

**2025 HOUSE HUMAN SERVICES**

**HB 1564**

# 2025 HOUSE STANDING COMMITTEE MINUTES

## Human Services Committee Pioneer Room, State Capitol

HB 1564  
1/27/2025

Relating to Indian child welfare.
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9:58 a.m. Vice-chairman Frelich opened the hearing.

Members Present: Vice-Chairman Frelich, Representatives Anderson, Beltz, Bolinske, Davis, Dobervich, Fegley, Holle, Kiefert, Rios, Rohr

Members Absent: Chairman M. Ruby, Representative Hendrix

### **Discussion Topics:**

- Indian Child Welfare Act.
- Amendments to declaration and rules of procedure.

9:58 a.m. Representative Davis, District 9, introduced the bill and submitted testimony, #31631.

10:03 a.m. Dan Lewerenz, Assistant Professor of Law of the Univeristy of ND Law, testified in favor and submitted testimony, #31660.

10:09 a.m. Chelsea Flory, Director of Burleigh County Human Service Zone, testified in favor and submitted testimony, #31753.

10:12 a.m. Heather Traynor, Youth and Family Court Specialist-ND Supreme Court, testified in opposition.

### **Additional written testimony:**

Harmony Bercier, Grant Manager, ND ICWA Family Preservation Partnership, UND, submitted testimony in favor, #31628.

Angel Belgarde, Member of the Turtle Mountain Band of Chippewa, submitted testimony in opposition, #31662.

10:13 a.m. Vice-Chairman Frelich closed the hearing.

*Jackson Toman, Committee Clerk*

**Testimony of Harmony Bercier  
In Support of House Bill 1564  
January 26, 2025**

Chair Ruby, Vice Chair Frelich, and Distinguished Members of the House Human Services Committee,

Thank you for the opportunity to testify in support of House Bill 1564. My name is Harmony Bercier, and I am an enrolled member of the Turtle Mountain Band of Chippewa. I serve as the Grant Manager for the North Dakota ICWA Family Preservation (Best Practices) Partnership at the University of North Dakota. I am writing today to strongly support this important bill, which clarifies and strengthens protections for Native American children and families in North Dakota.

The proposed revisions in HB 1564 address critical areas that will enhance the practical application of the Indian Child Welfare Act (ICWA). One of the most significant clarifications ensures that active efforts are made immediately following an emergency removal, establishing a clear framework for securing early tribal involvement, preferred placements, and promoting best practices. Strengthening the early response in this way has been shown to lead to improved outcomes for children and families.

Additionally, HB 1564 permits affidavit testimony when a party cannot be reached for consent. This provision removes barriers that contribute to unnecessary delays, providing courts with a practical and effective solution. By aligning the language with existing child welfare statutes, the bill reinforces consistency and ensures that best practices are adhered to.

Equally important, HB 1564 addresses certain drafting errors in the original law, ensuring that its application remains accurate and effective. These updates not only clarify the intent of the law but also highlight North Dakota's continued leadership in upholding the rights of Native children and families. Our state is regarded as a leader in providing services to Native families and ensuring that ICWA's principles are implemented with fidelity. These revisions further reinforce that commitment and ensure that North Dakota remains at the forefront of this critical work.

I respectfully urge the committee to support the advancement of HB 1564, with the recognition that additional refinements may be necessary to further clarify and strengthen its implementation.

Thank you for your time and consideration. I welcome the opportunity to answer any questions you may have.

Respectfully,  
Harmony Bercier  
Grant Manager - ND ICWA Family Preservation Partnership  
harmony.bercier@und.edu  
701.213.9550





# North Dakota House of Representatives

STATE CAPITOL  
600 EAST BOULEVARD  
BISMARCK, ND 58505-0360



## **Representative Jayme Davis**

District 9  
601 John Street  
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[jdavis@ndlegis.gov](mailto:jdavis@ndlegis.gov)

## **COMMITTEES:**

Human Services  
Political Subdivisions

January 26, 2025

Good Morning Chairman Ruby and Members of the Human Services Committee, For the record I am Jayme Davis, Representative from District 9. I am also a proud member of the Turtle Mountain Band of Chippewa Indians and Descendent of the Standing Rock Nation.

Thank you for the opportunity to present House Bill 1564. This bill represents a critical step toward strengthening the welfare and protection of Indian children in North Dakota while respecting the unique cultural and social fabric of our communities. Many people worked diligently on the language of this bill and as its carrier, I respectfully request a favorable vote.

House Bill 1564 seeks to amend and reenact specific sections of the North Dakota Century Code to align with the principles of the Indian Child Welfare Act (ICWA). It introduces clarifications and procedural updates designed to ensure that the best interests of Indian children are served while honoring tribal sovereignty and cultural preservation. Let me highlight the key amendments and their significance.

The bill refines the definition of "active efforts" to require affirmative, tailored actions by agencies to prevent the breakup of Indian families. This ensures comprehensive, timely, and culturally appropriate support for parents and custodians, from accessing services to reuniting families. This amendment emphasizes collaboration with tribal entities and extended family members to respect traditional tribal values.

We have revised the jurisdictional framework to affirm tribal authority over child custody proceedings involving tribal children, except where specific legal exceptions apply. These updates are vital for ensuring that Indian children are placed in homes that uphold their cultural heritage and identity.

This bill also strengthens the notification process to ensure parents, custodians, and tribes are timely and adequately informed of proceedings affecting their children. Clear timelines and mechanisms are introduced to promote fairness and preparation in these critical matters.

The amendments solidify placement preferences for Indian children, prioritizing extended family and tribal members, and emphasizing cultural connection. Importantly, the bill limits the grounds for departing from these preferences, ensuring decisions are not influenced by socioeconomic status or convenience but by the child's best interests and tribal standards.

Lastly, the bill requires that records of Indian child adoptive placements be shared with the Bureau of Indian Affairs to preserve tribal affiliations and membership eligibility. This provision ensures the continuity of a child's cultural and legal identity, even in cases of adoption.

As you consider this bill, I ask you to reflect on the broader implications of our actions today. The protections outlined in House Bill 1564 safeguard the rights and identities of Indian children and promote the integrity of tribal communities. While additional amendments may be introduced later, this version establishes a strong foundation for protecting some of our most vulnerable children.

Chairman Ruby and members of the committee, I respectfully ask for your support in voting favorably for this bill. By doing so, you affirm your commitment to justice and the enduring rights of North Dakota's tribal nations.

Thank you, and I'm happy to answer any questions you may have.

**Testimony of Professor Dan Lewerenz**  
**In support of House Bill 1564**  
**Monday, January 27, 2025**

Chairman Ruby, Vice-Chairwoman Frelich, and members of the House Human Services Committee, thank you for this opportunity to testify in support of HB 1654. Representative Davis, thank you for the invitation. My name is Dan Lewerenz, and I am an Assistant Professor of Law and Director of the Indian Law & Tribal Law Certificate Program at the University of North Dakota School of Law and I teach the Law School's Indian Child Welfare Act course. I also am a member of the Iowa Tribe of Kansas and Nebraska, and I work with the North Dakota ICWA Best Practices Partnership, a joint Tribal-State-Private collaboration led by UND to improve Indian Child Welfare implementation and cooperation throughout the State. I say that only by manner of introduction, though; the opinions expressed in my testimony here today are my own, and do not necessarily represent the views of my employer, my Tribe, or the Partnership.

I urge you today to advance HB 1564, amending what I will refer to as the North Dakota Indian Child Welfare Act (or North Dakota ICWA), for two reasons. First, the North Dakota ICWA was necessary when enacted by this Legislature two years ago, and it remains vitally important today. Second, the proposed amendments in 1564 would make important improvements that will both clarify and streamline the existing law.

First, the North Dakota ICWA was, and still is, vitally important. This Legislature enacted the North Dakota ICWA at a time when the Federal Indian Child Welfare Act faced the existential threat of the *Brackeen* litigation. Fortunately, the U.S. Supreme Court held that the Federal ICWA did not exceed Congress's Indian Affairs power and did not commandeer the States.<sup>1</sup> That battle was won, but the war is not over. In fact, next week the Minnesota Supreme Court will hear argument in a new case, initiated by some of the same anti-ICWA activists behind *Brackeen*, once again challenging the constitutionality of ICWA.<sup>2</sup> This Legislature's enactment of the North Dakota ICWA two years ago sent a powerful message that this State stands side-by-side with Tribes, child welfare professionals, and the majority of other States in recognizing that ICWA embodies the gold standard in child welfare policy and practice. If this Committee advances and this Legislature ultimately enacts HB 1564, it will send an equally powerful message that North Dakota will not be cowed by radical activists and their extremist agenda.

Second, HB 1564 would make important improvements to the North Dakota ICWA. For starters, the bill corrects some drafting errors that inadvertently made their way into the original North Dakota ICWA. The current law, for example, accidentally covers an award of custody to one of the parents in a divorce proceeding, and HB 1564 would correct that error. In addition, HB 1564 would clarify some provisions that attorneys and social workers implementing the North Dakota ICWA have found confusing. For example, in an attempt to be comprehensive in describing the proceedings covered by the North Dakota ICWA, the current law makes reference "foster care or nonfoster care placement." But "nonfoster care placement" is not a term regularly used in child welfare practice in this State, and practitioners were unsure what that term was intended to cover. So HB 1564 would

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<sup>1</sup> *Haaland v. Brackeen*, 599 U.S. 255 (2023).

<sup>2</sup> *In re Welfare of Children of L.K. and A.S.*, No. A24-1296 (Minn.).

delete that term. Also, Section 27-19.1-01(3) in the North Dakota IWCA concerns ordinary foster care proceedings, but contains confusing language that looks like it should apply instead to emergency proceedings. HB 1564 would restructure the North Dakota ICWA in a way that better clarifies which standards apply to which proceedings.

I will close by saying that no legislation, whether enacted or proposed, is perfect. Those of us who work on Indian Child Welfare in North Dakota continue to gather feedback both on the North Dakota ICWA as enacted in 2023 and on HB 1564, and we might still come to this body with further amendments. It is my opinion that those amendments would not change the substance of HB 1564 in any meaningful way, but instead would simply do more to clarify the law. But in any case, I think it is important that this Committee advance HB 1564 today so that North Dakota can continue to be a leader in Indian Child Welfare best practices.

I am happy to answer any questions the Committee has of me, whether today or in the future.

Dan Lewerenz

Assistant Professor of Law; Director, Indian Law & Tribal Law Certificate Program

University of North Dakota School of Law

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Good morning,

First, please allow me to apologize for the last minute submission. My family and I found out about this hearing late Sunday morning and honestly I have never found myself presenting before such a large audience of very powerful individuals.

Powerful individuals, that is a good place to start. You all have the power to make changes happen and changes are exactly what my family has been fighting for with child welfare in Indian country for well over a year. (Probably not politically correct, but I assure you I am Native American and my view of the reservation and the programs therein as such, Indian country). On the reservation there are individuals granted very powerful positions just like you ladies and gentlemen. However, unlike our wonderful local, state and federal government, there are no checks and balances. There is no one there to stop someone from violating rights, from committing fraud and there is no one there to investigate when these things happen. All of this and more has happened in the case of my niece and my sister. A woman who was given a position of authority over the Turtle Mountain Band of Chippewa child welfare program used her power to stop the adoption of my niece by my sister. This director of child welfare was angry and vengeful because my sister had the audacity to point out the flaws of the program. The director wrote her own complaint of abuse after the state's investigator found no evidence of abuse. The director lied to the FBI in an attempt to have my niece removed from my sister's care. This director has violated the rights of many children and families out of spite. Please take the time to read testimony and to consider these families before giving tribal CPS programs any more power or authority. Clearly, these people have too much power and will use it in any way that suits his or her own agenda.

Giving any native american ran child welfare program more power would be detrimental to all native families and children. There are numerous cases and many families that have been destroyed by tribal cps programs because there is no one there who has the education, the licensure or the training to be in the positions they are in and worse more there is no one there to ensure these people are doing what is in the child's best interest. Children in the system are just added numbers for federal funding. The more children the more money. There has even been a case of embezzlement in the Turtle Mountain tribal CPS, but you won't hear about that because the guilty party was the Chairman's aunt. Children are removed from loving homes such as my sister's and given to poverty stricken individuals who have made fostering children a career for the money. The Indian Child Welfare Act did nothing for our native children except condemn them to a life of poverty and struggle.

Many of you have no idea what the reservation is like nor do you have any idea of the tribal government. Just for an example of how people are put into place in the tribal government; think of Biden vs Trump for President. Now, if over 50% of the United States was Biden's relation in one way or another, do you believe that Trump would be our President right now? This is politics on the reservation. People who are related to the majority of the voting members are who win, not individuals who care, not individuals who want to do better for the people. When these individuals such as the chairman, Jamie Azure, get into office they appoint people to high positions in the tribe. Individuals who have no training, no education or very little and who do not have the intellect required to run such positions. When situations arise these people do not make changes and they do not admit there were mistakes; instead they fight change, hide the evidence and protect their pride and ego.

Like many of you, Mr. Azure took an oath to do what is best for the people, but I assure you his intentions are more directed towards what is best for his family and himself.

The State of North Dakota needs to redeem and utilize its ability to step in and be the savior for the Native American children. When tribal CPS fails our children they should not be awarded more power. My sister waited 6 long months for the adoption to be finalized for a child that she took in at birth. A child that was left at the hospital after birth because her drug addicted mother did not care. This same mother has done this more than once. No family stepped up, no family member could take in this beautiful baby because the grandmother was already raising all the other grandchildren. My sister's story is tragic but it is reality. Please take the time to hear her testimony and really look into what has been done to her and my niece. Help us fight the tribal CPS programs by not granting them more power. Do not allow them to continue to abuse their power, violate the rights of families and children and do not give them the power to make it that much easier to do.

The State of North Dakota needs to force the tribes in hiring and appointing only educated, licensed and appropriate staff to such high positions. There is no reason our tribe should have individuals with only high school diplomas working as CPS case workers. This is where the State CPS should step in and take over. This is where the State of North Dakota is needed. Our children deserve better.

Again, I must apologize. I literally had 45 minutes to write this statement and to get it submitted. I would love to testify to all of you in person, and perhaps someday I will. There is so much more that needs to be said and there is so much more the world needs to know.

Thank you for taking the time to hear my statement. I can only pray that I made a difference.

Angel Belgarde

Member of the Turtle Mountain Band of Chippewa

North Dakota Resident

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Testimony Prepared for the  
**House Human Services Committee**

January 27, 2025

By: Chelsea Flory, Burleigh County Human Service Zone Director

**RE: HB 1564: Relating to Indian Child Welfare**

Chair Ruby, Vice Chair Frelich and members of the House Human Services Committee, my name is Chelsea Flory. I serve as the Director of Burleigh County Human Service Zone, which includes the county of Burleigh. In addition, I am a member of the North Dakota Human Service Zone Director Association. I am here today to provide testimony in support of HB 1564.

Human Service Zones are the legal designee of the North Dakota Department of Health and Human Services (NDHHS), managing a range of critical responsibilities including the legal custody of children in the public foster care system and foster care case management services. North Dakotans deeply value child safety, and this bill reflects that intent.

This bill supports the application of the federal Indian Child Welfare Act (ICWA) of 1974. It helps Tribal and Zone child welfare team members meet safety needs for Native American children who are impacted by abuse or neglect.

We believe all other additions to the bill align with current practice, policy, and the Safety Framework Practice Model (SFPM), adopted in 2020 as part of social services redesign (SB 2124). This model ensures consistent, evidence-based practices across all Human Service Zones, focusing on child safety while respecting parental rights.

I urge a "do pass" on HB 1564. Thank you for your consideration of my testimony. I stand for any questions from the committee.

# 2025 HOUSE STANDING COMMITTEE MINUTES

## Human Services Committee Pioneer Room, State Capitol

HB 1564  
2/17/2025

Relating to Indian child welfare.
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4:12 p.m. Chairman M. Ruby opened the meeting.

Members Present: Chairman M. Ruby, Vice-Chairman Frelich, Representatives K. Anderson, Beltz, Bolinske, Davis, Dobervich, Fegley, Hendrix, Holle, Kiefert, Rios, Rohr

### Discussion Topics:

- Committee action

4:12 p.m. Representative Dobervich moved a Do Pass.

4:12 p.m. Representative K. Anderson seconded the motion.

Representatives	Vote
Representative Matthew Ruby	Y
Representative Kathy Frelich	Y
Representative Karen Anderson	Y
Representative Mike Beltz	Y
Representative Macy Bolinske	Y
Representative Jayme Davis	Y
Representative Gretchen Dobervich	Y
Representative Cleyton Fegley	Y
Representative Jared Hendrix	Y
Representative Dawson Holle	Y
Representative Dwight Kiefert	Y
Representative Nico Rios	Y
Representative Karen Rohr	Y

4:14 p.m. Motion passed 13-0-0.

Representative Dobervich will carry the bill.

4:14 p.m. Chairman M. Ruby closed the meeting.

*Jackson Toman, Committee Clerk*



**REPORT OF STANDING COMMITTEE**  
**HB 1564 ([25.1211.01000](#))**

**Human Services Committee (Rep. M. Ruby, Chairman)** recommends **DO PASS** (13 YEAS, 0 NAYS, 0 ABSENT OR EXCUSED AND NOT VOTING). HB 1564 was placed on the Eleventh order on the calendar.

**2025 SENATE HUMAN SERVICES**

**HB 1564**

# 2025 SENATE STANDING COMMITTEE MINUTES

## Human Services Committee Fort Lincoln Room, State Capitol

HB 1564  
3/12/2025

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

2:28 p.m. Chairman Lee opened the hearing.

Members Present: Chairman Lee, Vice-Chairman Weston, Senator Van Oosting, Senator Clemens, Senator Hogan, Senator Roers.

### Discussion Topics:

- Federal Regulation
- Current implementation
- Judicial Proceeding
- Legislative History

2:28 p.m. Representative Jayme Davis, District 9, introduced the bill and submitted testimony #40869.

2:35 p.m. Dan Lewerenz, Assistant Professor with University of North Dakota School of Law, testified in favor and submitted testimony #40815.

2:52 p.m. Rhonda R. Allery, Director of Mountain Lakes Human Service Zone, testified in favor and submitted testimony #40802.

2:55 p.m. Heather Traynor, Youth and Family Court Specialist with ND Court, testified in neutral and submitted testimony #40586.

2:57 p.m. Senator Roers Moved amendment LC#25.1211.01001.

2:57 p.m. Senator Weston seconded the motion.

Senators	Vote
Senator Judy Lee	Y
Senator Kent Weston	Y
Senator David A. Clemens	Y
Senator Kathy Hogan	AB
Senator Kristin Roers	Y
Senator Desiree Van Oosting	Y

Motion passed 5-0-1.

2:59 p.m. Senator Roers moved Do Pass as amended.

2:59 p.m. Senator Weston seconded the motion.

Senators	Vote
Senator Judy Lee	Y
Senator Kent Weston	Y
Senator David A. Clemens	Y
Senator Kathy Hogan	AB
Senator Kristin Roers	Y
Senator Desiree Van Oosting	Y

Motion passed 5-0-1.

Senator Hogan will carry the bill.

**Additional written testimony:**

Harmony Bercier, Grant Manager with University of North Dakota, submitted written testimony #40809.

3:01 p.m. Chairman Lee closed the hearing.

*Andrew Ficek, Committee Clerk*

March 12, 2025

Sixty-ninth  
Legislative Assembly  
of North Dakota

## PROPOSED AMENDMENTS TO

### 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:

- 1 (1) Conducting a comprehensive assessment of the circumstances of the  
2 Indian child's family, with a focus on safe reunification as the most desirable  
3 goal, with ongoing timely assessment to determine when the threat is  
4 resolved and placement of the Indian child can be returned to the custodian.
- 5 (2) Identifying appropriate services and helping a parent or Indian custodian to  
6 overcome barriers, including actively assisting a parent or Indian custodian  
7 in obtaining such services.
- 8 (3) Identifying, notifying, and inviting representatives of the Indian child's tribe to  
9 participate in providing support and services to the Indian child's family and  
10 in family team meetings, permanency planning, and resolution of placement  
11 issues.
- 12 (4) Conducting or causing to be conducted a diligent search for the Indian  
13 child's extended family members, and contacting and consulting with  
14 extended family members to provide family structure and support for the  
15 Indian child and the Indian child's parent or Indian custodian.
- 16 (5) Offering and employing available and culturally appropriate family  
17 preservation strategies and facilitating the use of remedial and rehabilitative  
18 services provided by the Indian child's tribe.
- 19 (6) Taking steps to keep siblings together, if possible.
- 20 (7) Supporting regular visits with a parent or Indian custodian in the most  
21 natural setting possible as well as trial home visits of the Indian child during  
22 any period of removal, consistent with the need to ensure the health, safety,  
23 and welfare of the Indian child.
- 24 (8) Identifying community resources, including housing, financial,  
25 transportation, mental health, substance abuse, and peer support services  
26 and actively assisting the Indian child's parent or Indian custodian or, as  
27 appropriate, the Indian child's family, in utilizing and accessing those  
28 resources.
- 29 (9) Monitoring progress and participation in services.



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

(11) Providing post-reunification services and monitoring.

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

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

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

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

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

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

(1) Foster care or ~~nonfoster care~~ placement;

(2) A preadoptive placement;

(3) An adoptive placement; or

- 1 (4) A termination of parental rights under section 27-20.3-20 for an Indian child.
- 2 h. "Indian child's tribe" means the Indian tribe in which an Indian child is a member
- 3 or eligible for membership or, in the case of an Indian child who is a member of or
- 4 eligible for membership in more than one tribe, the Indian tribe with which the
- 5 Indian child has the more significant contacts.
- 6 i. "Indian custodian" means any Indian individual who has legal custody of an
- 7 Indian child under tribal law or custom or under state law or to whom temporary
- 8 physical care, custody, and control has been transferred by the parent of the
- 9 Indian child.
- 10 j. "Indian tribe" means an Indian tribe, band, nation, or other organized Indian
- 11 group or community of Indians recognized as eligible for services provided to
- 12 Indians by the United States secretary of the interior because of their status as
- 13 Indians, including any Alaska native village as defined in 43 U.S.C. 1602(c).
- 14 k. "Parent" means a biological parent or parents of an Indian child or an Indian
- 15 individual who has lawfully adopted an Indian child, including adoptions under
- 16 tribal law or custom. The term does not include the unwed father if paternity has
- 17 not been acknowledged or established.
- 18 l. "Preadoptive placement" means the temporary placement of an Indian child in a
- 19 foster home, home of a relative other than a parent or Indian custodian, or home
- 20 of a guardian after a termination of parental rights but before or in lieu of an
- 21 adoptive placement, but does not include an emergency change in placement
- 22 under section 27-20.3-06.
- 23 m. "Termination of parental rights" means any action resulting in the termination of
- 24 the parent-child relationship. It does not include a placement based upon an act
- 25 by an Indian child which, if committed by an adult, would be deemed a crime or a
- 26 placement upon award of custody to one of the Indian child's parents in a divorce
- 27 proceeding.
- 28 2. Before removal of an Indian child from the custody of a parent or Indian custodian for
- 29 purposes of involuntary foster care placement or the termination of parental rights over
- 30 an Indian child, the court shall find that active efforts have been made to provide
- 31 remedial services and rehabilitative services designed to prevent the breakup of the



1 Indian family and that these efforts have proved unsuccessful. The court may not  
2 order the removal unless evidence of active efforts shows there has been a vigorous  
3 and concerted level of casework beyond the level that would constitute reasonable  
4 efforts under section 27-20.3-26. Reasonable efforts may not be construed to be  
5 active efforts. Active efforts must be made in a manner that takes into account the  
6 prevailing social and cultural values, conditions, and way of life of the Indian child's  
7 tribe. Active efforts must utilize the available resources of the Indian child's extended  
8 family, tribe, tribal and other relevant social service agencies, and individual Indian  
9 caregivers.

- 10 3. The court may order the removal of the Indian child for involuntary foster care  
11 placement only if the court determines, by clear and convincing evidence, that  
12 continued custody of the Indian child by the parent or Indian custodian is likely to  
13 result in serious emotional or physical damage to the Indian child. Evidence must  
14 show a causal relationship between the particular conditions in the home and the  
15 likelihood that continued custody of the Indian child will result in serious emotional or  
16 physical damage to the particular Indian child who is the subject of the proceeding.  
17 Poverty, isolation, custodian age, crowded or inadequate housing, substance use, or  
18 nonconforming social behavior does not by itself constitute clear and convincing  
19 evidence of imminent serious emotional or physical damage to the Indian child. As  
20 soon as the threat has been removed and the Indian child is no longer at risk, the state  
21 should terminate the removal, by returning the Indian child to the parent or Indian  
22 custodian while offering a solution to mitigate the situation that gave rise to the need  
23 for emergency removal and placement. If a court order authorizes the emergency  
24 removal of the Indian child from the parent or Indian custodian of the child under this  
25 section, the order must be accompanied by a declaration that includes:  
26 a. The name, tribal affiliation, and address of the Indian child, each parent of the  
27 Indian child, and the Indian custodian of the child, as applicable; and  
28 b. A detailed account of the circumstances that led the agency responsible for  
29 emergency removal of the child to take that action.  
30 4. The court may order the termination of parental rights over the Indian child only if the  
31 court determines, by evidence beyond a reasonable doubt that continued custody of

1 the Indian child by the parent or Indian custodian is likely to result in serious emotional  
2 or physical damage to the Indian child.

3 5. In considering whether to involuntarily place an Indian child in foster care or to  
4 terminate the parental rights of the parent of an Indian child, the court shall require that  
5 a qualified expert witness must be qualified to testify regarding whether the Indian  
6 child's continued custody by the parent or Indian custodian is likely to result in serious  
7 emotional or physical damage to the Indian child and should be qualified to testify as  
8 to the prevailing social and cultural standards of the Indian child's tribe. An individual  
9 may be designated by the Indian child's tribe as being qualified to testify to the  
10 prevailing social and cultural standards of the Indian child's tribe. If the parties  
11 stipulate in writing and the court is satisfied the stipulation is made knowingly,  
12 intelligently, and voluntarily, the court may accept a declaration or affidavit from a  
13 qualified expert witness in lieu of testimony. If one or more parties have been found to  
14 be in default under the North Dakota Rules of Civil Juvenile Procedure, the court may  
15 accept a declaration or affidavit from a qualified expert witness without a stipulation in  
16 writing from the defaulted parties. The court or any party may request the assistance  
17 of the Indian child's tribe or the bureau of Indian affairs office serving the Indian child's  
18 tribe in locating individuals qualified to serve as expert witnesses. The social worker  
19 regularly assigned to the Indian child may not serve as a qualified expert witness in  
20 child custody proceedings concerning the Indian child. The qualified expert witness  
21 should be someone familiar with the particular Indian child and have contact with the  
22 parent or Indian custodian to observe interaction between the parent or Indian  
23 custodian, Indian child, and extended family members. The child welfare agency and  
24 courts should facilitate access to the family and records to facilitate accurate  
25 testimony.

- 26 6. If a court order authorizes the emergency removal of the Indian child from the parent  
27 or Indian custodian of the child under state law, the order must be accompanied by a  
28 declaration from the child welfare agency that includes:  
29 a. The name, tribal affiliation, and address of the Indian child, each parent of the  
30 Indian child, and the Indian custodian of the child, as applicable; and



1 b. A detailed account of the circumstances that led the agency responsible for  
2 emergency removal of the child to take action.

3 7. An emergency removal or placement of an Indian child under state law must terminate  
4 immediately when the removal or placement is no longer necessary to prevent  
5 imminent physical damage or harm to the Indian child. If removal or placement is  
6 determined to be no longer necessary, the child welfare agency shall terminate the  
7 removal by returning the Indian child to the parent or Indian custodian and offer a  
8 solution to mitigate the situation that gave rise to the need for emergency removal and  
9 placement.

10 7.8. If an Indian child is the subject of a shelter care hearing, the party initiating the hearing  
11 shall provide the court with a declaration that includes the specific actions that have  
12 been taken to assist the parent or Indian custodian since the emergency removal so  
13 the child may be safely returned to the custody of the parent or Indian custodian, and  
14 the specific actions the initiating party intends to take so the Indian child may be  
15 returned safely without initiating an Indian child custody proceeding.

16 8.9. To facilitate the intent of this chapter, the agency, in cooperation with the Indian child's  
17 tribe of affiliation, unless a parent objects, shall take steps to enroll the Indian child in  
18 the tribe with the goal of finalizing enrollment before termination.

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

21 **27-19.1-02. Jurisdiction over custody proceedings.**

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

23 a. A child custody proceeding, including:

24 (1) An involuntary proceeding; and

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

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

30 b. An emergency proceeding other than:

31 (1) ~~A tribal.~~

2. This chapter does not apply to:

- a. A tribal court proceeding; or
- (2)b. A proceeding regarding a delinquent act;
- c. An award of custody of the Indian child to one of the parents, including an award in a divorce proceeding; or
- d. A voluntary placement that either parent, both parents, or the Indian custodian has, of his or her or their free will, without a threat of removal by a state agency, chosen for the Indian child and that does not operate to prohibit the Indian child's parent or Indian custodian from regaining custody of the Indian child upon demand.

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

3-4. If this chapter applies at the commencement of a proceeding, this chapter does not cease to apply solely because the Indian child reaches age eighteen during the pendency of the proceeding.

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

- ~~a. A parent of the Indian child objects to the transfer.~~
- ~~b. An Indian tribe has exclusive jurisdiction over an Indian child custody proceeding involving an Indian child who resides or is domiciled within the reservation of the tribe, except if that jurisdiction is otherwise vested in the state by federal law. If an Indian child is a ward of a tribal court, the Indian tribe retains exclusive jurisdiction regardless of the residence or domicile of the Indian child.~~



- 1 ~~5-6.~~ In an Indian child custody proceeding under this chapter involving an Indian child who  
2 is not residing or domiciled within the reservation of the Indian child's tribe, the court  
3 assigned to exercise jurisdiction under this chapter, upon the petition of the Indian  
4 child's parent, Indian custodian, or tribe, shall transfer the proceeding to the  
5 jurisdiction of the tribe unless any of the following apply:
- 6 a. A parent of the Indian child objects to the transfer.
- 7 ~~b.6.~~ The Indian child's tribe does not have a tribal court, or the tribal court of the  
8 Indian child's tribe declines jurisdiction.
- 9 ~~c.6.~~ The court determines good cause exists to deny the transfer. In determining  
10 whether good cause exists to deny the transfer, the court may not consider any  
11 perceived inadequacy of the tribal social services department or the tribal court of  
12 the Indian child's tribe. The court may determine good cause exists to deny the  
13 transfer only if the person opposing the transfer shows by clear and convincing  
14 evidence the evidence or testimony necessary to decide the case cannot be  
15 presented in tribal court without undue hardship to the parties or the witnesses  
16 and that the tribal court is unable to mitigate the hardship by making  
17 arrangements to receive the evidence or testimony by use of telephone or live  
18 audiovisual means, by hearing the evidence or testimony at a location that is  
19 convenient to the parties and witnesses, or by use of other means permissible  
20 under the tribal court's rules of evidence.
- 21 ~~6-7.~~ An Indian child's tribe may intervene at any point in an Indian child custody  
22 proceeding.
- 23 ~~7-8.~~ The state shall give full faith and credit to the public acts, records, and judicial  
24 proceedings of an Indian tribe which are applicable to an Indian child custody  
25 proceeding to the same extent that the state gives full faith and credit to the public  
26 acts, records, and judicial proceedings of any other governmental entity.

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

- 29 1. In a proceeding involving the foster care ~~or nonfoster care~~ placement of or termination  
30 of parental rights to an Indian child whom the court knows or has reason to know may  
31 be an Indian child, the party seeking the foster care ~~or nonfoster care~~ placement or

1 termination of parental rights, for the first hearing of the proceeding, shall notify the  
2 Indian child's parent, Indian custodian, and tribe, by registered mail, return receipt  
3 requested, of the pending proceeding and of the parties' right to intervene in the  
4 proceeding and shall file the return receipt with the court. Notice of subsequent  
5 hearings in a proceeding must be in writing and may be given by mail, personal  
6 delivery, facsimile transmission, or electronic mail. If the identity or location of the  
7 Indian child's parent, Indian custodian, or tribe cannot be determined, that notice shall  
8 be given to the United States secretary of the interior in like manner. The first hearing  
9 in the proceeding may not be held until at least ten days after receipt of the notice by  
10 the parent, Indian custodian, and tribe or until at least fifteen days after receipt of the  
11 notice by the United States secretary of the interior. On request of the parent, Indian  
12 custodian, or tribe, the court shall grant a continuance of up to twenty additional days  
13 to enable the requester to prepare for that hearing.

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

- 16 1. A voluntary consent by a parent or Indian custodian to a foster care ~~or nonfoster care~~  
17 placement of an Indian child is not valid unless the consent or delegation is executed  
18 in writing, recorded before a judge, and accompanied by a written certification by the  
19 judge that the terms and consequences of the consent or delegation were fully  
20 explained in detail to and were fully understood by the parent or Indian custodian. The  
21 judge also shall certify the parent or Indian custodian fully understood the explanation  
22 in English or that the explanation was interpreted into a language the parent or Indian  
23 custodian understood. Any consent or delegation of powers given under this  
24 subsection before or within ten days after the birth of the Indian child is not valid. A  
25 parent or Indian custodian who has executed a consent or delegation of powers under  
26 this subsection may withdraw the consent or delegation for any reason at any time,  
27 and the Indian child must be returned to the parent or Indian custodian. A parent or  
28 Indian custodian who has executed a consent or delegation of powers under this  
29 subsection also may move to invalidate the out-of-home care placement.

30 **SECTION 5. AMENDMENT.** Section 27-19.1-05 of the North Dakota Century Code is  
31 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 preferencesAnother 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 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;
  - ~~e-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,

1 unless the person responsible for determining the placement finds good cause, as  
2 described in subsection 6, for departing from the order of placement preference under  
3 subsection 2 or finds that emergency conditions necessitate departing from that order.  
4 When the reason for departing from that order is resolved, the Indian child must be  
5 placed in compliance with the order of placement preference under subsection 2.

6 4. In placing an Indian child under subsections 1 and 2 regarding an Indian child under  
7 subsection 1, if the Indian child's tribe has established, by resolution, an order of  
8 preference that is different from the order specified in subsection 1 or 2, the order of  
9 preference established by that tribe must be followed, in the absence of good cause,  
10 as described in subsection 6, to the contrary, so long as the placement under  
11 subsection 1 is appropriate for the Indian child's special needs, if any, and the  
12 placement under subsection 2 is the least restrictive setting appropriate for the Indian  
13 child's needs as specified in subsection 2.

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

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

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

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

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



- 1                   (2) The request of the Indian child, if the Indian child is of sufficient age and
- 2                   capacity to understand the decision being made.
- 3                   (3) The presence of a sibling attachment that can be maintained only through a
- 4                   particular placement.
- 5                   (4) The extraordinary physical, mental, or emotional needs of the Indian child,
- 6                   such as specialized treatment services that may be unavailable in the
- 7                   community where families who meet the placement preferences live.
- 8                   (5) The unavailability of a suitable placement after a determination by the court
- 9                   that a diligent search was conducted to find suitable placements meeting
- 10                  the preference criteria, but none has been located. For purposes of this
- 11                  analysis, the standards for determining whether a placement is unavailable
- 12                  must conform to the prevailing social and cultural standards of the Indian
- 13                  community in which the Indian child's parent, Indian custodian, or extended
- 14                  family resides or with which the Indian child's parent, Indian custodian, or
- 15                  extended family members maintain social and cultural ties.
- 16                  d. A placement may not depart from the preferences based on the socioeconomic
- 17                  status of any placement relative to another placement.
- 18                  e. A placement may not depart from the preferences based solely on ordinary
- 19                  bonding or attachment that flowed from time spent in a nonpreferred placement
- 20                  that was made in violation of this chapter.
- 21                  f. The burden of establishing good cause to depart from the order of placement
- 22                  preference is on the party requesting that departure.
- 23                  7. The department or a child welfare agency shall maintain a record of each adoptive
- 24                  placement, foster care ~~or nonfoster-care~~ placement, preadoptive placement, and
- 25                  delegation of powers, made of an Indian child, evidencing the efforts made to comply
- 26                  with the placement preference requirements specified in this section, and shall make
- 27                  that record available at any time on the request of the United States secretary of the
- 28                  interior or the Indian child's tribe.

29                  **SECTION 6. AMENDMENT.** Section 27-19.1-06 of the North Dakota Century Code is  
30                  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 States secretary of the interior under subsection 1, and that secretary shall maintain the confidentiality of the birth parent's identity.

**REPORT OF STANDING COMMITTEE  
HB 1564**

**Human Services Committee (Sen. Lee, Chairman)** recommends **AMENDMENTS** ([25.1211.01001](#)) and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 1 ABSENT OR EXCUSED AND NOT VOTING). HB 1564 was placed on the Sixth order on the calendar. This bill does not affect workforce development.

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

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.

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- 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

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;
  - ~~c.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 preferencesAnother 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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1 given, in the absence of good cause, as described in subsection 6, to the contrary, to a  
2 placement in one of the following, in the order of preference listed:

3 a. The tribe's statutory adopted placement preference, if applicable;

4 b. The home of an extended family member of the Indian child;

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

6 ~~e-d.~~ An Indian foster home licensed or approved by the department; or

7 ~~d-e.~~ A qualified residential treatment facility or residential care center for children and  
8 youth approved by an Indian tribe or operated by an Indian organization that has  
9 a program suitable to meet the needs of the Indian child.

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

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

26 5. The standards to be applied in meeting the placement preference requirements of this  
27 subsection must be the prevailing social and cultural standards of the Indian  
28 community in which the Indian child's parent, Indian custodian, or extended family  
29 members reside or with which the Indian child's parent, Indian custodian, or extended  
30 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.



Testimony Prepared for  
March 12, 2025

**Senate Human Service Committee**

By: Rhonda Allery, Mountain Lakes Human Service Zone Director

**RE: HB 1564: Relating to Indian Child Welfare**

Chair Lee, Vice Chair Weston, and members of the Senate Human Services Committee, my name is Rhonda Allery. I serve as the Director of Mountain Lakes Human Service Zone, which includes the counties of Rolette, Benson, Ramsey and Towner. In addition, I am a member of the North Dakota Human Service Zone Director Association. I am here today to provide testimony in support of HB 1564.

Human Service Zones are the legal designee of the North Dakota Department of Health and Human Services (NDHHS), managing a range of critical responsibilities including the legal custody of children in the public foster care system, foster care case management services, and the assessment of child safety (child protective services). Zone staff also provide in-home services to families to ensure the safety of children in their homes.

This bill supports the application of the federal law the Indian Child Welfare Act (ICWA) of 1974. It helps Zone child welfare team members meet safety needs and defines best practice for Native American children who are impacted by abuse or neglect and the foster care system.

We believe HB 1564 aligns with current practice, policy, and the Safety Framework Practice Model (SFPM), adopted in 2020 as part of social services redesign (SB 2124). This model ensures consistent, evidence-based practices across all Human Service Zones, focusing on child safety while respecting parental rights.

I urge a “do pass” on HB 1564. Thank you for your consideration of my testimony. I stand for any questions from the committee.

Testimony of Harmony Bercier  
**Senate Human Services Committee**  
In Support of House Bill 1564  
March 11, 2025

Dear Chairwoman Lee and Senate Committee members,

Thank you for the opportunity to provide testimony in strong support of House Bill 1564. My name is Harmony Bercier, and I am an enrolled member of the Turtle Mountain Band of Chippewa. As a North Dakota constituent, I have dedicated the past eight years to coordinating efforts between State, Court, and Tribal partners to improve the accurate implementation of the Indian Child Welfare Act (ICWA). I am grateful for the thoughtful revisions that have strengthened this bill, and I urge the committee to vote in favor of its passage.

This version of HB 1564 provides essential clarifications and improvements that will enhance the practical application of ICWA in North Dakota. By reinforcing the requirement for active efforts immediately following an emergency removal, this bill helps ensure that preferred placements are secured, best practices are followed, and Native children remain connected to their families and communities. Research has shown that early and consistent active efforts lead to better outcomes for children, reducing time spent in care and increasing family reunification rates.

Additionally, the inclusion of affidavit testimony as an option when a party cannot be reached for consent removes unnecessary barriers that have historically caused delays in proceedings. This practical solution ensures that cases can move forward in a timely and fair manner while maintaining the integrity of the ICWA process. Aligning statutory language with existing child welfare laws and ensuring clarity around who is responsible for carrying out certain provisions further strengthens consistency and ensures that best practices are followed across all cases involving ICWA-eligible children and their families.

North Dakota has emerged as a national leader in strengthening ICWA implementation, and this bill is yet another example of the state's commitment to protecting Native children and families. The collaborative efforts between State, Court, and Tribal partners have resulted in notable improvements, including increased compliance with ICWA requirements, stronger relationships between jurisdictions, and better outcomes for children and families. HB 1564 reinforces this progress by addressing key areas that enhance efficiency, accountability, and clarity in ICWA-related cases.

Through my work coordinating efforts between State, Court and Tribal partners, I have seen firsthand the importance of clear, consistent policies that support collaboration and accountability. HB 1564 not only strengthens North Dakota's leadership in this area but also demonstrates a continued commitment to ensuring that Native children and families are treated with the dignity, respect, and legal protections they deserve.

I respectfully urge the committee to support HB 1564. Thank you for your time and consideration. Please reach out with any questions.

**Respectfully,**  
Harmony Bercier  
[harmony.bercier@und.edu](mailto:harmony.bercier@und.edu)  
701.213.9550

Testimony of Professor Dan Lewerenz In Support of H.B. 1564

March 12, 2025

**Testimony of Professor Dan Lewerenz (University of North Dakota School of Law)  
In support of House Bill 1564  
Wednesday, March 12, 2025**

Chairwoman Lee, Vice-Chairman Weston, and members of the Senate Human Services Committee, thank you for this opportunity to testify in support of HB 1564. Representative Davis, thank you for the invitation. My name is Dan Lewerenz, and I am an Assistant Professor of Law and Director of the Indian Law & Tribal Law Certificate Program at the University of North Dakota School of Law, where I teach the Law School's Indian Child Welfare Act course. I also am a member of the Iowa Tribe of Kansas and Nebraska, and I work with the North Dakota ICWA Best Practices Partnership, a joint Tribal-State-Private collaboration led by UND to improve Indian Child Welfare implementation and cooperation throughout the State. I say that only by manner of introduction; the opinions expressed in my testimony here today are my own, and do not necessarily represent the views of my employer, my Tribe, or the Partnership.

I urge you today to advance HB 1564, which would amend what I will refer to as the North Dakota Indian Child Welfare Act (or North Dakota ICWA), for two reasons. First, the North Dakota ICWA was necessary when it was enacted by this Legislature two years ago, and it remains vitally important today. Second, the proposed amendments in HB 1564 would make important improvements that will both clarify and streamline the existing law. In addition, and with the support of HB 1564's principal sponsor, Representative Davis, I offer three simple (but important) proposed amendments that would further clarify and simplify the law, but which do not change the substance of the bill that passed the House.

First, the North Dakota ICWA was, and still is, vitally important. The Legislature enacted the North Dakota ICWA at a time when the Federal Indian Child Welfare Act faced the existential threat of the *Brackeen* litigation. Fortunately, the U.S. Supreme Court held that the Federal ICWA did not exceed Congress's Indian Affairs power and did not commandeer the States.<sup>1</sup> That battle was won, but the war is not over. In fact, next month the Minnesota Supreme Court will hear argument in a new case, initiated by some of the same anti-ICWA activists behind *Brackeen*, that once again challenges the constitutionality of ICWA.<sup>2</sup> This Legislature's enactment of the North Dakota ICWA two years ago sent a powerful message that this State stands side-by-side with Tribes, child welfare professionals, and the majority of other States in recognizing that ICWA embodies the gold standard in child welfare policy and practice. If this Committee advances and this Legislature ultimately enacts HB 1564, it will send an equally powerful message that North Dakota will not be cowed by radical activists and their small-minded agenda.

Second, HB 1564 would make important improvements to the North Dakota ICWA. For starters, the bill corrects some drafting errors that inadvertently made their way into the original North Dakota ICWA. The current law, for example, accidentally covers an award of custody to one of the parents

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<sup>1</sup> *Haaland v. Brackeen*, 599 U.S. 255 (2023).

<sup>2</sup> *In re Welfare of Children of L.K. and A.S.*, No. A24-1296 (Minn.) (argument scheduled April 1, 2025).



in a divorce proceeding, and HB 1564 would correct that error. In addition, HB 1564 would clarify some provisions that attorneys and social workers implementing the North Dakota ICWA have found confusing. For example, in an attempt to be comprehensive in describing the proceedings covered by the North Dakota ICWA, the current law makes reference to “foster care or nonfoster care placement.” But “nonfoster care placement” is not a term regularly used in child welfare practice in this State, and practitioners were unsure what that term was intended to cover. So HB 1564 would delete that term. Also, Section 27-19.1-01(3) in the North Dakota ICWA concerns ordinary foster care proceedings, but contains language that looks like it should apply instead to emergency proceedings, which has created confusion. HB 1564 would restructure the North Dakota ICWA in a way that better clarifies which standards apply to which proceedings.

With my testimony, I have also submitted a redline of HB 1564 proposing three simple amendments. I want to stress that none of these amendments changes the substance of the bill already advanced by the House; instead, they would simply further clarify the law. Specifically:

- In Section 27-19.1-01(1)(d) I recommend either an amendment to, or a substitution for, a phrase in the current North Dakota ICWA that is undefined in North Dakota law and that, if it is not amendment, might cause confusion.
- In Section 27-19.1-01(3), where HB 1564 would add some language, I recommend instead adding that language just a few sections below to Section 27-19.1-01(6). This, too, is in the interest of clarity. Both the Federal ICWA and the North Dakota ICWA treat foster care proceedings and emergency proceedings differently, with different rules applying to each. Section 3 mostly concerns foster care proceedings, but the proposed new language in HB 1564 concerns emergency proceedings. My concern is that addressing them both in the same section will create confusion. (In fact, that is the very reason that HB 1564 would delete one sentence from Section 3; it was a sentence that fit better with emergency proceedings than with foster care proceedings.) My recommendation preserves HB 1564’s language in tact, but simply moves it down to Section 6, consolidating it with other provisions that concern emergency proceedings.
- Finally, I recommend a minor reorganization of what the current law provides at Section 27-19.1-02(4) and (5), which HB 1564 had consolidated under a single Section 5. Representative Davis and the sponsors of HB 1564 appropriately recognized that the current law accidentally has some duplication: Sections 4 and 4.a in the current law are exactly the same as Sections 5 and 5.a, and that duplication serves no purpose. Thus, HB 1564 combines them into a single section, a move that I generally endorse. However, one of the subsections, subsection 4.b in the current law (and subsection 5.b in HB 1564) does not fit with the others. These sections generally concern the transfer of Indian child welfare cases from State court to Tribal court when there is concurrent jurisdiction—i.e., when either court could handle a case. Subsection 4.b, on the other hand, describes conditions when Tribal courts have exclusive jurisdiction—i.e., when only Tribal courts can handle a case. My proposed edits would isolate the current Subsection 4.b as a stand-alone Section 5, and otherwise would follow HB 1564 in eliminating

the duplicated language and consolidating the rest of the former Sections 4 and 5 under a new Section 6.

I also am aware of proposed amendments that will be offered by North Dakota Supreme Court's Court Improvement Program. I have discussed that proposal with its backers, and I endorse those proposed amendments as well.

I will close by saying that no legislation, whether enacted or proposed, is perfect. Those of us who work on Indian Child Welfare in North Dakota continue to gather feedback both on the North Dakota ICWA as enacted in 2023 and on HB 1564, and I expect that in years to come we will come back to this body with further amendments to make North Dakota's ICWA even better. But for now, it is important that this Committee advance HB 1564, preferably with the proposed amendments, so that North Dakota can continue to be a leader in Indian Child Welfare best practices.

I am happy to answer any questions the Committee has of me, whether today or in the future.

Dan Lewerenz

Assistant Professor of Law; Director, Indian Law & Tribal Law Certificate Program

University of North Dakota School of Law

[dan.lewerenz@und.edu](mailto:dan.lewerenz@und.edu)

**HOUSE BILL NO. 1564**

Introduced by

Representatives Davis, Beltz, Brown, Finley-DeVile, 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.

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

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

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

3 3. The court may order the removal of the Indian child for involuntary foster care  
4 placement only if the court determines, by clear and convincing evidence, that  
5 continued custody of the Indian child by the parent or Indian custodian is likely to  
6 result in serious emotional or physical damage to the Indian child. Evidence must  
7 show a causal relationship between the particular conditions in the home and the  
8 likelihood that continued custody of the Indian child will result in serious emotional or  
9 physical damage to the particular Indian child who is the subject of the proceeding.  
10 Poverty, isolation, custodian age, crowded or inadequate housing, substance use, or  
11 nonconforming social behavior does not by itself constitute clear and convincing  
12 evidence of imminent serious emotional or physical damage to the Indian child. As  
13 soon as the threat has been removed and the Indian child is no longer at risk, the state  
14 should terminate the removal, by returning the Indian child to the parent or Indian  
15 custodian while offering a solution to mitigate the situation that gave rise to the need  
16 for emergency removal and placement.

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

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

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 Procedure, the court may accept a  
8 declaration or affidavit from a qualified expert witness without a stipulation in writing  
9 from the defaulted parties. The court or any party may request the assistance of the  
10 Indian child's tribe or the bureau of Indian affairs office serving the Indian child's tribe  
11 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.

26 6. If a court order authorizes the emergency  
27 removal of the Indian child from the parent or Indian custodian of the child under this  
28 section, the order must be accompanied by a declaration that includes:

29 a. The name, tribal affiliation, and address of the Indian child, each parent of the  
30 Indian child, and the Indian custodian of the child, as applicable; and

31 b. A detailed account of the circumstances that led the agency responsible for  
19 emergency removal of the child to take that action.

20 An emergency removal or placement of an Indian child under state law must terminate  
21 immediately when the removal or placement is no longer necessary to prevent  
22 imminent physical damage or harm to the Indian child. If removal or placement is  
23 determined to be no longer necessary, the child welfare agency shall terminate the  
24 removal by returning the Indian child to the parent or Indian custodian and offer a  
25 solution to mitigate the situation that gave rise to the need for emergency removal and  
26 placement.



- 27       7. If an Indian child is the subject of a shelter care hearing, the party initiating the hearing  
28       shall provide the court with a declaration that includes the specific actions that have  
29       been taken to assist the parent or Indian custodian since the emergency removal so  
30       the child may be safely returned to the custody of the parent or Indian custodian, and  
31       the specific actions the initiating party intends to take so the Indian child may be  
32       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


1 Indian child and the Indian child's parent; whether the parent ever had custody of the  
2 Indian child; or the Indian child's blood quantum.

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

6 ~~4.5.~~  An Indian tribe has exclusive jurisdiction over an Indian child custody proceeding  
7 involving an Indian child who resides or is domiciled within the reservation of the  
8 tribe, except if that jurisdiction is otherwise vested in the state by federal law. If an  
9 Indian child is a ward of a tribal court, the Indian tribe retains exclusive  
10 jurisdiction regardless of the residence or domicile of the Indian child.

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

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

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

19 ~~c.d.~~ The court determines good cause exists to deny the transfer. In determining  
20 whether good cause exists to deny the transfer, the court may not consider any  
21 perceived inadequacy of the tribal social services department or the tribal court of  
22 the Indian child's tribe. The court may determine good cause exists to deny the  
23 transfer only if the person opposing the transfer shows by clear and convincing  
24 evidence the evidence or testimony necessary to decide the case cannot be  
25 presented in tribal court without undue hardship to the parties or the witnesses

and that the tribal court is unable to mitigate the hardship by making arrangements to receive the evidence or testimony by use of telephone or live audiovisual means, by hearing the evidence or testimony at a location that is convenient to the parties and witnesses, or by use of other means permissible under the tribal court's rules of evidence.

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

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

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

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

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

- 1        1. A voluntary consent by a parent or Indian custodian to a foster care ~~or nonfoster care~~  
2        placement of an Indian child is not valid unless the consent or delegation is executed  
3        in writing, recorded before a judge, and accompanied by a written certification by the  
4        judge that the terms and consequences of the consent or delegation were fully  
5        explained in detail to and were fully understood by the parent or Indian custodian. The  
6        judge also shall certify the parent or Indian custodian fully understood the explanation  
7        in English or that the explanation was interpreted into a language the parent or Indian  
8        custodian understood. Any consent or delegation of powers given under this  
9        subsection before or within ten days after the birth of the Indian child is not valid. A  
10       parent or Indian custodian who has executed a consent or delegation of powers under  
11       this subsection may withdraw the consent or delegation for any reason at any time,  
12       and the Indian child must be returned to the parent or Indian custodian. A parent or  
13       Indian custodian who has executed a consent or delegation of powers under this  
14       subsection also may move to invalidate the out-of-home care placement.

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

17       **27-19.1-05. ~~Placements~~Placement preferences.**

- 18       1. Subject to subsections 3 and 4, in placing an Indian child for adoption or in delegating  
19       powers, as described in a lawful executed power of attorney regarding an Indian child,  
20       preference must be given, in the absence of good cause, as described in  
21       subsection 6, to the contrary, to a placement with or delegation to one of the following,  
22       in the order of preference listed:
- 23       a. The tribe's statutory adopted placement preference, if applicable;
  - 24       b. An extended family member of the Indian child;
  - 25       ~~b.c.~~ Another member of the Indian child's tribe;
  - 26       ~~c.d.~~ Another Indian family with whom the Indian child has a relationship or an Indian  
27       family from a tribe that is culturally similar to or linguistically connected to the  
28       Indian child's tribe; or
  - 29       ~~d.e. The tribe's statutory adopted placement preferences~~ Another Indian family.
- 30       2. An Indian child who is accepted for a foster care ~~or nonfoster care~~ placement or a  
31       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 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.

6. a. If a party asserts that good cause not to follow the placement preferences exists, the reasons for that belief or assertion must be stated orally on the record or provided in writing to the parties to the child custody proceeding and the court.
- b. The party seeking departure from the placement preferences bears the burden of proving by clear and convincing evidence that there is good cause to depart from the placement preferences.
- c. A court's determination of good cause to depart from the placement preferences must be made on the record or in writing and must be based on one or more of the following considerations:
  - (1) The request of the Indian child's parent, if they attest that they have reviewed the placement options, if any, that comply with the order of preference.
  - (2) The request of the Indian child, if the Indian child is of sufficient age and capacity to understand the decision being made.
  - (3) The presence of a sibling attachment that can be maintained only through a particular placement.
  - (4) The extraordinary physical, mental, or emotional needs of the Indian child, such as specialized treatment services that may be unavailable in the community where families who meet the placement preferences live.
  - (5) The unavailability of a suitable placement after a determination by the court that a diligent search was conducted to find suitable placements meeting the preference criteria, but none has been located. For purposes of this analysis, the standards for determining whether a placement is unavailable must conform to the prevailing social and cultural standards of the Indian community in which the Indian child's parent, Indian custodian, or extended family resides or with which the Indian child's parent, Indian custodian, or extended family members maintain social and cultural ties.

- 1           d. A placement may not depart from the preferences based on the socioeconomic
- 2           status of any placement relative to another placement.
- 3           e. A placement may not depart from the preferences based solely on ordinary
- 4           bonding or attachment that flowed from time spent in a nonpreferred placement
- 5           that was made in violation of this chapter.
- 6           f. The burden of establishing good cause to depart from the order of placement
- 7           preference is on the party requesting that departure.
- 8        7. The department or a child welfare agency shall maintain a record of each adoptive
- 9           placement, foster care ~~or non-foster care~~ placement, preadoptive placement, and
- 10          delegation of powers, made of an Indian child, evidencing the efforts made to comply
- 11          with the placement preference requirements specified in this section, and shall make
- 12          that record available at any time on the request of the United States secretary of the
- 13          interior or the Indian child's tribe.

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

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

- 17       1. The state court entering a final adoption decree or order in any voluntary or involuntary
- 18          Indian child adoptive placement must furnish a copy of the decree or order within thirty
- 19          days to the Bureau of Indian Affairs, ~~Chief, Division of Human Services, 1849~~
- 20          ~~C Street NW, Mail Stop 3645 MIB, Washington, DC 20240~~ as prescribed by the Bureau
- 21          of Indian Affairs, along with the following information, in an envelope marked
- 22          "Confidential":
  - 23           a. The birth name and birth date of the Indian child, and tribal affiliation and name of
  - 24           the Indian child after adoption;
  - 25           b. The names and addresses of the biological parents;
  - 26           c. The names and addresses of the adoptive parents;
  - 27           d. The name and contact information for any agency having files or information
  - 28           relating to the adoption;
  - 29           e. Any affidavit signed by the biological parent or parents requesting the parent's
  - 30           identity remain confidential; and

- 1           f. Any information relating to tribal membership or eligibility for tribal membership of
- 2           the adopted Indian child.
- 3       2. The court shall give the birth parent of an Indian child the opportunity to file an affidavit
- 4           indicating that the birth parent wishes the United States secretary of the interior to
- 5           maintain the confidentiality of the birth parent's identity. If the birth parent files that
- 6           affidavit, the court shall include the affidavit with the information provided to the United
- 7           States secretary of the interior under subsection 1, and that secretary shall maintain
- 8           the confidentiality of the birth parent's identity.



# North Dakota House of Representatives

STATE CAPITOL  
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## Representative Jayme Davis

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## COMMITTEES:

Human Services  
Political Subdivisions

March 12, 2025

Good Morning Chair Lee and Vice Chair Weston and Members of the Human Services Committee, for the record I am Jayme Davis, Representative from District 9. I am also a proud member of the Turtle Mountain Band of Chippewa Indians and Descendent of the Standing Rock Nation.

Thank you for the opportunity to present House Bill 1564. This bill represents a critical step toward strengthening the welfare and protection of Indian children in North Dakota while respecting the unique cultural and social fabric of our communities. Many people worked diligently on the language of this bill and as its carrier, I respectfully request a favorable vote.

House Bill 1564 seeks to amend and reenact specific sections of the North Dakota Century Code to align with the principles of the Indian Child Welfare Act (ICWA). It introduces clarifications and procedural updates designed to ensure that the best interests of Indian children are served while honoring tribal sovereignty and cultural preservation. Let me highlight the key amendments and their significance.

The bill refines the definition of "active efforts" to require affirmative, tailored actions by agencies to prevent the breakup of Indian families. This ensures comprehensive, timely, and culturally appropriate support for parents and custodians, from accessing services to reuniting families. This amendment emphasizes collaboration with tribal entities and extended family members to respect traditional tribal values.

We have revised the jurisdictional framework to affirm tribal authority over child custody proceedings involving tribal children, except where specific legal exceptions apply. These updates are vital for ensuring that Indian children are placed in homes that uphold their cultural heritage and identity.

This bill also strengthens the notification process to ensure parents, custodians, and tribes are timely and adequately informed of proceedings affecting their children. Clear timelines and mechanisms are introduced to promote fairness and preparation in these critical matters.

The amendments solidify placement preferences for Indian children, prioritizing extended family and tribal members, and emphasizing cultural connection. Importantly, the bill limits the grounds for departing from these preferences, ensuring decisions are not influenced by socioeconomic status or convenience but by the child's best interests and tribal standards.

Lastly, the bill requires that records of Indian child adoptive placements be shared with the Bureau of Indian Affairs to preserve tribal affiliations and membership eligibility. This provision ensures the continuity of a child's cultural and legal identity, even in cases of adoption.

The protections outlined in House Bill 1564 safeguard the rights and identities of Indian children and promote the integrity of tribal communities.

The experts in the field that will follow my introduction do have a additional amendments that I fully support. These experts are the authors of the original North Dakota ICWA and continue to work to work to strengthen its foundation for protecting some of our most vulnerable children.

Chair Lee and members of the committee, I respectfully ask for your support in voting favorably for this bill. By doing so, you affirm your commitment to justice and the enduring rights of North Dakota's tribal nations.

Miigwech, Thank you, and I'm happy to answer any questions you may have.