

# DOMESTIC RELATIONS AND PERSONS

## CHAPTER 125

### HOUSE BILL NO. 1336

(Representatives Johnston, Becker, Ertelt, Hoverson, Kasper, Monson, Paulson, Skroch)

(Senators Kannianen, O. Larsen, Luick, Myrdal)

AN ACT to create and enact a new subdivision to subsection 1 of section 14-02.1-02.1 of the North Dakota Century Code, relating to printed information by state department of health; and to amend and reenact subsection 11 of section 14-02.1-02 of the North Dakota Century Code, relating to informed consent requirements before an abortion.

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

**SECTION 1. AMENDMENT.** Subsection 11 of section 14-02.1-02 of the North Dakota Century Code is amended and reenacted as follows:

11. "Informed consent" means voluntary consent to abortion by the woman upon whom the abortion is to be performed or induced provided that:
  - a. The woman is told the following by the physician who is to perform the abortion, by the referring physician, or by the physician's agent, at least twenty-four hours before the abortion:
    - (1) The name of the physician who will perform the abortion;
    - (2) The abortion will terminate the life of a whole, separate, unique, living human being;
    - (3) The particular medical risks associated with the particular abortion procedure to be employed including, when medically accurate, the risks of infection, hemorrhage, danger to subsequent pregnancies, and infertility;
    - (4) The probable gestational age of the unborn child at the time the abortion is to be performed; and
    - (5) The medical risks associated with carrying her child to term.
  - b. The woman is informed, by the physician or the physician's agent, at least twenty-four hours before the abortion:
    - (1) That medical assistance benefits may be available for prenatal care, childbirth, and neonatal care and that more detailed information on the availability of that assistance is contained in the printed materials given to her as described in section 14-02.1-02.1;

- (2) That the printed materials given to her and described in section 14-02.1-02.1 describe the unborn child and list agencies that offer alternatives to abortion;
- (3) That the father is liable to assist in the support of her child, even in instances in which the father has offered to pay for the abortion; ~~and~~
- (4) That she is free to withhold or withdraw her consent to the abortion at any time without affecting her right to future care or treatment and without the loss of any state or federally funded benefits to which she might otherwise be entitled; and
- (5) That it may be possible to reverse the effects of an abortion-inducing drug if she changes her mind, but time is of the essence, and information and assistance with reversing the effects of an abortion-inducing drug are available in the printed materials given to her as described in section 14-02.1-02.1.
- c. The woman certifies in writing, prior to the abortion, that the information described in subdivisions a and b has been furnished to her.
- d. Before the performance of the abortion, the physician who is to perform or induce the abortion or the physician's agent receives a copy of the written certification prescribed by subdivision c.
- e. The physician has not received or obtained payment for a service provided to a patient who has inquired about an abortion or has scheduled an abortion before the twenty-four-hour period required by this section.

<sup>48</sup> **SECTION 2.** A new subdivision to subsection 1 of section 14-02.1-02.1 of the North Dakota Century Code is created and enacted as follows:

Materials including information it may be possible to reverse the effects of an abortion-inducing drug but time is of the essence. The materials must include information directing the patient where to obtain further information and assistance in locating a medical professional who can aid in the reversal of abortion-inducing drugs, such as mifepristone and misoprostol.

Approved March 22, 2019

Filed March 22, 2019

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<sup>48</sup> Section 14-02.1-02.1 was also amended by section 3 of Senate Bill No. 2124, chapter 391.

## CHAPTER 126

### HOUSE BILL NO. 1546

(Representatives Simons, Becker, Ertelt, Magrum, Rohr, Toman)  
(Senators Kannianen, O. Larsen, Luick, Schaible, Wanzek)

AN ACT to create and enact a new section to chapter 14-02.1 of the North Dakota Century Code, relating to prohibition on human dismemberment abortion; to amend and reenact section 2 of chapter 132 of the 2007 Session Laws, relating to the implementation of the prohibition of the performance of abortions; to provide a penalty; and to provide an effective date.

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

**SECTION 1.** A new section to chapter 14-02.1 of the North Dakota Century Code is created and enacted as follows:

##### **Prohibition on human dismemberment abortion - Penalty.**

1. For purposes of this section, "human dismemberment abortion" means intentionally dismembering a living unborn child and extracting the unborn child one piece at a time from a uterus, with the purpose of causing the death of an unborn child, through use of clamps, grasping forceps, tongs, scissors, or similar instruments that, through the convergence of two rigid levers, slice, crush, or grasp the head, arm, leg, spinal cord, internal organ, or other portion of the unborn child's body to cut or rip it off, regardless if the fetal body parts are removed by the same instrument, suction, or other means.
2. Except in the case of a medical emergency, it is a class C felony for an individual to intentionally perform a human dismemberment abortion.
3. A woman upon whom a human dismemberment abortion is performed or attempted to be performed in violation of subsection 2 may not be prosecuted for a violation of subsection 2 or for conspiracy to violate subsection 2.

**SECTION 2. AMENDMENT.** Section 2 of chapter 132 of the 2007 Session laws is amended and reenacted as follows:

**SECTION 2. EFFECTIVE DATE.** This Act becomes effective on the date the legislative council approves by motion the recommendation of the attorney general to the legislative council that it is reasonably probable that this Act would be upheld as constitutional ~~thirtieth day after:~~

1. The adoption of an amendment to the United States Constitution which, in whole or in part, restores to the states the authority to prohibit abortion; or
2. The attorney general certifies to the legislative council the issuance of the judgment in any decision of the United States Supreme Court which, in whole or in part, restores to the states authority to prohibit abortion.

**SECTION 3. EFFECTIVE DATE.** Section 1 of this Act becomes effective on the thirtieth day after the adoption of an amendment to the United States Constitution which, in whole or in part, restores to the states the authority to prohibit abortion, or on the thirtieth day after the attorney general certifies to the legislative council:

1. The issuance of the judgment in any decision of the United States Supreme Court or the United States Court of Appeals for the Eighth Circuit which would allow enforcement of section 1 of this Act; or
2. The issuance of the judgment in any decision of the United States Supreme Court which, in whole or in part, restores to the states authority to prohibit abortion.

Approved April 10, 2019

Filed April 11, 2019

## CHAPTER 127

### SENATE BILL NO. 2115

(Human Services Committee)  
(At the request of the Department of Human Services)

AN ACT to amend and reenact section 14-08.1-04, subsection 2 of section 14-09-08.1, subsection 4 of section 14-09-08.4, section 14-09-09.32, subsection 8 of section 14-09-25, section 34-15-07, and subsection 6 of section 50-09-08.6 of the North Dakota Century Code, relating to child support; to repeal section 14-09-09.37 of the North Dakota Century Code, relating to child support; and to provide a continuing appropriation.

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

**SECTION 1. AMENDMENT.** Section 14-08.1-04 of the North Dakota Century Code is amended and reenacted as follows:

**14-08.1-04. Duty of state's attorneychild support agency - Sheriff's fees.**

~~Upon request of the county social service board director or the executive director of the department of human services, the state's attorney of any county furnishing public assistance or county general assistance~~The child support agency shall commence any appropriate action or proceeding under sections 14-08.1-02 and 14-08.1-03, in which case fees for filing and, Except for public assistance cases as determined by the child support agency, a sheriff may charge and collect service of process may not be charged or collected~~fees consistent with section 11-15-07.~~

**SECTION 2. AMENDMENT.** Subsection 2 of section 14-09-08.1 of the North Dakota Century Code is amended and reenacted as follows:

2. a. Each party subject to the order shall immediately inform the state disbursement unit of the party's:
  - (1) Social security number;
  - (2) Residential and mailing addresses and any change of address;
  - (3) Telephone number;
  - (4) Motor vehicle operator's license number;
  - (5) Employer's name, address, and telephone number;
  - (6) Electronic mail address; and
  - ~~(6)~~(7)Change of any other condition which may affect the proper administration of this chapter.
- b. Each order for payment of child support must notify each party of the requirements in subdivision a and require the party to provide the

information within ten days from the date of the order or ten days after any change in the information.

- c. In any subsequent child support enforcement or modification action between the parties, upon sufficient showing that diligent effort has been made to ascertain the location of a party, the court shall deem due process requirements for notice and service to have been met, with respect to the noticed party, by delivery of written notice to the most recent residential or employer address provided by the noticed party pursuant to this subsection.
- d. The requirements of this subsection continue in effect until all child support obligations have been satisfied with respect to each child subject to the order.

**SECTION 3. AMENDMENT.** Subsection 4 of section 14-09-08.4 of the North Dakota Century Code is amended and reenacted as follows:

4. If a child support ~~order~~obligation sought to be amended was entered at least one year before the filing of a motion or petition for amendment, the court shall order the amendment of the child support ~~order~~obligation to conform the amount of child support payment to that required under the child support guidelines, whether or not the motion or petition for amendment arises out of a periodic review of a child support ~~order~~obligation, and whether or not a material change of circumstances has taken place, unless the presumption that the correct amount of child support would result from the application of the child support guidelines is rebutted. If a motion or petition for amendment is filed within one year of the entry of the ~~order~~obligation sought to be amended, the party seeking amendment must also show a material change of circumstances.

**SECTION 4. AMENDMENT.** Section 14-09-09.32 of the North Dakota Century Code is amended and reenacted as follows:

**14-09-09.32. Agreements to waive child support.**

1. An agreement purporting to relieve an obligor of any current or future duty of child support is void and may not be enforced. An agreement purporting to waive past-due child support is void and may not be enforced unless the child support obligee and any assignee of the obligee have consented to the agreement in writing and the agreement has been approved by a court of competent jurisdiction. A copy of the order of approval must be provided to the state disbursement unit. As used in this section, "child support" does not include spousal support.
2. In a judgment for divorce or other relief under this title in any matter in which the child and both of the child's parents do not reside together, a court shall establish a child support obligation unless the child support agency requests the issue of child support be reserved. Notwithstanding subsection 1, the court may issue a stay of any further accruals under a child support order if the court finds the stay would be in the best interests of the child. Avoidance of income withholding or the requirement to make any child support payment through the state disbursement unit is not a proper basis to stay a child support obligation under this subsection. A child support obligation that is stayed under this subsection may be reinstated on a prospective basis as provided under the terms of the stay or at any time by order of the court or

upon affidavit of any party. The party filing the affidavit shall provide a copy of the affidavit to any other party to the action and to the state disbursement unit.

**SECTION 5. AMENDMENT.** Subsection 8 of section 14-09-25 of the North Dakota Century Code is amended and reenacted as follows:

8. The child support agency may suspend or waive judgment interest on an arrearage as part of an amnesty program, as an incentive for satisfying a child support obligation or complying with a payment plan, or if the child support agency determines that the judgment interest is not collectible through commercially reasonable efforts. This subsection applies to judgment interest accruing before July 1, 2005, only if the arrearage is assigned to the child support agency under section 50-09-06.1 or 50-24.1-02.1 or if the obligee provides written consent. Any judgment interest that is suspended or waived under this subsection may be reinstated by a court at any time or by the child support agency if the obligor has failed to comply with a payment plan.

**SECTION 6. AMENDMENT.** Section 34-15-07 of the North Dakota Century Code is amended and reenacted as follows:

**34-15-07. Disposition of civil money penalties - Continuing appropriation.**

A civil money penalty collected under this chapter must be paid into the state treasury for deposit in the general child support collection and disbursement fund and is appropriated to the department on a continuing basis for the purpose of covering losses the department incurs in making child support disbursements as provided under section 14-09-25.

**SECTION 7. AMENDMENT.** Subsection 6 of section 50-09-08.6 of the North Dakota Century Code is amended and reenacted as follows:

6. In a contest under this section, the court ~~must~~shall affirm the action of the state agency to withhold, restrict, or suspend a license unless ~~if~~the court finds that the licensee's delinquency or failure to comply with a subpoena, or an existing payment plan was not willful. Upon a showing by the state agency that the licensee has failed to comply with a subpoena, is listed on the arrears registry, or is not in compliance with an existing payment plan between the licensee and the state agency under this section, the licensee has the burden of proving that the delinquency or failure to comply was not willful~~state agency's decisions was arbitrary, unreasonable, or capricious.~~

**SECTION 8. REPEAL.** Section 14-09-09.37 of the North Dakota Century Code is repealed.

Approved April 8, 2019

Filed April 9, 2019

## CHAPTER 128

### SENATE BILL NO. 2267

(Senators Hogan, Dever, O. Larsen)  
(Representatives Hager, K. Koppelman, Pyle)

AN ACT to create and enact a new section to chapter 14-09 of the North Dakota Century Code, relating to information provided to a child support obligor to minimize delinquencies.

#### 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:

#### **Income withholding - Information provided to obligor.**

If a new or amended child support order is issued by a court in a case enforced by a child support agency, the child support agency shall inform the obligor of the possibility the income withholding date may not align with the child support order date and of any affirmative steps the obligor may take to avoid a delinquent payment as a result of this possible misalignment.

Approved March 20, 2019

Filed March 21, 2019

## CHAPTER 129

### SENATE BILL NO. 2225

(Senators Dever, Oban)  
(Representatives Keiser, Klemin, Kreidt, Longmuir)

AN ACT to amend and reenact section 14-09-10 of the North Dakota Century Code, relating to familial duty to support for health services; to repeal section 50-01-19 of the North Dakota Century Code, relating to familial duty to support for county welfare; to provide for application; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 14-09-10 of the North Dakota Century Code is amended and reenacted as follows:

#### **14-09-10. Reciprocal duty of support for health services - Support of poor.**

It is the duty of the father, the mother,

1. ~~Each parent and every adult child of any person~~ Each parent and every adult who is unable to support oneself, to shall maintain that person ~~adult to the extent of the ability of each. This liability may be enforced by any person furnishing necessities to the person. The promise of an adult child to pay for necessities furnished to the child's parent is binding.~~
2. Except as provided under subsection 3, a creditor may not recover under this duty of support unless the:
  - a. Recovery sought by a creditor is for the furnishing of necessary health services, which may include medical and long-term care services;
  - b. Recovery sought is from a parent or adult child who received a direct benefit from a disqualifying transfer of an asset under section 50-06.2-07 or 50-24.1-02;
  - c. Recovery being sought from this parent or adult child does not exceed the fair market value, including any gain, resulting from the disqualifying transfer; and
  - d. Disqualifying transfer occurred within five years of the receipt of the necessary health services or application for medical assistance.
3. A creditor may recover under this duty to support if the:
  - a. Recovery is sought by a creditor for the furnishing of necessary health services, which may include medical and long-term care services;
  - b. Recovery is sought from a parent or adult child who acted in bad faith by misappropriating, misusing, or diverting income or assets of the other adult to prevent or avoid payment for necessary health services;

- c. Recovery being sought from the parent or adult child does not exceed the fair market value, including any gain, resulting from the disqualifying transfer; and
- d. Bad faith action occurred within five years of the receipt of the necessary health services.

<sup>49</sup> **SECTION 2. REPEAL.** Section 50-01-19 of the North Dakota Century Code is repealed.

**SECTION 3. APPLICATION.** This Act applies to a collection action to enforce liability for furnishing necessities which becomes final on and after the effective date of this Act.

**SECTION 4. EMERGENCY.** This Act is declared to be an emergency measure.

Approved March 21, 2019

Filed March 22, 2019

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<sup>49</sup> Section 50-01-19 was amended by section 55 of Senate Bill No. 2124, chapter 391.

## CHAPTER 130

### HOUSE BILL NO. 1395

(Representatives Schauer, Adams, Buffalo, Hager, K. Koppelman, Mitskog, Pyle,  
Satrom)  
(Senator Hogan)

AN ACT to amend and reenact section 14-09-22 of the North Dakota Century Code, relating to requiring evaluations for individuals convicted of child abuse; and to provide a penalty.

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

<sup>50</sup> **SECTION 1. AMENDMENT.** Section 14-09-22 of the North Dakota Century Code is amended and reenacted as follows:

##### **14-09-22. Abuse of child - Penalty.**

1. Except as provided in subsection 2 or 3, a parent, adult family or household member, guardian, or other custodian of any child, who willfully inflicts or allows to be inflicted upon the child mental injury or bodily injury, substantial bodily injury, or serious bodily injury as defined by section 12.1-01-04 is guilty of a class C felony except if the victim of an offense under this section is under the age of six years in which case the offense is a class B felony.
2. A person who provides care, supervision, education, or guidance for a child unaccompanied by the child's parent, adult family or household member, guardian, or custodian in exchange for money, goods, or other services and who while providing such services commits an offense under this section is guilty of a class B felony. Any such person that commits, allows to be committed, or conspires to commit, against the child, a sex offense as defined in chapter 12.1-20 is subject to the penalties provided in that chapter.
3. A person that commits an offense under this section is guilty of a class B felony if the victim suffers permanent loss or impairment of the function of a bodily member or organ, except if the victim of the offense is under the age of six years in which case the offense is a class A felony.
4. For any person who pleads guilty or is convicted of an offense under this section, the court shall include in the sentence an order for the person to complete a parental capacity evaluation, mental health evaluation, and anger management assessment, and to complete treatment recommendations as ordered by the court as a condition of probation.

Approved April 18, 2019

Filed April 19, 2019

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<sup>50</sup> Section 14-09-22 was also amended by section 2 of House Bill No. 1396, chapter 104.

## CHAPTER 131

### SENATE BILL NO. 2051

(Human Services Committee)

(At the request of the Commission on Uniform State Laws)

AN ACT to create and enact chapter 14-09.4 of the North Dakota Century Code, relating to the Uniform Nonparent Custody and Visitation Act; to repeal section 14-09-05.1 of the North Dakota Century Code, relating to grandparental rights of visitation; and to provide for application.

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

**SECTION 1.** Chapter 14-09.4 of the North Dakota Century Code is created and enacted as follows:

##### **14-09.4-01. Definitions.**

As used in this chapter:

1. "Child" means an unemancipated individual who is under eighteen years of age.
2. "Compensation" means wages or other remuneration paid in exchange for care of a child. The term does not include reimbursement of expenses for care of the child, including payment for food, clothing, and medical expenses.
3. "Consistent caretaker" means a nonparent who meets the requirements of subsection 2 of section 14-09.4-03.
4. "Custody" means physical custody, legal custody, or both. The term includes joint custody or shared custody.
5. "Harm to a child" means significant adverse effect on a child's physical, emotional, or psychological well-being.
6. "Legal custody" means the right to make significant decisions regarding a child, including decisions regarding a child's education, health care, and scheduled activity.
7. "Nonparent" means an individual other than a parent of the child, including a grandparent, sibling, or stepparent of the child.
8. "Parent" means an individual recognized as a parent under law of this state other than this chapter.
9. "Person" means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.
10. "Physical custody" means living with a child and exercising day-to-day care of the child.

11. "Record" means information inscribed on a tangible medium, or stored in an electronic or other medium, and is retrievable in perceivable form.
12. "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 a federally recognized Indian tribe.
13. "Substantial relationship with the child" means a relationship between a nonparent and child which meets the requirements of subsection 3 of section 14-09.4-03.
14. "Visitation" means the right to spend time, which may include an overnight stay, with a child who is living with another person.

#### **14-09.4-02. Scope.**

1. Except as otherwise provided in subsection 2, this chapter applies to a proceeding in which a nonparent seeks custody or visitation.
2. This chapter does not apply to a proceeding:
  - a. Between nonparents, unless a parent is a party to the proceeding;
  - b. Pertaining to custody of or visitation with an Indian child as defined in the Indian Child Welfare Act of 1978 [25 U.S.C. 1903(4)], to the extent the proceeding is governed by the Indian Child Welfare Act of 1978 [25 U.S.C. 1901 through 196]; and
  - c. Pertaining to a child who is the subject of an ongoing proceeding in any state regarding:
    - (1) Guardianship of the person; or
    - (2) An allegation by a government entity that the child is abused, neglected, dependent, or otherwise in need of care.
3. A nonparent may not maintain a proceeding under this chapter for custody of or visitation with a child solely because the nonparent served as a foster parent of the child.
4. An individual whose parental rights concerning a child have been terminated may not maintain a proceeding under this chapter concerning the child.
5. Relief under this chapter is not available during the period of a custody or visitation order entered under chapter 14-09.3 or other order dealing with custody of or visitation with a child of a deployed parent. A custody or visitation order entered before a parent was deployed remains in effect unless modified by the court.

#### **14-09.4-03. Requirements for order of custody or visitation.**

1. A court may order custody or visitation to a nonparent if the nonparent proves:
  - a. The nonparent:

- (1) Is a consistent caretaker; or
  - (2) Has a substantial relationship with the child and denial of custody or visitation would result in harm to the child; and
- b. An order of custody or visitation to the nonparent is in the best interest of the child.
- 2. A nonparent is a consistent caretaker if the nonparent without expectation of compensation:
  - a. Lived with the child for not less than twelve months, unless the court finds good cause to accept a shorter period;
  - b. Regularly exercised care of the child;
  - c. Made day-to-day decisions regarding the child solely or in cooperation with an individual having physical custody of the child; and
  - d. Established a bonded and dependent relationship with the child with the express or implied consent of a parent of the child, or without the consent of a parent if no parent has been able or willing to perform parenting functions.
- 3. A nonparent has a substantial relationship with the child if:
  - a. The nonparent:
    - (1) Is an individual with a familial relationship with the child by blood or law; or
    - (2) Formed a relationship with the child without expectation of compensation; and
  - b. A significant emotional bond exists between the nonparent and the child.

#### **14-09.4-04. Presumption for parental decision.**

- 1. In an initial proceeding under this chapter, a decision by a parent regarding a request for custody or visitation by a nonparent is presumed to be in the best interest of the child.
- 2. Subject to section 14-09.4-14, a nonparent has the burden to rebut the presumption under subsection 1 by clear and convincing evidence of the facts required by subsection 1 of section 14-09.4-03. Proof of unfitness of a parent is not required to rebut the presumption under subsection 1.

#### **14-09.4-05. Commencement of proceeding - Jurisdiction.**

A nonparent may commence a proceeding by filing a petition under section 14-09.4-06 in the court having jurisdiction to determine custody or visitation under chapter 14-14.1.

**14-09.4-06. Verified petition.**

1. A nonparent shall verify a petition for custody or visitation under penalty of perjury and allege facts showing the nonparent:
  - a. Meets the requirements of a consistent caretaker of the child; or
  - b. Has a substantial relationship with the child and denial of custody or visitation would result in harm to the child.
2. A petition under subsection 1 must state the relief sought and allege specific facts showing:
  - a. The duration and nature of the relationship between the nonparent and the child, including the period the nonparent lived with the child and the care provided, if any;
  - b. The content of any agreement between the parties to the proceeding regarding care of the child and custody of or visitation or other contact with the child;
  - c. A description of any previous attempt by the nonparent to obtain custody of or visitation or other contact with the child;
  - d. The extent to which the parent is willing to permit the nonparent to have custody of or visitation or other contact with the child;
  - e. Information about compensation or expectation of compensation provided to the nonparent in exchange for care of the child;
  - f. Information required to establish the jurisdiction of the court under chapter 14-14.1;
  - g. The reason the requested custody or visitation is in the best interest of the child, applying the factors in section 14-09.4-11; and
  - h. If the nonparent alleges a substantial relationship with the child, the reason denial of custody or visitation to the nonparent would result in harm to the child.
3. If an agreement described in subdivision b of subsection 2 is in a record, the nonparent shall attach a copy of the agreement to the petition.

**14-09.4-07. Sufficiency of petition.**

1. The court shall determine based on the petition under section 14-09.4-06 whether the nonparent has pleaded a prima facie case that the nonparent:
  - a. Is a consistent caretaker; or
  - b. Has a substantial relationship with the child and denial of custody or visitation would result in harm to the child.
2. If the court determines under subsection 1 the nonparent has not pleaded a prima facie case, the court shall dismiss the petition.

**14-09.4-08. Notice.**

On commencement of a proceeding, the nonparent shall give notice to each:

1. Parent of the child who is the subject of the proceeding;
2. Person having custody of the child;
3. Individual having court-ordered visitation with the child; and
4. Attorney, guardian ad litem, or similar representative appointed for the child.

**14-09.4-09. Appointment - Interview of child - Court services - Limitation.**

In the manner and to the extent authorized by this title in a family law proceeding other than under this chapter, the court may:

1. Appoint an attorney, guardian ad litem, or similar representative for the child;
2. Interview the child;
3. Require the parties to participate in mediation or another form of alternative dispute resolution, but a party who has been the victim of domestic violence, sexual assault, stalking, or other crime against the individual by another party to the proceeding may not be required to participate.
4. Order an evaluation, investigation, or other assessment of the child's circumstances and the effect on the child of ordering or denying the requested custody or visitation or modifying a custody or visitation order; and
5. Allocate payment between the parties of a fee for a service ordered under this section. Public funds may not be used to provide services under this section.

**14-09.4-10. Emergency order.**

On finding that a party or a child who is the subject of a proceeding is in danger of imminent harm, the court may expedite the proceeding and issue an emergency order.

**14-09.4-11. Best interest of child.**

In determining whether an order of custody or visitation to a nonparent is in the best interest of a child, the court shall consider:

1. The nature and extent of the relationship between the child and the parent;
2. The nature and extent of the relationship between the child and the nonparent;
3. The views of the child, taking into account the age and maturity of the child;
4. Past or present conduct by a party, or individual living with a party, which poses a risk to the physical, emotional, or psychological well-being of the child;
5. The likely impact of the requested order on the relationship between the child and the parent;

6. The applicable factors in section 14-09-06.2; and
7. Any other factor affecting the best interest of the child.

**14-09.4-12. Presumption arising from child abuse, child neglect, domestic violence, sexual assault, or stalking.**

1. The court shall presume that ordering custody or visitation to a nonparent is not in the best interest of the child if the court finds that the nonparent, or an individual living with the nonparent, has committed child abuse, child neglect, domestic violence, sexual assault, stalking, or comparable conduct in violation of law of this state or another state.
2. A finding that the conduct specified in subsection 1 occurred must be based on:
  - a. Evidence of a conviction in a criminal proceeding or final judgment in a civil proceeding; or
  - b. Proof by a preponderance of the evidence.
3. A nonparent may rebut the presumption under subsection 1 by proving by clear and convincing evidence that ordering custody or visitation to the nonparent will not endanger the health, safety, or welfare of the child.

**14-09.4-13. Order of custody or visitation.**

1. If a nonparent seeks custody, the court may order:
  - a. Primary residential responsibility to the nonparent;
  - b. Joint custody to the nonparent and a parent or other party; or
  - c. Visitation to the nonparent.
2. If a nonparent seeks visitation only, the court may not order custody to the nonparent seeking visitation.

**14-09.4-14. Modification of custody or visitation.**

1. On motion, and subject to subsections 3 and 4, the court may modify a final custody or visitation order under section 14-09.4-13 on a showing by a preponderance of the evidence that:
  - a. A substantial and continuing change in circumstance has occurred relevant to the custody of or visitation with the child; and
  - b. Modification is in the best interest of the child.
2. Except as otherwise provided in subsections 3 and 4, if a nonparent has rebutted the presumption under section 14-09.4-04 in an initial proceeding, the presumption remains rebutted.
3. If a motion is filed to modify an order of visitation under this chapter to obtain an order of custody, the nonparent must rebut the presumption under section 14-09.4-04.

4. On agreement of the parties, the court may modify a custody or visitation order, unless the court finds the agreement is not in the best interest of the child.

**14-09.4-15. Findings of fact and conclusions of law.**

When issuing a final order of custody or visitation, the court shall make findings of fact and conclusions of law on the record in support of its decision or, if the petition is dismissed under section 14-09.4-07, state the reasons for the dismissal.

**14-09.4-16. Effect of adoption of child by stepparent or other relative.**

If a child is adopted by a stepparent or other relative of the child, an order of custody or visitation to a nonparent remains in effect and is not changed by the adoption unless modified, after notice to all parties to the custody or visitation proceeding, by the court that entered the order or the court that granted the adoption.

**14-09.4-17. Expense of facilitating visitation.**

The court may issue an order allocating responsibility between the parties for payment of the expense of facilitating visitation, including transportation expenses.

**14-09.4-18. Law governing child support.**

The authority of a court to award child support payable to or by a nonparent is governed by chapter 14-09.

**14-09.4-19. Equitable right or remedy.**

This chapter does not preclude the recognition of an equitable right or remedy for a psychological parent under law of this state other than this chapter.

**14-09.4-20. Relation to Electronic Signatures in Global and National Commerce Act.**

This chapter modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act [15 U.S.C. 7001 et seq.] but does not modify, limit, or supersede section 101(c) of that Act [15 U.S.C. 7001(c)], or authorize electronic delivery of any of the notices described in section 103(b) of that Act [15 U.S.C. 7003(b)].

**SECTION 2. REPEAL.** Section 14-09-05.1 of the North Dakota Century Code is repealed.

**SECTION 3. APPLICATION.** Section 1 of this Act applies to a proceeding commenced before the effective date of this Act in which a final order has not been entered and to a proceeding commenced on or after the effective date of this Act.

Approved March 21, 2019

Filed March 22, 2019

## CHAPTER 132

### HOUSE BILL NO. 1038

(Legislative Management)  
(Judiciary Committee)

AN ACT to amend and reenact section 14-15.1-05 of the North Dakota Century Code, relating to required reports of a child placing agency.

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

**SECTION 1. AMENDMENT.** Section 14-15.1-05 of the North Dakota Century Code is amended and reenacted as follows:

#### **14-15.1-05. Report of agreements and disbursements.**

Prior to a hearing under this chapter, a report of agreements and disbursements must be filed with the court and served upon the department. The report must include the following:

1. A statement of all agreements, whether oral or written, entered into between any of the parties to an action under this chapter, which relate in any way to the future conduct of any party with respect to the child. If oral agreements are reported, the substance of such agreements must be set forth in the report and a copy of the report must be served on all parties to the oral agreement. Copies of all written agreements must be attached to the report.
2. A full accounting in a manner acceptable to the court of all disbursements of anything of value made or agreed to be made by or on behalf of the identified adoptive parent in connection with proceedings under this chapter. The report must show any expenses incurred in connection with:
  - a. The birth of the child.
  - b. Placement of the child with the identified adoptive parent.
  - c. Medical or hospital care received by the birth parent or by the child prior to or after the child's birth.
  - d. Services relating to the petition for relinquishment or the placement of the child which were received by or on behalf of a birth parent, identified adoptive parent, or any other person.
3. ~~A statement of each person furnishing information contained in the report by which that person attests to the correctness and truthfulness of the information furnished.~~

Approved March 13, 2019

Filed March 14, 2019