CHILD CUSTODY REVIEW TASK FORCE

Section 2 of Senate Bill No. 2186 (2025) directed the Legislative Management to create a Child Custody Review Task Force with membership consisting of one member of the Supreme Court Self Help Program, appointed by the Supreme Court; one member representing the district courts, appointed by the Supreme Court; one member appointed by the State Bar Association; two members of the House or Senate Judiciary Committees, appointed by the Chairman of the Legislative Management; one member of the Senate, appointed by the Senate Majority Leader; one member of the House, appointed by the House Majority Leader; two members representing parents subject to a child custody order; one member representing law enforcement; one member representing family mediators; and the director of Legal Services of North Dakota.

The task force was created to:

- Address issues involving the withholding of a child in violation of a custody decree and issues relating to a parent or party who provides false information against another parent or party in connection to a child custody order.
- Consider ways to expeditiously and effectively enforce violations of custody orders, particularly the withholding of a child.
- Consider the development of self-help or artificial intelligence assisted forms and processes, expedited access to ex parte contempt of court orders, and other civil and criminal penalties, including possible additional compensatory time, and successful remedies used in other states.

Task force members were Senators David A. Clemens (Chairman) and Jose L. Castaneda, Representatives Nels Christianson and Mary Schneider, and Citizen Members James D. Hovey, Corey Johnson, Victoria S. Konidaris, Jason Kraft, Jason W. McLean, Stacy Moldenhauer, Catie Palsgraaf, and Derrick Sherwood.

BACKGROUND

During the 2025 legislative session, the Legislative Assembly considered Senate Bill No. 2186 and Senate Bill No. 2184, which involved matters relating to parenting time enforcement, child custody violations, and false allegations of harm to a child. These matters subsequently became the focus of the task force.

As introduced, Section 1 of Senate Bill No. 2186 would have amended North Dakota Century Code Section 12.1-18-05 to create a criminal penalty for an individual who removes or detains the individual's own child under the age of 18 years within this state with the intent to deny another individual's rights in violation of a custody decree. The bill also would have amended a provision in Section 12.1-18-05, which provides it is a Class C felony for an individual to unlawfully remove or detain an individual's own child outside this state in violation of a custody decree. The bill was amended in the Senate to reduce the offense level of the newly created criminal penalty. The Senate amendment also created an additional offense in Section 12.1-18-05 for an individual who gives false information or a false report alleging harm to a child by one parent against the other to a law enforcement officer or the Department of Health and Human Services (DHHS) which that individual knows to be false.

Senate Bill No. 2186 was further amended in the House of Representatives to remove all amendments to Section 12.1-18-05 and create Section 14-09-24.1, which provides unless a party shows by clear and convincing evidence additional parenting time should not be ordered, if the court finds one parent intentionally interfered with the other parent's court-ordered parenting time, the court shall order additional parenting time to the parent who lost parenting time due to the interference to indemnify that parent for any lost court-ordered parenting time. The amendments also included a directive to the Legislative Management to create a Child Custody Review Task Force.

As introduced, Senate Bill No. 2184 would have amended Section 14-09-06.5 to provide if a court finds an allegation of harm to a child by one parent against the other is false and not made in good faith, the court shall order additional parenting time to the parent responding to the false allegation. The bill failed to pass in the Senate.

ENFORCEMENT OF PARENTING TIME ORDERS AND FALSE REPORTS

North Dakota Parenting Time Enforcement

In North Dakota, violations of parenting time provisions in custody orders, also referred to as parental rights and responsibilities or residential responsibility orders, generally are enforced through the civil contempt of court process under Chapter 27-10. For purposes of enforcing parenting time provisions, Section 27-10-01.1 defines contempt of court as "intentional disobedience, resistance, or obstruction of the authority, process, or order of a court or other officer, including a referee or magistrate." While the contempt process may vary among individual state district courts, it generally involves one parent filing a motion with the court, along with supporting documents, which explains the alleged violations of the parenting time provisions in the order and requests the district court issue an order to show cause requiring the

nonmoving parent to respond to the motion and appear at a hearing. The nonmoving parent generally files a response to the moving parent's motion before the hearing. At the hearing, the court must consider the evidence and determine whether the moving parent proved the nonmoving parent is in contempt of court for violating the parenting time order.

Also included within the Century Code are provisions:

- Providing any person who intentionally removes, causes the removal of, or detains the person's own child outside of North Dakota with the intent to deny another person's rights in violation of an existing custody decree is guilty of a Class C felony (Section 12.1-18-05);
- Requiring the court to consider and evaluate various factors affecting the best interests and welfare of the child when deciding parental rights and responsibilities, including a factor relating to the willingness and ability of each parent to facilitate a close and continuing relationship with the other parent (Section 14-09-06.2);
- Requiring the court to award the noncustodial parent reasonable attorney's fees and costs if the court determines there has been willful and persistent denial of visitation rights by the custodial parent with respect to the child and authorizing the court to use any remedy available to enforce visitation (Section 14-09-24); and
- Providing unless a party shows by clear and convincing evidence additional parenting time should not be ordered, if the court finds one parent intentionally interfered with the other parent's court-ordered parenting time, the court shall order additional parenting time to the parent who lost parenting time due to the interference to indemnify that parent for any lost court-ordered parenting time (Section 14-09-24.1).

North Dakota Supreme Court Programs

Expedited Parenting Time Mediation Program

In April 2020, the Supreme Court established the Expedited Parenting Time Mediation Program to assist parties in quickly resolving parenting time issues without involvement of the court in cases when a parenting time order is already in place. The program is voluntary and designed to be completed within 7 days from the date mediation was requested by a parent. The court will provide up to 2 hours of mediation, with the mediator being responsible for collecting fees from the parents for any additional mediation session not paid by the court.

Mediators must have a contract with the court to provide mediation services for the program. The mediator must notify the program administrator when the mediation has concluded and advise an agreement has been reached in whole or in part, or the parties were unable to reach an agreement. If an agreement is reached, the mediator must prepare a written summary for the parties to sign. If the parties are unable to reach an agreement, the parties may still proceed with the judicial process to resolve the issue or enforce compliance with the court order.

Legal Self Help Center

The North Dakota Supreme Court Legal Self Help Center is an impartial legal reference service that specializes in providing civil court process information to self-represented litigants. The center does not provide legal advice but provides information about common North Dakota state court processes in civil matters, including amending and enforcing parenting time orders.

The center's website provides references and links to applicable provisions in the Century Code, North Dakota Rules of Civil Procedure, and North Dakota Rules of Evidence, for amending and enforcing parenting time orders. The website also provides over 800 forms, including forms for modifying a parenting time order and initiating the contempt process by moving the court for an order to show cause.

Other States

Most states provide civil enforcement remedies to enforce parenting time orders, typically through a designated motion process, the contempt process, or both. Some states offer expedited procedures specifically for seeking relief when a violation of a parenting time order is alleged.

In some states, such as Alaska, Arkansas, California, Illinois, Iowa, Minnesota, Montana, North Dakota, Texas, Utah, and Virginia, violating or interfering with a parenting time order may constitute a criminal offense. The elements and severity of the offense vary significantly by state, and some states include affirmative defenses in state law.

Many states allow for some form of alternative dispute resolution, often through the court process. However, some states have developed alternative dispute resolution mechanisms that operate with minimal court involvement.

False Reports in Connection to a Custody Order

North Dakota Statutory Provisions

The Century Code contains civil and criminal statutory provisions that may apply to a parent or party who provides false information against a parent in connection with a child custody order. Section 12.1-11-03 provides an individual is guilty of a Class A misdemeanor if that individual gives false information or a false report to a law enforcement officer which that individual knows to be false, and the information or report may interfere with an investigation or may materially mislead a law enforcement officer. There also are provisions embedded in the civil process to address false reports in the context of parenting disputes, including:

- Requiring the court to evaluate various factors affecting the best interests and welfare of the child when determining parental rights and responsibilities, including a factor relating to the making of false allegations not made in good faith, by one parent against the other, of harm to a child (Section 14-09-06.2); and
- Requiring the court to enter an order directing the parent making the false allegation to pay court costs and reasonable attorney's fees incurred by the other parent in responding to the allegation if the court finds an allegation of harm to a child by one parent against the other is false and not made in good faith (Section 14-09-06.5).

Chapter 50-25.1 governs child protection response services provided by DHHS, including assessment steps that must be taken in response to reports of child abuse or neglect made to the department. Under certain circumstances, including when a report alleges a violation of a criminal statute involving sexual or physical abuse, the department is required to contact law enforcement.

Section 50-25.1-13 provides an individual who willfully makes a false report or provides false information that causes a report to be made under Chapter 50-25.1 is guilty of a Class B misdemeanor unless the false report is made to law enforcement, in which case the individual is guilty of a Class A misdemeanor. The individual also is liable in a civil action for all damages suffered by the individual reported, including exemplary damages.

Other States

Many states, including Arizona, Arkansas, Colorado, Connecticut, Florida, Idaho, Illinois, Indiana, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and Washington, have civil child protection laws which carry penalties for individuals who willfully or intentionally make a false report of child abuse or neglect to law enforcement or the department responsible for investigating reports of child abuse. Most of these states classify false reporting as a misdemeanor or similar charge. However, in Florida, Illinois, Tennessee, and Texas, false reporting is a felony. In some states, including Arkansas, Indiana, Missouri, and Virginia, second or subsequent offenses are upgraded to felonies.

Testimony

The task force received testimony from law enforcement, representatives of DHHS, family law practitioners, parents subject to custody orders, and other interested stakeholders.

Testimony from law enforcement indicated responding to custody disputes is challenging. These situations often are emotionally charged events in which each party is adamant they are right. The trauma of an arrest during the response process can create conditions that raise concerns for officer safety. The task force was informed officers are placed in a difficult position when asked to interpret and enforce custody orders, because parents may have made informal adjustments to parenting time to accommodate their personal circumstances, leaving officers to interpret how these modifications align with the formal order. Testimony from law enforcement indicated clearly drafted laws and custody orders are beneficial for effective law enforcement response, and providing officers with immediate access to child custody orders in the field would be helpful when responding to disputes.

Testimony from DHHS indicated the department works in coordination with law enforcement on all reports involving child sexual abuse, physical abuse resulting in significant or visible injury, or any case in which it appears a serious crime connected to suspected child abuse or neglect may have been committed. While the department is responsible for assessing the validity of child abuse and neglect allegations, this responsibility does not extend to determining whether a report is false because it may have been made with ulterior motives, such as gaining leverage in a custody dispute. The task force was informed the department does not maintain records on the number of referrals to law enforcement for suspected false reporting of child abuse and neglect.

Testimony from family law practitioners indicated parent education and court accessibility are essential to improving outcomes and promoting a more effective legal process in contested custody cases. Parents often lack an understanding of the law and court process, and some parents wait many months for their cases to be heard in court due to significant court backlogs. Testimony from practitioners indicated cases become more complex when allegations of domestic violence meet certain criteria, resulting in a rebuttable presumption against the perpetrating parent. A dedicated family

court, in which judges hear only family law cases, would ensure expertise in family law and may expedite the judicial process.

Testimony from a family law mediator indicated approximately 85 percent of contested custody cases in North Dakota are settled in mediation. Mediation orders generally require mediation services be completed within 120 days of the order being issued and the parties may use up to 6 hours of state-paid family mediation services.

Testimony from parents indicated ongoing custody disputes are financially and emotionally devastating for families, especially when the disputes involve false allegations against the other parent. Testimony indicated prolonged custody disputes can irreparably damage a relationship between a parent and child, and finding legal representation in custody cases is difficult. Testimony from some parents indicated establishing a presumption of equal shared parenting would help address child custody and false testimony issues.

Task Force Considerations

Education

Task force members expressed the need for additional education for attorneys, the judiciary, and parents involved in family law disputes. Members submitted suggestions relating to additional educational opportunities, including requiring parents to complete a uniform family law education seminar or course in certain domestic relations cases to promote a clearer understanding of the applicable law and legal process.

Expedited Proceedings

Task force members expressed the need to establish expedited time frames or clear deadlines requiring the court to promptly address allegations of a child being withheld in violation of an order to ensure violations do not persist for an extended period. Members shared suggestions to address this issue, including requiring the court to schedule a hearing within 30 days of the filing of a motion alleging a parenting time violation.

Law Enforcement Involvement

Task force members expressed concern criminalizing the withholding of a child would not resolve the underlying issues within the family and converting parenting time disputes into criminal matters would create significant practical challenges for law enforcement. Members noted law enforcement would be expected to make quick determinations in complex situations which may take courts months to fully adjudicate, potentially escalating the conflict. Members also observed district court judges already have the authority, through the contempt process, to impose jail time for a parent's intentional noncompliance with a parenting time order.

Parenting Time Expeditors

Task force members expressed the need for further discussion on establishing parenting time expeditors to address parenting time issues for families in a more efficient manner. Members submitted suggestions relating to the establishment of parenting time expeditors, including:

- Authorizing parenting time expeditors to issue binding decisions, including interpretations of order provisions when the parties are unable to reach an agreement, subject to the limitations in the order.
- Limiting the authority of a parenting time expeditor to parenting time matters only, excluding parenting responsibility issues or other matters typically addressed by a parenting coordinator.
- Establishing a defined time frame within which a parenting time expeditor must issue a decision that is measured in days rather than weeks or months.
- Setting parameters for educational and certification requirements for parenting time expeditors which do not exceed those required for mediators.
- Permitting private appointments of parenting time expeditors.
- Considering whether the costs of parenting time expeditor services should be allocated between the parties or funded by the state.
- Considering whether the North Dakota Family Law Mediation Program could be expanded to include parenting time expeditors.

Rules of Procedure and Court

A member expressed the need to require the court to adopt and implement specific rules of procedure and court for domestic relations matters. The member noted the absence of rules tailored to domestic relations cases has led to variations in practice among jurisdictions, resulting in delays for families who need more timely resolutions.

Recommendations

The task force recommends a bill draft [27.0075.02000] to require the court to order a party who is a parent of a child at issue in a contested proceeding involving parental rights and responsibilities to participate in and complete a parenting education course.

The task force recommends a bill draft [27.0076.02000] to require the court to hold a hearing within 30 days after a request for a contempt citation is filed with the court in a proceeding in which one individual subject to a parenting time order alleges the other individual subject to the same parenting time order intentionally interfered with court-ordered parenting time.

The task force recommends a bill draft [27.0077.02000] to require the State Court Administrator's office to provide forms that may be used to request a contempt citation in a proceeding in which one individual subject to a parenting time order alleges the other individual subject to the same parenting time order intentionally interfered with court-ordered parenting time and make those forms available for public use.

CREATION OF A DESIGNATED FAMILY COURT

North Dakota Court Structure

North Dakota District Courts

Section 1 of Article VI of the Constitution of North Dakota provides the judicial power of the state is vested in a unified judicial system consisting of a Supreme Court, a district court, and other courts as may be provided by law. The district courts exercise exclusive jurisdiction in criminal cases and general jurisdiction in civil cases, including domestic relations cases involving divorce, custody, and parenting time disputes.

Section 3 of Article VI of the Constitution of North Dakota provides the Supreme Court with the authority to establish rules of procedure to be followed by all the courts of the state. The Supreme Court has organized the district courts into eight judicial districts operating within four administrative units. In each district, there is a presiding judge who oversees the judicial services in the district's geographical area and serves as the chief administrative officer of all courts in the district. The duties of the presiding judge include assigning cases among the judges of the district.

According to the *North Dakota Supreme Court Annual Report*, in 2024, there were 6,468 domestic relations case filings, consisting of divorce (35 percent), protection and restraining orders (36 percent), support proceedings (14 percent), paternity (4 percent), adoption (5 percent), parenting responsibility (6 percent), and termination of parental rights (less than 1 percent).

District Court Judges

There are 55 district court judges serving in the state. The number of judges assigned to each judicial district is as follows:

- South Central (Burleigh, Emmons, Grant, McLean, Mercer, Morton, Oliver, and Sheridan counties): 10.
- Northwest (Divide, Williams, and McKenzie counties): 6.
- North Central (Burke, Mountrail, and Ward counties): 5.
- East Central (Cass, Steele, and Traill counties): 11.
- Northeast Central (Grand Forks and Nelson counties): 6.
- Northeast (Benson, Bottineau, Cavalier, McHenry, Pembina, Pierce, Ramsey, Renville, Rolette, Towner, and Walsh counties): 6.
- Southeast (Barnes, Dickey, Eddy, Foster, Griggs, Kidder, LaMoure, Logan, McIntosh, Ransom, Richland, Sargent, Stutsman, and Wells counties): 7.
- Southwest (Adams, Billings, Bowman, Dunn, Golden Valley, Hettinger, Slope, and Stark counties): 4.

The office of district court judge is an elected position that is filled every 6 years following a nonpartisan election held in the district in which the judge will serve. When a vacancy occurs in the office of district court judge, the Supreme Court must determine whether that office is necessary for effective judicial administration or whether the district judgeship may be transferred to another location to fill a need for judicial services. If the vacancy is to be filled, the Governor may either fill the vacancy by appointing a candidate from a list of nominees submitted by the Judicial Nominating Committee or by calling a special election.

District court judges are judges of general jurisdiction, meaning they may preside over any case properly brought before the district court, including criminal proceedings, family law disputes, complex civil actions, and juvenile matters.

Judicial Referees

The presiding judge of a judicial district may appoint one or more judicial referees to serve on a full-time or part-time basis. Under Section 27-05-30, judicial referees may preside over a variety of matters, including domestic relations, civil protection orders, juvenile court proceedings, child welfare and delinquency cases, and reviews of administrative agency actions. Section 27-05-30 also authorizes the Supreme Court to adopt rules relating to the qualifications and authority of judicial referees.

North Dakota Supreme Court Administrative Rule 13 further defines the authority of judicial referees and the scope of duties a presiding judge may delegate to a judicial referee. Judicial referees may carry out all delegated duties, including issuing orders to show cause, temporary restraining orders, temporary injunctions, and imposing remedial sanctions for contempt of court.

The presiding judge of the judicial district also may appoint judicial referees as magistrates. Magistrates may be delegated various responsibilities, including issuing search warrants, presiding over certain criminal hearings, determining eligibility for appointment of indigent defense counsel, conducting preliminary mental health commitment proceedings, and issuing temporary civil protection orders.

There are five judicial referees serving in three judicial districts: two serve the East Central Judicial District; two serve the South Central Judicial District; and one serves the North Central Judicial District. Each judicial referee has jurisdiction only within the judicial district of appointment and is expected to maintain an office as assigned by the presiding judge of the judicial district.

A party to a proceeding before a judicial referee is entitled to have the matter heard by a district court judge if a written request is filed by the party within 7 days after service of either the initiating documents or other notice informing the party of the right. A party also may request a review of the findings and order of a judicial referee by a district court judge. Unless superseded by a written order of a district court judge following the review process, a judicial referee's decision has the same effect as a district court judge's ruling.

Juvenile Court and Specialized Dockets

The juvenile court is a subset of the district court which has jurisdiction over children in need of protection, and termination of parental rights, guardianship, and delinquency cases. The mission of the juvenile court is to promote public safety, hold juvenile offenders accountable, and increase the capacity of juveniles to contribute productively to their community.

In 2024, the juvenile court received:

- 1,764 child abuse and neglect referrals from human service zones following child abuse and neglect investigations;
- 248 new filings relating to the guardianship of a minor and child placements, and held 413 juvenile guardianship review hearings on existing cases; and
- 135 children's treatment services assessment approvals for review.

In North Dakota, there are both adult and juvenile specialized dockets. A specialized docket is a juvenile or district court that oversees a therapeutic program comprised of interdisciplinary teams, enhanced judicial involvement, court-supervised treatment programs, and other components designed to achieve effective alternatives to traditional case dispositions. The specialized dockets include juvenile drug courts, an adult treatment court, a veterans' treatment court, and a domestic violence court.

North Dakota Family Court History

The 1965 Legislative Assembly adopted House Bill No. 903, commonly referred to as the family court law, which permitted the establishment of a family court as a division of a district court.

Between 1965 and the repeal of the law in 1991, district judges in counties having a population exceeding 10,000 were allowed to establish family court divisions. The purpose of the family court was to protect the rights of children, and to promote the public welfare and the welfare of children by preserving, promoting, and protecting family life and the institution of marriage. The court also was responsible for providing means for the reconciliation of spouses and the amicable settlement of domestic and family controversies.

In counties in which a family court was established, a civil action instituted in divorce or separation cases could not be filed unless family court jurisdiction in that case had been waived by court order or a petition had been filed with the

clerk of the district court. Under the family court system, at the time of the hearing on the petition or at any time after the petition had been filed, the court was authorized to refer the parties to the court's family court counselor for a conference or series of conferences to attempt to effect a reconciliation of the spouses or an amicable adjustment or settlement of the issues of the controversy. The conferences were to be held informally and could involve, with the consent of both of the parties to the proceeding, the aid of physicians, psychiatrists or other specialists, scientific or social experts, or the pastor or director of any religious denomination to which the parties belonged. An admission or statement made by either party during the conference could not be used in evidence in an action without the consent of that individual.

Under the family court system, an action could not be filed for divorce or separation within a 60-day period after the date of the hearing on the petition. If, after the expiration of the waiting period, the controversy between the spouses had not been resolved, either spouse was permitted to institute proceedings for divorce or separation.

Records indicated only one family court remained in existence beyond 1979. Testimony in support of Senate Bill No. 2268 (1991), which repealed the family court law, indicated the family court system was used in the 1970s to attempt to prevent divorces by requiring couples to go to counseling, but the system was not successful, did not have funding, and was no longer used.

Family Court Structures in Other States

Family courts in other states manage a variety of family related matters, including juvenile proceedings, child abuse and neglect, divorce, custody, parenting time, and support. These courts also frequently provide or refer the public to services, including counseling, mediation, parenting education, and social services.

Although the subject matter handled by family courts often is similar, the structure of family courts varies significantly among states. Some states have established a separate dedicated family court, while others operate a family court division within a court of general jurisdiction. The authority creating the family court also varies among states, with some states establishing a family court through statute, while others are created through court or administrative rule.

Consistent with North Dakota's court structure, some states, including Iowa, Kansas, Montana, Nebraska, Oklahoma, South Dakota, Wisconsin, and Wyoming, assign domestic relations matters to county, district, circuit, or trial courts of general jurisdiction, rather than a specialized family court. Several states, including Delaware, New York, Rhode Island, South Carolina, Virginia, and West Virginia, have established a family court by law as a separate court. Many states, including Alabama, Hawaii, Illinois, Kentucky, Maine, Massachusetts, Michigan, Minnesota, Missouri, Nevada, New Hampshire, Oregon, Pennsylvania, Texas, and Vermont, have established a family court as a division of a court of general jurisdiction, either throughout the state or in select regions or jurisdictions.

Testimony

The task force received testimony from representatives of the Supreme Court, family law practitioners, and other interested stakeholders.

Testimony from a representative of the Supreme Court indicated family law cases represent 2 percent of the total court cases filed annually and 87 percent of those cases are never reopened after the final judgment. The task force was informed the estimated cost of creating a single new family court judgeship, including salary, benefits, and support staff, is $867,991 per biennium, and the estimated cost of creating a single judicial referee, including salary, benefits, and support staff, is $745,630 per biennium. Testimony indicated alternatives to additional judgeships or judicial referees include converting existing referees to judgeships, increasing the use of the existing family mediation programs and parenting coordinators, establishing parenting education classes, and implementing expedited statutory deadlines for resolving contempt motions. Testimony suggested these alternatives may be cost-effective and reduce the waiting time for hearings.

The task force was informed in Minnesota, family law matters generally are handled by the district courts. The state is divided into 10 judicial districts, encompassing all 87 counties. By statute, the second and fourth judicial districts must maintain dedicated family court divisions to handle divorce and related matters. District courts also may establish family court divisions, consistent with rules established by the supreme court. Testimony from a family law practitioner in Minnesota indicated many custody order violations are the result of unclear terms, misunderstandings between the parties, changes in circumstances since the order was issued, or intentional noncompliance with the order. Alternative dispute resolution in Minnesota courts includes adjudicative, evaluative, facilitative, and hybrid options. These options often provide parents more autonomy to reach a settlement and establish clear terms agreed upon by both parties. Family courts provide a high level of expertise on domestic issues, but may draw funding and resources away from other courts.

Task Force Considerations

Task force members emphasized the need for continued study and discussion regarding the establishment and implementation of a family court.

Recommendations

The task force recommends a bill draft [27.0074.02000] to create a legislative family court review committee to study the feasibility, structure, fiscal impact, and implementation requirements for establishing a family court.