

SENATE BILL NO. 2152

Introduced by

Judiciary Committee

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

1 A BILL for an Act to create and enact chapter 14-14.1 of the North Dakota Century Code,
2 relating to the Uniform Child Custody Jurisdiction and Enforcement Act; and to repeal chapter
3 14-14 of the North Dakota Century Code, relating to the Uniform Child Custody Jurisdiction Act.

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

5 **SECTION 1.** Chapter 14-14.1 of the North Dakota Century Code is created and
6 enacted as follows:

7 **14-14.1-01. (102) Definitions.** As used in the chapter:

- 8 1. "Abandoned" means left without provision for reasonable and necessary care or
9 supervision.
- 10 2. "Child custody determination" means a judgment, decree, or other order of a court
11 providing for the legal custody, physical custody, or visitation with respect to a
12 child. The term includes a permanent, temporary, initial, and modification order.
13 The term does not include an order relating to child support or other monetary
14 obligation of an individual.
- 15 3. "Child custody proceeding" means a proceeding in which legal custody, physical
16 custody, or visitation with respect to a child is an issue. The term includes a
17 proceeding for divorce, separation, neglect, abuse, dependency, guardianship,
18 paternity, termination of parental rights, and protection from domestic violence, in
19 which the issue may appear. The term does not include a proceeding involving
20 juvenile delinquency, contractual emancipation, or enforcement under sections
21 14-41.1-22 through 14-14.1-37.
- 22 4. "Commencement" means the filing of the first pleading in a proceeding.
- 23 5. "Court" means an entity authorized under the law of a state to establish, enforce, or
24 modify a child custody determination.

- 1 6. "Home state" means the state in which a child lived with a parent or a person
2 acting as a parent for at least six consecutive months immediately before the
3 commencement of a child custody proceeding. In the case of a child less than six
4 months of age, the term means the state in which the child lived from birth with any
5 of the persons mentioned. A period of temporary absence of any of the mentioned
6 persons is part of the period.
- 7 7. "Initial determination" means the first child custody determination concerning a
8 particular child.
- 9 8. "Issuing court" means the court that makes a child custody determination for which
10 enforcement is sought under this chapter.
- 11 9. "Issuing state" means the state in which a child custody determination is made.
- 12 10. "Modification" means a child custody determination that changes, replaces,
13 supersedes, or is otherwise made after a previous determination concerning the
14 same child, whether or not it is made by the court that made the previous
15 determination.
- 16 11. "Person acting as a parent" means a person, other than a parent, who:
17 a. Has physical custody of the child or has had physical custody for a period of
18 six consecutive months, including any temporary absence, within one year
19 immediately before the commencement of a child custody proceeding; and
20 b. Has been awarded legal custody by a court or claims a right to legal custody
21 under the law of this state.
- 22 12. "Petitioner" means a person who seeks enforcement of an order for return of a
23 child under the Hague convention on the civil aspects of international child
24 abduction or enforcement of a child custody determination.
- 25 13. "Physical custody" means the physical care and supervision of a child.
- 26 14. "Respondent" means a person against whom a proceeding has been commenced
27 for enforcement of an order for return of a child under the Hague convention on the
28 civil aspects of international child abduction or enforcement of a child custody
29 determination.

1 15. "State" means a state of the United States, the District of Columbia, Puerto Rico,
2 the United States Virgin Islands, or any territory or insular possession subject to
3 the jurisdiction of the United States.

4 16. "Tribe" means an Indian tribe or band, or Alaskan native village, which is
5 recognized by federal law or formally acknowledged by a state.

6 17. "Warrant" means an order issued by a court authorizing law enforcement officers to
7 take physical custody of a child.

8 **14-14.1-02. (103) Proceedings governed by other law.** This chapter does not govern
9 an adoption proceeding or a proceeding pertaining to the authorization of emergency medical
10 care for a child.

11 **14-14.1-03. (104) Application to Indian tribes.**

12 1. A child custody proceeding that pertains to an Indian child as defined in the Indian
13 Child Welfare Act [25 U.S.C. 1901 et seq.] is not subject to this chapter to the
14 extent that it is governed by the Indian Child Welfare Act.

15 2. A court of this state shall treat a tribe as if it were a state for the purpose of
16 applying sections 14-14.1-01 through 14-14.1-21.

17 3. A child custody determination made by a tribe under factual circumstances in
18 substantial conformity with the jurisdictional standards of this chapter must be
19 recognized and enforced under sections 14-14.1-22 through 14-14.1-37.

20 **14-14.1-04. (105) International application.**

21 1. A court of this state shall treat a foreign country as if it were a state for the purpose
22 of applying sections 14-14.1-01 through 14-14.1-21.

23 2. Except as otherwise provided in subsection 3, a child custody determination made
24 in a foreign country under factual circumstances in substantial conformity with the
25 jurisdictional standards of this chapter must be recognized and enforced under
26 sections 14-14.1-22 through 14-14.1-37.

27 3. A court of this state need not apply this chapter if the child custody law of a foreign
28 country violates fundamental principles of human rights.

29 **14-14.1-05. (106) Effect of child custody determination.** A child custody
30 determination made by a court of this state that had jurisdiction under this chapter binds all
31 persons who have been served in accordance with the laws of this state or notified in

1 accordance with section 14-14.1-07 or who have submitted to the jurisdiction of the court and
2 who have been given an opportunity to be heard. As to those persons, the determination is
3 conclusive as to all decided issues of law and fact except to the extent the determination is
4 modified.

5 **14-14.1-06. (107) Priority.** If a question of existence or exercise of jurisdiction under
6 this chapter is raised in a child custody proceeding, the question, upon request of a party, must
7 be given priority on the calendar and handled expeditiously.

8 **14-14.1-07. (108) Notice to persons outside state.**

- 9 1. Notice required for the exercise of jurisdiction when a person is outside this state
10 may be given in a manner prescribed by the law of this state for service of process
11 or by the law of the state in which the service is made. Notice must be given in a
12 manner reasonably calculated to give actual notice but may be by publication if
13 other means are not effective.
- 14 2. Proof of service may be made in the manner prescribed by the law of this state or
15 by the law of the state in which the service is made.
- 16 3. Notice is not required for the exercise of jurisdiction with respect to a person who
17 submits to the jurisdiction of the court.

18 **14-14.1-08. (109) Appearance and limited immunity.**

- 19 1. A party to a child custody proceeding, including a modification proceeding, or a
20 petitioner or respondent in a proceeding to enforce or register a child custody
21 determination is not subject to personal jurisdiction in this state for another
22 proceeding or purpose solely by reason of having participated, or of having been
23 physically present for the purpose of participating, in the proceeding.
- 24 2. A person who is subject to personal jurisdiction in this state on a basis other than
25 physical presence is not immune from service of process in this state. A party
26 present in this state who is subject to the jurisdiction of another state is not immune
27 from service of process allowable under the laws of that state.
- 28 3. The immunity granted by subsection 1 does not extend to civil litigation based on
29 acts unrelated to the participation in a proceeding under this chapter committed by
30 an individual while present in this state.

31 **14-14.1-09. (110) Communication between courts.**

- 1 1. A court of this state may communicate with a court in another state concerning a
2 proceeding arising under this chapter.
- 3 2. The court may allow the parties to participate in the communication. If the parties
4 are not able to participate in the communication, they must be given the
5 opportunity to present facts and legal arguments before a decision on jurisdiction is
6 made.
- 7 3. Communication between courts on schedules, calendars, court records, and
8 similar matters may occur without informing the parties. A record need not be
9 made of the communication.
- 10 4. Except as otherwise provided in subsection 3, a record must be made of a
11 communication under this section. The parties must be informed promptly of the
12 communication and granted access to the record.
- 13 5. For the purposes of this section, "record" means information that is inscribed on a
14 tangible medium or that is stored in an electronic or other medium and is
15 retrievable in perceivable form.

16 **14-14.1-10. (111) Taking testimony in another state.**

- 17 1. In addition to other procedures available to a party, a party to a child custody
18 proceeding may offer testimony of witnesses who are located in another state,
19 including testimony of the parties and the child, by deposition or other means
20 allowable in this state for testimony taken in another state. The court on its own
21 motion may order that the testimony of a person be taken in another state and may
22 prescribe the manner in which and the terms upon which the testimony is taken.
- 23 2. A court of this state may permit an individual residing in another state to be
24 deposed or to testify by telephone, audiovisual means, or other electronic means
25 before a designated court or at another location in that state. A court of this state
26 shall cooperate with courts of other states in designating an appropriate location for
27 the deposition or testimony.
- 28 3. Documentary evidence transmitted from another state to a court of this state by
29 technological means that do not produce an original writing may not be excluded
30 from evidence on an objection based on the means of transmission.

31 **14-14.1-11. (112) Cooperation between courts - Preservation of records.**

- 1 1. A court of this state may request the appropriate court of another state to:
 - 2 a. Hold an evidentiary hearing;
 - 3 b. Order a person to produce or give evidence pursuant to procedures of that
4 state;
 - 5 c. Order that an evaluation be made with respect to the custody of a child
6 involved in a pending proceeding;
 - 7 d. Forward to the court of this state a certified copy of the transcript of the record
8 of the hearing, the evidence otherwise presented, and any evaluation
9 prepared in compliance with the request; and
 - 10 e. Order a party to a child custody proceeding or any person having physical
11 custody of the child to appear in the proceeding with or without the child.
- 12 2. Upon request of a court of another state, a court of this state may hold a hearing or
13 enter an order described in subsection 1.
- 14 3. Travel and other necessary and reasonable expenses incurred under
15 subsections 1 and 2 may be assessed against the parties according to the law of
16 this state.
- 17 4. A court of this state shall preserve the pleadings, orders, decrees, records of
18 hearings, evaluations, and other pertinent records with respect to a child custody
19 proceeding until the child attains eighteen years of age. Upon appropriate request
20 by a court or law enforcement official of another state, the court shall forward a
21 certified copy of those records.

22 **14-14.1-12. (201) Initial child custody jurisdiction.**

- 23 1. Except as otherwise provided in section 14-14.1-15, a court of this state has
24 jurisdiction to make an initial child custody determination only if:
 - 25 a. This state is the home state of the child on the date of the commencement of
26 the proceeding, or was the home state of the child within six months before
27 the commencement of the proceeding, and the child is absent from this state
28 but a parent or person acting as a parent continues to live in this state;
 - 29 b. A court of another state does not have jurisdiction under subdivision a, or a
30 court of the home state of the child has declined to exercise jurisdiction on the

1 ground that this state is the more appropriate forum under section 14-14.1-18
2 or 14-14.1-19, and:

3 (1) The child and the child's parents, or the child and at least one parent or
4 a person acting as a parent, have a significant connection with this
5 state other than mere physical presence; and

6 (2) Substantial evidence is available in this state concerning the child's
7 care, protection, training, and personal relationships;

8 c. All courts having jurisdiction under subdivision a or b have declined to
9 exercise jurisdiction on the ground that a court of this state is the more
10 appropriate forum to determine the custody of the child under section
11 14-14.1-18 or 14-14.1-19; or

12 d. No court of any other state would have jurisdiction under the criteria specified
13 in subdivision a, b, or c.

14 2. Subsection 1 is the exclusive jurisdictional basis for making a child custody
15 determination by a court of this state.

16 3. Physical presence of, or personal jurisdiction over, a party or a child is not
17 necessary or sufficient to make a child custody determination.

18 **14-14.1-13. (202) Exclusive, continuing jurisdiction.**

19 1. Except as otherwise provided in section 14-14.1-15, a court of this state which has
20 made a child custody determination consistent with section 14-14.1-12 or
21 14-14.1-14 has exclusive, continuing jurisdiction over the determination until:

22 a. A court of this state determines that neither the child, nor the child and one
23 parent, nor the child and a person acting as a parent have a significant
24 connection with this state and that substantial evidence is no longer available
25 in this state concerning the child's care, protection, training, and personal
26 relationships; or

27 b. A court of this state or a court of another state determines that the child, the
28 child's parents, and any person acting as a parent do not presently reside in
29 this state.

30 2. A court of this state which has made a child custody determination and does not
31 have exclusive, continuing jurisdiction under this section may modify that

1 determination only if it has jurisdiction to make an initial determination under
2 section 14-14.1-12.

3 **14-14.1-14. (203) Jurisdiction to modify determination.** Except as otherwise
4 provided in section 14-14.1-15, a court of this state may not modify a child custody
5 determination made by a court of another state unless a court of this state has jurisdiction to
6 make an initial determination under subdivision a or b of subsection 1 of section 14-14.1-12
7 and:

- 8 1. The court of the other state determines it no longer has exclusive, continuing
9 jurisdiction under section 14-14.1-13 or that a court of this state would be a more
10 convenient forum under section 14-14.1-18; or
- 11 2. A court of this state or a court of the other state determines that the child, the
12 child's parents, and any person acting as a parent do not presently reside in the
13 other state.

14 **14-14.1-15. (204) Temporary emergency jurisdiction.**

- 15 1. A court of this state has temporary emergency jurisdiction if the child is present in
16 this state and the child has been abandoned or it is necessary in an emergency to
17 protect the child because the child, or a sibling or parent of the child, is subjected
18 to or threatened with mistreatment or abuse.
- 19 2. If there is no previous child custody determination that is entitled to be enforced
20 under this chapter and a child custody proceeding has not been commenced in a
21 court of a state having jurisdiction under sections 14-14.1-12 through 14-14.1-14, a
22 child custody determination made under this section remains in effect until an order
23 is obtained from a court of a state having jurisdiction under sections 14-14.1-12
24 through 14-14.1-14. If a child custody proceeding has not been or is not
25 commenced in a court of a state having jurisdiction under sections 14-14.1-12
26 through 14-14.1-14, a child custody determination made under this section
27 becomes a final determination, if it so provides and this state becomes the home
28 state of the child.
- 29 3. If there is a previous child custody determination that is entitled to be enforced
30 under this chapter, or a child custody proceeding has been commenced in a court
31 of a state having jurisdiction under sections 14-14.1-12 through 14-14.1-14, any

1 order issued by a court of this state under this section must specify in the order a
2 period that the court considers adequate to allow the person seeking an order to
3 obtain an order from the state having jurisdiction under sections 14-14.1-12
4 through 14-14.1-14. The order issued in this state remains in effect until an order
5 is obtained from the other state within the period specified or the period expires.

6 4. A court of this state which has been asked to make a child custody determination
7 under this section, upon being informed that a child custody proceeding has been
8 commenced in, or a child custody determination has been made by, a court of a
9 state having jurisdiction under sections 14-14.1-12 through 14-14.1-14, shall
10 immediately communicate with the other court. A court of this state which is
11 exercising jurisdiction pursuant to sections 14-14.1-12 through 14-14.1-14, upon
12 being informed that a child custody proceeding has been commenced in, or a child
13 custody determination has been made by, a court of another state under a statute
14 similar to this section shall immediately communicate with the court of that state to
15 resolve the emergency, protect the safety of the parties and the child, and
16 determine a period for the duration of the temporary order.

17 **14-14.1-16. (205) Notice - Opportunity to be heard - Joinder.**

- 18 1. Before a child custody determination is made under this chapter, notice and an
19 opportunity to be heard in accordance with section 14-14.1-07 must be given to all
20 persons entitled to notice under the law of this state as in child custody
21 proceedings between residents of this state, any parent whose parental rights have
22 not been previously terminated, and any person having physical custody of the
23 child.
- 24 2. This chapter does not govern the enforceability of a child custody determination
25 made without notice or an opportunity to be heard.
- 26 3. The obligation to join a party and the right to intervene as a party in a child custody
27 proceeding under this chapter are governed by the laws of this state as in child
28 custody proceedings between residents of this state.

29 **14-14.1-17. (206) Simultaneous proceedings.**

- 30 1. Except as otherwise provided in section 14-14.1-15, a court of this state may not
31 exercise its jurisdiction under sections 14-14.1-12 through 14-14.1-21 if, at the time

1 of the commencement of the proceeding, a proceeding concerning the custody of
2 the child has been commenced in a court of another state having jurisdiction
3 substantially in conformity with this chapter, unless the proceeding has been
4 terminated or is stayed by the court of the other state because a court of this state
5 is a more convenient forum under section 14-14.1-18.

6 2. Except as otherwise provided in section 14-14.1-15, a court of this state, before
7 hearing a child custody proceeding, shall examine the court documents and other
8 information supplied by the parties under section 14-14.1-20. If the court
9 determines that a child custody proceeding has been commenced in a court in
10 another state having jurisdiction substantially in accordance with this chapter, the
11 court of this state shall stay its proceeding and communicate with the court of the
12 other state. If the court of the state having jurisdiction substantially in accordance
13 with this chapter does not determine that the court of this state is a more
14 appropriate forum, the court of this state shall dismiss the proceeding.

15 3. In a proceeding to modify a child custody determination, a court of this state shall
16 determine whether a proceeding to enforce the determination has been
17 commenced in another state. If a proceeding to enforce a child custody
18 determination has been commenced in another state, the court may:
19 a. Stay the proceeding for modification pending the entry of an order of a court
20 of the other state enforcing, staying, denying, or dismissing the proceeding for
21 enforcement;
22 b. Enjoin the parties from continuing with the proceeding for enforcement; or
23 c. Proceed with the modification under conditions it considers appropriate.

24 **14-14.1-18. (207) Inconvenient forum.**

25 1. A court of this state which has jurisdiction under this chapter to make a child
26 custody determination may decline to exercise its jurisdiction at any time if it
27 determines that it is an inconvenient forum under the circumstances and that a
28 court of another state is a more appropriate forum. The issue of inconvenient
29 forum may be raised upon motion of a party, the court's own motion, or request of
30 another court.

- 1 2. Before determining whether it is an inconvenient forum, a court of this state shall
2 consider whether it is appropriate for a court of another state to exercise
3 jurisdiction. For this purpose, the court shall allow the parties to submit information
4 and shall consider all relevant factors, including:
- 5 a. Whether domestic violence has occurred and is likely to continue in the future
6 and which state could best protect the parties and the child;
- 7 b. The length of time the child has resided outside this state;
- 8 c. The distance between the court in this state and the court in the state that
9 would assume jurisdiction;
- 10 d. The relative financial circumstances of the parties;
- 11 e. Any agreement of the parties as to which state should assume jurisdiction;
- 12 f. The nature and location of the evidence required to resolve the pending
13 litigation, including testimony of the child;
- 14 g. The ability of the court of each state to decide the issue expeditiously and the
15 procedures necessary to present the evidence; and
- 16 h. The familiarity of the court of each state with the facts and issues in the
17 pending litigation.
- 18 3. If a court of this state determines that it is an inconvenient forum and that a court of
19 another state is a more appropriate forum, it shall stay the proceedings upon
20 condition that a child custody proceeding be promptly commenced in another
21 designated state and may impose any other condition the court considers just and
22 proper.
- 23 4. A court of this state may decline to exercise its jurisdiction under this chapter if a
24 child custody determination is incidental to an action for divorce or another
25 proceeding while still retaining jurisdiction over the divorce or other proceeding.
- 26 **14-14.1-19. (208) Jurisdiction declined by reason of conduct.**
- 27 1. Except as otherwise provided in section 14-14.1-15, if a court of this state has
28 jurisdiction under this chapter because a person seeking to invoke its jurisdiction
29 has engaged in unjustifiable conduct, the court shall decline to exercise its
30 jurisdiction unless:

- 1 a. The parents and all persons acting as parents have acquiesced in the
- 2 exercise of jurisdiction;
- 3 b. A court of the state otherwise having jurisdiction under sections 14-14.1-12
- 4 through 14-14.1-14 determines that this state is a more appropriate forum
- 5 under section 14-14.1-18; or
- 6 c. No court of any other state would have jurisdiction under the criteria specified
- 7 in sections 14-14.1-12 through 14-14.1-14.
- 8 2. If a court of this state declines to exercise its jurisdiction under subsection 1, it may
- 9 fashion an appropriate remedy to ensure the safety of the child and prevent a
- 10 repetition of the unjustifiable conduct, including staying the proceeding until a child
- 11 custody proceeding is commenced in a court having jurisdiction under sections
- 12 14-14.1-12 through 14-14.1-14.
- 13 3. If a court dismisses a petition or stays a proceeding because it declines to exercise
- 14 its jurisdiction pursuant to subsection 1, it shall assess against the party seeking to
- 15 invoke its jurisdiction necessary and reasonable expenses including costs,
- 16 communication expenses, attorney's fees, investigative fees, expenses for
- 17 witnesses, travel expenses, and child care during the course of the proceedings,
- 18 unless the party from whom fees are sought establishes that the assessment
- 19 would be clearly inappropriate. The court may not assess fees, costs, or expenses
- 20 against this state unless authorized by law other than this chapter.

21 **14-14.1-20. (209) Information to be submitted to court.**

- 22 1. Subject to section 14-07.1-18, in a child custody proceeding, each party, in its first
- 23 pleading or in an attached affidavit, shall give information, if reasonably
- 24 ascertainable, under oath as to the child's present address or whereabouts, the
- 25 places where the child has lived during the last five years, and the names and
- 26 present addresses of the persons with whom the child has lived during that period.
- 27 The pleading or affidavit must state whether the party:
- 28 a. Has participated, as a party or witness or in any other capacity, in any other
- 29 proceeding concerning the custody of or visitation with the child and, if so,
- 30 identify the court, the case number, and the date of the child custody
- 31 determination, if any;

- 1 b. Knows of any proceeding that could affect the current proceeding, including
2 proceedings for enforcement and proceedings relating to domestic violence,
3 protective orders, termination of parental rights, and adoptions and, if so,
4 identify the court, the case number, and the nature of the proceeding; and
5 c. Knows the names and addresses of any person not a party to the proceeding
6 who has physical custody of the child or claims rights of legal custody or
7 physical custody of, or visitation with, the child and, if so, the names and
8 addresses of those persons.
- 9 2. If the information required by subsection 1 is not furnished, the court, upon motion
10 of a party or its own motion, may stay the proceeding until the information is
11 furnished.
- 12 3. If the declaration as to any of the items described in subdivision a, b, or c of
13 subsection 1 is in the affirmative, the declarant shall give additional information
14 under oath as required by the court. The court may examine the parties under
15 oath as to details of the information furnished and other matters pertinent to the
16 court's jurisdiction and the disposition of the case.
- 17 4. Each party has a continuing duty to inform the court of any proceeding in this or
18 any other state that could affect the current proceeding.

19 **14-14.1-21. (210) Appearance of parties and child.**

- 20 1. In a child custody proceeding in this state, the court may order a party to the
21 proceeding who is in this state to appear before the court in person with or without
22 the child. The court may order any person who is in this state and who has
23 physical custody or control of the child to appear in person with the child.
- 24 2. If a party to a child custody proceeding whose presence is desired by the court is
25 outside this state, the court may order that a notice given under section 14-14.1-07
26 include a statement directing the party to appear in person with or without the child
27 and informing the party that failure to appear may result in a decision adverse to
28 the party.
- 29 3. The court may enter any orders necessary to ensure the safety of the child and of
30 any person ordered to appear under this section.

1 4. If a party to a child custody proceeding who is outside this state is directed to
2 appear under subsection 1 or desires to appear personally before the court with or
3 without the child, the court may require another party to pay reasonable and
4 necessary travel and other expenses of the party so appearing and of the child.

5 **14-14.1-22. (302) Enforcement under Hague convention.** Under this chapter a court
6 of this state may enforce an order for the return of the child made under the Hague convention
7 on the civil aspects of international child abduction as if it were a child custody determination.

8 **14-14.1-23. (303) Duty to enforce.**

9 1. A court of this state shall recognize and enforce a child custody determination of a
10 court of another state if the latter court exercised jurisdiction in substantial
11 conformity with this chapter, or the determination was made under factual
12 circumstances meeting the jurisdictional standards of this chapter, and the
13 determination has not been modified in accordance with this chapter.

14 2. A court of this state may utilize any remedy available under other law of this state
15 to enforce a child custody determination made by a court of another state. The
16 remedies provided in this chapter are cumulative and do not affect the availability
17 of other remedies to enforce a child custody determination.

18 **14-14.1-24. (304) Temporary visitation.**

19 1. A court of this state which does not have jurisdiction to modify a child-custody
20 determination, may issue a temporary order enforcing:
21 a. A visitation schedule made by a court of another state; or
22 b. The visitation provisions of a child custody determination of another state that
23 does not provide for a specific visitation schedule.

24 2. If a court of this state makes an order under subdivision b of subsection 1, it shall
25 specify in the order a period that it considers adequate to allow the petitioner to
26 obtain an order from a court having jurisdiction under the criteria specified in
27 sections 14-14.1-12 through 14-14.1-21. The order remains in effect until an order
28 is obtained from the other court or the period expires.

29 **14-14.1-25. (305) Registration of child custody determination.**

- 1 1. A child custody determination issued by a court of another state may be registered
2 in this state, with or without a simultaneous request for enforcement, by sending to
3 the district court in this state:
 - 4 a. A letter or other document requesting registration;
 - 5 b. Two copies, including one certified copy, of the determination sought to be
6 registered, and a statement under penalty of perjury that to the best of the
7 knowledge and belief of the person seeking registration the order has not
8 been modified; and
 - 9 c. Except as otherwise provided in section 14-14.1-20, the name and address of
10 the person seeking registration and any parent or person acting as a parent
11 who has been awarded custody or visitation in the child custody determination
12 sought to be registered.
- 13 2. On receipt of the documents required by subsection 1, the registering court shall:
 - 14 a. Cause the determination to be filed as a foreign judgment, together with one
15 copy of any accompanying documents and information, regardless of their
16 form; and
 - 17 b. Serve notice upon the persons named pursuant to subdivision c of
18 subsection 1 and provide them with an opportunity to contest the registration
19 in accordance with this section.
- 20 3. The notice required by subdivision b of subsection 2 must state that:
 - 21 a. A registered determination is enforceable as of the date of the registration in
22 the same manner as a determination issued by a court of this state;
 - 23 b. A hearing to contest the validity of the registered determination must be
24 requested within twenty days after service of notice; and
 - 25 c. Failure to contest the registration will result in confirmation of the child custody
26 determination and preclude further contest of that determination with respect
27 to any matter that could have been asserted.
- 28 4. A person seeking to contest the validity of a registered order must request a
29 hearing within twenty days after service of the notice. At that hearing, the court
30 shall confirm the registered order unless the person contesting registration
31 establishes that:

- 1 a. The issuing court did not have jurisdiction under sections 14-14.1-12 through
2 14-14.1-21;
- 3 b. The child custody determination sought to be registered has been vacated,
4 stayed, or modified by a court having jurisdiction to do so under sections
5 14-14.1-12 through 14-14.1-21; or
- 6 c. The person contesting registration was entitled to notice, but notice was not
7 given in accordance with section 14-14.1-07, in the proceedings before the
8 court that issued the order for which registration is sought.
- 9 5. If a timely request for a hearing to contest the validity of the registration is not
10 made, the registration is confirmed as a matter of law and the person requesting
11 registration and all persons served must be notified of the confirmation.
- 12 6. Confirmation of a registered order, whether by operation of law or after notice and
13 hearing, precludes further contest of the order with respect to any matter that could
14 have been asserted at the time of registration.

15 **14-14.1-26. (306) Enforcement of registered determination.**

- 16 1. A court of this state may grant any relief normally available under the law of this
17 state to enforce a registered child custody determination made by a court of
18 another state.
- 19 2. A court of this state shall recognize and enforce, but may not modify, except in
20 accordance with sections 14-14.1-12 through 14-14.1-21, a registered child
21 custody determination of a court of another state.

22 **14-14.1-27. (307) Simultaneous proceedings.** If a proceeding for enforcement under
23 sections 14-14.1-22 through 14-14.1-37 is commenced in a court of this state and the court
24 determines that a proceeding to modify the determination is pending in a court of another state
25 having jurisdiction to modify the determination under sections 14-14.1-12 through 14-14.1-21,
26 the enforcing court shall immediately communicate with the modifying court. The proceeding
27 for enforcement continues unless the enforcing court, after consultation with the modifying
28 court, stays or dismisses the proceeding.

29 **14-14.1-28. (308) Expedited enforcement of child custody determination.**

- 30 1. A petition under sections 14-14.1-22 through 14-14.1-37 must be verified. Certified
31 copies of all orders sought to be enforced and of any order confirming registration

- 1 must be attached to the petition. A copy of a certified copy of an order may be
2 attached instead of the original.
- 3 2. A petition for enforcement of a child custody determination must state:
- 4 a. Whether the court that issued the determination identified the jurisdictional
5 basis it relied upon in exercising jurisdiction and, if so, what the basis was;
- 6 b. Whether the determination for which enforcement is sought has been
7 vacated, stayed, or modified by a court whose decision must be enforced
8 under this chapter and, if so, identify the court, the case number, and the
9 nature of the proceeding;
- 10 c. Whether any proceeding has been commenced that could affect the current
11 proceeding, including proceedings relating to domestic violence, protective
12 orders, termination of parental rights, and adoptions and, if so, identify the
13 court, the case number, and the nature of the proceeding;
- 14 d. The present physical address of the child and the respondent, if known;
- 15 e. Whether relief in addition to the immediate physical custody of the child and
16 attorney's fees is sought, including a request for assistance from law
17 enforcement officials and, if so, the relief sought; and
- 18 f. If the child custody determination has been registered and confirmed under
19 section 14-14.1-25, the date and place of registration.
- 20 3. Upon the filing of a petition, the court shall issue an order directing the respondent
21 to appear in person with or without the child at a hearing and may enter any order
22 necessary to ensure the safety of the parties and the child. The hearing must be
23 held on the next judicial day after service of the order unless that date is
24 impossible. In that event, the court shall hold the hearing on the first judicial day
25 possible. The court may extend the date of hearing at the request of the petitioner.
- 26 4. An order issued under subsection 3 must state the time and place of the hearing
27 and advise the respondent that at the hearing the court may order that the
28 petitioner take immediate physical custody of the child and may order the payment
29 of fees, costs, and expenses under section 14-14.1-32, and may schedule a
30 hearing to determine whether further relief is appropriate, unless the respondent
31 appears and establishes that:

- 1 a. The child custody determination has not been registered and confirmed under
2 section 14-14.1-25 and that:
- 3 (1) The issuing court did not have jurisdiction under sections 14-14.1-12
4 through 14-14.1-21;
- 5 (2) The child custody determination for which enforcement is sought has
6 been vacated, stayed, or modified by a court having jurisdiction to do so
7 under sections 14-14.1-12 through 14-14.1-21; or
- 8 (3) The respondent was entitled to notice, but notice was not given in
9 accordance with section 14-14.1-07, in the proceedings before the court
10 that issued the order for which enforcement is sought; or
- 11 b. The child custody determination for which enforcement is sought was
12 registered and confirmed under section 14-14.1-24, but has been vacated,
13 stayed, or modified by a court of a state having jurisdiction to do so under
14 sections 14-14.1-12 through 14-14.1-21.

15 **14-14.1-29. (309) Service of petition and order.** Except as otherwise provided in
16 section 14-14.1-31, the petition and order must be served, by any method authorized by the law
17 of this state, upon the respondent and any person who has physical custody of the child.

18 **14-14.1-30. (310) Hearing and order.**

- 19 1. Unless the court issues a temporary emergency order under section 14-14.1-15,
20 upon a finding that a petitioner is entitled to immediate physical custody of the
21 child, the court shall order that the petitioner may take immediate physical custody
22 of the child unless the respondent establishes that:
- 23 a. The child custody determination has not been registered and confirmed under
24 section 14-14.1-25 and that:
- 25 (1) The issuing court did not have jurisdiction under sections 14-14.1-12
26 through 14-14.1-21;
- 27 (2) The child custody determination for which enforcement is sought has
28 been vacated, stayed, or modified by a court of a state having
29 jurisdiction to do so under sections 14-14.1-12 through 14-14.1-21; or

- 1 (3) The respondent was entitled to notice, but notice was not given in
2 accordance with section 14-14.1-07, in the proceedings before the court
3 that issued the order for which enforcement is sought; or
- 4 b. The child custody determination for which enforcement is sought was
5 registered and confirmed under section 14-14.1-25 but has been vacated,
6 stayed, or modified by a court of a state having jurisdiction to do so under
7 sections 14-14.1-12 through 14-14.1-21.
- 8 2. The court shall award the fees, costs, and expenses authorized under section
9 14-14.1-32 and may grant additional relief, including a request for the assistance of
10 law enforcement officials, and set a further hearing to determine whether additional
11 relief is appropriate.
- 12 3. If a party called to testify refuses to answer on the ground that the testimony may
13 be self-incriminating, the court may draw an adverse inference from the refusal.
- 14 4. A privilege against disclosure of communications between spouses and a defense
15 of immunity based on the relationship of husband and wife or parent and child may
16 not be invoked in a proceeding under sections 14-14.1-22 through 14-14.1-37.
- 17 **14-14.1-31. (311) Warrant to take physical custody of child.**
- 18 1. Upon the filing of a petition seeking enforcement of a child custody determination,
19 the petitioner may file a verified application for the issuance of a warrant to take
20 physical custody of the child if the child is immediately likely to suffer serious
21 physical harm or be removed from this state.
- 22 2. If the court, upon the testimony of the petitioner or other witness, finds that the
23 child is imminently likely to suffer serious physical harm or be removed from this
24 state, it may issue a warrant to take physical custody of the child. The petition
25 must be heard on the next judicial day after the warrant is executed unless that
26 date is impossible. In that event, the court shall hold the hearing on the first judicial
27 day possible. The application for the warrant must include the statements required
28 by subsection 2 of section 14-14.1-28.
- 29 3. A warrant to take physical custody of a child must:
- 30 a. Recite the facts upon which a conclusion of imminent serious physical harm
31 or removal from the jurisdiction is based;

- 1 b. Direct law enforcement officers to take physical custody of the child
- 2 immediately; and
- 3 c. Provide for the placement of the child pending final relief.
- 4 4. The respondent must be served with the petition, warrant, and order immediately
- 5 after the child is taken into physical custody.
- 6 5. A warrant to take physical custody of a child is enforceable throughout this state. If
- 7 the court finds on the basis of the testimony of the petitioner or other witness that a
- 8 less intrusive remedy is not effective, it may authorize law enforcement officers to
- 9 enter private property to take physical custody of the child. If required by exigent
- 10 circumstances of the case, the court may authorize law enforcement officers to
- 11 make a forcible entry at any hour.
- 12 6. The court may impose conditions upon placement of a child to ensure the
- 13 appearance of the child and the child's custodian.

14 **14-14.1-32. (312) Costs, fees, and expenses.**

- 15 1. The court shall award the prevailing party, including a state, necessary and
- 16 reasonable expenses incurred by or on behalf of the party, including costs,
- 17 communication expenses, attorney's fees, investigative fees, expenses for
- 18 witnesses, travel expenses, and child care during the course of the proceedings,
- 19 unless the party from whom fees or expenses are sought establishes that the
- 20 award would be clearly inappropriate.
- 21 2. The court may not assess fees, costs, or expenses against a state unless
- 22 authorized by law other than this chapter.

23 **14-14.1-33. (313) Recognition and enforcement.** A court of this state shall accord full

24 faith and credit to an order issued by another state and consistent with this chapter which

25 enforces a child custody determination by a court of another state unless the order has been

26 vacated, stayed, or modified by a court having jurisdiction to do so under sections 14-14.1-12

27 through 14-14.1-21.

28 **14-14.1-34. (314) Appeals.** An appeal may be taken from a final order in a proceeding

29 under sections 14-14.1-22 through 14-14.1-37 in accordance with expedited appellate

30 procedures in other civil cases. Unless the court enters a temporary emergency order under

1 section 14-14.1-24, the enforcing court may not stay an order enforcing a child custody
2 determination pending appeal.

3 **14-14.1-35. (315) Role of state's attorney.**

4 1. In a case arising under this chapter or involving the Hague convention on the civil
5 aspects of international child abduction, the state's attorney may take any lawful
6 action, including resort to a proceeding under sections 14-14.1-22 through
7 14-14.1-37 or any other available civil proceeding to locate a child, obtain the
8 return of a child, or enforce a child custody determination if there is:

- 9 a. An existing child custody determination;
10 b. A request to do so from a court in a pending child custody proceeding;
11 c. A reasonable belief that a criminal statute has been violated; or
12 d. A reasonable belief that the child has been wrongfully removed or retained in
13 violation of the Hague convention on the civil aspects of international child
14 abduction.

15 2. A state's attorney acting under this section acts on behalf of the court and may not
16 represent any party.

17 **14-14.1-36. (316) Role of law enforcement.** At the request of a state's attorney acting
18 under section 14-14.1-35, a law enforcement officer may take any lawful action reasonably
19 necessary to locate a child or a party and assist a state's attorney with responsibilities under
20 section 14-14.1-35.

21 **14-14.1-37. (317) Costs and expenses.** If the respondent is not the prevailing party,
22 the court may assess against the respondent all direct expenses and costs incurred by the
23 state's attorney and law enforcement officers under section 14-14.1-35 or 14-14.1-36.

24 **SECTION 2. REPEAL.** Chapter 14-14 of the North Dakota Century Code is repealed.