

**HOUSE JUDICIARY COMMITTEE
SENATOR DIANE LARSON, CHAIR
MARCH 23, 2021**

**NORTH DAKOTA DEPARTMENT OF CORRECTIONS AND REHABILITATION
LISA BJERGAARD, DIRECTOR, DIVISION OF JUVENILE SERVICES
PRESENTING TESTIMONY IN SUPPORT OF HOUSE BILL 1035**

Chair Larson and members of the Judiciary Committee, my name is Lisa Bjergaard, and I am the Director of the Division of Juvenile Services for the North Dakota Department of Corrections and Rehabilitation. I am here to testify on behalf of the department in support of House Bill 1035, which will create and enact chapters 27-20.2, 27-20.3, and 27-20.4 of the North Dakota Century Code, relating to the Juvenile Court Act; to amend and reenact subsection 16 of section 11-16-01, section 12.1-32-15, subsections 1 and 3 of section 12.1-41-12, subsection 2 of section 14-02.1-03.1, subsection 2 of section 14-02.1-08, subdivision c of subsection 2 of section 14-07.1-18, section 14-15-11, subsections 1 and 2 of section 15.1-09-33.4, sections 15.1-19-15, 20.1-13.1-01, 20.1-15-01, 26.1-36-20, and 26.1-40-11.1, subsection 2 of section 27-05-30, section 27-20.1-01, paragraph 4 of subdivision n of subsection 2 of section 27-20.1-06, subsection 1 of section 27-20.1-10, subdivision d of subsection 1 of section 27-20.1-11, subsection 3 of section 27-20.1-11, subsection 2 of section 27-20.1-17, section 27-20.1-22, subsections 2 and 3 of section 27-21-02, subsection 3 of section 27-21-02.1, section 27-21-09, subsections 2 and 5 of section 27-21-12, section 30.1-27-02, subsection 3 of section 30.1-27-06, section

39-06-32.1, subsection 2 of section 39-20-01, section 39-24.1-01, subsection 5 of section 50-06-05.1, subdivision a of subsection 4 of section 50-06-43.2, subsection 1 of section 50-11.3-01, subsection 4 of section 50-25.1-15, subsection 2 of section 54-12-34, and sections 54-23.4-17 and 62.1-02-01 of the North Dakota Century Code, relating to juvenile justice; to repeal chapter 27-20 and section 27-21-03 of the North Dakota Century Code, relating to the Uniform Juvenile Court Act; and to provide a penalty.

I am here to introduce you today to the new Juvenile Court Act. This bill followed a lengthy pathway to arrive here today. Those of us who work in juvenile justice made efforts for the past several years to tackle some of the intractable issues, but progress has been spotty and slow. You will hear more about some of those efforts as we move through testimony this morning. One positive result of that work was the 2019 creation of the Commission on Juvenile Justice.

The commission is directed to review N.D.C.C. 27-20, the Uniform Juvenile Court Act; gather information concerning issues of child welfare, including education, abuse and neglect; receive reports and testimony from individuals, state and local agencies, community based organizations, and other public and private organizations, in furtherance of the commission's duties; advise effective intervention, resources and services for children; and submit a report to the governor and the legislative management findings and recommendations which may include a legislative strategy to implement recommendations.

I was appointed to serve as the chair of the first two-year convening of the commission. Because of the state's previous work with the Council of State Governments Justice Center (CSG), the Vera Institute of Justice, and the RFK National Center for Juvenile Justice, there was a widespread general awareness and considerable consensus amongst practitioners, agencies and the juvenile courts of the challenges faced by the child welfare and juvenile justice systems across the state. There was also an awareness of the complex nature of this work, and thus an awareness that steps forward needed to be carefully guided and well organized.

Representative Klemin served as the chair of the 66th legislative interim judiciary committee, was appointed as a member of the commission, and also served on the children's cabinet. The interim judiciary committee had before it a study resolution to continue an examination of the juvenile justice system. Representative Klemin felt strongly that the interim committee would want to present a meaningful piece of legislation. This created the possibility for working together. We tentatively planned that the juvenile justice commission would support the interim committee in their effort to provide meaningful improvement to the juvenile justice sections of century code.

As a starting point, we thought it would be most appropriate to secure the guidance of an expert consultant who could provide us with a preliminary assessment of North Dakota's juvenile justice system. Representative Klemin approached the North Dakota Juvenile Justice State Advisory Group (NDSAG),

who approved funding a request for proposals in order to secure a qualified consultant. The Council of State Governments Justice Center submitted the successful proposal and began their work late in 2019.

Building on their previous work in North Dakota and armed with more than a decade of juvenile justice research, the CSG consultants conducted a review of current N.D.C.C. 27-20. They issued an instructive memo on June 1, 2020, which outlined a number of key challenges as well as ten specific findings related to statute and 27 recommendations for system improvements.

The Commission on Juvenile Justice approved the formation of a workgroup to tackle writing the improvements to the statute. Members of the workgroup included practitioners as well as legislators who were members of the commission and members of the interim judiciary committee. Practitioner roles represented on the workgroup included child welfare, juvenile court, indigent defense, state's attorneys, juvenile corrections, and the state juvenile justice specialist. Following the final drafting of the bill, several groups and agencies reviewed the bill and offered considerable feedback resulting in a number of amendments to the bill that are also offered for your consideration.

Now turning to the bill itself, HB 1035 is mostly reorganizational, and provides updated language and terms, inserts definitions and includes pages of required cross-references. To be clear, the bill is not 117 pages of new law; in fact, the first 28 pages consist of cross references.

Chapter 27-20 defines and outlines court process and procedure for three types of children's cases: deprived children, unruly children, and delinquent children. Current statute includes responses to each of these case types within the single chapter. Recommendation #1 in the CSG assessment was to establish a stand-alone juvenile justice statute that is separate from child welfare and the criminal code. Practitioners have long recognized the complexities of having all case types in one chapter, and so the first task tackled was to reorganize 27-20 into discrete sections. This bill creates 27-20.2, which follows the guardianship statute (27-20.1), which is a Juvenile Court Act. Then, 27-20.3 is redefines deprived and unruly children as "children in need of services" and describes how the court is to proceed in those cases. 27-20.4 is now the delinquency chapter. Since all the chapters require definitions, some of the length of the bill comes from adding sets of definitions to each of these chapters.

Also, the chapters include updated definitions for commonly used terms and practices that simply weren't part of the vernacular in the late 1960's when the Uniform Juvenile Court Act was adopted in North Dakota. As an example, even though we have used a program called "attendant care" as an alternative for detention for more than 30 years, the statute has not been updated for more than 40 years, so the term "attendant care" is not defined. The exercise of defining, re-defining, and pulling apart the different case types is expected to prove invaluable to all practitioners who work in and around juvenile court; from court personnel to zone workers, probation officers, staff from the division of juvenile services, attorneys, law enforcement and schools. There are changes that will

impact other practices in the bill as well. The following changes impact primarily those children who are found to be “children in need of services”:

First, Chapter 27-20.3 redefines deprived and unruly children as children in need of services and refers the response to these children to the service providers, the Human Service Zones. Based on research and recommended best practice, this new designation eliminates the need for law enforcement to cite these youth and refer them juvenile court, and instead bypasses those delays by steering these children and their families directly to services and service coordination via the Human Service Zones. The goal is to get children and their families connected to services as soon as they are identified, without the requirement of court involvement.

Recognizing that a change in statute will change practice, and large changes in practice require careful and planful rollout, there are some delayed implementation amendments included in some of the sections, for your consideration. This is one of the recommended changes in statute that has a delay in implementation. Furthermore, you will hear a companion bill, HB 1427, which establishes three committees whose sole responsibility will be to carefully consider the service delivery strategies and potential service needs for this group. A strategy for supporting this implementation work has been created, and will continue for the next three years.

Second, current statute does not include the presumption of indigence for all youth regardless of a parent’s ability to pay. A key recommendation included in

the preliminary CSG assessment and included in the bill draft is a significant update to the section of the Juvenile Court Act that defines the right to counsel.

Third, a recommendation for best practice suggested that school-led, community-based interventions for low level disruptive behaviors and truancy in schools should be developed. The workgroup determined that the best approach to this recommendation would be to build the structure for this practice into the statute, but then create a delayed implementation mechanism so that adequate time and attention could be paid to creating appropriate processes for this change in practice. It is important to understand that this section does not apply to serious delinquent acts committed on school property.

Fourth, the bill draft adds a specific section called “active efforts”, which applies to those children who fall under the jurisdiction of the Indian Child Welfare Act. This is the one addition in the entire bill draft that is not based specifically on a recommendation from the CSG. The Indian Child Welfare Act is federal law, and practitioners find themselves having to figure out and cross reference between state statute and federal statute to apply the Act correctly. Including the relevant language directly into the juvenile court act will assist all practitioners and court staff to correctly apply the federal protections to Indian children.

These four areas mark the key proposed changes in chapters 27-20.2 and 27-20.3. There are also some changes in chapter 27-20.4. The bill refines the terms of detention and removes the use of detention to prevent self-harm and

clarifies the purposes of detention. Overall, the chapter adds many existing evidence-based practices into statute and puts timelines around the terms of probation and limits the length of dispositional orders. The substantive changes made to the delinquency chapter are few. The goals of this chapter are to preserve public safety and do so expediently, focusing on using deep end and high cost resources for the most high risk youth.

This concludes the overview of the scope and substance of HB 1035. As this work impacts many systems that work with children many settings, you can imagine that it has drawn significant curiosity, significant support, and occasional criticism. After all, the bill attempts to modernize a chapter of statute that has not been substantially altered in more than 40 years. The bill more clearly organizes statute, provides needed updates to definitions and language, but most importantly provides the legal structure that supports improved practices. Improved practices will translate into better outcomes for North Dakota youth and their families. I support a “do pass” recommendation for HB1035.

