

HOUSE BILL NO. 1362

Introduced by

Representatives Christensen, Bosch, Heilman, Kasper, Koppelman, Lefor, Meier, M. Ruby

Senators Boehm, Larsen, Paulson, Wobbema

1 A BILL for an Act to create and enact a new section to chapter 14-09 of the North Dakota
2 Century Code, relating to recognizing a parent's interest in their child's upbringing.

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

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

6 **Parent's interest in child's upbringing.**

7 1. As used in this section:

8 a. "Parent" means parent or legal guardian not including a school or other institution
9 servicing in loco parentis; and
10 b. "Stakeholder" means a person that has a vested interest in the success of the
11 organization or system.

12 2. ~~Notwithstanding any other provision of law:~~

13 ~~—~~ a. A parent possesses a fundamental liberty interest to raise the parent's child
14 without undue government interference in the care, custody, and management of
15 the parent's child and, at all times, retains a vital interest in preventing the
16 irretrievable destruction of family life.

17 b. It is in the best interest and welfare of a child to be raised under the care and
18 supervision of the child's parents.

19 c. A child's need for a normal family life in a permanent home and for positive,
20 nurturing family relationships usually is best met by the child's parents.

21 d. The integrity of the family unit and the right of a parent to conceive, raise,
22 manage, train, educate, and reasonably discipline the parent's child should be
23 constitutionally protected.

1 ~~e. The right of a fit, competent parent to raise the parent's child without undue~~
2 ~~government interference is a fundamental liberty interest and is fundamental~~
3 ~~public policy of this state.~~

4 f.e. The fundamental liberty interest of a parent is recognized, protected, and does
5 not cease to exist ~~simply because a parent may fail to be a model parent or~~
6 because the parent's child is placed in the temporary custody of the state.

7 ~~g. There is a rebuttable presumption that a parent's decisions are in the parent's~~
8 ~~child's best interests.~~

9 h.f. A fundamentally fair process must be provided to a parent if the state moves to
10 challenge or interfere with parental rights.

11 (1) A government entity must support any actions or allegations made in
12 opposition to the rights and desires of a parent regarding the parent's child
13 by sufficient evidence to satisfy a parent's constitutional entitlement to
14 heightened protection against government interference with the parent's
15 fundamental rights and liberty interests and, ~~concomitantly,~~ the right of the
16 child to be reared by the child's parent.

17 (2) Before adjudication of unfitness, government action in relation to a parent
18 and the parent's child may not exceed the least restrictive means of
19 alternatives available to accomplish a compelling state interest.

20 (3) Until the state proves parental unfitness, and the child suffers, or is
21 substantially likely to suffer, serious detriment as a result, the child and the
22 child's parent share a vital interest in preventing erroneous termination of
23 their relationship and the state may not presume a child and the child's
24 parent are adversaries.

25 3. If a parent's fundamental rights protected by this section are violated, a parent may
26 assert that violation as a claim or defense in a judicial proceeding and may obtain
27 appropriate relief against a governmental entity. The prevailing party in an action filed
28 under this section is entitled to reasonable attorney's fees and costs.

29 4. It is the public policy of the state that:

30 a. A parent retains the fundamental right and duty to exercise primary control over
31 the care, supervision, upbringing, and education of the parent's child;

- 1 b. A child has the right to protection from abuse and neglect; and
- 2 c. The state retains a compelling interest in investigating, prosecuting, and
- 3 punishing abuse and neglect.
- 4 4.5. The state's education systems are supportive and secondary to the primary role of a
- 5 parent. The legislative assembly is the primary stakeholder in the establishment,
- 6 maintenance, and success of the state's education systems. ~~The department of public-~~
- 7 ~~instruction is the primary stakeholder in the state's public education system. The board~~
- 8 ~~of a school district is a secondary stakeholder in the state's public education system.~~