

**FISCAL NOTE**  
**Requested by Legislative Council**  
**01/10/2019**

Bill/Resolution No.: SB 2153

- 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
<b>Revenues</b>						
<b>Expenditures</b>						
<b>Appropriations</b>						

- 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
<b>Counties</b>			
<b>Cities</b>			
<b>School Districts</b>			
<b>Townships</b>			

- 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 provides that a memorandum of understanding may be entered into for the court system to provide services to juveniles adjudicated in tribal 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.*

The fiscal impact can not be determined. The court system does not have sufficient information on the number of youths it would involve or the services required to meet their needs.

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.*

- 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.*

- 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.*

**Name:** Don Wolf

**Agency:** Court System

**Telephone:** 328-3508

**Date Prepared:** 01/11/2019

**2019 SENATE JUDICIARY**

**SB 2153**

# 2019 SENATE STANDING COMMITTEE MINUTES

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

SB 2153  
1/14/2019  
#30714 (39:07)

- Subcommittee  
 Conference Committee

Committee Clerk: Meghan Pegel

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

A BILL for an Act to create and enact a new section to chapter 27-20 of the North Dakota Century Code, relating to cooperative agreements to provide services to juveniles adjudicated in tribal court; to provide for a report to legislative management; and to provide an expiration date

## Minutes:

3 Attachments

**Chair Larson** opens the hearing on SB 2153.

**Nicole Poolman**, District 7 Senator, testifies in favor of the bill (see attachment #1).

**(3:26) Senator Luick:** What age groups does this cover?

**Senator Poolman:** This is for minors.

**Chair Larson:** Juveniles between the ages of 7 and 17 unless we pass the bill that says that the minimum age will be 10.

**Vice Chairman Dwyer:** The fiscal note says they couldn't determine impact because there's not sufficient information on the number of use it would involve, but the courts have said they think they can absorb it?

**Senator Poolman:** Correct.

**Senator Bakke:** It says provisions will be based on availability of state resources. There is potential that if they're full or overloaded, that no services would be available.

**Senator Poolman:** Correct. If there isn't a slot available, the state will not take them on.

**Senator Bakke:** What is the usage right now? Is there a waiting list? Is it already saturated? I want them to have availability to these services.

**Senator Poolman:** I will have to defer that question.

**(5:30) Lisa Bjergaard**, Director of the ND Division of Juvenile Services, testifies in favor of the bill.

**Bjergaard:** I have words from Judge Donovan Foughty who was one of our district judges in the Devils Lake area. He works with the Spirit Lake nation as well as Turtle Mountain (see attachment #2)

**(8:50) Chair Larson:** Can you address the previous question for Senator Bakke- if there isn't any placement available.

**Bjergaard:** In my opinion this bill is better than the one that was introduced 2 years ago. What Judge Foughty had begun 2 years ago was a concern about the division of juvenile services and whether kids could get those services which includes the correctional center. It makes no sense just to get them that slice of corrections way on the end. They need the juvenile justice services that are available through the juvenile court. The Juvenile court was added this time so that youth would have the availability of services all the way from the prevention, diversion, early intervention things throughout the continuum of what is available to youth. This is an improved version.

One of the reasons that we talk about- creating an MOU. We probably would not need your support for that. What we want to do is see what the volume looks like. We cannot come in and propose to you, or give you good fiscal notes, or a lot of information about what needs are until we have some time and a mechanism for doing some work with tribal courts so we can understand the data. We don't know what the numbers are. We want to work with tribes and try to develop some sort of arrangement. There is an arrangement between the Devils Lake drug court and Spirit Lake that seems to be working very well. We are hoping that that is what we are able to establish, but we need everybody on board with permission. In our system Native American youth are overrepresented. At some point these kids are failing enough to get themselves into state court. It's probably better for all of us if we do some things early on and stem that tide.

**Senator Bakke:** What is the usage of those programs right now? Are there waiting lists? Is there room even to collect the data?

**Bjergaard:** It would be my hope that we are not talking about placing kids in beds. We are talking about providing services and case management in the community wherever and whenever we can. For instance, if we're providing a drug and alcohol group to 8 kids and capacity in that group is 10, we've got room for a couple more. Those are the things we are talking about. When it comes to a hard bed at juvenile corrections, those are court orders and we don't control the door in those cases. We've worked really hard in the last 4 or 5 years. In 2014 our average daily count by the end of the year was down to 71. This last year it's down to 50 which means that in the last 3 or 4 months I haven't had 50 kids at the youth correctional. We're really trying to make sure the kids are served appropriately in the community.

**(13:37) Senator Bakke:** I'm wondering about the services. Oftentimes social workers have over the top caseloads. I want to make sure we have those services available for those youth early on to prevent what you're talking about. I don't know how busy we are.

**Bjergaard:** After a couple of years we will be able to answer that better.

**Chair Larson:** Will you be keeping track of the disproportionate minority youth numbers before and after this?

**Bjergaard:** I can't speak for the court, but we track those numbers. So yes.

**Senator Myrdal:** In the testimony that Senator Poolman gave us from last time, I notice it was mentioned specific counties that have no service. Is that still correct?

**Bjergaard:** To the best of my awareness, that is still correct. That's just a fact of rural life. Part of where that information came from was in preparing what Vanette presented, she spent a lot of time with Judge Foughty, and that's his bench. He was lamenting that there are times where by the time the youth bounces around enough to make it to his court, they are in serious need of some very high structured help.

**(16:10) Joan Heckaman,** District 23 Senator, testifies in favor of the bill

**Senator Heckaman:** I have all the Spirit Lake nation in my legislative district. This is an issue that's been important to me. At the end of December Judge Foughty had scheduled a legislative briefing with us, but had to be cancelled due to the roads and weather. We never got to hear part of what Lisa and Judge Foughty are lobbying for. I visited with Judge Kavanagh from Spirit Lake nation. At the end of December there was a government to government conference in Bismarck and he was there. This is certainly a concern of his too as a reservation judge. When I taught on the reservation up there, I did special education from 2004-2009 and from 2009-2013 I worked in their alternative high school working with their youth. There used to be services for juveniles in the lake region but is no longer available.

I had a student that came from the alternative program and ended up housed at the Lake Region Correctional Facility for the youth there. I sent lessons back forth. Towards the middle of May, I got a note from this individual that said "Mrs. Heckaman, can you please allow the courts to have me stay here until the end of school otherwise I know I wouldn't be able to finish school. If I go back, I know I won't have the support and be able to have the time to finish my schooling." That wasn't possible. There wasn't a way to do that at that time. I'm not sure if that student has ever finished their schooling.

Those are the things that go on. We don't have the facilities there anymore to provide that. We do have the ability to provide their schooling while they are there, sending lessons in and they have someone there at the facility to facilitate those lessons coming back and forth from the schools. The problem is that those are gone now too. Judge Kavanagh is concerned up there on the number of individuals. I've been in his courtroom with a student whose parents didn't show up that day. I was called in by the court to be there on the student's behalf.

There is a lot of need out there that we don't see in the regular judicial system. Looking at what is coming forward out of this bill, if Lisa can support it, I can too. I have confidence in her and the work she does. There is a comment that "In Indian country, if you want to get services to a Native American youth, you give him a brick and tell him to throw it through a window" because it's the only way we can get him in. We don't want that to happen. We want to have the services available. Going through the BIA it's difficult for Judge Kavanagh to have that support too. Somehow through the juvenile system and this bill, we have to figure this out. We can't let it go on two more years.

**Senator Bakke:** Do they provide those services on the reservation or do they have to travel?

**Senator Heckaman:** I will defer that question to Lisa. Like I mentioned our meeting with Judge Foughty was cancelled so we weren't able to get that information.

**(21:47) Cory Pederson**, Director of Juvenile Court, testifies in favor of the bill

**Pederson:** The services are being provided mostly off the reservation. They have to travel if those services exist in the neighboring counties. Standing Rock would have to travel to Burleigh County. Spirit Lake goes to the Devils Lake region and if Devils Lake doesn't have the specific service, like psychiatric services or assessments, then they would have to travel to probably Grand Forks. It's mostly all off reservation.

**Vice Chairman Dwyer:** Would that change if this bill is passed?

**Pederson:** This is a pilot, so we would have to look into that. I think we can bring services to them. There are a lot of services in our communities that we do travel and some outreach. 15 years many of the Human Services used to travel to counties to do services. That doesn't really happen, but we can look at other services. It's a cooperative agreement, so it will depend on the agreements of each tribe and what they want. Some of it is communication and sharing of resources and information. That can be valuable for many of the kids and families.

**Bjergaard:** We provide in home services. Our case managers and home therapy are in their homes. Many families don't know what to do so simply having a professional in the system that knows what services are available can guide them. Those things will not cost us more because we will fit that into the existing probation officer or division of juvenile services case management structure. There will be formidable challenges with travel, there always is, but we will have a better handle on what we have out there after.

**(25:41) Erica Thunder**, Judicial Systems Administrator for the ND Indian Affairs Commission, testifies in favor for bill (see attachment #3)

**(36:45) Senator Myrdal:** On page 4 you say the tribes have to enter into an agreement? Do they enter into an agreement individually per case or is it an overall agreement with the juvenile court?

**Thunder:** I will defer that question. I believe generally each tribe has the option to opt into an agreement like this and can change it as they want to.

**Senator Bakke:** What services are presently provided on the reservation in these cases?

**Thunder:** It depends on the case. There are some that aren't receiving anything. I'm seeing some work on my tribe, and I'm very proud of the work that's being done with the goodwill recovery treatment center. They will directly work with youth that struggle with substance abuse, but it is very limited.

**Chair Larson** closes the hearing on SB 2153.

# 2019 SENATE STANDING COMMITTEE MINUTES

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

SB 2153  
1/15/2019  
#30822 (04:02)

- Subcommittee  
 Conference Committee

Committee Clerk: Meghan Pegel

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

A BILL for an Act to create and enact a new section to chapter 27-20 of the North Dakota Century Code, relating to cooperative agreements to provide services to juveniles adjudicated in tribal court; to provide for a report to legislative management; and to provide an expiration date

## Minutes:

No Attachments

**Chair Larson** calls the committee to order to discuss SB 2153.

**Chair Larson:** This is pretty straightforward; we just ran out of time yesterday to take action.

**Vice Chairman Dwyer: Moved a Do Pass**

**Senator Osland: Seconded.**

**Senator Myrdal:** I'm not familiar with tribal law and the agreements between their sovereignty and ours. I agree with this bill, but are they unable to provide services for themselves?

**Chair Larson:** When I worked at the police youth bureau, I know sometimes on the reservation, a juvenile who was adjudicated or even just held would be housed in the jail with adult offenders because that was all they had available. This looks like an effort to try to provide services to the young people in our state, off or on the reservation. We have better services and facilities to be able to provide that intervention for those youth. We already do provide those things for Native Americans that live off the reservation, so I think this is an effort to provide better services for all youth regardless of residence.

**Senator Luick:** What was the deal with the fiscal note?

**Chair Larson:** There is no fiscal impact. They think they can probably absorb what is already in place. They weren't certain until they've done it to see if there really was an actual fiscal impact. They aren't aware of any that can be reported at this time.

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

**Chair Larson will carry the bill.**



**REPORT OF STANDING COMMITTEE**

**SB 2153: Judiciary Committee (Sen. D. Larson, Chairman)** recommends **DO PASS**  
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2153 was placed on the  
Eleventh order on the calendar.

**2019 HOUSE JUDICIARY**

**SB 2153**

# 2019 HOUSE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Prairie Room, State Capitol

SB 2153  
3/11/2019  
33537

- Subcommittee  
 Conference Committee

Committee Clerk: DeLores D. Shimek
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## Explanation or reason for introduction of bill/resolution:

**Relating to cooperative agreements to provide services to juveniles adjudicated in tribal court; to provide for a report to legislative date.**

**Minutes:**

1,2
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**Chairman Koppelman:** Opened the hearing on SB 2153.

**Senator Poolman:** (Attachment #1) Went over testimony.

**Rep. Vetter:** This went through GVA last session? I remember the issue was something to do with the funding this program and the whole sovereignty thing and mixing the courts together and there were some issues there. Do you remember?

**Senator Poolman:** It came through the Senate with all in agreement. We didn't see those as issues on the Senate side. The carrier of the bill Rep. B. Koppelman expressed that fact state and tribal relations had become so strained that was truly the issue at hand at the time.

**Erica Thunder, Judicial Systems Administrator:** We were happy to see it go through the Senate Judiciary Committee. (Attachment 2) Went over the testimony.

**Chairman K. Koppelman:** The fiscal note is nothing. That tells me DOCR really wants this to happen.

**Erica Thunder:** Yes DOCR wants this to happen? Continued with testimony.

**Rep. Paur:** The judicial system is under considerable strain. Do you think they could handle this?

**Erica Thunder:** It is not a huge amount of youth that would be under this. It encourages judges to look at this as a means to fix something that is ongoing.

**Rep. Rick Becker:** We are told year in and year out the judicial system is overburdened. You would not be comfortable if you had the resources we will do it. It is better to have a

fiscal note putting money in so you know that these youths will actually be taken care of. In your discussions; did you discuss the capacity for taking on x-number of youth and does it meet the needs?

**Erica Thunder:** Yes. That is why it was outlined in page 2 of SB, line 3, subsection d; juvenile court may limit the number of tribal juveniles excepted based on criteria developed by the juvenile court and the availability of state resources and services. That was a concern that was raised.

**Rep. Rick Becker:** This says we can take on the youth as long as we have the resources. That is what I was wondering about. What is the number that you are aware of that we could take on?

**Erica Thunder:** There has been no specific number that has been outlined. DOCR is very comfortable with this. They don't think we need to outline the cases. Is it the intent of having the framework to exist in general?

**Chairman K. Koppelman:** Do you see that agreement then forcing the tribal government to prioritize cases so you would say this group of juveniles really needs help and then we will do it based upon need?

**Erica Thunder:** That wasn't a concern when going over it. When speaking to each of the tribes there was much said about the good will about this framework existing in general and not a concern about the high volume of numbers and who might be picked and who might not. Anything is better than nothing and having this is good.

**Chairman K. Koppelman:** You want to make the those with the greatest need are getting the services they need.

**Rep. Buffalo:** Do you see this agreement having potential to curb the schools of prison pipeline that we see so much especially within our BIA because we know that native American, Alaska Natives are the highest that are incarcerated by it in the state, county federal level.

**Erica Thunder:** Absolutely. That was our intent of this bill. The idea behind it was we can provide services in areas of behavioral health; which is so expansive; we can start changing that projector to that point.

**Rep. Jones:** I hear the federal laws governs on the reservation. Is this a way to intervene for young people so they have a better outcome?

**Erica Thunder:** Yes it can be very complex. Typically, tribal law will apply in the cases we are talking about. We are not talking about major crimes. We would be talking about when double jeopardy does occur when a major crime is committed by a tribal member versus or tribal member or tribal members versus non-tribal member. The federal laws do come into play.

House Judiciary Committee

SB 2153

March 11, 2019

Page 3

**Scott Davis, Executive Director of ND Indian Affairs Commission:** That is the whole focus of this to keep youth out of further trouble.

Opposition: None

Neutral: None

Hearing closed.

# 2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee  
Prairie Room, State Capitol

SB 2153  
3/13/2019  
33617

- Subcommittee  
 Conference Committee

Committee Clerk: DeLores D. Shimek
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## Explanation or reason for introduction of bill/resolution:

Relating to cooperative agreements to provide services to juveniles adjudicated in tribal court; to provide for a report to legislative date.

## Minutes:

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**Chairman Koppelman:** Opened the meeting on SB 2153.

## Do Pass Motion Made by Rep. Hanson; Seconded by Rep. Satrom

Discussion:

**Rep. Vetter:** This was the same bill that went through our GVA committee last session. Some issues they had with it was using our juvenile system so I don't know how there isn't a fiscal note. There were some issues with this last time. There was no fiscal note and I don't see how they can use our juvenile system and it is not going to cost us any money.

**Chairman K. Koppelman:** That was discussed during the hearing. This was introduced last session as well. I don't recall if there was some opposition on it for that reason, but my understanding is all parties are on board this time. The way the bill language is crafted it allows them to monitor. It doesn't require them to take any certain amount of people. Would the tribe look at the most egregious cases and they would fast track those into the juvenile justice system and we didn't get a clear answer to that. My guess is that is what they are looking at doing. The fiscal note does indicate the cost can't be determined.

**Rep. Jones:** That is why this is a pilot program. This is definitely taking on more responsibility. I am going to support it.

**Chairman K. Koppelman:** This is not going to be referred to appropriations so will see how this works. The entire tribal court system is in need of additional services.

**Rep. McWilliams:** I am going to oppose this motion as it is right now. We have a strain on our systems and services right now just with the population as it is now. We are already struggling with workloads and it puts undo pressure on it.

**Chairman K. Koppelman:** On the sovereignty issue that is why it calls for a cooperative agreement. There is a sunset clause and a two-year window.

**Rep. Rick Becker:** It is certainly good intent. The sovereignty issue blurs the lines. I think the reservation system is broken and when we keep doing these types of things we are prolonging this broken system.

**Chairman K. Koppelman:** I understand that. I have no idea of what the number will be; apparently they can control that.

**Rep. Jones:** We are always being a there is higher rates in the native population; but how can you compared and we are always being told how there is higher rates of crime, suicide, abuse and everything in the native population. I sympathize with that, but how can you compare their rates to ND rates when we are operating on a completely different system? At least this is a piece to do a pilot program to try get a better look at it.

**Roll Call Vote: 7 Yes 6 No 1 Absent Carrier: Rep. Jones**

Closed.

Date: 3-13-14  
 Roll Call Vote #: 1

**2019 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES 2153**

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 HANSON 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) 7 No 6

Absent 1

Floor Assignment Rep. Jones

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

**REPORT OF STANDING COMMITTEE**

**SB 2153: Judiciary Committee (Rep. K. Koppelman, Chairman)** recommends **DO PASS** (7 YEAS, 6 NAYS, 1 ABSENT AND NOT VOTING). SB 2153 was placed on the Fourteenth order on the calendar.

**2019 TESTIMONY**

**SB 2153**

#1  
SB 2153  
1/14

Nicole Poolman

Senate Judiciary Committee

Monday, January 14, 2019

Good morning, Chair Larson and members of the Judiciary Committee, my name is Nicole Poolman, State Senator from District 7 representing Bismarck and Lincoln.

I'm here today to introduce SB 2153, a bill to create a pilot program between tribal and state juvenile services. If the bill looks familiar to you, it should. It came from the work of an interim committee during the 65<sup>th</sup> legislative session. I can safely say if you were here last session, you voted for this bill, as it passed unanimously through the Senate. As you also remember, we were in the middle of the DAPL protests during that session, and state and tribal relations were severely strained. By the time the bill went to the House, no one came to testify in favor of the bill or answer questions the committee may have had, so it died in the House.

The bill is designed to create a program that will give youth going through the tribal courts access to the same resources and treatment available to those going through out state system. We believe access to these services can keep young people closer to their families as well as prevent their entrance into our corrections system as adults. The bill lays out the terms of what would become a memorandum of understanding, including the provision that this would be based on availability of state resources. In other words, we aren't taking someone if we don't have room. There is no fiscal note on the bill because the department of corrections believes they will be able to absorb the costs associated with the potential agreement.

We have experts here to discuss the need for the program and answer any questions you may have about the current system. I hope you will support this bill not only because it can prevent these young people from entering our corrections system as adults, but more importantly, because it is the right thing to do for these kids.

#1  
SB 2153  
1/14

SB 2046  
3-2-17

Vonette Richter  
Code Revisor  
Legislative Council  
Senate Bill No. 2046  
March 2, 2017

The following information is an excerpt from the 2017 Final Report of the Legislative Management regarding the tribal youth study conducted by the Tribal and State Relations Committee:

## TRIBAL AND STATE RELATIONS COMMITTEE

### TRIBAL YOUTH STUDY

#### North Dakota Juvenile Justice System

North Dakota has a two-tiered system in which services are provided by the juvenile court, a division of the state's judicial system; and by the Division of Juvenile Services, a division of the Department of Corrections and Rehabilitation, an executive branch agency.

The North Dakota juvenile justice system is largely defined through the role of the juvenile court under Chapter 27-20, known as the Uniform Juvenile Court Act. The Uniform Juvenile Court Act established the juvenile court as a division of the district court. The juvenile court has exclusive and original jurisdiction over any child who is alleged to be deprived, delinquent, or unruly. In North Dakota, youth ages 7 up to age 18 who are alleged to have committed a delinquent or unruly act fall under the jurisdiction of the juvenile court.

Generally, the juvenile offenders who commit more serious crimes or who are chronically involved in delinquent behavior are placed with the Division of Juvenile Services. Juveniles with less serious offenses are supervised in juvenile court either formally before a judicial officer or informally with a juvenile court officer. Whether a juvenile is with the Division of Juvenile Services or the juvenile court the philosophy of case management is the same--a continuum of care with comprehensive case management.

The Division of Juvenile Services operates eight regional offices in eight cities across the state providing services to all counties in the state. The Division of Juvenile Services does not provide direct services to the juvenile tribal courts. The juvenile court essentially provides the same services for juveniles except the services are provided within the community.

#### Testimony and Committee Considerations

In its study of the feasibility and desirability of state, federal, and tribal collaboration in providing services for tribal youth in the state who are adjudicated in tribal courts, the committee received testimony and information from a district judge, the Director of the Division of Juvenile Services, a tribal judge, a tribal prosecutor, tribal council members, and tribal members.

The committee learned from the testimony that a great disparity exists between the state courts and the tribal courts in the level of services available to youth who are adjudicated in each court. In the Human Services Region III--which includes Ramsey, Benson, Towner, Rolette, Cavalier, and Eddy Counties--along with the Turtle Mountain Band of Chippewa Indians and Spirit Lake Sioux Tribe Reservations, there are no adolescent psychiatric beds, no substance abuse treatment beds, no safe beds for heightened, but not imminent-risk adolescents, no detox units, and no detention for delinquency.

The information indicated when dealing with juveniles in the state system, the goal is to be able to offer the services necessary to keep the juveniles out of juvenile court. Juvenile supervisors and juvenile probation officers try to keep youth out of court by using diversion programs. For those juveniles who become involved in the juvenile court system, the North Dakota Youth Correctional Center is an option. At the center, a juvenile has access to treatment, counseling, and educational programming.

When a tribal youth commits delinquent acts, the tribal judge does not have the same options as the juvenile court judge. Tribal judges do not have access to the Division of Juvenile Services or the Youth Correctional Center. In the tribal system the infrastructure does not exist to provide options other than detention. In most cases, that detention is for a long period of time and is far from the tribal youth's home. In the state system the effort is always made to return the youth to the youth's family, an option not available to tribal youth.

Testimony from a tribal prosecutor indicated as a result of the lack of treatment, education, counseling, and other services, tribal youth adjudicated in tribal court have a much higher rate of recidivism than youth adjudicated in the state system.

The committee reviewed a tribal-state agreement from Utah under which a tribal youth who commits a delinquent act can be sent to a state youth correctional center for services. Under the Utah system, the state provides services to delinquent tribal youth without cost to the tribe.

Testimony from a representative of the Division of Juvenile Services indicated the Youth Correctional Center and several of the tribes have entered informal agreements for the provision of services, both detention and longer term correctional placement, at various times over the years. The agreements allowed for the case-by-case analysis and placement of tribal youth at the Youth Correctional Center. It was noted in Chapter 54-40.2, which outlines the process for creating agreements between public agencies and Indian tribes, gives the Department of Corrections and Rehabilitation the authority to enter a memorandum of understanding to provide state services to juvenile youth.

During the course of the discussion of the need to provide services to tribal youth, the committee considered a bill draft to establish a pilot program to provide state services to juveniles adjudicated in tribal court. The bill draft would direct the Department of Corrections and Rehabilitation to offer to negotiate a memorandum of understanding with the government of a federally recognized Indian tribe in the state for the purpose of accepting and providing for the custody, care, and treatment of tribal juveniles adjudicated in tribal court in accordance with tribal or federal laws. Testimony in support of the bill draft indicated although the option for the state and the tribes to collaborate is available without legislation, no action has been taken. The testimony suggested legislation is needed to get the process started.

Testimony from tribal representatives in support of the bill draft indicated the bill draft would formalize a process that would be in the best interest of tribal youth. The testimony noted a bill draft would be a positive step forward in repairing the relationship between the state and the tribes and would aid in a closer government-to-government understanding.

#### **Recommendation**

The committee recommends Senate Bill No. 2046 to establish a pilot program for providing state services to juveniles adjudicated in tribal court. The bill directs the Department of Corrections and Rehabilitation to offer to negotiate a memorandum of understanding with the government of a federally recognized Indian tribe in the state for the purpose of accepting and providing for the custody, care, and treatment of tribal juveniles adjudicated in tribal court in accordance with tribal or federal laws.

#1

SB 2153

1/14

# 2  
SB 2153  
1/14

Thank you Senators Poolman, Kannianen, Diane Larson and Marcellais and Representatives Keiser, Roers and Jones for sponsoring Senate Bill 2153. This bill is a good first step in providing better access to services for Native American Juveniles living on the Indian Nations in North Dakota. A tribal nation judge does not have the same access to services for juveniles that I do in the state court system. For example, a tribal judge cannot place a juvenile with the Department of Juvenile Services. On the other hand the State of Utah will take custody of juveniles adjudicated in tribal courts in delinquency matters. On a weekly basis I have contact with Spirit Lake Tribal Court not always related to juvenile cases but frequently. In delinquency cases the adjudication of the matter takes place where the crime was committed and the disposition goes back to where the juvenile lives. When a Native American Juvenile living on Spirit Lake commits a crime in Fargo the matter is adjudicated in Cass County and sent back to Spirit Lake for disposition if found guilty or they admit. On occasion Spirit Lake Court will refuse to take jurisdiction of a case and disposition will take place in state court in Benson County. The reason this is being done I believe is because the state court has better access to services for juveniles. A while back there was a juvenile in the custody of Spirit Lake who was placed at a youth facility in North Dakota. This juvenile did some significant property damage at the facility and was adjudicated in the county where the facility was located. At the dispositional phase Spirit Lake Court refused to take the case on advice of the director of tribal social services even though the juvenile was in the custody of tribal social services. The case ended up in Benson Court where the director of tribal social services was giving input on disposition. The juvenile ended up in the custody of the Department of Juvenile Services. Based on my 30 plus years on the bench I am of the opinion that a Native American juvenile living in Indian Country does not have the same access to services that other juveniles have in North Dakota. Senate Bill No. 2153 does to some degree correct that opined deficiency. Thank you Lisa Bjergaard for reading my comments into the committee hearing record. Donovan Foughty

# 3  
SB 2153  
1/14

**Testimony of Erica Thunder, on behalf of, North Dakota Indian Affairs Commission**  
Hearing Relating to Juveniles Adjudicated in Tribal Courts  
SB 2153  
Senate Judiciary Committee  
Chairwoman, Senator Diane Johnson  
North Dakota State Capital, Bismarck ND  
January 14, 2019

Chairwoman Diane Johnson and members of the Committee,

Thank you for this opportunity to speak with you all. My name is Erica Thunder, and I serve as Judicial Systems Administrator for the North Dakota Indian Affairs Commission (hereinafter "NDIAC"). I work beneath, Commissioner Scott J. Davis, Commissioner, to the NDIAC, and speak on behalf of he and our Office in my testimony today. NDIAC, is a cabinet member agency of the Governor's Cabinet, wherein Mr. Davis serves, and we are commemorating our 70<sup>th</sup> year as a legislatively authorized North Dakota Commission. On behalf of my agency, NDIAC, we support Senate Bill 2153.

As a background to myself and also to my work--I was raised and graduated from Bottineau High School, completed my bachelor's degree in Political Science from the University of North Dakota, and also completed both my Juris Doctorate and Federal Indian Law Degrees from the University of North Dakota School of Law. I am a member of the Three Affiliated Tribes, and spent my formative years growing up in the Turtle Mountains.

#3  
SB 2153  
1/14

I want to take this moment to thank all of those who work within our department of corrections and rehabilitation, the division of juvenile services, our North Dakota courts, generally, on the behalf of our North Dakota youth and for the greater good of our great State and its people. I would also like to thank this Bill's sponsors, Senators Poolman, Kannianen, Larson, and Marcellais, as well as Representatives Keiser and Roers Jones.

My position as Judicial Systems Administrator is one which interfaces with all levels of the judicial systems within North Dakota. Having previously practiced as an attorney in various capacities, but particularly in the areas of child welfare and juvenile justice, two things have always remained key in obtaining effective judicial systems: collaboration and communication.

This bill allows North Dakota and its judicial systems to collaborate and talk with each other in a way that will serve a very vulnerable population that is currently falling into a "grey" area of our judicial systems. When I use that term, I want to make clear that by having the ability—through updated language to the North Dakota Century code—for the department of corrections and rehabilitation, through its division of juvenile services; the supreme court, through the office of the state court administration; and through my own agency, the North Dakota Indian Affairs Commission—to negotiate and enter into MOU's (Memorandums of Understanding) with our North Dakota Tribal Governments, courts, and their youth; we are serving a population who are very often receiving the bare minimum of services. While adjudicated as youth, these vulnerable populations overwhelming struggle with higher rates of behavioral health issues,

# 3  
SB 2153  
1/14

that stem into mental health incapacities, as well as also being youth who have a higher rate of being a dual status youth—meaning they are likely also within our Child Welfare system, along with being within our juvenile justice system. These are truly youth that are our most vulnerable—in a place where services provided to them while they are still youth, could change the trajectory of their future lives, to become productive citizens of North Dakota. They may be youth that have been, or are, adjudicated in both the State and Tribal jurisdictions. Because of this fact, often times, these youth become “forgotten” or “lost” in a way—as one or the other jurisdiction may be under the impression these youth are receiving services, when they are not. These issues strike back to what I believe is most important to Senate Bill 2153: collaboration and communication. This Bill, through law, will allow a very needed exchange of information relevant to the treatment and rehabilitation needs of a Tribal juvenile and their family, however their family may be made up of (e.g. nuclear, kinship, foster, etc). It would allow for the integral process of consultation and cooperation, which includes the exchanging of court orders between North Dakota’s state juvenile courts and Tribal courts, medical and psychiatric reports, law enforcement reports, and other information pertinent to the referral. An MOU under Senate Bill 2153 would allow for all of these exchanges to be done in a safe way, protected by acts that our court systems already have to follow when exchanging information—such as HIPPA laws, in the case of medical records.

This law would allow for referrals to be made by both the Tribal and North Dakota juvenile courts, providing for services based on the individualized needs of each tribal juvenile being referred. This kind of relationship would change the life of a tribal youth who may suffer from

#3  
SB 2153  
1/14

untreated behavioral issues, including PTSD, depression or anxiety, wherein both the North Dakota juvenile courts and Tribal courts can specifically address those issues, while collaboratively, assist the youth, with communications with the Tribal courts in cultural areas that may be of assistance to youth and appropriate for them to connect with their own identity. Issues of identity as a youth and even adults have empirically shown a youth to struggle more than their counterparts and peers in healthy relationships, healthy self-image, and a healthy sense of respect, which leads to struggles in school, jobs, and their life as a future adult, family member, and potential parent.

This Bill allows for an area in which our North Dakota juvenile courts and Tribal courts have been looking for a solution to for a very long time—it allows for the North Dakota Juvenile court to maintain regular contact with each Tribe who enters into such an agreement (if they so choose), regarding each Tribal juvenile who has been placed in the supervision of North Dakota juvenile court, along will providing quarterly case plans and more frequent reports to the tribal courts. This is something that so many interim committees of the Legislature, along with Commissions, task forces, and other entities of the State and of the Tribes, have looked at as a way to work in good faith, together, with the support of North Dakota Century Code to back the work and protect against any liabilities.

This Bill does note that the North Dakota juvenile court may limit the number of Tribal juveniles accepted based on criteria to be developed by the Juvenile Court and the availability of State

#3  
SB 2153  
1/14

resources and services. But what I can note, and say on behalf of all of those working within these fields, regardless of jurisdiction, this work is already happening, and the services and resources are already being used. Whether concurrently as I stated earlier, while a youth may be adjudicated in two separate jurisdictions (tribal and state), or whether they do not receive services needed to address the issues they face, and they find themselves in North Dakota adult facilities, that will use the same amount of resources and services to try to rehabilitate problems that could have been addressed at a much younger, and impressionable age.

As part of my work with North Dakota Indian Affairs Commission, I have been proud to serve on such committees and task forces such as the Children's Behavioral Health Task Force, the Prevention of Sexual Abuse of Children Task Force, the Committee on Tribal and State Court Affairs, the North Dakota Dual Status Youth Initiative, as well as agencies like the Native American Training Institute Executive Board, the Indian Child Welfare Subcommittee of North Dakota, the North Dakota Task Force on Human Trafficking, and the work done by the previous Court Improvement Program, along with UND's work with Indian Child Welfare. In every discussion I have had with these groups, there is hope that a Bill like this one, Senate Bill 2153, can come to fruition and alleviate the silos that currently exist between our State and Tribal juvenile courts, and allow for more collaboration between the jurisdictions.

#3  
SB 2153  
1/14

This is a Bill with real solutions to very prevalent problems. It's fiscally intelligent, and when all is said and done, is a Bill to assist our most vulnerable population in this State, our North Dakota youth.

Thank you for your time today, Chairwoman and members of the Committee. This concludes my testimony.

#1  
SB 2153  
3-11-19  
P.1

Nicole Poolman

House Judiciary Committee

Monday, March 11, 2019 3:15

Good morning, Chairman Koppleman and members of the Judiciary Committee, my name is Nicole Poolman, State Senator from District 7 representing Bismarck and Lincoln.

I'm here today to introduce SB 2153, a bill to create a pilot program between tribal and state juvenile services. If the bill looks familiar to you, it should. It came from the work of an interim committee during the 65<sup>th</sup> legislative session. As you probably remember, we were in the middle of the DAPL protests during that session, and state and tribal relations were severely strained. By the time the bill came to the House in 2017, no one came to testify in favor of the bill or answer questions the committee may have had, so it died in the House. With the renewed focus on state and tribal relations this session, we have brought the bill back.

The bill is designed to create a program that will give youth going through the tribal courts access to the same resources and treatment available to those going through our state system. We believe access to these services can keep young people closer to their families as well as prevent their entrance into our corrections system as adults. The bill lays out the terms of what would become a memorandum of understanding, including the provision that this would be based on availability of state resources. In other words, we aren't taking someone if we don't have room. There is no fiscal note on the bill because the department of corrections believes they will be able to absorb the costs associated with the potential agreement.

We have experts here to discuss the need for the program and answer any questions you may have about the current system. I hope you will support this bill not only because it can prevent these young people from entering our corrections system as adults, but more importantly, because it is the right thing to do for these kids.

#2  
SB 2153  
3-11-19

**Testimony of Erica Thunder, on behalf of, North Dakota Indian Affairs Commission**  
Hearing Relating to Juveniles Adjudicated in Tribal Courts  
SB 2153  
House Judiciary Committee  
Chairman Kim Koppelman  
North Dakota State Capitol, Bismarck ND  
March 11, 2019

Chairman Koppelman and members of the Committee,

Thank you for this opportunity to speak with you all. My name is Erica Thunder, and I serve as Judicial Systems Administrator for the North Dakota Indian Affairs Commission (hereinafter "NDIAC"). I work with Commissioner Scott J. Davis, Commissioner to the NDIAC, and I speak on behalf of he and our Office in my testimony today. NDIAC, is a cabinet member agency of the Governor's Cabinet, wherein Mr. Davis serves, and we are commemorating our 70<sup>th</sup> year as a legislatively authorized North Dakota Commission. On behalf of my agency, NDIAC, we support Senate Bill 2153.

As a background to myself and also to my work--I was raised and graduated from Bottineau High School, completed my bachelor's degree in Political Science from the University of North Dakota, and also completed both my Juris Doctorate and Federal Indian Law Degrees from the University of North Dakota School of Law. I am a member of the Three Affiliated Tribes, and spent my formative years growing up in the Turtle Mountains.

I want to take this moment to thank all of those who work within our department of corrections and rehabilitation, the division of juvenile services, our North Dakota courts, generally, on the behalf of our North Dakota youth and for the greater good of our great State

#2  
SB2153  
3-11-19

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My position as Judicial Systems Administrator is one which interfaces with all levels of the judicial systems within North Dakota. Having previously practiced as an attorney in various capacities, but particularly in the areas of child welfare and juvenile justice, two things have always remained key in obtaining effective judicial systems: collaboration and communication.

This bill allows North Dakota and its judicial systems to collaborate and talk with each other in a way that will serve a very vulnerable population that is currently falling into a "grey" area of our judicial systems. When I use that term, I want to make clear that by having the ability—through updated language to the North Dakota Century code—for the department of corrections and rehabilitation, through its division of juvenile services; the supreme court, through the office of the state court administration; and through my own agency, the North Dakota Indian Affairs Commission—to negotiate and enter into MOU's (Memorandums of Understanding) with our North Dakota Tribal Governments, courts, and their youth; we are serving a population who are very often receiving the bare minimum of services. While adjudicated as youth, these vulnerable populations overwhelming struggle with higher rates of behavioral health issues, that stem into mental health incapacities, as well as also being youth who have a higher rate of being a dual status youth—meaning they are likely also within our Child Welfare system, along with being within our juvenile justice system. These are truly youth that are our most vulnerable—in a place where services provided to them while they are still youth, could change the trajectory of their future lives, to become productive citizens of North Dakota. They may be youth that have been, or are, adjudicated in both the State and Tribal

#2  
SB 2153  
3-11-19

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This law would allow for referrals to be made by both the Tribal and North Dakota juvenile courts, providing for services based on the individualized needs of each tribal juvenile being referred. This kind of relationship would change the life of a tribal youth who may suffer from untreated behavioral issues, including PTSD, depression or anxiety, wherein both the North Dakota juvenile courts and Tribal courts can specifically address those issues, while collaboratively, assist the youth, with communications with the Tribal courts in cultural areas that may be of assistance to youth and appropriate for them to connect with their own identity. Issues of identity as a youth and even adults have empirically shown a youth to struggle more than their counterparts and peers in healthy relationships, healthy self-image, and a healthy

#2  
SB 2153  
3-11-19

sense of respect, which leads to struggles in school, jobs, and their life as a future adult, family member, and potential parent.

This Bill allows for an area in which our North Dakota juvenile courts and Tribal courts have been looking for a solution to for a very long time—it allows for the North Dakota Juvenile court to maintain regular contact with each Tribe who enters into such an agreement (if they so choose), regarding each Tribal juvenile who has been placed in the supervision of North Dakota juvenile court, along with providing quarterly case plans and more frequent reports to the tribal courts. This is something that so many interim committees of the Legislature, along with Commissions, task forces, and other entities of the State and of the Tribes, have looked at as a way to work in good faith, together, with the support of North Dakota Century Code to back the work and protect against any liabilities.

This Bill does note that the North Dakota juvenile court may limit the number of Tribal juveniles accepted based on criteria to be developed by the Juvenile Court and the availability of State resources and services. But what I can note, and say on behalf of all of those working within these fields, regardless of jurisdiction, this work is already happening, and the services and resources are already being used. Whether concurrently as I stated earlier, while a youth may be adjudicated in two separate jurisdictions (tribal and state), or whether they do not receive services needed to address the issues they face, and they find themselves in North Dakota adult facilities, that will use the same amount of resources and services to try to rehabilitate problems that could have been addressed at a much younger, and impressionable age.

#2  
SB 2153  
3-11-19

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This is a Bill with real solutions to very prevalent problems. It's fiscally intelligent, and when all is said and done, is a Bill to assist our most vulnerable population in this State, our North Dakota youth.

Thank you for your time today, Chairwoman and members of the Committee. This concludes my testimony.