90276.0400

Sixty-first
Legislative Assembly
of North Dakota

# SECOND ENGROSSMENT

# REENGROSSED SENATE BILL NO. 2042

Introduced by

Legislative Council

(Judicial Process Committee)

A BILL for an Act to create and enact six new sections to chapter 14-09 and chapter 14-09.2 of the North Dakota Century Code, relating to parental rights and responsibilities and to parenting coordinators; to amend and reenact sections 14-05-22, 14-05-23, 14-09-05.1, 14-09-06.2, 14-09-06.3, 14-09-06.4, 14-09-06.6, and 14-09-07 of the North Dakota Century Code, relating to parental rights and responsibilities; to repeal sections 14-09-04, 14-09-05, 14-09-06, 14-09-06.1, and 14-09-28 of the North Dakota Century Code, relating to child custody and parental custody and visitation rights and duties; and to provide an expiration date.

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

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

**14-05-22. ~~Custody of children - Visitation~~ Parental rights and responsibilities - Costs.**

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

~~3. If the court finds that a parent has perpetrated domestic violence and that parent does not have custody, and there exists one incident of domestic violence which resulted in serious bodily injury or involved the use of a dangerous weapon or there exists a pattern of domestic violence within a reasonable time proximate to the proceeding, the court shall allow only supervised child visitation with that parent unless there is a showing by clear and convincing evidence that unsupervised visitation would not endanger the child's physical or emotional health.~~

~~4. If any court finds that a parent has sexually abused the parent's child, the court shall prohibit all visitation and contact between the abusive parent and the child until the court finds that the abusive parent has successfully completed a treatment program designed for such sexual abusers, and that supervised visitation is in the child's best interest. Contact between the abusive parent and the child may be allowed only in a therapeutic setting, facilitated by a therapist as part of a sexual abuse treatment program, and only when the therapist for the abusive parent and the therapist for the abused child agree that it serves a therapeutic purpose and is in the best interests of the child.~~

~~5. In any custody or visitation proceeding in which a parent is found to have perpetrated domestic violence, and there exists one incident of domestic violence which resulted in serious bodily injury or involved the use of a dangerous weapon or there exists a pattern of domestic violence within a reasonable time proximate to the proceeding, all court costs, attorney's fees, evaluation fees, and expert witness fees must be paid by the perpetrator of the domestic violence unless those costs would place an undue financial hardship on that parent.~~

**SECTION 2. AMENDMENT.** Section 14-05-23 of the North Dakota Century Code is amended and reenacted as follows:

**14-05-23. Temporary support, attorney's fees, and ~~custody~~ <u>parental rights and responsibilities</u>.** During any time in which an action for separation or divorce is pending, the court, upon application of a party, may issue an order requiring a party to pay such support as may be necessary for the support of a party and minor children of the parties and for the payment of attorney's fees. The court in the order may ~~award custody of minor children to a~~

~~party~~ make an order concerning parental rights and responsibilities concerning the children of the parties. The order may be issued and served in accordance with the North Dakota Rules of Court. The court may include in the order a provision for domestic violence protection provided the party has submitted a verified application for the order which is sufficient to meet the criteria defined in subsection 2 of section 14-07.1-01. A violation of the protection provision of the order is subject to the penalties established in section 14-07.1-06 and the arrest procedures authorized in section 14-07.1-11.

**SECTION 3. AMENDMENT.** Section 14-09-05.1 of the North Dakota Century Code is amended and reenacted as follows:

**14-09-05.1. Grandparental rights of visitation to unmarried ~~minors~~ minor child - Mediation or arbitration.**

1. The grandparents and great-grandparents of an unmarried minor child may be granted reasonable visitation rights to the ~~minor~~ child by the district court upon a finding that visitation would be in the best interests of the ~~minor~~ child and would not interfere with the parent-child relationship.
2. The court shall consider the amount of personal contact that has occurred between the grandparents or great-grandparents and the ~~minor~~ child and the ~~minor's~~ child's parents.
3. This section does not apply to agency adoptions or when the ~~minor~~ child has been adopted by a person other than a stepparent or grandparent. Any visitation rights granted under this section before the adoption of the ~~minor~~ child may be terminated upon the adoption if termination of the rights is in the best interest of the ~~minor~~ child.
4. An application for visitation rights under this section may be considered by the district court in conjunction with a divorce proceeding involving the parent of the minor child. If any district court of this state retains jurisdiction over the ~~custodial~~ residential placement of the minor child or children by virtue of any prior proceedings, the rights conferred by this section may be enforced by the grandparents or the great-grandparents through motion under the prior proceeding. If no district court otherwise has jurisdiction, a proceeding to enforce grandparental rights may be brought against the ~~custodial~~ parent having primary

residential responsibility as a civil action and venued in the county of residence of the minor child.

5. The district court may require mediation of the matter under chapter 14-09.1. If mediation fails and if the mediator agrees, the court may order the dispute arbitrated by the person who attempted mediation. Joinder of grandparents or of great-grandparents awarded visitation rights under this section must occur in any proceeding to terminate parental rights.

**SECTION 4.** Five new sections to chapter 14-09 of the North Dakota Century Code are created and enacted as follows:

**Definitions.** As used in this chapter, unless the context otherwise requires:

1. "Decisionmaking responsibility" means the responsibility to make decisions concerning the child. The term may refer to decisions on all issues or on specified issues, but not child support issues.
2. "Parental rights and responsibilities" means all rights and responsibilities a parent has concerning the parent's child.
3. "Parenting plan" means a written plan describing each parent's rights and responsibilities.
4. "Parenting schedule" means the schedule of when the child is in the care of each parent.
5. "Parenting time" means the time when the child is to be in the care of a parent.
6. "Primary residential responsibility" means a parent with more than fifty percent of the residential responsibility.
7. "Residential responsibility" means a parent's responsibility to provide a home for the child.

**Parental rights and responsibilities - Best interests and welfare of child.**

1. A court issuing an order that deals with parenting rights and responsibilities of a child entered under this chapter shall award the parental rights and responsibilities concerning the child to a person, agency, organization, or institution as will, in the opinion of the court, promote the best interests and welfare of the child. Between the mother and father, whether married or unmarried, there is no presumption as to whom will better promote the best interests and welfare of the child.

2. If the court finds that a parent has perpetrated domestic violence and that parent does not have residential responsibility, and there exists one incident of domestic violence which resulted in serious bodily injury or involved the use of a dangerous weapon or there exists a pattern of domestic violence within a reasonable time proximate to the proceeding, the court shall allow only supervised parenting time with that parent unless there is a showing by clear and convincing evidence that unsupervised parenting time would not endanger the child's physical or emotional health.

3. If any court finds that a parent has sexually abused the parent's child, the court shall prohibit contact between the abusive parent and the child until the court finds that the abusive parent has successfully completed a treatment program designed for such sexual abusers and that supervised parenting time is in the child's best interest. Contact between the abusive parent and the child may be allowed only in a therapeutic setting, facilitated by a therapist as part of a sexual abuse treatment program, and only when the therapist for the abusive parent and the therapist for the abused child agree that contact serves a therapeutic purpose and is in the best interests of the child.

4. In any proceeding dealing with parental rights and responsibilities in which a parent is found to have perpetrated domestic violence, and there exists one incident of domestic violence which resulted in serious bodily injury or involved the use of a dangerous weapon or there exists a pattern of domestic violence within a reasonable time proximate to the proceeding, all court costs, attorney's fees, evaluation fees, and expert witness fees must be paid by the perpetrator of the domestic violence unless those costs would place an undue financial hardship on that parent.

**Parenting plans - Contents.**

1. In any proceeding to establish or modify a judgment providing for parenting time with a child, the parents shall develop and file with the court a parenting plan to be included in the court's decree. If the parents are unable to agree on a parenting plan, the court shall issue a parenting plan considering the best interests of the child.

2. A parenting plan must include, at a minimum, provisions regarding the following or an explanation as to why a provision is not included:
   a. Decisionmaking responsibility relative to:
      (1) Routine or day-to-day decisions; and
      (2) Major decisions such as education, health care, and spiritual development;
   b. Information sharing and access, including telephone and electronic access;
   c. Legal residence of a child for school attendance;
   d. Residential responsibility, parenting time, and parenting schedule, including:
      (1) Holidays and days off from school, birthday, and vacation planning;
      (2) Weekends and weekdays; and
      (3) Summers;
   e. Transportation and exchange of the child, considering the safety of the parties;
   f. Procedure for review and adjustment of the plan; and
   g. Methods for resolving disputes.

**Decisionmaking responsibility.** Except as provided in subsection 3, in the making of any order relative to decisionmaking responsibility:

1. If the parents have reached an agreement as to decisionmaking responsibility, the court shall accept the agreement unless the court makes written findings that the agreement is not in the best interests of the child.
2. If the parents cannot agree on an allocation of decisionmaking responsibility, the court shall enter an order allocating decisionmaking responsibility in the best interests of the child.
3. An allocation of decisionmaking responsibility is not in the best interests of the child unless the order includes a method of resolving disputes when parents do not agree on an issue.
4. If the court finds that domestic violence as defined in section 14-07.1-01 has occurred, the court shall consider such domestic violence in determining whether joint decisionmaking responsibility is in the best interests of the child. In such cases, the court shall make orders for the allocation of parental rights and

responsibilities that best protect the child, the parent, or both. If joint decisionmaking responsibility is granted, even though there is evidence of domestic violence, the court shall provide written findings to support the order.

**Parental rights and responsibilities.**

1. Each parent of a child has the following rights and responsibilities:
   a. Right to access and obtain copies of the child's educational, medical, dental, religious, insurance, and other records or information.
   b. Right to attend educational conferences concerning the child. This right does not require any school to hold a separate conference with each parent.
   c. Right to reasonable access to the child by written, telephonic, and electronic means.
   d. Duty to inform the other parent as soon as reasonably possible of a serious accident or serious illness for which the child receives health care treatment. The parent shall provide to the other parent a description of the serious accident or serious illness, the time of the serious accident or serious illness, and the name and location of the treating health care provider.
   e. Duty to immediately inform the other parent of residential telephone numbers and address, and any changes to the same.
   f. Duty to keep the other parent informed of the name and address of the school the child attends.
2. The court shall include in an order establishing or modifying parental rights and responsibilities the rights and duties listed in this section; however, the court may restrict or exclude any right or duty listed in this section if the order states the reason in support of the restriction or exclusion. The court shall consider any domestic violence protection orders relating to the parties when determining whether to restrict or exclude any right or duty listed in this section.

**SECTION 5. AMENDMENT.** Section 14-09-06.2 of the North Dakota Century Code is amended and reenacted as follows:

**14-09-06.2. Best interests and welfare of child - Court consideration - Factors.**

1. For the purpose of ~~custody~~ parental rights and responsibilities, the best interests and welfare of the child is determined by the court's consideration and evaluation

of all factors affecting the best interests and welfare of the child. These factors include all of the following when applicable:

a. The love, affection, and other emotional ties existing between the parents and child and the ability of each parent to provide the child with nurture, love, affection, and guidance.

b. The ~~capacity and disposition of the parents to give the child love, affection, and guidance and to continue the education of the child~~ ability of each parent to assure that the child receives adequate food, clothing, shelter, medical care, and a safe environment.

c. The ~~disposition of the parents to provide the child with food, clothing, medical care, or other remedial care recognized and permitted under the laws of this state in lieu of medical care, and other material needs~~ child's developmental needs and the ability of each parent to meet those needs, both in the present and in the future.

d. The sufficiency and stability of each parent's home environment, the impact of extended family, the length of time the child has lived in ~~a stable satisfactory environment~~ each parent's home, and the desirability of maintaining continuity in the child's home and community.

e. The ~~permanence, as a family unit, of the existing or proposed custodial home~~ willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child.

f. The moral fitness of the parents, as that fitness impacts the child.

g. The mental and physical health of the parents, as that health impacts the child.

h. The home, school, and community record of the child and the potential effect of any change.

i. ~~The reasonable preference of the child, if the court deems the child to be of sufficient intelligence, understanding, and experience to express a preference.~~ If the court finds by clear and convincing evidence that a child is of sufficient maturity to make a sound judgment, the court may give substantial weight to the preference of the mature child. The court also shall

give due consideration to other factors that may have affected the child's preference, including whether the child's preference was based on undesirable or improper influences.

j. Evidence of domestic violence. In ~~awarding custody or granting rights of visitation~~ determining parental rights and responsibilities, the court shall consider evidence of domestic violence. If the court finds credible evidence that domestic violence has occurred, and there exists one incident of domestic violence which resulted in serious bodily injury or involved the use of a dangerous weapon or there exists a pattern of domestic violence within a reasonable time proximate to the proceeding, this combination creates a rebuttable presumption that a parent who has perpetrated domestic violence may not be awarded ~~sole or joint custody of a~~ residential responsibility for the child. This presumption may be overcome only by clear and convincing evidence that the best interests of the child require that ~~parent's participation as a custodial~~ parent have residential responsibility. The court shall cite specific findings of fact to show that the ~~custody or visitation arrangement~~ residential responsibility best protects the child and the parent or other family or household member who is the victim of domestic violence. If necessary to protect the welfare of the child, ~~custody~~ residential responsibility for a child may be awarded to a suitable third person, provided that the person would not allow access to a violent parent except as ordered by the court. If the court awards ~~custody~~ residential responsibility to a third person, the court shall give priority to the child's nearest suitable adult relative. The fact that the abused parent suffers from the effects of the abuse may not be grounds for denying that parent ~~custody~~ residential responsibility. As used in this subdivision, "domestic violence" means domestic violence as defined in section 14-07.1-01. A court may consider, but is not bound by, a finding of domestic violence in another proceeding under chapter 14-07.1.

k. The interaction and interrelationship, or the potential for interaction and interrelationship, of the child with any person who resides in, is present, or frequents the household of a parent and who may significantly affect the

child's best interests. The court shall consider that person's history of inflicting, or tendency to inflict, physical harm, bodily injury, assault, or the fear of physical harm, bodily injury, or assault, on other persons.

l. The making of false allegations not made in good faith, by one parent against the other, of harm to a child as defined in section 50-25.1-02.

m. Any other factors considered by the court to be relevant to a particular ~~child custody~~ parental rights and responsibilities dispute.

2. In any proceeding under this chapter, the court, at any stage of the proceedings after final judgment, may make orders about what security is to be given for the care, custody, and support of the unmarried minor children of the marriage as from the circumstances of the parties and the nature of the case is equitable.

**SECTION 6. AMENDMENT.** Section 14-09-06.3 of the North Dakota Century Code is amended and reenacted as follows:

**14-09-06.3. Custody investigations and reports - Costs.**

1. In contested ~~custody~~ proceedings dealing with parental rights and responsibilities the court ~~may~~, upon the request of either party, or, upon its own motion, may order an investigation and report concerning ~~custodial arrangements for~~ parenting rights and responsibilities regarding the child. The court shall designate a person or agency responsible for making the investigation and report, which designees may include the county social service board, public health officer, school officials, and any other public agency or private practitioner it deems qualified to make the investigation.

2. The investigator may consult any person who may have information about the child and any potential ~~custody~~ arrangements for parenting rights and responsibilities, and upon order of the court may refer the child to any professional personnel for diagnosis.

3. The court shall mail the investigator's report to counsel and to any party not represented by counsel at least thirty days before the hearing. The investigator shall make available to any such counsel or party the complete file of data and reports underlying the investigator's report and the names and addresses of all persons whom the investigator has consulted. A party may call the investigator

and any person whom the investigator has consulted for cross-examination at the hearing. A party may not waive the party's right of cross-examination before the hearing.

4. The court shall enter an order for the costs of any such investigation against either or both parties, except that if the parties are indigent the expenses must be borne by the county where the child resided at the time the action was commenced or if a modification of parental rights and responsibilities, at the time the motion to modify is served.

**SECTION 7. AMENDMENT.** Section 14-09-06.4 of the North Dakota Century Code is amended and reenacted as follows:

**14-09-06.4. Appointment of guardian ad litem or ~~child custody~~ investigator for ~~children~~ child in ~~custody, support, and visitation~~ proceedings involving parental rights and responsibilities - Immunity.** In any action for an annulment, divorce, legal separation, or other action affecting marriage, when either party has reason for special concern as to the future of the minor ~~children~~ child, and in any action when the ~~custody or visitation of children~~ parenting rights and responsibilities concerning the child is contested, either party to the action may petition the court for the appointment of a guardian ad litem to represent the ~~children~~ child concerning ~~custody, support, and visitation~~ parenting rights and responsibilities. The court~~, in its discretion,~~ may appoint a guardian ad litem or ~~child custody~~ investigator on its own motion. If appointed, a guardian ad litem shall serve as an advocate of the ~~children's~~ child's best interests. If appointed, the ~~child custody~~ investigator shall provide those services as prescribed by the supreme court. The court may direct either or both parties to pay the guardian ad litem or ~~child custody~~ investigator fee established by the court. If neither party is able to pay the fee, the court may direct the fee to be paid, in whole or in part, by the county ~~of venue~~ where the child resided at the time the action was commenced. The court may direct either or both parties to reimburse the county, in whole or in part, for such payment. Any guardian ad litem or ~~child custody~~ investigator appointed under this section who acts in good faith in making a report to the court is immune from any civil liability resulting from the report. For the purpose of determining good faith, the good faith of the guardian ad litem or ~~child custody~~ investigator is a disputable presumption.

**SECTION 8. AMENDMENT.** Section 14-09-06.6 of the North Dakota Century Code is amended and reenacted as follows:

**14-09-06.6. Limitations on postjudgment ~~custody~~ modifications of primary residential responsibility.**

1. Unless agreed to in writing by the parties, or if included in the parenting plan, no motion for an order to modify ~~a custody order~~ primary residential responsibility may be made earlier than two years after the date of entry of an order establishing ~~custody~~ primary residential responsibility, except in accordance with subsection 3.
2. Unless agreed to in writing by the parties, or if included in the parenting plan, if a motion for modification has been disposed of upon its merits, no subsequent motion may be filed within two years of disposition of the prior motion, except in accordance with subsection ~~3~~ 5.
3. The time limitation in subsections 1 and 2 does not apply if the court finds:
   a. The persistent and willful denial or interference with ~~visitation~~ parenting time;
   b. The child's present environment may endanger the child's physical or emotional health or impair the child's emotional development; or
   c. The primary ~~physical care of~~ residential responsibility for the child has changed to the other parent for longer than six months.
4. A party seeking modification of ~~a custody~~ an order concerning primary residential responsibility shall serve and file moving papers and supporting affidavits and shall give notice to the other party to the proceeding who may serve and file a response and opposing affidavits. The court shall consider the motion on briefs and without oral argument or evidentiary hearing and shall deny the motion unless the court finds the moving party has established a prima facie case justifying a modification. ~~If a prima facie case is established, the~~ The court shall set a date for an evidentiary hearing only if a prima facie case is established.
5. The court may not modify ~~a prior custody order~~ the primary residential responsibility within the two-year period following the date of entry of an order establishing ~~custody~~ primary residential responsibility unless the court finds the modification is necessary to serve the best interest of the child and:
   a. The persistent and willful denial or interference with ~~visitation~~ parenting time;

b. The child's present environment may endanger the child's physical or emotional health or impair the child's emotional development; or

c. The ~~primary physical care of~~ residential responsibility for the child has changed to the other parent for longer than six months.

6. The court may modify ~~a prior custody order~~ the primary residential responsibility after the two-year period following the date of entry of an order establishing ~~custody~~ primary residential responsibility if the court finds:

a. On the basis of facts that have arisen since the prior order or which were unknown to the court at the time of the prior order, a material change has occurred in the circumstances of the child or the parties; and

b. The modification is necessary to serve the best interest of the child.

7. The court may modify a prior ~~custody~~ order concerning primary residential responsibility at any time if the court finds a stipulated agreement by the parties to modify the ~~custody~~ order is in the best interest of the child.

8. Upon a motion to modify ~~custody~~ primary residential responsibility under this section, the burden of proof is on the moving party.

9. If a motion for change of ~~custody~~ primary parental responsibility is filed during the time a parent is in active duty service, the court may not enter an order modifying or amending a previous judgment or order, or issue a new order, which changes the child's placement that existed on the date the parent was called to active duty service, except the court may enter a temporary ~~custody~~ order ~~that~~ concerning residential responsibility which is in the best interest of the child. The temporary ~~custody~~ order must explicitly provide that ~~custody~~ residential responsibility must be restored to the service member upon the service member's release from active duty service, unless the court finds by clear and convincing evidence that restoration of ~~custody~~ residential responsibility would not be in the best interest of the child. If an original ~~custody~~ decision concerning primary residential responsibility is pending and the service member is alerted for active duty service, or is absent for active duty service, the court may not issue a permanent ~~custody~~ order until the return of the service member from active duty. The court may issue a temporary ~~custody~~ order concerning primary residential responsibility in the best

interest of the child for the time period of the active duty service. This section does not prevent a service member from consenting to a modification ~~of custody~~ that continues past discharge or release from active duty service or to agreeing to a permanent ~~custody~~ order before release from active duty service. For purposes of this section, "service member" means a member of the national guard or a reserve unit of the United States armed forces and "active duty service" means an order to active duty under United States Code title 10.

**SECTION 9. AMENDMENT.** Section 14-09-07 of the North Dakota Century Code is amended and reenacted as follows:

**14-09-07. Residence of child.**

1. A parent ~~entitled to the custody of~~ with primary residential responsibility for a child may not change the primary residence of the child to another state except upon order of the court or with the consent of the ~~noncustodial~~ other parent, if the ~~noncustodial~~ other parent has been given ~~visitation rights~~ parenting time by the decree.

2. A parent with equal residential responsibility for a child may not change the residence of the child to another state except with consent of the other parent or order of the court allowing the move and awarding that parent primary residential responsibility.

3. A court order is not required if the ~~noncustodial~~ other parent:

~~1.~~ a. Has not exercised ~~visitation rights~~ parenting time for a period of one year; or

~~2.~~ b. Has moved to another state and is more than fifty miles [80.47 kilometers] from the residence of the ~~custodial~~ parent with primary residential responsibility.

**SECTION 10.** A new section to chapter 14-09 of the North Dakota Century Code is created and enacted as follows:

**References to child custody and custodial parent.** Any law that refers to the "custody" of a child means the allocation of parental rights and responsibilities as provided in this chapter. Any law that refers to a "custodial parent" or "primary residential responsibility" means a parent with more than fifty percent of the residential responsibility and any reference

to a noncustodial parent means a parent with less than fifty percent of the residential responsibility.

**SECTION 11.** Chapter 14-09.2 of the North Dakota Century Code is created and enacted as follows:

**14-09.2-01. Parenting coordinator - Definition.** A parenting coordinator is a neutral individual authorized to use any dispute resolution process to resolve parenting time disputes. The purpose of a parenting coordinator is to resolve parenting time disputes by interpreting, clarifying, and addressing circumstances not specifically addressed by an existing court order. A parenting coordinator:

1. May assess for the parties whether there has been a violation of an existing court order and, if so, recommend further court proceedings.
2. May be appointed to resolve a one-time parenting time dispute or to provide ongoing parenting time dispute resolution services. Parenting time dispute also means a visitation dispute under existing orders.
3. Shall attempt to resolve a parenting time dispute by facilitating negotiations between the parties to promote settlement and, if it becomes apparent that the dispute cannot be resolved by an agreement of the parties, shall make a decision resolving the dispute.

**14-09.2-02. Appointment of parenting coordinator.** In any action for divorce, legal separation, paternity, or guardianship in which children are involved, the court, upon its own motion or by motion or agreement of the parties, may appoint a parenting coordinator to assist the parties in resolving issues or disputes related to parenting time. A party, at any time before the appointment of a parenting coordinator, may file a written objection to the appointment on the basis of domestic violence having been committed by another party against the objecting party or a child who is a subject of the action. After the objection is filed, a parenting coordinator may not be appointed unless, on the request of a party, a hearing is held and the court finds that a preponderance of the evidence does not support the objection. If a parenting coordinator is appointed, the court shall order appropriate measures be taken to ensure the physical and emotional safety of all parties and children.

**14-09.2-03. Qualifications.** The supreme court shall establish qualifications and maintain and make available to the public a roster of individuals eligible to serve as a parenting coordinator. The roster must include each individual's name, address, and telephone number.

**14-09.2-04. Agreement or decision binding.** Within five days of notice of the appointment, or within five days of notice of a subsequent parenting time dispute between the same parties, the parenting coordinator shall meet with the parties together or separately and shall make a diligent effort to facilitate an agreement to resolve the dispute. The parenting coordinator may confer with the parties through a telephone conference or other means. A parenting coordinator may make a decision without conferring with a party if the parenting coordinator makes a good-faith effort to confer with the party. If the parties do not reach an agreement, the parenting coordinator shall make a decision resolving the dispute as soon as possible but not later than five days after receiving all of the information necessary to make a decision and after the final meeting or conference with the parties. The parenting coordinator shall put the agreement or decision in writing and provide a copy to the parties. An agreement of the parties or a decision of the parenting coordinator is binding on the parties until further order of the court.

**14-09.2-05. Fees.** Before the appointment of the parenting coordinator, the court shall give the parties notice that the fees of the parenting coordinator will be apportioned between the parties. In its order appointing the parenting coordinator, the court shall apportion the fees of the parenting coordinator between the parties, with each party bearing the portion of the fees that the court determines is just and equitable under the circumstances. If a party files a pro se motion regarding a parenting time dispute and there is not a court order that provides for apportionment of the fees of a parenting coordinator, the court may require the party requesting the appointment of a parenting coordinator to pay the fees of the coordinator in advance. Neither party may be required to submit a dispute to a parenting coordinator if the party cannot afford to pay the fees of a parenting coordinator or an affordable coordinator is not available, unless the other party agrees to pay the fees. After the fees are incurred, a party may by motion request that the fees be reapportioned on equitable grounds. The court may consider the resources of the parties, the nature of the dispute, and whether a party acted in bad faith. Notwithstanding the provisions of section 14-09.2-06, the court may consider information from the parenting coordinator in determining bad faith.

**14-09.2-06. Confidentiality.** Statements made and documents produced as part of the parenting coordinator process which are not otherwise discoverable are not subject to discovery or other disclosure and are not admissible into evidence for any purpose at trial or in any other proceeding, including impeachment. Parenting coordinators and lawyers for the parties, to the extent of their participation in the parenting coordinator process, may not be subpoenaed or called as witnesses in court proceedings. Notes, records, and recollections of parenting coordinators are confidential and may not be disclosed unless:

1. The parties and the parenting coordinator agree in writing to the disclosure; or
2. Disclosure is required by law or other applicable professional codes. Notes and records of parenting coordinators may not be disclosed to the court unless after a hearing the court determines that the notes or records should be reviewed in camera. Unless the court determines that the notes and records contain information regarding acts that may be a violation of a state or federal criminal law, the notes and records may not be released.

**14-09.2-07. Immunity.** A parenting coordinator is immune from civil liability for damages for acts or omissions of ordinary negligence arising out of that individual's duties and responsibilities as a parenting coordinator.

**14-09.2-08. Modification or termination of appointment.** The court may terminate or modify the parenting coordinator appointment upon agreement of the parties, upon motion of either party, at the request of the parenting coordinator, or by the court on its own motion for good cause shown. Good cause includes:

1. Lack of reasonable progress over a significant period of time despite the best efforts of the parties and the parenting coordinator;
2. A determination that the parties no longer need the assistance of a parenting coordinator;
3. Impairment on the part of a party that significantly interferes with the party's participation in the process; or
4. The parenting coordinator is unwilling or unable to serve.

**SECTION 12. REPEAL.** Sections 14-09-04, 14-09-05, 14-09-06, 14-09-06.1, and 14-09-28 of the North Dakota Century Code are repealed.

**SECTION 13. EXPIRATION DATE.** Section 11 of this Act is effective through June 30, 2011, and after that date is ineffective.