

HOUSE BILL NO. 1035

Introduced by

Legislative Management

(Judiciary Committee)

1 A BILL for an Act to create and enact chapters 27-20.2, 27-20.3, and 27-20.4 of the North
2 Dakota Century Code, relating to the Juvenile Court Act; to amend and reenact subsection 16 of
3 section 11-16-01, section 12.1-32-15, subsections 1 and 3 of section 12.1-41-12, subsection 2
4 of section 14-02.1-03.1, subsection 2 of section 14-02.1-08, subdivision c of subsection 2 of
5 section 14-07.1-18, section 14-15-11, subsections 1 and 2 of section 15.1-09-33.4, sections
6 15.1-19-15, 20.1-13.1-01, 20.1-15-01, 26.1-36-20, and 26.1-40-11.1, subsection 2 of section
7 27-05-30, section 27-20.1-01, paragraph 4 of subdivision n of subsection 2 of section
8 27-20.1-06, subsection 1 of section 27-20.1-10, subdivision d of subsection 1 of section
9 27-20.1-11, subsection 3 of section 27-20.1-11, subsection 2 of section 27-20.1-17, section
10 27-20.1-22, section 27-20.3-05 as created by section 23 of this Act, section 27-20.4-06 as
11 created by section 25 of this Act, subsections 2 and 3 of section 27-21-02, subsection 3 of
12 section 27-21-02.1, section 27-21-09, subsections 2 and 5 of section 27-21-12, section
13 30.1-27-02, subsection 3 of section 30.1-27-06, section 39-06-32.1, subsection 2 of section
14 39-20-01, section 39-24.1-01, subsection 5 of section 50-06-05.1, subdivision a of subsection 4
15 of section 50-06-43.2, subsection 1 of section 50-11.3-01, sections 50-25.1-02 and 50-25.1-06,
16 subsection 4 of section 50-25.1-15, subsection 2 of section 54-12-34, and sections 54-23.4-17
17 and 62.1-02-01 of the North Dakota Century Code, relating to juvenile justice; to repeal chapter
18 27-20 and section 27-21-03 of the North Dakota Century Code, relating to the Uniform Juvenile
19 Court Act; ~~and~~ to provide a penalty; and to provide an effective date.

20 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

21 **SECTION 1. AMENDMENT.** Subsection 16 of section 11-16-01 of the North Dakota Century
22 Code is amended and reenacted as follows:

1 16. Institute and defend proceedings under sections 14-09-12 and 14-09-19 and chapters
2 14-15, ~~27-2027-20.2, 27-20.3, 27-20.4~~, and 50-01 upon consultation with the human
3 service zone director or the executive director of the department of human services.

4 **SECTION 2. AMENDMENT.** Section 12.1-32-15 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **12.1-32-15. Offenders against children and sexual offenders - Sexually violent**
7 **predators - Registration requirement - Penalty. (~~Contingent effective date - See note~~)**

8 ~~1. As used in this section:~~

9 ~~a. "A crime against a child" means a violation of chapter 12.1-16, section-~~
10 ~~12.1-17-01.1 if the victim is under the age of twelve, 12.1-17-02, 12.1-17-04,~~
11 ~~subdivision a of subsection 6 of section 12.1-17-07.1, section 12.1-18-01,~~
12 ~~12.1-18-02, 12.1-18-05, chapter 12.1-29, or section 14-09-22, subsection 3 of~~
13 ~~section 12.1-41-02, subsection 3 of section 12.1-41-03, or an equivalent offense~~
14 ~~from another court in the United States, a tribal court, or court of another country,~~
15 ~~in which the victim is a minor or is otherwise of the age required for the act to be~~
16 ~~a crime or an attempt or conspiracy to commit these offenses.~~

17 ~~b. "Department" means the department of corrections and rehabilitation.~~

18 ~~c. "Homeless" means an individual who is physically present in this state, but is~~
19 ~~living in a park, under a bridge, on the streets, in a vehicle or camper, or is~~
20 ~~otherwise without a traditional dwelling, and also one who resides in this state but~~
21 ~~does not maintain a permanent address. The term does not include individuals~~
22 ~~who are temporarily domiciled or individuals residing in public or private shelters~~
23 ~~that provide temporary living accommodations.~~

24 ~~d. "Mental abnormality" means a congenital or acquired condition of an individual~~
25 ~~that affects the emotional or volitional capacity of the individual in a manner that~~
26 ~~predisposes that individual to the commission of criminal sexual acts to a degree~~
27 ~~that makes the individual a menace to the health and safety of other individuals.~~

28 ~~e. "Predatory" means an act directed at a stranger or at an individual with whom a~~
29 ~~relationship has been established or promoted for the primary purpose of~~
30 ~~victimization.~~

- 1 ~~f. "Sexual offender" means a person who has pled guilty to or been found guilty,~~
2 ~~including juvenile delinquent adjudications, of a violation of section 12.1-20-03,~~
3 ~~12.1-20-03.1, 12.1-20-04, 12.1-20-05, 12.1-20-05.1, 12.1-20-06, 12.1-20-06.1,~~
4 ~~12.1-20-07 except for subdivision a of subsection 1, 12.1-20-11, 12.1-20-12.1,~~
5 ~~12.1-20-12.2, 12.1-20-12.3 except for subdivision a of subsection 1 and~~
6 ~~subdivision b of subsection 1 if the offense involves only a demand for money,~~
7 ~~chapter 12.1-27.2, subsection 2 of section 12.1-22-03.1, subdivision b of~~
8 ~~subsection 1 of section 12.1-41-02, section 12.1-41-04, 12.1-41-05, or~~
9 ~~12.1-41-06, or an equivalent offense from another court in the United States, a~~
10 ~~tribal court, or court of another country, or an attempt or conspiracy to commit~~
11 ~~these offenses.~~
- 12 ~~g. "Sexually dangerous individual" means an individual who meets the definition-~~
13 ~~specified in section 25-03.3-01.~~
- 14 ~~h. "Temporarily domiciled" means staying or being physically present in this state for~~
15 ~~more than thirty days in a calendar year or at a location for longer than ten~~
16 ~~consecutive days, attending school for longer than ten days, or maintaining~~
17 ~~employment in the jurisdiction for longer than ten days, regardless of the state of~~
18 ~~the residence.~~
- 19 ~~2. The court shall impose, in addition to any penalty provided by law, a requirement that~~
20 ~~the individual register, within three days of coming into a county in which the individual~~
21 ~~resides, is homeless, or within the period identified in this section that the individual~~
22 ~~becomes temporarily domiciled. The individual must register with the chief of police of~~
23 ~~the city or the sheriff of the county if the individual resides, attends school, or is~~
24 ~~employed in an area other than a city. A homeless individual shall register every three~~
25 ~~days with the sheriff or chief of police of the jurisdiction in which the individual is~~
26 ~~physically present. The court shall require an individual to register by stating this~~
27 ~~requirement on the court records, if that individual:~~
- 28 ~~a. Has pled guilty or nolo contendere to, or been found guilty as a felonious sexual~~
29 ~~offender or an attempted felonious sexual offender, including juvenile delinquent~~
30 ~~adjudications of equivalent offenses unless the offense is listed in subdivision c.~~

- 1 ~~_____ b. Has pled guilty or nolo contendere to, or been found guilty as a sexual offender~~
2 ~~for, a misdemeanor or attempted misdemeanor. The court may deviate from~~
3 ~~requiring an individual to register if the court first finds the individual is no more~~
4 ~~than three years older than the victim if the victim is a minor, the individual has~~
5 ~~not previously been convicted as a sexual offender or of a crime against a child,~~
6 ~~and the individual did not exhibit mental abnormality or predatory conduct in the~~
7 ~~commission of the offense.~~
- 8 ~~_____ c. Is a juvenile found delinquent under subdivision d of subsection 1 of section~~
9 ~~12.1-20-03, subdivision a of subsection 2 of section 12.1-20-03, or as a sexual~~
10 ~~offender for a misdemeanor. The court may deviate from requiring the juvenile to~~
11 ~~register if the court first finds the juvenile has not previously been convicted as a~~
12 ~~sexual offender or for a crime against a child, and the juvenile did not exhibit~~
13 ~~mental abnormality or predatory conduct in the commission of the offense.~~
- 14 ~~_____ d. Has pled guilty or nolo contendere to, or been found guilty of, a crime against a~~
15 ~~child or an attempted crime against a child, including juvenile delinquent~~
16 ~~adjudications of equivalent offenses. Except if the offense is described in section~~
17 ~~12.1-29-02, or section 12.1-18-01 or 12.1-18-02 and the person is not the parent~~
18 ~~of the victim, the court may deviate from requiring an individual to register if the~~
19 ~~court first finds the individual has not previously been convicted as a sexual~~
20 ~~offender or for a crime against a child, and the individual did not exhibit mental~~
21 ~~abnormality or predatory conduct in the commission of the offense.~~
- 22 ~~_____ e. Has pled guilty or nolo contendere, been found guilty, or been adjudicated~~
23 ~~delinquent of any crime against another individual which is not otherwise~~
24 ~~specified in this section if the court determines that registration is warranted by~~
25 ~~the nature of the crime and therefore orders registration for the individual. If the~~
26 ~~court orders an individual to register as an offender under this section, the~~
27 ~~individual shall comply with all of the registration requirements in this chapter.~~
- 28 ~~_____ 3. If a court has not ordered an individual to register in this state, an individual who~~
29 ~~resides, is homeless, or is temporarily domiciled in this state shall register if the~~
30 ~~individual:~~

- 1 ~~_____ a. Is incarcerated or is on probation or parole after July 31, 1995, for a crime~~
2 ~~against a child described in section 12.1-29-02, or section 12.1-18-01 or~~
3 ~~12.1-18-02 if the individual was not the parent of the victim, or as a sexual~~
4 ~~offender;~~
- 5 ~~_____ b. Has pled guilty or nolo contendere to, or been adjudicated for or found guilty of,~~
6 ~~an offense in a court of this state for which registration is mandatory under this~~
7 ~~section or an offense from another court in the United States, a tribal court, or~~
8 ~~court of another country equivalent to those offenses set forth in this section; or~~
- 9 ~~_____ c. Has pled guilty or nolo contendere to, or has been found guilty of, a crime against~~
10 ~~a child or as a sexual offender for which registration is mandatory under this~~
11 ~~section if the conviction occurred after July 31, 1985.~~
- 12 ~~_____ 4. In its consideration of mental abnormality or predatory conduct, the court shall~~
13 ~~consider the age of the offender, the age of the victim, the difference in ages of the~~
14 ~~victim and offender, the circumstances and motive of the crime, the relationship of the~~
15 ~~victim and offender, and the mental state of the offender. The court may order an~~
16 ~~offender to be evaluated by a qualified counselor, psychologist, or physician before~~
17 ~~sentencing. Except as provided under subdivision e of subsection 2, the court shall~~
18 ~~state on the record in open court its affirmative finding for not requiring an offender to~~
19 ~~register.~~
- 20 ~~_____ 5. When an individual is required to register under this section, the official in charge of a~~
21 ~~facility or institution where the individual required to register is confined, or the~~
22 ~~department, shall, before the discharge, parole, or release of that individual, inform the~~
23 ~~individual of the duty to register pursuant to this section. The official or the department~~
24 ~~shall require the individual to read and sign a form as required by the attorney general,~~
25 ~~stating that the duty of the individual to register has been explained to that individual.~~
26 ~~The official in charge of the place of confinement, or the department, shall obtain the~~
27 ~~address where the individual expects to reside, attend school, or work upon discharge,~~
28 ~~parole, or release and shall report the address to the attorney general. The official in~~
29 ~~charge of the place of confinement, or the department, shall give three copies of the~~
30 ~~form to the individual and shall send three copies to the attorney general no later than~~
31 ~~forty-five days before the scheduled release of that individual. The attorney general~~

1 shall forward one copy to the law enforcement agency having jurisdiction where the
2 individual expects to reside, attend school, or work upon discharge, parole, or release,
3 one copy to the prosecutor who prosecuted the individual, and one copy to the court in
4 which the individual was prosecuted. All forms must be transmitted and received by
5 the law enforcement agency, prosecutor, and court thirty days before the discharge,
6 parole, or release of the individual.

7 ~~6.~~ An individual who is required to register pursuant to this section who is released on
8 probation or discharged upon payment of a fine must, before the release or discharge,
9 be informed of the duty to register under this section by the court in which that
10 individual is convicted. The court shall require the individual to read and sign a form as
11 required by the attorney general, stating that the duty of the individual to register under
12 this section has been explained to that individual. The court shall obtain the address
13 where the individual expects to reside, attend school, or work upon release or
14 discharge and shall report the address to the attorney general within three days. The
15 court shall give one copy of the form to the individual and shall send two copies to the
16 attorney general. The attorney general shall forward one copy to the appropriate law
17 enforcement agency having jurisdiction where the individual expects to reside, attend
18 school, or work upon discharge, parole, or release.

19 ~~7.~~ Registration consists of a written statement signed by the individual, giving the
20 information required by the attorney general, and the biometric data and photograph of
21 the individual. An individual who is not required to provide a sample of blood and other
22 body fluids under section 31-13-03 or by the individual's state or court of conviction or
23 adjudication shall submit a sample of blood and other body fluids for inclusion in a
24 centralized database of DNA identification records under section 31-13-05. The
25 collection, submission, testing and analysis of, and records produced from, samples of
26 blood and other body fluids, are subject to chapter 31-13. Evidence of the DNA profile
27 comparison is admissible in accordance with section 31-13-02. A report of the DNA
28 analysis certified by the state crime laboratory is admissible in accordance with section
29 31-13-05. A district court shall order an individual who refuses to submit a sample of
30 blood or other body fluids for registration purposes to show cause at a specified time
31 and place why the individual should not be required to submit the sample required

1 under this subsection. Within three days after registration, the registering law
2 enforcement agency shall forward the statement, biometric data, and photograph to
3 the attorney general and shall submit the sample of the individual's blood and body
4 fluids to the state crime laboratory. If an individual required to register under this
5 section has a change in vehicle or computer online identity, the individual shall
6 register, within three days after the change, with the law enforcement agency with
7 which that individual last registered of the individual's new vehicle or computer online
8 identity. If an individual required to register pursuant to this section has a change in
9 name, school, or residence or employment address, that individual shall register, at
10 least ten days before the change, with the law enforcement agency with which that
11 individual last registered of the individual's new name, school, residence address, or
12 employment address. A change in school or employment address includes the
13 termination of school or employment for which an individual required to register under
14 this section, the individual shall register within three days of the termination with the
15 law enforcement agency with which the individual last registered. The law enforcement
16 agency, within three days after receipt of the information, shall forward it to the
17 attorney general. The attorney general shall forward the appropriate registration data
18 to the law enforcement agency having local jurisdiction of the new place of residence,
19 school, or employment. Upon a change of address, the individual required to register
20 shall also register within three days at the law enforcement agency having local
21 jurisdiction of the new place of residence, school, or employment. The individual
22 registering under this section shall periodically confirm the information required under
23 this subsection in a manner and at an interval determined by the attorney general. A
24 law enforcement agency that has previously registered an offender may omit the
25 biometric data portion of the registration if that agency has a set of biometric data on
26 file for that individual and is personally familiar with and can visually identify the
27 offender. These provisions also apply in any other state that requires registration.
28 ~~8.~~ An individual required to register under this section shall comply with the registration
29 requirement for the longer of the following periods:

- 1 ~~———— a. — A period of fifteen years after the date of sentence or order deferring or~~
2 ~~suspending sentence upon a plea or finding of guilt or after release from~~
3 ~~incarceration, whichever is later;~~
- 4 ~~———— b. — A period of twenty five years after the date of sentence or order deferring or~~
5 ~~suspending sentence upon a plea or finding of guilt or after release from~~
6 ~~incarceration, whichever is later, if the offender is assigned a moderate risk by the~~
7 ~~attorney general as provided in subsection 12; or~~
- 8 ~~———— c. — For the life of the individual, if that individual:~~
- 9 ~~———— (1) — On two or more occasions has pled guilty or nolo contendere to, or been~~
10 ~~found guilty of a crime against a child or as a sexual offender. If all qualifying~~
11 ~~offenses are misdemeanors, this lifetime provision does not apply unless a~~
12 ~~qualifying offense was committed after August 1, 1999;~~
- 13 ~~———— (2) — Pleads guilty or nolo contendere to, or is found guilty of, an offense~~
14 ~~committed after August 1, 1999, which is described in subdivision a of~~
15 ~~subsection 1 of section 12.1-20-03, section 12.1-20-03.1, or subdivision d of~~
16 ~~subsection 1 of section 12.1-20-03 if the person is an adult and the victim is~~
17 ~~under age twelve, or section 12.1-18-01 if that individual is an adult other~~
18 ~~than a parent of the victim, or an equivalent offense from another court in~~
19 ~~the United States, a tribal court, or court of another country; or~~
- 20 ~~———— (3) — Is assigned a high risk by the attorney general as provided in subsection 12.~~
- 21 ~~———— 9. — An individual required to register under this section who violates this section is guilty of~~
22 ~~a class C felony. The failure of a homeless individual to register as required in~~
23 ~~subsections 2 and 3 is prima facie evidence of a violation of this section. The clerk of~~
24 ~~court shall forward all warrants issued for a violation of this section to the county~~
25 ~~sheriff, who shall enter all such warrants into the national crime information center~~
26 ~~wanted person file. A court may not relieve an individual, other than a juvenile, who~~
27 ~~violates this section from serving a term of at least ninety days in jail and completing~~
28 ~~probation of one year.~~
- 29 ~~———— 10. — When an individual is released on parole or probation and is required to register~~
30 ~~pursuant to this section, but fails to do so within the time prescribed, the court shall~~

1 ~~order the probation, or the parole board shall order the parole, of the individual~~
2 ~~revoked.~~

3 ~~—11.— If an individual required to register pursuant to this section is temporarily sent outside~~
4 ~~the facility or institution where that individual is confined under conviction or sentence,~~
5 ~~the local law enforcement agency having jurisdiction over the place where that~~
6 ~~individual is being sent must be notified within a reasonable time period before that~~
7 ~~individual is released from the facility or institution. This subsection does not apply to~~
8 ~~any individual temporarily released under guard from the facility or institution in which~~
9 ~~that individual is confined.~~

10 ~~—12.— The attorney general, with the assistance of the department and the juvenile courts,~~
11 ~~shall develop guidelines for the risk assessment of sexual offenders who are required~~
12 ~~to register, with a low-risk, moderate-risk, or high-risk level being assigned to each~~
13 ~~offender as follows:~~

14 ~~— a.— The department shall conduct a risk assessment of sexual offenders who are~~
15 ~~incarcerated in institutions under the control of the department and sexual~~
16 ~~offenders who are on supervised probation. The department, in a timely manner,~~
17 ~~shall provide the attorney general any information, including the offender's level~~
18 ~~of risk and supporting documentation, concerning individuals required to be~~
19 ~~registered under this section who are about to be released or placed into the~~
20 ~~community.~~

21 ~~— b.— The attorney general shall conduct a risk assessment of sexual offenders who~~
22 ~~are not under the custody or supervision of the department. The attorney general~~
23 ~~may adopt a law enforcement agency's previous assignment of risk level for an~~
24 ~~individual if the assessment was conducted in a manner substantially similar to~~
25 ~~the guidelines developed under this subsection.~~

26 ~~— c.— The juvenile courts or the agency having legal custody of a juvenile shall conduct~~
27 ~~a risk assessment of juvenile sexual offenders who are required to register under~~
28 ~~this section. The juvenile courts or the agency having legal custody of a juvenile~~
29 ~~shall provide the attorney general any information, including the offender's level~~
30 ~~of risk and supporting documentation, concerning juveniles required to register~~
31 ~~and who are about to be released or placed into the community.~~

1 ~~_____ d. The attorney general shall notify the offender of the risk level assigned to that~~
2 ~~offender. An offender may request a review of that determination with the attorney~~
3 ~~general's sexual offender risk assessment committee and may present any~~
4 ~~information that the offender believes may lower the assigned risk level.~~

5 ~~_____ 13. Relevant and necessary conviction and registration information must be disclosed to~~
6 ~~the public by a law enforcement agency if the individual is a moderate or high risk and~~
7 ~~the agency determines that disclosure of the conviction and registration information is~~
8 ~~necessary for public protection. The attorney general shall develop guidelines for~~
9 ~~public disclosure of offender registration information. Public disclosure may include~~
10 ~~internet access if the offender:~~

11 ~~_____ a. Is required to register for a lifetime under subsection 8;~~

12 ~~_____ b. Has been determined to be a high risk to the public by the department, the~~
13 ~~attorney general, or the courts, according to guidelines developed by those~~
14 ~~agencies; or~~

15 ~~_____ c. Has been determined to be a high risk to the public by an agency of another state~~
16 ~~or the federal government.~~

17 ~~If the offender has been determined to be a moderate risk, public disclosure must~~
18 ~~include, at a minimum, notification of the offense to the victim registered under chapter~~
19 ~~12.1-34 and to any agency, civic organization, or group of persons who have~~
20 ~~characteristics similar to those of a victim of the offender. Upon request, law~~
21 ~~enforcement agencies may release conviction and registration information regarding~~
22 ~~low-risk, moderate-risk, or high-risk offenders.~~

23 ~~_____ 14. A state officer, law enforcement agency, or public school district or governing body of a~~
24 ~~nonpublic school or any appointee, officer, or employee of those entities is not subject~~
25 ~~to civil or criminal liability for making risk determinations, allowing a sexual offender to~~
26 ~~attend a school function under section 12.1-20-25, or for disclosing or for failing to~~
27 ~~disclose information as permitted by this section.~~

28 ~~_____ 15. If a juvenile is adjudicated delinquent and required or ordered to register as a sexual~~
29 ~~offender or as an offender against a child under this section, the juvenile shall comply~~
30 ~~with the registration requirements in this section. Notwithstanding any other provision~~
31 ~~of law, a law enforcement agency shall register a juvenile offender in the same manner~~

1 as adult offenders and may release any relevant and necessary information on file to
2 other law enforcement agencies, the department of human services, or the public if
3 disclosure is necessary to protect public health or safety. The law enforcement agency
4 shall release any relevant and necessary information on file to the superintendent or
5 principal of the school the juvenile attends. The school administration shall notify
6 others in similar positions if the juvenile transfers to another learning institution in or
7 outside the state.

8 ~~16.~~ If an individual has been required to register as a sexual offender or an offender
9 against a child under section 12.1-32-15 or former section 27-20-52.1 before August 1,
10 1999, the individual may petition the court to be removed from the offender list if
11 registration is no longer mandatory for that individual. In considering the petition, the
12 court shall comply with the requirements of this section.

13 ~~17.~~ A sexual offender who is currently assigned a moderate or high-risk level by the
14 attorney general may not use a state park of this state as a residence or residential
15 address to comply with the registration requirements of this section. Before arriving at
16 a state park for overnight lodging or camping, a sexual offender who is assigned a
17 moderate or high-risk level by the attorney general shall notify a parks and recreation
18 department law enforcement officer at the state park where the sexual offender will be
19 staying.

20 ~~18.~~ When an individual who is required to register pursuant to this section plans to travel
21 outside of the United States, at least twenty-one days before the intended travel, the
22 individual shall inform the agency with which the individual last registered the
23 individual's residence address the details of the intended travel. Upon receipt of the
24 information from the registering law enforcement agency, the attorney general shall
25 report the travel to the United States marshal service.

26 ~~**Offenders against children and sexual offenders -- Sexually violent predators --**~~
27 ~~**Registration requirement -- Penalty. (Contingent effective date -- See note)**~~

- 28 1. As used in this section:
- 29 a. "A crime against a child" means a violation of chapter 12.1-16, section
30 12.1-17-01.1 if the victim is under the age of twelve, 12.1-17-02, 12.1-17-04,
31 subdivision a of subsection 6 of section 12.1-17-07.1, section 12.1-18-01,

1 12.1-18-02, 12.1-18-05, chapter 12.1-29, or section 14-09-22, subsection 3 of
2 section 12.1-41-02, subsection 3 of section 12.1-41-03, or an equivalent offense
3 from another court in the United States, a tribal court, or court of another country,
4 in which the victim is a minor or is otherwise of the age required for the act to be
5 a crime or an attempt or conspiracy to commit these offenses.

- 6 b. "Department" means the department of corrections and rehabilitation.
- 7 c. "Homeless" means an individual who is physically present in this state, but is
8 living in a park, under a bridge, on the streets, in a vehicle or camper, or is
9 otherwise without a traditional dwelling, and also one who resides in this state but
10 does not maintain a permanent address. The term does not include individuals
11 who are temporarily domiciled or individuals residing in public or private shelters
12 that provide temporary living accommodations.
- 13 d. "Mental abnormality" means a congenital or acquired condition of an individual
14 that affects the emotional or volitional capacity of the individual in a manner that
15 predisposes that individual to the commission of criminal sexual acts to a degree
16 that makes the individual a menace to the health and safety of other individuals.
- 17 e. "Predatory" means an act directed at a stranger or at an individual with whom a
18 relationship has been established or promoted for the primary purpose of
19 victimization.
- 20 f. "Reside" means to live permanently or be situated for a considerable time in a
21 home or a particular place.
- 22 g. "Sexual offender" means a person who has pled guilty to or been found guilty,
23 including juvenile delinquent adjudications, of a violation of section 12.1-20-03,
24 12.1-20-03.1, 12.1-20-04, 12.1-20-05, 12.1-20-05.1, 12.1-20-06, 12.1-20-06.1,
25 12.1-20-07 except for subdivision a of subsection 1, 12.1-20-11, 12.1-20-12.1,
26 12.1-20-12.2, 12.1-20-12.3 except for subdivision a of subsection 1 and
27 subdivision b of subsection 1 if the offense involves only a demand for money,
28 chapter 12.1-27.2, subsection 2 of section 12.1-22-03.1, subdivision b of
29 subsection 1 of section 12.1-41-02, section 12.1-41-04, 12.1-41-05, or
30 12.1-41-06, or an equivalent offense from another court in the United States, a

1 tribal court, or court of another country, or an attempt or conspiracy to commit
2 these offenses.

3 h. "Sexually dangerous individual" means an individual who meets the definition
4 specified in section 25-03.3-01.

5 i. "Temporarily domiciled" means staying or being physically present in this state for
6 more than thirty days in a calendar year or at a location for longer than ten
7 consecutive days, attending school for longer than ten days, or maintaining
8 employment in the jurisdiction for longer than ten days, regardless of the state of
9 the residence.

10 2. The court shall impose, in addition to any penalty provided by law, a requirement that
11 the individual register, within three days of coming into a county in which the individual
12 resides, is homeless, or within the period identified in this section that the individual
13 becomes temporarily domiciled. The individual must register with the chief of police of
14 the city of the individual's place of residence, or the sheriff of the county if the
15 individual resides in an area other than a city. A homeless individual shall register
16 every three days with the sheriff or chief of police of the jurisdiction in which the
17 individual is physically present. The court shall require an individual to register by
18 stating this requirement on the court records, if that individual:

19 a. Has pled guilty or nolo contendere to, or been found guilty as a felonious sexual
20 offender or an attempted felonious sexual offender, including juvenile delinquent
21 adjudications of equivalent offenses unless the offense is listed in subdivision c.

22 b. Has pled guilty or nolo contendere to, or been found guilty as a sexual offender
23 for, a misdemeanor or attempted misdemeanor. The court may deviate from
24 requiring an individual to register if the court first finds the individual is no more
25 than three years older than the victim if the victim is a minor, the individual has
26 not previously been convicted as a sexual offender or of a crime against a child,
27 and the individual did not exhibit mental abnormality or predatory conduct in the
28 commission of the offense.

29 c. Is a juvenile found delinquent under subdivision d of subsection 1 of section
30 12.1-20-03, subdivision a of subsection 2 of section 12.1-20-03, or as a sexual
31 offender for a misdemeanor. The court may deviate from requiring the juvenile to

- 1 register if the court first finds the juvenile has not previously been convicted as a
2 sexual offender or for a crime against a child, and the juvenile did not exhibit
3 mental abnormality or predatory conduct in the commission of the offense.
- 4 d. Has pled guilty or nolo contendere to, or been found guilty of, a crime against a
5 child or an attempted crime against a child, including juvenile delinquent
6 adjudications of equivalent offenses. Except if the offense is described in section
7 12.1-29-02, or section 12.1-18-01 or 12.1-18-02 and the person is not the parent
8 of the victim, the court may deviate from requiring an individual to register if the
9 court first finds the individual has not previously been convicted as a sexual
10 offender or for a crime against a child, and the individual did not exhibit mental
11 abnormality or predatory conduct in the commission of the offense.
- 12 e. Has pled guilty or nolo contendere, been found guilty, or been adjudicated
13 delinquent of any crime against another individual which is not otherwise
14 specified in this section if the court determines that registration is warranted by
15 the nature of the crime and therefore orders registration for the individual. If the
16 court orders an individual to register as an offender under this section, the
17 individual shall comply with all of the registration requirements in this chapter.
- 18 3. If a court has not ordered an individual to register in this state, an individual who
19 resides, is homeless, or is temporarily domiciled in this state shall register if the
20 individual:
- 21 a. Is incarcerated or is on probation or parole after July 31, 1995, for a crime
22 against a child described in section 12.1-29-02, or section 12.1-18-01 or
23 12.1-18-02 if the individual was not the parent of the victim, or as a sexual
24 offender;
- 25 b. Has pled guilty or nolo contendere to, or been adjudicated for or found guilty of,
26 an offense in a court of this state for which registration is mandatory under this
27 section or an offense from another court in the United States, a tribal court, or
28 court of another country equivalent to those offenses set forth in this section; or
- 29 c. Has pled guilty or nolo contendere to, or has been found guilty of, a crime against
30 a child or as a sexual offender for which registration is mandatory under this
31 section if the conviction occurred after July 31, 1985.

- 1 4. In its consideration of mental abnormality or predatory conduct, the court shall
2 consider the age of the offender, the age of the victim, the difference in ages of the
3 victim and offender, the circumstances and motive of the crime, the relationship of the
4 victim and offender, and the mental state of the offender. The court may order an
5 offender to be evaluated by a qualified counselor, psychologist, or physician before
6 sentencing. Except as provided under subdivision e of subsection 2, the court shall
7 state on the record in open court its affirmative finding for not requiring an offender to
8 register.
- 9 5. When an individual is required to register under this section, the official in charge of a
10 facility or institution where the individual required to register is confined, or the
11 department, shall, before the discharge, parole, or release of that individual, inform the
12 individual of the duty to register pursuant to this section. The official or the department
13 shall require the individual to read and sign a form as required by the attorney general,
14 stating that the duty of the individual to register has been explained to that individual.
15 The official in charge of the place of confinement, or the department, shall obtain the
16 address where the individual expects to reside, attend school, or work upon discharge,
17 parole, or release and shall report the address to the attorney general. The official in
18 charge of the place of confinement, or the department, shall give three copies of the
19 form to the individual and shall send three copies to the attorney general no later than
20 forty-five days before the scheduled release of that individual. The attorney general
21 shall forward one copy to the law enforcement agency having jurisdiction where the
22 individual expects to reside, attend school, or work upon discharge, parole, or release,
23 one copy to the prosecutor who prosecuted the individual, and one copy to the court in
24 which the individual was prosecuted. All forms must be transmitted and received by
25 the law enforcement agency, prosecutor, and court thirty days before the discharge,
26 parole, or release of the individual.
- 27 6. An individual who is required to register pursuant to this section who is released on
28 probation or discharged upon payment of a fine must, before the release or discharge,
29 be informed of the duty to register under this section by the court in which that
30 individual is convicted. The court shall require the individual to read and sign a form as
31 required by the attorney general, stating that the duty of the individual to register under

1 this section has been explained to that individual. The court shall obtain the address
2 where the individual expects to reside, attend school, or work upon release or
3 discharge and shall report the address to the attorney general within three days. The
4 court shall give one copy of the form to the individual and shall send two copies to the
5 attorney general. The attorney general shall forward one copy to the appropriate law
6 enforcement agency having jurisdiction where the individual expects to reside, attend
7 school, or work upon discharge, parole, or release.

- 8 7. Registration consists of a written or electronic statement signed by the individual,
9 giving the information required by the attorney general, and the biometric data and
10 photograph of the individual. An individual who is not required to provide a sample of
11 blood and other body fluids under section 31-13-03 or by the individual's state or court
12 of conviction or adjudication shall submit a sample of blood and other body fluids for
13 inclusion in a centralized database of DNA identification records under section
14 31-13-05. The collection, submission, testing and analysis of, and records produced
15 from, samples of blood and other body fluids, are subject to chapter 31-13. Evidence
16 of the DNA profile comparison is admissible in accordance with section 31-13-02. A
17 report of the DNA analysis certified by the state crime laboratory is admissible in
18 accordance with section 31-13-05. A district court shall order an individual who refuses
19 to submit a sample of blood or other body fluids for registration purposes to show
20 cause at a specified time and place why the individual should not be required to
21 submit the sample required under this subsection. Within three days after registration,
22 the registering law enforcement agency shall forward the statement, biometric data,
23 and photograph to the attorney general and shall submit the sample of the individual's
24 blood and body fluids to the state crime laboratory. If an individual required to register
25 under this section has a change in vehicle or computer online identity, the individual
26 shall register, within three days after the change, with the law enforcement agency
27 having local jurisdiction of the individual's place of residence of the individual's new
28 vehicle or computer online identity. If an individual required to register pursuant to this
29 section has a change in name, school, or residence or employment address, that
30 individual shall register, at least ten days before the change, with the law enforcement
31 agency having local jurisdiction of the individual's place of residence of the individual's

1 new name, school, residence address, or employment address. A change in school or
2 employment address includes the termination of school or employment for which an
3 individual required to register under this section, the individual shall register within
4 three days of the termination with the law enforcement agency having local jurisdiction
5 of the individual's place of residence. The law enforcement agency, within three days
6 after receipt of the information, shall forward it to the attorney general. The attorney
7 general shall forward the appropriate registration data to the law enforcement agency
8 having local jurisdiction of the new place of residence, school, or employment. Upon a
9 change of address, the individual required to register also shall register within three
10 days at the law enforcement agency having local jurisdiction of the new place of
11 residence. If an individual required to register in North Dakota, including in a tribal
12 registry, resides in another state or on tribal lands, that individual shall register
13 employment and school addresses and any changes in required registration
14 information with the law enforcement agency having local jurisdiction over the school
15 or employment address. The individual registering under this section shall periodically
16 confirm the information required under this subsection in a manner and at an interval
17 determined by the attorney general. A law enforcement agency that has previously
18 registered an offender may omit the biometric data portion of the registration if that
19 agency has a set of biometric data on file for that individual and is personally familiar
20 with and can visually identify the offender. These provisions also apply in any other
21 state that requires registration.

- 22 8. An individual required to register under this section shall comply with the registration
23 requirement for the longer of the following periods:
- 24 a. A period of fifteen years after the date of sentence or order deferring or
25 suspending sentence upon a plea or finding of guilt or after release from
26 incarceration, whichever is later;
 - 27 b. A period of twenty-five years after the date of sentence or order deferring or
28 suspending sentence upon a plea or finding of guilt or after release from
29 incarceration, whichever is later, if the offender is assigned a moderate risk by the
30 attorney general as provided in subsection 12; or
 - 31 c. For the life of the individual, if that individual:

- 1 (1) On two or more occasions has pled guilty or nolo contendere to, or been
2 found guilty of a crime against a child or as a sexual offender. If all qualifying
3 offenses are misdemeanors, this lifetime provision does not apply unless a
4 qualifying offense was committed after August 1, 1999;
- 5 (2) Pleads guilty or nolo contendere to, or is found guilty of, an offense
6 committed after August 1, 1999, which is described in subdivision a of
7 subsection 1 of section 12.1-20-03, section 12.1-20-03.1, or subdivision d of
8 subsection 1 of section 12.1-20-03 if the person is an adult and the victim is
9 under age twelve, or section 12.1-18-01 if that individual is an adult other
10 than a parent of the victim, or an equivalent offense from another court in
11 the United States, a tribal court, or court of another country; or
- 12 (3) Is assigned a high risk by the attorney general as provided in subsection 12.
- 13 9. An individual required to register under this section who violates this section is guilty of
14 a class C felony. The failure of a homeless individual to register as required in
15 subsections 2 and 3 is prima facie evidence of a violation of this section. The clerk of
16 court shall forward all warrants issued for a violation of this section to the county
17 sheriff, who shall enter all such warrants into the national crime information center
18 wanted person file. A court may not relieve an individual, other than a juvenile, who
19 violates this section from serving a term of at least ninety days in jail and completing
20 probation of one year.
- 21 10. When an individual is released on parole or probation and is required to register
22 pursuant to this section, but fails to do so within the time prescribed, the court shall
23 order the probation, or the parole board shall order the parole, of the individual
24 revoked.
- 25 11. If an individual required to register pursuant to this section is temporarily sent outside
26 the facility or institution where that individual is confined under conviction or sentence,
27 the local law enforcement agency having jurisdiction over the place where that
28 individual is being sent must be notified within a reasonable time period before that
29 individual is released from the facility or institution. This subsection does not apply to
30 any individual temporarily released under guard from the facility or institution in which
31 that individual is confined.

- 1 12. The attorney general, with the assistance of the department and the juvenile courts,
2 shall develop guidelines for the risk assessment of sexual offenders who are required
3 to register, with a low-risk, moderate-risk, or high-risk level being assigned to each
4 offender as follows:
- 5 a. The department shall conduct a risk assessment of sexual offenders who are
6 incarcerated in institutions under the control of the department and sexual
7 offenders who are on supervised probation. The department, in a timely manner,
8 shall provide the attorney general any information, including the offender's level
9 of risk and supporting documentation, concerning individuals required to be
10 registered under this section who are about to be released or placed into the
11 community.
- 12 b. The attorney general shall conduct a risk assessment of sexual offenders who
13 are not under the custody or supervision of the department. The attorney general
14 may adopt a law enforcement agency's previous assignment of risk level for an
15 individual if the assessment was conducted in a manner substantially similar to
16 the guidelines developed under this subsection.
- 17 c. The juvenile courts or the agency having legal custody of a juvenile shall conduct
18 a risk assessment of juvenile sexual offenders who are required to register under
19 this section. The juvenile courts or the agency having legal custody of a juvenile
20 shall provide the attorney general any information, including the offender's level
21 of risk and supporting documentation, concerning juveniles required to register
22 and who are about to be released or placed into the community.
- 23 d. The attorney general shall notify the offender of the risk level assigned to that
24 offender. An offender may request a review of that determination with the attorney
25 general's sexual offender risk assessment committee and may present any
26 information that the offender believes may lower the assigned risk level.
- 27 13. An individual assessed as a high-risk sexual offender in accordance with
28 subsection 12, may not reside within five hundred feet [152.4 meters] of a public or
29 nonpublic preschool or elementary, middle, or high school.
- 30 14. Relevant and necessary conviction and registration information must be disclosed to
31 the public by a law enforcement agency if the individual is a moderate or high risk and

1 the agency determines that disclosure of the conviction and registration information is
2 necessary for public protection. The attorney general shall develop guidelines for
3 public disclosure of offender registration information. Public disclosure may include
4 internet access if the offender:

- 5 a. Is required to register for a lifetime under subsection 8;
- 6 b. Has been determined to be a high risk to the public by the department, the
7 attorney general, or the courts, according to guidelines developed by those
8 agencies; or
- 9 c. Has been determined to be a high risk to the public by an agency of another state
10 or the federal government.

11 If the offender has been determined to be a moderate risk, public disclosure must
12 include, at a minimum, notification of the offense to the victim registered under chapter
13 12.1-34 and to any agency, civic organization, or group of persons who have
14 characteristics similar to those of a victim of the offender. Upon request, law
15 enforcement agencies may release conviction and registration information regarding
16 low-risk, moderate-risk, or high-risk offenders.

17 15. A state officer, law enforcement agency, or public school district or governing body of a
18 nonpublic school or any appointee, officer, or employee of those entities is not subject
19 to civil or criminal liability for making risk determinations, allowing a sexual offender to
20 attend a school function under section 12.1-20-25, or for disclosing or for failing to
21 disclose information as permitted by this section.

22 16. If a juvenile is adjudicated delinquent and required or ordered to register as a sexual
23 offender or as an offender against a child under this section, the juvenile shall comply
24 with the registration requirements in this section. Notwithstanding any other provision
25 of law, a law enforcement agency shall register a juvenile offender in the same manner
26 as adult offenders and may release any relevant and necessary information on file to
27 other law enforcement agencies, the department of human services, or the public if
28 disclosure is necessary to protect public health or safety. The law enforcement agency
29 shall release any relevant and necessary information on file to the superintendent or
30 principal of the school the juvenile attends. The school administration shall notify

1 others in similar positions if the juvenile transfers to another learning institution in or
2 outside the state.

3 17. If an individual has been required to register as a sexual offender or an offender
4 against a child under section 12.1-32-15 or former section 27-20-52.1 before August 1,
5 1999, the individual may petition the court to be removed from the offender list if
6 registration is no longer mandatory for that individual. In considering the petition, the
7 court shall comply with the requirements of this section.

8 18. A sexual offender who is currently assigned a moderate or high-risk level by the
9 attorney general may not use a state park of this state as a residence or residential
10 address to comply with the registration requirements of this section. Before arriving at
11 a state park for overnight lodging or camping, a sexual offender who is assigned a
12 moderate or high-risk level by the attorney general shall notify a parks and recreation
13 department law enforcement officer at the state park where the sexual offender will be
14 staying.

15 19. When an individual who is required to register pursuant to this section plans to travel
16 outside of the United States, at least twenty-one days before the intended travel, the
17 individual shall inform the agency with which the individual last registered the
18 individual's residence address the details of the intended travel. Upon receipt of the
19 information from the registering law enforcement agency, the attorney general shall
20 report the travel to the United States marshal service.

21 **SECTION 3. AMENDMENT.** Subsections 1 and 3 of section 12.1-41-12 of the North Dakota
22 Century Code are amended and reenacted as follows:

- 23 1. If the individual was a minor at the time of the offense and committed the offense as a
24 direct result of being a victim, the individual is not criminally liable or subject to a
25 juvenile delinquency proceeding under chapter ~~27-20~~27-20.4 for:
- 26 a. Prostitution under section 12.1-29-03;
 - 27 b. Misdemeanor forgery under section 12.1-24-01;
 - 28 c. Misdemeanor theft offenses under chapter 12.1-23;
 - 29 d. Insufficient funds or credit offenses under section 6-08-16;
 - 30 e. Manufacture or possession of a controlled or counterfeit substance offenses
31 under section 19-03.1-23; and

1 f. Drug paraphernalia offenses under chapter 19-03.4.

2 3. An individual who has engaged in commercial sexual activity is not criminally liable or
3 subject to a juvenile delinquency proceeding under chapter ~~27-20~~27-20.4 for
4 prostitution if the individual was a minor at the time of the offense.

5 **SECTION 4. AMENDMENT.** Subsection 2 of section 14-02.1-03.1 of the North Dakota
6 Century Code is amended and reenacted as follows:

7 2. Any pregnant woman under the age of eighteen or next friend is entitled to apply to
8 the juvenile court for authorization to obtain an abortion without parental consent. All
9 proceedings on such application must be conducted in the juvenile court of the county
10 of the minor's residence before a juvenile judge or referee, if authorized by the juvenile
11 court judge in accordance with the provisions of chapter 27-05, except that the
12 parental notification requirements of ~~chapter 27-20~~rules 3, 4, and 5 of the North
13 Dakota Rules of Juvenile Procedure are not applicable to proceedings under this
14 section. A court may change the venue of proceedings under this section to another
15 county only upon finding that a transfer is required in the best interests of the minor. All
16 applications in accordance with this section must be heard by a juvenile judge or
17 referee within forty-eight hours, excluding Saturdays and Sundays, of receipt of the
18 application. The juvenile judge or referee shall find by clear and convincing evidence:

19 a. Whether or not the minor is sufficiently mature and well informed with regard to
20 the nature, effects, and possible consequences of both having an abortion and
21 bearing her child to be able to choose intelligently among the alternatives.

22 b. If the minor is not sufficiently mature and well informed to choose intelligently
23 among the alternatives without the advice and counsel of her parents or
24 guardian, whether or not it would be in the best interests of the minor to notify her
25 parents or guardian of the proceedings and call in the parents or guardian to
26 advise and counsel the minor and aid the court in making its determination and to
27 assist the minor in making her decision.

28 c. If the minor is not sufficiently mature and well informed to choose intelligently
29 among the alternatives and it is found not to be in the best interests of the minor
30 to notify and call in her parents or guardian for advice and counsel, whether an
31 abortion or some other alternative would be in the best interests of the minor.

1 **SECTION 5. AMENDMENT.** Subsection 2 of section 14-02.1-08 of the North Dakota
2 Century Code is amended and reenacted as follows:

- 3 2. Whenever an unborn child who is the subject of abortion is born alive and is viable, it
4 becomes an abandoned child and ~~deprived~~ a child in need of protection, unless:
- 5 a. The termination of the pregnancy is necessary to preserve the life of the mother;
6 or
- 7 b. The mother and her spouse, or either of them, have agreed in writing in advance
8 of the abortion, or within seventy-two hours thereafter, to accept the parental
9 rights and responsibilities for the unborn child if it survives the abortion
10 procedure.

11 **SECTION 6. AMENDMENT.** Subdivision c of subsection 2 of section 14-07.1-18 of the
12 North Dakota Century Code is amended and reenacted as follows:

- 13 c. A court of competent jurisdiction orders the disclosure after an in camera review
14 and a written finding by the court that the information directly and specifically
15 relates to a determination of child abuse and neglect under chapter 50-25.1 or
16 termination of parental rights under sections 14-15-19, ~~27-20-44, 27-20-45,~~
17 ~~27-20-46, 27-20-47~~ 27-20.3-20, 27-20.3-21, 27-20.3-22, 27-20.3-23, ~~27-20.3-24,~~
18 27-20.3-25, and ~~27-20-48~~ 27-20.3-26 27-20.3-24; or

19 **SECTION 7. AMENDMENT.** Section 14-15-11 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **14-15-11. Notice of petition - Investigation and hearing.**

- 22 1. a. After the filing of a petition to adopt a minor, the court shall fix a time and place
23 for hearing the petition. At least twenty days before the date of hearing, notice of
24 the filing of the petition and of the time and place of hearing must be given by the
25 petitioner to the department and human service zone; any agency or individual
26 whose consent to the adoption is required by this chapter but who has not
27 consented; an individual whose consent is dispensed with upon any ground
28 mentioned in subdivisions a, b, f, h, i, and j of subsection 1 of section 14-15-06
29 but who has not consented; any appropriate Indian tribe; and any individual
30 identified by the court as a biological parent or a possible biological parent of the
31 minor, upon making inquiry to the extent necessary and appropriate, as in

1 | proceedings under section ~~27-20-45~~27-20.3-24~~27-20.3-22~~, unless the individual
2 | has relinquished parental rights or the individual's parental rights have been
3 | previously terminated by a court. The notice to the department and human
4 | service zone must be accompanied by a copy of the petition.

5 | b. Notice of the filing of a petition to adopt an adult must be given by the petitioner
6 | at least twenty days before the date of the hearing to each living parent of the
7 | adult to be adopted.

8 | 2. An investigation must be made by a licensed child-placing agency to inquire into the
9 | conditions and antecedents of a minor sought to be adopted and of the petitioner for
10 | the purpose of ascertaining whether the adoptive home is a suitable home for the
11 | minor and whether the proposed adoption is in the best interest of the minor.

12 | 3. A written report of the investigation must be filed with the court by the investigator
13 | before the petition is heard.

14 | 4. The report of the investigation must contain a review of the child's history; a
15 | preplacement adoption assessment of the petitioner, including a criminal history record
16 | investigation of the petitioner; and a postplacement evaluation of the placement with a
17 | recommendation as to the granting of the petition for adoption and any other
18 | information the court requires regarding the petitioner or the minor.

19 | 5. An investigation and report is not required in cases in which a stepparent is the
20 | petitioner or the individual to be adopted is an adult. The department and human
21 | service zone, when required to consent to the adoption, may give consent without
22 | making the investigation. If the petitioner is a relative other than a stepparent of the
23 | minor, the minor has lived with the petitioner for at least nine months, no allegations of
24 | abuse or neglect have been filed against the petitioner or any member of the
25 | petitioner's household, and the court is satisfied that the proposed adoptive home is
26 | appropriate for the minor, the court may waive the investigation and report required
27 | under this section.

28 | 6. The department and human service zone, when required to consent to the adoption,
29 | may request the licensed child-placing agency to conduct further investigation and to
30 | make a written report thereof as a supplemental report to the court.

1 7. After the filing of a petition to adopt an adult, the court by order shall direct that a copy
2 of the petition and a notice of the time and place of the hearing be given to any
3 individual whose consent to the adoption is required but who has not consented and to
4 each living parent of the adult to be adopted. The court may order an appropriate
5 investigation to assist it in determining whether the adoption is in the best interest of
6 the individuals involved.

7 8. Notice must be given in the manner appropriate under the North Dakota Rules of Civil
8 Procedure for the service of process in a civil action in this state or in any manner the
9 court by order directs. Proof of the giving of the notice must be filed with the court
10 before the petition is heard.

11 **SECTION 8. AMENDMENT.** Subsections 1 and 2 of section 15.1-09-33.4 of the North
12 Dakota Century Code are amended and reenacted as follows:

13 1. The board of a school district shall prohibit a student from participating in any
14 extracurricular activity if:

15 a. The student has pled guilty to or been convicted of a criminal offense and
16 sentenced under section 12.1-32-02.1 or pled guilty or been convicted of an
17 offense specified in subsection 1 of section 12.1-32-09.1;

18 b. The student has:

19 (1) An order prohibiting contact issued against the student at the request of
20 another student or employee of the school under section 12.1-31.2-02;

21 (2) A disorderly conduct restraining order issued against the student at the
22 request of another student or employee of the school under section
23 12.1-31.2-01, except a temporary restraining order under subsection 4 of
24 section 12.1-31.2-01; or

25 (3) A protection order issued against the student at the request of another
26 student or employee of the school, except a temporary protection order
27 under section 14-07.1-03;

28 c. The principal of the school receives information pertaining to an offense or order
29 included under this section as provided in ~~subsection 2 of section~~

30 ~~27-20-51~~section ~~27-20-2-22~~27-20.2-21; or

1 d. The victim of the offense or the subject of the order notifies the principal of the
2 offense or order.

3 2. For purposes of this section, a representative of the juvenile court system may notify
4 the principal of a school regarding the existence of files or records of the juvenile court
5 pertaining to a student of the school which are open to inspection by the principal
6 under ~~subsection 2 of section 27-20-51~~ section 27-20.2-2227-20.2-21.

7 **SECTION 9. AMENDMENT.** Section 15.1-19-15 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **15.1-19-15. Record retention.**

10 Records regarding a student obtained by a school under section 15.1-19-14, section
11 ~~27-20-51~~ 27-20.2-2227-20.2-21, or section ~~27-20-52~~ 27-20.4-21 must be destroyed when the
12 student reaches the age of eighteen or no longer attends the school, whichever occurs later.

13 **SECTION 10. AMENDMENT.** Section 20.1-13.1-01 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **20.1-13.1-01. Implied consent to determine alcohol concentration and presence of**
16 **drugs.**

17 Any individual who operates a motorboat or vessel in this state is deemed to have given
18 consent, and shall consent, subject to this chapter, to a chemical test, or tests, of the blood,
19 breath, or urine for the purpose of determining the alcohol concentration or presence of other
20 drugs, or combination thereof, in the individual's blood, breath, or urine. As used in this chapter,
21 "operates" means to be in motion, en route, but not at anchor or aground; "vessel" means any
22 watercraft used or designed to be used for navigation on the water such as a boat operated by
23 machinery, either permanently or temporarily affixed, a sailboat other than a sailboard, an
24 inflatable manually propelled boat, a canoe, kayak, or rowboat, but does not include an inner
25 tube, air mattress, or other water toy; "drug" means any drug or substance or combination of
26 drugs or substances which renders an individual incapable of safely operating a motorboat or
27 vessel; and "chemical test" means any test or tests to determine the alcohol concentration or
28 presence of other drugs, or combination thereof, in the individual's blood, breath, or urine,
29 approved by the director of the state crime laboratory or the director's designee under this
30 chapter. The chemical test must be administered at the direction of a game warden or a law
31 enforcement officer only after placing the individual, except individuals mentioned in section

1 20.1-13.1-04, under arrest and informing that individual that the individual is or will be charged
2 with the offense of operating a motorboat or vessel while under the influence of intoxicating
3 liquor, drugs, or a combination thereof. For the purposes of this chapter, the taking into custody
4 of a minor under section ~~27-20-13~~27-20.4-05 satisfies the requirement of an arrest. The game
5 warden or law enforcement officer shall also inform the individual charged that refusal of the
6 individual to submit to the chemical test determined appropriate will result in that individual
7 being prohibited from operating a motorboat or vessel for up to three years. The game warden
8 or law enforcement officer shall determine the chemical test to be used. When a minor is taken
9 into custody for violating section 20.1-13-07, the game warden or law enforcement officer shall
10 diligently attempt to contact the minor's parent or legal guardian to explain the cause for the
11 custody and the implied consent chemical testing requirements. Neither the game warden or
12 law enforcement officer's efforts to contact, nor any consultation with, a parent or legal guardian
13 may be permitted to interfere with the administration of chemical testing requirements under this
14 chapter.

15 **SECTION 11. AMENDMENT.** Section 20.1-15-01 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **20.1-15-01. Implied consent to determine alcohol concentration and presence of**
18 **drugs.**

19 Any individual who is afield with a gun or other firearm or a bow and arrow is deemed to
20 have given consent, and shall consent, subject to this chapter, to a chemical test of the blood,
21 breath, or urine for the purpose of determining the alcohol concentration or presence of other
22 drugs, or combination thereof, in the individual's blood, breath, or urine. As used in this chapter,
23 "drug" means any drug or substance or combination of drugs or substances which renders an
24 individual incapable of safely hunting or being afield with a gun or other firearm or a bow and
25 arrow, and "chemical test" means any test or tests to determine the alcohol concentration or
26 presence of other drugs, or combination thereof, in the individual's blood, breath, or urine,
27 approved by the director of the state crime laboratory or the director's designee under this
28 chapter. The chemical test must be administered at the direction of a game warden or a law
29 enforcement officer only after placing the individual, except individuals mentioned in section
30 20.1-15-04, under arrest and informing that individual that the individual is or will be charged
31 with the offense of being afield with a gun or other firearm or a bow and arrow while under the

1 influence of intoxicating liquor, drugs, or a combination thereof. For the purposes of this chapter,
2 the taking into custody of a minor under section ~~27-20-13~~27-20.4-05 satisfies the requirement of
3 an arrest. The game warden or law enforcement officer shall also inform the individual charged
4 that refusal of the individual to submit to the chemical test determined appropriate will result in a
5 revocation for up to four years of the individual's hunting privileges. The game warden or law
6 enforcement officer shall determine the chemical test to be used. When a minor is taken into
7 custody for violating section 20.1-01-06, the game warden or law enforcement officer shall
8 diligently attempt to contact the minor's parent or legal guardian to explain the cause for the
9 custody and the implied consent chemical testing requirements. Neither the game warden or
10 law enforcement officer's efforts to contact, nor any consultation with, a parent or legal guardian
11 may be permitted to interfere with the administration of chemical testing requirements under this
12 chapter.

13 **SECTION 12. AMENDMENT.** Section 26.1-36-20 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **26.1-36-20. Juvenile's accident and health coverage to continue - Conditions.**

16 Insurance companies and nonprofit health service corporations licensed in this state shall
17 continue coverage of a juvenile insured under an accident and health insurance policy or a
18 health service contract while the legal custody of the juvenile has been given by a court, under
19 ~~chapter 27-20~~chapters 27-20.3 and 27-20.4, to any public institution or agency, to the same
20 extent as the general public is covered as long as the juvenile meets all the other usual
21 qualifications for insurability and continues to pay the policy or contract premiums. A juvenile's
22 incarceration may not be a basis for cancellation of the juvenile's accident and health insurance
23 policy or health service contract.

24 **SECTION 13. AMENDMENT.** Section 26.1-40-11.1 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **26.1-40-11.1. Juvenile's suspension of driving privileges - Nontraffic delinquent**
27 **conduct.**

28 Insurers are prohibited from using or relying on a nontraffic delinquent juvenile's suspension
29 of driving privileges under section ~~27-20-31~~27-20.4-16 as a reason for canceling, denying, or
30 nonrenewing the automobile insurance policy of the nontraffic delinquent juvenile offender or
31 the parents of the nontraffic delinquent juvenile offender.

1 **SECTION 14. AMENDMENT.** Subsection 2 of section 27-05-30 of the North Dakota
2 Century Code is amended and reenacted as follows:

3 2. In accordance with rules of the supreme court, the presiding judge may assign a
4 referee to preside in any case or proceeding provided for in chapter 12.1-31.2, title 14,
5 sections 20.1-01-28 and 20.1-01-29, ~~chapter 27-20, chapter~~chapters 27-20.2, 27-20.3,
6 27-20.4, and 28-25, subsection 6 of section 50-09-08.6, and subsection 2 of section
7 50-09-14.

8 **SECTION 15. AMENDMENT.** Section 27-20.1-01 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **27-20.1-01. Definitions.**

11 ~~The definitions set forth in section 27-20-02 are applicable to this chapter.~~As used in this
12 chapter:

13 1. "Abandon" means:

14 a. As to a parent of a child not in the custody of that parent, failure by the
15 noncustodial parent significantly without justifiable cause:

16 (1) To communicate with the child; or

17 (2) To provide for the care and support of the child as required by law; or

18 b. As to a parent of a child in that parent's custody:

19 (1) To leave the child for an indefinite period without making firm and agreed
20 plans, with the child's immediate caregiver, for the parent's resumption of
21 physical custody;

22 (2) Following the child's birth or treatment at a hospital, to fail to arrange for the
23 child's discharge within ten days after the child no longer requires hospital
24 care; or

25 (3) Willfully fail to furnish food, shelter, clothing, or medical attention reasonably
26 sufficient to meet the child's needs.

27 2. "Abandoned infant" means a child who has been abandoned before reaching the age
28 of one year.

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

30 a. Is without proper parental care or control, subsistence, education as required by
31 law, or other care or control necessary for the child's physical, mental, or

- 1 emotional health, or morals, and the need for services or protection is not due
2 primarily to the lack of financial means of the child's parents, guardian, or other
3 custodian;
- 4 b. Has been placed for care or adoption in violation of law;
5 c. Has been abandoned by the child's parents, guardian, or other custodian;
6 d. Is without proper parental care, control, or education as required by law, or other
7 care and control necessary for the child's well-being because of the physical,
8 mental, emotional, or other illness or disability of the child's parent or parents,
9 and that such lack of care is not due to a willful act of commission or act of
10 omission by the child's parents, and care is requested by a parent;
- 11 e. Is in need of treatment and whose parents, guardian, or other custodian have
12 refused to participate in treatment as ordered by the juvenile court;
- 13 f. Was subject to prenatal exposure to chronic or severe use of alcohol or any
14 controlled substance as defined in chapter 19-03.1 in a manner not lawfully
15 prescribed by a practitioner;
- 16 g. Is present in an environment subjecting the child to exposure to a controlled
17 substance, chemical substance, or drug paraphernalia as prohibited by section
18 19-03.1-22.2;
- 19 h. Is a victim of human trafficking as defined in title 12.1;
- 20 ~~i. Is habitually and without justification truant from school;~~
- 21 ~~j. Is habitually disobedient of the reasonable and lawful commands of the child's~~
22 ~~parent, guardian, or other custodian and is ungovernable or who is willfully in a~~
23 ~~situation dangerous or injurious to the health, safety, or morals of the child or~~
24 ~~others; or~~
- 25 ~~k. Exceeds the parent's or legal guardians ability to care for the child due to:~~
26 ~~(1) The child's behavioral or mental health conditions;~~
27 ~~(2) Ungovernable behavior that has been committed on school grounds during~~
28 ~~the operating hours of school.~~
- 29 ~~4. "Child in need of services" means a child who in any of the foregoing instances is in~~
30 ~~need of treatment or rehabilitation:~~

- 1 ~~a. Has committed an offense applicable only to a child, except for an offense~~
2 ~~committed by a minor fourteen years of age or older under subsection 2 of~~
3 ~~section 12.1-31-03 or an equivalent local ordinance or resolution;~~
4 ~~b. Has committed an offense in violation of section 5-01-08; or~~
5 ~~c. Is under the age of fourteen years and has purchased, possessed, smoked, or~~
6 ~~used tobacco, a tobacco-related product, an electronic smoking device, or an~~
7 ~~alternative nicotine product in violation of subsection 2 of section 12.1-31-03. As~~
8 ~~used in this subdivision, "electronic smoking device" and "alternative nicotine~~
9 ~~product" have the same meaning as in section 12.1-31-03.~~
- 10 5. "Custodian" means a person, other than a parent or legal guardian, that stands in loco
11 parentis to the child and a person that has been given legal custody of the child by
12 order of a court.
- 13 6. "Fit and willing person" means a relative or other individual who has been determined,
14 after consideration of an assessment that includes a criminal history record
15 investigation under chapter 50-11.3, to be a qualified individual under this chapter and
16 chapter 30.1-27, and who consents in writing to act as a legal guardian.
- 17 7. "Relative" means:
- 18 a. The child's grandparent, great-grandparent, sibling, half-sibling, aunt, great-aunt,
19 uncle, great-uncle, nephew, niece, or first cousin;
- 20 b. An individual with a relationship to the child, derived through a current or former
21 spouse of the child's parent, similar to a relationship described in subdivision a;
- 22 c. An individual recognized in the child's community as having a relationship with
23 the child similar to a relationship described in subdivision a;
- 24 d. The child's stepparent; or
- 25 e. An extended family member as defined by the law or custom of an Indian child's
26 tribe.

27 **SECTION 16. AMENDMENT.** Paragraph 4 of subdivision n of subsection 2 of section
28 27-20.1-06 of the North Dakota Century Code is amended and reenacted as follows:

- 29 (4) The parent has ~~deprived the~~ child in need of protection as that term is
30 defined under section ~~27-20-02~~ 27-20.1-01;

1 **SECTION 17. AMENDMENT.** Subsection 1 of section 27-20.1-10 of the North Dakota
2 Century Code is amended and reenacted as follows:

3 1. A hearing under this chapter must be conducted by the court without a jury, in an
4 informal but orderly manner, and separately from other proceedings not included in
5 section ~~27-20-03~~27-20.2-03 or section 27-20.1-02.

6 **SECTION 18. AMENDMENT.** Subdivision d of subsection 1 of section 27-20.1-11 of the
7 North Dakota Century Code is amended and reenacted as follows:

8 d. The child is a ~~deprived~~ child in need of protection as defined under section
9 ~~27-20-02~~27-20.1-01.

10 **SECTION 19. AMENDMENT.** Subsection 3 of section 27-20.1-11 of the North Dakota
11 Century Code is amended and reenacted as follows:

12 3. The court may appoint a guardian as a dispositional alternative if a child has been
13 adjudicated as ~~deprived~~a child in need of protection, ~~unruly~~child in need of services,
14 or delinquent under chapter ~~27-20~~27-20.2, 27-20.3, or 27-20.4.

15 **SECTION 20. AMENDMENT.** Subsection 2 of section 27-20.1-17 of the North Dakota
16 Century Code is amended and reenacted as follows:

17 2. A guardian's authority and responsibility terminates upon the death, resignation, or
18 removal of the guardian, or upon the child's death, adoption, marriage, or attainment
19 of majority, but termination does not affect the guardian's liability for prior acts or the
20 guardian's obligation to account for funds and assets of the child. For cases arising
21 under section ~~27-20-30~~127-20.3-17~~27-20.3-16~~, the age of majority is age twenty-one.

22 **SECTION 21. AMENDMENT.** Section 27-20.1-22 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **27-20.1-22. Confidentiality.**

25 Except as provided by section ~~27-20-51~~27-20.2-22~~27-20.2-21~~, all files and records under
26 this chapter are closed to the public and confidential.

27 **SECTION 22.** Chapter 27-20.2 of the North Dakota Century Code is created and enacted
28 as follows:

29 **27-20.2-01. Definitions.**

30 As used in this chapter, unless the context requires otherwise:

31 1. "Abandon" means:

- 1 a. As to a parent of a child not in the custody of that parent, failure by the
2 noncustodial parent significantly without justifiable cause:
3 (1) To communicate with the child; or
4 (2) To provide for the care and support of the child as required by law; or
5 b. As to a parent of a child in that parent's custody:
6 (1) To leave the child for an indefinite period without making firm and agreed
7 plans, with the child's immediate caregiver, for the parent's resumption of
8 physical custody;
9 (2) Following the child's birth or treatment at a hospital, to fail to arrange for the
10 child's discharge within ten days after the child no longer requires hospital
11 care; or
12 (3) Willfully fail to furnish food, shelter, clothing, or medical attention reasonably
13 sufficient to meet the child's needs.
14 2. "Abandoned infant" means a child who has been abandoned before reaching the age
15 of one year.
16 3. "Child" means an individual who is:
17 a. Under the age of eighteen years and is not married; or
18 b. Under the age of twenty years with respect to a delinquent act committed while
19 under the age of eighteen years and not married.
20 4. "Child in need of protection" means a child who:
21 a. Is without proper parental care or control, subsistence, education as required by
22 law, or other care or control necessary for the child's physical, mental, or
23 emotional health, or morals, and the need for services or protection is not due
24 primarily to the lack of financial means of the child's parents, guardian, or other
25 custodian;
26 b. Has been placed for care or adoption in violation of law;
27 c. Has been abandoned by the child's parents, guardian, or other custodian;
28 d. Is without proper parental care, control, or education as required by law, or other
29 care and control necessary for the child's well-being because of the physical,
30 mental, emotional, or other illness or disability of the child's parent or parents.

- 1 and that such lack of care is not due to a willful act of commission or act of
2 omission by the child's parents, and care is requested by a parent;
- 3 e. Is in need of treatment and whose parents, guardian, or other custodian have
4 refused to participate in treatment as ordered by the juvenile court;
- 5 f. Was subject to prenatal exposure to chronic or severe use of alcohol or any
6 controlled substance as defined in chapter 19-03.1 in a manner not lawfully
7 prescribed by a practitioner;
- 8 g. Is present in an environment subjecting the child to exposure to a controlled
9 substance, chemical substance, or drug paraphernalia as prohibited by section
10 19-03.1-22.2; or
- 11 h. Is a victim of human trafficking as defined in title 12.1.
- 12 5. "Child in need of services" means a child who in any of the foregoing instances is in
13 need of treatment or rehabilitation:
- 14 a. Is habitually and without justification truant from school subject to compulsory
15 school attendance and is absent from school without an authorized excuse more
16 than ~~five~~three days during a school year;
- 17 b. Is habitually disobedient of the reasonable and lawful commands of the child's
18 parent, guardian, or other custodian, ~~including running away~~, and is ungovernable
19 or who is willfully in a situation dangerous or injurious to the health, safety, or
20 morals of the child or others;
- 21 c. Has committed an offense applicable only to a child, except for an offense
22 committed by a minor fourteen years of age or older under subsection 2 of
23 section 12.1-31-03 or an equivalent local ordinance or resolution; or
- 24 d. ~~Has committed an offense in violation of minor in consumption or minor in~~
25 ~~possession in violation of section 5-01-08; or~~
- 26 ~~e.~~ Is under the age of fourteen years and has purchased, possessed, smoked, or
27 used tobacco, a tobacco-related product, an electronic smoking device, or an
28 alternative nicotine product in violation of subsection 2 of section 12.1-31-03. As
29 used in this subdivision, "electronic smoking device" and "alternative nicotine
30 product" have the same meaning as in section 12.1-31-03; and
- 31 f.e. In any of the foregoing instances is in need of treatment or rehabilitation.

- 1 6. "Custodian" means a person, other than a parent or legal guardian, which stands in
2 loco parentis to the child and a person that has been given legal custody of the child
3 by order of a court.
- 4 7. "Delinquent act" means an act designated a crime under the law, including local
5 ordinances or resolutions of this state, or of another state if the act occurred in that
6 state, or under federal law, ~~and the crime does not fall under subdivision c of~~
7 ~~subsection 21.~~
- 8 8. "Delinquent child" means a child who has committed a delinquent act and is in need of
9 treatment or rehabilitation.
- 10 9. "Director" means the director of juvenile court or the director's designee.
- 11 10. "Diversion" means an intervention strategy that redirects a child away from formal
12 processing in the juvenile justice system, while still holding the child accountable for
13 that child's actions.
- 14 11. "Facility" means buildings, structures, or systems, including those for essential
15 administration and support, which are used to provide residential treatment for
16 children.
- 17 12. "Host county" means the county within the human service zone in which the human
18 service zone administrative office is located and in which the human service zone
19 team members are employed.
- 20 13. "Human service zone" means a county or consolidated group of counties
21 administering human services within a designated area in accordance with an
22 agreement or plan approved by the department of human services.
- 23 14. "Juvenile court" means the district court of this state.
- 24 15. "Juvenile drug court" means a program established by the supreme court which is a
25 post-petition or post-adjudication program aimed at intervening in substance use
26 disorders through intense supervision and participation in recovery services.
- 27 16. "Proceeding" means any hearing conducted before a juvenile court ~~or a referral for~~
28 ~~service.~~
- 29 17. "Qualified residential treatment program" means a licensed or approved residence
30 providing an out-of-home treatment placement for children, including a
31 trauma-informed model.

- 1 18. "Relative" means:
- 2 a. The child's grandparent, great-grandparent, sibling, half-sibling, aunt, great-aunt,
- 3 uncle, great-uncle, nephew, niece, or first cousin;
- 4 b. An individual with a relationship to the child, derived through a current or former
- 5 spouse of the child's parent, similar to a relationship described in subdivision a;
- 6 c. An individual recognized in the child's community as having a relationship with
- 7 the child similar to a relationship described in subdivision a; or
- 8 d. The child's stepparent.
- 9 19. "Restorative justice" means a system of justice which focuses on the rehabilitation of
- 10 offenders through reconciliation with victims and the community at large.
- 11 20. "Shelter care" means temporary care of a child in physically unrestricted facilities.
- 12 21. "The court" means the district courts as designated by the North Dakota supreme
- 13 court which includes juvenile court as a subset of district court.
- 14 22. "Willfully" has the meaning provided in section 12.1-02-02.
- 15 **27-20.2-02. Presumption of age.**
- 16 1. In determining an individual's age for purposes of this chapter, the individual's date of
- 17 birth as provided by any of the following is presumed to be the individual's legal date
- 18 of birth:
- 19 a. A state government in the form of a birth certificate, other state-issued
- 20 identification, or a certified copy of a birth certificate that includes the individual's
- 21 date of birth.
- 22 b. The United States government in the form of a tribal identification document,
- 23 military identification, passport, passport card, permanent resident card,
- 24 certificate of United States citizenship, certificate of naturalization, border
- 25 crossing card, visa, or other entry document that includes the individual's date of
- 26 birth.
- 27 c. A foreign government in the form of a passport, driver's license, or other foreign
- 28 government-issued identity document that includes the individual's date of birth. If
- 29 there is a conflict between government-issued forms, a government-issued birth
- 30 certificate or a certified copy of a birth certificate takes precedence.

1 2. The presumption in subsection 1 may be rebutted by clear and convincing evidence to
2 the contrary.

3 **27-20.2-03. Jurisdiction.**

4 1. The juvenile court has exclusive original jurisdiction of the following proceedings,
5 which are governed by this chapter:

6 a. Proceedings in which a child is alleged to be delinquent, a child in need of
7 services, or a child in need of services or protection under this chapter or chapter
8 27-20.4;

9 b. Proceedings for the termination of parental rights except if a part of an adoption
10 proceeding under chapter 27-20.3;

11 c. Proceedings arising under section ~~27-20.3-17~~27-20.3-16;

12 d. Civil forfeiture proceedings arising under chapter 19-03.1 or section 29-31.1-04
13 for which a child is alleged to have possessed forfeitable property. The juvenile
14 court shall conduct the proceedings in accordance with the procedures provided
15 for under sections 19-03.1-36 through 19-03.1-37; and

16 e. Proceedings for the guardianship of a child under chapter 27-20.1, except the
17 testamentary appointment of a guardian for a minor governed by chapter
18 30.1-27.

19 2. The juvenile court also has exclusive original jurisdiction of the following proceedings,
20 which are governed by the laws relating to those proceedings without regard to the
21 other provisions of this chapter:

22 a. Proceedings to obtain judicial consent to the marriage, employment, or
23 enlistment in the armed services of a child, if consent is required by law;

24 b. Proceedings under the interstate compact on juveniles;

25 c. Proceedings under the interstate compact on the placement of children; and

26 d. Proceedings arising under section 50-06-06.13 to obtain a judicial determination
27 that the placement of a severely emotionally disturbed child in an out-of-home
28 treatment program is in the best interests of the child.

29 **27-20.2-04. Juvenile court personnel.**

30 1. The supreme court may provide for the appointment by administrative and personnel
31 rules of the necessary juvenile court officers, clerical personnel, and other specialized

- 1 personnel within the limits of legislative appropriations to assist the juvenile court in
2 carrying out the juvenile probation and supervisor functions of the juvenile court.
3 2. Detention center facilities and personnel must be funded by the county.
4 3. All salaries, per diem, and other compensation payable to juvenile court personnel, all
5 necessary books, forms, stationery, office supplies and equipment, postage,
6 telephone, and travel, and other necessary expenses incurred in carrying out the
7 provisions of this chapter must be borne by the state, except for suitable quarters for
8 conducting official business and lights and fuel which must be funded by the county
9 and except as provided by subsection 1 of section ~~27-20.2~~2027-20.2-19.

10 **27-20.2-05. Powers and duties of the director of juvenile court.**

- 11 1. For the purpose of carrying out the objectives and purposes of this chapter and
12 subject to the limitations of this chapter or imposed by the court, a director shall:
13 a. Make investigations, reports, and recommendations to the juvenile court.
14 b. Receive and examine referrals and charges of delinquency, a child in need of
15 services, or a child in need of protection for the purpose of considering the
16 commencement of proceedings under this chapter.
17 c. Make a determination upon intake of referrals regarding the appropriate manner
18 to handle delinquent conduct, or a child in need of services or a child in need of
19 protection by use of nonjudicial adjustments or formal court processes.
20 d. Supervise and assist a child placed on probation for delinquency or a child in
21 need of services, or both.
22 e. Make appropriate referrals to other private or public agencies of the community if
23 assistance of the agencies appears to be needed or desirable.
24 f. Issue a temporary custody order concerning a child who is referred to the
25 director's supervision or care as a delinquent or a child in need of services or
26 protection. Except as provided by this chapter, a director does not have the
27 powers of a law enforcement officer.
28 g. Take acknowledgments of instruments for the purpose of this chapter.
29 h. Make such temporary order not to exceed ninety-six hours for the custody and
30 control of a child alleged to be in need of services or protection as may be

- 1 deemed appropriate. The order must be reduced to writing within twenty-four
2 hours, excluding holidays and weekends.
- 3 i. Perform all other functions designated by this chapter or under section 27-05-30
4 or by order of the court pursuant to such law, including, if qualified, the order of a
5 referee.
- 6 j. Issue an order to a law enforcement authority to transport a child to and from a
7 specified location.
- 8 k. Receive and examine requests for review of a child's placement at a qualified
9 residential treatment program under the federal Family First Prevention Services
10 Act [Pub. L. 115-123; 132 Stat. 64; 42 U.S.C. 675].
- 11 l. Receive and examine petitions to establish, modify, or terminate a guardianship
12 of a minor under chapter 27-20.1.
- 13 2. Any of the foregoing functions may be performed in another state if authorized by the
14 court of this state and permitted by the laws of the other state.

15 **27-20.2-06. Commencement of proceedings.**

16 A proceeding under this chapter may be commenced:

- 17 1. By transfer of a case from another court as provided in section 27-20.2-07; or
18 2. In other cases by the filing of a petition as provided in this chapter. The petition and all
19 other documents in the proceeding must be entitled "In the interest of
20 _____ , a child". If a child is in shelter care, the petition must be filed within
21 thirty days of the shelter care, this is the date on which the child was removed both
22 physically and legally from the parents, legal guardians, or custodians.

23 **27-20.2-07. Transfer from other courts.**

24 If it appears to the court in a criminal proceeding, except for an offense transferred under
25 section 27-20.4-20, that the defendant is a child subject to the jurisdiction of the juvenile court,
26 the court immediately shall transfer the case to the juvenile court together with a copy of the
27 accusatory pleading and other papers, documents, and transcripts of testimony relating to the
28 case. The court shall order that the defendant be taken immediately to the juvenile court or to a
29 place of detention designated by the juvenile court, or release the defendant to the custody of
30 the defendant's parent, guardian, custodian, or other person legally responsible for the
31 defendant, to be brought before the juvenile court at a time designated by that court. The

1 accusatory pleading may serve in lieu of a petition in the juvenile court unless that court directs
2 the filing of a petition.

3 **27-20.2-08. Nonjudicial adjustment - Diversion.**

4 Before an informal adjustment is held or a petition filed, the director of juvenile court or
5 designee may impose requirements in lieu of further proceedings for the conduct and control of
6 the child with a diversion.

7 **27-20.2-09. Nonjudicial adjustment - Informal adjustment.**

- 8 1. Before a petition is filed, the director of juvenile court or designee may give counsel
9 and advice to the parties and impose conditions for the conduct and control of the
10 child in lieu of further proceedings with a view to an informal adjustment if it appears:
11 a. The admitted facts bring the case within the jurisdiction of the court;
12 b. Information, advice, and conditions, if any, for the conduct and control of the child
13 without an adjudication would be in the best interest of the public and the child;
14 and
15 c. The child and the child's parents, guardian, or other custodian consent to the
16 counsel and advice with knowledge that consent is not obligatory.
- 17 2. If a victim is identified in the referral, the court must give reasonable written notice of
18 the informal adjustment to the victim.
- 19 3. The giving of information and advice and any conditions imposed for the conduct and
20 control of the child may not extend beyond six months from the day commenced
21 unless extended by the court for an additional period not to exceed six months and
22 does not authorize the detention of the child if not otherwise permitted by this chapter.
23 If the child admits to driving or being in actual physical control of a vehicle in violation
24 of section 39-08-01 or an equivalent ordinance, the child may be required to pay a fine
25 as a condition imposed under this section.
- 26 4. An incriminating statement made by a child to the juvenile court officer or designee
27 giving information and advice incident to the giving of counsel and advice may not be
28 used against the child over objection in any proceeding or as part of a risk and need
29 screening or assessment process.

1 **27-20.2-10. Venue.**

2 Except as provided in sections 27-20.3-03 and 27-20.4-03, a proceeding in this chapter
3 may be commenced in the county in which the child resides or the county in which the acts
4 constituting the alleged conduct occurred.

5 **27-20.2-11. Transfer to another juvenile court within the state.**

6 If the child resides in a county of the state and the proceeding is commenced in a court of
7 another county, the court, on motion of a party or on motion of the court made before final
8 disposition and in consultation with the court in the other county, may transfer the proceeding to
9 the county of the child's residence for further action. Like transfer may be made if the residence
10 of the child changes pending the proceeding. The proceeding must be transferred if the child
11 has been adjudicated delinquent or a child in need of services and other proceedings involving
12 the child are pending in the juvenile court of the county of the child's residence.

13 **27-20.2-12. Right to counsel.**

14 1. Except as provided in section 27-20.1-09, a child alleged to be within the jurisdiction of
15 the court in an action arising under chapters 27-20.1, 27-20.2, 27-20.3, and 27-20.4
16 has the right to be represented by counsel in all proceedings in which a petition has
17 been filed. Counsel for the child must be appointed, regardless of income, unless
18 counsel is retained for the juvenile, in any proceeding in which the juvenile is alleged
19 to be:

20 a. Delinquent;

21 b. A child in need of services; or

22 c. A child in need of protection if the child is of sufficient age and competency to
23 assist counsel.

24 2. A child may waive the right to counsel in a juvenile delinquency proceeding if the child,
25 who is fourteen years of age or older and the court has determined the waiver is
26 knowing, voluntary, and intelligent. The waiver must be made on the record. If a child
27 waives counsel for a hearing, the child must be informed of the right to revoke the
28 waiver and request counsel at all subsequent hearings.

29 3. ~~Except in the case of undue hardship, the~~The court shall require payment for
30 reimbursement of counsel appointed pursuant to this section from a person that has

1 legal care, custody, or control of the child. **The court must include this finding in the**
2 **findings of fact and order for disposition.**

3 4. A child's parent, legal guardian, or custodian is entitled to counsel upon the filing of an
4 application for counsel and a determination of indigency. If a party appears without
5 counsel, the court shall determine whether the party knows the party may be
6 represented by counsel and that the party is entitled to counsel at public expense if
7 indigent. The court may continue the proceeding to enable a party to obtain counsel. A
8 child's parent, legal guardian, or custodian determined to be indigent is entitled to
9 counsel:

10 a. At a detention hearing;

11 b. At the dispositional stage of a juvenile delinquency matter;

12 c. At all proceedings in a child in need of services or protection; or

13 d. In a permanency or review of an order entered in any of the proceedings under
14 subdivision a, b, or c.

15 5. The child may elect to be represented by counsel for a nonjudicial adjustment.

16 **27-20.2-13. Other basic rights.**

17 1. A party is entitled to the opportunity to introduce evidence and otherwise be heard in
18 the party's own behalf and to cross-examine adverse witnesses.

19 2. A child charged with a delinquent act need not be a witness against or otherwise
20 incriminate oneself. An extrajudicial statement, if obtained in the course of violation of
21 this chapter or which would be constitutionally inadmissible in a criminal proceeding,
22 may not be used against a child. Evidence illegally seized or obtained may not be
23 received over objection to establish the allegations made against a child. A confession
24 validly made by a child out of court is insufficient to support an adjudication of
25 delinquency unless the confession is corroborated in whole or in part by other
26 evidence.

27 **27-20.2-14. Orders directed to parents or guardians.**

28 Every parent or guardian has an obligation and must participate in any treatment of the
29 parent's or guardian's child as ordered by the juvenile court.

30 **27-20.2-15. Indian child welfare - Active efforts and procedures.**

31 1. As used in this section:

1 a. "Active efforts" means affirmative, active, thorough, and timely efforts intended
2 primarily to maintain or reunite an Indian child with the child's family. Active efforts
3 are required if the federal Indian Child Welfare Act of 1978 [25 U.S.C. 1901
4 through 1963] applies or may apply, including during the verification process. If
5 an agency is involved in the child-custody proceeding, active efforts must involve
6 assisting the parent or parents or Indian custodian through the steps of a case
7 plan and with accessing or developing the resources necessary to satisfy the
8 case plan. To the maximum extent possible, active efforts should be provided in a
9 manner consistent with the prevailing social and cultural conditions and way of
10 life of the Indian child's tribe and should be conducted in partnership with the
11 Indian child and the Indian child's parents, extended family members, Indian
12 custodians, and tribe. Active efforts are to be tailored to the facts and
13 circumstances of the case. The term includes:

- 14 (1) Conducting a comprehensive assessment of the circumstances of the
15 Indian child's family, with a focus on safe reunification as the most desirable
16 goal, with ongoing timely assessment to determine if the threat is resolved
17 and placement of the child can be returned to the custodian;
18 (2) Identifying appropriate services and helping the parents to overcome
19 barriers, including actively assisting the parents in obtaining such services;
20 (3) Identifying, notifying, and inviting representatives of the Indian child's tribe to
21 participate in providing support and services to the Indian child's family and
22 in family team meetings, permanency planning, and resolution of placement
23 issues;
24 (4) Conducting or causing to be conducted a diligent search for the Indian
25 child's extended family members, and contacting and consulting with
26 extended family members to provide family structure and support for the
27 Indian child and the Indian child's parents;
28 (5) Offering and employing available and culturally appropriate family
29 preservation strategies and facilitating the use of remedial and rehabilitative
30 services provided by the child's tribe;
31 (6) Taking steps to keep siblings together whenever possible;

- 1 (7) Supporting regular visits with parents or Indian custodians in the most
2 natural setting possible as well as trial home visits of the Indian child during
3 any period of removal, consistent with the need to ensure the health, safety,
4 and welfare of the child;
- 5 (8) Identifying community resources including housing, financial, transportation,
6 mental health, substance abuse, and peer support services and actively
7 assisting the Indian child's parents or, if appropriate, the child's family, in
8 utilizing and accessing those resources;
- 9 (9) Monitoring progress and participation in services;
- 10 (10) Considering alternative ways to address the needs of the Indian child's
11 parents and if appropriate, the family, if the optimum services do not exist or
12 are not available; and
- 13 (11) Providing post-reunification services and monitoring.
- 14 b. "Extended family member" means a relationship defined by the law or custom of
15 the Indian child's tribe or, in the absence of such law or custom, means an
16 individual who has reached the age of eighteen and who is the Indian child's
17 grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece
18 or nephew, first or second cousin, or stepparent.
- 19 c. "Indian" means an individual who is a member of an Indian tribe, or who is a
20 native and a member of a regional corporation as defined in 43 U.S.C.1606.
- 21 d. "Indian child" means an unmarried individual who is under the age of eighteen
22 and is either a member of an Indian tribe or is eligible for membership in an
23 Indian tribe and is the biological child of a member of an Indian tribe.
- 24 e. "Indian child's tribe" means the Indian tribe in which an Indian child is a member
25 or eligible for membership or, in the case of an Indian child who is a member of or
26 eligible for membership in more than one tribe, the Indian tribe with which the
27 Indian child has the more significant contacts.
- 28 f. "Indian custodian" means any Indian individual who has legal custody of an
29 Indian child under tribal law or custom or under state law or to whom temporary
30 physical care, custody, and control has been transferred by the parent of the
31 child.

1 g. "Indian tribe" means an Indian tribe, band, nation, or other organized Indian
2 group or community of Indians recognized as eligible for services provided to
3 Indians by the United States secretary of the interior because of their status as
4 Indians, including any Alaska native village as defined in 43 U.S.C.1602(c).

5 h. "Parent" means any biological parent or parents of an Indian child or any Indian
6 individual who has lawfully adopted an Indian child, including adoptions under
7 tribal law or custom. The term does not include the unwed father if paternity has
8 not been acknowledged or established.

9 i. "Termination of parental rights" means any action resulting in the termination of
10 the parent-child relationship. The term does not include a placement based upon
11 an act by an Indian child which, if committed by an adult, would be deemed a
12 crime or a placement upon award of custody to one of the child's parents in a
13 divorce proceeding.

14 2. Before removal of an Indian child from the custody of a parent or Indian custodian for
15 purposes of involuntary foster care placement or the termination of parental rights over
16 an Indian child, the court shall find that active efforts have been made to provide
17 remedial services and rehabilitative services designed to prevent the breakup of the
18 Indian family and that these efforts have proved unsuccessful. The court may not
19 order the removal unless evidence of active efforts shows there has been a vigorous
20 and concerted level of casework beyond the level that would constitute reasonable
21 efforts under section ~~27-20.3-28~~27-20.3-26. Reasonable efforts may not be construed
22 to be active efforts. Active efforts must be made in a manner that takes into account
23 the prevailing social and cultural values, conditions, and way of life of the Indian child's
24 tribe. Active efforts must utilize the available resources of the Indian child's extended
25 family, tribe, tribal and other relevant social service agencies, and individual Indian
26 caregivers.

27 3. The court may order the removal of the Indian child for involuntary foster case
28 placement only if the court determines, by clear and convincing evidence, that
29 continued custody of the child by the parent or Indian custodian is likely to result in
30 serious emotional or physical damage or harm to the child. Evidence must show a
31 causal relationship between the particular conditions in the home and the likelihood

1 that continued custody of the child will result in serious emotional or physical damage
2 or harm to the particular child who is the subject of the proceeding. Poverty, isolation,
3 custodian age, crowded or inadequate housing, substance use, or nonconforming
4 social behavior does not by itself constitute clear and convincing evidence of imminent
5 serious emotional or physical damage or harm to the child. As soon as the threat has
6 been removed and the child is no longer at risk, the state should terminate the
7 removal, by returning the child to the parent while offering a solution to mitigate the
8 situation that gave rise to the need for emergency removal and placement.

9 4. The court may only order the termination of parental rights over the Indian child if the
10 court determines, by evidence beyond a reasonable doubt, that continued custody of
11 the child by the parent or Indian custodian is likely to result in serious emotional or
12 physical damage or harm to the child.

13 5. In considering whether to involuntarily place an Indian child in foster care or to
14 terminate the parental rights of the parent of an Indian child, the court shall require that
15 a qualified expert witness must be qualified to testify regarding whether the child's
16 continued custody by the parent or Indian custodian is likely to result in serious
17 emotional or physical damage or harm to the child and should be qualified to testify as
18 to the prevailing social and cultural standards of the Indian child's tribe. An individual
19 may be designated by the Indian child's tribe as being qualified to testify to the
20 prevailing social and cultural standards of the Indian child's tribe. The court or any
21 party may request the assistance of the Indian child's tribe or the bureau of Indian
22 affairs office serving the Indian child's tribe in locating individuals qualified to serve as
23 expert witnesses. The social worker regularly assigned to the Indian child may not
24 serve as a qualified expert witness in child-custody proceedings concerning the child.
25 The qualified expert witness should be someone familiar with the particular child and
26 have contact with the parents to observe interaction between the parents, child, and
27 extended family members. The child welfare agency and courts should facilitate
28 access to the family and records to facilitate accurate testimony.

29 ~~27-20.2-16. Substance use programming:~~

30 ~~1. If a child is subject to nonjudicial adjustments under this chapter and is found to be~~
31 ~~delinquent under section 27-20.4-16, or is found to be in need of services or protection~~

~~under section 27-20.3-16, the juvenile court may require a substance use screening and subsequent programming to appropriately address:~~

~~a. A child who is found to have violated section 39-08-01 or equivalent; or~~

~~b. If a child is found to have an alcohol concentration of at least two one-hundredths of one percent by weight at the time of performance of a test within two hours after driving or being in physical control of a motor vehicle.~~

~~2. If a child is subject to informal adjustment under this chapter and is required to participate in the twenty-four seven sobriety program, the period of participation may not exceed six months.~~

~~3. If a child required to participate in the twenty-four seven sobriety program under this section fails to comply with program requirements without being excused, the testing site shall notify the juvenile court and refer the child to the juvenile court for further disposition. The child may not be detained or otherwise taken into custody without authorization from the juvenile court.~~

~~4. If the juvenile court requires the child to participate in a juvenile drug court program, the juvenile court may waive the participation in the twenty-four seven sobriety program requirements of this section.~~

27-20.2-1727-20.2-16. Order of adjudication - Noncriminal.

1. An order of disposition or other adjudication in a proceeding under this chapter is not a conviction of crime and does not impose any civil disability ordinarily resulting from a conviction or operate to disqualify the child in any civil service application or appointment. A child may not be committed or transferred to a penal institution or other facility used primarily for the execution of sentences of individuals convicted of a crime.

2. The disposition of a child and evidence adduced in a hearing in juvenile court may not be used against the child in any proceeding in any court other than a juvenile court, whether before or after reaching majority, except for impeachment or in dispositional proceedings after conviction of a felony for the purposes of a presentence investigation and report.

27-20.2-1827-20.2-17. Rights and duties of legal custodian.

1. As used in this section, "sibling of the child entering foster care" means:

- 1 a. A brother or sister who has at least one biological or adoptive parent in common;
2 b. A fictive brother or sister with a significant bond as identified by the child or
3 parent; or
4 c. A child who would have been considered a sibling but for the termination or other
5 disruption of parental rights, including a death of a parent.
6 2. A legal custodian has:
7 a. The right to the physical custody of the child and the right to determine the nature
8 of the care, placement, and treatment of the child, including ordinary medical
9 care as well as medical or surgical treatment for a serious physical condition or
10 illness that in the opinion of a licensed physician requires prompt treatment,
11 except for any limits the court may impose.
12 b. The right and duty to provide for the care, protection, training, and education and
13 the physical, mental, and moral welfare of the child, subject to the conditions and
14 limitations of the order and to the remaining rights and duties of the child's
15 parents or guardian.
16 c. A duty within thirty days after the removal of a child from the custody of the
17 parent or parents of the child for the purpose of placement into foster care, to
18 exercise due diligence to identify and provide notice to the following relatives: all
19 parents of a sibling of the child entering foster care who have legal custody of the
20 sibling, all adult grandparents, and any other adult suggested by the parents,
21 subject to exceptions due to family or domestic violence, that:
22 (1) Specifies that the child has been or is being removed from the custody of
23 the parent or parents of the child;
24 (2) Explains the options the relative has under federal, state, and local law to
25 participate in the care and placement of the child, including any options that
26 may be lost by failing to respond to the notice;
27 (3) Describes the requirements and standards to become a foster family home
28 and the additional services and supports that are available for children
29 placed in that home; and

1 (4) Describes how the relative of the child may enter an agreement with the
2 department of human services and human service zone to receive a
3 subsidized guardianship payment.

4 ~~27-20.2-19~~27-20.2-18. Guardian ad litem - Immunity.

5 The court at any stage of a proceeding under this chapter, on application of a party or on
6 motion of the court, shall appoint a guardian ad litem for a child who is a party to the proceeding
7 if the child has no parent, guardian, or custodian appearing on the child's behalf or the interests
8 of the parent, guardian, or custodian conflict with the child's or in any other case in which the
9 interests of the child require a guardian. A party to the proceeding or that party's employee or
10 representative may not be appointed. A guardian ad litem appointed under this section is
11 immune from civil liability for damages for any act or omission arising out of that individual's
12 duties and responsibilities as a guardian ad litem, unless the act or omission constitutes gross
13 or willful negligence or gross or willful misconduct.

14 ~~27-20.2-20~~27-20.2-19. Costs and expenses for care of child.

- 15 1. The following expenses are a charge upon the funds of the county or human service
16 zone upon certification of the expenses by the court:
- 17 a. The cost of medical and other examinations and treatment of a child ordered by
18 the court.
- 19 b. The cost of care and support of a child committed by the court to the legal
20 custody of a public agency other than an institution for delinquent children or to a
21 private agency or individual other than a parent.
- 22 c. The cost of any necessary transportation for medical and other examinations and
23 treatment of a child ordered by the court unless the child is in the legal custody of
24 a state agency.
- 25 d. The cost of a guardian ad litem under subsection 5 of section 27-20.1-16 or
26 section 30.1-27-06 or the cost of an attorney under subsection 6 of section
27 27-20.1-16 if the court finds the parent's or child's estate is insufficient to meet
28 the cost.
- 29 2. The commission on legal counsel for indigents shall pay reasonable compensation for
30 services and related expenses of counsel provided at public expense for a party and
31 the supreme court shall pay reasonable compensation for a guardian ad litem. The

1 attorney general shall pay the witness fees, mileage, and travel expense of witnesses
2 incurred in the proceedings under this chapter in the amount and at the rate provided
3 for in section 31-01-16, except the commission on legal counsel for indigents shall pay
4 the witness fees, mileage, and travel expenses of witnesses subpoenaed by counsel
5 employed by or contracted with the commission for proceedings under this chapter in
6 the amount and at the rate provided for in section 31-01-16. Expenses of the state
7 include the cost of any necessary transportation for medical and other examinations
8 and treatment of a child ordered by the court if the child is in the legal custody of a
9 state agency in which case the cost must be reimbursed to the county or human
10 service zone by that state agency at the state mileage rate, excluding meals and
11 lodging, plus twenty-nine cents per mile.

12 3. If, after due notice to the parents or other persons legally obligated to care for and
13 support the child, and to a child over the age of eighteen, and after affording the
14 parents, other persons, and children over eighteen years of age an opportunity to be
15 heard, the court finds that the parents, other persons, or a child over eighteen years of
16 age is financially able to pay all or part of the costs and expenses stated in
17 subsection 1, and expenses payable by the supreme court under subsection 2, the
18 court may order the party to pay the same and prescribe the manner of payment.
19 Unless otherwise ordered, payment shall be made to the clerk of court for remittance
20 to the person to which compensation is due, or if the costs and expenses have been
21 paid by the county, human service zone, or the state to the county treasurer of the
22 county, the county treasurer of the host county, or to the state treasurer.

23 4. Unless the court finds there is no likelihood the party is or will be able to pay attorney's
24 fees and expenses, the court, in the order or judgment following a hearing under this
25 chapter, shall order the parents or other persons legally obligated to care for and
26 support the child, and the child if over the age of eighteen, to reimburse the presumed
27 amount of indigent defense costs and expenses, as determined by the commission on
28 legal counsel for indigents, and shall notify the party of the right to a hearing on the
29 reimbursement amount. If the party or the state requests a hearing within thirty days of
30 receiving notice under this subsection, the court shall schedule a hearing at which the
31 actual amount of attorney's fees and expenses must be shown. In determining the

1 amount of reimbursement and method of payment, the court shall consider the
2 financial resources of the party and the nature of the burden that reimbursement of
3 costs and expenses will impose.

4 5. A party who is required to reimburse indigent defense costs and expenses and who is
5 not willfully in default in that reimbursement may at any time petition the court to waive
6 reimbursement of all or any portion of the attorney's fees and expenses. If the court is
7 satisfied reimbursement of the amount due will impose undue hardship on the party or
8 the party's immediate family, the court may waive reimbursement of all or any portion
9 of the amount due or modify the method of payment.

10 **27-20.2-21 27-20.2-20. Protective order.**

11 At any stage of the proceedings, upon application of a party or on the court's own motion,
12 the court may make an order restraining or otherwise controlling the conduct of a person if:

13 1. The court finds that the conduct:

14 a. Is or may be detrimental or harmful to the child; or

15 b. Will tend to defeat the execution of an order of disposition; and

16 2. Notice of the application or motion and the grounds for the appropriate motion and an
17 opportunity to be heard have been given to the person against which the order is
18 directed.

19 **27-20.2-22 21-20.2-21. Inspection of court files and records - Penalty.**

20 1. Except as provided in this section, all files and records of the juvenile court, whether in
21 the office of the clerk of court or juvenile court, of a proceeding under this chapter are
22 closed to the public. Juvenile court files and records are open to inspection only by:

23 a. The judge and staff of the juvenile court.

24 b. The parties to the proceeding or the parties' counsel or the guardian ad litem of
25 any party.

26 c. A public or private agency or institution providing supervision or having custody of
27 the child under order of the juvenile court which must be given a copy of the
28 findings and order of disposition when the agency or institution receives custody
29 of the child. If a case involves the federal Indian Child Welfare Act of 1978 [25
30 U.S.C. 1901 through 1963], the agency or institution having custody of the child
31 shall serve the appropriate Indian Child Welfare Act service agent, tribe or tribal

- 1 designee, or an Indian Child Welfare Act qualified expert witness with the findings
2 and order of disposition.
- 3 d. Any court and the court's probation and other officials or professional staff and
4 the attorney for the defendant for use in preparing a presentence report in a
5 criminal case in which the defendant is convicted and who, before the criminal
6 case, had been a party to the proceeding in juvenile court.
- 7 e. The professional staff of the uniform crime victims compensation program if
8 necessary for the discharge of the duties of the staff pursuant to chapter 54-23.4.
- 9 f. A staff member of the division of children and family services of the department of
10 human services or a law enforcement officer if necessary for the performance of
11 that staff member's duties under section 50-11.1-06.2 or the federal National
12 Child Protection Act of 1993 [Pub. L. 103-209; 107 Stat. 2490; 42 U.S.C. 5119
13 et seq.].
- 14 g. An employee or agent of the department of human services if necessary for
15 performance of that individual's duty under chapter 50-11 or 50-11.1 to
16 investigate the background of an individual living or working in the facility, home,
17 or residence for which licensure is sought.
- 18 h. A criminal justice agency if the juvenile is required to register under section
19 12.1-32-15.
- 20 i. The staff of a children's advocacy center if the juvenile or a victim of the child has
21 been referred for or has received services at the children's advocacy center.
- 22 j. A victim of the delinquent child or the victim's guardian. All records including
23 medical, educational, and school information must be redacted before inspection.
24 For purposes of this subdivision, only records pertaining to the specific offense
25 between the victim and the delinquent child may be inspected.
- 26 2. Juvenile court files and records are also open to inspection with written leave of a
27 juvenile court judge or judicial referee to whom juvenile court matters have been
28 referred:
- 29 a. Upon a showing in writing of a legitimate interest in a proceeding or in the work of
30 the juvenile court, but only to the extent necessary to respond to the legitimate
31 interest; and

- 1 b. By the principal of any public or private school that is a member of the North
2 Dakota high school activities association, or the superintendent of any school
3 district that has one or more schools involved in the association, but only to the
4 extent necessary to enforce the rules and regulations of the North Dakota high
5 school activities association.
- 6 3. In a proceeding under this chapter, if the juvenile court finds a child ~~is in need of~~
7 ~~services or~~ committed a delinquent act that constitutes a violation of a law or local
8 ordinance governing the operation of a motor vehicle or a delinquent act of
9 manslaughter or negligent homicide caused by the child's operation of a motor vehicle,
10 the juvenile court shall report the finding to the director of the department of
11 transportation within ten days.
- 12 4. Following an adjudication of delinquency for an offense that would be a felony if
13 committed by an adult, the child's school principal, chief administrative officer, or
14 designated school guidance counselor, if requested, must be allowed access to the
15 disposition order. Any other juvenile court files and records of a child may be disclosed
16 to a superintendent or principal of the school in which the child is currently enrolled or
17 in which the child wishes to enroll if the child's documented behavior appears to
18 present a danger to self or to the students or staff of the school.
- 19 5. Following an adjudication of delinquency for an offense that results in the prohibitions
20 included in subsection 1 or 2 of section 62.1-02-01, if requested, a law enforcement
21 officer must be allowed access to the disposition order.
- 22 6. The juvenile court may notify a referring agency of the disposition of a case.
- 23 7. Notwithstanding that juvenile court records are closed to the public, nothing in this
24 section may be construed to limit the release upon request of general information not
25 identifying the identity of any juvenile, witness, or victim in any proceeding under this
26 chapter. Files in the clerk of court's office are open to public inspection if the related
27 hearing was open to the public under section ~~27-20.3-14~~27-20.3-13.
- 28 8. To the extent necessary to provide victim services or benefits under chapter 12.1-41,
29 the judge and staff of the juvenile court may disclose information to refer a child, who
30 may be a victim of human trafficking, to a program for runaway and homeless children

1 located in the state and approved by the juvenile court of jurisdiction. Information
2 disclosed under this subsection must remain confidential.

3 9. An individual with access or authorization to inspect juvenile court files and records
4 under this section may not share the information contained in the files and records
5 with any other person not authorized by law. An individual who violates this subsection
6 is guilty of a class B misdemeanor.

7 **~~27-20.2-23~~27-20.2-22. Disclosure of information needed to apprehend child.**

8 Notwithstanding any other provision of law, the name, photographs, fingerprints, or other
9 identifying information of a child who is alleged to have committed a delinquent act involving
10 actual or threat of serious bodily injury which would constitute a felony if committed by an adult
11 or who left without authorization from a secure detention facility may be released by law
12 enforcement, the division of juvenile services, or the juvenile court for purposes of
13 apprehending the child.

14 **27-20.2-2427-20.2-23. Law enforcement and correctional facility records.**

15 1. Unless a charge of delinquency is transferred for criminal prosecution under section
16 27-20.4-20, the interest of national security requires, or the court otherwise orders in
17 the interest of the child, the law enforcement and correctional facility records and files
18 of a child alleged or found to be delinquent or in need of services or protection are not
19 open to public inspection; but inspection of these records and files is permitted by:
20 a. A juvenile court having the child before the court in any proceeding;
21 b. Counsel for a party to the proceeding;
22 c. The officers of public institutions or agencies to whom the child is or may be
23 committed;
24 d. Law enforcement officers of other jurisdictions if necessary for the discharge of
25 official duties of the officers;
26 e. A court in which the child is convicted of a criminal offense for the purpose of a
27 presentence report or other dispositional proceeding, or by officials of correctional
28 facilities to which the child is detained or committed, or by the parole board, the
29 governor, or the pardon advisory board, if one has been appointed, in considering
30 the child's parole or discharge or in exercising supervision over the child;

- 1 f. The professional staff of the uniform crime victims compensation program if
2 necessary for the discharge of the duties of the professional staff pursuant to
3 chapter 54-23.4; and
- 4 g. A superintendent, assistant superintendent, principal, or designee of the school in
5 which the child is currently enrolled or of a school in which the child wishes to
6 enroll.
- 7 2. Notwithstanding that law enforcement records and files of a child alleged or found to
8 be delinquent or in need of services or protection are not open to public inspection,
9 this section does not limit the release of general information that does not identify the
10 identity of the child.

11 ~~27-20.2-25~~~~27-20.2-24.~~ **Children's fingerprints, photographs.**

- 12 1. A child under fourteen years of age may not be fingerprinted in the investigation of a
13 crime except as provided in this section. Fingerprints of a child who is referred to the
14 court may be taken and filed by law enforcement officers in investigating the
15 commission of the following crimes: murder, manslaughter, gross sexual imposition,
16 robbery, aggravated assault, burglary, theft, forgery, and unlawful possession or use of
17 a handgun.
- 18 2. Fingerprint files of children must be kept separate from those of adults. Copies of
19 fingerprints known to be those of a child may be maintained locally and copies may be
20 sent to a central state depository but may not be sent to a federal depository unless
21 needed in the interest of national security.
- 22 3. Fingerprint files of children may be inspected by law enforcement officers if necessary
23 for the discharge of official duties of law enforcement officers. Other inspections may
24 be authorized by the court in individual cases upon a showing it is necessary in the
25 public interest.
- 26 4. Fingerprints of a child are considered a part of the child's juvenile or adult investigative
27 file and must be removed from the state and local files and destroyed in accordance
28 with section ~~27-20.2-26~~27-20.2-25.
- 29 5. If latent fingerprints are found during the investigation of an offense and a law
30 enforcement officer has probable cause to believe the latent fingerprints are those of a
31 particular child, the officer may fingerprint the child regardless of age or offense for

1 purposes of immediate comparison with the latent fingerprints. If the comparison is
2 negative, the fingerprint card and other copies of the fingerprints taken must be
3 destroyed immediately. If the child is not referred to the court, the fingerprints must be
4 destroyed immediately.

5 6. A child may be photographed by a law enforcement officer at the time of arrest for the
6 crimes of murder, manslaughter, gross sexual imposition, robbery, aggravated assault,
7 burglary, theft, forgery, or unlawful possession or use of a handgun. The photograph
8 must be destroyed if the child is not referred to the juvenile court. If a court finds facts
9 that would justify a finding that a child at least fourteen years of age at the time of the
10 offense is delinquent and the finding involves the unlawful use or possession of a
11 handgun or the commission of an act proscribed by the criminal laws of this state and
12 punishable as a felony or a class A misdemeanor committed for the benefit of, at the
13 direction of, or in association or affiliation with any criminal street gang, with the intent
14 to promote, further, or assist in the activities of a criminal gang, the juvenile court shall
15 order upon the request of the state's attorney the taking and retention of a photograph
16 of the child for purposes of identification. Photographs of children under this
17 subsection may be maintained on a local basis and sent to a central state depository
18 but must be maintained separate from those of adults and must be destroyed in
19 accordance with section ~~27-20.2-26~~27-20.2-25.

20 **~~27-20.2-26~~27-20.2-25. Destruction of juvenile court records.**

- 21 1. Except as otherwise required under section 25-03.3-04, all juvenile court records must
22 be retained and disposed of pursuant to rules and policies established by the North
23 Dakota supreme court.
- 24 2. Upon the final destruction of a file or record, the proceeding must be treated as if the
25 proceeding never occurred. The juvenile court shall notify each agency named in the
26 file or record of the destruction. All index references, except those which may be made
27 by the attorney general and the directors of the department of transportation, the
28 department of human services, the department of corrections and rehabilitation, the
29 commission on legal counsel for indigents and its public defender offices, law
30 enforcement agencies, and human service zones, must be deleted. Each agency,
31 except the attorney general and the directors of the department of transportation, the

1 department of human services, the department of corrections and rehabilitation, the
2 commission on legal counsel for indigents and its public defender offices, law
3 enforcement agencies, and human service zones, upon notification of the destruction
4 of a file or record, shall destroy all files, records, and references to the child's
5 apprehension, detention, and referral to the juvenile court and any record of
6 disposition made by the juvenile court. The attorney general, the department of human
7 services, the department of corrections and rehabilitation, the commission on legal
8 counsel for indigents and its public defender offices, law enforcement agencies, and
9 human service zones may not keep a juvenile file or record longer than is required by
10 the records retention policy of that official, department, or agency. Upon inquiry in any
11 matter the child, the court, and representatives of agencies, except the attorney
12 general and the directors of the department of transportation, the department of
13 human services, the department of corrections and rehabilitation, law enforcement
14 agencies, and human service zones, properly shall reply that no record exists with
15 respect to the child.

16 **27-20.2-2727-20.2-26. Appeals.**

- 17 1. An aggrieved party, including the state or a subdivision of the state, may appeal from a
18 final order, judgment, or decree of the juvenile court to the supreme court by filing
19 written notice of appeal within thirty days after entry of the order, judgment, or decree,
20 or within any further time the supreme court grants, after entry of the order, judgment,
21 or decree. The appeal must be heard by the supreme court upon the files, records,
22 and minutes or transcript of the evidence of the juvenile court, giving appreciable
23 weight to the findings of the juvenile court. The name of the child may not appear on
24 the record on appeal.
- 25 2. The appeal does not stay the order, judgment, or decree appealed from, but the
26 supreme court may otherwise order on application and hearing consistent with this
27 chapter if suitable provision is made for the care and custody of the child. If the order,
28 judgment, or decree appealed from grants the custody of the child to, or withholds
29 custody of the child from, one or more of the parties to the appeal, the appeal must be
30 heard at the earliest practicable time.

1 **27-20.2-28 27-20.2-27. Rules of court.**

2 The North Dakota supreme court may adopt rules of procedure governing proceedings
3 under this chapter.

4 **27-20.2-29 27-20.2-28. In-state placement of juveniles - Exception.**

5 Except for cases in which the specific necessary treatment is unavailable in the state or
6 cases in which the appropriate treatment or services cannot be provided in a timely manner in
7 the state, all juveniles in need of residential treatment or residential care placement must be
8 placed in in-state residential facilities.

9 **SECTION 23.** Chapter 27-20.3 of the North Dakota Century Code is created and enacted
10 as follows:

11 **27-20.3-01. Definitions.**

12 As used in this chapter:

13 1. "Abandon" means:

14 a. As to a parent of a child not in the custody of that parent, failure by the
15 noncustodial parent significantly without justifiable cause:

16 (1) To communicate with the child; or

17 (2) To provide for the care and support of the child as required by law; or

18 b. As to a parent of a child in that parent's custody:

19 (1) To leave the child for an indefinite period without making firm and agreed
20 plans, with the child's immediate caregiver, for the parent's resumption of
21 physical custody;

22 (2) Following the child's birth or treatment at a hospital, to fail to arrange for the
23 child's discharge within ten days after the child no longer requires hospital
24 care; or

25 (3) Willfully to fail to furnish food, shelter, clothing, or medical attention
26 reasonably sufficient to meet the child's needs.

27 2. "Abandoned infant" means a child who has been abandoned before reaching the age
28 of one year.

29 3. "Aggravated circumstances" means circumstances in which a parent:

30 a. Abandons, tortures, chronically abuses, or sexually abuses a child;

- 1 b. Fails to make substantial, meaningful efforts to secure treatment for the parent's
2 addiction, mental illness, behavior disorder, or any combination of those
3 conditions for one year;
- 4 c. Engages in conduct prohibited under sections 12.1-20-01 through 12.1-20-08 or
5 chapter 12.1-27.2, in which a child is the victim or intended victim;
- 6 d. Engages in conduct that constitutes one of the following crimes, or of an offense
7 under the laws of another jurisdiction which requires proof of substantially similar
8 elements:
- 9 (1) A violation of section 12.1-16-01, 12.1-16-02, 12.1-16-03, or 14-09-22 in
10 which the victim is another child of the parent;
- 11 (2) Aiding, abetting, attempting, conspiring, or soliciting a violation of section
12 12.1-16-01, 12.1-16-02, or 12.1-16-03 in which the victim is a child of the
13 parent; or
- 14 (3) A violation of section 12.1-17-02 in which the victim is a child of the parent
15 and has suffered serious bodily injury;
- 16 e. Engages or attempts to engage in conduct, prohibited under sections 12.1-17-01
17 through 12.1-17-04, in which a child is the victim or intended victim;
- 18 f. In the case of a child age nine or older, has been incarcerated under a sentence
19 for which the latest release date after the child's age of majority;
- 20 g. Subjects the child to prenatal exposure to chronic or severe use of alcohol or any
21 controlled substance as defined in chapter 19-03.1 in a manner not lawfully
22 prescribed by a practitioner; or
- 23 h. Allows the child to be present in an environment subjecting the child to exposure
24 to a controlled substance, chemical substance, or drug paraphernalia as
25 prohibited by section 19-03.1-22.2.
- 26 4. "Attendant care" means a nonsecure holdover site for children in need of services who
27 are in the custody of law enforcement and need constant short-term supervision on a
28 preadjudicatory basis.
- 29 5. "Child in need of protection" means a child who:
- 30 a. Is without proper parental care or control, subsistence, education as required by
31 law, or other care or control necessary for the child's physical, mental, or

- 1 emotional health, or morals, and the need for services or protection is not due
2 primarily to the lack of financial means of the child's parents, guardian, or other
3 custodian;
- 4 b. Has been placed for care or adoption in violation of law;
5 c. Has been abandoned by the child's parents, guardian, or other custodian;
6 d. Is without proper parental care, control, or education as required by law, or other
7 care and control necessary for the child's well-being because of the physical,
8 mental, emotional, or other illness or disability of the child's parent or parents,
9 and that such lack of care is not due to a willful act of commission or act of
10 omission by the child's parents, and care is requested by a parent;
- 11 e. Is in need of treatment and whose parents, guardian, or other custodian have
12 refused to participate in treatment as ordered by the juvenile court;
- 13 f. Was subject to prenatal exposure to chronic or severe use of alcohol or any
14 controlled substance as defined in chapter 19-03.1 in a manner not lawfully
15 prescribed by a practitioner;
- 16 g. Is present in an environment subjecting the child to exposure to a controlled
17 substance, chemical substance, or drug paraphernalia as prohibited by section
18 19-03.1-22.2; or
- 19 h. Is a victim of human trafficking as defined in title 12.1.
- 20 6. "Child in need of services" means a child who:
- 21 a. Is habitually and without justification truant from school subject to compulsory
22 school attendance and is absent from school without an authorized excuse more
23 than ~~five~~three days during a school year;
- 24 b. Is habitually disobedient of the reasonable and lawful commands of the child's
25 parent, guardian, or other custodian, ~~including running away~~, and is ungovernable
26 or who is willfully in a situation dangerous or injurious to the health, safety, or
27 morals of the child or others;
- 28 c. Has committed an offense applicable only to a child, except for an offense
29 committed by a minor fourteen years of age or older under subsection 2 of
30 section 12.1-31-03 or an equivalent local ordinance or resolution; or

1 d. ~~Has committed an offense in violation of minor in consumption or minor in-~~
2 ~~possession in violation of section 5-01-08; or~~

3 ~~e.~~ Is under the age of fourteen years and has purchased, possessed, smoked, or
4 used tobacco, a tobacco-related product, an electronic smoking device, or an
5 alternative nicotine product in violation of subsection 2 of section 12.1-31-03. As
6 used in this subdivision, "electronic smoking device" and "alternative nicotine
7 product" have the same meaning as in section 12.1-31-03; and

8 f.e. In any of the foregoing instances is in need of treatment or rehabilitation.

9 7. "Custodian" means a person, other than a parent or legal guardian, which stands in
10 loco parentis to the child and a person to which legal custody of the child has been
11 given by order of a court.

12 8. "Diversion" means an intervention strategy that redirects a child away from formal
13 processing in the juvenile justice system, while still holding the child accountable for
14 that child's actions.

15 9. "Fit and willing relative or other appropriate individual" means a relative or other
16 individual who has been determined, after consideration of an assessment that
17 includes a criminal history record investigation under chapter 50-11.3, to be a qualified
18 individual under chapters 27-20.1 and 30.1-27, and who consents in writing to act as a
19 legal guardian.

20 10. "Home" as used in the phrase "to return home" means the abode of the child's parent
21 with whom the child formerly resided.

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

25 12. "Permanency hearing" means a hearing, conducted with respect to a child who is in
26 foster care, to determine the permanency plan for the child which includes the
27 following:

28 a. Whether and, if applicable, when the child will be returned to the parent.

29 b. Whether and, if applicable, when the child will be placed for adoption and the
30 state will file a petition for termination of parental rights.

- 1 c. Whether and, if applicable, when a fit and willing relative or other appropriate
2 individual will be appointed as a legal guardian.
- 3 d. Whether and, if applicable, to place siblings in the same foster care, relative,
4 guardianship, or adoptive placement, unless it is determined that the joint
5 placement would be contrary to the safety or well-being of any of the siblings.
- 6 e. Whether and, if applicable, in the case of siblings removed from the home of the
7 siblings who are not jointly placed, to provide for frequent visitation or other
8 ongoing interaction between the siblings, unless it is determined to be contrary to
9 the safety or well-being of any of the siblings.
- 10 f. In cases in which a compelling reason has been shown that it would not be in the
11 child's best interests to return home, to have parental rights terminated, to be
12 placed for adoption, to be placed with a fit and willing relative, or to be placed
13 with a legal guardian, whether and, if applicable, when the child, aged sixteen or
14 older, will be placed in another planned permanent living arrangement. The court
15 shall:
- 16 (1) Ask the child whether the child has a desired permanency outcome of
17 another planned permanent living arrangement;
- 18 (2) Make a judicial determination explaining why another planned permanent
19 living arrangement is the best permanency plan for the child; and
- 20 (3) Identify the compelling reasons it continues not to be in the best interest of
21 the child to return home, be placed for adoption, be placed with a legal
22 guardian, or be placed with a fit and willing relative.
- 23 g. In the case of a child who has been placed in foster care outside the state in
24 which the home of the parents is located, or if the parents maintain separate
25 homes, outside the state in which the home of the parent who was the child's
26 primary caregiver is located, whether out-of-state placements have been
27 considered. If the child is currently in an out-of-state placement, the court shall
28 determine whether the placement continues to be appropriate and in the child's
29 best interests.
- 30 h. In the case of a child who has attained age fourteen, the services needed to
31 assist the child to make the transition to successful adulthood.

1 13. "Qualified residential treatment programs" mean residential child care facilities that
2 provide a higher level of care which must use a trauma-informed treatment model and
3 employ registered or licensed nursing staff and other licensed clinical staff to meet the
4 treatment needs of children in out-of-home placement.

5 14. "Referral" means a written report submitted to the director of juvenile court or the
6 director of the human service zone concerning delinquent behavior without an arrest
7 or taking into custody having occurred and the child remains in the parental home to
8 be notified of any action taken by the director or human service zone as authorized in
9 this chapter.

10 15. "Relative" means:

11 a. The child's grandparent, great-grandparent, sibling, half-sibling, aunt, great-aunt,
12 uncle, great-uncle, nephew, niece, or first cousin;

13 b. An individual with a relationship to the child, derived through a current or former
14 spouse of the child's parent, similar to a relationship described in subdivision a;

15 c. An individual recognized in the child's community as having a relationship with
16 the child similar to a relationship described in subdivision a; or

17 d. The child's stepparent.

18 16. "Shelter care" means temporary care of a child in physically unrestricted facilities.

19 **27-20.3-02. Jurisdiction.**

20 Jurisdiction as set forth in section 27-20.2-03 is applicable to this chapter.

21 **27-20.3-03. Venue.**

22 Except as otherwise provided by this section, a proceeding under this chapter must be
23 commenced in the county in which the child resides. If the need for services or protection are
24 alleged, the proceeding may be brought in the county in which the child is present at the time
25 the proceeding is commenced, the county in which the child has resided for the majority of the
26 thirty days before the date of the alleged need for services or protection, or the county in which
27 the alleged need for services or protection has occurred. The court shall determine the
28 appropriate venue for a child in need of services or a child in need of protection based on the
29 best interest of the child.

1 **27-20.3-04. Powers and duties of director of juvenile court.**

2 1. For the purpose of carrying out the objectives and purposes of this chapter and
3 subject to the limitations of this chapter or imposed by the court, a director shall:

4 a. Make investigations, reports, and recommendations to the juvenile court.

5 b. Receive and examine referrals of a child in need of services or child in need of
6 protection for the purpose of considering ~~the commencement of proceedings~~
7 ~~under this chapter~~ diversion of services.

8 c. Make a determination upon intake of referrals regarding the appropriate manner
9 to handle delinquent conduct, a child in need of services, or a child in need of
10 protection ~~by use of nonjudicial commencement of proceedings~~ under this
11 chapter.

12 d. ~~Supervise and assist a child placed on probation for a child in need of services.~~

13 ~~—~~ e. Make appropriate referrals to other private or public agencies of the community if
14 their assistance appears to be needed or desirable.

15 ~~f.~~ e. Issue a temporary custody order concerning a child who is referred to the
16 director's supervision or care as a child in need of services or a child in need of
17 protection. Except as provided by this chapter, a director does not have the
18 powers of a law enforcement officer.

19 ~~g.~~ f. Take acknowledgments of instruments for the purpose of this chapter.

20 ~~h.~~ g. Make such temporary order not to exceed ninety-six hours for the custody and
21 control of a child alleged to be in need of services or protection as may be
22 deemed appropriate. The order must be reduced to writing within twenty-four
23 hours, excluding holidays and weekends.

24 ~~i.~~ h. Perform all other functions designated by this chapter or under section 27-05-30
25 or by order of the court, including, if qualified, those of a referee.

26 ~~j.~~ i. Issue an order to a law enforcement authority to transport a child to and from a
27 specified location.

28 ~~k.~~ j. Receive and examine requests for review of a child's placement at a qualified
29 residential treatment program under the Family First Prevention Services Act
30 [Pub. L. 115-123; 132 Stat. 64; 42 U.S.C. 675].

1 2. Any of the foregoing functions may be performed in another state if authorized by the
2 court of this state and permitted by the laws of the other state.

3 **27-20.3-05. Method of making a child in need of services referral.**

4 1. A referral alleging a child is a child in need of services may be made by a parent,
5 guardian or other custodian, a law enforcement officer, a school official, or any other
6 person that has knowledge of the facts alleged and believes such facts are true.

7 2. ~~A referral alleging that a child is a child in need of services under subdivision a, b, c, e,~~
8 ~~or f of subsection 4 of section 27-20.2-01 must be sent to the applicable human-~~
9 ~~service zone.~~

10 ~~3.~~ ~~A referral alleging a child is a child in need of services under subdivision d of~~
11 ~~subsection 4 of section 27-20.2-01 must be sent to the juvenile court.~~

12 4.3. The referral must be set forth in writing and must set forth the following:

- 13 a. The name, date of birth, and residence address of the child alleged to be a child
14 in need of services;
15 b. The names and residence addresses of the parent, guardian or legal custodian,
16 any other family members, or any other individuals living within the child's home;
17 c. The name of any public institution or agency having the responsibility or ability to
18 supply services alleged to be needed by the child; and
19 d. Whether any of the matters required by this subsection are unknown.

20 5.4. If a school official is filing a referral alleging a child is a child in need of services,
21 information must be included which shows:

- 22 a. The legally responsible school district has sought to resolve the expressed
23 problem through all appropriate and available educational approaches; and
24 b. The school district has sought to engage the parent, guardian, or legal custodian
25 of such child in solving the problem but such person has been unwilling or unable
26 to do so, that the problem remains, and that court intervention is needed.

27 6.5. If a school official is filing a complaint alleging a child is a child in need of services
28 involving a child who is eligible or suspected to be eligible for services under the
29 federal Individuals with Disabilities Education Act of 1990 [20 U.S.C. 1400 et seq.] or
30 Section 504 of the federal Rehabilitation Act of 1973 [29 U.S.C. 725], information must
31 be included which demonstrates that the legally liable school district:

- 1 a. Has determined the child is eligible or suspected to be eligible under the federal
2 Individuals with Disabilities Education Act of 1990 [20 U.S.C. 1400 et seq.] or
3 Section 504 of the federal Rehabilitation Act of 1973 [29 U.S.C. 725]; and
4 b. Has reviewed for appropriateness the child's current individualized education
5 program and placement and has made modifications as appropriate.

6 **27-20.3-06. Taking into protective custody.**

- 7 1. A child alleged to be in need of protection may be taken into protective custody:
8 a. Pursuant to an order of the court under this chapter;
9 b. By a law enforcement officer or designee if there are reasonable grounds to
10 believe:
11 (1) The child is suffering from illness or injury or is in immediate danger from
12 the child's surroundings, and the child's removal is necessary; or
13 (2) The child has run away from the child's parents, guardian, or other
14 custodian; or
15 c. By order of the director made pursuant to section 27-20.3-04.
16 2. The taking of a child into protective custody is not an arrest, except for the purpose of
17 determining the validity of the arrest under the Constitution of North Dakota or the
18 United States Constitution.
19 3. A law enforcement officer shallmay transport a child to and from attendant care.
20 4. Without a compelling reason to the contrary, a court order transferring a child into
21 custody must provide a reasonable period of time to facilitate a beneficial transition for
22 the child and other parties involved.

23 **27-20.3-07. Shelter care of child.**

24 A child taken into protective custody may not be placed in shelter care before the hearing
25 on the petition unless the child's care is required to protect a person or property of others or of
26 the child or because the child may abscond or be removed from the jurisdiction of the court or
27 because the child has no parent, guardian or custodian, or other person able to provide
28 supervision and care for the child and return the child to the court if required, or an order for the
29 child's shelter care has been made by the court pursuant to this chapter.

1 **27-20.3-08. Release efor delivery to court.**

2 1. A person taking a child into protective custody, with all reasonable speed and without
3 first taking the child elsewhere, shall:

4 a. Release the child to the child's parent, guardian, custodian, or other responsible
5 adult able and willing to assume custody of the child, upon that person's promise
6 to bring the child before the court if requested by the court, unless the child's
7 shelter care is warranted or required; or

8 b. Bring the child before the court or deliver the child to a shelter care facility
9 designated by the court or to a medical facility if the child is believed to suffer
10 from a serious physical condition or illness that requires prompt treatment. The
11 person taking the child into custody promptly shall give notice of taking the child
12 into custody, together with a statement of the reason for taking the child into
13 custody, to a parent, guardian, or other custodian and to the court. Any
14 questioning of the child necessary to comply with this subdivision must conform
15 to the procedures and conditions prescribed by this chapter and rules of court.

16 2. If a parent, guardian, or other custodian, when requested, fails to bring the child before
17 the court as provided in subsection 1, the court may issue a warranttemporary custody
18 order directing the child be taken into custody and brought before the court.

19 3. If the petition is not filed, the child must be released from shelter care.

20 **27-20.3-09. Place of shelter care.**

21 A child alleged to be in need of shelter care may be placed only in:

22 1. A licensed foster home or a home approved by the court;

23 2. A facility operated by a licensed child welfare agency; or

24 3. Any other suitable place or facility, including a medical facility for the treatment of
25 mental illness, alcoholism, or drug addiction, designated by the court.

26 **27-20.3-10. Release from shelter care - Hearing - Conditions of release.**

27 1. If a child is brought before the court or delivered to a shelter care facility designated by
28 the court, the director, thean intake officer, or other authorized officer of the court or
29 human service zone immediately shall make an investigation and release the child
30 unless it appears that the child's shelter care is warranted or required under section
31 27-20.3-07. If there is reason to believe the child may be an Indian child and the

1 federal Indian Child Welfare Act of 1978 [25 U.S.C. 1901 through 1963] may apply, the
2 judge or referee may order the child be placed under the custody of the human service
3 zone for a maximum of thirty days from the date of the emergency removal upon
4 finding:

5 a. A return of the child to the parent or Indian custodian would subject the child to
6 imminent danger or harm;

7 b. The court has been unable to transfer the proceeding to the appropriate Indian
8 tribe; or

9 c. Holding an adjudicatory hearing is not possible.

10 2. If the child is not released, a judge or referee shall hold a shelter care hearing
11 promptly and not later than ninety-six hours after the child is placed in shelter care to
12 determine whether there is probable cause to believe that the child is in need of
13 ~~services or~~ protection and whether the child's shelter care is required under section
14 27-20.3-07. Reasonable notice, either oral or written, stating the time, place, and
15 purpose of the shelter care hearing must be given to the child and, if able to be found,
16 to the child's parents, guardian, or other custodian. Before the commencement of the
17 hearing, the court shall inform the parties of the rights of the parties to counsel and to
18 counsel at public expense if the parties are indigent, ~~and of the child's right to remain~~
19 ~~silent with respect to any allegations of delinquent conduct or any allegations the child~~
20 ~~is in need of services.~~

21 3. If continued shelter care is required, the judge or referee may order that the child be
22 kept in shelter care for no more than sixty days from the date ~~of the~~ the child was
23 placed in shelter care.

24 4. As a condition to the child's release from shelter care, the court may order a parent,
25 guardian, custodian, or any other member of the household in which the child resides
26 to vacate the child's residence if probable cause exists to believe that the parent,
27 guardian, custodian, or other member of the household has committed a sexual
28 offense with or against the child, pursuant to sections 12.1-20-03 through 12.1-20-07
29 or section 12.1-20-11, and the presence of the alleged sexual offender in the child's
30 residence presents a danger to the child's life or physical, emotional, or mental health.

1 The court may order that the parent, guardian, or custodian not allow contact with an
2 identified person if the court determines the order is in the best interests of the child.
3 5. If the child is not released and a parent, guardian, or custodian has not been notified
4 of the hearing, did not appear or waive appearance at the hearing, and files an
5 affidavit showing these facts, the court shall rehear the matter without unnecessary
6 delay and order the child's release, unless it appears from the hearing that the child's
7 shelter care is required under section 27-20.3-07.

8 **27-20.3-11. Diversion.**

9 ~~1. A child in need of services may be diverted.~~

10 ~~2. A child in need of services as a result of a minor in consumption or minor in~~
11 ~~possession may receive an informal adjustment.~~

12 ~~3. A child who is contesting a charge of minor in possession or minor in consumption~~
13 ~~may receive a formal petition under chapter 27-20.4.~~

14 ~~**27-20.3-12. Petition - Preliminary determination.**~~

15 ~~A petition alleging that a child is in need of protection under this chapter must be reviewed~~
16 ~~by the juvenile director or the court, or other person authorized by the court to determine~~
17 ~~whether the filing of the petition is in the best interest of the public and the child.~~

18 ~~**27-20.3-13**~~**27-20.3-12. Petition - Who may prepare and file - Review.**

19 A petition alleging a child in need of protection must be prepared, filed, and served upon the
20 parties by the state's attorney. A petition may also be prepared by any other person, including a
21 law enforcement officer, which has knowledge of the facts alleged or is informed and believes
22 the facts are true. A petition prepared by any person other than a state's attorney may not be
23 filed unless the director or the court has determined the filing of the petition is in the best
24 interest of the public and the child.

25 ~~**27-20.3-14**~~**27-20.3-13. Conduct of child in need of protection hearings.**

26 1. A hearing under this chapter must be conducted by the court ~~without a jury, in an~~
27 informal but orderly manner and separately from other proceedings not included in
28 section 27-20.2-03 and in accordance with the rules of North Dakota juvenile
29 procedure.

30 2. If the hearing has not been held within the time limit, or any extension of the time limit,
31 required by supreme court rule, the petition must be dismissed. ~~If the child elects to~~

~~contest a charge of minor in possession under subsection 3 of section 27-20.3-11, the standards of proof as provided in chapter 27-20.4 apply.~~

3. The state's attorney shall present the evidence in support of any allegations of the petition not admitted and otherwise conduct the proceedings on behalf of the state.
4. ~~Except for informal adjustments under section 27-20.2-09, the~~The proceedings must be recorded by stenographic notes or by electronic, mechanical, or other appropriate means.
5. Juvenile court hearings are closed to the public even if the purpose of the hearing is to declare a person in contempt of court. The general public must be excluded from other hearings under this chapter. In hearings from which the general public is excluded, only the parties, counsel of the parties, witnesses, victims, and any other persons the court finds have a proper interest in the proceedings may be admitted by the court. The court may temporarily exclude the child or other person from the hearing if, after being warned by the court that disruptive conduct will cause removal from the courtroom, the child or other person persists in conduct that justifies removal from the courtroom.

~~27-20.3-15~~27-20.3-14. Adjudication.

1. If the court finds from clear and convincing evidence that the child is in need of ~~services or~~ protection, the court shall proceed immediately or at a postponed hearing to make a proper disposition of the case.
2. After hearing the evidence on the petition, the court shall make and file findings as to whether the child is in need of protection. ~~The findings must be prepared, filed, and served on all parties by the state's attorney.~~ If the court finds the child is not in need of protection, the court shall dismiss the petition and order the child discharged from any restriction previously ordered in the proceeding.
3. In hearings under this section, all evidence helpful in determining the questions presented, including oral and written reports, may be received by the court and relied upon to the extent of the probative value of the evidence even though not otherwise competent in the hearing on the petition. The parties or the counsel of the parties must be afforded an opportunity to examine and controvert written reports so received and

1 to cross-examine individuals making the reports. Sources of confidential information
2 need not be disclosed.

3 4. On motion of the court or that of a party, the court may continue the hearings under
4 this section for a reasonable period to receive reports and other evidence bearing on
5 the disposition. In scheduling investigations and hearings the court shall give priority to
6 proceedings in which a child has otherwise been removed from the child's home
7 before an order of disposition has been made.

8 ~~27-20.3-16~~~~27-20.3-15~~. **Disposition of a child in need of protection.**

- 9 1. If a child is found to be a child in need of protection, the court may make any of the
10 following orders of disposition best suited to the protection and physical, mental, and
11 moral welfare of the child:
- 12 a. Permit the child to reside with the child's parents, guardian, or other custodian,
13 subject to conditions and limitations as the court prescribes, including supervision
14 as directed by the court for the protection of the child.
- 15 b. Subject to conditions and limitations as the court prescribes, transfer temporary
16 legal custody to any of the following:
- 17 (1) An agency or other private organization licensed or otherwise authorized by
18 law to receive and provide care for the child.
- 19 (2) The director of the human service zone or other public agency authorized by
20 law to receive and provide care for the child.
- 21 c. Require the parents, guardian, or other custodian to participate in treatment.
- 22 d. Appoint a fit and willing relative or other appropriate individual as the child's legal
23 guardian under section 27-20.1-11.
- 24 e. In cases in which a compelling reason has been shown that it would not be in the
25 child's best interests to return home, to have parental rights terminated, to be
26 placed for adoption, to be placed with a fit and willing relative, or to be placed
27 with a legal guardian, establish, by order, some other planned permanent living
28 arrangement.
- 29 2. Without a compelling reason to the contrary, a court order that transfers the child from
30 the current protective placement to a parent or other biological family must provide a

1 reasonable period of time to facilitate a beneficial transition for the child and other
2 parties involved.

3 3. A child in need of protection may not be placed in a residential facility that houses
4 delinquent children.

5 **27-20.3-1727-20.3-16. Disposition of child needing continued foster care services.**

6 1. As used in this section, "child" means an individual between the ages of eighteen and
7 twenty-one years who is in need of continued foster care services.

8 2. A petition to commence an action under this section must contain information as
9 required by supreme court rule along with an affidavit either prepared by the
10 administrative human service zone, as determined by the department of human
11 services, or prepared by an agency or tribal council of a recognized Indian reservation
12 in this state.

13 3. The court shall issue a summons upon the filing of a petition and affidavit.

14 4. If a child is in need of continued foster care services as determined by the human
15 service zone or the department of human services and as set forth in a continued
16 foster care agreement, the court shall make the following judicial determination:

17 a. That the child is not in need of services or protection or delinquent, but is in need
18 of continued foster care services;

19 b. That the child will remain in or will return to foster care pursuant to the child's
20 continued foster care agreement;

21 c. That the child's continued foster care agreement has been willfully entered
22 between:

23 (1) The human service zone or the department of human services or its agent,
24 the child, and the foster care provider; or

25 (2) An agency or tribal council of a recognized Indian reservation in the state if
26 the child is not subject to the jurisdiction of the state, the child, and the
27 foster care provider;

28 d. That it is in the best interest of the child to remain in or return to foster care;

29 e. That reasonable efforts were made in accordance with subsection 7 of section

30 **27-20.3-2027-20.3-18;**

- 1 f. That the child has attained the age of eighteen or older but does not exceed the
2 age of twenty-one years;
- 3 g. That the child has satisfied the education, employment, or disability requirements
4 under the federal Fostering Connections to Success and Increasing Adoptions
5 Act of 2008 [Pub. L. 110-351] and as set forth by the department of human
6 services;
- 7 h. That the human service zone, as determined by the department of human
8 services, or that an agency or tribal council of a recognized Indian reservation in
9 the state, shall continue foster care case management, unless otherwise agreed
10 to or required by the department of human services;
- 11 i. That the human service zone or an agency or tribal council of a recognized
12 Indian reservation in the state must have care and placement responsibility of the
13 child;
- 14 j. That permanency hearing must be as set forth in section ~~27-20.3-26~~27-20.3-24;
15 and
- 16 k. That there are no grounds to file a petition to terminate parental rights under
17 section ~~27-20.3-22~~27-20.3-20.
- 18 5. Pursuant to rule 16 of the North Dakota Rules of Juvenile Procedure, a court may
19 modify or vacate the judicial determination made under subsection 4.
- 20 ~~27-20.3-18~~**27-20.3-17. Human service zone to report to committing juvenile court.**
- 21 1. A human service zone shall develop a family case plan and file the plan with the
22 committing juvenile court within sixty days.
- 23 2. A human service zone shall review each placement of a child found to be in need or
24 protection with custody ordered to a human service zone and shall review the current
25 status of each child every three months to determine whether a change in placement
26 or program is necessary for continued efforts toward reunification and permanency of
27 the child, and shall report the findings to the committing juvenile court.
- 28 ~~27-20.3-19. Court order required for removal of child.~~
- 29 ~~An order of disposition or other adjudication in a proceeding under this chapter, in those~~
30 ~~cases in which a child is removed from the home of a parent, custodian, or guardian for the~~
31 ~~reason that continuation in such home would be contrary to the welfare of such child, must~~

1 ~~specifically state that a continuation of the child in the home of the parent, custodian, or~~
2 ~~guardian would be contrary to the welfare of the child.~~

3 **27-20.3-2027-20.3-18. Reasonable efforts to prevent removal or to reunify - When**
4 **required.**

- 5 1. As used in this section, "reasonable efforts" means the exercise of due diligence, by
6 the agency granted authority over the child under this chapter, to use appropriate and
7 available services to meet the needs of the child and the child's family in order to
8 prevent removal of the child from the child's family or, after removal, to use appropriate
9 and available services to eliminate the need for removal, to reunite the child and the
10 child's family, and to maintain family connections. In determining reasonable efforts to
11 be made with respect to a child under this section, and in making reasonable efforts,
12 the child's health and safety must be the paramount concern.
- 13 2. Except as provided in subsection 4, reasonable efforts must be made to preserve
14 families, reunify families, and maintain family connections:
 - 15 a. Before the placement of a child in foster care, to prevent or eliminate the need for
16 removing the child from the child's home;
 - 17 b. To make it possible for a child to return safely to the child's home;
 - 18 c. Whether and, if applicable, to place siblings in the same foster care, relative,
19 guardianship, or adoptive placement, unless it is determined that such a joint
20 placement would be contrary to the safety or well-being of any of the siblings;
21 and
 - 22 d. In the case of siblings removed from the home of the siblings who are not jointly
23 placed, to provide for frequent visitation or other ongoing interaction between the
24 siblings, unless it is contrary to the safety or well-being of any of the siblings.
- 25 3. If the court or the child's custodian determined that continuation of reasonable efforts,
26 as described in subsection 2, is inconsistent with the permanency plan for the child,
27 reasonable efforts must be made to place the child in a timely manner in accordance
28 with the permanency plan and to complete steps that are necessary to finalize the
29 permanent placement of the child.
- 30 4. Reasonable efforts of the type described in subsection 2 are not required if:

- 1 a. A court of competent jurisdiction has determined a parent has subjected a child to
2 aggravated circumstances; or
- 3 b. The parental rights of the parent, with respect to another child of the parent, have
4 been involuntarily terminated.
- 5 5. Efforts to place a child for adoption, with a fit and willing relative or other appropriate
6 individual as a legal guardian, or in another planned permanent living arrangement,
7 may be made concurrently with reasonable efforts of the type described in
8 subsection 2.
- 9 6. Removal of a child from the child's home for placement in foster care must be based
10 on judicial findings stated in the court's order, and determined on a case-by-case basis
11 in a manner that complies with the requirements of titles IV-B and IV-E of the federal
12 Social Security Act [42 U.S.C. 620 et seq. and 42 U.S.C. 6701 et seq.], as amended,
13 and federal regulations adopted under this federal Act, provided that this subsection
14 may not provide a basis for overturning an otherwise valid court order.
- 15 7. For the purpose of section ~~27-20.3-21~~27-20.3-19, reasonable efforts were made under
16 this section to meet the child's needs before a foster care placement for a child
17 remaining in care for continued foster care purposes.

18 **27-20.3-21**27-20.3-19. Indian child welfare - Active efforts and procedures.

- 19 1. As used in this section:
- 20 a. "Active efforts" means affirmative, active, thorough, and timely efforts intended
21 primarily to maintain or reunite an Indian child with the child's family. Active efforts
22 required of the federal Indian Child Welfare Act of 1978 [25 U.S.C. 1901 through
23 1963] apply or may apply, including during the verification process. If an agency
24 is involved in the child-custody proceeding, active efforts must involve assisting
25 the parent or parents or Indian custodian through the steps of a case plan and
26 with accessing or developing the resources necessary to satisfy the case plan. To
27 the maximum extent possible, active efforts should be provided in a manner
28 consistent with the prevailing social and cultural conditions and way of life of the
29 Indian child's tribe and should be conducted in partnership with the Indian child
30 and the Indian child's parents, extended family members, Indian custodians, and

1 tribe. Active efforts are to be tailored to the facts and circumstances of the case.

2 The term includes:

- 3 (1) Conducting a comprehensive assessment of the circumstances of the
4 Indian child's family, with a focus on safe reunification as the most desirable
5 goal, with ongoing timely assessment to determine when the threat is
6 resolved and placement of the child can be returned to the custodian.
- 7 (2) Identifying appropriate services and helping the parents to overcome
8 barriers, including actively assisting the parents in obtaining such services.
- 9 (3) Identifying, notifying, and inviting representatives of the Indian child's tribe to
10 participate in providing support and services to the Indian child's family and
11 in family team meetings, permanency planning, and resolution of placement
12 issues.
- 13 (4) Conducting or causing to be conducted a diligent search for the Indian
14 child's extended family members, and contacting and consulting with
15 extended family members to provide family structure and support for the
16 Indian child and the Indian child's parents.
- 17 (5) Offering and employing available and culturally appropriate family
18 preservation strategies and facilitating the use of remedial and rehabilitative
19 services provided by the child's tribe.
- 20 (6) Taking steps to keep siblings together, if possible.
- 21 (7) Supporting regular visits with parents or Indian custodians in the most
22 natural setting possible as well as trial home visits of the Indian child during
23 any period of removal, consistent with the need to ensure the health, safety,
24 and welfare of the child.
- 25 (8) Identifying community resources, including housing, financial,
26 transportation, mental health, substance abuse, and peer support services
27 and actively assisting the Indian child's parents or, as appropriate, the
28 child's family, in utilizing and accessing those resources.
- 29 (9) Monitoring progress and participation in services.

1 (10) Considering alternative ways to address the needs of the Indian child's
2 parents and where appropriate, the family, if the optimum services do not
3 exist or are not available.

4 (11) Providing post-reunification services and monitoring.

- 5 b. "Extended family member" means a relationship defined by the law or custom of
6 the Indian child's tribe or, in the absence of such law or custom, means an
7 individual who has reached the age of eighteen and who is the Indian child's
8 grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece
9 or nephew, first or second cousin, or stepparent.
- 10 c. "Indian" means an individual who is a member of an Indian tribe, or who is a
11 native and a member of a regional corporation as defined under 43 U.S.C. 1606.
- 12 d. "Indian child" means any unmarried individual who is under the age of eighteen
13 and is either a member of an Indian tribe or is eligible for membership in an
14 Indian tribe and is the biological child of a member of an Indian tribe.
- 15 e. "Indian child's tribe" means the Indian tribe in which an Indian child is a member
16 or eligible for membership or, in the case of an Indian child who is a member of or
17 eligible for membership in more than one tribe, the Indian tribe with which the
18 Indian child has the more significant contacts.
- 19 f. "Indian custodian" means any Indian individual who has legal custody of an
20 Indian child under tribal law or custom or under state law or to whom temporary
21 physical care, custody, and control has been transferred by the parent of the
22 child.
- 23 g. "Indian tribe" means an Indian tribe, band, nation, or other organized Indian
24 group or community of Indians recognized as eligible for services provided to
25 Indians by the United States secretary of the interior because of their status as
26 Indians, including any Alaska native village as defined in 43 U.S.C. 1602(c).
- 27 h. "Parent" means any biological parent or parents of an Indian child or any Indian
28 individual who has lawfully adopted an Indian child, including adoptions under
29 tribal law or custom. The term does not include the unwed father if paternity has
30 not been acknowledged or established.

- 1 i. "Termination of parental rights" means any action resulting in the termination of
2 the parent-child relationship. It does not include a placement based upon an act
3 by an Indian child which, if committed by an adult, would be deemed a crime or a
4 placement upon award of custody to one of the child's parents in a divorce
5 proceeding.
- 6 2. Before removal of an Indian child from the custody of a parent or Indian custodian for
7 purposes of involuntary foster care placement or the termination of parental rights over
8 an Indian child, the court shall find that active efforts have been made to provide
9 remedial services and rehabilitative services designed to prevent the breakup of the
10 Indian family and that these efforts have proved unsuccessful. The court may not
11 order the removal unless evidence of active efforts shows there has been a vigorous
12 and concerted level of casework beyond the level that would constitute reasonable
13 efforts under section ~~27-20.3-28~~27-20.3-26. Reasonable efforts may not be construed
14 to be active efforts. Active efforts must be made in a manner that takes into account
15 the prevailing social and cultural values, conditions, and way of life of the Indian child's
16 tribe. Active efforts must utilize the available resources of the Indian child's extended
17 family, tribe, tribal and other relevant social service agencies, and individual Indian
18 caregivers.
- 19 3. The court may order the removal of the Indian child for involuntary foster care
20 placement only if the court determines, by clear and convincing evidence, that
21 continued custody of the child by the parent or Indian custodian is likely to result in
22 serious emotional or physical damage to the child. Evidence must show a causal
23 relationship between the particular conditions in the home and the likelihood that
24 continued custody of the child will result in serious emotional or physical damage to
25 the particular child who is the subject of the proceeding. Poverty, isolation, custodian
26 age, crowded or inadequate housing, substance use, or nonconforming social
27 behavior does not by itself constitute clear and convincing evidence of imminent
28 serious emotional or physical damage to the child. As soon as the threat has been
29 removed and the child is no longer at risk, the state should terminate the removal, by
30 returning the child to the parent while offering a solution to mitigate the situation that
31 gave rise to the need for emergency removal and placement.

- 1 4. The court may only order the termination of parental rights over the Indian child if the
2 court determines, by evidence beyond a reasonable doubt that continued custody of
3 the child by the parent or Indian custodian is likely to result in serious emotional or
4 physical damage to the child.
- 5 5. In considering whether to involuntarily place an Indian child in foster care or to
6 terminate the parental rights of the parent of an Indian child, the court shall require that
7 a qualified expert witness must be qualified to testify regarding whether the child's
8 continued custody by the parent or Indian custodian is likely to result in serious
9 emotional or physical damage to the child and should be qualified to testify as to the
10 prevailing social and cultural standards of the Indian child's tribe. An individual may be
11 designated by the Indian child's tribe as being qualified to testify to the prevailing
12 social and cultural standards of the Indian child's tribe. The court or any party may
13 request the assistance of the Indian child's tribe or the bureau of Indian affairs office
14 servicing the Indian child's tribe in locating individuals qualified to serve as expert
15 witnesses. The social worker regularly assigned to the Indian child may not serve as a
16 qualified expert witness in child-custody proceedings concerning the child. The
17 qualified expert witness should be someone familiar with the particular child and have
18 contact with the parents to observe interaction between the parents, child, and
19 extended family members. The child welfare agency and courts should facilitate
20 access to the family and records to facilitate accurate testimony.

21 ~~27-20.3-2227-20.3-20.~~ Termination of parental rights.

- 22 1. The court by order may terminate the parental rights of a parent with respect to the
23 parent's child if:
- 24 a. The parent has abandoned the child;
- 25 b. The child is subjected to aggravated circumstances;
- 26 c. The child is in need of ~~services or~~ protection and the court finds:
- 27 (1) The conditions and causes of the need for ~~services or~~ protection are likely to
28 continue or will not be remedied and for that reason the child is suffering or
29 will probably suffer serious physical, mental, moral, or emotional harm; or
30 (2) The child has been in foster care, in the care, custody, and control of the
31 department or human service zone, ~~or, in cases arising out of an~~

1 adjudication by the juvenile court that a child is in need of services, the
2 division of juvenile services, for at least four hundred fifty out of the previous
3 six hundred sixty nights;

4 d. The written consent of the parent acknowledged before the court has been given;
5 or

6 e. The parent has pled guilty or nolo contendere to, or has been found guilty of
7 engaging in a sexual act under section 12.1-20-03 or 12.1-20-04, the sexual act
8 led to the birth of the parent's child, and termination of the parental rights of the
9 parent is in the best interests of the child.

10 2. If the court does not make an order of termination of parental rights, it may grant an
11 order under section ~~27-20.3-16~~27-02.3-15 if the court finds from clear and convincing
12 evidence that the child is in need of protection.

13 **27-20.3-2327-20.3-21. Petition for termination of parental rights.**

14 1. As used in this section:

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

16 (1) A finding of a child in need of protection made under this chapter; or

17 (2) A conviction of a person, responsible for a child's welfare, for conduct
18 involving the child, under chapter 12.1-16 or sections 12.1-17-01 through
19 12.1-17-04 or 12.1-20-01 through 12.1-20-08.

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

21 (1) The child's age;

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

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

25 (4) Whether the child has special needs; and

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

27 c. "Department" means the department of human services.

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

- 1 2. A petition for termination of parental rights must be prepared, filed, and served upon
2 the parties by the state's attorney. A petition may also be prepared by any other
3 person that is not the court, including a law enforcement officer, who has knowledge of
4 the facts alleged or is informed and believes that they are true. A petition prepared by
5 any person other than a state's attorney may not be filed unless the director or the
6 court, has determined the filing of the petition is in the best interest of the public and
7 the child.
- 8 3. Except as provided in subsection 4, a petition for termination of parental rights must be
9 filed:
- 10 a. If the child has been in foster care, in the custody of the department, human
11 service zone, or, in cases arising out of an adjudication by the court of a child in
12 need of services, the division of juvenile services, for at least four hundred fifty
13 out of the previous six hundred sixty nights;
- 14 b. Within sixty days after the court has found the child to be an abandoned infant; or
- 15 c. Within sixty days after the court has convicted the child's parent of one of the
16 following crimes, or of an offense under the laws of another jurisdiction which
17 requires proof of substantially similar elements:
- 18 (1) A violation of section 12.1-16-01, 12.1-16-02, or 12.1-16-03, or subsection 1
19 of section 14-09-22 in which the victim is another child of the parent;
- 20 (2) Aiding, abetting, attempting, conspiring, or soliciting a violation of section
21 12.1-16-01, 12.1-16-02, or 12.1-16-03 in which the victim is a child of the
22 parent; or
- 23 (3) A violation of section 12.1-17-02 in which the victim is a child of the parent
24 and has suffered serious bodily injury.
- 25 4. A petition for termination of parental rights need not be filed if:
- 26 a. The child is being cared for by a relative approved by the department and human
27 service zone;
- 28 b. The department or human service zone has documented in the case plan a
29 compelling reason for determining that filing such a petition would not be in the
30 child's best interests and has notified the court that the documentation is
31 available for review by the court; or

- 1 c. The department or the human service zone has determined:
- 2 (1) Reasonable efforts to preserve and reunify the family are required under
- 3 section ~~27-20.3-28~~27-20.3-26 to be made with respect to the child;
- 4 (2) The case plan provides such services are necessary for the safe return of
- 5 the child to the child's home; and
- 6 (3) Such services have not been provided consistent with time periods
- 7 described in the case plan.
- 8 5. For purposes of subsection 3, a child in foster care entered foster care on the earlier
- 9 of:
- 10 a. The date of the court's order if the court:
- 11 (1) Made a finding that the child has been subjected to child abuse or neglect;
- 12 (2) Determined that it is unsafe or contrary to the welfare of the child to remain
- 13 in the home; and
- 14 (3) Granted custody of the child to the department or human service zone or, in
- 15 cases arising out of an adjudication by the court that a child is in need of
- 16 services, the division of juvenile services; or
- 17 b. The date that is sixty days after:
- 18 (1) The date of a hearing under section 27-20.3-10 which results in maintaining
- 19 a child in shelter care;
- 20 (2) The date of an order in a dispositional hearing under which a child is placed
- 21 in foster care; or
- 22 (3) The date a child is placed in foster care voluntarily and with the consent of
- 23 the child's parent.
- 24 6. For purposes of subsection 3, a child leaves foster care at the time:
- 25 a. The court enters an order:
- 26 (1) Denying a petition to grant care, custody, and control of the child to the
- 27 human service zone or the division of juvenile services;
- 28 (2) Terminating an order that granted custody of the child to the human service
- 29 zone or the division of juvenile services; or
- 30 (3) Appointing a legal guardian under chapter 27-20.1;

- 1 b. The court order under which the child entered foster care ends by operation of
2 law;
- 3 c. The child is placed in a parental home by the court or a legal custodian other
4 than the division of juvenile services and the legal custodian lacks authority to
5 remove the child without further order of the court; or
- 6 d. The child is placed in a parental home by the division of juvenile services.
- 7 7. For purposes of subsection 3, a child is not in foster care on any night during which
8 the child is:
- 9 a. On a trial home visit;
- 10 b. Receiving services at the youth correctional center pursuant to an adjudication of
11 delinquency; or
- 12 c. Absent without leave from the place in which the child was receiving foster care.

13 ~~27-20.3-24~~~~27-20.3-22~~. **Proceeding for termination of parental rights.**

- 14 1. The petition must contain information required by the North Dakota Rules of Juvenile
15 Procedure and state clearly that an order for termination of parental rights is requested
16 and that the effect will be as stated in section ~~27-20.3-25~~27-20.3-23.
- 17 2. If both of the biological parents of the child are not named in the petition either as
18 petitioner or as respondent, the court shall cause inquiry to be made of the petitioner
19 and other appropriate persons in an effort to identify an unnamed parent. The inquiry
20 must include, to the extent necessary and appropriate, all of the following:
- 21 a. Whether any man is presumed to be the father of the child under chapter 14-20.
- 22 b. Whether the biological mother of the child was cohabiting with a man at the time
23 of conception or birth of the child.
- 24 c. Whether the biological mother of the child has received from any man support
25 payments or promises of support with respect to the child or in connection with
26 the pregnancy.
- 27 d. Whether any individual has formally or informally acknowledged or declared that
28 individual's possible parentage of the child.
- 29 e. Whether any individual claims any right to custody of the child.
- 30 3. The court shall add as respondent to the petition and cause to be served with a
31 summons any individual identified by the court as an unnamed parent, unless the

1 individual has relinquished parental rights, or parental rights have been previously
2 terminated by a court.

3 4. If the court, after inquiry, is unable to identify an unnamed parent and no individual has
4 appeared in the proceeding claiming to be an unnamed parent of the child or to have
5 any right of custody of the child, the court shall enter an order terminating all parental
6 rights of the unnamed parent with reference to the child and the parent and child
7 relationship.

8 5. If a petition for termination of parental rights is made by a parent of the child under this
9 section or if a parent consents to termination of parental rights, that parent is entitled
10 to legal counsel during all stages of a proceeding to terminate the parent and child
11 relationship.

12 6. Subject to the disposition of an appeal, upon the expiration of thirty days after an order
13 terminating parental rights is issued under this section, the order may not be
14 questioned by any person, including the petitioner, in any manner, or upon any
15 ground, including fraud, misrepresentation, failure to give any required notice, or lack
16 of jurisdiction of the parties or of the subject matter, unless the person retained
17 custody of the child.

18 7. At least ten days before the petition is heard, the clerk of district court or juvenile court
19 shall provide a copy of the petition and summons, if any, to the director of the human
20 service zone.

21 **~~27-20.3-25~~27-20.3-23. Effect of order terminating parental rights or appointing a legal**
22 **guardian.**

23 An order terminating parental rights of a parent terminates all the parent's rights and
24 obligations with respect to the child and of the child to or through the parent arising from the
25 parental relationship. Following the order terminating parental rights, the parent is not entitled to
26 notice of proceedings for the adoption of the child by another nor has the parent any right to
27 object to the adoption or otherwise to participate in the proceedings.

28 **~~27-20.3-26~~27-20.3-24. Disposition upon termination of parental rights.**

29 1. If, upon entering an order terminating the parental rights of a parent, there is no parent
30 having parental rights, the court shall:

- 1 a. Commit the child to the custody of the human service zone director or a licensed
- 2 child-placing agency willing to accept custody for the purpose of placing the child
- 3 for adoption or, in the absence of such an agreement, in a foster home;
- 4 b. Appoint a fit and willing relative or other appropriate individual as the child's legal
- 5 guardian; or
- 6 c. Establish some other planned permanent living arrangement.
- 7 2. The custodian has the rights of a legal custodian and authority to consent to the child's
- 8 adoption, marriage, enlistment in the armed forces of the United States, and surgical
- 9 and other medical treatment.
- 10 3. If the child is not placed for adoption within twelve months after the date of the order
- 11 and a legal guardianship or other planned permanent living arrangement for the child
- 12 has not been established by a court of competent jurisdiction, the child must be
- 13 returned to the court issuing the original termination order for entry of further orders for
- 14 the care, custody, and control of the child.

15 **27-20.3-2727-20.3-25. Court order required for removal of child.**

16 An order of disposition or other adjudication in a proceeding under this chapter, in those

17 cases in which a child is removed from the home of a parent, custodian, or guardian for the

18 reason that continuation in such home would be contrary to the welfare of such child, must

19 specifically state that a continuation of the child in the home of the parent, custodian, or

20 guardian would be contrary to the welfare of the child.

21 **27-20.3-2827-20.3-26. Limitations of time on orders of disposition.**

- 22 1. An order terminating parental rights is without limit as to duration.
- 23 2. An order of disposition requiring services for the family without the removal of custody
- 24 may not exceed twelve months from disposition unless extended by the court. The
- 25 human service zone may request two extensions of up to four months each for the
- 26 family to complete the treatment goals of the court order and the case plan.
- 27 3. Except as provided in subsection 2, an order of disposition pursuant to which a child is
- 28 placed in foster care may not continue in force for more than twelve months after the
- 29 child is considered to have entered foster care. Before the extension of any court order
- 30 limited under this subsection, a permanency hearing must be conducted. Any other
- 31 order of disposition may not continue in force for more than twelve months.

- 1 4. Except after a termination of parental rights finding, the court may terminate an order
2 of disposition before the expiration of the order or extend its duration for further
3 periods. An order of extension may be made if:
 - 4 a. A hearing is held before the expiration of the order upon motion of a party or on
5 the court's own motion;
 - 6 b. Reasonable notice of the hearing and opportunity to be heard are given to the
7 parties affected;
 - 8 c. The court finds the extension is necessary to accomplish the purposes of the
9 order extended; and
 - 10 d. The extension does not exceed twelve months from the expiration of an order
11 limited by subsection 3 or two years from the expiration of any other limited order.
- 12 5. The court may terminate an order of disposition or extension before its expiration, on
13 or without an application of a party, if it appears to the court the purposes of the order
14 have been accomplished. If a party may be affected adversely by the order of
15 termination, the order may be made only after reasonable notice and opportunity to be
16 heard have been given to the party.
- 17 6. Except as provided in subsection 1, when the child attains the age of twenty years, all
18 orders affecting the child then in force terminate and the child is discharged from
19 further obligation or control.
- 20 7. If an order of disposition is made with respect to a child under the age of ten years
21 pursuant to which the child is placed in foster care without terminating parental rights
22 and the parent and child relationship, the court, before extending the duration of the
23 order, shall determine upon the extension hearing whether the child is adoptable and
24 whether termination of those rights and that relationship is warranted under section
25 27-20.3-03.1 and is in the best interest of the child. In that case the notice of the
26 extension hearing also must inform the parties affected that the court will determine
27 whether the child is adoptable and whether termination of their parental rights and the
28 parent and child relationship is warranted and in the best interest of the child and that
29 a further order of disposition may be made by the court placing the child with a view to
30 adoption. If the court determines the child is adoptable and termination of parental
31 rights and the parent and child relationship is warranted and is in the best interest of

1 the child, the court shall make a further order of disposition terminating those rights
2 and that relationship and committing the child under section 27-20.3-09.

3 **SECTION 24.** Section 27-20.3-05 of the North Dakota Century Code, as created by
4 section 23 of this Act, is amended and reenacted as follows:

5 **27-20.3-05. Method of making a child in need of services referral.**

- 6 1. A referral alleging a child is a child in need of services may be made by a parent,
7 guardian or other custodian, a law enforcement officer, a school official, or any other
8 person that has knowledge of the facts alleged and believes such facts are true.
- 9 2. A referral alleging a child is a child in need of services under section 27-20.2-01 must
10 be sent to the juvenile court.
- 11 3. The referral must be set forth in writing and must set forth the following:
- 12 a. The name, date of birth, and residence address of the child alleged to be a child
13 in need of services;
- 14 b. The names and residence addresses of the parent, guardian or legal custodian,
15 any other family members, or any other individuals living within the child's home;
- 16 c. The name of any public institution or agency having the responsibility or ability to
17 supply services alleged to be needed by the child; and
- 18 d. Whether any of the matters required by this subsection are unknown.
- 19 4. If a school official is filing a referral alleging a child is a child in need of services,
20 information must be included which shows:
- 21 a. The legally responsible school district has sought to resolve the expressed
22 problem through all appropriate and available educational approaches; and
- 23 b. The school district has sought to engage the parent, guardian, or legal custodian
24 of such child in solving the problem but such person has been unwilling or unable
25 to do so, that the problem remains, and that court intervention is needed.
- 26 5. If a school official is filing a complaint alleging a child is a child in need of services
27 involving a child who is eligible or suspected to be eligible for services under the
28 federal Individuals with Disabilities Education Act of 1990 [20 U.S.C. 1400 et seq.] or
29 Section 504 of the federal Rehabilitation Act of 1973 [29 U.S.C. 725], information must
30 be included which demonstrates that the legally liable school district:

- a. Has determined the child is eligible or suspected to be eligible under the federal Individuals with Disabilities Education Act of 1990 [20 U.S.C. 1400 et seq.] or Section 504 of the federal Rehabilitation Act of 1973 [29 U.S.C. 725]; and
- b. Has reviewed for appropriateness the child's current individualized education program and placement and has made modifications as appropriate.

6. A referral alleging that a child is a child in need of services under section 27-20.2-01 must be sent to the applicable human service zone.

SECTION 25. Chapter 27-20.4 of the North Dakota Century Code is created and enacted as follows:

27-20.4-01. Definitions.

As used in this chapter:

1. "Accountability" means that after a child is determined to have committed delinquent behavior, by admission or adjudication, the child is held responsible for the behavior through individualized and structured consequences or sanctions for the loss, damage, or injury suffered and proportionate to the offense.
2. "Arrest" means a taking into custody of a child by law enforcement in the manner authorized by law to answer for the commission of a delinquent offense.
3. "Attendant care" is a nonsecure holdover site for delinquent children or children in need of services who have been picked up by law enforcement and need constant short-term supervision on a preadjudicatory basis.
4. "Child" means an individual who is:
 - a. Under the age of eighteen years and is not married; or
 - b. Under the age of twenty years with respect to a delinquent act committed while under the age of eighteen years and not married.
5. "Community-based program" means a nonresidential program.
6. "Custodian" means a person, other than a parent or legal guardian, which stands in loco parentis to the child and a person that has been given legal custody of the child by order of a court.
7. "Delinquent act" means an act designated a crime under the law, including local ordinances or resolutions of this state, or of another state if the act occurred in that

1 ~~state, or under federal law, and the crime does not fall under subdivision c of~~
2 ~~subsection 21 of section 27-20.2-01.~~

3 8. "Delinquent child" means a child who has committed a delinquent act and is in need of
4 treatment or rehabilitation.

5 9. "Detention" means a physically secure facility with locked doors. The term does not
6 include shelter care, attendant care, or home confinement.

7 10. "Director" means the director of juvenile court services.

8 11. "Dispositional stage" means any proceeding after adjudication for a delinquent
9 offense.

10 12. "Diversion" means an intervention strategy made by a person with authority which
11 directs the child away from formal court processing to a specifically designed program
12 or activity to hold the child accountable for the actions of the child and prevents further
13 involvement in the formal legal system.

14 13. "Division" means the division of juvenile services.

15 14. "Evidence-based" means a program or practice that has had multiple randomized
16 control studies demonstrating the program or practice is effective for a specific
17 population, has been researched, and has been rated as effective by a standardized
18 program evaluation tool.

19 15. "Facility" means buildings, structures, or systems, including those for essential
20 administration and support, which are used to provide residential treatment for
21 children.

22 16. "Fit and willing relative or other appropriate individual" means a relative or other
23 individual who has been determined, after consideration of an assessment that
24 includes a criminal history record investigation under chapter 50-11.3, to be a qualified
25 individual under chapters 27-20.1 and 30.1-27, and who consents in writing to act as a
26 legal guardian.

27 17. "Graduated sanctions" means a calibrated system of sanctions designed to ensure
28 that children face timely and consistent consequences that correspond to the
29 frequency and nature of a child's noncompliant behaviors, public safety risk, and
30 engagement in supervision and services.

- 1 18. "Home" when used in the phrase "to return home" means the abode of the child's
2 parent with whom the child formerly resided.
- 3 19. "Home confinement" means predisposition or post-disposition temporary placement of
4 a child in the child's home, or a surrogate home with the consent of the child's parent,
5 guardian, or custodian for supervision.
- 6 20. "Human service zone" means a county or consolidated group of counties
7 administering human services within a designated area in accordance with an
8 agreement or plan approved by the department of human services.
- 9 21. "Incentives" means calibrated system of rewards designed so that children receive
10 immediate and consistent feedback that supports appropriate behavior and follow
11 through with probation conditions.
- 12 22. "Informal adjustment" means a meeting held by the director of juvenile court or
13 designee to resolve a low-level delinquent referral and is an alternative to the filing of a
14 petition for formal court processing.
- 15 23. "Intensive supervision probation program" means a community-based alternative that
16 provides a higher degree of supervision and use of graduated incentives and
17 sanctions over a child, post-adjudication, to ensure public safety and applies to
18 children who are at high risk to reoffend.
- 19 24. "Juvenile court" means the district court of this state.
- 20 25. "Juvenile drug court" means a program established by the supreme court which is a
21 post-petition or post-adjudication program aimed at intervening in substance use
22 disorders through intense supervision and participation in recovery services.
- 23 26. "Pick up and hold order" means an order of the court to take a child into custody
24 based upon an allegation of delinquency or failure to appear for court.
- 25 ~~26-27.~~ "Predisposition assessment" means an investigation, assessment, and written report
26 to the court based on the results of risk and need screening and assessment tools
27 regarding a disposition for a delinquent child.
- 28 ~~27-28.~~ "Proceeding" means any hearing or informal adjustment conducted before a court.
- 29 ~~28-29.~~ "Qualified residential treatment program" means a licensed or approved residence
30 providing an out-of-home treatment placement for children including a trauma-
31 informed model.

1 29.30. "Referral" means a written report of alleged delinquent behavior of a child which is
2 received by the director of juvenile court.

3 30.31. "Relative" means:

4 a. The child's grandparent, great-grandparent, sibling, half-sibling, aunt, great-aunt,
5 uncle, great-uncle, nephew, niece, or first cousin;

6 b. An individual with a relationship to the child, derived through a current or former
7 spouse of the child's parent, similar to a relationship described in subdivision a;

8 c. An individual recognized in the child's community as having a relationship with
9 the child similar to a relationship described in subdivision a; or

10 d. The child's stepparent.

11 31.32. "Risk factors" means characteristics and behaviors that, when addressed or changed,
12 affect a child's risk for committing delinquent acts.

13 32.33. "Shelter care" means temporary care of a child in physically unrestricted facilities.

14 33.34. "Treatment" means targeting interventions that focus on risk factors, improved mental
15 health, and improved positive youth outcomes.

16 **27-20.4-02. Jurisdiction.**

17 Jurisdiction as set forth in section 27-20.2-03 is applicable to this chapter.

18 **27-20.4-03. Venue.**

19 A proceeding under this chapter may be commenced in the county in which the child
20 resides. If delinquent conduct is alleged, the proceeding is commenced in the county in which
21 the acts constituting the alleged delinquent conduct occurred. If delinquent conduct is alleged in
22 part in one county and in part in another county, the jurisdiction venue is in either of the counties.

23 **27-20.4-04. Powers and duties of director of juvenile court.**

24 1. For the purpose of carrying out the objectives and purposes of this chapter and
25 subject to the limitations of this chapter or imposed by the court, a director shall:

26 a. Make investigations, reports, and recommendations to the juvenile court.

27 b. Receive and examine complaints, referrals, and charges of delinquency for the
28 purpose of considering the commencement of proceedings under this chapter.

29 c. Make a determination upon intake of referrals regarding the appropriate manner
30 to handle a child in need of services or a child in need of protection by use of
31 nonjudicial commencement of proceedings under this chapter.

- 1 d. Supervise and assist a child placed on probation for delinquency.
- 2 e. Make appropriate referrals to other private or public agencies of the community if
3 their assistance appears to be needed or desirable.
- 4 f. Issue a temporary custody order concerning a child who is referred to the
5 director's supervision or care as a delinquent child. Except as provided by this
6 chapter, a director does not have the powers of a law enforcement officer.
- 7 g. Take acknowledgments of instruments for the purpose of this chapter.
- 8 h. Perform all other functions designated by this chapter, under section 27-05-30, or
9 by order of the court, including, if qualified, those of a referee.
- 10 i. Issue an order to a law enforcement authority to transport a child to and from a
11 specified location.
- 12 j. Receive and examine requests for review of a child's placement at a qualified
13 residential treatment program under the Family First Prevention Services Act
14 [Pub. L. 115-123; 132 Stat. 64; 42 U.S.C. 675].
- 15 2. Any of the foregoing functions may be performed in another state if authorized by the
16 court of this state and permitted by the laws of the other state.

17 **27-20.4-05. Taking into custody.**

- 18 1. A child may be taken into custody:
 - 19 a. Pursuant to a pick up and hold order or other order of the court under this
20 chapter;
 - 21 b. Pursuant to the laws of arrest and as authorized after scoring of the detention
22 screening tool; or
 - 23 c. For preadjudicatory supervision in attendant care or shelter care.
- 24 2. The taking of a child into custody is not an arrest, except for the purpose of
25 determining the validity of the arrest under the Constitution of North Dakota or the
26 United States Constitution.
- 27 3. A law enforcement officer shall transport a child if necessary as determined by the
28 court.

29 **27-20.4-06. Detention - Nonsecure care of child.**

- 30 1. A child taken into custody may not be detained or placed in nonsecure care before the
31 hearing on the petition unless the child's detention or nonsecure care is required to

1 protect the person or property of others or of the child or because the child may
2 abscond or be removed from the jurisdiction of the court or because the child has no
3 parent, guardian, or custodian or other person able to provide supervision and care for
4 the child and return the child to the court if required, or an order for the child's
5 detention or nonsecure care has been made by the court pursuant to this chapter.

6 2. Law enforcement, juvenile court staff, and division staff shall use a detention
7 screening tool to assure the appropriate use of detention and whether the child is a
8 public safety risk. The juvenile court shall establish the detention screening tool, which
9 must include objective factors to aid in the decision of placement of the child. Law
10 enforcement, court records, and division records must include data on detention
11 screening scores and, if the score does not authorize detention, the explanation for the
12 override resulting in placing the juvenile in detention.

13 3. The court may place a juvenile in detention before adjudication only if the court finds
14 releasing the child would pose an unreasonable risk to public safety and that all
15 restrictive alternatives have been considered.

16 4. A juvenile may be placed in a secure detention facility if one or more of the following
17 conditions are met:

18 a. The child is alleged to have committed an offense that if committed by an adult
19 would constitute a felony against person, felony weapon, or felony drug
20 distribution;

21 b. The child has a record of failure to appear in court or there is probable cause to
22 believe that the child will flee the jurisdiction of the court;

23 c. The child has violated the terms of detention release on home confinement or
24 electronic monitoring;

25 d. There is oral or written verification that the child is an alleged delinquent child
26 sought for an offense in another jurisdiction or that the child left a juvenile
27 detention facility without authorization.

28 e. The child is an out-of-state runaway subject to the rules of the interstate
29 commission on juveniles;

30 f. The child meets criteria for secure detention on the detention screening tool; or

31 g. The child meets criteria for an override on the detention screening tool.

1 h. If a child is participating in a juvenile drug court program as a result of an
2 adjudication for a delinquent offense, the court may order the child detained in a
3 juvenile detention center operated pursuant to chapter 12-44.1. The child may be
4 detained twice during the child's participation in the program with the total period
5 of detention under this section not to exceed four days in a one-year period.

6 5. A child may not be placed in detention solely due to lack of supervision alternatives or
7 due to the community's inability to provide appropriate treatment or services.

8 6. Alternatives to secure detention may be utilized to include home confinement,
9 electronic monitoring, and parental or guardian supervision if the court determines
10 there is no unreasonable risk to public safety.

11 7. A child placed in detention must have a mental health and trauma screening tool
12 completed by the juvenile detention center or by juvenile court upon entry and provide
13 that information to the juvenile court before release or detention hearing.

14 **27-20.4-07. Release or delivery to court.**

15 1. A person taking a child into custody, with all reasonable speed and without first taking
16 the child elsewhere, shall:

17 a. Complete the detention screening instrument and use the results in making a
18 release or hold decision. Release options include allowing a child to return home
19 with parental supervision and a promise to appear for court if notified, or release
20 with limited supervision, such as an electronic monitoring device or conditions for
21 home confinement.

22 b. Release the child to the child's parent, guardian, custodian, or other responsible
23 adult able and willing to assume custody of the child, upon that individual's
24 promise to bring the child before the court if requested by the court, unless the
25 child's detention warranted or required under section 27-20.4-05; or

26 c. Bring the child before the court or deliver the child to a detention facility
27 designated by the court or to a medical facility if the child is believed to suffer
28 from a serious physical condition or illness that requires prompt treatment. The
29 person taking the child into custody promptly shall give notice of taking the child
30 into custody, together with a statement of the reason for taking the child into
31 custody, to a parent, guardian, or other custodian and to the court. Any temporary

1 detention or questioning of the child necessary to comply with this subdivision
2 must conform to the procedures and conditions prescribed by this chapter and
3 rules of court.

4 2. If a parent, guardian, or other custodian, if requested, fails to bring the child before the
5 court as provided in subsection 1, the court may issue a pick up and hold order
6 directing that the child be taken into custody and brought before the court.

7 3. If the petition is not filed within five days after the date of the detention hearing, the
8 child must be released from detention.

9 **27-20.4-08. Place of detention.**

10 A child alleged to be delinquent may be detained only in:

11 1. A licensed foster home or a home approved by the court;

12 2. A facility operated by a licensed child welfare agency;

13 3. A detention home or center for delinquent children which is under the direction or
14 supervision of the court or other public authority or of a private agency approved by
15 the court:

16 a. Any other suitable place or facility, including a medical facility for the treatment of
17 mental illness, alcoholism, or drug addiction, designated by the court; or

18 b. A jail or other facility for the detention of adults only if the facility in subdivision c
19 is not available, the detention is in a room separate and removed from those for
20 adults, it appears to the satisfaction of the court, the director, or designee, that
21 public safety and protection reasonably require detention, and it is so authorized.

22 **27-20.4-09. Release from detention or nonsecure care - Hearing - Conditions of**
23 **release.**

24 1. If a child is brought before the court or delivered to a detention or nonsecure care
25 facility designated by the court, the director, the intake officer, or other authorized
26 officer of the court immediately shall make an investigation and release the child
27 unless it appears that the child's detention is warranted or required under section
28 27-20.4-05.

29 2. Reasonable notice of the release from detention must be provided to any victim as
30 required by subsection 19 of section 12.1-34-02.

- 1 3. If the child is not released, reasonable notice, either oral or written, stating the time,
2 place, and purpose of the detention or shelter care must be given to the child and, if
3 able to be found, to the child's parents, guardian, or other custodian. If the child is not
4 represented by counsel at a proceeding, the court shall inform the child of the right to
5 counsel, regardless of income. Before the commencement of the hearing, the court
6 shall inform the child's parents, legal guardian, or custodian of the right to counsel at
7 public expense at the dispositional stage if the parent, guardian, or custodian applies
8 and is determined to be indigent and of the child's right to remain silent with respect to
9 any allegations of delinquent conduct.
- 10 a. If the child is not released from detention, a judge or referee shall hold a
11 detention hearing within twenty-four hours after the time the child is placed in
12 detention, excluding weekends or legal holidays, to determine whether there is
13 probable cause to believe the child has committed the delinquent act alleged,
14 and whether the child's detention is required under section 27-20.4-05. In
15 determining whether a child requires detention, the court shall consider the
16 results of the detention screening tool.
- 17 b. If the child is not released from nonsecure care, a judge or referee shall hold a
18 hearing promptly and not later than ninety-six hours after the child is placed in
19 nonsecure care to determine whether there is probable cause to believe the child
20 has committed a delinquent act and whether the child's shelter care is required.
- 21 4. If the child is not released and a parent, guardian, or custodian has not been notified
22 of the hearing, did not appear or waive appearance at the hearing, and files an
23 affidavit showing these facts, the court shall rehear the matter without unnecessary
24 delay and order the child's release, unless it appears from the hearing that the child's
25 detention is required under section 27-20.4-05.
- 26 5. If the parents cannot be found or fail to appear for the detention or nonsecure care
27 hearing and the child does not pose a substantial risk to the community and needs to
28 be detained, the human service zone is notified and a child in need of protection or
29 services care hearing is held.
- 30 6. If it appears that any child being held in detention or shelter care may have an
31 intellectual or developmental disability, the court or detention personnel shall refer the

1 child to the department of human services for an eligibility determination and the
2 results of the eligibility determination must be filed with the court within the time
3 required by the court.

4 7. If it appears that any child being held in detention or nonsecure care appears to have
5 a mental health disorder, the detention staff or court intake officer shall request that
6 the court order a mental health hospital placement prescreening that must be
7 conducted within twenty-four hours after the court's order and the results must be filed
8 with the court.

9 8. If an individual who is or appears to be a child is received at a jail facility or other
10 facility for the detention of adult offenders or individuals charged with a crime, the
11 official in charge of the facility immediately shall inform the court and bring the
12 individual before the court upon request or deliver the individual to a detention or
13 nonsecure facility designated by the court.

14 9. If a case is transferred to another court for criminal prosecution, the child may be
15 transferred to the appropriate officer or detention facility in accordance with the law
16 governing the detention of persons charged with crime.

17 **27-20.4-10. Diversion.**

18 1. Before an informal adjustment is held or a petition is filed, the director of juvenile court
19 or designee may determine that no further action is required or impose conditions in
20 lieu of further proceedings for the conduct and control of the child with a diversion to a
21 community-based program or service.

22 2. A child referred to the court may be considered for diversion if any of the following
23 criteria are met:

24 a. ~~The child has no prior formal court adjudications for a similar offense type;~~

25 ~~b.~~ The referral is for a delinquent act that is not an offense requiring a notification to
26 be sent to the department of transportation;

27 ~~e.b.~~ The referral is for a delinquent act that has not been previously diverted more
28 than twice by the juvenile court within the last twelve months; or

29 ~~d.c.~~ The referral is not an offense that could require sex offender registration.

30 3. Effective August 1, 2023, except for a drug-related offense, simple assault under
31 chapter 12.1-17-01, or domestic violence under chapter 12.1-17-01.2, a child who

1 commits a delinquent act, an infraction or misdemeanor offense on school grounds
2 during hours of operation may not be referred to the juvenile court.

3 **27-20.4-11. Informal adjustment.**

- 4 1. Before a petition is filed, the director of juvenile court, or other officer of the court
5 designated by the court, subject to direction of the court may give counsel and advice
6 to the parties and impose conditions for the conduct and control of the child in lieu of
7 further proceedings with a view to an informal adjustment if it appears:
- 8 a. The admitted facts bring the case within the jurisdiction of the court;
9 b. Counsel, advice, and conditions, if any, for the conduct and control of the child
10 without an adjudication would be in the best interest of the public and the child;
11 and
12 c. The child and the child's parents, guardian, or other custodian consent to the
13 conditions with knowledge that consent is not obligatory.
- 14 2. A child referred to the court may be considered for informal adjustment if any of the
15 following criteria are met:
- 16 a. The child has no prior formal court adjudications for a similar case type within the
17 last twelve months;
18 b. The referral is for a delinquent act and the child has not been previously diverted
19 more than twice by the juvenile court;
20 c. A formal petition was filed but an informal adjustment has been requested by the
21 state's attorney as part of an agreement with defense counsel or was ordered by
22 the court in dismissing a formal petition;
23 d. The referral is a sex offense referral that could require sex offender registration
24 but both the state's attorney and the victim have agreed to an informal
25 adjustment to address the matter; or
26 e. The referral is from the division.
- 27 3. Reasonable written notice of the informal adjustment is given by the court to the victim
28 if one is identified on the referral.
- 29 4. Upon an admission to the referred offense, the director of juvenile court or designee
30 will conduct a preliminary risk and needs assessment and the results must be made
31 available to the child and family. The results of the risk and needs assessment are

1 used to inform the outcome of the informal adjustment. Individuals conducting the risk
2 and needs screening tool must receive training on the appropriate delivery and use of
3 the tool. ~~The juvenile court director or designee shall make a diligent inquiry as to the~~
4 ~~identity of the child's parents or guardians and provide the most recent mailing~~
5 ~~address for the parents or guardians to the state's attorney for the purpose of service.~~

6 5. An informal agreement may not extend beyond six months from the day the
7 agreement was agreed upon. An extension may be granted by the court for an
8 additional period not to exceed six months. An extension may not authorize the
9 detention of the child if not otherwise permitted by this chapter. If the child admits to
10 driving or being in actual physical control of a vehicle in violation of section 39-08-01
11 or an equivalent ordinance, the child may be required to pay a fine as a condition
12 imposed under this section.

13 6. An incriminating statement made by a child to the juvenile court director or designee
14 giving counsel, advice, or as part of the risk and need screening and assessment
15 process, may not be used against the child over objection in any proceeding.

16 **27-20.4-12. Petition - Preliminary determination.**

17 A petition alleging delinquency under this chapter must be reviewed by the director, the
18 court, or other person designated by the director and authorized by the court to determine
19 whether the filing of the petition is in the best interest of the public and the child.

20 **27-20.4-13. Petition - Who may prepare and file - Review.**

21 A petition alleging delinquent conduct must be prepared, filed, and served upon the parties
22 by the state's attorney. ~~The juvenile court shall conduct an inquiry into and provide the last~~
23 ~~known addresses of the parents and guardians of the child in the referral to the state's attorney.~~

24 **27-20.4-14. Conduct of hearings.**

- 25 1. Hearings under this chapter must be conducted by the court without a jury, ~~in an~~
26 ~~informal but orderly manner and separately from other proceedings not included in~~
27 ~~section 27-20.2-03 and~~ in accordance with the North Dakota Rules of Juvenile
28 Procedure.
- 29 2. If the hearing has not been held within the time limit, or any extension of the time limit,
30 required by the North Dakota Rules of Juvenile Procedure, the petition must be
31 dismissed.

- 1 3. The state's attorney shall present the evidence in support of any allegations of the
2 petition not admitted and otherwise conduct the proceedings on behalf of the state.
3 4. Except for informal adjustments under section 27-20.4-10, the proceedings must be
4 recorded by stenographic notes or by electronic, mechanical, or other appropriate
5 means.
6 5. The general public must be excluded from all hearings under this chapter. During
7 hearings, only the parties, the parties' counsel, witnesses, victims, and any other
8 persons the court finds have a proper interest in the proceedings may be admitted by
9 the court. The court may temporarily exclude the child or other person from the
10 hearing if, after being warned by the court that disruptive conduct will cause removal
11 from the courtroom, the child or other person persists in conduct that justifies removal
12 from the courtroom.

13 **27-20.4-15. Predispositional assessment.**

- 14 1. Before the disposition hearing, the court shall direct the director or designee, to
15 conduct a predisposition assessment and to prepare a written report for the court,
16 unless waived by the court.
17 2. The predisposition assessment must consist of a risk and needs assessment together
18 with any other appropriate screenings.
19 3. During the pendency of any proceeding the court may order:
20 a. The child to be examined at a suitable place by a physician, psychologist, or
21 certified addiction counselor;
22 b. The child to be tested by appropriate forensic methods to determine whether the
23 child has been exposed to a controlled substance or other substance considered
24 injurious to the child's health;
25 c. Medical or surgical treatment of a child who is suffering from a serious physical
26 condition or illness, or alcohol or drug abuse, which in the opinion of a licensed
27 physician requires prompt treatment, even if the parent, guardian, or other
28 custodian has not been given notice of a hearing, is not available, or without
29 good cause informs the court of that person's refusal to consent to the treatment;
30 or

1 d. An evidence-based risk and needs assessment, mental health screening, or
2 trauma screening.

3 e. The child to be examined to determine the child's competence or criminal
4 responsibility. If the child is found to lack competency or criminal responsibility the
5 court may:

6 (1) Dismiss the delinquency proceedings against the child and order the
7 release of the child to the child's parent, guardian, or legal custodian upon
8 conditions considered appropriate by the court;

9 (2) Suspend the delinquency proceedings against the child for a period of up to
10 one year and order services be provided to the child as an outpatient or
11 inpatient, by commitment to an institution for persons with intellectual
12 disabilities or mental illness; or

13 (3) Dismiss the delinquency proceedings and direct that child in need of
14 protection proceedings be initiated.

15 **27-20.4-16. Adjudication.**

16 1. If the court finds by proof beyond a reasonable doubt that the child committed the acts
17 by reason of which the child is alleged to be delinquent, the court shall proceed
18 immediately or at a postponed hearing to hear evidence as to whether the child is in
19 need of treatment or rehabilitation and to make and file findings. In the absence of
20 evidence to the contrary, evidence of the commission of which constitute a felony is
21 sufficient to sustain a finding that the child is in need of treatment or rehabilitation. If
22 the court finds that the child is not in need of treatment or rehabilitation, the court shall
23 dismiss the proceeding and discharge the child from any detention or other restriction
24 previously ordered.

25 2. After hearing the evidence on the petition, the court shall make and file findings as to
26 whether the child is delinquent and whether the acts ascribed to the child were
27 committed by the child. If the court finds the allegations of delinquent conduct have not
28 been established, the court shall dismiss the petition and order the child discharged
29 from any detention or other restriction previously ordered in the proceeding.

30 3. In hearings under subsection 1, all evidence helpful in determining the questions
31 presented, including the predisposition assessment and any other oral and written

1 reports, may be received by the court and relied upon to the extent of its probative
2 value even though not otherwise competent in the hearing on the petition. The parties
3 or the counsel of the parties must be afforded an opportunity to examine and
4 controvert written reports so received and to cross-examine individuals making the
5 reports. Sources of confidential information need not be disclosed.

- 6 4. On motion of the court or that of a party, the court may continue the hearings under
7 this section for a reasonable period to receive reports and other evidence bearing on
8 the disposition or the need for treatment or rehabilitation. In this event the court shall
9 make an appropriate order for detention of the child or the child's release from
10 detention subject to supervision of the court during the period of the continuance. In
11 scheduling investigations and hearings the court shall give priority to proceedings in
12 which a child is in detention or has otherwise been removed from the child's home
13 before an order of disposition has been made.

14 **27-20.4-17. Disposition of a delinquent child.**

- 15 1. If the child is found to be a delinquent child, the court shall make findings and include
16 in the order of disposition any actions or steps necessary to ensure:
17 a. The child receives the treatment or rehabilitation the court deems most
18 appropriate;
19 b. Accountability to the victim Repairing harm caused to the victim or community;
20 and
21 c. Safety of the community.
- 22 2. If the child is found to be a delinquent child, the court may order probation with
23 conditions best suited to the child's individual need for treatment, rehabilitation, and
24 welfare.
- 25 3. If the court cannot find a less restrictive alternative, the court may commit a child to the
26 division of juvenile services. A risk and need assessment must be the basis for the
27 determination of commitment to the division of juvenile services. The court only may
28 commit a child to the division for a new delinquent offense. Unless all probation
29 extensions have been exhausted, the child's risk and treatment needs continue to be
30 high and the child is refusing to comply with the terms of probation, the court may not
31 commit a child for a violation of the terms of probation.

- 1 4. The court may:
- 2 a. Order the child to make monetary restitution to the victim of the offense or to
- 3 complete a specified number of hours of community service as determined by the
- 4 court, or both;
- 5 b. Order the periodic testing for the use of illicit drugs or alcohol; or
- 6 c. Order the child's participation in a juvenile drug court program.
- 7 5. If the delinquent act committed by the child was a sexual offense, the court shall
- 8 ensure the child is assessed in a timely manner, not to exceed thirty days, with
- 9 age-appropriate social assessments to determine the appropriate level of required
- 10 treatment.

11 **27-20.4-18. Probation of a delinquent child.**

- 12 1. A probation order entered by the court must place the child under the supervision of
- 13 the director.
- 14 2. The conditions of probation must be specifically stated in writing and provided to the
- 15 child.
- 16 3. Probation conditions must relate to the individual child's risk and needs assessment
- 17 and the adjudicated offense.
- 18 4. Violations of probation conditions may be sanctioned by the juvenile director, or
- 19 designee utilizing graduated sanctions and incentives.
- 20 5. Formal probation orders may not exceed twelve months from disposition.
- 21 6. The court may release a child from probation or modify the terms and conditions of the
- 22 probation at any time, but the court shall release a child who has complied
- 23 satisfactorily with the terms, conditions, and duration of probation and the court shall
- 24 terminate the court's jurisdiction.
- 25 7. The director of juvenile court shall establish procedures regarding graduated sanctions
- 26 and incentives. The graduated sanctions program may include a program of home
- 27 confinement or electronic monitoring but may not include a secure detention stay.
- 28 8. The director or assigned probation court officer may request two extensions up to four
- 29 months each or one extension up to four months for intensive supervised probation
- 30 programs for failure to comply or meet the treatment goals of the court order and case
- 31 plan.

1 9. Probation may not be extended solely to collect restitution. If probation is terminated
2 with restitution owing the victim, court procedure governs continued collection or
3 motion for civil judgment against the parents, if appropriate.

4 **27-20.4-19. Delinquent children - Suspension of driving privileges.**

5 1. If a child is adjudicated delinquent of an offense that would be a class A misdemeanor
6 or a felony if the offense were committed by an adult, the juvenile court may order the
7 suspension of the child's driving privileges for a period of up to six months for the first
8 offense. For a second or subsequent offense, the juvenile court may order the
9 suspension of the child's driving privileges for up to one year. As a condition to the
10 return of driving privileges, the juvenile court may order the successful completion of
11 an appropriate driver's examination.

12 2. If the juvenile court orders the suspension of a child's driving privileges, the juvenile
13 court immediately shall take possession of the child's driver's license or permit and
14 send copies of the court's order to the director of the department of transportation who
15 shall make notation of the child's suspension of driving privileges.

16 3. The record of the child's suspension of driving privileges under this section must be
17 kept confidential and may not be released except to law enforcement personnel in
18 connection with law enforcement activities. The record of a child's suspension of
19 driving privileges under this section may not be disclosed to or shared with the
20 licensing officials of any other state or jurisdiction. At the end of the six-month or
21 one-year period, the director shall remove and destroy all record of the child's
22 suspension of driving privileges under this section.

23 4. This section may not be construed to limit consensual agreements between the
24 juvenile court and the child restricting the driving privileges of the child.

25 **27-20.4-20. Restitution.**

26 1. In addition to a child being ordered to make restitution under section 27-20.4-16, a
27 parent of a child adjudged delinquent may be ordered to make restitution on the child's
28 behalf in an amount not exceeding five thousand dollars.

29 2. Before ordering parental restitution under this section, the court shall hold a hearing on
30 the matter with notice given to all interested parties as to the nature and amount of the

1 parental restitution. In determining whether to order parental restitution, the court shall
2 take the following factors into account:

3 a. The ability of the parent or parents to pay monetary restitution and the care and
4 control exercised by the parents.

5 b. The ability of the child to pay monetary restitution.

6 c. Whether ordering parental restitution would detract from the child's treatment,
7 rehabilitation, or welfare.

8 d. The number of delinquent acts, if any, previously committed by the child.

9 3. A parental order of restitution must be limited to those damages directly related to the
10 delinquent act and expenses actually incurred as a result of the delinquent act.

11 4. Unless the court directs otherwise, any order of restitution under this section or section
12 27-20.4-16 may be filed, transcribed, and enforced by the juvenile court or person
13 entitled to the restitution in the same manner as civil judgments rendered by the courts
14 of this state may be enforced. A child against whose parents a judgment may be
15 entered under this section is jointly and severally liable with that child's parents for the
16 amounts up to five thousand dollars and solely liable for any amounts over that
17 amount. Any judgment rendered under this section may not be discharged in
18 bankruptcy and is not subject to the statutes of limitation provided for in chapter 28-01
19 and the judgment may not be canceled under section 28-20-35.

20 **27-20.4-21. Transfer to other courts.**

21 1. After a petition has been filed alleging delinquency based on conduct that is
22 designated a crime or public offense under the laws, including local ordinances or
23 resolutions of this state, the court before hearing the petition on the merits shall
24 transfer the offense for prosecution to the appropriate court having jurisdiction of the
25 offense if:

26 a. The child is over sixteen years of age and requests the transfer;

27 b. The child was fourteen years of age or more at the time of the alleged conduct
28 and the court determines that there is probable cause to believe the child
29 committed the alleged delinquent act and the delinquent act involves the offense
30 of murder or attempted murder; gross sexual imposition or the attempted gross

1 sexual imposition of a victim by force or by threat of imminent death, serious
2 bodily injury, or kidnapping; or

3 c. (1) The child was fourteen or more years of age at the time of the alleged
4 conduct;

5 (2) A hearing on whether the transfer should be made is held in conformity with
6 sections 27-20.2-12, 27-20.2-13, and 27-20.4-14;

7 (3) Notice in writing of the time, place, and purpose of the hearing is given to
8 the child and the child's parents, guardian, or other custodian at least three
9 days before the hearing; and

10 (4) The court finds that there are reasonable grounds to believe:

11 (a) The child committed the delinquent act alleged;

12 (b) The child is not amenable to treatment or rehabilitation as a child
13 through available programs;

14 (c) The child is not treatable in an institution for individuals who are
15 intellectually disabled or who are mentally ill;

16 (d) The interests of the community require that the child be placed under
17 legal restraint or discipline; and

18 (e) If the child is fourteen or fifteen years old, the child committed a
19 delinquent act involving the infliction or threat of serious bodily harm.

20 2. The burden of proving reasonable grounds to believe that a child is amenable to
21 treatment or rehabilitation as a child through available programs is on the child in
22 those cases in which the alleged delinquent act involves the offense of manslaughter,
23 aggravated assault, robbery, arson involving an inhabited structure, or escape
24 involving the use of a firearm, destructive device, or other dangerous weapon or in
25 cases in which the alleged delinquent act involves an offense that if committed by an
26 adult would be a felony and the child has two or more previous delinquency
27 adjudications for offenses that would be a felony if committed by an adult.

28 3. In determining a child's amenability to treatment and rehabilitation, the court shall
29 consider and make specific findings on the following factors:

30 a. Age;

31 b. Mental capacity;

- 1 c. Maturity;
- 2 d. Degree of criminal sophistication exhibited;
- 3 e. Previous record;
- 4 f. Success or failure of previous attempts to rehabilitate;
- 5 g. Whether the child can be rehabilitated before expiration of juvenile court
- 6 jurisdiction;
- 7 h. Any psychological, probation, or institutional reports;
- 8 i. The nature and circumstances of the acts for which the transfer is sought;
- 9 j. The prospect for adequate protection of the public; and
- 10 k. Any other relevant factors.

11 4. A child subject to the jurisdiction of the juvenile court, either before or after reaching
12 eighteen years of age, may not be prosecuted for an offense previously committed
13 unless the case has been transferred as provided in this section.

14 5. Statements made by the child at a hearing under this section are not admissible
15 against the child over objection in the criminal proceedings following the transfer
16 except for impeachment.

17 6. If the case is not transferred, the judge who conducted the hearing may not over
18 objection of an interested party preside at the hearing on the petition. If the case is
19 transferred to a court of which the judge who conducted the hearing is also a judge,
20 the judge likewise is disqualified over objection from presiding in the prosecution.

21 7. An individual at least twenty years of age who committed an offense while a child and
22 was not adjudicated for the offense in juvenile court may be prosecuted in district court
23 as an adult, unless the state intentionally delayed the prosecution to avoid juvenile
24 court jurisdiction. The district court has original and exclusive jurisdiction for the
25 prosecution under this subsection.

26 **27-20.4-22. Court order required for removal of child.**

27 An order of disposition or other adjudication in a proceeding under this chapter, in cases in
28 which a child is removed from the home of a parent, custodian, or guardian for the reason that
29 continuation in such home would be contrary to the welfare of the child, must specifically state
30 that a continuation of the child in the home of the parent, custodian, or guardian would be
31 contrary to the welfare of the child.

1 **27-20.4-23. Limitations of orders of disposition.**

- 2 1. An order of disposition may not exceed twelve months from disposition unless
3 extended by the court. The director or designee may request two extensions up to four
4 months each for the child to complete the treatment goals of the court order and the
5 case plan.
- 6 2. An order of disposition committing a delinquent child to the division of juvenile services
7 may not exceed twelve months. The court may extend the order for an additional
8 twelve-month period, if:
- 9 a. A hearing is held upon motion of the division, or on the court's own motion, prior
10 to the expiration of the order;
- 11 b. Reasonable notice of the hearing and an opportunity to be heard are given to the
12 child and the parent, guardian, or other custodian;
- 13 c. The court finds the extension is necessary for the treatment or rehabilitation of
14 the child and has determined that such treatment cannot be provided in their
15 home community; and
- 16 d. The extension does not exceed twelve months from the expiration of an order
17 limited by subsection 3 or two years from the expiration of any other limited order.
- 18 3. Except as provided in subsection 2, an order of disposition pursuant to which a child is
19 placed in foster care may not continue for more than twelve months after the child is
20 considered to have entered foster care. A permanency hearing must be conducted
21 before the extension of any court order limited under this subsection. Any other order
22 of disposition may not continue in force for more than twelve months.
- 23 4. The court may terminate an order of disposition before the expiration of the order.
- 24 5. Except as provided in subsection 2, the court may terminate an order of disposition or
25 extension before its expiration, on or without an application of a party, if it appears to
26 the court the purposes of the order have been accomplished. If a party may be
27 adversely affected by the order of termination, the order may be made only after
28 reasonable notice and opportunity to be heard have been given to the party.
- 29 6. When the child attains the age of twenty years, all orders affecting the child then in
30 force terminate and the child is discharged from further obligation or control.

1 **27-20.4-24. Reasonable efforts to prevent removal or to reunify - When required.**

2 1. As used in this section, "reasonable efforts" means the exercise of due diligence, by
3 the agency granted authority over the child under this chapter, to use appropriate and
4 available services to meet the needs of the child and the child's family in order to
5 prevent removal of the child from the child's family or, after removal, to use appropriate
6 and available services to eliminate the need for removal, to reunite the child and the
7 child's family, and to maintain family connections. In determining reasonable efforts to
8 be made with respect to a child under this section, and in making reasonable efforts,
9 the child's health and safety must be the paramount concern.

10 2. Except as provided in subsection 4, reasonable efforts must be made to preserve
11 families, reunify families, and maintain family connections:

12 a. Before the placement of a child in foster care, to prevent or eliminate the need for
13 removing the child from the child's home;

14 b. To make it possible for a child to return safely to the child's home;

15 c. Whether and, if applicable, to place siblings in the same foster care, relative,
16 guardianship, or adoptive placement, unless it is determined that such a joint
17 placement would be contrary to the safety or well-being of any of the siblings;
18 and

19 d. In the case of siblings removed from the home of the siblings who are not jointly
20 placed, to provide for frequent visitation or other ongoing interaction between the
21 siblings, unless it is contrary to the safety or well-being of any of the siblings.

22 3. If the court or the child's custodian determined that continuation of reasonable efforts,
23 as described in subsection 2, is inconsistent with the permanency plan for the child,
24 reasonable efforts must be made to place the child in a timely manner in accordance
25 with the permanency plan and to complete whatever steps are necessary to finalize
26 the permanent placement of the child.

27 4. Reasonable efforts of the type described in subsection 2 are not required if:

28 a. A court of competent jurisdiction has determined a parent has subjected a child to
29 aggravated circumstances; or

30 b. The parental rights of the parent, with respect to another child of the parent, have
31 been involuntarily terminated.

- 1 5. Efforts to place a child for adoption, with a fit and willing relative or other appropriate
2 individual as a legal guardian, or in another planned permanent living arrangement,
3 may be made concurrently with reasonable efforts of the type described in
4 subsection 2.
- 5 6. Removal of a child from the child's home for placement in foster care must be based
6 on judicial findings stated in the court's order, and determined on a case-by-case basis
7 in a manner that complies with the requirements of titles IV-B and IV-E of the federal
8 Social Security Act [42 U.S.C. 620 et seq. and 42 U.S.C. 6701 et seq.], as amended,
9 and federal regulations adopted under those federal laws, provided that this
10 subsection may not provide a basis for overturning an otherwise valid court order.
- 11 7. For the purpose of section 27-20.3-17, reasonable efforts were made under this
12 section to meet the child's needs before a foster care placement for a child remaining
13 in care for continued foster care purposes.

14 **27-20.4-25. Law enforcement and correctional facility records.**

- 15 1. Unless a charge of delinquency is transferred for criminal prosecution under section
16 27-20.4-20, the interest of national security requires, or the court otherwise orders in
17 the interest of the child, the law enforcement and correctional facility records and files
18 of a child alleged or found to be delinquent or in need of services or protection are not
19 open to public inspection; but inspection of these records and files is permitted by:
- 20 a. A juvenile court having the child before the court in any proceeding;
21 b. Counsel for a party to the proceeding;
22 c. The officers of public institutions or agencies to whom the child is or may be
23 committed;
24 d. Law enforcement officers of other jurisdictions if necessary for the discharge of
25 official duties of the officers;
26 e. A court in which the child is convicted of a criminal offense for the purpose of a
27 presentence report or other dispositional proceeding, or by officials of correctional
28 facilities to which the child is detained or committed, or by the parole board, the
29 governor, or the pardon advisory board, if one has been appointed, in considering
30 the child's parole or discharge or in exercising supervision over the child;

- 1 f. The professional staff of the uniform crime victims compensation program if
2 necessary for the discharge of the duties of the professional staff pursuant to
3 chapter 54-23.4; and
- 4 g. A superintendent, assistant superintendent, principal, or designee of the school in
5 which the child is currently enrolled or of a school in which the child wishes to
6 enroll.
- 7 2. Notwithstanding that law enforcement records and files of a child alleged or found to
8 be delinquent or in need of services or protection are not open to public inspection,
9 this section does not limit the release of general information that does not identify the
10 identity of the child.

11 **27-20.4-26. Substance use programming.**

- 12 1. If a child is subject to nonjudicial adjustments under this chapter and is found to be
13 delinquent under section 27-20.4-16, or is found to be in need of services or protection
14 under section 27-20.3-16, the juvenile court may require a substance use screening
15 and subsequent programming to appropriately address:
- 16 a. A child who is found to have violated section 39-08-01 or equivalent; or
- 17 b. If a child is found to have an alcohol concentration of at least two one-hundredths
18 of one percent by weight at the time of performance of a test within two hours
19 after driving or being in physical control of a motor vehicle.
- 20 2. If a child is subject to informal adjustment under this chapter and is required to
21 participate in the twenty-four seven sobriety program, the period of participation may
22 not exceed six months.
- 23 3. If a child required to participate in the twenty-four seven sobriety program under this
24 section fails to comply with program requirements without being excused, the testing
25 site shall notify the juvenile court and refer the child to the juvenile court for further
26 disposition. The child may not be detained or otherwise taken into custody without
27 authorization from the juvenile court.
- 28 4. If the juvenile court requires the child to participate in a juvenile drug court program,
29 the juvenile court may waive the participation in the twenty-four seven sobriety
30 program requirements of this section.

1 **SECTION 26.** Section 27-20.4-06 of the North Dakota Century Code, as created by section
2 25 of this Act, is amended and reenacted as follows:

3 **27-20.4-06. Detention - Nonsecure care of child.**

- 4 1. A child taken into custody may not be detained or placed in nonsecure care before the
5 hearing on the petition unless the child's detention or nonsecure care is required to
6 protect the person or property of others or of the child or because the child may
7 abscond or be removed from the jurisdiction of the court or because the child has no
8 parent, guardian, or custodian or other person able to provide supervision and care for
9 the child and return the child to the court if required, or an order for the child's
10 detention or nonsecure care has been made by the court pursuant to this chapter.
- 11 2. Law enforcement, juvenile court staff, and division staff shall use a detention
12 screening tool to assure the appropriate use of detention and whether the child is a
13 public safety risk. The juvenile court shall establish the detention screening tool, which
14 must include objective factors to aid in the decision of placement of the child. Law
15 enforcement, court records, and division records must include data on detention
16 screening scores and, if the score does not authorize detention, the explanation for the
17 override resulting in placing the juvenile in detention.
- 18 3. The court may place a juvenile in detention before adjudication only if the court finds
19 releasing the child would pose an unreasonable risk to public safety and that all
20 restrictive alternatives have been considered.
- 21 4. A juvenile may be placed in a secure detention facility if one or more of the following
22 conditions are met:
- 23 a. The child is alleged to have committed an offense that if committed by an adult
24 would constitute a felony against person, felony weapon, or felony drug
25 distribution;
- 26 b. The child has a record of failure to appear in court or there is probable cause to
27 believe that the child will flee the jurisdiction of the court;
- 28 c. The child has violated the terms of detention release on home confinement or
29 electronic monitoring;

1 d. There is oral or written verification that the child is an alleged delinquent child
2 sought for an offense in another jurisdiction or that the child left a juvenile
3 detention facility without authorization.

4 e. The child is an out-of-state runaway subject to the rules of the interstate
5 commission on juveniles;

6 f. The child meets criteria for secure detention on the detention screening tool; or

7 g. The child meets criteria for an override on the detention screening tool.

8 ~~h. If a child is participating in a juvenile drug court program as a result of an~~
9 ~~adjudication for a delinquent offense, the court may order the child detained in a~~
10 ~~juvenile detention center operated pursuant to chapter 12-44.1. The child may be~~
11 ~~detained twice during the child's participation in the program with the total period~~
12 ~~of detention under this section not to exceed four days in a one-year period.~~

13 5. ~~A child may not be placed in detention solely due to lack of supervision alternatives or~~
14 ~~due to the community's inability to provide appropriate treatment or services.~~ A child
15 may not be placed in detention by law enforcement or juvenile court, including drug
16 court solely:

17 a. Due to a lack of supervision alternatives, service options, or more appropriate
18 facilities.

19 b. Due to the community's inability to provide treatment or services.

20 c. Due to a lack of supervision in the home or community.

21 d. In order to allow a parent, guardian, or legal custodian to avoid his or her legal
22 responsibility.

23 e. Due to a risk of the juvenile's self-harm.

24 f. In order to attempt to punish, treat, or rehabilitate the child.

25 g. Due to a request by a victim, law enforcement, or the community.

26 h. In order to permit more convenient administrative access to the juvenile.

27 6. Alternatives to secure detention may be utilized to include home confinement,
28 electronic monitoring, and parental or guardian supervision if the court determines
29 there is no unreasonable risk to public safety.

- 1 7. A child placed in detention must have a mental health and trauma screening tool
2 completed by the juvenile detention center or by juvenile court upon entry and provide
3 that information to the juvenile court before release or detention hearing.

4 **SECTION 27. AMENDMENT.** Subsections 2 and 3 of section 27-21-02 of the North Dakota
5 Century Code are amended and reenacted as follows:

- 6 2. Placement in the care of the North Dakota youth correctional center ~~or in a career and~~
7 ~~technical education, training, or other treatment and rehabilitation institution for~~
8 ~~children or young adults within this state;~~ or
9 3. Placement in the care of a career and technical education, training, or other treatment
10 and rehabilitation institution for children or young adults within this state or in another
11 state in the event that adequate facilities for the child's treatment and rehabilitation are
12 not available within this state and the committing juvenile court concurs in the
13 placement.

14 **SECTION 28. AMENDMENT.** Subsection 3 of section 27-21-02.1 of the North Dakota
15 Century Code is amended and reenacted as follows:

- 16 3. The division may conduct a permanency hearing, as authorized by section
17 ~~27-20-36~~27-20.4-23, if an appropriate permanency plan may be carried out without
18 exceeding the division's authority.

19 **SECTION 29. AMENDMENT.** Section 27-21-09 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **27-21-09. Cooperation with other agencies and departments of the state - Right to**
22 **inspect facilities of state institutions - Right to examine children.**

- 23 1. The division of juvenile services may enter contracts with service providers as
24 necessary to meet the mission of the division.
25 2. The division of juvenile services shall cooperate with and receive the cooperation of
26 the department of human services, the department of public instruction, the
27 department of career and technical education, the juvenile courts, the state
28 department of health, and such other agencies and departments of the state as may
29 be necessary to carry out the objectives of this chapter.
30 3. The division of juvenile services may inspect at all reasonable times the facilities of
31 those institutions within the state it is authorized to utilize under this chapter, and may

1 examine any child it has placed in the care of such institution, and may contract with
2 public and private agencies to provide services for them or to retain from them
3 required services to meet the purpose and objective of this chapter.

4 **SECTION 30. AMENDMENT.** Subsections 2 and 5 of section 27-21-12 of the North Dakota
5 Century Code are amended and reenacted as follows:

6 2. Notwithstanding any other provisions of law relating to confidentiality, except for the
7 confidentiality requirements of federal drug and alcohol treatment and rehabilitation
8 laws, the division may disclose all or part of a juvenile's files and records, including
9 juvenile court orders, medical, psychological, education, and treatment and counseling
10 records, to individuals employed by the following if the knowledge is reasonably
11 necessary in the best interest of the juvenile and for the protection of others:

12 a. The district court or juvenile court.

13 b. A parent or legal guardian of the juvenile, the parent's or legal guardian's
14 counsel, or the juvenile's counsel, when the juvenile court has committed the
15 juvenile to the custody of the division of juvenile services, and the records are
16 relevant to a proceeding under chapter ~~27-2027-20.4~~ or to a placement hearing
17 under section 27-21-02.1, or when disclosure is necessary for the juvenile's
18 treatment and rehabilitation plan. If the juvenile court determines that it is against
19 the best interests of the juvenile to disclose records to a parent or legal guardian,
20 the juvenile court may issue an order prohibiting disclosure and describing the
21 records that may not be disclosed.

22 c. An employee or agent of any division of the department of corrections and
23 rehabilitation when necessary to carry out the duties of the department.

24 d. The department of human services or a human service zone.

25 e. A licensed hospital or medical facility, a public or private treatment facility, or a
26 residential care or treatment facility, when necessary for the evaluation,
27 treatment, or care of a juvenile in the custody of the division of juvenile services.

28 f. A law enforcement agency when the division has reasonable grounds to believe
29 the juvenile has committed a delinquent act or has threatened to commit a
30 delinquent act involving serious bodily injury, or when the juvenile is required to
31 register, or is registered, under section 12.1-32-15.

- 1 g. A school district or multidistrict special education program in which the juvenile is
2 enrolled.
- 3 h. The office of the attorney general.
- 4 i. The risk management division of the office of management and budget and
5 investigators, consultants, or experts retained by the state for the purpose of
6 investigating and defending claims under chapter 32-12.2.
- 7 5. The division may disclose the files and records of a juvenile under ~~subdivision f or g of~~
8 ~~subsection 1 of section 27-20-51~~ section 27-20.2-2227-20.2-21.

9 **SECTION 31. AMENDMENT.** Section 30.1-27-02 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **30.1-27-02. (5-202) Testamentary appointment of guardian of minor.**

12 The parent of a minor may appoint by will a guardian of an unmarried minor. A testamentary
13 appointment becomes effective upon filing the guardian's acceptance in the court in which the
14 will is probated and remains effective upon approval by the court either after or without a
15 hearing, if, before acceptance, both parents are dead or the surviving parent's rights have been
16 terminated by prior court order. If both parents are dead, an effective appointment by the parent
17 who died later has priority. This state recognizes a testamentary appointment effected by filing
18 the guardian's acceptance under a will probated in another state which is the testator's domicile
19 and upon approval by the court either after or without a hearing. Upon acceptance of
20 appointment, written notice of acceptance must be given by the guardian to the minor and to the
21 person having the minor's care or to the minor's nearest adult relative under ~~section 27-20-02-~~
22 27-20.3-02. Within forty-five days of the filing of acceptance, the testamentary guardian must
23 file with the court a criminal history record check report and affidavit stating whether the
24 proposed guardian has been investigated for offenses related to theft, fraud, or the abuse,
25 neglect, or exploitation of an adult or child and shall provide a release authorizing access to any
26 record information maintained by an agency in this or another state or a federal agency.

27 **SECTION 32. AMENDMENT.** Subsection 3 of section 30.1-27-06 of the North Dakota
28 Century Code is amended and reenacted as follows:

- 29 3. The guardian ad litem shall serve a copy of the report on the minor if the minor is
30 fourteen years of age or older, the testamentary guardian, the person having the

1 minor's care or the minor's nearest adult relative under section ~~27-20-02~~27-20.3-02,
2 and the personal representative of the deceased parent's estate.

3 **SECTION 33. AMENDMENT.** Section 39-06-32.1 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **39-06-32.1. Suspension of child's driving privileges.**

6 Upon receipt of a copy of an order of a juvenile court ordering the suspension of a child
7 operator's license, the director shall suspend the operator's license and make notation of the
8 length of time of the suspension. During the time of the suspension, an application for a class D
9 instruction permit may not be accepted from the child. For purposes of this section, "child" is
10 defined by section ~~27-20-02~~27-20.4-02.

11 **SECTION 34. AMENDMENT.** Subsection 2 of section 39-20-01 of the North Dakota
12 Century Code is amended and reenacted as follows:

13 2. The test or tests must be administered at the direction of a law enforcement officer
14 only after placing the individual under arrest for violation of section 39-08-01 or an
15 equivalent offense. For the purposes of this chapter, the taking into custody of a child
16 under section ~~27-20-13~~27-20.4-05 or an individual under twenty-one years of age
17 satisfies the requirement of an arrest. The law enforcement officer shall determine
18 which of the tests is to be used.

19 **SECTION 35. AMENDMENT.** Section 39-24.1-01 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **39-24.1-01. Implied consent to determine alcohol concentration and presence of**
22 **drugs.**

23 An individual who operates a snowmobile on any public land or private land with public
24 access is deemed to have given consent, and shall consent, subject to this chapter, to a
25 chemical test, or tests, of the blood, breath, or urine for the purpose of determining the alcohol
26 concentration or presence of other drugs, or combination thereof, in the individual's blood,
27 breath, or urine. As used in this chapter, the definitions in section 39-24-01 apply, and in
28 addition, "chemical test" means any test or tests to determine the alcohol concentration or
29 presence of other drugs, or combination thereof, in the individual's blood, breath, or urine,
30 approved by the director of the state crime laboratory or the director's designee under this
31 chapter; and "drug" means any drug or substance or combination of drugs or substances which

1 renders an individual incapable of safely operating a snowmobile. The chemical test must be
2 administered at the direction of a law enforcement officer only after placing the individual,
3 except individuals mentioned in section 39-24.1-04, under arrest and informing that individual
4 that the individual is or will be charged with the offense of operating a snowmobile while under
5 the influence of intoxicating liquor, drugs, or a combination thereof. For the purposes of this
6 chapter, the taking into custody of a minor under section ~~27-20-13~~27-20.4-05 satisfies the
7 requirement of an arrest. The law enforcement officer shall also inform the individual charged
8 that refusal of the individual to submit to the chemical test determined appropriate will result in
9 that individual being prohibited from operating a snowmobile for up to three years. The law
10 enforcement officer shall determine the chemical test to be used. When a minor is taken into
11 custody for violating subdivision c of subsection 5 of section 39-24-09, the law enforcement
12 officer shall diligently attempt to contact the minor's parent or legal guardian to explain the
13 cause for the custody and the implied consent chemical testing requirements. Neither the law
14 enforcement officer's efforts to contact, nor any consultation with, a parent or legal guardian
15 may be permitted to interfere with the administration of chemical testing requirements under this
16 chapter.

17 **SECTION 36. AMENDMENT.** Subsection 5 of section 50-06-05.1 of the North Dakota
18 Century Code is amended and reenacted as follows:

19 5. To provide for the study, and to promote the well-being, of ~~deprived~~a child in need of
20 protection, unfulya child in need of services, and delinquent children.

21 **SECTION 37. AMENDMENT.** Section 50-25.1-02 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **50-25.1-02. Definitions.**

24 In this chapter, unless the context or subject matter otherwise requires:

- 25 1. "A person responsible for the child's welfare" means an individual who has
26 responsibility for the care or supervision of a child and who is the child's parent, an
27 adult family member of the child, any member of the child's household, the child's
28 guardian, or the child's foster parent; or an employee of, or any person providing care
29 for the child in, a public or private school or child care setting.
- 30 2. "Abuse of alcohol", "alcohol abuse", or "abused alcohol" means alcohol use disorder
31 as defined in the current edition of the "Diagnostic and Statistical Manual of Mental

1 Disorders" published by the American psychiatric association or a maladaptive use of
2 alcohol with negative medical, sociological, occupational, or familial effects.

3 3. "Abused child" means an individual under the age of eighteen years who is suffering
4 from abuse as defined in section 14-09-22 caused by a person responsible for the
5 child's welfare and "sexually abused child" means an individual under the age of
6 eighteen years who is subjected by a person responsible for the child's welfare, or by
7 any individual, including a juvenile, who acts in violation of sections 12.1-20-01
8 through 12.1-20-07, sections 12.1-20-11 through 12.1-20-12.3, or chapter 12.1-27.2.

9 4. "Alternative response assessment" means a child protection response involving
10 substance exposed newborns which is designed to:

- 11 a. Provide referral services to and monitor support services for a person responsible
12 for the child's welfare and the substance exposed newborn; and
13 b. Develop a plan of safe care for the substance exposed newborn.

14 5. "Authorized agent" means the human service zone, unless another entity is
15 designated by the department.

16 6. "Child in need of services" means a child who in any of the following instances is in
17 need of treatment or rehabilitation:

18 a. Is habitually and without justification truant from school or absent from school
19 without an authorized excuse for more than five days during a school year;

20 b. Is habitually disobedient of the reasonable and lawful commands of the child's
21 parent, guardian, or other custodian including runaway and is ungovernable or
22 who is willfully in a situation that is dangerous or injurious to the health, safety, or
23 morals of the child or others;

24 c. Except for an offense committed by a minor who is fourteen years of age or older
25 under subsection 2 of section 12.1-31-03 or an equivalent local ordinance or
26 resolution, has committed an offense applicable only to a child; or

27 d. Is under fourteen years of age and has purchased, possessed, smoked, or used
28 tobacco, a tobacco-related product, an electronic smoking device, or an
29 alternative nicotine product in violation of subsection 2 of section 12.1-31-03. As
30 used in this subdivision, "electronic smoking device" and "alternative nicotine
31 product" have the same meaning as in section 12.1-31-03.

- 1 | 7. "Child protection assessment" means a factfinding process designed to provide
2 | information that enables a determination to be made that services are required to
3 | provide for the protection and treatment of an abused or neglected child and an
4 | evidence-based screening tool.
- 5 | ~~7.8.~~ "Children's advocacy center" means a full or associate member of the national
6 | children's alliance which assists in the coordination of the investigation in response to
7 | allegations of child abuse by providing a dedicated child-friendly location at which to
8 | conduct forensic interviews, forensic medical examinations, and other appropriate
9 | services and which promotes a comprehensive multidisciplinary team response to
10 | allegations of child abuse. The team response may include forensic interviews,
11 | forensic medical examinations, mental health and related support services, advocacy,
12 | and case review.
- 13 | ~~8.9.~~ "Citizen review committee" means a committee appointed by the department to review
14 | the department's provision of child welfare services.
- 15 | ~~9.10.~~ "Department" means the department of human services or its designee.
- 16 | ~~10.11.~~ "Family services assessment" means a child protection services response to reports of
17 | suspected child abuse or neglect in which the child is determined to be at low risk and
18 | safety concerns for the child are not evident according to guidelines developed by the
19 | department and an evidence-based screening tool.
- 20 | ~~11.12.~~ "Institutional child abuse or neglect" means situations of known or suspected child
21 | abuse or neglect when the institution responsible for the child's welfare is a residential
22 | child care facility, a treatment or care center for individuals with intellectual disabilities,
23 | a public or private residential educational facility, a maternity home, or any residential
24 | facility owned or managed by the state or a political subdivision of the state.
- 25 | ~~12.13.~~ "Local child protection team" means a multidisciplinary team consisting of the
26 | designee of the human service zone director who shall serve as presiding officer,
27 | together with such other representatives as that director might select for the team. All
28 | team members, at the time of their selection and thereafter, must be staff members of
29 | the public or private agencies they represent or shall serve without remuneration. An
30 | attorney member of the child protection team may not be appointed to represent the
31 | child or the parents at any subsequent court proceeding nor may the child protection

1 team be composed of fewer than three members. The department may coordinate the
2 organization of local child protection teams on a human service zone basis.

3 ~~13.14.~~ "Near death" means an act that, as certified by a physician, places a child in serious or
4 critical condition.

5 ~~14.15.~~ "Neglected child" means a child who, due to the action or inaction of a person
6 responsible for the child's welfare:

- 7 a. Is without proper care or control, subsistence, education as required by law, or
8 other care or control necessary for the child's physical, mental, or emotional
9 health, or morals, and is not due primarily to the lack of financial means of a
10 person responsible for the child's welfare;
- 11 b. Has been placed for care or adoption in violation of law;
- 12 c. Has been abandoned;
- 13 d. Is without proper care, control, or education as required by law, or other care and
14 control necessary for the child's well-being because of the physical, mental,
15 emotional, or other illness or disability of a person responsible for the child's
16 welfare, and that such lack of care is not due to a willful act of commission or act
17 of omission, and care is requested by a person responsible for the child's welfare;
- 18 e. Is in need of treatment and a person responsible for the child's welfare has
19 refused to participate in treatment as ordered by the juvenile court;
- 20 f. Was subject to prenatal exposure to chronic or severe use of alcohol or any
21 controlled substance as defined in chapter 19-03.1 in a manner not lawfully
22 prescribed by a practitioner;
- 23 g. Is present in an environment subjecting the child to exposure of a controlled
24 substance, chemical substance, or drug paraphernalia as prohibited by section
25 19-03.1-22.2; or
- 26 h. Is a victim of human trafficking as defined in title 12.1.

27 ~~15.16.~~ "Prenatal exposure to a controlled substance" means use of a controlled substance as
28 defined in chapter 19-03.1 by a pregnant woman for a nonmedical purpose during
29 pregnancy as evidenced by withdrawal symptoms in the child at birth, results of a
30 toxicology test performed on the mother at delivery or the child at birth, or medical

1 effects or developmental delays during the child's first year of life that medically
2 indicate prenatal exposure to a controlled substance.

3 ~~16.17.~~ "Protective services" includes services performed after an assessment of a report of
4 child abuse or neglect has been conducted, such as social assessment, service
5 planning, implementation of service plans, treatment services, referral services,
6 coordination with referral sources, progress assessment, monitoring service delivery,
7 and direct services.

8 ~~17.18.~~ "State child protection team" means a multidisciplinary team consisting of the
9 designee of the department and, where possible, of a physician, a representative of a
10 child-placing agency, a representative of the state department of health, a
11 representative of the attorney general, a representative of the superintendent of public
12 instruction, a representative of the department of corrections and rehabilitation, one or
13 more representatives of the lay community, and, as an ad hoc member, the designee
14 of the chief executive official of any institution named in a report of institutional abuse
15 or neglect. All team members, at the time of their selection and thereafter, must be
16 staff members of the public or private agency they represent or shall serve without
17 remuneration. An attorney member of the child protection team may not be appointed
18 to represent the child or the parents at any subsequent court proceeding nor may the
19 child protection team be composed of fewer than three persons.

20 ~~18.19.~~ "Substance exposed newborn" means an infant younger than twenty-eight days of age
21 at the time of the initial report of child abuse or neglect and who is identified as being
22 affected by substance abuse or withdrawal symptoms or by a fetal alcohol spectrum
23 disorder.

24 **SECTION 38. AMENDMENT.** Section 50-25.1-06 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **50-25.1-06. Protective and other services to be provided.**

27 1. The department shall provide protective services for the abused or neglected child and
28 other children under the same care as may be necessary for their well-being and shall
29 provide other appropriate social services, as the circumstances warrant, to the
30 parents, custodian, or other persons serving in loco parentis with respect to the child

1 or the other children. The department may discharge the duties described in this
2 section through an authorized agent.

3 2. The department shall provide appropriate services to a child referred as a child in
4 need of services and shall provide appropriate services to the person responsible for
5 the child's welfare and the children under the same care as may be necessary for the
6 well-being and safety of the children.

7 **SECTION 39. AMENDMENT.** Subdivision a of subsection 4 of section 50-06-43.2 of the
8 North Dakota Century Code is amended and reenacted as follows:

9 a. Review ~~chapter 27-20~~ chapters 27-20.1, 27-20.2, 27-20.3, and 27-20.4;

10 **SECTION 40. AMENDMENT.** Subsection 1 of section 50-11.3-01 of the North Dakota
11 Century Code is amended and reenacted as follows:

12 1. Before appointment as a legal guardian under ~~chapter 27-20~~ 27-20.1, the individual to
13 be appointed legal guardian must be subject to an assessment that includes the result
14 of a criminal history record investigation made under this section. In addition, any adult
15 living in the household of the individual to be appointed legal guardian must be subject
16 to a criminal history record investigation made under this section.

17 **SECTION 41. AMENDMENT.** Subsection 4 of section 50-25.1-15 of the North Dakota
18 Century Code is amended and reenacted as follows:

19 4. If an infant is left at a hospital, the hospital shall provide the parent or the agent with a
20 numbered identification bracelet to link the parent or the agent to the infant, unless
21 due to birth of the infant, the infant and parent currently have an identification bracelet.
22 Possession of an identification bracelet does not entitle the bracelet holder to take
23 custody of the infant on demand. If an individual possesses a bracelet linking the
24 individual to an infant left at a hospital under this section and parental rights have not
25 been terminated, possession of the bracelet creates a presumption that the individual
26 has standing to participate in a protection services action brought under this chapter or
27 chapter ~~27-20~~ 27-20.3. Possession of the bracelet does not create a presumption of
28 maternity, paternity, or custody.

29 **SECTION 42. AMENDMENT.** Subsection 2 of section 54-12-34 of the North Dakota Century
30 Code is amended and reenacted as follows:

1 2. The criminal justice data information sharing system may be accessed only in
2 accordance with rules adopted under this section. Any law enforcement record in the
3 possession of the attorney general through the criminal justice data information
4 sharing system is an exempt record. Criminal justice data information about an offense
5 committed by a child if the offense has not been transferred under
6 section ~~27-20-34~~27-20.4-21 to another court having jurisdiction of the offense and
7 information about a child victim or witness is confidential.

8 **SECTION 43. AMENDMENT.** Section 54-23.4-17 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **54-23.4-17. Confidentiality of records.**

11 Juvenile or law enforcement records obtained under chapter ~~27-20~~27-20.4 may be released
12 to the parties, their counsel, and representatives of the parties in proceedings before the
13 division and must be sealed at the conclusion of the proceedings. All other records of the
14 division concerning the application for or award of compensation under this chapter are
15 confidential and are not open to public disclosure. Inspection of these records, however, must
16 be permitted by:

- 17 1. Law enforcement officers when necessary for the discharge of their official duties.
- 18 2. Representatives of a claimant, whether an individual or an organization, who may
19 review a claim file or receive specific information from the file upon the presentation of
20 the signed authorization of the claimant.
- 21 3. Physicians or health care providers treating or examining persons claiming benefits
22 under this title, or physicians giving medical advice to the division regarding any claim,
23 at the discretion of the division.
- 24 4. Any person who is rendering assistance to the division at any stage of the proceedings
25 on any matter pertaining to the administration of this chapter.
- 26 5. Juvenile or law enforcement records obtained under chapter ~~27-20~~27-20.4 may be
27 released to the parties, their counsel, and representatives in proceedings before the
28 division and must be sealed at the conclusion of the proceedings.

29 **SECTION 44. AMENDMENT.** Section 62.1-02-01 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **62.1-02-01. Persons who are not to possess firearms - Penalty.**

- 2 1. a. A person who has been convicted anywhere of a felony offense involving
3 violence or intimidation in violation of chapters 12.1-16 through 12.1-25 or an
4 equivalent felony offense of another state or the federal government is prohibited
5 from owning a firearm or having one in possession or under control from the date
6 of conviction and continuing for a period of ten years after the date of conviction
7 or the date of release from incarceration, parole, or probation, whichever is latest.
- 8 b. A person who has been convicted anywhere of a felony offense of this or another
9 state or the federal government not provided for in subdivision a or who has been
10 convicted of a class A misdemeanor offense involving violence or intimidation in
11 violation of chapters 12.1-16 through 12.1-25 or an equivalent offense of another
12 state or the federal government and the offense was committed while using or
13 possessing a firearm, a dangerous weapon, or, as defined in section 12.1-01-04,
14 a destructive device or an explosive, is prohibited from owning a firearm or
15 having one in possession or under control from the date of conviction and
16 continuing for a period of five years after the date of conviction or the date of
17 release from incarceration, parole, or probation, whichever is latest.
- 18 c. A person who is or has ever been diagnosed and confined or committed to a
19 hospital or other institution in this state or elsewhere by a court of competent
20 jurisdiction, other than a person who has had the petition that provided the basis
21 for the diagnosis, confinement, or commitment dismissed under section
22 25-03.1-17, 25-03.1-18, or 25-03.1-19, or equivalent statutes of another
23 jurisdiction, as a person requiring treatment as defined in section 25-03.1-02, or
24 as a mentally deficient individual, is prohibited from purchasing a firearm or
25 having one in possession or under control. This limitation does not apply to a
26 person who has not suffered from the disability for the previous three years or
27 who has successfully petitioned for relief under section 62.1-02-01.2.
- 28 d. A person under the age of eighteen years may not possess a handgun except
29 that such a person, while under the direct supervision of an adult, may possess a
30 handgun for the purposes of firearm safety training, target shooting, or hunting.

1 A person who violates subdivision a or b is guilty of a class C felony, and a person who
2 violates subdivision c or d is guilty of a class A misdemeanor.

3 2. For the purposes of this section, "conviction" means a determination that the person
4 committed one of the above-mentioned crimes upon a verdict of guilt, a plea of guilty,
5 or a plea of nolo contendere even though:

6 a. The court suspended execution of sentence in accordance with subsection 3 of
7 section 12.1-32-02;

8 b. The court deferred imposition of sentence in accordance with subsection 4 of
9 section 12.1-32-02;

10 c. The court placed the person on probation;

11 d. The person's conviction has been reduced in accordance with subsection 9 of
12 section 12.1-32-02 or section 12.1-32-07.1;

13 e. Sentence dispositions, sentence reductions, or offense determinations equivalent
14 to this section were imposed or granted by a court, board, agency, or law of
15 another state or the federal government; or

16 f. The person committed an offense equivalent to an offense described in
17 subdivision a or b of subsection 1 when that person was subject to juvenile
18 adjudication or proceedings and a determination of a court under chapter
19 ~~27-2027-20.4~~ or of a court of another state or the federal government was made
20 that the person committed the delinquent act or offense.

21 3. A felon who is not sentenced under section 12.1-32-09.1 may possess a rifle that has
22 a barrel sixteen inches [40.72 centimeters] or longer or a shotgun that has a barrel
23 eighteen inches [45.72 centimeters] or longer and which is one of the following:

24 a. A firearm, including any firearm with a matchlock, flintlock, percussion cap, or
25 similar type of ignition system, manufactured before 1899.

26 b. A replica of any firearm described in subdivision a, if the replica is not designed
27 or redesigned for using rimfire or conventional centerfire fixed ammunition or
28 uses rimfire or conventional centerfire fixed ammunition that is no longer
29 manufactured in the United States and which is not readily available in the
30 ordinary channels of commercial trade.

- 1 c. A muzzleloading rifle or muzzleloading shotgun designed to use black powder or
2 a black powder substitute and which cannot use fixed ammunition.

3 **SECTION 45. REPEAL.** Chapter 27-20 and section 27-21-03 of the North Dakota Century
4 Code are repealed.

5 **SECTION 46. EFFECTIVE DATE.** Sections 24 and 26 of this Act become effective on
6 August 1, 2022.