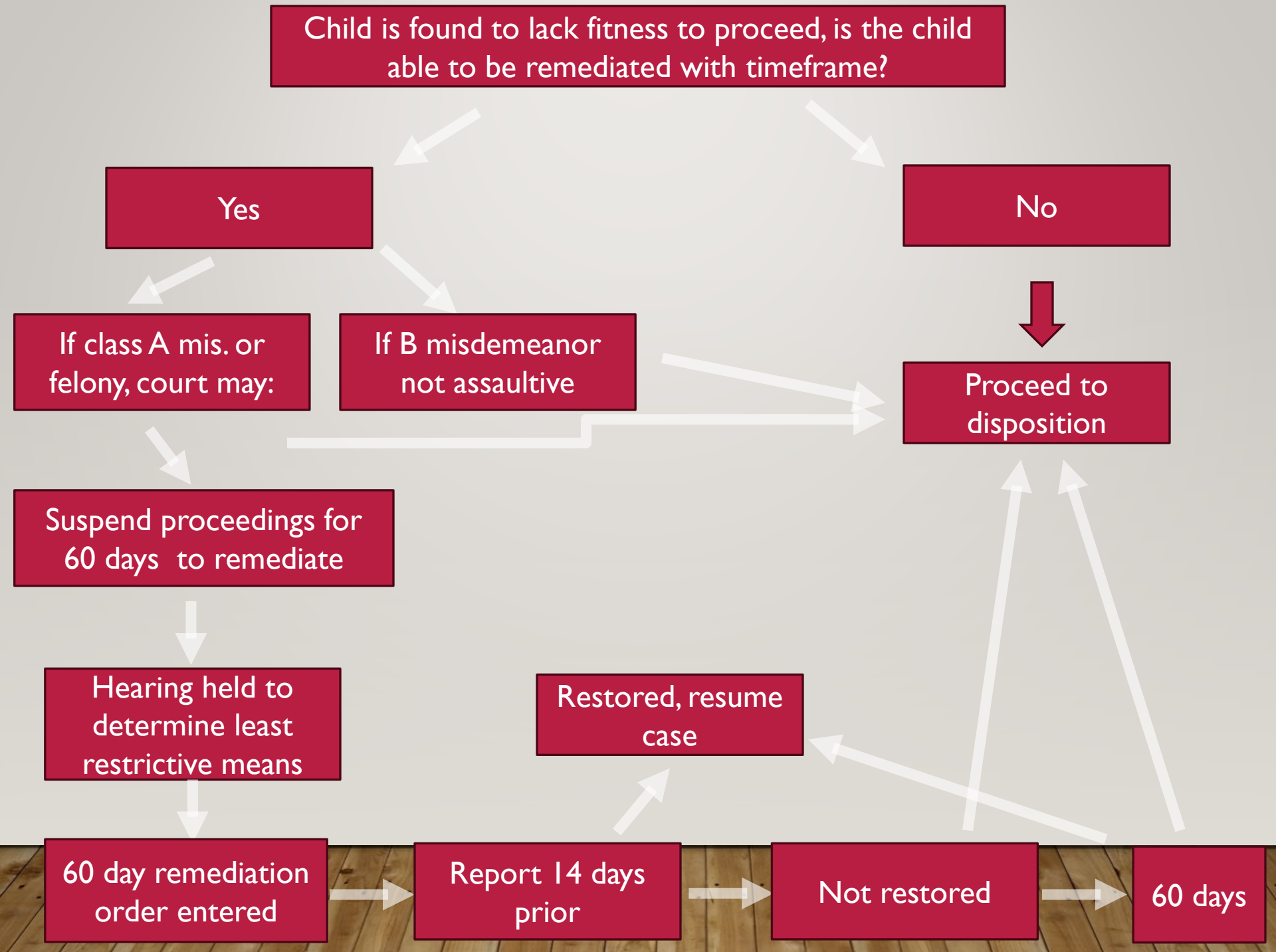
SECTION 6: APPROPRIATION

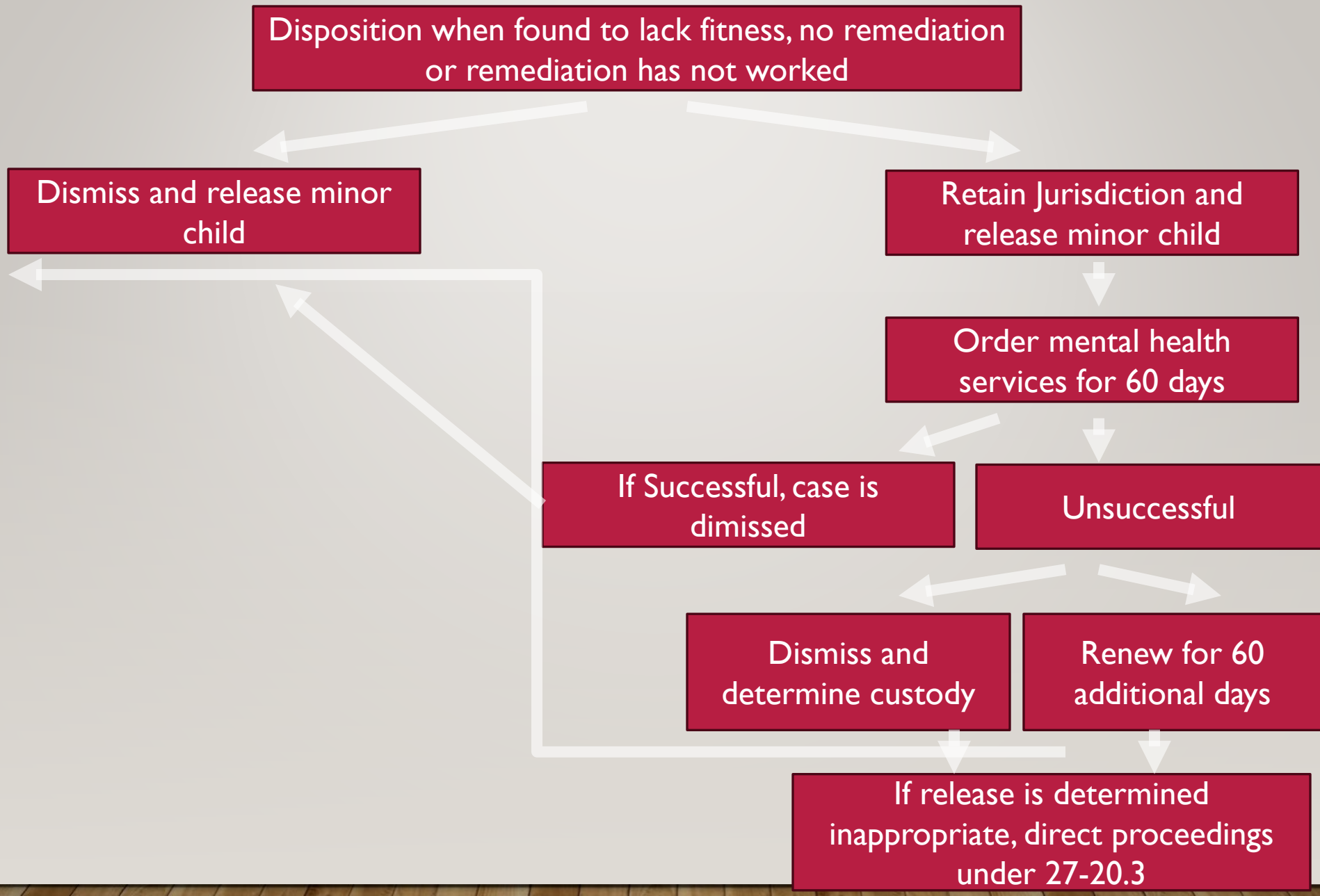
- This was trimmed in the Senate down to $500,000 after amendments

SECTION 7: DELAYED EFFECTIVE DATE

- Sections 4 and 5 of this Act become effective on January 2, 2027.


Child is alleged to have committed delinquent act
Fitness Raised
Evaluation Order entered
Necessary materials sent
Examination conducted within ~~15~~ 20 days (+~~7~~15 for GCS)
Report issued within 15 days of evaluation
Case Resumes
Lacks Fitness Go to Nex Page
Hearing on Report within 10 days
Found Fit to proceed


Child is found to lack fitness to proceed, is the child able to be remediated with timeframe?
Yes
No
If class A mis. or felony, court may:
If B misdemeanor not assaultive
Proceed to disposition
Suspend proceedings for 60 days to remediate
Hearing held to determine least restrictive means
Restored, resume case
60 day remediation order entered
Report 14 days prior
Not restored
60 days


Disposition when found to lack fitness, no remediation or remediation has not worked
Dismiss and release minor child
Retain Jurisdiction and release minor child
Order mental health services for 60 days
If Successful, case is dimissed
Unsuccessful
Dismiss and determine custody
Renew for 60 additional days
If release is determined inappropriate, direct proceedings under 27-20.3

Original Section 3: Addition to the CHIPS Code

- Amends 27-20.3-01 by adding new subsection (i) to modify the definition of a Child in Need of Protection for any child alleged to have committed a delinquent act and found to have lacked fitness and was not able to be remediated.
    - This allows another avenue for services to be provided to a child after the delinquency petition is dismissed

2025 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Room JW327B, State Capitol

SB 2036
3/25/2025

Relating to the age of an offender, suspension or dismissal of proceedings, and predispositional assessment; to provide an appropriation; and to provide an effective date.

11:10 a.m. Chairman Klemin opened the hearing.

Members Present: Chairman Klemin, Vice-Chairman Karls, Vice-Chairman Vetter, Representatives Christianson, Henderson, Johnston, McLeod, S. Olson, Satrom, Tveit, VanWinkle, Wolff, Schneider

Members Absent: Representative Hoverson

Discussion Topics:

- Child in Need of Protection System
- Juvenile fitness to proceed in court

11:11 a.m. Travis Finck, Executive Director of North Dakota Commission on Legal Counsel for Indigents, discussed the intentions of the bill.

11:16 a.m. Dereck Steiner, Assistant State's Attorney at the Cass County State's Attorney's Office, proposed an amendment, testimony #43754.

11:32 a.m. Travis Finck, Executive Director of North Dakota Commission on Legal Counsel for Indigents, answered committee questions.

11:34 a.m. Representative VanWinkle moved to Amend and reinstate the original version of section 4.

11:34 a.m. Representative Satrom seconded the motion.

Representatives	Vote
Representative Lawrence R. Klemin	N
Representative Karen Karls	N
Representative Steve Vetter	N
Representative Nels Christianson	N
Representative Donna Henderson	Y
Representative Jeff Hoverson	A
Representative Daniel Johnston	N
Representative Carrie McLeod	A
Representative SuAnn Olson	Y
Representative Bernie Satrom	Y

Representative Mary Schneider	Y
Representative Bill Tveit	N
Representative Lori VanWinkle	Y
Representative Christina Wolff	Y

11:36 a.m. Motion failed 6-6-2

11:36 a.m. Representative S. Olson moved a Do Pass and rerefer to Appropriations.

11:36 a.m. Representative Schneider seconded the motion.

Representatives	Vote
Representative Lawrence R. Klemin	Y
Representative Karen Karls	Y
Representative Steve Vetter	Y
Representative Nels Christianson	Y
Representative Donna Henderson	Y
Representative Jeff Hoverson	A
Representative Daniel Johnston	Y
Representative Carrie McLeod	A
Representative SuAnn Olson	Y
Representative Bernie Satrom	Y
Representative Mary Schneider	Y
Representative Bill Tveit	N
Representative Lori VanWinkle	Y
Representative Christina Wolff	Y

11:38 a.m. Motion passed 11-1-2

11:38 a.m. Representative Christianson will carry the bill.

11:41 a.m. Chairman Klemin closed the hearing.

Wyatt Armstrong, Committee Clerk

REPORT OF STANDING COMMITTEE
REENGROSSED SB 2036 (25.0324.04000)

Judiciary Committee (Rep. Klemin, Chairman) recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (11 YEAS, 1 NAY, 2 ABSENT OR EXCUSED AND NOT VOTING). SB 2036 was rereferred to the **Appropriations Committee**.

Proposed Amendment to Reengrossed Senate Bill 2036

AMENDMENT.

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

5. "Child in need of protection" means a child who:

a. Is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for the child's physical, mental, or emotional health, or morals, and the need for services or protection is not due primarily to the lack of financial means of the child's parents, guardian, or other custodian;

b. Has been placed for care or adoption in violation of law;

c. Has been abandoned by the child's parents, guardian, or other custodian;

d. Is without proper parental care, control, or education as required by law, or other care and control necessary for the child's well-being because of the physical, mental, emotional, or other illness or disability of the child's parent or parents, and that such lack of care is not due to a willful act of commission or act of omission by the child's parents, and care is requested by a parent;

e. Is in need of treatment and whose parents, guardian, or other custodian have refused to participate in treatment as ordered by the juvenile court;

f. Was subject to prenatal exposure to chronic or severe use of alcohol or any controlled substance as defined in chapter 19-03.1 in a manner not lawfully prescribed by a practitioner;

g. Is present in an environment subjecting the child to exposure to a controlled substance, chemical substance, or drug paraphernalia as prohibited by section 19-03.1-22.2; or

h. Is a victim of human trafficking as defined in title 12.1; or

i. Was found to lack fitness to proceed by a court in a delinquency case and the delinquency case was dismissed within the six months preceding the filing of the petition.

AMENDMENT.

Section 27-20.3-21 of the North Dakota Century Code is amended and reenacted as follows:

27-20.3-21. Petition for termination of parental rights.

1. As used in this section:

a. "A finding that the child has been subjected to child abuse or neglect" means:

(1) A finding of a child in need of protection made under this chapter, except as provided in subdivision i of subsection 5 of section 27 - 20.3 - 01; or

(2) A conviction of a person, responsible for a child's welfare, for conduct involving the child, under chapter 12.1-16 or sections 12.1-17-01 through 12.1-17-04 or 12.1-20-01 through 12.1-20-08.

b. "Compelling reason" means a recorded statement that reflects consideration of:

(1) The child's age;

(2) The portion of the child's life spent living in the household of a parent of the child;

(3) The availability of an adoptive home suitable to the child's needs;

(4) Whether the child has special needs; and

(5) The expressed wishes of a child age ten or older.

c. "Department" means the department of health and human services.

d. "Human service zone" means a county or consolidated group of counties administering human services within a designated area in accordance with an agreement or plan approved by the department.

2. A petition for termination of parental rights must be prepared, filed, and served upon the parties by the state's attorney. A petition may also be prepared by any other person that is not the court, including a law enforcement officer, who has knowledge of the facts alleged or is informed and believes that they are true. A petition prepared by any person other than a state's attorney may not be filed unless the director or the court has determined the filing of the petition is in the best interest of the public and the child.

3. Except as provided in subsection 4, a petition for termination of parental rights must be filed:

a. If the child has been in foster care, in the custody of the department, human service zone, or, in cases arising out of an adjudication by the court of a child in a delinquency case, the division of juvenile services, for at least four hundred fifty out of the previous six hundred sixty nights;

b. Within sixty days after the court has found the child to be an abandoned infant; or

c. Within sixty days after the court has convicted the child's parent of one of the following crimes, or of an offense under the laws of another jurisdiction which requires proof of substantially similar elements:

(1) A violation of section 12.1-16-01, 12.1-16-02, or 12.1-16-03, or subsection 1 of section 14-09-22 in which the victim is another child of the parent;

(2) Aiding, abetting, attempting, conspiring, or soliciting a violation of section 12.1-16-01, 12.1-16-02, or 12.1-16-03 in which the victim is a child of the parent; or

(3) A violation of section 12.1-17-02 in which the victim is a child of the parent and has suffered serious bodily injury.

4. A petition for termination of parental rights need not be filed if:

a. The child is being cared for by a relative approved by the human service zone;

b. The human service zone has documented in the case plan a compelling reason for determining that filing such a petition would not be in the child's best interests and has notified the court that the documentation is available for review by the court; or

c. The human service zone has determined:

(1) Reasonable efforts to preserve and reunify the family are required under section 27-20.3-26 to be made with respect to the child;

(2) The case plan provides such services are necessary for the safe return of the child to the child's home; and

(3) Such services have not been provided consistent with time periods described in the case plan.

5. For purposes of subsection 3, a child in foster care entered foster care on the earlier of:

a. The date of the court's order if the court:

(1) Made a finding that the child has been subjected to child abuse or neglect, or the child is in need of protection under subdivision i of subsection 5 of section 27 - 20.3 - 01;

(2) Determined that it is unsafe or contrary to the welfare of the child to remain in the home; and

(3) Granted custody of the child to the human service zone or, in cases arising out of an adjudication by the court that a child is in need of services, the division of juvenile services; or

b. The date that is sixty days after:

(1) The date of a hearing under section 27-20.3-10 which results in maintaining a child in shelter care;

(2) The date of an order in a dispositional hearing under which a child is placed in foster care; or

(3) The date a child is placed in foster care voluntarily and with the consent of the child's parent.

6. For purposes of subsection 3, a child leaves foster care at the time:

a. The court enters an order:

(1) Denying a petition to grant care, custody, and control of the child to the human service zone or the division of juvenile services;

(2) Terminating an order that granted custody of the child to the human service zone or the division of juvenile services; or

(3) Appointing a legal guardian under chapter 27-20.1;

b. The court order under which the child entered foster care ends by operation of law;

c. The child is placed in a parental home by the court or a legal custodian other than the division of juvenile services and the legal custodian lacks authority to remove the child without further order of the court; or

d. The child is placed in a parental home by the division of juvenile services.

7. For purposes of subsection 3, a child is not in foster care on any night during which the child is:

a. On a trial home visit;

b. Receiving services at the youth correctional center pursuant to an adjudication of delinquency; or

c. Absent without leave from the place in which the child was receiving foster care.

2025 HOUSE APPROPRIATIONS

SB 2036

2025 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee
Roughrider Room, State Capitol

SB 2036
4/3/2025

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

9:25 a.m. Chairman Vigesaa opened the meeting.

Members present: Chairman Vigesaa, Vice Chairman Kempenich, Representatives Anderson, Berg, Bosch, Brandenburg, Fisher, Hanson, Louser, Martinson, Meier, Mitskog, Monson, Murphy, Nathe, Nelson, O'Brien, Pyle, Richter, Sanford, Stemen, Wagner

Member absent: Swiontek

Discussion Topics:

- Juvenile Court Act
- Fitness to Proceed of Juveniles

9:27 a.m. Representative Klemin introduced the bill #44609.

9:32 a.m. Chairman Vigesaa closed the meeting.

Krystal Eberle, Committee Clerk

SB 2036
House Appropriations committee
Rep. Lawrence R. Klemin
April 3, 2025

Mr. Chairman and members of the Committee. SB 2036 was prepared by a work group of the interim Juvenile Justice Committee. The work group included a prosecutor, a defense attorney, a District Judge, and representatives from DHHS, with the assistance of consultants from the Council of State Governments Justice Center. The bill relates to the procedure for determining if a juvenile has the legal fitness to proceed in a delinquency case in Juvenile Court.

Sections 1, 2, 3 and 4 are clean up provisions and the deletion of some language that was moved to other sections in the Juvenile Court Act. A new Chapter 27-20.5 to the Juvenile Court Act relating to fitness to proceed is created in **Section 5** of the bill.

Section 27-20.5-01 contains definitions, including the definition of "fitness to proceed". This means whether a juvenile offender has sufficient present ability to consult with counsel and assist in presenting his defense with a reasonable degree of rational understanding.

Section 27-20.5-02 relates to the age of the minor. An individual under the age of 10 is deemed legally incapable or committing an offense. An individual age 10 or older can be assessed for mental fitness or capacity.

Section 27-20.5-03 provides that if there is any doubt whether a minor has fitness to proceed, then adjudication can't proceed until a determination on fitness is made.

Section 27-20.5-04 allows the court to take judicial notice of any previous fitness to proceed determination made in the last 12 months. The court can then dismiss the case.

Section 27-20.5-05 is a due process section and provides that if there is doubt about a minor's fitness to proceed, the case can't proceed until counsel is appointed for the minor and until the minor is found to have the mental capacity to proceed. The section also provides for the closing of any reports to the public and that they can't be opened except in the limited cases set out in this section.

Section 27-05.1-06 contains provisions relating to the fitness to proceed examination by a mental health professional in the least restrictive environment, the timing of the examination, and the timing for a written report to the court.

Section 27-05.1-07 requires a hearing to determine if the minor lacks fitness to proceed. If the court finds that the minor does have fitness to proceed then the delinquency proceedings must proceed. If the court finds that the minor lacks fitness to proceed or will not attain fitness to proceed within the time period set out in a

remediation order, the court must dispose of the case in accordance with the section on disposition.

Section 27-20.5-08 relates to remediation orders. The court can suspend the case until the minor either regains fitness or until it is determined that the minor will not regain fitness. A remediation provider must provide a report to the court on this issue. There are several time limits set out in this section for the remediation period and the report.

Section 27-05.1-09 relates to the disposition of the case. When the court receives a report from a mental health professional that the minor lacks fitness to proceed and there is a substantial likelihood that the minor is unable to be remediated within the time period set out in a remediation order, the court may dismiss the delinquency proceedings and release the minor to the minor's parent or legal guardian, or order mental health services be provided to the minor for a period not to exceed 60 days, subject to an extension of treatment for another 60 days. After that the court can dismiss the case and release the minor to the minor's parent or legal guardian. If release to the parent or legal guardian is inappropriate, the court can dismiss the case and direct that further proceedings can be held under Chapter 27-20.3 relating to children in need of protection.

Section 6 of the bill contains an appropriation of $500,000 to DHHS for administering juvenile fitness to proceed mental health services for the next biennium.

Rep. Lawrence R. Klemin
District 47, Bismarck

2025 HOUSE STANDING COMMITTEE MINUTES

Appropriations - Human Resources Division
Roughrider Room, State Capitol

SB 2036
4/4/2025

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

9:01 a.m. Chairman J. Nelson called the meeting to order.

Members Present: Chairman J. Nelson, Vice Chairman Stemen, Representatives B. Anderson, Berg, Mitskog, Murphy, O'Brien, Wagner.

Discussion Topics:

- Committee Action
- Remediation services

9:03 a.m. Jonathan Alm, Chief Legal Officer, North Dakota Department of Health and Human Services stood for questions. He then introduced a proposed amendment for SB 2037 for the committee to consider before returning to SB 2036.

9:34 a.m. Representative Stemen moved a Do Pass as amended SB 2036.

9:34 a.m. Representative O'Brien seconded the motion.

Roll Call Vote:

Representatives	Vote
Representative Jon O. Nelson	Y
Representative Gregory Stemen	Y
Representative Bert Anderson	N
Representative Mike Berg	Y
Representative Alisa Mitskog	Y
Representative Eric J. Murphy	Y
Representative Emily O'Brien	Y
Representative Scott Wagner	N

Motion passed 6-2-0. No bill carrier announced.

9:56 a.m. Chairman J. Nelson adjourned the meeting.

Jan Kamphuis, Committee Clerk

2025 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee
Roughrider Room, State Capitol

SB 2036
4/8/2025

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

8:53 a.m. Chairman Vigesaa opened the meeting.

Members present: Chairman Vigesaa, Vice Chairman Kempenich, Representatives Anderson, Berg, Bosch, Brandenburg, Fisher, Hanson, Louser, Martinson, Meier, Monson, Murphy, Nelson, O'Brien, Pyle, Richter, Sanford, Stemen, Swiontek, Wagner

Members absent: Mitskog, Nathe

Discussion Topics:

- Committee Action

8:54 a.m. Representative O'Brien moved Do Pass.

8:54 a.m. Representative Hanson seconded the motion.

8:57 a.m. Roll Call Vote

Representatives	Vote
Representative Don Vigesaa	Y
Representative Keith Kempenich	N
Representative Bert Anderson	N
Representative Mike Berg	Y
Representative Glenn Bosch	Y
Representative Mike Brandenburg	Y
Representative Jay Fisher	N
Representative Karla Rose Hanson	Y
Representative Scott Louser	N
Representative Bob Martinson	AB
Representative Lisa Meier	Y
Representative Alisa Mitskog	AB
Representative David Monson	N
Representative Eric J. Murphy	Y
Representative Mike Nathe	AB
Representative Jon O. Nelson	Y
Representative Emily O'Brien	Y

Representative Brandy L. Pyle	Y
Representative David Richter	Y
Representative Mark Sanford	Y
Representative Gregory Stemen	Y
Representative Steve Swiontek	Y
Representative Scott Wagner	N

8:57 a.m. Motion passed 14-6-3.

8:57 a.m. Representative Christianson will carry.

8:58 a.m. Chairman Vigesaa closed the meeting.

Krystal Eberle, Committee Clerk

REPORT OF STANDING COMMITTEE
REENGROSSED SB 2036 (25.0324.04000)

Appropriations Committee (Rep. Vigesaa, Chairman) recommends **DO PASS** (14 YEAS, 6 NAYS, 3 ABSENT OR EXCUSED AND NOT VOTING). Reengrossed SB 2036 was placed on the Fourteenth order on the calendar.