

FIRST ENGROSSMENT

ENGROSSED HOUSE BILL NO. 1556

Introduced by

Representatives Stemen, Beltz, Hagert, O'Brien, Ostlie, Dockter, Nelson

Senators Lee, Roers, Davison

1 A BILL for an Act to amend and reenact subsection 5 of section 27-20.3-01, and sections
2 27-20.3-15 and 27-20.3-21 of the North Dakota Century Code, relating to a child in need of
3 protection and termination of parental rights; and to declare an emergency.

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

5 **SECTION 1. AMENDMENT.** Subsection 5 of section 27-20.3-01 of the North Dakota
6 Century Code is amended and reenacted as follows:

- 7 5. "Child in need of protection" means a child who:
- 8 a. Is without proper parental care or control, subsistence, education as required by
9 law, or other care or control necessary for the child's physical, mental, or
10 emotional health, or morals, and the need for services or protection is not due
11 primarily to the lack of financial means of the child's parents, guardian, or other
12 custodian;
 - 13 b. Has been placed for care or adoption in violation of law;
 - 14 c. Has been abandoned by the child's parents, guardian, or other custodian;
 - 15 d. Is without proper parental care, control, or education as required by law, or other
16 care and control necessary for the child's well-being because of the physical,
17 mental, emotional, or other illness or disability of the child's parent or parents,
18 and that such lack of care is not due to a willful act of commission or act of
19 omission by the child's parents, and care is requested by a parent;
 - 20 e. Is in need of treatment and whose parents, guardian, or other custodian have
21 refused to participate in treatment as ordered by the juvenile court;

- 1 f. Was subject to prenatal exposure to chronic or severe use of alcohol or any
2 controlled substance as defined in chapter 19-03.1 in a manner not lawfully
3 prescribed by a practitioner;
- 4 g. Is present in an environment subjecting the child to exposure to a controlled
5 substance, chemical substance, or drug paraphernalia as prohibited by section
6 19-03.1-22.2; ~~or~~
- 7 h. Is a victim of human trafficking as defined in title 12.1; or
- 8 i. Is in need of care and treatment and:
- 9 (1) Has been diagnosed with a severe mental health condition or behavioral
10 health disorder by a licensed child psychologist or psychiatrist;
- 11 (2) Has committed an act of a violent or sexual nature against another family
12 member living in the household, which if committed by an adult would be
13 considered a crime under the laws of this state; and
- 14 (3) Whose parent is unable to provide proper control of the child and is in fear
15 for the safety of a family member living in the same household as the child.

16 **SECTION 2. AMENDMENT.** Section 27-20.3-15 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **27-20.3-15. Disposition of a child in need of protection.**

- 19 1. If a child is found to be a child in need of protection, the court may make any of the
20 following orders of disposition best suited to the protection of the child or family and
21 the physical, mental, and moral welfare of the child:
- 22 a. Permit the child to reside with the child's parents, guardian, or other custodian,
23 subject to conditions and limitations as the court prescribes, including supervision
24 as directed by the court for the protection of the child.
- 25 b. Subject to conditions and limitations as the court prescribes, transfer temporary
26 legal custody to any of the following:
- 27 (1) An agency or other private organization licensed or otherwise authorized by
28 law to receive and provide care for the child.
- 29 (2) The director of the human service zone to receive and provide care for the
30 child.

- 1 c. Require the child or parents, guardian, or other custodian to participate in
2 treatment.
- 3 d. Appoint a fit and willing relative or other appropriate individual as the child's legal
4 guardian under section 27-20.1-11.
- 5 e. In cases in which a compelling reason has been shown that it would not be in the
6 child's best interests to return home, to have parental rights terminated, to be
7 placed for adoption, to be placed with a fit and willing relative, or to be placed
8 with a legal guardian, establish, by order, some other planned permanent living
9 arrangement.
- 10 2. Without a compelling reason to the contrary, a court order that transfers the child from
11 the current protective placement to a parent or other biological family must provide a
12 reasonable period of time to facilitate a beneficial transition for the child and other
13 parties involved.
- 14 3. A child in need of protection may not be placed in a residential facility that houses
15 delinquent children.

16 **SECTION 3. AMENDMENT.** Section 27-20.3-21 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **27-20.3-21. Petition for termination of parental rights.**

- 19 1. As used in this section:
 - 20 a. "A finding that the child has been subjected to child abuse or neglect" means:
 - 21 (1) A finding of a child in need of protection made under this chapter, except as
22 provided in subdivision i of subsection 5 of section 27-20.3-01; or
 - 23 (2) A conviction of a person, responsible for a child's welfare, for conduct
24 involving the child, under chapter 12.1-16 or sections 12.1-17-01 through
25 12.1-17-04 or 12.1-20-01 through 12.1-20-08.
 - 26 b. "Compelling reason" means a recorded statement that reflects consideration of:
 - 27 (1) The child's age;
 - 28 (2) The portion of the child's life spent living in the household of a parent of the
29 child;
 - 30 (3) The availability of an adoptive home suitable to the child's needs;
 - 31 (4) Whether the child has special needs; and

- 1 (5) The expressed wishes of a child age ten or older.
- 2 c. "Department" means the department of health and human services.
- 3 d. "Human service zone" means a county or consolidated group of counties
- 4 administering human services within a designated area in accordance with an
- 5 agreement or plan approved by the department.
- 6 2. A petition for termination of parental rights must be prepared, filed, and served upon
- 7 the parties by the state's attorney. A petition may also be prepared by any other
- 8 person that is not the court, including a law enforcement officer, who has knowledge of
- 9 the facts alleged or is informed and believes that they are true. A petition prepared by
- 10 any person other than a state's attorney may not be filed unless the director or the
- 11 court has determined the filing of the petition is in the best interest of the public and
- 12 the child.
- 13 3. Except as provided in subsection 4, a petition for termination of parental rights must be
- 14 filed:
- 15 a. If the child has been in foster care, in the custody of the department, human
- 16 service zone, or, in cases arising out of an adjudication by the court of a child in a
- 17 delinquency case, the division of juvenile services, for at least four hundred fifty
- 18 out of the previous six hundred sixty nights;
- 19 b. Within sixty days after the court has found the child to be an abandoned infant; or
- 20 c. Within sixty days after the court has convicted the child's parent of one of the
- 21 following crimes, or of an offense under the laws of another jurisdiction which
- 22 requires proof of substantially similar elements:
- 23 (1) A violation of section 12.1-16-01, 12.1-16-02, or 12.1-16-03, or subsection 1
- 24 of section 14-09-22 in which the victim is another child of the parent;
- 25 (2) Aiding, abetting, attempting, conspiring, or soliciting a violation of section
- 26 12.1-16-01, 12.1-16-02, or 12.1-16-03 in which the victim is a child of the
- 27 parent; or
- 28 (3) A violation of section 12.1-17-02 in which the victim is a child of the parent
- 29 and has suffered serious bodily injury.
- 30 4. A petition for termination of parental rights need not be filed if:
- 31 a. The child is being cared for by a relative approved by the human service zone;

- 1 b. The human service zone has documented in the case plan a compelling reason
2 for determining that filing such a petition would not be in the child's best interests
3 and has notified the court that the documentation is available for review by the
4 court; or
- 5 c. The human service zone has determined:
- 6 (1) Reasonable efforts to preserve and reunify the family are required under
7 section 27-20.3-26 to be made with respect to the child;
- 8 (2) The case plan provides such services are necessary for the safe return of
9 the child to the child's home; and
- 10 (3) Such services have not been provided consistent with time periods
11 described in the case plan.
- 12 5. For purposes of subsection 3, a child in foster care entered foster care on the earlier
13 of:
- 14 a. The date of the court's order if the court:
- 15 (1) Made a finding that the child has been subjected to child abuse or neglect or
16 the child is in need of protection under subdivision i of subsection 5 of
17 section 27-20.3-01;
- 18 (2) Determined that it is unsafe or contrary to the welfare of the child to remain
19 in the home; and
- 20 (3) Granted custody of the child to the human service zone or, in cases arising
21 out of an adjudication by the court that a child is in need of services, the
22 division of juvenile services; or
- 23 b. The date that is sixty days after:
- 24 (1) The date of a hearing under section 27-20.3-10 which results in maintaining
25 a child in shelter care;
- 26 (2) The date of an order in a dispositional hearing under which a child is placed
27 in foster care; or
- 28 (3) The date a child is placed in foster care voluntarily and with the consent of
29 the child's parent.
- 30 6. For purposes of subsection 3, a child leaves foster care at the time:
- 31 a. The court enters an order:

- 1 (1) Denying a petition to grant care, custody, and control of the child to the
- 2 human service zone or the division of juvenile services;
- 3 (2) Terminating an order that granted custody of the child to the human service
- 4 zone or the division of juvenile services; or
- 5 (3) Appointing a legal guardian under chapter 27-20.1;
- 6 b. The court order under which the child entered foster care ends by operation of
- 7 law;
- 8 c. The child is placed in a parental home by the court or a legal custodian other
- 9 than the division of juvenile services and the legal custodian lacks authority to
- 10 remove the child without further order of the court; or
- 11 d. The child is placed in a parental home by the division of juvenile services.
- 12 7. For purposes of subsection 3, a child is not in foster care on any night during which
- 13 the child is:
- 14 a. On a trial home visit;
- 15 b. Receiving services at the youth correctional center pursuant to an adjudication of
- 16 delinquency; or
- 17 c. Absent without leave from the place in which the child was receiving foster care.

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