Sixtieth Legislative Assembly of North Dakota
In Regular Session Commencing Wednesday, January 3, 2007

HOUSE BILL NO. 1092
(Judiciary Committee)
(At the request of the Supreme Court)

AN ACT to create and enact sections 27-20-32.3, 27-20-48.2, 27-20-48.3, and 27-20-48.4 of the North Dakota Century Code, relating to active efforts in juvenile proceedings regarding Indian children and legal guardianships for children; to amend and reenact section 12-46-14, subsection 1 of section 15.1-29-14, sections 27-20-02 and 27-20-06, subsection 1 of section 27-20-10, sections 27-20-12, 27-20-13, 27-20-14, 27-20-15, 27-20-17, 27-20-19, 27-20-20, 27-20-24, 27-20-26, 27-20-28, 27-20-30, 27-20-31, 27-20-32.1, subsection 4 of section 27-20-34, subsections 2 and 3 of section 27-20-36, subsection 3 of section 27-20-37, subsection 1 of section 27-20-40, subsection 1 of section 27-20-42, section 27-20-44, subsection 2 of section 27-20-45, and sections 27-20-48, 27-20-48.1, 27-20-50, 27-20-54, 27-20-59, and 54-12-01.3 of the North Dakota Century Code, relating to proceedings under the Uniform Juvenile Court Act and references to juvenile supervisor; to repeal sections 27-05-29, 27-20-01, and 27-20-35 of the North Dakota Century Code, relating to assigned duties of juvenile supervisors and Uniform Juvenile Court Act proceedings; and to provide for a legislative council study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-46-14 of the North Dakota Century Code is amended and reenacted as follows:

12-46-14. Transportation of persons committed to North Dakota youth correctional center. The director of juvenile ~~supervisor~~ court, or other officer or person designated by the court at the time commitment is ordered, shall conduct to the North Dakota youth correctional center all persons committed to it. Such person shall receive the amount of mileage allowed in section 11-15-25.

SECTION 2. AMENDMENT. Subsection 1 of section 15.1-29-14 of the North Dakota Century Code is amended and reenacted as follows:

1. a. Except as provided in subdivision b, for purposes of applying this chapter, a student's school district of residence is the district in which the student's custodial parent or legal guardian resides:

   (1) At the time that a state court, tribal court, director of juvenile ~~supervisor~~ court, or the division of juvenile services issues an order requiring the student to stay for a prescribed period at a state-licensed foster home or at a state-licensed child care home or facility;

   (2) At the time a county or state social service agency places the student, with the consent of the student's parent or legal guardian, at a state-licensed foster home or at a state-licensed child care home or facility;

   (3) At the time the student is initially placed in a state-operated institution, even if the student is later placed at a state-licensed foster home or at a state-licensed child care home or facility; or

   (4) At the time the student is placed voluntarily, by a parent or legal guardian, in a state-operated institution or in a state-licensed child care home, facility, or program, located outside the student's school district of residence, including those defined in sections 25-01.2-01 and 50-11-00.1.

b. A determination regarding the student's school district of residence made under subdivision a is valid until the September fifteenth following the determination. On that date and each September fifteenth thereafter, the placing agency or the entity funding the student's placement shall determine the district in which the student's custodial parent or legal guardian resides and shall notify the district that it is deemed to be the student's district of residence for purposes of this chapter. If, however, the student is placed in accordance with paragraph 4 of subdivision a and the placement is privately funded, the administrator of the facility or program in which the student is placed shall determine the student's school district of residence and provide the notification required by this subdivision.

SECTION 3. AMENDMENT. Section 27-20-02 of the North Dakota Century Code is amended and reenacted as follows:

27-20-02. Definitions. As used in this chapter:

1. "Abandon" means:

   a. As to a parent of a child not in the custody of that parent, failure by the noncustodial parent significantly without justifiable cause:

      (1) To communicate with the child; or

      (2) To provide for the care and support of the child as required by law; or

   b. As to a parent of a child in that parent's custody:

      (1) To leave the child for an indefinite period without making firm and agreed plans, with the child's immediate caregiver, for the parent's resumption of physical custody;

      (2) Following the child's birth or treatment at a hospital, to fail to arrange for the child's discharge within ten days after the child no longer requires hospital care; or

      (3) To willfully fail to furnish food, shelter, clothing, or medical attention reasonably sufficient to meet the child's needs.

2. "Abandoned infant" means a child who has been abandoned before reaching the age of one year.

3. "Aggravated circumstances" means circumstances in which a parent:

   a. Abandons, tortures, chronically abuses, or sexually abuses a child;

   b. Fails to make substantial, meaningful efforts to secure treatment for the parent's addiction, mental illness, behavior disorder, or any combination of those conditions for a period equal to the lesser of:

      (1) One year; or

      (2) One-half of the child's lifetime, measured in days, as of the date a petition alleging aggravated circumstances is filed;

   c. Engages in conduct prohibited under sections 12.1-20-01 through 12.1-20-08 or chapter 12.1-27.2, in which a child is the victim or intended victim;

   d. Engages in conduct that constitutes one of the following crimes, or of an offense under the laws of another jurisdiction which requires proof of substantially similar elements:

(1) A violation of section 12.1-16-01, 12.1-16-02, or 12.1-16-03, or subdivision a of subsection 1 of section 14-09-22 in which the victim is another child of the parent;

(2) Aiding, abetting, attempting, conspiring, or soliciting a violation of section 12.1-16-01, 12.1-16-02, or 12.1-16-03 in which the victim is a child of the parent; or

(3) A violation of section 12.1-17-02 in which the victim is a child of the parent and has suffered serious bodily injury;

e. Engages or attempts to engage in conduct, prohibited under sections 12.1-17-01 through 12.1-17-04, in which a child is the victim or intended victim; ~~or~~

f. Has been incarcerated under a sentence for which the latest release date is:

(1) In the case of a child age nine or older, after the child's majority; or

(2) In the case of a child, after the child is twice the child's current age, measured in days;

g. Subjects the child to prenatal exposure to chronic or severe use of alcohol or any controlled substance as defined in chapter 19-03.1 in a manner not lawfully prescribed by a practitioner; or

h. Allows the child to be present in an environment subjecting the child to exposure to a controlled substance, chemical substance, or drug paraphernalia as prohibited by section 19-03.1-22.2.

4. "Child" means an individual who is:

a. Under the age of eighteen years and is ~~neither~~ not married ~~and cohabiting with spouse nor in the military service of the United States~~; or

b. Under the age of twenty years with respect to a delinquent act committed while under the age of eighteen years.

5. "Custodian" means a person, other than a parent or legal guardian, who stands in loco parentis to the child or a person to whom legal custody of the child has been given by order of a court.

6. "Delinquent act" means an act designated a crime under the law, including local ordinances or resolutions of this state, or of another state if the act occurred in that state, or under federal law, and the crime does not fall under subdivision c of subsection ~~18 and is not a traffic offense as defined in subsection 17~~ 19.

7. "Delinquent child" means a child who has committed a delinquent act and is in need of treatment or rehabilitation.

8. "Deprived child" means a child who:

a. Is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for the child's physical, mental, or emotional health, or morals, and the deprivation is not due primarily to the lack of financial means of the child's parents, guardian, or other custodian;

b. Has been placed for care or adoption in violation of law;

c. Has been abandoned by the child's parents, guardian, or other custodian;

d. Is without proper parental care, control, or education as required by law, or other care and control necessary for the child's well-being because of the physical, mental, emotional, or other illness or disability of the child's parent or parents, and that such lack of care is not due to a willful act of commission or act of omission by the child's parents, and care is requested by a parent;

e. Is in need of treatment and whose parents, guardian, or other custodian have refused to participate in treatment as ordered by the juvenile court;

f. Was subject to prenatal exposure to chronic ~~and~~ or severe use of alcohol or any controlled substance as defined in chapter 19-03.1 in a manner not lawfully prescribed by a practitioner; or

g. Is present in an environment subjecting the child to exposure to a controlled substance, chemical substance, or drug paraphernalia as prohibited by section 19-03.1-22.2.

9. "Detention" means a physically secure facility with locked doors and does not include shelter care, attendant care, or home detention.

10. "Director" means the director of juvenile court or the director's designee.

11. "Fit and willing relative or other appropriate individual" means a relative or other individual who has been determined, after consideration of an assessment that includes a criminal history record investigation under chapter 50-11.3, to be a qualified person under chapter 30.1-27, and who consents in writing to act as a legal guardian.

~~11.~~ 12. "Home" when used in the phrase "to return home" means the abode of the child's parent with whom the child formerly resided.

~~12.~~ 13. "Juvenile court" means the district court of this state.

14. "Juvenile drug court" means a program established in a judicial district consisting of intervention and assessment of juveniles involved in forms of substance abuse; frequent drug testing; intense judicial and probation supervision; individual, group, and family counseling; substance abuse treatment; educational opportunities; and use of sanctions and incentives.

~~13.~~ 15. "Permanency hearing" means a hearing, conducted with respect to a child who is in foster care, to determine the permanency plan for the child which includes:

a. Whether and, if applicable, when the child will be returned to the parent;

b. Whether and, if applicable, when the child will be placed for adoption and the state will file a petition for termination of parental rights;

c. Whether and, if applicable, when a fit and willing relative or other appropriate individual will be appointed as a legal guardian;

d. In cases in which a compelling reason has been shown that it would not be in the child's best interests to return home, to have parental rights terminated, to be placed for adoption, to be placed with a fit and willing relative, or to be placed with a legal guardian, whether and, if applicable, when the child will be placed in another planned permanent living arrangement;

e. In the case of a child who has been placed in foster care outside the state in which the home of the parents is located, or if the parents maintain separate homes, outside the state in which the home of the parent who was the child's primary caregiver is located, whether ~~the~~ out-of-state placements have been considered. If the child is

currently in an out-of-state placement, the court shall determine whether the placement continues to be appropriate and in the child's best interests; and

f. In the case of a child who has attained age sixteen, the services needed to assist the child to make the transition from foster care to independent living.

~~14.~~ 16. "Protective supervision" means supervision ordered by the court of children found to be deprived or unruly.

~~15.~~ 17. "Relative" means:

a. The child's grandparent, great-grandparent, sibling, half-sibling, aunt, great-aunt, uncle, great-uncle, nephew, niece, or first cousin;

b. An individual with a relationship to the child, derived through a current or former spouse of the child's parent, similar to a relationship described in subdivision a;

c. An individual recognized in the child's community as having a relationship with the child similar to a relationship described in subdivision a; or

d. The child's stepparent.

~~16.~~ 18. "Shelter care" means temporary care of a child in physically unrestricted facilities.

~~17. "Traffic offense" means a violation of a law or local ordinance or resolution governing the operation of a vehicle upon the highways of this state, or the waterways within or adjoining this state, by a child who has been issued a valid operator's license or permit if one is required, other than manslaughter resulting from the operation of a motor vehicle in violation of section 12.1-16-02; negligent homicide in violation of section 12.1-16-03; and driving or being in actual physical control of a vehicle in violation of section 39-08-01, or an equivalent ordinance.~~

~~18.~~ 19. "Unruly child" means a child who:

a. Is habitually and without justification truant from school;

b. Is habitually disobedient of the reasonable and lawful commands of the child's parent, guardian, or other custodian and is ungovernable or who is willfully in a situation dangerous or injurious to the health, safety, or morals of the child or others;

c. Has committed an offense applicable only to a child, except for an offense committed by a minor fourteen years of age or older under subsection 2 of section 12.1-31-03 or an equivalent local ordinance or resolution;

d. ~~Has committed a noncriminal traffic offense without ever having been issued an operator's license or permit if one was required;~~

~~e.~~ Has committed an offense in violation of section ~~39-08-18 or~~ 5-01-08; or

~~f.~~ e. Is under the age of fourteen years and has purchased, possessed, smoked, or used tobacco or tobacco-related products in violation of subsection 2 of section 12.1-31-03; and

~~g.~~ f. In any of the foregoing instances is in need of treatment or rehabilitation.

~~19.~~ 20. "Willfully" has the meaning provided in section 12.1-02-02.

SECTION 4. AMENDMENT. Section 27-20-06 of the North Dakota Century Code is amended and reenacted as follows:

27-20-06. Powers and duties of ~~juvenile supervisors~~ director of juvenile court.

1. For the purpose of carrying out the objectives and purposes of this chapter and subject to the limitations of this chapter or imposed by the court, a ~~juvenile supervisor~~ director shall:

   a. Make investigations, reports, and recommendations to the juvenile court.

   b. Receive and examine complaints and charges of delinquency~~,~~ or unruly conduct~~,~~ or deprivation of a child for the purpose of considering the commencement of proceedings under this chapter.

   c. Supervise and assist a child placed on probation ~~or in the juvenile supervisor's protection, supervision, or care by order of the court or other authority of law~~ for delinquency or unruly conduct, or both.

   d. Make appropriate referrals to other private or public agencies of the community if their assistance appears to be needed or desirable.

   e. ~~Take into custody and detain~~ Issue a temporary custody order concerning a child who is ~~under the juvenile supervisor's~~ referred to the director's supervision or care as a delinquent, unruly, or deprived child ~~if the juvenile supervisor has reasonable cause to believe that the child's health or safety is in imminent danger, or that the child may abscond or be removed from the jurisdiction of the court, or when ordered by the court pursuant to this chapter~~. Except as provided by this chapter, a ~~juvenile supervisor~~ director does not have the powers of a law enforcement officer. ~~The juvenile supervisor may not conduct accusatory proceedings under this chapter against a child who is or may be under the juvenile supervisor's care or supervision.~~

   f. Administer oaths.

   g. Take acknowledgments of instruments for the purpose of this chapter.

   h. Make such temporary order not to exceed ninety-six hours for the custody and control of a child alleged to be deprived as may be deemed appropriate. The order must be reduced to writing within twenty-four hours, excluding holidays and weekends.

   i. Perform all other functions designated by this chapter or under section 27-05-30 or by order of the court pursuant thereto, including, if qualified, those of a referee.

   j. ~~Perform such functions relating to domestic relations matters as directed by the juvenile supervisor's appointing district judge, acting in accordance with section 27-05-29.~~ Issue an order to a law enforcement authority to transport a child to and from a specified location.

2. Any of the foregoing functions may be performed in another state if authorized by the court of this state and permitted by the laws of the other state.

SECTION 5. AMENDMENT. Subsection 1 of section 27-20-10 of the North Dakota Century Code is amended and reenacted as follows:

1. Before a petition is filed, the director of juvenile ~~supervisor~~ court or other officer of the court designated by it, subject to its direction, may give counsel and advice to the parties and impose conditions for the conduct and control of the child with a view to an informal adjustment if it appears:

   a. The admitted facts bring the case within the jurisdiction of the court;

   b. Counsel, advice, and conditions, if any, for the conduct and control of the child without an adjudication would be in the best interest of the public and the child; and

c. The child and the child's parents, guardian, or other custodian consent thereto with knowledge that consent is not obligatory.

SECTION 6. AMENDMENT. Section 27-20-12 of the North Dakota Century Code is amended and reenacted as follows:

27-20-12. Transfer to another juvenile court within the state.

1. If the child resides in a county of the state and the proceeding is commenced in a court of another county, the court, on motion of a party or on its own motion made prior to final disposition and in consultation with the court in the other county, may transfer the proceeding to the county of the child's residence for further action. Like transfer may be made if the residence of the child changes pending the proceeding. The proceeding must be transferred if the child has been adjudicated delinquent or unruly and other proceedings involving the child are pending in the juvenile court of the county of the child's residence.

2. Certified copies of all legal and social documents and records pertaining to the case on file with the clerk of the court must accompany the transfer.

SECTION 7. AMENDMENT. Section 27-20-13 of the North Dakota Century Code is amended and reenacted as follows:

27-20-13. Taking into custody.

1. A child may be taken into custody:

   a. Pursuant to an order of the court under this chapter;

   b. Pursuant to the laws of arrest;

   c. By a law enforcement officer ~~or a juvenile supervisor~~ if there are reasonable grounds to believe:

      (1) That the child is suffering from illness or injury or is in immediate danger from the child's surroundings, and that the child's removal is necessary; or

      (2) That the child has run away from the child's parents, guardian, or other custodian; or

   d. By order of the ~~juvenile supervisor~~ director made pursuant to subdivision h of subsection 1 of section 27-20-06.

2. The taking of a child into custody is not an arrest, except for the purpose of determining its validity under the Constitution of North Dakota or the Constitution of the United States.

3. A law enforcement officer may transport a child to and from detention.

SECTION 8. AMENDMENT. Section 27-20-14 of the North Dakota Century Code is amended and reenacted as follows:

27-20-14. Detention of child - Juvenile drug court exception.

1. A child taken into custody may not be detained or placed in shelter care prior to the hearing on the petition unless the child's detention or care is required to protect the person or property of others or of the child or because the child may abscond or be removed from the jurisdiction of the court or because the child has no parent, guardian, or custodian or other person able to provide supervision and care for the child and return the child to the court when required, or an order for the child's detention or shelter care has been made by the court pursuant to this chapter.

2. If a child is participating in a juvenile drug court program, the drug court may order the child detained. The child may be detained twice during the child's participation in the program but the total period of detention under this subsection may not exceed four days in a one-year period.

SECTION 9. AMENDMENT. Section 27-20-15 of the North Dakota Century Code is amended and reenacted as follows:

27-20-15. Release or delivery to court.

1. A person taking a child into custody, with all reasonable speed and without first taking the child elsewhere, shall:

   a. Release the child to the child's parent, guardian, custodian, or other responsible adult able and willing to assume custody of the child, upon that individual's promise to bring the child before the court when requested by the court, unless the child's detention or shelter care is warranted or required under section 27-20-14; or

   b. Bring the child before the court or deliver the child to a detention or shelter care facility designated by the court or to a medical facility if the child is believed to suffer from a serious physical condition or illness which requires prompt treatment. The person taking the child into custody shall promptly give ~~written~~ notice thereof, together with a statement of the reason for taking the child into custody, to a parent, guardian, or other custodian and to the court. Any temporary detention or questioning of the child necessary to comply with this subsection must conform to the procedures and conditions prescribed by this chapter and rules of court.

2. If a parent, guardian, or other custodian, when requested, fails to bring the child before the court as provided in subsection 1, the court may issue its warrant directing that the child be taken into custody and brought before the court.

3. If a child is ordered detained by a juvenile drug court, notice under this section is not required.

SECTION 10. AMENDMENT. Section 27-20-17 of the North Dakota Century Code is amended and reenacted as follows:

27-20-17. Release from detention or shelter care - Hearing - Conditions of release.

1. If a child is brought before the court or delivered to a detention or shelter care facility designated by the court, the ~~juvenile supervisor~~ director, the intake officer, or other authorized officer of the court shall immediately make an investigation and release the child unless it appears that the child's detention or shelter care is warranted or required under section 27-20-14.

2. If the child is not released, a judge or referee shall hold a detention or shelter care hearing promptly and not later than ninety-six hours after the child is placed in detention or shelter care to determine whether there is probable cause to believe the child has committed the delinquent or unruly acts alleged, or the child is deprived and whether the child's detention or shelter care is required under section 27-20-14. A hearing is not required if the child has been ordered detained by a juvenile drug court. Reasonable notice ~~thereof~~, either oral or written, stating the time, place, and purpose of the detention or shelter care hearing must be given to the child and, if they can be found, to the child's parents, guardian, or other custodian. Prior to the commencement of the hearing, the court shall inform the parties of their right to counsel and to appointed counsel if they are needy persons, and of the child's right to remain silent with respect to any allegations of delinquency or unruly conduct.

3. If continued shelter care is required, the judge or referee may order that the child be kept in shelter care for no more than sixty days from the date of the shelter care hearing.

4. As a condition to the child's release from shelter care, the court may order a parent, guardian, custodian, or any other member of the household in which the child resides to vacate the child's residence if probable cause exists to believe that the parent, guardian, custodian, or other member of the household has committed a sexual offense with or against the child, pursuant to sections 12.1-20-03 through 12.1-20-07 or section 12.1-20-11, and the presence of the alleged sexual offender in the child's residence presents a danger to the child's life or physical, emotional, or mental health. The court may order that the parent, guardian, or custodian not allow contact with an identified person if the court determines the order is in the best interests of the child.

5. If the child is not released and a parent, guardian, or custodian has not been notified of the hearing, did not appear or waive appearance at the hearing, and files an affidavit showing these facts, the court shall rehear the matter without unnecessary delay and order the child's release, unless it appears from the hearing that the child's detention or shelter care is required under section 27-20-14.

SECTION 11. AMENDMENT. Section 27-20-19 of the North Dakota Century Code is amended and reenacted as follows:

27-20-19. Petition - Preliminary determination. A petition alleging delinquency or unruliness under this chapter ~~may not be filed unless~~ must be reviewed by the ~~juvenile supervisor~~ director, the court, or other person authorized by the court ~~has determined and endorsed upon the petition that~~ to determine whether the filing of the petition is in the best interest of the public and the child.

SECTION 12. AMENDMENT. Section 27-20-20 of the North Dakota Century Code is amended and reenacted as follows:

27-20-20. Petition - Who may ~~make~~ prepare and file - Review. ~~Subject to section 27-20-19 the~~ A petition may be ~~made~~ prepared and filed by the state's attorney. A petition may also be prepared by any other person, including a law enforcement officer, who has knowledge of the facts alleged or is informed and believes that they are true. A petition prepared by any person other than a state's attorney may not be filed unless the director, the court, or other person authorized by the court has determined the filing of the petition is in the best interest of the public and the child.

SECTION 13. AMENDMENT. Section 27-20-24 of the North Dakota Century Code is amended and reenacted as follows:

27-20-24. Conduct of hearings.

1. Hearings under this chapter must be conducted by the court without a jury, in an informal but orderly manner, and separately from other proceedings not included in section 27-20-03.

2. If the hearing has not been held within the time limit, or any extension thereof, required by subsection 1 of section 27-20-22, the petition must be dismissed.

3. The state's attorney upon request of the court shall present the evidence in support of any allegations of the petition not admitted and otherwise conduct the proceedings on behalf of the state.

4. ~~The~~ Except for informal adjustments under section 27-20-10, the proceedings must be recorded by stenographic notes or by electronic, mechanical, or other appropriate means.

5. Hearings are open to the public if the purpose of the hearing is to declare a person in contempt of court or to consider a petition alleging an offense identified under subdivision b of subsection 1 of section 27-20-34 or subsection 2 of section 27-20-34. The general

public must be excluded from other hearings under this chapter. In hearings from which the general public is excluded, only the parties, their counsel, witnesses, victims, ~~and other persons accompanying a party for that person's assistance,~~ and any other persons ~~as~~ the court finds have a proper interest in the proceedings ~~or in the work of the court~~ may be admitted by the court. The court may temporarily exclude the child or other person from the hearing ~~except while allegations of that child's delinquency or unruly conduct are being heard~~ if, after being warned by the court that disruptive conduct will cause removal from the courtroom, the child or other person persists in conduct that justifies removal from the courtroom.

SECTION 14. AMENDMENT. Section 27-20-26 of the North Dakota Century Code is amended and reenacted as follows:

27-20-26. Right to counsel - Exceptions.

1. Except as otherwise provided ~~under~~ in this ~~chapter~~ section, a party who is indigent and unable to employ legal counsel is entitled to ~~representation by legal~~ counsel at public expense at custodial, post-petition, and informal adjustment stages of proceedings under this chapter ~~and, if as a needy person the party is unable to employ counsel, to have the court provide counsel for the party~~. During the informal adjustment stage of a proceeding only the child, if determined to be indigent, is entitled to counsel at public expense. In proceedings regarding allegations of unruliness or delinquency, a child's parent, legal guardian, or custodian, if determined to be indigent, is entitled to counsel at public expense only during the dispositional stage of the proceedings. If a party appears without counsel the court shall ascertain whether the party knows ~~of the party's right to~~ the party may be represented by counsel and ~~to be provided with~~ that the party is entitled to counsel ~~by the court if the party is a needy person~~ at public expense if indigent. The court may continue the proceeding to enable a party to obtain counsel and ~~shall provide~~, subject to this section, counsel must be provided for an unrepresented ~~needy person~~ indigent party upon the ~~person's~~ party's request. Counsel must be provided for a child not represented by the child's parent, guardian, or custodian at custodial, post-petition, and informal adjustment stages of proceedings under this chapter. If the interests of two or more parties conflict, separate counsel must be provided for each of them.

2. ~~A needy person~~ An indigent party is one who at the time of requesting counsel is unable, without undue financial hardship, to provide for full payment of legal counsel and all other necessary expenses for representation. A child is not to be considered ~~needy~~ indigent under this section if the child's ~~parents or~~ parent can, without undue financial hardship, provide full payment for legal counsel and other expenses of representation. Any parent entitled to the custody of a child involved in a proceeding under this chapter is, unless undue financial hardship would ensue, responsible for providing legal counsel and for paying other necessary expenses of representation for the parent's child. The court may enforce performance of this duty by appropriate order. ~~As used in this subsection, the word "parent" includes adoptive parents.~~

SECTION 15. AMENDMENT. Section 27-20-28 of the North Dakota Century Code is amended and reenacted as follows:

27-20-28. Investigation and report.

1. If the allegations of a petition are admitted by a party or notice of a hearing under section 27-20-34 has been given, the court, prior to the hearing on need for treatment or rehabilitation and disposition, may direct that a social study and report in writing to the court be made by the ~~juvenile supervisor~~ director or other person designated by the court, concerning the child, the child's family and environment, and other matters relevant to disposition of the case. If the allegations of the petition are not admitted and notice of a hearing under section 27-20-34 has not been given, the court may not direct the making of

the study and report until after the court has heard the petition upon notice of hearing given pursuant to this chapter and the court has found that the child committed a delinquent act or is an unruly or deprived child.

2. During the pendency of any proceeding the court ~~may~~:

   a. May order the child to be examined at a suitable place by a physician, psychologist, or certified addiction counselor ~~and may also~~;

   b. May order the child tested by appropriate forensic methods to determine whether the child has been exposed to a controlled substance or other substance considered injurious to the child's health; or

   c. May order medical or surgical treatment of a child who is suffering from a serious physical condition or illness, or alcohol or drug abuse, which in the opinion of a licensed physician requires prompt treatment, even if the parent, guardian, or other custodian has not been given notice of a hearing, is not available, or without good cause informs the court of that person's refusal to consent to the treatment.

SECTION 16. AMENDMENT. Section 27-20-30 of the North Dakota Century Code is amended and reenacted as follows:

27-20-30. Disposition of deprived child.

1. If the child is found to be a deprived child, the court may make any of the following orders of disposition best suited to the protection and physical, mental, and moral welfare of the child:

   a. Permit the child to ~~remain~~ reside with the child's parents, guardian, or other custodian, subject to conditions and limitations as the court prescribes, including supervision as directed by the court for the protection of the child.

   b. Subject to conditions and limitations as the court prescribes, transfer temporary legal custody to any of the following:

      (1) ~~Any individual who, after study by the juvenile supervisor or other person or agency designated by the court, is found by the court to be qualified to receive and care for the child.~~

      ~~(2)~~ An agency or other private organization licensed or otherwise authorized by law to receive and provide care for the child.

      ~~(3)~~ (2) The director of the county social service board or other public agency authorized by law to receive and provide care for the child.

      ~~(4)~~ ~~An individual in another state with or without supervision by an appropriate officer under section 27-20-40.~~

   c. Without making any of the orders otherwise provided in this section, transfer custody of the child to the juvenile court of another state if authorized by and in accordance with section 27-20-39 if the child is or is about to become a resident of that state.

   d. Require the parents, guardian, or other custodian to participate in treatment.

   e. Appoint a fit and willing relative or other appropriate individual as the child's legal guardian.

   f. In cases in which a compelling reason has been shown that it would not be in the child's best interests to return home, to have parental rights terminated, to be placed

for adoption, to be placed with a fit and willing relative, or to be placed with a legal guardian, establish, by order, some other planned permanent living arrangement.

2. Unless a child found to be deprived is found also to be delinquent or unruly and not amenable to treatment, the child may not be committed to or confined in an institution or other facility designed or operated for the benefit of delinquent children.

SECTION 17. AMENDMENT. Section 27-20-31 of the North Dakota Century Code is amended and reenacted as follows:

27-20-31. Disposition of delinquent child. If the child is found to be a delinquent child, the court may make any of the following orders of disposition best suited to the child's treatment, rehabilitation, and welfare:

1. Any order authorized by section 27-20-30 for the disposition of a deprived child;

2. Placing the child on probation under the supervision of the ~~juvenile supervisor~~ director, probation officer, or other appropriate officer of the court or of the court of another state as provided in section 27-20-41 or the director of the county social service board under conditions and limitations the court prescribes;

3. Ordering the child to pay a fine if the delinquent act committed by the child constitutes manslaughter resulting from the operation of a motor vehicle in violation of section 12.1-16-02; negligent homicide in violation of section 12.1-16-03; or driving or being in actual physical control of a vehicle in violation of section 39-08-01, or an equivalent ordinance. The court may suspend the imposition of a fine imposed pursuant to this subsection upon such terms and conditions as the court may determine. Fines collected pursuant to this subsection must be paid into the county treasury for disposition pursuant to section 29-27-02.1;

4. ~~Placing the child in an institution, camp, or other facility for delinquent children operated under the direction of the court or other local public authority;~~

~~5.~~ Committing the child to the division of juvenile services or to another state department to which commitment of delinquent or unruly children may be made. When necessary, the commitment order may provide that the child initially be placed in a secure facility;

~~6.~~ 5. Ordering the child to make monetary restitution to the victim of the offense or to complete a specified number of hours of community service as determined by the court, or both;

~~7.~~ 6. Ordering the periodic testing for the use of illicit drugs or alcohol pursuant to rules or policies adopted by the supreme court; or

~~8.~~ 7. ~~Under section 27-20-31.1, order the driver's license or permit of the child to be delivered to the juvenile supervisor, probation officer, or other appropriate officer of the court and to inform the director of the department of transportation of the child's suspension of driving privileges and the duration of the suspension of privileges.~~ Ordering the child's participation in a juvenile drug court program.

SECTION 18. AMENDMENT. Section 27-20-32.1 of the North Dakota Century Code is amended and reenacted as follows:

27-20-32.1. Court order required for removal of child. An order of disposition or other adjudication in a proceeding under this chapter, in those cases in which a child is removed from the home of a ~~relative by birth, marriage, or adoption~~ parent, custodian, or guardian for the reason that continuation in such home would be contrary to the welfare of such child, must specifically state that a continuation of the child in the home of the ~~relative~~ parent, custodian, or guardian would be contrary to the welfare of the child.

SECTION 19. Section 27-20-32.3 of the North Dakota Century Code is created and enacted as follows:

27-20-32.3. Definitions - Active efforts - When required. When an agency is seeking to effect a foster care placement of, or termination of parental rights to an Indian child, the court shall require active efforts as set forth in 25 U.S.C. section 1912(d).

SECTION 20. AMENDMENT. Subsection 4 of section 27-20-34 of the North Dakota Century Code is amended and reenacted as follows:

4. ~~The transfer terminates the jurisdiction of the juvenile court over the child with respect to the delinquent acts alleged in the petition. In addition, any~~ Any transfer ~~under subdivision b or c of subsection 1~~ operates to terminate the juvenile court's jurisdiction over the child with respect to any future offense if the child is ultimately convicted of the offense giving rise to the transfer.

SECTION 21. AMENDMENT. Subsections 2 and 3 of section 27-20-36 of the North Dakota Century Code are amended and reenacted as follows:

2. An order of disposition committing a delinquent or unruly child to the division of juvenile services continues in force for not more than ~~two years~~ twelve months, excluding any period of time the child is on parole from an institution, or until the child is sooner discharged by an institution.

   a. The court which made the order may extend its duration for additional ~~two-year~~ twelve-month periods subject to like discharge, if:

      (1) A hearing is held upon motion of the division, or on the court's own motion, prior to the expiration of the order;

      (2) Reasonable notice of the hearing and an opportunity to be heard are given to the child and the parent, guardian, or other custodian; and

      (3) The court finds that the extension is necessary for the treatment or rehabilitation of the child.

   b. A permanency hearing must be conducted within thirty days after a court determines that aggravated circumstances of the type described in subdivisions a, c, d, or e of subsection 3 of section 27-20-02 exist, or within twelve months after a child, subject to an order of disposition under this subsection, is considered to have entered foster care, or is continued in foster care following a previous permanency hearing. The permanency hearing may be conducted:

      (1) By the division of juvenile services as a placement hearing under chapter 27-21; or

      (2) By the court, if the court requires, or if it appears that an appropriate permanency plan could not be carried out without exceeding the authority of the division of juvenile services.

3. Except as provided in subsection 2, an order of disposition pursuant to which a child is placed in foster care may not continue in force for more than twelve months after the child is considered to have entered foster care. Before the extension of any court order limited under this subsection, a permanency hearing must be conducted. Any other order of disposition may not continue in force for more than ~~two years~~ twelve months.

SECTION 22. AMENDMENT. Subsection 3 of section 27-20-37 of the North Dakota Century Code is amended and reenacted as follows:

3. Any party to the proceeding, the director of juvenile ~~supervisor~~ court or other person having supervision or legal custody of or an interest in the child may petition the court for the relief provided in this section. The petition must set forth in concise language the grounds upon which the relief is requested.

SECTION 23. AMENDMENT. Subsection 1 of section 27-20-40 of the North Dakota Century Code is amended and reenacted as follows:

1. If a juvenile court of another state which has adopted the Uniform Juvenile Court Act, or a substantially similar Act which includes provisions corresponding to sections 27-20-39 and 27-20-40, requests a juvenile court of this state to accept jurisdiction of a child found by the requesting court to have committed a delinquent act or to be an unruly or deprived child, and the court of this state finds, after investigation that the child is, or is about to become, a resident of the county in which the court presides, it shall promptly and not later than fourteen days after receiving the request issue its acceptance in writing to the requesting court and direct its director of juvenile ~~supervisor~~ court or other person designated by it to take physical custody of the child from the requesting court and bring the child before the court of this state or make other appropriate provisions for the child's appearance before the court.

SECTION 24. AMENDMENT. Subsection 1 of section 27-20-42 of the North Dakota Century Code is amended and reenacted as follows:

1. Upon receiving a request of a juvenile court of another state which has adopted the Uniform Juvenile Court Act, or a substantially similar Act which includes provisions corresponding to sections 27-20-41 and 27-20-42 to provide supervision of a child under the jurisdiction of that court, a court of this state may issue its written acceptance to the requesting court and designate its director of juvenile ~~supervisor~~ court, probation officer, or other appropriate officer who is to provide supervision, stating the probable cost per day therefor.

SECTION 25. AMENDMENT. Section 27-20-44 of the North Dakota Century Code is amended and reenacted as follows:

27-20-44. Termination of parental rights.

1. The court by order may terminate the parental rights of a parent with respect to the parent's child if:

   a. The parent has abandoned the child;

   b. The child is subjected to aggravated circumstances as defined under subsection 3 of section 27-20-02;

   c. The child is a deprived child and the court finds:

      (1) The conditions and causes of the deprivation are likely to continue or will not be remedied and that by reason thereof the child is suffering or will probably suffer serious physical, mental, moral, or emotional harm; or

      (2) The child has been in foster care, in the care, custody, and control of the department, or a county social service board, or, in cases arising out of an adjudication by the juvenile court that a child is an unruly child, the division of juvenile services, for at least four hundred fifty out of the previous six hundred sixty nights; or

      ~~(3) A court of competent jurisdiction has convicted the child's parent of one of the following crimes, or of an offense under the laws of another jurisdiction which requires proof of substantially similar elements:~~

~~(a) A violation of section 12.1-16-01, 12.1-16-02, or 12.1-16-03 in which the victim is another child of the parent;~~

~~(b) Aiding, abetting, attempting, conspiring, or soliciting a violation of section 12.1-16-01, 12.1-16-02, or 12.1-16-03 in which the victim is a child of the parent; or~~

~~(c) A violation of section 12.1-17-02 in which the victim is a child of the parent and has suffered serious bodily injury; or~~

~~c.~~ d. The written consent of the parent acknowledged before the court has been given.

2. If the court does not make an order of termination of parental rights, it may grant an order under section 27-20-30 if the court finds from clear and convincing evidence that the child is a deprived child.

SECTION 26. AMENDMENT. Subsection 2 of section 27-20-45 of the North Dakota Century Code is amended and reenacted as follows:

2. If both of the natural parents of the child are not named in the petition either as petitioner or as respondent, the court shall cause inquiry to be made of the petitioner and other appropriate persons in an effort to identify an unnamed parent. The inquiry must include, to the extent necessary and appropriate, all of the following:

   a. Whether any man is presumed to be the father of the child under ~~the Uniform Parentage Act~~ chapter 14-20.

   b. Whether the natural mother of the child was cohabiting with a man at the time of conception or birth of the child.

   c. Whether the natural mother of the child has received from any man support payments or promises of support with respect to the child or in connection with her pregnancy.

   d. Whether any person has formally or informally acknowledged or declared that person's possible parentage of the child.

   e. Whether any person claims any right to custody of the child.

SECTION 27. AMENDMENT. Section 27-20-48 of the North Dakota Century Code is amended and reenacted as follows:

27-20-48. Guardian ad litem. The court at any stage of a proceeding under this chapter, on application of a party or on its own motion, shall appoint a lay guardian ad litem for a child who is a party to the proceeding if the child has no parent, guardian, or custodian appearing on the child's behalf or their interests conflict with the child's or in any other case in which the interests of the child require a guardian. A party to the proceeding or that party's employee or representative may not be appointed.

SECTION 28. AMENDMENT. Section 27-20-48.1 of the North Dakota Century Code is amended and reenacted as follows:

27-20-48.1. Appointment of legal guardian.

~~1. In a proceeding under chapter 30.1-27, the~~ The court may~~:~~

   ~~a. Without terminating parental rights, appoint a fit and willing relative or other appropriate individual as the child's legal guardian if the court has determined that a lawful basis exists for terminating parental rights, but the child is unlikely to be placed for adoption; or~~

~~b. Appoint a fit and willing relative or other appropriate individual as the child's legal guardian if the child has not been placed for adoption within twelve months after a termination of all parental rights.~~

~~2. An individual appointed as a legal guardian has:~~

~~a. If there is a parent with remaining parental rights, the rights of a legal custodian; and~~

~~b. If there is no parent with remaining parental rights, the rights of a legal custodian and the authority to consent to the child's adoption, marriage, enlistment in the armed forces of the United States, and surgical and other medical treatment~~ establish a guardianship as a dispositional alternative if a child has been adjudicated as deprived, unruly, or delinquent.

SECTION 29. Section 27-20-48.2 of the North Dakota Century Code is created and enacted as follows:

27-20-48.2. Powers and duties of guardian of child. A guardian of a child has the powers and responsibilities of a legal custodian if there is a parent with remaining parental rights. If there is no parent with remaining parental rights, the guardian has the rights of a legal custodian and the authority to consent to the child's adoption, marriage, enlistment in the armed forces of the United States, and surgical and other medical treatment. A guardian is not liable to third persons by reason of the parental relationship for acts of the child. In particular, and without qualifying the foregoing, a guardian has the following powers and duties:

1. The guardian must take reasonable care of the child's personal effects and commence protective proceedings if necessary to protect other property of the child.

2. The guardian may receive money payable for the support of the ward to the child's parent, guardian, or custodian under the terms of any statutory benefit or insurance system, or any private contract, devise, trust, conservatorship, or custodianship. The guardian also may receive money or property of the child paid or delivered by virtue of section 30.1-26-03. Any sums so received must be applied to the child's current needs for support, care, and education. The guardian must exercise due care to conserve any excess for the child's future needs unless a conservator has been appointed for the estate of the child, in which case excess must be paid over at least annually to the conservator. Sums so received by the guardian are not to be used for compensation for the guardian's services except as approved by order of court or as determined by a duly appointed conservator other than the guardian. A guardian may institute proceedings to compel the performance by any person of a duty to support the child or to pay sums for the welfare of the child.

3. The guardian is empowered to facilitate the child's education, social, or other activities and to authorize medical or other professional care, treatment, or advice. A guardian is not liable by reason of this consent for injury to the child resulting from the negligence or acts of third persons unless it would have been illegal for a parent to have consented. A guardian may consent to the marriage or adoption of the child.

4. A guardian shall file an annual report with the court informing the court of the status or condition of the child and provide a copy of the report to the child. The report must include changes that have occurred since the previous reporting period and an accounting of the child's estate. The guardian shall report whether the child has resided in an institution, whether the child continues to require guardianship, and whether any powers of the guardian should be increased or limited. The filing of a report and its acceptance by the court or clerk of district court does not constitute an adjudication or a determination of the merits of the report nor does the filing of the report constitute the court's approval of the report. The office of state court administrator shall provide printed forms that may be used to fulfill reporting requirements.

SECTION 30. Section 27-20-48.3 of the North Dakota Century Code is created and enacted as follows:

27-20-48.3. Termination of appointment of guardian - General. A guardian's authority and responsibility terminates upon the death, resignation, or removal of the guardian, or upon the child's death, adoption, marriage, or attainment of majority, but termination does not affect the guardian's liability for prior acts nor the guardian's obligation to account for funds and assets of the child.

SECTION 31. Section 27-20-48.4 of the North Dakota Century Code is created and enacted as follows:

27-20-48.4. Resignation or removal proceedings.

1. A guardian may petition for permission to resign. A petition for permission to resign may include a request for appointment of a successor guardian. Resignation of a guardian does not terminate the guardianship until it has been approved by the court.

2. Any party to the proceeding in which the child's status was adjudicated, the director, or the child, if fourteen or more years of age, may petition for removal of a guardian on the grounds that the removal would be in the best interest of the child. A petition for removal may include a request for appointment of a successor guardian.

3. After notice and hearing on a petition for removal or for permission to resign, the court may terminate the guardianship and make any further order that may be appropriate.

4. If, at any time in the proceeding, the court determines that the interests of the child are, or may be, inadequately represented, it may appoint an attorney to represent the child, giving consideration to the preference of the child if the child is fourteen or more years of age.

SECTION 32. AMENDMENT. Section 27-20-50 of the North Dakota Century Code is amended and reenacted as follows:

27-20-50. Protective order. ~~On~~ At any stage of the proceedings, upon application of a party or on the court's own motion, the court may make an order restraining or otherwise controlling the conduct of a person if:

1. ~~An order of disposition of a delinquent, unruly, or deprived child has been or is about to be made in a proceeding under this chapter;~~

~~2.~~ The court finds that the conduct:

   a. Is or may be detrimental or harmful to the child; ~~and~~ or

   b. Will tend to defeat the execution of ~~the~~ an order of disposition; and

~~3.~~ 2. Due notice of the application or motion and the grounds therefor and an opportunity to be heard ~~thereon~~ have been given to the person against whom the order is directed.

SECTION 33. AMENDMENT. Section 27-20-54 of the North Dakota Century Code is amended and reenacted as follows:

27-20-54. Destruction of juvenile court records.

1. ~~All~~ Except as otherwise required under section 25-03.3-04, all juvenile court records must be ~~maintained~~ retained and disposed of pursuant to rules and ~~procedures~~ policies established by the North Dakota supreme court.

2. Upon the final destruction of a file or record, the proceeding must be treated as if it never occurred. The juvenile court shall notify each agency named in the file or record of the destruction. All index references, except those which may be made by the director of the

department of transportation, must be deleted~~, and upon~~. Each agency, except the director of the department of transportation, upon notification of the destruction of a file or record, shall destroy all files, records, and references to the child's apprehension, detention, and referral to the juvenile court and any record of disposition made by the juvenile court. Upon inquiry in any matter the child, the court~~, law enforcement officers,~~ and representatives of agencies, except the director of the department of transportation, shall properly reply that no record exists with respect to the child. ~~The juvenile court shall notify each agency or official therein named. Each law enforcement agency and law enforcement officer except the director of the department of transportation, upon receipt of a copy of the order, shall destroy all files, records, and references to the child pertaining to the child's apprehension, detention, and referral to the juvenile court and any record of disposition made by the juvenile court.~~

SECTION 34. AMENDMENT. Section 27-20-59 of the North Dakota Century Code is amended and reenacted as follows:

27-20-59. Short title. This chapter may be cited as the ~~Uniform~~ Juvenile Court Act.

SECTION 35. AMENDMENT. Section 54-12-01.3 of the North Dakota Century Code is amended and reenacted as follows:

54-12-01.3. Judicial officers - Legal defense - Indemnification. The attorney general shall appear and defend any supreme court justice, supreme court surrogate justice, district court judge, district court surrogate judge, judicial referee, or director of juvenile ~~supervisor~~ court of this state in any action founded upon an act or omission arising out of performance of an official duty. If the attorney general determines that the attorney general or an assistant attorney general is unable to defend the judicial officer, the attorney general shall employ a special assistant attorney general to represent the judicial officer. The state shall indemnify the supreme court justice, supreme court surrogate justice, district court judge, district court surrogate judge, judicial referee, or director of juvenile ~~supervisor~~ court of this state for all reasonable costs, including attorney's fees, incurred by or awarded against the judicial officer in the action.

SECTION 36. REPEAL. Sections 27-05-29, 27-20-01, and 27-20-35 of the North Dakota Century Code are repealed.

SECTION 37. LEGISLATIVE COUNCIL STUDY - INDIAN CHILD WELFARE. During the 2007-08 interim, the legislative council shall consider studying the application of and the desirability of changing the law relating to the welfare of Indian children when placed in the care of individuals other than parents and the effect of the Indian Child Welfare Act on state law. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly.

_____	_____
Speaker of the House	President of the Senate
_____	_____
Chief Clerk of the House	Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixtieth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1092.

House Vote:	Yeas	92	Nays	0	Absent	2
Senate Vote:	Yeas	44	Nays	0	Absent	3

_____
Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2007.

Approved at _____ M. on _____, 2007.

_____
Governor

Filed in this office this _____ day of _____, 2007,

at _____ o'clock _____ M.

_____
Secretary of State