

**HOUSE BILL NO. 1094**

Introduced by

Human Services Committee

(At the request of the Department of Human Services)

1 A BILL for an Act to amend and reenact subsection 15 of section 27-20-02, sections 27-20-32.2  
2 and 27-20-38, and subsection 5 of section 50-11-00.1 of the North Dakota Century Code,  
3 relating to placement of siblings in foster care and a guardian's duty to exercise due diligence.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Subsection 15 of section 27-20-02 of the North Dakota  
6 Century Code is amended and reenacted as follows:

- 7 15. "Permanency hearing" means a hearing, conducted with respect to a child who is  
8 in foster care, to determine the permanency plan for the child which includes:
- 9 a. Whether and, if applicable, when the child will be returned to the parent;
  - 10 b. Whether and, if applicable, when the child will be placed for adoption and the  
11 state will file a petition for termination of parental rights;
  - 12 c. Whether and, if applicable, when a fit and willing relative or other appropriate  
13 individual will be appointed as a legal guardian;
  - 14 d. Whether and, if applicable, to place siblings in the same foster care, relative,  
15 guardianship, or adoptive placement, unless it is determined that the joint  
16 placement would be contrary to the safety or well-being of any of the siblings;
  - 17 e. Whether and, if applicable, in the case of siblings removed from their home  
18 who are not jointly placed, to provide for frequent visitation or other ongoing  
19 interaction between the siblings, unless it is determined to be contrary to the  
20 safety or well-being of any of the siblings;
  - 21 f. In cases in which a compelling reason has been shown that it would not be in  
22 the child's best interests to return home, to have parental rights terminated, to  
23 be placed for adoption, to be placed with a fit and willing relative, or to be

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

3 e. g. In the case of a child who has been placed in foster care outside the state in  
4 which the home of the parents is located, or if the parents maintain separate  
5 homes, outside the state in which the home of the parent who was the child's  
6 primary caregiver is located, whether out-of-state placements have been  
7 considered. If the child is currently in an out-of-state placement, the court  
8 shall determine whether the placement continues to be appropriate and in the  
9 child's best interests; and

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

12 **SECTION 2. AMENDMENT.** Section 27-20-32.2 of the North Dakota Century Code is  
13 amended and reenacted as follows:

14 **27-20-32.2. Reasonable efforts to prevent removal or to reunify - When required.**

15 1. As used in this section, "reasonable efforts" means the exercise of due diligence,  
16 by the agency granted authority over the child under this chapter, to use  
17 appropriate and available services to meet the needs of the child and the child's  
18 family in order to prevent removal of the child from the child's family or, after  
19 removal, to use appropriate and available services to eliminate the need for  
20 removal ~~and~~, to reunite the child and the child's family, and to maintain family  
21 connections. In determining reasonable efforts to be made with respect to a child  
22 under this section, and in making reasonable efforts, the child's health and safety  
23 must be the paramount concern.

24 2. Except as provided in subsection 4, reasonable efforts must be made to preserve  
25 ~~and families,~~ reunify families, and maintain family connections:

26 a. Prior to the placement of a child in foster care, to prevent or eliminate the  
27 need for removing the child from the child's home; ~~and~~

28 b. To make it possible for a child to return safely to the child's home;

29 c. To place siblings in the same foster care, relative, guardianship, or adoptive  
30 placement, unless it is determined that such a joint placement would be  
31 contrary to the safety or well-being of any of the siblings; and

- 1           d. In the case of siblings removed from their home who are not jointly placed, to  
2           provide for frequent visitation or other ongoing interaction between the  
3           siblings, unless it is contrary to the safety or well-being of any of the siblings.
- 4           3. If the court or the child's custodian determined that continuation of reasonable  
5           efforts, as described in subsection 2, is inconsistent with the permanency plan for  
6           the child, reasonable efforts must be made to place the child in a timely manner in  
7           accordance with the permanency plan and to complete whatever steps are  
8           necessary to finalize the permanent placement of the child.
- 9           4. Reasonable efforts of the type described in subsection 2 are not required if:
- 10          a. A court of competent jurisdiction has determined that a parent has subjected a  
11          child to aggravated circumstances; or
- 12          b. The parental rights of the parent, with respect to another child of the parent,  
13          have been involuntarily terminated.
- 14          5. Efforts to place a child for adoption, with a fit and willing relative or other  
15          appropriate individual as a legal guardian, or in another planned permanent living  
16          arrangement, may be made concurrently with reasonable efforts of the type  
17          described in subsection 2.
- 18          6. Removal of a child from the child's home for placement in foster care must be  
19          based on judicial findings stated in the court's order, and determined on a  
20          case-by-case basis in a manner that complies with the requirements of titles IV-B  
21          and IV-E of the Social Security Act [42 U.S.C. 620 et seq. and 42 U.S.C. 6701  
22          et seq.], as amended, and federal regulations adopted thereunder, provided that  
23          this subsection may not provide a basis for overturning an otherwise valid court  
24          order.

25           **SECTION 3. AMENDMENT.** Section 27-20-38 of the North Dakota Century Code is  
26 amended and reenacted as follows:

27           **27-20-38. Rights and duties of legal custodian.** A custodian to whom legal custody  
28 has been given by the court under this chapter has ~~the~~:

- 29           1. The right to the physical custody of the child and the right to determine the nature  
30           of the care, placement, and treatment of the child, including ordinary medical care  
31           as well as medical or surgical treatment for a serious physical condition or illness

- 1           which in the opinion of a licensed physician requires prompt treatment, except for  
2           any limits the court may impose. ~~The custodian also has the~~
- 3           2. The right and duty to provide for the care, protection, training, and education and  
4           the physical, mental, and moral welfare of the child, subject to the conditions and  
5           limitations of the order and to the remaining rights and duties of the child's parents  
6           or guardian.
- 7           3. A duty within thirty days after the removal of a child from the custody of the parent  
8           or parents of the child, to exercise due diligence to identify and provide notice to all  
9           parents, grandparents, and any other adult relative suggested by the parents and  
10           grandparents, subject to exceptions due to family or domestic violence, that:
- 11           a. Specifies that the child has been or is being removed from the custody of the  
12           parent or parents of the child;
- 13           b. Explains the options the relative has under federal, state, and local law to  
14           participate in the care and placement of the child, including any options that  
15           may be lost by failing to respond to the notice;
- 16           c. Describes the requirements and standards to become a foster family home  
17           and the additional services and supports that are available for children placed  
18           in that home; and
- 19           d. Describes how the relative of the child may enter into an agreement with the  
20           department to receive a subsidized guardianship payment.

21           **SECTION 4. AMENDMENT.** Subsection 5 of section 50-11-00.1 of the North Dakota  
22 Century Code is amended and reenacted as follows:

- 23           5. "Family foster home for children" means an occupied private residence in which  
24           foster care for children is regularly provided by the owner or lessee thereof to no  
25           more than four children, unless all the children in foster care are related to each  
26           other by blood or marriage or unless the department approves otherwise for the  
27           placement of siblings, in which case such the limitation in this subsection does not  
28           apply.