

DOMESTIC RELATIONS

CHAPTER 173

HOUSE BILL NO. 1642
(Representatives Shockman, Marks, D. Larson)
(Senators Axtman, Tennefos)

FETAL TISSUE RESEARCH

AN ACT to amend and reenact sections 14-02.2-01 and 14-02.2-02 of the North Dakota Century Code, relating to the use of fetal organs or tissue for experimentation or transplantation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-02.2-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-02.2-01. Live fetal experimentation - Penalty.

1. ~~No~~ A person ~~shall~~ may not use any live human fetus, whether before or after expulsion from its mother's womb, for scientific, laboratory, research, or other kind of experimentation. This section ~~shall~~ does not prohibit procedures incident to the study of a human fetus while it is in its mother's womb, provided that in the best medical judgment of the physician, made at the time of the study, ~~said~~ the procedures do not substantially jeopardize the life or health of the fetus, and provided ~~said~~ the fetus is not the subject of a planned abortion. In any criminal proceeding the fetus ~~shall be~~ is conclusively presumed not to be the subject of a planned abortion if the mother signed a written statement at the time of the study, that she was not planning an abortion.
2. A person may not use a fetus or newborn child, or any tissue or organ thereof, resulting from an induced abortion in animal or human research, experimentation, or study, or for animal or human transplantation.
3. This section ~~shall~~ does not prohibit or regulate diagnostic or remedial procedures, the purpose of which is to determine the life or health of the fetus involved or to preserve the life or health of the fetus involved, or of the mother involved.
- ~~3-~~ 4. A fetus is a live fetus for the purposes of this section when, in the best medical judgment of a physician, it shows evidence of life as determined by the same medical standards as are used in determining evidence of life in a spontaneously aborted fetus at approximately the same stage of gestational development.
- ~~4-~~ 5. Any person violating this section ~~shall be~~ is guilty of a class A felony.

SECTION 2. AMENDMENT. Section 14-02.2-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-02.2-02. Experimentation on dead fetus - Use of fetal organs or tissue for transplantation or experimentation - Sale of fetus or fetal organs or tissue - Penalty.

1. ~~No~~ An experimentation may ~~not~~ knowingly be performed upon a dead fetus resulting from an occurrence other than an induced abortion unless the consent of the mother has first been obtained; provided, however, that ~~such the consent shall is not be~~ required in the case of a routine pathological study. In any criminal proceeding, consent ~~shall be is~~ conclusively presumed to have been granted for the purposes of this section by a written statement, signed by the mother who is at least eighteen years of age, to the effect that she consents to the use of her fetus for scientific, laboratory, research, or other kind of experimentation or study. Such written consent ~~shall constitute constitutes~~ lawful authorization for the transfer of the dead fetus.
2. A person may not use a fetus or fetal organs or tissue resulting from an induced abortion in animal or human research, experimentation, or study, or for animal or human transplantation except for diagnostic or remedial procedures, the purpose of which is to determine the life or health of the fetus or to preserve the life or health of the fetus or mother, or pathological study.
3. ~~No~~ A person ~~shall may not~~ perform or offer to perform an abortion where part or all of the consideration for ~~said the~~ abortion is that the fetal ~~remains~~ organs or tissue may be used for animal or human transplantation, experimentation, or other kind of research or study.
- ~~3-~~ 4. ~~No~~ A person ~~shall may not~~ knowingly sell, transfer, distribute, or give away, accept, use, or attempt to use any fetus or fetal organs or tissue for a use which that is in violation of the provisions of this section. For purposes of this section, the word "fetus" ~~shall include includes~~ also an embryo or neonate.
- ~~4-~~ 5. Violation of this section by any person is a class C felony.

Approved March 29, 1989
Filed March 30, 1989

CHAPTER 174

SENATE BILL NO. 2051
(Legislative Council)
(Interim Judiciary Committee)

EMPLOYER'S DISCRIMINATORY PRACTICES

AN ACT to amend and reenact sections 14-02.4-02 and 14-02.4-03 of the North Dakota Century Code, relating to definitions and employer's discriminatory practices under the Human Rights Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-02.4-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-02.4-02. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Age" insofar as it refers to any prohibited unfair employment or other practice means over the age of forty and under the age of seventy.
2. "Court" means the district court in the judicial district in which the alleged discriminatory practice occurred.
3. "Discriminatory practice" means an act or attempted act which because of race, color, religion, sex, national origin, age, physical or mental handicap, or status with regard to marriage or public assistance results in the unequal treatment or separation or segregation of any persons, or denies, prevents, limits, or otherwise adversely affects, or if accomplished would deny, prevent, limit, or otherwise adversely affect, the benefit of enjoyment by any person of employment, labor union membership, housing accommodations, property rights, public accommodations, public services, or credit transactions. The term "discriminate" includes segregate or separate and for purposes of discrimination based on sex, it includes sexual harassment.
 - ~~a-~~ Sexual harassment includes unwelcome sexual advances, requests for sexual favors, sexually motivated physical conduct or other verbal or physical conduct or communication of a sexual nature when:
 - ↔ a. Submission to that conduct or communication is made a term or condition, either explicitly or implicitly, of obtaining employment, public accommodations or public services, education, or housing;

- ~~42~~ b. Submission to or rejection of that conduct or communication by an individual is used as a factor in decisions affecting that individual's employment, public accommodations or public services, education, or housing; or
- ~~43~~ c. That conduct or communication has the purpose or effect of substantially interfering with an individual's employment, public accommodations, public services, educational, or housing environment; and in the case of employment, the employer is responsible for its acts and those of its supervisory employees if it knows or should know of the existence of the harassment and fails to take timely and appropriate action.
4. "Employee" means a person who performs services for an employer, who employs ten or more individuals, for compensation, whether in the form of wages, salaries, commission, or otherwise. "Employee" does not include a person elected to public office in the state or political subdivision by the qualified voters thereof, or a person chosen by the officer to be on the officer's political staff, or an appointee on the policymaking level or an immediate advisor with respect to the exercise of the constitutional or legal powers of the office. Provided, "employee" does include a person subject to the civil service or merit system or civil service laws of the state government, governmental agency, or a political subdivision.
5. "Employer" means a person within the state who employs ten or more full-time employees for more than one quarter of the year, and a person wherever situated who employs ten or more employees whose services are to be partially or wholly performed in the state.
6. "Employment agency" means a person regularly undertaking, with or without compensation, to procure employees for an employer or to procure for employees opportunity to work for an employer and includes any agent of the person.
7. "Handicap" means an impairment that substantially limits one or more major life activities. The term includes having a record of such an impairment or being regarded as having such an impairment.
8. "Labor organization" means a person, employee representation committee, plan in which employees participate, or other organization which exists solely or in part for the purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment.
- ~~8-~~ 9. "National origin" means the place of birth of an individual or any of the individual's lineal ancestors.
- ~~9-~~ 10. "Otherwise qualified person" means a person who is capable of performing the essential functions of the particular employment in question.
11. "Person" means an individual, partnership, association, corporation, unincorporated organization, mutual company, joint stock company, trust, agent, legal representative, trustee, trustee in bankruptcy, receiver, labor organization, public body, public

corporation, and the state and a political subdivision and agency thereof.

- ~~10-~~ 12. "Public accommodation" means every place, establishment, or facility of whatever kind, nature, or class that caters or offers services, facilities, or goods to the general public for a fee, charge, or gratuity. "Public accommodation" does not include a bona fide private club or other place, establishment, or facility which is by its nature distinctly private; provided, however, the distinctly private place, establishment, or facility is a "public accommodation" during the period it caters or offers services, facilities, or goods to the general public for a fee, charge, or gratuity.
- ~~11-~~ 13. "Public service" means a public facility, department, agency, board, or commission, owned, operated, or managed by or on behalf of this state, a political subdivision thereof, or a public corporation.
- ~~12-~~ 14. "Real estate broker" and "real estate salesman" mean a real estate broker and real estate salesman as defined in section 43-23-06.1.
- ~~13-~~ 15. "Real property" means a right, title, interest in or to the possession, ownership, enjoyment, or occupancy of a parcel of land, building situated thereon, or portion of the building.
16. "Reasonable accommodations" means accommodations by an employer that do not:
- a. Unduly disrupt or interfere with the employer's normal operations;
 - b. Threaten the health or safety of the handicapped individual or others;
 - c. Contradict a business necessity of the employer; or
 - d. Impose undue hardship on the employer, based on the size of the employer's business, the type of business, the financial resources of the employer, and the estimated cost and extent of the accommodation.
- ~~14-~~ 17. "Sex" includes, but is not limited to, pregnancy, childbirth, and disabilities related to pregnancy or childbirth.
- ~~15-~~ 18. "Status with regard to public assistance" means the condition of being a recipient of federal, state, or local assistance, including medical assistance, or of being a tenant receiving federal, state, or local subsidies, including rental assistance or rent supplements.

SECTION 2. AMENDMENT. Section 14-02.4-03 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-02.4-03. Employer's discriminatory practices. It is a discriminatory practice for an employer to fail or refuse to hire a person;

to discharge an employee; or to accord adverse or unequal treatment to a person or employee with respect to application, hiring, training, apprenticeship, tenure, promotion, upgrading, compensation, layoff, or a term, privilege, or condition of employment, because of race, color, religion, sex, national origin, age, physical or mental handicap, or status with respect to marriage or public assistance. It is a discriminatory practice for an employer to fail or refuse to make reasonable accommodations for an otherwise qualified person with a physical or mental handicap or because of that person's religion. This chapter does not prohibit compulsory retirement of any employee who has attained sixty-five years of age, but not seventy years of age, and who, for the two-year period immediately before retirement, is employed in a bona fide executive or high policymaking position, if the employee is entitled to an immediate nonforfeiture annual retirement benefit from a pension, profit-sharing, savings, or deferred compensation plan, or any combination of those plans, of the employer of the employee, which equal, in the aggregate, at least twenty-seven thousand dollars.

Approved March 22, 1989
Filed March 23, 1989

CHAPTER 175

HOUSE BILL NO. 1468
(Representative Shaft)
(Senator Holmberg)

MAGISTRATES' AUTHORITY

AN ACT to amend and reenact sections 14-03-09, 16.1-15-08, 16.1-15-09, 16.1-15-11, 16.1-15-13, and 16.1-16-07 of the North Dakota Century Code, relating to the authority of magistrates to perform marriages and the duty of magistrates to preserve election ballots.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-03-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-03-09. Who may solemnize marriages. Marriages may be solemnized by all judges of courts of record within their respective jurisdictions, by magistrates appointed and assigned under section 27-07.1-07, by ordained ministers of the gospel and priests of every church, by ministers of the gospel licensed by regular church bodies or denominations and serving as pastors of churches, and by any person authorized by the forms and usages of any church or religious denomination or organization organized or possessing a certificate of authority pursuant to chapters 10-24 through 10-28.

SECTION 2. AMENDMENT. Section 16.1-15-08 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-15-08. Wrapping and returning of ballots to county judge. After having prepared the reports and poll lists provided for in section 16.1-15-06 for delivery to the county auditor, the inspector and election judges shall cause the ballots of each kind cast at the election to be smoothly spread upon a wrapper of strong durable paper of the same width as the ballots and of sufficient strength to permit its being folded to form a complete wrapper for the ballots. The ballots and wrappers shall then be folded tightly together and the wrapper shall be pasted or glued securely at the outer end to completely envelop and hold the ballots together. Ballots which are void shall be wrapped in a separate wrapper and shall be marked "void". Ballots which are spoiled shall be separately wrapped and marked "spoiled". In folding and sealing ballots, the various classes of ballots shall be kept separate. The judges shall fold all ballots counted by them, except those which are void, and shall place them in manila wrappers, not exceeding two hundred ballots to each wrapper. Each wrapper shall be endorsed with the name or number of the precinct and the date on which the election was held. The wrappers shall be sealed securely in a manner prescribed by the secretary of state so the wrappers cannot be opened without an obvious and permanent breaking of the seal. The ballots, together with those found void or spoiled, and together with the opened envelopes from voted absentee ballots and the unopened envelopes of absentee ballots rejected as defective, shall

be returned either in person or by mail to the county judge or to the magistrate for the county appointed and assigned under section 27-07.1-07. Ballots used with any electronic voting system or counted by an electronic counting machine shall be wrapped, sealed, and returned as provided in this section.

SECTION 3. AMENDMENT. Section 16.1-15-09 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-15-09. Voting machines - Electronic voting systems - Electronic counting machines - Returns. Election officers shall make returns of votes cast upon voting machines and on electronic voting systems and counted on electronic counting machines for all candidates and for any measures or questions in the same manner as now or hereafter provided by law insofar as such provisions of law are applicable. Within the ability of the electronic counting machine to accurately do so, all ballots not containing write-in votes may be counted by the machine prior to the counting and recording of the ballots containing write-in votes. The county auditor shall designate the public place or places where electronic voting system ballots and ballots to be counted on electronic counting machines must be delivered by the election inspector and the two election judges to be counted in the presence of the election inspector and the two election judges. All such counting centers used for counting electronic voting system ballots shall have tabulating equipment which has an element which generates a printed record at the beginning of its operation which verifies that the tabulating elements for each candidate position and each question and the public counter are all set at zero. The tabulating equipment must also be equipped with an element which generates a printed record at the end of its operation of the total number of voters whose ballots have been tabulated, the total number of votes cast for each candidate on the ballot, and the total number of votes cast for or against any measure appearing on the ballot. Both printed records must be certified by the election inspector and the two election judges.

If any electronic voting system ballot or a ballot counted by an electronic counting machine is damaged or defective so that it cannot be properly counted by the automatic tabulating or electronic counting equipment, a true duplicate copy must be made by election officials of opposed interests and substituted for the damaged or defective ballot. All duplicate ballots must be clearly labeled duplicate, must bear a serial number which must be recorded on the damaged or defective ballot, and must be wrapped and delivered with other ballots to the county judge or to the magistrate for the county appointed and assigned under section 27-07.1-07.

SECTION 4. AMENDMENT. Section 16.1-15-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-15-11. Locking and examination of voting machines - Tally of voting machine votes - Certification to county judges. Voting machines shall remain locked for ten days next following use at an election and as much longer thereafter as necessary or advisable because of any existing or probable contest over the results of the election. They may be opened and all data and figures therein examined upon the order of any court of competent jurisdiction. A complete record of the tally of votes from each voting machine shall be made by the inspector and the election judges at the time votes are tallied. This record shall agree in every respect with the pollbooks and the original reports of the total votes cast for each candidate

or measure. The record shall then be certified by the inspector and the election judges, and one copy shall be delivered to the county judge or to the magistrate of the county appointed and assigned under section 27-07.1-07 at the same time as the ballots are delivered to him pursuant to section 16.1-15-08. The records may be opened and all data and figures therein examined upon the order of any court of competent jurisdiction in the event of any existing or probable contest over the results of the election.

SECTION 5. AMENDMENT. Section 16.1-15-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-15-13. County judge to keep ballots forty-five days - Exception - Use of ballots as evidence. Immediately upon receiving the ballots as provided in section 16.1-15-08, the county judge or the magistrate shall give receipt therefor to the election judges and shall place the ballots properly arranged in the order of the precinct number in boxes which shall be securely locked. The boxes shall be placed in a fireproof vault and shall be kept securely for forty-five days. They shall not be opened nor inspected, except upon court order in a contested election, when it is necessary to produce them at a trial for any offense committed at an election, or to permit election officials to complete their duties. Forty-five days after the election, upon determination by the county judge or the magistrate that no contest is pending, the ballots shall be destroyed. If any contest of the election of any officer voted for at the election or a prosecution under the provisions of this title is pending at the expiration of such time, the ballots shall not be destroyed until the contest or prosecution is finally determined. The ballots returned to the county judge or the magistrate as provided in this section shall be received in evidence without introducing further foundation.

SECTION 6. AMENDMENT. Section 16.1-16-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-16-07. Contest involving irregularity of ballots - Preservation of ballots. Either the contestant or the contestee, within the time provided by this title for the preservation of ballots, may give notice by certified mail to the county judge or to the magistrate for the county appointed and assigned under section 27-07.1-07 of any county where he desires the ballots preserved, that an election contest is pending in a designated court. Thereupon, it is the duty of the county judge or the magistrate to preserve all the paper ballots, electronic voting system ballots, and voting machine records until the contest has been finally determined.

Approved March 29, 1989
Filed March 30, 1989

CHAPTER 176

SENATE BILL NO. 2431
(Senators Mushik, Stenehjem, J. Meyer)
(Representatives J. DeMers, Stofferahn, Wentz)

MARRIAGE LICENSE SUPPLEMENTAL FEE

AN ACT to amend and reenact section 14-03-22 of the North Dakota Century Code, relating to the supplemental fee for aid to victims of domestic violence.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 14-03-22 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-03-22. Marriage license fee - Supplemental fee - Duties of officers. For the issuance and filing of a marriage license the county judge shall collect the sum of six dollars from the party applying for the license. ~~Beginning with July 1, 1981, the~~ The judge shall also collect from the applicant a supplemental fee of ~~nineteen~~ twenty-nine dollars for aid to victims of domestic violence, pursuant to chapter 14-07.2. The judge shall deposit the collected sums monthly with the county treasurer. The county treasurer shall forward the amount represented by supplemental fees to the state treasurer by the fifteenth of each month for crediting to the domestic violence prevention fund. The judge shall prepare a copy of the license and certificate and transmit them to the registrar of vital statistics who shall record them in a book of records kept in ~~his~~ the registrar's office for that purpose. The registrar shall index ~~his~~ the records and upon request shall issue certified copies of the recorded license and certificate for a one dollar fee. ~~He~~ The registrar shall keep an accurate account of these fees and shall turn them over to the state treasurer by the fifteenth of each month for crediting to the general fund.

Approved March 28, 1989
Filed March 28, 1989

* NOTE: Section 14-03-22 was also amended by section 1 of Senate Bill No. 2454, chapter 177.

CHAPTER 177

SENATE BILL NO. 2454
 (Senators Mushik, J. Meyer, Stenehjem)
 (Representatives J. DeMers, Sorensen, Wentz)

DOMESTIC VIOLENCE

AN ACT to create and enact sections 14-07.1-10, 14-07.1-11, 14-07.1-12, 14-07.1-13, 14-07.1-14, 14-07.1-15, 14-07.1-16, 14-07.1-17, and 14-07.1-18 of the North Dakota Century Code, relating to the consolidation of statutes concerning procedures for handling domestic violence and the domestic violence prevention fund; to amend and reenact sections 14-03-22, 14-07.1-01, 14-07.1-02, 14-07.1-03, 14-07.1-04, 14-07.1-05, 14-07.1-06, 14-07.1-07, 14-07.1-08, subsection 8.1 of section 27-07.1-17, and subsection 1 of section 29-06-15 of the North Dakota Century Code, relating to the supplemental marriage license fee, domestic violence protection orders, jurisdiction of county courts, and warrantless arrests in domestic violence cases; to repeal chapters 12-64 and 14-07.2 of the North Dakota Century Code, relating to procedures for handling domestic violence and the domestic violence prevention fund; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 14-03-22 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-03-22. Marriage license fee - Supplemental fee - Duties of officers. For the issuance and filing of a marriage license the county judge shall collect the sum of six dollars from the party applying for the license. ~~Beginning with July 1, 1981, the~~ The judge shall also collect from the applicant a supplemental fee of nineteen dollars for aid to victims of domestic violence through the domestic violence prevention fund, pursuant to chapter ~~14-07.2~~ 14-07.1. The judge shall deposit the collected sums monthly with the county treasurer. The county treasurer shall forward the amount represented by supplemental fees to the state treasurer by the fifteenth of each month for crediting to the domestic violence prevention fund. The judge shall prepare a copy of the license and certificate and transmit them to the registrar of vital statistics who shall record them in a book of records kept in ~~his~~ the registrar's office for that purpose. The registrar shall index ~~his~~ the records and upon request shall issue certified copies of the recorded license and certificate for a one dollar fee. ~~He~~ The registrar shall keep an accurate account of these fees and shall turn them over to the state treasurer by the fifteenth of each month for crediting to the general fund.

SECTION 2. AMENDMENT. Section 14-07.1-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-07.1-01. "Adult abuse" defined. For purposes of this chapter, "adult abuse" includes physical harm, bodily injury, or assault on the complaining adult, or the imminent threat thereof. Definitions.

* NOTE: Section 14-03-22 was also amended by section 1 of Senate Bill No. 2431, chapter 176.

1. "Department" means the state department of health and consolidated laboratories.
2. "Domestic violence" includes physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury, or assault, on the complaining family or household members.
3. "Domestic violence program" means a program that provides emergency housing for victims of domestic violence and their dependents, plus some or all of the following additional services:
 - a. Counseling.
 - b. Advocacy.
 - c. Community education on domestic violence.
 - d. Support groups.
 - e. Twenty-four hour crisis lines.
 - f. Referral to other sources for services not provided by the domestic violence program.
4. "Family or household member" means a spouse, family member, former spouse, parent, child, persons related by blood or marriage, persons who are in a dating relationship, persons who are presently residing together or who have resided together in the past, persons who have a child in common regardless of whether they are or have been married or have lived together at any time, and, for the purpose of the issuance of a domestic violence protection order, any other person with a sufficient relationship to the abusing person as determined by the court under section 14-07.1-02.
5. "Health officer" means the state health officer of the department.
6. "Law enforcement officer" means a public servant authorized by law or by a government agency to enforce the law and to conduct or engage in investigations of violations of law.
7. "Willfully" means willfully as defined in section 12.1-02-02.

SECTION 3. AMENDMENT. Section 14-07.1-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-07.1-02. ~~Adult abuse Protection~~ Domestic violence protection order.

1. An action for a protection order commenced by a verified application alleging the existence of ~~adult abuse domestic violence~~ may be brought in district court or county court by any ~~spouse, family member, former spouse, parent, child, persons related by blood, persons who are presently residing together or who have resided together in the past, persons who have a child in common regardless of whether they have been married or have lived together at any time~~ family or household member or by any other person if

- the court determines that the relationship between that person and the alleged abusing person is sufficient to warrant the issuance of an adult abuse a domestic violence protection order. An action may be brought under this section, regardless of whether a petition for legal separation, annulment, or divorce has been filed.
2. Upon receipt of the application, the court shall order a hearing to be held not later than fourteen days from the date of the hearing order.
 3. Service ~~shall~~ must be made upon the respondent ~~not less than~~ at least five days prior to the hearing. If service cannot be made, the court may set a new date.
 4. Upon a showing of actual or imminent ~~adult abuse~~ domestic violence, the court may enter a protection order after due notice and full hearing. The relief provided by the court may include any or all of the following:
 - a. Restraining any party from threatening, molesting, or injuring any other person.
 - b. Excluding either the respondent or any person with whom the respondent lives from the dwelling they share, from the residence of another person against whom the ~~adult abuse~~ domestic violence is occurring, or from ~~an adult abuse a domestic violence~~ care facility, ~~where~~ if this exclusion is necessary to the physical or mental well-being of the applicant or others.
 - c. Awarding temporary custody or establishing temporary visitation rights with regard to minor children.
 - d. Recommending or requiring that either or both parties undergo counseling with ~~an adult abuse a domestic violence~~ program or other agency ~~which~~ that provides professional services ~~which~~ that the court deems appropriate. The court may request a report from the designated agency within a time period established by the court. The costs of the court-ordered initial counseling assessment and subsequent reports ~~shall~~ must be borne by the parties or, if indigent, by the respondent's county of residence.
 - e. Requiring a party to pay such support as may be necessary for the support of a party and any minor children of the parties and reasonable attorneys fees and costs.
 - f. Awarding temporary use of personal property, including motor vehicles, to either party.
 5. The court may amend its order or agreement at any time upon subsequent petition filed by either party.
 6. No order or agreement under this section ~~shall affect~~ affects title to any real property in any matter.

SECTION 4. AMENDMENT. Section 14-07.1-03 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-07.1-03. Temporary protection order - Copy to law enforcement agency.

1. ~~Where~~ If an application under section 14-07.1-02 alleges an immediate and present danger of ~~abuse~~ domestic violence to the applicant, based upon an allegation of a recent incident of actual ~~abuse or threat of abuse~~ domestic violence, the court may grant an ex parte temporary protection order, pending a full hearing, granting such relief as the court deems proper.
2. An ex parte temporary protection order may include:
 - a. Restraining any party from committing acts of ~~abuse~~ domestic violence on another person.
 - b. Excluding the respondent or any person with whom the respondent lives from the dwelling they share, from the residence of another person, or from ~~an adult abuse~~ a domestic violence shelter care facility.
 - c. Awarding temporary custody or establishing temporary visitation rights with regard to minor children.
3. An ex parte temporary protection order ~~shall remain~~ remains in effect, in the court's discretion, for not more than thirty days, unless otherwise terminated by the court.
4. A full hearing as provided by section 14-07.1-02 ~~shall~~ must be set for not later than fourteen days from the issuance of the temporary order. The respondent ~~shall~~ must be served forthwith with a copy of the ex parte order along with a copy of the application and notice of the date set for the hearing.
5. The clerk of court shall transmit a copy of each temporary protection order, or extension, modification, or termination thereof, by the close of the business day on which the order was granted to the local law enforcement agency with jurisdiction over the residence of the applicant or over the residence at which the actual ~~abuse which~~ domestic violence that is the subject of the temporary protection order has occurred, or is likely to occur, if requested by the applicant and approved by the court. Each appropriate law enforcement agency may make available information as to the existence and current status of any temporary protection order issued pursuant to this section, through an existing verification system, to any law enforcement officer responding to the scene of reported domestic violence.
6. If the filing fee for filing the application has been waived by order of the court, the court may waive the fee for service of process by the sheriff or other appropriate law enforcement agency or may order the respondent to pay these costs.

SECTION 5. AMENDMENT. Section 14-07.1-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-07.1-04. Assistance of peace law enforcement officer in service or execution. When an order is issued upon request of the applicant under section 14-07.1-02 or 14-07.1-03, the court shall order the sheriff or other appropriate law enforcement officer to accompany the applicant and assist in placing the applicant in possession of the dwelling or residence, or otherwise assist in execution or service of the protection order, which may include assistance in referral to an adult abuse a domestic violence shelter care facility.

SECTION 6. AMENDMENT. Section 14-07.1-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-07.1-05. Right to apply for relief. A person's right to apply for relief under section 14-07.1-02 or 14-07.1-03 ~~shall is not be affected by his or her leaving~~ if the person leaves the residence or dwelling to avoid abuse domestic violence. The court ~~shall may~~ not require security or bond from any party ~~unless it the court~~ deems it necessary in exceptional cases.

SECTION 7. AMENDMENT. Section 14-07.1-06 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-07.1-06. Penalty for violation of a protection order —~~Arrest without warrant~~. Whenever a protection order is granted pursuant to section 14-07.1-02 or 14-07.1-03 and the respondent or person to be restrained has been served a copy of the order, a violation of the order is a class A misdemeanor and also constitutes criminal contempt of court subject to penalties therefor. ~~A peace officer may arrest any person without a warrant if:~~

- 1- ~~The person has committed the offense of violating a protection order; whether or not the violation was committed in the presence of the officer; or~~
- 2- ~~The peace officer has probable cause to believe the person; within four hours of the ascertainment of probable cause; has assaulted that person's spouse; other family member; former spouse; or any person with whom the person resides; although the assault did not take place in the presence of the peace officer. A peace officer may not arrest a person pursuant to this subsection without first observing that there has been recent physical injury to; or impairment of physical condition of; the alleged victim.~~

~~A peace officer may not be held criminally or civilly liable for making an arrest pursuant to this section if the officer acts in good faith on probable cause and without malice.~~

SECTION 8. AMENDMENT. Section 14-07.1-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-07.1-07. Nonexclusive remedy. Any proceeding under ~~this chapter shall be~~ sections 14-07.1-01 through 14-07.1-08 is in addition to any other civil or criminal remedies.

SECTION 9. AMENDMENT. Section 14-07.1-08 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-07.1-08. Emergency relief. When the court is unavailable an application may be filed before a local magistrate, as defined by subsection 3 of section 29-01-14, who may grant relief in accordance with section 14-07.1-03, upon good cause shown in an ex parte proceeding, if it is deemed necessary to protect the applicant or others from ~~abuse~~ domestic violence. Immediate and present danger of ~~abuse~~ domestic violence to the applicant or others shall constitute good cause for purposes of this section. Any order issued under this section ~~shall expire~~ expires seventy-two hours after its issuance, unless continued by the court, or the local magistrate in the event of continuing unavailability of the court. At that time, the applicant may seek a temporary order from the court. Any order issued under this section and any documentation in support ~~thereof shall~~ of the order must be immediately certified to the court. ~~Such~~ The certification to the court ~~shall have~~ has the effect of commencing proceedings under section 14-07.1-02 and invoking the other provisions of this chapter.

SECTION 10. Section 14-07.1-10 of the North Dakota Century Code is hereby created and enacted to read as follows:

14-07.1-10. Arrest procedures.

1. A law enforcement officer's decision to arrest and charge a person for a crime involving domestic violence may not be dependent on the specific consent of the victim, involve a consideration of the relationship of the parties, or be based solely on a request by the victim.
2. A law enforcement officer investigating a crime involving domestic violence may not threaten, suggest, or otherwise indicate, for the purpose of discouraging requests for law enforcement intervention, that family or household members will be arrested. When complaints are received from two or more family or household members, the officer shall evaluate each complaint separately to determine whether to seek an arrest warrant.

SECTION 11. Section 14-07.1-11 of the North Dakota Century Code is hereby created and enacted to read as follows:

14-07.1-11. Arrest without warrant.

1. A law enforcement officer may arrest a person without a warrant if:
 - a. The person has committed the offense of violating a protection order under section 14-07.1-06, whether or not the violation was committed in the presence of the officer; or
 - b. The officer has probable cause to believe the person, within four hours of the ascertainment of probable cause, has assaulted that person's family or household member as defined in section 14-07.1-01, although the assault did not take place in the presence of the officer. A law enforcement officer may not arrest a person pursuant to this subdivision without first

observing that there has been recent physical injury to, or impairment of physical condition of, the alleged victim.

2. A law enforcement officer may not be held criminally or civilly liable for making an arrest pursuant to this section if the officer acts in good faith on probable cause and without malice.

SECTION 12. Section 14-07.1-12 of the North Dakota Century Code is hereby created and enacted to read as follows:

14-07.1-12. Reports. A law enforcement officer shall make a written report of the investigation of any allegation of domestic violence regardless of whether an arrest was made. The officer shall submit the report to the officer's supervisor or to any other person to whom the officer is required to submit similar reports.

SECTION 13. Section 14-07.1-13 of the North Dakota Century Code is hereby created and enacted to read as follows:

14-07.1-13. Order prohibiting contact - Penalty.

1. If a person charged with or arrested for a crime involving domestic violence is released from custody before arraignment or trial, the court authorizing the release of the person shall consider and may issue, if there is no outstanding restraining or protection order prohibiting the person from having contact with the victim, an order prohibiting the person from having contact with the victim. The order must contain the court's directives and must inform the person that any violation of the order constitutes a criminal offense. The court shall provide a copy of the order to the victim. The court shall determine at the time of the person's arraignment whether an order issued pursuant to this section will be extended. If the court issues an order pursuant to this section prior to the time the person is charged, the order expires at the person's arraignment or within seventy-two hours of issuance if charges against the person are not filed.
2. If the court has probable cause to believe that the person charged or arrested is likely to use, display, or threaten to use a firearm or dangerous weapon as defined in section 12.1-01-04 in any further acts of violence, the court may require that the person surrender for safekeeping any firearm or dangerous weapon in the person's immediate possession or control, or subject to the person's immediate possession or control, to the sheriff of the county or chief of police of the city in which the person resides.
3. Whenever an order prohibiting contact is issued, modified, extended, or terminated under this section, the clerk of court shall forward a copy of the order on or before the next business day to the appropriate law enforcement agency specified in the order. Upon receipt of the copy of the order, the law enforcement agency shall enter the order for one year or until the date of expiration specified by the order into any information system available in the state that is used by law enforcement agencies to list outstanding warrants. The order is enforceable in any jurisdiction in this state.

4. A person who willfully violates a court order issued under this section is guilty of a class A misdemeanor.

SECTION 14. Section 14-07.1-14 of the North Dakota Century Code is hereby created and enacted to read as follows:

14-07.1-14. Law enforcement guidelines and training.

1. Every law enforcement agency shall develop and implement, with assistance from the criminal justice training and statistics division, specific operational guidelines for arrest policies and procedures in crimes involving domestic violence. The guidelines must include procedures for the conduct of criminal investigations, procedures for arrests and victim assistance by law enforcement officers, procedures concerning the provision of services to victims, and any additional procedures as may be necessary to carry out sections 14-07.1-02 through 14-07.1-14.
2. The peace officers standards and training board shall establish, in conjunction with the state's attorneys association, an education and training program for law enforcement officers and state's attorneys concerning the handling of crimes involving domestic violence. The training must stress the enforcement of criminal laws in domestic violence cases and the use of community resources.

SECTION 15. Section 14-07.1-15 of the North Dakota Century Code is hereby created and enacted to read as follows:

14-07.1-15. Domestic violence prevention fund established. The domestic violence prevention fund is a special fund in the state treasury. The moneys accumulated in the fund are allocated to the department for distribution as provided by this chapter and within the limits of legislative appropriation. The fund is not subject to section 54-44.1-11.

SECTION 16. Section 14-07.1-16 of the North Dakota Century Code is hereby created and enacted to read as follows:

14-07.1-16. Grants - Eligibility - Conditions - Limitation. The department shall administer moneys in the domestic violence prevention fund for grants to private nonprofit organizations that are engaged in providing emergency housing for victims of domestic violence and their dependents. An eligible entity must receive at least twenty-five percent of its funding from one or more local, municipal, or county sources, either in cash or in kind. Grants are renewable within the limits of legislative appropriation, if the applicant continues to meet the eligibility criteria established by this section and rules adopted by the department. Grant application deadlines may be included in any rules adopted to implement this section. No initial grant may exceed the amount of twenty thousand dollars per biennium, but any appropriated funds remaining unobligated after the first year of the biennium may be disbursed by the department as supplemental grants.

SECTION 17. Section 14-07.1-17 of the North Dakota Century Code is hereby created and enacted to read as follows:

14-07.1-17. Duties of health officer. The health officer shall:

1. Respond to all applicants within sixty days after the deadline for receipt of applications, whether or not the applicant is eligible for funds.
2. Ensure that no more than ten percent of the moneys allocated to the domestic violence prevention fund in any biennium is expended for departmental administration of the grant program.
3. Distribute grants to eligible applicants in accordance with the purposes of sections 14-07.1-15 through 14-07.1-18.

SECTION 18. Section 14-07.1-18 of the North Dakota Century Code is hereby created and enacted to read as follows:

14-07.1-18. Domestic violence program records - Confidentiality - Exceptions - Penalty.

1. All agents, employees, and volunteers participating in a domestic violence program shall maintain the confidentiality of the:
 - a. Address, telephone number, and other identifying information of a shelter, safe home, and place of emergency safe housing;
 - b. Name, address, telephone number, personally identifying information, and case file or history of any client receiving services from a domestic violence program; and
 - c. Name, address, telephone number, and other identifying information of an agent, employee, or volunteer providing services under a domestic violence program.
2. The information described in subsection 1 is not subject to section 44-04-18 and may not be disclosed unless:
 - a. A client consents to the release of information that relates only to that client or the client's dependents;
 - b. The agent, employee, or volunteer operating a domestic violence program determines the disclosure of the information necessary for the efficient and safe operation of a domestic violence program; or for the protection of the safety of an employee, agent, volunteer, or client of a domestic violence program; or for the protection of a third party reasonably thought to be in need of protection;
 - c. A court of competent jurisdiction orders the disclosure; or
 - d. An agent, employee, or volunteer working with a domestic violence program has knowledge or reasonable cause to suspect a child has been abused or neglected as defined by section 50-25.1-02.
3. Any person who violates this section is guilty of an infraction.

SECTION 19. AMENDMENT. Subsection 8.1 of section 27-07.1-17 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- 8.1. ~~Adult abuse~~ Domestic violence protection order proceedings. The county court has concurrent jurisdiction with the district court pursuant to chapter 14-07.1.

SECTION 20. AMENDMENT. Subsection 1 of section 29-06-15 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. A peace law enforcement officer, without a warrant, may arrest a person:
 - a. For a public offense, committed or attempted in the officer's presence; and for the purpose of this subdivision a crime shall be deemed committed or attempted in the officer's presence when what the officer observes through the officer's senses reasonably indicates to the officer that a crime was in fact committed or attempted in the officer's presence by the person arrested.
 - b. When the person arrested has committed a felony, although not in the officer's presence.
 - c. When a felony in fact has been committed, and the officer has reasonable cause to believe the person arrested to have committed it.
 - d. On a charge, made upon reasonable cause, of the commission of a felony by the party arrested.
 - e. For the public offenses, not classified as felonies and not committed in the officer's presence as provided for under section 29-06-15.1.
 - f. On a charge, made upon reasonable cause, of driving or being in actual physical control of a vehicle while under the influence of alcoholic beverages.
 - g. If the peace officer has probable cause to believe the person, within four hours of the ascertainment of probable cause, has assaulted that person's spouse, other family member, former spouse, or any person with whom the person resides, although the assault did not take place in the presence of the peace officer. A peace officer may not arrest a person pursuant to this subdivision without first observing that there has been recent physical injury to, or impairment of physical condition of, the alleged victim. For the offense of violating a protection order under section 14-07.1-06 or for an assault involving domestic violence pursuant to section 14-07.1-11.

* SECTION 21. REPEAL. Chapter 14-07.2 of the North Dakota Century Code and chapter 12-64 of the 1987 Supplement to the North Dakota Century Code are hereby repealed.

Approved April 11, 1989
Filed April 12, 1989

* NOTE: Section 14-07.2-06 was amended by section 1 of Senate Bill No. 2289, chapter 179.

CHAPTER 178

SENATE BILL NO. 2398
(Senator Yockim)
(Representative Rydell)

DOMESTIC VIOLENCE IN CUSTODY DETERMINATIONS

AN ACT to amend and reenact sections 14-05-22 and 14-09-06.2 of the North Dakota Century Code, relating to the consideration of evidence of domestic violence by courts in determining rights to custody and visitation of children; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-05-22 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-05-22. Custody of children - Visitation rights.

1. In an action for divorce, the court, before or after judgment, may give such direction for the custody, care, and education of the children of the marriage as may seem necessary or proper, and may vacate or modify the same at any time. Any award or change of custody must be made in accordance with the provisions of chapter 14-09.
2. After making an award of custody, the court shall, upon request of the noncustodial parent, grant such rights of visitation as will enable the child and the noncustodial parent to maintain a parent-child relationship that will be beneficial to the child, unless the court finds, after a hearing, that visitation is likely to endanger the child's physical or emotional health.
3. In awarding custody or granting rights of visitation, the court shall consider evidence of domestic violence and, if the court finds that domestic violence has occurred, shall give direction for the custody of children of the marriage and grant rights of visitation in a manner that best protects the children and the parent or other family or household member who is the victim of domestic violence from any further harm. As used in this section, "domestic violence" means domestic violence as defined in section 12-64-01 or, if Senate Bill No. 2454 is approved by the fifty-first legislative assembly and becomes effective, section 14-07.1-01. The court also shall consider the interaction and interrelationship, or the potential for interaction and interrelationship, of the child with any person who resides in, is present, or frequents the household of a parent, and who may significantly affect the child's best interests. The court shall consider that person's history of inflicting, or tendency to inflict, physical harm, bodily injury, assault, or the fear of physical harm, bodily injury, or assault, on other persons.

SECTION 2. AMENDMENT. Section 14-09-06.2 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-09-06.2. Best interests and welfare of child - Court consideration - Factors.

- 1. For the purpose of custody, the best interests and welfare of the child ~~shall be~~ is determined by the court's consideration and evaluation of all factors affecting the best interests and welfare of the child. These factors include all of the following when applicable:
 - ~~1-~~ a. The love, affection, and other emotional ties existing between the parents and child.
 - ~~2-~~ b. The capacity and disposition of the parents to give the child love, affection, and guidance and to continue the education of the child.
 - ~~3-~~ c. The disposition of the parents to provide the child with food, clothing, medical care, or other remedial care recognized and permitted under the laws of this state in lieu of medical care, and other material needs.
 - ~~4-~~ d. The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity.
 - ~~5-~~ e. The permanence, as a family unit, of the existing or proposed custodial home.
 - ~~6-~~ f. The moral fitness of the parents.
 - ~~7-~~ g. The mental and physical health of the parents.
 - ~~8-~~ h. The home, school, and community record of the child.
 - ~~9-~~ i. The reasonable preference of the child, if the court deems the child to be of sufficient intelligence, understanding, and experience to express a preference.
 - ~~10-~~ j. The existence of domestic violence. If the court finds that domestic violence has occurred, the court shall provide for a custody arrangement that best protects the child and the parent or other family or household member who is the victim of domestic violence from any further harm. As used in this subdivision, "domestic violence" means domestic violence as defined in section 12-64-01 or, if Senate Bill No. 2454 is approved by the fifty-first legislative assembly and becomes effective, section 14-07.1-01.
 - k. The interaction and interrelationship, or the potential for interaction and interrelationship, of the child with any person who resides in, is present, or frequents the household of a parent and who may significantly affect the child's best interests. The court shall consider that person's history of inflicting, or tendency to inflict, physical harm, bodily

injury, assault, or the fear of physical harm, bodily injury, or assault, on other persons.

1. Any other factors considered by the court to be relevant to a particular child custody dispute.
2. In any proceeding under this chapter, the court, at any stage of the proceedings after final judgment, may make orders about what security is to be given for the care, custody, and support of the unmarried minor children of the marriage as from the circumstances of the parties and the nature of the case is equitable.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 6, 1989
Filed April 7, 1989

CHAPTER 179

SENATE BILL NO. 2289
(Senators Waldera, Heinrich, Holmberg)
(Representatives R. Anderson, Rydell, J. DeMers)

SEXUAL ASSAULT PROGRAM RECORDS

AN ACT to amend and reenact section 14-07.2-06 of the North Dakota Century Code, relating to the confidentiality of sexual assault program records; to provide a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 14-07.2-06 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-07.2-06. Adult abuse or sexual assault program records - Confidentiality - Exceptions - Penalty.

1. All agents, employees, and volunteers participating in an adult abuse or sexual assault program shall maintain the confidentiality of the:
 - a. Address, telephone number, and other identifying information of a shelter, safe home, and place of emergency safe housing;
 - b. Name, address, telephone number, personally identifying information, and case file or history of any client receiving services from an adult abuse or sexual assault program; and
 - c. Name, address, telephone number, and other identifying information of an agent, employee, or volunteer providing services under an adult abuse or sexual assault program.
2. The information described in subsection 1 is excepted from the public records disclosure requirements of section 44-04-18 and may not be disclosed unless:
 - a. A client consents to the release of information which relates only to that client or the client's dependents;
 - b. The agent, employee, or volunteer operating an adult abuse or sexual assault program determines the disclosure of the information necessary for the efficient and safe operation of an adult abuse or sexual assault program; or for the protection of the safety of an employee, agent, volunteer, or client of an adult abuse or sexual assault program; or for the protection of a third party reasonably thought to be in need of protection;
 - c. A court of competent jurisdiction orders the disclosure; or

* NOTE: Chapter 14-07.2 was repealed by section 21 of Senate Bill No. 2454, chapter 177.

- d. An agent, employee, or volunteer working with an adult abuse or sexual assault program has knowledge or reasonable cause to suspect a child has been abused or neglected as is defined by section 50-25.1-02.
3. Any person who violates this section is guilty of an infraction.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 22, 1989
Filed March 23, 1989

CHAPTER 180

SENATE BILL NO. 2356
(Senator Stenehjem)
(Representative J. DeMers)

SUPPORT ORDER MODIFICATION

AN ACT to create and enact two new sections to chapter 14-09 of the North Dakota Century Code, relating to modification of support obligations for children after majority and the duration of support obligations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 14-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Modification of support for children after majority.

1. In the absence of a written agreement to the contrary entered into after the effective date of this Act, a judgment or order requiring the payment of child support until the child attains majority is deemed to be modified to continue as to the child until the end of the month during which the child is graduated from high school or attains the age of nineteen years, whichever occurs first, if:
 - a. The child is enrolled and attending high school and is eighteen years of age prior to the date the child is expected to be graduated; and
 - b. The child resides with the person to whom the duty of support is owed.
2. The person to whom the duty of support is owed shall file an affidavit with the district court stating that the child has been continuously enrolled in high school and is, or will be, eighteen years of age prior to the date the child is expected to be graduated. The affidavit must be served by the person to whom the duty of support is owed upon the person owing the duty of support. Upon the filing of the affidavit, the judgment or order is deemed modified pursuant to subsection 1, unless the person owing the duty of support files a motion with the court, within twenty days subsequent to service of the affidavit, requesting a hearing on the need to modify the judgment or order.

SECTION 2. A new section to chapter 14-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Duration of child support obligations. A judgment or order requiring the payment of child support continues as to the child until the end of the month in which the support obligation terminates.

Approved March 31, 1989
Filed March 31, 1989

CHAPTER 181

SENATE BILL NO. 2048
 (Legislative Council)
 (Interim Judiciary Committee)

AIDS TESTING

AN ACT to create and enact a new section to chapter 23-06.1 and two new sections to chapter 23-07 of the North Dakota Century Code, relating to testing anatomical gifts for exposure to the human immunodeficiency virus and to testing of inmates, certain convicted individuals, and hospital patients for exposure to the human immunodeficiency virus; and to amend and reenact sections 14-10-17, 19-02.1-19, 23-07-01, 23-07-03, 23-07-07, 23-07-08, 23-07-09, 23-07-21, and 53-03-03 of the North Dakota Century Code, relating to sexually transmitted disease.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-10-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-10-17. Minors - Treatment for ~~venereal~~ sexually transmitted disease - Drug abuse - Alcoholism. Any person of the age of fourteen years or older may contract for and receive examination, care, or treatment for ~~venereal~~ sexually transmitted disease, alcoholism, or drug abuse without permission, authority, or consent of a parent or guardian.

SECTION 2. AMENDMENT. Section 19-02.1-19 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-02.1-19. False advertising.

1. An advertisement of a food, drug, device, or cosmetic ~~shall be deemed to be~~ is false if it is false or misleading in any particular.
2. For the purpose of this chapter the advertisement of a drug or device representing it to have any effect in albuminuria, appendicitis, arteriosclerosis, blood poison, bone disease, Bright's disease, cancer, carbuncles, cholecystitis, diabetes, diphtheria, dropsy, erysipelas, gallstones, heart and vascular diseases, high blood pressure, mastoiditis, measles, meningitis, mumps, nephritis, otitis media, paralysis, pneumonia, poliomyelitis (infantile paralysis), prostate gland disorders, pyelitis, scarlet fever, sexual impotence, sexually transmitted disease, sinus infection, smallpox, tuberculosis, tumors, typhoid, or uremia-~~venereal disease; shall~~ is also be ~~deemed to be~~ false, except that no advertisement not in violation of subsection 1 ~~shall be deemed to be~~ is false under this subsection if it is disseminated only to members of the medical, dental, pharmaceutical, or veterinary professions, or appears only in the scientific periodicals of these

professions, or is disseminated only for the purpose of public health education by persons not commercially interested, directly or indirectly, in the sale of such drugs or devices; provided, that whenever the department determines that an advance in medical science has made any type of self-medication safe as to any of the diseases named above, the department by rule shall by regulation authorize the advertisement of drugs having curative or therapeutic effect for such disease, subject to such conditions and restrictions as the department may deem necessary in the interests of public health; and provided, further, that this subsection shall not be construed as indicating that self-medication for diseases other than those named herein is safe or efficacious.

* SECTION 3. A new section to chapter 23-06.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Anatomical parts testing - Exception. No anatomical parts of human bodies, including whole blood, plasma, blood products, blood derivatives, semen, body tissue, organs, and parts of organs or products derived from parts of organs may be used for injection, transfusion, or transplantation into a human body unless the anatomical parts or the donor have been examined for the presence of antibodies to or antigens of the human immunodeficiency virus and the test is negative for the presence of such antibodies or antigens. The testing requirement of this section does not apply if, in a medical emergency constituting a serious threat to the life of a potential anatomical part recipient, a required anatomical part that has been subjected to the testing required under this section is not available. The state department of health and consolidated laboratories may adopt rules to implement the requirements of this section.

SECTION 4. AMENDMENT. Section 23-07-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-07-01. Powers of state department of health and consolidated laboratories. The state department of health and consolidated laboratories shall designate the diseases which shall that must be reported as prescribed in this chapter, and it may classify such diseases as contagious or infectious, ~~veneraeal~~ sexually transmitted, and dangerous.

SECTION 5. AMENDMENT. Section 23-07-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-07-03. Report of cases of ~~veneraeal~~ sexually transmitted disease. The superintendent or manager of a hospital, dispensary, or charitable or penal institution, in which there is a case of ~~veneraeal~~ sexually transmitted disease, or the superintendent's designee, shall report such case to the nearest health officer having jurisdiction. The report ~~shall~~ must be made in the form and manner directed by the state department of health and consolidated laboratories.

SECTION 6. AMENDMENT. Section 23-07-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-07-07. ~~Veneraeal~~ Sexually transmitted diseases - Additional powers and duties of health officers. The state health officer, and each district, county, and city health officer within ~~his~~ the officer's jurisdiction, when necessary for the protection of public health, shall:

- * NOTE: Section 3 of Senate Bill No. 2048 was codified as NDCC section 23-06.2-11.1 because NDCC chapter 23-06.1 was repealed by Senate Bill No. 2055, chapter 303.

1. Make examination of any person reasonably suspected of being infected with ~~venerreal~~ a sexually transmitted disease and detain ~~such~~ that person until the results of the examination are known.
2. Require any person infected with ~~venerreal~~ a sexually transmitted disease to report for treatment to a reputable physician and to continue such treatment until ~~he is cured or to submit to, if incurable, continue indefinitely such treatment provided at public expense until he is cured~~ as recommended by the physician.
3. Require any person infected with a sexually transmitted disease to be examined or tested for the presence of antibodies to or antigens of the human immunodeficiency virus. The state health officer shall designate sexually transmitted diseases for which contact tracing is appropriate. If contact tracing is appropriate, the attending physician, or health officer if authorized by the attending physician, shall notify the following individuals regarding possible exposure to contagious disease:
 - a. Known sexual partners of an individual infected with a sexually transmitted disease.
 - b. Individuals who either have been, or may be, exposed to an individual infected with a sexually transmitted disease in a manner that creates an epidemiologically demonstrated risk of transmission.
4. Investigate sources of infection of ~~venerreal disease~~ sexually transmitted diseases.
- 4- 5. Cooperate with the proper officials whose duty it is to enforce laws directed against prostitution, and otherwise to use every proper means for the repression of prostitution, including providing proper officials with all relevant information available concerning individuals who are infected with the human immunodeficiency virus and who are engaged in prostitution.

SECTION 7. A new section to chapter 23-07 of the North Dakota Century Code is hereby created and enacted to read as follows:

Testing of inmates and convicted individuals for exposure to the human immunodeficiency virus - Reporting - Liability.

1. The following individuals must be examined or tested for the presence of antibodies to or antigens of the human immunodeficiency virus:
 - a. Every individual convicted of a crime who is imprisoned for fifteen days or more in a grade one or grade two jail, a regional correctional facility, or the state penitentiary;
 - b. Every individual, whether imprisoned or not, who is convicted of a sexual offense under chapter 12.1-20, except for those convicted of violating sections 12.1-20-10, 12.1-20-12.1, and 12.1-20-13; and

- c. Every individual, whether imprisoned or not, who is convicted of an offense involving the use of a controlled substance, as defined in chapter 19-03.1, and the offense involved the use of paraphernalia, including any type of syringe or hypodermic needle, that creates an epidemiologically demonstrated risk of transmission of the human immunodeficiency virus.
2. The results of any positive or reactive test must be reported to the state department of health and consolidated laboratories in the manner prescribed by the department. Subsection 1 does not require the testing of an individual before sentencing or the testing of an individual held in a jail or correctional facility awaiting transfer to the state penitentiary.
3. A licensed physician, nurse, technician, or employee of a hospital or clinic who draws blood from any person for the purpose of conducting a test required by this section is not liable in any civil action for damages arising out of such action except for an act or omission that constitutes gross negligence.

SECTION 8. A new section to chapter 23-07 of the North Dakota Century Code is hereby created and enacted to read as follows:

Rules. The department may adopt rules under chapter 28-32 for the efficient enforcement of this chapter.

SECTION 9. AMENDMENT. Section 23-07-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-07-08. Persons in prison examined and treated for ~~veneraeal~~ sexually transmitted diseases. Every person convicted of a crime who is imprisoned fifteen days or more in a state, county, or city prison ~~shall~~ must be examined for ~~veneraeal~~ sexually transmitted disease and if infected, shall be treated therefor by the health officer within whose jurisdiction ~~such~~ the person is imprisoned.

SECTION 10. AMENDMENT. Section 23-07-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-07-09. ~~Veneraeal~~ Sexually transmitted diseases - Persons isolated in prison - Exceptions. The prison authorities of any state, county, or city prison shall make available to the health officers such portion of the prison as may be necessary for a clinic or hospital wherein the following persons may be isolated and treated ~~at public expense until cured~~:

1. Persons who are imprisoned in ~~such~~ the prison and who are infected with ~~veneraeal~~ a sexually transmitted disease.
2. Persons who are suffering with ~~veneraeal~~ a sexually transmitted disease at the time of the expiration of their term of imprisonment.
3. Persons isolated or quarantined by the health officer when no other suitable place for isolation or quarantine is available.

In lieu of such isolation, any of such persons, in the discretion of the health officer, may be required to report for treatment to a licensed

physician or to submit to treatment provided at public expense until cured. ~~Nothing contained in this. This section shall may not~~ be construed to interfere with the service of any sentence imposed by a court as punishment for the commission of crime.

* SECTION 11. AMENDMENT. Section 23-07-21 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-07-21. Penalties. ~~Any~~ A person is guilty of an infraction:

1. Who violates or fails to obey any ~~of the provisions~~ provision of this chapter, any lawful rule or regulation made by the state department of health and consolidated laboratories, or any order issued by any state, district, county, or municipal health officer;
2. Who violates any quarantine law or regulation, or who leaves a quarantined area without being discharged; or
3. Who, knowing that ~~he the person~~ is infected with a ~~venereal~~ sexually transmitted disease, willfully exposes another person to infection;

is guilty of an infraction.

SECTION 12. AMENDMENT. Section 53-03-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

53-03-03. Permit required - Terms upon which granted. A permit to conduct a carnival ~~shall must~~ be granted upon the condition, and the contract ~~shall must~~ state, that there ~~shall may~~ not be:

1. Set up or operated any gambling device, lottery, number or paddle wheel, number board, punchboard, or other game of chance or skin game of any kind; or
2. Any lewd, lascivious, or indecent show, indecent exposure of the person, suggested lewdness or immorality, any indecent dance, ~~men-only show~~; where ~~women or girls~~ persons perform, or any other lewd, immoral, or indecent show or attraction; or
- 3- ~~Knowingly allowed or permitted to follow or be connected with such carnival any man or woman infected with venereal disease.~~

Approved April 7, 1989
Filed April 7, 1989

* NOTE: Section 23-07-21 was also amended by section 4 of Senate Bill No. 2049, chapter 310.

CHAPTER 182

HOUSE BILL NO. 1231
(Representatives J. DeMers, P. DeMers, Wentz)
(Senators J. Meyer, Nalewaja)

ADOPTION INFORMATION DISCLOSURE

AN ACT to amend and reenact subsections 4 and 9 of section 14-15-16 of the North Dakota Century Code, relating to disclosure of adoption information under the Revised Uniform Adoption Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 4 and 9 of section 14-15-16 of the 1987 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

4. An adopted person who is ~~twenty-one~~ eighteen years of age or over may request the department of human services to secure and disclose information identifying the adopted child's genetic parents or to secure and disclose nonidentifying information not on file with the board or a child-placing agency. The department of human services shall, within five working days of receipt of the request, notify in writing the child-placing agency having access to the information requested of the request by the adopted child. If there has not been established a presumed or adjudicated father under chapter 14-17 then a "genetic parent" includes for the purposes of a request to secure and disclose nonidentifying information not on file with the department or child-placing agency, the alleged father as indicated in the files of the child-placing agency; provided, that there exists in the file information which corroborates the allegation of paternity, including the existence of communications between the alleged father and child-placing agency, or between the alleged father and the natural or adjudicated mother or members of her family, or such other corroborative information permitted by rules adopted by the department of human services.
9. Any adopted person ~~twenty-one~~ eighteen or more years of age whose adoption was finalized in this state or whose genetic parents had their parental rights terminated in this state may request the department of human services to secure and disclose identifying information concerning an adult sibling in the same manner as provided for in subsection 4. Identifying information pertaining exclusively to the adult sibling, whether part of the permanent record of a file in the department of human services or in an agency, may be released only upon written consent of the adult sibling and any living genetic parents of the adult sibling if the adult sibling knows of their identity.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 183

SENATE BILL NO. 2459
(Senators Mathern, Robinson)
(Representative Wentz)

PARENTAL RIGHTS TERMINATION RIGHT TO COUNSEL

AN ACT to create and enact a new section to chapter 14-15 of the North Dakota Century Code, relating to the right to counsel in termination proceedings under the Revised Uniform Adoption Act; and to amend and reenact sections 14-17-18 and 27-20-45 of the North Dakota Century Code, relating to the right to counsel in termination proceedings under the Uniform Parentage Act and the Uniform Juvenile Court Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 14-15 of the North Dakota Century Code is hereby created and enacted to read as follows:

Right to counsel. A parent who consents to the adoption of a minor, under section 14-15-05, is entitled to legal counsel during all stages of a proceeding to terminate the parent and child relationship under section 14-15-19 if the minor is to be placed for adoption by a child-placing agency licensed under chapter 50-12. The parent may retain counsel of the parent's own choosing and at the parent's own expense, or, if indigent, the parent may request the court to order, upon which the court shall order, that a state's attorney serve as legal counsel to the parent at no cost to the parent. As an alternative to the state's attorney serving as legal counsel to the parent, the state's attorney may request the court to order, upon which the court may order, if a conflict is shown to exist, that other legal counsel services that may be available be provided to the parent at no cost to the parent. These alternative legal counsel services include counsel services for indigent persons. Prior to the termination proceeding held under section 14-15-19, the court or a person designated by the court shall inform the parent of the right to counsel provided by this section.

SECTION 2. AMENDMENT. Section 14-17-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-17-18. Right to counsel - Free transcript on appeal.

1. At the pretrial hearing and in further proceedings, any party may be represented by counsel. The court shall appoint counsel for a party who is financially unable to obtain counsel.
2. A parent who relinquishes or proposes to relinquish a minor for adoption, under section 14-17-24, is entitled to legal counsel during all stages of a proceeding to terminate the parent and child relationship under that section if the child is to be placed for adoption by a child-placing agency licensed under chapter 50-12. The parent may retain counsel of the parent's own choosing and at

the parent's own expense, or, if indigent, the parent may request the court to order, upon which the court shall order, that a state's attorney serve as legal counsel to the parent at no cost to the parent. As an alternative to the state's attorney serving as legal counsel to the parent, the state's attorney may request the court to order, upon which the court may order, if a conflict is shown to exist, that other legal counsel services that may be available be provided to the parent at no cost to the parent. These alternative legal counsel services include counsel services for indigent persons. Prior to the termination proceeding held under section 14-17-24, the court or a person designated by the court shall inform the parent of the right to counsel provided by this section.

3. If a party is financially unable to pay the cost of a transcript, the court shall furnish on request a transcript for purposes of appeal.

SECTION 3. AMENDMENT. Section 27-20-45 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

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

1. The petition shall comply with section 27-20-21 and state clearly that an order for termination of parental rights is requested and that the effect thereof will be as stated in the first sentence of section 27-20-46.
2. If both of the natural parents of the child are not named in the petition either as petitioner or as respondent, the court shall cause inquiry to be made of the petitioner and other appropriate persons in an effort to identify an unnamed parent. The inquiry shall include, to the extent necessary and appropriate, all of the following:
 - a. Whether any man is presumed to be the father of the child under the Uniform Parentage Act.
 - b. Whether the natural mother of the child was cohabiting with a man at the time of conception or birth of the child.
 - c. Whether the natural mother of the child has received from any man support payments or promises of support with respect to the child or in connection with her pregnancy.
 - d. Whether any person has formally or informally acknowledged or declared his possible parentage of the child.
 - e. Whether any person claims any right to custody of the child.
3. The court shall add as respondent to the petition and cause to be served with a summons any person identified by the court as an unnamed parent, unless the person has relinquished parental rights, or parental rights have been previously terminated by a court.
4. If the court, after inquiry, is unable to identify an unnamed parent and no person has appeared in the proceeding claiming to be

an unnamed parent of the child or to have any right of custody of the child, the court shall enter an order terminating all parental rights of the unnamed parent with reference to the child and the parent and child relationship.

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

6. Subject to the disposition of an appeal, upon the expiration of thirty days after an order terminating parental rights is issued under this section, the order cannot be questioned by any person, including the petitioner, in any manner, or upon any ground, including fraud, misrepresentation, failure to give any required notice, or lack of jurisdiction of the parties or of the subject matter, unless the person retained custody of the child.

Approved April 19, 1989
Filed April 19, 1989

CHAPTER 184

HOUSE BILL NO. 1307
(Representative Wentz)
(Senator J. Meyer)

ASSISTED CONCEPTION ACT

AN ACT to adopt the Uniform Status of Children of Assisted Conception Act; and to amend and reenact section 12.1-31-05 of the North Dakota Century Code, relating to child procurement.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in sections 1 through 7 of this Act:

1. "Assisted conception" means a pregnancy resulting from insemination of an egg of a woman with sperm of a man by means other than sexual intercourse or by removal and implantation of an embryo after sexual intercourse, but does not include the pregnancy of a wife resulting from the insemination of her egg using her husband's sperm.
2. "Donor" means an individual whose body produces sperm or egg used for the purpose of assisted conception, whether or not a payment is made for the sperm or egg used, but does not include a woman who gives birth to a resulting child.
3. "Surrogate" means an adult woman who enters into an agreement to bear a child conceived through assisted conception for intended parents.

SECTION 2. Maternity. A woman who gives birth to a child is the child's mother.

SECTION 3. Assisted conception by married woman. The husband of a woman who bears a child through assisted conception is the father of the child, notwithstanding any declaration of invalidity or annulment of the marriage obtained after the assisted conception, unless within two years after learning of the child's birth the husband commences an action in which the mother and child are parties and in which it is determined that the husband did not consent to the assisted conception.

SECTION 4. Parental status of donors and deceased persons.

1. A donor is not the parent of a child conceived through assisted conception.
2. A person who dies before a conception using his sperm or her egg is not a parent of any resulting child born of the conception.

SECTION 5. Surrogate agreements. Any agreement in which a woman agrees to become a surrogate or to relinquish her rights and duties as parent of a child conceived through assisted conception is void. The surrogate, however, is the mother of a resulting child and the surrogate's husband, if a party to the agreement, is the father of the child. If the surrogate's husband is not a party to the agreement or the surrogate is unmarried, paternity of the child is governed by chapter 14-17.

SECTION 6. Relation of parent and child. A child whose status as a child is declared or negated by sections 1 through 7 of this Act is the child only of his or her parent or parents as determined under sections 1 through 7 of this Act for all purposes, including succession and gift rights in section 7 of this Act.

SECTION 7. Succession and gift rights. Unless superseded by later events forming or terminating a parent and child relationship, the status of parent and child declared or negated by sections 1 through 7 of this Act as to a given individual and a child born alive controls for purposes of:

1. Intestate succession;
2. Probate law exemptions, allowances, or other protections for children in a parent's estate; and
3. Determining eligibility of the child or the child's descendants to share in a donative transfer from any person as a member of a class determined by reference to the relationship.

SECTION 8. AMENDMENT. Section 12.1-31-05 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

12.1-31-05. Child procurement - Penalty. Except with respect to fees and charges authorized by law or approved by a court in a proceeding related to the placement of a minor child for adoption or related to the adoption of a minor child, a person is guilty of child procurement, a class C felony, if the person knowingly offers, gives, or agrees to give to another or solicits, accepts, or agrees to accept from another, a thing of value as consideration for the recipient's furnishing or aiding another to furnish a minor child for the purposes of adoption. This section does not apply to parties to any agreement in which a woman agrees to become a surrogate, as defined in section 1 of this Act, or to relinquish her rights and duties as parent of a child conceived through assisted conception, as defined in section 1 of this Act.

Approved April 3, 1989
Filed April 3, 1989