

HOUSE BILL NO. 1034

Introduced by

Legislative Management

(Juvenile Justice Committee)

1 A BILL for an Act to create and enact a new chapter to title 27 of the North Dakota Century
2 Code, relating to the re-establishment of parental rights and responsibilities.

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

4 **SECTION 1.** A new chapter to title 27 of the North Dakota Century Code is created and
5 enacted as follows:

6 **Definitions.**

7 As used in this chapter:

8 1. "Child" means an individual under the age of eighteen.

9 2. "Custodian" means a person, other than a genetic parent or legal guardian, which
10 stands in loco parentis to the child and to which legal custody of the child has been
11 given by the court.

12 3. "Department" means the department of health and human services.

13 4. "Division of juvenile services" means the division within the department of corrections
14 and rehabilitation established in chapter 27-21.

15 5. "Genetic parent" means the biological mother or adjudicated mother of the child, or the
16 presumed father or adjudicated father of the child under chapter 14-20.

17 6. "Human service zone" means a county or consolidated group of counties
18 administering human services within a designated area in accordance with an
19 agreement or plan approved by the department.

20 7. "Parental rights and responsibilities" means all rights and responsibilities a genetic
21 parent has concerning the parent's child.

22 8. "Re-establishment of the legal parent and child relationship" means the physical
23 reunification of a child under the custody of the human service zone or division of
24 juvenile services, and a previously terminated genetic parent, and restoration of all

1 rights, powers, privileges, immunities, duties, and obligations that were severed and
2 terminated by the court under section 27-20.3-20.

3 **Jurisdiction.**

4 The juvenile court has exclusive original jurisdiction over all proceedings for
5 re-establishment of the legal parent and child relationship which are governed by this chapter.

6 **Venue - Inconvenient forum.**

7 1. Except as otherwise provided in this section, a proceeding under this chapter must be
8 commenced in the county in which the child resides.

9 2. A proceeding for re-establishment of parental rights and responsibilities must be
10 brought in the court in the county in which the child subject of the petition resides or in
11 which the agency having the care, custody, or control of the child is located, at the
12 time of filing or granting the petition.

13 3. If the court finds in the interest of substantial justice the matter should be heard in
14 another forum, the court may transfer, stay, or dismiss the proceeding in whole or in
15 part on any condition that is just.

16 **Petition - Who may prepare and file.**

17 A petition for re-establishment of the legal parent and child relationship may be filed by any
18 interested party from the original termination of parental rights proceeding if:

19 1. The state's attorney receives a copy of the petition and the responsible custodian and
20 the state's attorney agree re-establishment of the legal parent and child relationship is
21 in the child's best interests;

22 2. The genetic parent is willing and has the capability to provide day-to-day care and
23 maintain the health, safety, and welfare of the child;

24 3. At least twelve months have elapsed following a final order terminating parental rights
25 and the child remains in foster care;

26 4. There is no pending litigation or appeal pertaining to the original termination of
27 parental rights proceeding;

28 5. The child has not been adopted; and

29 6. The child is not the subject of a written adoption placement agreement between the
30 responsible custodian and the prospective adoptive parent.

1 **Contents of petition.**

2 A petitioner for re-establishment of the legal parent and child relationship shall sign the
3 petition under oath and the petition must include:

- 4 1. The full name, date of birth, address, and all other legal names and aliases by which
5 the genetic parents have been known at any time;
- 6 2. The full name and date of birth of each child for whom reunification is sought;
- 7 3. The petitioner's relationship to each child for whom reunification is sought;
- 8 4. To which genetic parent or parents the rights are sought to be re-established;
- 9 5. The reasons for seeking reunification and why reunification is in the child's best
10 interest;
- 11 6. The details of the termination of parental rights for which reunification is sought,
12 including the date and jurisdiction of the order, and the court file number and date of
13 any previous order terminating parental rights;
- 14 7. The details of any other active juvenile court case in which the genetic parent is a
15 named party, including the case's court file number;
- 16 8. The steps the genetic parent has taken toward personal rehabilitation since the order
17 terminating parental rights, including treatment, work, or other personal history
18 demonstrating rehabilitation;
- 19 9. How the genetic parent whose rights are sought to be re-established has corrected the
20 condition leading to the order terminating parental rights for which reunification is
21 sought;
- 22 10. The reason the genetic parent is willing and capable to provide day-to-day care and
23 maintain the health, safety, and welfare of the child; and
- 24 11. Any previous request by any party, whether for the present order terminating parental
25 rights or for any other order terminating parental rights, whether granted or not.

26 **Petition may not be brought in certain circumstances.**

27 A petition for the re-establishment of the legal parent and child relationship may not be
28 brought if the genetic parent whose rights are the subject of the petition for re-establishment
29 previously has had parental rights terminated based on a:

- 30 1. Finding of sexual abuse; or

1 2. Conviction for intentional conduct that resulted in the substantial bodily injury or death
2 of a minor.

3 **Right to appointed counsel.**

4 1. A child within the jurisdiction of the court in an action arising under this chapter has the
5 right to be represented by counsel in all proceedings in which a petition has been filed.
6 The court shall appoint counsel to represent the child, regardless of income, unless
7 counsel is retained for the child, in any proceeding in which the child is of sufficient
8 age and competency to assist counsel.

9 2. A child who is fourteen years of age or older may waive the right to counsel. The
10 waiver must be made on the record and the court shall determine if the waiver is
11 knowing, voluntary, and intelligent. If a child waives counsel for a hearing, the court
12 shall inform the child of the right to revoke the waiver and request counsel at all
13 subsequent hearings.

14 3. A genetic parent is entitled to counsel upon the filing of an application for counsel and
15 a determination of indigency. If a party appears without counsel, the court shall
16 determine whether the party knows the party may be represented by counsel and the
17 party is entitled to counsel at public expense if indigent. The court may continue the
18 proceeding to enable a party to obtain counsel.

19 **Appointment of guardian ad litem for child - Immunity.**

20 In a proceeding under this chapter, the court shall appoint a guardian ad litem for a child
21 who is a party to the proceeding upon motion of the court or by motion or agreement of the
22 parties. The guardian ad litem shall serve as an advocate of the child's best interests. A
23 guardian ad litem appointed under this section is immune from civil liability for damages for any
24 act or omission arising out of the guardian ad litem's duties and responsibilities, unless the act
25 or omission constitutes gross or willful negligence or gross or willful misconduct.

26 **Prima facie review of petition.**

27 1. Upon filing of a petition for the re-establishment of the legal parent and child
28 relationship, the court shall consider the petition without oral argument or evidentiary
29 hearing and shall deny the petition unless the court finds the petitioner has established
30 a prima facie case justifying that re-establishment of parental rights is in the child's

1 best interest. If a prima facie case is not established, the court shall dismiss the
2 petition.

3 2. If a prima facie case is established, the court shall set a date for an evidentiary
4 hearing. The clerk of district court or juvenile court shall provide a copy of the petition
5 and summons to any interested party.

6 **Trial home placement.**

7 1. After the petition is filed, the court may order the necessary parties to create a
8 transition plan. The plan must provide for the health and safety of the child and outline
9 the transition services to the genetic parent, as well as the conditions and supervisions
10 required by the human service zone for transitioning the child into the home on a trial
11 basis, with the ultimate goal being full reunification before the hearing on the petition.

12 2. The human service zone shall monitor the genetic parent during the implementation of
13 the plan and shall identify and assist the genetic parent in using appropriate family
14 preservation strategies and accessing community resources to provide for the health
15 and safety of the child.

16 3. During the time of transition, the human service zone shall remove the child from the
17 genetic parent's home upon any abuse or neglect allegation. If the child is removed,
18 the human service zone shall notify the court of the removal and the court shall deny
19 the petition as provided for in this chapter.

20 **Hearing.**

21 1. The petitioner has the burden of proof at the hearing.

22 2. At the hearing, the court may grant the petition ordering the re-establishment of the
23 legal parent and child relationship only if the court finds by clear and convincing
24 evidence that:

25 a. Re-establishment of the legal parent and child relationship is in the child's best
26 interests;

27 b. There is no pending litigation or appeal pertaining to the original termination of
28 parental rights proceeding;

29 c. The genetic parent whose rights are sought to be re-established is not named in
30 any other active juvenile court case;

31 d. The child has not been adopted;

- 1 e. The child is not the subject of a written adoption placement agreement between
- 2 the responsible social services agency and the prospective adoptive parent;
- 3 f. At least twelve months have elapsed following a final order terminating parental
- 4 rights and the child remains in foster care;
- 5 g. The genetic parent has corrected the condition that led to the order terminating
- 6 parental rights; and
- 7 h. The genetic parent is willing and has the capability to provide day-to-day care
- 8 and maintain the health, safety, and welfare of the child.
- 9 3. In determining whether to grant a petition under this chapter, the court shall consider
- 10 the child's age, maturity, and ability to express a preference and may consider the
- 11 child's preference regarding the re-establishment as one factor, along with any other
- 12 relevant factor.

13 **Order re-establishing parental rights - Effect.**

- 14 1. In granting a petition for re-establishment of the legal parent and child relationship, the
- 15 court shall enter its finding in a written order providing that from the date of the order of
- 16 re-establishment of parental rights, the child is the child of the genetic parent whose
- 17 rights were terminated and must be accorded all the same rights as existed before the
- 18 order terminating parental rights, including inheritance rights. The order must include
- 19 that all legal rights, powers, privileges, immunities, duties, and obligations to each
- 20 other as genetic parent and child are re-established.
- 21 2. As of the effective date of a court order providing for the re-establishment of the legal
- 22 parent and child relationship:
 - 23 a. The child is the legal child of the genetic parent;
 - 24 b. The genetic parent whose rights were terminated under a previous order of the
 - 25 court is restored to the status of legal parent of the child and all rights, powers,
 - 26 privileges, immunities, duties, and obligations that were severed and terminated
 - 27 by the court under section 27-20.3-20 are restored;
 - 28 c. The order placing the child under the care, custody, and control of the human
 - 29 service zone or division of juvenile services is terminated; and
 - 30 d. Permanent legal and physical custody of the child is awarded to the genetic
 - 31 parent.

- 1 3. An order re-establishing the legal parent and child relationship as to one genetic
2 parent of the child has no effect on:
3 a. The legal rights of any other genetic parent whose rights to the child have been
4 terminated by the court; or
5 b. The legal sibling relationship between the child and any other children of the
6 genetic parent.

7 **Denial - Subsequent petitions.**

- 8 If the court denies a petition under this chapter after a hearing, the court may issue a written
9 order barring the filing of a subsequent petition by the genetic parent. The court shall provide
10 the length of time the genetic parent is barred from filing a subsequent petition, make written
11 findings in support of the order, and evaluate the best interests of the child.