

2015 HOUSE JUDICIARY

HB 1210

2015 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1210
1/21/2015
22287

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the option of court-ordered rehabilitative programming for the parents, guardian, or other custodian of a deprived child.

Minutes:

Testimony 1, 2

Chairman K.Koppelman: Opened the hearing on HB 1210 with testimony in support.

Rep. L. Klemin: HB 1210 deals with situations relating to the temporary custody of children in the custody of a foster parent. Sometimes the foster parent doesn't always know what is going on with relation to the child and its custody. Mr. Jon Mielke is a foster parent in Bismarck and he is here to give further information about what this bill does.

Jon Mielke, Foster Parent: (See Testimony #1) (2:08-7:40)

Rep. P. Anderson: What would be your definition of reasonable period of time?

Jon Mielke: there are a few phases in the bill that aren't specific and that is because I don't think we should take all the discursion for preceding officers so it leaves somewhat open. It may be one day and the preceding officer might decide it should be a week or month so they would still have that discretion but certainly not issuing them without good cause and effective the same day. It does place a hardship on the people involved and especially potentially being traumatizing for the children.

Chairman K.Koppelman: I appreciate and commend you for all the care you provide as a foster parent. The law in most cases generally air on the side of the biological families in trying to reunite them. Do you see a potential flip side to this that perhaps it could inconvenience or damage the biological family?

Jon Mielke: That is why there are phases in the proposed legislation that say without good cause or reasonable time so it is still gives the court discretion. I am not suggesting all orders lack that. Most of them do but we have definitely experienced instances in the foster parents that we know within this area and from around the state can tell you some stories.

Sandy Benewalk, Director Stutsman County Social Services: (See testimony #2)
(11:32-15:00)

Rep. Lois Delmore: Are there reports and forms filled out for every visit?

Sandy Benewalk: Yes; those are tracked in case management we have to track what all the visits are. If there is very good interaction or some of the situations I have talked that is documented also.

Rep. Lois Delmore: Sometimes people won't sign those forms so there is no recourse and then you don't have access to them even though they have been filled out and done if they don't sign them you don't see them. Is that correct?

Sandy Benewalk: When I was speaking about that I was speaking if they were going to consulting or if they are having other reports or other agencies and those agencies cannot give us the information because of confidentiality laws unless we have a release so the parent has to be willing to sign that release for the agency to give us those reports.

Rep. Brabandt: It says parent visiting their children under the influence of drugs. Does this happen a lot?

Sandy Benewalk: Yes it is not uncommon that it happens. There are times when we ask for a drug testing before they can have a visit with their child, but all the laws require us to make sure that the parent does have the opportunity to visit the child so we can't be doing that all the time.

Rep. Kretschmar: In your county how many children are in foster care on an average over the year?

Sandy Benewalk: In our county the numbers have gone up drastically in the last couple years. It is about 30.

Rep. Kretschmar: Do you know how many there are statewide?

Sandy Benewalk: I have good access to that information but I don't remember what it is. I can get you that information.

Rep. Mary Johnson: I presume legal custody in this situation is with the county?

Sandy Benewalk: Yes that would be the case in the situations I am talking about. I can look up where that is in the code for you.

Chairman K.Koppelman: Is there a flip side to this that can somehow mitigate the removal of a child for foster care just like we are trying to mitigate the return to the family?

Sandy Benewalk: Those are very accurate comments and ones that we are thinking about at all times. In the last few years placement with relatives has gotten a lot better. Those numbers have gone up quite a bit. We try to keep the child as close as we can and

connected with the family. Family team decision making which is pulling like in Burleigh County; when there is talk about having to remove all the people who are close to try bring them together to try and figure out if there is another yet plan and the hope is to reduce the place in foster care.

Chairman K.Koppelman: Is there anything in law requiring that kind of consideration or is that something you and your counter parts are doing on your own.

Sandy Benewalk: I am not aware of anything in the law that would say that.

Rep. D. Larson: I have been a part of the family team decision making process and it is excellent. Is there any move to expand that across the state into other areas it is very effective. The families are very well respected in that process and are asked for to bring in some people they think can help them to be successful in their parenting.

Sandy Benewalk: Thank you for that comment. I testified yesterday in favor of adding that back into the budget. It was an OAR that the department put together, but it was not one that made the budget. Now it is in four counties and the OAR was to expand to six additional counties at a cost of \$25,000 each so it is not a high ticket amount. Basically it is for a facilitator to help make this happen.

Rep. Brabandt: When did foster care become so prevalent?

Sandy Benewalk: I don't have an answer for that. I have been at Stutsman County for ten years as the director and I have seen an increase every year. When I grew up I wasn't aware of foster care that much either. Our numbers have gone up the last few years because of drug use. I am sure that the department we have those stats if you wish to see it.

Sheri Doe, Director of the Division of Children and Family Services to the Department: Today there are over 2,000 children in foster care in ND. There have been a 42% increase in the number of placements since 2010 and most of those are to families and foster home settings. The number made with relatives has also increased. We need more emphasis on pre removal, prevention and getting to the families early is very important. The influx of families and cases has just overwhelmed everyone in ND. Back in 1998 the federal government passed the ASFA laws which revolutionized foster care in the county. It set up the rules and guidelines and that is still being fine-tuned as we speak today.

Rep. K. Wallman: Do those statistics include PATH. Foster care for those children with special needs and special help?

Sheri Doe: Yes it does?

Chairman K.Koppelman: Is there anything in law as children are removed and go into foster care is there anything in law requiring children go to within family relative care?

Sheri Doe: The Child Abuse and Neglect laws we have on the books are very specific about what would constitute abuse. County custodians are not quick to remove children and we don't do it alone. It is in conjunction with their judicial partners. A judge and judicial referee have to review the circumstances of that removal before they will grant the removal order. I think parents' rights are respected. Judges are very attuned to the rights of the parents. When we go into court after we have removed a child we need to as workers be able to prove that we have done reasonable efforts to get that child home.

Chairman K.Koppelman: This bill speaks to how that happens when a child is taken from the home. What constitutes neglect or abuse? It sounds like some people are doing a good job of caring for children.

Rep. D. Larson: I have full confidence that the family's rights are being protected in every situation that I have been involved with in my career. Since we are putting something into law I also believe we need to be careful because it wasn't very long ago that I was in favor of mandatory sentencing because things weren't happening the way they should, but now maybe things need to soften a bit so I think it is good to be careful about what we put into law. I do not have any concerns on the way it is happening now.

Opposition: None

Neutral: None

Hearing closed.

2015 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1210
1/27/2015

22659

Subcommittee

Conference Committee

Committee Clerk Signature



Minutes:

Chairman K.Koppelman: Discussed HB 1210.

Rep. L. Klemin: This bill was on keeping foster parent informed about what is going on with their person they have legal custody over.

Chairman K.Koppelman: the only thing was our intern was going to check on whether there is other Century Code dealing with this and also about the removal of children from the home as well as the return of children from the home and whether there should be some language that addresses both. I will try to take a look at that and maybe we can look at this tomorrow.

2015 HOUSE STANDING COMMITTEE MINUTES

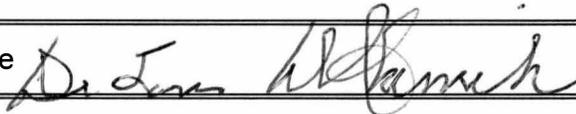
House Judiciary Committee
Prairie Room, State Capitol

HB 1210
2/4/2015
23257

Subcommittee

Conference Committee

Committee Clerk Signature



Minutes:

Proposed Amendment #1

Chairman K. Koppelman: Opened the meeting on this bill. This is the bill that deals with foster care and the removal of a child from foster care in order to bring that child back into the home.

Rep. Karls: (Proposed amendment #1) went over the proposed amendment. (1:08-2:54)

Rep. Karls Made a Motion to Move the amendment; Seconded by Rep. K. Hawken:

Discussion:

Rep. L. Klemin: Discussed the work custody. Maybe you meant protective placement?

Rep. D. Larson: It is considered legal custody in line 11. Whenever we were talking to a child we always referred to who has legal custody of you. It would be court custody and I believe when you are talking about juveniles the verbiage you would use would be for the purpose of guardianship.

Rep. L. Klemin: Maybe it could be legal custody then to be consistent.

Chairman K. Koppelman: This chapter deals with this whole issue so I am not sure legal custody is the right term.

Rep. L. Klemin: That is the current term used in the current section 1. Either way would be fine.

Rep. Lois Delmore: Are we not going to do anything with the first part of the bill is this the only amendment we are going to put on where they talked about a lack of compliance in Part D?

Rep. D. Larson: It is called protective placement in line 17.

Chairman K. Koppelman: 27-20-13 which is the section of law this would amend the title is taking into custody. The term custody is consistent with that chapter.

Rep. K. Wallman: The amendment says unless the child is in immediate danger the court can return them and give them a reasonable time. If the family is notified and knows the child is going to be taken and there is more time allowed it could give a family time to flee with a child. Are we creating a problem?

Chairman K. Koppelman: We should not presume a family would be responsible and fleeing. That is the idea that is trying to be addressed here.

Rep. K. Wallman: I don't want us to create a situation where we are not specific enough. We don't want to create an opportunity that the child would be in harm.

Rep. D. Larson: If it isn't an immediate danger situation the court has to decide

Chairman K. Koppelman: This is consistent with practice.

Rep. D. Larson: If there is immediate danger law enforcement is directed to take the child into protective custody. The court has to demonstrate that protective measures have happened. This talks about a reasonable period of time. In social services you have to document everything with the family before they remove a child and active measures is a part of the court proceedings that has to happen before a child is removed from custody.

Rep. P. Anderson: G is a new addition to this statute and I am struggling with a reasonable time. I think if that child has to go back to the biological parents they should do it quickly.

Chairman K. Koppelman: It seems to me that the amendment we are discussing is a question of balancing the bill.

Rep. L. Klemin: Reasonable period of time may vary.

Voice vote carried.

Rep. L. Klemin Moved a Do Pass As Amended; Seconded by Rep. Mary Johnson:

Discussion:

Rep. K. Wallman: I am going to vote for this. I think it would be good to be given foster parents reasonable amount of forewarning so that the child doesn't cause more stress with that transition.

Chairman K. Koppelman: These issues are heart wrenching issues.

Rep. Lois Delmore: We are talking 2000 kids in the state. That is a large number.

House Judiciary Committee

HB 1210

February 4, 2015

Page 3

Roll Call Vote: 13 Yes 0 No 0 Absent Carrier: Rep. L. Klemin:

January 29, 2015

SK
2-5-15

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1210

Page 1, line 1, after "enact" insert "subsection 4 of section 27-20-13 and"

Page 1, line 2, after "child" insert "to or"

Page 1, after line 6, insert:

"SECTION 1. Subsection 4 to section 27-20-13 of the North Dakota Century Code is created and enacted as follows:

4. Unless a child is in immediate danger, a court order transferring a child into custody shall provide a reasonable period of time to facilitate a beneficial transition for the child and other parties involved."

Renumber accordingly

**2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL NO. HB 1210**

House JUDICIARY Committee

Subcommittee Conference Committee

Amendment LC# or Description: 15.0570.01001

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
Other Actions: Reconsider _____

Motion Made By Vice Chairman Karls: Seconded By Rep. K. Hawken:

Representative	Yes	No	Representative	Yes	No
Chairman K. Koppelman			Rep. Pamela Anderson		
Vice Chairman Karls			Rep. Delmore		
Rep. Brabandt			Rep. K. Wallman		
Rep. Hawken					
Rep. Mary Johnson					
Rep. Klemin					
Rep. Kretschmar					
Rep. D. Larson					
Rep. Maragos					
Rep. Paur					

Total (Yes) _____ No _____

Absent _____

Floor Assignment: _____

If the vote is on an amendment, briefly indicate intent:

VOICE VOTE CARRIED.

**2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL NO. HB 1210**

House JUDICIARY Committee

Subcommittee Conference Committee

Amendment LC# or Description: 15.0570.01001

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
Other Actions: Reconsider _____

Motion Made By Rep. L. Klemin: Seconded By Rep. Mary Johnson:

Representative	Yes	No	Representative	Yes	No
Chairman K. Koppelman	X		Rep. Pamela Anderson	X	
Vice Chairman Karls	X		Rep. Delmore	X	
Rep. Brabandt	X		Rep. K. Wallman	X	
Rep. Hawken	X				
Rep. Mary Johnson	X				
Rep. Klemin	X				
Rep. Kretschmar	X				
Rep. D. Larson	X				
Rep. Maragos	X				
Rep. Paur	X				

Total (Yes) 13 No 0

Absent 0

Floor Assignment: :Rep. L. Klemin:

If the vote is on an amendment, briefly indicate intent:

VOICE VOTE CARRIED.

REPORT OF STANDING COMMITTEE

HB 1210: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1210 was placed on the Sixth order on the calendar.

Page 1, line 1, after "enact" insert "subsection 4 of section 27-20-13 and"

Page 1, line 2, after "child" insert "to or"

Page 1, after line 6, insert:

"SECTION 1. Subsection 4 to section 27-20-13 of the North Dakota Century Code is created and enacted as follows:

4. Unless a child is in immediate danger, a court order transferring a child into custody shall provide a reasonable period of time to facilitate a beneficial transition for the child and other parties involved."

Renumber accordingly

2015 SENATE JUDICIARY

HB 1210

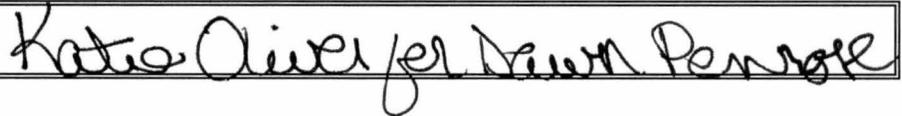
2015 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

HB 1210
3/16/2015
24922

- Subcommittee
 Conference Committee

Committee Clerk Signature



Minutes:

4 Attachments

Chairman Hogue opened the hearing on HB 1210. Representative Klemin was on hand to introduce the bill.

Representative Klemin: District 47. See attachment #1. (2:23- 3:57)

Senator Armstrong: Was there any discussion on that reasonable period of time of putting a maximum on it?

Representative Klemin: I assume you mean in the House Judiciary?

Senator Armstrong: Yes, saying you can't take any longer than a certain number of weeks.

Representative Klemin: I do not remember any specific period of time being discussed.

Jon Mielke: Bismarck foster parent. See attachment #2. (5:09-10:57)

Chairman Hogue: Can you talk a little bit about the House amendment.

Jon Mielke: It is my understanding in visiting with people in the judicial system I asked specific questions as it relates to my experience as a foster parent. I laid out several different scenarios as to how children come into our care and in almost every situation they indicated that their interpretation would be that it would involve an emergency situation and the provisions of that new language would not apply. There are situations, however, where there is not immediate danger but it is more a situation where it is the child's behavior that is causing them to go into care. In those situations this section may apply, I am not really

sure how a transition would be effectuated in a situation like that and it is my understanding that the Department of Human Services has somebody that will testify on section 1.

Chairman Hogue: Are you satisfied that this reasonable period language is sufficiently specific to cure the problem?

Jon Mielke: When I was working with people in the judicial system concerning that language I initially had a number of days there and it was more to guarantee the minimum.

Senator Luick: How many of these children are coming from drug affected homes?

Jon Mielke: I think that the representative from Human Services might be better position to answer that.

Lisa Bjergaard: Director, North Dakota Department of Corrections and Rehabilitation Division of Juvenile Services. See attachment #3. (17:19-21:20)

Chairman Hogue: So as I understand your testimony is that the language in the amendments on lines 10-12 in any case should not be in 27-20-13 of the Code?

Lisa Bjergaard: It is my position in 27-20-13 and I think the department of human services folks are going to talk about some funding issues if it is moved somewhere else. This is our taking into custody delinquent kids; it is hard to imagine what an appropriate time into that might be.

Senator Armstrong: The term 'immediate danger' is not defined in the definitions in this section of the Code, is it defined anywhere else?

Lisa Bjergaard: Not that I am aware. I have at the back of my testimony I have a proposed amendment.

Senator Grabinger: If we adopted your amendment then you would come in support of this at that time?

Lisa Bjergaard: I would be neutral as I do not have jurisdictional authority or interest over deprived children.

Shari Doe: Director of Children and Family Services Department. See attachment #4. (25:41-31:38)

Senator Luick: There seems to be some agreement that section 1 is a bad idea; can you tell me why that was put into the bill in the House?

Shari Doe: I cannot tell you as I was not part of the conversation; it was added during subcommittee work on the bill.

There was no further testimony on HB 1210 and Chairman Hogue closed the hearing.

2015 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

HB 1210
3/31/2015
25641

- Subcommittee
 Conference Committee

Committee Clerk Signature



Minutes:

Ch. Hogue: We will take a look at HB 1210. Did everyone refresh their memory on this one? This is the bill looking at the foster care; the proponents' aim was that they wanted notice and consideration when children are being shuffled from their care and back to their biological parent(s).

Sen. Casper: There was an amendment offered by DOCR Division of Juvenile Services.

Sen. Armstrong: Foster parents have an incredibly tough job and they serve an incredibly good purpose, but I don't know why this law has to go into place. I don't know why the court order couldn't already do this. I believe they can do it now. Are they saying that the rights of the foster parents aren't being protected currently in the courts so that they need legislation to do so, and if that's the case we would have to have a serious discussion about whose rights apply? I understand what they do and I am thankful for everything that they do, but if a biological parent gets custody of his/her biological child through a court proceeding, the rights of a foster parent go pretty low on the list as to what is constitutionally protected. I don't know if this necessarily does any harm. I just get a little concerned when we start making these laws. I believe that the foster parent may not agree with the court order; you might not believe that the biological parent is ready to have this child back, especially if you are good and care about children. The problem with biological parents, there's no law on the books that says you have to be a good parent, and while we wish there was, you have a constitutional protection as a biological parent that is one of the most important ones we have. I don't know if this does any harm, I get concerned when we start dealing with this issue. I don't know why the court couldn't do this now.

Ch. Hogue: Except I wasn't sure that if I recalled the section 1 request for deletion and I'm not sure what section 2 is doing either. According to Mr. Mielke, I think that the most important part of this bill is section 3; where you have been a foster parent and now you get a call and say to have the child ready to go. It is important to have closure. I can't see where section 1 really does. I support taking that section out of the bill. I don't see anything wrong in section 3. I can certainly understand somebody taking a child in, wanting to provide them with a safe home environment and then someone shows up and says we're taking them today. I think section 3 is reasonable. Does anyone know about section 2?

Sen. Nelson: Having been a guardian of a child I got when he was two, and at the age of 10, he was ordered to go back to his father. It takes a long time to convince the child that the people that he's been with all this time are now releasing him to someone who they don't know. I think you need to have that transition time, to try and explain what is happening. This is very traumatic. I can't imagine had I not known weeks in advance I was going to have to give this child up. I agree with this section 3.

Sen. Luick: I agree with section 3 as well. Everyone needs that transition time.

Ch. Hogue: Can anyone speak to section 2.

Sen. Armstrong: I don't like it.

Sen. Casper: I don't like sections 1 or 2. I can support section 3.

Sen. Grabinger: I have a question regarding section 2, can we do this under HIPAA laws. Wouldn't that be private information?

Sen. Armstrong: Section 2 is designed to take discretion away from a judge. If a judge says you have complied with the order, then you have complied. If the judge says you haven't complied, then you haven't complied with whatever the order said they needed to do to get their child back. The judge will make the determination as to whether or not you have complied substantially enough to get your child back.

Ch. Hogue: I understand, we are talking about two different transfers in this bill. In the first section, Social Services was concerned for the welfare of a child and if was a deprived child, we have to remove them from the home. For

safety and/or for strategic reasons, you may not necessarily want to have this drawn out period where someone is saying good-bye. The juvenile court has made the decision, the parent has their act together, and they are capable of taking care of their child. I don't see the harm in giving the foster parents some time. It seems like it is a very small gesture to let them have an appropriate separation. It seems like the committee is not supportive of section 1 or 2, but there is support for section 3.

Sen. Armstrong: I move to amend HB 1210 to remove section 1 & section 2.

Sen. Casper: Second the motion.

Ch. Hogue: Voice vote. Motion carried. We now have the bill before us as amended.

Sen. Casper: I move a Do Pass as amended.

Sen. Grabinger: Second the motion.

4 YES 2 NO 0 ABSENT
CARRIER: Sen. Nelson

DO PASS AS AMENDED

March 31, 2015

3/31/15
JRE

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1210

Page 1, line 1, remove "subsection 4 of section 27-20-13 and"

Page 1, line 3, remove "; and to amend and reenact"

Page 1, remove lines 4 and 5

Page 1, line 6, remove "custodian of a deprived child"

Page 1, remove lines 8 through 19

Page 1, line 23, replace "shall" with "must"

Renumber accordingly

Date: 3/31/2015
Voice Vote # 1

2015 SENATE STANDING COMMITTEE
VOICE VOTE
BILL/RESOLUTION NO. 1210

Senate Judiciary Committee

Subcommittee

Amendment LC# or Description: 15-0579.02001 03000

Recommendation: Adopt Amendment

Do Pass Do Not Pass Without Committee Recommendation

As Amended Rerefer to Appropriations

Place on Consent Calendar

Other Actions: Reconsider _____

Seconded By

Motion Made By Sen. Armstrong Sen. Casper

Senators	Yes	No	Senators	Yes	No
Ch. Hogue			Sen. Grabinger		
Sen. Armstrong			Sen. C. Nelson		
Sen. Casper					
Sen. Luick					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Motion: Carried

Date: 3/31/15
Roll Vote # 2

2015 SENATE STANDING COMMITTEE

ROLL CALL VOTE
BILL/RESOLUTION NO. 1210

Senate Judiciary Committee

Subcommittee

Amendment LC# or Description: 15.0579.02001 03600

- Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
- Other Actions: Reconsider _____

Seconded By

Motion Made By Sen. Casper Sen. Grabinger

Senators	Yes	No	Senators	Yes	No
Ch. Hogue	✓		Sen. Grabinger	✓	
Sen. Armstrong		✓	Sen. C. Nelson	✓	
Sen. Casper	✓				
Sen. Luick	✓				

Total (Yes) 4 No 2

Absent ∅

Floor Assignment Sen. Nelson

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1210, as engrossed: Judiciary Committee (Sen. Hogue, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (4 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1210 was placed on the Sixth order on the calendar.

Page 1, line 1, remove "subsection 4 of section 27-20-13 and"

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Page 1, line 23, replace "shall" with "must"

Renumber accordingly

2015 CONFERENCE COMMITTEE

HB 1210

2015 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1210
4/15/2015
26117

- Subcommittee
 Conference Committee - AM

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the option of court-ordered rehabilitative programming for the parents, guardian, or other custodian of a deprived child.

Minutes:

Rep. K. Karls (Chair): Called the meeting to order on conference committee on HB 1210. All committee members were present. Would you let us know what the Senate did to our bill?

Senator Casper: We were concerned with the situation where we were giving precedence to the biological parents; but if we are going to give preference to them then we should allow time for that transition from a child under foster care that they transition back to their biological parent and that would not be an immediate process. That was our number one priority that we wanted to make. The other items we were concerned about biological parents being put in lesser position.

Senator Nelson: We though Section 2 was common sense and they shouldn't have to be written in code. Having been a guardian I came at this at a little bit of an angle. If they have never known their biological parents because she was under the age of two when the determination was made and all of a sudden to be called at 9AM to get them ready to be picked up at 1PM; it is traumatic to the guardian or foster parent. If they are going to transfer the child we need to allow some sort of reasonable transition time for that to happen. That was the reason for our section 1. As for section 2; we thought those types of things should just be a matter of what constitutes a guardian should keep track of their assessments and reports and make sure that the child is well cared for.

Rep. K. Koppelman: The citizen who requested the bill appeared before us. We were concerned about taking the one sided approach. That is why we added the language. I don't have strong feeling about removing that. What we were concerned in the House was creating an unlevelled playing field giving preference to the foster family while ignoring the biological family. I realize in a lot of cases it is necessary to remove a child immediately and in those cases you could; however I have heard from constitutions and others some horror stories too of families where children were removed; but then they were returned

after some time. Maybe in hind site they shouldn't have been removed at all. That is a concern too. I think it should work both ways.

Senator Nelson: The basis of this bill is the Uniform Juvenile Court Act and it does deal with 27-20.13 which you have in section 1. A deprived child is well defined in code. I think it is that opening phase that we really didn't like.

Rep. K. Koppelman: I can understand that, but you have taken that whole piece out about as the child is removed from their own setting. It might solve that to amend the bill from what came from the Senate? At the beginning of line 8 to say to or from and later to or from a parent. Whether this is the correct code for that I don't know. If we say the best interest in the child is what we are looking at I hope it is in the best interest in the child from its family. We wanted to make sure we had a balance.

Senator Nelson: When I carried this on the floor I made it big fuss about a delinquent child needs when a child has committed a delinquent act and needed treatment. But a deprived child there are definitions for what they are. In my case the father didn't deserve the children, but there are cases that the deprived child is without proper parental care as required by law. You can't consider financial means and has been abandoned by parents and in need of parental care and is subject to prenatal exposure, drugs and alcohol that is present; those things are all the deprived child and that is who we are talking about in this bill.

Senator Casper: I appreciate what Rep. K. Koppelman is saying and we can work that out language wise. My concern is a situation where somebody is truly in danger. We can do some work on that.

Rep. K. Koppelman: I think that would be a good outcome. If you insert a to or from on line 8 then it would read without a compelling reason to the contrary a court order that transfers the child to or from the current protective placement to or from a parent or other biological family must provide reasonable period of time? I am not sure that is the proper way to phase it? That is what we are trying to get at.

Senator Nelson: I am concerned about this child.

Rep. K. Koppelman: I think that would be a compelling reason and that is the whole point.

Senator Luick: My concern is the care and also subsections d of 4.

Rep. K. Koppelman: We don't have a concern on that section. We wanted to make sure this was a balanced issue so this consideration of care would be exercised in both cases. Maybe we could work with counsel and come up with an amendment.

Chairman Karls: Is everyone agreeable? We will schedule another meeting later today.

Adjourned.

2015 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1210
4/15/2015
Job #26136

Subcommittee
 Conference Committee- PM

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to time for beneficial transition of a child to or from temporary legal custody.

Minutes:

Proposed amendment #1

Rep. K. Karls (Chair): Opened the conference committee meeting on HB 1210 to order. All members are present.

Chairman K. Koppelman: (See proposed amendment #1) I believe Senator Casper conferred and I looked over his shoulder with Tessa after our last meeting and our intern has completed a proposed amendment.

Rep. K. Koppelman moved that the Senate recede from Senate amendments and amend as follows; Seconded by Senator Casper.

Rep. K. Koppelman: My concern is if the motion is to recede from the Senate amendments then we are back to the 200 version of the bill. We are told that the proper motion is to recede from the Senate amendments and amend with this amendment so I would move that and note if we are amending the 200 version it needs to take out some of the language the Senate took out on this other amendment.

Discussion:

Senator Casper: What we did earlier in the committee we had discussed putting something to the effect in section 2 of the amendment of the Senate version of the legislation that came over into and out of trying or there are two sections of the code and section 27-20-13 if taking section. The department is coming in and taking custody. In section 27-20-30 would be giving back so we have a similar language in each section and this is what the discussion was this morning so instead of having it all in one section we had to split it into two so it is appropriate.

Roll Call Vote: 6 Yes 0 No 0 Absent

Adjourned.

April 15, 2015

JK
4/15/15

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1210

That the Senate recede from its amendments as printed on page 1297 of the House Journal and page 1072 of the Senate Journal and that Engrossed House Bill No. 1210 be amended as follows:

Page 1, line 3, remove "; and to amend and reenact"

Page 1, remove lines 4 and 5

Page 1, line 6, remove "custodian of a deprived child"

Page 1, line 10, replace "Unless a child is in immediate danger" with "Without a compelling reason to the contrary"

Page 1, remove lines 13 through 19

Page 1, line 23, replace "shall" with "must"

Renumber accordingly

Date: 4-15-15
 Roll Call Vote #: 1

**2015 HOUSE CONFERENCE COMMITTEE
 ROLL CALL VOTES**

BILL/RESOLUTION NO. 1210 as (re) engrossed

House Judiciary Committee

- Action Taken**
- HOUSE accede to Senate Amendments
 - HOUSE accede to Senate Amendments and further amend
 - SENATE recede from Senate amendments
 - SENATE recede from Senate amendments and amend as follows
 - Unable to agree, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Rep. Koppelman Seconded by: Sen. Casper

Representatives	Am		Yes	No	Senators	Am		Yes	No
	4/15	4/15				4/15	4/15		
Rep. Karls (Chair)	✓	✓	✓		Senator Luick	✓	✓	✓	
Rep. K. Koppelman	✓	✓	✓		Senator Casper	✓	✓	✓	
Rep. P. Anderson	✓	✓	✓		Senator Carolyn Nelson	✓	✓	✓	
Total Rep. Vote					Total Senate Vote				

Vote Count Yes: 6 No: 0 Absent: 0

House Carrier NO CARRIER Senate Carrier NO CARRIER

LC Number 15.0579.02002. _____ of amendment

LC Number _____ . 04000 _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

REPORT OF CONFERENCE COMMITTEE

HB 1210, as engrossed: Your conference committee (Sens. Luick, Casper, Nelson and Reps. Karls, K. Koppelman, P. Anderson) recommends that the **SENATE RECEDE** from the Senate amendments as printed on HJ page 1297, adopt amendments as follows, and place HB 1210 on the Seventh order:

That the Senate recede from its amendments as printed on page 1297 of the House Journal and page 1072 of the Senate Journal and that Engrossed House Bill No. 1210 be amended as follows:

Page 1, line 3, remove "; and to amend and reenact"

Page 1, remove lines 4 and 5

Page 1, line 6, remove "custodian of a deprived child"

Page 1, line 10, replace "Unless a child is in immediate danger" with "Without a compelling reason to the contrary"

Page 1, remove lines 13 through 19

Page 1, line 23, replace "shall" with "must"

Renumber accordingly

Engrossed HB 1210 was placed on the Seventh order of business on the calendar.

2015 TESTIMONY

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House Bill No. 1210

Testimony Before House Judiciary Committee

January 21, 2015

**Presented by: Jon Mielke
Foster Parent**

Good morning Chairman Koppelman and committee members. My name is Jon Mielke. My wife, Carol, and I are foster parents. We have been licensed by Burleigh County since 2002. I am appearing in support of this bill and especially want to thank Rep. Klemin for introducing it at my request.

Over the past 12 years my wife and I have cared for 39 kids, virtually all infants under the age of three. Ten of these placements were long-term, with an average of 14 months. The longest was nearly three years. These kids become members of our family. Most often, we were the only parents that they knew.

I am a past president of the North Dakota Foster and Adoptive Family Association. Carol and I were named Foster Parents of the Year in 2006. I am currently employed by the Upper Great Plains Transportation Institute. Prior to coming to the Transportation Institute, I worked for the Public Service Commission for 23 years. I served as the PSC's chief executive officer for 10 years and also served as an administrative hearing officer.

My wife and I regularly attend court proceedings involving the children that we care for. Almost all of these proceedings are presided over by a judicial referee instead of a judge. Having served as an administrative hearing officer, I am familiar with the discretion that laws and rules give to presiding officers.

In some cases, we strongly disagree with resulting orders which go to an extreme to avoid terminating parental rights or return children to parents even though the parents have been almost totally non-compliant with permanency plans developed by social service professionals and court appointed guardian ad litem.

The courts and judicial referees already have the ability to do what this bill proposes, but what seems like common sense does not always find its way into corresponding orders. Passing this bill would send a clear message to presiding officers regarding a few things that should be considered when court orders are issued.

Section 1 of the bill simply provides that when parents, guardians, or custodians of children in foster care are participating in rehabilitative programs, related assessments and progress reports must be released to the entity that the court has given legal custody. In many cases

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this entity would be county social services. Failure to comply with this requirement or to regularly visit the child, without good cause, would constitute a lack of compliance and should result in an order that would leave the child in protective care.

Section 2 of the bill provides that orders that remove a child from protective care should provide for a reasonable transition period. Such a provision would give social work professionals and foster families the time to effectuate a planned transition that would minimize the traumatizing effects that may come with relocation.

If court orders are issued without providing for a transition period of even as little as one or two or three days, children may be taken out of school and returned to biological parents without any prior notice to case workers or foster parents. In other instances, foster parents may be forced to leave work mid-afternoon to pack-up clothes and diapers and formula because the infant that they are caring for is going to be picked up within an hour or two to comply with a court order that was issued earlier that day. Similarly, social service case workers may have virtually no notice of the things that they have to do to comply with the provisions of a court order that mandates immediate relocation.

Even more important than the hardships that these orders impose on case workers and foster parents is the trauma that it creates for the children involved. They are, in many cases, removed from a home environment that they have been in and placed in a foreign environment with no related counseling or transition. Judicial referees already have the ability to issue orders that minimize these impacts, but that is not always the end result. Section 2 of this bill will hopefully remind presiding officers to consider these impacts when issuing related orders.

This bill is not intended to impose new burdens on the courts. It does, however, seek to remind presiding officers that biological parents should not be rewarded for noncompliance and that court orders should provide reasonable notice before removing children from protective care. Both of these changes are ultimately in the best interest of the children involved.

Thank you Mr. Chairman and committee members, that concludes my testimony. I would be happy to respond to any questions that you might have.

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**House Judiciary Committee
January 21, 2015
Testimony Regarding HB 1210
Sandy Bendewald, Director Stutsman County Social Services**

Representative Koppelman and members of the House Judiciary Committee, my name is Sandy Bendewald. I am the Stutsman County Social Service Director and a member of the North Dakota County Director's Association. I am here today in support of HB 1210.

I would like to speak to the release of assessment and progress reports, regular visitation with children, and the reasonable time for beneficial transition from protective placement to the parent or biological family.

Good case management involves getting the appropriate releases to receive information from assessments and progress reports. Sometimes however the parent refuses to sign the releases. Having this in century code that failure to provide this information without good cause constitutes a lack of compliance, would be helpful in those situations.

The wording of "regularly visit the child", in my opinion, should be strengthened. I would guess that this wording is in the bill to address those frustrating situations where parents do not visit their children and then expect to have their children returned to them. This wording would work in those situations. However there are many times where parents do have regular visits with their children but they are not quality visits. Examples would be the parent that comes to visits but does so under the influence of drugs, the parent who visits but spends the whole time yelling at their children, or the parent that visits but sits in a corner and doesn't interact. My suggestion would be amend the bill to address this concern.

Providing a reasonable period of time to facilitate a beneficial transition is important. There are court systems where this already happens because all of the partners understand the importance of transition planning. However this is not always the case. In those situations it would be beneficial to have it in Century Code.

I would like to thank you for this opportunity to testify and would be available for any questions

15.0579.01001
Title.

Prepared by the Legislative Council staff for
Representative Karls
January 29, 2015

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PROPOSED AMENDMENTS TO HOUSE BILL NO. 1210

Page 1, line 1, after "enact" insert "subsection 4 of section 27-20-13 and"

Page 1, line 2, after "child" insert "to or"

Page 1, after line 6, insert:

"SECTION 1. Subsection 4 to section 27-20-13 of the North Dakota Century Code is created and enacted as follows:

4. Unless a child is in immediate danger, a court order transferring a child into custody shall provide a reasonable period of time to facilitate a beneficial transition for the child and other parties involved."

Renumber accordingly

#1-A-1

NORTH DAKOTA HOUSE OF REPRESENTATIVES



STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360



Representative Lawrence R. Klemin

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1709 Montego Drive
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Residence: 701-222-2577
lklemin@nd.gov

COMMITTEES:

Judiciary
Political Subdivisions, Chairman

TESTIMONY OF REP. LAWRENCE R. KLEMIN

SENATE JUDICIARY COMMITTEE

HOUSE BILL 1210

MARCH 16, 2015

Mr. Chairman and members of the Senate Judiciary Committee, I am Lawrence R. Klemin, Representative from District 47 in Bismarck. I am here to testify in support of HB1210.

HB1210 relates to transition procedures when a child is transferred from the custody of a parent or family member to a foster parent and back again.

Section 1 relates to the situation when a child is determined to be delinquent or unruly and there is a need to take the child into custody under the Juvenile Court Act. The new language provides that unless the child is in immediate danger, the court order must provide a reasonable period of time to facilitate the transfer of the child. What is a reasonable period of time will depend on the facts and circumstances of each case as determined by the court. Section 1 was not in the original bill, but was added as an amendment in the House.

Section 2 provides that when legal custody of a child is transferred to the temporary custody of a foster parent, that any related assessments and progress reports concerning the child also be provided to the foster parent so that the foster parent will be aware of any special needs and requirements of the child.

Section 3 provides that when legal custody of a child is transferred from the foster parent back to the parent that the court order that transfers the child provide for a reasonable period of time to facilitate the transfer.

There are also other persons here to testify on this bill who can provide the committee with more information concerning the reasons for the bill. I urge your support of HB1210 and will try to answer any questions that you may have.

#1B-1

**CHAPTER 27-20
UNIFORM JUVENILE COURT ACT**

27-20-01. Interpretation.

Repealed by S.L. 2007, ch. 274, § 36.

27-20-02. Definitions.

As used in this chapter:

1. "Abandon" means:
 - a. As to a parent of a child not in the custody of that parent, failure by the noncustodial parent significantly without justifiable cause:
 - (1) To communicate with the child; or
 - (2) To provide for the care and support of the child as required by law; or
 - b. As to a parent of a child in that parent's custody:
 - (1) To leave the child for an indefinite period without making firm and agreed plans, with the child's immediate caregiver, for the parent's resumption of physical custody;
 - (2) Following the child's birth or treatment at a hospital, to fail to arrange for the child's discharge within ten days after the child no longer requires hospital care; or
 - (3) To willfully fail to furnish food, shelter, clothing, or medical attention reasonably sufficient to meet the child's needs.
2. "Abandoned infant" means a child who has been abandoned before reaching the age of one year.
3. "Aggravated circumstances" means circumstances in which a parent:
 - a. Abandons, tortures, chronically abuses, or sexually abuses a child;
 - b. Fails to make substantial, meaningful efforts to secure treatment for the parent's addiction, mental illness, behavior disorder, or any combination of those conditions for a period equal to the lesser of:
 - (1) One year; or
 - (2) One-half of the child's lifetime, measured in days, as of the date a petition alleging aggravated circumstances is filed;
 - c. Engages in conduct prohibited under sections 12.1-20-01 through 12.1-20-08 or chapter 12.1-27.2, in which a child is the victim or intended victim;
 - d. Engages in conduct that constitutes one of the following crimes, or of an offense under the laws of another jurisdiction which requires proof of substantially similar elements:
 - (1) A violation of section 12.1-16-01, 12.1-16-02, or 12.1-16-03, or subdivision a of subsection 1 of section 14-09-22 in which the victim is another child of the parent;
 - (2) Aiding, abetting, attempting, conspiring, or soliciting a violation of section 12.1-16-01, 12.1-16-02, or 12.1-16-03 in which the victim is a child of the parent; or
 - (3) A violation of section 12.1-17-02 in which the victim is a child of the parent and has suffered serious bodily injury;
 - e. Engages or attempts to engage in conduct, prohibited under sections 12.1-17-01 through 12.1-17-04, in which a child is the victim or intended victim;
 - f. Has been incarcerated under a sentence for which the latest release date is:
 - (1) In the case of a child age nine or older, after the child's majority; or
 - (2) In the case of a child, after the child is twice the child's current age, measured in days;
 - g. Subjects the child to prenatal exposure to chronic or severe use of alcohol or any controlled substance as defined in chapter 19-03.1 in a manner not lawfully prescribed by a practitioner; or

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- h. Allows the child to be present in an environment subjecting the child to exposure to a controlled substance, chemical substance, or drug paraphernalia as prohibited by section 19-03.1-22.2.
 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.
 5. "Custodian" means a person, other than a parent or legal guardian, who stands in loco parentis to the child or a person to whom legal custody of the child has been given by order of a court.
 6. "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 state, or under federal law, and the crime does not fall under subdivision c of subsection 19.
 7. "Delinquent child" means a child who has committed a delinquent act and is in need of treatment or rehabilitation.
 8. "Deprived child" means a child who:
 - a. Is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for the child's physical, mental, or emotional health, or morals, and the deprivation is not due primarily to the lack of financial means of the child's parents, guardian, or other custodian;
 - b. Has been placed for care or adoption in violation of law;
 - c. Has been abandoned by the child's parents, guardian, or other custodian;
 - d. Is without proper parental care, control, or education as required by law, or other care and control necessary for the child's well-being because of the physical, mental, emotional, or other illness or disability of the child's parent or parents, and that such lack of care is not due to a willful act of commission or act of omission by the child's parents, and care is requested by a parent;
 - e. Is in need of treatment and whose parents, guardian, or other custodian have refused to participate in treatment as ordered by the juvenile court;
 - f. Was subject to prenatal exposure to chronic or severe use of alcohol or any controlled substance as defined in chapter 19-03.1 in a manner not lawfully prescribed by a practitioner; or
 - g. Is present in an environment subjecting the child to exposure to a controlled substance, chemical substance, or drug paraphernalia as prohibited by section 19-03.1-22.2.
 9. "Detention" means a physically secure facility with locked doors and does not include shelter care, attendant care, or home detention.
 10. "Director" means the director of juvenile court or the director's designee.
 11. "Fit and willing relative or other appropriate individual" means a relative or other individual who has been determined, after consideration of an assessment that includes a criminal history record investigation under chapter 50-11.3, to be a qualified person under chapter 30.1-27, and who consents in writing to act as a legal guardian.
 12. "Home" when used in the phrase "to return home" means the abode of the child's parent with whom the child formerly resided.
 13. "Juvenile court" means the district court of this state.
 14. "Juvenile drug court" means a program established in a judicial district consisting of intervention and assessment of juveniles involved in forms of substance abuse; frequent drug testing; intense judicial and probation supervision; individual, group, and family counseling; substance abuse treatment; educational opportunities; and use of sanctions and incentives.
 15. "Permanency hearing" means a hearing, conducted with respect to a child who is in foster care, to determine the permanency plan for the child which includes:
 - a. Whether and, if applicable, when the child will be returned to the parent;
 - b. Whether and, if applicable, when the child will be placed for adoption and the state will file a petition for termination of parental rights;

- c. Whether and, if applicable, when a fit and willing relative or other appropriate individual will be appointed as a legal guardian;
 - d. Whether and, if applicable, to place siblings in the same foster care, relative, guardianship, or adoptive placement, unless it is determined that the joint placement would be contrary to the safety or well-being of any of the siblings;
 - e. Whether and, if applicable, in the case of siblings removed from their home who are not jointly placed, to provide for frequent visitation or other ongoing interaction between the siblings, unless it is determined to be contrary to the safety or well-being of any of the siblings;
 - f. In cases in which a compelling reason has been shown that it would not be in the child's best interests to return home, to have parental rights terminated, to be placed for adoption, to be placed with a fit and willing relative, or to be placed with a legal guardian, whether and, if applicable, when the child will be placed in another planned permanent living arrangement;
 - g. In the case of a child who has been placed in foster care outside the state in which the home of the parents is located, or if the parents maintain separate homes, outside the state in which the home of the parent who was the child's primary caregiver is located, whether out-of-state placements have been considered. If the child is currently in an out-of-state placement, the court shall determine whether the placement continues to be appropriate and in the child's best interests; and
 - h. In the case of a child who has attained age sixteen, the services needed to assist the child to make the transition from foster care to independent living.
16. "Protective supervision" means supervision ordered by the court of children found to be deprived or unruly.
17. "Relative" means:
- a. The child's grandparent, great-grandparent, sibling, half-sibling, aunt, great-aunt, uncle, great-uncle, nephew, niece, or first cousin;
 - b. An individual with a relationship to the child, derived through a current or former spouse of the child's parent, similar to a relationship described in subdivision a;
 - c. An individual recognized in the child's community as having a relationship with the child similar to a relationship described in subdivision a; or
 - d. The child's stepparent.
18. "Shelter care" means temporary care of a child in physically unrestricted facilities.
19. "Unruly child" means a child who:
- a. Is habitually and without justification truant from school;
 - b. Is habitually disobedient of the reasonable and lawful commands of the child's parent, guardian, or other custodian and is ungovernable or who is willfully in a situation dangerous or injurious to the health, safety, or morals of the child or others;
 - c. Has committed an offense applicable only to a child, except for an offense committed by a minor fourteen years of age or older under subsection 2 of section 12.1-31-03 or an equivalent local ordinance or resolution;
 - d. Has committed an offense in violation of section 5-01-08; or
 - e. Is under the age of fourteen years and has purchased, possessed, smoked, or used tobacco or tobacco-related products in violation of subsection 2 of section 12.1-31-03; and
 - f. In any of the foregoing instances is in need of treatment or rehabilitation.
20. "Willfully" has the meaning provided in section 12.1-02-02.

27-20-03. Jurisdiction.

- 1. The juvenile court has exclusive original jurisdiction of the following proceedings, which are governed by this chapter:
 - a. Proceedings in which a child is alleged to be delinquent, unruly, or deprived;
 - b. Proceedings for the termination of parental rights except when a part of an adoption proceeding;

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- c. Proceedings arising under sections 27-20-39 through 27-20-42;
 - d. Proceedings arising under section 27-20-30.1; and
 - e. Civil forfeiture proceedings arising under chapter 19-03.1 or section 29-31.1-04 for which a child is alleged to have possessed forfeitable property. The juvenile court shall conduct the proceedings in accordance with the procedures provided for under sections 19-03.1-36 through 19-03.1-37.
2. The juvenile court also has exclusive original jurisdiction of the following proceedings, which are governed by the laws relating thereto without regard to the other provisions of this chapter:
- a. Proceedings to obtain judicial consent to the marriage, employment, or enlistment in the armed services of a child, if consent is required by law;
 - b. Proceedings under the interstate compact on juveniles;
 - c. Proceedings under the interstate compact on the placement of children; and
 - d. Proceedings arising under section 50-06-06.13 to obtain a judicial determination that the placement of a severely emotionally disturbed child in an out-of-home treatment program is in the best interests of the child.
3. The juvenile court has concurrent jurisdiction with the district court of proceedings for the appointment of a guardian for a minor which, if originated under this chapter, are governed by this chapter and chapter 30.1-27.

27-20-04. Concurrent jurisdiction.

Repealed by S.L. 1991, ch. 326, § 203.

27-20-05. Juvenile court personnel.

- 1. The supreme court may provide for the appointment by administrative and personnel rules of the necessary juvenile court officers, clerical personnel, and other specialized personnel within the limits of legislative appropriations to assist the court in carrying out its juvenile probation and supervisor functions.
- 2. Detention center facilities and personnel must be funded by the county.
- 3. All salaries, per diem, and other compensation payable to juvenile court personnel, all necessary books, forms, stationery, office supplies and equipment, postage, telephone, travel, and other necessary expenses incurred in carrying out the provisions of this chapter must be borne by the state, except for suitable quarters for conducting official business and lights and fuel which must be funded by the county and except as provided by subsection 1 of section 27-20-49.

27-20-05.1. County juvenile supervisors - Authorization for mill levy.

Repealed by S.L. 1981, ch. 320, § 112.

27-20-06. Powers and duties of director of juvenile court.

- 1. For the purpose of carrying out the objectives and purposes of this chapter and subject to the limitations of this chapter or imposed by the court, a director shall:
 - a. Make investigations, reports, and recommendations to the juvenile court.
 - b. Receive and examine complaints and charges of delinquency or unruly conduct or deprivation of a child for the purpose of considering the commencement of proceedings under this chapter.
 - c. Supervise and assist a child placed on probation for delinquency or unruly conduct, or both.
 - d. Make appropriate referrals to other private or public agencies of the community if their assistance appears to be needed or desirable.
 - e. Issue a temporary custody order concerning a child who is referred to the director's supervision or care as a delinquent, unruly, or deprived child. Except as provided by this chapter, a director does not have the powers of a law enforcement officer.
 - f. Administer oaths.

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- g. Take acknowledgments of instruments for the purpose of this chapter.
 - h. Make such temporary order not to exceed ninety-six hours for the custody and control of a child alleged to be deprived as may be deemed appropriate. The order must be reduced to writing within twenty-four hours, excluding holidays and weekends.
 - i. Perform all other functions designated by this chapter or under section 27-05-30 or by order of the court pursuant thereto, including, if qualified, those of a referee.
 - j. Issue an order to a law enforcement authority to transport a child to and from a specified location.
2. Any of the foregoing functions may be performed in another state if authorized by the court of this state and permitted by the laws of the other state.

27-20-07. Referees.

Repealed by S.L. 1985, ch. 334, § 5.

27-20-08. Commencement of proceedings.

A proceeding under this chapter may be commenced:

- 1. By transfer of a case from another court as provided in section 27-20-09;
- 2. By the court accepting jurisdiction as provided in section 27-20-40 or accepting supervision of a child as provided in section 27-20-42; or
- 3. In other cases by the filing of a petition as provided in this chapter. The petition and all other documents in the proceeding must be entitled "In the interest of _____, a child". If a child is in shelter care, the petition must be filed within thirty days of the shelter care hearing under section 27-20-17. If the petition is not filed, the child must be released from shelter care.

27-20-09. Transfer from other courts.

If it appears to the court in a criminal proceeding, except for an offense transferred under section 27-20-34, that the defendant is a child subject to the jurisdiction of the juvenile court, the court shall immediately transfer the case to the juvenile court together with a copy of the accusatory pleading and other papers, documents, and transcripts of testimony relating to the case. It shall order that the defendant be taken immediately to the juvenile court or to a place of detention designated by the juvenile court, or release the defendant to the custody of the defendant's parent, guardian, custodian, or other person legally responsible for the defendant, to be brought before the juvenile court at a time designated by that court. The accusatory pleading may serve in lieu of a petition in the juvenile court unless that court directs the filing of a petition.

27-20-10. Informal adjustment.

- 1. Before a petition is filed, the director of juvenile court or other officer of the court designated by it, subject to its direction, may give counsel and advice to the parties and impose conditions for the conduct and control of the child with a view to an informal adjustment if it appears:
 - a. The admitted facts bring the case within the jurisdiction of the court;
 - b. Counsel, advice, and conditions, if any, for the conduct and control of the child without an adjudication would be in the best interest of the public and the child; and
 - c. The child and the child's parents, guardian, or other custodian consent thereto with knowledge that consent is not obligatory.
- 2. The giving of counsel and advice and any conditions imposed for the conduct and control of the child cannot extend beyond nine months from the day commenced unless extended by the court for an additional period not to exceed six months and does not authorize the detention of the child if not otherwise permitted by this chapter. If the child admits to driving or being in actual physical control of a vehicle in violation

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of section 39-08-01 or an equivalent ordinance, the child may be required to pay a fine as a condition imposed under this section.

- 3. An incriminating statement made by a participant to the person giving counsel or advice and in the discussions or conferences incident thereto may not be used against the declarant over objection in any hearing except in a hearing on disposition in a juvenile court proceeding or in a criminal proceeding against the declarant after conviction for the purpose of a presentence investigation.
- 4. If a child is subject to informal adjustment for a violation of section 39-08-01 or equivalent ordinance, or 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, the juvenile court shall require the child to participate in the twenty-four seven sobriety program under chapter 54-12 for up to nine months.

27-20-11. Venue.

A proceeding under this chapter may be commenced in the county in which the child resides. A proceeding under section 27-20-30.1 must be commenced in the administrative county, as determined by the department of human services. If delinquent or unruly conduct is alleged, the proceeding may be commenced in the county in which the acts constituting the alleged delinquent or unruly conduct occurred. If deprivation is alleged, the proceeding may be brought in the county in which the child is present when it is commenced, the county in which the child has resided the majority of the thirty days prior to the date of the alleged deprivation, or the county where the alleged deprivation has occurred. The court shall determine the appropriate venue for a deprivation action based upon the best interests of the child.

27-20-12. Transfer to another juvenile court within the state.

- 1. If the child resides in a county of the state and the proceeding is commenced in a court of another county, the court, on motion of a party or on its own motion made prior to final disposition and in consultation with the court in the other county, may transfer the proceeding to the county of the child's residence for further action. Like transfer may be made if the residence of the child changes pending the proceeding. The proceeding must be transferred if the child has been adjudicated delinquent or unruly and other proceedings involving the child are pending in the juvenile court of the county of the child's residence.
- 2. Certified copies of all legal and social documents and records pertaining to the case on file with the clerk of the court must accompany the transfer.

27-20-13. Taking into custody.

- 1. A child may be taken into custody:
 - a. Pursuant to an order of the court under this chapter;
 - b. Pursuant to the laws of arrest;
 - c. By a law enforcement officer if there are reasonable grounds to believe:
 - (1) That the child is suffering from illness or injury or is in immediate danger from the child's surroundings, and that the child's removal is necessary; or
 - (2) That the child has run away from the child's parents, guardian, or other custodian; or
 - d. By order of the director made pursuant to subdivision h of subsection 1 of section 27-20-06.
- 2. The taking of a child into custody is not an arrest, except for the purpose of determining its validity under the Constitution of North Dakota or the Constitution of the United States.
- 3. A law enforcement officer may transport a child to and from detention.

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27-20-14. Detention of child - Juvenile drug court exception.

1. A child taken into custody may not be detained or placed in shelter care prior to the hearing on the petition unless the child's detention or care is required to protect the person or property of others or of the child or because the child may abscond or be removed from the jurisdiction of the court or because the child has no parent, guardian, or custodian or other person able to provide supervision and care for the child and return the child to the court when required, or an order for the child's detention or shelter care has been made by the court pursuant to this chapter.
2. If a child is participating in a juvenile drug court program as a result of an adjudication for a delinquent offense, the drug court may order the child detained in a juvenile detention center operated pursuant to chapter 12-44.1. The child may be detained twice during the child's participation in the program but the total period of detention under this subsection may not exceed four days in a one-year period.

27-20-15. Release or delivery to court.

1. A person taking a child into custody, with all reasonable speed and without first taking the child elsewhere, shall:
 - a. Release the child to the child's parent, guardian, custodian, or other responsible adult able and willing to assume custody of the child, upon that individual's promise to bring the child before the court when requested by the court, unless the child's detention or shelter care is warranted or required under section 27-20-14; or
 - b. Bring the child before the court or deliver the child to a detention or shelter care facility designated by the court or to a medical facility if the child is believed to suffer from a serious physical condition or illness which requires prompt treatment. The person taking the child into custody shall promptly give notice thereof, together with a statement of the reason for taking the child into custody, to a parent, guardian, or other custodian and to the court. Any temporary detention or questioning of the child necessary to comply with this subsection must conform to the procedures and conditions prescribed by this chapter and rules of court.
2. If a parent, guardian, or other custodian, when requested, fails to bring the child before the court as provided in subsection 1, the court may issue its warrant directing that the child be taken into custody and brought before the court.
3. If a child is ordered detained by a juvenile drug court, notice under this section is not required.

27-20-16. Place of detention.

1. A child alleged to be delinquent or unruly may be detained only in:
 - a. A licensed foster home or a home approved by the court;
 - b. A facility operated by a licensed child welfare agency;
 - c. A detention home or center for delinquent or unruly children which is under the direction or supervision of the court or other public authority or of a private agency approved by the court;
 - d. Any other suitable place or facility, including a medical facility for the treatment of mental illness, alcoholism, or drug addiction, designated by the court; or
 - e. A jail or other facility for the detention of adults only if the facility in subdivision c is not available, the detention is in a room separate and removed from those for adults, it appears to the satisfaction of the court or the juvenile supervisor, intake officer, or other authorized officer of the court, that public safety and protection reasonably require detention, and it is so authorized.
2. The official in charge of a jail or other facility for the detention of adult offenders or persons charged with crime shall inform the court immediately if a person who is or appears to be a child is received at the facility and shall bring the person before the court upon request or deliver the person to a detention or shelter care facility designated by the court.

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3. If a case is transferred to another court for criminal prosecution, the child may be transferred to the appropriate officer or detention facility in accordance with the law governing the detention of persons charged with crime.
4. A child alleged to be deprived may be placed in shelter care only in the facilities stated in subdivisions a, b, and d of subsection 1 and may not be detained in a jail or other facility intended or used for the detention of adults charged with criminal offenses or of children alleged to be delinquent or unruly.
5. Effective January 1, 1988, a child alleged to be unruly may be detained only in the facilities listed in subdivisions a, b, c, and d of subsection 1.

27-20-17. Release from detention or shelter care - Hearing - Conditions of release.

1. If a child is brought before the court or delivered to a detention or shelter care facility designated by the court, the director, the intake officer, or other authorized officer of the court shall immediately make an investigation and release the child unless it appears that the child's detention or shelter care is warranted or required under section 27-20-14.
2. If the child is not released, a judge or referee shall hold a detention or shelter care hearing promptly and not later than ninety-six hours after the child is placed in detention or shelter care to determine whether there is probable cause to believe the child has committed the delinquent or unruly acts alleged, or the child is deprived and whether the child's detention or shelter care is required under section 27-20-14. A hearing is not required if the child has been ordered detained by a juvenile drug court. Reasonable notice, either oral or written, stating the time, place, and purpose of the detention or shelter care hearing must be given to the child and, if they can be found, to the child's parents, guardian, or other custodian. Prior to the commencement of the hearing, the court shall inform the parties of their right to counsel and to counsel at public expense if they are indigent, and of the child's right to remain silent with respect to any allegations of delinquency or unruly conduct.
3. If continued shelter care is required, the judge or referee may order that the child be kept in shelter care for no more than sixty days from the date of the shelter care hearing.
4. As a condition to the child's release from shelter care, the court may order a parent, guardian, custodian, or any other member of the household in which the child resides to vacate the child's residence if probable cause exists to believe that the parent, guardian, custodian, or other member of the household has committed a sexual offense with or against the child, pursuant to sections 12.1-20-03 through 12.1-20-07 or section 12.1-20-11, and the presence of the alleged sexual offender in the child's residence presents a danger to the child's life or physical, emotional, or mental health. The court may order that the parent, guardian, or custodian not allow contact with an identified person if the court determines the order is in the best interests of the child.
5. If the child is not released and a parent, guardian, or custodian has not been notified of the hearing, did not appear or waive appearance at the hearing, and files an affidavit showing these facts, the court shall rehear the matter without unnecessary delay and order the child's release, unless it appears from the hearing that the child's detention or shelter care is required under section 27-20-14.

27-20-18. Subpoena.

Superseded by N.D.R.Juv.P., Rule 13.

27-20-19. Petition - Preliminary determination.

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

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27-20-20. Petition - Who may prepare and file - Review.

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

27-20-20.1. Petition to terminate parental rights - When brought - Definitions.

1. A petition to terminate parental rights may be made as provided under this section and section 27-20-45.
2. Except as provided in subsection 3, a petition for termination of parental rights must be filed:
 - a. If the child has been in foster care, in the custody of the department, or, in cases arising out of an adjudication by the court that a child is an unruly child, the division of juvenile services, for at least four hundred fifty out of the previous six hundred sixty nights;
 - b. Within sixty days after a court of competent jurisdiction has found the child to be an abandoned infant; or
 - c. Within sixty days after a court of competent jurisdiction has convicted the child's parent of one of the following crimes, or of an offense under the laws of another jurisdiction which requires proof of substantially similar elements:
 - (1) A violation of section 12.1-16-01, 12.1-16-02, or 12.1-16-03, or subdivision a of subsection 1 of section 14-09-22 in which the victim is another child of the parent;
 - (2) Aiding, abetting, attempting, conspiring, or soliciting a violation of section 12.1-16-01, 12.1-16-02, or 12.1-16-03 in which the victim is a child of the parent; or
 - (3) A violation of section 12.1-17-02 in which the victim is a child of the parent and has suffered serious bodily injury.
3. A petition for termination of parental rights need not be filed if:
 - a. The child is being cared for by a relative approved by the department;
 - b. The department has documented in the case plan a compelling reason for determining that filing such a petition would not be in the child's best interests and has notified the court that the documentation is available for review by the court; or
 - c. The department has determined:
 - (1) Reasonable efforts to preserve and reunify the family are required under section 27-20-32.2 to be made with respect to the child;
 - (2) The case plan provides such services are necessary for the safe return of the child to the child's home; and
 - (3) Such services have not been provided consistent with time periods described in the case plan.
4. For purposes of subsection 2, a child in foster care entered foster care on the earlier of:
 - a. The date of the court's order if the court:
 - (1) Made a finding that the child has been subjected to child abuse or neglect;
 - (2) Determined that it is unsafe or contrary to the welfare of the child to remain in the home; and
 - (3) Granted custody of the child to the department or, in cases arising out of an adjudication by the court that a child is an unruly child, the division of juvenile services; or
 - b. The date that is sixty days after:
 - (1) The date of a hearing under section 27-20-17 which results in retaining a child in shelter care;

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- (2) The date of an order in a dispositional hearing under which a child is placed in foster care; or
 - (3) The date a child is placed in foster care voluntarily and with the consent of the child's parent.
5. For purposes of subsection 2, a child leaves foster care when:
 - a. The court enters an order:
 - (1) Denying a petition to grant care, custody, and control of the child to the department or the division of juvenile services;
 - (2) Terminating an order that granted custody of the child to the department or the division of juvenile services; or
 - (3) Appointing a legal guardian under section 27-20-48.1;
 - b. The court order under which the child entered foster care ends by operation of law;
 - c. The child is placed in a parental home by the court or a legal custodian other than the division of juvenile services and the legal custodian lacks authority to remove the child without further order of the court; or
 - d. The child is placed in a parental home by the division of juvenile services.
 6. For purposes of subsection 2, a child is not in foster care on any night during which the child is:
 - a. On a trial home visit;
 - b. Receiving services at the youth correctional center pursuant to an adjudication of delinquency; or
 - c. Absent without leave from the place in which the child was receiving foster care.
 7. For purposes of this section:
 - a. "A finding that the child has been subjected to child abuse or neglect" means:
 - (1) A finding of deprivation made under chapter 27-20; or
 - (2) A conviction of a person, responsible for a child's welfare, for conduct involving the child, under chapter 12.1-16 or sections 12.1-17-01 through 12.1-17-04 or 12.1-20-01 through 12.1-20-08.
 - b. "Compelling reason" means a recorded statement that reflects consideration of:
 - (1) The child's age;
 - (2) The portion of the child's life spent living in the household of a parent of the child;
 - (3) The availability of an adoptive home suitable to the child's needs;
 - (4) Whether the child has special needs; and
 - (5) The expressed wishes of a child age ten or older.
 - c. "Department" means the department of human services or its designee, including any county social service board.

27-20-21. Contents of petition.
 Superseded by N.D.R.Juv.P., Rule 3.

27-20-22. Summons.
 Superseded by N.D.R.Juv.P., Rules 2, 5, and 10.

27-20-23. Service of summons.
 Superseded by N.D.R.Juv.P., Rule 6.

- 27-20-24. Conduct of hearings.**
1. Hearings under this chapter must be conducted by the court without a jury, in an informal but orderly manner, and separately from other proceedings not included in section 27-20-03.
 2. If the hearing has not been held within the time limit, or any extension thereof, required by subsection 1 of section 27-20-22, the petition must be dismissed.

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3. The state's attorney upon request of the court 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 27-20-10, the proceedings must be recorded by stenographic notes or by electronic, mechanical, or other appropriate means.
5. Hearings are open to the public if the purpose of the hearing is to declare a person in contempt of court or to consider a petition alleging an offense identified under subdivision b of subsection 1 of section 27-20-34 or subsection 2 of section 27-20-34. The general public must be excluded from other hearings under this chapter. In hearings from which the general public is excluded, only the parties, their counsel, 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.

27-20-25. Service by publication - Interlocutory order of disposition.

Superseded by N.D.R.Juv.P., Rule 8.

27-20-26. Right to counsel - Exceptions.

1. Except as otherwise provided in this section, a party who is indigent and unable to employ legal counsel is entitled to counsel at public expense at proceedings commenced under section 27-20-30.1, and at custodial, post-petition, and informal adjustment stages of proceedings under this chapter. During the informal adjustment stage of a proceeding or in a proceeding commenced under section 27-20-30.1 only the child, if determined to be indigent, is entitled to counsel at public expense. In proceedings regarding allegations of unruliness or delinquency, a child's parent, legal guardian, or custodian, if determined to be indigent, is entitled to counsel at public expense only during the dispositional stage of the proceedings. If a party appears without counsel the court shall ascertain whether the party knows the party may be represented by counsel and that the party is entitled to counsel at public expense if indigent. The court may continue the proceeding to enable a party to obtain counsel and, subject to this section, counsel must be provided for an unrepresented indigent party upon the party's request. Counsel must be provided for a child who is under the age of eighteen years and is not represented by the child's parent, guardian, or custodian at custodial, post-petition, and informal adjustment stages of proceedings under this chapter. If the interests of two or more parties conflict, separate counsel must be provided for each of them.
2. An indigent party is one who at the time of requesting counsel is unable, without undue financial hardship, to provide for full payment of legal counsel and all other necessary expenses for representation. A child who, at the time of the proceeding, is under the age of eighteen years is not to be considered indigent under this section if the child's parent can, without undue financial hardship, provide full payment for legal counsel and other expenses of representation. Any parent of a child who is under the age of eighteen and is involved in a proceeding under this chapter is, unless undue financial hardship would ensue, responsible for providing legal counsel and for paying other necessary expenses of representation for the parent's child. The court may enforce performance of this duty by appropriate order.
3. For purposes of this section and section 27-20-49, "party" means the child and the child's parent, legal guardian, or custodian, and includes "child" as defined in subsection 1 of section 27-20-30.1.

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27-20-27. Other basic rights.

1. A party is entitled to the opportunity to introduce evidence and otherwise be heard in the party's own behalf and to cross-examine adverse witnesses.
2. A child charged with a delinquent act need not be a witness against or otherwise incriminate oneself. An extrajudicial statement, if obtained in the course of violation of this chapter or which would be constitutionally inadmissible in a criminal proceeding, may not be used against a child. Evidence illegally seized or obtained may not be received over objection to establish the allegations made against a child. A confession validly made by a child out of court is insufficient to support an adjudication of delinquency unless it is corroborated in whole or in part by other evidence.

27-20-27.1. Orders directed to parents or guardians.

It is the policy of this state that every parent or guardian has an obligation to participate in any treatment of the parent's or guardian's child as ordered by the juvenile court. The juvenile court may hold any parent or guardian who willfully fails to participate in the treatment in contempt of court.

27-20-28. Investigation and report.

1. If the allegations of a petition are admitted by a party or notice of a hearing under section 27-20-34 has been given, the court, prior to the hearing on need for treatment or rehabilitation and disposition, may direct that a social study and report in writing to the court be made by the director or other person designated by the court, concerning the child, the child's family and environment, and other matters relevant to disposition of the case. If the allegations of the petition are not admitted and notice of a hearing under section 27-20-34 has not been given, the court may not direct the making of the study and report until after the court has heard the petition upon notice of hearing given pursuant to this chapter and the court has found that the child committed a delinquent act or is an unruly or deprived child.
2. During the pendency of any proceeding the court:
 - a. May order the child to be examined at a suitable place by a physician, psychologist, or certified addiction counselor;
 - b. May order the child tested by appropriate forensic methods to determine whether the child has been exposed to a controlled substance or other substance considered injurious to the child's health; or
 - c. May order medical or surgical treatment of a child who is suffering from a serious physical condition or illness, or alcohol or drug abuse, which in the opinion of a licensed physician requires prompt treatment, even if the parent, guardian, or other custodian has not been given notice of a hearing, is not available, or without good cause informs the court of that person's refusal to consent to the treatment.

27-20-29. Hearing - Findings - Dismissal.

1. After hearing the evidence on the petition, the court shall make and file its findings as to whether the child is a deprived child, or if the petition alleges that the child is delinquent or unruly, whether the acts ascribed to the child were committed by the child. If the court finds that the child is not a deprived child or that the allegations of delinquency or unruly conduct have not been established, it shall dismiss the petition and order the child discharged from any detention or other restriction previously ordered in the proceeding.
2. If the court finds on proof beyond a reasonable doubt that the child committed the acts by reason of which the child is alleged to be delinquent or unruly, it shall proceed immediately or at a postponed hearing to hear evidence as to whether the child is in need of treatment or rehabilitation and to make and file its findings thereon. In the absence of evidence to the contrary, evidence of the commission of acts which constitute a felony is sufficient to sustain a finding that the child is in need of treatment or rehabilitation. If the court finds that the child is not in need of treatment or

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- rehabilitation, it shall dismiss the proceeding and discharge the child from any detention or other restriction previously ordered.
3. If the court finds from clear and convincing evidence that the child is deprived or that the child is in need of treatment or rehabilitation as a delinquent or unruly child, the court shall proceed immediately or at a postponed hearing to make a proper disposition of the case.
 4. In hearings under subsections 2 and 3, 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 its probative value even though not otherwise competent in the hearing on the petition. The parties or their counsel must be afforded an opportunity to examine and controvert written reports so received and to cross-examine individuals making the reports. Sources of confidential information need not be disclosed.
 5. On its motion or that of a party, the court may continue the hearings under this section for a reasonable period to receive reports and other evidence bearing on the disposition or the need for treatment or rehabilitation. In this event the court shall make an appropriate order for detention of the child or the child's release from detention subject to supervision of the court during the period of the continuance. In scheduling investigations and hearings the court shall give priority to proceedings in which a child is in detention or has otherwise been removed from the child's home before an order of disposition has been made.

27-20-30. Disposition of deprived child.

1. If the child is found to be a deprived child, the court may make any of the following orders of disposition best suited to the protection and physical, mental, and moral welfare of the child:
 - a. Permit the child to reside with the child's parents, guardian, or other custodian, subject to conditions and limitations as the court prescribes, including supervision as directed by the court for the protection of the child.
 - b. Subject to conditions and limitations as the court prescribes, transfer temporary legal custody to any of the following:
 - (1) An agency or other private organization licensed or otherwise authorized by law to receive and provide care for the child.
 - (2) The director of the county social service board or other public agency authorized by law to receive and provide care for the child.
 - c. Without making any of the orders otherwise provided in this section, transfer custody of the child to the juvenile court of another state if authorized by and in accordance with section 27-20-39 if the child is or is about to become a resident of that state.
 - d. Require the parents, guardian, or other custodian to participate in treatment.
 - e. Appoint a fit and willing relative or other appropriate individual as the child's legal guardian.
 - f. In cases in which a compelling reason has been shown that it would not be in the child's best interests to return home, to have parental rights terminated, to be placed for adoption, to be placed with a fit and willing relative, or to be placed with a legal guardian, establish, by order, some other planned permanent living arrangement.
2. Unless a child found to be deprived is found also to be delinquent or unruly and not amenable to treatment, the child may not be committed to or confined in an institution or other facility designed or operated for the benefit of delinquent children.

27-20-30.1. Disposition of child needing continued foster care services.

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

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2. A petition to commence an action under this section must contain information required under section 27-20-21 along with an affidavit prepared by the administrative county, as determined by the department of human services.
3. The court shall issue a summons in accordance with section 27-20-22 upon the filing of a petition and affidavit.
4. If a child is in need of continued foster care services as determined by the department of human services and as set forth in a continued foster care agreement, the court shall make the following judicial determination:
 - a. That the child is not deprived, delinquent, or unruly but is in need of continued foster care services;
 - b. That the child will remain in or will return to foster care pursuant to the child's continued foster care agreement;
 - c. That the child's continued foster care agreement has been willfully entered between the department of human services or its agent, the child, and the foster care provider;
 - d. That it is in the best interest of the child to remain in or return to foster care;
 - e. That reasonable efforts were made in accordance with subsection 7 of section 27-20-32.2;
 - f. That the child has attained the age of eighteen or older but does not exceed the age of twenty-one years;
 - g. That the child has satisfied the education, employment, or disability requirements under the Fostering Connections to Success and Increasing Adoptions Act of 2008 [Pub. L. 110-351] and as set forth by the department of human services;
 - h. That the administrative county, as determined by the department, shall continue foster care case management, unless otherwise agreed to or required by the department;
 - i. That the administrative county or division of juvenile services must have care and placement responsibility of the child;
 - j. That permanency hearing must be as set forth in section 27-20-36; and
 - k. That there are no grounds to file a petition to terminate parental rights under chapter 27-20.
5. Pursuant to section 27-20-37, a court may modify or vacate the judicial determination made under subsection 4.

27-20-31. Disposition of delinquent child.

If the child is found to be a delinquent child, the court may make any of the following orders of disposition best suited to the child's treatment, rehabilitation, and welfare:

1. Any order authorized by section 27-20-30 for the disposition of a deprived child;
2. Placing the child on probation under the supervision of the director, probation officer, or other appropriate officer of the court or of the court of another state as provided in section 27-20-41 or the director of the county social service board under conditions and limitations the court prescribes;
3. Ordering the child to pay a fine if the delinquent act committed by the child constitutes manslaughter resulting from the operation of a motor vehicle in violation of section 12.1-16-02; negligent homicide in violation of section 12.1-16-03; or driving or being in actual physical control of a vehicle in violation of section 39-08-01, or an equivalent ordinance. The court may suspend the imposition of a fine imposed pursuant to this subsection upon such terms and conditions as the court may determine. Fines collected pursuant to this subsection must be paid into the county treasury for disposition pursuant to section 29-27-02.1;
4. Committing the child to the division of juvenile services or to another state department to which commitment of delinquent or unruly children may be made. When necessary, the commitment order may provide that the child initially be placed in a secure facility;
5. Ordering the child to make monetary restitution to the victim of the offense or to complete a specified number of hours of community service as determined by the court, or both;

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- 6. Ordering the periodic testing for the use of illicit drugs or alcohol pursuant to rules or policies adopted by the supreme court; or
- 7. Ordering the child's participation in a juvenile drug court program.
- 8. If a child is adjudicated delinquent for a violation of section 39-08-01 or equivalent ordinance, or 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, the juvenile court shall require the child to participate in the twenty-four seven sobriety program under chapter 54-12.

27-20-31.1. Delinquent children - Suspension of driving privileges.

- 1. If a juvenile is adjudicated delinquent of an offense that would be a class A misdemeanor or a felony if the offense were committed by an adult, the juvenile court may order the suspension of the juvenile's driving privileges for a period of up to six months for the first offense. For a second or subsequent offense, the juvenile court may order the suspension of the juvenile's driving privileges for up to one year. As a condition to the return of driving privileges, the juvenile court may order the successful completion of an appropriate driver's examination.
- 2. When the juvenile court orders the suspension of a juvenile's driving privileges, the juvenile court shall immediately take possession of the juvenile's driver's license or permit and send copies of the court's order to the director of the department of transportation who shall make notation of the juvenile's suspension of driving privileges.
- 3. The record of the juvenile's suspension of driving privileges under this section must be kept confidential and may not be released except to law enforcement personnel in connection with law enforcement activities. The record of a juvenile's suspension of driving privileges under this section may not be disclosed to or shared with the licensing officials of any other state or jurisdiction. At the end of the six-month or one-year period, the director shall remove and destroy all record of the juvenile's suspension of driving privileges under this section.
- 4. This section may not be construed to limit consensual agreements between the juvenile court and the juvenile restricting the driving privileges of the juvenile.

27-20-31.2. Restitution.

- 1.
 - a. In addition to a child being ordered to make restitution under section 27-20-31, a parent of a child adjudged delinquent may be ordered to make restitution on the child's behalf in an amount not exceeding five thousand dollars.
 - b. Prior to ordering parental restitution under this section, the court shall hold a hearing on the matter with notice given to all interested parties as to the nature and amount of the parental restitution. In determining whether to order parental restitution, the court must take the following factors into account:
 - (1) The ability of the parent or parents to pay monetary restitution and the care and control exercised by the parents.
 - (2) The ability of the child to pay monetary restitution.
 - (3) Whether ordering parental restitution would detract from the child's treatment, rehabilitation, or welfare.
 - (4) The number of delinquent acts, if any, previously committed by the child.
 - c. A parental order of restitution must be limited to those damages directly related to the delinquent act and expenses actually incurred as a result of the delinquent act.
- 2. Unless the court directs otherwise, any order of restitution under this section or section 27-20-31 may be filed, transcribed, and enforced by the person entitled to the restitution in the same manner as civil judgments rendered by the courts of this state may be enforced. A child against whose parents a judgment may be entered under this section is jointly and severally liable with that child's parents for the amounts up to five thousand dollars and solely liable for any amounts over that amount. Any judgment

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rendered under this section may not be discharged in bankruptcy and is not subject to the statutes of limitation provided for in chapter 28-01 and the judgment may not be canceled under section 28-20-35.

27-20-32. Disposition of unruly child.

If the child is found to be unruly, the court may make any disposition authorized for a delinquent child except commitment to a secure facility. If after making the disposition the court finds upon a further hearing that the child is not amenable to treatment or rehabilitation under the disposition made, it may make a disposition otherwise authorized by section 27-20-31.

27-20-32.1. Court order required for removal of child.

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

27-20-32.2. Reasonable efforts to prevent removal or to reunify - When required.

1. As used in this section, "reasonable efforts" means the exercise of due diligence, by the agency granted authority over the child under this chapter, to use appropriate and available services to meet the needs of the child and the child's family in order to prevent removal of the child from the child's family or, after removal, to use appropriate and available services to eliminate the need for removal, to reunite the child and the child's family, and to maintain family connections. In determining reasonable efforts to be made with respect to a child under this section, and in making reasonable efforts, the child's health and safety must be the paramount concern.
2. Except as provided in subsection 4, reasonable efforts must be made to preserve families, reunify families, and maintain family connections:
 - a. Prior to the placement of a child in foster care, to prevent or eliminate the need for removing the child from the child's home;
 - b. To make it possible for a child to return safely to the child's home;
 - c. To place siblings in the same foster care, relative, guardianship, or adoptive placement, unless it is determined that such a joint placement would be contrary to the safety or well-being of any of the siblings; and
 - d. In the case of siblings removed from their home who are not jointly placed, to provide for frequent visitation or other ongoing interaction between the siblings, unless it is contrary to the safety or well-being of any of the siblings.
3. If the court or the child's custodian determined that continuation of reasonable efforts, as described in subsection 2, is inconsistent with the permanency plan for the child, reasonable efforts must be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child.
4. Reasonable efforts of the type described in subsection 2 are not required if:
 - a. A court of competent jurisdiction has determined that a parent has subjected a child to aggravated circumstances; or
 - b. The parental rights of the parent, with respect to another child of the parent, have been involuntarily terminated.
5. Efforts to place a child for adoption, with a fit and willing relative or other appropriate individual as a legal guardian, or in another planned permanent living arrangement, may be made concurrently with reasonable efforts of the type described in subsection 2.
6. Removal of a child from the child's home for placement in foster care must be based on judicial findings stated in the court's order, and determined on a case-by-case basis in a manner that complies with the requirements of titles IV-B and IV-E of the Social Security Act [42 U.S.C. 620 et seq. and 42 U.S.C. 6701 et seq.], as amended, and

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federal regulations adopted thereunder, provided that this subsection may not provide a basis for overturning an otherwise valid court order.

- 7. For the purpose of section 27-20-30.1, reasonable efforts were made under this section to meet the child's needs before a foster care placement for a child remaining in care for continued foster care purposes.

27-20-32.3. Definitions - Active efforts - When required.

When an agency is seeking to effect a foster care placement of, or termination of parental rights to an Indian child, the court shall require active efforts as set forth in 25 U.S.C. 1912(d).

27-20-33. 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 persons 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.

27-20-34. Transfer to other courts.

- 1. After a petition has been filed alleging delinquency based on conduct which is designated a crime or public offense under the laws, including local ordinances or resolutions of this state, the court before hearing the petition on its merits shall transfer the offense for prosecution to the appropriate court having jurisdiction of the offense if:
 - a. The child is over sixteen or more years of age and requests the transfer;
 - b. The child was fourteen years of age or more at the time of the alleged conduct and the court determines that there is probable cause to believe the child committed the alleged delinquent act and the delinquent act involves the offense of murder or attempted murder; gross sexual imposition or the attempted gross sexual imposition of a victim by force or by threat of imminent death, serious bodily injury, or kidnapping; or the manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance in violation of subdivision a or b of subsection 1 of section 19-03.1-23, except for the manufacture, delivery, or possession with intent to manufacture or deliver marijuana in an amount less than one pound [.45 kilogram]; or the gratuitous delivery of a controlled substance not a narcotic drug or methamphetamine which is a singular and isolated event involving an amount of controlled substance sufficient solely for a single personal use; or
 - (1) The child was fourteen or more years of age at the time of the alleged conduct;
 - (2) A hearing on whether the transfer should be made is held in conformity with sections 27-20-24, 27-20-26, and 27-20-27;
 - (3) Notice in writing of the time, place, and purpose of the hearing is given to the child and the child's parents, guardian, or other custodian at least three days before the hearing; and
 - (4) The court finds that there are reasonable grounds to believe that:
 - (a) The child committed the delinquent act alleged;
 - (b) The child is not amenable to treatment or rehabilitation as a juvenile through available programs;
 - (c) The child is not treatable in an institution for individuals who are intellectually disabled or who are mentally ill;
 - c. (1) The child was fourteen or more years of age at the time of the alleged conduct;

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- (d) The interests of the community require that the child be placed under legal restraint or discipline; and
 - (e) If the child is fourteen or fifteen years old, the child committed a delinquent act involving the infliction or threat of serious bodily harm.
2. The burden of proving reasonable grounds to believe that a child is amenable to treatment or rehabilitation as a juvenile through available programs is on the child in those cases in which the alleged delinquent act involves the offense of manslaughter, aggravated assault, robbery, arson involving an inhabited structure, or escape involving the use of a firearm, destructive device, or other dangerous weapon or in cases in which the alleged delinquent act involves an offense which if committed by an adult would be a felony and the child has two or more previous delinquency adjudications for offenses which would be a felony if committed by an adult.
 3. In determining a child's amenability to treatment and rehabilitation, the court shall consider and make specific findings on the following factors:
 - a. Age;
 - b. Mental capacity;
 - c. Maturity;
 - d. Degree of criminal sophistication exhibited;
 - e. Previous record;
 - f. Success or failure of previous attempts to rehabilitate;
 - g. Whether the juvenile can be rehabilitated prior to expiration of juvenile court jurisdiction;
 - h. Any psychological, probation, or institutional reports;
 - i. The nature and circumstances of the acts for which the transfer is sought;
 - j. The prospect for adequate protection of the public; and
 - k. Any other relevant factors.
 4. Any transfer operates to terminate the juvenile court's jurisdiction over the child with respect to any future offense if the child is ultimately convicted of the offense giving rise to the transfer.
 5. No child subject to the jurisdiction of the juvenile court, either before or after reaching eighteen years of age, may be prosecuted for an offense previously committed unless the case has been transferred as provided in this section.
 6. Statements made by the child at the hearing under this section are not admissible against the child over objection in the criminal proceedings following the transfer except for impeachment.
 7. If the case is not transferred, the judge who conducted the hearing may not over objection of an interested party preside at the hearing on the petition. If the case is transferred to a court of which the judge who conducted the hearing is also a judge, the judge likewise is disqualified over objection from presiding in the prosecution.
 8. A person at least twenty years of age who committed an offense while a child and was not adjudicated for the offense in juvenile court may be prosecuted in district court as an adult, unless the state intentionally delayed the prosecution to avoid juvenile court jurisdiction. The district court has original and exclusive jurisdiction for the prosecution under this subsection.

27-20-35. Disposition of mentally ill, mentally retarded, alcohol, or drug abusing child.
 Repealed by S.L. 2007, ch. 274, § 36.

27-20-36. Limitations of time on orders of disposition.

1. An order terminating parental rights or establishing a legal guardianship is without limit as to duration.
2. An order of disposition committing a delinquent or unruly child to the division of juvenile services continues in force for not more than twelve months, excluding any period of time the child is on parole from an institution, or until the child is sooner discharged by an institution.

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- a. The court which made the order may extend its duration for additional twelve-month periods subject to like discharge, if:
 - (1) A hearing is held upon motion of the division, or on the court's own motion, prior to the expiration of the order;
 - (2) Reasonable notice of the hearing and an opportunity to be heard are given to the child and the parent, guardian, or other custodian; and
 - (3) The court finds that the extension is necessary for the treatment or rehabilitation of the child.
 - b. A permanency hearing must be conducted within thirty days after a court determines that aggravated circumstances of the type described in subdivision a, c, d, or e of subsection 3 of section 27-20-02 exist, or within twelve months after a child, subject to an order of disposition under this subsection, is considered to have entered foster care, or is continued in foster care following a previous permanency hearing, including a hearing conducted on a petition filed under section 27-20-30.1. The permanency hearing may be conducted:
 - (1) By the division of juvenile services as a placement hearing under chapter 27-21; or
 - (2) By the court, if the court requires, or if it appears that an appropriate permanency plan could not be carried out without exceeding the authority of the division of juvenile services.
 3. Except as provided in subsection 2, an order of disposition pursuant to which a child is placed in foster care may not continue in force for more than twelve months after the child is considered to have entered foster care. Before the extension of any court order limited under this subsection, a permanency hearing must be conducted. Any other order of disposition may not continue in force for more than twelve months.
 4. Except as provided in subsection 1, the court may terminate an order of disposition before the expiration of the order or extend its duration for further periods. An order of extension may be made if:
 - a. A hearing is held before the expiration of the order upon motion of a party or on the court's own motion;
 - b. Reasonable notice of the hearing and opportunity to be heard are given to the parties affected;
 - c. The court finds the extension is necessary to accomplish the purposes of the order extended; and
 - d. The extension does not exceed twelve months from the expiration of an order limited by subsection 3 or two years from the expiration of any other limited order.
 5. Except as provided in subsection 2, the court may terminate an order of disposition or extension prior to its expiration, on or without an application of a party, if it appears to the court that the purposes of the order have been accomplished. If a party may be adversely affected by the order of termination, the order may be made only after reasonable notice and opportunity to be heard have been given to the party.
 6. Except as provided in subsection 1, when the child attains the age of twenty years, all orders affecting the child then in force terminate and the child is discharged from further obligation or control.
 7. If an order of disposition is made with respect to a child under the age of ten years pursuant to which the child is placed in foster care without terminating parental rights and the parent and child relationship, the court, before extending the duration of the order, shall determine upon the extension hearing whether the child is adoptable and whether termination of those rights and that relationship is warranted under section 27-20-44 and is in the best interest of the child. In that case the notice of the extension hearing must also inform the parties affected that the court will determine whether the child is adoptable and whether termination of their parental rights and the parent and child relationship is warranted and in the best interest of the child and that a further order of disposition may be made by the court placing the child with a view to adoption. If the court determines that the child is adoptable and that termination of parental rights and the parent and child relationship is warranted and is in the best

interest of the child, the court shall make a further order of disposition terminating those rights and that relationship and committing the child under section 27-20-47.

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27-20-37. Modification or vacation of orders.

Superseded by N.D.R.Juv.P., Rule 16 and N.D.R.Crim.P., Rule 43.

27-20-38. Rights and duties of legal custodian.

A custodian to whom legal custody has been given by the court under this chapter has:

1. The right to the physical custody of the child and the right to determine the nature of the care, placement, and treatment of the child, including ordinary medical care as well as medical or surgical treatment for a serious physical condition or illness which in the opinion of a licensed physician requires prompt treatment, except for any limits the court may impose.
2. The right and duty to provide for the care, protection, training, and education and the physical, mental, and moral welfare of the child, subject to the conditions and limitations of the order and to the remaining rights and duties of the child's parents or guardian.
3. A duty within thirty days after the removal of a child from the custody of the parent or parents of the child for the purpose of placement into foster care, to exercise due diligence to identify and provide notice to all parents, grandparents, and any other adult relative suggested by the parents and grandparents, subject to exceptions due to family or domestic violence, that:
 - a. Specifies that the child has been or is being removed from the custody of the parent or parents of the child;
 - b. Explains the options the relative has under federal, state, and local law to participate in the care and placement of the child, including any options that may be lost by failing to respond to the notice;
 - c. Describes the requirements and standards to become a foster family home and the additional services and supports that are available for children placed in that home; and
 - d. Describes how the relative of the child may enter into an agreement with the department to receive a subsidized guardianship payment.

27-20-39. Disposition of nonresident child.

1. If the court finds that a child who has been adjudged to have committed a delinquent act or to be unruly or deprived is or is about to become a resident of another state which has adopted the Uniform Juvenile Court Act, or a substantially similar Act which includes provisions corresponding to sections 27-20-39 and 27-20-40, the court may defer hearing on need for treatment or rehabilitation and disposition and request by any appropriate means the juvenile court of the county of the child's residence or prospective residence to accept jurisdiction of the child.
2. If the child becomes a resident of another state while on probation or under protective supervision under order of a juvenile court of this state, the court may request the juvenile court of the county of the state in which the child has become a resident to accept jurisdiction of the child and to continue the child's probation or protective supervision.
3. Upon receipt and filing of an acceptance, the court of this state shall transfer custody of the child to the accepting court and cause the child to be delivered to the person designated by that court to receive the child's custody. It also shall provide that court with certified copies of the order adjudging the child to be a delinquent, unruly, or deprived child, of the order of transfer, and if the child is on probation or under protective supervision under order of the court, of the order of disposition. It also shall provide that court with a statement of the facts found by the court of this state and any recommendations and other information it considers of assistance to the accepting

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court in making a disposition of the case or in supervising the child on probation or otherwise.

- 4. Upon compliance with subsection 3, the jurisdiction of the court of this state over the child is terminated.

27-20-40. Disposition of resident child received from another state.

- 1. If a juvenile court of another state which has adopted the Uniform Juvenile Court Act, or a substantially similar Act which includes provisions corresponding to sections 27-20-39 and 27-20-40, requests a juvenile court of this state to accept jurisdiction of a child found by the requesting court to have committed a delinquent act or to be an unruly or deprived child, and the court of this state finds, after investigation that the child is, or is about to become, a resident of the county in which the court presides, it shall promptly and not later than fourteen days after receiving the request issue its acceptance in writing to the requesting court and direct its director of juvenile court or other person designated by it to take physical custody of the child from the requesting court and bring the child before the court of this state or make other appropriate provisions for the child's appearance before the court.
- 2. Upon the filing of certified copies of the orders of the requesting court determining that the child committed a delinquent act or is an unruly or deprived child and committing the child to the jurisdiction of the juvenile court of this state, the court of this state shall immediately fix a time for a hearing on the need for treatment or rehabilitation and disposition of the child or on the continuance of any probation or protective supervision.
- 3. The hearing and notice thereof and all subsequent proceedings are governed by this chapter. The court may make any order of disposition permitted by the facts and this chapter. The orders of the requesting court are conclusive that the child committed the delinquent act or is an unruly or deprived child and of the facts found by the court in making the orders, subject only to section 27-20-37. If the requesting court has made an order placing the child on probation or under protective supervision, a like order shall be entered by the court of this state. The court may modify or vacate the order in accordance with section 27-20-37.

27-20-41. Ordering out-of-state supervision.

- 1. Subject to the provisions of this chapter governing dispositions and to the extent that funds of the county are available, the court may place a child in the custody of a suitable person in another state. On obtaining the written consent of a juvenile court of another state which has adopted the Uniform Juvenile Court Act or a substantially similar Act which includes provisions corresponding to sections 27-20-41 and 27-20-42, the court of this state may order that the child be placed under the supervision of a probation officer or other appropriate official designated by the accepting court. One certified copy of the order must be sent to the accepting court and another filed with the clerk of the board of county commissioners of the county of the requesting court of this state.
- 2. The reasonable cost of the supervision, including the expenses of necessary travel, must be borne by the county of the requesting court of this state. Upon receiving a certified statement signed by the judge of the accepting court of the cost incurred by the supervision, the court of this state shall certify if it appears that the sum so stated was reasonably incurred and file it with the county auditor of the county for payment. The appropriate officials shall thereupon issue a warrant for the sum stated payable to the appropriate officials of the county of the accepting court.

27-20-42. Supervision under out-of-state order.

- 1. Upon receiving a request of a juvenile court of another state which has adopted the Uniform Juvenile Court Act, or a substantially similar Act which includes provisions corresponding to sections 27-20-41 and 27-20-42 to provide supervision of a child

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under the jurisdiction of that court, a court of this state may issue its written acceptance to the requesting court and designate its director of juvenile court, probation officer, or other appropriate officer who is to provide supervision, stating the probable cost per day therefor.

2. Upon the receipt and filing of a certified copy of the order of the requesting court placing the child under the supervision of the officer so designated, the officer shall arrange for the reception of the child from the requesting court, provide supervision pursuant to the order and this chapter, and report thereon from time to time together with any recommendations the officer may have to the requesting court.
3. The court in this state from time to time shall certify to the requesting court the cost of supervision that has been incurred and request payment therefor from the appropriate officials of the county of the requesting court to the appropriate officials of the county of the accepting court.
4. The court of this state at any time may terminate supervision by notifying the requesting court. In that case, or if the supervision is terminated by the requesting court, the officer of the court supervising the child shall return the child to a representative of the requesting court authorized to receive the child.

27-20-43. Powers of out-of-state probation officers.

If a child has been placed on probation or protective supervision by a juvenile court of another state which has adopted the Uniform Juvenile Court Act or a substantially similar Act which includes provisions corresponding to this section, and the child is in this state with or without the permission of that court, the juvenile supervisor or probation officer of that court or other person designated by that court to supervise or take custody of the child has all the powers and privileges in this state with respect to the child as given by this chapter to like officers or persons of this state, including the right of visitation, counseling, control, and direction, taking into custody, and returning to that state.

27-20-44. Termination of parental rights.

1. The court by order may terminate the parental rights of a parent with respect to the parent's child if:
 - a. The parent has abandoned the child;
 - b. The child is subjected to aggravated circumstances as defined under subsection 3 of section 27-20-02;
 - c. The child is a deprived child and the court finds:
 - (1) The conditions and causes of the deprivation are likely to continue or will not be remedied and that by reason thereof the child is suffering or will probably suffer serious physical, mental, moral, or emotional harm; or
 - (2) The child has been in foster care, in the care, custody, and control of the department, or a county social service board, or, in cases arising out of an adjudication by the juvenile court that a child is an unruly child, the division of juvenile services, for at least four hundred fifty out of the previous six hundred sixty nights; or
 - d. The written consent of the parent acknowledged before the court has been given.
2. If the court does not make an order of termination of parental rights, it may grant an order under section 27-20-30 if the court finds from clear and convincing evidence that the child is a deprived child.

27-20-45. Proceeding for termination of parental rights.

1. The petition must comply with section 27-20-21 and state clearly that an order for termination of parental rights is requested and that the effect will be as stated in section 27-20-46.
2. If both of the natural parents of the child are not named in the petition either as petitioner or as respondent, the court shall cause inquiry to be made of the petitioner

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and other appropriate persons in an effort to identify an unnamed parent. The inquiry must include, to the extent necessary and appropriate, all of the following:

- a. Whether any man is presumed to be the father of the child under chapter 14-20.
 - b. Whether the natural mother of the child was cohabiting with a man at the time of conception or birth of the child.
 - c. Whether the natural mother of the child has received from any man support payments or promises of support with respect to the child or in connection with her pregnancy.
 - d. Whether any person has formally or informally acknowledged or declared that person's possible parentage of the child.
 - e. Whether any person claims any right to custody of the child.
3. The court shall add as respondent to the petition and cause to be served with a summons any person identified by the court as an unnamed parent, unless the person has relinquished parental rights, or parental rights have been previously terminated by a court.
 4. If the court, after inquiry, is unable to identify an unnamed parent and no person has appeared in the proceeding claiming to be an unnamed parent of the child or to have any right of custody of the child, the court shall enter an order terminating all parental rights of the unnamed parent with reference to the child and the parent and child relationship.
 5. If a petition for termination of parental rights is made by a parent of the child under this section or if a parent consents to termination of parental rights under section 27-20-44, that parent is entitled under section 27-20-26 to legal counsel during all stages of a proceeding to terminate the parent and child relationship.
 6. Subject to the disposition of an appeal, upon the expiration of thirty days after an order terminating parental rights is issued under this section, the order cannot be questioned by any person, including the petitioner, in any manner, or upon any ground, including fraud, misrepresentation, failure to give any required notice, or lack of jurisdiction of the parties or of the subject matter, unless the person retained custody of the child.

27-20-46. Effect of order terminating parental rights or appointing a legal guardian.

1. An order terminating parental rights of a parent terminates all the parent's rights and obligations with respect to the child and of the child to or through the parent arising from the parental relationship. The parent is not thereafter entitled to notice of proceedings for the adoption of the child by another nor has the parent any right to object to the adoption or otherwise to participate in the proceedings.
2. An order appointing a legal guardian terminates any authority of a parent that is granted to the legal guardian under that order. A parent subject to such an order is entitled to treatment as a party at any subsequent juvenile court proceeding regarding the child.

27-20-47. Disposition upon termination of parental rights

1. If, upon entering an order terminating the parental rights of a parent, there is no parent having parental rights, the court shall:
 - a. Commit the child to the custody of the executive director of the department of human services or a licensed child-placing agency willing to accept custody for the purpose of placing the child for adoption or, in the absence thereof, in a foster home;
 - b. Appoint a fit and willing relative or other appropriate individual as the child's legal guardian; or
 - c. Establish some other planned permanent living arrangement.
2. The custodian has the rights of a legal custodian and authority to consent to the child's adoption, marriage, enlistment in the armed forces of the United States, and surgical and other medical treatment.

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3. If the child is not placed for adoption within twelve months after the date of the order and a legal guardianship or other planned permanent living arrangement for the child has not been established by a court of competent jurisdiction, the child must be returned to the court issuing the original termination order for entry of further orders for the care, custody, and control of the child.

27-20-48. Guardian ad litem - Immunity.

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

27-20-48.1. Appointment of legal guardian.

The court may establish a guardianship as a dispositional alternative if a child has been adjudicated as deprived, unruly, or delinquent.

27-20-48.2. Powers and duties of guardian of child.

A guardian of a child has the powers and responsibilities of a legal custodian if there is a parent with remaining parental rights. If there is no parent with remaining parental rights, the guardian has the rights of a legal custodian and the authority to consent to the child's adoption, marriage, enlistment in the armed forces of the United States, and surgical and other medical treatment. A guardian is not liable to third persons by reason of the parental relationship for acts of the child. In particular, and without qualifying the foregoing, a guardian has the following powers and duties:

1. The guardian must take reasonable care of the child's personal effects and commence protective proceedings if necessary to protect other property of the child.
2. The guardian may receive money payable for the support of the ward to the child's parent, guardian, or custodian under the terms of any statutory benefit or insurance system, or any private contract, devise, trust, conservatorship, or custodianship. The guardian also may receive money or property of the child paid or delivered by virtue of section 30.1-26-03. Any sums so received must be applied to the child's current needs for support, care, and education. The guardian must exercise due care to conserve any excess for the child's future needs unless a conservator has been appointed for the estate of the child, in which case excess must be paid over at least annually to the conservator. Sums so received by the guardian are not to be used for compensation for the guardian's services except as approved by order of court or as determined by a duly appointed conservator other than the guardian. A guardian may institute proceedings to compel the performance by any person of a duty to support the child or to pay sums for the welfare of the child.
3. The guardian is empowered to facilitate the child's education, social, or other activities and to authorize medical or other professional care, treatment, or advice. A guardian is not liable by reason of this consent for injury to the child resulting from the negligence or acts of third persons unless it would have been illegal for a parent to have consented. A guardian may consent to the marriage or adoption of the child.
4. A guardian shall file an annual report with the court informing the court of the status or condition of the child and provide a copy of the report to the child. The report must include changes that have occurred since the previous reporting period and an accounting of the child's estate. The guardian shall report whether the child has resided in an institution, whether the child continues to require guardianship, and whether any powers of the guardian should be increased or limited. The filing of a report and its acceptance by the court or clerk of district court does not constitute an

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adjudication or a determination of the merits of the report nor does the filing of the report constitute the court's approval of the report. The office of state court administrator shall provide printed forms that may be used to fulfill reporting requirements.

27-20-48.3. Termination of appointment of guardian - General.

A guardian's authority and responsibility terminates upon the death, resignation, or removal of the guardian, or upon the child's death, adoption, marriage, or attainment of majority, but termination does not affect the guardian's liability for prior acts nor the guardian's obligation to account for funds and assets of the child.

27-20-48.4. Resignation or removal proceedings.

1. A guardian may petition for permission to resign. A petition for permission to resign may include a request for appointment of a successor guardian. Resignation of a guardian does not terminate the guardianship until it has been approved by the court.
2. Any party to the proceeding in which the child's status was adjudicated, the director, or the child, if fourteen or more years of age, may petition for removal of a guardian on the grounds that the removal would be in the best interest of the child. A petition for removal may include a request for appointment of a successor guardian.
3. After notice and hearing on a petition for removal or for permission to resign, the court may terminate the guardianship and make any further order that may be appropriate.
4. If, at any time in the proceeding, the court determines that the interests of the child are, or may be, inadequately represented, it may appoint an attorney to represent the child, giving consideration to the preference of the child if the child is fourteen or more years of age.

27-20-49. Costs and expenses for care of child.

1. The following expenses are a charge upon the funds of the county upon certification thereof by the court:
 - a. The cost of medical and other examinations and treatment of a child ordered by the court.
 - b. The cost of care and support of a child committed by the court to the legal custody of a public agency other than an institution for delinquent children or to a private agency or individual other than a parent.
 - c. The cost of any necessary transportation for medical and other examinations and treatment of a child ordered by the court unless the child is in the legal custody of a state agency.
2. The commission on legal counsel for indigents shall pay reasonable compensation for services and related expenses of counsel provided at public expense for a party and the supreme court shall pay reasonable compensation for a guardian ad litem. The attorney general shall pay the witness fees, mileage, and travel expense of witnesses incurred in the proceedings under this chapter in the amount and at the rate provided for in section 31-01-16. Expenses of the state include the cost of any necessary transportation for medical and other examinations and treatment of a child ordered by the court if the child is in the legal custody of a state agency in which case the cost must be reimbursed to the county by that state agency at the state mileage rate, excluding meals and lodging, plus twenty-nine cents per mile.
3. If, after due notice to the parents or other persons legally obligated to care for and support the child, and to a child over the age of eighteen, and after affording them an opportunity to be heard, the court finds that they are financially able to pay all or part of the costs and expenses stated in subsection 1, and expenses payable by the supreme court under subsection 2, the court may order them to pay the same and prescribe the manner of payment. Unless otherwise ordered, payment shall be made to the clerk of the juvenile court for remittance to the person to whom compensation is due, or if the

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- costs and expenses have been paid by the county or the state to the county treasurer of the county or to the state treasurer.
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4. Unless it finds that there is no likelihood that the party is or will be able to pay attorney's fees and expenses, the court, in its order or judgment following a hearing under this chapter, shall order the parents or other persons legally obligated to care for and support the child, and the child if over the age of eighteen, to reimburse the presumed amount of indigent defense costs and expenses, as determined by the commission on legal counsel for indigents, and shall notify the party of the right to a hearing on the reimbursement amount. If the party or the state requests a hearing within thirty days of receiving notice under this subsection, the court shall schedule a hearing at which the actual amount of attorney's fees and expenses must be shown. In determining the amount of reimbursement and method of payment, the court shall consider the financial resources of the party and the nature of the burden that reimbursement of costs and expenses will impose.
 5. A party who is required to reimburse indigent defense costs and expenses and who is not willfully in default in that reimbursement may at any time petition the court to waive reimbursement of all or any portion of the attorney's fees and expenses. If the court is satisfied that reimbursement of the amount due will impose undue hardship on the party or the party's immediate family, the court may waive reimbursement of all or any portion of the amount due or modify the method of payment.

27-20-50. Protective order.

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

1. The court finds that the conduct:
 - a. Is or may be detrimental or harmful to the child; or
 - b. Will tend to defeat the execution of an order of disposition; and
2. Due notice of the application or motion and the grounds therefor and an opportunity to be heard have been given to the person against whom the order is directed.

27-20-51. Inspection of court files and records.

1. Except as provided in this section, all files and records of the juvenile court, whether in the office of the clerk of district court or juvenile court, of a proceeding under this chapter are closed to the public. Juvenile court files and records are open to inspection only by:
 - a. The judge and staff of the juvenile court.
 - b. The parties to the proceeding or their counsel or the guardian ad litem of any party.
 - c. A public or private agency or institution providing supervision or having custody of the child under order of the juvenile court, which must be given a copy of the findings and order of disposition when it receives custody of the child.
 - d. Any court and its probation and other officials or professional staff and the attorney for the defendant for use in preparing a presentence report in a criminal case in which the defendant is convicted and who, prior to the criminal case, had been a party to the proceeding in juvenile court.
 - e. The professional staff of the uniform crime victims compensation program when necessary for the discharge of their duties pursuant to chapter 54-23.4.
 - f. A staff member of the division of children and family services of the department of human services or a law enforcement officer when necessary for the performance of that person's duties under section 50-11.1-06.2 or the National Child Protection Act of 1993 [Pub. L. 103-209; 107 Stat. 2490; 42 U.S.C. 5119 et seq.].
 - g. An employee or agent of the department of human services when necessary for performance of that individual's duty under chapter 50-11 or 50-11.1 to investigate the background of an individual living or working in the facility, home, or residence for which licensure is sought.

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- h. A criminal justice agency if the juvenile is required to register under section 12.1-32-15.
- 2. Juvenile court files and records are also open to inspection with written leave of a juvenile court judge or judicial referee to whom juvenile court matters have been referred:
 - a. Upon a showing in writing of a legitimate interest in a proceeding or in the work of the juvenile court, but only to the extent necessary to respond to the legitimate interest; and
 - b. By the principal of any public or private school that is a member of the North Dakota high school activities association, or the superintendent of any school district that has one or more schools involved in the association, but only to the extent necessary to enforce the rules and regulations of the North Dakota high school activities association.
- 3. In a proceeding under this chapter, if the juvenile court finds that a child committed a delinquent or unruly act that constitutes a violation of a law or local ordinance governing the operation of a motor vehicle or a delinquent act of manslaughter or negligent homicide caused by the child's operation of a motor vehicle, the juvenile court shall report the finding to the director of the department of transportation within ten days.
- 4. Following an adjudication of delinquency for an offense that would be a felony if committed by an adult, the juvenile's school principal, chief administrative officer, or designated school guidance counselor, if requested, must be allowed access to the disposition order. Any other juvenile court files and records of a child may be disclosed to a superintendent or principal of the school in which the child is currently enrolled or in which the child wishes to enroll if the child appears to present a danger to self or to the students or staff of the school.
- 5. Following an adjudication of delinquency for an offense that results in the prohibitions included in subsection 1 or 2 of section 62.1-02-01, if requested, a law enforcement officer must be allowed access to the disposition order.
- 6. The juvenile court may notify a referring agency of the disposition of a case.
- 7. Notwithstanding that juvenile court records are closed to the public, nothing in this section may be construed to limit the release upon request of general information not identifying the identity of any juvenile, witness, or victim in any proceeding under this chapter. Files in the clerk of court's office are open to public inspection if the related hearing was open to the public under section 27-20-24.

27-20-51.1. Disclosure of information needed to apprehend juvenile.

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

27-20-52. Law enforcement and correctional facility records.

- 1. Unless a charge of delinquency is transferred for criminal prosecution under section 27-20-34, the interest of national security requires, or the court otherwise orders in the interest of the child, the law enforcement and correctional facility records and files of a child alleged or found to be delinquent, unruly, or deprived are not open to public inspection; but inspection of these records and files is permitted by:
 - a. A juvenile court having the child before it in any proceeding;
 - b. Counsel for a party to the proceeding;
 - c. The officers of public institutions or agencies to whom the child is or may be committed;
 - d. Law enforcement officers of other jurisdictions when necessary for the discharge of their official duties;

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- e. A court in which the child is convicted of a criminal offense for the purpose of a presentence report or other dispositional proceeding, or by officials of correctional facilities to which the child is detained or committed, or by the parole board, the governor, or the pardon advisory board, if one has been appointed, in considering the child's parole or discharge or in exercising supervision over the child;
 - f. The professional staff of the uniform crime victims compensation program when necessary for the discharge of its duties pursuant to chapter 54-23.4; and
 - g. A superintendent or principal of the school in which the child is currently enrolled or of a school in which the child wishes to enroll.
2. Notwithstanding that law enforcement records and files of a child alleged or found to be delinquent, unruly, or deprived are not open to public inspection, this section does not limit the release of general information that does not identify the identity of the child.

27-20-52.1. Law enforcement database.

Repealed by S.L. 1999, ch. 131, § 2.

27-20-53. Children's fingerprints, photographs.

1. No child under fourteen years of age may be fingerprinted in the investigation of a crime except as provided in this section. Fingerprints of a child who is referred to the court may be taken and filed by law enforcement officers in investigating the commission of the following crimes: murder, manslaughter, gross sexual imposition, robbery, aggravated assault, burglary, theft, forgery, and unlawful possession or use of a handgun.
2. Fingerprint files of children must be kept separate from those of adults. Copies of fingerprints known to be those of a child may be maintained locally and copies may be sent to a central state depository but may not be sent to a federal depository unless needed in the interest of national security.
3. Fingerprint files of children may be inspected by law enforcement officers when necessary for the discharge of their official duties. Other inspections may be authorized by the court in individual cases upon a showing that it is necessary in the public interest.
4. Fingerprints of a child are considered a part of the child's juvenile or adult investigative file and must be removed from the state and local files and destroyed in accordance with section 27-20-54.
5. If latent fingerprints are found during the investigation of an offense and a law enforcement officer has probable cause to believe that they are those of a particular child, the officer may fingerprint the child regardless of age or offense for purposes of immediate comparison with the latent fingerprints. If the comparison is negative, the fingerprint card and other copies of the fingerprints taken must be immediately destroyed. If the child is not referred to the court, the fingerprints must be immediately destroyed.
6. A child may be photographed by a law enforcement officer at the time of arrest for the crimes of murder, manslaughter, gross sexual imposition, robbery, aggravated assault, burglary, theft, forgery, or unlawful possession or use of a handgun. The photograph must be destroyed if the child is not referred to the juvenile court. If a court finds facts that would justify a finding that a child at least fourteen years of age at the time of the offense is delinquent and the finding involves the unlawful use or possession of a handgun or the commission of an act proscribed by the criminal laws of this state and punishable as a felony or a class A misdemeanor committed for the benefit of, at the direction of, or in association or affiliation with any criminal street gang, with the intent to promote, further, or assist in the activities of a criminal gang, the juvenile court shall order upon the request of the state's attorney the taking and retention of a photograph of the child for purposes of identification. Photographs of children under this subsection may be maintained on a local basis and sent to a central state depository

but must be maintained separate from those of adults and must be destroyed in accordance with section 27-20-54.

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27-20-54. Destruction of juvenile court records.

1. Except as otherwise required under section 25-03.3-04, all juvenile court records must be retained and disposed of pursuant to rules and policies established by the North Dakota supreme court.
2. Upon the final destruction of a file or record, the proceeding must be treated as if it never occurred. The juvenile court shall notify each agency named in the file or record of the destruction. All index references, except those which may be made by the attorney general and the directors of the department of transportation, the department of human services, the department of corrections and rehabilitation, law enforcement agencies, and county social service agencies, must be deleted. Each agency, except the attorney general and the directors of the department of transportation, the department of human services, the department of corrections and rehabilitation, law enforcement agencies, and county social service agencies, upon notification of the destruction of a file or record, shall destroy all files, records, and references to the child's apprehension, detention, and referral to the juvenile court and any record of disposition made by the juvenile court. The attorney general, the department of human services, the department of corrections and rehabilitation, law enforcement agencies, and county social service agencies may not keep a juvenile file or record longer than is required by the records retention policy of that official, department, or agency. Upon inquiry in any matter the child, the court, and representatives of agencies, except the attorney general and the directors of the department of transportation, the department of human services, the department of corrections and rehabilitation, law enforcement agencies, and county social service agencies, shall properly reply that no record exists with respect to the child.

27-20-54.1. Destruction of juvenile records and files - Certain types of records excepted.

Repealed by S.L. 1979, ch. 366, § 2.

27-20-55. Contempt powers.

The court may punish a person for contempt of court under chapter 27-10.

27-20-56. Appeals.

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

27-20-57. Rules of court.

The supreme court of this state may adopt rules of procedure not in conflict with this chapter governing proceedings under it.

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27-20-58. Uniformity of interpretation.

Repealed by S.L. 1983, ch. 82, § 154.

27-20-59. Short title.

This chapter may be cited as the Juvenile Court Act.

27-20-60. In-state placement of juveniles - Exception.

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

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House Bill No. 1210**Testimony Before Senate Judiciary Committee****March 16, 2015****Presented by: Jon Mielke
Foster Parent**

Good afternoon, Mr. Chairman and committee members. My name is Jon Mielke. My wife, Carol, and I are foster parents. We have been licensed by Burleigh County since 2002. I am appearing in support of the original version of this bill and especially want to thank Rep. Klemin for introducing it at my request.

Over the past 12 years my wife and I have fostered 41 kids, virtually all infants under the age of three. Ten of these placements were long-term, with an average of 14 months. The longest was nearly three years. These kids become members of our family. Most often, we were the only parents that they knew.

I am a past president of the North Dakota Foster and Adoptive Parent Association. Carol and I were named Foster Parents of the Year in 2006. I am currently employed by the Upper Great Plains Transportation Institute. Prior to coming to the Transportation Institute, I worked for the Public Service Commission for 23 years. I served as the PSC's chief executive officer for 10 years and also served as an administrative hearing officer.

My wife and I regularly attend court proceedings involving the children that we care for. Almost all of these proceedings are presided over by a judicial referee instead of a judge. Having served as an administrative hearing officer, I am familiar with the discretion that laws and rules give to presiding officers.

In some cases, we strongly disagree with resulting orders that go to an extreme to avoid terminating parental rights or return children to parents even though the parents have been almost totally non-compliant with permanency plans developed by social service professionals and court-appointed guardian ad litem.

The courts and judicial referees already have the ability to do what this bill proposes, but what seems like common sense does not always find its way into corresponding orders. Passing this bill would send a clear message to presiding officers regarding a few things that should be considered when court orders are issued.

Section 2 of the bill, as amended, simply provides that when parents, guardians, or custodians of children in foster care are participating in rehabilitative programs, related assessments and progress reports must be released to the court-appointed legal guardian. In many cases this entity would be county social services. Failure to comply with this requirement or to regularly visit the child, without good cause, would constitute a lack of compliance and should result in an order that would leave the child in protective care.

Section 3 of the bill provides that orders that remove a child from protective care should provide for a reasonable transition period. Such a provision would give social work professionals and foster families time to effectuate a smooth transition and to thereby minimize the traumatizing effects that might otherwise come with relocation.

If court orders are issued without providing for a transition period of even as little as one or two or three days, children may be taken out of school and returned to biological parents without any prior notice to case workers or foster parents. In other instances, foster parents may be forced to leave work mid-afternoon to pack-up clothes and diapers and formula because the infant that they are caring for is going to be picked up within an hour or two to comply with a court order that was issued earlier that day. Similarly, social service case workers may have virtually no time to do the things that they have to do to comply with the provisions of a court order that mandates immediate relocation.

Even more important than the hardships that these orders impose on case workers and foster parents is the trauma that it creates for the children involved. They are, in many cases, removed from a home environment that they have been in and placed in a foreign environment with no related counseling or transition. Judicial referees already have the ability to issue orders that minimize these impacts, but that is not always the end result. Section 3 of this bill will hopefully remind presiding officers to consider these impacts when issuing related orders.

This bill is not intended to impose new burdens on the courts. It does, however, seek to remind presiding officers that biological parents should not be rewarded for noncompliance and that court orders should provide reasonable notice before removing children from protective care. Both of these changes are ultimately in the best interest of the children involved.

Section 1 of this bill contains an amendment that was inserted by the House Judiciary Committee following its hearing on this bill. I have discussed this amendment with three members of the judicial system and believe that it will have very little impact on foster parents or the children that they take into their homes because virtually all of the children involved come into care in an emergency situation and are, therefore, exempt from the provisions of Section 1. The agencies involved in non-emergency situations may, however, have some concerns. If so, I expect that they will testify accordingly.

As I indicated earlier, I am a past president of the North Dakota Foster and Adoptive Parent Association. The association's board of directors has asked me to inform you that it unanimously supports the original version of this bill. The board has not discussed the merits of Section 1 of the amended bill.

Thank you Mr. Chairman and committee members, that concludes my testimony. I would be happy to respond to any questions that you might have.

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SENATE JUDICIARY COMMITTEE
David Hogue, Chair
March 16, 2015

North Dakota Department of Corrections and Rehabilitation
Division of Juvenile Services

Lisa Bjergaard, Director
Testimony concerning Engrossed House Bill No. 1210

For the record, I am Lisa Bjergaard, Director of the Division of Juvenile Services and I present this testimony in opposition to HB1210 in its engrossed form.

The Division of Juvenile Services took no position on HB1210 as it was introduced. HB1210 was in relation to section 27-20-30. However, an amendment has added a new subsection 4 to N.D.C.C. § 27-20-13 that will be problematic for the Juvenile Court, the Division of Juvenile Services and law enforcement.

Section 27-20-13 of the Juvenile Court Act.

Section 27-20-13 prescribes the action of taking a child into custody. In most, if not all instances, this is an action taken by law enforcement officers. There are three entities that can direct an officer to take a child into custody: (1) A judge can make an order -an example might be issuing a pick up and hold order for a runaway or absconding youth; (2) The juvenile court director can direct this action - an example might be an after-hours or weekend situation in which law enforcement calls the juvenile court director for direction; and (3) The third entity is the law enforcement officer who takes action under his or her own authority - for example, when the officer witnesses the commission of a delinquent act. Taking into custody is an action that can only occur in an immediate and urgent situation under Section 27-20-13.

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Once the child has been taken into custody, Section 27-20-15 directs what occurs next. In this section, the law enforcement officer either follows the direction of a judge or juvenile court director, or makes a decision based on the officer's own decision-making authority. Section 27-20-15 allows two decisions; (1) release the child; or (2) deliver the child to the Juvenile court. The child will be released, placed into a shelter, or placed into detention to await delivery to the Juvenile court.

Chapter 27-20 then goes on to describe all of the activities possible in order to properly deliver the child to the Juvenile court. In addition, the chapter describes the range of actions the court can properly take while exercising jurisdiction over a child.

The amendment to HB 1210 poses the following problems for the Division of Juvenile Services. HB 1210, as it was introduced, initiated language for the disposition of deprived children. However, Chapter 27-20 applies not just to deprived children, but also to unruly and delinquent youth. Section 27-20-13 provides direction for taking into custody unruly, delinquent and deprived children. The addition of the subsection to this section will apply to unruly and delinquent cases as well.

Furthermore, terms used in the amendment are vague. The action of "taking into custody" set forth in Section 27-20-13 is not a "transfer into custody", as the language of the amendment states. The terms "transfer" and "removal" are terms that are used later in the chapter under sections that provide guidance for dispositional orders.

Also, the language of the amendment uses the mandatory "shall". It is unclear how to apply the concept of facilitating a beneficial transition period to the action of taking a child into custody.

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Finally, it may not simply be enough to determine that this amendment is simply misplaced and should be added to different section of Chapter 27-20. If the amendment is inserted into another section, it poses other challenges, including potentially resulting in more hearings, and eliminating certain foster care funding streams.

The Division of Juvenile Services asks that asks Section 1 of Engrossed House Bill 1210 be removed in its entirety.

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Testimony
Engrossed House Bill 1210 – Department of Human Services
Judiciary Committee
Senator David Hogue, Chairman
March 16, 2015

Chairman Hogue, members of the Committee, I am Shari Doe, Director of the Children and Family Services Division for the Department of Human Services (Department). I am here today to provide information on Engrossed House Bill 1210.

The Department did not take a position on House Bill 1210 as introduced.

If Section 1 of Engrossed House Bill 1210 is only applicable to North Dakota Century Code (N.D.C.C.) Section 27-20-13, taking a child into custody, the Department does not believe it would impact the placement of foster care youth or Title IV-E funding. The Department reads the language "a court order transferring a child into custody shall provide a reasonable period of time to facilitate a beneficial transition for the child and other parties involved" to not apply to temporary custody orders that are issued by the director of juvenile court, as they are not court orders. If this interpretation is correct, Section 1 of Engrossed House Bill 1210 would not impact the process of obtaining a temporary custody order from the director of juvenile court. If the Department's interpretation is not correct, Section 1 would limit the ability to immediately obtain the custody and control of an alleged deprived child pursuant to the temporary custody order process set forth in subdivision h of subsection 1 of section 27-20-06 of N.D.C.C. This would place children at risk.

If Section 1 of Engrossed House Bill 1210 is intended to require transition time between a court's order to temporarily transfer the child's legal custody

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and actual transfer of the physical custody of the child, unless the child is in immediate danger, the Department has the following concerns relative to the impact of that section in foster care situations:

A temporary custody order issued by the director of juvenile court as discussed above is valid for 96 hours after the initial removal. Within those 96 hours, a shelter care hearing must take place if the child is to remain in protective custody. Reasonable notice, either oral or written, stating the time, place, and purpose of the shelter care hearing must be given to the child and, if they can be found, to the child's parents, guardian, or other custodian. At the shelter care hearing, the court will make a determination whether it is contrary to the welfare of the child to return home. When the court determines that it is contrary to the child's welfare to return home, the court will issue a shelter care order transferring the temporary custody of the child to the county agency. If a shelter care order is granted, the county agency, working through the State's Attorney, has up to 60 days to arrange for a deprivation hearing.

A child who is currently in his or her parent's, guardian's, or custodian's home also may be ordered by the court into protective custody when the county agency determines the child, in his or her present circumstances, is a "deprived child" under N.D.C.C. section 27-20-02. To obtain an order to place a child into protective custody, the county agency will work with the State's Attorney to file a petition for deprivation while the child is in the home of the parent, guardian, or custodian. The child and the parent, guardian, or custodian of the child are parties to the deprivation hearing. A hearing is held and the court will determine that it is contrary to the welfare of the child to return home and place the child in the county agency's

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custody, or it will determine that transfer of custody to the county agency is denied.

If the court places the child in the county agency's custody, Section 1 of Engrossed House Bill 1210 would require the court to consider a "reasonable period of time" for the transition when doing so would keep a child in harm's way after the court has transferred custody to the county agency and has determined that it is contrary to the welfare of the child to remain in the home of the parent, guardian, or custodian. This puts children at risk.

Finally, Section 1 of Engrossed House Bill 1210 would impact Title IV-E funding. To access federal Title IV-E funding for the care of the child, federal rule requires the judicial determination that results in the child's removal to coincide with the action to remove the child. If a court orders transfer of custody for the welfare of the child, custodians must immediately place that child in a safe and secure setting. Title IV-E funding could not be utilized if the court provides a "reasonable period of time" under Section 1 of Engrossed House Bill 1210.

The Department asks Section 1 of Engrossed House Bill 1210 be removed from the bill.

Mr. Chairman, I'm happy to answer questions you may have.

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Proposed Amendment to HB 1210 (.03000 version)

Page 1, line 1, after enact insert "subsection 4 of section 27-20-13 and"

Page 1, line 5, insert

"SECTION 1. Subsection 4 to section 27-20-13 of the North Dakota Century Code is created and enacted as follows:

4. Without a compelling reason to the contrary, a court order transferring a child into custody shall provide a reasonable period of time to facilitate a beneficial transition for the child and other parties involved.

Renumber accordingly

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