

Sixty-eighth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1536

Introduced by

Representatives Davis, Conmy, Finley-DeVile, Hager, Henderson, Klemin, Pyle, Rohr, Weisz

Senator Luick

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

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

7 ~~SECTION 1. A new subsection to section 27-20.3-19 of the North Dakota Century Code is~~
8 ~~created and enacted as follows:~~

9 ~~**Foster care or preadoptive placements - Criteria - Preferences.**~~

10 ~~An Indian child accepted for foster care or preadoptive placement must be placed in~~
11 ~~the least restrictive setting that most approximates a family and which meets the~~
12 ~~child's special needs, if any. The child must be placed within reasonable proximity to~~
13 ~~the child's home, taking into account any special needs of the child. In any foster care~~
14 ~~or preadoptive placement, a preference must be given, in the absence of good cause~~
15 ~~to the contrary, to a placement with:~~

16 ~~a. A member of the Indian child's extended family;~~

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

18 ~~c. An Indian foster home licensed or approved by an authorized non-Indian~~
19 ~~licensing authority; or~~

20 ~~d. An institution for children approved by an Indian tribe operated by an Indian~~
21 ~~organization which has a program suitable to meet the Indian child's needs.~~

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

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

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

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

(1) Conducting a comprehensive assessment of the circumstances of the Indian child's family, with a focus on safe reunification as the most desirable goal, with ongoing timely assessment to determine when the threat is resolved and placement of the Indian child can be returned to the custodian.

(2) Identifying appropriate services and helping a parent or Indian custodian to overcome barriers, including actively assisting a parent or Indian custodian in obtaining such services.

(3) Identifying, notifying, and inviting representatives of the Indian child's tribe to participate in providing support and services to the Indian child's family and in family team meetings, permanency planning, and resolution of placement issues.

(4) Conducting or causing to be conducted a diligent search for the Indian child's extended family members, and contacting and consulting with extended family members to provide family structure and support for the Indian child and the Indian child's parent or Indian custodian.

(5) Offering and employing available and culturally appropriate family preservation strategies and facilitating the use of remedial and rehabilitative services provided by the Indian child's tribe.

1 (6) Taking steps to keep siblings together, if possible.

2 (7) Supporting regular visits with a parent or Indian custodian in the most
3 natural setting possible as well as trial home visits of the Indian child during
4 any period of removal, consistent with the need to ensure the health, safety,
5 and welfare of the Indian child.

6 (8) Identifying community resources, including housing, financial,
7 transportation, mental health, substance abuse, and peer support services
8 and actively assisting the Indian child's parent or Indian custodian or, as
9 appropriate, the Indian child's family, in utilizing and accessing those
10 resources.

11 (9) Monitoring progress and participation in services.

12 (10) Considering alternative ways to address the needs of the Indian child's
13 parent or Indian custodian and where appropriate, the family, if the optimum
14 services do not exist or are not available.

15 (11) Providing post-reunification services and monitoring.

16 b. "Adoptive placement" means the permanent placement of an Indian child for
17 adoption.

18 c. "Extended family member" means a relationship defined by the law or custom of
19 the Indian child's tribe or, in the absence of such law or custom, means an
20 individual who has reached the age of eighteen and who is the Indian child's
21 grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece
22 or nephew, first or second cousin, or stepparent.

23 d. "Foster care or nonfoster care placement" means the removal of an Indian child
24 from the home of his or her parent or Indian custodian for temporary placement in
25 a foster home, qualified residential treatment program, residential care center for
26 Indian children and youth, or certified shelter care facility, in the home of a
27 relative other than a parent or Indian custodian, or in the home of a guardian,
28 from which placement the parent or Indian custodian cannot have the Indian child
29 returned upon demand. The term does not include an adoptive placement, a
30 preadoptive placement, and emergency change in placement under section
31 27-20.3-06 or holding an Indian child in custody.

1 e. "Indian" means an individual who is a member of an Indian tribe, or who is a
2 native and a member of a regional corporation as defined under 43 U.S.C. 1606.

3 f. "Indian child" means any unmarried individual who is under the age of eighteen
4 and is either a member of an Indian tribe or is eligible for membership in an
5 Indian tribe and is the biological child of a member of an Indian tribe.

6 g. "Indian child custody proceeding" means a proceeding brought by the state
7 involving:

8 (1) Foster care or nonfoster care placement;

9 (2) A preadoptive placement;

10 (3) An adoptive placement; or

11 (4) A termination of parental rights under section 27-20.3-20 for an Indian child.

12 h. "Indian child's tribe" means the Indian tribe in which an Indian child is a member
13 or eligible for membership or, in the case of an Indian child who is a member of or
14 eligible for membership in more than one tribe, the Indian tribe with which the
15 Indian child has the more significant contacts.

16 i. "Indian custodian" means any Indian individual who has legal custody of an
17 Indian child under tribal law or custom or under state law or to whom temporary
18 physical care, custody, and control has been transferred by the parent of the
19 Indian child.

20 j. "Indian tribe" means an Indian tribe, band, nation, or other organized Indian
21 group or community of Indians recognized as eligible for services provided to
22 Indians by the United States secretary of the interior because of their status as
23 Indians, including any Alaska native village as defined in 43 U.S.C. 1602(c).

24 k. "Parent" means a biological parent or parents of an Indian child or an Indian
25 individual who has lawfully adopted an Indian child, including adoptions under
26 tribal law or custom. The term does not include the unwed father if paternity has
27 not been acknowledged or established.

28 l. "Preadoptive placement" means the temporary placement of an Indian child in a
29 foster home, home of a relative other than a parent or Indian custodian, or home
30 of a guardian after a termination of parental rights but before or in lieu of an

1 adoptive placement, but does not include an emergency change in placement
2 under section 27-20.3-06.

3 m. "Termination of parental rights" means any action resulting in the termination of
4 the parent-child relationship. It does not include a placement based upon an act
5 by an Indian child which, if committed by an adult, would be deemed a crime or a
6 placement upon award of custody to one of the Indian child's parents in a divorce
7 proceeding.

8 2. Before removal of an Indian child from the custody of a parent or Indian custodian for
9 purposes of involuntary foster care placement or the termination of parental rights over
10 an Indian child, the court shall find that active efforts have been made to provide
11 remedial services and rehabilitative services designed to prevent the breakup of the
12 Indian family and that these efforts have proved unsuccessful. The court may not
13 order the removal unless evidence of active efforts shows there has been a vigorous
14 and concerted level of casework beyond the level that would constitute reasonable
15 efforts under section 27-20.3-26. Reasonable efforts may not be construed to be
16 active efforts. Active efforts must be made in a manner that takes into account the
17 prevailing social and cultural values, conditions, and way of life of the Indian child's
18 tribe. Active efforts must utilize the available resources of the Indian child's extended
19 family, tribe, tribal and other relevant social service agencies, and individual Indian
20 caregivers.

21 3. The court may order the removal of the Indian child for involuntary foster care
22 placement only if the court determines, by clear and convincing evidence, that
23 continued custody of the Indian child by the parent or Indian custodian is likely to
24 result in serious emotional or physical damage to the Indian child. Evidence must
25 show a causal relationship between the particular conditions in the home and the
26 likelihood that continued custody of the Indian child will result in serious emotional or
27 physical damage to the particular Indian child who is the subject of the proceeding.
28 Poverty, isolation, custodian age, crowded or inadequate housing, substance use, or
29 nonconforming social behavior does not by itself constitute clear and convincing
30 evidence of imminent serious emotional or physical damage to the Indian child. As
31 soon as the threat has been removed and the Indian child is no longer at risk, the state

1 should terminate the removal, by returning the Indian child to the parent or Indian
2 custodian while offering a solution to mitigate the situation that gave rise to the need
3 for emergency removal and placement.

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

8 5. In considering whether to involuntarily place an Indian child in foster care or to
9 terminate the parental rights of the parent of an Indian child, the court shall require that
10 a qualified expert witness must be qualified to testify regarding whether the Indian
11 child's continued custody by the parent or Indian custodian is likely to result in serious
12 emotional or physical damage to the Indian child and should be qualified to testify as
13 to the prevailing social and cultural standards of the Indian child's tribe. An individual
14 may be designated by the Indian child's tribe as being qualified to testify to the
15 prevailing social and cultural standards of the Indian child's tribe. If the parties
16 stipulate in writing and the court is satisfied the stipulation is made knowingly,
17 intelligently, and voluntarily, the court may accept a declaration or affidavit from a
18 qualified expert witness in lieu of testimony. The court or any party may request the
19 assistance of the Indian child's tribe or the bureau of Indian affairs office serving the
20 Indian child's tribe in locating individuals qualified to serve as expert witnesses. The
21 social worker regularly assigned to the Indian child may not serve as a qualified expert
22 witness in child custody proceedings concerning the Indian child. The qualified expert
23 witness should be someone familiar with the particular Indian child and have contact
24 with the parent or Indian custodian to observe interaction between the parent or Indian
25 custodian, Indian child, and extended family members. The child welfare agency and
26 courts should facilitate access to the family and records to facilitate accurate
27 testimony.

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

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

4 **27-19.1-02. Indian child welfare - Jurisdiction over custody proceedings.**

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

6 a. A child custody proceeding, including:

7 (1) An involuntary proceeding; and

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

10 b. An emergency proceeding other than:

11 (1) A tribal court proceeding; or

12 (2) A proceeding regarding a delinquent act;

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

15 d. A voluntary placement that either parent, both parents, or the Indian custodian
16 has, of his or her or their free will, without a threat of removal by a state agency,
17 chosen for the Indian child and that does not operate to prohibit the Indian child's
18 parent or Indian custodian from regaining custody of the Indian child upon
19 demand.

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

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

29 4. In an Indian child custody proceeding under this chapter involving an Indian child who
30 is not residing or domiciled within the reservation of the Indian child's tribe, the court
31 assigned to exercise jurisdiction under this chapter, upon the petition of the Indian

1 child's parent, Indian custodian, or tribe, shall transfer the proceeding to the
2 jurisdiction of the tribe unless either of the following applies:

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

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

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

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

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

17 c. The court determines good cause exists to deny the transfer. In determining
18 whether good cause exists to deny the transfer, the court may not consider any
19 perceived inadequacy of the tribal social services department or the tribal court of
20 the Indian child's tribe. The court may determine good cause exists to deny the
21 transfer only if the person opposing the transfer shows by clear and convincing
22 evidence the evidence or testimony necessary to decide the case cannot be
23 presented in tribal court without undue hardship to the parties or the witnesses
24 and that the tribal court is unable to mitigate the hardship by making
25 arrangements to receive the evidence or testimony by use of telephone or live
26 audiovisual means, by hearing the evidence or testimony at a location that is
27 convenient to the parties and witnesses, or by use of other means permissible
28 under the tribal court's rules of evidence.

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

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

5 **27-19.1-03. Indian child welfare - Court proceedings.**

6 1. In a proceeding involving the foster care or nonfoster care placement of or termination
7 of parental rights to an Indian child whom the court knows or has reason to know may
8 be an Indian child, the party seeking the foster care or nonfoster care placement or
9 termination of parental rights, for the first hearing of the proceeding, shall notify the
10 Indian child's parent, Indian custodian, and tribe, by registered mail, return receipt
11 requested, of the pending proceeding and of the parties' right to intervene in the
12 proceeding and shall file the return receipt with the court. Notice of subsequent
13 hearings in a proceeding must be in writing and may be given by mail, personal
14 delivery, facsimile transmission, or electronic mail. If the identity or location of the
15 Indian child's parent, Indian custodian, or tribe cannot be determined, that notice shall
16 be given to the United States secretary of the interior in like manner. The first hearing
17 in the proceeding may not be held until at least ten days after receipt of the notice by
18 the parent, Indian custodian, and tribe or until at least fifteen days after receipt of the
19 notice by the United States secretary of the interior. On request of the parent, Indian
20 custodian, or tribe, the court shall grant a continuance of up to twenty additional days
21 to enable the requester to prepare for that hearing.

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

26 **27-19.1-04. Indian child welfare - Voluntary proceedings - Consent - Withdrawal.**

27 1. A voluntary consent by a parent or Indian custodian to a foster care or nonfoster care
28 placement of an Indian child is not valid unless the consent or delegation is executed
29 in writing, recorded before a judge, and accompanied by a written certification by the
30 judge that the terms and consequences of the consent or delegation were fully
31 explained in detail to and were fully understood by the parent or Indian custodian. The

1 judge also shall certify the parent or Indian custodian fully understood the explanation
2 in English or that the explanation was interpreted into a language the parent or Indian
3 custodian understood. Any consent or delegation of powers given under this
4 subsection before or within ten days after the birth of the Indian child is not valid. A
5 parent or Indian custodian who has executed a consent or delegation of powers under
6 this subsection may withdraw the consent or delegation for any reason at any time,
7 and the Indian child must be returned to the parent or Indian custodian. A parent or
8 Indian custodian who has executed a consent or delegation of powers under this
9 subsection also may move to invalidate the out-of-home care placement.

10 2. A voluntary consent by a parent to a termination of parental rights under subdivision d
11 of subsection 1 of section 27-20.3-20 is not valid unless the consent is executed in
12 writing, recorded before a judge, and accompanied by a written certification by the
13 judge that the terms and consequences of the consent were fully explained in detail to
14 and were fully understood by the parent. The judge also shall certify the parent fully
15 understood the explanation in English or that the explanation was interpreted into a
16 language that the parent understood. Consent given under this subsection before or
17 within ten days after the birth of the Indian child is not valid. A parent who has
18 executed a consent under this subsection may withdraw the consent for any reason at
19 any time before the entry of a final order terminating parental rights, and the Indian
20 child must be returned to the Indian child's parent.

21 **27-19.1-05. Indian child welfare - Placements preferences.**

22 1. Subject to subsections 3 and 4, in placing an Indian child for adoption or in delegating
23 powers, as described in a lawful executed power of attorney regarding an Indian child,
24 preference must be given, in the absence of good cause, as described in
25 subsection 6, to the contrary, to a placement with or delegation to one of the following,
26 in the order of preference listed:
27 a. An extended family member of the Indian child;
28 b. Another member of the Indian child's tribe;
29 c. Another Indian family with whom the Indian child has a relationship or an Indian
30 family from a tribe that is culturally similar to or linguistically connected to the
31 Indian child's tribe; or

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

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

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

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

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

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

16 3. An Indian child who is the subject of an emergency removal or placement under a
17 child custody determination under section 27-20.3-06 must be placed in compliance
18 with foster care or nonfoster care placement or preadoptive placement preferences,
19 unless the person responsible for determining the placement finds good cause, as
20 described in subsection 6, for departing from the order of placement preference under
21 subsection 2 or finds that emergency conditions necessitate departing from that order.
22 When the reason for departing from that order is resolved, the Indian child must be
23 placed in compliance with the order of placement preference under subsection 2.

24 4. In placing an Indian child under subsections 1 and 2 regarding an Indian child under
25 subsection 1, if the Indian child's tribe has established, by resolution, an order of
26 preference that is different from the order specified in subsection 1 or 2, the order of
27 preference established by that tribe must be followed, in the absence of good cause,
28 as described in subsection 6, to the contrary, so long as the placement under
29 subsection 1 is appropriate for the Indian child's special needs, if any, and the
30 placement under subsection 2 is the least restrictive setting appropriate for the Indian
31 child's needs as specified in subsection 2.

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

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

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

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

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

18 (2) The request of the Indian child, if the Indian child is of sufficient age and
19 capacity to understand the decision being made.

20 (3) The presence of a sibling attachment that can be maintained only through a
21 particular placement.

22 (4) The extraordinary physical, mental, or emotional needs of the Indian child,
23 such as specialized treatment services that may be unavailable in the
24 community where families who meet the placement preferences live.

25 (5) The unavailability of a suitable placement after a determination by the court
26 that a diligent search was conducted to find suitable placements meeting
27 the preference criteria, but none has been located. For purposes of this
28 analysis, the standards for determining whether a placement is unavailable
29 must conform to the prevailing social and cultural standards of the Indian
30 community in which the Indian child's parent, Indian custodian, or extended

1 family resides or with which the Indian child's parent, Indian custodian, or
2 extended family members maintain social and cultural ties.

3 d. A placement may not depart from the preferences based on the socioeconomic
4 status of any placement relative to another placement.

5 e. A placement may not depart from the preferences based solely on ordinary
6 bonding or attachment that flowed from time spent in a nonpreferred placement
7 that was made in violation of this chapter.

8 f. The burden of establishing good cause to depart from the order of placement
9 preference is on the party requesting that departure.

10 7. The department or a child welfare agency shall maintain a record of each adoptive
11 placement, foster care or nonfoster care placement, preadoptive placement, and
12 delegation of powers, made of an Indian child, evidencing the efforts made to comply
13 with the placement preference requirements specified in this section, and shall make
14 that record available at any time on the request of the United States secretary of the
15 interior or the Indian child's tribe.

16 **27-19.1-06. Adoptee information.**

17 1. The state court entering a final adoption decree or order in any voluntary or involuntary
18 Indian child adoptive placement must furnish a copy of the decree or order within thirty
19 days to the Bureau of Indian Affairs, Chief, Division of Human Services, 1849
20 C Street NW, Mail Stop 3645 MIB, Washington, DC 20240, along with the following
21 information, in an envelope marked "Confidential";

22 a. The birth name and birth date of the Indian child, and tribal affiliation and name of
23 the Indian child after adoption;

24 b. The names and addresses of the biological parents;

25 c. The names and addresses of the adoptive parents;

26 d. The name and contact information for any agency having files or information
27 relating to the adoption;

28 e. Any affidavit signed by the biological parent or parents requesting the parent's
29 identity remain confidential; and

30 f. Any information relating to tribal membership or eligibility for tribal membership of
31 the adopted Indian child.

1 2. The court shall give the birth parent of an Indian child the opportunity to file an affidavit
2 indicating that the birth parent wishes the United States secretary of the interior to
3 maintain the confidentiality of the birth parent's identity. If the birth parent files that
4 affidavit, the court shall include the affidavit with the information provided to the United
5 States secretary of the interior under subsection 1, and that secretary shall maintain
6 the confidentiality of the birth parent's identity.

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

9 **27-20.3-18. Reasonable efforts to prevent removal or to reunify - When required.**

- 10 1. As used in this section, "reasonable efforts" means the exercise of due diligence, by
11 the agency granted authority over the child under this chapter, to use appropriate and
12 available services to meet the needs of the child and the child's family in order to
13 prevent removal of the child from the child's family or, after removal, to use appropriate
14 and available services to eliminate the need for removal, to reunite the child and the
15 child's family, and to maintain family connections. In determining reasonable efforts to
16 be made with respect to a child under this section, and in making reasonable efforts,
17 the child's health and safety must be the paramount concern.
- 18 2. Except as provided in subsection 4, reasonable efforts must be made to preserve
19 families, reunify families, and maintain family connections:
- 20 a. Before the placement of a child in foster care, to prevent or eliminate the need for
21 removing the child from the child's home;
- 22 b. To make it possible for a child to return safely to the child's home;
- 23 c. Whether and, if applicable, to place siblings in the same foster care, relative,
24 guardianship, or adoptive placement, unless it is determined that such a joint
25 placement would be contrary to the safety or well-being of any of the siblings;
26 and
- 27 d. In the case of siblings removed from the home of the siblings who are not jointly
28 placed, to provide for frequent visitation or other ongoing interaction between the
29 siblings, unless it is contrary to the safety or well-being of any of the siblings.
- 30 3. If the court or the child's custodian determined that continuation of reasonable efforts,
31 as described in subsection 2, is inconsistent with the permanency plan for the child,

1 reasonable efforts must be made to place the child in a timely manner in accordance
2 with the permanency plan and to complete steps that are necessary to finalize the
3 permanent placement of the child.

- 4 4. Reasonable efforts of the type described in subsection 2 are not required if:
- 5 a. A court of competent jurisdiction has determined a parent has subjected a child to
6 aggravated circumstances; or
 - 7 b. The parental rights of the parent, with respect to another child of the parent, have
8 been involuntarily terminated.
- 9 5. Efforts to place a child for adoption, with a fit and willing relative or other appropriate
10 individual as a legal guardian, or in another planned permanent living arrangement,
11 may be made concurrently with reasonable efforts of the type described in
12 subsection 2.
- 13 6. Removal of a child from the child's home for placement in foster care must be based
14 on judicial findings stated in the court's order, and determined on a case-by-case basis
15 in a manner that complies with the requirements of titles IV-B and IV-E of the federal
16 Social Security Act [42 U.S.C. 620 et seq. and 42 U.S.C. 6701 et seq.], as amended,
17 and federal regulations adopted under this federal Act, provided that this subsection
18 may not provide a basis for overturning an otherwise valid court order.
- 19 7. For the purpose of section ~~27-20.3-19~~27-19.1-01, reasonable efforts were made under
20 this section to meet the child's needs before a foster care placement for a child
21 remaining in care for continued foster care purposes.

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

23 **SECTION 4. LEGISLATIVE MANAGEMENT STUDY - INDIAN CHILD WELFARE.** During
24 the 2023-24 interim, the legislative management shall consider studying the ~~implications of~~
25 ~~codifying the Indian Child Welfare Act of 1978 [25 U.S.C. 1901 et seq.]~~implementation of
26 chapter 27-19.1. The study must include a review of ~~the Indian Child Welfare Act of 1978 [25~~
27 ~~U.S.C. 1901 et seq.]~~, ~~section 27-20.3-19~~federal statutes related to Indian child welfare,
28 ~~related~~relevant case law, and input from stakeholders. The legislative management shall report
29 its findings and recommendations, together with any legislation necessary to implement the
30 recommendations, to the sixty-ninth legislative assembly.