

HOUSE BILL NO. 1232

Introduced by

Representatives Devlin, Price, Weisz

Senators Fischer, Kilzer, Lee

1 A BILL for an Act to amend and reenact subdivision a of subsection 1 of section 14-02.1-03.1,
2 subsection 9 of section 14-02.5-01, subdivision a of subsection 1 of section 14-03-17, sections
3 14-04-04, 14-05-22, 14-05-23, 14-05-25, and 14-06-02, subsection 4 of section 14-07-15,
4 subsection 4 of section 14-07.1-02, section 14-07.1-02.1, subsection 2 of section 14-07.1-03,
5 sections 14-07.1-05.1, 14-09-04, 14-09-05, 14-09-06, 14-09-06.1, 14-09-06.2, 14-09-06.3,
6 14-09-06.4, 14-09-06.6, 14-09-07, and 14-09-08.12, subsection 1 of section 14-09-08.18,
7 sections 14-09-24, 14-09-28, 14-09.1-01, 14-09.1-02, 14-09.1-06, 14-09.1-08, and 14-10-05,
8 subsection 1 of section 14-15.1-02, subsection 3 of section 14-17-14, section 14-17-17,
9 subsection 1 of section 14-17-24, subdivision a of subsection 2 of section 15-10-19.1, section
10 27-05-29, subdivision f of subsection 1 of section 27-05.2-03, subsection 3 of section 32-28-02,
11 and subdivision h of subsection 1 of section 50-09-08.2 of the North Dakota Century Code,
12 relating to the use of the terms custody, visitation, custodial parent, and noncustodial parent.

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

14 **SECTION 1. AMENDMENT.** Subdivision a of subsection 1 of section 14-02.1-03.1 of
15 the North Dakota Century Code is amended and reenacted as follows:

16 a. The attending physician has secured the written consent of the minor woman
17 and both parents, if living, or the surviving parent if one parent is deceased, or
18 the ~~custodial~~ parent of primary residence if the parents are separated or
19 divorced, or the legal guardian or guardians if the minor is subject to
20 guardianship;

21 **SECTION 2. AMENDMENT.** Subsection 9 of section 14-02.5-01 of the 1999
22 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23 9. "Familial status" means one or more minors being domiciled with a parent or
24 another person having legal ~~custody~~ parental responsibility of the minor or minors;

1 or the designee of the parent or other person having ~~such custody~~ parental
2 responsibility with the written permission of the parent or other person. The
3 protections afforded against discrimination on the basis of familial status apply to
4 any person who is pregnant or is in the process of securing legal ~~custody~~ parental
5 responsibility of any minor.

6 **SECTION 3. AMENDMENT.** Subdivision a of subsection 1 of section 14-03-17 of the
7 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 8 a. An affidavit by each of the applicants showing that each is over the age of
9 eighteen years. In addition, each applicant shall exhibit to the register of
10 deeds, or designated official, a birth certificate or other satisfactory evidence
11 of age. If either applicant is under the age of eighteen years, the register of
12 deeds, or designated official, shall require the written consent of:
- 13 (1) Either parent of the minor applicant, if the parents are living together;
 - 14 (2) The parent having the legal custody of or parental responsibility for the
15 minor applicant, if the parents are not living together;
 - 16 (3) The surviving parent, if one of the parents of the minor applicant is
17 deceased; or
 - 18 (4) The guardian, or person under whose care and government the minor
19 applicant is, if both parents of the minor applicant are deceased, or if a
20 person other than a parent has legal and actual custody of or parental
21 responsibility for the minor applicant.

22 **SECTION 4. AMENDMENT.** Section 14-04-04 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **14-04-04. ~~Custody of Parental responsibility for children.~~** The court shall award the
25 ~~custody of parental responsibility for the children of a marriage annulled on the ground of fraud~~
26 or force to the innocent parent and also may provide for their education and maintenance out of
27 the property of the guilty party.

28 **SECTION 5. AMENDMENT.** Section 14-05-22 of the North Dakota Century Code is
29 amended and reenacted as follows:

30 **14-05-22. ~~Custody of children~~ Allocation of parental responsibility - Visitation**
31 **rights Parenting time - Costs.**

- 1 1. In an action for divorce, the court, before or after judgment, may give such direction
2 for the ~~custody~~ allocation of parental responsibility, care, and education of the
3 children of the marriage as may seem necessary or proper, and may vacate or
4 modify the same at any time. Any award or change of ~~custody~~ parental
5 responsibility must be made in accordance with ~~the provisions of~~ chapter 14-09.
- 6 2. After making an ~~award of custody~~ allocation of parental responsibility, the court
7 ~~shall~~, upon request of the ~~noncustodial~~ parent of alternate residence, shall grant
8 such rights of visitation as will enable the child and the ~~noncustodial~~ parent of
9 alternate residence to maintain a parent-child relationship that will be beneficial to
10 the child, unless the court finds, after a hearing, that ~~visitation~~ parenting time is
11 likely to endanger the child's physical or emotional health.
- 12 3. If the court finds that a parent has perpetrated domestic violence and that parent
13 ~~does not have custody~~ has not been allocated parental responsibility, and there
14 exists one incident of domestic violence which resulted in serious bodily injury or
15 involved the use of a dangerous weapon or there exists a pattern of domestic
16 violence within a reasonable time proximate to the proceeding, the court shall allow
17 only supervised ~~child visitation~~ parenting time with that parent unless there is a
18 showing by clear and convincing evidence that unsupervised ~~visitation~~ parenting
19 time would not endanger the child's physical or emotional health.
- 20 4. If any court finds that a parent has sexually abused the parent's child, the court
21 shall prohibit all ~~visitation~~ parenting time and contact between the abusive parent
22 and the child until the court finds that the abusive parent has successfully
23 completed a treatment program designed for such sexual abusers, and that
24 supervised visitation is in the child's best interest. Contact between the abusive
25 parent and the child may be allowed only in a therapeutic setting, facilitated by a
26 therapist as part of a sexual abuse treatment program, and only when the therapist
27 for the abusive parent and the therapist for the abused child agree that it serves a
28 therapeutic purpose and is in the best interests of the child.
- 29 5. In any ~~custody~~ allocation of parental responsibility or ~~visitation~~ parenting time
30 proceeding in which a parent is found to have perpetrated domestic violence, and
31 there exists one incident of domestic violence which resulted in serious bodily

1 injury or involved the use of a dangerous weapon or there exists a pattern of
2 domestic violence within a reasonable time proximate to the proceeding, all court
3 costs, attorneys' fees, evaluation fees, and expert witness fees must be paid by the
4 perpetrator of the domestic violence unless those costs would place an undue
5 financial hardship on that parent.

6 **SECTION 6. AMENDMENT.** Section 14-05-23 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **14-05-23. Temporary support, attorney fees, and ~~custody~~ parental responsibility.**

9 During any time in which an action for divorce is pending, the court, upon application of a party,
10 may issue an order requiring a party to pay such support as may be necessary for the support
11 of a party and minor children of the parties and for the payment of attorney fees. The court in
12 the order may award ~~custody~~ parental responsibility of minor children to a party. The order may
13 be issued and served in accordance with the North Dakota Rules of Court. The court may
14 include in the order a provision for domestic violence protection provided the party has
15 submitted a verified application for the order which is sufficient to meet the criteria defined in
16 subsection 2 of section 14-07.1-01. A violation of the protection provision of the order is subject
17 to the penalties established in section 14-07.1-06 and the arrest procedures authorized in
18 section 14-07.1-11.

19 **SECTION 7. AMENDMENT.** Section 14-05-25 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **14-05-25. Security for alimony - Disposition of homestead.** The court may require
22 either party to give reasonable security for providing maintenance or making any payments
23 required under ~~the provisions of~~ this chapter and may enforce the same by appointment of a
24 receiver or by any other remedy applicable to the case. When either the husband or the wife
25 has a separate estate sufficient to give a proper support, the court in its discretion may withhold
26 any allowance to that person out of the separate property of the other spouse. The court, in
27 rendering the decree of divorce, may assign the homestead or such part thereof as to the court
28 may seem just, to the innocent party, either absolutely or for a limited period, according to the
29 facts in the case and in consonance with the law relating to homesteads. The disposition of the
30 homestead by the court, and all orders and decrees touching the alimony and maintenance of
31 either party to a marriage and for the ~~custody~~ parental responsibility, education, and support of

1 the children are subject to revision on appeal in all particulars, including those which are stated
2 to be in the discretion of the court.

3 **SECTION 8. AMENDMENT.** Section 14-06-02 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **14-06-02. Temporary support, attorney fees, and ~~eustedy~~ allocation of parental**
6 **responsibility.** During any time in which an action for separation is pending, the court, upon
7 application of a party, may issue an order requiring a party to pay such support as may be
8 necessary for the support of a party and any minor children of the parties and for the payment
9 of attorney fees. The court in the order may award ~~eustedy~~ parental responsibility of any minor
10 children to any party. The order may be issued and served in accordance with the North
11 Dakota Rules of Court.

12 **SECTION 9. AMENDMENT.** Subsection 4 of section 14-07-15 of the North Dakota
13 Century Code is amended and reenacted as follows:

14 4. The fact, if it is a fact, that either parent may have secured a divorce awarding the
15 custody of or parental responsibility for the child, in no manner relieves either
16 parent from the requirements and penalty of this section, except that compliance
17 with the terms of a child support order by a parent is an affirmative defense to a
18 charge under this section made against that parent.

19 **SECTION 10. AMENDMENT.** Subsection 4 of section 14-07.1-02 of the North Dakota
20 Century Code is amended and reenacted as follows:

21 4. Upon a showing of actual or imminent domestic violence, the court may enter a
22 protection order after due notice and full hearing. The relief provided by the court
23 may include any or all of the following:
24 a. Restraining any party from threatening, molesting, injuring, harassing, or
25 having contact with any other person.
26 b. Excluding either the respondent or any person with whom the respondent
27 lives from the dwelling they share, from the residence of another person
28 against whom the domestic violence is occurring, or from a domestic violence
29 care facility, if this exclusion is necessary to the physical or mental well-being
30 of the applicant or others.

- 1 c. Awarding temporary ~~custody~~ parental responsibility or establishing temporary
2 ~~visitation rights~~ parenting time with regard to minor children.
- 3 d. Recommending or requiring that either or both parties undergo counseling
4 with a domestic violence program or other agency that provides professional
5 services that the court deems appropriate. The court may request a report
6 from the designated agency within a time period established by the court.
7 The costs of the court-ordered initial counseling assessment and subsequent
8 reports must be borne by the parties or, if indigent, by the respondent's county
9 of residence.
- 10 e. Requiring a party to pay such support as may be necessary for the support of
11 a party and any minor children of the parties and reasonable attorneys' fees
12 and costs.
- 13 f. Awarding temporary use of personal property, including motor vehicles, to
14 either party.
- 15 g. Requiring the respondent to surrender for safekeeping any firearm or other
16 specified dangerous weapon, as defined in section 12.1-01-04, in the
17 respondent's immediate possession or control or subject to the respondent's
18 immediate control, if the court has probable cause to believe that the
19 respondent is likely to use, display, or threaten to use the firearm or other
20 dangerous weapon in any further acts of violence. If so ordered, the
21 respondent shall surrender the firearm or other dangerous weapon to the
22 sheriff, or the sheriff's designee, of the county in which the respondent resides
23 or to the chief of police, or the chief's designee, of the city in which the
24 respondent resides.

25 **SECTION 11. AMENDMENT.** Section 14-07.1-02.1 of the 1999 Supplement to the
26 North Dakota Century Code is amended and reenacted as follows:

27 **14-07.1-02.1. Allegation of domestic violence - Effect.** If the court finds that a
28 party's allegation of domestic violence in a domestic violence protection order proceeding,
29 divorce proceeding, ~~child custody~~ allocation of parental responsibility proceeding, ~~child~~
30 ~~visitation~~ parenting time proceeding, separation proceeding, or termination of parental rights
31 proceeding is false and not made in good faith, the court shall order the party making the false

1 allegation to pay court costs and reasonable attorney's fees incurred by the other party in
2 responding to the allegation.

3 **SECTION 12. AMENDMENT.** Subsection 2 of section 14-07.1-03 of the North Dakota
4 Century Code is amended and reenacted as follows:

- 5 2. An ex parte temporary protection order may include:
- 6 a. Restraining any party from having contact with or committing acts of domestic
7 violence on another person.
 - 8 b. Excluding the respondent or any person with whom the respondent lives from
9 the dwelling they share, from the residence of another person, or from a
10 domestic violence shelter care facility.
 - 11 c. Awarding temporary ~~custody~~ parental responsibility or establishing temporary
12 ~~visitation rights~~ parenting time with regard to minor children.
 - 13 d. Requiring the respondent to surrender for safekeeping any firearm or other
14 specified dangerous weapon, as defined in section 12.1-01-04, in the
15 respondent's immediate possession or control or subject to the respondent's
16 immediate control, if the court has probable cause to believe that the
17 respondent is likely to use, display, or threaten to use the firearm or other
18 dangerous weapon in any further acts of violence. If so ordered, the
19 respondent shall surrender the firearm or other dangerous weapon to the
20 sheriff, or the sheriff's designee, of the county in which the respondent resides
21 or the chief of police, or the chief's designee, of the city in which the
22 respondent resides.

23 **SECTION 13. AMENDMENT.** Section 14-07.1-05.1 of the North Dakota Century Code
24 is amended and reenacted as follows:

25 **14-07.1-05.1. Appointment of guardian ad litem for minor.** The court, upon the
26 request of either party or upon its own motion, may appoint a guardian ad litem in an action for
27 a protection order to represent a minor concerning ~~custody~~ the allocation of parental
28 responsibility, support, or ~~visitation~~ parenting time if either party or the court has reason for
29 special concern as to the immediate future of the minor. The guardian ad litem may be
30 appointed at the time of a temporary protection order or at any time before the full hearing. The
31 role of the guardian ad litem consists of investigation and making a recommendation and report

1 to the court. At no time may the involvement of the guardian ad litem alter the requirements set
2 forth in section 14-07.1-03. The appointment of the guardian ad litem expires immediately after
3 the full hearing unless the court retains the right, upon specific finding of need, to continue the
4 appointment of a guardian ad litem to participate in ~~visitation~~ parenting time. The guardian ad
5 litem shall have access to records before the court except as otherwise provided by law. The
6 court may direct either or both parties to pay the guardian ad litem fees established by the
7 court. If neither party is able to pay the fees, the court, after notice to the state's attorney of the
8 county of venue, may direct the fees to be paid, in whole or in part, by the county of venue. The
9 court may direct either or both parties to reimburse the county, in whole or in part, for the
10 payment.

11 **SECTION 14. AMENDMENT.** Section 14-09-04 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **14-09-04. ~~Custody of~~ Parental responsibility for legitimate child.** The father and
14 mother of a legitimate unmarried minor child are entitled equally to ~~its custody~~ parental
15 responsibility, services, and earnings, and neither can transfer ~~such custody~~ parental
16 responsibility, services, and earnings to any other person, without the written consent of the
17 other, except in case of death, desertion, or abandonment.

18 **SECTION 15. AMENDMENT.** Section 14-09-05 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **14-09-05. Custody of illegitimate child.** When maternity and paternity of an
21 illegitimate child are positively established, the ~~custody rights~~ allocation of parental
22 responsibility must be equal as between mother and father and must serve the best interests of
23 the child. The ~~custodial~~ parent of primary residence is entitled to the child's services and
24 earnings.

25 **SECTION 16. AMENDMENT.** Section 14-09-06 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 **14-09-06. Priority of ~~custody~~ parental responsibility of father and mother.** The
28 husband and father and wife and mother have equal rights with regard to the care, ~~custody~~
29 parental responsibility, education, and control of the children of the marriage, while such
30 husband and wife live separate and apart from each other, and when they so live in a state of
31 separation without being divorced, the district court or judge thereof, upon application of either,

1 may grant a writ of habeas corpus to inquire into the ~~custody~~ parental responsibility of any
2 minor unmarried child of the marriage, and may award the ~~custody of such parental~~
3 responsibility for the child to either for such time and under such regulations as the case may
4 require. The decision of the court or judge must be guided by the rules provided by law for
5 awarding the ~~custody of parental responsibility~~ for a minor or the appointment of a general
6 guardian.

7 **SECTION 17. AMENDMENT.** Section 14-09-06.1 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **14-09-06.1. Awarding ~~custody~~ parental responsibility - Best interests and welfare**
10 **of child.** An order ~~for custody of~~ allocating parental responsibility for an unmarried minor child
11 entered pursuant to this chapter must award the ~~custody of parental responsibility~~ for the child
12 to a person, agency, organization, or institution as will, in the opinion of the judge, promote the
13 best interests and welfare of the child. Between the mother and father, whether natural or
14 adoptive, there is no presumption as to who will better promote the best interests and welfare of
15 the child.

16 **SECTION 18. AMENDMENT.** Section 14-09-06.2 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **14-09-06.2. Best interests and welfare of child - Court consideration - Factors.**

- 19 1. For the purpose of ~~custody~~ allocating parental responsibility, the best interests and
20 welfare of the child is determined by the court's consideration and evaluation of all
21 factors affecting the best interests and welfare of the child. These factors include
22 all of the following when applicable:
- 23 a. The love, affection, and other emotional ties existing between the parents and
24 child.
 - 25 b. The capacity and disposition of the parents to give the child love, affection,
26 and guidance and to continue the education of the child.
 - 27 c. The disposition of the parents to provide the child with food, clothing, medical
28 care, or other remedial care recognized and permitted under the laws of this
29 state in lieu of medical care, and other material needs.
 - 30 d. The length of time the child has lived in a stable satisfactory environment and
31 the desirability of maintaining continuity.

- 1 e. The permanence, as a family unit, of the existing or proposed custodial home.
- 2 f. The moral fitness of the parents.
- 3 g. The mental and physical health of the parents.
- 4 h. The home, school, and community record of the child.
- 5 i. The reasonable preference of the child, if the court deems the child to be of
- 6 sufficient intelligence, understanding, and experience to express a preference.
- 7 j. Evidence of domestic violence. In ~~awarding custody~~ allocating parental
- 8 responsibility or ~~granting rights of visitation~~ parenting time, the court shall
- 9 consider evidence of domestic violence. If the court finds credible evidence
- 10 that domestic violence has occurred, and there exists one incident of
- 11 domestic violence which resulted in serious bodily injury or involved the use of
- 12 a dangerous weapon or there exists a pattern of domestic violence within a
- 13 reasonable time proximate to the proceeding, this combination creates a
- 14 rebuttable presumption that a parent who has perpetrated domestic violence
- 15 may not be awarded ~~sole or joint custody of a child~~ parental responsibility.
- 16 This presumption may be overcome only by clear and convincing evidence
- 17 that the best interests of the child require that parent's participation as a
- 18 ~~custodial parent~~ parent of primary residence. The court shall cite specific findings of
- 19 fact to show that the ~~custody~~ parental responsibility or ~~visitation~~ parenting
- 20 time arrangement best protects the child and the parent or other family or
- 21 household member who is the victim of domestic violence. If necessary to
- 22 protect the welfare of the child, ~~custody~~ parental responsibility may be
- 23 awarded to a suitable third person, provided that the person would not allow
- 24 access to a violent parent except as ordered by the court. If the court awards
- 25 ~~custody~~ parental responsibility to a third person, the court shall give priority to
- 26 the child's nearest suitable adult relative. The fact that the abused parent
- 27 suffers from the effects of the abuse may not be grounds for denying that
- 28 parent ~~custody~~ parental responsibility. As used in this subdivision, "domestic
- 29 violence" means domestic violence as defined in section 14-07.1-01. A court
- 30 may consider, but is not bound by, a finding of domestic violence in another
- 31 proceeding under chapter 14-07.1.

- 1 k. The interaction and interrelationship, or the potential for interaction and
2 interrelationship, of the child with any person who resides in, is present, or
3 frequents the household of a parent and who may significantly affect the
4 child's best interests. The court shall consider that person's history of
5 inflicting, or tendency to inflict, physical harm, bodily injury, assault, or the fear
6 of physical harm, bodily injury, or assault, on other persons.
- 7 l. The making of false allegations not made in good faith, by one parent against
8 the other, of harm to a child as defined in section 50-25.1-02.
- 9 m. Any other factors considered by the court to be relevant to a particular ~~child~~
10 custody parental responsibility dispute.
- 11 2. In any proceeding under this chapter, the court, at any stage of the proceedings
12 after final judgment, may make orders about what security is to be given for the
13 care, ~~custody~~ parental responsibility, and support of the unmarried minor children
14 of the marriage as from the circumstances of the parties and the nature of the case
15 is equitable.

16 **SECTION 19. AMENDMENT.** Section 14-09-06.3 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **14-09-06.3. ~~Custody~~ Parental responsibility investigations and reports - Costs.**

- 19 1. In contested ~~custody~~ parental responsibility proceedings the court may, upon the
20 request of either party, or, upon its own motion, order an investigation and report
21 concerning custodial arrangements for the child. The court shall designate a
22 person or agency responsible for making the investigation and report, which
23 designees may include the county social service board, public health officer, school
24 officials, and any other public agency or private practitioner it deems qualified to
25 make the investigation.
- 26 2. The investigator may consult any person who may have information about the child
27 and any potential ~~custody~~ parental responsibility arrangements, and upon order of
28 the court may refer the child to any professional personnel for diagnosis.
- 29 3. The court shall mail the investigator's report to counsel and to any party not
30 represented by counsel at least thirty days before the hearing. The investigator
31 shall make available to any such counsel or party the complete file of data and

1 reports underlying the investigator's report and the names and addresses of all
2 persons whom the investigator has consulted. A party may call the investigator
3 and any person whom the investigator has consulted for cross-examination at the
4 hearing. A party may not waive the party's right of cross-examination before the
5 hearing.

6 4. The court shall enter an order for the costs of any such investigation against either
7 or both parties, except that if the parties are indigent the expenses must be borne
8 by the county.

9 **SECTION 20. AMENDMENT.** Section 14-09-06.4 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **14-09-06.4. Appointment of guardian ad litem for children in ~~eustody~~ allocation of**
12 **parental responsibility, support, and ~~visitation~~ parenting time proceedings.** In any action
13 for an annulment, divorce, legal separation, or other action affecting marriage, where either
14 party has reason for special concern as to the future of the minor children, and in actions
15 affecting the marriage relationship where the custody of such children is contested, either party
16 to the action may petition the court for the appointment of a guardian ad litem to represent the
17 children concerning ~~eustody~~ allocation of parental responsibility, support, and ~~visitation~~
18 parenting time. The court, in its discretion, may appoint a guardian ad litem on its own motion.
19 If appointed, a guardian ad litem shall serve as an advocate of the children's best interests.
20 The court may direct either or both parties to pay the guardian ad litem fee established by the
21 court. If neither of the parties are able to pay the fee, the court may direct the fee to be paid, in
22 whole or in part, by the county of venue. The court may direct either or both parties to
23 reimburse the county, in whole or in part, for such payment.

24 **SECTION 21. AMENDMENT.** Section 14-09-06.6 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **14-09-06.6. Limitations on postjudgment custody or allocation of parental**
27 **responsibility modifications.**

28 1. Unless agreed to in writing by the parties, no motion to modify a custody or
29 parental responsibility order may be made earlier than two years after the date of
30 entry of an order establishing custody or parental responsibility, except in
31 accordance with subsection 3.

- 1 2. Unless agreed to in writing by the parties, if a motion for modification has been
2 disposed of upon its merits, no subsequent motion may be filed within two years of
3 disposition of the prior motion, except in accordance with subsection 3.
- 4 3. The time limitation in subsections 1 and 2 does not apply if the court finds:
- 5 a. The persistent and willful denial or interference with ~~visitation~~ parenting time;
- 6 b. The child's present environment may endanger the child's physical or
7 emotional health or impair the child's emotional development; or
- 8 c. The primary physical care of the child has changed to the other parent for
9 longer than six months.
- 10 4. A party seeking modification of a custody or parental responsibility order shall
11 serve and file moving papers and supporting affidavits and shall give notice to the
12 other party to the proceeding who may serve and file a response and opposing
13 affidavits. The court shall consider the motion on briefs and without oral argument
14 or evidentiary hearing and shall deny the motion unless the court finds the moving
15 party has established a prima facie case justifying a modification. If a prima facie
16 case is established, the court shall set a date for an evidentiary hearing.
- 17 5. The court may not modify a prior custody or parental responsibility order within the
18 two-year period following the date of entry of an order establishing custody or
19 parental responsibility unless the court finds the modification is necessary to serve
20 the best interest of the child and:
- 21 a. The persistent and willful denial or interference with ~~visitation~~ parenting time;
- 22 b. The child's present environment may endanger the child's physical or
23 emotional health or impair the child's emotional development; or
- 24 c. The primary physical care of the child has changed to the other parent for
25 longer than six months.
- 26 6. The court may modify a prior custody or parental responsibility order after the
27 two-year period following the date of entry of an order establishing custody or
28 parental responsibility if the court finds:
- 29 a. On the basis of facts that have arisen since the prior order or which were
30 unknown to the court at the time of the prior order, a material change has
31 occurred in the circumstances of the child or the parties; and

- 1 b. The modification is necessary to serve the best interest of the child.
- 2 7. The court may modify a prior custody or parental responsibility order at any time if
- 3 the court finds a stipulated agreement by the parties to modify the custody or
- 4 parental responsibility is in the best interest of the child.
- 5 8. Upon a motion to modify custody or parental responsibility under this section, the
- 6 burden of proof is on the moving party.

7 **SECTION 22. AMENDMENT.** Section 14-09-07 of the North Dakota Century Code is

8 amended and reenacted as follows:

9 **14-09-07. Residence of child.** A parent ~~entitled to the custody of a child~~ of primary

10 residence may not change the residence of the child to another state except upon order of the

11 court or with the consent of the ~~noncustodial~~ parent of alternate residence, if the ~~noncustodial~~

12 parent of alternate residence has been given ~~visitation~~ parenting time rights by the decree. A

13 court order is not required if the ~~noncustodial~~ parent of alternate residence:

- 14 1. Has not exercised ~~visitation~~ parenting time rights for a period of one year; or
- 15 2. Has moved to another state and is more than fifty miles [80.47 kilometers] from the
- 16 residence of the ~~custodial~~ parent of primary residence.

17 **SECTION 23. AMENDMENT.** Section 14-09-08.12 of the North Dakota Century Code

18 is amended and reenacted as follows:

19 **14-09-08.12. Authorization to insurer.** The signature of the ~~custodial~~ parent of

20 primary residence of the insured dependent, the obligee, or the obligee's assignee is a valid

21 authorization to the insurer for purposes of processing an insurance reimbursement payment to

22 the provider of the medical services, for the release of information concerning the insured

23 dependent or coverage available to the insured dependent, and otherwise for purposes of

24 verifying coverage and payment for the insured dependent, in the same manner and to the

25 same extent as the signature of the insured.

26 **SECTION 24. AMENDMENT.** Subsection 1 of section 14-09-08.18 of the North Dakota

27 Century Code is amended and reenacted as follows:

- 28 1. A payment for services rendered by a medical provider to an obligor's dependent
- 29 which is directed to the obligor in the form of reimbursements from health
- 30 insurance must be paid to the medical provider, ~~custodial~~ parent of primary
- 31 residence, or public authority when the reimbursement is not owed to the obligor.

1 **SECTION 25. AMENDMENT.** Section 14-09-24 of the 1999 Supplement to the North
2 Dakota Century Code is amended and reenacted as follows:

3 **14-09-24. Interference with ~~visitation~~ parenting time - Attorney's fees -**
4 **Enforcement remedies and tools.** In any proceeding in which ~~child-visitation~~ parenting time
5 is properly in dispute between the parents of a child, the court shall award the ~~noncustodial~~
6 parent of alternate residence reasonable attorney's fees and costs if the court determines there
7 has been willful and persistent denial of ~~visitation~~ parenting time rights by the ~~custodial~~ parent
8 of primary residence with respect to the child. The court may use any remedy that is available
9 to enforce a child support order and which is appropriate to enforce ~~visitation~~ parenting time.

10 **SECTION 26. AMENDMENT.** Section 14-09-28 of the 1999 Supplement to the North
11 Dakota Century Code is amended and reenacted as follows:

12 **14-09-28. Parental ~~custody~~ responsibility and ~~visitation~~ parenting time rights and**
13 **duties.**

- 14 1. Each parent of a child has the following ~~custody~~ parental responsibility and
15 ~~visitation~~ parenting time rights and duties:
- 16 a. Right to access and obtain copies of the child's educational, medical, dental,
17 religious, insurance, and other records or information.
 - 18 b. Right to attend educational conferences concerning the child. This right does
19 not require any school to hold a separate conference with each parent.
 - 20 c. Right to reasonable access to the child by written, telephonic, and electronic
21 means.
 - 22 d. Duty to inform the other parent as soon as reasonably possible of a serious
23 accident or serious illness for which the child receives health care treatment.
24 The parent shall provide to the other parent a description of the serious
25 accident or serious illness, the time of the serious accident or serious illness,
26 and the name and location of the treating health care provider.
 - 27 e. Duty to immediately inform the other parent of a change in residential
28 telephone number and address.
 - 29 f. Duty to keep the other parent informed of the name and address of the school
30 the child attends.

1 2. The court shall include in an order establishing or modifying ~~visitation~~ parenting
2 time the rights and duties listed in this section; however, the court may restrict or
3 exclude any right or duty listed in this section if the order states the reason in
4 support of the restriction or exclusion. The court shall consider any domestic
5 violence protection orders relating to the parties when determining whether to
6 restrict or exclude any right or duty listed in this section.

7 **SECTION 27. AMENDMENT.** Section 14-09.1-01 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **14-09.1-01. Purpose.** The purpose of this chapter is, through mediation, to enable the
10 parties in contested ~~child custody~~ allocation of parental responsibility, support, or ~~visitation~~
11 parenting time proceedings to resolve the dispute voluntarily.

12 **SECTION 28. AMENDMENT.** Section 14-09.1-02 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **14-09.1-02. Mediation authorized - Exception.** In any proceeding involving an order,
15 modification of an order, or enforcement of an order for the ~~custody~~ allocation of parental
16 responsibility, support, or ~~visitation~~ parenting time of a child in which the ~~custody~~ allocation of
17 parental responsibility or ~~visitation~~ parenting time issue is contested, the court may order
18 mediation at the parties' own expense. The court may not order mediation if the ~~custody~~
19 allocation of parental responsibility, support, or ~~visitation~~ parenting time issue involves or may
20 involve physical or sexual abuse of any party or the child of any party to the proceeding.

21 **SECTION 29. AMENDMENT.** Section 14-09.1-06 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **14-09.1-06. Confidentiality.** Any communication, verbal or written, in a mediation
24 proceeding under this chapter is confidential and inadmissible as evidence in any proceeding.
25 A mediator appointed under this chapter may not be a witness and the notes and work product
26 of the mediator are not subject to discovery or subpoena in the proceeding in which the
27 contested ~~child custody~~ allocation of parental responsibility, support, or ~~visitation~~ parenting time
28 is at issue.

29 **SECTION 30. AMENDMENT.** Section 14-09.1-08 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **14-09.1-08. Failure to agree.** The mediator may report to the court at any time that the
2 parties are unable to reach an agreement. The mediator may recommend to the court that a
3 full hearing on the ~~custody~~ allocation of parental responsibility, support, or ~~visitation~~ parenting
4 time issue be held within thirty days. The mediator may not make a substantive
5 recommendation to the court concerning the contested issue of ~~custody~~ parental responsibility,
6 support, or ~~visitation~~ parenting time.

7 **SECTION 31. AMENDMENT.** Section 14-10-05 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **14-10-05. Assignment of children prohibited - Penalty.** No person, other than the
10 parents, may assume the permanent care and ~~custody of~~ parental responsibility for a child,
11 unless authorized so to do by an order or decree of a court having jurisdiction, except that a
12 parent, upon giving written notice to the department of human services, may place that person's
13 own child in the home of the child's grandparent, uncle, or aunt for adoption or guardianship by
14 the person receiving the child. The child must be considered abandoned if proceedings for the
15 adoption or guardianship of the child are not initiated by such relative within one year following
16 the date of notice of placement. No parent may assign or otherwise transfer the parent's rights
17 or duties with respect to the care and ~~custody of~~ parental responsibility for the parent's child.
18 Any such transfer or assignment, written or otherwise, is void. This section does not affect the
19 right of the parent to consent in writing to the legal adoption of the parent's child, but such
20 written consent does not operate to transfer any right in the child in the absence of a decree by
21 a court having jurisdiction. Any person who violates the provisions of this section is guilty of a
22 class A misdemeanor.

23 **SECTION 32. AMENDMENT.** Subsection 1 of section 14-15.1-02 of the North Dakota
24 Century Code is amended and reenacted as follows:

25 1. A birth parent or identified adoptive parent may file with the court a petition to
26 relinquish parental rights with respect to a minor child to the identified adoptive
27 parent. The written consent of any birth parent to the adoption must accompany
28 the petition. The written consent of the identified adoptive parent to assume
29 ~~custody~~ parental responsibility must be filed with the petition. The petition and all
30 documents must be served upon the department, nonpetitioning birth parents, and
31 identified adoptive parent.

1 **SECTION 33. AMENDMENT.** Subsection 3 of section 14-17-14 of the 1999
2 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3 3. The judgment or order may contain any other provision directed against the
4 appropriate party to the proceeding, concerning the duty of support, the ~~custody~~
5 allocation of parental responsibility and guardianship of the child, ~~visitation~~
6 parenting time privileges with the child, the furnishing of bond or other security for
7 the payment of the judgment, or any other matter in the best interest of the child.
8 The judgment or order may direct the father to pay the reasonable expenses of the
9 mother's pregnancy and confinement.

10 **SECTION 34. AMENDMENT.** Section 14-17-17 of the 1999 Supplement to the North
11 Dakota Century Code is amended and reenacted as follows:

12 **14-17-17. Modification of judgment or order.** The court has continuing jurisdiction to
13 modify a judgment or order for future support and, subject to section 14-09-06.6, ~~custody~~
14 parental responsibility and ~~rights of visitation~~ parenting time for the child.

15 **SECTION 35. AMENDMENT.** Subsection 1 of section 14-17-24 of the North Dakota
16 Century Code is amended and reenacted as follows:

17 1. If a mother relinquishes or proposes to relinquish for adoption a child who does not
18 have (a) a presumed father under subsection 1 of section 14-17-04, (b) a father
19 whose relationship to the child has been determined by the court, or (c) a father as
20 to whom the child is a legitimate child under prior law of this state or under the law
21 of another jurisdiction, or if a child otherwise becomes the subject of an adoption
22 proceeding, the agency or person to whom the child has been or is to be
23 relinquished, or the mother or the person having ~~custody of~~ parental responsibility
24 for the child, shall file a petition in the district court to terminate the parental rights
25 of the father, unless the father's relationship to the child has been previously
26 terminated or determined by a court not to exist.

27 **SECTION 36. AMENDMENT.** Subdivision a of subsection 2 of section 15-10-19.1 of
28 the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

29 a. A person less than eighteen years of age whose guardian, ~~custodial~~ parent of
30 primary residence, or parents are legal residents of this state and have
31 resided in this state for twelve months, or a dependent child whose ~~custodial~~

1 parent of primary residence moved into the state with the intent to establish
2 legal residency for a period of years within the last twelve months immediately
3 prior to the beginning of the academic term;

4 **SECTION 37. AMENDMENT.** Section 27-05-29 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **27-05-29. District judges may assign additional duties to juvenile supervisors -**
7 **Authority of supreme court.** A district judge may authorize any juvenile supervisor, appointed
8 by the judge in ~~his~~ the judge's capacity as judge of the juvenile court, to assume, and direct the
9 supervisor to carry out, additional duties as provided in this section. The supreme court may
10 promulgate rules concerning additional powers, duties, and responsibilities for juvenile
11 supervisors. Subject to such rules, a district judge may authorize and direct ~~his~~ the judge's
12 supervisor to conduct hearings on such domestic relations matters as ~~child custody~~ parental
13 responsibility changes, support allowances, and other similar matters, provided that no
14 authorization or direction may be given to a juvenile supervisor to preside over a proceeding for
15 divorce, separation, or annulment of a marriage.

16 **SECTION 38. AMENDMENT.** Subdivision f of subsection 1 of section 27-05.2-03 of
17 the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

18 f. For filing a motion or an answer to a motion to modify an order for alimony,
19 property division, child support, or ~~child custody~~ parental responsibility, thirty
20 dollars. The clerk shall deposit this fee with the state treasurer for deposit in
21 the general fund of the state treasury.

22 **SECTION 39. AMENDMENT.** Subsection 3 of section 32-28-02 of the 1999
23 Supplement to the North Dakota Century Code is amended and reenacted as follows:

24 3. If the person whose name is to be changed is a minor, the court shall consider the
25 appointment of a guardian ad litem, and notice of the intended application must be
26 published in the official newspaper of the county in which the minor resides and, if
27 different, the official newspaper of the county in which each of the minor's parents
28 reside. If the minor has a ~~noncustodial~~ parent of alternate residence, a copy of the
29 notice must be deposited in a post office in this state, postage prepaid, not later
30 than ten days after the publication of the notice, and directed to the ~~noncustodial~~
31 ~~parent's~~ last reasonably ascertained post-office address of the parent of alternate

1 residence. An affidavit of mailing of the notice prepared in accordance with the
2 North Dakota Rules of Civil Procedure must be filed with the court.

3 **SECTION 40. AMENDMENT.** Subdivision h of subsection 1 of section 50-09-08.2 of
4 the North Dakota Century Code is amended and reenacted as follows:

5 h. Enter into agreements with financial institutions doing business in the state,
6 and with the assistance, or through the agency, of the secretary, with financial
7 institutions doing business in two or more states:

- 8 (1) To develop and operate, in coordination with those financial institutions,
9 a data match system, using automated data exchanges to the
10 maximum extent feasible, in which each such financial institution is
11 required to provide in each calendar quarter the name, record address,
12 social security number or other taxpayer identification number, and
13 other identifying information for each ~~noncustodial~~ parent of alternate
14 residence who maintains an account at such financial institution and
15 who owes past-due support, as identified by the state agency by name
16 and social security number or other taxpayer number; and
17 (2) Under which such financial institution, in response to a notice of lien or
18 an execution, will encumber or surrender, as the case may be, assets
19 held by such institution on behalf of any ~~noncustodial~~ parent of
20 alternate residence who is subject to a lien for unpaid child support;