

**FIRST ENGROSSMENT
with Conference Committee Amendments****ENGROSSED SENATE BILL NO. 2171**

Introduced by

Human Services Committee

(At the request of the Department of Human Services)

1 A BILL for an Act to create and enact three new sections to chapter 27-20, two new
2 subsections to section 50-09-01, five new subsections to section 50-09-02, two new
3 subsections to 50-09-03, a new section to chapter 50-09, two new sections to chapter 50-11,
4 two new chapters to title 50, and a new section to chapter 50-12 of the North Dakota Century
5 Code, relating to implementing the Adoption and Safe Families Act of 1997 and the interstate
6 compact on adoption and medical assistance; to amend and reenact subsection 4 of section
7 14-15-11, subsection 2 of section 14-15.1-04, sections 27-20-02, 27-20-03, 27-20-30,
8 27-20-36, 27-20-38, 27-20-44, 27-20-45, 27-20-46, 27-20-47, 27-21-02.1, and 50-11-06.8 of
9 the North Dakota Century Code, relating to implementing the Adoption and Safe Families Act of
10 1997; and to provide for a legislative council study.

11 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

12 **SECTION 1. AMENDMENT.** Subsection 4 of section 14-15-11 of the North Dakota
13 Century Code is amended and reenacted as follows:

14 4. The report of the investigation must contain an evaluation of the placement,
15 including a criminal history record investigation of the petitioner, with a
16 recommendation as to the granting of the petition for adoption and any other
17 information the court requires regarding the petitioner or the minor.

18 **SECTION 2. AMENDMENT.** Subsection 2 of section 14-15.1-04 of the North Dakota
19 Century Code is amended and reenacted as follows:

20 2. An assessment of how the identified adoptive parent's emotional maturity,
21 finances, health, relationships, criminal history record, and any other relevant
22 factors may affect the identified adoptive parent's ability to accept, care for, and
23 provide the child with an adequate environment in which to mature.

SECTION 3. AMENDMENT. Section 27-20-02 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

1. "Abandon" means:

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

(1) To communicate with the child; or

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

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

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

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

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

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

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

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

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

(1) One year; or

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

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

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

- (1) A violation of section 12.1-16-01, 12.1-16-02, or 12.1-16-03;
- (2) Aiding, abetting, attempting, conspiring, or soliciting a violation of section 12.1-16-01, 12.1-16-02, or 12.1-16-03; or
- (3) A violation of section 12.1-17-02 in which the victim has suffered serious bodily injury;

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

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

- (1) In the case of a child age nine or older, after the child's majority; or
- (2) In the case of a child, after the child is twice the child's current age, measured in days.

4. "Child" means an individual who is:

- a. Under the age of eighteen years and is neither married and cohabiting with spouse nor in the military service of the United States; or
- b. Under the age of twenty years with respect to a delinquent act committed while under the age of eighteen years.

~~2.~~ 5. "Custodian" means a person, other than a parent or legal guardian, who stands in loco parentis to the child or a person to whom legal custody of the child has been given by order of a court.

~~3.~~ 6. "Delinquent act" means an act designated a crime under the law, including local ordinances or resolutions of this state, or of another state if the act occurred in that state, or under federal law, and the crime does not fall under subdivision c of subsection ~~40~~16 and is not a traffic offense as defined in subsection ~~9~~15.

~~4.~~ 7. "Delinquent child" means a child who has committed a delinquent act and is in need of treatment or rehabilitation.

~~5.~~ 8. "Deprived child" means a child who:

- 1 a. Is without proper parental care or control, subsistence, education as required
- 2 by law, or other care or control necessary for the child's physical, mental, or
- 3 emotional health, or morals, and the deprivation is not due primarily to the
- 4 lack of financial means of the child's parents, guardian, or other custodian;
- 5 b. Has been placed for care or adoption in violation of law;
- 6 c. Has been abandoned by the child's parents, guardian, or other custodian;
- 7 d. Is without proper parental care, control, or education as required by law, or
- 8 other care and control necessary for the child's well-being because of the
- 9 physical, mental, emotional, or other illness or disability of the child's parent or
- 10 parents, and that such lack of care is not due to a willful act of commission or
- 11 act of omission by the child's parents, and care is requested by a parent; or
- 12 e. Is in need of treatment and whose parents, guardian, or other custodian have
- 13 refused to participate in treatment as ordered by the juvenile court.
- 14 9. "Fit and willing relative or other appropriate individual" means a relative or other
- 15 individual who has been determined, after consideration of an assessment that
- 16 includes a criminal history record investigation under section 23 of this Act, to be a
- 17 qualified person under chapter 30.1-27, and who consents in writing to act as a
- 18 legal guardian.
- 19 10. "Home" when used in the phrase "to return home" means the abode of the child's
- 20 parent with whom the child formerly resided.
- 21 ~~6-~~ 11. "Juvenile court" means the district court of this state.
- 22 12. "Permanency hearing" means a hearing, conducted with respect to a child who is
- 23 in foster care, to determine the permanency plan for the child which includes:
- 24 a. Whether and, if applicable, when the child will be returned to the parent;
- 25 b. Whether and, if applicable, when the child will be placed for adoption and the
- 26 state will file a petition for termination of parental rights;
- 27 c. Whether and, if applicable, when a fit and willing relative or other appropriate
- 28 individual will be appointed as a legal guardian;
- 29 d. In cases in which a compelling reason has been shown that it would not be in
- 30 the child's best interests to return home, to have parental rights terminated, to
- 31 be placed for adoption, to be placed with a fit and willing relative, or to be

placed with a legal guardian, whether and, if applicable, when the child will be placed in another planned permanent living arrangement;

e. In the case of a child who has been placed in foster care outside the state in which the home of the parents is located, or if the parents maintain separate homes, outside the state in which the home of the parent who was the child's primary caregiver is located, whether the out-of-state placement continues to be appropriate and in the child's best interests; and

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

~~7.~~ 13. "Protective supervision" means supervision ordered by the court of children found to be deprived or unruly.

14. "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.

~~8.~~ 15. "Shelter care" means temporary care of a child in physically unrestricted facilities.

~~9.~~ 16. "Traffic offense" means a violation of a law or local ordinance or resolution governing the operation of a vehicle upon the highways of this state, or the waterways within or adjoining this state, by a child who has been issued a valid operator's license or permit if one is required, other than manslaughter resulting from the operation of a motor vehicle in violation of section 12.1-16-02; negligent homicide in violation of section 12.1-16-03; and driving or being in actual physical control of a vehicle in violation of section 39-08-01, or an equivalent ordinance.

~~10.~~ 17. "Unruly child" means a child who:

a. Is habitually and without justification truant from school;

- b. Is habitually disobedient of the reasonable and lawful commands of the child's parent, guardian, or other custodian and is ungovernable; or who is willfully in a situation dangerous or injurious to the health, safety, or morals of the child or others;
- c. Has committed an offense applicable only to a child;
- d. Has committed a noncriminal traffic offense without ever having been issued an operator's license or permit if one was required; or
- e. Has committed an offense in violation of section 39-08-18 or 5-01-08; and
- f. In any of the foregoing instances is in need of treatment or rehabilitation.

18. "Willfully" has the meaning provided in section 12.1-02-02.

SECTION 4. AMENDMENT. Section 27-20-03 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

27-20-03. Jurisdiction.

- 1. The juvenile court has exclusive original jurisdiction of the following proceedings, which are governed by this chapter:
 - a. Proceedings in which a child is alleged to be delinquent, unruly, or deprived;
 - b. Proceedings for the termination of parental rights except when a part of an adoption proceeding; and
 - c. Proceedings arising under sections 27-20-39 through 27-20-42.
- 2. The juvenile court also has exclusive original jurisdiction of the following proceedings, which are governed by the laws relating thereto without regard to the other provisions of this chapter:
 - a. Proceedings to obtain judicial consent to the marriage, employment, or enlistment in the armed services of a child, if consent is required by law;
 - b. Proceedings under the interstate compact on juveniles;
 - c. Proceedings under the interstate compact on the placement of children; and
 - d. Proceedings arising under section 50-06-06.13 to obtain a judicial determination that the placement of a severely emotionally disturbed child in an out-of-home treatment program is in the best interests of the child.

- 1 3. The juvenile court has concurrent jurisdiction with the district court of proceedings
2 for the appointment of a guardian for a minor which, if originated under this
3 chapter, are governed by this chapter and chapter 30.1-27.

4 **SECTION 5.** A new section to chapter 27-20 of the North Dakota Century Code is
5 created and enacted as follows:

6 **Reasonable efforts to prevent removal or to reunify - When required.**

- 7 1. As used in this section, "reasonable efforts" means the exercise of due diligence,
8 by the agency granted authority over the child under this chapter, to use
9 appropriate and available services to meet the needs of the child and the child's
10 family in order to prevent removal of the child from the child's family or, after
11 removal, to use appropriate and available services to eliminate the need for
12 removal and to reunite the child and the child's family. In determining reasonable
13 efforts to be made with respect to a child under this section, and in making
14 reasonable efforts, the child's health and safety must be the paramount concern.
- 15 2. Except as provided in subsection 4, reasonable efforts must be made to preserve
16 and reunify families:
- 17 a. Prior to the placement of a child in foster care, to prevent or eliminate the
18 need for removing the child from the child's home; and
- 19 b. To make it possible for a child to return safely to the child's home.
- 20 3. If the court or the child's custodian determined that continuation of reasonable
21 efforts, as described in subsection 2, is inconsistent with the permanency plan for
22 the child, reasonable efforts must be made to place the child in a timely manner in
23 accordance with the permanency plan and to complete whatever steps are
24 necessary to finalize the permanent placement of the child.
- 25 4. Reasonable efforts of the type described in subsection 2 are not required if:
- 26 a. A court of competent jurisdiction has determined that a parent has subjected
27 the child to aggravated circumstances; or
- 28 b. The parental rights of the parent, with respect to another child of the parent,
29 have been involuntarily terminated.
- 30 5. Efforts to place a child for adoption, with a fit and willing relative or other
31 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 Social Security Act [42 U.S.C. 620, et seq., and 42 U.S.C. 6701, et seq.], as amended, and federal regulations adopted thereunder, provided that this subsection may not provide a basis for overturning an otherwise valid court order.

SECTION 6. AMENDMENT. Section 27-20-30 of the North Dakota Century Code is amended and reenacted as follows:

27-20-30. Disposition of deprived child.

1. If the child is found to be a deprived child, the court may make any of the following orders of disposition best suited to the protection and physical, mental, and moral welfare of the child:
 - a. Permit the child to remain with ~~his~~ the child's parents, guardian, or other custodian, subject to conditions and limitations as the court prescribes, including supervision as directed by the court for the protection of the child.
 - b. Subject to conditions and limitations as the court prescribes, transfer temporary legal custody to any of the following:
 - (1) Any individual who, after study by the juvenile supervisor or other person or agency designated by the court, is found by the court to be qualified to receive and care for the child.
 - (2) An agency or other private organization licensed or otherwise authorized by law to receive and provide care for the child.
 - (3) The director of the county social service board or other public agency authorized by law to receive and provide care for the child.
 - (4) An individual in another state with or without supervision by an appropriate officer under section 27-20-40.
 - c. Without making any of the ~~foregoing~~ orders otherwise provided in this section transfer custody of the child to the juvenile court of another state if authorized

by and in accordance with section 27-20-39 if the child is or is about to become a resident of that state.

d. Require the parents, guardian, or other custodian to participate in ~~the~~ treatment ~~ordered for the child~~.

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

f. In cases in which a compelling reason has been shown that it would not be in the child's best interests to return home, to have parental rights terminated, to be placed for adoption, to be placed with a fit and willing relative, or to be placed with a legal guardian, establish, by order, some other planned permanent living arrangement.

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

SECTION 7. AMENDMENT. Section 27-20-36 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

27-20-36. Limitations of time on orders of disposition.

1. An order terminating parental rights or establishing a legal guardianship is without limit as to duration.

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

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

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

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

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

b. A permanency hearing must be conducted within thirty days after a court determines that reasonable efforts of the type described in subsection 2 of section 5 of this Act are not required, or twelve months after a child, subject to an order of disposition under this subsection, is considered to have entered foster care, or is continued in foster care following a previous permanency hearing. The permanency hearing may be conducted:

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

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

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

4. Except as provided in subsection 1, the court may terminate an order of disposition before the expiration of the order or extend its duration for further periods. An order of extension may be made if:

a. A hearing is held before the expiration of the order upon motion of a party or on the court's own motion;

b. Reasonable notice of the hearing and opportunity to be heard are given to the parties affected;

c. The court finds the extension is necessary to accomplish the purposes of the order extended; 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. However, the court may order that the child permanently remain in foster care with a specified caregiver and that the duration of the order be left to the determination of the court if the court determines that:

- 1 (1) All reasonable efforts have been made to reunite the child with the
- 2 child's family;
- 3 (2) The deprivation is likely to continue;
- 4 (3) With respect to a child under the age of ten, termination of parental
- 5 rights and subsequent adoption would not be in the best interests of the
- 6 child; and
- 7 (4) The placement of the child in permanent foster care is in the best
- 8 interests of the child.
- 9 5. Except as provided in subsection 2, the court may terminate an order of disposition
- 10 or extension prior to its expiration, on or without an application of a party, if it
- 11 appears to the court that the purposes of the order have been accomplished. If a
- 12 party may be adversely affected by the order of termination, the order may be
- 13 made only after reasonable notice and opportunity to be heard have been given to
- 14 the party.
- 15 6. Except as provided in subsection 1, when the child attains the age of twenty years,
- 16 all orders affecting the child then in force terminate and the child is discharged
- 17 from further obligation or control.
- 18 7. If an order of disposition is made with respect to a child under the age of ten years
- 19 pursuant to which the child is ~~removed from the care, custody, and control of the~~
- 20 ~~child's parent, guardian, or other custodian~~ placed in foster care without
- 21 terminating parental rights and the parent and child relationship, the court, before
- 22 extending the duration of the order, shall determine upon the extension hearing
- 23 whether the child is adoptable and whether termination of those rights and that
- 24 relationship is warranted under section 27-20-44 and is in the best interest of the
- 25 child. In that case the notice of the extension hearing must also inform the parties
- 26 affected that the court will determine whether the child is adoptable and whether
- 27 termination of their parental rights and the parent and child relationship is
- 28 warranted and in the best interest of the child and that a further order of disposition
- 29 may be made by the court placing the child with a view to adoption. If the court
- 30 determines that the child is adoptable and that termination of parental rights and
- 31 the parent and child relationship is warranted and is in the best interest of the child,

the court shall make a further order of disposition terminating those rights and that relationship and committing the child under section 27-20-47.

SECTION 8. AMENDMENT. Section 27-20-38 of the North Dakota Century Code is amended and reenacted as follows:

27-20-38. 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.

SECTION 9. AMENDMENT. Section 27-20-44 of the North Dakota Century Code is amended and reenacted as follows:

27-20-44. Termination of parental rights.

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

a. The parent has abandoned the child;

b. The child is a deprived child and the court finds ~~that the~~ :

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

~~or~~

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

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

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

(b) Aiding, abetting, attempting, conspiring, or soliciting a violation of section 12.1-16-01, 12.1-16-02, or 12.1-06-03 in which the victim is a child of the parent; or

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

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

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

SECTION 10. A new section to chapter 27-20 of the North Dakota Century Code is created and enacted as follows:

Petition to terminate parental rights - When brought - Definitions.

1. A petition to terminate parental rights may be made as provided under this section and section 27-20-45.

2. Except as provided in subsection 3, a petition for termination of parental rights must be filed:

a. If the child has been in foster care, in the custody of the department, or, in cases arising out of an adjudication by the court that a child is an unruly child, the division of juvenile services, for at least four hundred fifty out of the previous six hundred sixty nights;

b. Within sixty days after a court of competent jurisdiction has found the child to be an abandoned infant; or

c. Within sixty days after a court of competent jurisdiction has convicted the child's parent of one of the following crimes, or of an offense under the laws of another jurisdiction which requires proof of substantially similar elements:

- (1) A violation of section 12.1-16-01, 12.1-16-02, or 12.1-16-03 in which the victim is another child of the parent;
 - (2) Aiding, abetting, attempting, conspiring, or soliciting a violation of section 12.1-16-01, 12.1-16-02, or 12.1-16-03 in which the victim is a child of the parent; or
 - (3) A violation of section 12.1-17-02 in which the victim is a child of the parent and has suffered serious bodily injury.
3. A petition for termination of parental rights need not be filed if:
 - a. The child is being cared for by a relative approved by the department;
 - b. The department 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
 - c. The department has determined:
 - (1) Reasonable efforts to preserve and reunify the family are required under section 5 of this Act to be made with respect to the child;
 - (2) The case plan provides such services are necessary for the safe return of the child to the child's home; and
 - (3) Such services have not been provided consistent with time periods described in the case plan.
4. For purposes of subsection 2, a child in foster care entered foster care on the earlier of:
 - a. The date of the court's order if the court:
 - (1) Made a finding that the child has been subjected to child abuse or neglect;
 - (2) Determined that it is unsafe or contrary to the welfare of the child to remain in the home; and
 - (3) Granted custody of the child to the department or, in cases arising out of an adjudication by the court that a child is an unruly child, the division of juvenile services; or
 - b. The date that is sixty days after:

- (1) The date of a hearing under section 27-20-17 which results in retaining a child in shelter care;
 - (2) The date of an order in a dispositional hearing under which a child is placed in foster care; or
 - (3) The date a child is placed in foster care voluntarily and with the consent of the child's parent.
5. For purposes of subsection 2, a child leaves foster care when:
 - a. The court enters an order:
 - (1) Denying a petition to grant care, custody, and control of the child to the department or the division of juvenile services;
 - (2) Terminating an order that granted custody of the child to the department or the division of juvenile services; or
 - (3) Appointing a legal guardian under section 14 of this Act;
 - b. The court order under which the child entered foster care ends by operation of law;
 - c. The child is placed in a parental home by the court or a legal custodian other than the division of juvenile services and the legal custodian lacks authority to remove the child without further order of the court; or
 - d. The child is placed in a parental home by the division of juvenile services.
6. For purposes of subsection 2, a child is not in foster care on any night during which the child is:
 - a. On a trial home visit;
 - b. Receiving services at the youth correctional center pursuant to an adjudication of delinquency; or
 - c. Absent without leave from the place in which the child was receiving foster care.
7. For purposes of this section:
 - a. "A finding that the child has been subjected to child abuse or neglect" means:
 - (1) A finding of deprivation made under chapter 27-20; or

(2) A conviction of a person, responsible for a child's welfare, for conduct involving the child, under chapter 12.1-16 or sections 12.1-17-01 through 12.1-17-04 or 12.1-20-01 through 12.1-20-08.

b. "Compelling reason" means a recorded statement that reflects consideration of:

(1) The child's age;

(2) The portion of the child's life spent living in the household of a parent of the child;

(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.

c. "Department" means the department of human services or its designee, including any county social service board.

SECTION 11. AMENDMENT. Section 27-20-45 of the North Dakota Century Code is amended and reenacted as follows:

27-20-45. Proceeding for termination of parental rights.

1. The petition must comply with section 27-20-21 and state clearly that an order for termination of parental rights is requested and that the effect ~~thereof~~ will be as stated in ~~the first sentence of~~ section 27-20-46.
2. If both of the natural parents of the child are not named in the petition either as petitioner or as respondent, the court shall cause inquiry to be made of the petitioner and other appropriate persons in an effort to identify an unnamed parent. The inquiry must include, to the extent necessary and appropriate, all of the following:
 - a. Whether any man is presumed to be the father of the child under the Uniform Parentage Act.
 - b. Whether the natural mother of the child was cohabiting with a man at the time of conception or birth of the child.
 - c. Whether the natural mother of the child has received from any man support payments or promises of support with respect to the child or in connection with her pregnancy.

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

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

3. The court shall add as respondent to the petition and cause to be served with a summons any person identified by the court as an unnamed parent, unless the person has relinquished parental rights, or parental rights have been previously terminated by a court.

4. If the court, after inquiry, is unable to identify an unnamed parent and no person has appeared in the proceeding claiming to be an unnamed parent of the child or to have any right of custody of the child, the court shall enter an order terminating all parental rights of the unnamed parent with reference to the child and the parent and child relationship.

5. If a petition for termination of parental rights is made by a parent of the child under this section or if a parent consents to termination of parental rights under section 27-20-44, that parent is entitled under section 27-20-26 to legal counsel during all stages of a proceeding to terminate the parent and child relationship ~~if the child is to be placed for adoption by a child placing agency licensed under chapter 50-12. The parent may retain counsel of the parent's own choosing and at the parent's own expense, or, if indigent, the parent may request the court to order, upon which the court shall order, that a state's attorney serve as legal counsel to the parent at no cost to the parent. As an alternative to the state's attorney serving as legal counsel to the parent, the state's attorney may request the court to order, upon which the court may order, if a conflict is shown to exist, that other legal counsel services that may be available be provided to the parent at no cost to the parent. These alternative legal counsel services include counsel services for indigent persons. Prior to the termination proceeding held under this chapter, the court or a person designated by the court shall inform the parent of the right to counsel provided by this subsection.~~

6. Subject to the disposition of an appeal, upon the expiration of thirty days after an order terminating parental rights is issued under this section, the order cannot be questioned by any person, including the petitioner, in any manner, or upon any

ground, including fraud, misrepresentation, failure to give any required notice, or lack of jurisdiction of the parties or of the subject matter, unless the person retained custody of the child.

SECTION 12. AMENDMENT. Section 27-20-46 of the North Dakota Century Code is amended and reenacted as follows:

27-20-46. Effect of order terminating parental rights or appointing a legal guardian.

1. An order terminating parental rights of a parent terminates all ~~his~~ the parent's rights and obligations with respect to the child and of the child to or through ~~him~~ 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 ~~he~~ the parent any right to object to the adoption or otherwise to participate in the proceedings.
2. An 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.

SECTION 13. AMENDMENT. Section 27-20-47 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

27-20-47. ~~Commitment to agency~~ Disposition upon termination of parental rights.

1. If, upon entering an order terminating the parental rights of a parent, there is no parent having parental rights, the court shall ~~commit~~:
 - a. Commit the child to the custody of the executive director of the department of human services or a licensed child-placing agency willing to accept custody for the purpose of placing the child for adoption or, in the absence thereof, in a foster home ~~or take other suitable measures for the care and welfare of the child;~~
 - b. Appoint a fit and willing relative or other appropriate individual as the child's legal guardian; or
 - c. Establish some other planned permanent living arrangement.

2. The custodian has the rights of a legal custodian and authority to consent to the child's adoption ~~of the child~~, his marriage, his enlistment in the armed forces of the United States, and surgical and other medical treatment ~~for the child~~.

~~2.~~ 3. If the child is not ~~adopted~~ placed for adoption within ~~eighteen~~ twelve months after the date of the order and a ~~guardian or conservator of~~ legal guardianship or other planned permanent living arrangement for the child has not been ~~appointed by the~~ district established by a court of competent jurisdiction, the child must be returned to the court for entry of further orders for the care, custody, and control of the child.

SECTION 14. A new section to chapter 27-20 of the North Dakota Century Code is created and enacted as follows:

Appointment of legal guardian.

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

- a. Without terminating parental rights, appoint a fit and willing relative or other appropriate individual as the child's legal guardian if the court has determined that a lawful basis exists for terminating parental rights, but the child is unlikely to be placed for adoption; or
- b. Appoint a fit and willing relative or other appropriate individual as the child's legal guardian if the child has not been placed for adoption within twelve months after a termination of all parental rights.

2. An individual appointed as a legal guardian has:

- a. If there is a parent with remaining parental rights, the rights of a legal custodian; and
- b. If there is no parent with remaining parental rights, the rights of a legal custodian and the authority to consent to the child's adoption, marriage, enlistment in the armed forces of the United States, and surgical and other medical treatment.

SECTION 15. AMENDMENT. Section 27-21-02.1 of the North Dakota Century Code is amended and reenacted as follows:

27-21-02.1. Placement procedures. The division of juvenile services shall retain custody of the child as granted by the authority of the committing court and the Uniform Juvenile Court Act. The court in an order committing the child to the division may require court

1 approval before a placement may be made to a more restrictive setting. All other placements
2 may be made by the division at any time it appears to be in the child's best interest and in the
3 best interest of the state.

4 1. A child, child's parent, or guardian who objects to a placement to a more restrictive
5 setting made by the division may request a placement hearing to review the
6 placement.

7 2. In an emergency, or for reasons of safety and security, the division may
8 temporarily place a child in an appropriate facility. A child, child's parent, or
9 guardian who objects to the temporary placement may request a placement
10 hearing to review the placement determined by the division.

11 3. The division may conduct a permanency hearing, as authorized by section
12 27-20-36, if an appropriate permanency plan may be carried out without exceeding
13 the division's authority.

14 **SECTION 16.** Two new subsections to section 50-09-01 of the 1997 Supplement to the
15 North Dakota Century Code are created and enacted as follows:

16 "Title IV-B" means title IV-B of the Social Security Act [Pub. L. 90-248, title II,
17 sec. 240(c); 81 Stat. 911; 42 U.S.C. 620 et seq.], as amended;

18 "Title IV-E" means title IV-E of the Social Security Act [Pub. L. 96-272, title I,
19 sec. 101(a)(1); 94 Stat. 501, 42 U.S.C. 670 et seq.], as amended.

20 **SECTION 17.** Five new subsections to section 50-09-02 of the 1997 Supplement to the
21 North Dakota Century Code are created and enacted as follows:

22 For purposes of section 674(e)(2) of the Social Security Act [42 U.S.C. 674(e)(2)],
23 approve families, outside of the jurisdiction of the state of North Dakota, for
24 placement of children for adoption.

25 Act as the official agency of the state in the administration of child and family
26 services in conformity with title IV-B and to direct and supervise county
27 administration of that program.

Act as the official agency of the state in the administration of federal payments for foster care and adoption assistance in conformity with title IV-E and to direct and supervise county administration of that program.

Provide, upon request and insofar as staff resources permit, technical assistance concerning the requirements of title IV-B and title IV-E to courts within this state, including tribal courts, and to state's attorneys and tribal prosecutors within this state.

Make training available to state's attorneys and assistant state's attorneys who are willing to collaborate with colleagues in other counties on petitions to terminate parental rights.

SECTION 18. Two new subsections to section 50-09-03 of the 1997 Supplement to the North Dakota Century Code are created and enacted as follows:

Administer child and family services under the direction and supervision of the state agency in conformity with title IV-B.

Administer federal payments for foster care and adoption assistance under the direction and supervision of the state agency in conformity with title IV-E.

SECTION 19. A new section to chapter 50-09 of the North Dakota Century Code is created and enacted as follows:

State agency to submit plans and administer programs under title IV-B and title IV-E - Make application for federal funds.

1. The state agency may submit state plans in forms that meet the requirements for such plans which are, or may be, imposed under title IV-B or title IV-E. The state agency may take actions reasonably necessary to conform the administration of programs under its supervision and direction to the requirements of title IV-B or title IV-E and the state plans submitted thereunder, including the issuance of policy manuals, forms, and program directives. The state agency may seek appropriate waivers of the requirements of federal statutes or regulations as may be authorized by federal law.

2. The state agency may apply for additional or conditionally available funds, such as adoption incentive payments, as may be made available under title IV-B or title IV-E, and may take any action reasonably necessary to support an application.

SECTION 20. AMENDMENT. Section 50-11-06.8 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

50-11-06.8. Criminal ~~background~~ history record investigation - Fingerprinting required.

1. Except as provided in ~~subsection 6~~ sections 21 and 22 of this Act, each facility providing foster care for children shall secure, from a law enforcement agency or any other agency authorized to take fingerprints, two sets of fingerprints and shall provide all other information necessary to secure state criminal history record information and a nationwide background check under ~~the National Child Protection Act of 1993 [Pub. L. 103-209; 107 Stat. 2490; 42 U.S.C. 5119, et seq.], as amended,~~ federal law from:
 - a. Any individual employed by the facility; and
 - b. Any adult living in the facility, but not being provided care in the facility.
2. The facility shall assure that information obtained under subsection 1 is provided to the department.
3. Upon receipt of all fingerprints and necessary information relating to a license request, the department shall submit the information and fingerprints to the bureau of criminal investigation. The department shall provide a copy of any response received from the bureau of criminal investigation to the facility.
4. The bureau of criminal investigation shall request a nationwide background check from the federal bureau of investigation and, upon receipt of a response, provide the response of the federal bureau of investigation to the department. The bureau shall also provide any criminal history record information that may lawfully be made available under chapter 12-60 to the department.
5. Upon request by the operators of a facility, a law enforcement agency shall take fingerprints of persons described in subdivisions a and b of subsection 1 if the request is made for purposes of this section.
6. ~~This section does not apply to a family foster care home for children.~~

7. The department shall pay the cost of securing fingerprints, any criminal history record information made available under chapter 12-60, and a nationwide background check.

8. 7. An agency that takes fingerprints as provided under this section may charge a reasonable fee to offset the costs of the fingerprinting.

SECTION 21. A new section to chapter 50-11 of the North Dakota Century Code is created and enacted as follows:

Criminal history record investigation - Fingerprinting not required.

1. a. Except as provided in section 22 of this Act, each facility providing foster care shall secure from any individual employed by the facility and any adult living in the facility, but not being provided care in the facility, identifying information other than fingerprints, that is appropriate to accomplish a statewide criminal history record investigation.

b. Fingerprints need not be taken and a nationwide background check need not be made if an individual:

(1) Has resided continuously in this state for eleven years or since reaching age eighteen, whichever is less;

(2) Is on active United States military duty or has resided continuously in this state since receiving an honorable discharge; or

(3) Is excused from providing fingerprints under rules adopted by the department.

2. The department shall verify that sufficient identifying information has been provided. Upon verification, the department shall submit that information to the bureau of criminal investigation.

3. The bureau of criminal investigation shall provide any criminal history record information that may lawfully be made available under chapter 12-60 to the department. The department shall provide a copy of any response received from the bureau of criminal investigation to the facility.

4. The department shall pay the cost of securing any criminal history record information made available under chapter 12-60.

1 5. The department shall consult with the bureau of criminal investigation to determine
2 the identifying information, other than fingerprints, appropriate to accomplish a
3 statewide criminal history record investigation.

4 6. The department may adopt emergency rules under this section without the finding
5 otherwise required under section 28-32-02.

6 **SECTION 22.** A new section to chapter 50-11 of the North Dakota Century Code is
7 created and enacted as follows:

8 **Criminal history record investigation - When not required.** A criminal history record
9 investigation may not be required, under section 50-11-06.8 or section 21 of this Act, of a family
10 foster care home for children licensed or approved on the effective date of this section for so
11 long as that home remains continuously licensed or approved.

12 **SECTION 23.** A new chapter to title 50 of the North Dakota Century Code is created
13 and enacted as follows:

14 **Criminal history record investigation required.**

15 1. Before appointment as a legal guardian under chapter 27-20, the individual must
16 be subject to an assessment that includes the result of a criminal history record
17 investigation made under this section.

18 2. Except as provided in subsection 6, an individual described in subsection 1 shall
19 secure, from a law enforcement agency or other agency authorized to take
20 fingerprints, two sets of fingerprints, and shall provide all other information
21 necessary to secure state criminal history record information and a nationwide
22 background check under federal law. Upon a request made under this section, a
23 law enforcement agency shall take fingerprints of any individual described in
24 subsection 1, and may charge a reasonable fee to offset the cost of fingerprinting.

25 3. An individual described in subsection 1 shall assure that information obtained
26 under subsection 2 is provided to the department of human services.

27 4. Upon receipt of all fingerprints and necessary information relating to a criminal
28 history record investigation, the department of human services shall submit those
29 fingerprints and that information to the bureau of criminal investigation.

30 5. The bureau of criminal investigation shall request a nationwide background check
31 from the federal bureau of investigation and, upon receipt of a response, provide

1 the response of the federal bureau of investigation to the department of human
2 services. The bureau of criminal investigation shall also provide any criminal
3 history record information that may lawfully be made available under chapter 12-60
4 to the department of human services. The bureau of criminal investigation may
5 charge a reasonable fee to offset the cost of providing any criminal history record
6 information and may require payment of any charge imposed by the federal bureau
7 of criminal investigation for a nationwide background check.

8 6. Fingerprints need not be taken and a nationwide background check need not be
9 made if an individual:

10 a. Has resided continuously in this state for eleven years or since reaching age
11 eighteen, whichever is less;

12 b. Is on active United States military duty or has resided continuously in this
13 state since receiving an honorable discharge; or

14 c. Is excused from providing fingerprints under rules adopted by the department
15 of human services.

16 7. The department of human services shall provide an individual, who provided the
17 department with information under subsection 2, with any information received
18 under this section from the bureau of criminal investigation which the department
19 of human services is not prevented by federal law from disclosing to the individual.

20 8. The department of human services may adopt emergency rules under this section
21 without the finding otherwise required under section 28-32-02.

22 **Criminal history record investigation - Effect of results.** An individual may not be
23 licensed or approved as a foster parent or treated as having a home suitable for the adoption of
24 any child other than the individual's stepchild, and a foster care facility that employs or houses
25 an individual may not be licensed or approved, if the individual is the subject of a criminal
26 history record investigation that reveals:

27 1. A felony conviction by a court of competent jurisdiction for criminal conduct
28 involving:

29 a. Child abuse or neglect;

30 b. Domestic violence, as that term is used in chapter 14-07.1;

1 c. A crime in which a child was a victim, including the creation or distribution of
2 child pornography; or

3 d. A crime involving violence, including rape, sexual assault, or murder, but not
4 including other physical assault or battery;

5 2. A felony conviction entered within the past five years by a court of competent
6 jurisdiction for criminal conduct involving:

7 a. A crime involving violence not described in subsection 1;

8 b. Any drug-related offense; or

9 c. An attempt, facilitation, solicitation, or conspiracy to commit criminal conduct
10 described in subsection 1;

11 3. A felony conviction entered by a court of competent jurisdiction for criminal conduct
12 described in subsection 2 if five years have not elapsed after final discharge or
13 release from any term of probation, parole, or other form of community corrections,
14 without subsequent conviction, unless the individual demonstrates sufficient
15 rehabilitation; or

16 4. A felony conviction entered by a court of competent jurisdiction for criminal conduct
17 described in subsection 2 or a misdemeanor conviction by a court of competent
18 jurisdiction for a crime in which a child was the victim or a crime of violence if the
19 individual is not sufficiently rehabilitated.

20 **SECTION 24.** A new section to chapter 50-12 of the North Dakota Century Code is
21 created and enacted as follows:

22 **Criminal history record investigation required.**

23 1. A child-placing agency shall include, in any adoptive home study report, the results
24 of a criminal history record investigation made under this section. If the results
25 reveal a conviction of a crime described in section 23 of this Act, the home study
26 report must include a determination that a home provided by the prospective
27 adoptive parent is not a suitable home for the placement of any child and a
28 recommendation that the petition for adoption be denied.

29 2. Except as provided in subsection 6, a child-placing agency shall secure, from a law
30 enforcement agency or any other agency authorized to take fingerprints, two sets
31 of fingerprints, and shall provide all other information necessary to secure state

1 criminal history record information and a nationwide background check under
2 federal law from any prospective adoptive parent. Upon a request of a
3 child-placing agency, a law enforcement agency shall take fingerprints of any
4 prospective adoptive parent for purposes of this section. An agency that takes
5 fingerprints as provided under this section may charge a reasonable fee to offset
6 the cost of fingerprinting.

7 3. The child-placing agency shall assure that information obtained under subsection 2
8 is provided to the department of human services and shall arrange payment to the
9 bureau of criminal investigation sufficient to defray the cost of securing criminal
10 history record information under this section.

11 4. Upon receipt of all fingerprints and necessary information relating to a criminal
12 history record investigation, the department of human services shall submit those
13 fingerprints and that information to the bureau of criminal investigation.

14 5. The bureau of criminal investigation shall request a nationwide background check
15 from the federal bureau of investigation and, upon receipt of a response, provide
16 the response of the federal bureau of investigation to the department of human
17 services. The bureau of criminal investigation shall also provide any criminal
18 history record information that may lawfully be made available under chapter 12-60
19 to the department.

20 6. Fingerprints need not be taken and a nationwide background check need not be
21 made if a prospective adoptive parent:

22 a. Has resided continuously in this state for eleven years or since reaching age
23 eighteen, whichever is less;

24 b. Is on active United States military duty or has resided continuously in this
25 state since receiving an honorable discharge; or

26 c. Is excused from providing fingerprints under rules adopted by the department
27 of human services.

28 7. The department of human services shall provide the child-placing agency with any
29 information, received under this section from the bureau of criminal investigation,
30 that the department of human services is not prevented by federal law from
31 disclosing to the child-placing agency.

- 1 8. The department of human services may adopt emergency rules under this section
2 without the finding otherwise required under section 28-32-02.

3 **SECTION 25.** A new chapter to title 50 of the North Dakota Century Code is created
4 and enacted as follows:

5 **Definitions.** As used in this chapter:

- 6 1. "Adoption assistance" means the payment or payments for the maintenance of a
7 child which are made or committed to be made pursuant to an adoption assistance
8 program established by the laws of a party state.
- 9 2. "Adoption assistance state" means the state that is signatory to an adoption
10 assistance agreement in a particular case.
- 11 3. "Child with special needs" means an individual under twenty-one years of age,
12 who was or will be adopted before reaching eighteen years of age, and who has
13 any of the special needs described in section 50-09-02.2.
- 14 4. "Compact" means the interstate compact on adoption and medical assistance.
- 15 5. "Department" means the department of human services.
- 16 6. "Medical assistance" means a program operated by a state under a state plan
17 approved under title XIX of the Social Security Act [42 U.S.C. 1396, et seq.].
- 18 7. "Party state" means a state that has adopted the compact.
- 19 8. "Residence state" means the state in which the child lives.
- 20 9. "State" means a state of the United States, the District of Columbia, the
21 Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of
22 the Northern Mariana Islands, or a territory or possession of the United States.

23 **Adoption assistance.**

- 24 1. This state determines the amounts of adoption assistance it will provide to a child
25 with special needs. Adoption assistance may be subject to periodic reevaluation of
26 eligibility.
- 27 2. Adoption assistance and medical assistance to which this compact applies is that
28 provided from the effective date of an adoption assistance agreement.
- 29 3. An adoption assistance agreement must be written, signed by the adoptive parents
30 and on behalf of the state, and include:

- 1 a. A commitment that adoption assistance is payable without regard for the state
- 2 of residence of the adoptive parents;
- 3 b. Provisions identifying the types of care and services toward which the
- 4 adoption assistance state must make payments;
- 5 c. A commitment to make medical assistance available to the child in
- 6 accordance with this chapter;
- 7 d. A declaration that the agreement is for the benefit of the child, the adoptive
- 8 parents, and the state, and that it is enforceable by any of them; and
- 9 e. The date or dates upon which each payment or other benefit is to commence.
- 10 4. Any services or benefits provided for a child by this state as the residence state or
- 11 the adoption assistance state may be facilitated by the department on behalf of
- 12 another party state. Staff of the department shall assist staff of the child welfare
- 13 agencies of other party states and the beneficiaries of adoption assistance
- 14 agreements in assuring prompt and full access to all benefits included in such
- 15 agreements.
- 16 5. Adoption assistance payments made by this state on behalf of a child living in
- 17 another state must be made on the same basis and in the same amounts as they
- 18 would be made if the child were living in this state, except that the laws of the
- 19 adoption assistance program of the state in which the child lives may provide for
- 20 the payment of higher amounts.

21 **Medical assistance.**

- 22 1. Except as provided in subsection 2:
- 23 a. A child, for whom this state has agreed under the terms of an adoption
- 24 assistance agreement to provide medical assistance, is eligible for medical
- 25 assistance in this state during the entire period for which the agreement is in
- 26 effect and shall receive the same benefits as any other child who is covered
- 27 by the medical assistance program in this state;
- 28 b. When a child, who is covered by an adoption assistance agreement under
- 29 which this state is the adoption state, is living in another party state, payment
- 30 for any medical services and benefits specified under the terms of the
- 31 adoption assistance agreement, which are not available to the child under the

1 medical assistance program of the residence state, must be made by this
2 state as required by its law; and

3 c. A child, for whom a party state has agreed under the terms of an adoption
4 assistance agreement to provide medical assistance, is eligible for medical
5 assistance in this state during the entire period this state is the child's
6 residence state, and shall receive the same benefits as any other child who is
7 covered by the medical assistance program in this state.

8 2. Medical assistance may be subject to periodic reevaluation of eligibility, provided
9 that:

10 a. No reevaluation may depend upon whether the adoptive parents are eligible
11 for medical assistance; and

12 b. Financial eligibility is based solely upon the child's income and assets.

13 **Compact administration.**

14 1. The executive director of the department shall:

15 a. Execute one or more interstate compacts on behalf of this state, not
16 inconsistent with this chapter, to implement the purposes of this chapter; and
17 b. Designate a compact administrator and a deputy compact administrator as
18 the executive director deems necessary.

19 2. The compact administrator shall:

20 a. Coordinate all activities under this compact within this state;
21 b. Be the principal contact for officials and agencies within and without this state
22 for the facilitation of interstate relations involving this compact and benefits
23 and services provided under this compact; and
24 c. Assist child welfare agency staff from other party states and adoptive families
25 receiving adoption and medical assistance on an interstate basis.

26 3. Acting with compact administrators from other party states, the compact
27 administrator:

28 a. Shall develop uniform forms and administrative procedures for the interstate
29 monitoring and delivery of adoption and medical assistance benefits and
30 services pursuant to this compact; and

b. May enter into supplementary agreements, not inconsistent with the compact, with some or all party states, provided that no supplementary agreement may relieve a party state of any obligation to provide adoption and medical assistance in accordance with applicable state and federal law and this compact.

Joinder and withdrawal.

1. This state's joinder of the compact is effective upon execution of the compact by the executive director of the department.
2. The compact may be joined by any state.
3. This state may withdraw from the compact only by written notice sent to the appropriate officials of all other party states, but no such notice may take effect until one year after it is given.
4. All adoption assistance agreements outstanding and to which this state is a signatory at the time when its withdrawal from the compact takes effect must continue until they expire or are terminated in accordance with their provisions. Until such expiration or termination, all beneficiaries of the agreements involved shall continue to have all rights and obligations conferred or imposed by the compact, and this state shall continue to administer the compact to the extent necessary to fully implement those rights and obligations.

SECTION 26. LEGISLATIVE COUNCIL STUDY - IMPACT OF THE ADOPTION AND SAFE FAMILIES ACT. The legislative council shall consider studying, during the 1999-2000 interim, the impact to the state department of human services, counties, court system, division of juvenile services, adoption agencies, and families of the Adoption and Safe Families Act of 1997 including related state and county staffing requirements, court costs, adoption-related costs and issues, foster care-related impacts, and the impacts on families.