

# DOMESTIC RELATIONS AND PERSONS

## CHAPTER 124

HOUSE BILL NO. 1295  
(Erickson, Dotzenrod, Lee, Martin, Olson).

### ABORTION CONTROL

AN ACT to create and enact chapter 14-02.1 of the North Dakota Century Code, relating to the control of abortions and related matters, and providing penalties; and to repeal chapter 12.1-19 of the North Dakota Century Code, as contained in section 19 of chapter 116 of the 1973 Sessions Laws of the state of North Dakota, relating to the control of abortions and related matters and providing penalties; and declaring an emergency.

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

SECTION 1.) Chapter 14-02.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

14-02.1-01. PURPOSE.) The purpose of this chapter is to protect unborn human life and maternal health within present constitutional limits. It reaffirms the tradition of the state of North Dakota to protect every human life whether unborn or aged, healthy or sick.

14-02.1-02. DEFINITIONS.) As used in this chapter:

1. "Abortion" means the termination of human pregnancy with an intention other than to produce a live birth or to remove a dead embryo or fetus.
2. "Hospital" means an institution licensed by the state department of health under chapter 23-16, and any hospital operated by the United States or this state.
3. "Licensed physician" means a person who is licensed to practice medicine or osteopathy under chapter 43-17, or a physician practicing in the armed services of the United States, or in the employ of the United States.
4. "Informed consent" means voluntary consent to abortion by the woman upon whom the abortion is to be performed only after full disclosure to her by the physician who is to perform the abortion of such of the following information as is reasonably chargeable to the knowledge of such physician in his professional capacity:

- a. The state of development of the fetus, the method of abortion to be utilized, and the effects of such abortion method upon the fetus.
- b. The possible physical and psychological complications of abortion.
- c. Available alternatives to abortion; namely, childbirth or adoption, or both.

Such informed consent shall be evidenced by a written statement, in the form prescribed by the state department of health and approved by the attorney general, signed by the physician and the woman upon whom the abortion is to be performed, in which statement the physician certifies that he has made the full disclosure provided above; and in which statement the woman upon whom the abortion is to be performed acknowledges that the above disclosures have been made to her and that she voluntarily consents to the abortion.

5. "Viable" means the ability of a fetus to live outside the mother's womb, albeit with artificial aid.

12-02.1-03. CONSENT TO ABORTION.)

1. No abortion may be performed upon any woman in the absence of informed consent. However, informed consent of the pregnant woman is not required in the event of a medical emergency when the woman is incapable of giving her consent if a licensed physician certifies the abortion is necessary to preserve her life.
2. Subsequent to the period of pregnancy when the fetus may reasonably be expected to have reached viability, no abortion other than an abortion necessary to preserve her life or if the continuation of her pregnancy will impose on her a substantial risk of grave impairment of her physical or mental health may be performed upon any woman in the absence of:
  - a. The written consent of her husband unless her husband is voluntarily separated from her; or
  - b. The written consent of a parent, if living, or the custodian or legal guardian of such woman if the woman is unmarried and under eighteen years of age.
3. No executive officer, administrative agency, or public employee of the state of North Dakota or any local governmental body has power to issue any order requiring an abortion, nor shall any such officer or entity coerce any woman to have an abortion, nor shall any other person coerce any woman to have an abortion.

14-02.1-04. LIMITATIONS ON THE PERFORMANCE OF ABORTIONS - PENALTY.)

1. No abortion shall be done by any person other than a licensed physician using medical standards applicable to all other surgical procedures.
2. After the first twelve weeks of pregnancy but prior to the time at which the fetus may reasonably be expected to have reached viability, no abortion may be performed in any facility other than a licensed hospital.
3. After the point in pregnancy where the fetus may reasonably be expected to have reached viability, no abortion may be performed except in a hospital, and if in the medical judgment of the physician the abortion is necessary to preserve the life of the mother or if the continuation of her pregnancy will impose on her a substantial risk of grave impairment of her physical or mental health.

An abortion under this subsection may only be performed if the above-mentioned medical judgment of the physician who is to perform the abortion is first certified by him in writing, setting forth in detail the facts upon which he relies in making such judgment and if this judgment has been concurred in by two other licensed physicians who have examined the patient. The foregoing certification and concurrence is not required in the case of an emergency where the abortion is necessary to preserve the life of the patient.

4. Any licensed physician who performs an abortion without complying with the provisions of this section is guilty of a class A misdemeanor.
5. It shall be a class B felony for any person, other than a physician licensed under chapter 43-17, to perform an abortion in this state.

14-02.1-05. PRESERVING LIFE OF A VIABLE FETUS - PENALTY.)

The licensed physician performing an abortion shall take all reasonable steps both during and subsequent to the abortion, in keeping with good medical practice consistent with the procedure being used, to preserve the life and the health of a fetus which has survived the abortion and has been born alive as a premature infant viable by medical standards. Such steps shall include the presence of life-supporting equipment as defined by the department of health in the room where the abortion is to be performed. Failure to do so is a class C felony.

14-02.1-06. SOLICITING ABORTIONS.) No licensed physician

or licensed hospital, or any person employed by the licensed physician or licensed hospital, nor any other person shall advertise or participate in any form of communication having as its purpose the inviting, inducing, or attracting of a pregnant woman to undergo an abortion.

14-02.1-07. REPORTING OF PRACTICE OF ABORTION.)

1. Every hospital in which an abortion is performed shall keep on file, in the form prescribed by the state department of health, a statement dated and certified by the licensed physician who performed the abortion setting forth such information with respect to the abortion as the state department of health by regulation shall require; including, but not limited to, information on prior pregnancies; the medical procedure employed to administer the abortion; the gestational age of the fetus; the vital signs of the fetus after abortion, if any; and, if performed after viability, the medical procedures employed to protect and preserve the life and health of the fetus.
2. The licensed physician performing an abortion shall cause the same pathology studies to be made in connection therewith as is done in connection with all other surgical procedures. The hospital shall keep the reports thereof on file.
3. In connection with an abortion, the hospital shall keep on file the original of each of the documents required by this Act relating to informed consent.
4. Such hospital shall, within thirty days after the abortion, file with the state department of health a report, upon a form prescribed by the state department of health and certified by the custodian of the records or licensed physician in charge of such medical facility or hospital, setting forth all of the information required in subsections 1, 2, and 3 of this section, except such information as would identify any individual involved with the abortion. The report shall exclude copies of any documents required to be filed by subsection 3 of this section, but shall certify that such documents were duly executed and are on file.
5. All reports and documents required by this Act shall be confidential, subject to such disclosure as is permitted by law, except that statistical data not identifying any individual involved in an abortion shall be made public by the state department of health annually, and the report required by subsection 4 of this section to be filed with the state department of health shall be available for public inspection, except insofar as it identifies any individual involved in an abortion. Names and identities of persons submitting to abortion shall remain confidential among

medical and medical support personnel directly involved in the abortion, and among persons working in the facility where the abortion was performed whose duties include billing the patient or submitting claims to an insurance company, keeping facility records, or processing abortion data required by state law.

6. The department shall report to the attorney general any apparent violation of this Act.

14-02.1-08. PROTECTION OF FETUS BORN ALIVE - PENALTY.)

1. A person is guilty of a class C felony if he knowingly, or negligently, causes the death of a viable fetus born alive.
2. Whenever a fetus which is the subject of abortion is born alive and is viable, it becomes an abandoned and deprived child, unless:
  - a. The termination of the pregnancy is necessary to preserve the life of the mother; or
  - b. The mother and her spouse, or either of them, have agreed in writing in advance of the abortion, or within seventy-two hours thereafter, to accept the parental rights and responsibilities for the fetus if it survives the abortion procedure.

14-02.1-09. HUMANE DISPOSAL OF NONVAILABLE FETUS.) The licensed physician performing the abortion, if performed outside of a hospital, must see to it that the fetus is disposed of in a humane fashion under regulations established by the state department of health. A licensed hospital in which an abortion is performed must dispose of a dead fetus in a humane fashion in compliance with regulations promulgated by the state department of health.

14-02.1-10. CONCEALING STILLBIRTH OR DEATH OF INFANT - PENALTY.) It shall be a class A misdemeanor for a person to conceal the stillbirth of a fetus or to fail to report to a physician or to the county coroner the death of an infant under two years of age.

14-02.1-11. GENERAL PENALTY.) A person violating any provision of this chapter for which another penalty is not specifically prescribed shall be guilty of a class A misdemeanor. Any person willfully violating a rule or regulation promulgated under this chapter is guilty of an infraction.

14-02.1-12. SHORT TITLE.) This chapter may be cited as the North Dakota Abortion Control Act.

SECTION 2. REPEAL.) Chapter 12.1-19 of the North Dakota Century Code, as contained in section 19 of chapter 116 of the 1973 Session Laws of the state of North Dakota, is hereby repealed.

SECTION 3. SAVINGS CLAUSE.) If any section, subsection, subdivision, sentence, or clause of this Act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of the Act.

SECTION 4. EMERGENCY.) This Act is hereby declared to be an emergency measure and shall be in full force and effect from and after its passage and approval.

Not approved or disapproved by the Governor

Filed April 11, 1975

## CHAPTER 125

HOUSE BILL NO. 1294  
(Erickson, Dotzenrod, Lee, Martin, Olson)

## FETAL EXPERIMENTATION

AN ACT to prohibit fetal experimentation, and providing a penalty.

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

## SECTION 1. LIVE FETAL EXPERIMENTATION - PENALTY.)

1. No person shall use any live human fetus, whether before or after expulsion from its mother's womb, for scientific, laboratory, research, or other kind of experimentation. This section shall not prohibit procedures incident to the study of a human fetus while it is in its mother's womb, provided that in the best medical judgment of the physician, made at the time of the study, said procedures do not substantially jeopardize the life or health of the fetus, and provided said fetus is not the subject of a planned abortion. In any criminal proceeding the fetus shall be conclusively presumed not to be the subject of a planned abortion if the mother signed a written statement at the time of the study, that she was not planning an abortion.
2. This section shall not prohibit or regulate diagnostic or remedial procedures, the purpose of which is to determine the life or health of the fetus involved or to preserve the life or health of the fetus involved, or of the mother involved.
3. A fetus is a live fetus for purposes of this section when, in the best medical judgment of a physician, it shows evidence of life as determined by the same medical standards as are used in determining evidence of life in a spontaneously aborted fetus at approximately the same stage of gestational development.
4. Any person violating this section shall be guilty of a class A felony.

## SECTION 2. EXPERIMENTATION ON DEAD FETUS - SALE OF FETUS - PENALTY.)

1. No experimentation may knowingly be performed upon a

- dead fetus unless the consent of the mother has first been obtained; provided, however, that such consent shall not be required in the case of a routine pathological study. In any criminal proceeding, consent shall be conclusively presumed to have been granted for the purposes of this section by a written statement, signed by the mother who is at least eighteen years of age, to the effect that she consents to the use of her fetus for scientific, laboratory, research, or other kind of experimentation or study. Such written consent shall constitute lawful authorization for the transfer of the dead fetus.
2. No person shall perform or offer to perform an abortion where part or all of the consideration for said abortion is that the fetal remains may be used for experimentation or other kind of research or study.
  3. No person shall knowingly sell, transfer, distribute, or give away any fetus for a use which is in violation of the provisions of this section. For purposes of this section, the word "fetus" shall include also an embryo or neonate.
  4. Violation of this section by any person is a class C felony.

Approved March 12, 1975



## CHAPTER 126

HOUSE BILL NO. 1302  
(Olson, Lundene)

## MARRIAGE

AN ACT to amend and reenact sections 14-03-01 and 14-03-02 of the North Dakota Century Code, relating to the contract of marriage and the lawful age for marriage.

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

SECTION 1. AMENDMENT.) Section 14-03-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-03-01. WHAT CONSTITUTES MARRIAGE.) Marriage is a personal relation arising out of a civil contract between a male and a female to which the consent of the parties is essential. The marriage relation shall be entered into, maintained, annulled, or dissolved only as provided by law.

SECTION 2. AMENDMENT.) Section 14-03-02 of the 1973 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-03-02. LAWFUL AGE FOR MARRIAGE.) Any unmarried person of the age of eighteen years or upwards, and not otherwise disqualified, is capable of consenting to and consummating a marriage. If a person is between sixteen and eighteen years of age, a marriage license shall not be issued without the consent of the parents or guardian, if there are any. If a person is below the age of sixteen, a marriage license shall not be issued without the consent of the county court or the county court of increased jurisdiction of the county of residence of one of the licensed applicants, together with the consent of the parents or guardian of said applicant.

Approved March 25, 1975

## CHAPTER 127

SENATE BILL NO. 2274  
(Longmire, Freed)

## DISBURSEMENT OF NONSUPPORT PAYMENTS

AN ACT to create and enact a new subsection to section 14-08-07 of the 1973 Supplement to the North Dakota Century Code, relating to the custody and disbursement of nonsupport payments made to the clerk of district court.

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

SECTION 1.) A new subsection to section 14-08-07 of the 1973 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

The clerk of court, at his option, may deposit payments received by him under this section in a special trust account in either the Bank of North Dakota or in a banking institution of this state designated as a depository of public funds under chapter 21-04 and make payments from such trust account to those persons entitled by law to receive payments, or the clerk may deposit payments received by him under this section with the county treasurer and direct their disbursement pursuant to chapter 11-14.

Approved March 19, 1975

## CHAPTER 128

HOUSE BILL NO. 1261  
(Committee on Judiciary)  
(At the request of the Social Service Board)

## PERSONS ENTITLED TO ADOPTION NOTICE

AN ACT to amend and reenact subsection 1 of section 14-15-11 of the North Dakota Century Code, relating to persons entitled to notice of petition for adoption.

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

SECTION 1.) Subsection 1 of section 14-15-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. After the filing of a petition to adopt a minor, the court shall fix a time and place for hearing the petition. At least twenty days before the date of hearing, notice of the filing of the petition and of the time and place of hearing shall be given by the petitioner to (a) the public welfare board; (b) any agency or person whose consent to the adoption is required by this act but who has not consented; (c) a person whose consent is dispensed with upon any ground mentioned in subdivisions a, b, g, h, and i of subsection 1 of section 14-15-06 but who has not consented; and any person identified by the court as a natural parent or a possible natural parent of the minor in proceedings under section 27-20-45, unless the person has relinquished parental rights or his parental rights have been previously terminated by a court. The notice to the social service board shall be accompanied by a copy of the petition.

Approved March 19, 1975

## CHAPTER 129

HOUSE BILL NO. 1496  
(Lundene, Lee)

## IDENTIFICATION CARDS

AN ACT to provide for an identification card; and providing a penalty.

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

SECTION 1. IDENTIFICATION CARDS.) The clerk of the district court shall issue a special laminated identification card to any resident of this state who shall make a proper application upon a form provided by the clerk of the district court and who shall:

1. Be sixteen years of age or older;
2. Present a birth certificate or other satisfactory evidence of the applicant's age, together with a photograph of the applicant; and
3. Pay a required fee of three dollars.

Such fee shall be deposited in the county general fund by the clerk. An identification card issued pursuant to this section shall expire every five years but may be renewed. A fee of three dollars shall be required for the renewal of an expired card or for the replacement of any card which has been lost or accidentally destroyed. Such an identification card shall be in a form, size, and design as prescribed by the state health department, shall contain a photograph of the holder, and shall clearly state that it does not enable its holder to operate a motor vehicle. An identification card issued pursuant to this section shall be sufficient identification wherever and whenever a different identification card is not required.

SECTION 2. CONFIDENTIALITY OF INFORMATION - PENALTY.) Any information obtained by the clerk of the district court from an application for the issuance, renewal, or replacement of an identification card issuable pursuant to this Act is confidential and shall not be divulged to any person, association, corporation, or organization, public or private, except to the legal guardian or the attorney of the applicant or to a person, association, corporation, or organization nominated in writing by the applicant, the applicant's legal guardian, or the applicant's attorney. Violation of this section is a class A misdemeanor.

SECTION 3. FRAUD AND MISREPRESENTATION - PENALTY.) Any fraud or misrepresentation in the application for, or use of, an identification card issued pursuant to this Act or alteration of such an identification card in any manner so as to not truly indicate the bearer's identity or age is a class A misdemeanor.

SECTION 4. PUBLIC AWARENESS.) Governmental agencies, boards, and commissions of this state may conduct a program of advertisement for the purpose of bringing the provisions of this Act to the attention of the general public. Such an advertisement program may utilize the mass media, pamphlets, public meetings, or any other appropriate means of communication.

Approved March 18, 1975

## CHAPTER 130

SENATE BILL NO. 2245  
(Committee on Judiciary)  
(At the request of the Social Service Board)

## UNIFORM PARENTAGE ACT

AN ACT relating to the identification of parents and constituting the Uniform Parentage Act; to provide substantive legal equality for all children; and to repeal chapter 32-36 of the North Dakota Century Code.

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

SECTION 1. PARENT AND CHILD RELATIONSHIP DEFINED.) As used in this Act, "parent and child relationship" means the legal relationship existing between a child and his natural or adoptive parents incident to which the law confers or imposes rights, privileges, duties, and obligations. It includes the mother and child relationship and the father and child relationship.

SECTION 2. RELATIONSHIP NOT DEPENDENT ON MARRIAGE.) The parent and child relationship extends equally to every child and to every parent, regardless of the marital status of the parents.

SECTION 3. HOW PARENT AND CHILD RELATIONSHIP ESTABLISHED.) The parent and child relationship between a child and:

1. The natural mother may be established by proof of her having given birth to the child, or under this Act;
2. The natural father may be established under this Act;
3. An adoptive parent may be established by proof of adoption under the Revised Uniform Adoption Act.

SECTION 4. PRESUMPTION OF PATERNITY.)

1. A man is presumed to be the natural father of a child if:
  - a. He and the child's natural mother are or have been married to each other and the child is born during the marriage, or within three hundred days after the marriage is terminated by death, annulment, declaration of

- invalidity, or divorce, or after a decree of separation is entered by a court;
- b. Before the child's birth, he and the child's natural mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and:
    - (1) If the attempted marriage could be declared invalid only by a court, the child is born during the attempted marriage, or within three hundred days after its termination by death, annulment, declaration of invalidity, or divorce; or
    - (2) If the attempted marriage is invalid without a court order, the child is born within three hundred days after the termination of cohabitation;
  - c. After the child's birth, he and the child's natural mother have married, or attempted to marry, each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and:
    - (1) He has acknowledged his paternity of the child in writing filed with the division of vital statistics of the state department of health,
    - (2) With his consent, he is named as the child's father on the child's birth certificate, or
    - (3) He is obligated to support the child under a written voluntary promise or by court order;
  - d. While the child is under the age of majority, he receives the child into his home and openly holds out the child as his natural child; or
  - e. He acknowledges his paternity of the child in a writing filed with the division of vital statistics of the state department of health, which shall promptly inform the mother of the filing of the acknowledgment, and she does not dispute the acknowledgment within a reasonable time after being informed thereof, in a writing filed with the division of vital statistics of the state department of health. If

another man is presumed under this section to be the child's father, acknowledgment may be effected only with the written consent of the presumed father or after the presumption has been rebutted.

2. A presumption under this section may be rebutted in an appropriate action only by clear and convincing evidence. If two or more presumptions arise which conflict with each other, the presumption which on the facts is founded on the weightier considerations of policy and logic controls. The presumption is rebutted by a court decree establishing paternity of the child by another man.

#### SECTION 5. DETERMINATION OF FATHER AND CHILD RELATIONSHIP

##### - WHO MAY BRING ACTION - WHEN ACTION MAY BE BROUGHT.)

1. A child, his natural mother, or a man presumed to be his father under subdivision a, b, or c of subsection 1 of section 4, may bring an action:
  - a. At any time for the purpose of declaring the existence of the father and child relationship presumed under subdivision a, b, or c of subsection 1 of section 4; or
  - b. For the purpose of declaring the nonexistence of the father and child relationship presumed under subdivision a, b, or c of subsection 1 of section 4 only if the action is brought within a reasonable time after obtaining knowledge of relevant facts, but in no event later than five years after the child's birth. After the presumption has been rebutted, paternity of the child by another man may be determined in the same action, if he has been made a party.
2. Any interested party may bring an action at any time for the purpose of determining the existence or nonexistence of the father and child relationship presumed under subdivision d or e of subsection 1 of section 4.
3. An action to determine the existence of the father and child relationship with respect to a child who has no presumed father under section 4 may be brought by the child, the mother or personal representative of the child, the authorities charged with the support of the child, the personal representative or a parent of the mother if the mother has died, a man alleged or alleging himself to be the father, or the personal representative or a parent of the alleged father if the alleged father has died or is a minor.
4. Regardless of its terms, an agreement, other than an agreement approved by the court in accordance with



subsection 2 of section 13, between an alleged or presumed father and the mother or child, does not bar an action under this section.

5. If an action under this section is brought before the birth of the child, all proceedings shall be stayed until after the birth, except service of process and the taking of depositions to perpetuate testimony.

SECTION 6. STATUTE OF LIMITATIONS.) An action to determine the existence of the father and child relationship as to a child who has no presumed father under section 4 may not be brought later than three years after the birth of the child, or later than three years after the effective date of this Act, whichever is later. However, an action brought by or on behalf of a child whose paternity has not been determined is not barred until three years after the child reaches the age of majority. Sections 6 and 7 do not extend the time within which a right of inheritance or a right to a succession may be asserted beyond the time provided by law relating to distribution and closing of decedents' estates or to the determination of heirship, or otherwise.

SECTION 7. JURISDICTION - VENUE.)

1. The district court has jurisdiction of an action brought under this Act. The action may be joined with an action for divorce, annulment, separate maintenance, or support.
2. A person who has sexual intercourse in this state thereby submits to the jurisdiction of the courts of this state as to an action brought under this Act with respect to a child who may have been conceived by that act of intercourse. In addition to any other method provided by rule or statute, personal jurisdiction may be acquired by personal service of summons outside this state or by registered mail with proof of actual receipt.
3. The action may be brought in the county in which the child or the alleged father resides or is found or, if the father is deceased, in which proceedings for probate of his estate have been or could be commenced.

SECTION 8. PARTIES.) The child shall be made a party to the action. If he is a minor he shall be represented by his general guardian or a guardian ad litem appointed by the court. The child's mother or father may not represent the child as guardian or otherwise. The court may appoint the director of the county welfare board as guardian ad litem for the child. The natural mother, each man presumed to be the father under section 4, and each man alleged to be the natural father, shall be made parties or, if not subject to the jurisdiction of the court, shall be given notice of the action in a manner prescribed by the court and an opportunity to be heard. The court may align the parties.

## SECTION 9. PRETRIAL PROCEEDINGS.)

1. As soon as practicable after an action to declare the existence or nonexistence of the father and child relationship has been brought, an informal hearing shall be held. The court may order that the hearing be held before a referee. The public shall be barred from the hearing. A record of the proceeding or any portion thereof shall be kept if any party requests, or the court orders. Rules of evidence need not be observed.
2. Upon refusal of any witness, including a party, to testify under oath or produce evidence, the court may order him to testify under oath and produce evidence concerning all relevant facts. If the refusal is upon the ground that his testimony or evidence might tend to incriminate him, the court may grant him immunity from all criminal liability on account of the testimony or evidence he is required to produce. An order granting immunity bars prosecution of the witness for any offense shown in whole or in part by testimony or evidence he is required to produce, except for perjury committed in his testimony. The refusal of a witness, who has been granted immunity, to obey an order to testify or produce evidence is a civil contempt of the court.
3. Testimony of a physician concerning the medical circumstances of the pregnancy and the condition and characteristics of the child upon birth is not privileged.

## SECTION 10. BLOOD TESTS.)

1. The court may, and upon request of a party shall, require the child, mother, or alleged father to submit to blood tests. The tests shall be performed by an expert qualified as an examiner of blood types, appointed by the court.
2. The court, upon reasonable request by a party, shall order that independent tests be performed by other experts qualified as examiner of blood types.
3. In all cases, the court shall determine the number and qualifications of the experts.

SECTION 11. EVIDENCE RELATING TO PATERNITY.) Evidence relating to paternity may include:

1. Evidence of sexual intercourse between the mother and alleged father at any possible time of conception;

2. An expert's opinion concerning the statistical probability of the alleged father's paternity based upon the duration of the mother's pregnancy;
3. Blood test results, weighted in accordance with evidence, if available, of the statistical probability of the alleged father's paternity;
4. Medical or anthropological evidence relating to the alleged father's paternity of the child based on tests performed by experts. If a man has been identified as a possible father of the child, the court may, and upon request of a party shall, require the child, the mother, and the man to submit to appropriate tests; and
5. All other evidence relevant to the issue of paternity of the child.

#### SECTION 12. PRETRIAL RECOMMENDATIONS.)

1. On the basis of the information produced at the pretrial hearing, the judge or referee conducting the hearing shall evaluate the probability of determining the existence or nonexistence of the father and child relationship in a trial and whether a judicial declaration of the relationship would be in the best interest of the child. On the basis of the evaluation, an appropriate recommendation for settlement shall be made to the parties, which may include any of the following:
  - a. That the action be dismissed with or without prejudice;
  - b. That the matter be compromised by an agreement among the alleged father, the mother, and the child, in which the father and child relationship is not determined but in which a defined economic obligation is undertaken by the alleged father in favor of the child and, if appropriate, in favor of the mother; subject to approval by the judge or referee conducting the hearing. In reviewing the obligation undertaken by the alleged father in a compromise agreement, the judge or referee conducting the hearing shall consider the best interest of the child, in the light of the factors enumerated in subsection 5 of section 15, discounted by the improbability, as it appears to him, of establishing the alleged father's paternity or nonpaternity of the child in a trial of the action. In the best interest of the child, the court may order that the alleged father's identity be kept

confidential. In that case, the court may designate a person or agency to receive from the alleged father and disburse on behalf of the child all amounts paid by the alleged father in fulfillment of obligations imposed on him; and

- c. That the alleged father voluntarily acknowledge his paternity of the child.
2. If the parties accept a recommendation made in accordance with subsection 1, judgment shall be entered accordingly.
3. If a party refuses to accept a recommendation made under subsection 1 and blood tests have not been taken, the court shall require the parties to submit to blood tests, if practicable. Thereafter the judge or referee shall make an appropriate final recommendation. If a party refuses to accept the final recommendation, the action shall be set for trial.
4. The guardian ad litem may accept or refuse to accept a recommendation under this section.
5. The informal hearing may be terminated and the action set for trial if the judge or referee conducting the hearing finds it unlikely that all parties would accept a recommendation he might make under subsection 1 or 3.

#### SECTION 13. CIVIL ACTION - TRIAL.)

1. An action under this Act is a civil action governed by the rules of civil procedure. The mother of the child and the alleged father are competent to testify and may be compelled to testify. Subsections 2 and 3 of section 10 and sections 11 and 12 apply.
2. Testimony relating to sexual access to the mother by an unidentified man at any time or by an identified man at a time other than the probable time of conception of the child is inadmissible in evidence, unless offered by the mother.
3. In an action against an alleged father, evidence offered by him with respect to a man who is not subject to the jurisdiction of the court concerning his sexual intercourse with the mother at or about the probable time of conception of the child is admissible in evidence only if he has undergone and made available to the court blood tests the results of which do not exclude the possibility of his paternity of the child. A man who is identified and is subject to the jurisdiction of the court shall be made a defendant in the

action.

4. The trial shall be by the court without a jury unless either party demands trial by jury.

SECTION 14. JUDGMENT OR ORDER.)

1. The judgment or order of the court determining the existence or nonexistence of the parent and child relationship is determinative for all purposes.
2. If the judgment or order of the court is at variance with the child's birth certificate, the court shall order that an amended birth registration be made under section 23.
3. The judgment or order may contain any other provision directed against the appropriate party to the proceeding, concerning the duty of support, the custody and guardianship of the child, visitation privileges with the child, the furnishing of bond or other security for the payment of the judgment, or any other matter in the best interest of the child. The judgment or order may direct the father to pay the reasonable expenses of the mother's pregnancy and confinement.
4. Support judgments or orders ordinarily shall be for periodic payments which may vary in amount. In the best interest of the child, a lump sum payment or the purchase of an annuity may be ordered in lieu of periodic payments of support. The court may limit the father's liability for past support of the child to the proportion of the expenses already incurred that the court deems just.
5. In determining the amount to be paid by a parent for support of the child and the period during which the duty of support is owed, a court enforcing the obligation of support shall consider all relevant facts, including:
  - a. The needs of the child;
  - b. The standard of living and circumstances of the parents;
  - c. The relative financial means of the parents;
  - d. The earning ability of the parents;
  - e. The need and capacity of the child for education, including higher education;
  - f. The age of the child;

- g. The financial resources and the earning ability of the child;
- h. The responsibility of the parents for the support of others; and
- i. The value of services contributed by the custodial parent.

SECTION 15. COSTS.) The court may order reasonable fees of counsel, experts, and the child's guardian ad litem, and other costs of the action and pretrial proceedings, including blood tests, to be paid by the parties in proportions and at times determined by the court. The court may order the proportion of any indigent party to be paid by the county welfare board of the county in which the child resides or found.

SECTION 16. ENFORCEMENT OF JUDGMENT OR ORDER.)

1. If existence of the father and child relationship is declared, or paternity or a duty of support has been acknowledged or adjudicated under this Act or under prior law, the obligation of the father may be enforced in the same or other proceedings by the mother, the child, the public authority that has furnished or may furnish the reasonable expenses of pregnancy, confinement, education, support, or funeral, or by any other person, including a private agency, to the extent he has furnished or is furnishing these expenses.
2. The court may order support payments to be made to the mother, the clerk of the court, or a person, corporation, or agency designated to administer them for the benefit of the child under the supervision of the court.
3. Willful failure to obey the judgment or order of the court is a civil contempt of the court. All remedies for the enforcement of judgments apply.

SECTION 17. MODIFICATION OF JUDGMENT OR ORDER.) The court has continuing jurisdiction to modify or revoke a judgment or order:

1. For future education and support; and
2. With respect to matters listed in subsections 3 and 4 of section 15 and subsection 2 of section 17, except that a court entering a judgment or order for the payment of a lump sum or the purchase of an annuity under subsection 4 of section 15 may specify that the judgment or order may not be modified or revoked.

SECTION 18. RIGHT TO COUNSEL - FREE TRANSCRIPT ON APPEAL.)

1. At the pretrial hearing and in further proceedings, any party may be represented by counsel. The court shall appoint counsel for a party who is financially unable to obtain counsel.
2. If a party is financially unable to pay the cost of a transcript, the court shall furnish on request a transcript for purposes of appeal.

#### SECTION 19. HEARINGS AND RECORDS - CONFIDENTIALITY.)

Notwithstanding any other law concerning public hearings and records, any hearing or trial held under this Act shall be held in closed court without admittance of any person other than those necessary to the action or proceeding. All papers and records, other than the final judgment, pertaining to the action or proceeding, whether part of the permanent record of the court or of a file in any state agency or elsewhere, are subject to inspection only upon consent of the court and all interested persons, or in exceptional cases only upon an order of the court for good cause shown.

SECTION 20. ACTION TO DECLARE MOTHER AND CHILD RELATIONSHIP.) Any interested party may bring an action to determine the existence or nonexistence of a mother and child relationship. Insofar as practicable, the provisions of this Act applicable to the father and child relationship apply.

#### SECTION 21. PROMISE TO RENDER SUPPORT.)

1. Any promise in writing to furnish support for a child, growing out of a supposed or alleged father and child relationship, does not require consideration and is enforceable according to its terms, subject to subsection 4 of section 6.
2. In the best interest of the child or the mother, the court may, and upon the promisor's request shall, order the promise to be kept in confidence and designate a person or agency to receive and disburse on behalf of the child all amounts paid in performance of the promise.

#### SECTION 22. BIRTH RECORDS.)

1. Upon order of a court of this state or upon request of a court of another state, the state registrar of vital statistics shall prepare an amended birth registration consistent with the findings of the court.
2. The fact that the father and child relationship was declared after the child's birth shall not be ascertainable from the amended birth registration but the actual place and date of birth shall be shown.

3. The evidence upon which the amended birth registration was made and the original birth certificate shall be kept in a sealed and confidential file and be subject to inspection only upon consent of the court and all interested persons, or in exceptional cases only upon an order of the court for good cause shown.

SECTION 23. WHEN NOTICE OF ADOPTION PROCEEDING REQUIRED.)

If a mother relinquishes or proposes to relinquish for adoption a child who has (a) a presumed father under subsection 1 of section 4, (b) a father whose relationship to the child has been determined by a court, or (c) a father as to whom the child is a legitimate child under prior law of this state or under the law of another jurisdiction, the father shall be given notice of the adoption proceeding and have the rights provided under the Revised Uniform Adoption Act, unless the father's relationship to the child has been previously terminated or determined by a court not to exist.

SECTION 24. PROCEEDING TO TERMINATE PARENTAL RIGHTS.)

1. If a mother relinquishes or proposes to relinquish for adoption a child who does not have (a) a presumed father under subsection 1 of section 4, (b) a father whose relationship to the child has been determined by the court, or (c) a father as to whom the child is a legitimate child under prior law of this state or under the law of another jurisdiction, or if a child otherwise becomes the subject of an adoption proceeding, the agency or person to whom the child has been or is to be relinquished, or the mother of the person having custody of the child, shall file a petition in the district court to terminate the parental rights of the father, unless the father's relationship to the child has been previously terminated or determined by a court not to exist.
2. In an effort to identify the natural father, the court shall cause inquiry to be made of the mother and any other appropriate person. The inquiry shall include the following: whether the mother was married at the time of conception of the child or at any time thereafter; whether the mother was cohabiting with a man at the time of conception or birth of the child; whether the mother has received from any man support payments or promises of support with respect to the child or in connection with her pregnancy; or whether any man has formally or informally acknowledged or declared his possible paternity of the child.
3. If, after the inquiry, the natural father is identified to the satisfaction of the court, or if more than one man is identified as a possible



- father, each shall be given notice of the proceeding in accordance with subsection 5. If any of them fails to appear or, if appearing, fails to claim custodial rights, his parental rights with reference to the child shall be terminated. If the natural father, or a man representing himself to be the natural father, claims custodial rights, the court shall proceed to determine custodial rights.
4. If, after the inquiry, the court is unable to identify the natural father or any possible natural father and no person has appeared claiming to be the natural father and claiming custodial rights, the court shall enter an order terminating the unknown natural father's parental rights with reference to the child. Subject to the disposition of an appeal, upon the expiration of thirty days after an order terminating parental rights is issued under this subsection, the order cannot be questioned by any person, 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.
  5. Notice of the proceedings shall be given to every person identified as the natural father or a possible natural father in the manner appropriate under the rules of civil procedure for the service of process in a civil action in this state, or in any manner the court directs. Proof of giving the notice shall be filed with the court before the petition is heard. If no person has been identified as the natural father or a possible father, the court, on the basis of all information available, shall determine whether publication or public posting of notice of the proceeding is likely to lead to identification and, if so, shall order publication or public posting at times and in places and manner it deems appropriate.

SECTION 25. UNIFORMITY OF APPLICATION AND CONSTRUCTION.) This Act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this Act among states enacting it.

SECTION 26. SHORT TITLE.) This Act may be cited as the Uniform Parentage Act.

SECTION 27. SEVERABILITY.) If any provision of this Act or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

\* SECTION 28. REPEAL.) Chapter 32-36 of the North Dakota Century Code is hereby repealed.

Approved April 9, 1975

\*NOTE: Section 32-36-28 was amended by section 348 and section 32-36-29 was amended by section 349 of Senate Bill No. 2039, chapter 106.