

House Bill No. 1035
House Judiciary Committee

Testimony Presented by
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Chairman Klemin and members of the Committee. For the record my name is Karen Kringlie. I am the Director of Juvenile Court for Administrative Unit Two, which consists of the 17 counties in the East Central and Southeast Judicial Districts. I am also the court's representative on the Commission on Juvenile Justice. I will provide an overview of the bill draft and its key provisions.

House Bill 1035 is the culmination of five years of discussion and study by North Dakota leaders in the juvenile justice system. In November of 2015, North Dakota Supreme Court Justice Lisa McEvers led a North Dakota juvenile justice team as they attended a Fifty State Forum on juvenile justice. The goal was to bring together state leaders, across branches, to discuss the importance of adopting evidence-based juvenile strategies in order to reduce further offenses, lessen the fiscal burden of supervising and/or housing youth offenders, all while ensuring public safety in the community. Each state set measurable goals intended to reduce recidivism, target valuable tax dollars where they will have the most impact, and reform the system to concentrate on public safety and changing behaviors.

This Fifty State Forum led to a Council of State Government's technical assistance grant, an interim study, the children's behavioral health task forms, the Dual Status Youth Initiative, and the preliminary study of the North Dakota's juvenile justice system. There were stakeholder visits with North Dakota justice system stakeholders in winter and spring of 2020. These visits were to gather information and feedback about the way the system currently operates and to make recommendations for improvements. The last set of recommendations were received by the Commission on Juvenile Justice on June 1, 2020 and under the leadership of Representative Klemin, a small workgroup was formed to begin work on a statutory draft that would become House Bill 1035.

The workgroup consisted of representatives from all three branches of government and all major partners in the juvenile justice system: Representative Klemin, Representative Kim Koppelman, Senator Larson and Senator Bakke, Lisa Bjergaard from the Division of Juvenile Services, Lisa Jahner from the Governor's state juvenile justice advisory group, Cory Pedersen from the Department of Human Services, Travis Finck from the Commission on Legal Counsel

for Indigents, Tessa Vaagen from the Burleigh County State's Attorney's office, and myself as a representative of the juvenile court.

The workgroup met virtually this past summer while we worked on the first draft. That first draft was introduced at the Interim Judiciary Committee on July 22, 2020. We received a large number of written comments from stakeholder groups with valuable feedback. We took that feedback and met several times during the month of August to make changes to the draft. A revised version of the bill was presented at the Interim Judiciary Committee on September 24, 2020. Then starting in November we began a series of stakeholder speaking engagements to go over the bill draft and respond to questions about the changes this bill proposes both in structure and in substance.

As you have probably noticed, the bill is a lengthy one, and to be really clear, that is not because it is 122 pages of new law. The length is caused in large part because of the structural reorganization that the workgroup has proposed and also because of the need to add all the required cross-references.

North Dakota's current Chapter 27-20, the Uniform Juvenile Court Act, was enacted in the 1960's and it combines all case types: deprived, unruly and delinquency into the same chapter. By way of a quick explanation of the juvenile court case types under current law: Deprived cases are cases where the parents are alleged to have subjected their children to child abuse or neglect such that a petition is filed and the court is asked to intervene. Unruly cases are cases where children are charged for behavior that is illegal for them only due to their age. These are sometimes referred to as "status offenses" and in North Dakota consists of truancy, unruly behavior, running away from home, use, purchase, or possession of tobacco under the age of 14, and minor consuming alcohol or minor in possession. Delinquency cases involve children charged with behavior that would also be illegal for adults and for adults we refer to it as criminal behavior or criminal offenses.

The juvenile court act that we practice with today weaves all three of these case types together in the sixty some statutes that currently make up Chapter 27-20. For a new practitioner in the juvenile court system - whether attorney, judge, court officer, guardian ad litem, parent, child, or victim – this chapter is difficult to navigate. One sentence in a statute refers to a delinquent child in detention and the next line will only apply to deprived children in shelter care. It is no wonder that many new to the system have a steep learning curve and often rely on separate guides, brochures, or veteran practitioners to help them understand how the law will apply to a particular situation.

The roles and responsibilities in many sections are either silent or not clear which makes it difficult to know who is responsible for which task. The definitions are not up-to-date and do not reflect many of the modern tools and phrases that are used in the practice such as, “diversion”, “restorative justice”, “attendant care”, “graduated sanctions” and others.

The length of House Bill 1035 has in large part to do with the reorganization of the chapter to separate out the different case types and make one chapter for each. The bill repeals in its entirety current Chapter 27-20 and replaces it (following the current guardianship of a child chapter at 27-20.1) with 27-20.2, which is referred to as “The Juvenile Court Act”, 27-20.3 which contains the new unruly and deprived chapter, and 27-20.4 which contains the delinquency chapter. The current Chapter 27-21 regarding the Division of Juvenile Services is at the back end of the structure. Looked at together, the separated chapters by case type and the updated definitions sections for each, will make it much easier for the participant and practitioner to navigate and is a more accurate reflection of modern practice.

To meet the goals set out by the North Dakota Commission on Juvenile Justice, the bill seeks to ensure that youth who are at low risk to reoffend are able to quickly and easily receive services outside of the juvenile justice system. To do that, the bill establishes a case category common in many other states of “Child in Need of Services” or CHINS. This category takes over all the behavior we currently define as “Unruly Child”, ungovernable behavior, truancy, runaway, and use of tobacco under the age of 14. The bill draft excludes from the CHINS category Minor Consuming or Minor in Possession, which becomes part of the delinquency section. This was done specifically in order to allow for a hearing process on contested cases as well as a mechanism to carry out some of the statutorily required duties such as notification to the Department of Transportation of violations of the graduated driver’s license statute.

Today all unruly referrals are under the exclusive original jurisdiction of the juvenile court and all referrals of those types of behaviors by children come to the juvenile court for assessment and any appropriate actions. Currently, the vast majority of unruly referrals are diverted to services by the courts and those youth age out of the system without further involvement needed by the system. Taking into account many comments and concerns of the stakeholders, the workgroup decided to delay the start of the CHINS referrals being directed to the human service zones to August 1, 2022. This allows time for planning and ensuring that services are available through this other pathway. The overarching goal is to allow families to access these same services without the necessity of an arrest and creation of a juvenile court record for these types of behaviors. This aligns our code with what works and is most effective

to prevent a child from being drawn deeper into the criminal justice system. It also allows families to proactively reach out for help much earlier instead of waiting for escalating behavior that merits an arrest or law enforcement citation.

Regarding the court dispositional process, the bill draft strengthens the tools needed to align ourselves with research and best practice.

One of the most exciting parts of the bill draft for me personally is the broadened right to counsel for children. There are many times that parents or siblings are victims of a juvenile's behavior and the parents and child may have a conflict of interest. Having a child fully advised of the legal consequences by an attorney is best practice and this portion of the bill will cut down on continuances and longer stays in pre-adjudicatory detention or shelter care while requests and application for counsel are being processed. Having that presumption that all children are entitled to counsel in a delinquency case is critical in my opinion.

There is another section of the bill draft which has a delayed implementation date of August 1, 2023 and that is when the bill would limit schools from referring youth to juvenile court who commit low level infractions or misdemeanors, with some exceptions for misdemeanor assaults and drug offenses. The delayed implementation date here also allows for the subcommittee proposed in HB 1427 to work on pathways to services prior to the law going into effect.

The bill draft also adds a specific statute on "active efforts" in cases that fall under the Indian Child Welfare Act. This is something that will aid the zones, attorneys, judges and participants by having those federal law requirements specifically placed in our state statute on children.

Regarding delinquent children, the bill has clear limits on the use of costly secure detention, requires the use of validated risk and needs assessments, mental health and trauma screens, and a predisposition investigation and report to the court prior to a formal court disposition. It codifies the requirement to perform assessments and screenings that will inform the court's decisions. Evidenced-based assessments are really the engine that drive effective juvenile delinquency programs and services and while they are already being performed in North Dakota as a matter of practice and procedure, our current statutes do not mention the use of risk and needs assessments nor do they require court decisions to be based on what is clearly driving the behavior. Adding this statute on the use of assessments and screening instruments is critical to good juvenile justice practice.

There are shorter time limits on probation, from nine months to six months, and limits on removing custody of a child from parents due to low level probation violations. This saves money and makes sense as placement out of home of low level youth is tied to adult offending which is very costly to taxpayers. The bill requires the use of graduated sanctions by the court officers who manage probation caseloads. In other words, we must match timely and consistent consequences to the frequency and nature of a child's noncompliant behaviors, public safety risks, and level of the child's engagement in supervision and services. This too is currently practiced but is not codified into statutes so the application can be inconsistent across the state.

Just to reiterate, much of the language of House Bill 1035 is current law. I have touched upon some of the key new provisions but much of the bill is a restructuring of current law for clarity and focus on these separate case types and the addition of up-to-date definitions and procedures. The new portions were extensively studied, researched, and chosen by Representative Klemin's workgroup as the best statutory language to bring our 1960's juvenile code into the modern practice of juvenile justice. The language requires cross-system collaboration and the provision of services based on a developmental approach of children.

In closing, we know that children's brains aren't fully developed until adulthood and that at a young age they are particularly vulnerable to counterproductive policies and procedures. House Bill 1035 builds upon what we know works effectively with children and families. By using a commonsense approach to solving problems in our juvenile justice system, we can decrease referrals, enhance public safety, and make even more responsible use of our resources. If passed, this bill will provide a modern juvenile justice code that benefits all who come into contact with the North Dakota juvenile justice system.

Thank you for the opportunity to provide comment on this important bill. Chairman Klemin and members of the committee, this concludes my prepared remarks, and I am happy to answer any questions that you might have.