

## Proposed Amendment to Reengrossed Senate Bill 2036

### AMENDMENT.

Subsection 5 of section 27-20.3-01 of the North Dakota Century Code is amended and reenacted as follows:

5. "Child in need of protection" means a child who:
- a. Is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for the child's physical, mental, or emotional health, or morals, and the need for services or protection is not due primarily to the lack of financial means of the child's parents, guardian, or other custodian;
  - b. Has been placed for care or adoption in violation of law;
  - c. Has been abandoned by the child's parents, guardian, or other custodian;
  - d. Is without proper parental care, control, or education as required by law, or other care and control necessary for the child's well-being because of the physical, mental, emotional, or other illness or disability of the child's parent or parents, and that such lack of care is not due to a willful act of commission or act of omission by the child's parents, and care is requested by a parent;
  - e. Is in need of treatment and whose parents, guardian, or other custodian have refused to participate in treatment as ordered by the juvenile court;
  - f. Was subject to prenatal exposure to chronic or severe use of alcohol or any controlled substance as defined in chapter 19-03.1 in a manner not lawfully prescribed by a practitioner;
  - g. Is present in an environment subjecting the child to exposure to a controlled substance, chemical substance, or drug paraphernalia as prohibited by section 19-03.1-22.2; or
  - h. Is a victim of human trafficking as defined in title 12.1; or
  - i. Was found to lack fitness to proceed by a court in a delinquency case and the delinquency case was dismissed within the six months preceding the filing of the petition.

### AMENDMENT.

Section 27-20.3-21 of the North Dakota Century Code is amended and reenacted as follows:

27-20.3-21. Petition for termination of parental rights.

1. As used in this section:

- a. "A finding that the child has been subjected to child abuse or neglect" means:

(1) A finding of a child in need of protection made under this chapter, except as provided in subdivision i of subsection 5 of section 27 - 20.3 - 01; or

(2) A conviction of a person, responsible for a child's welfare, for conduct involving the child, under chapter 12.1-16 or sections 12.1-17-01 through 12.1-17-04 or 12.1-20-01 through 12.1-20-08.

b. "Compelling reason" means a recorded statement that reflects consideration of:

- (1) The child's age;
- (2) The portion of the child's life spent living in the household of a parent of the child;
- (3) The availability of an adoptive home suitable to the child's needs;
- (4) Whether the child has special needs; and
- (5) The expressed wishes of a child age ten or older.

c. "Department" means the department of health and human services.

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

2. A petition for termination of parental rights must be prepared, filed, and served upon the parties by the state's attorney. A petition may also be prepared by any other person that is not the court, including a law enforcement officer, who has knowledge of the facts alleged or is informed and believes that they are true. A petition prepared by any person other than a state's attorney may not be filed unless the director or the court has determined the filing of the petition is in the best interest of the public and the child.

3. Except as provided in subsection 4, a petition for termination of parental rights must be filed:

- a. If the child has been in foster care, in the custody of the department, human service zone, or, in cases arising out of an adjudication by the court of a child in a delinquency case, the division of juvenile services, for at least four hundred fifty out of the previous six hundred sixty nights;
- b. Within sixty days after the court has found the child to be an abandoned infant; or
- c. Within sixty days after the court has convicted the child's parent of one of the following crimes, or of an offense under the laws of another jurisdiction which requires proof of substantially similar elements:
  - (1) A violation of section 12.1-16-01, 12.1-16-02, or 12.1-16-03, or subsection 1 of section 14-09-22 in which the victim is another child of the parent;
  - (2) Aiding, abetting, attempting, conspiring, or soliciting a violation of section 12.1-16-01, 12.1-16-02, or 12.1-16-03 in which the victim is a child of the parent;or

(3) A violation of section 12.1-17-02 in which the victim is a child of the parent and has suffered serious bodily injury.

4. A petition for termination of parental rights need not be filed if:

- a. The child is being cared for by a relative approved by the human service zone;
- b. The human service zone has documented in the case plan a compelling reason for determining that filing such a petition would not be in the child's best interests and has notified the court that the documentation is available for review by the court; or
- c. The human service zone has determined:
  - (1) Reasonable efforts to preserve and reunify the family are required under section 27-20.3-26 to be made with respect to the child;
  - (2) The case plan provides such services are necessary for the safe return of the child to the child's home; and
  - (3) Such services have not been provided consistent with time periods described in the case plan.

5. For purposes of subsection 3, a child in foster care entered foster care on the earlier of:

a. The date of the court's order if the court:

(1) Made a finding that the child has been subjected to child abuse or neglect, or the child is in need of protection under subdivision i of subsection 5 of section 27-20.3 - 01;

(2) Determined that it is unsafe or contrary to the welfare of the child to remain in the home; and

(3) Granted custody of the child to the human service zone or, in cases arising out of an adjudication by the court that a child is in need of services, the division of juvenile services; or

b. The date that is sixty days after:

(1) The date of a hearing under section 27-20.3-10 which results in maintaining a child in shelter care;

(2) The date of an order in a dispositional hearing under which a child is placed in foster care; or

(3) The date a child is placed in foster care voluntarily and with the consent of the child's parent.

6. For purposes of subsection 3, a child leaves foster care at the time:

a. The court enters an order:

(1) Denying a petition to grant care, custody, and control of the child to the human service zone or the division of juvenile services;

(2) Terminating an order that granted custody of the child to the human service zone or the division of juvenile services; or

(3) Appointing a legal guardian under chapter 27-20.1;

b. The court order under which the child entered foster care ends by operation of law;

c. The child is placed in a parental home by the court or a legal custodian other than the division of juvenile services and the legal custodian lacks authority to remove the child without further order of the court; or

d. The child is placed in a parental home by the division of juvenile services.

7. For purposes of subsection 3, a child is not in foster care on any night during which the child is:

a. On a trial home visit;

b. Receiving services at the youth correctional center pursuant to an adjudication of delinquency; or

c. Absent without leave from the place in which the child was receiving foster care.