

## CHAPTER 27-20.4 DELINQUENCY

### 27-20.4-01. Definitions.

1. "Accountability" means that after a child is determined to have committed delinquent behavior, by admission or adjudication, the child is held responsible for the behavior through individualized and structured consequences or sanctions for the loss, damage, or injury suffered and proportionate to the offense.
2. "Arrest" means a taking into custody of a child by law enforcement in the manner authorized by law to answer for the commission of a delinquent offense.
3. "Attendant care" is a nonsecure holdover site for delinquent children who have been picked up by law enforcement and need constant short-term supervision on a preadjudicatory basis or as an alternative to detention.
4. "Certified shelter care" means a nonsecure permanent dwelling operated by an agency certified by the department of health and human services, where employees offer safe shelter, food, and a structured routine, and which is available twenty-four hours a day to a resident in need of emergency placement, not to exceed seven days, unless otherwise approved by the department.
5. "Child" means an individual who is:
  - a. Under the age of eighteen years and is not married; or
  - b. Eighteen years of age or older with respect to a delinquent act committed while under the age of eighteen years and not married, unless an offense is transferred under section 27-20.4-21.
6. "Community-based program" means a nonresidential program.
7. "Custodian" means a person, other than a parent or legal guardian, which stands in loco parentis to the child and a person that has been given legal custody of the child by order of a court.
8. "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.
9. "Delinquent child" means a child who has committed a delinquent act and is in need of treatment or rehabilitation or is a child subject to proceedings arising under the interstate compact on juveniles.
10. "Detention" means a physically secure facility with locked doors. The term does not include shelter care, attendant care, or home confinement.
11. "Director" means the director of juvenile court services.
12. "Dispositional stage" means any proceeding after adjudication for a delinquent offense.
13. "Diversion" means an intervention strategy made by a person with authority which directs the child away from formal court processing to a specifically designed program or activity to hold the child accountable for the actions of the child and prevents further involvement in the formal legal system.
14. "Division" means the division of juvenile services.
15. "Evidence-based" means a program or practice that has had multiple randomized control studies demonstrating the program or practice is effective for a specific population, has been researched, and has been rated as effective by a standardized program evaluation tool.
16. "Facility" means buildings, structures, or systems, including those for essential administration and support, which are used to provide residential treatment for children.
17. "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 individual under chapters 27-20.1 and 30.1-27, and who consents in writing to act as a legal guardian.
18. "Graduated sanctions" means a calibrated system of sanctions designed to ensure that children face timely and consistent consequences that correspond to the

- frequency and nature of a child's noncompliant behaviors, public safety risk, and engagement in supervision and services.
19. "Home" when used in the phrase "to return home" means the abode of the child's parent with whom the child formerly resided.
  20. "Home confinement" means predisposition or post-disposition temporary placement of a child in the child's home, or a surrogate home with the consent of the child's parent, guardian, or custodian for supervision.
  21. "Human service zone" means a county or consolidated group of counties administering human services within a designated area in accordance with an agreement or plan approved by the department of health and human services.
  22. "Incentives" means calibrated system of rewards designed so that children receive immediate and consistent feedback that supports appropriate behavior and follow through with probation conditions.
  23. "Informal adjustment" means a meeting held by the director of juvenile court or designee to resolve a low-level delinquent referral and is an alternative to the filing of a petition for formal court processing.
  24. "Intensive supervision probation program" means a community-based alternative that provides a higher degree of supervision and use of graduated incentives and sanctions over a child, post-adjudication, to ensure public safety and applies to children who are at high risk to reoffend.
  25. "Juvenile court" means the district court of this state.
  26. "Juvenile drug court" means a program established by the supreme court which is a post-petition or post-adjudication program aimed at intervening in substance use disorders through intense supervision and participation in recovery services.
  27. "Pick up and hold order" means an order of the court to take a child into custody based upon an allegation of delinquency or failure to appear for court, or a determination the child poses a risk to public safety while under court-ordered supervision.
  28. "Predisposition assessment" means an investigation, assessment, and written report to the court based on the results of risk and need screening and assessment tools regarding a disposition for a delinquent child.
  29. "Proceeding" means any hearing or informal adjustment conducted before a court.
  30. "Qualified residential treatment program" means a licensed or approved residence providing an out-of-home treatment placement for children including a trauma-informed model.
  31. "Referral" means a written report of alleged delinquent behavior of a child which is received by the director of juvenile court.
  32. "Relative" or "kinship 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.
  33. "Risk factors" means characteristics and behaviors that, when addressed or changed, affect a child's risk for committing delinquent acts.
  34. "Shelter care" means temporary care during which a child needs a safe bed outside the home, in a shelter care site or a certified shelter care site managed by an agency or licensed foster care facility.
  35. "Treatment" means targeting interventions that focus on risk factors, improved mental health, and improved positive youth outcomes.

**27-20.4-02. Jurisdiction.**

Jurisdiction as set forth in section 27-20.2-03 is applicable to this chapter.

### **27-20.4-03. Venue.**

A proceeding under this chapter may be commenced in the county in which the acts constituting the alleged delinquent conduct occurred. If delinquent conduct is alleged in part in one county and in part in another county, the venue is in either of the counties. If it is in the best interest of the child, the case may be commenced in the child's county of residence.

### **27-20.4-04. Powers and duties of 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 director shall:
  - a. Make investigations, reports, and recommendations to the juvenile court.
  - b. Receive and examine complaints, referrals, and charges of delinquency for the purpose of considering the commencement of proceedings under this chapter.
  - c. Make a determination upon intake of runaway referrals subject to the interstate compact on juveniles for purposes of compliance with the compact.
  - d. Supervise and assist a child placed on probation for delinquency.
  - e. Make appropriate referrals to other private or public agencies of the community if their assistance appears to be needed or desirable.
  - f. Issue a temporary custody order concerning a child who is referred to the director's supervision or care as a delinquent child. Except as provided by this chapter, a director does not have the powers of a law enforcement officer.
  - g. Take acknowledgments of instruments for the purpose of this chapter.
  - h. Perform all other functions designated by this chapter, under section 27-05-30, or by order of the court, including, if qualified, those of a referee.
  - i. Issue an order to a law enforcement authority to transport a child to and from a specified location.
  - j. Receive and examine requests for review of a child's placement at a qualified residential treatment program under the Family First Prevention Services Act [Pub. L. 115-123; 132 Stat. 64; 42 U.S.C. 675].
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.

### **27-20.4-05. Taking into custody.**

1. A child may be taken into custody:
  - a. Pursuant to a pick up and hold order or other order of the court under this chapter;
  - b. Pursuant to the laws of arrest and as authorized after scoring of the detention screening tool; or
  - c. For preadjudicatory supervision in attendant care, shelter care, certified shelter care, or detention.
2. The taking of a child into custody is not an arrest, except for the purpose of determining the validity of the arrest under the Constitution of North Dakota or the United States Constitution.
3. A law enforcement officer shall transport a child if necessary as determined by the court.

#### **27-20.4-05.1. Method of making a delinquency referral to juvenile court.**

1. A referral alleging a child has committed a delinquent act may be made to the juvenile court by a law enforcement officer who has reasonable grounds and knowledge of the facts alleged and believes such facts are true.
2. If a child is taken into custody on the alleged delinquent act, the law enforcement officer shall send the referral to the juvenile court within twenty-four hours after the time in which the minor is taken into custody under section 27-20.4-05.
3. A child who commits an infraction or misdemeanor offense on school property may not be referred to the juvenile court unless school interventions have been unsuccessful

and documentation is included with the referral indicating which interventions or educational approaches were attempted.

- a. A school is not required to engage in interventions before referring a case for the following misdemeanor offenses:
  - (1) Drug-related offenses under title 19;
  - (2) Offenses against a person under chapter 12.1-17, 12.1-31.2, or 14-07.1;
  - (3) Sex offenses under chapters 12.1-20, 12.1-27.1, 12.1-27.2, and 12.1-29; and
  - (4) Any offense involving a firearm, weapon, or dangerous weapon as defined in section 62.1-01-01.
- b. A law enforcement officer may:
  - (1) Investigate possible delinquent offenses and conduct occurring at a school, including conducting probable cause searches;
  - (2) Consult with school staff about the conduct of a child enrolled in a school;
  - (3) Refer a child to the juvenile court for a delinquent offense occurring on school grounds or on school property as allowed by this section;
  - (4) Transport a child enrolled in a school to a location permitted by law;
  - (5) Take temporary custody of a child in accordance with section 27-20.4-05 or protective custody of a child in accordance with section 27-20.3-06; and
  - (6) Protect the safety of students and the school community.

#### **27-20.4-06. Detention - Nonsecure care of child.**

1. A child taken into custody may not be detained or placed in nonsecure care before the hearing on the petition unless the child's detention or nonsecure 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 if required, or an order for the child's detention or nonsecure care has been made by the court pursuant to this chapter.
2. Law enforcement, juvenile court staff, or division staff shall use a detention screening tool to assure the appropriate use of detention and whether the child is a public safety risk. The juvenile court shall establish the detention screening tool, which must include objective factors to aid in the decision of placement of the child. Law enforcement, court records, and division records must include data on detention screening scores and, if the score does not authorize detention, the explanation for the override resulting in placing the juvenile in detention.
3. The court may place a juvenile in detention only if the court finds releasing the child would pose a risk to public safety and that all less restrictive alternatives have been considered.
4. A juvenile may be placed in a secure detention facility if one or more of the following conditions are met:
  - a. The child is alleged to have committed an offense that if committed by an adult would constitute a felony against person, felony weapon, or felony drug distribution;
  - b. The child has a record of failure to appear in court or there is probable cause to believe that the child will flee the jurisdiction of the court;
  - c. The child has violated the terms of detention release on home confinement or electronic monitoring;
  - d. There is oral or written verification that the child is an alleged delinquent child sought for an offense in another jurisdiction or that the child left a juvenile detention facility without authorization;
  - e. The child is an out-of-state runaway subject to the rules of the interstate commission on juveniles;
  - f. The child meets criteria for secure detention on the detention screening tool; or
  - g. The child meets criteria for an override on the detention screening tool.
5. A child may not be placed in detention:

- a. Due to a lack of supervision alternatives, service options, or more appropriate facilities;
  - b. Due to the community's inability to provide treatment or services;
  - c. Due to a lack of supervision in the home or community;
  - d. In order to allow a parent, guardian, or legal custodian to avoid his or her legal responsibility;
  - e. Due to a risk of the juvenile's self-harm;
  - f. In order to attempt to punish, treat, or rehabilitate the child;
  - g. Due to a request by a victim, law enforcement, or the community; or
  - h. In order to permit more convenient administrative access to the juvenile.
6. Alternatives to secure detention may be utilized to include home confinement, electronic monitoring, and parental or guardian supervision if the court determines there is no unreasonable risk to public safety.
  7. A child placed in detention must have a mental health and trauma screening tool completed by the juvenile detention center or by juvenile court upon entry and provide that information to the juvenile court before release or detention hearing.

**27-20.4-07. 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. Complete the detention screening instrument and use the results in making a release or hold decision. Release options include allowing a child to return home with parental supervision and a promise to appear for court if notified, or release with limited supervision, such as an electronic monitoring device or conditions for home confinement.
  - b. 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 if requested by the court, unless the child's detention is warranted or required under section 27-20.4-05; or
  - c. Bring the child before the court or deliver the child to a detention facility designated by the court or to a medical facility if the child is believed to suffer from a serious physical condition or illness that requires prompt treatment. The person taking the child into custody promptly shall give notice of taking the child into custody, 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 subdivision must conform to the procedures and conditions prescribed by this chapter and rules of court.
2. If a parent, guardian, or other custodian, if requested, fails to bring the child before the court as provided in subsection 1, the court may issue a pick up and hold order directing that the child be taken into custody and brought before the court.
3. If the petition is not filed within five days after the date of the detention hearing, the child must be released from detention.

**27-20.4-08. Place of detention.**

1. A child alleged to be delinquent may be detained only in:
  - a. A licensed foster home or a home approved by the court;
  - b. A facility operated by a licensed child welfare agency; or
  - c. A detention home or center for delinquent children which is under the direction or supervision of the court or other public authority or of a private agency approved by the court or any other suitable place or facility, including a medical facility for the treatment of mental illness, alcoholism, or drug addiction, designated by the court.
2. A child alleged or adjudicated delinquent, who has not reached the age of eighteen, may not be held in an adult jail or correctional facility, adult lockup, or court holding facility.

**27-20.4-09. Release from detention or nonsecure care - Hearing - Conditions of release.**

1. If a child is brought before the court or delivered to a detention, attendant care, or nonsecure care facility designated by the court, the director, the intake officer, or other authorized officer of the court immediately shall make an investigation and release the child unless it appears that the child's detention is warranted or required under section 27-20.4-05.
2. Reasonable notice of the release from detention must be provided to any victim as required by subsection 19 of section 12.1-34-02.
3. If the child is not released, reasonable notice, either oral or written, stating the time, place, and purpose of the detention or shelter care must be given to the child and, if able to be found, to the child's parents, guardian, or other custodian. If the child is not represented by counsel at a proceeding, the court shall inform the child of the right to counsel, regardless of income. Before the commencement of the hearing, the court shall inform the child's parents, legal guardian, or custodian of the right to counsel at public expense at the dispositional stage if the parent, guardian, or custodian applies and is determined to be indigent and of the child's right to remain silent with respect to any allegations of delinquent conduct.
  - a. If the child is not released from detention, a judge or referee shall hold a detention hearing within twenty-four hours after the time the child is placed in detention, excluding weekends or legal holidays, to determine whether there is probable cause to believe the child has committed the delinquent act alleged, and whether the child's detention is required under section 27-20.4-05. In determining whether a child requires detention, the court shall consider the results of the detention screening tool.
  - b. If the child is not released from attendant care or nonsecure care, a judge or referee shall hold a hearing promptly and not later than ninety-six hours after the child is placed in nonsecure care to determine whether there is probable cause to believe the child has committed a delinquent act and whether the child's shelter care is required.
4. 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 is required under section 27-20.4-05.
5. If the parents cannot be found for the detention or nonsecure care hearing and the child does not pose a risk to the community and does not need to be detained, the human service zone is notified and a child in need of protection or shelter care hearing is held.
6. If it appears that any child being held in detention, attendant care, or shelter care nonsecure care may have an intellectual or developmental disability, the court or detention personnel shall refer the child to the department of health and human services for an eligibility determination for intellectual or developmental disabilities program management services and a level of care assessment and the results must be filed with the court upon completion. The department of health and human services shall provide status updates to the court within the time required by the court.
7. If it appears that any child being held in detention or nonsecure care appears to have a serious and persistent mental illness, the detention staff or court intake officer shall request that the court order a diagnostic assessment that includes a recommendation for necessary level of care that must be conducted within forty-eight hours after the court's order. The person conducting the diagnostic assessment shall file the results with the court.
8. If an individual who is or appears to be a child is received at a jail facility or other facility for the detention of adult offenders or individuals charged with a crime, the official in charge of the facility immediately shall inform the court and bring the

individual before the court upon request or deliver the individual to a detention or nonsecure facility designated by the court.

9. If a case is transferred to adult court for criminal prosecution, a child who has not reached the age of eighteen may not be transferred to an adult jail or correctional facility, adult lockup, or court holding facility in accordance with the law governing the detention of persons charged with a crime. A child who has not reached the age of eighteen may continue to be held in a juvenile detention facility during the pendency of the criminal prosecution but only as ordered by the court.

#### **27-20.4-10. Diversion.**

1. Before an informal adjustment is held or a petition is filed, the director of juvenile court or designee may determine that no further action is required or impose conditions in lieu of further proceedings for the conduct and control of the child with a diversion to a community-based program or service.
2. A child referred to the court may be considered for diversion if any of the following criteria are met:
  - a. The referral is for a delinquent act that is not an offense requiring a notification to be sent to the department of transportation;
  - b. The referral is for a delinquent act that has not been previously diverted more than twice by the juvenile court within the last twelve months; or
  - c. The referral is not an offense that could require sex offender registration.

#### **27-20.4-11. Informal adjustment.**

1. Before a petition is filed, the director of juvenile court, or other officer of the court designated by the court, subject to direction of the court may give counsel and advice to the parties and impose conditions for the conduct and control of the child in lieu of further proceedings 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 to the conditions with knowledge that consent is not obligatory.
2. A child referred to the court may be considered for informal adjustment if any of the following criteria are met:
  - a. The child has no prior formal court adjudications for a similar case type within the last twelve months;
  - b. The referral is for a delinquent act and the child has not been previously diverted more than twice by the juvenile court;
  - c. A formal petition was filed but an informal adjustment has been requested by the state's attorney as part of an agreement with defense counsel or was ordered by the court in dismissing a formal petition;
  - d. The referral is a sex offense referral that could require sex offender registration but both the state's attorney and the victim have agreed to an informal adjustment to address the matter; or
  - e. The referral is from the division.
3. Reasonable written notice of the informal adjustment is given by the court to the victim if one is identified on the referral.
4. Upon an admission to the referred offense, the director of juvenile court or designee will conduct a preliminary risk and needs assessment and the results must be made available to the child and family. The results of the risk and needs assessment are used to inform the outcome of the informal adjustment. Individuals conducting the risk and needs screening tool must receive training on the appropriate delivery and use of the tool.
5. An informal agreement may not extend beyond six months from the day the agreement was agreed upon. An extension may be granted by the court for an

additional period not to exceed six months. An extension may not authorize the detention of the child if not otherwise permitted by this chapter. For a driving-related offense, the agreement may include a restriction on the child's driving privileges as allowed under section 27-20.4-19.

6. An incriminating statement made by a child to the juvenile court director or designee giving counsel, advice, or as part of the risk and need screening and assessment process, may not be used against the child over objection in any proceeding.

**27-20.4-12. Petition - Preliminary determination.**

A petition alleging delinquency under this chapter must be reviewed by the director, the court, or other person designated by the director and authorized by the court to determine whether the filing of the petition is in the best interest of the public and the child.

**27-20.4-13. Petition - Who may prepare and file - Review.**

A petition alleging delinquent conduct must be prepared, filed, and served upon the parties by the state's attorney. The juvenile court shall conduct an inquiry into and provide the last known addresses of the parents and guardians of the child in the referral to the state's attorney.

**27-20.4-14. 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 27-20.2-03 and in accordance with the North Dakota Rules of Juvenile Procedure.
2. If the hearing has not been held within the time limit, or any extension of the time limit, required by the North Dakota Rules of Juvenile Procedure, the petition must be dismissed.
3. The state's attorney 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. Except for a diversion under section 27-20.4-10 or an informal adjustment under section 27-20.4-11, the proceedings must be recorded by stenographic notes or by electronic, mechanical, or other appropriate means.
5. The general public must be excluded from all hearings under this chapter. During hearings, only the parties, the parties' counsel, witnesses, victims, and any other persons the court finds have a proper interest in the proceedings may be admitted by the court. The court may temporarily exclude the child or other person from the hearing 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.

**27-20.4-15. Predispositional assessment.**

1. Before the disposition hearing, the court shall direct the director or designee, to conduct a predisposition assessment and to prepare a written report for the court, unless waived by the court.
2. The predisposition assessment must consist of a risk and needs assessment together with any other appropriate screenings.
3. During the pendency of any proceeding the court may order:
  - a. The child to be examined at a suitable place by a physician, psychologist, or certified addiction counselor;
  - b. The child to be 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;
  - c. 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;
- d. An evidence-based risk and needs assessment, mental health screening, or trauma screening; or
  - e. The child to be examined to determine the child's competence or criminal responsibility. If the child is found to lack competency or criminal responsibility the court may:
    - (1) Dismiss the delinquency proceedings against the child and order the release of the child to the child's parent, guardian, or legal custodian upon conditions considered appropriate by the court;
    - (2) Suspend the delinquency proceedings against the child for a period of up to one year and order services be provided to the child as an outpatient or inpatient, by commitment to an institution for persons with intellectual disabilities or mental illness; or
    - (3) Dismiss the delinquency proceedings and direct that child in need of protection proceedings be initiated.

#### **27-20.4-16. Adjudication.**

1. If the court finds by proof beyond a reasonable doubt that the child committed the acts by reason of which the child is alleged to be delinquent, the court shall proceed immediately or at a postponed hearing to hear evidence as to whether the child is in need of treatment or rehabilitation and to make and file findings. In the absence of evidence to the contrary, evidence of the commission of which constitute a felony is sufficient to sustain a finding that the child is in need of treatment or rehabilitation. If the court finds that the child is not in need of treatment or rehabilitation, the court shall dismiss the proceeding and discharge the child from any detention or other restriction previously ordered.
2. After hearing the evidence on the petition, the court shall make and file findings as to whether the child is delinquent and whether the acts ascribed to the child were committed by the child. If the court finds the allegations of delinquent conduct have not been established, the court shall dismiss the petition and order the child discharged from any detention or other restriction previously ordered in the proceeding.
3. In hearings under subsection 1, all evidence helpful in determining the questions presented, including the predisposition assessment and any other oral and written reports, may be received by the court and relied upon to the extent of its probative value even though not otherwise competent in the hearing on the petition. The parties or the counsel of the parties must be afforded an opportunity to examine and controvert written reports so received and to cross-examine individuals making the reports. Sources of confidential information need not be disclosed.
4. On motion of the court or that of a party, the court may continue the hearings under this section for a reasonable period to receive reports and other evidence bearing on the disposition or the need for treatment or rehabilitation. In this event the court shall make an appropriate order for detention of the child or the child's release from detention subject to supervision of the court during the period of the continuance. In scheduling investigations and hearings the court shall give priority to proceedings in which a child is in detention or has otherwise been removed from the child's home before an order of disposition has been made.

#### **27-20.4-17. Disposition of a delinquent child.**

1. If the child is found to be a delinquent child, the court shall make findings and include in the order of disposition any actions or steps necessary to ensure:
  - a. The child receives the treatment or rehabilitation the court deems most appropriate;
  - b. Repairing harm caused to the victim or community; and
  - c. Safety of the community.

2. If the child is found to be a delinquent child, the court may order probation with conditions best suited to the child's individual need for treatment, rehabilitation, and welfare.
3. The court may commit a child to the division of juvenile services, or may order a child over eighteen years of age to serve a term of probation under the supervision of the department of corrections and rehabilitation.
4. The court may:
  - a. Order 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;
  - b. Order the periodic testing for the use of illicit drugs or alcohol; or
  - c. Order the child's participation in a juvenile drug court program.
5. If the delinquent act committed by the child was a sexual offense, the court shall ensure the child is assessed in a timely manner, not to exceed thirty days, with age-appropriate social assessments to determine the appropriate level of required treatment.

**27-20.4-18. Probation of a delinquent child.**

1. A probation order entered by the court must place the child under the supervision of the director, unless the child is over eighteen years of age and the child's risk and needs require supervision by the department of corrections and rehabilitation under subsection 1 of section 27-20.4-15.
2. The conditions of probation must be specifically stated in writing and provided to the child.
3. Probation conditions must relate to the individual child's risk and needs assessment and the adjudicated offense.
4. Violations of probation conditions may be sanctioned by the juvenile director, or designee utilizing graduated sanctions.
5. Formal probation orders may not exceed twelve months from disposition.
6. The court may release a child from probation or modify the terms and conditions of the probation at any time, but the court shall release a child who has complied satisfactorily with the terms, conditions, and duration of probation and the court shall terminate the court's jurisdiction.
7. The director of juvenile court shall establish procedures regarding graduated sanctions and incentives. The graduated sanctions program may include a program of home confinement or electronic monitoring but may not include a secure detention stay.
8. The director or assigned probation court officer may request two extensions up to four months each for failure to comply or meet the treatment goals of the court order and case plan.
9. Probation may not be extended solely to collect restitution. If probation is terminated with restitution owing the victim, court procedure governs continued collection or motion for civil judgment against the parents, if appropriate.

**27-20.4-19. Delinquent children - Suspension of driving privileges.**

1. If a child is adjudicated delinquent of an offense that would be a class A misdemeanor or a felony if the offense were committed by an adult, the juvenile court may order the suspension of the child's driving privileges for a period of up to six months for the first offense. For a second or subsequent offense, the juvenile court may order the suspension of the child's driving privileges for up to one year. As a condition to the return of driving privileges, the juvenile court may order the successful completion of an appropriate driver's examination.
2. If the juvenile court orders the suspension of a child's driving privileges, the juvenile court immediately shall take possession of the child's driver's license or permit and send copies of the court's order to the director of the department of transportation who shall make notation of the child's suspension of driving privileges.

3. The record of the child's suspension of driving privileges under this section must be kept confidential and may not be released except to law enforcement personnel in connection with law enforcement activities. The record of a child's suspension of driving privileges under this section may not be disclosed to or shared with the licensing officials of any other state or jurisdiction. At the end of the six-month or one-year period, the director shall remove and destroy all record of the child's suspension of driving privileges under this section.
4. This section may not be construed to limit consensual agreements between the juvenile court and the child restricting the driving privileges of the child.

**27-20.4-20. Restitution.**

1. In addition to a child being ordered to make restitution under section 27-20.4-16, a parent of a child adjudged delinquent may be ordered to make restitution on the child's behalf in an amount not exceeding five thousand dollars.
2. Before ordering parental restitution under this section, the court shall hold a hearing on the matter with notice given to all interested parties as to the nature and amount of the parental restitution. In determining whether to order parental restitution, the court shall take the following factors into account:
  - a. The ability of the parent or parents to pay monetary restitution and the care and control exercised by the parents.
  - b. The ability of the child to pay monetary restitution.
  - c. Whether ordering parental restitution would detract from the child's treatment, rehabilitation, or welfare.
  - d. The number of delinquent acts, if any, previously committed by the child.
3. A parental order of restitution must be limited to those damages directly related to the delinquent act and expenses actually incurred as a result of the delinquent act.
4. Unless the court directs otherwise, any order of restitution under this section or section 27-20.4-16 may be filed, transcribed, and enforced by the juvenile court or person entitled to the restitution in the same manner as civil judgments rendered by the courts of this state may be enforced. A child against whose parents a judgment may be entered under this section is jointly and severally liable with that child's parents for the amounts up to five thousand dollars and solely liable for any amounts over that amount. Any judgment rendered under this section may not be discharged in bankruptcy and is not subject to the statutes of limitation provided for in chapter 28-01 and the judgment may not be canceled under section 28-20-35.

**27-20.4-21. Transfer to other courts.**

1. After a petition has been filed alleging delinquency based on conduct that is designated a crime or public offense under the laws, including local ordinances or resolutions of this state, the court before hearing the petition on the merits shall transfer the offense for prosecution to the appropriate court having jurisdiction of the offense if:
  - a. The child is over sixteen years of age and requests the transfer;
  - b. The child was fourteen years of age or more at the time of the alleged conduct and the court determines that there is probable cause to believe the child committed the alleged delinquent act and the delinquent act involves the offense of murder or attempted murder; gross sexual imposition or the attempted gross sexual imposition of a victim by force or by threat of imminent death, serious bodily injury, or kidnapping; or
  - c.
    - (1) The child was fourteen or more years of age at the time of the alleged conduct;
    - (2) A hearing on whether the transfer should be made is held in conformity with sections 27-20.2-12, 27-20.2-13, and 27-20.4-14;
    - (3) Notice in writing of the time, place, and purpose of the hearing is given to the child and the child's parents, guardian, or other custodian at least three days before the hearing; and

- (4) The court finds that there are reasonable grounds to believe:
  - (a) The child committed the delinquent act alleged;
  - (b) The child is not amenable to treatment or rehabilitation as a child through available programs;
  - (c) The child is not treatable in an institution for individuals who are intellectually disabled or who are mentally ill;
  - (d) The interests of the community require that the child be placed under legal restraint or discipline; and
  - (e) If the child is fourteen or fifteen years old, the child committed a delinquent act involving the infliction or threat of serious bodily harm.
2. The burden of proving reasonable grounds to believe that a child is amenable to treatment or rehabilitation as a child through available programs is on the child:
  - a. If the alleged delinquent act involves the offense of manslaughter, aggravated assault, robbery, arson involving an inhabited structure, or escape involving the use of a firearm, destructive device, or other dangerous weapon;
  - b. If the alleged delinquent act involves an offense that if committed by an adult would be a felony and the child has two or more previous delinquency adjudications for offenses that would be a felony if committed by an adult; or
  - c. If the child is twenty-five years of age or older.
3. In determining a child's amenability to treatment and rehabilitation, the court shall consider and make specific findings on the following factors:
  - a. Age;
  - b. Mental capacity;
  - c. Maturity;
  - d. Degree of criminal sophistication exhibited;
  - e. Previous record;
  - f. Success or failure of previous attempts to rehabilitate;
  - g. Whether the child can be rehabilitated before expiration of juvenile court jurisdiction;
  - h. Any psychological, probation, or institutional reports;
  - i. The nature and circumstances of the acts for which the transfer is sought;
  - j. The prospect for adequate protection of the public; and
  - k. Any other relevant factors.
4. A child subject to the jurisdiction of the juvenile court, either before or after reaching eighteen years of age, may not be prosecuted for an offense previously committed unless the case has been transferred as provided in this section.
5. Statements made by the child at a hearing under this section are not admissible against the child over objection in the criminal proceedings following the transfer except for impeachment.
6. If the case is not transferred, the judge who conducted the hearing may not over objection of an interested party preside at the hearing on the petition. If the case is transferred to a court of which the judge who conducted the hearing is also a judge, the judge likewise is disqualified over objection from presiding in the prosecution.

**27-20.4-22. Court order required for removal of child.**

An order of disposition or other adjudication in a proceeding under this chapter, in cases in which a child is removed from the home of a parent, custodian, or guardian for the reason that continuation in such home would be contrary to the welfare of the child, must specifically state that a continuation of the child in the home of the parent, custodian, or guardian would be contrary to the welfare of the child.

**27-20.4-23. Limitations of orders of disposition.**

1. An order of disposition may not exceed twelve months from disposition unless extended by the court. The director or designee may request two extensions up to four months each for the child to complete the treatment goals of the court order and the case plan.

2. An order of disposition committing a delinquent child to the division of juvenile services may not exceed twelve months. The court may extend the order for an additional twelve-month period, if:
  - a. A hearing is held upon motion of the division, or on the court's own motion, prior to the expiration of the order;
  - b. Reasonable notice of the hearing and an opportunity to be heard are given to the child and the parent, guardian, or other custodian;
  - c. The court finds the extension is necessary for the treatment or rehabilitation of the child and has determined that such treatment cannot be provided in their home community; and
  - d. The extension does not exceed twelve months from the expiration of an order limited by subsection 3 or two years from the expiration of any other limited order.
3. Except as provided in subsection 2, an order of disposition pursuant to which a child is placed in foster care may not continue for more than twelve months after the child is considered to have entered foster care. A permanency hearing must be conducted before the extension of any court order limited under this subsection. Any other order of disposition may not continue in force for more than twelve months.
4. The court may terminate an order of disposition before the expiration of the order.
5. Except as provided in subsection 2, the court may terminate an order of disposition or extension before its expiration, on or without an application of a party, if it appears to the court the purposes of the order have been accomplished. If a party may be adversely affected by the order of termination, the order may be made only after reasonable notice and opportunity to be heard have been given to the party.

**27-20.4-24. Reasonable efforts to prevent removal or to reunify - When required.**

1. As used in this section, "reasonable efforts" means the exercise of due diligence, by the agency granted authority over the child under this chapter, to use appropriate and available services to meet the needs of the child and the child's family in order to prevent removal of the child from the child's family or, after removal, to use appropriate and available services to eliminate the need for removal, to reunite the child and the child's family, and to maintain family connections. In determining reasonable efforts to be made with respect to a child under this section, and in making reasonable efforts, the child's health and safety must be the paramount concern.
2. Except as provided in subsection 4, reasonable efforts must be made to preserve families, reunify families, and maintain family connections:
  - a. Before the placement of a child in foster care, to prevent or eliminate the need for removing the child from the child's home;
  - b. To make it possible for a child to return safely to the child's home;
  - c. Whether and, if applicable, to place siblings in the same foster care, relative, guardianship, or adoptive placement, unless it is determined that such a joint placement would be contrary to the safety or well-being of any of the siblings; and
  - d. In the case of siblings removed from the home of the siblings who are not jointly placed, to provide for frequent visitation or other ongoing interaction between the siblings, unless it is contrary to the safety or well-being of any of the siblings.
3. If the court or the child's custodian determined that continuation of reasonable efforts, as described in subsection 2, is inconsistent with the permanency plan for the child, reasonable efforts must be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child.
4. Reasonable efforts of the type described in subsection 2 are not required if:
  - a. A court of competent jurisdiction has determined a parent has subjected a child to aggravated circumstances; or
  - b. The parental rights of the parent, with respect to another child of the parent, have been involuntarily terminated.
5. Efforts to place a child for adoption, with a fit and willing relative or other appropriate individual as a legal guardian, or in another planned permanent living arrangement,

may be made concurrently with reasonable efforts of the type described in subsection 2.

6. Removal of a child from the child's home for placement in foster care must be based on judicial findings stated in the court's order, and determined on a case-by-case basis in a manner that complies with the requirements of titles IV-B and IV-E of the federal Social Security Act [42 U.S.C. 620 et seq. and 42 U.S.C. 6701 et seq.], as amended, and federal regulations adopted under those federal laws, provided that this subsection may not provide a basis for overturning an otherwise valid court order.
7. For the purpose of section 27-20.3-17, reasonable efforts were made under this section to meet the child's needs before a foster care placement for a child remaining in care for continued foster care purposes.

**27-20.4-25. Law enforcement and correctional facility records.**

1. Unless a charge of delinquency is transferred for criminal prosecution under section 27-20.4-20, the interest of national security requires, or the court otherwise orders in the interest of the child, the law enforcement and correctional facility records and files of a child alleged or found to be delinquent are not open to public inspection; but inspection of these records and files is permitted by:
  - a. A juvenile court having the child before the court in any proceeding;
  - b. Counsel for a party to the proceeding;
  - c. The officers of public institutions or agencies to whom the child is or may be committed;
  - d. Law enforcement officers of other jurisdictions if necessary for the discharge of official duties of the officers;
  - e. A court in which the child is convicted of a criminal offense for the purpose of a presentence report or other dispositional proceeding, or by officials of correctional facilities to which the child is detained or committed, or by the parole board, the governor, or the pardon advisory board, if one has been appointed, in considering the child's parole or discharge or in exercising supervision over the child;
  - f. The professional staff of the uniform crime victims compensation program if necessary for the discharge of the duties of the professional staff pursuant to chapter 54-23.4; and
  - g. A superintendent, assistant superintendent, principal, or designee of the school in which the child is currently enrolled or of a school in which the child wishes to enroll.
2. Notwithstanding that law enforcement records and files of a child alleged or found to be delinquent are not open to public inspection, this section does not limit the release of general information that does not identify the identity of the child.

**27-20.4-26. Substance use programming.**

1. If a child is subject to nonjudicial adjustments under this chapter or is found to be delinquent under section 27-20.4-16, the juvenile court may require a substance use screening and subsequent programming to appropriately address:
  - a. A child who is found to have violated section 39-08-01 or equivalent; or
  - b. If a child is found to have an alcohol concentration of at least two one-hundredths of one percent by weight at the time of performance of a test within two hours after driving or being in physical control of a motor vehicle.
2. If a child is subject to informal adjustment under this chapter and is required to participate in the twenty-four seven sobriety program, the period of participation may not exceed six months.
3. If a child required to participate in the twenty-four seven sobriety program under this section fails to comply with program requirements without being excused, the testing site shall notify the juvenile court and refer the child to the juvenile court for further disposition. The child may not be detained or otherwise taken into custody without authorization from the juvenile court.

4. If the juvenile court requires the child to participate in a juvenile drug court program, the juvenile court may waive the participation in the twenty-four seven sobriety program requirements of this section.

**27-20.4-27. Tribal juvenile services cooperative agreement.**

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:

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;
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;
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
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.