

PROTECTING CHILDREN ENDANGERED BY METH: A STATUTORY REVISION TO EXPEDITE THE TERMINATION OF PARENTAL RIGHTS IN AGGRAVATED CIRCUMSTANCES

I. INTRODUCTION

“Not-guilty Plea in Home Invasion Case: Man Faces Charges of Attempted Murder, Injecting Boy With Meth.”¹ “Breast-feeding Mom Passed Meth to Baby.”² “Mother Arrested After Baby Ingests Meth Stash.”³ “Mom On Probation After Meth Bust, Lab Was Found in May Near Children’s Room.”⁴ “Baby Apparently Ingests Meth; Parents Arrested.”⁵

These headlines from newspapers across the nation represent what federal, state, and local officials are calling a drug epidemic of unprecedented proportion.⁶ Meth, with its powerfully addictive high, is affecting the lives of people across the country, and destroying the lives of users from the inside out.⁷ While the meth problem originated on the West Coast, it is now a national problem affecting a broad spectrum of users.⁸ Meth is the

1. Charles McCarthy, *Not-guilty Plea in Home Invasion Case: Man Faces Charges of Attempted Murder, Injecting Boy with Meth*, FRESNO BEE, Sept. 13, 2005, at B5, available at 2005 WLNR 14425051.

2. *Oregon: Breast-feeding Mom Passed Meth to Baby*, SEATTLE POST-INTELLIGENCER, Aug. 31, 2005, at B2, available at 2005 WLNR 13742314.

3. Jaelyn O’Malley, *Mother Arrested After Baby Ingests Meth Stash*, RENO GAZETTE-JOURNAL, Aug. 26, 2005, at 2A, available at 2005 WLNR 13497478.

4. Sara Eaton & Rebecca S. Green, *Mom on Probation After Meth Bust, Lab was Found in May Near Children’s Room*, J. GAZETTE (Fort Wayne, Ind.), Aug. 23, 2005, at 4C, available at 2005 WLNR 13483256.

5. Levi Hill, *Baby Apparently Ingests Meth; Parents Arrested*, SILVER CITY SUN-NEWS (N.M.), Aug. 16, 2005, at 1A, available at 2005 WLNR 12942311.

6. See generally MARK ELLS ET AL., AM. PROSECUTORS RES. INST., BEHIND THE DRUG: THE CHILD VICTIMS OF METH LABS (2002), available at http://www.ndaa-apri.org/publications/newsletters/update_volume_15_number_2_2002.html (calling meth addiction a complex epidemic).

7. See David Jefferson, *America’s Most Dangerous Drug*, MSNBC.COM, Aug. 8, 2005, available at <http://www.msnbc.com/id/8770112/site/newsweek/print/i/displaymode/10981> (providing examples of lives ruined by methamphetamine use).

8. ANGELO KYLE & BILL HANSELL, NAT’L ASS’N OF COUNTIES, THE METH EPIDEMIC IN AMERICA: TWO SURVEYS OF U.S. COUNTIES 2 (2005), available at <http://www.naco.org/Template.cfm?Section=Publications&Templat=/ContentManagement/ContentDisplan.cfm&ContentID=16925>. The National Association of Counties conducted a survey of law enforcement and child welfare officials in order to determine the impact of meth on county services and their communities. *Id.* More than 500 counties in 45 states completed a survey called “The Criminal Effect of Meth on Communities.” *Id.* More than 300 counties in the 13 states in the country

leading drug-related local law enforcement problem in the country, and it is affecting urban, suburban, and rural areas alike.⁹

Meth is causing complex challenges, including legal, medical, and environmental problems associated with its use and production.¹⁰ Governments must fund the investigation, arrest, adjudication, imprisonment, and treatment costs for meth-related offenders.¹¹ Further, governments must deal with meth lab cleanups and other collateral consequences of meth use and production.¹² Too often, these collateral consequences are children.¹³ As the number of meth-related arrests increases, law enforcement officials are discovering a corresponding increase in the number of children who are grossly neglected by a parent using meth.¹⁴ These children are often sick, requiring both immediate medical assistance and placement into protective custody, which is overwhelming the already strained child welfare system.¹⁵

North Dakota is not immune from the scourge of meth.¹⁶ North Dakota Attorney General Wayne Stenehjem noted that while meth was virtually unknown in North Dakota in 1990, it has since become a problem in nearly every community in the state.¹⁷ Drug arrests in North Dakota have steadily risen in the past three years, including the number of meth-related arrests.¹⁸ The National Drug Intelligence Center calls meth the most significant drug

where child welfare is administered at the county level responded to a survey called “The Impact of Meth on Children.” *Id.*

9. KYLE & HANSELL, *supra* note 8, at 2.

10. *Id.*

11. *Id.*; see also U.S. DEP’T OF HEALTH & HUMAN SERVS., METH: WHAT’S COOKING IN YOUR NEIGHBORHOOD? 1 (2002), available at <http://media.shs.net/prevline/pdfs/vhs143.pdf> (indicating that meth’s collateral expenses include increased healthcare costs, environmental cleanup, and the cost of jailing meth manufacturers and traffickers).

12. KYLE & HANSELL, *supra* note 8, at 2.

13. See ELLS ET AL., *supra* note 6 (stating that meth creates “new and substantial risks to children”).

14. See KYLE & HANSELL, *supra* note 8, at 6 (stating that law enforcement officials clamping down on meth are seeing an increase in the number of children neglected and exposed to the harmful effects of meth).

15. *Id.* at 3, 6.

16. See OFF. OF NAT’L DRUG CONTROL POL’Y, STATE OF N.D. PROFILE OF DRUG INDICATORS 2-4 (2005), available at <http://www.whitehousedrugpolicy.gov/statelocal/nd/nd.pdf> (stating that meth “is the primary concern for law enforcement and public health officials in North Dakota”).

17. Stephen Lee, *Officials Brainstorm on Meth Crisis Cures*, GRAND FORKS HERALD (N.D.), Dec. 10, 2004, at 4B.

18. See OFF. OF NAT’L DRUG CONTROL POL’Y, *supra* note 16, at 3. In 2001, 2002, and 2003, the Drug Enforcement Administration (DEA) reported forty-two, fifty-two and thirty-four drug-related arrests in North Dakota, respectively. *Id.* During that same time, state and local officials in North Dakota reported 1,658; 1,752; and 2,045 drug-related arrests, respectively. *Id.* In 2004, the DEA reported forty-five drug-related arrests and sixty meth lab seizures. *Id.* State and local drug arrest figures are not yet available for the year 2004.

threat to North Dakota, and an investigative priority for federal, state, and local law enforcement officials.¹⁹

In addition to increasing crime in North Dakota,²⁰ meth has had a profound effect on the child welfare system.²¹ Fifty-four percent of North Dakota counties reported an increase in foster care placements due to meth within the past three years,²² and over twenty-six percent of all deprivation cases tracked in the past year resulted from meth use.²³ Presently, approximately one in four children in foster care in North Dakota come from a family that is using, selling, or manufacturing meth.²⁴ “Social workers are reporting that the time demands to provide case management services to a family involved with meth are significantly higher than other child welfare situations.”²⁵ With the meth epidemic quickly creating a national and local

19. NAT’L DRUG INTELLIGENCE CTR., N.D. DRUG THREAT ASSESSMENT (2002), available at <http://www.usdoj.gov/ndic/pubs1/1052/meth.html>.

20. See KYLE & HANSELL, *supra* note 8, at 4 (stating that North Dakota reported a ninety-one percent increase in arrests involving meth in the past three years); see also Lee, *supra* note 17, at 4B (stating that one third of the cases that the Bureau of Criminal Investigation works on involve meth).

21. See Interview with Dixie Evans, Dir., N.D. Guardian Ad Litem Project, in Grand Forks, N.D. (Sept. 13, 2005) (on file with the *North Dakota Law Review*) (reporting that during the period from July 1, 2004, through June 30, 2005, 26.6% of the 880 deprivation cases resulted from meth use by the parent).

22. See KYLE & HANSELL, *supra* note 8, at 6 (presenting results of a survey to determine if counties experienced an increase in out-of-home placement of children due to meth in the past five years).

23. Interview with Dixie Evans, *supra* note 21; see also *Foster Care Placements: Interim Testimony Before the Budget Committee on Human Services* (Sept. 22, 2004) (statement of Paul Ronningen, Director of Children and Family Services), available at <http://www.state.nd.us/info/testimony/2003/human-services/040923-cfs-fostercareupdate.html> (reporting that during the 2004 calendar year, Cass County placed 148 children in foster care, 54 of whom were placed because of meth use, manufacturing, and/or sale).

24. E-mail from Paul Ronningen, Dir., Children and Family Servs. Div., Dep’t of Health and Human Servs., to Michelle Kommer (Oct. 11, 2005, 08:26 CST) (on file with the *North Dakota Law Review*). To measure the impact of methamphetamine on social services, the Division of Children and Family Services conducted a survey during September 2005. *Id.* As of August 16, 2005, there were 1,316 children in out-of-home placement. *Id.* The survey was addressed to the custodians of 1,098 of these children, and 975 (or 88.8%) responded. *Id.* Of the 975 responding, 231 (23.7%) indicated that meth was the cause for the removal of the child from the home. *Id.* This represents an increase of more than 10% in just two years, as the same question was asked during a survey in 2003. *Id.* Of the 758 responding in 2003, 117 (15%) said that meth was the cause for the removal of the child from the home. *Id.*

25. *Impact of Drug Abuse on Child Welfare System: Interim Testimony Before the Budget Committee on Human Services* (June 17, 2003) (statement of Paul Ronningen, Director of Children and Family Services), available at <http://www.nd.gov/humanservices/info/testimony/2003/gov-services/040617.html>. According to Ronningen, “[W]hen parents are arrested and jailed [for meth crimes], [all] the children present may need placement; courts are requiring the counties to provide regular transportation to jails and prisons for children to visit their parent(s).” *Id.*; see also KYLE & HANSELL, *supra* note 8, at 6 (stating that children who are removed from meth homes are often sick, and their parents may be in jail, awaiting treatment, or not seeking treatment).

child welfare crisis, the North Dakota legislature must act swiftly and decisively to end the abuse and neglect suffered by the children of meth users. This note proposes a revision to the statutory process for terminating parental rights to permit the expedited termination of parental rights when a child is endangered by meth.

To support this proposition, Part II of this note explains how meth is different from and more devastating than other illicit drugs this nation has combated in the past, and why it has a particularly devastating effect on the lives of children associated with a meth user. Part III of this note discusses the constitutional implications of terminating parental rights and reviews historical shifts in child welfare policy pertaining to the termination of parental rights. Also included in Part III is a discussion of current obstacles in child welfare policy that prevent expediting the termination of parental rights even where it is necessary for the protection of the child. Part IV of this note will propose a model statute, which, if enacted in North Dakota, would protect children from abuse and neglect by expediting the termination of parental rights when a child is endangered by meth.

II. THE CONFLICT BETWEEN METH USE AND PARENTAL RIGHTS

Because of the unique effects of meth on the human brain, a conflict exists between the state's duty to protect the best interests of children and the parental right to custody.²⁶ In order to illustrate this conflict, this section first sets forth general information about meth to explain what meth is, where it came from, who is using it, and why it is addicting users across the country.²⁷ Second, this section explains how meth affects the brain differently than other drugs, resulting in powerful addiction and permanent brain damage that is characterized by violent and aggressive behavior.²⁸ Third, this section discusses why there is currently no successful treatment protocol for methamphetamine addiction.²⁹ Finally, this section examines

26. See NAT'L INST. ON DRUG ABUSE, METHAMPHETAMINE ABUSE AND ADDICTION 5 (2002), available at <http://www.nida.nih.gov/PDF/RRMetham.pdf> (examining the effects of meth on the human brain).

27. See Lee, *supra* note 17, at 4B (stating that nationally nine million people have tried meth and eighty-five percent become addicted).

28. See KCI: The Anti-Meth Site, Methamphetamine Frequently Asked Questions, http://www.kci.org/meth_info/faq_meth.htm (last visited Sept. 24, 2005) (stating that the meth-induced release of high levels of dopamine causes aggressiveness and extremely violent behavior).

29. See Lee, *supra* note 17, at 4B (stating that meth is more difficult to treat than any other addiction); Charles Bliss, *Methamphetamine: How Effective Are Current Treatment Programs?*, CORNERSTONE BEHAV. HEALTH, <http://www.cornerstonebh.com/meth4.htm> (last visited Oct. 9, 2005) (stating that standard treatment programs are not working well for methamphetamine users); KCI: The Anti-Meth Site, *supra* note 28 (stating that treatment providers describe meth abusers as "the hardest to treat" of all drug users); MethamphetamineAddiction.com,

why characteristics of meth use create an environment that is unacceptably threatening to the health and safety of children.³⁰

A. "METH" GENERALLY

Methamphetamine (meth), also called speed, ice, crystal, and crank, comes in many forms.³¹ Meth can be smoked, snorted, ingested, or injected.³² Meth means "an amine derivative of amphetamine, C₁₀H₁₅N, used in the form of its crystalline hydrochloride as a central nervous system stimulant, both medically and illicitly."³³ As will be seen from the information that follows, this clinical definition cloaks the effects of meth in benign, technical jargon.³⁴

Contrary to common knowledge and suggestions by the media, meth is not a "new" drug.³⁵ Derived from its parent drug amphetamine, meth was developed in the late 1800s for use in nasal decongestants and bronchial inhalers.³⁶ In the 1970s, after its abuse became more widespread, meth became a Schedule II drug because of its negligible medical use and high potential for addiction.³⁷ While meth has been present in the United States for many years, meth use has grown significantly in recent years because it is both highly available and cheap,³⁸ having recently acquired the dubious distinction of causing "America's first homegrown drug crisis."³⁹

Methamphetamine is also imported from several foreign countries,⁴⁰ mainly from Mexico.⁴¹ However, much of the supply in the United States

Methamphetamine Information, http://methamphetamineaddiction.com/methamphetamine_meth.html (last visited Oct. 11, 2005) (stating that the success rate for traditional methamphetamine rehabilitation is seven percent).

30. See *infra* Part II.D (discussing the conflict between meth and permanency for children).

31. See U.S. DEP'T OF HEALTH & HUMAN SERVS., *supra* note 11, at 1 (listing other names for meth).

32. See *id.* (listing ways to use meth).

33. MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 1151 (Deluxe ed. 1998).

34. See *generally infra* Part II.B.3 (stating that meth causes violent behavior).

35. See CTR. FOR SUBSTANCE ABUSE TREATMENT, U.S. DEP'T OF HEALTH & HUMAN SERVS. TREATMENT FOR STIMULANT DISORDERS: TREATMENT IMPROVEMENT PROTOCOL (TIP) SERIES 6 (Substance Abuse and Mental Health Servs. Admin. 1999) (stating that meth was first synthesized in 1887 and available in 1932 as a nasal spray).

36. See *id.* (stating that meth was available in 1932 as a nasal spray); see also Jefferson, *supra* note 7 (stating that meth was originally used in decongestants and bronchial inhalers).

37. KCI: The Anti-Meth Site, *supra* note 28; MethamphetamineAddiction.com, *supra* note 29.

38. Jefferson, *supra* note 7.

39. Jon Bonne, *Meth's Deadly Buzz*, MSNBC.COM, <http://www.msnbc.msn.com/id/3071772/> (last visited Oct. 8, 2005).

40. See KYLE & HANSELL, *supra* note 8, at 8 (explaining that meth is imported from Mexico, Canada, China, and Southeast Asia).

41. U.S. DEP'T OF HEALTH & HUMAN SERVS., *supra* note 11, at 2.

is produced in this country.⁴² Meth can be manufactured easily with a cocktail of household items including lithium batteries, cold medicine, drain cleaner, and engine-starter fluid, which are ingredients that are both inexpensive and widely available.⁴³ Consequently, clandestine laboratories can spring up quickly and move easily, avoiding detection by law enforcement.⁴⁴ Because meth is cheaper and more available than other imported drugs like marijuana and cocaine,⁴⁵ it is now the most prevalent synthetic drug manufactured in the United States.⁴⁶

One of the many remarkable and unique characteristics of the meth epidemic is its users' defiance of stereotype.⁴⁷ Unlike the visions of pot-smoking hippies of the 1970s and cocaine-snorting yuppies of the 1980s, meth has "quietly marched across the country and up the socioeconomic ladder" without discriminating on the basis of race, sex, age, or economic status.⁴⁸ Its initial effects, including increased energy, feelings of euphoria, weight loss, and enhanced athletic and sexual performance,⁴⁹ make it attractive across a broad spectrum of society.⁵⁰ The drug has addicted high school and college athletes, blue-collar laborers, white-collar professionals, and even soccer moms in the heartland.⁵¹

42. *Id.* For many years, meth was mostly imported or made domestically in "super labs" from ingredients either smuggled into the United States or purchased locally. KYLE & HANSELL, *supra* note 8, at 8. Production started to change significantly about ten years ago, when small labs began to spring up where meth cooks created small amounts of meth from legally purchased household goods, using more than one hundred recipes available on the Internet. *Id.*

43. Bonne, *supra* note 39; see also U.S. DEP'T OF HEALTH & HUMAN SERVS., *supra* note 11, at 2 (stating that meth "cooks" use drain cleaner, batteries, and engine-starter fluid to make meth).

44. See U.S. DEP'T OF HEALTH AND HUMAN SERVS., *supra* note 11, at 2-3 (stating that secret labs can spring up quickly and avoid detection). *But see* Don Davis & Amy Dalrymple, *Meth Laws Bring Results*, FORUM (Fargo, N.D.), Sept. 25, 2005, at A1, A12 (stating that a law passed in North Dakota restricting the sale of ingredients used to make meth has reduced the number of meth labs by seventy-four percent since it became effective June 1, 2005).

45. Jefferson, *supra* note 7.

46. U.S. DEP'T OF HEALTH & HUMAN SERVS., *supra* note 11, at 1.

47. See Jefferson, *supra* note 7 (discussing the phenomenon of meth use across socioeconomic classes); see also NAT'L INST. ON DRUG ABUSE, *supra* note 26, at 1 (stating that methamphetamine use among diverse populations has been documented).

48. Jefferson, *supra* note 7.

49. See U.S. DEP'T OF HEALTH AND HUMAN SERVS., *supra* note 11, at 3 (listing typical psychological effects of meth).

50. See Jefferson, *supra* note 7 (stating that meth has seeped into the mainstream of society).

51. See C.W. Nevius, *Meth Speeds Headlong Into Suburbs*, S.F. CHRON., Mar. 5, 2005, available at <http://www.sfgate.com/cgi-in/article.cgi?f=/c/a/2005/03/05/BAG4QBL3AO1.DTL> (stating that a nationally recognized expert on methamphetamine addiction treats every segment of the population, including soccer moms and grandmas).

B. HOW METH IS DIFFERENT FROM OTHER DRUGS

Meth is different from other illicit drugs in several significant ways.⁵² This subsection discusses meth's unique effect on the human brain that results in addiction, permanent brain damage, and violent and aggressive behavior.⁵³

1. *Your Brain on Meth*

Meth affects the brain differently than other drugs.⁵⁴ Unlike amphetamine, meth significantly affects the central nervous system.⁵⁵ Meth affects the user at different rates depending on whether it is snorted, smoked, ingested, or injected.⁵⁶ All methods of use affect the brain by prompting the immediate production of dopamine, the chemical responsible for the regulation of pleasure.⁵⁷

Meth and cocaine are often compared and contrasted in an effort to better understand the effects of meth.⁵⁸ Although meth and cocaine are both stimulants affecting dopamine in the brain, there are differences in how the drugs affect the brain and nerve cells.⁵⁹ Like cocaine, meth boosts brain levels of dopamine, but cocaine and meth do not achieve this effect in the same way.⁶⁰ Cocaine does not directly stimulate the release of dopamine.⁶¹ Instead, cocaine prevents the normal "recycling" of the chemical messenger once it is released.⁶² Conversely, meth actually enters the nerve

52. See Kayleen Larson, *Meth Myths*, INITIATIVE Q., Fall 2005, at 8 (stating that compared to other drugs, meth is easier to manufacture, more readily available, less expensive, and highly addictive).

53. See JANE MAXWELL, CTR. FOR EXCELLENCE IN DRUG EPIDEMIOLOGY, IMPLICATIONS OF RESEARCH FOR TREATMENT: METHAMPHETAMINE 3 (2005), available at <http://www.utexas.edu/research/cswr/gcattc/Methamphetamine.pdf> (stating that chronic meth use causes deterioration of the cerebrum); see also NAT'L INST. ON DRUG ABUSE, *supra* note 26, at 4 (stating that meth use can lead to addiction, rages, and extremely violent behavior).

54. See NAT'L INST. ON DRUG ABUSE, *supra* note 26, at 5 (examining the difference between meth and other stimulants).

55. See *id.* at 2 (stating that meth's chemical structure is similar to amphetamine, but has a more pronounced effect on the central nervous system).

56. See *id.* at 3 (listing ways to take meth).

57. See Bliss, *supra* note 29 (stating that the main neurotransmitter affected by meth is dopamine).

58. See, e.g., NAT'L INST. ON DRUG ABUSE, *supra* note 26, at 5 (comparing meth and cocaine); MAXWELL, *supra* note 53, at 2 (comparing meth and cocaine).

59. See NAT'L INST. ON DRUG ABUSE, *supra* note 26, at 5 (stating that although meth and cocaine structures are similar, meth is different from cocaine).

60. See *id.* (noting differences in how meth and cocaine work at the level of the nerve cell).

61. *Id.*

62. *Id.*

cell to cause an excessive release of dopamine.⁶³ The meth “rush” is caused by the resulting release of dopamine.⁶⁴

Both meth and cocaine use result in the accumulation of dopamine, but cocaine is quickly metabolized by the body, while meth is not.⁶⁵ With cocaine use, half of the drug is removed from the body within an hour.⁶⁶ With meth use, half of the drug is removed from the body in twelve hours.⁶⁷ Because the human body metabolizes it slowly, meth is present in the brain longer, creating both longer stimulant effects and more serious damage to the brain.⁶⁸

Researchers have found that as much as fifty percent of the dopamine-producing brain cells can be damaged by prolonged exposure to low levels of meth.⁶⁹ Nerve cells in the brain can be damaged even more severely.⁷⁰ Preliminary evidence suggests that meth actually causes deterioration of the brain’s cerebrum, resulting in permanent brain damage that manifests itself in an inability to concentrate, deterioration of memory, lack of motivation, and inability to experience pleasure.⁷¹

Because of meth’s effects on the user, chronic meth use results in both short- and long-term costs to the user and to society.⁷² As the addiction progresses, the user’s brain functioning deteriorates, and so does her ability to interact socially, hold a job, and maintain relationships.⁷³ Alarming, contemporary research suggests these functional and chemical changes in the brain may be permanent.⁷⁴

63. *Id.*

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.*

71. MAXWELL, *supra* note 53, at 3; *see also* Rizwan Shah, Drug Endangered Children: Medical Effects, <http://www.iowadec.org/uploads/DEC%20Power%20Point%20Dr%20Shah%203%2015%2005.pdf> (last visited Jan. 17, 2006) (stating that a comparison of blood flow in the brain between meth users and non-users suggests brain damage in meth users).

72. *See* U.S. DEP’T OF HEALTH & HUMAN SERVS., *supra* note 11 and accompanying text (listing examples of meth’s costs to society); *see also infra* note 73 and accompanying text (listing examples of meth’s costs to the user).

73. *See* MAXWELL, *supra* note 53, at 1-2 (stating that meth adversely affects social support networks and behavioral functioning, causing social, work, and financial problems).

74. *See id.* at 3 (stating that meth may cause permanent damage to neurons and cognitive functioning).

2. *Meth Is Highly Addictive*

Because of its intense effects, meth is dangerously addictive.⁷⁵ While using meth once may not create an instant addiction per se, one use can instigate the intense cycle that leads to addiction more quickly than any other drug.⁷⁶ The unusually intense rush and long-lasting high created by the dopamine influx, followed by the depletion of dopamine and corresponding depression, or “low,” cause users to seek more meth to recover.⁷⁷ Because tolerance for meth can occur within minutes,⁷⁸ each time the drug is used, more meth is required to achieve the same effect, which leads quickly to an addictive cycle.⁷⁹

A comparison of patterns between meth and cocaine use showed that a typical meth user got high more than twenty days per month, using several times per day, suggesting a use-routine focused on maintaining a high.⁸⁰ In contrast, cocaine users were more likely to use on fewer days and in the evenings, comporting more with the picture of a recreational user.⁸¹ The need to maintain a meth high leads to a “binge” and “crash” pattern.⁸²

During the binge, the user obtains the initial “rush” and experiences a physical sensation said to be equivalent to ten orgasms.⁸³ Unlike a cocaine high that can last two to five minutes, the meth rush can last for five to thirty minutes.⁸⁴ The rush is followed by a high during which the user feels energetic, intensely smart, and euphoric due to the dopamine release in the brain.⁸⁵ To maintain this high, the user binges by ingesting more and more meth.⁸⁶ During the binge, the user is both mentally and physically hyperactive, and may stay awake for days at a time, until the “tweaking” stage.⁸⁷

75. See Lee, *supra* note 17, at 4B (stating that nationally nine million people have tried meth and eighty-five percent become addicted); see also NAT'L INST. ON DRUG ABUSE, *supra* note 26, at 3 (stating that meth affects users differently, depending on whether it is smoked, snorted, ingested, or injected).

76. See Larson, *supra* note 52, at 9 (stating that meth addicts can be helped, but meth addiction poses unique recovery hurdles); Lee, *supra* note 17, at 4B (stating that meth is much more addictive than other drugs).

77. MethamphetamineAddiction.com, *supra* note 29.

78. NAT'L INST. ON DRUG ABUSE, *supra* note 26, at 3.

79. *Id.*

80. MAXWELL, *supra* note 53, at 2.

81. *Id.*

82. See MethamphetamineAddiction.com, *supra* note 29 (describing each stage of meth use in detail).

83. *Id.*

84. *Id.*

85. *Id.*

86. *Id.*

87. *Id.*

During the tweaking stage at the end of a binge, the user experiences what are described as intolerable feelings of emptiness, exhaustion, depression, and anxiety.⁸⁸ A tweaking meth user is dangerous to those she may encounter, including peers, children, and law enforcement.⁸⁹ Because of the fight or flight mode induced by the body's production of adrenaline, the tweaking meth user is known to be exceptionally aggressive, violent, argumentative, paranoid, and physically strong, often with disastrous consequences.⁹⁰ An inevitable postlude to the high is the "crash" where the user's body must replenish itself, and the user can sleep for several days at a time.⁹¹

3. *Meth Causes Violence*

As if it were not enough that meth rots a user's brain, the effect of meth is externalized in the form of dangerously aggressive behavior.⁹² Symptoms can be so extreme that they lead to suicide and murder.⁹³ Chronic use can lead to psychotic behavior, including paranoia and hallucinations, as well as out-of-control rages accompanied by aggressive and violent behavior.⁹⁴ The psychotic symptoms of meth use can last for months even after use has ceased.⁹⁵ Because of the intensity of these symptoms, users' lifestyles are characteristically interwoven with violence.⁹⁶ In law enforcement circles, meth users are known to present special dangers because of their irrationality, paranoia, unpredictability, and tendency to react violently to confrontation.⁹⁷

88. *Id.*

89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.* High levels of dopamine cause the pleasure and euphoria that are sought by meth users, but too much dopamine causes aggressiveness and extremely violent behavior. KCI: The Anti-Meth Site, *supra* note 28; *see also* NAT'L INST. ON DRUG ABUSE, *supra* note 26, at 4 (stating that meth abuse leads to psychotic behavior, including extremely violent behavior).

93. *See* KYLE & HANSELL, *supra* note 8, at 6 (stating that side effects can lead to violent and aggressive acts, including suicide).

94. NAT'L INST. ON DRUG ABUSE, *supra* note 26, at 4.

95. *Id.* at 5-6.

96. *See* MAXWELL, *supra* note 53, at 2 (stating that violence is characteristic of the lifestyles of the majority of those entering meth treatment).

97. *See* ELLS ET AL. *supra* note 6 (stating that the investigation of meth-related crimes presents real and immediate danger).

C. NO TREATMENT PROTOCOL PROVEN TO BE EFFECTIVE

Because of meth's unique effects on the brain, most meth users become addicted.⁹⁸ While meth users may be able to recover with effective treatment, currently no treatment protocol has proven effective in significant numbers.⁹⁹ Meth addicts are frustrating treatment providers because of the disturbingly high number of treatment failures in conventional treatment programs.¹⁰⁰ While additional research is needed to identify successful treatment options for the unique hurdles presented by meth,¹⁰¹ existing research and contemporary experience suggest that successful recovery will only be accomplished with longer, more intensive treatment.¹⁰²

D. CONFLICT BETWEEN METH AND PERMANENCY FOR CHILDREN

The time and effort required to recover from a meth addiction create an irresolvable conflict between the parent's right to custody and the child's need for permanency.¹⁰³ Courts across the country, including the North Dakota Supreme Court, have held that delaying termination of parental rights for a protracted period while the parent participates in treatment or is incarcerated is detrimental to the welfare and best interests of children.¹⁰⁴ Courts have further held that even where a parent has participated in treatment or where treatment is ongoing, it may nevertheless be appropriate

98. See Lee, *supra* note 17, at 4B (stating that eighty-five percent of the nine million that have tried meth become addicted).

99. See Lee, *supra* note 17, at 4B (stating that meth is more difficult to treat than any other addiction); Bliss, *supra* note 29 (stating that standard treatment programs are not working well for methamphetamine users); KCI: The Anti-Meth Site, *supra* note 28 (stating that treatment providers describe meth abusers as "the hardest to treat" of all drug users); MethamphetamineAddiction.com, *supra* note 29 (stating that the success rate for traditional methamphetamine rehabilitation is seven percent).

100. MethamphetamineAddiction.com, *supra* note 29.

101. See MAXWELL, *supra* note 53, at 4 (stating that research efforts are important to the development of meth treatment).

102. See Larson, *supra* note 52, at 9 (stating that experts agree meth users need longer, more intensive treatment than is the current standard); MethamphetamineAddiction.com, *supra* note 29 (stating that statistics show that longer-term residential treatment is more effective).

103. See Larson, *supra* note 52, at 9 (stating that meth users require longer treatment); see also *In re J.L.D.*, 539 N.W.2d 73, 77 (N.D. 1995) (recognizing the serious potential for harm in delaying a child's placement in an adoptive home).

104. See *In re C.R.*, 1999 ND 221, ¶¶ 12, 14, 602 N.W.2d 520, 525 (terminating parental rights of incarcerated father of two-year-old was appropriate, as a long-term wait would be detrimental to the child); *In Interest of C.K.H.*, 458 N.W.2d 303, 307 (N.D. 1990) (holding that even with evidence that long and intensive therapy might provide the parent with the ability to learn necessary skills, children cannot be expected to wait and assume the risks).

to terminate parental rights, because the parent's progress is not sufficient evidence that the parent will change her ways.¹⁰⁵

Federal law also recognizes a child's need for permanency.¹⁰⁶ The Adoption and Safe Families Act of 1997 requires states to file a petition for termination of parental rights where a child has been in foster care for fifteen of the past twenty-two months.¹⁰⁷ The dismal outlook for successful recovery from meth addiction,¹⁰⁸ combined with the time required for even a chance of successful treatment, directly conflicts with the child's need for permanency in a safe environment.¹⁰⁹

E. METH ENDANGERS CHILDREN

For the reasons discussed above, the meth epidemic in the United States holds a devastating effect on the country as a whole, and on children in particular.¹¹⁰ According to United States Attorney General Alberto Gonzalez, "[I]n terms of damage to children and our society, meth is now the most dangerous drug in America."¹¹¹

Each stage of meth use brings new dangers to the children of meth users, as the drug affects the parent's ability to care for the child.¹¹² The binging parent experiences mood swings that cause irritability and impatience, which can lead to abusive behavior toward children.¹¹³ The tweaking parent is obsessed with finding more meth, often depriving her children of the most basic needs, including appropriate nutrition, hygiene, and medical attention.¹¹⁴ Parents who have crashed often fail to supervise their children while sleeping for days.¹¹⁵ Likewise, unborn children are harmed

105. *See In re Welfare of D.N.*, 523 N.W.2d 11, 13 (Minn. App. 1994) (holding that termination was appropriate even though the mother completed the first phase of chemical dependency treatment and sought further counseling).

106. *See* Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, 111 Stat. 2115 (codified as amended at 42 U.S.C. § 675(5)(E) (2000)) (requiring petition for termination of parental rights if a child has been in foster care for fifteen of the past twenty-two months).

107. *Id.*

108. *See generally supra* Part ILC (discussing the lack of effective treatment protocol for meth users).

109. *See supra* notes 103-105 and accompanying text (discussing a child's need for permanency).

110. ELLS ET AL., *supra* note 6; KYLE & HANSELL, *supra* note 8, at 6.

111. Jefferson, *supra* note 7.

112. ELLS ET AL., *supra* note 6.

113. *Id.*

114. *Id.*; *see also* U.S. DEP'T OF HEALTH & HUMAN SERVS., *supra* note 11, at 8 (stating that meth-using parents often do not supervise their children's activities and hygiene, and deprive children of food and medical attention).

115. ELLS ET AL., *supra* note 6.

by meth, as meth use during pregnancy causes premature delivery, low birth weight, abnormal reflexes, extreme irritability, and learning disabilities.¹¹⁶

In addition to the abuse and neglect suffered at the hands of the meth-using parent, children are further affected by exposure to other users, weapons, and the third-party violence that often accompanies a drug-user's lifestyle.¹¹⁷ In an alarming number of arrests involving meth, there is a child living in the home.¹¹⁸ Children are frequently found at the scene of meth laboratories, where they are exposed to poisonous chemicals and fumes and toxic waste, and they can be victims of fires in these highly flammable environments.¹¹⁹

For these reasons, child welfare agencies have seen a substantial increase in the number of children placed in foster care.¹²⁰ During the past year, forty percent of counties across the nation have reported an increase in foster care placements due to the use and manufacture of meth.¹²¹ Minnesota and North Dakota experienced more significant increases during this time, with more than sixty-nine percent of counties in Minnesota and fifty-four percent of counties in North Dakota reporting increased foster care placements due to meth.¹²² Disturbingly, this survey revealed that forty-eight percent of the county child welfare officials indicated that where meth is involved, families cannot be reunified.¹²³ Fifty-nine percent say meth use makes reunification more difficult.¹²⁴ Furthermore, fifty-six percent said it takes longer to reunify, and twenty-seven percent said that "recidivism is so great with meth users that the reunification of these families does not last."¹²⁵

Figures provided by the North Dakota Guardian Ad Litem (GAL) Project¹²⁶ and the Division of Children and Family Services¹²⁷ substantiate the significant effect of meth on the child welfare system in North

116. *See id.* (stating that meth's effects on the fetus are serious and life-threatening); KYLE & HANSELL, *supra* note 8, at 6 (describing the prenatal effects of meth use); U.S. DEP'T OF HEALTH & HUMAN SERVS., *supra* note 11, at 8 (listing the effects of prenatal meth use).

117. ELLS ET AL., *supra* note 6.

118. KYLE & HANSELL, *supra* note 8, at 2.

119. *Id.* at 8.

120. *Id.* at 3.

121. *Id.* at 6.

122. *Id.*

123. *Id.* at 7.

124. *Id.* at 6-7.

125. *Id.* at 7.

126. Interview with Dixie Evans, *supra* note 21. The GAL Project is a legislatively funded program created to provide a trained, independent observer to advocate for the best interests of the child in court proceedings. *Id.* There are presently fifty-two lay guardian ad litem serving the children of North Dakota. *Id.*

127. E-mail from Paul Ronningen, *supra* note 24.

Dakota.¹²⁸ According to records kept by GAL from July 1, 2004, to June 30, 2005, more than one quarter (26.6%) of the 880 children placed in foster care due to deprivation were placed because of meth-related issues.¹²⁹ This comports with a point-in-time survey conducted by the Division of Children and Family Services, which reported that almost one in four of the 978 children in foster care on August 16, 2005, were removed from the home because of meth use, manufacturing, or sale.¹³⁰

As illustrated by these statistics, meth's detrimental effect on the safety and well-being of children is increasing the number of abused and neglected children in foster care, with no plausible solution in sight.¹³¹ Because of the urgency of this dire situation, the status quo of existing child welfare policy must be challenged, and legislation must be enacted to protect children endangered by meth.

III. TERMINATING PARENTAL RIGHTS TO PROTECT CHILDREN ENDANGERED BY METH

Chronic meth use effectively eliminates the possibility for a parent to provide a home that is free of abuse and neglect.¹³² Furthermore, even if the parent does attempt to recover from her addiction, contemporary research suggests that a protracted amount of time is required to obtain the improbable chance for successful recovery.¹³³ In balancing the child's right to protection from abuse and neglect and the need for a permanent home with the parent's right to custody of the child, the child's interest clearly emerges as paramount.¹³⁴

This grim state of affairs begs the conclusion that it is necessary to expedite the termination of parental rights where a child's health and safety are endangered by meth.¹³⁵ Revising North Dakota's statute to effect this

128. *See id.* (stating that meth's impact on child welfare in North Dakota is substantial).

129. Interview with Dixie Evans, *supra* note 21.

130. E-mail from Paul Ronningen, *supra* note 24.

131. *See* KYLE & HANSELL, *supra* note 8, at 6 (stating that fifty-four percent of North Dakota counties experienced an increase in out-of-home placements in the past year).

132. *See generally supra* Part II (discussing the effects of meth on the parent's ability to provide a safe home for children).

133. *See supra* note 99 and accompanying text (suggesting that recovery from meth addiction is improbable).

134. *See supra* notes 103-105 and accompanying text (discussing a child's need for permanency).

135. *See* KYLE & HANSELL, *supra* note 8, at 6 (stating that many children are "grossly neglected" by meth-using parents).

change is a natural, logical, and necessary step to protect children and to mitigate the drastic and horrifying consequences of meth.¹³⁶

The forthcoming section discusses the constitutional implications of terminating parental rights, reviews the shifts in child welfare policy pertaining to the termination of parental rights, and examines current obstacles lurking in contemporary child welfare policy that prevent the expedited termination of parental rights where it is necessary for the protection of the child. Further, this section explains why expediting the termination of parental rights of meth users is consistent with both state and federal law. Finally, this section concludes with a proposed statute that, if implemented in North Dakota, would require expediting the termination of parental rights in cases where a child is endangered by meth.¹³⁷

A. THE CONSTITUTIONAL DIMENSION OF A PARENT'S RIGHT TO CUSTODY OF HER CHILD

A parent's right to custody of his or her child dates back to English common law, when the father was granted the legal right to custody of the child.¹³⁸ In 1982 in *Santosky v. Kramer*,¹³⁹ the United States Supreme Court recognized a parent's right to custody as a fundamental liberty interest under the Constitution.¹⁴⁰ Even prior to *Santosky*, the North Dakota Supreme Court recognized that "[p]arents have a fundamental, natural right to their children which is of constitutional dimension."¹⁴¹

Even though a parent has a constitutionally protected right to custody of her child, the state, as *parens patriae*,¹⁴² has a legitimate interest in protecting children and advancing a child's best interests.¹⁴³ Therefore, a parent's right is not absolute.¹⁴⁴ A state may intervene when parental custody adversely affects the child's welfare,¹⁴⁵ and the state will not enforce a

136. See N.D. CENT. CODE § 27-20-44 (1999) (failing to specifically address deprivation caused by meth or other drugs).

137. See *infra* Part IV.A (presenting a proposed statute to specify that deprivation caused by meth use calls for the expedited termination of parental rights).

138. Gloria Christopherson, *Minnesota Adopts a Best Interest Standard in Parental Rights Termination Process*, 71 MINN. L. REV. 1263, 1266 (1987).

139. 455 U.S. 745 (1982).

140. *Santosky*, 455 U.S. at 753.

141. *Kleingartner v. D.P.A.B.*, 310 N.W.2d 575, 578 (N.D. 1981).

142. BLACK'S LAW DICTIONARY 1144 (8th ed. 2004). The Latin, literal interpretation of *parens patriae* is "parent of his or her country." *Id.*

143. See *Santosky*, 455 U.S. at 766 (specifying that states have a *parens patriae* interest in preserving and promoting the welfare of children).

144. *Kleingartner*, 310 N.W.2d at 578.

145. *Ginsberg v. New York*, 390 U.S. 629, 639 (1968); see also *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944) (stating that there must be a compelling justification for the intrusion of the government into the private lives of families).

parent's right to custody "to the detriment or destruction of the happiness and well-being of the child."¹⁴⁶

In order to retain parental rights, the parent is required to provide care that meets minimum community standards.¹⁴⁷ "The law secures [these] rights only so long as [the parent] shall discharge [her] obligations."¹⁴⁸ When it becomes evident that a parent is not able to discharge parental responsibilities, it may become necessary to terminate parental rights in order to discharge the state's duty to provide the child with a permanent home.¹⁴⁹ All states recognize the termination of parental rights as a strategy to protect children and have enacted statutes defining this process.¹⁵⁰

Termination of parental rights is an extreme measure in protecting the child, as it is an absolute and comprehensive severing of the parent-child relationship.¹⁵¹ Following termination, there is no communication or visitation between the parent and the child, and the parent has no right to any information about the child.¹⁵² Recognizing the seriousness of this measure, the Supreme Court in *Santosky* held that before a state may sever the rights of parents to the custody of their natural child, "due process requires that the State support its allegations by at least clear and convincing evidence."¹⁵³

Currently, in order to terminate parental rights in North Dakota, the state must file a petition and prove by clear and convincing evidence that: (1) the child is deprived; (2) the deprivation is likely to continue; and (3) the deprivation has caused or will continue to cause serious physical, mental, emotional, or moral harm.¹⁵⁴ Each case, regardless of the cause, nature, or severity of deprivation is reviewed under the same three-part test.¹⁵⁵

146. *In re F.H.*, 283 N.W.2d 202, 214 (N.D. 1979).

147. *Asendorf v. M.S.S.*, 342 N.W.2d 203, 206 (N.D. 1983).

148. *In re F.H.*, 283 N.W.2d at 214.

149. *See Santosky v. Kramer*, 455 U.S. 745, 767 (1982) (holding that the state's interest in finding an alternate home arises only when it is clear that the natural parent cannot provide a home).

150. NAT'L CLEARINGHOUSE ON CHILD ABUSE AND NEGLECT, GROUNDS FOR INVOLUNTARY TERMINATION OF PARENTAL RIGHTS: SUMMARY OF STATE LAWS 1 (2005), available at <http://nccanch.acf.hhs.gov/general/legal/statutes/groundterminall.pdf>.

151. MARK HARDIN & ROBERT LANCOUR, EARLY TERMINATION OF PARENTAL RIGHTS: DEVELOPING APPROPRIATE STATUTORY GROUNDS 4 (A.B.A. 1996).

152. *Id.*

153. *Santosky*, 455 U.S. at 747-48.

154. *See In re A.S.*, 1998 ND 181, ¶ 15, 584 N.W.2d 853, 856 (creating a three-part test for the termination of parental rights).

155. *See id.* (applying the three-part test for the termination of parental rights).

B. SHIFTS IN CHILD WELFARE POLICY PERTAINING TO TERMINATION OF PARENTAL RIGHTS

Policy in the United States with regard to the involuntary termination of parental rights has shifted several times since the 1970s, when foster care policy emphasized removing children from any unsafe environment, and children entering foster care stayed there for long periods of time.¹⁵⁶ The United States Supreme Court coined the term “foster care drift” in *Smith v. Organization of Foster Families for Equality and Reform*¹⁵⁷ in 1977, when it described the experience of foster children in New York at the time.¹⁵⁸ The foster care system was characterized by the ease with which it removed children from their homes, yet demonstrated reluctance to terminate parental rights.¹⁵⁹ As a result, children moved from foster home to foster home over extended periods, and few children were freed from the system for adoption.¹⁶⁰

In response to this problem, Congress enacted the Adoption Assistance and Child Welfare Act of 1980 (AACWA).¹⁶¹ AACWA was designed to remedy what were seen as significant problems with the foster care system, with three goals in mind: (1) to prevent the unnecessary placement of children in foster care; (2) to reunify families where possible; and (3) to reduce the time children spend in foster care by encouraging adoption when reunification was not possible.¹⁶² With regard to the first two goals, AACWA required the state to undertake reasonable efforts to provide the family with support and services to avoid separation in the first place, and to reunite the family if separation had occurred.¹⁶³ To reduce the time that children spent in foster care, AACWA established time frames within which the state was required to document a permanency plan, and also required a hearing within

156. Madelyn Freundlich, *Expediting the Termination of Parental Rights: Solving a Problem or Sowing the Seeds of a New Predicament?*, 28 CAP. U. L. REV. 97, 97 (1999).

157. 431 U.S. 816 (1977).

158. See *Smith*, 431 U.S. at 836 (observing that New York foster children were spending a median time of over four years in foster care in multiple foster homes).

159. Freundlich, *supra* note 156, at 98.

160. Robert Gordon, *Drifting Through the Byzantium: The Promise and Failure of the Adoption and Safe Families Act of 1997*, 83 MINN. L. REV. 637, 643 (1999).

161. The Adoption Assistance and Child Welfare Act of 1980, Pub. L. No. 96-272, 94 Stat. 500 (codified as amended at 42 U.S.C. § 1305 (1980)).

162. Freundlich, *supra* note 156, at 98.

163. See 42 U.S.C. § 671(a)(15)(A)-(B) (2000) (requiring reasonable efforts to preserve and reunify families). The term “reasonable efforts” was neither defined in the statute nor in the regulations adopted by the U.S. Department of Health and Human Services, which is significant even today. See Mary O’Flynn, Comment, *The Adoption and Safe Families Act of 1997: Changing Child Welfare Policy Without Addressing Parental Substance Abuse*, 16 J. CONTEMP. HEALTH L. & POL’Y 243, 253 (1999) (discussing the consequences of AACWA’s failure to define reasonable efforts).

eighteen months from the date when a child entered foster care in order to judicially monitor the disposition of the child.¹⁶⁴ During the late 1980s, the number of terminations increased, with a corresponding increase in the number of adoptions.¹⁶⁵

Criticism of this approach appeared in the early 1990s, as questions arose as to the propriety of focusing state efforts on terminating parental rights rather than making efforts to support and preserve the birth family.¹⁶⁶ This shift in ideology caused Congress to enact the Family Preservation and Family Support Act of 1993.¹⁶⁷ This Act was designed to keep families together by providing federal matching funds to encourage states to develop family preservation systems and other support services including health, education, and child care programs.¹⁶⁸ Within a few years, the number of children in foster care again increased, and the number of adoptions stagnated.¹⁶⁹

Criticism of the emphasis on family preservation quickly mounted as the states went to great lengths in terms of time and expense to reunite the parent and child, even if it meant exposing children to dangerous conditions.¹⁷⁰ After recognizing the consequences of this policy, Congress enacted the Adoption and Safe Families Act of 1997 (ASFA).¹⁷¹ The policy focus shifted once again toward greater use of termination of parental rights as a strategy for achieving permanency for children.¹⁷²

164. See Pub. L. No. 96-272, 94 Stat. 500 (codified at 42 U.S.C. § 671(a)(16) (1986) (mandating development of a case plan); 42 U.S.C. § 675(5)(B)-(C) (1986) (requiring periodic case reviews and a dispositional review after eighteen months); Freundlich, *supra* note 156, at 98 (stating that AACWA “nationalized” foster care rules).

165. Freundlich, *supra* note 156, at 99.

166. *Id.* at 98.

167. *Id.*; see Family Preservation and Support Act of 1993, Pub. L. No. 103-66, 107 Stat. 312 (codified as amended at 42 U.S.C. § 629 (a)-(c) (1986) (renewing efforts to preserve families).

168. See Omnibus Budget Reconciliation Act 13711, Pub. L. No. 103-66, 107 Stat. 312 (codified as amended at 42 U.S.C. § 629(a) (1994)) (stating the purpose of the Act); Gordon, *supra* note 160, at 646 (stating that the Act renewed emphasis on preventative services).

169. See Freundlich, *supra* note 156, at 98 (stating that adoptions stagnated at approximately 17,000 to 21,000 per year as the population of children in foster care substantially increased).

170. See *id.* at 99 (stating that criticism grew as critics pointed to unsafe conditions for children and families). Lack of clarity regarding the reasonable efforts requirement has been blamed for a number of highly publicized child deaths. Title IV-E Foster Care Eligibility Reviews and Child and Family Services State Plan Reviews, Proposed Rule, 63 Fed. Reg. 50,061 (Sept. 18, 1998).

171. Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, 111 Stat. 2115 (codified as amended at 42 U.S.C. § 670 (2000)).

172. See Freundlich, *supra* note 156, at 99 (stating that ASFA brought termination of parental rights to the forefront as a core strategy in achieving permanency).

C. ASFA: THE “GREAT CLARIFICATION”

ASFA represents the contemporary approach to child welfare in the United States, and it recognizes termination of parental rights as a necessary strategy in achieving permanency for children in foster care.¹⁷³ ASFA revises and clarifies AACWA, setting forth two significant changes affecting the termination of parental rights.¹⁷⁴

First, ASFA defines certain circumstances where reasonable efforts to reunite the parent and child are not required.¹⁷⁵ Second, ASFA establishes a time frame in which a petition to terminate parental rights must be filed after attempts to reunify parent and child have been unsuccessful.¹⁷⁶ In effect, these provisions permit the expedited termination of parental rights in order to prevent the child from languishing in foster care, when the parent has either subjected the child to aggravated circumstances or has failed to respond in a timely manner to the state’s efforts toward reunification.¹⁷⁷

According to ASFA, reasonable efforts to reunite the parent and child shall not be required to be made where a court has found that:

1. The parent has subjected the child to “aggravated circumstances” as defined in state law (including but not limited to abandonment, torture, chronic abuse, and sexual abuse);¹⁷⁸
2. The parent has committed murder or voluntary manslaughter or aided or abetted, attempted, conspired or solicited to commit such a murder or manslaughter of another child of the parent;¹⁷⁹
3. The parent has committed a felony assault that results in serious bodily injury to the child or another one of their children; or¹⁸⁰
4. The parental rights of the parent to a sibling have been involuntarily terminated.¹⁸¹

173. *Id.*

174. *Id.*

175. *See* 42 U.S.C. § 671(a)(15)(D) (2000) (listing where reasonable efforts are not required).

176. *See id.* § 675(5)(E) (specifying the circumstances under which the state must file a petition to terminate parental rights and concurrently plan for the child’s adoption, including the recruitment and approval of a qualified adoptive family when the child has been in foster care for fifteen out of the most recent twenty-two months).

177. *See* Freundlich, *supra* note 156, at 99-100 (discussing the effect of ASFA on the termination of parental rights).

178. 42 U.S.C. § 671(a)(15)(D)(i).

179. *Id.* § 671(a)(15)(D)(ii)(II)-(III).

180. *Id.* § 671(a)(15)(D)(ii)(IV).

181. *Id.* § 671(a)(15)(D)(iii).

Upon the finding of one or more of these circumstances, ASFA requires the court to proceed with a permanency hearing within thirty days, and to make reasonable efforts to place the child: (1) for adoption; (2) with a legal guardian; or (3) in another permanent placement.¹⁸² The legislative intent of the Act was to provide for expedited termination of parental rights in situations that are particularly harmful and contrary to the state's role in promoting the health and safety of the child.¹⁸³ Even though ASFA explicitly permits expediting the termination of parental rights in the presence of certain circumstances, this portion of the Act has failed in application.¹⁸⁴

1. *ASFA's Inherent Obstacles*

There are two primary reasons why states have failed to implement the provision of ASFA that explicitly permits the expedited termination of parental rights.¹⁸⁵ First, although ASFA provides guidance as to the type of aggravated circumstances that dispense with the requirement to provide reasonable efforts to reunite the parent and child,¹⁸⁶ ASFA permits states to create their own definition of aggravated circumstances through state law.¹⁸⁷ Consequently, while all fifty states have technically adopted the provisions of ASFA, there is little uniformity in the construction and effect of termination statutes.¹⁸⁸ Several states, including North Dakota, have sterilized the effect of ASFA by failing to construct the statute in a manner that permits expediting the termination of parental rights.¹⁸⁹

Second, the Act suggests that reasonable efforts "shall not be required to be made" to reunify the family in certain aggravated circumstances, but it fails to expressly prohibit the state from providing services to reunite the

182. *Id.* § 671(a)(15)(E), (F).

183. *See* H.R. REP. NO. 96-136, at 47 (1979), *reprinted in* 1997 U.S.C.C.A.N. 1448, 1448 (stating that the Committee recognizes there are circumstances where preventative services are inappropriate, including where the child is in immediate danger).

184. *See supra* notes 178-181 (specifying circumstances where reasonable efforts to reunite parent and child are not required).

185. *See* 42 U.S.C. § 671(a)(15)(D)(i) (stating that termination of parental rights can be expedited in the presence of aggravated circumstances).

186. *See id.* (suggesting the types of conditions considered to be aggravated, but leaving states the discretion to define aggravated circumstances).

187. *See id.* (stating that reasonable efforts are not required if the parent has subjected the child to aggravated circumstances *as defined in state law*) (emphasis added).

188. *See* NAT'L CLEARINGHOUSE ON CHILD ABUSE AND NEGLECT, *supra* note 150, at 2 (stating that some states spell out grounds for termination, while others use general language).

189. *See* N.D. CENT. CODE § 27-20-44 (2005) (failing to refer to aggravated circumstances or a process for expediting termination); S.D. CODIFIED LAWS § 26-8A-26 (2005) (failing to include reference to aggravated circumstances or a process for expediting termination of parental rights).

parent and child upon the finding of aggravated circumstances of deprivation.¹⁹⁰ In other words, ASFA's failure to mandate expedited termination of parental rights in the presence of aggravated circumstances permits the state to continue to make efforts to reunite, even where those efforts may be futile or dangerous to the child.¹⁹¹

Because states are free to define the types of situations that might constitute an aggravated circumstance of deprivation,¹⁹² and are also permitted to continue efforts to reunite families even in the presence of aggravated circumstances,¹⁹³ any effect ASFA may have had in hastening the termination of parental rights in serious circumstances can be neutered through statutory construction.¹⁹⁴ Furthermore, the absence of a statute mandating the expedited termination of parental rights in serious circumstances permits state agencies and the judiciary to act on a bias that favors the preservation of biological family ties, prolonging the child's journey through the foster care system.¹⁹⁵

2. *Expediting Termination in Aggravated Circumstances Is Consistent with Existing North Dakota Law*

While ASFA's provisions permitting the expedited termination of parental rights have not been implemented in North Dakota, the concept is neither a deviation from legislative intent nor a significant departure from existing law.¹⁹⁶ The primary obstacle to expediting the termination of parental rights in aggravated circumstances is one of statutory construction.¹⁹⁷

Authority for the termination of parental rights in North Dakota is derived from the Uniform Juvenile Court Act (UJCA), which is codified in

190. 42 U.S.C. § 671(a)(15)(D).

191. *See* Gordon, *supra* note 160, at 674 (stating that agencies have discretion in deciding when to make reasonable efforts to reunite the child).

192. *See* 42 U.S.C. § 671(a)(15)(D) (stating that reasonable efforts are not required if the parent has subjected the child to aggravated circumstances *as defined in state law*) (emphasis added).

193. *See id.* (failing to prohibit states from making reasonable efforts in the presence of aggravated circumstances).

194. *See id.* (providing states with the authority to create their own definition of aggravated circumstances without federal oversight or intervention).

195. *See generally* Manvinder Gill, Note, *Protecting the Abused Child: It Is Time to Reevaluate Judicial Preference for Preserving Parental Custody Rights Over the Rights of the Child to be Free from Physical Abuse and Sexual Exploitation*, 18 J. JUV. L. 67, 68 (1997) (urging re-evaluation of the existing judicial preference for the preservation of biological family ties).

196. *See* N.D. CENT. CODE § 27-20-44 (Supp. 2005) (failing to expressly permit the expedited termination of parental rights). The statute neither specifies nor implies that there are situations where reasonable efforts are not required to reunite the family. *See id.* (failing to state that reasonable efforts may be withheld in certain circumstances).

197. *See id.* (failing to provide direction as to expediting the termination of parental rights).

Chapter 27-20 of the North Dakota Century Code (“termination statute”).¹⁹⁸ The Act also includes a definition of “aggravated circumstances,”¹⁹⁹ a definition of “reasonable efforts,”²⁰⁰ and a description of when reasonable efforts are not required to reunite the family.²⁰¹ However, because the latter sections are not referenced or cross-referenced to the termination statute, their presence is moot.²⁰²

The termination statute does not include any reference on its face to reasonable efforts or aggravated circumstances, what they are, or how they may factor into the termination process.²⁰³ Consequently, in following the termination process described in the UJCA, there is no occasion to seek out other portions of the Act that discuss reasonable efforts and aggravated circumstances.²⁰⁴ This lack of reference has a significant consequence, as it causes all deprivation cases to be guided by a process for termination that fails to distinguish more egregious types of deprivation from others.²⁰⁵ The practical effect of the termination statute’s construction is arguably contrary to both legislative intent and existing interpretations of the North Dakota Supreme Court, as discussed in the next three subsections.²⁰⁶

a. North Dakota Legislature Expresses Intolerance for Drug-Related Child Abuse

In 2003, the North Dakota Legislature made several additions to the UJCA to statutorily demonstrate the state’s lack of tolerance for prenatal exposure to controlled substances, and the exposure of children to the toxic process of the manufacturing or use of controlled substances.²⁰⁷ Specifically, the definition of “deprived child” was revised to include a child who “[is] subject to prenatal exposure to chronic and severe use of alcohol or any controlled substance [not lawfully prescribed];” or “[i]s present in an

198. *See id.* (setting forth grounds for the termination of parental rights).

199. *See id.* § 27-20-02(3) (providing the definition of aggravated circumstances).

200. *See id.* § 27-20-32.2 (providing the definition of reasonable efforts).

201. *See id.* § 27-20-32.2(4) (providing that reasonable efforts are not required in some circumstances).

202. *See id.* § 27-20-44 (lacking reference to aggravated circumstances and reasonable efforts).

203. *See id.* (lacking reference to aggravated circumstances and reasonable efforts).

204. *See id.* (failing to provide reference to Section 27-20-32.2(4) or Section 27-20-02(3)).

205. *See id.* (failing to distinguish more egregious types of deprivation from others).

206. *See id.* §§ 27-20-02(8)(f)-(g) (suggesting that the Legislature intended to include drug abuse as a factor in terminating parental rights).

207. *See id.* (including prenatal exposure to meth and exposure of children to meth labs as forms of deprivation).

environment subjecting the child to exposure to a controlled substance, chemical substance, or drug paraphernalia [as prohibited by statute].”²⁰⁸

Problematically, the intentions of the Legislature were relegated to the definitions section of the UJCA, instead of being placed within the termination statute itself.²⁰⁹ As a result, instead of mandating a process by which these types of deprivations would be treated more seriously than others, the revision only served to provide an example of a specific manner in which a child may be considered deprived.²¹⁰ Because a court could presumably have reached a conclusion of deprivation in these circumstances, even absent this expansion of the “deprived child” definition, its practical effect is benign.²¹¹ Nevertheless, the Legislature’s desire to treat drug-related deprivation more seriously than other types of deprivation is clear, and should be incorporated into the revised statute governing the process for terminating parental rights.²¹²

b. Other Obscurities in the UJCA

Further, while the UJCA includes a section defining when reasonable efforts are and are not required to reunite the family (“reasonable efforts statute”),²¹³ the termination statute includes no reference to reasonable efforts, eliminating any occasion to seek out the reasonable efforts statute.²¹⁴ Complicating the matter further, while the reasonable efforts statute specifically dispenses with the requirement of reasonable efforts in “aggravated circumstances,”²¹⁵ the definition of aggravated circumstances is also located only in the introductory section of the UJCA,²¹⁶ without corresponding inclusion or reference in the termination statute.²¹⁷ Because the termination statute contains no language to prompt reference to either the reasonable efforts statute or the definition of aggravated circumstances, in application,

208. *Id.*

209. *See id.* § 27-20-44 (failing to specify meth use as an aggravating circumstance affecting termination of parental rights).

210. *See id.* §§ 27-20-02(8)(f)-(g) (expanding the definition of a deprived child).

211. *See id.* § 27-20-44 (including deprivation as a reason to terminate parental rights).

212. *See id.* §§ 27-20-02(8)(f)-(g) (identifying prenatal drug use and a child’s exposure to drug manufacturing as specific means of deprivation).

213. *See id.* § 27-20-32.2 (describing when reasonable efforts are required to prevent removal of the child or to reunify the family).

214. *See id.* § 27-20-44 (lacking reference to reasonable efforts).

215. *See id.* §§ 27-20-32.2(4)(a)-(b) (stating that reasonable efforts are not required in aggravated circumstances or where rights to another of the parent’s children have been involuntarily terminated).

216. *See id.* § 27-20-02(3) (providing the definition of aggravated circumstances without a corresponding reference to the effect on the process for terminating parental rights).

217. *See id.* § 27-20-44 (failing to mention the impact of aggravated circumstances on the process of terminating parental rights).

the Act fails to require or even suggest that deprivation under aggravated circumstances can prompt the expedited termination of parental rights.²¹⁸

c. North Dakota Supreme Court Views on Aggravated Circumstances

Notwithstanding the obstacles created by the statutory construction of the UJCA, the North Dakota Supreme Court has expressed views supporting the termination of parental rights in circumstances where a child is deprived because of a parent's addiction or other affliction with long-term effects on the ability to parent.²¹⁹ Further, the court has supported the termination of parental rights where deprivation results from the parent's chronic substance abuse, even where the addicted parent is involved in ongoing treatment.²²⁰ These holdings represent the court's affirmation that a child's need for permanency outweighs the parental right to custody in circumstances where a parent's affliction requires long-term treatment.²²¹

IV. STATUTORY CHANGE IS NECESSARY

For the reasons discussed above, it is necessary for the North Dakota Legislature to revise the Uniform Juvenile Court Act to "clean up the Act" and expressly require expediting the termination of parental rights where the child is subjected to aggravated circumstances.²²² In order to provide children with the protection and permanency intended by ASFA, the statute should require expediting the termination of parental rights when the child is exposed to aggravated circumstances as currently described within the UJCA.²²³ Additionally, as advanced in Parts II and III of this article, the

218. See *supra* notes 214-17 (identifying the Act's failure to specify that under certain circumstances reasonable efforts to reunite the parent and child are not required).

219. See *In Interest of* D.F.G. and E.K.B., 1999 ND 216, ¶¶ 14, 21, 602 N.W.2d 697, 701, 703 (holding that termination was appropriate where the mother's addiction and mental illness compromised her ability to provide her child with a predictable, stable environment).

220. See *In Interest of* A.S., 1998 ND 181, ¶ 26, 584 N.W.2d 853, 857 (holding that the mother's progress in addiction treatment did not provide enough evidence that she would be a good parent or change her ways); *In Interest of* J.H. and A.H., 484 N.W.2d 482, 484 (N.D. 1992) (quoting *In Interest of* L.J., 436 N.W.2d 558, 563 (N.D. 1989)) (holding that termination is appropriate where prognostic evidence shows that the inability to parent will not be resolved in enough time to successfully reunite parent and child).

221. See *supra* notes 219-20 (illustrating the court's affirmation that a child's need for permanency outweighs the parental right to custody).

222. See *generally supra* Parts II, III (discussing the impact of meth on child welfare and flaws in the current statute that impede the process for expediting the termination of parental rights).

223. See N.D. CENT. CODE § 27-20-02(3) (Supp. 2005) (listing aggravated circumstances of deprivation). Aggravated circumstances include where a parent has abandoned, tortured, chronically abused, or sexually abused a child; has failed to make efforts to secure treatment for his or her addiction, mental illness, or behavior disorder for a period equal to the lesser of one year

statute should provide for the expedited termination of parental rights where a child is endangered by meth. To prevent the revised statute from being void for vagueness, or in the alternative, too strictly applied, the definition section of the UJCA should be enhanced to include the definition for “child endangered by meth.”

A. PROPOSED STATUTE

The termination statute should be revised to include a new sub-section defining aggravated conditions of deprivation that mandate the expedited termination of parental rights.²²⁴ The new section should include ASFA-proscribed aggravated conditions already found in the termination statute,²²⁵ aggravated circumstances already provided in the definition section of the UJCA,²²⁶ and the aggravated circumstance that is the topic of this note, namely, where a child is endangered by meth. By incorporating these components, the termination statute will include a comprehensive definition of aggravated circumstances to comport with the requirements of ASFA, the intentions of the North Dakota legislature, and the state’s duty to protect North Dakotan children from abuse and neglect. The following is the proposed statute:

§ 27-20-44 *Termination of parental rights.*

1. The court by order may terminate the parental rights of a parent with respect to the parent’s child if:

- a. The parent has abandoned the child;²²⁷
- b. The child is subjected to aggravated circumstances, including:

(1) Where a court of competent jurisdiction has convicted the child’s parent of one of the following crimes, or of an offense under the laws of another jurisdiction which requires proof of substantially similar elements:²²⁸

or one-half of the child’s lifetime; has committed murder or voluntary manslaughter or aided or abetted, attempted, conspired or solicited another to commit such a crime; and has been incarcerated with a release date after the child’s majority, or where the child is younger than nine, a release date after the child is twice the child’s current age. *Id.*

224. *See* 42 U.S.C. § 671(a)(15)(D)(i) (2000) (permitting states to define aggravated circumstances that would expedite the termination of parental rights).

225. *See* N.D. CENT. CODE § 27-20-44(1)(b)(3) (Supp. 2005) (providing conditions of deprivation).

226. *See id.* § 27-20-02(3) (providing additional conditions of deprivation).

227. *Id.* § 27-20-44.

228. *Id.* § 27-20-44(1)(b)(3).

- (a) A violation of section 12.1-16-01, 12.1-16-02, or 12.1-16-03 in which the victim is another child of the parent;²²⁹
 - (b) Aiding, abetting, attempting, conspiring, or soliciting a violation of section 12.1-16-01, 12.1-16-02, or 12.1-16-03 in which the victim is a child of the parent; or²³⁰
 - (c) A violation of section 12.1-17-02 in which the victim is a child of the parent and has suffered serious bodily injury; or²³¹
- (2) The custodial parent has been incarcerated under a sentence for which the latest release date is:²³²
- (a) In the case of a child age nine or older, after the child's majority; or²³³
 - (b) In the case of a child, after the child is twice the child's current age, measured in days; or²³⁴
- (3) The custodial parent has failed to make substantial, meaningful efforts to secure treatment for addiction to alcohol or a controlled substance for a period of the lesser of one year or one-half of child's lifetime; or²³⁵
- (4) The child was subject to prenatal exposure to chronic and severe use of alcohol or any controlled substance as defined in chapter 19-03.1 in a manner not lawfully prescribed by a practitioner; or²³⁶
- (5) The child was present in an environment subjecting the child to exposure to a controlled substance, chemical substance, or drug paraphernalia as prohibited by section 19-03.1-22.2.; or²³⁷

229. *Id.* § 27-20-44(1)(b)(3)(a).

230. *Id.* § 27-20-44(1)(b)(3)(b).

231. *Id.* § 27-20-44(1)(b)(3)(c).

232. *Id.* § 27-20-02(3)(f).

233. *Id.* § 27-20-02(3)(f)(1).

234. *Id.* § 27-20-02(3)(f)(2).

235. *Id.* § 27-20-02(3)(b).

236. *Id.* § 27-20-02(3)(f).

237. *Id.* § 27-20-02(8)(g).

(6) The child was endangered by exposure to methamphetamine as described in section (4) or (5), or otherwise endangered by exposure to methamphetamine as determined by a court of competent jurisdiction; or²³⁸

c. The child is otherwise deprived and the court finds:

(1) The conditions and causes of the deprivation are likely to continue or will not be remedied and that by reason thereof the child is suffering or will probably suffer serious physical, mental, moral, or emotional harm;²³⁹

(2) The child has been in foster care, in the care, custody, and control of the department, or a county social service board, or, in cases arising out of an adjudication by the juvenile court that a child is an unruly child, the division of juvenile services, for at least four hundred fifty out of the previous six hundred sixty nights; or²⁴⁰

d. The written consent of the parent acknowledged before the court has been given.²⁴¹

2. If the court does not make an order of termination of parental rights, it may grant an order under section 27-20-30 if the court finds from clear and convincing evidence that the child is a deprived child.²⁴²

As revised above, UJCA section 27-20-44.1(b) comprehensively defines the aggravated circumstances that require expediting the termination of parental rights.²⁴³ This revision is necessary to prompt the immediate identification of a child's circumstances of deprivation, so that those children who have been deprived under aggravated circumstances may be expedited through the system in order to achieve permanency.²⁴⁴

238. *See infra* Part IV.B (illustrating the need to consider a parent's meth use as a factor in the termination of parental rights).

239. N.D. CENT. CODE § 27-20-44(1)(b)(1) (Supp. 2005).

240. *Id.* § 27-20-44(1)(b)(2).

241. *Id.* § 27-20-44(1)(c).

242. *Id.* § 27-20-44(2).

243. *See supra* notes 228-38 (setting forth circumstances requiring the expedited termination of parental rights).

244. *See* Gordon, *supra* note 160, at 655 (stating that long periods of foster care are seriously harmful to children).

B. NEW DEFINITION NECESSARY: “CHILD ENDANGERED BY METH”

In order to prevent the proposed statute from being interpreted too strictly or from being challenged as vague, it is imperative that legislative intent is clear.²⁴⁵ This intent can be expressed by updating the definitions provided in the UJCA.²⁴⁶ The definition for “child endangered by exposure to methamphetamine” will be particularly important in applying the proposed statute. The following is a proposed definition:

“*Child endangered by exposure to methamphetamine*” means where a child is subjected to situations including, but not limited to:

- a. The child’s prenatal exposure to methamphetamine; or
- b. The child’s presence in an environment where methamphetamine is used, manufactured, or sold; or
- c. A parent’s conviction for the use, manufacture, or sale of methamphetamine; or
- d. Where a court of competent jurisdiction finds that the state has produced other clear and convincing evidence that the child is abused or neglected due to a parent’s use, manufacture, or sale of methamphetamine.

C. IMPACT OF MODEL STATUTE

The most significant impact of the proposed statute is that its construction necessitates the immediate assessment of each case to determine if the child is deprived under aggravated or other circumstances as defined in the statute.²⁴⁷ This will force several important results. First, when aggravated circumstances of deprivation are found to exist under the proposed modifications to the UJCA section 27-20-44.1(b), the court will dispense with the requirement to expend reasonable efforts to reunite the parent and child, and require the agency to proceed with measures to

245. See *Golden Valley County v. Lundin*, 203 N.W. 317, 319 (1925) (holding that “[t]he legislative intention must primarily be determined from the language of the statute”).

246. See N.D. CENT. CODE § 27-20-02 (Supp. 2005) (failing to distinguish a “child endangered by meth” from a child deprived under other circumstances). The proposed formulation of the statute additionally necessitates the revision of North Dakota Century Code section 27-20-02(8) “Deprived child” and section 27-20-02(3) “Aggravated circumstances,” which is outside the scope of this note.

247. See *supra* Part IV.A (setting forth a proposed statute requiring immediate identification of circumstances of deprivation).

promptly place the child in a permanent home.²⁴⁸ Second, by making clearer distinctions between where reasonable efforts are required and where they are not, precious state resources will be utilized more efficiently.²⁴⁹ By not pursuing reunification in futile and dangerous situations, social workers and state agencies will have more time to devote to finding permanent homes for the children in these dire situations, as well as to helping those families with a chance to be successfully reunited.²⁵⁰ Third, if properly publicized, this statutory change may act as a special deterrent to those parents who might have otherwise gravitated toward meth.

V. CONCLUSION

Meth has entered the mainstream of American society, and North Dakota is no stranger to its devastation.²⁵¹ While parental addiction to controlled substances has presented challenges to child welfare for decades, meth is presenting new and particularly heinous dangers to children.²⁵² Contemporary evidence suggests that if meth treatment is to be successful at all, it can only be accomplished over a protracted period with intensive treatment.²⁵³ While time and treatment may be the solution for a meth user seeking to recover, time is the enemy of a child's right to permanency in a safe and stable environment.²⁵⁴ At its core, the question is this: In a battle between a parent's right to custody of her child, versus the child's right to a safe environment, who wins? The North Dakota statute must be revised to ensure that the answer is not "meth."

*Michelle Kommer**

248. See 42 U.S.C. § 671(a)(15)(E)(i)-(ii) (2000) (requiring the court to hold a permanency planning hearing within thirty days and to make reasonable efforts to finalize a permanent placement for the child).

249. See KYLE & HANSELL, *supra* note 8, at 6-7 (stating that the nature of the meth-using parent has increased the difficulty of family reunification, and counties have had to provide additional training and develop new protocols pertaining to children displaced due to meth).

250. See *id.* (suggesting that expediting the termination of parental rights where a child is endangered by meth will save time and resources).

251. See *supra* notes 16-25 and accompanying text (discussing meth's effects on North Dakota).

252. See *supra* Part II.E (discussing how meth endangers children).

253. See *supra* Part II.C (discussing the lack of effective meth treatment protocol).

254. See Gordon, *supra* note 160, at 655 (stating that long periods in foster care are seriously harmful to children).

*Michelle L. Kommer, J.D. candidate at the University of North Dakota. I would like to thank Judge Debbie Kleven and the Juvenile Policy Board for acting as a resource and permitting me to participate in their review of the Juvenile Court Act.