

**NORTH DAKOTA  
FOSTER CARE REQUIREMENTS – FOR AGENCIES & COURTS**

The requirements are relative to federal law; Adoption & Safe Families Act of 1997 (ASFA), (P.L. 103-89); Fostering Connections to Success & Increasing Adoptions Act of 2008, (P.L. 110-351); and Preventing Sex Trafficking and Strengthening Families Act, (P.L. 113-183)

The laws require both language and action: 1) courts are responsible for making the required findings in the order; and 2) agencies are responsible for taking action.

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| <p><b>Where:</b><br/>Title IV-B &amp; Title IV-E, Social Security Act<br/>42 U.S.C. §§620 – 632, 42 U.S.C. §§670 – 679<br/>NDCC §27-20, NDCC §50-11<br/>45 C.F.R. §§ 1355, 1356, 1357</p>   | <p><b>Why:</b><br/>These laws have a direct impact on cases where children are removed from a home or another setting by court order. They were enacted to help prevent unnecessary and/or prolonged foster care and keep families connected.</p> |
| <b>Required Agency Actions:</b>   |   |
| <ol style="list-style-type: none"> <li>1. Complete affidavit to justify request for court intervention, and/or action.</li> <li>2. Explain to the court why it is <u>contrary to the welfare</u> or not in the best interest of the child to remain in the home.</li> <li>3. Document detailed <u>reasonable efforts</u> made to preserve families, reunify families and maintain family connections:             <ol style="list-style-type: none"> <li>a) Prior to the placement of the child in foster care, to prevent or eliminate the need for removing the child from the child’s home; OR</li> <li>b) Reasonable efforts could not be made due to aggravated circumstances as defined in NDCC 27-20-02(3)</li> <li>c) To make it possible for a child to return safely to the child’s home;</li> <li>d) To place siblings together, unless there are documented safety concerns. If not jointly placed, siblings must be provided frequent visitation or other ongoing interaction, unless there are documented safety or well-being concerns.</li> </ol> </li> <li>4. Document active efforts when seeking foster care placement for, or termination of parental rights of an Indian child.</li> <li>5. Permanency Hearing, provide <u>detailed</u> documentation to the court to show the agency:             <ol style="list-style-type: none"> <li>a) Has made <u>reasonable efforts to finalize a permanent plan</u> specific to the child. As outlined in NDCC § 27-20-02(15).</li> <li>b) The steps the State agency is taking to ensure that:                 <ol style="list-style-type: none"> <li>(i) the child's foster family home or child care institution is following the reasonable and prudent parent standard; and</li> <li>(ii) the child has regular, ongoing opportunities to engage in age or developmentally appropriate activities.</li> </ol> </li> </ol> </li> <li>6. If the youth is 16 years of age or older and compelling reasons exist that it would <b>not</b> be in the best interest for the child to return home, to have parental rights terminated, to be placed for adoption, to be placed with a fit and willing relative, or to be placed with a legal guardian the agency will:             <ol style="list-style-type: none"> <li>a) Discuss with the child the option of APPLA (another planned permanent living arrangement) and document their desire, justification of why, and compelling reasons as outlined in NDCC 27-20-02(15)(f).</li> </ol> </li> <li>7. If youth is age 14 years of age or older, describe services that have/will assist youth in making the transition to independent living.</li> <li>8. Identify relatives and provide written notice within 30 days as outlined in NDCC 27-20-38(3)</li> <li>9. Request placement, care, and control with a <u>public agency</u>.</li> <li>10. Document foster care entry date and the date of removal.</li> <li>11. If applicable, provide information for out-of-state placements regarding whether the placement continues to be appropriate and in the best interest of the child.</li> </ol>  |   |
| <b>Required Judicial Language &amp; Findings for children adjudicated <u>deprived, delinquent, or unruly</u>.</b>   |   |
| <ol style="list-style-type: none"> <li>1. A judicial determination that “it is (would be) contrary to the welfare of (child) to remain in the home” in all cases where a child is placed in foster care or a foster care setting.</li> <li>2. A judicial determination with <u>detailed</u> findings that:             <ol style="list-style-type: none"> <li>a) “reasonable efforts were made to prevent the removal” and/or</li> <li>b) “reasonable efforts were made to safely return the child home”, or</li> <li>c) “reasonable efforts were not required to prevent removal” due to aggravated circumstances, etc.</li> </ol> </li> <li>3. A judicial determination that “reasonable efforts” were made to place siblings together;             <ol style="list-style-type: none"> <li>a) unless it is contrary to the safety or well-being of any sibling; and,</li> <li>b) if not jointly placed, siblings must be provided frequent visitation/interaction, if it is not contrary to the child’s safety or well-being.</li> </ol> </li> <li>4. A permanency hearing must be held within 30 days if it is determined that reasonable efforts to help a child safely return home are not required, as outlined in NDCC 27-20-36.2 (b).</li> <li>5. If applicable, the court must determine whether the out-of-state placement continues to be appropriate and in the best interest of the child.</li> <li>6. “Placement and care” responsibilities must always rest with the public agency. The agency must be given the authority to make the selection of the foster care provider. <u>A specific facility or home cannot be named in the court’s order.</u></li> <li>7. At the dispositional or permanency hearings <b>for youth age 14 and over</b>, the court shall make a finding that:             <ol style="list-style-type: none"> <li>a) Services have been/will be provided to assist (youth) in making transition from foster care to independent living.</li> </ol> </li> <li>8. The agency affidavit should be “incorporated by reference” into the order to assure sufficient detail in court order.</li> </ol> <p><b>In addition, at the Permanency Hearing:</b></p> <ol style="list-style-type: none"> <li>9. A judicial determination with <u>detailed</u> findings that the agency has made <u>reasonable efforts to finalize the permanency plan</u> specific to the child. This finding <u>must</u> be made within 12 months of a child’s removal, or within 12 months of the last order.</li> <li>10. <b><u>For the permanency goal of APPLA (another planned permanent living arrangement)</u></b>, effective 8/1/15 the court shall:             <ol style="list-style-type: none"> <li>a) Verify the youth is 16 years of age or older</li> <li>b) Ask the child whether the child has a desired permanency outcome of APPLA,</li> <li>c) Make a judicial determination explaining why APPLA is the best permanency plan for the child, and</li> <li>d) Identify the compelling reasons it continues not to be in the best interest of the child to return home, be placed for adoption, be placed with a legal Guardian, or be placed with a fit and willing relative.</li> </ol> </li> <li>11. “Reasonable efforts” findings as required in #2 and #3 above.</li> </ol> <p><b>Active Efforts:</b> When an agency is seeking a foster care placement for, or termination of parental rights to an Indian child, <u>active efforts</u> are required as indicated in 25 U.S. Code § 1912(d)</p> <p><b>Court Order Duration:</b> Foster Care court orders are limited to 12 months. The court order dates must encompass the period of time from removal and cannot exceed 12 months from the <u>date</u> of removal or from the last permanency hearing date/order.</p> |   |

**QUICK STATUTORY REFERENCE GUIDE – FOSTER CARE COURT ORDERS – NORTH DAKOTA**

| <b>Judicial Action – Required Language &amp; Findings *</b>   | <b>Legal Reference</b>   | <b>When</b>  | <b>a.k.a.</b>   |
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| <p><b>Contrary to the Welfare:</b><br/> <b>Judicial determination that</b> “it is [would be] contrary to the welfare of [child] to remain in the home.”</p>   | 45 C.F.R. §1356.21(c)<br>42 U.S.C. §672(a)(1)<br>NDCC §27-20-32.1  | At removal and every hearing thereafter  | “contrary” language                                     |
| <p><b>Reasonable efforts (detailed):</b><br/> <b>(1) Judicial determination that reasonable efforts were made to prevent the removal</b> of the child from the home and/or to <b>safely return</b> the child to the home; <b>OR</b><br/> <b>Judicial determination that reasonable efforts are not required</b> to prevent the child’s removal from home or to reunify the family (i.e. aggravated circumstances, etc.). When a court determines reasonable efforts to return the child home are not required, a Permanency Hearing must be held within 30 days of that determination;<br/> <b>AND</b><br/> <b>(2) Judicial determination that reasonable efforts were (are) made to place siblings together</b>, unless it is contrary to the safety and well-being of any sibling. If siblings <b>are not</b> placed together, reasonable efforts findings to provide frequent visitation or other ongoing interaction.</p>   | 45 C.F.R. §1356.21(b)(2)<br>42 U.S.C. §671(a)(15)<br>NDCC §27-20-32.2<br>NDCC §27-20-02(15)(d)(e)  | All foster care court orders   | “reasonable efforts” language<br><br>“sibling language” |
| <p><b>“Placement and care”</b> (care, custody &amp; control) responsibilities must rest with the public agency. The agency must be given independent authority to select the specific provider (home or facility) and make the placement. If foster care is the court’s intent, a specific provider should not be named in the court order.</p>   | 45 C.F.R. §1356.21(g)<br>42 U.S.C. §672(a)(2)  | All foster care court orders   | “care, custody, & control” language                     |
| <p><b>Independent Living language:</b> For youth age <b>14</b> and over, the court must find services have been/will be provided to assist [youth] in making the transition from foster care to independent living in all dispositional and permanency hearings.</p>  | 42 U.S.C. §677(5)(c)   | At dispositional and permanency hearings if youth is age 14 and over   | “independent living” language                           |
| <p><b>Foster care court orders may not exceed 12 months.</b> No long term orders with specified caregiver are permitted.</p>  | 42 U.S.C. §675(5)(c)<br>NDCC § 27-20-36(3)   | Dispositional and Permanency Hearings  | “time limited” language                                 |
| <p><b>Permanency Hearing:</b> When a court determines <u>reasonable efforts to return child home are not required</u>, a Permanency Hearing must be held within 30 days of that determination; unless permanency hearing requirements are fulfilled at the hearing in which the court determines that reasonable efforts to reunify are not required.</p> <ul style="list-style-type: none"> <li>In all other situations, a permanency hearing is required within 12 months of the date of removal and at least once every 12 months thereafter while the child is in foster care.</li> <li>The court must issue a <b>judicial determination that reasonable efforts have been made to finalize the permanency plan</b> for the child within 12 months of removal or from the last permanency hearing order.</li> <li>Permanency hearing orders must address all statutory criteria, and a full hearing must held.</li> <li>Permanency Hearing requirements as outlined above, are required every 12 months for foster children whose parental rights have been terminated or when an adoption is not yet finalized.</li> <li>For children 16 years of age or older with a goal of APPLA, the court shall meet the criteria as outlined in NDCC §27-20-02(15)(f) and make a <b>judicial determination explaining why APPLA is the best permanency plan</b>. Effective 8/1/15</li> </ul> | 42 U.S.C. §671(a)(15)(E)<br>NDCC §27-20-36(2)(b)<br><br>45 C.F.R. §1355.20(a)<br>45 C.F.R. §1356.21(h)<br>Criteria:<br>NDCC §27-20-02(15)<br>NDCC §27-20-47(3) | At the Permanency Hearing or no later than 12 months after removal<br><br><br><br><br><br><br><br><br><br>Permanency hearing when a goal of APPLA applies (limited to children ages 16 or older) | “permanency” language                                   |
| <p><b>Indian children:</b> ASFA does not supercede ICWA; therefore, ICWA provisions must still be addressed and followed. In addition, the Multi-Ethnic Placement Act (MEPA) also applies in connection with ASFA provisions.</p>   | 25 U.S.C 1912<br>42 U.S.C §622,1966b(2000)   | At every hearing involving a child under ICWA  | “ICWA” provisions                                       |
| <p><b>Guardianships</b> are an accepted form of permanency for children and can be established as a dispositional alternative.</p>  | NDCC §27-20-48.1<br>NDCC §27-20-30(1)  | Dispositional or Permanency Hearings   | “guardianships”   |
| <p><b>Compelling reasons</b> are required to justify the state’s decision not to file a TPR when a child has been in foster care for at least 450 out of the previous 660 nights.</p>   | 45 C.F.R. §1356.21(h)(3)<br>NDCC §27-20-20.1(3)<br>Tribal children:<br>45 C.F.R. §1356.21(h)(3)(iii)   | When a child has been in care 450 out of the previous 660 nights   | “compelling reasons”                                    |
| <p><b>Out of state Placement:</b> At a hearing for a child who is placed in foster care in a different state, the court must determine whether the out-of-state placement continues to be appropriate and in the best interests of the child.</p>   | 45 U.S.C. §675   | At any hearing if youth is placed out-of-state   | “out-of-state” language                                 |
| <p><b>Notice of hearing:</b> Foster parents, pre-adopt parents, and relative caregivers must be given notice of any hearing regarding a child in their home.</p>  | 45 C.F.R. §1356.21(o)<br>45 C.F.R. §1355.34(b)(2)(v)<br>NDCC §27-20-38(3)<br>N.D.R. Ct. 4.2  | For every hearing  | “foster parent” notice                                  |

**\*Note: North Dakota has submitted a state plan which conforms to the federal requirements for all children in foster care. The state risks sanctions and disallowance of substantial child welfare dollars for non-compliance.**