

**2019 SENATE JUDICIARY**

**SB 2088**

# 2019 SENATE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Fort Lincoln Room, State Capitol

SB 2088  
1/7/2019  
#30464 (3:46)

- Subcommittee  
 Conference Committee

Committee Clerk: Meghan Pegel

## Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact subsection 2 of section 27-20-24, subsections 2 and 3 of section 27-20-30.1 and subsection 1 of section 27-20-45 of the North Dakota Century Code, relating to juvenile court.

## Minutes:

No Attachments

Chair Larson opened the hearing on SB 2088.

**Sally Holewa**, State Court Administrator, testifying in favor of the bill.

**Holewa:** This is requested by the Supreme Court and is simply a clean-up bill. Back in the 2009 session, there were three sections of Century Code that the legislature superseded by juvenile rules of court. That's the section of contents of petition, summons and the service of the summons. This bill goes back into these 3 sections of statute and it takes away the reference to the statute that's been superseded and replaces it with the reference to the correct juvenile rule. That is rules 2, 3 and 5.

**Chair Larson:** Those were already covered in the Court Act?

**Holewa:** It's basically just swapping out the reference so if someone were to go to the statute to see what needs to be included in the petition or summons or how to serve it, it would just reference them back to the rule. Right now it just says "superseded by juvenile rule". This just gives the specific rule.

**Senator Myrdal: Moved a Do Pass**

**Senator Bakke: Seconded.**

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

**Senator Myrdal will carry the bill.**

**2019 SENATE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 2088**

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 Senator Myrdal 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				
Senator Osland	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Myrdal

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

**REPORT OF STANDING COMMITTEE**

**SB 2088: Judiciary Committee (Sen. D. Larson, Chairman) recommends DO PASS**  
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2088 was placed on the  
Eleventh order on the calendar.

**2019 HOUSE JUDICIARY**

**SB 2088**

# 2019 HOUSE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Prairie Room, State Capitol

SB 2088  
3/11/2019  
33536

- Subcommittee  
 Conference Committee

Committee Clerk: DeLores D. Shimek

## Explanation or reason for introduction of bill/resolution:

Relating to juvenile court.

## Minutes:

1

**Chairman Koppelman:** Opened the hearing on SB 2088.

**Sally Holewa, ND Court Administrator:** (Attachment 1) Clean-up bill. Went over testimony.

**Chairman K. Koppelman:** In your testimony you indicated Rule 10 who is required to be at the hearing and the consequences of not appearing the court.

**Sally Holewa:** By default, the court can receive any evidence in support of petition or they can schedule a new hearing. They can also go ahead and approve that petition and grant whatever relief is being sought.

**Chairman K. Koppelman:** I see the court may hold the person in contempt and may also precede even if the parent or guardian fails to appear.

**Rep. Paur:** Two hours ago I carried a bill on the floor with technical corrections and this 27-20.21 was in that bill. It said they replace it by Supreme Court rule instead of Rule 3.

**Chairman K. Koppelman:** We can do one of two things. If you would take a look at that before we act on this at SB2036. We need to be sure that this is correct. The rule of thumb is the last passed rules.

Opposition: None

Neutral: None

Hearing closed.

# 2019 HOUSE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Prairie Room, State Capitol

SB 2088  
3/13/2019  
33612

- Subcommittee  
 Conference Committee

Committee Clerk: DeLores D. Shimek

## **Explanation or reason for introduction of bill/resolution:**

Relating to juvenile court.

## **Minutes:**

1

**Chairman Koppelman:** Opened the meeting on SB 2088. This deals with reference to court rules and rather than referencing a section of administrative code where the court rules are, it simply names the rule.

**Do Pass Motion Made by Rep. Rick Becker; Seconded by Rep. Satrom**

## **Discussion:**

**Rep. Paur:** Wasn't the court administrator supposed to check since we just passed this same thing on SB 2036 except worded a little different?

**Chairman K. Koppelman:** We are OK moving forward. I can hold the bill and not sign it or send it to the floor until we get that answer to that question. Need to check with Sally Holewa first.

**Roll Call Vote: 12 Yes 0 No 2 Absent Carrier: Vice Chairman Karls**

**Closed.**

# 2019 HOUSE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Prairie Room, State Capitol

SB 2088  
3/18/2019  
33889

- Subcommittee  
 Conference Committee

Committee Clerk: DeLores D. Shimek

## **Explanation or reason for introduction of bill/resolution:**

Relating to juvenile court.

## **Minutes:**

1

**Chairman Koppelman:** Opened the hearing on SB 2088.

**Vice Chairman Karls:** Due to the excellent detective work of Rep. Paur we learned that part of the bill we saw in 2088 was already covered in the bill he carried in the bill he carried on technical corrections five days earlier so we don't need section 2 & 3 in the bill.

**Motion Made to reconsider our action by Rep. Rick Becker; Seconded by Rep. Vetter**

**Voice vote carried.**

**Vice Chairman Karls:** (Attachment #1) Proposed amendment. That will eliminate section 2 and 3 and renumber. Sally Holewa actually preferred the language that was in the technical corrections bill so she asked that we change section 1 to agree with that language; SB2036.

**Motion Made to Amend by Vice Chairman Karls; Seconded by Rep. Satrom**

Discussion:

**Voice vote carried.**

**Do Pass as Amended by Rep. Roers Jones; Seconded by Rep. Satrom**

Discussion:

**Roll Call Vote: 13 Yes 1 No 0 Absent Carrier: Vice Chairman Karls**

Closed.

DP 3/18/19

19.8039.01001  
Title.02000

Prepared by the Legislative Council staff for  
Representative Karls  
March 15, 2019

PROPOSED AMENDMENTS TO SENATE BILL NO. 2088

Page 1, line 1, remove ", subsections 2 and 3"

Page 1, line 2, remove "of section 27-20-30.1 and subsection 1 of section 27-20-45"

Page 1, line 8, remove "rule 2 of the North Dakota Rules of Juvenile"

Page 1, line 9, replace "Procedure" with "supreme court rule"

Page 1, remove lines 10 through 23

Renumber accordingly

**2019 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 582088**

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 BECKER \_\_\_\_\_ Seconded By SATROM \_\_\_\_\_

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) 12 No 0

Absent 2

Floor Assignment Rep. KARLS

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

Date: 3-18-19  
 Roll Call Vote #: 1

2019 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES 56  
 BILL/RESOLUTION NO. 2088

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 Becker Seconded By Vetter

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*

Date: 3-18-19  
Roll Call Vote #: 2

2019 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2088

House Judiciary Committee

Subcommittee

Amendment LC# or Description: Rule 2 of the ND Rules of Juvenile

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 KARLS Seconded By SATROM

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:

*Carried  
Voice  
Vote*

Date: 3-18-19  
 Roll Call Vote #: 3

2019 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 2088

House Judiciary Committee

Subcommittee

Amendment LC# or Description: 19.8039.01001.02000

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 Reno Jones Seconded By Satrom

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) 13 No 1

Absent 0

Floor Assignment Rep. KARLS

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

**REPORT OF STANDING COMMITTEE**

**SB 2088: Judiciary Committee (Rep. K. Koppelman, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). SB 2088 was placed on the Sixth order on the calendar.

Page 1, line 1, remove ", subsections 2 and 3"

Page 1, line 2, remove "of section 27-20-30.1 and subsection 1 of section 27-20-45"

Page 1, line 8, remove "rule 2 of the North Dakota Rules of Juvenile"

Page 1, line 9, replace "Procedure" with "supreme court rule"

Page 1, remove lines 10 through 23

Renumber accordingly

**2019 TESTIMONY**

**SB 2088**

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SB 2088  
3-11-19  
P.1

## SB 2088

House Judiciary Committee  
March 11, 2019

Testimony of Sally Holewa  
North Dakota State Court Administrator

SB 2088 was introduced at the request of the Supreme Court. It is strictly a clean-up bill. It replaces obsolete references to statutes with the corresponding rules of court. Rules of Court are enacted by the Supreme Court to establish a uniform procedure for handling different aspects of a case. The Supreme Court's rulemaking authority comes from Article VI, Section 3 of the Constitution of the State of North Dakota. Our purpose in requesting these amendments is to lead individuals directly to the relevant rules rather than having them take a detour through the Century Code.

Section 1 of SB 2088 amends NDCC 27-20-24 (2). The statute that is cross-referenced in this section of code is NDCC 27-20-22 (1). That section of code was repealed in 2011 so if you look it up in Century Code it currently reads: **27-20-22. Summons. Superseded by N.D.R.Juv.P., Rules 2, 5, and 10.** Rule 2 has to do with the timing of hearings. Rule 5 covers the content that is required in a Summons and how a summons can be served. Rule 10 covers who is required to be at a hearing and the consequences of not appearing for a hearing.

Section 2 of SB 2088 amends NDCC 27-20-30.1(2)(2). The first statute that is cross-referenced in this section of code is NDCC 27-20-21. That section of code was repealed in 2011 so if you look it up in Century Code it currently reads: **27-20-21. Contents of petition. Superseded by N.D.R.Juv.P., Rule 3.** Rule 3 covers who can be a petitioner and the required contents of a Petition. The second statute cross-referenced in this section of code is NDCC 27-20-22. As noted above that section currently reads: **27-20-22. Summons. Superseded by N.D.R.Juv.P., Rules 2, 5, and 10.** The proposed amendment in SB 2088 would change this second statutory reference to a reference to Rule 5, which is the rule that covers the content of the Summons and how it can be served.

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Section 3 of SB 2088 amends NDCC 27-20-45(1). The statute that is cross-referenced in this section is 27-20-21. As stated earlier, that section of code is obsolete. The proposed amendment would refer readers to Rule 3 of the North Dakota Rules of Civil Procedure which requires all civil court cases to begin with a Summons. Court proceedings are either criminal cases or civil cases. Juvenile cases are a type of civil procedure.

I have attached the rules of court that are referenced in the proposed amendments to SB 2088.

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## Rules of Juvenile Procedure, RULE 2. HEARING TIME

Effective Date: 5/1/2015

### (a) Hearing Time.

#### (1) Detention Hearing.

(A) The court must hold a detention hearing within 24 hours of the time a child is placed in detention to determine whether there is probable cause that a child committed an offense and that continued detention is required.

(B) The court must make findings that alternatives to detention were considered and why secure detention was required and alternatives were not appropriate.

(C) If a case is not disposed of within 60 days and the child remains in detention, an additional detention hearing must be held to determine if the child's continued detention is required under N.D.C.C. § 27-20-14.

(2) Shelter Care Hearing. The court must hold a shelter care hearing within 96 hours of the time a child is placed in shelter care to determine whether there is probable cause for the child to remain in shelter care.

(3) Petition Hearing. After the petition has been filed, the court must set a hearing, except in a continued foster care matter under N.D.C.C. § 27-20-30.1, in which a hearing is optional.

(A) Unless a continuance is granted under Rule 2(c), the hearing on the petition must not be held later than 30 days after the filing of the petition.

(B) If the child is in detention, the time for the initial hearing on the petition must not be later than 14 days after the child has been taken into custody.

(C) If a child is in shelter care, the petition must be filed within 30 days after the child has been taken into shelter care. The hearing on the petition must be held and findings made within 60 days of the initial removal.

**(b) Weekends and Holidays.** If the period of time for a hearing expires on a Saturday, Sunday or legal holiday, the hearing must be held on the next day that is not a Saturday, Sunday or legal holiday.

**(c) Continuance.** The court may continue a hearing under Rule 9.

**(d) Reliable Electronic Means.** A judge or referee may conduct a hearing, conference, or other proceeding, or take testimony, by using contemporaneous audio or audiovisual transmission by reliable electronic means.

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## Rules of Juvenile Procedure, RULE 3. CONTENTS OF PETITION

Effective Date: 5/1/2015

**(a) Petition.** The petition must be verified and may be on information and belief. It must include:

- (1) the facts that bring the child within the jurisdiction of the court;
- (2) the name, age, and residence address of the child on whose behalf the petition is brought;
- (3) the names and residence addresses, if known to petitioner, of the parties, except that the names and residence addresses of the parents, guardian, or custodian of the child may not be included in the petition in a continued foster care matter under N.D.C.C. § 27-20-30.1;
- (4) whether the child is in custody and, if so, whether in shelter care or detention and the date and time the child was taken into custody; and
- (5) a request for relief based on the facts alleged, stating that it is in the best interest of the child and the public that the proceeding be brought and, if delinquency or unruly conduct is alleged, that the child may be in need of treatment or rehabilitation.

**(b) Parties.** Parties include the petitioner, the child, parents, guardian, or custodian of the child, if any, and any person that the court allows to intervene as a party. If the child's parents, guardian, or custodian do not reside or cannot be found within the state, or if their places of residence are unknown, the name of any known adult relative residing within the county, or, if there be none, the known adult relative residing nearest to the location of the court must be included in the petition.

**(c) Juvenile Court Officer.** Juvenile court officers may not act as the petitioner where the child is alleged to be delinquent, unruly, deprived, or where termination of parental rights are involved.

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## Rules of Juvenile Procedure, RULE 5. SUMMONS

Effective Date: 5/1/2015

### (a) Summons.

(1) Except in a continued foster care matter under N.D.C.C. § 27-20-30.1, the court must direct the issuance of a summons to the parents, guardian, or other custodian, guardian ad litem, and any other persons who are proper or necessary parties to the proceeding, requiring them to appear before the court at the time fixed to answer the allegations of the petition. The summons must also be directed to the child if the child is 14 or more years of age or is alleged to be a delinquent or unruly child.

(2) A copy of the petition must accompany the summons unless the summons is served by publication, in which case the published summons must indicate the general nature of the allegations and where a copy of the petition can be obtained.

(3) Except in a continued foster care matter under N.D.C.C. § 27-20-30.1, the court may order the parents, guardian, or other custodian of the child to appear personally at the hearing and direct the person who has physical custody or control of the child to bring the child to the hearing. The order must include the address of the facility where the hearing will be held.

(4) In a continued foster care matter under N.D.C.C. § 27-20-30.1, the court may order the child to appear personally.

**(b) Immediate Custody Order.** If it appears from an affidavit filed or from sworn testimony before the court that the conduct, condition, or surroundings of the child are endangering the child's health or welfare or those of others, or that the child may leave or be removed from the jurisdiction of the court or will not be brought before the court, notwithstanding the service of the summons, the court may order a law enforcement officer to serve the summons and take the child into immediate custody and bring the child before the court.

**(c) Right to Counsel.** The summons must state that a party is entitled to counsel in the proceedings.

**(d) Waiver of Service.** Except in a continued foster care matter under N.D.C.C. § 27-20-30.1, a party, other than the child, may waive service of summons by written stipulation or by voluntary appearance at the hearing. If the child is present at the hearing, the child's counsel, parent, guardian, or

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other custodian, or guardian ad litem, may waive service of summons in the child's behalf. In a continued foster care matter under N.D.C.C. § 27-20-30.1, a child may waive service by written stipulation or by voluntary appearance at the hearing.

**(e) Hearing Without Parental Service.** When a child is in detention or shelter care and good cause is shown why service was not completed upon an absent or noncustodial parent, the court may proceed with the hearing on the petition in order to comply with statutory time limitations.

**Rules of Juvenile Procedure, RULE 10. PRESENCE, DEFAULT**

Effective Date: 5/1/2015

**(a) Presence.**

(1) Child. The child has the right to be present at all delinquency, unruly child and continued foster care hearings. The court may allow the child to be present at other hearings. The child waives the right to be present if the child voluntarily and without justification is absent after the hearing has commenced or if the child disrupts the proceedings.

(2) Counsel. If the child has counsel, counsel must be present at all hearings. Counsel for the state must be present or available for all hearings unless excused by the court.

(3) Parent, Guardian or Custodian. Except in a continued foster care matter under N.D.C.C. § 27-20-30.1, the parent, guardian or custodian of a child must be present at all hearings unless excused by the court. If such person fails to attend a hearing with the child without excuse, the court may order a law enforcement officer to take the person into custody and bring the person before the court. The court may hold the person in contempt. The court may proceed if it is in the best interests of the child to do so even if the parent, guardian, or custodian fails to appear.

**(b) Default.**

(1) If after being properly served with a summons or notice a parent, guardian or custodian fails to appear at a hearing, the court may receive evidence in support of the petition or reschedule the hearing.

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(2) If the petition is proved by the applicable burden of proof, the court may enter an order granting the relief sought in the petition.

**(c) Presence by Reliable Electronic Means.** Presence permitted by contemporaneous audio or audiovisual transmission by reliable electronic means is presence for the purposes of this rule.

### **Rules of Civil Procedure, RULE 3. COMMENCING AN ACTION**

Effective Date: 3/1/2015

A civil action is commenced by the service of a summons.

19.8039.01001  
Title.

Prepared by the Legislative Council staff for  
Representative Karls  
March 15, 2019

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P.1

PROPOSED AMENDMENTS TO SENATE BILL NO. 2088

Page 1, line 1, remove ", subsections 2 and 3"

Page 1, line 2, remove "of section 27-20-30.1 and subsection 1 of section 27-20-45"

Page 1, line 8, remove "rule 2 of the North Dakota Rules of Juvenile"

Page 1, line 9, replace "Procedure" with "supreme court rule"

Page 1, remove lines 10 through 23

Re-number accordingly