



North Dakota Legislative Council

Prepared for the Juvenile Justice Committee
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CHILD WELFARE SYSTEM - BACKGROUND MEMORANDUM

Section 6 of Senate Bill No. 2080 (2023) ([appendix](#)) directs the Legislative Management to study the laws and practices of the child welfare system. The study must include a review of the implementation of the revisions in juvenile court procedures and the new model of practice; the laws, administrative rules, and practices of the foster care and adoption systems; the timeliness of termination of parental rights; the timeliness of permanency; and the availability of resources to support children and families experiencing out-of-home placement or risk of out-of-home placement.

JUVENILE JUSTICE AND COURT PROCEDURE

Background

Juvenile courts were established in North Dakota in 1911 and encompass a small subset of the district courts. The juvenile court protects the best interests of children and addresses the unique characteristics and needs of children that come before the court. The juvenile court handles cases involving:

- Proceedings for the guardianship of a child.
- Children in need of services due to behavior which is adverse to their own well-being.
- Children in need of protection or where termination of parental rights is sought.
- Children between the ages of 10 and 17 accused of delinquent acts or behavior which if committed by an adult would be considered a crime.
- Children who are subject to the Interstate Compact on Juveniles or Interstate Compact on the Placement of Children.
- Children seeking judicial consent to marriage, employment, enlistment in the armed services, or certain medical procedures, but only if consent by the court is required by law.

The mission of the juvenile court in a delinquency case is to promote public safety, hold juvenile offenders accountable, and increase the capacity of juveniles to contribute productively to their community.

North Dakota Century Code Section 27-20.2-03 provides the juvenile court with exclusive original jurisdiction over a variety of proceedings, including when 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. Juvenile court receives the majority of the court's delinquency referrals from law enforcement agencies. Referrals regarding child in need of protection cases are received from the human service zones. Guardianship of a minor child cases begin with a filing of documents with the local clerk of court.

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 before 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, or guardian, placement in a foster home, or placement in the care of the Youth Correctional Center, a career and 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 to 8,877, a decrease of 1,223 referrals, or 12 percent, as compared to the previous year, with deprivation 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.

Court Procedure

The juvenile court has several options for handling or disposing of delinquent child cases. One option, which is known as diversion, allows for the referral of the juvenile to a private agency or program. A child referred to the court may be considered for diversion if any of the following criteria are met:

- The referral is for a delinquent act that is not an offense requiring a notification to be sent to the Department of Transportation;
- The referral is for a delinquent act that has not been diverted previously more than twice by the juvenile court within the last 12 months; or
- The referral is not an offense that could require sex offender registration.

A second option, which is known as an informal adjustment under Section 27-20.2-09, allows the child and parents to enter an informal adjustment agreement that sets conditions for the child to be accountable for the charges through informal court probation. Informal adjustment offers an opportunity to admit to the charge and accept conditions of probation without formal charges or a conviction being entered.

A third option is a formal adjudication in which a petition is filed in the district court and the case proceeds through the court system. The decision on the option selected is based on the seriousness of the offense, the age of the juvenile, previous offense history, and reliability of evidence.

Recent Legislation

In 2015, the Council of State Governments' (CSG) Justice Center convened a 50-state forum to present the results of national juvenile justice research, which had been completed in 2014. Researchers had carefully matched data from thousands of juvenile justice cases and had identified eight core principles for reducing recidivism and improving outcomes for youth involved in juvenile justice systems. Until then, North Dakota's Uniform Juvenile Court Act had not undergone any significant updates since it was enacted in the late 1960s. Key points in the reform process occurred at the beginning of the process, with a 2016 letter of intent signed by leaders from all three branches of government, a study resolution proposed by Supreme Court Chief Justice VandeWalle in 2017, the legislative creation of the Commission on Juvenile Justice in 2019, the engagement of the CSG Justice Center in 2019 to serve as a consultant for an interim study during the 2019-20 interim, the preparation of a detailed new Juvenile Court Act, and the passage of House Bill No. 1035 in 2021.

House Bill No. 1035 consisted of 117 pages, the first 28 of which were cross-references, which repealed and reorganized Chapter 27-20 into three new chapters. The Council of State Governments provided specific recommendations for practices supported by research evidence, and those recommendations formed the foundation for the reforms provided by the bill. The newly created chapters were Chapters 27-20.2, 27-20.3, and 27-20.4, which separated the various juvenile court case types into their own chapters. Chapter 27-20.1 previously had been created during the 2019 legislative session to address the issue of guardianship.

Chapter 27-20.2 created the new Juvenile Court Act. The chapter defines the jurisdiction, powers and duties, and practice of the juvenile court.

Chapter 27-20.3 addresses two case types that fall under the heading of child welfare. The chapter defines how the court will proceed for children who need protection or services, formerly identified as deprived children. The acronym "CHIPS" is used to describe a "child in need of protection or services" and defines children who need services, who previously were defined as unruly. The acronym for the latter group of children is "CHINS."

Chapter 27-20.4 describes how the court will proceed in cases of alleged juvenile delinquency.

The 2021 Legislative Assembly also passed House Bill No. 1427, which established the Juvenile Justice Planning Committee, the Planning Committee for Children in Need of Services, and the Planning Committee for Alternatives to Juvenile Detention. The committees were tasked with considering service delivery strategies before implementation and reporting to the Commission on Juvenile Justice and the Children's Cabinet during the 2021-22 interim.

As the committees finished their work, the Commission on Juvenile Justice convened a work group tasked with compiling edits and incorporating suggestions from practitioners and the committees. That work became House Bill No. 1137 (2023).

House Bill No. 1137

House Bill No. 1137 was a comprehensive juvenile justice reform bill consisting of 41 sections, the majority of which serve to correct references omitted in error during the 2021 legislative session during the development of the new Juvenile Court Act or address the Century Code language retained during the transition period related to the three delayed portions of House Bill No. 1035, which were no longer needed. The following sections of House Bill No. 1137 provide the substantive changes to the state's juvenile process and procedure.

Section 9

Removes the reference to "child in need of services" in the right to counsel. This reference was retained in error during the 2021 legislative session. A child in need of services case is no longer subject to court proceedings. The section also changes "shall require payment" to "may require payment" in regard to parent reimbursement of a child's constitutional right to counsel.

Section 11

Adds a new subsection to the statute regarding release of juvenile court records to the staff of a designated juvenile detention center or intake and assessment center for the purpose of performing and scoring the detention screening tool. This was a recommendation provided by the 2022 workgroup on alternatives to detention.

Section 30

Creates a new "method of making a delinquency referral to juvenile court" statute in order to clarify and address concerns raised by law enforcement about the delayed implementation of the section of House Bill No. 1035 regarding diversion of low-level school-based offenses. The new section clarifies that certain types of more concerning misdemeanors that occur at schools can be referred to the courts. The list includes all drug-related offenses, offenses against a person in Chapters 12.1-17, 12.1-31.2, or 14-07.1, sex offense misdemeanors, and any offenses involving firearms, weapons, or dangerous weapons. All other infractions and misdemeanors can be handled by the schools or referred to the courts if school interventions are unsuccessful. The intent of this section is to allow a school to handle low-level school behavior issues without the need to refer the behavior to the juvenile justice system.

Section 32

Adds language to clarify that youth who have not reached the age of 18 may not be held in adult jails or correctional facilities. The language serves to comply with federal law regarding the secure holding of youth.

Section 37

Clarifies language regarding when a court can commit a youth to the Division of Juvenile Services. The section eliminates the requirement to exhaust all probation extensions before placement with the division in order to allow the court to commit a child to the division if that is the treatment or rehabilitation the court deems most appropriate and which provides for the safety of the community.

ADOPTION SYSTEM

Overview

Adoption is a civil court process in North Dakota state district court which creates the relationship of parent and child between the individual petitioning to adopt and the adopted individual. The adopted individual is considered a legitimate blood descendant for all purposes, including inheritance and applicability of statutes, documents, and instruments, whether executed before or after the adoption is decreed, which do not expressly exclude an adopted individual from the document's operation or effect.

In North Dakota, all adoptions are facilitated through private adoption agencies. A private adoption agency is supported by private funds and must be licensed or approved by the state in which it operates. A private adoption agency also may receive public funds if the agency has a contract with the state to provide adoption services. In North Dakota, private agencies facilitate the adoption of infants and foreign-born children. Private agencies also facilitate "public agency adoptions" (or the adoption of children from the foster care system). North Dakota contracts with three private agencies to provide adoption services for children being adopted from the foster care system, as well as services for the families that adopt those children. This collaborative effort is called the Adults Adopting Special Kids Program.

Statutory Adoption Scheme

Section 14-15-03 provides the individuals who may adopt include:

- A husband and wife together although one or both are minors.
- An unmarried adult.
- The unmarried father or mother of the individual to be adopted.
- A married individual without the other spouse joining as a petitioner, if the individual to be adopted is not the adopting person's spouse, and if:

The petitioner is a stepparent of the individual to be adopted and the biological or legal parent of the individual to be adopted consents;

The petitioner and the other spouse are legally separated; or

The failure of the other spouse to join in the petition or to consent to the adoption is excused by the court by reason of prolonged unexplained absence, unavailability, incapacity, or circumstances constituting an unreasonable withholding of consent.

Adoption Procedure - Unidentified Parent

Section 14-15-09(1)(k) requires a petitioner to include all reasonable fees, such as fees for an adoption assessment, expenses for travel, medical expenses, and legal fees in the petition for adoption. After a petition is filed, Section 14-15-11 requires a licensed child-placing agency to complete an investigation as to the conditions of the minor to be adopted and of the petitioner to determine if the adoptive home is a suitable home for the minor and whether the proposed adoption is in the best interest of the minor. An investigation and report is not required in cases involving a petitioner who is a stepparent or in cases in which the individual being adopted is an adult. Section 14-15-11(5) provides the court may waive the investigation and report "if the petitioner is a relative other than a stepparent of the minor, the minor has lived with the petitioner for at least nine months, no allegations of abuse or neglect have been filed against the petitioner or any member of the petitioner's household, and the court is satisfied that the proposed adoptive home is appropriate for the minor." Section 14-15-13 requires the petitioner and the individual to be adopted to appear at the hearing on the petition. At the conclusion of the hearing, the court determines whether the adoption is in the best interest of the individual. The court also must make a finding as to the reasonableness of reported expenses.

Adoption Procedure - Identified Parent

Chapter 14-15.1 sets forth the legal process governing an identified parent adoption. In an identified parent adoption, the custody of the child passes directly from the birth parent to the adoptive parent through a legal process when the birth parents relinquish their parental rights pending the final adoption of the child at a later date. Section 14-15.1-03 requires the court to set a time and place for a hearing on the petition for relinquishment of parental rights. Section 14-15.1-04 requires the report of a child-placing agency to be filed with the court before a hearing under the chapter.

House Bill No. 1206 (2017) amended Section 14-15.1-04 to create a distinction between the required report of a child-placing agency in an adoption by an identified adopted parent and an adoption by an identified adoptive parent who is a relative. An identified parent who is a relative must have written character statements from three

adult witnesses describing various characteristics, such as the parent's emotional maturity and the stability of the home environment. An identified adoptive parent who is not a relative must complete a preplacement adoption assessment. Section 14-15.1-05 requires a report of agreements, whether oral or written, and a full accounting of any disbursement of anything of value to be filed with the court. Within 180 days after entry of an order for relinquishment under Chapter 14-15.1, the identified adoptive parent must file a petition for adoption under Chapter 14-15.

Home Study or Preplacement Inquiry

The "home study" or "preplacement inquiry" required by Sections 14-15-11 and 14-15.1-04 includes an evaluation of prospective adoptive families and of the physical and emotional environment into which a child would be placed. The inquiry also includes a series of interviews with a social worker, including at least one interview in the home. According to the Department of Health and Human Services, a home study usually is completed in a few months, depending on the agency's requirements and the number of other clients.

Senate Bill No. 2080

Senate Bill No. 2080 added language to Section 14-15-11 to support the use and consideration of the department-approved foster care assessment when considering a family for adoption. The additional language requires a child-placing agency to obtain and consider the foster care home assessment of a foster parent seeking to adopt a child and to provide the assessment with the report of the investigation to the court. The bill provides a presumption that an adoptive home is suitable for the purpose of adoption if the petitioner continuously furnished foster care for more than 1 year without disciplinary action, unless the agency reasonably believes the use of the assessment or the adoption would not be in the best interest of the minor. The bill amends Section 14-15-11(5) to add a court-appointed legal guardian as an individual for whom the court may waive the required investigation and report.

Senate Bill No. 2080 also provides that a human service zone director or child-placing agency must consider granting the adoptive placement to a child's foster family unless Chapter 27-19.1 or the federal Indian Child Welfare Act of 1978 applies, a fit and willing relative is not available to adopt the child, or the adoptive placement with the foster home would result in the separation of siblings.

FOSTER CARE SYSTEM

Overview

Foster care is 24-hour out-of-home care for children whose parents are unable to provide for their children's needs. Foster care includes the provision of food, clothing, shelter, security, safety, guidance, and comfort. In nearly all cases, a child in foster care has been removed from their home by court order, with custody given to a public agency, such as the Division of Juvenile Services, a human service zone, or Tribal Social Services. The Department of Health and Human Services licenses foster care homes and facilities to maintain a standard of safety and well-being for children in foster care.

Statutory Foster Care Scheme

North Dakota Century Code Chapter 50-11 and North Dakota Administrative Code Chapter 75-03-14 govern foster care homes. The statutory provisions and adopted rules provide the following regarding foster homes:

- A foster home must be licensed.
- To qualify as a foster home, an individual must:
 - Have an approved criminal background check;
 - Be at least 21 years of age (single or married);
 - Be financially stable;
 - Own or rent a home or apartment;
 - Be with or without children of their own;
 - Have adequate space for a child;
 - Have an income adequate for their own family;
 - Be aware that foster care is intended to be temporary;
 - Be willing to complete required training including trauma-informed care methods;
 - Have the ability to work as a team with social workers and other service providers;

Have the ability to understand and show acceptance of the child's parents; and

Provide personal references.

- A person providing foster care for children in a licensed or approved facility is immune from civil liability for any act or omission resulting in damage or injury to or by a child in foster care if, at the time of the act or omission, the person providing foster care for children applied the reasonable and prudent parent standard in a manner that protects child safety, while also allowing the child in foster care to experience age or developmentally appropriate activities.
- The Department of Health and Human Services may inspect the licensed facility and has full and free access to every part of the facility.
- Provides the minimum physical standards for the foster home such as requiring:
 - Every closet door be one that can be opened from the inside;
 - Firearms be kept in locked storage or be equipped with trigger locks;
 - The home have reliable, legal, and safe transportation available to transport children in placement; and
 - The home be equipped with a carbon monoxide detector.

TERMINATION OF PARENTAL RIGHTS

Chapter 27-20.3 governs the termination of parental rights as it relates to child welfare. Section 27-20.3-20 provides a court may terminate the parental rights of a parent with respect to the parent's child if:

- The parent has abandoned the child;
- The child is subjected to aggravated circumstances;
- The child is in need of protection and the court finds:
 - The conditions and causes of the need for protection are likely to continue or will not be remedied and for that reason the child is suffering or will probably suffer serious physical, mental, moral, or emotional harm; or
 - The child has been in foster care, in the care, custody, and control of the department or human service zone for at least 450 out of the previous 660 nights;
- The written consent of the parent acknowledged before the court has been given; or
- The parent has pled guilty or nolo contendere to, or has been found guilty of, engaging in a sexual act under Section 12.1-20-03 or 12.1-20-04, the sexual act led to the birth of the parent's child, and termination of the parental rights of the parent is in the best interests of the child.

Under Section 27-20.3-21, a petition for termination of parental rights must be prepared, filed, and served upon the parties by the state's attorney. Section 27-20.3-23 provides an order terminating the parental rights of a parent terminates all the parent's rights and obligations with respect to the child and of the child to or through the parent arising from the parental relationship. If, upon entering an order terminating the parental rights of a parent, there is no parent having parental rights, the court shall:

- Commit the child to the custody of the human service zone director or a licensed child-placing agency willing to accept custody for the purpose of placing the child for adoption or, in the absence of such an agreement, in a foster home;
- Appoint a fit and willing relative or other appropriate individual as the child's legal guardian; or
- Establish some other planned permanent living arrangement.

PERMANENCY HEARING

Section 27-20.3-01 defines a permanency hearing as "a hearing, conducted with respect to a child who is in foster care, to determine the permanency plan for the child...." The hearing includes several factors, including whether and when the child will be returned to the parent, whether and when the child will be placed for adoption and the state will file a petition for termination of parental rights, and in the case of a child who has attained age 14, the services needed to assist the child to make the transition to successful adulthood.

In cases in which a compelling reason has been shown that it would not be in the child's best interests to return home, to have parental rights terminated, to be placed for adoption, to be placed with a fit and willing relative, or to be placed with a legal guardian, whether and, if applicable, when the child, aged 16 or older, will be placed in another planned permanent living arrangement, Section 27-20.3-01 requires the court to:

- Ask the child whether the child has a desired permanency outcome of another planned permanent living arrangement;
- Make a judicial determination explaining why another planned permanent living arrangement is the best permanency plan for the child; and
- Identify the compelling reasons it continues not to be in the best interest of the child to return home, be placed for adoption, be placed with a legal guardian, or be placed with a fit and willing relative.

The overall objective of child welfare and placement is to use reasonable efforts to preserve families, reunify families, and maintain family connections before the placement of a child in foster care, to prevent or eliminate the need for removing the child from the child's home, and to place siblings in the same foster care, relative, guardianship, or adoptive placement, unless it is determined that such a joint placement would be contrary to the safety or well-being of any of the siblings. If the court or the child's custodian determined that continuation of reasonable efforts is inconsistent with the permanency plan for the child, reasonable efforts must be made to place the child in a timely manner in accordance with the permanency plan and to complete the steps necessary to finalize the permanent placement of the child.

SUGGESTED STUDY APPROACH

The committee may wish to invite representatives of the Department of Health and Human Services and the juvenile court, adoptive parents, foster parents, and representatives of private child-placing agencies to provide information on the adoption and foster care placement process and procedure, expenses, duration, and viable mechanisms to redesign the foster care and adoption process to streamline adoptions by licensed, certified, or approved family foster home for children providers and identify a fit and willing relative interested in adoption earlier in the process.

In addition, the committee may wish to receive testimony and information from representatives from DOCR, specifically the Division of Juvenile Services, representatives from regional human service centers, the Children's Cabinet, and representatives from the juvenile court to provide a review of the delivery of services in the juvenile justice system. The committee also may wish to seek technical assistance from the CSG Justice Center and the National Conference of State Legislatures.

ATTACH:1