

**FIRST ENGROSSMENT  
with House Amendments**

Fifty-sixth  
Legislative Assembly  
of North Dakota

**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; and to amend and reenact subsection 4 of  
7 section 14-15-11, subsection 2 of section 14-15.1-04, sections 27-20-02, 27-20-03,  
8 subsection 3 of section 27-20-24, sections 27-20-30, 27-20-36, 27-20-38, 27-20-44, 27-20-45,  
9 27-20-46, 27-20-47, 27-21-02.1, and 50-11-06.8 of the North Dakota Century Code, relating to  
10 implementing the Adoption and Safe Families Act of 1997.

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.

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

3           **27-20-02. Definitions.** As used in this chapter:

4           1. "Abandon" means:

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

7           (1) To communicate with the child; or

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

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

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

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

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

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

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

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

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

25           (1) One year; or

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

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

- 1           d. Engages in conduct that constitutes one of the following crimes, or of an  
2           offense under the laws of another jurisdiction which requires proof of  
3           substantially similar elements:
- 4           (1) A violation of section 12.1-16-01, 12.1-16-02, or 12.1-16-03;  
5           (2) Aiding, abetting, attempting, conspiring, or soliciting a violation of  
6           section 12.1-16-01, 12.1-16-02, or 12.1-16-03; or  
7           (3) A violation of section 12.1-17-02 in which the victim has suffered  
8           serious bodily injury;
- 9           e. Engages or attempts to engage in conduct, prohibited under sections  
10          12.1-17-01 through 12.1-17-04, in which a child is the victim or intended  
11          victim; or
- 12          f. Has been incarcerated under a sentence for which the latest release date is:
- 13          (1) In the case of a child age nine or older, after the child's majority; or  
14          (2) In the case of a child, after the child is twice the child's current age,  
15          measured in days.
- 16          4. "Child" means an individual who is:
- 17           a. Under the age of eighteen years and is neither married and cohabiting with  
18           spouse nor in the military service of the United States; or
- 19           b. Under the age of twenty years with respect to a delinquent act committed  
20           while under the age of eighteen years.
- 21          ~~2.~~ 5. "Custodian" means a person, other than a parent or legal guardian, who stands in  
22          loco parentis to the child or a person to whom legal custody of the child has been  
23          given by order of a court.
- 24          ~~3.~~ 6. "Delinquent act" means an act designated a crime under the law, including local  
25          ordinances or resolutions of this state, or of another state if the act occurred in that  
26          state, or under federal law, and the crime does not fall under subdivision c of  
27          subsection 4016 and is not a traffic offense as defined in subsection 915.
- 28          4. 7. "Delinquent child" means a child who has committed a delinquent act and is in  
29          need of treatment or rehabilitation.
- 30          ~~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 24 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 ~~6-~~ 10. "Juvenile court" means the district court of this state.
- 20 11. "Permanency hearing" means a hearing, conducted with respect to a child who is  
21 in foster care, to determine the permanency plan for the child which includes:
- 22 a. Whether and, if applicable, when the child will be returned to the parent;  
23 b. Whether and, if applicable, when the child will be placed for adoption and the  
24 state will file a petition for termination of parental rights;
- 25 c. Whether and, if applicable, when a fit and willing relative or other appropriate  
26 individual will be appointed as a legal guardian;
- 27 d. In cases in which a compelling reason has been shown that it would not be in  
28 the child's best interests to return home, to have parental rights terminated, to  
29 be placed for adoption, to be placed with a fit and willing relative, or to be  
30 placed with a legal guardian, whether and, if applicable, when the child will be  
31 placed in another planned permanent living arrangement;

- 1           e. In the case of a child who has been placed in foster care outside the state in  
2           which the home of the parents is located, or if the parents maintain separate  
3           homes, outside the state in which the home of the parent who was the child's  
4           primary caregiver is located, whether the out-of-state placement continues to  
5           be appropriate and in the child's best interests; and
- 6           f. In the case of a child who has attained age sixteen, the services needed to  
7           assist the child to make the transition from foster care to independent living.
- 8       ~~7.~~ 12. "Protective supervision" means supervision ordered by the court of children found  
9           to be deprived or unruly.
- 10       13. "Relative" means:
- 11           a. The child's grandparent, great-grandparent, sibling, half-sibling, aunt,  
12           great-aunt, uncle, great-uncle, nephew, niece, or first cousin;
- 13           b. An individual with a relationship to the child, derived through a current or  
14           former spouse of the child's parent, similar to a relationship described in  
15           subdivision a;
- 16           c. An individual recognized in the child's community as having a relationship  
17           with the child similar to a relationship described in subdivision a; or
- 18           d. The child's stepparent.
- 19       ~~8.~~ 14. "Shelter care" means temporary care of a child in physically unrestricted facilities.
- 20       ~~9.~~ 15. "Traffic offense" means a violation of a law or local ordinance or resolution  
21           governing the operation of a vehicle upon the highways of this state, or the  
22           waterways within or adjoining this state, by a child who has been issued a valid  
23           operator's license or permit if one is required, other than manslaughter resulting  
24           from the operation of a motor vehicle in violation of section 12.1-16-02; negligent  
25           homicide in violation of section 12.1-16-03; and driving or being in actual physical  
26           control of a vehicle in violation of section 39-08-01, or an equivalent ordinance.
- 27       ~~40.~~ 16. "Unruly child" means a child who:
- 28           a. Is habitually and without justification truant from school;
- 29           b. Is habitually disobedient of the reasonable and lawful commands of the child's  
30           parent, guardian, or other custodian and is ungovernable; or who is willfully in

- 1 a situation dangerous or injurious to the health, safety, or morals of the child  
2 or others;
- 3 c. Has committed an offense applicable only to a child;
- 4 d. Has committed a noncriminal traffic offense without ever having been issued  
5 an operator's license or permit if one was required; or
- 6 e. Has committed an offense in violation of section 39-08-18 or 5-01-08; and
- 7 f. In any of the foregoing instances is in need of treatment or rehabilitation.

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

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

11 **27-20-03. Jurisdiction.**

- 12 1. The juvenile court has exclusive original jurisdiction of the following proceedings,  
13 which are governed by this chapter:
- 14 a. Proceedings in which a child is alleged to be delinquent, unruly, or deprived;
- 15 b. Proceedings for the termination of parental rights except when a part of an  
16 adoption proceeding; and
- 17 c. Proceedings arising under sections 27-20-39 through 27-20-42.
- 18 2. The juvenile court also has exclusive original jurisdiction of the following  
19 proceedings, which are governed by the laws relating thereto without regard to the  
20 other provisions of this chapter:
- 21 a. Proceedings to obtain judicial consent to the marriage, employment, or  
22 enlistment in the armed services of a child, if consent is required by law;
- 23 b. Proceedings under the interstate compact on juveniles;
- 24 c. Proceedings under the interstate compact on the placement of children; and
- 25 d. Proceedings arising under section 50-06-06.13 to obtain a judicial  
26 determination that the placement of a severely emotionally disturbed child in  
27 an out-of-home treatment program is in the best interests of the child.
- 28 3. The juvenile court has concurrent jurisdiction with the district court of proceedings  
29 for the appointment of a guardian for a minor which, if originated under this  
30 chapter, are governed by this chapter and chapter 30.1-27.

1           **SECTION 5. AMENDMENT.** Subsection 3 of section 27-20-24 of the North Dakota  
2 Century Code is amended and reenacted as follows:

3           3. The state's attorney ~~upon request of the court~~ shall prepare petitions under this  
4 chapter and present the evidence in support of any allegations of ~~the~~ a petition not  
5 admitted and otherwise conduct the proceedings on behalf of the state.

6           **SECTION 6.** A new section to chapter 27-20 of the North Dakota Century Code is  
7 created and enacted as follows:

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

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

1           5. Efforts to place a child for adoption, with a fit and willing relative or other  
2           appropriate individual as a legal guardian, or in another planned permanent living  
3           arrangement, may be made concurrently with reasonable efforts of the type  
4           described in subsection 2.

5           6. Removal of a child from the child's home for placement in foster care must be  
6           based on judicial findings stated in the court's order, and determined on a  
7           case-by-case basis in a manner that complies with the requirements of titles IV-B  
8           and IV-E of the Social Security Act [42 U.S.C. 620, et seq., and 42 U.S.C. 6701,  
9           et seq.], as amended, and federal regulations adopted thereunder, provided that  
10          this subsection may not provide a basis for overturning an otherwise valid court  
11          order.

12           **SECTION 7. AMENDMENT.** Section 27-20-30 of the North Dakota Century Code is  
13 amended and reenacted as follows:

14           **27-20-30. Disposition of deprived child.**

15           1. If the child is found to be a deprived child, the court may make any of the following  
16 orders of disposition best suited to the protection and physical, mental, and moral  
17 welfare of the child:

18           a. Permit the child to remain with his the child's parents, guardian, or other  
19 custodian, subject to conditions and limitations as the court prescribes,  
20 including supervision as directed by the court for the protection of the child.

21           b. Subject to conditions and limitations as the court prescribes, transfer  
22 temporary legal custody to any of the following:

23           (1) Any individual who, after study by the juvenile supervisor or other  
24 person or agency designated by the court, is found by the court to be  
25 qualified to receive and care for the child.

26           (2) An agency or other private organization licensed or otherwise  
27 authorized by law to receive and provide care for the child.

28           (3) The director of the county social service board or other public agency  
29 authorized by law to receive and provide care for the child.

30           (4) An individual in another state with or without supervision by an  
31 appropriate officer under section 27-20-40.



- 1 c. Without making any of the ~~foregoing~~ orders otherwise provided in this section  
2 transfer custody of the child to the juvenile court of another state if authorized  
3 by and in accordance with section 27-20-39 if the child is or is about to  
4 become a resident of that state.
- 5 d. Require the parents, guardian, or other custodian to participate in ~~the~~  
6 treatment ~~ordered for the child~~.
- 7 e. Appoint a fit and willing relative or other appropriate individual as the child's  
8 legal guardian.
- 9 f. In cases in which a compelling reason has been shown that it would not be in  
10 the child's best interests to return home, to have parental rights terminated, to  
11 be placed for adoption, to be placed with a fit and willing relative, or to be  
12 placed with a legal guardian, establish, by order, some other planned  
13 permanent living arrangement.
- 14 2. Unless a child found to be deprived is found also to be delinquent, ~~he~~ the child  
15 may not be committed to or confined in an institution or other facility designed or  
16 operated for the benefit of delinquent children.

17 **SECTION 8. AMENDMENT.** Section 27-20-36 of the 1997 Supplement to the North  
18 Dakota Century Code is amended and reenacted as follows:

19 **27-20-36. Limitations of time on orders of disposition.**

- 20 1. An order terminating parental rights or establishing a legal guardianship is without  
21 limit as to duration.
- 22 2. An order of disposition committing a delinquent or unruly child to the division of  
23 juvenile services continues in force for not more than two years, excluding any  
24 period of time the child is on parole from an institution, or until the child is sooner  
25 discharged by an institution.
- 26 a. The court which made the order may extend its duration for additional  
27 two-year periods subject to like discharge, if:
- 28 a- (1) A hearing is held upon motion of the division, or on the court's own  
29 motion, prior to the expiration of the order;
- 30 b- (2) Reasonable notice of the hearing and an opportunity to be heard are  
31 given to the child and the parent, guardian, or other custodian; and

- 1 e. (3) The court finds that the extension is necessary for the treatment or  
2 rehabilitation of the child.
- 3 b. A permanency hearing must be conducted within thirty days after a court  
4 determines that reasonable efforts of the type described in subsection 2 of  
5 section 6 of this Act are not required, or twelve months after a child, subject to  
6 an order of disposition under this subsection, is considered to have entered  
7 foster care, or is continued in foster care following a previous permanency  
8 hearing. The permanency hearing may be conducted:
- 9 (1) By the division of juvenile services as a placement hearing under  
10 chapter 27-21; or
- 11 (2) By the court, if the court requires, or if it appears that an appropriate  
12 permanency plan could not be carried out without exceeding the  
13 authority of the division of juvenile services.
- 14 3. ~~An~~ Except as provided in subsection 2, an order of disposition pursuant to which a  
15 child is placed in foster care may not continue in force for more than ~~eighteen~~  
16 twelve months after the child is considered to have entered foster care. Before the  
17 extension of any court order limited under this subsection, a permanency hearing  
18 must be conducted. Any other order of disposition may not continue in force for  
19 more than two years.
- 20 4. Except as provided in subsection 1, the court may terminate an order of disposition  
21 before the expiration of the order or extend its duration for further periods. An  
22 order of extension may be made if:
- 23 a. A hearing is held before the expiration of the order upon motion of a party or  
24 on the court's own motion;
- 25 b. Reasonable notice of the hearing and opportunity to be heard are given to the  
26 parties affected;
- 27 c. The court finds the extension is necessary to accomplish the purposes of the  
28 order extended; and
- 29 d. The extension does not exceed twelve months from the expiration of an order  
30 limited by subsection 3 or two years from the expiration of any other limited  
31 order. However, the court may order that the child permanently remain in

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

1 determines that the child is adoptable and that termination of parental rights and  
2 the parent and child relationship is warranted and is in the best interest of the child,  
3 the court shall make a further order of disposition terminating those rights and that  
4 relationship and committing the child under section 27-20-47.

5 **SECTION 9. AMENDMENT.** Section 27-20-38 of the North Dakota Century Code is  
6 amended and reenacted as follows:

7 **27-20-38. Rights and duties of legal custodian.** A custodian to whom legal custody  
8 has been given by the court under this chapter has the right to the physical custody of the child  
9 and the right to determine the nature of the care, placement, and treatment of the child,  
10 including ordinary medical care as well as medical or surgical treatment for a serious physical  
11 condition or illness which in the opinion of a licensed physician requires prompt treatment,  
12 except for any limits the court may impose. The custodian also has the right and duty to  
13 provide for the care, protection, training, and education, and the physical, mental, and moral  
14 welfare of the child, subject to the conditions and limitations of the order and to the remaining  
15 rights and duties of the child's parents or guardian.

16 **SECTION 10. AMENDMENT.** Section 27-20-44 of the North Dakota Century Code is  
17 amended and reenacted as follows:

18 **27-20-44. Termination of parental rights.**

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

21 a. The parent has abandoned the child;

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

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

26 ~~or~~

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

- 1                   (3) A court of competent jurisdiction has convicted the child' s parent of  
2                   one of the following crimes, or of an offense under the laws of another  
3                   jurisdiction which requires proof of substantially similar elements:  
4                   (a) A violation of section 12.1-16-01, 12.1-16-02, or 12.1-16-03 in  
5                   which the victim is another child of the parent;  
6                   (b) Aiding, abetting, attempting, conspiring, or soliciting a violation of  
7                   section 12.1-16-01, 12.1-16-02, or 12.1-06-03 in which the victim  
8                   is a child of the parent; or  
9                   (c) A violation of section 12.1-17-02 in which the victim is a child of  
10                   the parent and has suffered serious bodily injury; or  
11                c. The written consent of the parent acknowledged before the court has been  
12                   given.  
13                2. If the court does not make an order of termination of parental rights, it may grant  
14                   an order under section 27-20-30 if the court finds from clear and convincing  
15                   evidence that the child is a deprived child.

16                **SECTION 11.** A new section to chapter 27-20 of the North Dakota Century Code is  
17 created and enacted as follows:

18                **Petition to terminate parental rights - When brought - Definitions.**

- 19                1. A petition to terminate parental rights may be made as provided under this section  
20                   and section 27-20-45.  
21                2. Except as provided in subsection 3, a petition for termination of parental rights  
22                   must be filed:  
23                   a. If the child has been in foster care, in the custody of the department, or, in  
24                   cases arising out of an adjudication by the court that a child is an unruly child,  
25                   the division of juvenile services, for at least four hundred fifty out of the  
26                   previous six hundred sixty nights;  
27                   b. Within sixty days after a court of competent jurisdiction has found the child to  
28                   be an abandoned infant; or  
29                   c. Within sixty days after a court of competent jurisdiction has convicted the  
30                   child's parent of one of the following crimes, or of an offense under the laws of  
31                   another jurisdiction which requires proof of substantially similar elements:

- 1                   (1) A violation of section 12.1-16-01, 12.1-16-02, or 12.1-16-03 in which  
2                   the victim is another child of the parent;
- 3                   (2) Aiding, abetting, attempting, conspiring, or soliciting a violation of  
4                   section 12.1-16-01, 12.1-16-02, or 12.1-16-03 in which the victim is a  
5                   child of the parent; or
- 6                   (3) A violation of section 12.1-17-02 in which the victim is a child of the  
7                   parent and has suffered serious bodily injury.
- 8           3. A petition for termination of parental rights need not be filed if:
- 9           a. The child is being cared for by a relative approved by the department;
- 10           b. The department has documented in the case plan a compelling reason for  
11           determining that filing such a petition would not be in the child's best interests  
12           and has notified the court that the documentation is available for review by  
13           the court; or
- 14           c. The department has determined:
- 15           (1) Reasonable efforts to preserve and reunify the family are required  
16           under section 6 of this Act to be made with respect to the child;
- 17           (2) The case plan provides such services are necessary for the safe return  
18           of the child to the child's home; and
- 19           (3) Such services have not been provided consistent with time periods  
20           described in the case plan.
- 21           4. For purposes of subsection 2, a child in foster care entered foster care on the  
22           earlier of:
- 23           a. The date of the court's order if the court:
- 24           (1) Made a finding that the child has been subjected to child abuse or  
25           neglect;
- 26           (2) Determined that it is unsafe or contrary to the welfare of the child to  
27           remain in the home; and
- 28           (3) Granted custody of the child to the department or, in cases arising out  
29           of an adjudication by the court that a child is an unruly child, the  
30           division of juvenile services; or
- 31           b. The date that is sixty days after:

- 1                   (1) The date of a hearing under section 27-20-17 which results in retaining  
2                   a child in shelter care;
- 3                   (2) The date of an order in a dispositional hearing under which a child is  
4                   placed in foster care; or
- 5                   (3) The date a child is placed in foster care voluntarily and with the consent  
6                   of the child's parent.
- 7           5. For purposes of subsection 2, a child leaves foster care when:
- 8           a. The court enters an order:
- 9           (1) Denying a petition to grant care, custody, and control of the child to the  
10           department or the division of juvenile services;
- 11           (2) Terminating an order that granted custody of the child to the  
12           department or the division of juvenile services; or
- 13           (3) Appointing a legal guardian under section 15 of this Act;
- 14           b. The court order under which the child entered foster care ends by operation  
15           of law;
- 16           c. The child is placed in a parental home by the court or a legal custodian other  
17           than the division of juvenile services and the legal custodian lacks authority to  
18           remove the child without further order of the court; or
- 19           d. The child is placed in a parental home by the division of juvenile services.
- 20           6. For purposes of subsection 2, a child is not in foster care on any night during which  
21           the child is:
- 22           a. On a trial home visit;
- 23           b. Receiving services at the youth correctional center pursuant to an  
24           adjudication of delinquency; or
- 25           c. Absent without leave from the place in which the child was receiving foster  
26           care.
- 27           7. For purposes of this section:
- 28           a. "A finding that the child has been subjected to child abuse or neglect" means:
- 29           (1) A finding of deprivation made under chapter 27-20; or

- 1                   (2) A conviction of a person, responsible for a child's welfare, for conduct  
2                                   involving the child, under chapter 12.1-16 or sections 12.1-17-01  
3                                   through 12.1-17-04 or 12.1-20-01 through 12.1-20-08.
- 4                   b. "Compelling reason" means a recorded statement that reflects consideration  
5                                   of:
- 6                                   (1) The child's age;  
7                                   (2) The portion of the child's life spent living in the household of a parent of  
8                                   the child;  
9                                   (3) The availability of an adoptive home suitable to the child's needs;  
10                                  (4) Whether the child has special needs; and  
11                                  (5) The expressed wishes of a child age ten or older.
- 12                   c. "Department" means the department of human services or its designee,  
13                                   including any county social service board.

14                   **SECTION 12. AMENDMENT.** Section 27-20-45 of the North Dakota Century Code is  
15 amended and reenacted as follows:

16                   **27-20-45. Proceeding for termination of parental rights.**

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



- 1           d. Whether any person has formally or informally acknowledged or declared ~~his~~  
2           that person's possible parentage of the child.
- 3           e. Whether any person claims any right to custody of the child.
- 4           3. The court shall add as respondent to the petition and cause to be served with a  
5           summons any person identified by the court as an unnamed parent, unless the  
6           person has relinquished parental rights, or parental rights have been previously  
7           terminated by a court.
- 8           4. If the court, after inquiry, is unable to identify an unnamed parent and no person  
9           has appeared in the proceeding claiming to be an unnamed parent of the child or  
10          to have any right of custody of the child, the court shall enter an order terminating  
11          all parental rights of the unnamed parent with reference to the child and the parent  
12          and child relationship.
- 13          5. If a petition for termination of parental rights is made by a parent of the child under  
14          this section or if a parent consents to termination of parental rights under section  
15          27-20-44, that parent is entitled under section 27-20-26 to legal counsel during all  
16          stages of a proceeding to terminate the parent and child relationship ~~if the child is~~  
17          ~~to be placed for adoption by a child placing agency licensed under chapter 50-12.~~  
18          ~~The parent may retain counsel of the parent's own choosing and at the parent's~~  
19          ~~own expense, or, if indigent, the parent may request the court to order, upon which~~  
20          ~~the court shall order, that a state's attorney serve as legal counsel to the parent at~~  
21          ~~no cost to the parent. As an alternative to the state's attorney serving as legal~~  
22          ~~counsel to the parent, the state's attorney may request the court to order, upon~~  
23          ~~which the court may order, if a conflict is shown to exist, that other legal counsel~~  
24          ~~services that may be available be provided to the parent at no cost to the parent.~~  
25          ~~These alternative legal counsel services include counsel services for indigent~~  
26          ~~persons. Prior to the termination proceeding held under this chapter, the court or a~~  
27          ~~person designated by the court shall inform the parent of the right to counsel~~  
28          ~~provided by this subsection.~~
- 29          6. Subject to the disposition of an appeal, upon the expiration of thirty days after an  
30          order terminating parental rights is issued under this section, the order cannot be  
31          questioned by any person, including the petitioner, in any manner, or upon any

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

4 **SECTION 13. AMENDMENT.** Section 27-20-46 of the North Dakota Century Code is  
5 amended and reenacted as follows:

6 **27-20-46. Effect of order terminating parental rights or appointing a legal**  
7 **guardian.**

- 8 1. An order terminating parental rights of a parent terminates all ~~his~~ the parent's  
9 rights and obligations with respect to the child and of the child to or through ~~him~~  
10 the parent arising from the parental relationship. The parent is not thereafter  
11 entitled to notice of proceedings for the adoption of the child by another nor has ~~he~~  
12 the parent any right to object to the adoption or otherwise to participate in the  
13 proceedings.
- 14 2. An order appointing a legal guardian terminates any authority of a parent that is  
15 granted to the legal guardian under that order. A parent subject to such an order is  
16 entitled to treatment as a party at any subsequent juvenile court proceeding  
17 regarding the child.

18 **SECTION 14. AMENDMENT.** Section 27-20-47 of the 1997 Supplement to the North  
19 Dakota Century Code is amended and reenacted as follows:

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

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

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

4           ~~2.~~ 3. If the child is not ~~adopted~~ placed for adoption within ~~eighteen~~ twelve months after  
5           the date of the order and a ~~guardian or conservator of~~ legal guardianship or other  
6           planned permanent living arrangement for the child has not been ~~appointed by the~~  
7           district established by a court of competent jurisdiction, the child must be returned  
8           to the court for entry of further orders for the care, custody, and control of the child.

9           **SECTION 15.** A new section to chapter 27-20 of the North Dakota Century Code is  
10          created and enacted as follows:

11          **Appointment of legal guardian.**

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

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

20          2. An individual appointed as a legal guardian has:

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

27          **SECTION 16. AMENDMENT.** Section 27-21-02.1 of the North Dakota Century Code is  
28          amended and reenacted as follows:

29          **27-21-02.1. Placement procedures.** The division of juvenile services shall retain  
30          custody of the child as granted by the authority of the committing court and the Uniform  
31          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 17.** 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 18.** 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.

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

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

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

11          **SECTION 19.** Two new subsections to section 50-09-03 of the 1997 Supplement to the  
12 North Dakota Century Code are created and enacted as follows:

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

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

17          **SECTION 20.** A new section to chapter 50-09 of the North Dakota Century Code is  
18 created and enacted as follows:

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

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

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

4           **SECTION 21. AMENDMENT.** Section 50-11-06.8 of the 1997 Supplement to the North  
5 Dakota Century Code is amended and reenacted as follows:

6           **50-11-06.8. Criminal ~~background~~ history record investigation - Fingerprinting**  
7 **required.**

- 8           1.   Except as provided in ~~subsection 6~~ sections 22 and 23 of this Act, each facility  
9                   providing foster care for children shall secure, from a law enforcement agency or  
10                  any other agency authorized to take fingerprints, two sets of fingerprints and shall  
11                  provide all other information necessary to secure state criminal history record  
12                  information and a nationwide background check under ~~the National Child~~  
13                  ~~Protection Act of 1993 [Pub. L. 103-209; 107 Stat. 2490; 42 U.S.C. 5119, et seq.],~~  
14                  ~~as amended,~~ federal law from:  
15                  a.   Any individual employed by the facility; and  
16                  b.   Any adult living in the facility, but not being provided care in the facility.  
17           2.   The facility shall assure that information obtained under subsection 1 is provided to  
18                  the department.  
19           3.   Upon receipt of all fingerprints and necessary information relating to a license  
20                  request, the department shall submit the information and fingerprints to the bureau  
21                  of criminal investigation. The department shall provide a copy of any response  
22                  received from the bureau of criminal investigation to the facility.  
23           4.   The bureau of criminal investigation shall request a nationwide background check  
24                  from the federal bureau of investigation and, upon receipt of a response, provide  
25                  the response of the federal bureau of investigation to the department. The bureau  
26                  shall also provide any criminal history record information that may lawfully be  
27                  made available under chapter 12-60 to the department.  
28           5.   Upon request by the operators of a facility, a law enforcement agency shall take  
29                  fingerprints of persons described in subdivisions a and b of subsection 1 if the  
30                  request is made for purposes of this section.  
31           6.   ~~This section does not apply to a family foster care home for children.~~

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

4           ~~8.~~   ~~7.~~   An agency that takes fingerprints as provided under this section may charge a  
5                    reasonable fee to offset the costs of the fingerprinting.

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 - Fingerprinting not required.**

9            1.    a.   Except as provided in section 23 of this Act, each facility providing foster care  
10                   shall secure from any individual employed by the facility and any adult living  
11                   in the facility, but not being provided care in the facility, identifying information  
12                   other than fingerprints, that is appropriate to accomplish a statewide criminal  
13                   history record investigation.

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

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

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

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

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

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

29            4.    The department shall pay the cost of securing any criminal history record  
30                   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 23.** 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 22 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 24.** 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 25.** 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 24 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 26.** 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

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

6            **Joinder and withdrawal.**

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