

**NORTH DAKOTA DEPARTMENT OF HUMAN SERVICES
BISMARCK, NORTH DAKOTA
July 9, 2021**

PI 21-17

TO: Human Service Zones
Division of Juvenile Services
Tribal Social Services
Field Service Specialists
Nexus PATH
Youthworks

FROM: Kelsey Bless, Permanency Administrator

PROGRAM: **Foster Care**

SUBJECT: Definitions 624-05-05
Child Welfare Court Hearings 624-05-15-13
Filing Court Documents 624-05-15-14
Permanency Hearing 624-05-15-20-20
Compelling Reason(s) 624-05-15-30-15
Termination of Parental Rights – Optional filing 624-05-15-30-05
Termination of Parental Rights - Mandatory Filing 624-05-15-30-10
~~Services Following Termination of Parental Rights 624-05-15-100-10~~
Notice to Relatives – Required Upon Child's Removal 624-05-15-50-23

RETENTION: Until manualized

EFFECTIVE: **July 1, 2021**

Children and Family Services updated foster care policy to provide clarity and compliance with HB 1035, Juvenile Justice legislative bill, approved during the January 2021 legislative session. The law changes were effective July 1, 2021, with various upgrades of NDCC 27-20 to four new chapters: NDCC 27-20.1 (guardianship), NDCC 27-20.2 (Juvenile Court Act) and NDCC 27-20.3 (Child Welfare) and NDCC 27-20.4 (Delinquency). The links to view the final language of new NDCC are located at <https://www.legis.nd.gov/cencode/t27.html>

This policy updates chapter 624-05 to offer consistency in state law language related to court efforts on behalf of children in foster care. In summary, specific child welfare highlights include inclusion of the federal Indian Child Welfare Act (ICWA), revisions of language such as the term “unruly” with “child in need of service (CHINS)”, replacement of “deprived” with “child in need of protection” (CHIPS), while adding the requirement of case managers to e-file family case plans for all CHIPS cases. Foster care cases opened after July 1, 2021, will need the initial family case plan submitted to the court, then quarterly progress submitted thereafter. For active foster care cases opened prior to July 1, 2021, custodial agencies can hold off on e-filing the quarterly progress until the next scheduled child and family team meeting.

The new regulations also state the only agency granted custody of a child in a delinquency case is the Division of Juvenile Services (DJS), meaning the human service zones will no longer be granted custody in insolated delinquency cases (NDCC 27-20.4-17). A human service zone may be granted custody of the child with delinquent behavior who is also determined to be a child in need of protection. Zone and DJS leadership were involved in the development of the HB 1035 legislative sections and are working to train staff locally. Zones and DJS are asked to engage with their assigned local States Attorney and juvenile court office to ensure clarity and compliance with local court procedures. State Court laws do not impact our tribal partners as they follow the law, rules and procedures of Tribal Court.

If you have questions, contact the Field Service Specialist assigned to your area or Kelsey Bless at kmbless@nd.gov or 701-328-3581.

Attachments:

- Hard Card (DN 751)
- 18+ Hard Card (DN 752)
- Court room checklist (under age 18)
- 18+ Court room checklist
- Affidavit example (under age 18)
- 18+ Affidavit example
- ND Court Order Technical Assistance Guide

At this time there will not be data entry or data element labeling changes made in FRAME. Children and Family Services is analyzing the cost and determining the need.

Definitions 624-05-05

1. "Abandon" means:
 - a. As to a parent of a child not in the custody of that parent, failure by the non-custodial parent significantly without justifiable cause:
 - 1) To communicate with the child; or
 - 2) To provide for the care and support of the child as required by law; or
 - b. As to a parent of a child in that parent's custody:
 - 1) To leave the child for an indefinite period of time without making firm and agreed plans, with the child's immediate caregiver, for the parent's resumption of physical custody;
 - 2) Following the child's birth or treatment at a hospital, to fail or arrange for the child's discharge within ten days after the child no longer requires hospital care; or
 - 3) To willfully fail to furnish food, shelter, clothing, or medical attention reasonably sufficient to meet the child's needs.
2. "Abandoned Infant" means a child who has been abandoned before reaching the age of one year.
3. "Active Efforts (ICWA)" means affirmative, active, thorough, and timely efforts intended primarily to maintain the child in the home, prevent removal of the child from the child's family, or, after removal, or reunite an Indian child with his or her family.

4. "Administrative Review" means a review open to the participation of the parents of the child, conducted by a panel of appropriate persons at least one of whom is not responsible for the case management of or the delivery of services to, either the child or the parents who are the subject of the review.
5. "Age-Appropriate" means activities or events that are generally accepted as suitable for children of the same chronological age or level of maturity. Age appropriateness is based on the development of cognitive, emotions, physical, and behavioral capacity that is typical for an age group.
- ~~6. "Agency" means the North Dakota Department of Human Services, Children and Family Services Division or its designee, including any Human Service Zone.~~
6. "Aggravated Circumstances" means circumstances in which a parent:
 - a. Abandons, tortures, chronically abuses, or sexually abuses a child;
 - b. Fails to make substantial, meaningful efforts to secure treatment for the parent's addiction, mental illness, behavior disorder, or any combination of those conditions for ~~a period equal to the lesser of one year;~~
~~One year; or~~
~~One half of the child's lifetime, measured in days, as of the date a petition alleging aggravated circumstances is filed.~~
 - c. Engages in ~~conduct prohibited under sections sex offenses in which a child is the victim or intended victim, including corruption or solicitation of a minor, use of a minor in a sexual performance, sexual exploitation or assault, or incest (prohibited under sections 12.1-20-01 through 12.1-20-08 or chapter 12.1-27.2), in which a child is the victim or intended victim;~~
 - d. Engages in conduct that constitutes one of the following crimes, or of an offense under the laws of another jurisdiction which requires proof of substantially similar elements;
 - 1) ~~Murder, manslaughter, or negligent homicide (violations of section A violation of section 12.1-16-01, 12.1-16-02, or 12.1-16-03 or 14-09-22 in which the victim is another child of the parent);~~
 - 2) Aiding, abetting, attempting, conspiring, or soliciting ~~murder, manslaughter, or negligent homicide (a violations of section 12.1-16-01, 12.1-16-02, or 12.1-16-03 in which the victim is a child of the parent);~~ or
 - 3) ~~Aggravated assault in which the victim has suffered serious injury (A violation of section 12.1-17-02 in which the victim is a child of the parent and has suffered serious bodily injury).~~
 - e. Engages or attempts to engage in ~~simple assault, aggravated assault, reckless endangerment or terrorizing in which a child is the victim or intended victim (conduct prohibited under sections 12.1-17-01 through 12.1-17-04, in which a child is the victim or intended victim);~~ or
 - f. ~~In the case of a child age nine or older, has~~ Has been incarcerated under a sentence for which the latest release date is after the child's age of majority;
 - 1) ~~In the case of a child age nine or older, after the child's majority;~~
or
 - 2) ~~In the case of a child, after the child is twice the child's current age, measured in days.~~

- g. Subjects the child to prenatal exposure to chronic or severe use of alcohol or any controlled substance as defined in chapter 19-03.1 in a manner not lawfully prescribed by a practitioner; or
 - h. Allows the child to be present in an environment subjecting the child to exposure to a controlled substance, chemical substance, or drug paraphernalia as prohibited by section 19-03.1-22.2.
- 7. "Babysitting" is short-term care of foster children when the foster parents are temporarily away, however still available to respond if needed. A babysitter can be a responsible individual, between the ages of 14 and 21, secured to provide care and supervision for no more than eight consecutive hours in one day.
- 8. "Child" means an individual who is:
 - a. Under the age of eighteen years and is not married; or neither married and cohabiting with spouse nor in the military services of the United States; or
 - b. Under the age of twenty years with respect to a delinquent act committed while under the age of eighteen years and not married.
- 9. "Child care (daycare)" is planned care for a child required ongoing while the foster parents are at work, school, or otherwise engaged on a regular basis. If ongoing child care is needed, foster parents can be approved for reimbursement following policy set forth in Maintenance Chapter 623-05.
- 10. ~~Deprived child~~ Child in need of protection means a child who:
 - a. Is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for the child's physical, mental, or emotional health, or morals, and ~~the deprivation~~ the need for services or protection is not due primarily to the lack of financial means of the child's parents, guardian, or other custodian.
 - b. Has been placed for care or adoption in violation of law
 - c. Has been abandoned by the child's parents, guardian, or other custodian.
 - d. Is without proper parental care, control, or education as required by law, or other care and control necessary for the child's well-being because of the physical, mental, emotional, or other illness or disability of the child's parent or parents, and that such lack of care is not due to a willful act of commission or act of omission by the child's parents, and care is required by a parent; or
 - e. Is in need of treatment and whose parents, guardian, or other custodian have refused to participate in treatment as ordered by the juvenile court.
 - f. Was subject to prenatal exposure to chronic or severe use of alcohol or any controlled substance as defined in chapter 19-03.1 in a manner not lawfully prescribed by a practitioner;
 - g. Is present in an environment subjecting the child to exposure to a controlled substance, chemical substance, or drug paraphernalia as prohibited by section 19 - 03.1 - 22.2;
 - h. Is a victim of human trafficking as defined in title 12.1;
 - i. Is habitually and without justification truant from school;

- j. Is habitually disobedient of the reasonable and lawful commands of the child's parent, guardian, or other custodian and is ungovernable or who is willfully in a situation dangerous or injurious to the health, safety, or morals of the child or others; or
 - k. Exceeds the parent's or legal guardians ability to care for the child due to:
 - (1) The child's behavioral or mental health conditions;
 - (2) Ungovernable behavior that has been committed on school grounds during the operating hours of school.
- 11. "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. For purposes of this chapter, custodial agency refers to a Human Service Zone, Division of Juvenile Services, or a federally recognized Tribe.
- 12. "Domicile (ICWA)" the domicile of an Indian parent or custodian's domicile is on the reservation; meaning their residence with intent to stay, or return.
- 13. "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 section 23 of this Act, to be a qualified person under Chapter 30.1-27, and who consents in writing to act as a legal guardian.
- ~~14. "Financially Responsible County" is the county where the child's parent has residence at the time of court intervention. The county of financial responsibility could change after a 60 day lapse in placement. If the parents do not have residence in North Dakota, then the financial responsibility exists in the county where the child resided at the time of court intervention. (Definition developed by county directors, 1997).~~
- 14. "Foster Care For Children" means the provision of substitute parental child care to those children described in Subsection vi of Section 50-09-01 of N.D.C.C. and includes the provision of food, shelter, security and safety, guidance and comfort on a 24-hour basis, to one or more children under 21 years of age to safeguard the child's growth and development and to minimize and counteract hazards to the child's emotional health inherent in the separation from the child's family. Foster care may be provided in a licensed family foster home, ~~group home,~~ or qualified residential treatment program (QRTP).~~child care facility.~~
- 15. "Foster Family Home" means an occupied family residence in which foster care is regularly provided by the owner or leasee thereof to no more than four children, unless all of the children in foster care are related to each other by blood or marriage in which case such limitations shall not apply.
- 16. "Federally Recognized Tribe" means any Indian Tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary of the Interior because of their status as Indians, including any Alaska Native Village. 25 U. S. C. 1903(8)
- ~~17. "Group Home" means a licensed or approved residence in which foster care is regularly provided to at least four, but fewer than thirteen, unrelated children.~~
- 17. "Home" when used in the phrase "to return home" means the abode of the child's parent with whom the child formerly resided.

18. "Indian child" means any unmarried person who is under age eighteen and is either (a) a member or citizen of an Indian Tribe or (b) is eligible for membership or citizenship in an Indian Tribe and is the biological child of a member/citizen of an Indian Tribe. 25 U.S.C. § 1903 (4); 25 C.F.R. § 23.2. A child who meets this definition is subject to ICWA.
19. "Identified Relative" means the child's grandparent, great-grandparent, sibling, half-sibling, aunt, great-aunt, uncle, great-uncle, nephew, niece or first cousin. An individual with a relationship to the children, derived through a current or former spouse of the child's parent, similar to a relationship described in the first sentence. An individual recognized in the child's community as having a relationship with the child similar to a relationship described in the first sentence A child's stepparent. (NDCC 50-11)
20. "Indian child's Tribe" means (a) the Indian Tribe in which an Indian child is a member or eligible for membership or (b), in the case of an Indian child who is a member of or eligible for membership in more than one Tribe, the Indian Tribe with which the Indian child has the more significant contacts. 25 U.S.C. § 1903(5).
21. "Imminent risk of serious harm" (used in risk only intakes and coordination with law enforcement) means:
 - a. Imminent - Having the potential to occur at any moment, or there is substantial likelihood that harm will be experienced.
 - b. Risk of Serious Harm - A high likelihood of a child being abused or experiencing negligent treatment or maltreatment that could result in one or more of the following outcomes:
 - 1) Death
 - 2) Life endangering illness
 - 3) Injury requiring medical attention
 - 4) Substantial risk of injury to the physical, emotional, or cognitive development
22. "Normalcy" means giving children in foster care the opportunity to engage in typical growth and development. This includes the participation in age-appropriate activities, responsibilities and life skills.
23. "Permanency hearing" means a ~~(judicial or Division of Juvenile Services [DJS] administrative hearing pursuant to N.D.C.C. 27-20)~~ hearing, conducted with respect to a child who is in foster care, to determine the permanency plan for the child which includes:
 - a. Whether and, if applicable, when the child will be returned to the parent;
 - b. Whether and, if applicable, when the child will be placed for adoption and the state will file a petition for termination of parental rights;
 - c. Whether and, if applicable, when a fit and willing relative or other appropriate individual will be appointed as a legal guardian;
 - d. Whether and, if applicable, to place siblings in the same foster care, relative, guardianship, or adoptive placement, unless it is determined that the joint placement would be contrary to the safety or well-being of any of the siblings;
 - e. Whether and, if applicable, in the case of siblings removed from their home who are not jointly placed, to provide for frequent visitation or other ongoing interaction between the siblings, unless it is determined to be contrary to the safety or well-being of any of the siblings;

- f. In cases in which a compelling reason has been shown that it would not be in the child's best interests to return home, to have parental rights terminated, to be placed for adoption, to be placed with a fit and willing relative, or to be placed with a legal guardian, whether and, if applicable, when the child is age sixteen or greater and placed in another planned permanent living arrangement. The court shall:
- (1) Ask the child whether the child has a desired permanency outcome of another planned permanent living arrangement;
 - (2) (2) Make a judicial determination explaining why another planned permanent living arrangement is the best permanency plan for the child; and
 - ~~(3)~~ (3) Identify the compelling reasons it continues not to be in the best interest of the child to return home, be placed for adoption, be placed with a legal guardian, or be placed with a fit and willing relative.
- g. In the case of a child who has been placed in foster care outside the state in which the home of the parents is located, or if the parents maintain separate homes, outside the state in which the home of the parent who was the child's primary caregiver is located, whether the out-of-state placement have been considered. If the child is currently in an out-of-state placement, the court shall determine whether the placement continues to be appropriate and in the child's best interests; and
- h. In the case of a child who has attained age fourteen, the services needed to assist the child to make the transition from foster care to successful adulthood.
24. "Protective supervision" means supervision ordered by the court of children found to be ~~deprived or unruly~~ in need of protection.
25. "Qualified Expert Witness (QEW)" means an individual qualified to testify regarding whether the child's continued custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child and should be qualified to testify as to the prevailing social and cultural standards of the Indian child's Tribe. A QEW may be designated by the Indian child's Tribe, but ultimately is the responsibility of the custodial agency and/or court to secure QEW's for ICWA cases. The caseworker regularly assigned to the Indian child may not serve as a QEW in child-custody proceedings concerning the child.
26. "Qualified Residential Treatment Program" means a licensed or approved residence providing an out-of-home treatment placement for children.
27. "Reasonable and Prudent Parent Standard" means the standard characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a child while at the same time encouraging the emotional and developmental growth of the child participating in extracurricular, enrichment, cultural, and social activities.
28. "Reasonable efforts" means the exercise of due diligence by the agency 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 and to reunite the child and the child's family and to maintain family

connections. If the child cannot return home, the agency must make reasonable efforts to make and finalize an alternate permanent placement of the child, including identifying appropriate in-State and out-of-State options. In the case of siblings removed from their home and not jointly placed, frequent visitation or interaction must be provided, unless it is contrary to the safety or well-being of any sibling. In making reasonable efforts and in determining reasonable efforts, the child's health and safety must be the paramount concern.

~~29. "Relative" means:~~

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

~~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;~~

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

~~The child's stepparent.~~

29. "Respite care" is temporary relief care for a child with special medical, emotional or behavioral needs, which requires time-limited supervision and care by another licensed foster parent. Respite care cannot exceed 96 hours and is reimbursable through a formal agreement (SFN 929) ~~pre-approved by a regional representative.~~
30. "Substitute care" is temporary care of foster children when the foster parents are unavailable to provide supervision and care for more than a portion of one day.
31. "Substitute caregiver" is a responsible adult, age 21 or older, temporarily providing care for a foster child in the absence of the foster parents for a portion of one day. If time exceeds one day, a licensed foster parent must provide substitute care if the primary foster parents are unavailable.

Child Welfare Court Hearings 624-05-15-13

A legal proceeding is a procedure or action established in a court of law to acquire a right, interest or benefit or to reinforce a remedy. Foster care case managers will engage in various types of court hearings.

A. Temporary Custody Order (TCO)

If present danger exists and out of home placement is warranted, agencies shall make reasonable efforts to prevent removal by seeking relatives or requesting shelter care for the children, prior to requesting a temporary custody order (TCO). The purpose of the temporary custody order is to remove the child from an unsafe situation with ~~support~~ authorization from Juvenile Court until a shelter care hearing can occur.

Highlights:

1. A removal from the home can be authorized by law enforcement or a TCO must be issued by the Director of Juvenile Court (or designee).
2. If removal is authorized verbally, a TCO must be in writing within 24 hours.
3. Paperwork Requirements

- a. Agency affidavit to request shelter care must be submitted to the Juvenile Court asap.
- b. Juvenile Court will need documentation to create a court file and schedule a shelter care hearing.

B. Shelter Care Hearing

The purpose of the shelter care hearing is to determine whether there is probable cause to believe the child is in need of protection or delinquent, ~~unruly or deprived~~ and if shelter care is required to protect the child, because the child may abscond or no parent/guardian is available to care for the child. The shelter care hearing is to be scheduled no later than 96 hours before a judge, with the exception of holidays and weekends.

Highlights:

1. The shelter care hearing will determine:
 - a. If the child shall remain in out of home placement under the care, custody, and control of a public agency;
 - b. If it was "contrary to the welfare" for the child to remain in the home upon removal; and
 - c. If reasonable or active efforts were made to prevent the removal.
2. An adjudication must occur within 60 days from date of removal (within 30 days if ICWA applies). Petitioner has 30 days from first placement to file a petition. However, in order to ensure proper service of the documents on the parties as required by court rules the filing of the petition should occur within the first 15 days.
 - a. If the petition is not filed within 30 days of the shelter care hearing, the child must be released from shelter care.
 - b. Some jurisdictions have an initial appearance on the petition, which is held within 30 days of removal. If that cannot be done, the shelter care order may be extended, but the required judicial determinations are required.
3. Paperwork Requirements
 - a. Agency case managers must collaborate with local State's Attorney office to verify the amount of time needed to prepare court documentation and service of process on all parties.
 - b. In most cases, the affidavit in support of the ~~deprivation~~ child in need of protection petition must be submitted to State's Attorney office as directed by the local State's Attorney or at least 10 days before the petition is to be filed with Juvenile Court.

C. Initial Appearance

This is the first time the parties of the case will appear in court to respond to the petition.

1. The Judicial Officer will:
 - a. Review the proceedings,
 - b. Acknowledge the parties who are present, and
 - c. Advise the respondents of:
 - i. The allegations,
 - ii. Their rights (counsel, admit, deny, go on to trial),
 - iii. The possible outcomes of the proceedings, and
 - iv. Consequences of an admission or denial.
2. Elicit a response (admission or denial) from the respondents.

- a. If they deny, then a pretrial conference, status conference, adjudication hearing or trial is scheduled.
 - b. If they admit, then either a disposition hearing will be held at that time or the case will be continued for a later dispositional hearing.
3. Paperwork Requirements
- a. Agency must work with the State's Attorney to ensure no further information is required to be filed with the court prior to the hearing.

D. Adjudication Hearing

The purpose of the adjudication hearing is to either accept admission to the allegations or to hear evidence submitted to prove the allegations as listed in the petition.

Highlights:

1. Evidence of **deprivation need for protection** must be proven by clear and convincing evidence:
 - a. Court must make findings as to whether the child is **deprived in need of protection**,
 - b. Evidence of **deprivation need for protection** must be clear and convincing,
 - c. Admission of **deprivation need for protection**,
 - d. If **deprivation need for protection** found; move to disposition hearing.
- ~~2. Evidence of each **unruly** allegations must be found by proof beyond a reasonable doubt:

 - a. Court must make findings to whether the child is unruly,
 - b. Evidence of unruly behavior must be clear and convincing,
 - c. Admission of unruly,
 - d. If unruly is found; move to disposition hearing.~~
3. Evidence of each **delinquent** act must be found by proof beyond a reasonable doubt **(27-20.4-16)**.
 - a. ~~Court must make findings to whether the child is delinquent, Evidence of delinquent act must be found beyond a reasonable doubt (27-20-29),~~
 - b. ~~Admission of delinquency,~~
 - a. ~~If delinquent is found; move to disposition hearing.~~
4. The hearing on the petition must be held and findings made within 60 days of initial removal (30 days if ICWA applies), unless a continuance is granted by the court under Rule 9 of the ND Rules of Juvenile Procedure.
5. In most cases, adjudication and dispositional hearing will be held at the same time.
6. Paperwork Requirements
 - a. Agency must work with the State's Attorney to ensure no further information is required to be filed with the court prior to the hearing.

E. Dispositional Hearing

The purpose of the dispositional hearing is best suited to the protection and physical, mental, and moral welfare of the child. This will include whether to permit the child to reside with the child's parents, guardian or other custodian, subject to conditions and limitations as the court subscribes including supervision as directed by the court for the protection of the child such as a safety or treatment plan. The court may also consider whether it is in the best interests of the child to return home if the child was removed in a shelter care hearing prior to disposition.

Highlights:

1. This hearing may be combined with the adjudication hearing.
2. The court may receive evidence from any party relating to the disposition. The court listens to evidence regarding what services the parents have participated in to address the issues that brought the case before the court.
3. The court will also hear evidence regarding the child's placement, well-being, and service needs. The court looks at the efforts made by the agency to assist the family, and the best interests of the minor.
4. In determining who shall have custody of a child at the time of disposition, the court will review what is in the child's best interest.
5. In delinquent/~~unruly~~ cases:
 - a. The court will hear evidence as to whether the child is in need of treatment or rehabilitation.
 - b. The burden of proof at this stage is clear and convincing evidence standard.
6. In ~~deprived-child in need of protection~~ cases:
 - a. The court can make any disposition listed at ~~27-20-30~~27-20.3-16 which is "best suited to the protection and physical, mental, and moral welfare of the child".
7. Paperwork Requirements
 - a. Agency must work with the State's Attorney to ensure no further information is required to be filed with the court prior to the hearing.

F. Review of Custody Hearing

At any time, the child, parents or any party can request a review hearing as it is not required that a review be initiated by the custodial agency. The purpose of the hearing is to update the court on the progress of the case planning, the court to review the respondent's request for release or any other issue which the respondent is requesting be reviewed by the court.

Highlights:

1. An agency can request for an early release of custody at this time if the family has met the terms of the case plan or can request the case be extended until the future permanency hearing to allow more time to achieve permanency goals.
2. A review hearing can also be combined with a permanency hearing and held as one hearing in judicial court proceedings.
3. Paperwork Requirements
 - a. Agency case managers must collaborate with local State's Attorney office to verify the amount of time needed to prepare court documentation.
 - b. In most cases, the affidavit must be submitted to the state's attorney at least 14 days before the needed hearing date in order to provide time for state's attorney review, the filing of the necessary documents, and the service of the paperwork on the parties in the case.

G. Permanency Hearing

The purpose of the permanency hearing is to monitor the progress of the case goals set forth in the original order addressing the issues that brought the child into foster care.

Highlights:

1. The court will monitor the well-being of the child and carefully review issues regarding the child's placement, service needs, education, and family visitation and

determine whether the original order should be extended for an additional period of time.

2. If permanency is not achieved within 12 months of removal, agencies must obtain judicial determinations that out of home care is required and that reasonable/active efforts were made to finalize the permanency plan and to indicate what the efforts were and the goal in place. Permanency goals may be either reunification, adoption, legal guardianship, placement with a fit and willing relative, or placement of another planned permanent living arrangement.
3. A permanency hearing and a review hearing can be combined and held as one hearing in judicial court proceedings.
4. Paperwork Requirements
 - a. Agency case managers must collaborate with local State's Attorney office to verify the amount of time needed to prepare court documentation.
 - b. In most cases, the affidavit must be submitted to State's Attorney office at least 90 days prior to order expiration in efforts for the State's Attorney to file the notice of permanency or request for review timely with the court.

H. 18+ Continued Care Permanency Hearing

The purpose of the hearing is to authorize placement and care responsibility to a public agency for a youth requesting continued foster care who meet specific eligibility. 18+ continued cases are no longer under the public custody of an agency.

Highlights:

1. 18+ Continued Care orders must be a permanency hearing and obtain permanency findings.
2. All 18+ cases must have a permanency hearing no later than 90 days of the effective date on the SFN 60, 18+ Continued Care Agreement.
3. Paperwork Requirements
 - a. Agency case managers must collaborate with local State's Attorney office to verify the amount of time needed to prepare court documentation.
 - b. In most cases, the affidavit must be submitted to State's Attorney office at least 14 days before the petition or notice of permanency is to be filed with the court.

I. Termination of Parental Rights (TPR) Hearing

The purpose of such a hearing is to review a request to terminate the parental rights of the parents in cases with the most extreme forms of deprivation/need for protection. This may be the case where the child has been 'abandoned' by the parents (~~see 27-20-02(1)~~27-20.1-01(1)) or where the child has been subjected to "aggravated circumstances", i.e. extreme forms of abuse or neglect. (~~see 27-20-02(3)~~27-20.1-01(3)) or when the child is and has been deprived in need of protection and all indications are that the deprivation/need for protection will continue to the harm of the child.

Highlights:

1. A TPR is a complicated proceeding; the rights of all parties are given great merit because of the finality of the outcome.
2. Judge will advise parties of their right to counsel, appoints counsel as necessary, accept admissions or denials on the TPR petition and order parents to the adjudicatory hearing.

3. If a parent or legal custodian is absent, the court will evaluate the sufficiency of service and notice and make a determination as to whether the parent has defaulted to the TPR for failure to appear or whether another advisory hearing date should be set for that parent.
4. In order for a termination of parental rights to be granted, the evidentiary standard of clear and convincing or beyond a reasonable doubt (ICWA) must be met to prove the child is deprived in need of protection, and:
 - a. The deprivation—need for protection is likely to continue or will not be remedied; and
 - b. The child will suffer serious physical, mental, moral, or emotional harm because of this; or
 - c. The child has been in foster care for at least 450 out the previous 660 nights (can be less than 450 days); or
 - d. The parents' consent to the termination.
5. Paperwork Requirements
 - a. Agency case managers must collaborate with local State's Attorney office to verify the amount of time needed to prepare court documentation.
 - b. The affidavit must be submitted to State's Attorney office at least 60 days and some areas 90 days before the petition for termination of parental rights is filed.

J. Court Order Continuances

Throughout the life of the case, there are times when the court "continues" the child's order without a hearing, this is typically done to ensure all parties have an attorney, etc. A continuance is an allowable function of the court, however the timeframe in which a continuance is granted is important for foster care cases.

Ongoing ~ Shelter Care/Disposition/Review Orders:

If a court has made the requisite "contrary to the welfare" and "reasonable or active efforts to prevent removal" findings, a continuance issued under Rule 9 of the N.D. Rules of Juv. Pro. can occur and will, unless otherwise ordered, continue the existing custodial order. Continuances generally carry forward the existing judicial determinations, which is acceptable when the child remains in public custody and the case is not due for a permanency review.

Permanency Orders:

If a case is due for 12-month permanency review, a court can make the decision to continue an order to maintain custody, however, the case must receive new permanency judicial determinations before the last day of the 13th month. Foster care federal regulations requires judicial determinations from the court that the agency has made reasonable efforts to finalize the permanency plan for the child. A continuance of a prior order does not bring forward the required new judicial determination, nor does a continuance allow the participation of the relevant parties in a hearing to address permanency. If the new (annual) permanency judicial determinations are not obtained by the end of the 13th month, NDDHS cannot make a foster care payment on behalf of the child.

K. Hearing Notices

Reasonable notice of court hearings and the opportunity to be heard for parties affected by the case must be granted. Initially, the agency granted temporary custody is required to notify all relevant parties. When ongoing hearings occur, the Juvenile Court and custodial agencies collaboratively provide reasonable notice, either oral or written, to the child, the child's parents, guardian, or other custodian (which could include the foster parent or caregiver).

Filing Court Documents 624-05-15-14 (NEW SECTION)

NDCC 27-20.3-17 requires custodial agencies to develop and submit an initial and ongoing "family case plan" to the committing juvenile court by e-filing into the court system. The progress reports help courts determine whether continued efforts toward reunification and permanency are occurring timely for the child.

Initial - New Case

1. Upload the *initial* family case plan within 60 days of entry into foster care.
2. "Family Case Plan" is defined by foster care policy to include:
 - a. Case plan (Tool 6),
 - b. Out of home safety plan (Tool 4), and
 - c. History of foster care placements since entry into care.

Quarterly Progress – Opened Cases

1. Upload the *quarterly* family case plan progress report
2. "Family Case Plan Progress Report" is defined in foster care policy to include:
 - a. Case plan (Tool 6),
 - b. Protective Capacities Progress Assessment (PCPA -Tool 7), and
 - c. History of foster care placements in the past quarter.

Juvenile Court E-filing:

Juvenile Court created training specific to e-filing documents into the court file. Custodial agencies must determine which employees will be uploading the documents and require the staff to take the online training to file properly. The custodial agency must code the plan as a "report" and comment on the status of the report being "initial or quarterly".

1. Code = Report
2. Filing Comment = Initial report or quarterly plan

File and Serve Training Links:

- <https://www.ndcourts.gov/legal-resources/rules/ndrct/3-5>
- <https://www.ndcourts.gov/district-courts/e-filing-portal>

The family case plan is an update to the court and viewed as a closed file. If a court hearing is pending, the court case status is closed. If the custodial agency feels it is necessary to redact documents specific to parental involvement and parental services, the agency can choose to redact or e-file documentation separately.

Permanency Hearing 624-05-15-20-20

Every child in foster care must have a “permanency hearing” within 12 months of the child’s entry to foster care or continuing in foster care following a previous permanency hearing. The hearing must be held in a juvenile court or tribal court of competent jurisdiction, ~~(these replace the former dispositional hearings), or as an option, by the Division of Juvenile Services (DJS) for youth under its custody as a placement hearing under N.D.C.C. 27-21.~~

Agencies must obtain a judicial determination that it made reasonable efforts to finalize the permanency plan that is in effect ~~(whether the plan is reunification, adoption, legal guardianship, placement with a fit and willing relative, or placement in another planned permanent living arrangement)~~ within twelve months of the date the child is considered to have entered foster care, and at least once every twelve months thereafter while the child is in foster care. The requirement for subsequent permanency hearings applies to all children, including children placed in a permanent foster home or a pre-adoptive home. In addition, a permanency hearing ~~in the court or DJS~~ must be conducted within thirty (30) days after a court determines that reasonable efforts are not required because:

1. A parent has subjected the child to aggravated circumstances; or
2. The parental rights of the parent, with respect to another child of the parent, have been involuntarily terminated.

The hearing shall determine the court-approved permanency plan for the child ~~that determines, if applicable, and~~ when the plan is expected to be achieved. The child age 16 or greater will be placed in another planned permanent living arrangement (APPLA). This applies in cases where the legal custodian has documented to the court a compelling reason for determining that it would not be in the best interests of the child to return home, be referred for termination of parental rights, or be placed for adoption with a fit and willing relative or with a legal guardian. See 624-05-15-115-30-10 for judicial determination requirements.

~~The child will be returned to the parent;~~

~~The child will be placed with a relative;~~

~~The child will be placed with a legal guardian;~~

~~To place siblings in the same foster care, relative, guardianship, or adoptive placement, if appropriate;~~

~~In the case of siblings removed from their home and not jointly placed, to provide frequent visitation, or ongoing interaction, if appropriate;~~

~~The legal custodian (or State) will petition for termination of parental rights;~~

~~The child will be placed for adoption; or~~

~~8.1. The child age 16 or greater will be placed in another planned permanent living arrangement (APPLA). This applies in cases where the legal custodian has documented to the court a compelling reason for determining that it would not~~

~~be in the best interests of the child to return home, be referred for termination of parental rights, or be placed for adoption with a fit and willing relative or with a legal guardian. See 624-05-15-115-30-10 for judicial determination requirements.~~

~~The hearing shall also:~~

- ~~1. Consider in-State and out-of-State placement options in permanency hearings, and if a child is already in an out-of-State placement, the hearing must determine if the placement continues to be appropriate and in the child's best interests; and~~
- ~~2. In the case of a child who has reached age 16, the services needed to assist the child to make the transition from foster care to independent living.~~

~~All of the information gathered at the Child & Family Team meetings, initial and quarterly case reviews, must be available to the court or DJS for a permanency hearing.~~

~~Termination of Parental Rights or Legal Guardian Appointment 624-05-15-30~~

~~A court's order, "Termination of Parental Rights," terminates all the parent's rights and obligations with respect to the child and of the child to or through the parent arising from the parental relationship. The parent is not thereafter entitled to notice of proceedings for the adoption of the child by another, nor has the parent any right to object to or participate in the child's adoption proceedings. The Agency's petition for Termination of Parental Rights must follow current instructions and formats for such petitions, set forth the facts plainly, and state clearly that the effect of the Termination of Parental Rights will be as described above.~~

~~A court's order appointing a legal guardian terminates any authority of a parent that is granted to the legal guardian under that order. A parent subject to such an order is entitled to treatment as a party at any subsequent juvenile court proceeding regarding the child.~~

~~After a termination of parental rights, if there is no other parent having parental rights, the court must: (N.D.C.C. 27-20-47)~~

- ~~1. Commit the child to the custody of the Department of Human Services or a licensed child-placing agency for adoptive or foster care placement;~~
- ~~2. Appoint a fit and willing relative or other appropriate individual as the child's legal guardian; or~~
- ~~3. Establish some other planned living arrangement for the child.~~

~~Legal Custodian:~~

~~N.D.C.C. 27-20-38 (8/1/99). Rights and duties of legal custodian. A custodian to whom legal custody has been given by the court under this chapter has the right to the physical custody of the child and the right to determine the nature of the care, placement and treatment of the child, including ordinary medical care as well as medical or surgical treatment for a~~

~~serious physical condition or illness which in the opinion of a licensed physician requires prompt treatment, except for any limits the court may impose. The custodian also has the right and duty to provide for the care, protection, training, and education, and the physical, mental, and moral welfare of the child, subject to the conditions and limitations of the order and to the remaining rights and duties of the child's parents or guardian.~~

~~(Consent for medical care for a foster child should come from the child's parent. If that is not possible, consent should come from the child's custodian, or the court, depending on the circumstances.) If the child has not been placed for adoption within 12 months of the custody order and the court has not established a legal guardianship or other planned alternative arrangement for the child, the child must be returned to the court for entry of further orders for the care, custody, and control of the child.~~

~~Compelling Reason(s) for Determining that Filing a Petition to Terminate Parental Rights Would Not Be in the Child's Best Interest~~ 624-05-15-30-15

~~A petition for termination of parental rights **need not** be filed if:~~

- ~~1. The child is being cared for by a relative approved by the human service zone;~~
- ~~2. The human service zone has documented in the case plan a compelling reason for determining that filing such a petition would not be in the child's best interests and has notified the court that the documentation is available for review by the court; or~~
- ~~3. The human service zone has determined:
 - ~~a. Reasonable efforts to preserve and reunify the family are required under section 27-20.3-21 to be made with respect to the child;~~
 - ~~b. The case plan provides such services are necessary for the safe return of the child to the child's home; and~~
 - ~~c. Such services have not been provided consistent with time period described in the case plan.~~~~

~~Determining if the filing of a petition to terminate parental rights would not be in the child's best interest; agencies must document on the SFN 348. Compelling reasons reflect consideration of:~~

- ~~1. The child's age;~~
- ~~2. The portion of the child's life spent living in the household of a parent;~~
- ~~3. The availability of an adoptive home suitable to the child's needs;~~
- ~~4. Whether the child has special needs; and~~
- ~~5. The expressed wishes of a child age ten or older.~~

~~These mandatory deadlines for filing a termination of parental rights do not apply, however, if one of the following is true:~~

- ~~1. The child is being cared for by a relative approved by the agency; or~~

- ~~2. The agency has determined that reasonable efforts to reunify child and family are required, the case plan indicates that services are necessary for the safe reunification, and such services have not been provided consistent with time periods prescribed in the case plan; or [Document this in the case plan (compelling reason not to file TPR). This must be available to the court at the next court hearing.]~~
- ~~3. The agency has documented in the case plan a compelling reason why Termination of Parental Rights (TPR) would not be in the child's best interests and has notified the court that the documentation is available for review by the court. The "compelling reason" must be a recorded statement which reflects consideration of all of the following:~~

~~The child's age,~~

- ~~1. The portion of the child's life spent living in the household of a parent of the child,~~
- ~~2. The availability of an adoptive home suitable to the child's needs,~~
- ~~c. Whether the child has special needs, and~~
- ~~d. The expressed wishes of a child age 10 or older.~~

Examples of "compelling reasons" include, but are not limited to, the following:

1. Adoption is not the best plan for the child.
2. The child has expressed a desire to avoid TPR and/or adoption.
3. The child has a significant bond with a non-family member who wishes to serve as a legal guardian.
4. The parent and child have a significant bond, but the parent cannot care for the child due to parent's emotional or physical disability, and another permanency plan has been identified for the child.
5. The parent has made significant measurable progress and continues to make diligent efforts to complete the requirements of the case plan, but needs more time to do so.
6. The placement of the child is due primarily to the child's behavior despite continued parental efforts at control and supervision, and progress is being made on improving the child's behavior.
7. There are insufficient grounds for filing a TPR petition.

~~Please use~~ Custodial agencies are to complete the SFN 348, "Compelling Reason(s) for Determining that Filing a Petition to Terminate Parental Rights Would Not be in the Child's Best Interest," to ~~carefully~~ document any compelling reasons. This form is to be retained in the child's file.

Termination of Parental Rights - Optional Filing 624-05-15-30-05

The custodial agency may file a petition to the court for Termination of Parental Rights at any time, if any one of the three following conditions pertains:

1. The parent has abandoned the child.
2. The child is subjected to aggravated circumstances;
3. The child is in need of services or protection and the court finds:

- a. The conditions and causes of the need for services or protection are likely to continue or will not be remedied and for that reason the child is suffering or will probably suffer serious physical, mental, moral, or emotional harm; or
 - b. The child has been in foster care, in the care, custody, and control of the department or human service zone, or, in cases arising out of an adjudication by the juvenile court that a child is in need of services, the division of juvenile services, for at least 450 out of the previous 660 nights;
- ~~3.4. Written consent of the parent, acknowledged before the court, has been given; or~~
~~4.5. The parent has pled guilty or nolo contendere to, or has been found guilty of engaging in a sexual act under section 12.1-20-03 or 12.1-20-04, the sexual act led to the birth of the parent's child, and termination of the parental rights of the parent is in the best interests of the child.~~

If the court does not make an order of termination of parental rights, it may grant an order under section 27-20.3-16 if the court finds from clear and convincing evidence that the child is in need of protection.

- ~~5.—The parent has given written consent to the Termination, acknowledged by court.~~
- ~~6.—The child is deprived and the court finds any one of the following:~~
- ~~7.—The conditions and causes of the deprivation are likely to continue or not be remedied and that by reason thereof the child is suffering or will probably suffer serious physical, mental, moral, or emotional harm; or~~
- ~~8.—The child has been in foster care or in the custody of the agency, county social service board, or the Division of Juvenile Services for at least 450 of the previous 660 nights; or~~
- ~~9.—A court of competent jurisdiction has convicted the child's parent of one of the following crimes in North Dakota, or of a substantially similar offense under the laws of another jurisdiction: murder, manslaughter, or negligent homicide of a child of the parent; aiding, abetting, attempting, conspiring, or soliciting the same crimes; or aggravated assault in which the victim is a child of the parent and has suffered serious bodily injury.~~

Termination of Parental Rights - Mandatory Filing 624-05-15-30-10

The custodial agency must file a petition to the court for Termination of Parental Rights:

1. On or before the day when the child has been in foster care ~~, in the custody of the agency or the Division of Juvenile Services~~ for 450 out of the previous 660 nights; or
2. Within 60 days after the court has found the child to be an abandoned infant; or
3. Within 60 days after the court has convicted the child's parent of one of the following crimes in North Dakota, or a substantially similar offense under the laws of another jurisdiction: murder, manslaughter, or negligent homicide of a child of the parent; aiding, abetting, attempting, conspiring, or soliciting the same crimes; or aggravated assault in which the victim is a child of the parent and has suffered serious bodily injury.

Once a termination of parental rights is authorized by the court, the custodial agency shall continue to exercise responsibility for planning until the permanency goal is finalized. This may include cooperation with a private agency adoption worker.

~~Services Following Termination of Parental Rights 624-05-15-100-10~~

~~The county where court action terminating parental rights was initiated shall continue to exercise responsibility for permanency planning until the adoption is finalized (as required by federal law). This should be done in cooperation with the private agency adoption worker.~~

~~For information on determination of financial responsibility for foster care payment, refer to: Manual Chapter 623-05.~~

~~Requirement for Notice to Relatives to~~ Required Upon Child's Removal 624-05-15-50-23

The agency granted temporary public custody of the child shall promptly give notice to the parent, guardian, or other custodian and to the court. Agencies are required to exercise due diligence to identify and provide notice to ~~the following~~ relatives: parents, parents of a sibling of the child ~~entering foster care who have legal custody of the sibling~~, all adult grandparents, and any other identified relatives or adults suggested by the parents, subject to exceptions due to family or domestic violence, within 30 days of the child's removal and placement into foster care.

For the purposes of this section, "sibling of the child entering foster care" means:

1. A brother or sister who has at least one biological or adoptive parent in common;
2. A fictive brother or sister with a significant bond as identified by the child or parent; or
3. A child that would have been considered a sibling but for the termination or other disruption of parental rights, including a death of a parent.

The Identified relatives must also be advised of all available options to become a placement resource for the child. The notice shall:

1. Specify that the child has been or is being removed from the custody of the parent/~~s, or parents of the child and placed into foster care~~;
2. Explains ~~the~~ options the relative has under federal, state, and local law to participate in the care and placement of the child, including any options that may be lost by failing to respond to the notice;
3. Describes the requirements and standards to become a licensed foster family home and the additional services and supports ~~that are~~ available for children placed in ~~that a foster~~ home; and
4. Describes how the relative of the child may be supported if they consider caring for their kin and choose not to obtain a foster care license. TANF Kinship Care offers financial support to the relative while the child is under public custody. In

addition, ND Kinship Navigator grants access to funding, resource and referral opportunities;

5. Describe how the relative may enter into an agreement with the department to receive a subsidized guardianship payment; and

6. Describe the next steps if a relative does not respond to the notice.

The agency must provide this notice in a manner that reasonably ensures the relative has understood the notice. ~~Meaning, This could mean providing the~~ notice is written in a language the relative is able to read and interpret, or that the fluent in. ~~Or, the family's case manager may have to go over the written notice~~ is verbally discussed in person with the relative. ~~If an individual has a visual impairment, the notice may need to be written using large print or Braille. Throughout the life of the case, the custodial agency must continue efforts to engage relatives. The custodial agency can determine if and when it is appropriate to invite an identified relative to actively participate in the child and family team meetings and case planning on behalf of the child.~~

~~It is not required to provide notice to relatives that are identified beyond 30 days of the child's removal. However, agencies can consider, on a case by case basis, whether notification would be appropriate.~~

~~It a relative fails to respond to the initial notice, the relative may not have the opportunity to participate in the care and placement of the child.~~

~~A notification template, which outlines the relatives options to become a placement resource for the child, is available for case managers to use.~~