

DOMESTIC RELATIONS AND PERSONS

CHAPTER 114

HOUSE BILL NO. 1325

(Representative Owens)
(Senator Myrdal)

AN ACT to amend and reenact section 14-05-24 of the North Dakota Century Code, relating to the valuation date of property in a divorce.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-05-24 of the North Dakota Century Code is amended and reenacted as follows:

14-05-24. Division of property and debts.

1. When a divorce is granted, the court shall make an equitable distribution of the property and debts of the parties. Except as may be required by federal law for specific property, and subject to the power of the court to determine a date that is just and equitable, the valuation date for marital property is the date mutually agreed upon between the parties. If the parties do not mutually agree upon a valuation date, the valuation date for marital property is the date of service of a summons in an action for divorce or separation or the date on which the parties last separated, whichever occurs first.
2. If one party to the divorce is covered by the civil service retirement system or other government pension system in lieu of social security and is not entitled to receive full social security benefits and the other party is a social security recipient, in making an equitable distribution award, the court shall compute what the present value of the social security benefits would have been to the party with the government pension during the covered period and subtract that amount from the value of the government pension in order to determine the government pension's marital portion.
3. The court may redistribute property and debts in a postjudgment proceeding if a party has failed to disclose property and debts as required by rules adopted by the supreme court or the party fails to comply with the terms of a court order distributing property and debts.

Approved March 22, 2017

Filed March 23, 2017

CHAPTER 115

HOUSE BILL NO. 1057

(Representatives Owens, K. Koppelman, Olson, Streyle, Klemin, Marschall)
(Senators Laffen, Hogue)

AN ACT to create and enact a new section to chapter 14-05 of the North Dakota Century Code, relating to the confidentiality of property and debt listing information of the parties to a divorce.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 14-05 of the North Dakota Century Code is created and enacted as follows:

Property and debt listing information confidential - Exception.

1. Except as provided in subsections 2 and 3, the property and debt listing of the parties to a divorce which is filed with the court or included in a judgment for divorce is a confidential record.
2. Upon providing written notice to all parties, any person may file a motion, supported by affidavit showing good cause, for access to the property and debt listing contained in a judgment for divorce.
3. The court shall allow access to the property and debt listing, or relevant portions of the information, if the court finds the public interest in granting access or the personal interest of the person seeking access outweighs the privacy interests of the parties or the parties' dependent children. In granting access the court may impose conditions necessary to balance the interests consistent with this subsection.

Approved March 29, 2017

Filed March 30, 2017

CHAPTER 116

HOUSE BILL NO. 1402

(Representatives Schneider, P. Anderson, Delmore, Dobervich, Guggisberg, Hogan,
Mitskog)
(Senators Nelson, Oban)

AN ACT to amend and reenact subsection 4 of section 14-07.1-02 of the North Dakota Century Code, relating to the surrender of firearms or other dangerous weapons pursuant to domestic violence protection orders.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁵⁷ **SECTION 1. AMENDMENT.** Subsection 4 of section 14-07.1-02 of the North Dakota Century Code is amended and reenacted as follows:

4. Upon a showing of actual or imminent domestic violence, the court may enter a protection order after due notice and full hearing. The relief provided by the court may include any or all of the following:
 - a. Restraining any party from threatening, molesting, injuring, harassing, or having contact with any other person.
 - b. Excluding either the respondent or any person with whom the respondent lives from the dwelling they share, from the residence of another person against whom the domestic violence is occurring, or from a domestic violence care facility, if this exclusion is necessary to the physical or mental well-being of the applicant or others.
 - c. Awarding temporary custody or establishing temporary visitation rights with regard to minor children.
 - d. Recommending or requiring that either or both parties undergo counseling with a domestic violence program or other agency that provides professional services that the court deems appropriate. The court may request a report from the designated agency within a time period established by the court. The costs of the court-ordered initial counseling assessment and subsequent reports must be borne by the parties or, if indigent, by the respondent's county of residence.
 - e. Requiring a party to pay such support as may be necessary for the support of a party and any minor children of the parties and reasonable attorney's fees and costs.
 - f. Awarding temporary use of personal property, including motor vehicles, to either party.
 - g. Requiring the respondent to surrender for safekeeping any firearm or other specified dangerous weapon, as defined in section 12.1-01-04, in the

⁵⁷ Section 14-07.1-02 was also amended by section 5 of Senate Bill No. 2309, chapter 107.

respondent's immediate possession or control or subject to the respondent's immediate control, if the court has probable cause to believe that the respondent is likely to use, display, or threaten to use the firearm or other dangerous weapon in any further acts of violence. If so ordered, the respondent shall surrender the firearm or other dangerous weapon to the sheriff, or the sheriff's designee, of the county in which the respondent resides or to the chief of police, or the chief's designee, of the city in which the respondent resides in the manner and at the time and place determined by that law enforcement officer. If the firearm or other dangerous weapon is not surrendered, the law enforcement officer may arrest the respondent pursuant to section 14-07.1-11 and take possession of the firearm or other dangerous weapon.

Approved March 30, 2017

Filed March 30, 2017

CHAPTER 117

SENATE BILL NO. 2161

(Senators Bekkedahl, Kannianen, Oehlke)
(Representatives Lefor, Sukut, Zubke)

AN ACT to amend and reenact section 14-07.1-18 of the North Dakota Century Code, relating to domestic violence program records.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-07.1-18 of the North Dakota Century Code is amended and reenacted as follows:

14-07.1-18. Domestic violence or sexual assault program records - Confidentiality - Exceptions - Penalty.

1. All agents, employees, and volunteers participating in a domestic violence or sexual assault program shall maintain the confidentiality of the:
 - a. Address, telephone number, and other identifying information of a shelter, safe home, and place of emergency safe housing;
 - b. Name, address, telephone number, personally identifying information, and case file or history of any client receiving services from a domestic violence or sexual assault program; and
 - c. Name, address, telephone number, and other identifying information of an agent, employee, or volunteer providing services under a domestic violence or sexual assault program.
2. The information described in subsection 1 is not subject to section 44-04-18 and may not be disclosed unless:
 - a. A client consents to the release of information that relates only to that client or the client's dependents;
 - b. The agent, employee, or volunteer operating a domestic violence or sexual assault program determines the disclosure of the information necessary for the efficient and safe operation of a domestic violence or sexual assault program; or for the protection of the safety of an employee, agent, volunteer, or client of a domestic violence or sexual assault program; or for the protection of a third party reasonably thought to be in need of protection;
 - c. A court of competent jurisdiction orders the disclosure after an in camera review and a written finding by the court that the information directly and specifically relates to a determination of child abuse and neglect under chapter 50-25.1 or termination of parental rights under sections 14-15-19, 27-20-44, 27-20-45, 27-20-46, 27-20-47, and 27-20-48; or

- d. An agent, employee, or volunteer working with a domestic violence or sexual assault program has knowledge or reasonable cause to suspect a child has been abused or neglected as defined by section 50-25.1-02.
3. The address, telephone number, and other identifying information of a shelter are exempt records as defined in section 44-04-17.1.
4. Any person who violates this section is guilty of an infraction.

Approved April 17, 2017

Filed April 17, 2017

CHAPTER 118

SENATE BILL NO. 2170

(Senators Hogue, D. Larson)
(Representatives Brabandt, Klemin)
(At the request of the Commission on Uniform State Laws)

AN ACT to create and enact a new chapter to title 14 of the North Dakota Century Code, relating to the Uniform Recognition and Enforcement of Canadian Protection Orders Act; to provide a penalty; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new chapter to title 14 of the North Dakota Century Code is created and enacted as follows:

Definitions.

1. "Canadian domestic violence protection order" means a judgment or part of a judgment or order issued in a civil proceeding by a court of Canada under the law of the issuing jurisdiction which relates to domestic violence and prohibits a respondent from:
 - a. Being in physical proximity to a protected individual or following a protected individual;
 - b. Directly or indirectly contacting or communicating with a protected individual or other individual described in the order;
 - c. Being within a certain distance of a specified place or location associated with a protected individual; or
 - d. Molesting, annoying, harassing, or engaging in threatening conduct directed at a protected individual.
2. "Domestic protection order" means an injunction or other order, issued by a tribunal under the domestic or family violence laws of the issuing court, to prevent an individual from engaging in violent or threatening acts against, harassment of, direct or indirect contact or communication with, or being in physical proximity to another individual.
3. "Issuing court" means the court that issues a Canadian domestic violence protection order.
4. "Protected individual" means an individual protected by a Canadian domestic violence protection order.
5. "Respondent" means the individual against whom a Canadian domestic violence protection order is issued.
6. "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession

subject to the jurisdiction of the United States. The term includes an Indian tribe or band that has jurisdiction to issue domestic violence protection orders.

7. "Tribunal" means a court, agency, or other entity authorized by law to issue or modify a domestic violence protection order.

Nonjudicial enforcement of order.

1. A law enforcement officer of this state, upon determining there is probable cause to believe a valid Canadian domestic violence protection order exists and that the order has been violated, shall enforce the Canadian domestic violence protection order as if it were the order of a tribunal of this state. Presentation of a record of a Canadian domestic violence protection order that identifies both a protected individual and a respondent and, on its face, is currently in effect, constitutes probable cause to believe that a valid order exists. For the purposes of this section, the protection order may be inscribed on a tangible medium or may have been stored in an electronic or other medium if it is retrievable in perceivable form. Presentation of a certified copy of a protection order is not required for enforcement.
2. If a record of a Canadian domestic violence protection order is not presented, the officer may consider other information in determining whether there is probable cause to believe a valid Canadian domestic violence protection order exists.
3. If a law enforcement officer of this state determines an otherwise valid Canadian domestic violence protection order cannot be enforced because the respondent has not been notified or served with the order, the officer shall inform the protected individual that the officer will make reasonable efforts to contact the respondent. After informing the respondent and serving the order, the officer shall allow the respondent a reasonable opportunity to comply with the order before enforcing the order.
4. If a law enforcement officer determines an individual is a protected individual, the officer shall inform the individual of available local victim services.
5. Registration or filing of an order in this state is not required for the enforcement of a valid foreign protection order under this chapter.

Judicial enforcement of order.

1. A tribunal may issue an order enforcing or refusing to enforce a Canadian domestic violence protection order on application of:
 - a. A person authorized by the law of this state other than this chapter to seek enforcement of a domestic protection order; or
 - b. A respondent.
2. A tribunal shall follow the procedures of this state for enforcement of a domestic protection order. An order entered under this section is limited to the enforcement of the terms of the Canadian domestic violence protection order as provided in this chapter.
3. A Canadian domestic violence protection order is valid if it:

- a. Identifies a protected individual and a respondent;
 - b. Is currently in effect;
 - c. Was issued by a tribunal that had jurisdiction over the parties and matter under the law of the issuing court; and
 - d. Was issued after the respondent was provided with reasonable notice and had an opportunity to be heard before the tribunal issued the order or, in the case of an order ex parte, the respondent was given notice and has had or will have an opportunity to be heard within a reasonable time after the issuing of the order, in a manner consistent with the rights of the respondent to due process.
4. An individual authorized under the law of this state to seek enforcement of a Canadian domestic violence protection order establishes a prima facie case for its validity by presenting an order valid on its face.
 5. Absence of any of the criteria for validity of a Canadian domestic violence protection order is an affirmative defense in an action seeking enforcement of the order.
 6. A tribunal of this state may enforce the provisions of a Canadian domestic violence protection order against a party to the order in which each party is a protected individual and respondent if:
 - a. The party seeking enforcement of the order filed a pleading requesting the order from the issuing court; and
 - b. The tribunal made specific findings that entitled the party to the enforcement sought.

Registration of order.

1. Any individual may register a Canadian domestic violence protection order in this state. To register the order, an individual shall present a certified copy of the order to any clerk of district court in this state.
2. Upon receipt of a Canadian domestic violence protection order, the clerk of the district court shall register the order in accordance with this section. After the order is registered, the clerk of district court shall furnish to the individual registering the order a certified copy of the registered order and transmit a copy of the order to the appropriate law enforcement agency.
3. A registered Canadian domestic violence protection order that is inaccurate or is not currently in effect must be corrected or removed from the registry in accordance with the law of this state.
4. An individual registering a Canadian domestic violence protection order shall file an affidavit by the protected individual that, to the best of the individual's knowledge, the order is currently in effect.
5. A registered Canadian domestic violence protection order may be entered in any existing state or federal registries of protection orders, in accordance with state or federal law.

6. A fee may not be charged for the registration of a Canadian domestic violence protection order or the correction or removal of a protection order.

Immunity.

This state or a local governmental agency, or a law enforcement officer, prosecuting attorney, clerk of district court, or any state or local governmental official acting in an official capacity, is immune from civil and criminal liability for an act or omission arising out of the registration or enforcement of a Canadian domestic violence protection order or the detention or arrest of an alleged violator of a Canadian domestic violence protection order if the act or omission is done in good faith in an effort to comply with this chapter.

Other remedies.

Pursuing remedies under this chapter does not preclude a protected individual from pursuing other legal or equitable remedies against the respondent.

Penalty.

Violation of a Canadian domestic violence protection order under this chapter is a class A misdemeanor. A second or subsequent violation of a Canadian domestic violence protection order is a class C felony.

SECTION 2. APPLICATION. Section 1 of this Act applies to any Canadian domestic violence protection order issued before, on, or after August 1, 2017, including any continuing action for enforcement of a Canadian domestic violence protection order commenced before August 1, 2017. A request for enforcement of a Canadian domestic violence protection order brought after July 31, 2017, for violations of a Canadian domestic violence protection order occurring before August 1, 2017, is governed by the provisions of section 1 of this Act.

Approved March 30, 2017

Filed March 31, 2017

CHAPTER 119

SENATE BILL NO. 2277

(Senator Wardner)
(Representative Lefor)

AN ACT to create and enact a new section to chapter 14-09 of the North Dakota Century Code, relating to child support obligations of incarcerated parents.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

Child support obligation of incarcerated parents.

1. A monthly support obligation established under any provision of this code and in effect after December 31, 2017, expires by operation of law upon incarceration of the obligor under a sentence of one hundred eighty days or longer, excluding credit for time served before sentencing.
2. Notwithstanding subsection 1, a monthly support obligation may be established for an obligor who is incarcerated under a sentence of one hundred eighty days or longer if the obligation is based on actual income of the obligor and the moving party makes a prima facie showing that the obligor's income exceeds the minimum amount provided in the guidelines established under section 14-09-09.7.
3. As used in this section, "incarceration" means placement of an obligor in a custodial setting in which the obligor is not permitted to earn wages from employment outside the correctional facility, and does not include probation or work release.
4. The expiration of a monthly support obligation under subsection 1 does not affect any past-due support that is owed before the expiration of the obligation.

Approved March 22, 2017

Filed March 22, 2017

CHAPTER 120

HOUSE BILL NO. 1206

(Representatives McWilliams, Rick C. Becker, Hogan, Johnston, Kasper, K.
Koppelman, Lefor, Olson, Pyle, Schneider, Weisz)
(Senator J. Lee)

AN ACT to amend and reenact subsection 13 of section 14-15-01 and sections 14-15.1-01 and 14-15.1-04 of the North Dakota Century Code, relating to the investigation and report by a child-placing agency and the definition of relative; and to provide for a legislative management study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 13 of section 14-15-01 of the North Dakota Century Code is amended and reenacted as follows:

13. "Relative" means any individual having the following relationship to the minor by marriage, blood, or adoption: brother, sister, stepbrother, stepsister, first cousin, uncle, aunt, or grandparent.

SECTION 2. AMENDMENT. Section 14-15.1-01 of the North Dakota Century Code is amended and reenacted as follows:

14-15.1-01. Definitions.

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

1. "Birth parent" means the woman who gave birth to a child, any man alleged by that woman to be the biological father of that child, or any man presumed by law or judicially determined to be the biological father of that child.
2. "Child-placing agency" means an agency licensed under chapter 50-12.
3. "Court" means the district court of this state.
4. "Department" means the department of human services.
5. "Identified adoptive parent" means the person or persons eligible under section 14-15-03 to adopt a child and who has been selected by a birth parent to adopt a specific child.
6. "Relative" means a brother, sister, stepbrother, stepsister, first cousin, uncle, aunt, or grandparent of the child by marriage, blood, or adoption.

SECTION 3. AMENDMENT. Section 14-15.1-04 of the North Dakota Century Code is amended and reenacted as follows:

14-15.1-04. Report of child-placing agency.

1. Before a hearing under this chapter, the report of a child-placing agency must be filed with the court. The child-placing agency shall serve a copy of the

report upon the birth parent, the identified adoptive parent, the guardian ad litem, and the department at least seven days before the hearing. The~~Except as provided in subsection 2, the report must include the following:~~

1. a. A recommendation as to whether the home of the identified adoptive parent is a suitable home for the placement of the child.
2. b. A preplacement adoption assessment indicating how the identified adoptive parent's emotional maturity, finances, health, relationships, criminal history record, and any other relevant factors may affect the identified adoptive parent's ability to accept, care for, and provide the child with an adequate environment in which to mature.
3. c. The medical and social history of the birth parent, including an assessment regarding the birth parent's understanding and acceptance of the action.
4. d. If the child has been born before the filing of the report, a medical and developmental history of the child.
2. If the identified adoptive parent is a relative of the child, the report of a child-placing agency must include:
 - a. An assessment and recommendation of the criminal history record of the identified adoptive parent and any adult living in the home of the adoptive parent.
 - b. Written credible character statements from three adult witnesses. Each statement must be acknowledged before a notary public and include:
 - (1) The relationship of the witness to the identified parent;
 - (2) The relationship, love, and other emotional ties existing between the child and the identified adoptive parent;
 - (3) The emotional maturity and moral character of the identified adoptive parent;
 - (4) The sufficiency and stability of the identified adoptive parent's home environment;
 - (5) The ability of the identified adoptive parent to provide food, clothing, shelter, and medical care for the child; and
 - (6) The mental and physical health of the identified adoptive parent, if known.
 - c. The medical and social history of the birth parent, including an assessment regarding the birth parent's understanding and acceptance of the action.

SECTION 4. LEGISLATIVE MANAGEMENT STUDY - ADOPTION. During the 2017-18 interim, the legislative management shall consider studying adoption by an identified or an unidentified adoptive parent. The study must include an evaluation and a comparison of the adoptive process and procedure, expenses, duration, and state tax credits and deductions associated with adoption by an identified or an unidentified adoptive parent. The legislative management shall report its findings and

recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly.

Approved April 4, 2017

Filed April 4, 2017

CHAPTER 121

SENATE BILL NO. 2248

(Senators Oban, Dever, Oehlke)
(Representatives Beadle, Nathe, Hanson)

AN ACT to create and enact a new subsection to section 14-15-19 of the North Dakota Century Code, relating to relinquishment and termination of parent and child relationship.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 14-15-19 of the North Dakota Century Code is created and enacted as follows:

- a. If the identity of the father or mother is known and an address for service is also known, or the address can be ascertained with reasonable diligence, the father or mother must be personally served the petition and notice for termination of parental rights in compliance with the North Dakota Rules of Civil Procedure.
- b. If the identity of the father or mother is unknown but the father's or mother's location is known, and the identity of the father or mother cannot be ascertained with reasonable diligence, notice must be given by publication of the petition at least once a week for three consecutive weeks in the official newspaper of the county in which the unknown father or mother is located.
- c. If the identity and location of the father or mother are unknown and the location and identity of the father or mother cannot be ascertained with reasonable diligence, notice must be given by publication of the petition at least once a week for three consecutive weeks in the official newspaper of the county in which conception occurred.
- d. The last publication as required under this subsection must be at least ten days before the time set for hearing. Proof of publication of the notice must be made at or before the hearing and filed in the proceeding.

Approved April 5, 2017

Filed April 5, 2017