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10/15/03
Date

2003 SENATE HUMAN SERVICES

SB 2036

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2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 2036

Senate Human Services Committee

☐ Conference Committee

Hearing Date: January 13, 2003

Tape Number	Side A	Side B	Meter #
1	X		# 2480 - 6044
Committee Clerk Signature <i>Donna Kramer</i>			

Minutes:

SENATOR JUDY Lee called the meeting to order for SB 2036. This bill is relating to eligibility for certification as a special needs adoption.

JENNIFER CLARK, Committee Counselor for Interim Family Law Committee testified. One of their committee's charges was to review the state adoption laws and review adoption laws of other states. This bill expands the definition to include a child who is at high risk for a physical, emotional or mental handicap. (Meter # 2527 - 2735)

JULIE HOFFMAN, Administrator of Adoption Services for the Department of Human Services, testified in support of passage. (Written Testimony) (Meter # 2811 - 3802)

SENATOR POLOVITZ asked questions regarding how 5 was determined to be the magic number for the state of North Dakota and if there were any programs for children of special needs before age 5?

Page 2

Senate Human Services Committee

Bill/Resolution Number SB 2036

Hearing Date January 13, 2003

Responses by JULIE HOFFMAN. (Meter # 3817 - 4212)

SENATOR LEE: Would it be correct if no other conditions existed, the age limit is in there, that purely the idea that the older than 5 would allow them to qualify. With the idea that older children are not always adoptable. (Meter # 4215 - 4349)

JULIE HOFFMAN: Good explanation. States have the option to change age of special needs.

SENATOR POLOVITZ: Do you have a category before 5 years of age that can help this child that could be classified as one of special needs?

JULIE HOFFMAN: (Meter #4514) Responded yes, if they are under age 5 and have a diagnosed condition. Yes, if they are under 5 and of a minority race. If they are under 5 and placed with their siblings for adoption, yes. But, if they are under 5 and don't meet any of those - no.

SENATOR LEE: The important word in there is "or" because you don't have to all but one.

LEEANNE JOHNSON, Adoption Director of Lutheran Social Services of ND testified in support of the bill. (Written testimony) (Meter # 4765 - 5430)

SENATOR LEE: Income guidelines?

LEEANNE JOHNSON responded no income guidelines.

MRS. GARY ZENTZ, mother of 15 living children, some adopted, testified in favor of adding bill. (Meter #5582 - 5977)

No further discussion.

Public Hearing closed on SB 2036 (Meter # 6044)

Committee Decision:

SENATOR POLOVITZ made a motion to DO PASS. (Meter #1004)

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Senate Human Services Committee

Bill/Resolution Number SB 2036

Hearing Date January 13, 2003

SENATOR FAIRFIELD seconded the motion.

Roll call and all in favor. 6 yeas and 0 nays.

SENATOR FAIRFIELD is the carrier.

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10/15/03
Date

FISCAL NOTE
Requested by Legislative Council
12/16/2002

Bill/Resolution No.: SB 2036

1A. State fiscal effect: Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

1B. County, city, and school district fiscal effect: Identify the fiscal effect on the appropriate political subdivision.

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2. Narrative: Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.

3. State fiscal effect detail: For information shown under state fiscal effect in 1A, please:

A. Revenues: Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.

B. Expenditures: Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.

C. Appropriations: Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.

Name:	Brenda M. Welsz	Agency:	Department of Human Services
Phone Number:	328-2397	Date Prepared:	12/18/2002

Lacosta Rickford
Operator's Signature

10/15/03
Date

Date: 01-13-03
Roll Call Vote #: 41

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2036

Senate Human Services Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Sen. Polovitz Seconded By Sen. Fairfield

Senators	Yes	No	Senators	Yes	No
Senator Judy Lee - Chairman	✓				
Senator Richard Brown - V. Chair.	✓				
Senator Robert S. Erbele	✓				
Senator Tom Fischer	✓				
Senator April Fairfield	✓				
Senator Michael Polovitz	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Fairfield

If the vote is on an amendment, briefly indicate intent:

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La Costa Rickford 10/15/03
Operator's Signature Date

REPORT OF STANDING COMMITTEE (410)
January 13, 2003 1:29 p.m.

Module No: SR-05-0495
Carrier: Fairfield
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2036: Human Services Committee (Sen. J. Lee, Chairman) recommends DO PASS
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2036 was placed on the
Eleventh order on the calendar.

(2) DESK, (3) COMM

Page No. 1

SR-05-0495

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Date

2003 HOUSE HUMAN SERVICES

SB 2036

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10/15/03
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2036

House Human Services Committee

☐ Conference Committee

Hearing Date February 26, 2003

Tape Number	Side A	Side B	Meter #
1	x		33.6 - 61.5
1		x	0.0 - 15.7
Committee Clerk Signature <i>Sharon Gupraw</i>			

Minutes:

Julie Hoffman, Administrator of Adoption Services for Dept. of Human Services appeared in support with written testimony, stating this bill is intended to add statutory language to include children who are at "high risk" for physical, mental or emotional disability due to circumstances of birth or early deprivation.

Rep. Price stated that you are trying to put into law something your already doing.

Rep. Weisz: How could a family come back to us for retroactive payments if its not in current law to allow for that? What authority would they have.

Answer; The authority comes under the fair hearing provision in the regulation for adoption assistance.

Rep. Weisz: So it doesn't matter what the law says, its what the hearing officer wants to interpret?

LaCosta Rickford
Operator's Signature

10/15/03
Date

Page 2

House Human Services Committee

Bill/Resolution Number SB 2036

Hearing Date February 27, 2003

Answer: I don't know what our hearing officers would interpret that, what I'm telling you is that in other states, because there is this documented history in the file of birth parents who are mentally retarded/mentally ill, used chemicals during pregnancy that that in itself has established at least in that hearing officer's mind, that the family was entitled to and should of had adoption assistance.

Rep. Amerman: Are the eligible for anything else?

Answer: money & medical assistance.

Rep. Potter: With the special needs definition, why we have a member of a minority?

Answer: That definition was patterned after the Federal definition which allows states to be more specific in their definition of special needs.

Jennifer Clark of Legislative Council who was committee council for the Family Law in the interim committee appeared to answer questions of the committee.

Leanne Johnson, Lutheran Social Services of ND and Adoption Director of A.A.S.K. appeared in support with written testimony.

Shirley Hoffarth, Adoption Specialist with A.A.S.K. Program appeared in support with written testimony.

Mrs. Gary Zentz of Bismarck appeared in support stating they have adopted 4 special needs kids and feels this would be beneficial to those who would like to adopt special needs kids and so that more of them could be adopted.

Closed hearing.

It was noted that around 525 subsidy cases at hand and projection is to top 700 within the next few years.

Page 3

House Human Services Committee

Bill/Resolution Number SB 2036

Hearing Date February 27, 2003

Afternoon committee work.

Rep. Price noted that this is a bill where they want to put into law what they are already doing.

Concerns of the committee regarding darker colored children and why if you were a different race, you would be called a Special Needs Child.

Rep. Porter: Has heartburn with new language stating its fairly open ended and there is really no definition for the words that they are putting in, that high risk force.

Rep. Weisz: Feels same concerns as Rep. Porter and his County Social Services Director. The only reason for these payments is to help get these kids adopted. Feels we are opening it up to that every child in foster care is going to be special needs.

Rep. Uglem: Feels what he is hearing is that they are being paid for adopting a special needs child and one that is at high risk.

Rep. Niemeier: feels that anytime we can take the special needs children that have probably been in foster care and we can imagine how hard that is for a child to be shifted from one family to another. If they can be united with a permanent family at the same cost as what we are doing with foster care, I think it is a fine thing and that the little differences we have on here should be set aside for the sake of the child and moves a DO PASS motion, second by Rep. Potter.

5 - 7 - 1

Motion Failed.

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2036

House Human Services Committee

☐ Conference Committee

Hearing Date March 18, 2003

Tape Number	Side A	Side B	Meter #
1	x		14.3 - 61.5
		x	0.0 - 2.9
Committee Clerk Signature <i>Sharon G. Graw</i>			

Minutes: Committee work.

Rep. Price: In this bill, they are just adding a child who is at high for such a handicap on page 2, there is one issue and it kinda disturbs me that on the first page on line 23, we've been told that in some cases the counties, some adoptions aren't done until the child reaches the age of 5 just to make sure that they get the special needs assistance which I think is really unfair to the child.

Rep. Niemeier: moves an amendment of the word "disability" into where it says "handicap" on page 2, line 1, second by Rep. Potter.

Rep. Devlin: Concerns on new language and on the age of 5 years old and older.

Rep. Porter: concerns with no way of knowing who is at risk, need diagnosis.

Rep. Weisz: Risk factors of parent only, genetic only exception, hold child until age 5

Rep. Potter: Children can be born to severe alcoholic or drug addicted mother, that's a concern of mine.

Page 2
House Human Services Committee
Bill/Resolution Number SB 2036
Hearing Date March 18, 2003

Rep. Price: No problem with subsidy once child is diagnosed. What concerns me now is we are doing more special needs adoption than we're doing regular infants adoption. The numbers are growing. The other one I have issue with is the minority, because the Tribal issues, its not a minority child if its adopted by the same race. The Tribal members do not want their children adopted by whites, they have special laws for that.

Rep. Niemeier: Who makes the determination on if that child is high risk? The sooner we get those kids adopted, the happier we should be to give those kids a chance a descent life. Who decides if they are at high risk at the time they are adopted? Answer: Doesn't know what the dept. uses as criteria.

Rep. Uglem: I still don't like the idea of just declaring high risk and making a payment whether they need it or not. I'm afraid every child will become high risk.

Rep. Porter: Moves amendment on page 1, line 23, overstrike 5 yrs of age or older, page 2, line 1, overstrike is at high risk for such a handicap and insert or has been diagnosed by a licensed physician as being at high risk for such a disability, second by Rep. Weisz.

Rep. Weisz: How would a person define at high risk?

Rep. Porter answer: I would look at it as an assessment a diagnosis of any other type of disease that they would have to get into the patients history and determine if they truly are at high risk for such disability. And at any point and time if things progress with that child, they can be diagnosed as being at high risk or have basically have the amended disability appear.

Rep. Price: That type of evaluation might be beneficial to adoptive parents.

Rep. Weisz: Problem with minimum age.

Rep. Porter: My intent was to remove the age restriction as being an automatic criteria.

Lacosta Rickford
Operator's Signature

10/15/03
Date

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House Human Services Committee

Bill/Resolution Number SB 2036

Hearing Date March 18, 2003

Rep. Price: Your intention of amendment - if you are a special needs child if your under 18, if you have a physical, mental or emotional disability, you've been diagnosed by a physician as being at high risk for such a disability, you are a member of a minority or you are a member of a sibling group.

Rep. Weisz: Is minority a federal requirement?

Rep. Niemeier: Needs age 5 and older back in.

Rep. Price: Counties are holding onto kids until age 5 or older and these kids need closure faster than that.

Rep. Sandvig: Would like a definition for at risk.

Rep. Price: A physician must make the decision.

Vote on first part of amendment. 13 - 0 - 0 Passed

Second part of amendment to remove age 5 and replace with age 10. This is so those that are age categorized could be difficult to adopt would be an automatic.

Rep. Niemeier: Can't support because of her family involvement.

Rep. Sandvig: Clarification.

Vote: 11 - 2 - 0 Passed

Rep. Price: We're hoping that the Counties won't hang onto these kids longer. This should make it the other way, that they won't keep them from age 3 to 5. I don't want them taking a 2 yr. old and then hanging onto them for 3 years just so there's an automatic.

Rep. Porter: The intent of this language was so that if a member of a minority adopted into a race outside of that minority, I think that the dept. has stretched the intent of this particular language outside of what its original goal was.

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House Human Services Committee

Bill/Resolution Number SB 2036

Hearing Date March 18, 2003

Rep. Price: So you want them to have the coverage if its for example an international adoption or a refugee adoption or a Native American adoption into a nonnative American family? Yes, But if a Filipino couple's nurse from Harvey goes to the Philippines to adopt, its at the same rate, the same.

Rep. Weisz: that's against the whole intent of what this legislation is meant to do which is to get our children, foster care or whatever adopted out. This is meant to help our hard to adopt children that we have here in the State of North Dakota. It definitely shouldn't be for international.

Rep. Price: That is not our intention to give up federal funds, but our intentionn is also to get these children adopted quickly and into the proper home.

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10/15/03
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2036

House Human Services Committee

☐ Conference Committee

Hearing Date March 19, 2003

Tape Number	Side A	Side B	Meter #
1	x		52.1 - 61.6
		x	0.0 - 7.1
Committee Clerk Signature <i>Sharon R. Brown</i>			

Minutes: Committee Work

Julie Hoffman appeared to answer questions of the committee. She states she has no problem with replacing handicap with disability. The only concern she has is that with the new HIPPA Regulations in adoption as a whole we are going to face some difficulties with getting records regarding birth parents both for the benefit of the child is to share with the adoption parents as well as for the purposes of defining special needs and possible diagnosis for the child.

Rep. Price: Regardless of who makes the diagnosis, that would be an issue. Answer: Yes, a physicians high risk would mean that that physician would have access to the parent records as well.

Ms. Hoffman: Regarding age - Children currently waiting for adoption are boys between the age of 8 and 12 (school age)

Rep. Welsz: Would they tend to qualify anyway under the other criteria of emotional, how many of those because of just age that wouldn't be able to qualify?

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10/15/03
Date

Page 2

House Human Services Committee

Bill/Resolution Number SB 2036

Hearing Date March 19, 2003

Answer: Many of them will qualify under the disability diagnosis anyway because these are who have diagnosable disabilities as well. There are probably very few children that we designate solely as special needs on age alone that don't have another disability. Most of those children would probably be the younger. Children most affected are 5, 6, & 7 ages, just entering school, because it doesn't show up until then.

Rep. Niemeier: What is the primary reason for studying the age as it currently is in statute, that's 5 and older.

Answer: That was a number that was generated by the Federal Government but I think it was based on adopt ability, that children as they entered school age.

Rep. Potter: The Federal Government pays for 70%, when? Answer: If a child is 4E eligible, then the Federal Government pays for 70% of the subsidy.

Rep. Porter: Made a motion to replace 10 with 7, second by Rep. Pollert.

Rep. Price: I did specifically ask Julie about the concern from Rep. Weisz and she said there had been an issue, it was related as much to the fact that they had a case worker with some issues and feels that it is not necessarily happening now.

VOTE: 12 - 0 - 1 Passed

Rep. Devlin: made a motion for DO PASS as Amended, second by Rep. Potter.

VOTE: 12 - 0 - 1 Rep. Amerman will carry the bill.

30110.0101
Title.0200

Adopted by the Human Services Committee
March 19, 2003

House Amendments to SB 2036 - Human Services Committee 03/19/2003

Page 1, line 23, overstrike "five" and insert immediately thereafter "seven"

House Amendments to SB 2036 - Human Services Committee 03/19/2003

Page 2, line 1, overstrike "handicap" and insert immediately thereafter "disability", replace "is" with "has been diagnosed by a licensed physician to be", and replace "handicap" with "disability"

Renumber accordingly

Date: February ²⁶, 2003
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2036

House _____ HUMAN SERVICES _____ Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Rep Niemeier Seconded By Rep Potter

Representatives	Yes	No	Representatives	Yes	No
Rep. Clara Sue Price - Chair	✓		Rep. Sally Sandvig	✓	
Rep. Bill Devlin, Vice-Chair		✓	Rep. Bill Amerman	✓	
Rep. Robin Weisz		✓	Rep. Carol Niemeier	✓	
Rep. Vonnie Pietsch		✓	Rep. Louise Potter	✓	
Rep. Gerald Uglem		✓			
Rep. Chet Pollert A		✓			
Rep. Todd Porter		✓			
Rep. Gary Kreidt		✓			
Rep. Alon Wieland		✓			

Total (Yes) 5 No 7

Absent 1

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

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10/15/03
Date

19
Date: March 19, 2003
Roll Call Vote #:

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2036

House HUMAN SERVICES Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass As Amended

Motion Made By Rep Devlin Seconded By Rep Potter

Representatives	Yes	No	Representatives	Yes	No
Rep. Clara Sue Price - Chair	✓		Rep. Sally Sandvig	✓	
Rep. Bill Devlin, Vice-Chair	✓		Rep. Bill Amerman	✓	
Rep. Robin Weisz ^A			Rep. Carol Niemeier	✓	
Rep. Vonnie Pietsch	✓		Rep. Louise Potter	✓	
Rep. Gerald Uglem	✓				
Rep. Chet Pollert	✓				
Rep. Todd Porter	✓				
Rep. Gary Kreidt	✓				
Rep. Alon Wieland	✓				

Total (Yes) 12 No 0

Absent 1

Floor Assignment Rep. Amerman

If the vote is on an amendment, briefly indicate intent:

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10/15/03
Date

REPORT OF STANDING COMMITTEE (410)
March 20, 2003 9:02 a.m.

Module No: HR-50-5285
Carrier: Amerman
Insert LC: 30110.0101 Title: .0200

REPORT OF STANDING COMMITTEE

SB 2036: Human Services Committee (Rep. Price, Chairman) recommends
AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS**
(12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2036 was placed on the Sixth
order on the calendar.

Page 1, line 23, overstrike "five" and insert immediately thereafter "seven"

Page 2, line 1, overstrike "handicap" and insert immediately thereafter "disability", replace "is"
with "has been diagnosed by a licensed physician to be", and replace "handicap" with
"disability"

Renumber accordingly

2003 TESTIMONY

SB 2036

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10/15/03
Date

SENATE HUMAN SERVICES COMMITTEE
Senate Bill Number 2036
January 12, 2003

Chairman Lee and members of the Senate Human Services Committee, good morning. My name is Leanne Johnson and I am employed by Lutheran Social Services of North Dakota and serve as the A.A.S.K. Adoption Director. I am providing this written testimony to support the passage of Senate Bill 2036 regarding the definition of special needs as it pertains to assistance provided for adoption children, a proposed change to North Dakota Century Code 50-09-02.2.

The A.A.S.K. program is a collaborative effort between Lutheran Social Services of North Dakota, The Village Family Service Center, Catholic Family Service and the North Dakota Department of Human Services. Turtle Mountain Child Welfare and Family Services is affiliated with A.A.S.K. This program is responsible for the adoption of children with special needs in North Dakota. The children placed for adoption through our program are children who are in the custody of the Department of Human Services or a county social service agency. Since the program began in 1993, a total of 522 children have been placed for adoption - 80 children during calendar year 2002.

I will refer the Committee to testimony provided by Ms. Julie Hoffman, State Adoptions Administrator for specifics of the current definition of "special needs" and the important relationship this designation brings to adoption assistance eligibility. The Adoption Assistance Program, or adoption subsidy program as it is more commonly known, has proven to be a very important tool in the placement of children with special needs. Subsidies enable a larger population of families to consider special needs adoption. As a result, hundreds of children in North Dakota have grown up in families, not systems.

Page 1

*Some
testimony
given to
A. Lee*

LaCosta Rickford
Operator's Signature

10/15/03
Date

With the increase in drug and alcohol abuse in this state, as well as the existence of mental illness in biological families and sexual abuse of children, the ability to determine whether a child will have future problems is difficult for many professionals, including adoption social workers. In many cases, young children enter the foster care system and are placed for adoption, but these children are too young to accurately test for emotional or psychological problems. This is increasingly the case since the implementation of the Adoption and Safe Families Act in 1999 in North Dakota.

Without an adoption assistance agreement in place, if an adoptive family returns to the agency for assistance due to the child's significant problems, the family is either denied services or must undertake a lengthy process, including the possibility of an administrative hearing process, to obtain benefits. The A.A.S.K. program has had contact with several families over the last several years that adopted children, which were "healthy", but later developed significant mental health and emotional needs. At the time of the adoption, there may have been reason to believe birthparents may have suffered from significant mental health disorders, ingested alcohol or drugs during pregnancy yet no withdrawal symptoms were noted at birth, or a multitude of other pre-disposing circumstances. However, the family was not able to secure an adoption assistance agreement. Once the need arose, families discovered that oftentimes, they did not have sufficient funds to secure the proper treatment. They spent significant amounts of money, resulting in financial strain for families, and realizing varying degrees of "success." The A.A.S.K. program has worked along with the Department of Human Services to assist some of these families in pursuing an adoption assistance agreement after legally finalizing their adoption. However, the guidelines for this type of agreement are very stringent and are largely based on the family being able

Page 2

Lacosta Rickford
Operator's Signature

10/15/03
Date

to document financial hardship. This type of situation can be an avoidable tragedy for families adopting children with special needs. Recognizing this, the Department of Human Services has implemented practice that is supportive and really, what is best, for our children and families. This practice is in line with thirty-one other states that have legislatively recognized the importance of this policy. The A.A.S.K. program believes adding the statutory language to include children who are at "high risk" for physical, mental or emotional disability is a pro-active and supportive measure for the children and families of North Dakota.

In closing, I would respectfully request that the members of this committee seriously consider the request to add to the definition of special needs as specified in NDCC 50-09-02.2 and give a "do pass" recommendation to Senate Bill 2036. Thank you for the opportunity to provide information to your committee regarding this important matter. I would be happy to answer any questions.

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10/15/03
Date

SENATE HUMAN SERVICES COMMITTEE

Senate Bill Number 2036

January 13, 2003

Chairman Lee and members of the Senate Human Services Committee, good morning. I am Julie Hoffman, Administrator of Adoption Services for the Department of Human Services. I am here today to support the passage of Senate Bill 2036 regarding the definition of special needs as it pertains to assistance provided for adopted children. This is a proposed change to North Dakota Century Code 50-09-02.2.

Currently, you will note that the definition of a child with special needs in this section is a child who is legally available for adoption (that is that the parental rights of their birth parents have been terminated) and they are in the custody of the Department of Human Services or a county social service agency. The statute further states that the child must meet at least one of the following criteria: be over the age of five, have a physical, emotional or mental handicap, be a member of a minority race or be part of a sibling group. A child, who meets at least one of these criteria, when placed for adoption with a family, may qualify to receive federal or state funded adoption assistance. This "special needs designation" is the first step in the eligibility determination for adoption assistance. The child will need to meet additional eligibility requirements related to their removal from their birth home, birth parent financial circumstances and placement circumstances. How the child meets these additional criteria will determine whether the subsidy will be primarily federally or State/ County funded. In November 2002, the percentage of our states' subsidies that were federally funded exceeded 72% of the total.

Adoption assistance can take three forms – a monthly subsidy that is no greater than the amount the child receives in a foster care payment, a

reimbursement of expenses related to the finalization of the adoption (not to exceed \$2000 per child) and medical assistance as a backup to the families primary health insurance. Federal regulations regarding the federally funded (Title IV-E) program (which the state assures will be applied to state funded adoption assistance as well) is clear that the state has an affirmative duty to promote the program and make this resource available to families adopting special needs children. The program was developed to provide permanency for children with special needs in public foster care by assisting states in providing ongoing financial and medical assistance on their behalf to the families who adopt them. The amount of assistance is determined through agreement between the family and the local agency, by evaluating the needs of the child and the circumstances of the family. Unlike other programs in the Social Security Act, the title IV-E adoption assistance program is intended to encourage an action that will be a lifelong social benefit to certain children and not to meet short-term monetary needs during a crisis.

Senate Bill 2036 is intended to add statutory language to include children who are at "high risk" for physical, mental or emotional disability due to circumstances of birth or deprivation. Currently, thirty-one states have a "risk" definition similar to the one we propose in their codified special needs definition. Most children who are placed from foster care for adoption meet the current special needs definition. However, with the implementation of the Adoption and Safe Families Act in 1999 in North Dakota, certain children in the foster care system are being placed for adoption at an earlier age and may not meet the specific definitions of the criteria as it now stands. These children may however, have a number of factors present that would predispose them to physical, emotional or mental health concerns in the future (such as maternal drug or alcohol use, birth parent mental health diagnosis, birth parent developmental disability, a number of moves in and out of foster care in early childhood, abuse

and/or neglect history, etc). We believe that the families that adopt these children should have resources available to them now and in the future if those physical or mental health concerns would materialize. The proposed change in the definition of special needs as found in NDCC 50-09 would codify current practice of the Department in determining such children as having "special needs".

Within calendar year 2002, 80 children from foster care were placed with families for the purpose of legal adoption. Of these 80 children, four children (or 5% of the placements) were designated as "special needs" due solely to their risk of developing a physical, mental or emotional handicap, and not meeting any of the current special needs criteria. The birth parents of all of these children have serious addiction issues, and two have a documented history of their mother having ingested alcohol and/or drugs during pregnancy. All of the birth mothers (and some of the birth fathers) of these children have serious mental health diagnosis. Two of the children's parents are considered mentally retarded. All four of the children have siblings that have been placed for adoption with other families. Had these children been placed with their siblings for adoption, they would have qualified as special needs under the "sibling" category. The foster parents of all four of these children became their adoptive parents. I would also note that in such cases where the child is designated as "special needs" solely on future risk, it is the practice of our adoption workers to recommend a zero monthly payment to the adopting family. By regulation however, the family may request up to the amount the child receives in a foster care payment. In all four of the cases cited above, the adopting family did request a monthly subsidy and the counties in which they live agreed to their request.

You will note that the fiscal note attached to this bill indicates that there will be a \$0 impact to the Department. As indicated, it is the practice of my

office to designate such children as have been described above as "special needs". It is my belief that this is both good practice and that it protects the Department from future liability for having "wrongfully denied" a family an adoption subsidy. These children were all removed from their birth parents due to deprivation. They were placed with foster families who nurtured them, grew to love them and when these children became available for adoption, were willing to assume the future risks of disability to adopt them and provide them with a permanent home. The Department strongly feels that we cannot abandon these families and leave them without the resources they will need to effectively meet their child's current and future needs. Additionally, regulations regarding adoption subsidy indicate that an adoptive parent has an opportunity for fair hearing if the family believes they have been wrongly denied benefits. Federal regulations state that an allegation that the "adoptive family disagrees with the determination by the State that a child is ineligible for adoption assistance" constitutes grounds for a fair hearing. If a family were to be successful in such a hearing, the family may be entitled to a retroactive payment of the wrongly denied subsidy. Many states have faced such hearings and have been required to pay retroactive payments amounting to tens of thousands of dollars. We believe that the Department's practice in these situations has prevented such fair hearings and retroactive payments.

In summary, the Department requests that you give due consideration to our request to add to the definition of special needs as specified in NDCC 50-09-02.2 and give a ^{do}"due pass" recommendation to Senate Bill 2036. I would be happy to answer any questions you may have.

HOUSE HUMAN SERVICES COMMITTEE

Senate Bill Number 2036

February 26, 2003

Chairman Price and members of the House Human Services Committee, good morning. I am Julie Hoffman, Administrator of Adoption Services for the Department of Human Services. I am here today to support the passage of Senate Bill 2036 regarding the definition of special needs as it pertains to assistance provided for adopted children. This is a proposed change to North Dakota Century Code 50-09-02.2.

Currently, you will note (beginning on line 21 of the first page of the bill) that the definition of a child with special needs in this section is a child who is legally available for adoption (that is that the parental rights of their birth parents have been terminated) and they are in the custody of the Department of Human Services or a county social service agency. The statute further states that the child must meet at least one of the following criteria: be over the age of five, have a physical, emotional or mental handicap, be a member of a minority race or be part of a sibling group. A child, who meets at least one of these criteria, when placed for adoption with a family, may qualify to receive federal or state funded adoption assistance. This "special needs designation" is the first step in the eligibility determination for adoption assistance. The child will need to meet additional eligibility requirements related to their removal from their birth home, birth parent financial circumstances and placement circumstances. How the child meets these additional criteria will determine whether the subsidy will be primarily federally or State/ County funded. In January 2003, the percentage of our states' subsidies that were federally funded exceeded 73% of the total.

Adoption assistance can take three forms – 1) a monthly cash subsidy that is no greater than the amount the child receives in a foster care payment, 2) a reimbursement of expenses related to the finalization of the adoption (not to exceed \$2000 per child) and 3) medical assistance as a backup to the families primary health insurance. Federal regulations regarding the federally funded (Title IV-E) program (which the state assures will be applied to state funded adoption assistance as well) is clear that the state has an affirmative duty to promote the program and make this resource available to families adopting special needs children. The program was developed to encourage permanency for children with special needs in public foster care by assisting states in providing ongoing financial and medical assistance on their behalf to the families who adopt them. The amount of assistance is determined through agreement between the family and the local agency, by evaluating the needs of the child and the circumstances of the family. Unlike other programs in the Social Security Act, the title IV-E adoption assistance program is intended to encourage an action that will be a lifelong social benefit to certain children and not to meet short-term monetary needs during a crisis.

Senate Bill 2036 is intended to add statutory language to include children who are at "high risk" for physical, mental or emotional disability due to circumstances of birth or early deprivation. Currently, thirty-one states have a "risk" definition similar to the one we propose as part of their codified special needs definition. Most children who are placed from foster care for adoption meet the current special needs definition. However, with the implementation of the Adoption and Safe Families Act in 1999 in North Dakota, certain children in the foster care system are being placed for adoption at an earlier age and may not meet the specific definitions of the criteria as it now stands. These children may however, have a number of factors present that would predispose them to physical, emotional or mental health concerns in the future (such as maternal drug or alcohol use,

birth parent mental health diagnosis, birth parent developmental disability, a number of moves in and out of foster care in early childhood, abuse and/or neglect history, etc). We believe that the families that adopt these children should have resources available to them now and in the future if those physical or mental health concerns would materialize. The proposed change in the definition of special needs as found in NDCC 50-09 would codify current practice of the Department in determining such children as having "special needs".

In calendar year 2002, 80 children from foster care were placed with families for the purpose of legal adoption. Of these 80 children, four children (or 5% of the placements) were designated as "special needs" due solely to their risk of developing a physical, mental or emotional handicap, and not meeting any of the current special needs criteria. Let me specifically describe the risk to these four children due to their birth family history. The birth parents of all four of these children have serious addiction issues, and two have a documented history of their mother having ingested alcohol and/or drugs during pregnancy. All of the birth mothers (and some of the birth fathers) of these children have serious mental health diagnosis. Two of the children's parents are considered mentally retarded. All four of the children have siblings that had been previously placed for adoption with other families. Ironically, had any of these children been placed with their siblings for adoption, they would have qualified as special needs under the "sibling" category. The foster parents of all four of these children became their adoptive parents. I would also note that in such cases where the child is designated as "special needs" solely on future risk, it is the practice of our adoption workers to recommend a zero monthly payment to the adopting family. By regulation however, the family may request up to the amount the child receives in a foster care payment. In all four of the cases cited above, the adopting family did request a monthly subsidy equivalent to the amount of the foster

care payment they had been receiving and the counties in which they live agreed to their request.

You will note that the fiscal note attached to this bill indicates that there will be a \$0 impact to the Department. As indicated, it is the practice of our program to designate such children as have been described above as "special needs". It is our belief that this is both good practice and that it protects the Department from future liability for having "wrongfully denied" a family an adoption subsidy. These children were all removed from their birth parents due to deprivation. They were placed with foster families who nurtured them, grew to love them and when these children became available for adoption, were willing to assume the future risks of disability to adopt them and provide them with a permanent home. The Department strongly feels that we cannot abandon these families and leave them without the resources they will need to effectively meet their child's current and future needs. Additionally, regulations regarding adoption subsidy indicate that an adoptive parent has an opportunity for fair hearing if the family believes they have been wrongly denied benefits. Federal regulations state that an allegation that the "adoptive family disagrees with the determination by the State that a child is ineligible for adoption assistance" constitutes grounds for a fair hearing. If a family were to be successful in such a hearing, the family may be entitled to a retroactive payment of the wrongly denied subsidy. Many states have faced such hearings and have been required to pay retroactive payments amounting to tens of thousands of dollars for an individual case. We believe that the Department's practice in these situations is proactive and has prevented such fair hearings and retroactive payments.

In summary, the Department requests that you give due consideration to our request to add to the definition of special needs as specified in NDCC 50-09-02.2 and give a "do pass" recommendation to

Senate Bill 2036. That concludes my remarks. I would be happy to answer any questions you may have.

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10/15/03
Date

HOUSE HUMAN SERVICES COMMITTEE
Senate Bill Number 2036
February 26, 2003

Chairman Price and members of the House Human Services Committee, good morning. My name is Leanne Johnson and I am employed by Lutheran Social Services of North Dakota and serve as the A.A.S.K. Adoption Director. I am providing this written testimony to support the passage of Senate Bill 2036 regarding the definition of special needs as it pertains to assistance provided for adoption children, a proposed change to North Dakota Century Code 50-09-02.2.

The Adults Adopting Special Kids (A.A.S.K.) program is a collaborative effort between Lutheran Social Services of North Dakota, The Village Family Service Center, Catholic Family Service and the North Dakota Department of Human Services. Turtle Mountain Child Welfare and Family Services is affiliated with A.A.S.K. This program is responsible for the adoption of children with special needs in North Dakota. The children placed for adoption through our program are children who are in the custody of the Department of Human Services or a county social service agency. Since the program began in 1993, a total of 522 children have been placed for adoption – 86 children during calendar year 2002.

I will refer the Committee to testimony provided by Ms. Julie Hoffman, State Adoptions Administrator for specifics of the current definition of "special needs" and the important relationship this designation brings to adoption assistance eligibility. The Adoption Assistance Program, or adoption subsidy program as it is more commonly known, has proven to be a very important tool in the placement of children with special needs. Subsidies enable a larger population of families to consider special needs adoption. As a result, hundreds of children in North Dakota have grown up in families, not systems.

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With the increase in drug and alcohol abuse in this state, as well as the existence of mental illness in biological families and sexual abuse of children, the ability to determine whether a child will have future problems is difficult for many professionals, including adoption social workers. In many cases, young children enter the foster care system and are placed for adoption, but these children are too young to accurately test for emotional or psychological problems. This is increasingly the case since the implementation of the Adoption and Safe Families Act in 1999 in North Dakota.

Without an adoption assistance agreement in place, if an adoptive family returns to the agency for assistance due to the child's significant problems, the family is either denied services or must undertake a lengthy process, including the possibility of an administrative hearing process, to obtain benefits. The A.A.S.K. program has had contact with several families over the last several years that adopted children, which were "healthy", but later developed significant mental health and emotional needs. At the time of the adoption, there may have been reason to believe birthparents may have suffered from significant mental health disorders, ingested alcohol or drugs during pregnancy yet no withdrawal symptoms were noted at birth, or a multitude of other pre-disposing circumstances. However, the family was not able to secure an adoption assistance agreement. Once the need arose, families discovered that oftentimes, they did not have sufficient funds to secure the proper treatment. They spent significant amounts of money, resulting in financial strain for families, and realizing varying degrees of "success." The A.A.S.K. program has worked along with the Department of Human Services to assist some of these families in pursuing an adoption assistance agreement after legally finalizing their adoption. However, the guidelines for this type of agreement are very stringent and are largely based on the family being able

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to document financial hardship. This type of situation can be an avoidable tragedy for families adopting children with special needs. Recognizing this, the Department of Human Services has implemented practice that is supportive and, really, what is best for North Dakota's children and families. This practice is in line with thirty-one other states that have legislatively recognized the importance of this policy. The A.A.S.K. program believes adding the statutory language to include children who are at "high risk" for physical, mental or emotional disability is a pro-active and supportive measure for the children and families of North Dakota.

In closing, I would respectfully request that the members of this committee seriously consider the request to add to the definition of special needs as specified in NDCC 50-09-02.2 and give a "do pass" recommendation to Senate Bill 2036. Thank you for the opportunity to provide information to your committee regarding this important matter. I would be happy to answer any questions.

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House Human Services Committee

Senate Bill 2036

February 26, 2003

Good morning Chairman Price and members of the House Human Services Committee. Allow me to introduce myself, my name is Shirley Hoffarth and I have been involved in the adoption arena in North Dakota for the past thirty years. The last ten years I have been employed as an adoption specialist with the AASK program in the Northeast and Lake Regions of the state. I am presenting testimony in support of the passage of Senate Bill 2036, which is a change to North Dakota Century Code 50-09-02.2.

Over the years since adoption has been part of my life, I have seen many changes and happily I can say most of them positive. Adoption practice has changed along with society. Initially, adoption was considered to be for the purpose of providing Caucasian families, who were unable to bear children, with a child to parent. The available infants came from women who society deemed inappropriate to be single parents. Thus adoption was the choice they were forced to make. Those adoptions were completed in a shroud of secrecy; most times the adopted child didn't even know he/she was adopted. Not only were they unaware, but also their adopted families were not aware of the birth family's social and medical background. The records show little information was documented. Happily that trend has changed along with society. Secrecy is no longer the norm, but the exception.

One of the other changes is that children that were considered to be, "unadoptable," are now being placed into permanent families. Those children are the ones who are coming through the courts because for one reason or another their biological parents cannot parent them. These

children are considered to be special needs, according to North Dakota Century Code 50-09-02.2, based on; being over the age of five, being placed as part of a sibling group, being of a minority race that is hard to place, or having a physical, mental or emotional handicap. With the implementation of the Adoption and Safe Families Act in North Dakota in 1999, there are many more children being referred for adoptive placement.

The process of Concurrent Planning has provided us with a wonderful tool to provide permanency for children much earlier in the process. However, in doing so we may not know if the child will eventually fit into the categories listed above. These are the children, we would consider to be "at risk" for being in those categories.

Good practice tells us that because of their family history and the knowledge we have of the situation that they will be special needs children by virtue of being who they are. They are the children whose parents are developmentally delayed or mentally ill. They are the children whose parents used alcohol or drugs during their pregnancy. They are also the children of parents who had other children's rights involuntarily terminated. Despite who they are they are children who need permanent families to care for them. We have been blessed with outstanding families who have come forth to parent some very challenging children. What we need to do is support them in any way we can. We need to provide a safety net for them so those children do not have to come back into the foster care system in order to get the help that they need. If the only way they can access services is to put the child back into the custody of the state we have only compounded the issues. By changing the law to reflect what is good practice, we will be able to provide both monetary and social services to these children and their families. It is a proactive measure to assist children and families.

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To understand more fully of what I speak, please allow me to give a real life example. Three months ago, an adoptive family of a fifteen-year-old child, who was adopted as an infant, was referred to me to help them secure some financial and supportive assistance. The day their son was placed in their home as an adopted child, they were told by the agency that there was a family history of severe mental illness. Within minutes he was placed into their arms, they had waited five years for that moment. They have held that moment in their minds and hearts for the last fifteen years. They monitored his behaviors and academic abilities as he struggled through elementary school. By middle school they were seeing doctors and were involved with the juvenile court system. Now, their son is in a residential treatment facility and will be for a minimum of a year. This family resides in a small community where they operate a small business. Because of their son's behaviors their parenting has been criticized, their business has faltered and their finances have been depleted. If this child would have been placed as a special needs child the expectations would have been different, services could have been accessed sooner, and financial assistance could have been provided to this family. What we can do now is really too little too late.

In conclusion, I urge you to give consideration to adding to the criteria of a special needs child that of, "high risk," as proposed in Senate Bill 2036. At this time, I would be happy to entertain any questions you may have.

Thank you for the opportunity to address this committee.

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LaCosta Rickford
Operator's Signature

10/15/03
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**House Human Services Committee
Senate Bill Number 2036**

Chairman Price and members of the House Human Services Committee. I would like to offer some additional information to the testimony presented on this bill on Wednesday, February 26th.

I have attached two pieces of information requested by members of the committee; a projection of the number of adoption subsidy cases into the future (requested by Rep. Weisz) and a chart that describes the number (and percentages) of agency adoptions for calendar 2002 (requested by Rep. Potter). Please note that in addition to the agency adoptions noted on this chart, there were an additional 183 stepparent adoptions that occurred in the same time frame. Stepparent adoptions do not involve the services of a child placing agency.

I would like to add a further comment about the financial benefits to the state of moving children to adoption from foster care. In addition to the obvious emotional benefits of providing a child with a permanent family, the state will realize financial savings when a child from foster care is adopted. Even if the subsidy paid to the family is the equivalent of the foster care payment, the state saves the additional costs of foster care case management, the costs of the juvenile court related to the yearly permanency court reviews and the medical costs since the family generally has private insurance that is the first payer of medical claims.

If I can be of any further help, please feel free to contact me at 328 - 4805.

Submitted by: Julie Hoffman, Administrator, Adoption Services, 3/3/2003

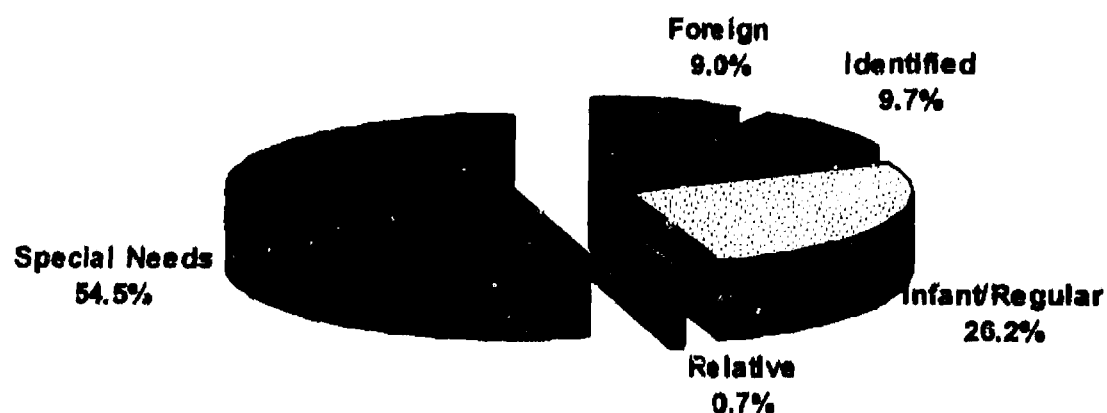
Children and Family Services **Adoptions**

Type of Adoption

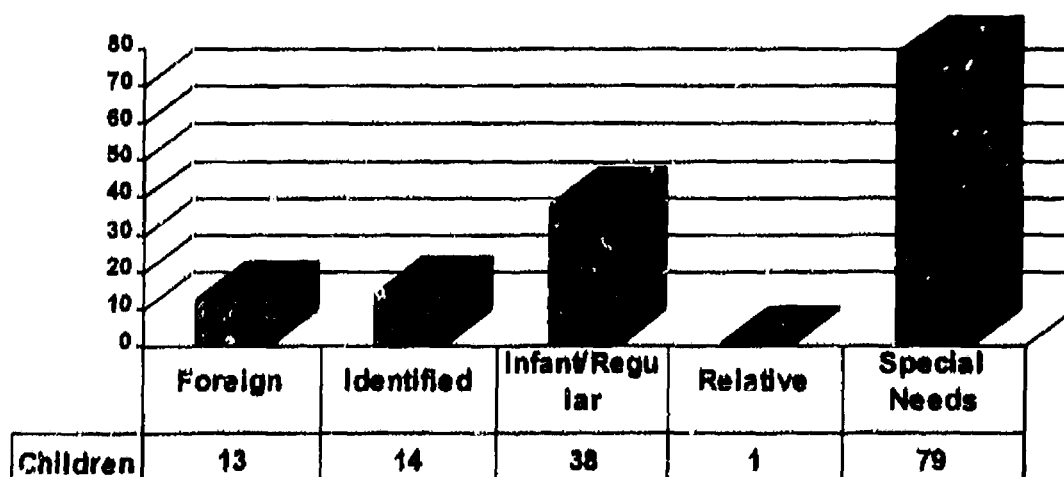
Statewide Agency Adoptions

1/1/2002 to 12/31/2002

Finalized Adoptions by Type



Finalized Adoptions by Type



Wednesday, February 26, 2003

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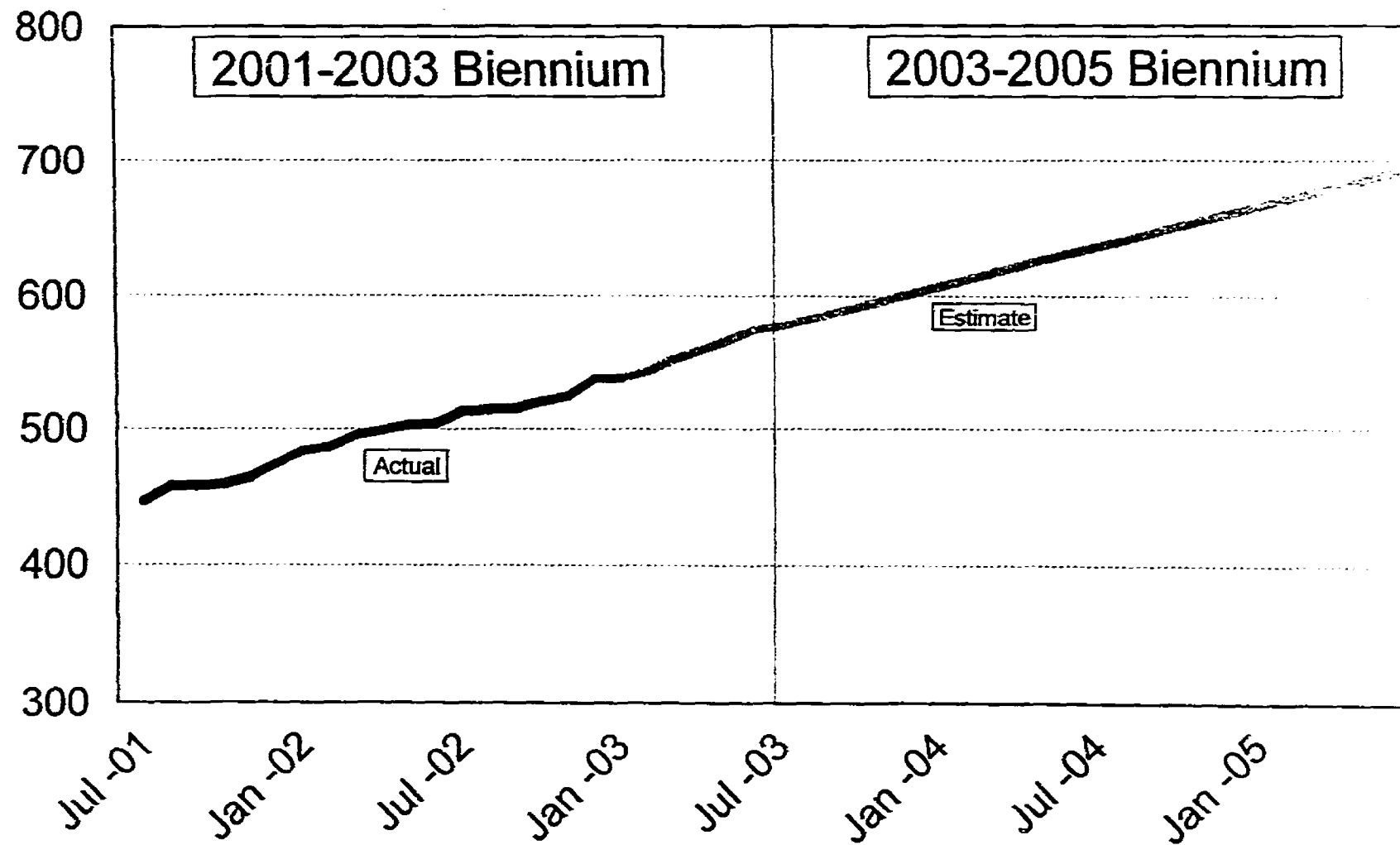
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North Dakota Department of Human Services
Children and Family Services
Adoption Services

The purpose of the Adoption Program is to recruit, approve and support families for children in need of adoption so they can have a permanent home.

Adoption Subsidy Cases by Month



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