

DOMESTIC RELATIONS AND PERSONS

CHAPTER 191

HOUSE BILL NO. 1581
(Wald, DuBord, Lee, Riehl)

ABORTION CONTROL

AN ACT to create and enact two new subsections to section 14-02.1-02 of the North Dakota Century Code, relating to definitions in the Abortion Control Act; to create and enact section 14-02.1-13 of the North Dakota Century Code, providing abortion reporting forms; and to amend and reenact subsection 4 of section 14-02.1-02, section 14-02.1-03, subsection 3 of section 14-02.1-04, section 14-02.1-05, section 14-02.1-07, and section 14-02.1-08 of the North Dakota Century Code, relating to definitions in the Abortion Control Act, consent to abortion, limitation on performance of abortion, preserving the life of a viable fetus, recording and reporting the abortion, and protection of infants born alive.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1.) Two new subsections to section 14-02.1-02 of the 1977 Supplement to the North Dakota Century Code are hereby created and enacted to read as follows:

"Abortion facility" means a clinic, ambulatory surgical center, physician's office, or any other place or facility in which abortions are performed, other than a hospital.

"Infant born alive" or "live born child" means a born child which exhibits either heart beat, spontaneous respiratory activity, spontaneous movement of voluntary muscles or pulsation of the umbilical cord if still attached to the child.

SECTION 2. AMENDMENT.) Subsection 4 of section 14-02.1-02 of the 1977 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. "Informed consent" means voluntary consent to abortion by the woman upon whom the abortion is to be performed only after full disclosure to her by the physician who is to

perform the abortion of such as much of the following information as is reasonably chargeable to the knowledge of such the physician in his professional capacity:

- a. The--state--of--development--of--the--fetus,--the--method--of--abortion--to--be--utilized,--and--the--effects--of--such abortion--methed--upon--the--fetus According to the best judgment of her attending physician, she is pregnant.
- b. The--possible--physical--and--psycheological--complications of--abortion The number of weeks elapsed from the probable time of the conception of her unborn child, based upon the information provided by her as to the time of her last menstrual period or based upon a history and physical examination and appropriate laboratory tests.
- c. Available--alternatives--to--abortion,--namely,--childbirth or--adoption,--or--birth. The probable anatomical and physiological characteristics of the unborn child at the time the abortion is to be performed.
- d. The immediate and long-term physical dangers of abortion, psychological trauma resulting from abortion, sterility and increases in the incidence of premature births, tubal pregnancies and stillbirths in subsequent pregnancies, as compared to the dangers in carrying the pregnancy to term.
- e. The particular risks associated with her own pregnancy and the abortion technique to be performed.
- f. Alternatives to abortion such as childbirth and adoption and information concerning public and private agencies that will provide the woman with economic and other assistance and encouragement to carry her child to term including, if the woman so requests, a list of the agencies and the services available from each.
- g. In cases where the fetus may reasonably be expected to have reached viability and thus be capable of surviving outside of her womb, the attending physician shall inform the woman of the extent to which he is legally obligated to preserve the life and health of her viable unborn child during and after the abortion.

In addition, the physician may inform the woman of any other material facts or opinions or provide any explanation of the above information which, in the exercise of his best medical judgment, is reasonably necessary to allow the woman to give her informed consent to the proposed abortion, with full knowledge of its nature and consequences.

~~Such--informed~~ Informed consent shall be evidenced by a written statement, in the form prescribed by the state department of health and approved by the attorney general, signed by the physician and the woman upon whom the abortion is to be performed, in which statement the physician certifies that he has made the full disclosure provided above; and in which statement the woman upon whom the abortion is to be performed acknowledges that the above disclosures have been made to her and that she voluntarily consents to the abortion.

Informed consent shall not be required in the event of a medical emergency when the woman is incapable of giving her consent if a licensed physician certifies the abortion is necessary to prevent her death.

SECTION 3. AMENDMENT.) Section 14-02.1-03 of the 1977 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-02.1-03. CONSENT TO ABORTION.)

1. ~~No-abortion-may-be-performed-upon-any-woman-in-the-absence-of-informed-consent.--However,--informed-consent--of--the-pregnant-woman--is-not-required-in-the-event-of-a-medical-emergency-when--the--woman--is--incapable--of--giving--her-consent--if-a-licensed-physician-certifies-the-abortion-is-necessary--to--preserve--her--life.~~ No physician shall perform an abortion unless prior to such performance the physician certified in writing that the woman gave her informed consent fully and without coercion, after the attending physician had informed the woman of the information contained in section 14-02.1-02 not more than thirty days nor less than forty-eight hours prior to her consent to the abortion and shall certify in writing the pregnant woman's marital status and age based upon proof of age offered by her. Prior to the period of pregnancy when the fetus may reasonably be expected to have reached viability, no abortion shall be performed upon an unemancipated minor unless the attending physician certifies in writing that each of the parents of the minor requesting the abortion has been provided by the physician in person with the information provided for in section 14-02.1-02 at least twenty-four hours prior to the minor's consent to the performance of abortion or unless the attending physician certifies in writing that he has caused materials of section 14-02.1-02 to be posted by certified mail to each of the parents of the minor separately to the last known addresses at least forty-eight hours prior to the minor's consent to the performance of abortion. When a parent of the minor has died or rights and interests of such parent have been legally terminated, this subsection shall apply to the sole remaining parent. When both parents have died or

where the rights and interests of both parents have been legally terminated, this subsection shall apply to the guardian or other person standing in loco parentis.

2. Subsequent to the period of pregnancy when the fetus may reasonably be expected to have reached viability, no abortion, other than an abortion necessary to preserve her life, or ~~if~~ because the continuation of her pregnancy will impose on her a substantial risk of grave impairment of her physical or mental health, may be performed upon any woman in the absence of:
 - a. The written consent of her husband unless her husband is voluntarily separated from her; or
 - b. The written consent of a parent, if living, or the custodian or legal guardian of ~~such~~ the woman, if the woman is unmarried and under eighteen years of age.
3. No executive officer, administrative agency, or public employee of the state of North Dakota or any local governmental body has power to issue any order requiring an abortion, nor shall any such officer or entity coerce any woman to have an abortion, nor shall any other person coerce any woman to have an abortion.

SECTION 4. AMENDMENT.) Subsection 3 of section 14-02.1-04 of the 1977 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. After the point in pregnancy where the fetus may reasonably be expected to have reached viability, no abortion may be performed except in a hospital, and then only if in the medical judgment of the physician the abortion is necessary to preserve the life of the ~~mother~~ woman or if in the physician's medical judgment the continuation of her pregnancy will impose on her a substantial risk of grave impairment of her physical or mental health.

An abortion under this subsection may only be performed if the above-mentioned medical judgment of the physician who is to perform the abortion is first certified by him in writing, setting forth in detail the facts upon which he relies in making ~~such~~ this judgment and if this judgment has been concurred in by two other licensed physicians who have examined the patient. The foregoing certification and concurrence is not required in the case of an emergency where the abortion is necessary to preserve the life of the patient.

SECTION 5. AMENDMENT.) Section 14-02.1-05 of the 1977 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-02.1-05. PRESERVING LIFE OF A VIABLE FETUS - PENALTY.) ~~The licensed physician performing an abortion shall take all reasonable steps both during and subsequent to the abortion, in keeping with good medical practice consistent with the procedure being used, to preserve the life and the health of a fetus which has survived the abortion and has been born alive as a premature infant viable by medical standards. Such steps shall include the presence of life-supporting equipment as defined by the department of health in the room where the abortion is to be performed. Failure to do so is a class C felony. An abortion of a viable child shall be performed only when there is in attendance a physician other than the physician performing the abortion who shall take control and provide immediate medical care for the viable child born as a result of the abortion. The physician performing it, and subsequent to the abortion, the physician required by this section to be in attendance, shall take all reasonable steps in keeping with good medical practice, consistent with the procedure used, to preserve the life and health of the unborn child. Failure to do so is a class C felony.~~

SECTION 6. AMENDMENT.) Section 14-02.1-07 of the 1977 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-02.1-07. RECORDS KEPT - REPORTING OF PRACTICE OF ABORTION.)

1. ~~Every hospital in which an abortion is performed shall keep on file, in the form prescribed by the state department of health, a statement dated and certified by the licensed physician who performed the abortion setting forth such information with respect to the abortion as the state department of health by regulation shall require, including, but not limited to, information on prior pregnancies, the medical procedure employed to administer the abortion, the gestational age of the fetus, the vital signs of the fetus after abortion, if any, and, if performed after viability, the medical procedures employed to protect and preserve the life and health of the fetus.~~
2. ~~The licensed physician performing an abortion shall cause the same pathology studies to be made in connection therewith as is done in connection with all other surgical procedures. The hospital shall keep the reports thereof on file.~~
3. ~~In connection with an abortion, the hospital shall keep on file the original of each of the documents required by this chapter relating to informed consent.~~
4. ~~Such hospital shall, within thirty days after the abortion, file with the state department of health a report, upon a form prescribed by the state department of health and certified by the custodian of the records or~~

licensed--physician--in-charge-of-such-medical-facility-or hospital,--setting-forth-all-of-the-information-required-in subsections--1,--2,--and--3--of--this-section,--except-such information-as-would-identify-any-individual-involved-with the-abortion.---The-report-shall-exclude-copies-of-any documents-required-to-be-filed-by-subsection--3--of--this section,--but--shall-certify-that-such-documents-were-duly executed-and-are-on-file.

5.---All--reports--and-documents-required-by-this-chapter-shall be--confidential,--subject--to--such--disclosure--as--is permitted--by--law,--except--that--statistical--data--not identifying-any-individual-involved-in-an-abortion--shall be-made-public-by-the-state-department-of-health-annually, and-the-report-required-by-subsection-4-of-this-section-to be--filed--with--the--state--department-of-health-shall-be available-for-public-inspection,--except--insofar--as--it identifies--any-individual-involved-in-an-abortion.---Names and-identities-of-persons--submitting--to--abortion--shall remain--confidential--among--medical--and--medical-support personnel-directly-involved-in--the--abortion,--and--among persons--working--in--the--facility--where--the-abortion-was performed-whose-duties--include--billing--the--patient--or submitting--claims--to--an--insurance--company,--keeping facility-records,--or-processing-abortion-data-required-by state-law.

6- 1. Records:

a. All abortion facilities and hospitals in which abortions are performed shall keep records, including admission and discharge notes, histories, results of tests and examinations, nurses' work sheets, social service records, and progress notes, and shall further keep a copy of all written certifications provided for in this chapter as well as a copy of the constructive notice forms, consent forms, court orders, abortion reports, and complication reports. Records shall be maintained in the permanent files of the hospital or abortion facility for a period of not less than seven years.

b. The medical records of abortion facilities and hospitals in which abortions are performed and all information contained therein shall remain confidential and shall be used by the department of health only for gathering statistical data and ensuring compliance with the provisions of this chapter.

2. Reporting:

a. An individual abortion report for each abortion performed upon a woman shall be completed by her

- attending physician. The report shall be confidential and shall not contain the name of the woman. This reporting shall include the data called for in the United States standard report of induced termination of pregnancy as recommended by the national center for health statistics.
- b. All abortion reports shall be signed by the attending physician and submitted to the department of health within thirty days from the date of the abortion. All complication reports shall be signed by the physician providing the post-abortion care and submitted to the department of health within thirty days from the date of the post-abortion care.
- c. A copy of the abortion report shall be made a part of the medical record of the patient at the facility or hospital in which the abortion was performed. In cases where post-abortion complications are discovered, diagnosed, or treated by physicians not associated with the facility or hospital where the abortion was performed, the department of health shall forward a copy of the report to that facility or hospital to be made a part of the patient's permanent record.
- d. The department of health shall be responsible for collecting all abortion reports and complication reports and collating and evaluating all data gathered therefrom and shall annually publish a statistical report based on data from abortions performed in the previous calendar year.
- e. The department shall report to the attorney general any apparent violation of this chapter.

SECTION 7. AMENDMENT.) Section 14-02.1-08 of the 1977 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-02.1-08. PROTECTION OF FETUS INFANT BORN ALIVE - PENALTY.)

1. A person is guilty of a class C felony if he knowingly, or negligently, causes the death of a viable fetus born alive.
2. Whenever a fetus which is the subject of abortion is born alive and is viable, it becomes an abandoned and deprived child, unless:
 - a. The termination of the pregnancy is necessary to preserve the life of the mother; or

- b. The mother and her spouse, or either of them, have agreed in writing in advance of the abortion, or within seventy-two hours thereafter, to accept the parental rights and responsibilities for the fetus if it survives the abortion procedure.

* SECTION 8.) Section 14-02.1-13 of the North Dakota Century Code is hereby created and enacted to read as follows:

14-02.1-13. FORMS.) The North Dakota state department of health shall make available to physicians, hospitals, and all abortion facilities the forms required by this chapter.

Approved April 8, 1979

* NOTE: This section is codified as North Dakota Century Code Section 14-02.1-07.1.

CHAPTER 192

SENATE BILL NO. 2385
(Sandness, Berube, Lee)

ABORTION ACCESSIBILITY RESTRICTED

AN ACT to establish a state policy statement in the areas of abortion and childbirth, family planning, payment for abortions by health insurance contracts, and limiting abortions in government hospitals in North Dakota; providing a penalty; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A STATE POLICY ON ABORTION AND CHILDBIRTH AND THE MEDICAL ASSISTANCE THEREOF.) Between normal childbirth and abortion, it shall be the policy of the state of North Dakota that normal childbirth is to be given preference, encouragement, and support by law and by state action, it being in the best interests of the well-being and common good of North Dakota citizens.

No funds of this state or any agency, county, municipality, or any other subdivision thereof and no federal funds passing through the state treasury or a state agency shall be used to pay for the performance, or for promoting the performance, of an abortion unless the abortion is necessary to prevent the death of the woman.

SECTION 2. USE OF PUBLIC FUNDS FOR FAMILY PLANNING DENYING USE FOR THE PERFORMANCE, REFERRAL, AND ENCOURAGEMENT OF ABORTION.) No funds of this state or any agency, county, municipality, or any other subdivision thereof and no federal funds passing through the state treasury or a state agency shall be used as family planning funds by any person, public or private agency which performs, refers, or encourages abortion.

SECTION 3. PAYMENT FOR ABORTIONS BY HEALTH INSURANCE POLICIES DELIVERED OR ISSUED IN NORTH DAKOTA.) No health insurance contracts, plans, or policies delivered or issued for delivery in this state shall provide coverage for abortions except by an optional rider for which there must be paid an additional premium. Provided, however, that this section shall not apply to the performance of an abortion necessary to prevent the death of the woman.

SECTION 4. LIMITATION OF ABORTION IN GOVERNMENT HOSPITALS OPERATED WITHIN NORTH DAKOTA.) No person shall authorize or perform an abortion in a hospital owned, maintained, or operated within the state by the state or any of its agencies or by any political subdivision of the state, unless the abortion is necessary to prevent the death of the woman.

SECTION 5. PENALTY.) Any person found guilty of violating this Act shall be guilty of a class B misdemeanor.

SECTION 6. SEVERABILITY.) Should any provision, section, clause, or word of this Act be construed by any court of law to be invalid, illegal, unconstitutional, or otherwise unenforcible, such invalidity, illegality, unconstitutionality, or unenforcibility shall not extend to any other provision or provisions of this Act.

It is the express intent of this legislature to enact legislation that is constitutional. A reviewing court, therefore, is requested to set forth clearly the grounds upon which any provisions of this Act is declared invalid so that appropriate remedial legislation may be enacted.

SECTION 7. EMERGENCY.) This Act is hereby declared to be an emergency measure and shall be in effect from and after its passage and approval.

Approved April 8, 1979

CHAPTER 193

HOUSE BILL NO. 1621
(Representatives Stenehjelm, Mushik, Unhjem)
(Senators Holmberg, Christensen, Redlin)

ADULT ABUSE

AN ACT relating to adult abuse, protection orders, temporary protection orders, assistance of peace officers in service or execution of protection orders, the right to apply for relief, the exclusiveness of the remedy from other remedies, emergency relief; and providing a penalty for violation of a protection order.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. "ADULT ABUSE" DEFINED.) For purposes of this Act, "adult abuse" includes physical harm, bodily injury, or assault on the complaining adult, or the imminent threat thereof.

SECTION 2. ADULT ABUSE - PROTECTION ORDER.)

1. An action for a protection order commenced by a verified application alleging the existence of adult abuse may be brought by any spouse or family member in the district court, regardless of whether or not a petition for legal separation, annulment, or divorce has been filed.
2. Upon receipt of the application, the court shall order a hearing to be held not later than fourteen days from the date of the hearing order.
3. Service shall be made upon the respondent not less than five days prior to the hearing. If service cannot be made, the court may set a new date.
4. Upon a showing of actual or imminent adult abuse, the court may enter a protection order after due notice and full hearing. The relief provided by the court may include any or all of the following:
 - a. Restraining any party from threatening, molesting, or injuring any other party.

- b. Excluding either party, for a period not to exceed thirty days, from the marital home, from the residence of the other, or from an adult abuse care facility, where this exclusion is necessary to the physical or mental well-being of the applicant or others.
 - c. Awarding temporary custody or establishing temporary visitation rights with regard to minor children.
 - d. Recommending that either or both parties undergo counseling with an adult abuse program or other agency which provides professional services which the court deems appropriate. The court may request a report from the designated agency within a time period established by the court. The costs of the court-ordered initial counseling assessment and subsequent reports shall be borne by the parties or, if indigent, by the respondent's county of residence.
5. The court may amend its order or agreement at any time upon subsequent petition filed by either party.
 6. No order or agreement under this section shall affect title to any real property in any matter.

SECTION 3. TEMPORARY PROTECTION ORDER - COPY TO LAW ENFORCEMENT AGENCY.)

1. Where an application under section 2 alleges an immediate and present danger of abuse to the applicant, the court may grant an ex parte temporary protection order, pending a full hearing, granting such relief as the court deems proper.
2. An ex parte temporary protection order may include:
 - a. Restraining any party from committing acts of abuse on the other.
 - b. Excluding any party from the dwelling they share, from the residence of the other, or from an adult abuse shelter care facility.
3. An ex parte temporary protection order shall remain in effect, in the court's discretion, for not more than thirty days, unless otherwise terminated by the court.
4. A full hearing as provided by section 2 shall be set for not later than fourteen days from the issuance of the temporary order. The respondent shall be served forthwith with a copy of the ex parte order along with a copy of the application and notice of the date set for the hearing.

5. The clerk of court shall transmit a copy of each temporary protection order, or extension, modification, or termination thereof, by the close of the business day on which the order was granted to the local law enforcement agency with jurisdiction over the residence of the applicant or over the residence at which the actual abuse which is the subject of the temporary protection order has occurred, or is likely to occur, if requested by the applicant and approved by the court. Each appropriate law enforcement agency may make available information as to the existence and current status of any temporary protection order issued pursuant to this section, through an existing verification system, to any law enforcement officer responding to the scene of reported domestic violence.

SECTION 4. ASSISTANCE OF PEACE OFFICER IN SERVICE OR EXECUTION.) When an order is issued upon request of the applicant under sections 2 or 3, the court shall order the sheriff or other appropriate law enforcement officer to accompany the applicant and assist in placing the applicant in possession of the dwelling or residence, or otherwise assist in execution or service of the protection order, which may include assistance in referral to an adult abuse shelter care facility.

SECTION 5. RIGHT TO APPLY FOR RELIEF.) A person's right to apply for relief under sections 2 or 3 shall not be affected by his or her leaving the residence or dwelling to avoid abuse. The court shall not require security or bond from any party unless it deems it necessary in exceptional cases.

SECTION 6. PENALTY FOR VIOLATION OF A PROTECTION ORDER - ARREST WITHOUT WARRANT.) Whenever a protection order is granted pursuant to sections 2 or 3 and the respondent or person to be restrained has been served a copy of the order, a violation of the order shall be a class A misdemeanor and also constitute criminal contempt of court subject to penalties therefor. A peace officer may arrest any person without a warrant if the officer has probable cause to believe the person has committed the offense of violating a protection order, whether or not the violation was committed in the presence of the officer. No peace officer shall be held criminally or civilly liable for making an arrest pursuant to this section if the officer acts in good faith on probable cause and without malice.

SECTION 7. NONEXCLUSIVE REMEDY.) Any proceeding under this Act shall be in addition to any other civil or criminal remedies.

SECTION 8. EMERGENCY RELIEF.) When the court is unavailable an application may be filed before a local magistrate, as defined by subsection 3 of section 29-01-14, who may grant relief in accordance with section 3, upon good cause shown in an ex parte proceeding, if it is deemed necessary to protect the applicant or others from abuse. Immediate and present danger of abuse to the applicant or others shall constitute good cause for purposes of this section.

Any order issued under this section shall expire seventy-two hours after its issuance, unless continued by the district court, or the issuing court in the event of continuing unavailability of the district court. At that time, the applicant may seek a temporary order from the district court. Any order issued under this section and any documentation in support thereof shall be immediately certified to the district court. Such certification to the district court shall have the effect of commencing proceedings under section 2 and invoking the other provisions of this Act.

SECTION 9.) A new subsection 4 of section 29-01-15 of the North Dakota Century Code is hereby created and enacted to read as follows:

4. Grant temporary protection orders under the particular circumstances and for the limited duration set forth in section 8 of this Act.

Approved April 7, 1979

CHAPTER 194

HOUSE BILL NO. 1585
(Representatives Stenehjem, Swiontek)
(Senator Lashkowitz)

AWARDS OF CUSTODY

AN ACT to create and enact three new sections to chapter 14-09 of the North Dakota Century Code, relating to investigations to be conducted before awarding custody, and the test and factors to be used in making an award of custody; and to amend and reenact sections 14-05-22 and 14-09-07 of the North Dakota Century Code, relating to awards of custody issued in connection with a decree of divorce, and the right of a custodial parent to change the residence of the child.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 14-05-22 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-05-22. CUSTODY OF CHILDREN - VISITATION RIGHTS.)

1. In an action for divorce, the court, before or after judgment, may give such direction for the custody, care, and education of the children of the marriage as may seem necessary or proper, and may vacate or modify the same at any time. Any award or change of custody must be made in accordance with the provisions of chapter 14-09.
2. After making an award of custody, the court shall, upon request of the noncustodial parent, grant such rights of visitation as will enable the child and the noncustodial parent to maintain a parent-child relationship that will be beneficial to the child, unless the court finds, after a hearing, that visitation is likely to endanger the child's physical or emotional health.

SECTION 2.) A new section to chapter 14-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

AWARDING CUSTODY - BEST INTERESTS AND WELFARE OF CHILD.) An order for custody of an unmarried minor child entered pursuant to

this chapter shall award the custody of the child to a person, agency, organization, or institution as will, in the opinion of the judge, promote the best interests and welfare of the child. Between the mother and father, whether natural or adoptive, there is no presumption as to who will better promote the best interests and welfare of the child.

SECTION 3.) A new section to chapter 14-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

BEST INTERESTS AND WELFARE OF CHILD - COURT CONSIDERATION - FACTORS.) For the purpose of custody, the best interests and welfare of the child shall be determined by the court's consideration and evaluation of all factors affecting the best interests and welfare of the child. These factors include all of the following when applicable:

1. The love, affection, and other emotional ties existing between the parents and child.
2. The capacity and disposition of the parents to give the child love, affection, and guidance and to continue the education of the child.
3. The disposition of the parents to provide the child with food, clothing, medical care, or other remedial care recognized and permitted under the laws of this state in lieu of medical care, and other material needs.
4. The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity.
5. The permanence, as a family unit, of the existing or proposed custodial home.
6. The moral fitness of the parents.
7. The mental and physical health of the parents.
8. The home, school, and community record of the child.
9. The reasonable preference of the child, if the court deems the child to be of sufficient intelligence, understanding, and experience to express a preference.
10. Any other factors considered by the court to be relevant to a particular child custody dispute.

In any proceeding under this chapter, the court, at any stage of the proceedings after final judgment, may make orders about what security is to be given for the care, custody, and support of the

unmarried minor children of the marriage as from the circumstances of the parties and the nature of the case is equitable.

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

CUSTODY INVESTIGATIONS AND REPORTS - COSTS.)

1. In contested custody proceedings the court may, upon the request of either party, or, upon its own motion, order an investigation and report concerning custodial arrangements for the child. The court shall designate a person or agency responsible for making the investigation and report, which designees may include the county social service board, public health officer, school officials, and any other public agency or private practitioner it deems qualified to make the investigation.
2. The investigator may consult any person who may have information about the child and any potential custody arrangements, and upon order of the court may refer the child to any professional personnel for diagnosis.
3. The court shall mail the investigator's report to counsel and to any party not represented by counsel at least ten days before the hearing. The investigator shall make available to any such counsel or party the complete file of data and reports underlying the investigator's report and the names and addresses of all persons whom the investigator has consulted. A party may call the investigator and any person whom he has consulted for cross-examination at the hearing. A party may not waive his right of cross-examination before the hearing.
4. The court may enter an order for the costs of any such investigation against either or both parties, except that if the parties are indigent the expenses shall be borne by the county.

SECTION 5. AMENDMENT.) Section 14-09-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-09-07. RESIDENCE OF CHILD.) A parent entitled to the custody of a child has--a--right--to shall not change his the residence,--subject-to-the-power-of-the-district-court-to-restrain-a removal-which-would-prejudice-the-rights-or-welfare of the child to another state except upon order of the court or with the consent of the noncustodial parent, where the noncustodial parent has been given visitation rights by the decree, however, a court order shall not be required if the noncustodial parent has not exercised such visitation rights for a period of one year.

Approved March 18, 1979

CHAPTER 195

HOUSE BILL NO. 1655
(Herman, Black, Eagles)

HUSBAND'S STATUS AS HEAD OF FAMILY REPEALED

AN ACT to repeal section 14-07-02 of the North Dakota Century Code, relating to the status of the husband as the head of the family.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. REPEAL.) Section 14-07-02 of the North Dakota Century Code is hereby repealed.

Approved March 3, 1979

CHAPTER 196

SENATE BILL NO. 2253
(Committee on Social Welfare and Veterans Affairs)
(At the request of the Social Service Board)

CHILD SUPPORT ENFORCEMENT PROCEDURES

AN ACT to create and enact five new sections to chapter 14-09 of the North Dakota Century Code, relating to wage assignment and orders for withholding and transmitting earnings for child support enforcement purposes; procedures for dissolving, revoking or modifying such assignments or orders; duties and liabilities of employers under such assignments and orders; and the creation of a lien on property to aid in the enforcement of child support obligations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

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

CHILD SUPPORT - WAGE ASSIGNMENT - PROCEDURES.)

1. Each judgment containing child support provisions and each order for child support issued by a district court of this state shall include an order directing the obligor to assign such salary currently due or to be due in the future from the obligor's employer or successor employers to the clerk of the court where the judgment is granted or the order issued, in such amount as will be sufficient to meet the child support payments imposed by the court. This wage assignment shall take effect upon application of the person receiving payments or any person or public agency designated to receive such payments, when the requirements of this section have been met. The application shall be a sworn statement which states that the obligor has failed to make a child support payment in full within twenty days of the due date of such payment. This section does not authorize a clerk of court who receives child support payments as trustee under section 14-08-07 to make such application.

2. The clerk of court, upon application of an authorized person or agency, shall send a notice by certified mail to the last known address of any obligor who has failed to make the required child support payment within twenty days of its due date. The notice shall be postmarked no later than ten days after the date on which the application was filed and shall inform the obligor that the wage assignment shall go into effect ten days after the date on which the notice was sent. The obligor may, within that ten day period, request a hearing on the issue of whether the wage assignment should take effect, in which case the wage assignment shall be held in abeyance pending the outcome of the hearing. The district court or its referee shall hold a hearing requested under this section within ten working days after the date of the request.
3. If at the hearing the obligor establishes that extraordinary circumstances prevented fulfillment of the child support obligation and that such circumstances are beyond the control of the obligor, the court may direct that the wage assignment be delayed until such time, within twelve months, as another month's payment is missed. If such a delay is granted, the wage assignment shall, upon application, go into effect if, within the following twelve months, the obligor fails to make in full any payment within twenty days of its due date.
4. An assignment made under this section shall be binding upon the employer and successor employers one week after service upon the employer of a true copy of the assignment signed by the obligor-employee and annexed to a copy of the order, by personal service or by registered or certified mail, until further order of the court or as provided in section 4 of this Act. For purposes of this Act, the term employer includes the state and federal governments and the political subdivisions of the state.
5. The employer may not use such assignments as a basis for the discharge of an employee or for any disciplinary action against the employee.
6. The employer must notify the clerk of court entering the wage assignment order, in writing, of the termination of the obligor-employee's employment within thirty days of such termination. Such notice must include the name and address of the obligor-employee's new employer if known.
7. Any wage assignment under this section shall have priority over any attachment, execution, garnishment or wage assignment unless otherwise ordered by the court and shall not be subject to any statutory limitations on such amounts levied against the income of the obligor-employee.

8. An employer may deduct one dollar from the obligor-employee's remaining salary for each payment made pursuant to an assignment under this section to cover the employer's expenses involved in such wage assignments.

SECTION 2.) A new section to chapter 14-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

CHILD SUPPORT - ALTERNATIVE PROCEDURE TO WITHHOLD AND TRANSMIT EARNINGS.)

1. In cases where a wage assignment has not been secured, upon application of the child or of any person having a direct interest in the welfare of the child, the court, pursuant to this section and upon a showing that a child support payment has not been made in full within twenty days of its due date, may order the employer of the obligor-employee:
 - a. To withhold from the obligor-employee's earnings presently due and from future earnings as they become due, such amounts as shall satisfy the obligor-employee's previous arrearage in child support payments, the obligor-employee's obligation to pay child support as it accrues in the future, and any attorney's fees that may be awarded in a proceeding under this section;
 - b. To deduct from the balance of the obligor-employee's salary, a fee of one dollar per month to cover the employer's expenses involved in withholding and transmitting the child support payment for that month;
 - c. To remit at least once each calendar month the amount withheld under subdivision a to the clerk of court entering such order;
 - d. To refrain from dismissing, disciplining, or in any way penalizing the obligor-employee on account of the proceeding to collect child support, on account of any order or orders entered by the court in such proceeding, and on account of employer compliance with such order or orders; and
 - e. To notify in writing the clerk of court entering such order of the termination of such obligor-employee's employment and the name and address if known of the obligor-employee's new employer within thirty days after termination of employment.

Such application may be filed as part of any proceeding brought for failure to make child support payments or may

- be made independently of any other support enforcement action.
2. Upon the filing of an application to withhold and transmit earnings, the court shall set a time for a hearing. The hearing shall be held within three weeks of the date the application is filed with the court.
 3. The applicant shall then cause to be served on the employer a copy of the application, a notice of hearing and interrogatories to be completed and returned by the employer to the court no later than three days prior to the hearing. The interrogatories when completed shall show whether the obligor-employee is an employee of the employer, whether the obligor-employee performs work and provides services or makes sales for the employer in this state, the present length of employment of the obligor-employee with the employer, the present pay period for such obligor-employee, the average earnings of the obligor-employee per pay period, and the name and address of the person, office or division of the employer responsible for the preparation of the obligor-employee's earnings payments.
 4. The applicant shall also cause to be served on the obligor-employee a copy of the application and a notice of hearing.
 5. Service under this section shall be personally or by mailing by certified mail, the documents required to be served.
 6. Any order to withhold and transmit earnings under this section shall have priority over any attachment, execution, garnishment or wage assignment unless otherwise ordered by the court and shall not be subject to any statutory limitations on executions issued against the income of the obligor-employee.

SECTION 3.) A new section to chapter 14-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

CHILD SUPPORT - DUTIES AND LIABILITIES OF EMPLOYER UNDER WAGE ASSIGNMENT ORDER OR ORDER TO WITHHOLD AND TRANSMIT EARNINGS.)

1. Any employer failing to comply with any requirements in sections 1 and 2 of this Act may be punished by the court for civil contempt. The court shall first afford such employer a reasonable opportunity to purge itself of such contempt.
2. Any employer who shall fail or refuse to deliver earnings pursuant to an order under section 1 or section 2 of this

Act, when such employer has had in its possession such earnings, shall be personally liable for the amount of such earnings which the employer failed or refused to deliver, together with costs, interest, and reasonable attorney's fees.

3. Any employer who dismisses, demotes, disciplines, or in any way penalizes an obligor-employee on account of any proceeding to collect child support, on account of any order or orders entered by the court in such proceeding, or on account of the employer's compliance with such order or orders, shall be liable to the obligor-employee for all damages, together with costs, interest thereon, and reasonable attorney's fees resulting from the employer's action. The employer may be required to make full restitution to the aggrieved obligor-employee, including reinstatements and back pay.
4. An employer may be enjoined by a court of competent jurisdiction from continuing any action in violation of sections 1 and 2 of this Act.
5. Any proceeding against an employer under this section must be commenced within ninety days after the employer's act or failure to act upon which such proceeding is based.
6. Compliance by an employer with an order issued under sections 1 and 2 of this Act operates as a discharge of the employer's liability to the obligor-employee as to that portion of the obligor-employee's wage so affected.

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

CHILD SUPPORT - ORDER FOR WAGE ASSIGNMENT OR TO WITHHOLD AND TRANSMIT EARNINGS - DISSOLUTION, REVOCATION OR MODIFICATION.) An order for wage assignment under section 1 of this Act or to withhold and transmit earnings under section 2 of this Act shall dissolve without any court action thirty days after the obligor-employee ceases employment with the employer. Such orders shall be revoked by the court upon an application when the obligor-employee is not in arrears of any court ordered child support as of the day of the application. Such order may be modified or revoked by the court upon application and for good cause shown. All applications to revoke or modify shall be served upon the employer and all persons having an interest in the order by certified mail, addressed to the last known addresses of such persons.

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

CHILD SUPPORT - JUDGMENT OR ORDER AS LIEN ON PROPERTY -
DURATION - EFFECT.)

1. A certified copy of any judgment or order which contains a provision for payment of child support, including any such judgment or order registered in this state under chapter 28-20.1 and 14-12.1, may be docketed in the judgment docket in the office of the clerk of court of any county and shall from such docketing become a lien upon all real property of the obligor in such county, owned by the obligor at the time, or which the obligor may afterwards and before the lien expires, acquire, for the respective amounts of child support installments as they mature. The judgment or order shall not become a lien for any sum or sums prior to the date they severally become due and payable. All liens arising under this section shall have, for a period of ten years from such docketing, the same force, effect and priority as a lien created by the docketing of any judgment pursuant to section 28-20-13, except as otherwise provided in this section. Such orders or judgments may be renewed as a lien for an additional ten years in accordance with sections 28-20-21, 28-20-22, and 28-20-23.
2. The certificate of the obligor sworn under penalty of perjury, that all amounts and installments which have matured under said judgment or order prior to the date of such certificate have been fully paid shall, when acknowledged and recorded, be prima facie evidence of such payment and conclusive in favor of any person dealing in good faith and for a valuable consideration with the obligor or his successors in interest. In the event of the legal disability of the obligor, the affidavit of the personal representative of the obligor shall have the same effect.
3. If any amount of child support provided in a judgment or order has been directed to be paid to the clerk of court pursuant to section 14-08-07 or to any other officer designated by the court pursuant to any other provision of law, and such directive is set forth in the copy of the docketed judgment or order, or in the docket of certified copy of an amended or supplemental order, such certificate shall not affect the lien unless also approved in writing by such clerk or other designated officer.
4. Whenever a certified copy of any judgment or order for child support has been docketed pursuant to this section, it may be cancelled and discharged upon full satisfaction pursuant to sections 28-20-24, 28-20-25, and 28-20-28. Such lien is not satisfied in full until each minor entitled to support under its term has reached majority or is otherwise emancipated or dies and until all arrearages accruing during the operation of the judgment or order have been satisfied.
5. A lien under this section shall not be dischargeable in bankruptcy.

Approved April 3, 1979

CHAPTER 197

HOUSE BILL NO. 1184
(Committee on Judiciary)
(At the request of the Social Service Board)

MODIFICATION OF SUPPORT ORDER

AN ACT to amend and reenact subsection 2 of section 14-12.1-02 of the North Dakota Century Code, relating to the definition of duty of support under the Revised Uniform Reciprocal Enforcement of Support Act; to amend and reenact section 14-12.1-24 of the North Dakota Century Code, relating to the powers and duties of district courts when acting as responding courts in actions for enforcement of support under the Revised Uniform Reciprocal Enforcement of Support Act; and to amend and reenact section 14-12.1-31 of the North Dakota Century Code, relating to the application of payments made under the Uniform Reciprocal Enforcement of Support Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Subsection 2 of section 14-12.1-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. "Duty of support" means a duty of support whether imposed or imposable by law or by order, decree, or judgment of any court, whether interlocutory or final or whether incidental to an action for divorce, separation, separate maintenance, or otherwise and includes the duty to pay arrearages of support past due and unpaid, said duty of support subject to modification under the provisions of this chapter upon a showing of material change in circumstances.

SECTION 2. AMENDMENT.) Section 14-12.1-24 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-12.1-24. ORDER OF SUPPORT.) If the responding court finds a duty of support it may order the obligor to furnish support or reimbursement therefor in accordance with the present needs and circumstances of the obligee and the present ability of the obligor to pay and subject the property of the obligor to the order. The

court, upon a finding of a material change in circumstances relative to the obligor's discharge of obligations under any existing order for child support or decree of divorce, may modify the order for child support or alimony combined with child support, and order the obligor to furnish support or reimbursement therefor and subject the property of the obligor to the order. Support orders made pursuant to this chapter shall require that payments be made to the clerk of the court of the responding state. The court and prosecuting attorney of any county in which the obligor is present or has property have the same powers and duties to enforce the order as have those of the county in which it was first issued. If enforcement is impossible or cannot be completed in the county in which the order was issued, the prosecuting attorney shall send a certified copy of the order to the prosecuting attorney of any county in which it appears that proceedings to enforce the order would be effective. The prosecuting attorney to whom the certified copy of the order is forwarded shall proceed with enforcement and report the results of the proceedings to the court first issuing the order.

SECTION 3. AMENDMENT.) Section 14-12.1-31 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-12.1-31. APPLICATION OF PAYMENTS.) A support order made by a court of this state pursuant to this chapter does not nullify and is not nullified by a support order made by a court of this state pursuant to any other law or by a support order made by a court of any other state pursuant to a substantially similar act or any other law, regardless of priority of issuance or variation in amounts ordered to be paid, unless otherwise specifically provided by the court. Amounts paid for a particular period pursuant to any support order made by the court of another state or by a court of this state pursuant to any other law shall be credited against the amounts accruing or accrued for the same period under any support order made by the court of this state under this chapter.

Approved March 7, 1979

CHAPTER 198

HOUSE BILL NO. 1054
(Legislative Council)
(Interim Committee on Criminal Justice System)

PENALTY FOR CHILDSNATCHING

AN ACT to provide a criminal penalty for the removal from or detention of a child outside North Dakota by a noncustodial parent in violation of a custody decree.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. REMOVAL OF CHILD FROM STATE IN VIOLATION OF CUSTODY DECREE - PENALTY.) Any person who intentionally removes, causes the removal of, or detains his or her own child under the age of eighteen years outside North Dakota with the intent to deny another person's rights under an existing custody decree shall be guilty of a class C felony. Detaining the child outside North Dakota in violation of the custody decree for more than seventy-two hours shall be prima facie evidence that the person charged intended to violate the custody decree at the time of removal.

Approved March 3, 1979

CHAPTER 199

HOUSE BILL NO. 1309
(Unhjem)

DISCLOSURE OF ADOPTIVE INFORMATION

AN ACT to create and enact two new subsections to section 14-15-01 of the North Dakota Century Code, relating to definitions in the Revised Uniform Adoption Act; and to amend and reenact section 14-15-16 of the North Dakota Century Code, relating to the disclosure of adoptive information and providing for retroactive application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1.) Two new subsections to section 14-15-01 of the North Dakota Century Code are hereby created and enacted to read as follows:

"Nonidentifying adoptive information" means:

- a. Age of genetic parent in years at the birth of the adopted child;
- b. Heritage of genetic parent;
- c. Educational attainments, including the number of years of school completed by genetic parent at the time of birth of the adopted child;
- d. General physical appearance of genetic parent at the time of birth of the adopted child, including the height, weight, color of hair, eyes, skin and other information of a similar nature;
- e. Talents, hobbies, and special interests of genetic parents;
- f. Existence of any other children born to either genetic parent before the birth of the adopted child;
- g. Reasons for child being placed for adoption or for termination of parental right;

- h. Religion of genetic parent;
- i. Vocation of genetic parent in general terms;
- j. Health history of genetic parents and blood relatives in a manner prescribed by the social service board;
- k. Such further information which, in the judgment of the agency, will not be detrimental to the adoptive parent or the adopted person requesting the information, but the additional information must not identify genetic parents by name or location.

"Genetic parent" means the natural mother or adjudicated mother of the adopted child, or the presumed father or adjudicated father of the adopted child under chapter 14-17.

SECTION 2. AMENDMENT.) Section 14-15-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-15-16. HEARINGS AND RECORDS IN ADOPTION PROCEEDINGS - CONFIDENTIAL NATURE - DISCLOSURE OF IDENTIFYING AND NONIDENTIFYING INFORMATION - RETROACTIVE OPERATION.) Notwithstanding any other law concerning public hearings and records:

1. All hearings held in proceedings under this chapter shall be held in closed court without admittance of any person other than essential officers of the court, the parties, their witnesses, counsel, persons who have not previously consented to the adoption but are required to consent, and representatives of the agencies present to perform their official duties;
2. All papers and records, and information pertaining to the adoption whether part of the permanent record of the court or of a file in the public-welfare social service board or in an agency are ~~subject to inspection only upon consent of the court and all interested persons, or in exceptional cases, only upon an order of the court for good cause shown, and~~ confidential and may be disclosed only in accordance with this section;
3. ~~Except as authorized in writing by the adoptive parent or the adopted child or upon order of the court for good cause shown in exceptional cases, no person shall be required to disclose the name or identity of either an adoptive parent or an adopted child.~~ Nonidentifying information, if known, concerning undisclosed genetic parents shall be furnished to:
 - a. The adoptive parents at the time of adoptive placement or upon their request.

- b. The adult adopted person upon written request therefor.
4. An adopted person who is twenty-one years of age or over may request the social service board to secure and disclose information identifying the adopted child's genetic parents or to secure and disclose nonidentifying information not on file with the board or a child placing agency. The social service board shall, within five working days of receipt of the request, notify in writing the child placing agency having access to the information requested of the request by the adopted child.
5. Within three months after receiving notice of the request of the adopted person, the child placing agency shall make complete and reasonable efforts to notify the genetic parents of the adopted child. The child placing agency may charge a reasonable fee to the adopted child for the cost of making a search pursuant to this subsection. All communications under this subsection are confidential. For purposes of this subsection, "notify" means a personal and confidential contact with the genetic parents of the adopted child; the personal and confidential contact shall not be by mail and shall be by an employee or agent of the licensed child placing agency which processed the pertinent adoption, or some other licensed child placing agency designated by the child placing agency; the personal and confidential contact shall be evidenced by filing with the social service board an affidavit of notification executed by the person who notified each genetic parent and certifying that each genetic parent was given the following information:
- a. The nature of the identifying information to which the agency has access;
- b. The nature of any nonidentifying information requested;
- c. The date of the request of the adopted child;
- d. The right of the genetic parent to file, within sixty days of receipt of the notice, an affidavit with the social service board stating that the identifying information should not be disclosed;
- e. The right of the genetic parent to file a consent to disclosure with the social service board at any time; and
- f. The effect of a failure of the genetic parent to file either a consent to disclosure or an affidavit stating that the identifying information should not be disclosed.

6. If the child placing agency certifies to the social service board that it has been unable to notify the genetic parent within three months, the identifying information shall not be disclosed to the adopted child. If either genetic parent has at any time filed with the social service board an unrevoked affidavit stating that the identifying information should not be disclosed, the social service board shall not disclose the information to the adopted child until the affidavit is revoked by the filing of a consent to disclosure by that parent.
7. If, within three months, the child placing agency certifies to the social service board that it has notified the genetic parents pursuant to subsection 5, the social service board shall receive the identifying information from the child placing agency and disclose the information sixty-one days after the date of the latest notice to either genetic parent. This disclosure will occur if, at any time during the sixty-one days, the genetic parent has filed an affidavit with the social service board stating that the information shall be disclosed and the affidavit has not been revoked by the subsequent filing by the genetic parent of an affidavit that the information shall not be disclosed.
8. If the genetic parent has died and has not filed an unrevoked affidavit with the social service board stating that identifying information shall not be disclosed, the information shall be forwarded to and released by the social service board to the adopted child. If the genetic parent has died, and at any time prior to his death the genetic parent has filed an unrevoked affidavit with the social service board stating that the identifying information shall not be disclosed, the adopted child may petition the court of original jurisdiction of the adoption proceeding for an order for release of the identifying information. The court shall grant the petition if, after consideration of the interests of all known persons involved, the court determines that disclosure of the information would be of greater benefit than nondisclosure.
9. Any adopted person twenty-one years of age or over whose adoption was finalized in this state or whose genetic parents had their parental rights terminated in this state may request the social service board to secure and disclose identifying information concerning an adult sibling in the same manner as provided for in subsection 4. Identifying information pertaining exclusively to the adult sibling, whether part of the permanent record of a file in the social service board or in an agency, shall be released only upon consent of that adult sibling.

10. No person may be required to disclose the name or identity of either an adoptive parent or an adopted child except:
 - a. In accordance with this section;
 - b. As authorized in writing by the adoptive parent or the adopted child;
 - c. Upon order of the court for good cause shown in exceptional cases.
11. The provisions of this section governing the release of identifying and nonidentifying adoptive information apply to adoptions completed before and after the effective date of this Act.
12. Any child placing agency discharging in good faith its responsibilities under this section is immune from any liability, civil or criminal, that otherwise might result.
13. The social service board shall make such reasonable rules and regulations as are necessary to carry out the purposes of this section.

Approved March 15, 1979

CHAPTER 200

SENATE BILL NO. 2263
 (Committee on Social Welfare and Veterans Affairs)
 (At the request of the Social Service Board)

ADOPTION PROCEEDINGS AND INVESTIGATIONS

AN ACT to create and enact a new subdivision to subsection 1 of section 14-15-09 of the North Dakota Century Code, relating to the social service board or a county social service board being named as a respondent in an adoption proceedings; and to amend and reenact subsections 2, 5, and 6 of section 14-15-11 and subsection 3 of section 14-15-13 of the North Dakota Century Code, relating to investigations for adoptions, and disposition of adoption petition.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
 STATE OF NORTH DAKOTA:

SECTION 1.) A new subdivision to subsection 1 of section 14-15-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

The social service board or a county social service board as respondent.

SECTION 2. AMENDMENT.) Subsections 2, 5, and 6 of section 14-15-11 of the North Dakota Century Code are hereby amended and reenacted to read as follows:

2. An investigation shall be made by the public-welfare social service board, a county welfare social service board, a licensed child-placing agency, or any other qualified agency or person designated by the court, to inquire into the conditions and antecedents of a minor sought to be adopted and of the petitioner for the purpose of ascertaining whether the adoptive home is a suitable home for the minor and whether the proposed adoption is in the best interest of the minor.
5. ~~Unless--directed--by--the--court,--an~~ An investigation and report is not required in cases in which ~~an--agency--is--a party--or--joins--in--the--petition--for--adoption,~~ a stepparent is the petitioner, or the person to be adopted is an adult. ~~In--other--cases,--the--court--may--waive--the~~

~~investigation-only-if-it-appears-that--waiver--is--in--the
best--interest-of-the-minor-and-that-the-adoptive-home-and
the-minor-are-suited-to-each-other.~~ The public-welfare
social service board which-is when required to consent to
the adoption may give consent without making the
investigation.

6. The public-welfare social service board or the agency or persons designated by the court to make the required investigation may request other departments or agencies within or without this state to make investigations of designated portions of the inquiry as may be appropriate and to make a written report thereof as a supplemental report to the court and shall make similar investigations and reports on behalf of other agencies or persons designated by the courts of this state or another place.

* SECTION 3. AMENDMENT.) Subsection 3 of section 14-15-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. If at the conclusion of the hearing the court determines that the required consents have been obtained ~~or--excused~~ and that the adoption is in the best interest of the individual to be adopted, it may (a) issue a final decree of adoption; or (b) issue an interlocutory decree of adoption which by its own terms automatically becomes a final decree of adoption on a day therein specified, which day shall not be less than six months nor more than one year after the date of issuance of the decree, unless sooner vacated by the court for good cause shown.

Approved April 7, 1979

* NOTE: Subsection 3 of section 14-15-13 was also amended by section 1 of House Bill No. 1433, chapter 201.

CHAPTER 201

HOUSE BILL NO. 1433
(Winkjer)

INTERLOCUTORY DECREE OF ADOPTION

AN ACT to amend and reenact subsection 3 of section 14-15-13 of the North Dakota Century Code, relating to the time at which an interlocutory decree of adoption may become a final decree.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

* SECTION 1. AMENDMENT.) Subsection 3 of section 14-15-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. If at the conclusion of the hearing, the court determines that the required consents have been obtained or excused and that the adoption is in the best interest of the individual to be adopted, it may (a) issue a final decree of adoption; or (b) issue an interlocutory decree of adoption which by its own terms automatically becomes a final decree of adoption on a day ~~therein~~ specified in the decree, which day shall not be less than six months nor more than one year after the date-of-issuance-of-the decree minor was placed in the adoptive home by an agency or after the social service board or court was informed of the custody of the minor by the petitioner, unless sooner vacated by the court for good cause shown.

Approved March 13, 1979

* NOTE: Subsection 3 of section 14-15-13 was also amended by section 3 of Senate Bill No. 2263, chapter 200.

CHAPTER 202

HOUSE BILL NO. 1362
 (Representatives Vig, Black, Gunsch)
 (Senators Holmberg, Christensen, Tallackson)

BIRTH CERTIFICATES FOR FOREIGN-BORN ADOPTEES

AN ACT to create and enact a new subsection to section 23-02.1-18 of the North Dakota Century Code, relating to the issuance of new birth certificates after the adoption of foreign-born persons; and to amend and reenact section 14-15-18 and subsection 5 of section 23-02.1-17 of the North Dakota Century Code, relating to reports of adoption and the application for a new birth certificate after the adoption of a foreign-born person.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
 STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 14-15-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-15-18. APPLICATION FOR NEW BIRTH RECORD.) Within thirty days after an adoption decree becomes final, the clerk of the court shall prepare an application for a birth record in the new name of the adopted individual and forward the application to the appropriate vital statistics office of the place, if known, where the adopted individual was born and forward a copy of the decree to the public---welfare social service board of this state for statistical purposes. In the case of the adoption of a person born outside of the United States, the court may make findings, based on evidence from the petitioner and other reliable state or federal sources, on the date and place of birth and parentage of the adopted person. These findings shall be certified by the court and included with the report of adoption filed with the state registrar of vital statistics pursuant to section 23-02.1-17.

SECTION 2. AMENDMENT.) Subsection 5 of section 23-02.1-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

5. When the state registrar shall receive a report of adoption or annulment of adoption or amendment thereof from a court for a person born in the United States but outside this state, such report shall be forwarded to the appropriate registration authority in the state of birth.

SECTION 3.) A new subsection to section 23-02.1-18 of the North Dakota Century Code is hereby created and enacted to read as follows:

For a person born in a foreign county whose adoptive parents are residents of the state of North Dakota at the time of the adoption, the state registrar of vital statistics shall prepare a new certificate of birth:

- a. In the case of a foreign-born person adopted in North Dakota, upon presentation of a report of adoption as required by section 23-02.1-17.
- b. In the case of a foreign-born person adopted outside the state of North Dakota or outside the United States, or in the state of North Dakota prior to the effective date of this section, upon presentation of a certified copy of the adoption decree, and:
 - (1) A certified copy of the certificate of birth of the adopted person; or
 - (2) An affidavit of an adoptive parent setting forth the true or probable date and place of birth and parentage of the adopted person.

Any certificate of birth issued under this subsection shall be in the same form as other certificates of birth issued in this state except that it shall state that it does not purport to be evidence of United States citizenship.

Approved March 24, 1979