

FISCAL NOTE
Requested by Legislative Council
03/27/2019

Amendment to: SB 2073

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2017-2019 Biennium		2019-2021 Biennium		2021-2023 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures			\$45,000		\$45,000	
Appropriations						

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2017-2019 Biennium	2019-2021 Biennium	2021-2023 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill transfers the responsibility of establishing, modifying or terminating a guardianship of a minor and appointment of a Guardian ad Litem to Juvenile Court. The House amendments to Senate Bill No. 2073 does not change the fiscal impact.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 7 provides for Juvenile Court to appoint a Guardian ad Litem when probate cases are transferred from District Court or upon petition to the court by a person interested in the child's well being.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

No impact

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

A lay Guardian ad Litem would be appointed in approximately 75 additional cases per year under Juvenile Court. These are not new cases but the number of cases identified as being incorrectly filed in District Court last year.

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

No additional appropriation was provided to the court system for this cost.

Name: Don Wolf

Agency: Court System

Telephone: 328-3509

Date Prepared: 12/28/2018

FISCAL NOTE
Requested by Legislative Council
12/26/2018

Bill/Resolution No.: SB 2073

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2017-2019 Biennium		2019-2021 Biennium		2021-2023 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures			\$45,000		\$45,000	
Appropriations						

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2017-2019 Biennium	2019-2021 Biennium	2021-2023 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill transfers the responsibility of establishing, modifying or terminating a guardianship of a minor and appointment of a Guardian ad Litem to Juvenile Court.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 7 provides for Juvenile Court to appoint a Guardian ad Litem when probate cases are transferred from District Court or upon petition to the court by a person interested in the child's well being.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

No impact

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

A lay Guardian ad Litem would be appointed in approximately 75 additional cases per year under Juvenile Court. These are not new cases but the number of cases identified as being incorrectly filed in District Court last year.

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

No additional appropriation was provided to the court system for this cost.

Name: Don Wolf

Agency: Court System

Telephone: 328-3509

Date Prepared: 12/28/2018

2019 SENATE JUDICIARY

SB 2073

2019 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2073
1/8/2019
#30532 (47:31)

- Subcommittee
 Conference Committee

Committee Clerk: Meghan Pegel

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact chapter 27-20.1 of the North Dakota Century Code, relating to guardianships of children; to amend and reenact subsection 11 of section 27-20-02, section 27-20-03, subsection 1 of section 27-20-06, sections 27-20-46, 27-20-48.1, and subsection 1 of section 27-20-49 of the North Dakota Century Code, relating to guardianships of children; and to repeal sections 27-20-48.2, 27-20-48.3, and 27-20-48.4 of the North Dakota Century Code, relating to guardianships of children.

Minutes:

1 Attachment

Chair Larson opened the hearing on SB 2073.

Cynthia Feland, District Court Judge in the South Central Judicial District, testifies in favor of bill (See Attachment #1)

(36:32) Chair Larson: Would you like to address the Fiscal Note- the \$45,000?

Judge Feland: It was tricky to figure this out. There are many of us on the Workgroup that don't think that there should be a fiscal note because we don't really think it's going to have an impact. A number of these things which are getting filed, may have a duplication of numbers and other than going and opening every case individually- I'm not sure if there's a good way to figure out how many of these that actually accomplishes. We already appoint guardian ad litem in some of these other cases.

I've handled a few cases where grandparents have come in, not through social services or your typical juvenile court deprivation procedures, but have come in seeking a guardianship because a child has been left with them for a significant period time. Then when they decide to file a petition, the parent decides they want to be back in the picture. You've got two competing sides and no one to tell you what is in the best interest of the child. We are already under the current provisions, appointing guardian ad litem in those cases. I don't know if the fiscal note is that great. However, I don't know if when people find out this procedure, are we going to have more of these cases that come in? They looked at all of the cases that were filed within the probate code in 2018. Under the current provisions only 14 should have stayed within the probate code and the rest should have been handled in juvenile court. Under the amounts that they feel that are being paid for guardian ad litem services, they came up with the \$45,000 which would cover the biennium.

Grandparents are the most common situation- where you have a parent with a drug addiction and has left a child with Grandma and Grandpa to take care of. Then the child becomes school age and the grandparents need to be able to get the child registered and they can't because they are not the parent. That's what precipitated this. This is a mechanism to allow those cases to go through. We're not anticipating a multitude of numbers; we're just looking at what has been based historically. I believe the worst case scenario is going to be \$45,000 for the next biennium because we're already doing it. The difficulty is figuring out how many because we don't have any numbers for how many of them they are currently already doing within the juvenile system.

(40:45) Senator Myrdal: On page 7 of your testimony concerning the definition of "parent", is that something that needs to be clarified with an amendment?

Judge Feland: I intentionally put it in the testimony because typically if things are specified verbatim, the courts go back and look at what the legislative intent is. There are people not considered a traditional parent. Because of this issue, I intend to forestall it. I want to make sure it's referenced so it's abundantly clear that this provision was never intended to address anybody other than a biological or adoptive parent. My understanding is that the indigent defense commission is okay with that. Those indigent defense services are based on the whole fundamental right to be a parent and unless you're biological or adopted, that fundamental right doesn't attach.

(43:30) Vice Chairman Dwyer: There is a definition of child, so should we add "parent means the biological parent of the child or the person who has formally adopted a child"?

Judge Feland: It would seem logical to me that the definition then would be put in 27-20-02. It could be included with the modification that we did. I would propose you put it as part of that original uniform juvenile act as opposed to 27-20.1 since we are just incorporating those definitions. Because that affects a multitude of other juvenile actions, I am hesitant. I don't know if it would create other problems in other places in juvenile court.

Senator Luick: Moved a Do Pass.

Vice Chairman Dwyer: Seconded.

Chair Larson: We will leave the language as is.

A Roll Call Vote Was Taken: 6 yeas, 0 nays, 0 absent. Motion carries.

Vice Chairman Dwyer will carry the bill.

REPORT OF STANDING COMMITTEE

SB 2073: Judiciary Committee (Sen. D. Larson, Chairman) recommends **DO PASS**
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2073 was placed on the
Eleventh order on the calendar.

2019 HOUSE JUDICIARY

SB 2073

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

SB 2073
3/12/2019
33581

- Subcommittee
 Conference Committee

Committee Clerk: DeLores D. Shimek by Donna Whetham

Explanation or reason for introduction of bill/resolution:

Relating to guardianship of children.

Minutes:

1

Chairman Koppelman: Opened the hearing on SB 2073.

Cynthia Feland, District Court Judge, South Central Judicial District: Went through testimony and the new chapter in Section 1-Definitions. See (Attachment #1). 1:00-6:20

Chairman K. Koppelman: To what degree is uniformity important?

Cynthia Feland: It is very important. Starting with definition section, explained and went over testimony definitions. 6:30-8:28

Chairman K. Koppelman: Does this actually change the concurrent jurisdiction if it is originating under this chapter that they are governed by 30.1-27? So that is part of this change as well?

Cynthia Feland: Right. Because there won't be any follow up in those cases. The only ones you are going to bring out of the probate court is the ones we talked about is where there is testamentary appointment that agrees to the appointment of the guardian and the court approves it. This makes clear that we are going to have the continuing portion of it will be in juvenile court and which ones will originate in juvenile court.

Chairman K. Koppelman: So this is a probate matter that triggers this? The judge sitting on the probate issue could end up being the same judge dealing with the juvenile issue. It depends which hat you are wearing rather than who is going to hear the case.

Cynthia Feland: Right. The key is things are handled very differently in juvenile court when it deals with confidentiality and who has access to see them. When we are dealing with the probate court they are open to the public. There may be redactions for account numbers and some things but otherwise it is open to the public. This is an effort to protect minors. It is to ensure that there isn't a question who has jurisdiction. It isn't common but sometimes we have to change that jurisdiction. We want to make sure there is no confusion as to how

the procedures work and in which court things need to be continued in. Continued Section 3 in Attachment 1. 11:00-18:39.

Rep. McWilliams: On the last line of under page 7 where it states “there is no mechanism for appeal when a petition is not accepted or approved by juvenile court”, does this fix that then?

Cynthia Feland: Yes, because the way things happen now when someone brings in a petition and it can look like anything even hand written and it is filed then reviewed by the juvenile court director and if they decide there is not enough information there it is rejected. We need to have a document that is filed and actually have the court look at that so that there is an appeal mechanism. It also stops people from filing multiple petitions that are not sufficient.

There will be forms at some point available on the website if this is adopted by this legislature, we will try to make it as user friendly as possible. If a grandparent wants to file a claim they will actually know what information they will need.

Chairman K. Koppelman: You have mentioned grandparents and I imagine that is the most typical people asking for this?

Cynthia Feland: It is the most common one we see that is not a testamentary one. We are seeing a lot of these situations coming up and grandparents have really had to take on additional responsibilities such as enrolling a child in school. It will also deal with issues that the military needs to address for deployment. This makes sure there is protections universally. 27:53

Rep. McWilliams: Page 7 line 4 of SB 2073 where it says “if the petitioner has made an insufficient showing of depravation the court without oral argument or an evidentiary hearing shall issue an order denying the petition”. Do we say anywhere what sufficient evidence is for depravation?

Cynthia Feland: We don't. We were trying to use language that would allow for a lay person have a better understanding. This bill would help the people have the ability to appeal a denial of a petition.

Rep. McWilliams: Is there any information provided to those individuals who want to petition and they are not sure what evidence they need to bring up

Cynthia Feland: There is a definition of what depravation is and that is in the statutory provision but it will also be on the website and on information sheets.

Rep. McWilliams: I don't want to create a situation where the only recourse for some petitioner that could be rejected and don't know why and their only recourse is trying to go to the Supreme court.

Cynthia Feland: They already have that problem now. This is intended to create protections for everybody. But it still keeps in the spirit of a gatekeeper. This makes sure there are clear

cut procedures so you can take your petition to the final conclusion and not left in a stack somewhere.

Chairman K. Koppelman: We have a \$45,000 Fiscal Note that would seem to disagree with your answer.

Cynthia Feland: I will tell you now I don't agree with that Fiscal Note but we put I on because it was an estimate that was made. Do those cases show up? Yes they already do. You will already be sent to court, the only difference in some of these cases. I understand the Fiscal note is there.

Chairman K. Koppelman: The fiscal level is one that would not require a rereferral to Appropriations only by a \$5000 amount. It does say no additional appropriation was provided to the court system for this cost. Which you are saying may not be there in the first place.

Cynthia Feland: I don't agree with the fiscal note. I am not expecting there to be any change. What I am expecting is you are going to make everybody's lives easier within the system. Because we are not going to start cases in the probate court and they send them to juvenile courts. The ones in the juvenile courts will have very clearly delineated procedures for what it takes to get in and what information is necessary. We should figure out how many cases are duplicate cases.

Rep. Hanson: The Fiscal note does say that these are not new cases and incorrectly filed.

Chairman K. Koppelman: Bottom of page 3 lines 23 and 26 of section 4 of the bill your notes say that this was being recodified in the other new section, where is that replicated?

Cynthia Feland: I am not sure I can find that at this time but as we discuss this I can point it out when we come to it. Discussed guardian ad litem?

Chairman K. Koppelman: In the cases of probate where there might not be sufficient dollars to handle these things because they are now being transferred to juvenile court where does that come from, I think it is in section 6 where it is assigned to the county, this might be a fiscal note in that respect.

Cynthia Feland: Part of the problem is the way things already situated. We have the same issues that can come up with family court issues. It needs to come from the estate first. Most of the time I have not had a case that we have had a direct payment to the county. We wanted to be fair to everybody and we want it clear how that is addressed.

Chairman K. Koppelman: On page 4 on line 13 of the bill, I assume if we did make the change on the other bill we would need to have similar language here concerning the Attorney guardian ad litem.

Cynthia Feland: This basically carries over, if that Attorney guardian ad litem who is originally appointed in the probate court agrees to carry on in the juvenile portion of it that this basically carries that over. If you change it elsewhere it would have to be changed here as well.

Chairman K. Koppelman: In Section 7 on page 4 lines 26-27 “if a court does not approve acceptance of a testamentary guardian of a minor under chapter 30.1-27” that is where this goes into juvenile court. What if the court does approve? You have a guardian in the probate world and it is not being dealt with here. What am I missing?

Cynthia Feland: It will get transferred at a different stage of the proceedings. The only thing the probate court will deal with is a testamentary appointment that it approves. It will then transfer to juvenile court as well. It just a question of where the appointment occurs and the only appointment that would occur under the probate code would be testamentary appointments that the testamentary guardian agrees to accept and the court approves.

Chairman K. Koppelman: We are seeing different terms in different sections, when you are talking about juvenile court is a guardian different than a guardian ad litem?

Cynthia Feland: They have the basically the same meaning. The guardian is the person who is appointed to be the quasi parent but guardian ad litem is one appointed by the court for a period of time. It could be a custody situation. Grandparents are a lot of time guardians.

Rep. Paur: Your question about that deletion on page 3, it appears on line 10 on page 11 in the bill will you touch on that when we get to that portion?

Cynthia Feland: Yes. Continued testimony pages 5 -7. (48:11-49:06) I am making this very clear as a legislative testimony because you have right now the right to court appointed counsel if you are a biological or adoptive parent. What we didn't want to create a problem where parents who are quasi parents to say they are now entitled to court appointed counsel. We wanted to make it abundantly clear that was not the case. We had talked about creating a definition but the problem would be we don't have separate definitions in this chapter. We have incorporated all of those from the existing juvenile court act. Parents can be used in different ways throughout that chapter that have nothing to do with appointment of counsel but have other effects. We were concerned that we might be meddling by creating a definition and maybe create problems within the juvenile court act. We are making it clear that the only people that we are intending be entitled to court appointed counsel is indigent parents that are biological or adopted. 49:22-stopped 51

Vice Chairman Karls: As we going through this whole process to become guardians do they ever extend it to adopt these children, is that another whole huge process?

Cynthia Feland: Yes. When parental rights have been terminated; sometimes they are terminated in juvenile court where the state becomes responsible. Typically someone else will be responsible for that child. Usually it is part of an adoption. They do them as dual proceedings. Sometimes the child is put with a placing agency and ultimately an adoption. Sometimes there isn't somebody who is able to adopt this child and then they are a ward of the state. In some of those cases a guardian can be appointed.

Vice Chairman Karls: Do grandparents typically adopt?

Cynthia Feland: Sometimes they do because parental rights have been terminated. Then they would be considered the adopted parent and they are responsible for that child just as if they were born to them.

Rep. McWilliams: When you go into tribal nations; that can be contested. Does that have any impact into what we are doing here?

Cynthia Feland: No, you will notice I specifically in the beginning incorporated the Indian Child Welfare Act because that applies to all of this. We do have cases that we have done to Non-Native American families of a Native American child but we have to make sure all the provisions of the Indian Child Welfare Act have been followed in doing those adoptions. This make sure that those requirements are incorporated as part of the procedures that will be followed.

Chairman K. Koppelman: Back to line 7 & 8, page 9 of SB 2073; when you talk about these cases and when court appointed counsel is necessary where does it come from? Does it come from the commission or elsewhere? When you rely upon that definition of what constituent's indigents and we have tried to ensure that the people getting the tax payer funded counsel are truly indigent and needing that. There seems to me a different constitutional construct when you are talking about the typical cases which is legal defense when you are charged with a crime and you are entitled to counsel constitutionally versus a situation like this which may not rise to that level of entitlement?

Cynthia Feland: So it is the fundamental right to be a parent. You cannot terminate parents' rights without their being notified that they have the right to indigent counsel. When we drafted this we put this language in on line 7-8 Page 9 of the bill because we are well versed in how those guidelines can change and the amounts and who you considered indigent. We didn't want to create something where this would be overlooked if you made a change there and it wasn't incorporated here. Continued on explaining Page 9 line 9-24 Page 11 of testimony. If you look at page 11 line 9 of the bill if you look at 27-20.1-13 is the reference you were looking for to order appointing a guardian. (59:00-1:16:47)

Rep. McWilliams: Page 8, line 12 of the bill under procedure upon approval it references 10 days, is that business days or calendar days?

Cynthia Feland: They will get an explanation sheet will show the timeframes. It doesn't state exactly here but there is specific requirements and rules of civil procedure of how you count days and calculate them. That could change so we didn't make it specific in here. When they fill out the forms and the explanation sheet it will tell them the date that they use. That is easier to change that make a legislative change.

Rep. Jones: Page 17 line 18 of the bill under attorney's fees that if the action is frivolous the court may award some cost incurred on behalf of the child including attorney's fees and other things, why was that put in there that way?

Cynthia Feland: Throughout the code there are provisions that allow for attorney's fees, they ask for fees all the time and they never get them usually. Unless there is a specific provision that allows for it or they can show that the filling of the proceedings was frivolous.

Unfortunately, in some of these cases we do get things that are filed have no real basis and can run up costs and if it is shown it was frivolous the attorney's fee can sometimes be paid for by the person making the filing. It is to discourage frivolous petitions.

Rep. Magrum: What is the big difference between a conservator and a guardian?

Cynthia Feland: A guardian has authority to whatever decisions powers that are awarded them. Such as residential, medical, legal, vocation, education and training for a person. Conservatorship only deals with finances. Sometimes we have people who are capable of deciding where they are going to live but they have a very complex estate and don't have the ability to manage that.

Rep. Magrum: Was our codes so bad that there was such a sweeping change here in these bills?

Cynthia Feland: you can go back and take a look at the change we made in 2015 and we made a lot to incapacitated adults. Part of the problem is sometimes we bring in uniform provisions of the code and we adopt the whole thing and sometimes we don't adopt any of it. Until you start working with it you don't notice the problems. I am pleased with what we have done with the incapacitated adults and now our intent is to do the same thing with regard to our children.

Chairman K. Koppelman Any opposition? Neutral? Seeing none.

Hearing closed.

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

SB 2073
3/20/2019
34050

- Subcommittee
 Conference Committee

Committee Clerk: DeLores D. Shimek

Explanation or reason for introduction of bill/resolution:

Relating to guardianship of children.

Minutes:

Chairman Koppelman: Opened the hearing on SB 2073. I haven't heard from anyone that there is a desire to make any changes. One thing I don't like on page 4, line 13 they specify an attorney guardian ad litem. We had some discussion about that during the hearing. I don't think you necessarily have to be an attorney. The legal community crafts these measures and they are different types of guardians, but certainly there are lay people who are not law trained, but can and have done a good job historically. This would leave the decision to the court to make that decision.

Motion Made to amend and remove an attorney and add the word a on line 13, page 4 by Rep. Jones; Seconded by Representative Simons:

Discussion:

Rep. Bob Paulson: Would that preclude the assignment of an attorney?

Chairman K. Koppelman: No it just removes the requirement that they be an attorney.

Voice Vote Carried

Chairman K. Koppelman: There is also reference on page 5 to attorney guardian ad litem. I would ask that we make another motion and Rep. Jones if you are comfortable making the motion to remove that word attorney as well and authorize our intern would look to see if there are any other instances where that may be and needs to be corrected.

Motion Made to amend to remove an attorney anywhere else in the bill where it might be by Rep. Jones; Seconded by Representative Simons:

Discussion

Voice vote carried.

Rep. McWilliams: Page 8, section 3? I had a questions mark about ten days?

Chairman K. Koppelman: You did in other sections. The court does have a process for counting days. I think it is regular days. On page 11 the order of appointing a guardian of a child suspends any authority of a parent that is granted to the guardian under that order. The parent subject to such an order is entitled to treatment as a party and any subsequent juvenile court proceeding regarding the child. This is appropriating because the court would be appointing a guardian. If we move on this one, I won't sign off on it until we move on 2072. Probably have the same carrier too.

Rep. McWilliams: I was interested in page 10, line 7-10 where they make a very subsequent change where the court finds a clear and convincing evidence that a child is of sufficient maturity to make a sound judgement or the child is age 14 or older.

Do Pass Motion as Amended by Rep. McWilliams; Seconded by Rep. Hanson

Discussion:

Roll Call Vote: 11 Yes 2 No 1 Absent Carrier: Rep. McWilliams

Closed.

19.8010.01001
Title.02000

DP 3/20/19
Adopted by the House Judiciary Committee

March 20, 2019

PROPOSED AMENDMENTS TO SENATE BILL NO. 2073

Page 4, line 13, replace "an attorney" with "a"

Page 4, line 14, remove "subsection 1 of"

Page 5, line 1, remove "attorney"

Page 5, line 2, replace "a lay" with "an alternative"

Renumber accordingly

**2019 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 SB 2073**

House **Judiciary** Committee

Subcommittee

Amendment LC# or Description: Remove an attorney and add the word a on line 4, page 13

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. Jones Seconded By Rep. Simons

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman			Rep. Buffalo		
Vice Chairman Karls			Rep. Karla Rose Hanson		
Rep. Becker					
Rep. Terry Jones					
Rep. Magrum					
Rep. McWilliams					
Rep. B. Paulson					
Rep. Paur					
Rep. Roers Jones					
Rep. Satrom					
Rep. Simons					
Rep. 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
 SB 2073**

House **Judiciary** Committee

Subcommittee

Amendment LC# or Description: Remove an attorney anywhere else in the bill where necessary

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. Jones Seconded By Rep. Simons

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman			Rep. Buffalo		
Vice Chairman Karls			Rep. Karla Rose Hanson		
Rep. Becker					
Rep. Terry Jones					
Rep. Magrum					
Rep. McWilliams					
Rep. B. Paulson					
Rep. Paur					
Rep. Roers Jones					
Rep. Satrom					
Rep. Simons					
Rep. Vetter					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Voice vote carried

REPORT OF STANDING COMMITTEE

SB 2073: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). SB 2073 was placed on the Sixth order on the calendar.

Page 4, line 13, replace "an attorney" with "a"

Page 4, line 14, remove "subsection 1 of"

Page 5, line 1, remove "attorney"

Page 5, line 2, replace "a lay" with "an alternative"

Renumber accordingly

2019 TESTIMONY

SB 2073

**Senate Bill 2073
Judiciary Committee**

**Testimony Presented by Cynthia M. Feland
District Court Judge
January 8, 2019**

Chair Larson, members of the Senate Judiciary Committee, I am Cynthia Feland, District Court Judge in the South Central Judicial District. In the fall of 2013 the Guardianship Workgroup, a multi-disciplinary group made up of stakeholders in the guardianship and conservatorship process, was created by Chief Justice VandeWalle and assigned the task of evaluating current guardianship and conservator statutes and procedures in light of the National Probate Standards. For the last two legislative sessions, the Guardianship Workgroup has identified and recommended a number of statutory amendments to improve and strengthen procedures in cases involving guardianship for incapacitated adults and conservatorship cases. The proposed amendments contained in Senate Bill 2073 are intended to clarify the procedures for guardianship of minors in juvenile cases. These statutory amendments were reviewed by the Judicial Conference in November.

Under the current statutory structure there has been a lot of confusion and lack of understanding regarding the process to establish a guardianship of a minor, as guardianship of minors may be sought under two different statutory schemes: the probate code or the Juvenile Court Act. While the current provisions of the Uniform Juvenile Court Act provide for the appointment of a guardian for a minor where a child has been adjudicated as deprived, unruly, or delinquent, in reviewing Chapter 27-20, the Guardianship Workgroup identified and recommended a number of statutory amendments to improve and strengthen procedures in guardianship of minor cases in juvenile court and to unify the procedures for appointment of a

guardian of a minor under the Uniform Probate Code. These statutory amendments were reviewed by the Judicial Conference in November. All of the proposed amendments to the Uniform Juvenile Court Act are contained in Senate Bill 2073.

You will note that the proposed amendments revise and repeal several sections of Chapter 27-20 and create a new chapter, 27-20.1. After lengthy discussion and several unsuccessful attempts by the Workgroup to incorporate all of the changes into Chapter 27-20, it was ultimately determined that the best approach was to create a new chapter that provided practitioners and the public with clear direction and procedures in a chronological format for bringing guardianship of minor cases before the court.

Sections 1 through 6 of the amendments modify the current provisions of Chapter 27-20 to incorporate Chapter 27-20.1 and remove existing guardianship procedures. Section 7 creates the Chapter 27-20.1 establishing the requirements and procedures for establishing guardianship of a minor. All of the provisions contained in chapter 27-20 related to guardianship of minors were reviewed, and in some instances revised and incorporated into the provisions of the proposed chapter 27-20.1

Section 1 – Definitions

Page 1, lines 8-14, amends N.D.C.C. § 27-20-02 to apply the definition of “fit and willing relative or other appropriate individual” to Chapter 27-20.1.

The amendment incorporates application of the definition to the new chapter consistent with the reference to testamentary guardianship of minors in the probate code.

Section 2 – Jurisdiction

Page 1, line 15 through Page 2, line 17, amends N.D.C.C. § 27-20-03 to remove subsection 3.

Subsection 3 addresses jurisdiction of guardianships of minors which will now be covered in chapter 27-20.1.

Section 3 – Powers and duties of director juvenile court

Page 2, line 18 through Page 3, line 14, amends the provisions of N.D.C.C. § 20-27-06 to add subsection k giving the juvenile court director the authority to review guardianship of minor petitions filed under chapter 27-20.1.

Juvenile Court directors currently review guardianship petitions filed in juvenile court, and the amendment maintains the current status.

Sections 4 – Effect of order terminating parental rights.

Page 3, lines 15-26, amends the provisions of N.D.C.C. § 27-20-46 to remove subsection 2.

Subsection 2, addressing the effect on an appointment of a guardian when parental rights are terminated will now be part of chapter 27-20.1.

Sections 5 – Appointment of guardian of a child

Page 3, line 27, amends the provisions of N.D.C.C. § 27-20-48.1 to add chapter 27-20.1.

Guardianships are currently used as a dispositional alternative for placement when a child has been adjudicated deprived, unruly, or delinquent. The amendment preserves guardianship as an alternative treatment option for placement under 27-20.

Section 6 - Costs and expenses for care of child

Page 4, lines 1-16, amends the provisions of N.D.C.C. § 27-20-49 to add subsection d.

As guardianships are being removed from chapter 27-20, the addition provides that the county will cover the cost of a guardian ad litem or an attorney for the minor when the cost cannot be covered by the child or parent's estate. After lengthy discussion, the Workgroup determined that an alternative payment method was necessary to ensure that a minor child is afforded the protections the guardian ad litem provides, and when necessary, an attorney, when that payment from the child or parent's estate is not always possible.

Section 7 – Chapter 27-20.1 Guardianship of Minors

Page 6, line 17 through Page 18, line 28 creates Chapter 27-20.1 to address the requirements and procedures for establishing, reviewing and modifying guardianship of minors.

Page 4, lines 19-20, creates **section 27-20.1-01 Definitions**, incorporating all of the definition in chapter 27-20 to chapter 27-20.1, thereby maintaining consistency in the Uniform Juvenile Court Act and avoiding duplication or oversight.

Page 4, lines 21-24, creates **section 27-20.1-02. Jurisdiction**, establishing jurisdiction for guardianship of minor cases previously addressed in section 27-20-03, and clarifying that except for uncontested testamentary guardianships under chapter 30.1-27, all guardianship of minor cases will be governed by this chapter.

Page 4, line 25, through Page 5, line 2, creates **section 27-20.1-03. Transfer from district court**, establishing the procedures for transfer of guardianship of minor cases from district court to juvenile court when the testamentary appointment is not approved, where subsequent

modification of a testamentary guardianship is required and for monitoring. Under the proposal in contested testamentary cases, the guardian ad litem appointed in district court would continue to serve as guardian ad litem if possible.

Page 5, lines 3-9, creates **section 27-20.1-04. Venue**, incorporating the provisions currently reflected in Section 27-20-11, addressing the venue options for guardianship of minor cases and giving the court discretion to determine the best venue if more than one county would be appropriate.

Page 5, lines 10-14, creates **section 27-20.1-05. Petition – Who may file**, modeled after Section 27-20-20, this section provides who may file a petition for a guardianship of a child. The proposal allows for a broader range of individuals to file a petition if they have knowledge of the facts. Based on lengthy discussions of the Workgroup, the expanded language was intended to ensure that persons having direct contact and knowledge of facts warranting guardianship could intervene on the child's behalf without delay.

Page 5, lines 15 through Page 7, line 13, creates **section 27-20.1-06. Contents of petition to appoint guardian of a child**, establishing the requirements for the contents of the petition. This section is modeled after section 30.1-28-03 governing guardianships of incapacitated adults and includes additional requirements that the petitioning party show deprivation and to address parental rights and Indian Child Welfare Act.

Under current law, there are no specific requirements for the contents of a petition seeking appointment of a guardian of a child. As a result, petitions are frequently filed which contain incomplete or insufficient information. After extensive discussions of the Workgroup,

the current proposal would ensure that all of the necessary information is included in the petition to enable juvenile court to properly address the request for guardianship. The deprivation requirement was added to operate as a gatekeeper for unsupported allegations with the Court making a determination as to sufficiency under section 27-20.1-07.

Page 7, lines 14-29, creates **section 27-20.1-07. Procedure upon filing of petition**, establishing the procedure once a petition is filed. The proposed procedure includes a preliminary review by the court to determine where there had been a sufficient showing of deprivation justifying possible appointment of a guardian, and an order either denying the petition or setting a hearing. The proposed provisions establish a formalized “gate keeping” process to expedite the handling of frivolous petitions and a procedure for appealing the denial of a petition. Under the current provision of 27-20, there is no mechanism for appeal when a petition is not accepted or approved by juvenile court.

Page 8, lines 1-25, creates **section 27-20.1-08. Procedure upon approval of petition**, establishing the procedure when a petition is approved by the court. All cases will require appointment of a lay guardian ad litem to protect the best interests of the child and hearing before the court. In situations where none of the interested parties or the guardian ad litem are contesting the guardianship, the Workgroup determined that a hearing would not be necessary. As a result, the proposed legislation includes a provision allowing the hearing, upon request, to be waived by the court.

Page 8, line 1 through Page 9, line 8, creates **section 27-20.1-09. Right to counsel**, establishing the right to counsel for both children and parents, and authorizing the court to appoint an attorney for the child, if warranted. The proposed provisions also include appointment of court appointed counsel for indigent parents. Although “parent” is not defined in the definitions section of section 27-20-02, incorporated in this chapter under proposed section 27-20.1-01, it is the Workgroup’s intent that the term “parent” only includes biological or adoptive parents. Nothing in the provisions proposed in this section are intended to expand the right to court appointed counsel that already exists under the current provisions of chapter 27-20.

Page 9, lines 9-24, creates **section 27-20.1-10. Conduct of hearings**, establishing the procedure for the hearing on the petition. Additionally, this section requires the court to determine if a conservatorship is necessary. The Workgroup determined that in cases where the minor has or will receive significant assets or a large settlement, additional safeguards might be required.

Page 9, line 25, through Page 10, line 14, creates **section 27-20.1-11. Appointment of guardian of a child**, establishing the criteria for appointment of a guardian for a minor, the burden of proof required for appointment, and identifies who may be appointed as guardian. The provisions were drafted to incorporate the North Dakota Supreme Court’s holdings in, *In re the Guardianship of J.S.L.F.*, 2013 ND 31, 826 N.W.2d 916.

The Court is to use the “best interest” factors in determining whether appointment of a guardian is necessary. Clear and convincing evidence was determined to be the appropriate burden of proof given that an order appointing a guardian affects the fundamental right of a parent.

If guardianship is determined to be appropriate, the court is authorized to appoint any “fit and willing person” as guardian. The requirement that the person appointed be “fit and willing” triggers a background check. The child’s preference of guardian is to be considered by the court, if the child is sufficiently mature or if the child is 14 or older. However, if the court does consider the child’s preference, it must also consider factors which could affect the child’s preference, particularly negative influences, such as pressure from another person.

Appointment of a guardianship as an alternative disposition for a deprived, unruly, or delinquent child under chapter 27-20-48.1 is incorporated into a proposed provision of this section.

Page 10, line 15 through Page 11, line 8, creates **section 27-20.1-12. Findings on petition to appoint guardian of a child – Order of appointment**, establishing the requirements for the contents of the court’s findings and order appointing a guardian of a child.

Under current law, there are no specific requirements for the contents of the findings and order. Consistent with guardianship of incapacitated adult cases, the findings and order must include the requirement for a beginning inventory, annual reports and an expiration date. Consistent with the review of deprivation cases under chapter 27-20, order of guardianship must be reviewed annually to determine if a guardianship continues to be in the best interest of

the child. Upon a good cause showing, the Court may set a longer time frame of no more than 3 years. Additionally, when appropriate, the order must address visitation between the child and the child's parents, siblings or other interested persons as appropriate. These provisions were determined by the Workgroup to properly address the fundamental rights of a parent and the best interest of the child.

Page 11, lines 9-20, creates **section 27-20.1-13. Effect of order appointing a guardian**, clarifying that although a parent's decision making authority over the child is suspended during a guardianship, the parent continues to have the right to parenting time and information concerning the minor child as determined appropriate by the court. In addition, the parent continues to have the right to inherit from the child and the obligation to financially support the child during the guardianship.

Page 11, line 21 through Page 12, line 5, creates **Section 27-20.1-14. Acceptance of appointment – Consent to jurisdiction – Letters of guardianship**, establishing the implications of the guardian's acceptance and the contents of the letters of guardianship.

Under subsection 1, the court retains personal jurisdiction over the guardian once the guardian accepts the appointment. Unless jurisdiction is transferred to another court or jurisdiction, the guardian would remain under the court's jurisdiction of the initiating court even where the guardian may have physically relocated.

Under subsection 2, by accepting the appointment, the guardian is deemed to have acknowledged their obligation to complete and file an annual report.

Subsection 3 establishes the contents of the letters of guardianship, including any limitations on the guardian's authority to make decisions. Under current law there are no specific requirements for letters of guardianship. Requiring the letters of guardianship and specifying the contents of the letters is consistent with guardianship of incapacitated adult cases and provides the guardians with a concise document to use in exercising authority under the guardianship. Schools and medical facilities often require a copy of the court order granting decision making authority for the minor, and the letters eliminate the necessity of filing court orders which may contain additional probate information not applicable to the guardianship. The letters would also reflect any limitations on the guardian's decision-making authority and provide for an expiration date. The due date for the annual report was included to remind the guardian of their duty to file the annual report. The Workgroup felt it was important to also include the expiration of the appointment to avoid the guardian from continuing to use the letters once the guardianship had expired.

Page 12, line 6 through Page 14, line 2, creates **Section 27-20.1-15. Powers and duties of guardian of a child**, establishing the duties and powers of the guardian. Modeled after the provisions of Section 27-20-48.2, this section expands the duties and includes the requirements for the annual report. The proposal also includes a prohibition on the use of a power of attorney by the guardian absent approval by the Court.

Page 14, line 26 through Page 15, line 25, creates **Section 27-20.1-16. Procedure for modification, resignation, or termination of a guardianship**, establishing the procedure to modify the guardianship, for resignation of the guardian and for termination of the

guardianship of a child. The provisions incorporate sections 27-20-48.3 and 27-20-48.4 and the procedures for guardianship of incapacitated adults under chapter 30.1-28.

Page 15, line 26 through Page 16, line 17, creates **Section 27-20.1-17. Expiration and termination of guardianship of a child**, establishing a mechanism for review of guardianships of a child. Although guardianships of a child will generally only be effective for a year, in certain instances, the Court may authorize for a period of no more than 3 years before review. This will allow for continued review to ensure the guardianship continues to be necessary, to modify the provisions of the guardianship, and to determine whether the current guardian should continue to be appointed. Subsection 3 requires the Supreme Court to adopt a rule or order to address existing guardianship of minor cases.

Page 16, line 18 through Page 17, line 15, creates **Section 27-20.1-18. Appointment of emergency guardian of a child**, establishing a mechanism for appointment of a guardian for a child in an emergency situation. Under current law, there are no provisions for an emergency appointment under either chapter 30.1-27 or chapter 27-20. These provisions of this section are modeled after the emergency provisions for incapacitated adults in section 30-1-28-10.1 and those for shelter care in deprivation cases under 27-20

Page 17, lines 16-19, creates **Section 27-20.1-19. Attorney's fees**, provides for an award of attorney's fees and costs when a frivolous objection is made to a testamentary appointment under section 30.1-27 or this chapter. This section is intended to discourage baseless objections to the parents' testamentary appointment or petitions under chapter 27-20.1.

The frivolous standard is the common standard used for an award of attorney's fees for baseless litigation.

Page 17, lines 20-27, creates **Section 27-20.1-20. Protective order**, mirroring the provisions of section 27-20-50.

Page 17, line 28 through Page 18, line 25, creates **Section 27-20.1-21. Orders for Evaluation**, authorizing the court to order evaluations of parties or proposed guardians, when warranted, to ensure the court has sufficient information to determine whether the guardianship is needed, and any conditions which might be required as part of the court's order for guardianship. This section also allows the court to request other persons having regular contact with the child to submit to evaluations. While the court cannot command "other persons" to submit to an evaluation, the refusal can be taken into consideration by the court in issuing a final order. This section also provides safeguards for the confidentiality of the evaluation reports and addendums by severely limiting who may read the reports and not allowing anyone other than the subject of the evaluation to have a copy without the court's permission. The guardian ad litem is entitled to use the information contained in the reports of evaluation to make a recommendation in the guardian ad litem's report.

Page 18, lines 26-28, creates **Section 27-20.1-22. Confidentiality**, establishing the general confidentiality provision for the chapter and relies upon the standards found in section 27-20-51.

Section 8– Repeal

Page 8, lines 18-19, repeals N.D.C.C. § 27-20-48.2, 27-20-48.3, and 27-20-48.4.

The repealed provisions are addressed under the amendments establishing 27-20.1.

Respectfully Submitted:

Cynthia M. Feland
District Judge

Guardianship Workgroup Members: Judge **Cynthia M. Feland**, Chair; **Stephen Astrup**, Vogel Law Firm; **Rich LeMay**, North Dakota Legal Services; **Rachel Thomason**, Bismarck, **Allyson Hicks**, North Dakota Attorney General's office; **Pamela Nesvig**, Judicial Referee; **Lauren Bosch**, Guardian Ad Litem; **Aaron Birst**, North Dakota Association of Counties; **Donna Byzewski**, Catholic Charities; **Michelle Gayette**, N.D. Department of Human Services; **David Boeck**, Protection and Advocacy; **Sally Holewa**, State Court Administrator; **Donna Wunderlich**, Trial Court Administrator, Unit 3; **Karen Kringlie**, Juvenile Court Director, Unit 2; **Catherine Palsgraff**, Citizen Access Coordinator; **Cathy Ferderer**, Family Law Mediation Program Administrator; **Storm Olson**, North Dakota Department of Human Services; **Rose Nichols**, Guardian Monitoring Program; and **Norma O'Halloran**, Grand Forks County Clerk of Court's Office.

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**Senate Bill 2073
House Judiciary Committee**

**Testimony Presented by Cynthia M. Feland
District Court Judge
March 12, 2019**

Chair Koppelman, members of the House Judiciary Committee, I am Cynthia Feland, District Court Judge in the South Central Judicial District. In the fall of 2013 the Guardianship Workgroup, a multi-disciplinary group made up of stakeholders in the guardianship and conservatorship process, was created by Chief Justice VandeWalle and assigned the task of evaluating current guardianship and conservator statutes and procedures in light of the National Probate Standards. For the last two legislative sessions, the Guardianship Workgroup has identified and recommended a number of statutory amendments to improve and strengthen procedures in cases involving guardianship for incapacitated adults and conservatorship cases. The proposed amendments contained in Senate Bill 2073 are intended to clarify the procedures for guardianship of minors in juvenile cases. These statutory amendments were reviewed by the Judicial Conference in November.

Under the current statutory structure there has been a lot of confusion and lack of understanding regarding the process to establish a guardianship of a minor, as guardianship of minors may be sought under two different statutory schemes: the probate code or the Juvenile Court Act. While the current provisions of the Uniform Juvenile Court Act provide for the appointment of a guardian for a minor where a child has been adjudicated as deprived, unruly, or delinquent, in reviewing Chapter 27-20, the Guardianship Workgroup identified and recommended a number of statutory amendments to improve and strengthen procedures in guardianship of minor cases in juvenile court and to unify the procedures for appointment of a

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guardian of a minor under the Uniform Probate Code. These statutory amendments were reviewed by the Judicial Conference in November. All of the proposed amendments to the Uniform Juvenile Court Act are contained in Senate Bill 2073.

You will note that the proposed amendments revise and repeal several sections of Chapter 27-20 and create a new chapter, 27-20.1. After lengthy discussion and several unsuccessful attempts by the Workgroup to incorporate all of the changes into Chapter 27-20, it was ultimately determined that the best approach was to create a new chapter that provided practitioners and the public with clear direction and procedures in a chronological format for bringing guardianship of minor cases before the court.

Sections 1 through 6 of the amendments modify the current provisions of Chapter 27-20 to incorporate Chapter 27-20.1 and remove existing guardianship procedures. Section 7 creates the Chapter 27-20.1 establishing the requirements and procedures for establishing guardianship of a minor. All of the provisions contained in chapter 27-20 related to guardianship of minors were reviewed, and in some instances revised and incorporated into the provisions of the proposed chapter 27-20.1

Section 1 – Definitions

Page 1, lines 8-14, amends N.D.C.C. § 27-20-02 to apply the definition of “fit and willing relative or other appropriate individual” to Chapter 27-20.1.

The amendment incorporates application of the definition to the new chapter consistent with the reference to testamentary guardianship of minors in the probate code.

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Section 2 – Jurisdiction

Page 1, line 15 through Page 2, line 17, amends N.D.C.C. § 27-20-03 to remove subsection 3.

Subsection 3 addresses jurisdiction of guardianships of minors which will now be covered in chapter 27-20.1.

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Page 2, line 18 through Page 3, line 14, amends the provisions of N.D.C.C. § 20-27-06 to add subsection k giving the juvenile court director the authority to review guardianship of minor petitions filed under chapter 27-20.1.

Juvenile Court directors currently review guardianship petitions filed in juvenile court, and the amendment maintains the current status.

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Page 3, lines 15-26, amends the provisions of N.D.C.C. § 27-20-46 to remove subsection 2.

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Section 6 - Costs and expenses for care of child

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As guardianships are being removed from chapter 27-20, the addition provides that the county will cover the cost of a guardian ad litem or an attorney for the minor when the cost cannot be covered by the child or parent's estate. After lengthy discussion, the Workgroup determined that an alternative payment method was necessary to ensure that a minor child is afforded the protections the guardian ad litem provides, and when necessary, an attorney, when that payment from the child or parent's estate is not always possible.

Section 7 – Chapter 27-20.1 Guardianship of Minors

Page 6, line 17 through Page 18, line 28 creates Chapter 27-20.1 to address the requirements and procedures for establishing, reviewing and modifying guardianship of minors.

Page 4, lines 19-20, creates **section 27-20.1-01 Definitions**, incorporating all of the definition in chapter 27-20 to chapter 27-20.1, thereby maintaining consistency in the Uniform Juvenile Court Act and avoiding duplication or oversight.

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modification of a testamentary guardianship is required and for monitoring. Under the proposal in contested testamentary cases, the guardian ad litem appointed in district court would continue to serve as guardian ad litem if possible.

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Page 5, lines 15 through Page 7, line 13, creates **section 27-20.1-06. Contents of petition to appoint guardian of a child**, establishing the requirements for the contents of the petition. This section is modeled after section 30.1-28-03 governing guardianships of incapacitated adults and includes additional requirements that the petitioning party show deprivation and to address parental rights and Indian Child Welfare Act.

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the current proposal would ensure that all of the necessary information is included in the petition to enable juvenile court to properly address the request for guardianship. The deprivation requirement was added to operate as a gatekeeper for unsupported allegations with the Court making a determination as to sufficiency under section 27-20.1-07.

Page 7, lines 14-29, creates **section 27-20.1-07. Procedure upon filing of petition**, establishing the procedure once a petition is filed. The proposed procedure includes a preliminary review by the court to determine where there had been a sufficient showing of deprivation justifying possible appointment of a guardian, and an order either denying the petition or setting a hearing. The proposed provisions establish a formalized “gate keeping” process to expedite the handling of frivolous petitions and a procedure for appealing the denial of a petition. Under the current provision of 27-20, there is no mechanism for appeal when a petition is not accepted or approved by juvenile court.

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Page 8, line 1 through Page 9, line 8, creates **section 27-20.1-09. Right to counsel**, establishing the right to counsel for both children and parents, and authorizing the court to appoint an attorney for the child, if warranted. The proposed provisions also include appointment of court appointed counsel for indigent parents. Although “parent” is not defined in the definitions section of section 27-20-02, incorporated in this chapter under proposed section 27-20.1-01, it is the Workgroup’s intent that the term “parent” only includes biological or adoptive parents. Nothing in the provisions proposed in this section are intended to expand the right to court appointed counsel that already exists under the current provisions of chapter 27-20.

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The Court is to use the “best interest” factors in determining whether appointment of a guardian is necessary. Clear and convincing evidence was determined to be the appropriate burden of proof given that an order appointing a guardian affects the fundamental right of a parent.

If guardianship is determined to be appropriate, the court is authorized to appoint any “fit and willing person” as guardian. The requirement that the person appointed be “fit and willing” triggers a background check. The child’s preference of guardian is to be considered by the court, if the child is sufficiently mature or if the child is 14 or older. However, if the court does consider the child’s preference, it must also consider factors which could affect the child’s preference, particularly negative influences, such as pressure from another person.

Appointment of a guardianship as an alternative disposition for a deprived, unruly, or delinquent child under chapter 27-20-48.1 is incorporated into a proposed provision of this section.

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Under current law, there are no specific requirements for the contents of the findings and order. Consistent with guardianship of incapacitated adult cases, the findings and order must include the requirement for a beginning inventory, annual reports and an expiration date. Consistent with the review of deprivation cases under chapter 27-20, order of guardianship must be reviewed annually to determine if a guardianship continues to be in the best interest of

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the child. Upon a good cause showing, the Court may set a longer time frame of no more than 3 years. Additionally, when appropriate, the order must address visitation between the child and the child's parents, siblings or other interested persons as appropriate. These provisions were determined by the Workgroup to properly address the fundamental rights of a parent and the best interest of the child.

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Under subsection 1, the court retains personal jurisdiction over the guardian once the guardian accepts the appointment. Unless jurisdiction is transferred to another court or jurisdiction, the guardian would remain under the court's jurisdiction of the initiating court even where the guardian may have physically relocated.

Under subsection 2, by accepting the appointment, the guardian is deemed to have acknowledged their obligation to complete and file an annual report.

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Page 12, line 6 through Page 14, line 2, creates **Section 27-20.1-15. Powers and duties of guardian of a child**, establishing the duties and powers of the guardian. Modeled after the provisions of Section 27-20-48.2, this section expands the duties and includes the requirements for the annual report. The proposal also includes a prohibition on the use of a power of attorney by the guardian absent approval by the Court.

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guardianship of a child. The provisions incorporate sections 27-20-48.3 and 27-20-48.4 and the procedures for guardianship of incapacitated adults under chapter 30.1-28.

Page 15, line 26 through Page 16, line 17, creates **Section 27-20.1-17. Expiration and termination of guardianship of a child**, establishing a mechanism for review of guardianships of a child. Although guardianships of a child will generally only be effective for a year, in certain instances, the Court may authorize for a period of no more than 3 years before review. This will allow for continued review to ensure the guardianship continues to be necessary, to modify the provisions of the guardianship, and to determine whether the current guardian should continue to be appointed. Subsection 3 requires the Supreme Court to adopt a rule or order to address existing guardianship of minor cases.

Page 16, line 18 through Page 17, line 15, creates **Section 27-20.1-18. Appointment of emergency guardian of a child**, establishing a mechanism for appointment of a guardian for a child in an emergency situation. Under current law, there are no provisions for an emergency appointment under either chapter 30.1-27 or chapter 27-20. These provisions of this section are modeled after the emergency provisions for incapacitated adults in section 30-1-28-10.1 and those for shelter care in deprivation cases under 27-20

Page 17, lines 16-19, creates **Section 27-20.1-19. Attorney's fees**, provides for an award of attorney's fees and costs when a frivolous objection is made to a testamentary appointment under section 30.1-27 or this chapter. This section is intended to discourage baseless objections to the parents' testamentary appointment or petitions under chapter 27-20.1.

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The frivolous standard is the common standard used for an award of attorney's fees for baseless litigation.

Page 17, lines 20-27, creates **Section 27-20.1-20. Protective order**, mirroring the provisions of section 27-20-50.

Page 17, line 28 through Page 18, line 25, creates **Section 27-20.1-21. Orders for Evaluation**, authorizing the court to order evaluations of parties or proposed guardians, when warranted, to ensure the court has sufficient information to determine whether the guardianship is needed, and any conditions which might be required as part of the court's order for guardianship. This section also allows the court to request other persons having regular contact with the child to submit to evaluations. While the court cannot command "other persons" to submit to an evaluation, the refusal can be taken into consideration by the court in issuing a final order. This section also provides safeguards for the confidentiality of the evaluation reports and addendums by severely limiting who may read the reports and not allowing anyone other than the subject of the evaluation to have a copy without the court's permission. The guardian ad litem is entitled to use the information contained in the reports of evaluation to make a recommendation in the guardian ad litem's report.

Page 18, lines 26-28, creates **Section 27-20.1-22. Confidentiality**, establishing the general confidentiality provision for the chapter and relies upon the standards found in section 27-20-51.

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Section 8– Repeal

Page 8, lines 18-19, repeals N.D.C.C. § 27-20-48.2, 27-20-48.3, and 27-20-48.4.

The repealed provisions are addressed under the amendments establishing 27-20.1.

Respectfully Submitted:

Cynthia M. Feland
District Judge

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