

2023 HOUSE JUDICIARY

HB 1137

2023 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Room JW327B, State Capitol

HB 1137
1/18/2023

Relating to juvenile court procedures.

Chairman Klemin opens hearing for HB 1137 at 9:00 AM

Members present: Chairman Klemin, Vice Chairman Karls, Rep. Bahl, Rep. Christensen, Rep. Cory, Rep. Henderson, Rep. S. Olson, Rep. Rios, Rep. S. Roers Jones, Rep. Satrom, , Rep. Schneider, Rep. VanWinkle, Rep. Vetter

Discussion Topics:

- Juvenile justice reform
- Previous legislation

Lisa Bjergaard, Chair, Commission on Juvenile Justice: Introduced the bill. Testimony (#13904)

Karen Kringlie, Director of Juvenile court, testified in support (#14144)

Travis Finck, Executive director, ND commission on legal counsel for infants (#13994)

Lynn Flieth, Director of RSR Human Service Zone. Testifying in support (#13887)

Cory Peterson, with Health and Human Services. Testifying in support (#14249)

Additional written testimony: Representative Lawrence Klemin (#15662)

Hearing closed at 10:14 AM.

Delores Shimek, Committee Clerk By: Leah Kuball

2023 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Room JW327B, State Capitol

HB 1137
1/23/2023

Relating to juvenile court procedures.

Chairman Klemin opened the hearing on HB 1137 at 3:05 PM.

Members present: Chairman Klemin, Vice Chairman Karls, Rep. Bahl, Rep. Christensen, Rep. Cory, Rep. Henderson, Rep. S. Olson, Rep. Rios, Rep. S. Roers Jones, Rep. Satrom, Rep. Schneider, Rep. VanWinkle, Rep. Vetter

Discussion Topics:

- Amendments
- Original sunset date
- Reporting deadline
- Indian Affairs

Chairman Klemin went over the proposed amendment changes (#15662)

Representative Roers Jones moved amendment 23.0313.04002.

Representative Schneider seconds motion

Roll call vote:

Representatives	Vote
Representative Lawrence R. Klemin	Y
Representative Karen Karls	Y
Representative Landon Bahl	Y
Representative Cole Christensen	Y
Representative Claire Cory	Y
Representative Donna Henderson	Y
Representative SuAnn Olson	Y
Representative Nico Rios	Y
Representative Shannon Roers Jones	Y
Representative Bernie Satrom	Y
Representative Mary Schneider	Y
Representative Lori VanWinkle	Y
Representative Steve Vetter	Y

Motion approved: 13-0-0

Representative Schneider moved a DO PASS as amended

Representative Roers Jones Seconds motion

Roll call vote:

Representatives	Vote
Representative Lawrence R. Klemin	Y
Representative Karen Karls	Y
Representative Landon Bahl	Y
Representative Cole Christensen	N
Representative Claire Cory	Y
Representative Donna Henderson	Y
Representative SuAnn Olson	Y
Representative Nico Rios	Y
Representative Shannon Roers Jones	Y
Representative Bernie Satrom	Y
Representative Mary Schneider	Y
Representative Lori VanWinkle	Y
Representative Steve Vetter	Y

Motion carries: 12-1-0

Bill carrier: Chairman Klemin

Hearing closed at 3:12 PM

Delores Shimek, Committee Clerk By: Leah Kuball

January 23, 2023

DR
1-23-2023
1 of 1

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1137

Page 1, line 12, remove the second "and"

Page 1, line 12, after "27-20.4-26" insert ", and section 27-20.4-27"

Page 43, after line 14, insert:

"SECTION 40. AMENDMENT. Section 27-20.4-27 of the North Dakota Century Code is amended and reenacted as follows:

27-20.4-27. Tribal juvenile services cooperative agreement – Report to legislative management. (~~Expired effective July 31, 2023~~)

4. The department of corrections and rehabilitation, through the division of juvenile services; the supreme court, through the office of the state court administrator; and the Indian affairs commission may negotiate and enter a memorandum of understanding with the tribal government of a federally recognized Indian tribe in the state for the purpose of accepting and providing for, in accordance with this chapter, the treatment and rehabilitation of tribal juveniles who have been adjudicated in tribal court under tribal or federal laws. Under the pilot program and terms of a memorandum of understanding:

- a.1. The tribal government, the department of corrections and rehabilitation, and the juvenile court may exchange information relevant to the treatment and rehabilitation needs of a tribal juvenile and the juvenile's family, including tribal court orders, medical and psychiatric reports, law enforcement reports, and other information pertinent to the referral;
 - b.2. The juvenile court and the department of corrections and rehabilitation shall provide services based on the individualized need of each tribal juvenile referred to and accepted by the tribal court, juvenile court, and department of corrections and rehabilitation;
 - c.3. The juvenile court and the department of corrections and rehabilitation shall maintain regular contact with the tribe regarding each tribal juvenile who has been placed in the supervision of the respective agency; and
 - d.4. The juvenile court and the department of corrections and rehabilitation may limit the number of tribal juveniles accepted based on criteria developed by the juvenile court and the availability of state resources and services.
2. ~~Before July first of each even-numbered year, the department of corrections and rehabilitation, the juvenile court, and the Indian affairs commission shall report and make recommendations to the legislative management on the status, effectiveness, performance, and sustainability of a memorandum of understanding established under this section."~~

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1137: Judiciary Committee (Rep. Klemin, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (12 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). HB 1137 was placed on the Sixth order on the calendar.

Page 1, line 12, remove the second "and"

Page 1, line 12, after "27-20.4-26" insert ", and section 27-20.4-27"

Page 43, after line 14, insert:

"SECTION 40. AMENDMENT. Section 27-20.4-27 of the North Dakota Century Code is amended and reenacted as follows:

27-20.4-27. Tribal juvenile services cooperative agreement –Report to legislative management. (Expired effective July 31, 2023)

4. The department of corrections and rehabilitation, through the division of juvenile services; the supreme court, through the office of the state court administrator; and the Indian affairs commission may negotiate and enter a memorandum of understanding with the tribal government of a federally recognized Indian tribe in the state for the purpose of accepting and providing for, in accordance with this chapter, the treatment and rehabilitation of tribal juveniles who have been adjudicated in tribal court under tribal or federal laws. Under the pilot program and terms of a memorandum of understanding:

- a-1. The tribal government, the department of corrections and rehabilitation, and the juvenile court may exchange information relevant to the treatment and rehabilitation needs of a tribal juvenile and the juvenile's family, including tribal court orders, medical and psychiatric reports, law enforcement reports, and other information pertinent to the referral;
 - b-2. The juvenile court and the department of corrections and rehabilitation shall provide services based on the individualized need of each tribal juvenile referred to and accepted by the tribal court, juvenile court, and department of corrections and rehabilitation;
 - e-3. The juvenile court and the department of corrections and rehabilitation shall maintain regular contact with the tribe regarding each tribal juvenile who has been placed in the supervision of the respective agency; and
 - d-4. The juvenile court and the department of corrections and rehabilitation may limit the number of tribal juveniles accepted based on criteria developed by the juvenile court and the availability of state resources and services.
2. ~~Before July first of each even-numbered year, the department of corrections and rehabilitation, the juvenile court, and the Indian affairs commission shall report and make recommendations to the legislative management on the status, effectiveness, performance, and sustainability of a memorandum of understanding established under this section."~~

Renumber accordingly

2023 SENATE JUDICIARY

HB 1137

2023 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

HB 1137
3/7/2023

A bill relating to inspection of court files and records, and delinquency referrals to juvenile court; relating to juvenile court procedures.

2:29 PM Chairman Larson opened the meeting.

Chairman Larson and Senators Myrdal, Luick, Estenson, Sickler, Paulson and Braunberger are present. Senator Myrdal stepped out of the meeting at 2:52 PM. Senator Braunberger stepped out of the meeting at 2:57 PM.

Discussion Topics:

- Juvenile justice reform
- Recidivism reduction
- Child in need of protection
- Detention screening tool

2:29 PM Lisa Bjergaard, Chair, Commission on Juvenile Justice, Director of the Division of Juvenile Services, North Dakota Department of Corrections and Rehabilitation introduced the bill and testified. #22259

2:39 PM Karen Kringlie, Director of Juvenile Court, Member, Commission on Juvenile Justice testified in favor of the bill. #22555

2:40 PM Karen Kringlie testified. #22292

2:55 PM Travis Finck, Executive Director, North Dakota Commission on Legal Counsel for Indigents, testified in favor of the bill. #22378

2:52 PM Chairman Larson presented amendment LC 23.0313.05001, #22719.

3:01 PM Lynn Flieth, Executive Director, RSR Human Service Zone (Ransom, Richland and Sargent counties), testified in favor of the bill. #22402

3:10 PM Corey Peterson, Children and Family Service Director, North Dakota Department of Health and Human Services spoke in favor of the bill.

3:13 PM Chairman Larson closed the public hearing.

Additional written testimony:

Diane Larson #22719

3:13 PM Senator Luick moved to adopt amendment LC 23.0313.05001 and amend Page 27, line 21, overstrike "27-20.3-03.1" and insert immediately thereafter "27-20.3-20" and Page 27, line 29, overstrike "27-20.3-09" and insert immediately thereafter "27-20.3-24"

3:13 PM Senator Estenson seconded the motion.

3:13 PM Roll call vote was taken.

Senators	Vote
Senator Diane Larson	Y
Senator Bob Paulson	Y
Senator Jonathan Sickler	Y
Senator Ryan Braunberger	AB
Senator Judy Estenson	Y
Senator Larry Luick	Y
Senator Janne Myrdal	AB

Motion passes 5-0-2.

3:15 PM Senator Luick moved to Do Pass the bill as Amended.
Senator Estenson seconded the motion.

3:15 PM Roll call vote is taken.

Senators	Vote
Senator Diane Larson	Y
Senator Bob Paulson	Y
Senator Jonathan Sickler	Y
Senator Ryan Braunberger	AB
Senator Judy Estenson	Y
Senator Larry Luick	Y
Senator Janne Myrdal	AB

Motion passes 5-0-2.

Senator Estenson will carry the bill.

This bill does not affect workforce development.

3:16 PM Chairman Larson closed the meeting.

Rick Schuchard, Committee Clerk

March 7, 2023

AG
3-7-23
(1-1)

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1137

Page 1, line 7, replace the first "subsection" with "subsections 1 and"

Page 19, after line 15, insert:

"SECTION 16. AMENDMENT. Subsection 1 of section 27-20.3-06 of the North Dakota Century Code is amended and reenacted as follows:

1. A child alleged to be in need of protection may be taken into protective custody:
 - a. Pursuant to an order of the court under this chapter;
 - b. By a law enforcement officer or designee if there are reasonable grounds to believe the child:
 - (1) ~~The child is~~ suffering from illness or injury or is in immediate danger from the child's surroundings, and the child's removal is necessary; or
 - (2) ~~The child has~~ is in violation of a city or county curfew; or
 - (3) Has run away from the child's parents, guardian, or other custodian; or
 - c. By order of the director made pursuant to section 27-20.3-04."

Page 27, line 21, overstrike "27-20.3-03.1" and insert immediately thereafter "27-20.3-20"

Page 27, line 29, overstrike "27-20.3-09" and insert immediately thereafter "27-20.3-24"

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1137, as engrossed: Judiciary Committee (Sen. Larson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). Engrossed HB 1137 was placed on the Sixth order on the calendar. This bill does not affect workforce development.

Page 1, line 7, replace the first "subsection" with "subsections 1 and"

Page 19, after line 15, insert:

"SECTION 16. AMENDMENT. Subsection 1 of section 27-20.3-06 of the North Dakota Century Code is amended and reenacted as follows:

1. A child alleged to be in need of protection may be taken into protective custody:
 - a. Pursuant to an order of the court under this chapter;
 - b. By a law enforcement officer or designee if there are reasonable grounds to believe the child:
 - (1) ~~The child is~~ suffering from illness or injury or is in immediate danger from the child's surroundings, and the child's removal is necessary; ~~or~~
 - (2) ~~The child has~~ is in violation of a city or county curfew; or
 - (3) Has run away from the child's parents, guardian, or other custodian; or
 - c. By order of the director made pursuant to section 27-20.3-04."

Page 27, line 21, overstrike "27-20.3-03.1" and insert immediately thereafter "27-20.3-20"

Page 27, line 29, overstrike "27-20.3-09" and insert immediately thereafter "27-20.3-24"

Renumber accordingly

TESTIMONY

HB 1137

Testimony Prepared for the
House Judiciary Committee
January 18, 2023
By: Lynn Flieth, RSR Human Service Zone Director

RE: HB 1137 – Relating to inspection of court files and records, and delinquency referrals to juvenile court

Chairman Klemin and members of the House Judiciary Committee, my name is Lynn Flieth. I am the Director for the RSR Human Service Zone, which includes the counties of Ransom, Sargent and Richland. I am here today to provide testimony in support of HB 1137.

Human Service Zones, the Division of Juvenile Services and Tribal child welfare agencies serve as legal custodians when care/custody/control of children is removed from their parents or legal caregivers. Additionally, beginning in July of 2022, the RSR Human Service Zone became the employing entity for the statewide CHINS (Children In Need of Services) Unit.

During the 2021 Legislative Session, this body began the important work of enhancing how juveniles displaying delinquent and ungovernable or “unruly” behavior are treated in the state of North Dakota. Those changes, based in research and an understanding of adolescent development, have shifted practice and, at times, challenged us to find new approaches to best serve our state’s youth. In the last 2 years, many of those initiatives have been put into action. The goals of these efforts include diverting youth away from the adult justice system, identifying service needs and to prioritizing developmentally appropriate accountability.

Many of the items in this bill clarify and update language to more fully reflect matters relating to those juvenile justice reforms. The updates in terminology from “deprived child” to “*child in need of protection*”, will align North Dakota Century Code and current child welfare

policy and practices. This bill will also completely remove Children In Need of Service from the jurisdiction of the Juvenile Court, as those referrals are now directed to the Human Service Zones. The Human Service Zone Directors voted in May of 2022, for a single Human Service Zone to become the employing entity for a statewide CHINS Unit to promote efficient administration and consistent implementation of addressing child in need of services referrals. The unit consists of 8 CHINS Specialists, including 1 supervisor, who are located throughout the state, all being employed through the RSR Human Service Zone. In the first 4 months of the existence of the CHINS unit, more than 900 referrals have been directed to this unit. CHINS Specialists reach out to families to offer support & information, with the guiding principles being to engage, educate and empower parents & caregivers. Education of community partners on the changes in law, as well as developing and fine-tuning policy and practice are ongoing. The CHINS Specialists also serve as the Dual Status Youth Liaisons for juveniles who have both child welfare and Juvenile Court involvement.

Other items of benefit to youth & families in this bill include:

1. Allowing for the appointment of legal counsel to represent youth in Juvenile Court, and additionally not requiring reimbursement of those costs by the parent/caregiver. These costs can be a significant financial burden for families who are already facing challenges.
2. Allowing for restriction of a juvenile's driving privileges rather than being required to pay a fine for driving-related offenses.
3. Allowing for a stipulation to accept a written declaration or affidavit of Qualified Expert Witnesses for cases in which the Indian Child Welfare Act applies. We recognize that limited tribal resources impact the availability of Qualified Expert Witnesses at times. This flexibility provides Qualified Expert Witnesses options

to provide their critical input to the court and will allow for juvenile court matters to continue to proceed in a timely manner.

4. Allowing for delinquency adjudication to occur in the child's county of residence, if deemed in the child's best interest. This promotes increased consistency and efficiency in the juvenile court process. Adjudication and disposition may occur without the delays of transferring from one jurisdiction to another.
5. Directing youth who commit an infraction or misdemeanor on school property away from the Juvenile Court process. This bill also provides clarification on when, or what types of offenses occurring on school property should proceed to the Juvenile Court.
6. Utilizing certified shelter care settings and other less restrictive placement options for delinquent youth rather than detention facilities, unless there are concerns for public safety.

These updates reflect North Dakota's commitment to treating our youth with fairness and accountability, while recognizing they are still growing and developing physically, socially and emotionally.

Thank you for consideration of my testimony in support of House Bill 1137. Does the committee have any questions for me?

**HOUSE JUDICIARY COMMITTEE
REPRESENTATIVE LAWRENCE KLEMIN, CHAIR
JANUARY 18, 2023**

**LISA BJERGAARD, CHAIR, COMMISSION ON JUVENILE JUSTICE
PRESENTING TESTIMONY IN SUPPORT OF HOUSE BILL 1137**

Chair Klemin and members of the Judiciary Committee, my name is Lisa Bjergaard, and I am the Chairperson for the Commission on Juvenile Justice. I am also the Director of the Division of Juvenile Services, Department of Corrections and Rehabilitation. I am here to testify in support of House Bill 1137, relating to juvenile court procedures.

The bill we are presenting today marks another chapter in the process of juvenile justice reform than began in 2015. We expect the effort will continue at least one more biennium, with completion in 2025. We have organized our presentation today into two parts. The first part will provide you with a brief historical review of the process of juvenile justice reform thus far and provide a high-level overview of what is included in this bill. The second part will provide a detailed, line by line review of the proposed bill.

2015 marked an important milestone in juvenile justice reform. It was the year the Council of State Government's Justice Center (CSG) convened a 50-state forum to present the results of national juvenile justice research which had been completed in 2014. Researchers had carefully matched data from 10's of thousands of juvenile justice cases and had identified 8 core principles for

reducing recidivism and improving outcomes for youth involved in juvenile justice systems. Teams of practitioners and judicial leaders from every state attended, and CSG encouraged states who had not yet begun to implement the research-based findings.

North Dakota's Uniform Juvenile Court Act had not undergone any significant overhaul since it was enacted in the late 1960's. After attending the 50-state forum, juvenile justice reform in North Dakota began in earnest. Key points in the process occurred as the process began, with a 2016 letter of intent signed by leaders from all three branches of government, a study resolution proposed by Chief Justice VandeWalle in 2017, the legislative creation of the Commission on Juvenile Justice in 2019, the engagement of the CSG Justice Center in 2019 to serve as a consultant for an interim study during the 2019-2020 interim, the preparation of a detailed new Juvenile Court Act, and the passage of HB1035 in 2021.

HB1035 was 117 pages long. It was not 117 pages of new law, in fact the first 28 pages were cross references. Still, it was a comprehensive and somewhat complicated piece of legislation. The Council of State Governments Justice Center provided specific recommendations for practices supported by research evidence, and those recommendations formed the foundation for the reforms. In general terms, the newly created chapters separated the various juvenile court case types into their own chapters. The issue of guardian ship had been addressed in the 2019 legislative session and had been numbered Chapter 27-

20.1. Therefore, the new chapters began with the title, Chapter 27-20.2. Chapter 27-20.2 is the new Juvenile Court Act. This Chapter defines the jurisdiction, powers and duties, and practice of the juvenile court.

Chapter 27-2.3 covers two case types that fall under the heading of Child Welfare. This chapter defines how the court will proceed for children who are in need of protection, formerly identified as deprived children. The acronym “CHIPS” is used to describe a ‘child in need of protection. This chapter also defines children who are in need of services, children who were previously defined as unruly. The acronym for this group of children is “CHINS”.

Chapter 27-20.4 describes how the court will proceed in cases of alleged juvenile delinquency.

Definitions were modernized, and a set of definitions was added to each chapter so that practitioners in the courtroom had the relevant definitions at their fingertips. Second, the original statute did not include the presumption of indigence for all youth regardless of a parent’s ability to pay. A key recommendation from CSG was to write a significant update to the section of the Juvenile Court Act that defines the right to counsel. Third, the new statute includes a specific section called “active efforts”, which applies to those children who fall under the jurisdiction of the Indian Child Welfare Act.

Recognizing that a change in statute will change practice, and large changes in practice require careful and planful rollout, there were some delayed

implementation dates for certain sections. The 2021 Legislature also passed HB 1427, which established three committees whose sole responsibility was to carefully consider the service delivery strategies prior to the implementation dates. Those groups reported to the Commission on Juvenile Justice and to the Children's Cabinet during the 21-22 interim.

As the committees finished their work, the Commission on Juvenile Justice convened a work group tasked with compiling edits and incorporating suggestions from practitioners and the committees. That work became the bill we have before us today, HB1137. I am here to introduce a bill that corrects, clarifies, and strengthens policy in a couple of areas.

HB1137 contains 39 sections. Most of those sections consist of corrected references omitted in error last session during the development of the new juvenile court act or language kept in the Century Code for the transition period of the three delayed portions of last session's House Bill 1035 that will no longer be needed. There are four more substantive amendments, and we will walk through those in detail as we move through the detailed review. This bill further improves the juvenile justice practices in North Dakota.

Improved practices will translate into better outcomes for North Dakota youth and their families. I support a "do pass" recommendation for HB1137.

HB 1137
68th Legislative Assembly
House Judiciary Committee
January 18, 2023
Testimony of Travis W. Finck, Executive Director NDCLCI in Support

Chairman Klemin, Vice Chair Karls, members of the House Judiciary Committee, I rise today on behalf of the Commission on Legal Counsel for Indigents in support of HB 1137. The Commission on Legal Counsel is the state agency responsible for the provision of legal services for individuals when there is a constitutional, statutory or rule based right to counsel.

HB 1137 makes some amendments to the new juvenile court act. While I will focus specifically on Section 9, let me state the Commission supports all the proposed changes in HB 1137. It has been an absolute privilege to work on the drafting of this bill last session and the amendments. It was truly an example of what can happen when people from all three branches of government collaborate with technical guidance from experts.

Section 9 of HB 1137 deals with the right to counsel within the juvenile court act. On Page 9, line 26 the right of a child to have counsel is removed for a child in need of services cases. ON Page 10, line 16 the right of a parent, legal guardian or custodian is removed for a child in need of services case. This is a direct result of the child in need of services cases being moved to the human service zones and away from the Court.

The remaining changes to the right to counsel section involve Section 3 of 27-20.2-12. The amendment would be to change the shall on pg 10, line 3 to a may and then cleans up the language regarding findings. These reimbursements, when ordered, go to the general fund, and do not come back to the Commission. As some background on this section, this section was added to the Juvenile Court Act last session over concerns the Commission would be providing services to non-indigent families who would be able to hire a private attorney if we no longer require a finding of indigency. Additionally, the legislature required me to report during the interim to legislative management the breakdown of indigent v. non-indigent and the amount of attorney fees ordered to be reimbursed and those collected. On June 30, 2022, I did submit that report. It was determined based upon numbers provided by the Court to the Commission, a finding was made in only 275 cases. Of those 275 cases, 254 were determined to be indigent. Thus, approximate 92.4 percent of the cases where a finding was made was indigent families. In the report provided to legislative management, a total of \$581 in

attorney fees was ordered to be reimbursed against families who would be declared indigent. \$1,614 in attorney fees was ordered in against the 21 non-indigent children. This resulted in a total assessment of \$2,195, of which at the time of the report only \$200 had been collected.

The most troubling thing within the numbers is the \$581 in attorney fees ordered against indigent families. Under the old uniform juvenile court act and policies of the commission, no reimbursement for attorney fees was ordered for representation provided on behalf of an indigent child. The juvenile court act provided this option to courts and this bill will fix those problems.

Lastly, it is important to remember since the 1967 case of In Re Gault Juveniles have enjoyed the right to counsel when alleged to have committed a juvenile act. The Commission steadfastly continues to provide this service. HB 1137 does not affect the constitutional right to counsel. The intent is by removing shall and replacing it with a may, judicial offers will only assess fees when absolute appropriate against families that would otherwise be found to be ineligible for services. The Commission therefore respectfully requests the bill receive a do pass recommendation from the committee. A Do Pass recommendation is furthering the intent of Gault and enables the Commission to continue to be the agency supporting the defense of liberty.

Respectfully Submitted:



Travis W. Finck, Executive Director
(701) 845-8632
tfinck@nd.gov

House Bill No. 1137
House Judiciary Committee

Testimony Presented by
Karen Kringlie, Director of Juvenile Court
January 18, 2023

Chairman Klemin and members of the Committee. For the record my name is Karen Kringlie. I am the Director of Juvenile Court for the East Central and Southeast Judicial Districts and a member of the Commission on Juvenile Justice. I have worked in the field of juvenile justice for over 27 years.

I am appearing at Representative Klemin's request to do the bill walk through and cover in more detail the provisions of the bill draft. I am happy to answer any questions you may have about how this bill would change or affect the current activities of the juvenile court.

Most of the 39 sections of House Bill 1137 consist of corrected references omitted in error last session during the development of the new juvenile court act or language kept in the Century Code for the transition period of the three delayed portions of last session's House Bill 1035 that are no longer be needed.

There are four more substantive in nature amendments and I will spend a little more time explaining why the Commission found them necessary and included them in the bill before you today. Those more substantive in nature sections are:

- Section 9 - regarding court ordered parental reimbursement of indigent defense fees;
- Section 11 – regarding release of court records for purposes of the scoring of the detention screening tool;
- Section 29 – a new section clarifying the process for referral of school-based infractions or misdemeanors; and
- Section 36 – regarding the court commitment of a youth to the Division of Juvenile Services.

Please feel free to interrupt me at any time you have a question.

Section One: Corrects a missed reference to the older term “deprivation” in the contributing to the deprivation or delinquency of a child and replaces “deprivation” with “child in need of protection”.

Section Two: Corrects missed references in the juvenile guardianship chapter to the older term “deprivation” and replaces with “child in need of protection”.

Section Three: Corrects missed references in the juvenile guardianship chapter to the older term “deprivation” and replaces with “child in need of protection”.

Section Four: Clarifies that only children, subjects of a juvenile guardianship, who are of “sufficient age and competency to assist counsel” are entitled to counsel. This prevents indigent defense attorneys from appointment to very young or infant clients who are unable to express their wishes or assist their attorney.

Section Five: This is the definition section of Chapter 27-20.2, otherwise known as The Juvenile Court Act. This adds a definition of “certified shelter care”, clarifies that the definition of a delinquent child includes children subject to the interstate compact on juveniles, adds “kinship relative” to the definition of relative, and updates the definition of “shelter care”.

Section Six: Removes an unnecessary reference to “child in need of services” that was kept in to bridge the delayed implementation of the transition of CHINS youth from the courts to the human service zones and corrects at line 20 a mistake in reference as adoption proceedings are not governed under the chapter referenced.

Section Seven: Removes unnecessary references to “child in need of services” from the powers and duties of a juvenile court director that were kept in the code to bridge the delayed implementation of the CHINS process.

Section Eight: Corrects a reference to a DUI fine for children that was left in error last section when House Bill 1035 eliminated DUI fines in formal petition cases. The error was also removing it in the section on informal adjustment. In discussions at the Commission it was agreed to recommend adding the sentence at lines 13-15 which makes clear that the juvenile court can place restrictions on a child’s driving privileges as part of an informal adjustment on a driving-related offense.

Section Nine: Removes the reference to “child in need of services” in the right to counsel since that was left in error last session. A child in need of services case is no longer subject of court proceedings. On Page 10, line 3, changes the “shall require payment” to “may require payment” in regards to parent reimbursement of a child’s constitutional right to counsel.

Section Ten: Adds a sentence indicating that parties can stipulate to the court accepting an affidavit in lieu of testimony from a qualified expert witness in an Indian Child Welfare Act case.

Section Eleven: Adds a new subsection to the statute regarding release of juvenile court records to the staff of a designated juvenile detention center or intake and assessment center for the purpose of performing and scoring the

detention screening tool. This was a recommendation that came out of a 2022 workgroup on alternatives to detention.

Section Twelve:

- Adds a definition of “certified shelter care” in the child in need of protection chapter,
- Updates the definition of “referral” to account for the transition to the zones of the child in need of services category,
- Adds “kinship relative” to the definition of “relative”; and
- Updates the definition of “shelter care”

Section 13: Updates the Venue statute by removing the reference to “child in need of services”.

Section 14: Updates the powers and duties of a juvenile court director in the Child Welfare chapter, 27-20.3. This is required to bridge the delayed implementation of the transition of the child in need of services cases to the zones that occurred by law on August 1, 2022.

Section 15: Deletes the carry-over language at lines 18-19 that bridged the delayed transition of child in need of services cases.

Section 16: Corrects a reference to attendant care that was left in error and updates the line to a “shelter care facility or certified shelter care facility”. Attendant care is a site used for youth accused of a delinquent act which is governed under Chapter 27-20.4, not Chapter 27-20.3.

Section 17: Adds the correct time frame for petition filing when a child is in shelter care. This matches Rule 2 of the North Dakota Rules of Juvenile Procedure.

Section 18: Add “shelter care or certified shelter care” as authorized places of shelter care for a child subject to proceedings under Chapter 27-20.3.

Section 19: Removed transition language that allowed juvenile court director or court offices involvement in the intake of a child placed in shelter during the delayed implementation of the process for child in need of services.

Section 20: Removes a reference to “other public agency authorized by law” that was left in error. All children in need of protection are placed in the custody of the director of the local human service zone.

Section 21: Corrects a reference to the wrong section of code regarding permanency hearings.

Section 22: Adds a sentence allowing parties to stipulate to the court accepting an affidavit in lieu of testimony from a qualified expert witness in an Indian Child Welfare Act case.

Section 23: Removes an unneeded reference to a child in need of services adjudication in the termination of parental rights section and replaces with a reference to delinquency cases that omitted during the splitting apart of the Uniform Juvenile Court Act into distinct chapters by case type. The basis for the reference here to delinquency cases is to cover cases where a child found delinquent is in foster care for more than at least 450 out of the previous 660 nights. This section also eliminates references to “the department” which was left in error since youth the subject of a termination of parental rights cases are in the custody of the human service zone director.

Section 24: New subsection four was added at the request of the Department of Health and Human Services as it was left out of this section in error last session.

Section 25:

- Adds to the definition section of the delinquency chapter the definition of “certified shelter care”,
- includes in the definition of a “delinquent child”, children who are subject to the interstate compact on juveniles,
- clarifies the pick up and hold order definition to include youth who pose a risk to public safety while under community supervision,
- includes “kinship relative” in the definition of relative, and
- updates the definition of “shelter care”.

Section 26: Clarifies the venue statute at the request of the state’s attorneys.

Section 27: Updates the powers and duties of the juvenile court director to clarify that out-of-state runaway referrals subject to the interstate compact on juveniles are subject to the director’s intake and determination of legal proceedings required under the compact.

Section 28: Updates the language to include the term “certified shelter care” or “detention” as a location authorized to hold preadjudicatory delinquent youth who have been taken into custody.

Section 29: Creates a new “Method of making a delinquency referral to juvenile court” statute in order to clarify and address concerns raised by law enforcement about the delayed section of House Bill 1035 regarding diversion of low level school-based offenses. This new section clarifies that certain types of more concerning misdemeanors that occur at schools can be referred to the courts. The list includes all drug-related offenses under Title 19, offenses against a person in chapters 12.1-17, 12.1-31.2, or 14-07.1, sex offense misdemeanors, and any offenses involving firearms, weapons, or dangerous weapons as defined in 62.1-01-01. All other infractions and misdemeanors can be handled by the schools or referred to the courts if school interventions are unsuccessful. The intent of this section is to allow a school to handle low-level school behavior issues without the need to refer such behavior to the juvenile justice system.

Section 30: Clarifies that youth who pose a risk to public safety may be placed in detention both before or after adjudication and at subsection five, deleted “solely”

and added “or” to clarify this subsection that has been difficult to interpret in practice.

Section 31: Language added to clarify that youth who have not reached the age of 18 may not be held in adult jails or correctional facilities. This language is to comply with federal law regarding the secure holding of youth.

Section 32: Adds references to “attendant care” as a possible place that youth charged with a delinquency may be held. At subsection five, clarifies language regarding the process if a parent cannot be found when a child has been taken into custody on a delinquent offense. At subsection nine, adds language to comply with federal law regarding the secure holding of youth.

Section 33: Eliminates the two year delayed school behavior section as this was replaced with the language proposed in Section 29.

Section 34: Corrects a reference to a DUI fine for children that omitted last session when House Bill 1035 eliminated DUI fines in formal petition cases. The error was also removing it in the section on informal adjustment. In discussions at the Commission it was agreed to recommend adding the sentence at lines 13-15 which makes clear that the juvenile court can place restrictions on a child’s driving privileges as part of an informal adjustment on a driving-related offense.

Section 35: Corrects a missed reference to “diversion” as a type of proceeding that does not have to be electronically recorded.

Section 36: Clarifies language having to do with when a court can commit a youth to the Division of Juvenile Services. Eliminates the requirement to exhaust all probation extensions prior to placement with the Division in order to allow the court to commit a child to the Division if that is the treatment or rehabilitation the court deems most appropriate and provides for the safety of the community. Note that despite the elimination in this subsection of a risk and needs assessment, a risk and needs assessment is still required of all youth, prior to a court’s disposition, under 27-20.4-15. This change makes the subsection more straight forward to read and interpret.

Section 37: Eliminates a clerical error at subsection 4 and clarifies language at subsection 8 that has been found to be difficult to interpret in practice.

Section 38: Eliminates an error in reference to child in need of services and child in need of protection in the delinquency chapter.

Section 39: Eliminates an error in reference to child in need of services or child in need of protection in the delinquency chapter.

I will stand for any questions you may have.

CONNECTING CHILDREN TO HELP

Who Do I Contact?

#14249

If a Child is Acting Out

CALL CHILDREN IN NEED OF SERVICES (CHINS) TEAM

CHILD'S BEHAVIORS MAY INCLUDE:

- Truant from school (youth is old enough to get self to and from school)
- Possession/use of tobacco and related products by youth ages 10-13
- Disobeying parents, or
- Running away

REFER TO THE CHILDREN IN NEED OF SERVICES (CHINS) TEAM

1. **Complete** the referral form and learn more.
Visit: www.hhs.nd.gov/cfs/children-need-services
2. **Submit referral form** by **Fax:** 701.328.0104 or **Email:** chins@nd.gov

Staffed Monday-Friday
8 a.m. - 5 p.m. Central Time
(7 a.m.- 4 p.m. Mountain Time)

WHY MAKE A REFERRAL:

- Voluntarily connect children and families to helpful community services
- Divert children/youth from juvenile justice system

LEARN MORE: [NDCC 27-20.3](#)

If a Person is Abusing or Neglecting a Child

CALL CHILD PROTECTION SERVICES (CPS) TEAM

A PERSON RESPONSIBLE FOR A CHILD'S WELFARE IS SUSPECTED OF:

- Abuse, causing physical injury
- Educational neglect, failure to make arrangements and/or provide for a child's education
- Emotional abuse
- Neglect, lack of supervision or care
- Sexual abuse

CONTACT CPS INTAKE TEAM

Call: 833.958.3500 toll-free, 711 (TTY)
Fax: 701.328.0361

Staffed Monday-Friday
8 a.m.- 5 p.m., Central Time
(7 a.m.- 4 p.m. Mountain Time)

LAW ENFORCEMENT OR MEDICAL PERSONNEL:

- If you need a Child Protection Worker to respond to your location immediately, contact your local Human Service Zone office directly.

LEARN MORE: [NDCC 50-25.1](#)

IMPORTANT:
If it's an **EMERGENCY**
and a child is in
immediate danger,
CALL 911 NOW

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1137

Page 1, line 12, delete "and"

Page 1 line 12, after "27-20.4-26" insert "and 27-20.4-27"

Page 43, after line 14, insert:

"SECTION 40. AMENDMENT. Section 27-20.4-27 of the North Dakota Century Code is amended and reenacted as follows:

27-20.4-27. Tribal juvenile services cooperative agreement – Report to legislative management. (Expired effective July 31, 2023)

CC - Section

~~1.~~ The department of corrections and rehabilitation, through the division of juvenile services; the supreme court, through the office of the state court administrator; and the Indian affairs commission may negotiate and enter a memorandum of understanding with the tribal government of a federally recognized Indian tribe in the state for the purpose of accepting and providing for, in accordance with this chapter, the treatment and rehabilitation of tribal juveniles who have been adjudicated in tribal court under tribal or federal laws. Under the ~~pilot~~ program and terms of a memorandum of understanding:

*CC - Subdivision
Subsection*

~~a. 1.~~ The tribal government, the department of corrections and rehabilitation, and the juvenile court may exchange information relevant to the treatment and rehabilitation needs of a tribal juvenile and the juvenile's family, including tribal court orders, medical and psychiatric reports, law enforcement reports, and other information pertinent to the referral;

~~b. 2.~~ The juvenile court and the department of corrections and rehabilitation shall provide services based on the individualized need of each tribal juvenile referred to and accepted by the tribal court, juvenile court, and department of corrections and rehabilitation;

~~c. 3.~~ The juvenile court and the department of corrections and rehabilitation shall maintain regular contact with the tribe regarding each tribal juvenile who has been placed in the supervision of the respective agency; and

~~d. 4.~~ The juvenile court and the department of corrections and rehabilitation may limit the number of tribal juveniles accepted based on criteria developed by the juvenile court and the availability of state resources and services.

~~2. — Before July first of each even numbered year, the department of corrections and rehabilitation, the juvenile court, and the Indian affairs commission shall report and make recommendations to the legislative management on the status, effectiveness, performance, and sustainability of a memorandum of understanding established under this section."~~

**SENATE JUDICIARY COMMITTEE
SENATOR DIANE LARSON, CHAIR
MARCH 07, 2023**

**LISA BJERGAARD, CHAIR, COMMISSION ON JUVENILE JUSTICE
PRESENTING TESTIMONY IN SUPPORT OF HOUSE BILL 1137**

Chair Larson and members of the Judiciary Committee, my name is Lisa Bjergaard, and I am the Chairperson for the Commission on Juvenile Justice. I am also the Director of the Division of Juvenile Services, Department of Corrections and Rehabilitation. I am here to testify in support of House Bill 1137, relating to juvenile court procedures.

The bill we are presenting today marks another chapter in the process of juvenile justice reform than began in 2015. We expect the effort will continue at least one more biennium, with completion in 2025. We have organized our presentation today into two parts. The first part will provide you with a brief historical review of the process of juvenile justice reform thus far and a high-level overview of what is included in this bill. The second part will provide a detailed, line by line review of the proposed bill.

2015 marked an important milestone in juvenile justice reform. It was the year the Council of State Government's Justice Center (CSG) convened a 50-state forum to present the results of national juvenile justice research, which had been completed in 2014. Researchers had carefully matched data from 10's of thousands of juvenile justice cases and had identified 8 core principles for

reducing recidivism and improving outcomes for youth involved in juvenile justice systems. Teams of practitioners and judicial leaders from every state attended, and CSG encouraged states who had not yet begun to implement the research-based findings.

North Dakota's Uniform Juvenile Court Act had not undergone any significant overhaul since it was enacted in the late 1960's. After attending the 50-state forum, juvenile justice reform in North Dakota began in earnest. Key points in the process occurred as the process began, with a 2016 letter of intent signed by leaders from all three branches of government, a study resolution proposed by Chief Justice VandeWalle in 2017, the legislative creation of the Commission on Juvenile Justice in 2019, the engagement of the CSG Justice Center in 2019 to serve as a consultant for an interim study during the 2019-2020 interim, the preparation of a detailed new Juvenile Court Act, and the passage of House Bill 1035 in 2021.

House Bill 1035 was 117 pages long. It was not 117 pages of new law; in fact, the first 28 pages were cross references. Still, it was a comprehensive and somewhat complicated piece of legislation. CSG provided specific recommendations for practices supported by research evidence, and those recommendations formed the foundation for the reforms. In general terms, the newly created chapters separated the various juvenile court case types into their own chapters. The issue of guardianship had been addressed in the 2019 legislative session and had been numbered Chapter 27-20.1. Therefore, the new

chapters began with the title, Chapter 27-20.2. Chapter 27-20.2 is the new Juvenile Court Act. This Chapter defines the jurisdiction, powers and duties, and practice of the juvenile court.

Chapter 27-2.3 covers two case types that fall under the heading of Child Welfare. This chapter defines how the court will proceed for children who need protection, formerly identified as deprived children. The acronym “CHIPS” is used to describe a ‘child in need of protection. This chapter also defines children who need services, children who were previously defined as unruly. The acronym for this group of children is “CHINS”.

Chapter 27-20.4 describes how the court will proceed in cases of alleged juvenile delinquency.

Definitions were modernized, and a set of definitions was added to each chapter so that practitioners in the courtroom had the relevant definitions at their fingertips. Second, the original statute did not include the presumption of indigence for all youth regardless of a parent’s ability to pay. A key recommendation from CSG was to write a significant update to the section of the Juvenile Court Act that defines the right to counsel. Third, the new statute includes a specific section called “active efforts”, which applies to those children who fall under the jurisdiction of the Indian Child Welfare Act.

Recognizing that a change in statute will change practice, and large changes in practice require careful and planful rollout, there were some delayed

implementation dates for certain sections. The 2021 Legislature also passed House Bill 1427, which established three committees whose sole responsibility was to carefully consider the service delivery strategies prior to the implementation dates. Those groups reported to the Commission on Juvenile Justice and to the Children's Cabinet during the 21-22 interim.

As the committees finished their work, the Commission on Juvenile Justice convened a work group tasked with compiling edits and incorporating suggestions from practitioners and the committees. That work became the bill we have before us today, House Bill 1137. I am here to introduce a bill that corrects, clarifies, and strengthens policy in a couple of areas.

House Bill 1137 contains 39 sections. Most of those sections consist of corrected references omitted in error last session during the development of the new juvenile court act or language kept in the Century Code for the transition period of the three delayed portions of last session's House Bill 1035 that will no longer be needed. There are four more substantive amendments, and we will walk through those in detail as we move through the detailed review. This bill further improves the juvenile justice practices in North Dakota.

Improved practices will translate into better outcomes for North Dakota youth and their families. I support a "do pass" recommendation for House Bill 1137.

PROPOSED AMENDMENT TO ENGROSSED HOUSE BILL NO. 1137

Page 27, line 21, overstrike “27-20.3-03.1” and insert immediately thereafter “27-20.3-20”

Page 27, line 29, overstrike “27-20.3-09” and insert immediately thereafter “27-20.3-24”

HB 1137
68th Legislative Assembly
Senate Judiciary Committee
March 7, 2023
Testimony of Travis W. Finck, Executive Director NDCLCI in Support

Madam Chair Larson, members of the Senate Judiciary Committee, I rise today on behalf of the Commission on Legal Counsel for Indigents in support of HB 1137. The Commission on Legal Counsel is the state agency responsible for the provision of legal services for individuals when there is a constitutional, statutory or rule based right to counsel.

HB 1137 makes some amendments to the new juvenile court act. While I will focus specifically on Section 9, let me state the Commission supports all the proposed changes in HB 1137. It has been an absolute privilege to work on the drafting of this bill last session and the amendments. It was truly an example of what can happen when people from all three branches of government collaborate with technical guidance from experts.

Section 9 of HB 1137 deals with the right to counsel within the juvenile court act. On Page 9, line 26 the right of a child to have counsel is removed for a child in need of services cases. ON Page 10, line 16 the right of a parent, legal guardian or custodian is removed for a child in need of services case. This is a direct result of the child in need of services cases being moved to the human service zones and away from the Court.

The remaining changes to the right to counsel section involve Section 3 of 27-20.2-12. The amendment would be to change the shall on pg 10, line 3 to a may and then cleans up the language regarding findings. These reimbursements, when ordered, go to the general fund, and do not come back to the Commission. As some background on this section, this section was added to the Juvenile Court Act last session over concerns the Commission would be providing services to non-indigent families who would be able to hire a private attorney if we no longer require a finding of indigency. Additionally, the legislature required me to report during the interim to legislative management the breakdown of indigent v. non-indigent and the amount of attorney fees ordered to be reimbursed and those collected. On June 30, 2022, I did submit that report. It was determined based upon numbers provided by the Court to the Commission, a finding was made in only 275 cases. Of those 275 cases, 254 were determined to be indigent. Thus, approximate 92.4 percent of the cases where a finding was made was indigent families. In the report provided to legislative management, a total of \$581 in

attorney fees was ordered to be reimbursed against families who would be declared indigent. \$1,614 in attorney fees was ordered in against the 21 non-indigent children. This resulted in a total assessment of \$2,195, of which at the time of the report only \$200 had been collected.

The most troubling thing within the numbers is the \$581 in attorney fees ordered against indigent families. Under the old uniform juvenile court act and policies of the commission, no reimbursement for attorney fees was ordered for representation provided on behalf of an indigent child. The juvenile court act provided this option to courts and this bill will fix those problems.

Lastly, it is important to remember since the 1967 case of In Re Gault Juveniles have enjoyed the right to counsel when alleged to have committed a juvenile act. The Commission steadfastly continues to provide this service. HB 1137 does not affect the constitutional right to counsel. The intent is by removing shall and replacing it with a may, judicial offers will only assess fees when absolute appropriate against families that would otherwise be found to be ineligible for services. The Commission therefore respectfully requests the bill receive a do pass recommendation from the committee. A Do Pass recommendation is furthering the intent of Gault and enables the Commission to continue to be the agency supporting the defense of liberty.

Respectfully Submitted:



Travis W. Finck, Executive Director
(701) 845-8632
tfinck@nd.gov

HB 1035
Report on First Fiscal Year Expenditures and Collections
Legislative Management
June 30, 2022
Prepared by Travis W. Finck, Executive Director, NDCLCI

Good morning, Mr. Chairman, it is my honor and privilege to submit the following report in accordance with the demands of HB 1035. Below you will find the information as requested by the legislative assembly.

1. Actual costs incurred to date and expected costs to be incurred for the 2021-23 biennium to provide legal counsel and related services to indigent juveniles:

The North Dakota Commission on Legal Counsel for Indigents does not have the ability to track which parties are indigent. The Court, under HB 1035, is required to make the finding of indigency. The finding of indigency is not reported back to the Commission, so we have no way of tracking such data. However, we can provide the total amount expended on contract services to provide counsel.

As of the end of May 2022, the Commission had spent \$511,505.15 in contract services, operating fees and services and travel related to juvenile court matters. This number would not include time spent on juvenile cases by full time public defenders within our public defender offices.

It is expected the Commission will expend \$1,116,011.24 for the entire biennium assuming case numbers remain consistent across the state. Again, this number would exclude time spent by full time public defenders within our public defender offices. (See Attachment 1).

The only way to attempt to ascertain the difference in costs spent on indigent v. non-indigent is take court data over the first 11 months of the fiscal year and apply to the costs. The Court has provided information, contained herein as attachment 2, of a breakdown of indigen v. non-indigent findings in juvenile delinquency cases in North Dakota. (It is important to note some of the costs provided herein also relate to Child in Need of Service and Child in Need of Protection/Termination cases). However, a parent must be determined to be indigent to receive services in those cases and a child must be of sufficient competent age to assist counsel to have counsel appointed).

Examining the data provided by the court, only 7.6 % of the cases where a finding was made by the Court were found to be non-indigent families (parents or child is not delineated). Therefore, 92.4% of the services provided, in cases in which the finding was made, were provided to indigent families. Using that number applied to the total incurred and expected costs: \$472,630.76 has been spent on indigent representation through May and \$1,031,194.53 will be spent on indigent representation for the biennium.

2. Actual costs incurred to date and expected costs to be incurred for the 2021-23 biennium to provide legal counsel and related services to nonindigent juveniles:

Please reference section 1 for explanation of the statistical inaccuracies of separating indigent and non-indigent juvenile representation. However, using the same assumptions as section 1: \$38,874.39 has been spent on non-indigent representation and it is expected \$84,816.85 will be spent for the biennium.

3. Any amounts collected from those financially able to pay all or part of the cost of providing legal counsel and related services for juveniles:

The North Dakota Commission on Legal Counsel for Indigents does not collect fees related to juvenile representation or any other fee. The fee ordered in 1035 is collected by the Court and deposited into the general fund. According to data received from the State Court Administrator's Office, a total of \$2,195 has been ordered by Judges across the state. Of the \$2,195 ordered, \$1,614 was ordered in non-indigent cases and \$581 ordered in Indigent cases. (See Attachment 2). As of the date of receiving the data, courts had collected only \$400 in payments.



Travis W. Finck, Executive Director
North Dakota Commission on Legal Counsel for Indigents
(701) 845-8632
tfinck@nd.gov

ATTACHMENT 2: COURT ORDERED FEES AND COLLECTIONS

Delinquent cases filed since 7/1/2021

Total Cases	772
Pending	119
No Petition	70
Dismissed	122
Cases with no indigent finding	186
Cases with finding	275

		Amount Ordered	Payments
Indigent	254	581	
Non-Indigent	21	1,614	200
Total	275	2,195	200

Testimony Prepared for the
Senate Judiciary Committee
March 7, 2023
By: Lynn Flieth, RSR Human Service Zone Director

RE: HB 1137 – Relating to inspection of court files and records, and delinquency referrals to juvenile court

Chair Larson, and members of the Senate Judiciary Committee, my name is Lynn Flieth. I am the Director for the RSR Human Service Zone, which includes the counties of Ransom, Sargent and Richland. I am here today to provide testimony in support of Engrossed HB 1137.

Human Service Zones, the Division of Juvenile Services and Tribal child welfare agencies serve as legal custodians when care/custody/control of children is removed from their parents or legal caregivers. Additionally, beginning in July of 2022, the RSR Human Service Zone became the employing entity for the statewide CHINS (Children In Need of Services) Unit.

During the 2021 Legislative Session, this body began the important work of enhancing how juveniles displaying delinquent and ungovernable or “unruly” behavior are treated in the state of North Dakota. Those changes, based in research and an understanding of adolescent development, have shifted practice and, at times, challenged us to find new approaches to best serve our state’s youth. In the last 2 years, many of those initiatives have been put into action. The goals of these efforts include diverting youth away from the adult justice system, identifying service needs earlier and prioritizing developmentally appropriate accountability.

Many of the items in this bill clarify and update language to reflect matters relating to those juvenile justice reforms. The updates in terminology from “deprived child” to “*child in need of protection*”, will align North Dakota Century Code and current child welfare policy and

practices. This bill will also completely remove Children In Need of Service from the jurisdiction of the Juvenile Court, as those referrals are now directed to the Human Service Zones. The Human Service Zone Directors voted in May of 2022, for a single Human Service Zone to become the employing entity for a statewide CHINS Unit to promote efficient administration and consistent implementation of addressing children in need of services referrals. The unit consists of 8 CHINS Specialists, including 1 supervisor, who are located throughout the state, all employed through the RSR Human Service Zone. In the first 6 months of the existence of the CHINS unit, more than 1,000 referrals have been received. CHINS Specialists reach out to families to offer support and information, with the guiding principles being to engage, educate and empower parents and/or caregivers. Education of community partners on the changes in law, as well as developing and fine-tuning policy and practice are ongoing. The CHINS Specialists also serve as the Dual Status Youth Liaisons for juveniles who have both child welfare and Juvenile Court involvement.

Other items of benefit to youth and families in this bill include:

1. Allowing for the appointment of legal counsel to represent youth in Juvenile Court, and additionally not requiring reimbursement of those costs by the parent/caregiver. These costs can be a significant financial burden for families who are already facing many challenges.
2. Allowing for restriction of a juvenile's driving privileges rather than being required to pay a fine for driving-related offenses.
3. Allowing for a stipulation to accept a written declaration or affidavit of Qualified Expert Witnesses for cases in which the Indian Child Welfare Act applies. We recognize that limited tribal resources impact the availability of Qualified Expert Witnesses at times. This flexibility provides Qualified Expert Witnesses options

to provide their critical input to the court and will allow for juvenile court matters to continue to proceed in a timely manner.

4. Allowing for delinquency adjudication to occur in the child's county of residence, if deemed in the child's best interest. This promotes increased consistency and efficiency in the juvenile court process. Adjudication and disposition may occur without the delays of transferring from one jurisdiction to another.
5. Directing youth who commit an infraction or misdemeanor on school property away from the Juvenile Court. This bill also provides clarification on when, or what types of offenses occurring on school property should proceed to the Juvenile Court.
6. Utilizing certified shelter care settings and other less restrictive placement options for delinquent youth rather than detention facilities, unless there are concerns for public safety. Furthermore, the bill allows for the release of juvenile court records to staff in detention or assessment centers, allowing them to complete the detention screening tool to aide in determining the most appropriate setting for the youth.

These updates reflect North Dakota's commitment to treating our youth with fairness and accountability, while recognizing they are still growing and developing physically, socially and emotionally.

Thank you for consideration of my testimony in support of House Bill 1137. Does the committee have any questions for me?

House Bill No. 1137
Senate Judiciary Committee

Testimony Presented by
Karen Kringlie, Director of Juvenile Court
March 7, 2023

Chair Larson and members of the Senate Judiciary Committee. For the record, my name is Karen Kringlie. I am the Director of Juvenile Court for the East Central and Southeast Judicial Districts and a member of the Commission on Juvenile Justice. I have worked in the field of juvenile justice for over 27 years.

I am appearing at Representative Klemin's request to do the bill walk through and cover in more detail the provisions of the bill draft. I am happy to answer any questions you may have about how this bill would change or affect the current activities of the juvenile court.

Most of the 40 sections of Engrossed House Bill 1137 consist of corrected references omitted in error last session during the development of the new juvenile court act or language kept in the Century Code for the transition period of the three delayed portions of last session's House Bill 1035 that are no longer be needed.

There are four more substantive in nature amendments and I will spend a little more time explaining why the Commission found them necessary and included them in the bill before you today. Those substantive in nature sections are:

- **Section 9** - regarding court ordered parental reimbursement of indigent defense fees;
- **Section 11** – regarding release of court records for purposes of the scoring of the detention screening tool;
- **Section 29** – a new section clarifying the process for referral of school-based infractions or misdemeanors; and
- **Section 36** – regarding the court commitment of a youth to the Division of Juvenile Services.

Please feel free to interrupt me at any time you have a question.

Section One: Corrects a missed reference to the older term “deprivation” in the contributing to the deprivation or delinquency of a child and replaces “deprivation” with “child in need of protection”.

Section Two: Corrects missed references in the juvenile guardianship chapter to the older term “deprivation” and replaces with “child in need of protection”.

Section Three: Corrects missed references in the juvenile guardianship chapter to the older term “deprivation” and replaces with “child in need of protection”.

Section Four: Clarifies that only children, subjects of a juvenile guardianship, who are of “sufficient age and competency to assist counsel” are entitled to counsel. This prevents indigent defense attorneys from appointment to very young or infant clients who are unable to express their wishes or assist their attorney.

Section Five: This is the definition section of Chapter 27-20.2, otherwise known as The Juvenile Court Act. This adds a definition of “certified shelter care”, clarifies that the definition of a delinquent child includes children subject to the interstate compact on juveniles, adds “kinship relative” to the definition of relative, and updates the definition of “shelter care”.

Section Six: Removes an unnecessary reference to “child in need of services” that was kept in to bridge the delayed implementation of the transition of CHINS youth from the courts to the human service zones and corrects at line 20 a mistake in reference as adoption proceedings are not governed under the chapter referenced.

Section Seven: Removes unnecessary references to “child in need of services” from the powers and duties of a juvenile court director that were kept in the code to bridge the delayed implementation of the CHINS process.

Section Eight: Corrects a reference to a DUI fine for children left in error last session when House Bill 1035 eliminated DUI fines in formal petition cases. The error was also removing it in the section on informal adjustment. In discussions at the Commission it was agreed to recommend adding the sentence at lines 13-15 which makes clear that the juvenile court can place restrictions on a child’s driving privileges as part of an informal adjustment on a driving-related offense.

Section Nine: Removes the reference to “child in need of services” in the right to counsel since that was left in error last session. A child in need of services case is no longer subject of court proceedings. On Page 10, line 3, changes the “shall require payment” to “may require payment” in regards to parent reimbursement of a child’s constitutional right to counsel.

Section Ten: Adds a sentence indicating that parties can stipulate to the court accepting an affidavit in lieu of testimony from a qualified expert witness in an Indian Child Welfare Act case.

Section Eleven: Adds a new subsection to the statute regarding release of juvenile court records to the staff of a designated juvenile detention center or intake and assessment center for the purpose of performing and scoring the detention screening tool. This was a recommendation that came out of a 2022 workgroup on alternatives to detention.

Section Twelve:

- Adds a definition of “certified shelter care” in the child in need of protection chapter,
- Updates the definition of “referral” to account for the transition to the zones of the child in need of services category,
- Adds “kinship relative” to the definition of “relative”; and
- Updates the definition of “shelter care”

Section 13: Updates the Venue statute by removing the reference to “child in need of services”.

Section 14: Updates the powers and duties of a juvenile court director in the Child Welfare chapter, 27-20.3. This is required to bridge the delayed implementation of the transition of the child in need of services cases to the zones that occurred by law on August 1, 2022.

Section 15: Deletes the carry-over language at lines 18-19 that bridged the delayed transition of child in need of services cases.

Section 16: Corrects a reference to attendant care that was left in error and updates the line to a “shelter care facility or certified shelter care facility”. Attendant care is a site used for youth accused of a delinquent act which is governed under Chapter 27-20.4, not Chapter 27-20.3.

Section 17: Adds the correct time frame for petition filing when a child is in shelter care. This matches Rule 2 of the North Dakota Rules of Juvenile Procedure.

Section 18: Add “shelter care or certified shelter care” as authorized places of shelter care for a child subject to proceedings under Chapter 27-20.3.

Section 19: Removed transition language that allowed juvenile court director or court offices involvement in the intake of a child placed in shelter during the delayed implementation of the process for child in need of services.

Section 20: Removes a reference to “other public agency authorized by law” that was left in error. All children in need of protection are placed in the custody of the director of the local human service zone.

Section 21: Corrects a reference to the wrong section of code regarding permanency hearings.

Section 22: Adds a sentence allowing parties to stipulate to the court accepting an affidavit in lieu of testimony from a qualified expert witness in an Indian Child Welfare Act case.

Section 23: Removes an unneeded reference to a child in need of services adjudication in the termination of parental rights section and replaces with a

reference to delinquency cases that omitted during the splitting apart of the Uniform Juvenile Court Act into distinct chapters by case type. The basis for the reference here to delinquency cases is to cover cases where a child found delinquent is in foster care for more than at least 450 out of the previous 660 nights. This section also eliminates references to “the department” which was left in error since youth the subject of a termination of parental rights cases are in the custody of the human service zone director.

Section 24: New subsection four was added at the request of the Department of Health and Human Services as it was left out of this section in error last session.

Section 25:

- Adds to the definition section of the delinquency chapter the definition of “certified shelter care”,
- includes in the definition of a “delinquent child”, children who are subject to the interstate compact on juveniles,
- clarifies the pick up and hold order definition to include youth who pose a risk to public safety while under community supervision,
- includes “kinship relative” in the definition of relative, and
- updates the definition of “shelter care”.

Section 26: Clarifies the venue statute at the request of the state’s attorneys.

Section 27: Updates the powers and duties of the juvenile court director to clarify that out-of-state runaway referrals subject to the interstate compact on juveniles are subject to the director’s intake and determination of legal proceedings required under the compact.

Section 28: Updates the language to include the term “certified shelter care” or “detention” as a location authorized to hold preadjudicatory delinquent youth who have been taken into custody.

Section 29: Creates a new “Method of making a delinquency referral to juvenile court” statute in order to clarify and address concerns raised by law enforcement about the delayed section of House Bill 1035 regarding diversion of low level school-based offenses. This new section clarifies that certain types of more concerning misdemeanors that occur at schools can be referred to the courts. The list includes all drug-related offenses under Title 19, offenses against a person in chapters 12.1-17, 12.1-31.2, or 14-07.1, sex offense misdemeanors, and any offenses involving firearms, weapons, or dangerous weapons as defined in 62.1-01-01. All other infractions and misdemeanors can be handled by the schools or referred to the courts if school interventions are unsuccessful. The intent of this section is to allow a school to handle low-level school behavior issues without the need to refer such behavior to the juvenile justice system.

Section 30: Clarifies that youth who pose a risk to public safety may be placed in detention both before or after adjudication and at subsection five, deleted “solely” and added “or” to clarify this subsection that has been difficult to interpret in practice.

Section 31: Language added to clarify that youth who have not reached the age of 18 may not be held in adult jails or correctional facilities. This language is to comply with federal law regarding the secure holding of youth.

Section 32: Adds references to “attendant care” as a possible place that youth charged with a delinquency may be held. At subsection five, clarifies language regarding the process if a parent cannot be found when a child has been taken into custody on a delinquent offense. At subsection nine, adds language to comply with federal law regarding the secure holding of youth.

Section 33: Eliminates the two year delayed school behavior section as this was replaced with the language proposed in Section 29.

Section 34: Corrects a reference to a DUI fine for children that omitted last session when House Bill 1035 eliminated DUI fines in formal petition cases. The error was also removing it in the section on informal adjustment. In discussions at the Commission it was agreed to recommend adding the sentence at lines 13-15 which makes clear that the juvenile court can place restrictions on a child’s driving privileges as part of an informal adjustment on a driving-related offense.

Section 35: Corrects a missed reference to “diversion” as a type of proceeding that does not have to be electronically recorded.

Section 36: Clarifies language having to do with when a court can commit a youth to the Division of Juvenile Services. Eliminates the requirement to exhaust all probation extensions prior to placement with the Division in order to allow the court to commit a child to the Division if that is the treatment or rehabilitation the court deems most appropriate and provides for the safety of the community. Note that despite the elimination in this subsection of a risk and needs assessment, a risk and needs assessment is still required of all youth, prior to a court’s disposition, under 27-20.4-15. This change makes the subsection more straight forward to read and interpret.

Section 37: Eliminates a clerical error at subsection 4 and clarifies language at subsection 8 found to be difficult to interpret in practice.

Section 38: Eliminates an error in reference to child in need of services and child in need of protection in the delinquency chapter.

Section 39: Eliminates an error in reference to child in need of services or child in need of protection in the delinquency chapter.

Section 40: Removes the expiration date and the requirement of annual reports to legislative management regarding the Tribal Juvenile Services Cooperative Agreement statute that created by the 66th N.D. Legislative Assembly. This has been a successful collaborative effort and all involved would like to continue.

I passed out an amendment for you to consider. This proposed amendment came to the attention of the Court in the last two weeks. This corrects a

reference in the Child Welfare chapter in the statute regarding limitations of time on orders of disposition. This amendment concerns Section 24 of the current bill form at subsection (8). The first corrected reference is request because the subsection currently refers to a statute that does not exist. The second correction is a missed reference to the termination of parental rights statute.

Thank you for the opportunity to testify in support of House Bill 1137. I will stand for any questions you may have.

23.0313.05001
Title.

Prepared by the Legislative Council staff for
Senator Larson
February 24, 2023

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1137

Page 1, line 7, replace the first "subsection" with "subsections 1 and"

Page 19, after line 15, insert:

"SECTION 16. AMENDMENT. Subsection 1 of section 27-20.3-06 of the North Dakota Century Code is amended and reenacted as follows:

1. A child alleged to be in need of protection may be taken into protective custody:
 - a. Pursuant to an order of the court under this chapter;
 - b. By a law enforcement officer or designee if there are reasonable grounds to believe the child:
 - (1) ~~The child is~~ suffering from illness or injury or is in immediate danger from the child's surroundings, and the child's removal is necessary; ~~or~~
 - (2) ~~The child has~~ is in violation of a city or county curfew; or
 - (3) Has run away from the child's parents, guardian, or other custodian; or
 - c. By order of the director made pursuant to section 27-20.3-04."

Renumber accordingly