

House Bill 1564  
Senate Human Services Committee  
Testimony Presented by Heather Traynor  
March 12, 2025

Good morning, Chairwoman Lee and members of the committee. My name is Heather Traynor, and I am the Youth and Family Court Specialist of the Court Improvement Program with the State Court Administrator's Office. The Court Improvement Program (CIP) provides support and resources to North Dakota's state courts, allowing them to evaluate and enhance court processes in response to the needs of children in the child welfare system. I am here today to offer an amendment to House Bill 1564.

Members of the Court Improvement Program met with members of the North Dakota Indian Child Welfare Best Practices Partnership to discuss implementing this legislation. It was agreed that some amendments were needed to clarify responsibilities and conform language to North Dakota statute. We would like to offer the following amendments:

On page five, line 18 we propose adding the language, "from the child welfare agency". Adding this language makes it clear that it is the child welfare agency who is to prepare and provide the declaration that is to accompany the order.

Finally, on page six, line 7 we propose removing the word "Civil" and adding "Juvenile", which would appropriately reference the correct procedure within the North Dakota Rules.

I am also aware of the proposed amendments that will be offered by Dan Lewerenz, Assistant Professor of Law and Director of the Indian Law & Tribal

Law Certificate Program at the University of North Dakota School of Law. The court is in support of those proposed amendments as well.

I appreciate your consideration and am happy to answer any questions you may have.

# PROPOSED AMENDMENTS TO

Legislative Assembly  
of North Dakota

## HOUSE BILL NO. 1564

Introduced by

Representatives Davis, Beltz, Brown, Finley-DeVille, Holle

Senators Cleary, Cory, Hogan, Lee, Weston

1 A BILL for an Act to amend and reenact sections 27-19.1-01 and 27-19.1-02, subsection 1 of  
2 section 27-19.1-03, subsection 1 of section 27-19.1-04, and sections 27-19.1-05 and  
3 27-19.1-06 of the North Dakota Century Code, relating to Indian child welfare.

### 4 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

5 SECTION 1. AMENDMENT. Section 27-19.1-01 of the North Dakota Century Code is  
6 amended and reenacted as follows:

#### 7 27-19.1-01. Active efforts and procedures - Definitions.

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

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

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

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- 1 (2) Identifying appropriate services and helping a parent or Indian custodian to
- 2 overcome barriers, including actively assisting a parent or Indian custodian
- 3 in obtaining such services.
- 4 (3) Identifying, notifying, and inviting representatives of the Indian child's tribe to
- 5 participate in providing support and services to the Indian child's family and
- 6 in family team meetings, permanency planning, and resolution of placement
- 7 issues.
- 8 (4) Conducting or causing to be conducted a diligent search for the Indian
- 9 child's extended family members, and contacting and consulting with
- 10 extended family members to provide family structure and support for the
- 11 Indian child and the Indian child's parent or Indian custodian.
- 12 (5) Offering and employing available and culturally appropriate family
- 13 preservation strategies and facilitating the use of remedial and rehabilitative
- 14 services provided by the Indian child's tribe.
- 15 (6) Taking steps to keep siblings together, if possible.
- 16 (7) Supporting regular visits with a parent or Indian custodian in the most
- 17 natural setting possible as well as trial home visits of the Indian child during
- 18 any period of removal, consistent with the need to ensure the health, safety,
- 19 and welfare of the Indian child.
- 20 (8) Identifying community resources, including housing, financial,
- 21 transportation, mental health, substance abuse, and peer support services
- 22 and actively assisting the Indian child's parent or Indian custodian or, as
- 23 appropriate, the Indian child's family, in utilizing and accessing those
- 24 resources.
- 25 (9) Monitoring progress and participation in services.
- 26 (10) Considering alternative ways to address the needs of the Indian child's
- 27 parent or Indian custodian and where appropriate, the family, if the optimum
- 28 services do not exist or are not available.
- 29 (11) Providing post-reunification services and monitoring.
- 30 b. "Adoptive placement" means the permanent placement of an Indian child for
- 31 adoption.

- 1           c. "Extended family member" means a relationship defined by the law or custom of  
2           the Indian child's tribe or, in the absence of such law or custom, means an  
3           individual who has reached the age of eighteen and who is the Indian child's  
4           grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece  
5           or nephew, first or second cousin, or stepparent.
- 6           d. "Foster care ~~or nonfoster care~~ placement" means the removal of an Indian child  
7           from the home of his or her parent or Indian custodian for temporary placement in  
8           a foster home, qualified residential treatment program, residential care center for  
9           Indian children and youth, or certified shelter care facility, in the home of a  
10          relative other than a parent or Indian custodian, or in the home of a guardian,  
11          from which placement the parent or Indian custodian cannot have the Indian child  
12          returned upon demand. The term does not include an adoptive placement, a  
13          preadoptive placement, ~~and an~~ emergency change in placement under section  
14          27-20.3-06, or holding an Indian child in custody.
- 15          e. "Indian" means an individual who is a member of an Indian tribe, or who is a  
16          native and a member of a regional corporation as defined under 43 U.S.C. 1606.
- 17          f. "Indian child" means any unmarried individual who is under the age of eighteen  
18          and is either a member of an Indian tribe or is eligible for membership in an  
19          Indian tribe and is the biological child of a member of an Indian tribe.
- 20          g. "Indian child custody proceeding" means a proceeding brought by the state  
21          involving:  
22               (1) Foster care ~~or nonfoster care~~ placement;  
23               (2) A preadoptive placement;  
24               (3) An adoptive placement; or  
25               (4) A termination of parental rights under section 27-20.3-20 for an Indian child.
- 26          h. "Indian child's tribe" means the Indian tribe in which an Indian child is a member  
27          or eligible for membership or, in the case of an Indian child who is a member of or  
28          eligible for membership in more than one tribe, the Indian tribe with which the  
29          Indian child has the more significant contacts.
- 30          i. "Indian custodian" means any Indian individual who has legal custody of an  
31          Indian child under tribal law or custom or under state law or to whom temporary

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1 physical care, custody, and control has been transferred by the parent of the  
2 Indian child.

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

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

11 l. "Preadoptive placement" means the temporary placement of an Indian child in a  
12 foster home, home of a relative other than a parent or Indian custodian, or home  
13 of a guardian after a termination of parental rights but before or in lieu of an  
14 adoptive placement, but does not include an emergency change in placement  
15 under section 27-20.3-06.

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

21 2. Before removal of an Indian child from the custody of a parent or Indian custodian for  
22 purposes of involuntary foster care placement or the termination of parental rights over  
23 an Indian child, the court shall find that active efforts have been made to provide  
24 remedial services and rehabilitative services designed to prevent the breakup of the  
25 Indian family and that these efforts have proved unsuccessful. The court may not  
26 order the removal unless evidence of active efforts shows there has been a vigorous  
27 and concerted level of casework beyond the level that would constitute reasonable  
28 efforts under section 27-20.3-26. Reasonable efforts may not be construed to be  
29 active efforts. Active efforts must be made in a manner that takes into account the  
30 prevailing social and cultural values, conditions, and way of life of the Indian child's  
31 tribe. Active efforts must utilize the available resources of the Indian child's extended

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family, tribe, tribal and other relevant social service agencies, and individual Indian caregivers.

3. The court may order the removal of the Indian child for involuntary foster care placement only if the court determines, by clear and convincing evidence, that continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child. Evidence must show a causal relationship between the particular conditions in the home and the likelihood that continued custody of the Indian child will result in serious emotional or physical damage to the particular Indian child who is the subject of the proceeding. Poverty, isolation, custodian age, crowded or inadequate housing, substance use, or nonconforming social behavior does not by itself constitute clear and convincing evidence of imminent serious emotional or physical damage to the Indian child. ~~As soon as the threat has been removed and the Indian child is no longer at risk, the state should terminate the removal, by returning the Indian child to the parent or Indian custodian while offering a solution to mitigate the situation that gave rise to the need for emergency removal and placement.~~ If a court order authorizes the emergency removal of the Indian child from the parent or Indian custodian of the child under this section, the order must be accompanied by a declaration from the child welfare agency that includes:

- a. The name, tribal affiliation, and address of the Indian child, each parent of the Indian child, and the Indian custodian of the child, as applicable; and
- b. A detailed account of the circumstances that led the agency responsible for emergency removal of the child to take that action.

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

5. In considering whether to involuntarily place an Indian child in foster care or to terminate the parental rights of the parent of an Indian child, the court shall require that a qualified expert witness must be qualified to testify regarding whether the Indian child's continued custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child and should be qualified to testify as

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1 to the prevailing social and cultural standards of the Indian child's tribe. An individual  
2 may be designated by the Indian child's tribe as being qualified to testify to the  
3 prevailing social and cultural standards of the Indian child's tribe. If the parties  
4 stipulate in writing and the court is satisfied the stipulation is made knowingly,  
5 intelligently, and voluntarily, the court may accept a declaration or affidavit from a  
6 qualified expert witness in lieu of testimony. If one or more parties have been found to  
7 be in default under the North Dakota Rules of Civil Juvenile Procedure, the court may  
8 accept a declaration or affidavit from a qualified expert witness without a stipulation in  
9 writing from the defaulted parties. The court or any party may request the assistance  
10 of the Indian child's tribe or the bureau of Indian affairs office serving the Indian child's  
11 tribe in locating individuals qualified to serve as expert witnesses. The social worker  
12 regularly assigned to the Indian child may not serve as a qualified expert witness in  
13 child custody proceedings concerning the Indian child. The qualified expert witness  
14 should be someone familiar with the particular Indian child and have contact with the  
15 parent or Indian custodian to observe interaction between the parent or Indian  
16 custodian, Indian child, and extended family members. The child welfare agency and  
17 courts should facilitate access to the family and records to facilitate accurate  
18 testimony.

- 19 6. An emergency removal or placement of an Indian child under state law must terminate  
20 immediately when the removal or placement is no longer necessary to prevent  
21 imminent physical damage or harm to the Indian child. If removal or placement is  
22 determined to be no longer necessary, the child welfare agency shall terminate the  
23 removal by returning the Indian child to the parent or Indian custodian and offer a  
24 solution to mitigate the situation that gave rise to the need for emergency removal and  
25 placement.
- 26 7. If an Indian child is the subject of a shelter care hearing, the party initiating the hearing  
27 shall provide the court with a declaration that includes the specific actions that have  
28 been taken to assist the parent or Indian custodian since the emergency removal so  
29 the child may be safely returned to the custody of the parent or Indian custodian, and  
30 the specific actions the initiating party intends to take so the Indian child may be  
31 returned safely without initiating an Indian child custody proceeding.



- 1        8.    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        **SECTION 2. AMENDMENT.** Section 27-19.1-02 of the North Dakota Century Code is  
5 amended and reenacted as follows:

6        **27-19.1-02. Jurisdiction over custody proceedings.**

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

8            a.    A child custody proceeding, including:

9                (1)   An involuntary proceeding; ~~and~~

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

12               (3)   A proceeding involving status offenses if any part of the proceeding results  
13               in the need for out-of-home placement of the child, including a foster care,  
14               preadoptive or adoptive placement, or termination of parental rights.

15            b.    An emergency proceeding ~~other than:~~

16                (1)   ~~A tribal.~~

- 17        2.    This chapter does not apply to:

18            a.    A tribal court proceeding; ~~or~~

19        ~~(2)~~b.    A proceeding regarding a delinquent act;

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

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

- 27        ~~2-3.~~    If a proceeding under subsection 1 concerns an Indian child, this chapter applies to  
28            that proceeding. In determining whether this chapter applies to a proceeding, the state  
29            court may not consider factors such as the participation of a parent or the Indian child  
30            in tribal cultural, social, religious, or political activities; the relationship between the  
31            Indian child and the Indian child's parent; whether the parent ever had custody of the  
32            Indian child; or the Indian child's blood quantum.

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1     3.4.   If this chapter applies at the commencement of a proceeding, this chapter does not  
2           cease to apply solely because the Indian child reaches age eighteen during the  
3           pendency of the proceeding.

4     4.5.   In an Indian child custody proceeding under this chapter involving an Indian child who  
5           is not residing or domiciled within the reservation of the Indian child's tribe, the court  
6           assigned to exercise jurisdiction under this chapter, upon the petition of the Indian  
7           child's parent, Indian custodian, or tribe, shall transfer the proceeding to the  
8           jurisdiction of the tribe unless ~~either~~any of the following ~~applies~~apply:

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

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

15     ~~5.   In an Indian child custody proceeding under this chapter involving an Indian child who~~  
16       ~~is not residing or domiciled within the reservation of the Indian child's tribe, the court~~  
17       ~~assigned to exercise jurisdiction under this chapter, upon the petition of the Indian~~  
18       ~~child's parent, Indian custodian, or tribe, shall transfer the proceeding to the~~  
19       ~~jurisdiction of the tribe unless any of the following apply:~~

20           ~~a.   A parent of the Indian child objects to the transfer.~~

21     ~~b.c.~~   The Indian child's tribe does not have a tribal court, or the tribal court of the  
22               Indian child's tribe declines jurisdiction.

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

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1 convenient to the parties and witnesses, or by use of other means permissible  
2 under the tribal court's rules of evidence.

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

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

9 SECTION 3. AMENDMENT. Subsection 1 of section 27-19.1-03 of the North Dakota  
10 Century Code is amended and reenacted as follows:

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

27 SECTION 4. AMENDMENT. Subsection 1 of section 27-19.1-04 of the North Dakota  
28 Century Code is amended and reenacted as follows:

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

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

SECTION 5. AMENDMENT. Section 27-19.1-05 of the North Dakota Century Code is amended and reenacted as follows:

**27-19.1-05. ~~Placements~~Placement preferences.**

1. Subject to subsections 3 and 4, in placing an Indian child for adoption or in delegating powers, as described in a lawful executed power of attorney regarding an Indian child, preference must be given, in the absence of good cause, as described in subsection 6, to the contrary, to a placement with or delegation to one of the following, in the order of preference listed:
  - a. The tribe's statutory adopted placement preference, if applicable;
  - b. An extended family member of the Indian child;
  - ~~b.c.~~ Another member of the Indian child's tribe;
  - ~~e.d.~~ Another Indian family with whom the Indian child has a relationship or an Indian family from a tribe that is culturally similar to or linguistically connected to the Indian child's tribe; or
  - ~~d.e. The tribe's statutory adopted placement preferences~~Another Indian family.
2. An Indian child who is accepted for a foster care ~~or nonfoster care~~ placement or a preadoptive placement must be placed in the least restrictive setting that most approximates a family that meets the Indian child's special needs, if any, and which is within reasonable proximity to the Indian child's home, taking into account those special needs. Subject to subsections 4 and 6, in placing an Indian child in a foster care ~~or nonfoster care~~ placement or a preadoptive placement, preference must be

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given, in the absence of good cause, as described in subsection 6, to the contrary, to a placement in one of the following, in the order of preference listed:

- a. The tribe's statutory adopted placement preference, if applicable;
- b. The home of an extended family member of the Indian child;
- ~~b-c.~~ A foster home licensed, approved, or specified by the Indian child's tribe;
- ~~c-d.~~ An Indian foster home licensed or approved by the department; or
- ~~d-e.~~ A qualified residential treatment facility or residential care center for children and youth approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the needs of the Indian child.

3. An Indian child who is the subject of an emergency removal or placement under a child custody determination under section 27-20.3-06 must be placed in compliance with foster care ~~or nonfoster care~~ placement or preadoptive placement preferences, unless the person responsible for determining the placement finds good cause, as described in subsection 6, for departing from the order of placement preference under subsection 2 or finds that emergency conditions necessitate departing from that order. When the reason for departing from that order is resolved, the Indian child must be placed in compliance with the order of placement preference under subsection 2.
4. In placing an Indian child under subsections 1 and 2 regarding an Indian child under subsection 1, if the Indian child's tribe has established, by resolution, an order of preference that is different from the order specified in subsection 1 or 2, the order of preference established by that tribe must be followed, in the absence of good cause, as described in subsection 6, to the contrary, so long as the placement under subsection 1 is appropriate for the Indian child's special needs, if any, and the placement under subsection 2 is the least restrictive setting appropriate for the Indian child's needs as specified in subsection 2.
5. The standards to be applied in meeting the placement preference requirements of this subsection must be the prevailing social and cultural standards of the Indian community in which the Indian child's parent, Indian custodian, or extended family members reside or with which the Indian child's parent, Indian custodian, or extended family members maintain social and cultural ties.

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- 1       6.   a.   If a party asserts that good cause not to follow the placement preferences exists,  
2           the reasons for that belief or assertion must be stated orally on the record or  
3           provided in writing to the parties to the child custody proceeding and the court.
- 4       b.   The party seeking departure from the placement preferences bears the burden of  
5           proving by clear and convincing evidence that there is good cause to depart from  
6           the placement preferences.
- 7       c.   A court's determination of good cause to depart from the placement preferences  
8           must be made on the record or in writing and must be based on one or more of  
9           the following considerations:
  - 10       (1)   The request of the Indian child's parent, if they attest that they have  
11           reviewed the placement options, if any, that comply with the order of  
12           preference.
  - 13       (2)   The request of the Indian child, if the Indian child is of sufficient age and  
14           capacity to understand the decision being made.
  - 15       (3)   The presence of a sibling attachment that can be maintained only through a  
16           particular placement.
  - 17       (4)   The extraordinary physical, mental, or emotional needs of the Indian child,  
18           such as specialized treatment services that may be unavailable in the  
19           community where families who meet the placement preferences live.
  - 20       (5)   The unavailability of a suitable placement after a determination by the court  
21           that a diligent search was conducted to find suitable placements meeting  
22           the preference criteria, but none has been located. For purposes of this  
23           analysis, the standards for determining whether a placement is unavailable  
24           must conform to the prevailing social and cultural standards of the Indian  
25           community in which the Indian child's parent, Indian custodian, or extended  
26           family resides or with which the Indian child's parent, Indian custodian, or  
27           extended family members maintain social and cultural ties.
- 28       d.   A placement may not depart from the preferences based on the socioeconomic  
29           status of any placement relative to another placement.
- 30       e.   A placement may not depart from the preferences based solely on ordinary  
31           bonding or attachment that flowed from time spent in a nonpreferred placement  
32           that was made in violation of this chapter.

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

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

SECTION 6. AMENDMENT. Section 27-19.1-06 of the North Dakota Century Code is amended and reenacted as follows:

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

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

- a. The birth name and birth date of the Indian child, and tribal affiliation and name of the Indian child after adoption;
- b. The names and addresses of the biological parents;
- c. The names and addresses of the adoptive parents;
- d. The name and contact information for any agency having files or information relating to the adoption;
- e. Any affidavit signed by the biological parent or parents requesting the parent's identity remain confidential; and
- f. Any information relating to tribal membership or eligibility for tribal membership of the adopted Indian child.

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

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- 1 States secretary of the interior under subsection 1, and that secretary shall maintain
- 2 the confidentiality of the birth parent's identity.