

2019 HOUSE JUDICIARY

HCR 3031

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HCR 3031
2/27/2019
32938

- Subcommittee
 Conference Committee

Committee Clerk: DeLores D. Shimek

Explanation or reason for introduction of bill/resolution:

Requesting the Legislative Management to study the juvenile justice process, levels of collaboration among various service systems, implementation of dispositional alternatives, and methods for improving outcomes for juveniles involved in the process.

Minutes:

1

Chairman Koppelman: Opened the hearing on HCR 3031.

Representative Klemin: Introduced the bill. (Attachment #1) Went over testimony and attachments.

Chairman K. Koppelman: Based on what you just said I hope you would not object if you recall you actually introduced the resolution which prompted the justice reinvestment study. I proposed an amendment seeking the justice center to assist with this?

Representative Klemin: That would be fine with me.

Chairman K. Koppelman: We had a bill earlier in the session that dealt with criminal activity of juveniles. The response was light and ineffective so that bill was passed. It wasn't requiring any kind of punitive action, but it was saying there should be some things considered when these kinds of cases come up. What direction should a study like this go?

Representative Klemin: I am not sure what is missing. A way to streamline it and bring it up to date is missing. We have not done a good job of that. We enacted the juvenile court act in 1969 and it is pretty much the same. We have not done a hard look at the juvenile system and we need to do that.

Opposition: None

Neutral:

Cory Peterson, Director of Juvenile Court in Bismarck and supervise in the Dickinson office: The Counsel of State Government actually has been to ND for juvenile justice. They

did a full report in March 2016. There is another bill SB 2313 would be good bill looking at having a commission for juvenile justice. This would also cover all children issues. Children zero to seventeen would be covered. The other piece is a six-year commission looking at juvenile justice.

Hearing closed.

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HCR 3031
3/4/2019
33079

- Subcommittee
 Conference Committee

Committee Clerk: DeLores D. Shimek

Explanation or reason for introduction of bill/resolution:

Requesting the Legislative Management to study the juvenile justice process, levels of collaboration among various service systems, implementation of dispositional alternatives, and methods for improving outcomes for juveniles involved in the process.

Minutes:

1

Chairman Koppelman: Opened the meeting on HCR 3031. This would be the same portion of the amendment that we just moved on HCR 3015 so we can move for i's attachment and the intern can take care of it.

Motion made to move the amendment 19.3061.01001 by Rep. Rick Becker; Seconded by Rep. Hanson

Discussion:

Voice vote carried.

Do Pass as Amended Motion Made by Rep. Hanson; Seconded by Rep. Rick Becker

Discussion:

Roll Call vote: 13 Yes 0 No 1 Absent Carrier: Rep. Hanson

Closed.

DP 3/4/19

19.3096.01001
Title.02000

Adopted by the Judiciary Committee

March 4, 2019

PROPOSED AMENDMENTS TO HOUSE CONCURRENT RESOLUTION NO. 3031

Page 1, after line 25, insert:

"BE IT FURTHER RESOLVED, that in conducting the study, the Legislative Management may seek technical assistance, as appropriate, from the Council of State Governments' Justice Center;"

Renumber accordingly

**2019 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 HB 3031**

House Judiciary Committee

Subcommittee

Amendment LC# or Description: 19.3061.0100 /

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Rep. Becker Seconded By Rep. Hanson

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman			Representative Buffalo		
Vice Chairman Karls			Representative K. R. Hanson		
Representative Becker					
Representative Terry Jones					
Representative Magrum					
Representative McWilliams					
Representative B. Paulson					
Representative Paur					
Representative Roers Jones					
Representative Satrom					
Representative Simons					
Representative Vetter					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Voice Vote Carried

**2019 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES**
HER 3031

House Judiciary Committee

Subcommittee

Amendment LC# or Description: _____

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

Motion Made By Rep. Hanson Seconded By Rep. Becker

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman	X		Representative Buffalo	---	
Vice Chairman Karls	X		Representative K. R. Hanson	X	
Representative Becker	X				
Representative Terry Jones	X				
Representative Magrum	X				
Representative McWilliams	X				
Representative B. Paulson	X				
Representative Paur	X				
Representative Roers Jones	X				
Representative Satrom	X				
Representative Simons	X				
Representative Vetter	X				

Total (Yes) 13 No 0

Absent 1

Floor Assignment Rep. Hanson

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

REPORT OF STANDING COMMITTEE

HCR 3031: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HCR 3031 was placed on the Sixth order on the calendar.

Page 1, after line 25, insert:

"BE IT FURTHER RESOLVED, that in conducting the study, the Legislative Management may seek technical assistance, as appropriate, from the Council of State Governments' Justice Center;"

Renumber accordingly

2019 SENATE JUDICIARY

HCR 3031

2019 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

HCR 3031
3/25/2019
#34194 (09:10)

- Subcommittee
 Conference Committee

Committee Clerk: Meghan Pegel

Explanation or reason for introduction of bill/resolution:

A concurrent resolution requesting the Legislative Management to study the juvenile justice process, levels of collaboration among various service systems, implementation of dispositional alternatives, and methods for improving outcomes for juveniles involved in the process.

Minutes:

1 Attachment

Chair Larson opens the hearing on HCR 3031.

Lawrence Klemin, District 47 Representative, testifies in favor (see attachment #1)

Vice Chairman Dwyer: Some resolutions that request studies say “shall consider studying” and some say “shall study”. This one says “request study”, so does that mean it’s optional for legislative management or mandatory?

Representative Klemin: This is optional. The language is the same as what we used in the resolution last session.

(5:20) Sally Holewa, State Court Administrator, testifies in favor

Holewa: The court system supports this resolution. The resolution last session was introduced at our request. We think it’s always a good opportunity every 30-40 years to stop and look at what we’re doing to see if we’re still on the right path. If there is a legislative committee put together to study the juvenile court, we would strongly urge you to consider adding a juvenile court director or two to that study. Most of our cases are settled informally so they don’t reach the level where they go in front of a district court judge or referee. Also our juvenile court directors would have the most up to date information on what’s happening nationally within the field of juvenile justice.

Chair Larson: Were you asking to have that added to the bill or to just ask legislative management to add them?

Holewa: I just want to put it on the record that we would like to have them included.

Chair Larson: so you're not looking at an amendment.

Holewa: No.

(7:00) Travis Finck, Deputy Director for the ND Commission on Legal Counsel for Indigents, testifies in favor

Finck: The commission has not directly considered this resolution, but I feel fairly confident in saying we have supported these types of things in the past. We are an integral partner in the juvenile court process and are involved not only in the juvenile delinquency matters, but also the deprivation matters. This committee has heard my concerns on other bills relating to juveniles this session, and I think this is an important study going forward, even if we're not listed. I, too, would like to state on record that I think it would be important to have a defense attorney on there.

Chair Larson: You're listed on line 10.

Finck: Great. We are in support.

Chair Larson closes the hearing on HCR 3031.

Vice Chairman Dwyer: Motions for a Do Pass.

Senator Bakke: Seconds.

A Roll Call Vote Was Taken: 5 yeas, 0 nays, 0 absent. Motion carries.

Senator Luick will carry the bill.

**2019 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 3031**

Senate Judiciary Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Vice Chairman Dwyer Seconded By Senator Bakke

Senators	Yes	No	Senators	Yes	No
Chair Larson	X		Senator Bakke	X	
Vice Chair Dwyer	X				
Senator Luick	X				
Senator Myrdal	X				

Total (Yes) 5 No 0

Absent 0

Floor Assignment Senator Luick

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

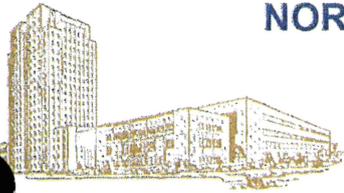
REPORT OF STANDING COMMITTEE

HCR 3031, as engrossed: Judiciary Committee (Sen. D. Larson, Chairman)
recommends **DO PASS** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).
Engrossed HCR 3031 was placed on the Fourteenth order on the calendar.

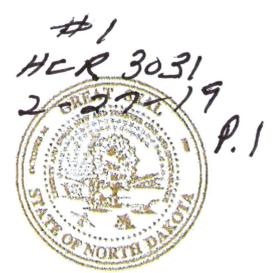
2019 TESTIMONY

HCR 3031

NORTH DAKOTA HOUSE OF REPRESENTATIVES



STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360



Representative Lawrence R. Klemin

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3929 Valley Drive
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Speaker of the House

TESTIMONY OF REP. LAWRENCE R. KLEMIN HOUSE CONCURRENT RESOLUTION 3031 HOUSE JUDICIARY COMMITTEE FEBRUARY 27, 2019

Mr. Chairman and members of the House Judiciary Committee. I am Lawrence R. Klemin, Representative for District 47 in Bismarck. I am here today to testify in support of HCR 3031, which requests Legislative Management to study the juvenile justice system. HCR 3031 is similar to SCR 4003 from the 2017 Session.

SCR 4003 also was a study of the juvenile justice system and was assigned to the interim Justice Reinvestment Committee on which I served. Although the study could have included a comprehensive review of the juvenile justice system, the study only resulted in the introduction of one short bill in the 2019 Session, HB 1039, which raised the age of culpability of a juvenile from age 7 to age 10.

Attached to my testimony is a portion of a background memorandum from the interim committee on the study of the juvenile justice system, a portion of the Legislative Management report from the interim Justice Reinvestment Committee, and a copy of HB 1039.

I think we need to continue the study of the juvenile justice system, since there is a need to update and streamline the juvenile justice process in many other areas. For example, the Juvenile Court Act in Chapter 27-20 is based on the Uniform Juvenile court Act of 1968, which was enacted in North Dakota in 1969. Although there have been some amendments to that chapter, it is basically the same as originally introduced in 1969.

I spoke to the representatives of the Council of State Governments about this study when they were here recently. They informed me that the CSG Justice Center could assist us with a comprehensive study of the juvenile justice system in North Dakota. The CSG Justice Center also previously worked with us when we revised the criminal code for adults.

I urge you to recommend adoption of HCR 3031. Thank you.

Rep. Lawrence R. Klemin
Speaker of the House

JUVENILE JUSTICE SYSTEM

House Concurrent Resolution No. 4003 (2017) (Appendix B), provides for a study of the juvenile justice process, levels of collaboration among various service systems, implementation of dispositional alternatives, and methods for improving outcomes for juveniles involved in the process.

Background

Section 27-20-03 provides the juvenile court has exclusive original jurisdiction of proceedings in which a child is alleged to be delinquent, unruly, or deprived. Under Chapter 27-20, "child" means an individual who is under the age of 18 years and is not married or under the age of 20 years with respect to a delinquent act committed while under the age of 18. Section 27-20-34 authorizes the court to transfer a juvenile proceeding to another court depending on various factors, such as the age of the child at the time of the alleged conduct, the age of the child at the time of the transfer request, and the child's amenability to treatment and rehabilitation.

Section 27-21-01 creates the Division of Juvenile Services within DOCR. The division operates the Youth Correctional Center and eight regional community-based services offices. The community services staff provide comprehensive case management and community-based correctional services to youth in the state while juvenile corrections specialists provide community services and correctional case management across eight regions.

Section 27-21-02 provides "the division of juvenile services is the administrative agency which shall take custody of delinquent and unruly children committed to its care by the juvenile courts." Section 27-21-02 requires the division, upon taking custody of a child or prior to receiving custody of a child, to complete diagnostic testing and evaluate the child to develop an individualized treatment and rehabilitation plan. The plan may include placement in the care of the child's parent, relative, guardian, or in a foster home, or placement in the care of the Youth Correctional Center, a career or technical education program, or other treatment and rehabilitation institution. Section 12-52-01 authorizes the division, with the approval of the Director of DOCR, to provide a juvenile aftercare program and other treatment and rehabilitation programs and to contract with public and private agencies to provide services for persons committed to the division.

Juvenile Services in Other States

According to data from the United States Office of Juvenile Justice and Delinquency, in 2013 North Dakota ranked 6th highest in the nation for the number of youth placed in the juvenile justice system per 100,000 youth in the state with 253 youth per 100,000. According to an analysis of the same data by The Sentencing Project, the overall juvenile sentencing rate per 100,000 youth in the United States is 173 while the rate for American Indian youth is 334 per 100,000.

In 2016 Kansas enacted reforms intended to improve its juvenile justice system by reducing the use of out-of-home placements and investing in community supervision and rehabilitative services. According to a June 2017 analysis provided in *Juvenile Justice Reforms in Kansas Show Early Signs of Success*, by The PEW Charitable Trusts, the reforms restrict the placement of certain juveniles in correctional facilities, focus the system's most intensive responses on the highest-risk juveniles, and shift significant resources toward evidence-based alternatives that allow youth to be supervised safely while remaining at home. At the time of enactment, Kansas projected the new policies would cut juvenile residential placements approximately 60 percent by 2022, at a savings of \$72 million to be reinvested in alternatives to incarceration over 5 years.

On June 16, 2017, Nevada Governor Brian Sandoval signed the Juvenile Justice System Reform Act that calls for Nevada to adopt a statewide validated risk and needs assessment tool, requires state funding be used for evidence-based practices, establishes better data collection, and creates a single juvenile justice oversight body to guide and oversee the reforms.

OPERATION AND MANAGEMENT OF CORRECTIONAL FACILITIES

House Concurrent Resolution No. 3002 (2017) (Appendix C), provides for a study of the operation, management, conditions, standards, and supervision of city, county, and regional correctional facilities and other potential means to improve the rehabilitative function of city, county, and regional correctional facilities and a possible transition of the supervision of city, county, and regional correctional facilities from DOCR to the Attorney General.

Background

Section 12-44.1-02 authorizes the governing body of a county or city to establish and maintain a correctional facility, contract for correctional facility services and use of correctional facilities with another county or city, or establish and maintain a correctional facility in conjunction with other counties and cities. Section 12-44.1-06 requires DOCR to grade correctional facilities as to the length of allowable inmate confinement based on

JUSTICE REINVESTMENT COMMITTEE

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The Justice Reinvestment Committee was assigned three studies:

- Senate Concurrent Resolution No. 4003 (2017) directed a study of the juvenile justice process, the appropriate age when a juvenile is considered capable of committing a criminal offense, levels of collaboration among various service systems, implementation of dispositional alternatives, and methods for improving outcomes for juveniles involved in the process.
- House Concurrent Resolution No. 3002 (2017) directed a study of the operation, management, conditions, standards, and supervision of city, county, and regional correctional facilities and other potential means to improve the rehabilitative function of city, county, and regional correctional facilities and a possible transition of the supervision of city, county, and regional correctional facilities from the Department of Corrections and Rehabilitation (DOCR) to the Attorney General.
- Section 11 of Senate Bill No. 2015 (2017) directed a study of alternatives to incarceration, with a focus on the behavioral health needs of individuals in the criminal justice system. The study must include receipt of reports on the status, effectiveness, and sustainability of the community behavioral health program for individuals in the criminal justice system, which must include caseload data, any recognized savings to DOCR, and an overview of the training requirements for contract behavioral health service providers.

The Legislative Management delegated to the committee the responsibility to receive the following reports:

- A report from DOCR and the Supreme Court regarding the progress of the justice reinvestment initiative (Section 20 of 2017 House Bill No. 1041).
- A report from the Justice Reinvestment Oversight Committee before July 1, 2018, of the findings and recommendations of the study of implementation of justice reinvestment policies in the state and any legislation required to implement those recommendations (Section 14 of 2017 Senate Bill No. 2015).

Committee members were Senators Kelly M. Armstrong (Chairman), Dick Dever, John Grabinger, Dave Oehlke, Arne Osland and Representatives Jake G. Blum, Karla Rose Hanson, Pat D. Heinert, Tom Kading, Karen Karls, Lawrence R. Klemin, Lisa Meier, Jon O. Nelson, Bernie Satrom, and Steve Vetter.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2018. The Legislative Management accepted the report for submission to the 66th Legislative Assembly.

JUVENILE JUSTICE SYSTEM Background

North Dakota Century Code Section 27-20-03 grants the juvenile court exclusive original jurisdiction of proceedings in which a child is alleged to be delinquent, unruly, or deprived. Under Chapter 27-20, "child" means an individual who is under the age of 18 years and is not married or under the age of 20 years with respect to a delinquent act committed while under the age of 18. Section 27-20-34 authorizes the court to transfer a juvenile proceeding to another court depending on various factors, such as the age of the child at the time of the alleged conduct, the age of the child at the time of the transfer request, and the child's amenability to treatment and rehabilitation.

Section 27-21-01 established the Division of Juvenile Services within DOCR. The division operates the Youth Correctional Center and eight regional community-based services offices. The community services staff provide comprehensive case management and community-based correctional services to youth in the state while juvenile corrections specialists provide community services and correctional case management across eight regions.

Section 27-21-02 provides "the division of juvenile services is the administrative agency which shall take custody of delinquent and unruly children committed to its care by the juvenile courts." Section 27-21-02 requires the division, upon taking custody of a child or prior to receiving custody of a child, to complete diagnostic testing and evaluate the child to develop an individualized treatment and rehabilitation plan. The plan may include placement in the care of the child's parent, relative, guardian, or in a foster home, or placement in the care of the Youth Correctional Center, a career or technical education program, or other treatment and rehabilitation institution. Section 12-52-01 authorizes the division, with the approval of the Director of DOCR, to provide a juvenile aftercare program and other treatment and rehabilitation programs and to contract with public and private agencies to provide services for persons committed to the division.

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Testimony and Committee Considerations

In its study of the juvenile justice system, the committee received testimony from representatives of DOCR, the Supreme Court, the Council of State Governments' Justice Center, the North Dakota Association of Counties, and the North Dakota Juvenile Justice State Advisory Group.

A representative from the **Division of Juvenile Services** indicated the juvenile justice system starts with law enforcement and includes the juvenile court, probation child welfare, and the Division of Juvenile Services. Testimony further indicated the state's juvenile violent crime rate is less than half of the national rate; however, the state has a higher rate of drug and alcohol use and disorderly conduct. The higher rate of disorderly conduct cases was attributed to an increased law enforcement presence in schools; however, the committee was informed further analysis is needed to determine whether appropriate community resources exist to divert some of the higher risk youth. **It was noted because the youth population in the criminal justice system is low, it is an opportune time to make changes to the system. Changes may help avoid the type of exponential growth in the incarceration rate of juveniles the adult system has experienced in recent years.**

The committee received information from a representative from the Supreme Court indicating juvenile court directors in the state are reviewing the age of juveniles entering the system compared to the age of criminal responsibility as outlined in Section 12.1-04-01. This section provides an individual under 7 years of age is deemed incapable of commission of an offense defined by the Constitution of North Dakota or Century Code. Testimony indicated the juvenile court budget designates \$11 per day per juvenile, with a total budget of \$14 million. Juvenile court offices are located in 11 cities across the state and the Department of Juvenile Services operates 8 regional offices. According to the testimony, the judicial branch budget for the 2017-19 biennium is \$11 million less than the 2015-16 biennium. Eleven positions were cut from the juvenile court and one office was closed.

A representative from the North Dakota Association of Counties indicated although prosecutors identified a lack of resources in rural areas and the western part of the state and issues with statewide polices, state's attorneys have expressed general satisfaction with the juvenile justice system.

Representatives from the Juvenile Court provided information regarding the process followed when a juvenile enters the juvenile court system. It was noted every juvenile is given a risk assessment to determine what is driving the behavior. Juvenile officers also provide more cognitive-based classes with groups to discuss how to handle stressful situations, and efforts have been made to provide more family based counseling. The committee received information from numerous individuals relating to the need for increased mental health services for youth.

The committee received information indicating a **need to streamline juvenile services** to provide services and funds to those families in need. The **Dual Status Youth Initiative** has received assistance from the Robert F. Kennedy National Resource Center for Juvenile Justice in an effort to change the trajectory of alleged abused and neglected children from entering the juvenile justice system by establishing child- and family-centered multi-disciplinary policies and practices. A representative from Juvenile Court Services indicated the initial implementation of the new family engagement policy will be in Grand Forks, Ramsey, Ward, Burleigh, Stutsman, Mercer, McLean, Oliver, and Sheridan Counties.

The committee considered a bill relating to the age of culpability of a juvenile. The bill would raise the age of culpability from 7 years old to 10 years old.

The committee received overwhelming testimony in support of the bill draft. Testimony indicated a law enforcement referral for a juvenile who is 7 or 8 years old would be sent to social services regardless of the statutory age of culpability because social services deals with the family dynamics that could be causing negative behaviors. According to the testimony, a juvenile under 12 years of age is placed with social services regardless of the offense and the most common age of culpability across the country is between 10 and 12 years of age.

Recommendation

The committee recommends House Bill No. 1039 to raise the age of culpability of a juvenile from 7 to 10 years old.

OPERATION AND MANAGEMENT OF CORRECTIONAL FACILITIES

Background

Section 12-44.1-02 authorizes the governing body of a county or city to establish and maintain a correctional facility, contract for correctional facility services and use of correctional facilities with another county or city, or establish and maintain a correctional facility in conjunction with other counties and cities. Section 12-44.1-06 requires DOCR to grade correctional facilities as to the length of allowable inmate confinement based on construction, size, and usage. Under this section:

- A grade one facility means a facility for confining inmates not more than 1 year;

19.0039.01000

Sixty-sixth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1039

#1
HCR 3031
2-27-19
P.5

Introduced by

Legislative Management

(Justice Reinvestment Committee)

1 A BILL for an Act to amend and reenact section 12.1-04-01 of the North Dakota Century Code,
2 relating to culpability of a juvenile.

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

4 **SECTION 1. AMENDMENT.** Section 12.1-04-01 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **12.1-04-01. Juveniles.**

7 ~~Persons~~An individual under the age of ~~seventen~~ years ~~are~~is deemed incapable of
8 commission of an offense defined by the constitution or statutes of this state. The prosecution of
9 any ~~person~~individual as an adult is barred if the offense was committed while the
10 ~~person~~individual was less than fourteen years of age.

19.3061.01002
Title.

Prepared by the Legislative Council staff for
Representative McWilliams
February 28, 2019

#1
HCR3031
3-4-19
P.1

PROPOSED AMENDMENTS TO HOUSE CONCURRENT RESOLUTION NO. ~~3015~~ ³⁰³¹

Page 1, line 3, after the comma insert "establish and implement a community transitional housing program, including independent host homes,"

Page 1, line 10, after the third comma insert "short-term housing,"

Page 1, line 22, after the comma insert "establish and implement a community transitional housing program, including independent host homes,"

Page 1, line 23, replace the period with "; and

BE IT FURTHER RESOLVED, that in conducting the study, the Legislative Management may seek technical assistance, as appropriate, from the Council of State Governments' Justice Center; and"

Renumber accordingly

NORTH DAKOTA HOUSE OF REPRESENTATIVES



STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360



Representative Lawrence R. Klemin

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Speaker of the House

#1

HCR 3031
3-25-19

TESTIMONY OF REP. LAWRENCE R. KLEMIN HOUSE CONCURRENT RESOLUTION 3031 SENATE JUDICIARY COMMITTEE MARCH 25, 2019

Madam Chairman and members of the Senate Judiciary Committee. I am Lawrence R. Klemin, Representative for District 47 in Bismarck. I am here today to testify in support of HCR 3031, which requests Legislative Management to study the juvenile justice system. HCR 3031 is similar to SCR 4003 from the 2017 Session.

SCR 4003 (2017) was a study resolution relating to the juvenile justice system and was assigned to the interim Justice Reinvestment Committee on which I served. That study resulted in the introduction of HB 1039 in the 2019 Session, which raised the age of culpability of a juvenile from age 7 to age 10. HB 1039 has passed the Legislature and has been signed by the Governor. The 2017-2018 interim committee did not complete a comprehensive review of the juvenile justice system or recommend any other bills for introduction in the 2019 Legislative Session.

We should continue the study of the juvenile justice system, since there is a need to update and streamline the juvenile justice process in many other areas. For example, the Juvenile Court Act in Chapter 27-20 is based on the Uniform Juvenile court Act of 1968, which was enacted in North Dakota in 1969. Although there have been some amendments to that chapter, it is basically the same as originally introduced in 1969.

I spoke to the representatives of the Council of State Governments about this study when they were here recently. They informed me that the CSG Justice Center could assist us with a comprehensive study of the juvenile justice system in North Dakota. The CSG Justice Center previously worked with us when we revised the criminal code for adults and did some initial study of the juvenile justice system. HCR 3031 includes language allowing Legislative Management to seek technical assistance from the CSG Justice Center.

In addition, the State Bar Association of North Dakota has been helpful in the past in other areas of the law in forming task forces to assist with studies and could be requested to assist with this study. A task force could be comprised of juvenile justice attorneys, juvenile court judges, representatives of the DOCR Division of Juvenile Services, and other juvenile justice and behavioral health professionals, who could make recommendations to the study committee for amendments or revisions in the law based on their experience in working with the current system.

#1
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3.25.19

Attached to my testimony is a portion of a background memorandum from the 2017-2018 interim committee on the study of the juvenile justice system, a portion of the Legislative Management report from the interim Justice Reinvestment Committee, and a copy of HB 1039.

Juvenile justice reform is a national issue and was a key focus at the recent National Council of Juvenile and Family Court Judges (NCJFCJ) annual conference on juvenile justice. Attached is a press release from that conference dated March 20, 2019.

I urge you to recommend adoption of HCR 3031. Thank you.

Rep. Lawrence R. Klemin
Speaker of the House

JUVENILE JUSTICE SYSTEM

House Concurrent Resolution No. 4003 (2017) (Appendix B), provides for a study of the juvenile justice process, levels of collaboration among various service systems, implementation of dispositional alternatives, and methods for improving outcomes for juveniles involved in the process.

Background

Section 27-20-03 provides the juvenile court has exclusive original jurisdiction of proceedings in which a child is alleged to be delinquent, unruly, or deprived. Under Chapter 27-20, "child" means an individual who is under the age of 18 years and is not married or under the age of 20 years with respect to a delinquent act committed while under the age of 18. Section 27-20-34 authorizes the court to transfer a juvenile proceeding to another court depending on various factors, such as the age of the child at the time of the alleged conduct, the age of the child at the time of the transfer request, and the child's amenability to treatment and rehabilitation.

Section 27-21-01 creates the Division of Juvenile Services within DOCR. The division operates the Youth Correctional Center and eight regional community-based services offices. The community services staff provide comprehensive case management and community-based correctional services to youth in the state while juvenile corrections specialists provide community services and correctional case management across eight regions.

Section 27-21-02 provides "the division of juvenile services is the administrative agency which shall take custody of delinquent and unruly children committed to its care by the juvenile courts." Section 27-21-02 requires the division, upon taking custody of a child or prior to receiving custody of a child, to complete diagnostic testing and evaluate the child to develop an individualized treatment and rehabilitation plan. The plan may include placement in the care of the child's parent, relative, guardian, or in a foster home, or placement in the care of the Youth Correctional Center, a career or technical education program, or other treatment and rehabilitation institution. Section 12-52-01 authorizes the division, with the approval of the Director of DOCR, to provide a juvenile aftercare program and other treatment and rehabilitation programs and to contract with public and private agencies to provide services for persons committed to the division.

Juvenile Services in Other States

According to data from the United States Office of Juvenile Justice and Delinquency, in 2013 North Dakota ranked 6th highest in the nation for the number of youth placed in the juvenile justice system per 100,000 youth in the state with 253 youth per 100,000. According to an analysis of the same data by The Sentencing Project, the overall juvenile sentencing rate per 100,000 youth in the United States is 173 while the rate for American Indian youth is 334 per 100,000.

In 2016 Kansas enacted reforms intended to improve its juvenile justice system by reducing the use of out-of-home placements and investing in community supervision and rehabilitative services. According to a June 2017 analysis provided in *Juvenile Justice Reforms in Kansas Show Early Signs of Success*, by The PEW Charitable Trusts, the reforms restrict the placement of certain juveniles in correctional facilities, focus the system's most intensive responses on the highest-risk juveniles, and shift significant resources toward evidence-based alternatives that allow youth to be supervised safely while remaining at home. At the time of enactment, Kansas projected the new policies would cut juvenile residential placements approximately 60 percent by 2022, at a savings of \$72 million to be reinvested in alternatives to incarceration over 5 years.

On June 16, 2017, Nevada Governor Brian Sandoval signed the Juvenile Justice System Reform Act that calls for Nevada to adopt a statewide validated risk and needs assessment tool, requires state funding be used for evidence-based practices, establishes better data collection, and creates a single juvenile justice oversight body to guide and oversee the reforms.

OPERATION AND MANAGEMENT OF CORRECTIONAL FACILITIES

House Concurrent Resolution No. 3002 (2017) (Appendix C), provides for a study of the operation, management, conditions, standards, and supervision of city, county, and regional correctional facilities and other potential means to improve the rehabilitative function of city, county, and regional correctional facilities and a possible transition of the supervision of city, county, and regional correctional facilities from DOCR to the Attorney General.

Background

Section 12-44.1-02 authorizes the governing body of a county or city to establish and maintain a correctional facility, contract for correctional facility services and use of correctional facilities with another county or city, or establish and maintain a correctional facility in conjunction with other counties and cities. Section 12-44.1-06 requires DOCR to grade correctional facilities as to the length of allowable inmate confinement based on

JUSTICE REINVESTMENT COMMITTEE

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The Justice Reinvestment Committee was assigned three studies:

- **Senate Concurrent Resolution No. 4003 (2017) directed a study of the juvenile justice process, the appropriate age when a juvenile is considered capable of committing a criminal offense, levels of collaboration among various service systems, implementation of dispositional alternatives, and methods for improving outcomes for juveniles involved in the process.**
- House Concurrent Resolution No. 3002 (2017) directed a study of the operation, management, conditions, standards, and supervision of city, county, and regional correctional facilities and other potential means to improve the rehabilitative function of city, county, and regional correctional facilities and a possible transition of the supervision of city, county, and regional correctional facilities from the Department of Corrections and Rehabilitation (DOCR) to the Attorney General.
- Section 11 of Senate Bill No. 2015 (2017) directed a study of alternatives to incarceration, with a focus on the behavioral health needs of individuals in the criminal justice system. The study must include receipt of reports on the status, effectiveness, and sustainability of the community behavioral health program for individuals in the criminal justice system, which must include caseload data, any recognized savings to DOCR, and an overview of the training requirements for contract behavioral health service providers.

The Legislative Management delegated to the committee the responsibility to receive the following reports:

- A report from DOCR and the Supreme Court regarding the progress of the justice reinvestment initiative (Section 20 of 2017 House Bill No. 1041).
- A report from the Justice Reinvestment Oversight Committee before July 1, 2018, of the findings and recommendations of the study of implementation of justice reinvestment policies in the state and any legislation required to implement those recommendations (Section 14 of 2017 Senate Bill No. 2015).

Committee members were Senators Kelly M. Armstrong (Chairman), Dick Dever, John Grabinger, Dave Oehlke, Arne Osland and Representatives Jake G. Blum, Karla Rose Hanson, Pat D. Heinerf, Tom Kading, Karen Karls, Lawrence R. Klemin, Lisa Meier, Jon O. Nelson, Bernie Satrom, and Steve Vetter.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2018. The Legislative Management accepted the report for submission to the 66th Legislative Assembly.

JUVENILE JUSTICE SYSTEM

Background

North Dakota Century Code Section 27-20-03 grants the juvenile court exclusive original jurisdiction of proceedings in which a child is alleged to be delinquent, unruly, or deprived. Under Chapter 27-20, "child" means an individual who is under the age of 18 years and is not married or under the age of 20 years with respect to a delinquent act committed while under the age of 18. Section 27-20-34 authorizes the court to transfer a juvenile proceeding to another court depending on various factors, such as the age of the child at the time of the alleged conduct, the age of the child at the time of the transfer request, and the child's amenability to treatment and rehabilitation.

Section 27-21-01 established the Division of Juvenile Services within DOCR. The division operates the Youth Correctional Center and eight regional community-based services offices. The community services staff provide comprehensive case management and community-based correctional services to youth in the state while juvenile corrections specialists provide community services and correctional case management across eight regions.

Section 27-21-02 provides "the division of juvenile services is the administrative agency which shall take custody of delinquent and unruly children committed to its care by the juvenile courts." Section 27-21-02 requires the division, upon taking custody of a child or prior to receiving custody of a child, to complete diagnostic testing and evaluate the child to develop an individualized treatment and rehabilitation plan. The plan may include placement in the care of the child's parent, relative, guardian, or in a foster home, or placement in the care of the Youth Correctional Center, a career or technical education program, or other treatment and rehabilitation institution. Section 12-52-01 authorizes the division, with the approval of the Director of DOCR, to provide a juvenile aftercare program and other treatment and rehabilitation programs and to contract with public and private agencies to provide services for persons committed to the division.

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Testimony and Committee Considerations

In its study of the juvenile justice system, the committee received testimony from representatives of DOCR, the Supreme Court, the Council of State Governments' Justice Center, the North Dakota Association of Counties, and the North Dakota Juvenile Justice State Advisory Group.

A representative from the **Division of Juvenile Services** indicated the juvenile justice system starts with law enforcement and includes the juvenile court, probation child welfare, and the Division of Juvenile Services. Testimony further indicated the state's juvenile violent crime rate is less than half of the national rate; however, the state has a higher rate of drug and alcohol use and disorderly conduct. The higher rate of disorderly conduct cases was attributed to an increased law enforcement presence in schools; however, the committee was informed further analysis is needed to determine whether appropriate community resources exist to divert some of the higher risk youth. **It was noted because the youth population in the criminal justice system is low, it is an opportune time to make changes to the system. Changes may help avoid the type of exponential growth in the incarceration rate of juveniles the adult system has experienced in recent years.**

The committee received information from a representative from the Supreme Court indicating juvenile court directors in the state are reviewing the age of juveniles entering the system compared to the age of criminal responsibility as outlined in Section 12.1-04-01. This section provides an individual under 7 years of age is deemed incapable of commission of an offense defined by the Constitution of North Dakota or Century Code. Testimony indicated the juvenile court budget designates \$11 per day per juvenile, with a total budget of \$14 million. Juvenile court offices are located in 11 cities across the state and the Department of Juvenile Services operates 8 regional offices. According to the testimony, the judicial branch budget for the 2017-19 biennium is \$11 million less than the 2015-16 biennium. Eleven positions were cut from the juvenile court and one office was closed.

A representative from the North Dakota Association of Counties indicated although prosecutors identified a lack of resources in rural areas and the western part of the state and issues with statewide polices, state's attorneys have expressed general satisfaction with the juvenile justice system.

Representatives from the Juvenile Court provided information regarding the process followed when a juvenile enters the juvenile court system. It was noted every juvenile is given a risk assessment to determine what is driving the behavior. Juvenile officers also provide more cognitive-based classes with groups to discuss how to handle stressful situations, and efforts have been made to provide more family based counseling. The committee received information from numerous individuals relating to the need for increased mental health services for youth.

The committee received information indicating a **need to streamline juvenile services** to provide services and funds to those families in need. The **Dual Status Youth Initiative** has received assistance from the Robert F. Kennedy National Resource Center for Juvenile Justice in an effort to change the trajectory of alleged abused and neglected children from entering the juvenile justice system by establishing child- and family-centered multi-disciplinary policies and practices. A representative from Juvenile Court Services indicated the initial implementation of the new family engagement policy will be in Grand Forks, Ramsey, Ward, Burleigh, Stutsman, Mercer, McLean, Oliver, and Sheridan Counties.

The committee considered a bill relating to the age of culpability of a juvenile. The bill would raise the age of culpability from 7 years old to 10 years old.

The committee received overwhelming testimony in support of the bill draft. Testimony indicated a law enforcement referral for a juvenile who is 7 or 8 years old would be sent to social services regardless of the statutory age of culpability because social services deals with the family dynamics that could be causing negative behaviors. According to the testimony, a juvenile under 12 years of age is placed with social services regardless of the offense and the most common age of culpability across the country is between 10 and 12 years of age.

Recommendation

The committee recommends House Bill No. 1039 to raise the age of culpability of a juvenile from 7 to 10 years old.

OPERATION AND MANAGEMENT OF CORRECTIONAL FACILITIES

Background

Section 12-44.1-02 authorizes the governing body of a county or city to establish and maintain a correctional facility, contract for correctional facility services and use of correctional facilities with another county or city, or establish and maintain a correctional facility in conjunction with other counties and cities. Section 12-44.1-06 requires DOCR to grade correctional facilities as to the length of allowable inmate confinement based on construction, size, and usage. Under this section:

- A grade one facility means a facility for confining inmates not more than 1 year;

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Introduced by

Legislative Management

(Justice Reinvestment Committee)

1 A BILL for an Act to amend and reenact section 12.1-04-01 of the North Dakota Century Code,
2 relating to culpability of a juvenile.

3 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

4 SECTION 1. AMENDMENT. Section 12.1-04-01 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 12.1-04-01. Juveniles.

7 ~~Persons~~An individual under the age of ~~seventen~~ years ~~are~~is deemed incapable of
8 commission of an offense defined by the constitution or statutes of this state. The prosecution of
9 any ~~person~~individual as an adult is barred if the offense was committed while the
10 ~~person~~individual was less than fourteen years of age.

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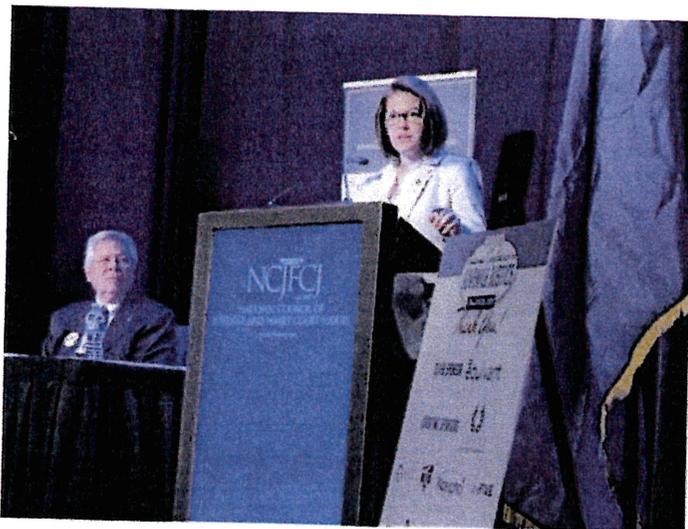
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LAS VEGAS - March 20, 2019 - (Newswire.com)

The **National Council of Juvenile and Family Court Judges (NCJFCJ)** National Conference on Juvenile Justice convened nearly 600 juvenile and family court judges, probation officers, lawyers, law enforcement and court professionals to improve national initiatives focused on the juvenile justice system.

The conference featured cutting-edge information, state-of-the-art programs and current research in juvenile reform and law. Some of the featured topics included: the Nevada

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DIGITAL JOURNAL form effort, alternatives to detention, trauma-informed justice, cyberviolence, recidivism, sex trafficking of minors, out-of-home placement, animal cruelty, special immigrant youth status, military-connected families, homelessness and LGBTQ issues in the juvenile justice system.

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Nevada Justice James W. Hardesty and Senator Catherine Cortez Masto (D-Nev.) opened the conference with a welcome address.

"Juvenile and family courts are important parts of our criminal justice system that help support children, families and communities in Nevada and across the country," said Senator Cortez Masto. "For over 80 years, NCJFCJ has brought together criminal justice advocates and professionals to provide skills training and policy support that can make all the difference for families and children that come into contact with the court system. I will continue to fight in the Senate to give law enforcement and criminal justice professionals the tools they need to combat human trafficking, ensure the humane treatment of all incarcerated juveniles and bolster funding for innovative rehabilitation programs that can help rebuild lives."

Jarrett Adams, JD, Law Office of Jarrett Adams, N.Y., delivered the keynote address about his story, *Life After Justice*, where he was wrongfully convicted of sexual assault at age 17 and was sentenced to 28 years in a maximum-security prison. After serving nearly 10 years and filing multiple appeals, Adams was exonerated with the assistance of the Wisconsin Innocence Project.

A featured presentation focused on the *Nevada Statewide Juvenile Justice Improvement Initiative* featuring Scott Shick, juvenile probation officer, Douglas County, Nevada; Judge Egan Walker, Second Judicial District Court, Washoe County, Nevada; and John "Jack" Martin, director, Clark County Department of Juvenile Justice Services.

Plenary highlights included Dale Erquiaga, president/CEO, Communities In Schools, and Jamal Tate, business owner and former juvenile offender, on race and school discipline and Toni McKinley on trust-based interventions for trafficking survivors, a special session sponsored by Caesars Entertainment.

Judge William Voy, family court judge, and Judge Soonhee "Sunny" Bailey, juvenile hearing master, both from the Eighth Judicial District Court, Clark County, Nevada, also presented on *Detention Alternative for Autistic Youth (D.A.A.Y. Court)*, the first specialty court for youth who show to be on the spectrum to receive proper treatment.

"This year's National Conference on Juvenile Justice is the largest juvenile justice conference in the NCJFCJ's 81-year history," said Joey Orduna Hastings, chief executive officer, NCJFCJ. "The record attendance is an indication that judicial officers, law enforcement, probation officers and other juvenile and family law professionals are eager for opportunities to learn the latest hands-on and evidence-based solutions to ensure that juvenile justice systems throughout the country are effective, just and beneficial to their communities."

About the National Council of Juvenile and Family Court Judges (NCJFCJ): Founded in 1937, the Reno, Nevada-based **National Council of Juvenile and Family Court Judges**, is the nation's oldest judicial membership organization and focused on improving the effectiveness of our nation's juvenile and family courts. A leader in continuing education opportunities, research and policy development in the field of juvenile and family justice, the 2,000-member organization is unique in providing practice-based resources to jurisdictions and communities nationwide.

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Christie Yabu, APR

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