



North Dakota Legislative Council

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JUVENILE JUSTICE PROCESS - BACKGROUND MEMORANDUM

House Bill No. 1036 (2021) directs the Legislative Management to study, in collaboration with the Commission on Juvenile Justice, the juvenile justice process. The study must include a review of the effective intervention, resources, and services for children.

Senate Bill No. 2258 (2021) directs the Legislative Management, in collaboration with the Commission on Juvenile Justice, to study the necessity of licensing shelter care programs for runaway, homeless, and former foster care youth and the ability of these youth to access temporary shelter. The study must include a review of the current barriers, effective intervention, and necessary resources and services. Because of the similarities in the studies directed by these two bills, the two studies have been combined into one comprehensive study.

JUVENILE JUSTICE

North Dakota Century Code Section 27-20.2-03 provides the juvenile court with exclusive original jurisdiction over a variety of proceedings, including those in which a child is alleged to be delinquent, a child in need of services, or a child in need of services or protection under Chapter 27-20.4. Under Chapter 27-20.2, "child" means an individual who is under the age of 18 and is not married or under the age of 20 with respect to a delinquent act committed while under the age of 18. Section 27-20.4-21 authorizes the court to transfer a juvenile proceeding to another court depending on various factors, such as the age of the child at the time of the alleged conduct, the age of the child at the time of the transfer request, and the child's amenability to treatment and rehabilitation.

Section 27-21-01 creates the Division of Juvenile Services within the Department of Corrections and Rehabilitation (DOCR), which operates the Youth Correctional Center and eight regional community-based services offices. The community services staff provide comprehensive case management and community-based correctional services to youth in the state while juvenile corrections specialists provide community services and correctional case management across eight regions.

Section 27-21-02 provides "the division of juvenile services is the administrative agency which shall take custody of delinquent and unruly children committed to its care by the juvenile courts." Section 27-21-02 requires the division, upon taking custody of a child or prior to receiving custody of a child, to complete diagnostic testing and evaluate the child to develop an individualized treatment and rehabilitation plan. The plan may include placement in the care of the child's parent, relative, guardian, or in a foster home, or placement in the care of the Youth Correctional Center, a career or technical education program, or other treatment and rehabilitation institution. Section 12-52-01 authorizes the division, with the approval of the Director of DOCR, to provide a juvenile aftercare program and other treatment and rehabilitation programs and to contract with public and private agencies to provide services for individuals committed to the division.

In 2020, the total referrals to the North Dakota juvenile courts decreased from 2019 by 1,223 (12 percent) to 8,877 with deprived referrals accounting for 11 percent of the decrease. Schools and other social services providers typically account for a large portion of referrals and as a result, the closure of in-person classes in March 2020 correlates with the decline of referrals in 2020. Of the delinquent referrals received in 2020, 84 percent were misdemeanors, 14 percent were felonies, and 2 percent were infractions. Of the unruly referrals received in 2020, 27 percent were runaways, 26 percent were for ungovernable behavior, 24 percent were referrals of unlawful possession or consumption of alcohol, 10 percent were for school truancy, 9 percent were for curfew violations, and 4 percent were for tobacco violations. Deprivation referrals resulted in a formal petition in 39 percent of the cases, 9 percent involved the filing of a termination of parental rights petition, and less than 1 percent of cases were youth from 18 to 21 years of age who chose to remain in foster care. In 51 percent of cases referred, families cooperated with services or the matters were otherwise diverted by human service zones from the formal court system.

INTERVENTION, RESOURCES, AND SERVICES FOR CHILDREN

House Bill No. 1036 is a continuation of the study of the juvenile justice process conducted by the 2019-20 interim Judiciary Committee which resulted in the recommendation and passage of House Bill No. 1035 (2021). The 2019-20 interim Judiciary Committee worked closely with the Commission on Juvenile Justice to craft House Bill No. 1035 to ensure youth at a low risk of reoffending are able to quickly and easily receive services outside the juvenile justice system. The Commission on Juvenile Justice is comprised of representatives from all three branches of government and stakeholders within the juvenile justice system, including representatives from juvenile court, DOCR, members of the Legislative Assembly, the state Juvenile Justice Advisory Group, the Department of Human Services, the Commission on Legal Counsel for Indigents, and local state's attorneys.

House Bill No. 1035 repealed Chapter 27-20 and replaced it with Chapter 27-20.2, which is referred to as "The Juvenile Court Act." House Bill No. 1035 also created Chapter 27-20.3, relating to child welfare and Chapter 27-20.4, relating to delinquency. Before the passage of House Bill No. 1035, the Uniform Juvenile Court Act consisted of the law relating to unruly or deprived children, now child welfare, and delinquency in a single chapter that was difficult to navigate and contained outdated definitions without reflecting the modern tools and phrases used in the juvenile justice system. The goal of the newly organized chapters was to separate the subjects by case type and provide updated definition sections for each chapter to make it easier for the participant and practitioner to navigate while serving as a more accurate reflection of modern practice.

To ensure youth at a low risk to reoffend are able to quickly and easily receive services outside the juvenile justice system, House Bill No. 1035 established a case category common in many other states of "child in need of services" (CHINS). This category takes over all the behavior that had been referred to as "unruly child," ungovernable behavior, truancy, runaway, and the use of tobacco under 14 years of age while excluding minor in consumption or possession. Testimony during the hearing for House Bill No. 1035 indicated most unruly referrals are diverted to services provided by the courts and those youth age out of the system without further involvement.

House Bill No. 1035 included several delayed effective dates to allow schools, the Department of Human Services, DOCR, the juvenile court, and other interested parties time to plan and implement best practices. As a result of the work during the interim and input from stakeholders, a delayed effective date was included in House Bill No. 1035 to delay the start of the CHINS referrals being directed to human service zones until August 1, 2022, to allow time for planning and to ensure services are available through the new pathway without an arrest and creation of a juvenile court record for these types of behaviors.

House Bill No. 1035 also broadened a child's right to counsel to allow a child to be fully advised of the legal consequences by creating a presumption that all children are entitled to counsel in a delinquency case in an effort to lower the number of continuances and shorten stays in preadjudicatory detention or shelter care while requests and applications for counsel are processed. The bill also provides for the delayed implementation of limiting schools from referring to juvenile court youth who commit low-level infractions or misdemeanors to allow the Juvenile Justice Planning Committee created through House Bill No. 1427 (2021) to establish pathways to services.

Through the creation of Chapter 27-20.4, House Bill No. 1035 established clear limits on the use of secure detention and requires the use of validated risk and needs assessments, mental health and trauma screens, and a predisposition investigation and report to the court before a formal court disposition. The chapter also provides for shorter time limits on probation, from 9 to 6 months, places limits on removing custody of a child from parents due to low-level probation violations, and requires the use of graduated sanctions by court officers who manage probation caseloads.

SHELTER CARE FOR RUNAWAY, HOMELESS, AND FORMER FOSTER CARE YOUTH

Section 27-20.3-04 directs the director of the juvenile court to receive and examine referrals of a child in need of services or a child in need of protection for the purpose of considering diversion of services and to make the appropriate referrals and issue temporary custody orders. Section 27-20.3-01 defines "child in need of services" as a child who:

- a. Is habitually and without justification truant from school subject to compulsory school attendance and is absent from school without an authorized excuse more than three days during a school year;

- b. Is habitually disobedient of the reasonable and lawful commands of the child's parent, guardian, or other custodian, including running away, and is ungovernable or who is willfully in a situation dangerous or injurious to the health, safety, or morals of the child or others;
- c. Has committed an offense applicable only to a child, except for an offense committed by a minor fourteen years of age or older under subsection 2 of section 12.1-31-03 or an equivalent local ordinance or resolution; or
- d. Is under the age of fourteen years and has purchased, possessed, smoked, or used tobacco, a tobacco-related product, an electronic smoking device, or an alternative nicotine product in violation of subsection 2 of section 12.1-31-03. As used in this subdivision, "electronic smoking device" and "alternative nicotine product" have the same meaning as in section 12.1-31-03; and
- e. In any of the foregoing instances is in need of treatment or rehabilitation.

The same section defines a "child in need of protection" as 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.

Section 27-20.3-01 further defines "diversion" as "an intervention strategy that redirects a child away from formal processing in the juvenile justice system, while still holding the child accountable for that child's actions" and defines "shelter care" as "temporary care of a child in physically unrestricted facilities."

According to the National Center for Homeless Education, in the 2018-19 school year, North Dakota's schools served 285 unaccompanied homeless youth. Nearly all the homeless youth are under 18 years of age, which creates a barrier to access to services necessary to keep the youth safe. The Youth Risk Behavior Survey administered to high school students across the state demonstrated homeless youth are 10.9 times more likely to use methamphetamines, 9.5 times more likely to engage in binge drinking, 3.4 times more likely to abuse prescription medication, 4.3 times more likely to be raped, and 3.6 times more likely to attempt suicide.

Homeless youth lack stable housing and are not in the physical custody of a parent or guardian. Homeless youth do not have parental support to meet their most basic needs including shelter, health care, food, and clothing. Although unaccompanied homeless youth under the age of 18 cannot access safe shelter and housing services without parental consent, homeless youth 18 years of age and older can access services on their own behalf, including shelter and housing services. Testimony from a representative of the SchoolHouse Connection during the hearing on House Bill No. 2258 indicated the parents of homeless youth often are unable or unwilling to consent to safe shelter and housing services, which creates a barrier to safety and stability for youth and communities. Several states, including Montana, Wyoming, Indiana, Maryland, Missouri, Texas, and Utah, have enacted legislation to allow youth under the age of 18 to obtain shelter and housing without parental consent.

RELEVANT 2021 LEGISLATION

House Bill No. 1091 authorizes the Department of Human Services to certify shelter care services and to use nonfederal funds to reimburse the costs of shelter care placements for no more than 7 days when the shelter care services being provided are certified by the department.

House Bill No. 1427 establishes three planning committees to research and develop plans for the implementation of House Bill No. 1035.

Senate Bill No. 2265 authorizes unaccompanied homeless minors to access routine health care, including behavioral health care, without parental consent.

SUGGESTED STUDY APPROACH

The committee may wish to proceed with the studies by receiving testimony and information from the Commission on Juvenile Justice, which will be completing a thorough review of effective intervention, resources, and services for children and the necessity of licensing shelter care programs for runaway, homeless, and former foster care youth and the ability of these youth to access temporary shelter. The committee also may wish to seek input from representatives from regional human service centers, the Division of Juvenile Services, and representatives from the juvenile court to provide a review of the delivery of services in the juvenile justice system before the remainder of House Bill No. 1035 becomes effective on August 1, 2022.