

**FIRST ENGROSSMENT  
with Conference Committee Amendments  
ENGROSSED HOUSE BILL NO. 1536**

Introduced by

Representatives Davis, Conmy, Finley-DeVille, Hager, Henderson, Klemin, Pyle, Rohr, Weisz  
Senator Luick

1 A BILL for an Act to create and enact chapter 27-19.1 of the North Dakota Century Code,  
2 relating to Indian child welfare; to amend and reenact section 27-20.3-18 of the North Dakota  
3 Century Code, relating to reasonable efforts to prevent removal; to repeal section 27-20.3-19 of  
4 the North Dakota Century Code, relating to Indian child welfare; and to provide for a legislative  
5 management study.

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

7 **SECTION 1.** Chapter 27-19.1 of the North Dakota Century Code is created and enacted as  
8 follows:

9 **27-19.1-01. Indian child welfare - Active efforts and procedures.**

10 1. As used in this chapter, unless context requires otherwise:

11 a. "Active efforts" means affirmative, active, thorough, and timely efforts intended  
12 primarily to maintain or reunite an Indian child with the Indian child's family. If an  
13 agency is involved in the child custody proceeding, active efforts must involve  
14 assisting the parent or a parent or Indian custodian with the steps of a case plan  
15 and including accessing or developing the resources necessary to satisfy the  
16 case plan. To the maximum extent possible, active efforts should be provided in a  
17 manner consistent with the prevailing social and cultural conditions and way of  
18 life of the Indian child's tribe and should be conducted in partnership with the  
19 Indian child and the Indian child's parents, extended family members, Indian  
20 custodians, and tribe. Active efforts are to be tailored to the facts and  
21 circumstances of the case. The term includes:

22 (1) Conducting a comprehensive assessment of the circumstances of the  
23 Indian child's family, with a focus on safe reunification as the most desirable

- 1                   goal, with ongoing timely assessment to determine when the threat is  
2                   resolved and placement of the Indian child can be returned to the custodian.  
3                   (2) Identifying appropriate services and helping a parent or Indian custodian to  
4                   overcome barriers, including actively assisting a parent or Indian custodian  
5                   in obtaining such services.  
6                   (3) Identifying, notifying, and inviting representatives of the Indian child's tribe to  
7                   participate in providing support and services to the Indian child's family and  
8                   in family team meetings, permanency planning, and resolution of placement  
9                   issues.  
10                  (4) Conducting or causing to be conducted a diligent search for the Indian  
11                  child's extended family members, and contacting and consulting with  
12                  extended family members to provide family structure and support for the  
13                  Indian child and the Indian child's parent or Indian custodian.  
14                  (5) Offering and employing available and culturally appropriate family  
15                  preservation strategies and facilitating the use of remedial and rehabilitative  
16                  services provided by the Indian child's tribe.  
17                  (6) Taking steps to keep siblings together, if possible.  
18                  (7) Supporting regular visits with a parent or Indian custodian in the most  
19                  natural setting possible as well as trial home visits of the Indian child during  
20                  any period of removal, consistent with the need to ensure the health, safety,  
21                  and welfare of the Indian child.  
22                  (8) Identifying community resources, including housing, financial,  
23                  transportation, mental health, substance abuse, and peer support services  
24                  and actively assisting the Indian child's parent or Indian custodian or, as  
25                  appropriate, the Indian child's family, in utilizing and accessing those  
26                  resources.  
27                  (9) Monitoring progress and participation in services.  
28                  (10) Considering alternative ways to address the needs of the Indian child's  
29                  parent or Indian custodian and where appropriate, the family, if the optimum  
30                  services do not exist or are not available.  
31                  (11) Providing post-reunification services and monitoring.

- 1           b. "Adoptive placement" means the permanent placement of an Indian child for  
2           adoption.
- 3           c. "Extended family member" means a relationship defined by the law or custom of  
4           the Indian child's tribe or, in the absence of such law or custom, means an  
5           individual who has reached the age of eighteen and who is the Indian child's  
6           grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece  
7           or nephew, first or second cousin, or stepparent.
- 8           d. "Foster care or nonfoster care placement" means the removal of an Indian child  
9           from the home of his or her parent or Indian custodian for temporary placement in  
10           a foster home, qualified residential treatment program, residential care center for  
11           Indian children and youth, or certified shelter care facility, in the home of a  
12           relative other than a parent or Indian custodian, or in the home of a guardian,  
13           from which placement the parent or Indian custodian cannot have the Indian child  
14           returned upon demand. The term does not include an adoptive placement, a  
15           preadoptive placement, and emergency change in placement under section  
16           27-20.3-06 or holding an Indian child in custody.
- 17           e. "Indian" means an individual who is a member of an Indian tribe, or who is a  
18           native and a member of a regional corporation as defined under 43 U.S.C. 1606.
- 19           f. "Indian child" means any unmarried individual who is under the age of eighteen  
20           and is either a member of an Indian tribe or is eligible for membership in an  
21           Indian tribe and is the biological child of a member of an Indian tribe.
- 22           g. "Indian child custody proceeding" means a proceeding brought by the state  
23           involving:
- 24           (1) Foster care or nonfoster care placement;
- 25           (2) A preadoptive placement;
- 26           (3) An adoptive placement; or
- 27           (4) A termination of parental rights under section 27-20.3-20 for an Indian child.
- 28           h. "Indian child's tribe" means the Indian tribe in which an Indian child is a member  
29           or eligible for membership or, in the case of an Indian child who is a member of or  
30           eligible for membership in more than one tribe, the Indian tribe with which the  
31           Indian child has the more significant contacts.

- 1           i. "Indian custodian" means any Indian individual who has legal custody of an  
2           Indian child under tribal law or custom or under state law or to whom temporary  
3           physical care, custody, and control has been transferred by the parent of the  
4           Indian child.
- 5           j. "Indian tribe" means an Indian tribe, band, nation, or other organized Indian  
6           group or community of Indians recognized as eligible for services provided to  
7           Indians by the United States secretary of the interior because of their status as  
8           Indians, including any Alaska native village as defined in 43 U.S.C. 1602(c).
- 9           k. "Parent" means a biological parent or parents of an Indian child or an Indian  
10          individual who has lawfully adopted an Indian child, including adoptions under  
11          tribal law or custom. The term does not include the unwed father if paternity has  
12          not been acknowledged or established.
- 13          l. "Preadoptive placement" means the temporary placement of an Indian child in a  
14          foster home, home of a relative other than a parent or Indian custodian, or home  
15          of a guardian after a termination of parental rights but before or in lieu of an  
16          adoptive placement, but does not include an emergency change in placement  
17          under section 27-20.3-06.
- 18          m. "Termination of parental rights" means any action resulting in the termination of  
19          the parent-child relationship. It does not include a placement based upon an act  
20          by an Indian child which, if committed by an adult, would be deemed a crime or a  
21          placement upon award of custody to one of the Indian child's parents in a divorce  
22          proceeding.
- 23          2. Before removal of an Indian child from the custody of a parent or Indian custodian for  
24          purposes of involuntary foster care placement or the termination of parental rights over  
25          an Indian child, the court shall find that active efforts have been made to provide  
26          remedial services and rehabilitative services designed to prevent the breakup of the  
27          Indian family and that these efforts have proved unsuccessful. The court may not  
28          order the removal unless evidence of active efforts shows there has been a vigorous  
29          and concerted level of casework beyond the level that would constitute reasonable  
30          efforts under section 27-20.3-26. Reasonable efforts may not be construed to be  
31          active efforts. Active efforts must be made in a manner that takes into account the

1 prevailing social and cultural values, conditions, and way of life of the Indian child's  
2 tribe. Active efforts must utilize the available resources of the Indian child's extended  
3 family, tribe, tribal and other relevant social service agencies, and individual Indian  
4 caregivers.

5 3. The court may order the removal of the Indian child for involuntary foster care  
6 placement only if the court determines, by clear and convincing evidence, that  
7 continued custody of the Indian child by the parent or Indian custodian is likely to  
8 result in serious emotional or physical damage to the Indian child. Evidence must  
9 show a causal relationship between the particular conditions in the home and the  
10 likelihood that continued custody of the Indian child will result in serious emotional or  
11 physical damage to the particular Indian child who is the subject of the proceeding.  
12 Poverty, isolation, custodian age, crowded or inadequate housing, substance use, or  
13 nonconforming social behavior does not by itself constitute clear and convincing  
14 evidence of imminent serious emotional or physical damage to the Indian child. As  
15 soon as the threat has been removed and the Indian child is no longer at risk, the state  
16 should terminate the removal, by returning the Indian child to the parent or Indian  
17 custodian while offering a solution to mitigate the situation that gave rise to the need  
18 for emergency removal and placement.

19 4. The court may order the termination of parental rights over the Indian child only if the  
20 court determines, by evidence beyond a reasonable doubt that continued custody of  
21 the Indian child by the parent or Indian custodian is likely to result in serious emotional  
22 or physical damage to the Indian child.

23 5. In considering whether to involuntarily place an Indian child in foster care or to  
24 terminate the parental rights of the parent of an Indian child, the court shall require that  
25 a qualified expert witness must be qualified to testify regarding whether the Indian  
26 child's continued custody by the parent or Indian custodian is likely to result in serious  
27 emotional or physical damage to the Indian child and should be qualified to testify as  
28 to the prevailing social and cultural standards of the Indian child's tribe. An individual  
29 may be designated by the Indian child's tribe as being qualified to testify to the  
30 prevailing social and cultural standards of the Indian child's tribe. If the parties  
31 stipulate in writing and the court is satisfied the stipulation is made knowingly.

1 intelligently, and voluntarily, the court may accept a declaration or affidavit from a  
2 qualified expert witness in lieu of testimony. The court or any party may request the  
3 assistance of the Indian child's tribe or the bureau of Indian affairs office serving the  
4 Indian child's tribe in locating individuals qualified to serve as expert witnesses. The  
5 social worker regularly assigned to the Indian child may not serve as a qualified expert  
6 witness in child custody proceedings concerning the Indian child. The qualified expert  
7 witness should be someone familiar with the particular Indian child and have contact  
8 with the parent or Indian custodian to observe interaction between the parent or Indian  
9 custodian, Indian child, and extended family members. The child welfare agency and  
10 courts should facilitate access to the family and records to facilitate accurate  
11 testimony.

12 6. An emergency removal or placement of an Indian child under state law must terminate  
13 immediately when the removal or placement is no longer necessary to prevent  
14 imminent physical damage or harm to the Indian child.

15 7. To facilitate the intent of this chapter, the agency, in cooperation with the Indian child's  
16 tribe of affiliation, unless a parent objects, shall take steps to enroll the Indian child in  
17 the tribe with the goal of finalizing enrollment before termination.

18 **27-19.1-02. Indian child welfare - Jurisdiction over custody proceedings.**

19 1. This chapter includes requirements that apply if an Indian child is the subject of:

20 a. A child custody proceeding, including:

21 (1) An involuntary proceeding; and

22 (2) A voluntary proceeding that could prohibit the parent or Indian custodian  
23 from regaining custody of the Indian child upon demand;

24 b. An emergency proceeding other than:

25 (1) A tribal court proceeding; or

26 (2) A proceeding regarding a delinquent act;

27 c. An award of custody of the Indian child to one of the parents, including an award  
28 in a divorce proceeding; or

29 d. A voluntary placement that either parent, both parents, or the Indian custodian  
30 has, of his or her or their free will, without a threat of removal by a state agency,  
31 chosen for the Indian child and that does not operate to prohibit the Indian child's

1                   parent or Indian custodian from regaining custody of the Indian child upon  
2                   demand.

3       2. If a proceeding under subsection 1 concerns an Indian child, this chapter applies to  
4       that proceeding. In determining whether this chapter applies to a proceeding, the state  
5       court may not consider factors such as the participation of a parent or the Indian child  
6       in tribal cultural, social, religious, or political activities; the relationship between the  
7       Indian child and the Indian child's parent; whether the parent ever had custody of the  
8       Indian child; or the Indian child's blood quantum.

9       3. If this chapter applies at the commencement of a proceeding, this chapter does not  
10       cease to apply solely because the Indian child reaches age eighteen during the  
11       pendency of the proceeding.

12       4. In an Indian child custody proceeding under this chapter involving an Indian child who  
13       is not residing or domiciled within the reservation of the Indian child's tribe, the court  
14       assigned to exercise jurisdiction under this chapter, upon the petition of the Indian  
15       child's parent, Indian custodian, or tribe, shall transfer the proceeding to the  
16       jurisdiction of the tribe unless either of the following applies:

17       a. A parent of the Indian child objects to the transfer.

18       b. An Indian tribe has exclusive jurisdiction over an Indian child custody proceeding  
19       involving an Indian child who resides or is domiciled within the reservation of the  
20       tribe, except if that jurisdiction is otherwise vested in the state by federal law. If an  
21       Indian child is a ward of a tribal court, the Indian tribe retains exclusive  
22       jurisdiction regardless of the residence or domicile of the Indian child.

23       5. In an Indian child custody proceeding under this chapter involving an Indian child who  
24       is not residing or domiciled within the reservation of the Indian child's tribe, the court  
25       assigned to exercise jurisdiction under this chapter, upon the petition of the Indian  
26       child's parent, Indian custodian, or tribe, shall transfer the proceeding to the  
27       jurisdiction of the tribe unless any of the following apply:

28       a. A parent of the Indian child objects to the transfer.

29       b. The Indian child's tribe does not have a tribal court, or the tribal court of the  
30       Indian child's tribe declines jurisdiction.

1           c. The court determines good cause exists to deny the transfer. In determining  
2           whether good cause exists to deny the transfer, the court may not consider any  
3           perceived inadequacy of the tribal social services department or the tribal court of  
4           the Indian child's tribe. The court may determine good cause exists to deny the  
5           transfer only if the person opposing the transfer shows by clear and convincing  
6           evidence the evidence or testimony necessary to decide the case cannot be  
7           presented in tribal court without undue hardship to the parties or the witnesses  
8           and that the tribal court is unable to mitigate the hardship by making  
9           arrangements to receive the evidence or testimony by use of telephone or live  
10           audiovisual means, by hearing the evidence or testimony at a location that is  
11           convenient to the parties and witnesses, or by use of other means permissible  
12           under the tribal court's rules of evidence.

13       6. An Indian child's tribe may intervene at any point in an Indian child custody  
14       proceeding.

15       7. The state shall give full faith and credit to the public acts, records, and judicial  
16       proceedings of an Indian tribe which are applicable to an Indian child custody  
17       proceeding to the same extent that the state gives full faith and credit to the public  
18       acts, records, and judicial proceedings of any other governmental entity.

19       **27-19.1-03. Indian child welfare - Court proceedings.**

20       1. In a proceeding involving the foster care or nonfoster care placement of or termination  
21       of parental rights to an Indian child whom the court knows or has reason to know may  
22       be an Indian child, the party seeking the foster care or nonfoster care placement or  
23       termination of parental rights, for the first hearing of the proceeding, shall notify the  
24       Indian child's parent, Indian custodian, and tribe, by registered mail, return receipt  
25       requested, of the pending proceeding and of the parties' right to intervene in the  
26       proceeding and shall file the return receipt with the court. Notice of subsequent  
27       hearings in a proceeding must be in writing and may be given by mail, personal  
28       delivery, facsimile transmission, or electronic mail. If the identity or location of the  
29       Indian child's parent, Indian custodian, or tribe cannot be determined, that notice shall  
30       be given to the United States secretary of the interior in like manner. The first hearing  
31       in the proceeding may not be held until at least ten days after receipt of the notice by



1           the parent, Indian custodian, and tribe or until at least fifteen days after receipt of the  
2           notice by the United States secretary of the interior. On request of the parent, Indian  
3           custodian, or tribe, the court shall grant a continuance of up to twenty additional days  
4           to enable the requester to prepare for that hearing.

5           2. Each party to a child custody proceeding of an Indian child has the right to examine all  
6           reports or other documents filed with the court upon which a decision with respect to  
7           the out-of-home care placement, termination of parental rights, or return of custody  
8           may be based.

9           **27-19.1-04. Indian child welfare - Voluntary proceedings - Consent - Withdrawal.**

10          1. A voluntary consent by a parent or Indian custodian to a foster care or nonfoster care  
11          placement of an Indian child is not valid unless the consent or delegation is executed  
12          in writing, recorded before a judge, and accompanied by a written certification by the  
13          judge that the terms and consequences of the consent or delegation were fully  
14          explained in detail to and were fully understood by the parent or Indian custodian. The  
15          judge also shall certify the parent or Indian custodian fully understood the explanation  
16          in English or that the explanation was interpreted into a language the parent or Indian  
17          custodian understood. Any consent or delegation of powers given under this  
18          subsection before or within ten days after the birth of the Indian child is not valid. A  
19          parent or Indian custodian who has executed a consent or delegation of powers under  
20          this subsection may withdraw the consent or delegation for any reason at any time,  
21          and the Indian child must be returned to the parent or Indian custodian. A parent or  
22          Indian custodian who has executed a consent or delegation of powers under this  
23          subsection also may move to invalidate the out-of-home care placement.

24          2. A voluntary consent by a parent to a termination of parental rights under subdivision d  
25          of subsection 1 of section 27-20.3-20 is not valid unless the consent is executed in  
26          writing, recorded before a judge, and accompanied by a written certification by the  
27          judge that the terms and consequences of the consent were fully explained in detail to  
28          and were fully understood by the parent. The judge also shall certify the parent fully  
29          understood the explanation in English or that the explanation was interpreted into a  
30          language that the parent understood. Consent given under this subsection before or  
31          within ten days after the birth of the Indian child is not valid. A parent who has

1 executed a consent under this subsection may withdraw the consent for any reason at  
2 any time before the entry of a final order terminating parental rights, and the Indian  
3 child must be returned to the Indian child's parent.

4 **27-19.1-05. Indian child welfare - Placements preferences.**

5 1. Subject to subsections 3 and 4, in placing an Indian child for adoption or in delegating  
6 powers, as described in a lawful executed power of attorney regarding an Indian child,  
7 preference must be given, in the absence of good cause, as described in  
8 subsection 6, to the contrary, to a placement with or delegation to one of the following,  
9 in the order of preference listed:

10 a. An extended family member of the Indian child;

11 b. Another member of the Indian child's tribe;

12 c. Another Indian family with whom the Indian child has a relationship or an Indian  
13 family from a tribe that is culturally similar to or linguistically connected to the  
14 Indian child's tribe; or

15 d. The tribe's statutory adopted placement preferences.

16 2. An Indian child who is accepted for a foster care or nonfoster care placement or a  
17 preadoptive placement must be placed in the least restrictive setting that most  
18 approximates a family that meets the Indian child's special needs, if any, and which is  
19 within reasonable proximity to the Indian child's home, taking into account those  
20 special needs. Subject to subsections 4 and 6, in placing an Indian child in a foster  
21 care or nonfoster care placement or a preadoptive placement, preference must be  
22 given, in the absence of good cause, as described in subsection 6, to the contrary, to a  
23 placement in one of the following, in the order of preference listed:

24 a. The home of an extended family member of the Indian child;

25 b. A foster home licensed, approved, or specified by the Indian child's tribe;

26 c. An Indian foster home licensed or approved by the department; or

27 d. A qualified residential treatment facility or residential care center for children and  
28 youth approved by an Indian tribe or operated by an Indian organization that has  
29 a program suitable to meet the needs of the Indian child.

30 3. An Indian child who is the subject of an emergency removal or placement under a  
31 child custody determination under section 27-20.3-06 must be placed in compliance

1 with foster care or nonfoster care placement or preadoptive placement preferences,  
2 unless the person responsible for determining the placement finds good cause, as  
3 described in subsection 6, for departing from the order of placement preference under  
4 subsection 2 or finds that emergency conditions necessitate departing from that order.  
5 When the reason for departing from that order is resolved, the Indian child must be  
6 placed in compliance with the order of placement preference under subsection 2.

7 4. In placing an Indian child under subsections 1 and 2 regarding an Indian child under  
8 subsection 1, if the Indian child's tribe has established, by resolution, an order of  
9 preference that is different from the order specified in subsection 1 or 2, the order of  
10 preference established by that tribe must be followed, in the absence of good cause,  
11 as described in subsection 6, to the contrary, so long as the placement under  
12 subsection 1 is appropriate for the Indian child's special needs, if any, and the  
13 placement under subsection 2 is the least restrictive setting appropriate for the Indian  
14 child's needs as specified in subsection 2.

15 5. The standards to be applied in meeting the placement preference requirements of this  
16 subsection must be the prevailing social and cultural standards of the Indian  
17 community in which the Indian child's parent, Indian custodian, or extended family  
18 members reside or with which the Indian child's parent, Indian custodian, or extended  
19 family members maintain social and cultural ties.

20 6. a. If a party asserts that good cause not to follow the placement preferences exists,  
21 the reasons for that belief or assertion must be stated orally on the record or  
22 provided in writing to the parties to the child custody proceeding and the court.

23 b. The party seeking departure from the placement preferences bears the burden of  
24 proving by clear and convincing evidence that there is good cause to depart from  
25 the placement preferences.

26 c. A court's determination of good cause to depart from the placement preferences  
27 must be made on the record or in writing and must be based on one or more of  
28 the following considerations:

29 (1) The request of the Indian child's parent, if they attest that they have  
30 reviewed the placement options, if any, that comply with the order of  
31 preference.

- 1           (2) The request of the Indian child, if the Indian child is of sufficient age and  
2                   capacity to understand the decision being made.
- 3           (3) The presence of a sibling attachment that can be maintained only through a  
4                   particular placement.
- 5           (4) The extraordinary physical, mental, or emotional needs of the Indian child,  
6                   such as specialized treatment services that may be unavailable in the  
7                   community where families who meet the placement preferences live.
- 8           (5) The unavailability of a suitable placement after a determination by the court  
9                   that a diligent search was conducted to find suitable placements meeting  
10                  the preference criteria, but none has been located. For purposes of this  
11                  analysis, the standards for determining whether a placement is unavailable  
12                  must conform to the prevailing social and cultural standards of the Indian  
13                  community in which the Indian child's parent, Indian custodian, or extended  
14                  family resides or with which the Indian child's parent, Indian custodian, or  
15                  extended family members maintain social and cultural ties.
- 16        d. A placement may not depart from the preferences based on the socioeconomic  
17                  status of any placement relative to another placement.
- 18        e. A placement may not depart from the preferences based solely on ordinary  
19                  bonding or attachment that flowed from time spent in a nonpreferred placement  
20                  that was made in violation of this chapter.
- 21        f. The burden of establishing good cause to depart from the order of placement  
22                  preference is on the party requesting that departure.
- 23        7. The department or a child welfare agency shall maintain a record of each adoptive  
24                  placement, foster care or nonfoster care placement, preadoptive placement, and  
25                  delegation of powers, made of an Indian child, evidencing the efforts made to comply  
26                  with the placement preference requirements specified in this section, and shall make  
27                  that record available at any time on the request of the United States secretary of the  
28                  interior or the Indian child's tribe.
- 29        **27-19.1-06. Adoptee information.**
- 30        1. The state court entering a final adoption decree or order in any voluntary or involuntary  
31                  Indian child adoptive placement must furnish a copy of the decree or order within thirty

1 days to the Bureau of Indian Affairs, Chief, Division of Human Services, 1849  
2 C Street NW, Mail Stop 3645 MIB, Washington, DC 20240, along with the following  
3 information, in an envelope marked "Confidential":

- 4 a. The birth name and birth date of the Indian child, and tribal affiliation and name of  
5 the Indian child after adoption;  
6 b. The names and addresses of the biological parents;  
7 c. The names and addresses of the adoptive parents;  
8 d. The name and contact information for any agency having files or information  
9 relating to the adoption;  
10 e. Any affidavit signed by the biological parent or parents requesting the parent's  
11 identity remain confidential; and  
12 f. Any information relating to tribal membership or eligibility for tribal membership of  
13 the adopted Indian child.

- 14 2. The court shall give the birth parent of an Indian child the opportunity to file an affidavit  
15 indicating that the birth parent wishes the United States secretary of the interior to  
16 maintain the confidentiality of the birth parent's identity. If the birth parent files that  
17 affidavit, the court shall include the affidavit with the information provided to the United  
18 States secretary of the interior under subsection 1, and that secretary shall maintain  
19 the confidentiality of the birth parent's identity.

20 **SECTION 2. AMENDMENT.** Section 27-20.3-18 of the North Dakota Century Code is  
21 amended and reenacted as follows:

22 **27-20.3-18. Reasonable efforts to prevent removal or to reunify - When required.**

- 23 1. As used in this section, "reasonable efforts" means the exercise of due diligence, by  
24 the agency granted authority over the child under this chapter, to use appropriate and  
25 available services to meet the needs of the child and the child's family in order to  
26 prevent removal of the child from the child's family or, after removal, to use appropriate  
27 and available services to eliminate the need for removal, to reunite the child and the  
28 child's family, and to maintain family connections. In determining reasonable efforts to  
29 be made with respect to a child under this section, and in making reasonable efforts,  
30 the child's health and safety must be the paramount concern.

- 1       2. Except as provided in subsection 4, reasonable efforts must be made to preserve  
2 families, reunify families, and maintain family connections:
  - 3       a. Before the placement of a child in foster care, to prevent or eliminate the need for  
4 removing the child from the child's home;
  - 5       b. To make it possible for a child to return safely to the child's home;
  - 6       c. Whether and, if applicable, to place siblings in the same foster care, relative,  
7 guardianship, or adoptive placement, unless it is determined that such a joint  
8 placement would be contrary to the safety or well-being of any of the siblings;  
9 and
  - 10      d. In the case of siblings removed from the home of the siblings who are not jointly  
11 placed, to provide for frequent visitation or other ongoing interaction between the  
12 siblings, unless it is contrary to the safety or well-being of any of the siblings.
- 13      3. If the court or the child's custodian determined that continuation of reasonable efforts,  
14 as described in subsection 2, is inconsistent with the permanency plan for the child,  
15 reasonable efforts must be made to place the child in a timely manner in accordance  
16 with the permanency plan and to complete steps that are necessary to finalize the  
17 permanent placement of the child.
- 18      4. Reasonable efforts of the type described in subsection 2 are not required if:
  - 19      a. A court of competent jurisdiction has determined a parent has subjected a child to  
20 aggravated circumstances; or
  - 21      b. The parental rights of the parent, with respect to another child of the parent, have  
22 been involuntarily terminated.
- 23      5. Efforts to place a child for adoption, with a fit and willing relative or other appropriate  
24 individual as a legal guardian, or in another planned permanent living arrangement,  
25 may be made concurrently with reasonable efforts of the type described in  
26 subsection 2.
- 27      6. Removal of a child from the child's home for placement in foster care must be based  
28 on judicial findings stated in the court's order, and determined on a case-by-case basis  
29 in a manner that complies with the requirements of titles IV-B and IV-E of the federal  
30 Social Security Act [42 U.S.C. 620 et seq. and 42 U.S.C. 6701 et seq.], as amended,

1           and federal regulations adopted under this federal Act, provided that this subsection  
2           may not provide a basis for overturning an otherwise valid court order.

3           7. For the purpose of section ~~27-20.3-19~~27-19.1-01, reasonable efforts were made under  
4           this section to meet the child's needs before a foster care placement for a child  
5           remaining in care for continued foster care purposes.

6           **SECTION 3. REPEAL.** Section 27-20.3-19 of the North Dakota Century Code is repealed.

7           **SECTION 4. LEGISLATIVE MANAGEMENT STUDY - INDIAN CHILD WELFARE.** During  
8           the 2023-24 interim, the legislative management shall consider studying the implementation of  
9           chapter 27-19.1. The study must include a review of federal statutes related to Indian child  
10          welfare, relevant case law, and input from stakeholders. The legislative management shall  
11          report its findings and recommendations, together with any legislation necessary to implement  
12          the recommendations, to the sixty-ninth legislative assembly.