

Sixty-eighth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1362

Introduced by

Representatives Christensen, Bosch, Heilman, Kasper, Koppelman, Lefor, Meier, M. Ruby

Senators Boehm, Larsen, Paulson, Wobbema

1 A BILL for an Act to create and enact a new section to chapter 14-09 of the North Dakota
2 Century Code, relating to recognizing a parent's interest in their child's upbringing.

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

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

6 **Parent's interest in child's upbringing.**

7 1. As used in this section:

8 a. "Parent" means parent or legal guardian not including a school or other institution
9 servicing in loco parentis; and

10 b. "Stakeholder" means a person that has a vested interest in the success of the
11 organization or system.

12 2. a. A parent possesses a fundamental liberty interest to raise the parent's child
13 without undue government interference in the care, custody, and management of
14 the parent's child and, at all times, retains a vital interest in preventing the
15 irretrievable destruction of family life.

16 b. It is in the best interest and welfare of a child to be raised under the care and
17 supervision of the child's parents.

18 c. A child's need for a permanent home and for positive, nurturing family
19 relationships usually is best met by the child's parents.

20 d. The integrity of the family unit and the right of a parent to conceive, raise,
21 manage, train, educate, and reasonably discipline the parent's child should be
22 constitutionally protected.

- 1 e. The fundamental liberty interest of a parent is recognized, protected, and does
2 not cease to exist because the parent's child is placed in the temporary custody
3 of the state.
- 4 f. A fundamentally fair process must be provided to a parent if the state moves to
5 challenge or interfere with parental rights.
- 6 (1) A government entity must support any actions or allegations made in
7 opposition to the rights and desires of a parent regarding the parent's child
8 by sufficient evidence to satisfy a parent's constitutional entitlement to
9 heightened protection against government interference with the parent's
10 fundamental rights and liberty interests and the right of the child to be
11 reared by the child's parent.
- 12 (2) Before adjudication of unfitness, government action in relation to a parent
13 and the parent's child may not exceed the least restrictive means of
14 alternatives available to accomplish a compelling state interest.
- 15 (3) Until the state proves parental unfitness, and the child suffers, or is
16 substantially likely to suffer, serious detriment as a result, the child and the
17 child's parent share a vital interest in preventing erroneous termination of
18 their relationship and the state may not presume a child and the child's
19 parent are adversaries.
- 20 3. If a parent's fundamental rights protected by this section are violated, a parent may
21 assert that violation as a claim or defense in a judicial proceeding and may obtain
22 appropriate relief against a governmental entity. The prevailing party in an action filed
23 under this section is entitled to reasonable attorney's fees and costs.
- 24 4. It is the public policy of the state that:
- 25 a. A parent retains the fundamental right and duty to exercise primary control over
26 the care, supervision, upbringing, and education of the parent's child;
- 27 b. A child has the right to protection from abuse and neglect; and
- 28 c. The state retains a compelling interest in investigating, prosecuting, and
29 punishing abuse and neglect.

- 1 5. The state's education systems are supportive and secondary to the primary role of a
- 2 parent. The legislative assembly is the primary stakeholder in the establishment,
- 3 maintenance, and success of the state's education systems.