

2021 SENATE HUMAN SERVICES

SB 2083

2021 SENATE STANDING COMMITTEE MINUTES

Human Services Committee Sakakawea Room, State Capitol

SB 2083
1/20/2021

A BILL for an Act to amend and reenact sections 50-25.1-02, 50-25.1-03, 50-25.1-03.1, 50-25.1-04, 50-25.1-04.1, 50-25.1-04.2, 50-25.1-04.3, 50-25.1-05, 50-25.1-05.1, 50-25.1-05.2, 50-25.1-05.3, 50-25.1-05.4, 50-25.1-05.5, 50-25.1-05.6, 50-25.1-06, 50-25.1-07, 50-25.1-09.1, 50-25.1-11, 50-25.1-13, 50-25.1-14, 50-25.1-15, 50-25.1-16, 50-25.1-18, 50-25.1-19, 50-25.1-20, 50-25.1-21, 50-25.1-22, and 50-25.1-23 of the North Dakota Century Code, relating to child abuse and neglect; and to provide a penalty.

Madam Chair Lee opened the hearing on SB 2083 at 9:07 a.m. All members present: Senator Lee, Senator K. Roers, Senator Clemens, Senator Hogan, Senator Anderson, Senator O. Larsen.

Discussion Topics:

- Hearing extension for DHS to provide amendments

[9:08] Cory Pederson, Director, Children and Family Services, Department of Human Services. Introduced SB 2083 and provided an update with the Department of Human Services and request an extension on the hearing.

[9:10] Kim Jacobson, Human Service Zone Director, Agassiz Valley. Provided written testimony #1714 in favor.

Additional written testimony: N/A

Madam Chair Lee closed the hearing on SB 2083 at 9:15 a.m.

Justin Velez, Committee Clerk

Testimony Prepared for the
Senate Human Services Committee

January 20, 2021

By: Kim Jacobson, Agassiz Valley Human Service Zone Director

RE: Senate Bill 2083 – Child Abuse and Neglect Changes

Chairman Lee and members of the Senate Human Services Committee, my name is Kim Jacobson. I am the Agassiz Valley Human Service Zone Director, serving the service area of Traill and Steele Counties, a member of the North Dakota Social Service Director Association, and a member of the North Dakota Association of Counties Board of Directors. Please consider my testimony in support of SB 2083.

North Dakota has been engaged various redesign efforts over the past three years. One of the key areas of redesign includes our child welfare system, including child protective services. It is through those efforts, our system has been examined, areas for improvement identified, and change implemented. The process of redesign allows us to take a birds-eye view of our programs examining how services can be better provided to ensure effectiveness, efficiency, and quality.

One example that has resulted from redesign effort is the implementation of the Safety Practice Model. This practice model structures the array of child welfare services - child protection, foster care and in-home services, use similar terminology, definition, and vision. It aligns the various levels of intervention in a way that is mindful of the values and goals of the entire system. Necessary changes have been identified. Some changes can be addressed through policy and practice. Other changes are required in law. These changes are included in Senate Bill 2083.

From the local boots on the ground standpoint, these changes are necessary. The change from a “*services required*” system to a “*confirmed*” determination yields a much more accurate representation. The term “*services required*” or “*no services required*” was often confusing to families and partners in the child welfare system. The proposed term change to “*confirmed*” or “*not confirmed*” does not change the intervention, but rather it communicates a clearer outcome message. Our goal remains to protect children and empower families. If there are risks to the family and child, our goal is to offer services and strategies to help mitigate safety risk and to strengthen families. Engagement is key to any type of intervention or change. Clearer definitions and language are key important for building an environment for engagement and support.

In addition, I am supportive of the changes proposed to institutional child abuse and neglect systems. There are opportunities for greater accountability and protective measures that can be supported under the institutional child abuse and neglect model. SB 2083 provides for the assessment to be completed by a DHS field specialist, who are members of a state specialty team. Under current law and practice, human service zones assess child protection reports related to schools and the reports related to a department funded facilities are completed by DHS. HB 2083 calls for all types of *institutional* (including school-based) child abuse and neglect reports to be assessed by the DHS specialty team and if warranted, a law enforcement investigation. Also, employers of such institutions have opportunity to take employer-related actions towards personnel who may have adversely impacted a child’s safety and those institutions would be held accountable for keeping children safe. This proposed change is highly supported and one that county social service directors (now human service zone directors) have advocated for many years.

The proposed change to remove reference of child protection team members is also supported. It removes outdated language and modernizes the law to support redesign system

changes. While we are grateful for the role that child protection teams have held in the past, our redesigned system no longer utilizes this process as it was a barrier to timely determination and notification to the family and if applicable, juvenile court.

This concludes my testimony on SB 2083. I stand for questions from the committee.

2021 SENATE STANDING COMMITTEE MINUTES

Human Services Committee
Sakakawea Room, State Capitol

SB 2083
1/26/2021 AM

A BILL for an Act to amend and reenact sections 50-25.1-02, 50-25.1-03, 50-25.1-03.1, 50-25.1-04, 50-25.1-04.1, 50-25.1-04.2, 50-25.1-04.3, 50-25.1-05, 50-25.1-05.1, 50-25.1-05.2, 50-25.1-05.3, 50-25.1-05.4, 50-25.1-05.5, 50-25.1-05.6, 50-25.1-06, 50-25.1-07, 50-25.1-09.1, 50-25.1-11, 50-25.1-13, 50-25.1-14, 50-25.1-15, 50-25.1-16, 50-25.1-18, 50-25.1-19, 50-25.1-20, 50-25.1-21, 50-25.1-22, and 50-25.1-23 of the North Dakota Century Code, relating to child abuse and neglect; and to provide a penalty.

Madam Chair Lee opened the hearing on SB 2083 at 8:38 a.m. All members present: Senator Lee, Senator K. Roers, Senator Hogan, Senator Clemens, Senator Anderson, Senator O. Larsen.

Discussion Topics:

- Impending danger language
- Evidence standard
- Addition of “or authorized agent”
- Juvenile referrals decrease
- Institutional changes
- “immediately” term definition and clarification
- Abuse and neglect assessment procedure

[8:40] Cory Pedersen, Director, Children and Family Services, DHS. Provided testimony #3231 in favor as well as proposed amendment #3376 and Child Fatality Panel Members of 2021 #3374.

[8:54] Jonathan Alm, Attorney, DHS. Provides clarification on the amendment provided by Cory Pedersen.

[9:20] Marlys Baker, Administrator, Child Protection Services, DHS. Provided clarification

[9:24] Amy De Kok, Legal Counsel, North Dakota School Boards Association (NDSBA). Provided neutral testimony #3404.

[9:33] Kim Jacobson, Human Service Zone Director, Aggassiz Valley. Provided testimony #3220 in favor.

[9:41] Melissa Hauer, General Counsel / Vice President, North Dakota Hospital Association. Provided testimony #2752 in favor.

[9:46] Marlys Baker, Administrator, Child Protection Services, DHS. Provided clarification on the standard practice of a Child Protection Assessment.

Senate Human Services Committee

SB 2083

1/26/2021

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Additional written testimony: N/A

Madam Chair Lee closed the hearing on SB 2083 at 9:51 a.m.

Justin Velez, Committee Clerk

Testimony

Senate Bill Number 2083 - Department of Human Services

Senate Human Services Committee

Senator Judy Lee, Chairman

January 26 , 2021

Chairman Lee, and members of the Senate Human Services Committee, I am Cory Pedersen, Director of the Children and Family Services Division with the Department of Human Services (Department). I appear before you to support Senate Bill 2083, which was introduced at the request of the Department.

The bill contains several updates necessary for clarification. Throughout the bill these changes clarify whether the provisions pertain to a “person”, which can mean either an individual or an entity, or pertain to an “individual”, which is a human being. Also throughout the bill clarification has been added to reflect when child protection services are to be conducted by the department directly or may be conducted through its authorized agent, Human Service Zones. These clarifying changes will not be addressed in the remainder of the testimony.

The bill also contains several proposed changes related to child protection services, institutional child protection, and the child fatality review panel, which I will review as we move through each section of the bill. In depth explanations will follow brief review of the definitions.

Section 1:

The proposed change on page 1, lines 16 through 18, removes “public or private school” from the definition of “a person responsible for a child’s welfare” and adds a definition of “person responsible for a child’s welfare” specific to institutional abuse or

neglect to define that the word “person” indicates an entity rather than an individual. The facility caring for the child is accountable for their safe care.

The change proposed on page 2 lines 1 through 6 clarifies the definitions of “abused child” and “sexually abused child” by clarifying that an abused child includes a “sexually abused child”, although the statutory references differ. There is no change in the meaning or implementation .

The proposed change on page 2, lines 14 through 26 creates a definition of “child fatality review panel” which separates panel membership from state child protection team membership and authorizes membership for the child fatality review panel to include representation from tribal medical services as well as representation from each federally recognized tribe in the state.

The proposed change on page 2, lines 28 through 30 and page 3, lines 1 and 2 amends the definition of “child protection assessment” and allows for determinations that a child may be found to have been abused or neglected in instances that may not identify a specific person responsible for a child’s welfare who is responsible for the abuse or neglect.

The proposed change on page 3, lines 13 through 17 changes the definition of the determination made when a child is determined to have been abused or neglected from “services required for the protection and treatment of an abused or neglected child” to “Confirmed”.

The proposed change on page 3, lines 18 through 22 creates a new definition of “Confirmed with unknown subject” which allows for abuse or neglect of a child to be confirmed in instances that may not identify a specific person responsible for a child’s welfare.

The proposed change on page 3, lines 28 through 30 defines a state of “impending danger” which is a concept integral to adoption of a new practice model adopted by the department. A child may be found to be in a state of impending danger through the use of specific criteria.

The proposed change on page 4, lines 1 through 13 adds a definition of “indicated” which has been contained in N.D.C.C. 50-25.1-04.1 but was not previously defined and amends the definition of “Institutional child abuse and neglect” moving public and private schools from the child protection response typically focused on families to the more institutional structure of a school setting. This change also clarifies the entities which fall within the definition of “institutional child abuse or neglect”.

The proposed change on page 4, Lines 14 through 22 removes the definition of “Local Child Protection Team”. Under the restructuring and redesign efforts within the department, local child protection teams are disbanded.

The proposed change on page 5, lines 10 through 15 revises the definition of “neglected child” to amend the definition of prenatal exposure to controlled substances to include those defined in section 19-03.1-01 rather than referencing the entire controlled substances act. The proposed change also revises environmental exposure of a child to controlled substances to include any amount of marijuana. The controlled substances act limits exposure to amounts less than one half ounce of marijuana for criminal charging purposes. While a laboratory test can indicate the presence of marijuana in the body of a child, these tests cannot determine the amount of marijuana nor the frequency of exposure required to produce a certain level in a child. There should not be an acceptable level of marijuana in a newborn or a child who is exposed in their home.

The proposed change on page 5, lines 28 through 31 and page 6, lines 1 through 11, addresses representation on the state child protection team, which reviews cases of institutional child abuse and neglect. The proposed definition adds representation from

law enforcement and a parent with lived experience to the team and defines a quorum for the team.

The proposed change on page 6, lines 16 and 17 creates a new definition of “Unable to determine” which allows a determination to be made at the conclusion of a child protection assessment that insufficient evidence exists to make a determination whether a child has been abused or neglected.

The proposed change on page 6, lines 18 through 20 creates a new definition of “Unconfirmed” which allows a determination to be made at the conclusion of a child protection assessment that child abuse and neglect was not confirmed by evidence gathered in the assessment.

Section 4:

Moving into Section 4, page 7, line 31 and page 8, lines 1 through 31. It was called to our attention as the result of child fatality reviews that the current statute mandating certain professionals to report suspicion of child abuse and neglect requires a report to be filed by each employee within a single entity, without exception. It was pointed out that within large institutions, if each individual followed this mandate, hundreds of reports could be received resulting from a single case. Another phenomenon that has been recognized is a scenario in which multiple mandated reporters each believe it is the responsibility of another professional to make the ‘mandated’ report and no report is filed. Entities have also instituted ‘workarounds’ such as directing reports through a designee or administrator, who may forward the report, or who may determine not to forward the report. In order to address these issues and any confusion for mandated reporters, the department is proposing that an entity who employs more than twenty-five mandated reporters may designate an individual to receive and forward reports of suspected child abuse and neglect while prohibiting the entity from imposing conditions on a report or other methods for controlling reports which are mandated. The proposed

language also allows a mandated reporter to report directly to the department or authorized agent.

Section 5:

Section 5, page 9, lines 4 through 31 and page 10, lines 1 through 5 addresses the state child protection team and institutional child abuse and neglect. As part of the redesign and reorganization efforts within the department it was recognized that the institutional child protection process had become outdated, inefficient, and not conducive to making timely and effective changes in facility practices for keeping children safe. For example, the state child protection team quarterly meetings often reviewed cases that were many months old, rendering state child protection team determinations and recommendations much less relevant to addressing root causes of the concerns reported.

For those facilities regulated or funded by the department the department will have the ability to hold facilities accountable through a variety of means and will be able to effect changes in facility policies and practices through licensing actions, corrective action plans, reports to accrediting bodies and fiscal sanctions when required.

Public and private school reports will be sent to corresponding school boards or governing body for private schools as well as to the Department of Public Instruction for their actions. Reports of potential criminal activity by a person responsible for a child's welfare will be forwarded to law enforcement for investigation. The department will continue to conduct assessments of reports of suspected child abuse and neglect in school settings using the institutional child protection approach.

Section 6:

Section 6, page 10, lines 9 through 19 corresponds to the definitions of child fatality review panel and state child protection team included in Section 1 of this bill. Separating the membership of the child fatality review panel and the state child protection team makes sense from the perspective of the purposes of each group and the skillsets and

representation needed to fulfill those purposes. The proposed language specifies the department's responsibilities to preside over the child fatality review panel, set meetings, and prepare records and reports.

Section 7:

Section 7, page 10, lines 23 and 24, moves the meeting frequency of the child fatality review panel from at least every six months to meeting quarterly and extends the time period for reviewing deaths and near deaths to the preceding twelve months rather than six months. The additional time is required related to receiving records from other entities, time needed for criminal investigations to concluded and the numbers of deaths and near deaths to be reviewed. The bill also removes the use of local child protection team members from the duties of the child fatality review panel since these teams are being disbanded (page 11, line 11).

Section 8:

Section 8, page 12, lines 20 through 24, allows the department or authorized agent access to medical records which are relevant to support decisions whether child abuse or neglect is confirmed, confirmed with an unknown subject or unable to determine. These terms reflect proposed changes to the determinations allowed for child abuse and neglect assessments which will be explained in more depth later in this testimony. This proposed change updates the language based on proposed changes to the department's determinations and does not change the Department's current ability to obtain records.

Page 12, lines 30 and 31, adds the use of an evidence-based screening tool as it was removed from the definition of "child protection assessment" and "family services assessment". This change does not change the current practice of completing an evidence-based screening tool as it clarifies that an assessment and completing an evidence-based screening tool are two separate tasks.

Page 13, lines 1 through 3, permits the department or authorized agent to terminate an assessment in process upon determining that there is no credible evidence supporting that the reported abuse or neglect occurred.

Section 9:

Section 9, page 13, lines 6 through 17, under the current statute, at the conclusion of a child protection assessment, the department must decide whether services are required for the protection and treatment of an abused or neglected child. This is often reduced to a determination of “services required” or “no services required”, with “services required” reflecting that a preponderance of the evidence gathered during the assessment meets a definition of abused child or neglected child.

The language of requiring services is misleading to the public because there is not a mechanism for the department to “require” participation in a service other than petitioning the Juvenile Court. Petitions in the Juvenile Court require a level of evidence that is “clear and convincing”, a much higher standard than a simple preponderance. When a determination is made that “services are required” there is an expectation that participation in the service is a requirement when this is not the case. Additionally, a determination of “no services required” is also misleading and is often not descriptive of the findings of the assessment. The public interprets “no services required” to mean “everything here is okay”, when the reality may be that there are many concerns but not sufficient evidence that meets a definition of “abused child” or “neglected child”. North Dakota is the only state which uses this decision-making language.

The department is proposing that the allowable decision-making be changed to “Confirmed”, meaning that child abuse or neglect has been confirmed for instances where there exists a preponderance of evidence that meets a definition of “abused child” or “neglected child”. This language more accurately communicates a finding that child abuse or neglect was found to be true. The term “Unconfirmed” would then indicate that child abuse and neglect was not verified.

In addition to these two decisions, “Confirmed with an unknown subject” would be used to describe situations in which a preponderance of the evidence meets a definition of abused child or neglected child, but insufficient information exists to name the individual who is responsible. An example would be an infant with unexplained injuries where

medical evidence indicates the injury was inflicted, but there is not a preponderance of evidence identifying an individual responsible for injuring the child.

Finally, a determination of “unable to determine” would indicate that insufficient evidence exists to determine whether a definition of abused child or neglected child has been met. An example would be situations in which the caregivers refuse to interview or interact with the child protection services worker. Under the current statute, and in the absence of other evidence, the determination would necessarily be “no services required”, yet that determination does not express the true conclusion and is misleading to those who are in a position to provide safety for the child, but who interpret the “no services required” determination to mean “everything here is okay”. The terms proposed here more accurately describe the true conclusion of the child protection assessment in plain language. I would emphasize that this change in language does not reflect a change in the assessment process, or level of evidence required.

Also, page 13, lines 13 and 14, is a small change related to child protection assessments involving confirmation of abuse and neglect arising from religious practices. This change replaces the word “legitimate” with the word “legal” to address situations in which a person responsible for the child’s welfare’s religious belief involves illegal activity, such as using an illegal substance or female genital mutilation. While the department does not propose to restrict religious freedom, illegal acts impacting children should not be able to hide behind a veil of religious freedom.

Section 10:

Section 10, page 13, lines 22 through 27 directs that confirmed decisions where a child meets the definition of an abused child or neglected child will be reported to the Juvenile Court. Further, this section limits placement on the child abuse and neglect information index to those cases where child abuse or child neglect are confirmed. This replaces the determination of “services are required”.

Section 12:

Section 12, page 14, lines 25 and 26 updates the directive for the department to enact rules for resolution of complaints and the conduct of appeal hearings requested by a subject who is aggrieved by the department's decision of "confirmed" child abuse or neglect. The Department will be updating the Administrative Code to coincide with the implementation of redesign and practice model changes.

Section 13:

Section 13, page 14, line 31 through page 15, line 1 directs placement of confirmed determinations on the child abuse and neglect information index, replacing the determination of "services are required". It should be noted that when abuse or neglect is confirmed related to an unknown subject, no individual's name is placed on the index, but the assessment is referenced as a confirmed decision.

Section 15:

Section 15, page 15, lines 17 through 26 addresses protective services provided following a child protection assessment. Under the Safety Framework Practice Model adopted by Children and Family Services, a determination is made at the conclusion of the assessment as to impending dangers identified. Referencing back to Section 1 of this bill, "impending danger" means a foreseeable state of danger in which a behavior, attitude, motive, emotion, or situation can be reasonably anticipated to have severe effects on a vulnerable child according to criteria developed by the department". Criteria for identifying a state of impending danger is well defined in the adopted practice model.

Current statute requires that services be provided in all instances in which a child meets the definition of an abused child or neglected child. Services are also to be provided to "other children under the same care" as well as "parents, custodian, or other persons serving in loco parentis with respect to the child or the other children". Approximately 1797 victims were identified in Federal Fiscal Year 2019, while this is a duplicated

number (a child is counted once for each assessment during the FFY) it represents considerable resources expended for provision of these services.

With the criteria developed under the newly adopted practice model, a determination is able to be made as to the ongoing safety of the children. For example, it is possible for there to be instances in which child abuse or neglect has occurred, but upon assessment of family and parent functioning, impending dangers are not identified. For example, parents understand their behavior as damaging to their children and are able to control and correct this behavior. The child is safe. Under the current statute, however, services must still be provided, based on the determination that “services are required for the protection and treatment of an abused or neglected child”.

The proposed language in this bill changes the requirement for providing services to mandate services for abused or neglected children who are in an identified state of impending danger. Targeting limited services to children determined to be in a state of impending danger makes better use of service resources than mandating services for families who may be able to correct abusive or neglectful behaviors on their own. Proposed changes also allow services to be provided, as resources permit, to any families upon concurrence of the parent, custodian, or other person serving in loco parentis.

Section 18:

Section 18, page 17, line 1 through page 18, line 25 is updated in accordance with the clarifying issues previously discussed, with one addition. Added to the confidentiality exceptions is a provision related to institutional child protection to specifically allow notification of a residential facility or setting’s board of directors and notification to any entity which accredits the facility or setting of the institutional child abuse or neglect “indicated” determination and allows the written report of the state child protection team, the approved improvement plan, and areas of deficiency that resulted in the notification to be provided.

Sections 25, 26, 27, and 28:

Sections 25, 26, 27 and 28, pages 24 and 25 are revised to reflect changes proposed in Section 9 regarding the use of “confirmed” to indicate identification of an abused or neglected child and to emphasize that the children’s safety must be included with well-being.

This concludes my testimony, and I am available to answer your questions. Thank you.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2083

Page 6, line 3, remove the overstrike over “~~and, as an ad hoc member, the designee~~”

Page 6, line 4, remove the overstrike over “~~of the chief executive official of any institution named in a report of institutional abuse~~”

Page 6, line 5, remove the overstrike over “~~or neglect~~”

Page 9, line 22, overstrike “the subject of the” and insert immediately thereafter “a”

Page 9, line 22, remove “meets the”

Page 9, line 23, replace “definition of” with “includes an allegation or report of”

Page 9, line 23, after “neglect” insert “as defined”

Page 9, line 26, after “instruction” insert “, the school district administrator,”

Page 9, line 26, after “and” insert “the president or chair of the”

Page 13, after line 3, insert:

“9. When a report alleges institutional child abuse or neglect involving a public or private school, the department or authorized agent shall conduct any child protection assessment. Whenever practical, the department or authorized agent shall provide notice of the onset of a child protection assessment to the public or private school. A public or private school may complete an investigation into any conduct reported or alleged to constitute institutional child abuse or neglect at its institution concurrently with any child protection assessment. When a public or private school conducts an investigation concurrently with a child protection assessment, the department or authorized agent and the public or private school shall coordinate the planning and execution of the child protection assessment and public or private school investigation efforts to avoid a duplication of factfinding efforts and multiple interviews whenever practical.”

Page 18, after line 10, insert:

“j. A public or private school that is the subject of a report of institutional child abuse or neglect; provided the identity of the persons reporting or supplying the information under this chapter is protected, except if the individuals reporting or supplying information are employees of the public or private school.”

Page 18, after line 25, insert:

“4. When a public or private school is the subject of a report of institutional child abuse or neglect, any records and information obtained, created,

generated, or gathered by the public or private school in response to the report or during any investigation by the public or private school of the alleged conduct set forth in the report, are confidential until the state child protection team makes a determination in accordance with section 50-25.1-04.1 whether institutional child abuse or neglect is indicated.”

Renumber accordingly



Child Fatality Panel Members 2021

Jenn Grabar – Assistant Administrator
Child Protection Services – DHS

Kelly Dillon – ND Attorney
General's Office

Dr. Barrie Miller – State Forensic
Medical Examiner

Dr. Mary Ann Sens – Department of
Pathology – UND

Lisa Bjergaard – Division of Juvenile
Justice

Duane Stanley – Bureau of Criminal
Investigation

Bobbi Peltier – Indian Health Services
Injury Prevention

Karen Eisenhardt – Citizen Member

Dr. Melissa Seibel- Sanford Health

Mandy Slag – Injury Prevention
Administrator- Dept. of Health

Rosalie Etherington – ND State Hospital
Superintendent

Tracy Miller – Epidemiologist –
Dept. of Health

Todd Porter – Emergency Medical Services /
State Legislator

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SB 2083
Testimony of Amy De Kok
Senate Human Services
January 26, 2021

Chairman Lee and members of the Senate Human Services committee, my name is Amy De Kok. I am in-house legal counsel for the North Dakota School Boards Association. NDSBA represents all 178 North Dakota public school districts and their boards. NDSBA and our member districts stand in a neutral position on SB 2083 as proposed and in its current version; however, should the amendments outlined by Mr. Pedersen in his testimony be adopted by this Committee, we would move to a supportive position.

Our public schools serve arguably the most vulnerable population of ND citizens. Parents entrust their children to our schools and to keep their kids safe and protected while in their care. School districts in ND take this responsibility very seriously and make significant efforts in furtherance of this obligation. Some of these efforts include developing robust policies and procedures covering a myriad of subjects, providing regular and ongoing training and professional development to staff, conducting criminal background checks on all employees who may have any unsupervised contact with children, and adopting procedures to ensure prompt reporting of misconduct on the part of school staff, volunteers, or service providers that have involvement with our schools. These are a few of the many proactive and responsive steps schools take to keep students safe and protected from harm. Schools are also highly regulated by federal and state law, particularly in terms of providing special education and related services to students with disabilities.

Regarding child abuse and neglect, schools employ several categories of mandatory reporters. These are individuals who by law must report any knowledge of known or suspected instances of child abuse or neglect. SB 2083 seeks to expand the existing definition of institutional child abuse or neglect to include public and private schools. NDSBA and our member districts are certainly supportive of protecting students from harm, especially conduct that could constitute child abuse or neglect. In its current form, the bill does not address the impact this expansion would have on a school district's ability to investigate and respond to reported allegations of child abuse or neglect on the part of a school employee, including the school's ability to possibly take appropriate action against an individual who, despite all of the efforts put in place by the school, has engaged in misconduct.

These concerns with the bill were discussed with the Department and we were able to work with Director Jones and Mr. Pederson on the amendments outlined in previous testimony. These concerns and resulting amendments relate to two areas. First, we wanted the bill to address the coordination between the Department and the school when the Department or its designee conducts an assessment following receipt of a report of institutional child abuse or neglect where a public or private school is the subject. The amendments make it clear that a school could conduct an internal investigation into conduct alleged in a report concurrently with any DHS assessment. The amendments also call for DHS and the school to coordinate the planning and execution of the child protection assessment and school investigation efforts.

The second area addressed by the amendments relates to confidentiality of the report and any information related to the report. We wanted to make sure school officials have access to information reported to DHS in order that schools may fully and appropriately address any alleged misconduct on the part of their employees. The identities of persons making the report or supplying information to DHS would remain confidential except as to individuals who are employed by the school. Without this information, schools would be unable to properly investigate on their end (which they are obligated to do) and take appropriate action against employees who engage in conduct that is the subject of the report. On a related note, the amendments would also keep all records and information gathered, obtained, created, or received by a school in connection with any report of institutional child abuse or neglect confidential until a finding of institutional child abuse or neglect is indicated by the state child protection team.

With these concerns addressed by the amendments, NDSBA would move to a support position. Thank you for your time and I would be happy to stand for any questions.

Testimony Prepared for the
Senate Human Services Committee

January 26, 2021

By: Kim Jacobson, Agassiz Valley Human Service Zone Director

RE: Senate Bill 2083 – Child Abuse and Neglect Changes

Chairman Lee and members of the Senate Human Services Committee, my name is Kim Jacobson. I am the Agassiz Valley Human Service Zone Director, serving the service area of Traill and Steele Counties, a member of the North Dakota Social Service Director Association, and a member of the North Dakota Association of Counties Board of Directors. Please consider my testimony in support of SB 2083.

North Dakota has been engaged various redesign efforts over the past three years. One of the key areas of redesign includes our child welfare system, including child protective services. It is through those efforts, our system has been examined, areas for improvement identified, and change implemented. The process of redesign allows us to take a birds-eye view of our programs examining how services can be better provided to ensure effectiveness, efficiency, and quality.

One example that has resulted from redesign effort is the implementation of the Safety Practice Model. This practice model structures the array of child welfare services - child protection, foster care and in-home services, use similar terminology, definition, and vision. It aligns the various levels of intervention in a way that is mindful of the values and goals of the entire system. Necessary changes have been identified. Some changes can be addressed through policy and practice. Other changes are required in law. These changes are included in Senate Bill 2083.

From the local boots on the ground standpoint, these changes are necessary. The change from a “*services required*” system to a “*confirmed*” determination yields a much more accurate representation. The term “*services required*” or “*no services required*” was often confusing to families and partners in the child welfare system. The proposed term change to “*confirmed*” or “*not confirmed*” does not change the intervention, but rather it communicates a clearer outcome message. Our goal remains to protect children and empower families. If there are risks to the family and child, our goal is to offer services and strategies to help mitigate safety risk and to strengthen families. Engagement is key to any type of intervention or change. Clearer definitions and language are key important for building an environment for engagement and support.

In addition, I am supportive of the changes proposed to institutional child abuse and neglect systems. There are opportunities for greater accountability and protective measures that can be supported under the institutional child abuse and neglect model. SB 2083 provides for the assessment to be completed by a DHS field specialist, who are members of a state specialty team. Under current law and practice, human service zones assess child protection reports related to schools and the reports related to a department funded facilities are completed by DHS. HB 2083 calls for all types of *institutional* (including school-based) child abuse and neglect reports to be assessed by the DHS specialty team and if warranted, a law enforcement investigation. Also, employers of such institutions have opportunity to take employer-related actions towards personnel who may have adversely impacted a child’s safety and those institutions would be held accountable for keeping children safe. This proposed change is highly supported and one that county social service directors (now human service zone directors) have advocated for many years.

The proposed change to remove reference of child protection team members is also supported. It removes outdated language and modernizes the law to support redesign system

changes. While we are grateful for the role that child protection teams have held in the past, our redesigned system no longer utilizes this process as it was a barrier to timely determination and notification to the family and if applicable, juvenile court.

This concludes my testimony on SB 2083. I stand for questions from the committee.



2021 SB 2083
Senate Human Services Committee
Senator Judy Lee, Chairman
January 26, 2021

Chairman Lee and members of the Senate Human Services Committee, I am Melissa Hauer, General Counsel for the North Dakota Hospital Association (NDHA). I am here to testify in support of Senate Bill 2083. I ask that you give this bill a **Do Pass** recommendation.

Hospitals support the change provided in section four of the bill because it will streamline and clarify the process of child abuse and neglect reporting for mandated reporters, including those working in health care such as physicians and nurses. In a hospital, there can be hundreds of employees who are mandated to report suspected child abuse and neglect. Often, one patient can trigger the duty for several employees to report, such as when a child comes into the emergency department and is treated by several nurses and physicians. One such episode of care may require five, six, or more employees to report the suspected abuse or neglect of one child. If each one does not file a separate report, have they failed to fulfill their duty to report? That is the question that would be resolved by this bill.

The bill would allow an entity employing more than 25 individuals who are required to report suspected child abuse or neglect to designate one individual to file reports on behalf of the staff members and volunteers of the entity. This will ensure that the reports are made more efficiently and timely. And it will ensure that each person who dealt with the same case has fulfilled his or her duty to report. A report filed by the designated individual will supply the first and last name, title, and contact information for every staff member or volunteer of the entity who is believed to have direct knowledge of the facts surrounding the report. The bill clarifies that this single report from the designated individual will meet the reporting requirement on behalf of staff members and volunteers of the entity.

This change would not preclude a staff member or volunteer from also reporting the suspected child abuse and neglect directly to the department. It also requires a staff member or volunteer who has knowledge the designated individual has failed to report on behalf of the staff member or volunteer immediately to make a report. We agree with these important safeguards to ensure all suspected child abuse and neglect is reported promptly.

We also believe this change will assist the Department of Human Services in its work because it will not receive multiple reports from mandated reporters which all deal with the same incident. It will make their response to the report a bit easier if they do not have to ensure that multiple reports are reviewed to determine if they spring from the same incident and really should be assessed as one case.

In summary, we support the bill for these reasons and ask that you give it a Do Pass recommendation. I would be happy to respond to any questions you may have. Thank you.

Respectfully Submitted,

Melissa Hauer, General Counsel/VP
North Dakota Hospital Association

2021 SENATE STANDING COMMITTEE MINUTES

Human Services Committee
Sakakawea Room, State Capitol

SB 2083
1/26/2021

A BILL for an Act to amend and reenact sections 50-25.1-02, 50-25.1-03, 50-25.1-03.1, 50-25.1-04, 50-25.1-04.1, 50-25.1-04.2, 50-25.1-04.3, 50-25.1-05, 50-25.1-05.1, 50-25.1-05.2, 50-25.1-05.3, 50-25.1-05.4, 50-25.1-05.5, 50-25.1-05.6, 50-25.1-06, 50-25.1-07, 50-25.1-09.1, 50-25.1-11, 50-25.1-13, 50-25.1-14, 50-25.1-15, 50-25.1-16, 50-25.1-18, 50-25.1-19, 50-25.1-20, 50-25.1-21, 50-25.1-22, and 50-25.1-23 of the North Dakota Century Code, relating to child abuse and neglect; and to provide a penalty.

Madam Chair Lee opened the committee discussion on SB 2083 at 2:58 p.m. Senators present: Lee, K. Roers, Hogan, Anderson, Clemens, O. Larsen.

Discussion Topics:

- Amendment proposed by DHS

Senator K. Roers moves to **ADOPT AMENDMENT 21.8063.01001**

Senator Hogan seconded

Voice vote – motion passed

Senator K. Roers moves **DO PASS, AS AMENDED.**

Senator Hogan seconded

Senators	Vote
Senator Judy Lee	Y
Senator Kristin Roers	Y
Senator Howard C. Anderson, Jr.	Y
Senator David A. Clemens	Y
Senator Kathy Hogan	Y
Senator Oley Larsen	Y

Motion passed 6-0-0.

Senator Hogan will carry SB 2083.

Additional written testimony: (1)

Cory Pederson, Director, Children and Family Services, DHS. Proposed amendments testimony #3376

Madam Chair Lee closed the discussion on SB 2083 at 3:01 p.m.

Justin Velez, Committee Clerk

January 26, 2021

C3
1/26
1 of 2

PROPOSED AMENDMENTS TO SENATE BILL NO. 2083

Page 6, line 2, remove "and"

Page 6, line 3, remove the overstrike over "~~, and, as an ad hoc member, the designee~~"

Page 6, remove the overstrike over line 4

Page 6, line 5, remove the overstrike over "~~or neglect~~"

Page 9, line 22, overstrike "the subject of the" and insert immediately thereafter "a"

Page 9, line 22, remove "meets the"

Page 9, line 23, replace "definition" with "includes an allegation or report"

Page 9, line 23, after "neglect" insert "as defined"

Page 9, line 26, after "instruction" insert ", the school district administrator,"

Page 9, line 26, after "and" insert "the president or chairman of the"

Page 13, after line 3, insert:

"9. If a report alleges institutional child abuse or neglect involving a public or private school, the department or the department's authorized agent shall conduct a child protection assessment. If practical, the department or the department's authorized agent shall provide notice of the onset of a child protection assessment to the public or private school. A public or private school may complete an investigation into any conduct reported or alleged to constitute institutional child abuse or neglect at the school's institution concurrently with a child protection assessment. If a public or private school conducts an investigation concurrently with a child protection assessment, the department or the department's authorized agent and the public or private school shall coordinate the planning and execution of the child protection assessment and public or private school investigation efforts to avoid a duplication of fact finding efforts and multiple interviews if practical."

Page 18, after line 10, insert:

"j. A public or private school that is the subject of a report of institutional child abuse or neglect, provided the identity of the persons reporting or supplying the information under this chapter is protected, except if the individuals reporting or supplying information are employees of the public or private school."

Page 18, after line 25, insert:

"4. If a public or private school is the subject of a report of institutional child abuse or neglect, any records and information obtained, created, generated, or gathered by the public or private school in response to the report or during an investigation by the public or private school of the alleged conduct set forth in the report, are confidential until the state child

protection team makes a determination in accordance with section 50-25.1-04.1 whether institutional child abuse or neglect is indicated."

CS
1/26
2012

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2083: Human Services Committee (Sen. Lee, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2083 was placed on the Sixth order on the calendar.

Page 6, line 2, remove "and"

Page 6, line 3, remove the overstrike over "~~, and, as an ad hoc member, the designee~~"

Page 6, remove the overstrike over line 4

Page 6, line 5, remove the overstrike over "~~or neglect~~"

Page 9, line 22, overstrike "the subject of the" and insert immediately thereafter "a"

Page 9, line 22, remove "meets the"

Page 9, line 23, replace "definition" with "includes an allegation or report"

Page 9, line 23, after "neglect" insert "as defined"

Page 9, line 26, after "instruction" insert ", the school district administrator."

Page 9, line 26, after "and" insert "the president or chairman of the"

Page 13, after line 3, insert:

"9. If a report alleges institutional child abuse or neglect involving a public or private school, the department or the department's authorized agent shall conduct a child protection assessment. If practical, the department or the department's authorized agent shall provide notice of the onset of a child protection assessment to the public or private school. A public or private school may complete an investigation into any conduct reported or alleged to constitute institutional child abuse or neglect at the school's institution concurrently with a child protection assessment. If a public or private school conducts an investigation concurrently with a child protection assessment, the department or the department's authorized agent and the public or private school shall coordinate the planning and execution of the child protection assessment and public or private school investigation efforts to avoid a duplication of fact finding efforts and multiple interviews if practical."

Page 18, after line 10, insert:

"j. A public or private school that is the subject of a report of institutional child abuse or neglect, provided the identity of the persons reporting or supplying the information under this chapter is protected, except if the individuals reporting or supplying information are employees of the public or private school."

Page 18, after line 25, insert:

"4. If a public or private school is the subject of a report of institutional child abuse or neglect, any records and information obtained, created, generated, or gathered by the public or private school in response to the report or during an investigation by the public or private school of the alleged conduct set forth in the report, are confidential until the state child protection team makes a determination in accordance with section 50-25.1-04.1 whether institutional child abuse or neglect is indicated."

Renumber accordingly

PROPOSED AMENDMENTS TO SENATE BILL NO. 2083

Page 6, line 3, remove the overstrike over “, and, as an ad hoc member, the designee”

Page 6, line 4, remove the overstrike over “of the chief executive official of any institution named in a report of institutional abuse”

Page 6, line 5, remove the overstrike over “or neglect”

Page 9, line 22, overstrike “the subject of the” and insert immediately thereafter “a”

Page 9, line 22, remove “meets the”

Page 9, line 23, replace “definition of” with “includes an allegation or report of”

Page 9, line 23, after “neglect” insert “as defined”

Page 9, line 26, after “instruction” insert “, the school district administrator,”

Page 9, line 26, after “and” insert “the president or chair of the”

Page 13, after line 3, insert:

“9. When a report alleges institutional child abuse or neglect involving a public or private school, the department or authorized agent shall conduct any child protection assessment. Whenever practical, the department or authorized agent shall provide notice of the onset of a child protection assessment to the public or private school. A public or private school may complete an investigation into any conduct reported or alleged to constitute institutional child abuse or neglect at its institution concurrently with any child protection assessment. When a public or private school conducts an investigation concurrently with a child protection assessment, the department or authorized agent and the public or private school shall coordinate the planning and execution of the child protection assessment and public or private school investigation efforts to avoid a duplication of factfinding efforts and multiple interviews whenever practical.”

Page 18, after line 10, insert:

“j. A public or private school that is the subject of a report of institutional child abuse or neglect; provided the identity of the persons reporting or supplying the information under this chapter is protected, except if the individuals reporting or supplying information are employees of the public or private school.”

Page 18, after line 25, insert:

“4. When a public or private school is the subject of a report of institutional child abuse or neglect, any records and information obtained, created,

generated, or gathered by the public or private school in response to the report or during any investigation by the public or private school of the alleged conduct set forth in the report, are confidential until the state child protection team makes a determination in accordance with section 50-25.1-04.1 whether institutional child abuse or neglect is indicated.”

Renumber accordingly

2021 HOUSE HUMAN SERVICES

SB 2083

2021 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee
Pioneer Room, State Capitol

SB 2083
3/15/2021

Relating to child abuse and neglect; and to provide a penalty

Chairman Weisz opened the committee hearing at 2:32 p.m.

Representatives	Attendance
Representative Robin Weisz	P
Representative Karen M. Rohr	P
Representative Mike Beltz	P
Representative Chuck Damschen	P
Representative Bill Devlin	P
Representative Gretchen Dobervich	P
Representative Clayton Fegley	P
Representative Dwight Kiefert	P
Representative Todd Porter	P
Representative Matthew Ruby	P
Representative Mary Schneider	P
Representative Kathy Skroch	A
Representative Bill Tveit	P
Representative Greg Westlind	P

Discussion Topics:

- Mandatory reporting
- Agent designation
- Children's Advocacy Centers
- School-related assessments

Cory Pederson, Director Children & Family Services Department Human Services (2:33) testified in favor and submitted testimony #9298.

Kimberly Jacobsen, Agassiz Valley Human Service Zone Director (2:42) testified in favor and submitted testimony #8977.

Amy DeKok, Legal Counsel North Dakota School Boards Association (2:57) testified in favor and submitted testimony #9144.

Melissa Hauer, General Counsel/VP North Dakota Hospital Association (3:01) testified in favor and submitted testimony #8995.

Additional written testimony: #9131

Chairman Weisz adjourned at 3:04 p.m.

Tamara Krause, Committee Clerk

Testimony

Engrossed Senate Bill Number 2083 - Department of Human Services

House of Representatives; Human Services Committee

Representative Robin Weisz, Chairman

March 15, 2021

Chairman Weisz, and members of the House Human Services Committee, I am Cory Pedersen, Director of the Children and Family Services Division with the Department of Human Services (Department). I appear before you to support Engrossed Senate Bill 2083, which was introduced at the request of the Department.

The bill contains several updates necessary for clarification. Throughout the bill these changes clarify whether the provisions pertain to a “person”, which can mean either an individual or an entity, or pertain to an “individual”, which is a human being. Also throughout the bill clarification has been added to reflect when child protection services are to be conducted by the department directly or may be conducted through its authorized agent, Human Service Zones. These housekeeping changes will not be addressed in the remainder of the testimony.

The bill also contains several proposed changes related to child protection services, Institutional Child Protection, and the Child Fatality Review Panel, which I will review as we move through each section of the bill. In depth explanations will follow brief review of the definitions. The Department offered an amendment to the original bill after conferring with representatives of the education system, who requested certain changes. Explanation of the amended language is included in this testimony.

Section 1:

The proposed change on page 1, lines 16, 17 and 18, removes “public or private school” from the definition of “a person responsible for a child’s welfare” and adds a definition of “person responsible for a child’s welfare” specific to institutional abuse or neglect to define that the word “person” indicates an entity rather than an individual. The facility caring for the child is accountable for their safe care.

The change proposed on page 2 lines 1 through 6 clarifies the definitions of “abused child” and “sexually abused child” by clarifying that an abused child includes a “sexually abused child”, although the statutory references differ. There is no change in the meaning or implementation.

The proposed change on page 2, lines 14 through 26 creates a definition of “child fatality review panel” which separates panel membership from state child protection team membership and authorizes membership for the child fatality review panel to include representation from tribal medical services as well as representation from each federally recognized tribe in the state.

The proposed change on page 2, lines 28 through 30 and page 3, lines 1 and 2 amends the definition of “child protection assessment” and allows for determinations that a child may be found to have been abused or neglected in instances that may not identify a specific person responsible for a child’s welfare who is responsible for the abuse or neglect.

The proposed change on page 3, lines 13 through 17 changes the definition of the determination made when a child is determined to have been abused or neglected from “services required for the protection and treatment of an abused or neglected child” to “Confirmed”.

The proposed change on page 3, lines 18 through 22 creates a new definition of “Confirmed with unknown subject” which allows for abuse or neglect of a child to be confirmed in instances that may not identify a specific person responsible for a child’s welfare.

The proposed change on page 3, lines 28 through 30 defines a state of “impending danger” which is a concept integral to adoption of a new practice model adopted by the department. A child may be found to be in a state of impending danger through the use of specific criteria.

The proposed change on page 4, lines 1 through 13 adds a definition of “indicated” which has been contained in N.D.C.C. 50-25.1-04.1 but was not previously defined and amends the definition of “Institutional child abuse and neglect” moving public and private schools from the child protection response typically focused on families to the more institutional structure of a school setting. This change also clarifies the entities which fall within the definition of “institutional child protection”.

The proposed change on page 4, Lines 14 through 22 removes the definition of “Local Child Protection Team”. Under the restructuring and redesign efforts within the department, local child protection teams are disbanded.

The proposed change on page 5, lines 14 and 15 revises the definition of “neglected child” to amend the definition of prenatal exposure to controlled substances to include those defined in section 19-03.1-01 rather than referencing the entire controlled substances act. The proposed change also revises environmental exposure of a child to controlled substances to include any amount of marijuana. The controlled substances act limits exposure to amounts less than one half ounce of marijuana for criminal charging purposes. While a laboratory test can indicate the presence of marijuana in the body of a child, these tests cannot determine the amount of marijuana nor the frequency of exposure required to produce a certain level in a child. There should not be an acceptable level of marijuana in a newborn or a child who is exposed in their home.

The proposed change on page 5, lines 28 through 31 and page 6, lines 1 through 11, addresses representation on the state child protection team, which reviews cases of institutional child abuse and neglect. The proposed definition adds representation from law enforcement and a parent with lived experience to the team and defines a quorum for the team.

The proposed change on page 6, lines 16 and 17 creates a new definition of “Unable to determine” which allows a determination to be made at the conclusion of a child protection assessment that insufficient evidence exists to make a determination whether a child has been abused or neglected.

The proposed change on page 6, lines 18 through 20 creates a new definition of “Unconfirmed” which allows a determination to be made at the conclusion of a child protection assessment that child abuse and neglect was not confirmed by evidence gathered in the assessment.

Section 4:

Moving into Section 4, page 7, line 31 and page 8, lines 1 through 31. It was called to our attention as the result of child fatality reviews that the current statute mandating certain professionals to report suspicion of child abuse and neglect requires a report to be filed by each employee within a single entity, without exception. It was pointed out that within large institutions, if each individual followed this mandate, hundreds of reports could be received resulting from a single case. Another phenomenon that has been recognized is a scenario in which multiple mandated reporters each believe it is the responsibility of another professional to make the ‘mandated’ report and no report is filed. Entities have also instituted ‘workarounds’ such as directing reports through a designee or administrator, who may forward the report, or who may determine not to forward the report. In order to address these issues and any confusion for mandated reporters, the department is proposing that an entity who employs more than twenty-five mandated reporters may designate an individual to receive and forward reports of

suspected child abuse and neglect while prohibiting the entity from imposing conditions on a report or other methods for controlling reports which are mandated. The proposed language also allows a mandated reporter to report directly to the department or authorized agent.

Section 5:

Section 5, page 9, lines 4 through 31 and page 10, lines 1 through 6 addresses the state child protection team and institutional child abuse and neglect. As part of the redesign and reorganization efforts within the department it was recognized that the institutional child protection process had become outdated, inefficient, and not conducive to making timely and effective changes in facility practices for keeping children safe. For example, the state child protection team quarterly meetings often reviewed cases that were many months old, rendering state child protection team determinations and recommendations much less relevant to addressing root causes of the concerns reported.

For those facilities regulated or funded by the department the department will have the ability to hold facilities accountable through a variety of means and will be able to effect changes in facility policies and practices through licensing actions, corrective action plans, reports to accrediting bodies and fiscal sanctions when required.

Public and private school reports will be sent to the Department of Public Instruction and to the corresponding school district administrator and president or chairman of the school board or governing body for private schools for their actions. Reports of potential criminal activity by a person responsible for a child's welfare will be forwarded to law enforcement for investigation. The department will continue to conduct assessments of reports of suspected child abuse and neglect in school settings using the institutional child protection approach.

Section 6:

Section 6, page 10, lines 10 through 20 corresponds to the definition in Section 1, page 5, lines 28 through 31. Separating the membership of the child fatality review panel and

the state child protection team makes sense from the perspective of the purposes of each group and the skillsets and representation needed to fulfill those purposes. The proposed language specifies the department's responsibilities to preside over the child fatality review panel, set meetings, and prepare records and reports.

Section 7:

Section 7, page 10, lines 24 and 25, moves the meeting frequency of the child fatality review panel from at least every six months to meeting quarterly and extends the time period for reviewing deaths and near deaths to the preceding twelve months rather than six months. The additional time is required related to receiving records from other entities, time needed for criminal investigations to conclude and the numbers of deaths and near deaths to be reviewed. The bill also removes the use of local child protection team members from the duties of the child fatality review panel since these teams are being disbanded (page 11, line 12).

Section 8:

Section 8, page 12, lines 23 through 25, allows the department or authorized agent access to medical records which are relevant to support decisions whether child abuse or neglect is confirmed, confirmed with an unknown subject or unable to determine. These terms reflect proposed changes to the determinations allowed for child abuse and neglect assessments which will be explained in more depth later in this testimony.

Page 13, lines 1 and 2, adds the use of an evidence-based screening tool as it was removed from the definition of "child protection assessment" and "family services assessment". This change does not change the current practice of completing an evidence-based screening tool as it clarifies that an assessment and completing an evidence-based screening tool are two separate tasks.

Page 13, lines 3 through 5, permits the department or authorized agent to terminate an assessment in process upon determining that there is no credible evidence supporting that the reported abuse or neglect occurred.

Page 13, lines 6 through 17, adds new language related to conducting child abuse and neglect assessments of public and private schools under the definition of institutional child protection. This section contains language amended from the original bill. The new language provides that the department shall provide notice to the public or private school at the onset of the child protection assessment whenever it is practical to do so. This section also allows a public or private school to perform an investigation into conduct which may be concurrent with the child protection assessment and that the department and the public or private school shall coordinate the planning and execution of the child protection assessment and the public or private school investigation to avoid a duplication of factfinding efforts and multiple interviews, if it is practical to do so.

Section 9:

Section 9, page 13, lines 20 through 25, changes the decision-making matrix for child protection services. Under the current statute, at the conclusion of a child protection assessment, the department must decide whether services are required for the protection and treatment of an abused or neglected child. This is often reduced to a determination of “services required” or “no services required”, with “services required” reflecting that a preponderance of the evidence gathered during the assessment meets a definition of abused child or neglected child.

The language of requiring services is a misnomer and quite misleading to the public because there is not a mechanism for the department to “require” participation in a service other than petitioning the Juvenile Court. Petitions in the Juvenile Court require a level of evidence that is “clear and convincing”, a much higher standard than a simple preponderance. When a determination is made that “services are required” there is an expectation that participation in the service is a requirement when this is not the case. Additionally, a determination of “no services required” is also misleading and is often not descriptive of the findings of the assessment. The public interprets “no services required” to mean “everything here is okay”, when the reality may be that there are many concerns but not sufficient evidence that meets a definition of “abused child” or “neglected child”. North Dakota is the only state which uses this decision-making language.

The department is proposing that the allowable decision-making be changed to “Confirmed”, meaning that child abuse or neglect has been confirmed for instances where there exists a preponderance of evidence that meets a definition of “abused child” or “neglected child”. This language more accurately communicates a finding that child abuse or neglect was found to be true. The term “Unconfirmed” would then indicate that child abuse and neglect was not verified.

In addition to these two decisions, “Confirmed with an unknown subject” would be used to describe situations in which a preponderance of the evidence meets a definition of abused child or neglected child, but insufficient information exists to name the individual who is responsible. An example would be an infant with unexplained injuries where medical evidence indicates the injury was inflicted, but there is not a preponderance of evidence identifying an individual responsible for injuring the child.

Finally, a determination of “unable to determine” would indicate that insufficient evidence exists to determine whether a definition of abused child or neglected child has been met. An example would be situations in which the caregivers refuse to interview or interact with the child protection services worker. Under the current statute, and in the absence of other evidence, the determination would necessarily be “no services required”, yet that determination does not express the true conclusion and is misleading to those who are in a position to provide safety for the child, but who interpret the “no services required” determination to mean “everything here is okay”. The terms proposed here more accurately describe the true conclusion of the child protection assessment in plain language. I would emphasize that this change in language does not reflect a change in the assessment process, or level of evidence required. Definitions of these terms can be found in Section 1.

Also, page 13, lines 27 and 28, is a small change related to child protection assessments involving confirmation of abuse and neglect arising from religious practices. This change replaces the word “legitimate” with the word “lawful” to address situations in which a person responsible for the child’s welfare’s religious belief involves illegal activity, such as using an illegal substance or female genital mutilation. While the

department does not propose to restrict religious freedom, illegal acts impacting children should not be able to hide behind a veil of religious freedom.

Section 10:

Section 10, page 14, lines 5 through 9 directs that confirmed decisions where a child meets the definition of an abused child or neglected child will be reported to the Juvenile Court. Further, this section limits placement on the child abuse and neglect information index to those cases where child abuse or child neglect are confirmed. This replaces the determination of “services are required”.

Section 12:

Section 12, page 15, lines 7 and 8 updates the directive for the department to enact rules for resolution of complaints and the conduct of appeal hearings requested by a subject who is aggrieved by the department’s decision of “confirmed” child abuse or neglect. The Department will be updating the Administrative Code to coincide with the implementation of redesign and practice model changes.

Section 13:

Section 13, page 15, lines 13 and 14 directs placement of confirmed determinations on the child abuse and neglect information index, replacing the determination of “services are required”. It should be noted that when abuse or neglect is confirmed related to an unknown subject, no individual’s name is placed on the index, but the assessment is referenced as a confirmed decision.

Section 15:

Section 15, page 15, line 30 and 31 and page 16 lines 1 through 8 addresses protective services provided following a child protection assessment. Under the Safety Framework Practice Model adopted by Children and Family Services, a determination is made at

the conclusion of the assessment as to impending dangers identified. Referencing back to Section 1 of this bill, “impending danger” means a foreseeable state of danger in which a behavior, attitude, motive, emotion, or situation can be reasonably anticipated to have severe effects on a vulnerable child according to criteria developed by the department”. Criteria for identifying a state of impending danger is well defined in the adopted practice model.

Current statute requires that services be provided in all instances in which a child meets the definition of an abused child or neglected child. Services are also to be provided to “other children under the same care” as well as “parents, custodian, or other persons serving in loco parentis with respect to the child or the other children”. Approximately 1797 victims were identified in Federal Fiscal Year 2019, while this is a duplicated number (a child is counted once for each assessment during the FFY) it represents considerable resources expended for provision of these services.

With the criteria developed under the newly adopted practice model, a determination is able to be made as to the ongoing safety of the children. For example, it is possible for there to be instances in which child abuse or neglect has occurred, but upon assessment of family and parent functioning, impending dangers are not identified. For example, parents understand their behavior as damaging to their children and are able to control and correct this behavior. The child is safe. Under the current statute, however, services must still be provided, based on the determination that “services are required for the protection and treatment of an abused or neglected child”.

The proposed language in this bill changes the requirement for providing services to mandate services for abused or neglected children who are in an identified state of impending danger. Targeting limited services to children determined to be in a state of impending danger makes better use of service resources than mandating services for families who may be able to correct abusive or neglectful behaviors on their own. Proposed changes also allow services to be provided, as resources permit, to any

families upon concurrence of the parent, custodian, or other person serving in loco parentis.

Section 18:

Page 18, lines 23 through 26 are part of the amended language agreed upon with representatives of the school system and provides that a public or private school that is the subject of a report of institutional child abuse or neglect may receive the report and any other information obtained, with the identity of the individuals reporting or supplying information protected except if the individuals reporting or supplying information are employees of the public or private school.

Page 19, lines 6 through 10 allow confidentiality exceptions for institutional child protection assessments to notify the board of directors and notification to any entity which accredits the facility or setting of the determination that institutional child abuse or neglect is indicated and may share the written report of the state child protection team, the approved improvement plan and areas of deficiency that resulted in the notification.

Page 19, lines 11 through 16 provides that records and information generated by a public or private school in response to the report, or during an investigation are confidential until the state child protection team makes a determination whether institutional child abuse or neglect is indicated.

Sections 25, 26, 27, and 28:

Sections 25, 26, 27 and 28, pages 24 through 26 are revised to reflect changes proposed in Section 9 regarding the use of "confirmed" to indicate identification of an abused or neglected child and to emphasize that the children's safety must be included with well-being.

This concludes my testimony, and I am available to answer your questions. Thank you.



Child Fatality Panel Members 2021

Jenn Grabar – Assistant Administrator
Child Protection Services – DHS

Kelly Dillon – ND Attorney
General's Office

Dr. Barrie Miller – State Forensic
Medical Examiner

Dr. Mary Ann Sens – Department of
Pathology – UND

Lisa Bjergaard – Division of Juvenile
Justice

Duane Stanley – Bureau of Criminal
Investigation

Bobbi Peltier – Indian Health Services
Injury Prevention

Karen Eisenhardt – Citizen Member

Dr. Melissa Seibel- Sanford Health

Mandy Slag – Injury Prevention
Administrator- Dept. of Health

Rosalie Etherington – ND State Hospital
Superintendent

Tracy Miller – Epidemiologist –
Dept. of Health

Todd Porter – Emergency Medical Services /
State Legislator

Testimony Prepared for the
House Human Services Committee

March 15, 2021

By: Kim Jacobson, Agassiz Valley Human Service Zone Director

RE: Senate Bill 2083 – Child Abuse and Neglect Changes

Chairman Weisz and members of the House Human Service Committee, my name is Kim Jacobson. I am the Agassiz Valley Human Service Zone Director, serving the service area of Traill and Steele Counties and a member of the North Dakota Social Service Director Association. Please consider my testimony in support of SB 2083.

North Dakota has been engaged various redesign efforts over the past three years. One of the key areas of redesign includes our child welfare system, including child protective services. It is through those efforts, our system has been examined, areas for improvement identified, and change implemented. The process of redesign allows us to take a birds-eye view of our programs examining how services can be better provided to ensure effectiveness, efficiency, and quality.

One example that has resulted from redesign effort is the implementation of the Safety Practice Model. This practice model structures the array of child welfare services - child protection, foster care and in-home services, uses similar terminology, definition, and vision. It aligns the various levels of intervention in a way that is mindful of the values and goals of the entire system. Necessary changes have been identified. Some changes can be addressed through policy and practice. Other changes are required in law. These changes are included in Senate Bill 2083.

From the local boots on the ground standpoint, these changes are necessary. The change from a “*services required*” system to a “*confirmed*” determination yields a much more

accurate representation. The term “*services required*” or “*no services required*” was often confusing to families and partners in the child welfare system. The proposed term change to “*confirmed*” or “*not confirmed*” does not change the intervention, but rather it communicates a clearer outcome message. Our goal remains to protect children and empower families. If there are risks to the family and child, our goal is to offer services and strategies to help mitigate safety risk and to strengthen families. Engagement is key to any type of intervention or change. Clearer definitions and language are key important for building an environment for engagement and support.

In addition, I am supportive of the changes proposed to institutional child abuse and neglect systems. There are opportunities for greater accountability and protective measures that can be supported under the institutional child abuse and neglect model. Under current law and practice, human service zones assess suspected child abuse/neglect reports related to both parent/caregiver and school-related concerns. The Department completes assessments of suspected child abuse/neglect reports related to institutional (non-school) concerns.

SB 2083 calls for the transition of school-related assessments to the Department. This would allow schools to be treated similarly to an institution and also better recognizes their duty as an employer. This is an important aspect of distinction from parent/caregiver-based reports. This proposed change is strongly and historically supported by Human Service Zone Directors.

The proposed change to remove reference of child protection team members is also supported. It removes outdated language and modernizes the law to support redesign system changes. While we are grateful for the role that child protection teams have held in the past, our redesigned system no longer utilizes this process as it was a barrier to timely determination and notification to the family and if applicable, juvenile court.

This concludes my testimony on SB 2083. I stand for questions from the committee.



NDSBA
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SB 2083
Testimony of Amy De Kok
House Human Services
March 15, 2021

Chairman Weisz and members of the House Human Services committee, my name is Amy De Kok. I am in-house legal counsel for the North Dakota School Boards Association. NDSBA represents all 178 North Dakota public school districts and their boards. NDSBA and our member districts stand in support of SB 2083 as amended by the Senate.

Our public schools serve arguably the most vulnerable population of ND citizens. Parents entrust their children to our schools and to keep their kids safe and protected while in their care. School districts in ND take this responsibility very seriously and make significant efforts in furtherance of this obligation. Some of these efforts include developing robust policies and procedures covering a myriad of subjects, providing regular and ongoing training and professional development to staff, conducting criminal background checks on all employees who may have any unsupervised contact with children, and adopting procedures to ensure prompt reporting of misconduct on the part of school staff, volunteers, or service providers that have involvement with our schools. These are a few of the many proactive and responsive steps schools take to keep students safe and protected from harm. Schools are also highly regulated by federal and state law, particularly in terms of providing special education and related services to students with disabilities.

Regarding child abuse and neglect, schools employ several categories of mandatory reporters. These are individuals who by law must report any knowledge of known or suspected instances of child abuse or neglect. SB 2083 seeks to expand the existing definition of institutional child abuse or neglect to include public and private schools. NDSBA and our member districts are supportive of protecting students from harm, especially conduct that could constitute child abuse or neglect. In its original form, the bill did not address the impact this expansion would have on a school district's ability to investigate and respond to reported allegations of child abuse or neglect on the part of a school employee, including the school's ability to possibly take appropriate action against an individual who, despite all of the efforts put in place by the school, has engaged in misconduct.

These concerns with the bill were discussed with the Department and we were able to work with Director Jones and Mr. Pederson on the amendments made to the bill by the Senate. These concerns and resulting amendments relate to two areas. First, we wanted the bill to address the coordination between the Department and the school when the Department or its designee conducts an assessment following receipt of a report of institutional child abuse or neglect where a public or private school is the subject. The amendments make it clear that a school could conduct an internal investigation into conduct alleged in a report concurrently with any DHS assessment. The amendments also call for DHS and the school to coordinate the planning and execution of the child protection assessment and school investigation efforts.

The second area addressed by the amendments relates to confidentiality of the report and any information related to the report. We wanted to make sure school officials have access to information reported to DHS in order that schools may fully and appropriately address any alleged misconduct on the part of their employees. The identities of persons making the report or supplying information to DHS would remain confidential except as to individuals who are employed by the school. Without this information, schools would be unable to properly investigate on their end (which they are obligated to do) and take appropriate action against employees who engage in conduct that is the subject of the report. On a related note, the amendments also keep all records and information gathered, obtained, created, or received by a school in connection with any report of institutional child abuse or neglect confidential until a finding of institutional child abuse or neglect is indicated by the state child protection team.

With these concerns addressed by the amendments, NDSBA moved to a support position. We ask that the Committee issue a Do Pass Recommendation in its current form. Thank you for your time and I would be happy to stand for any questions.



2021 SB 2083
House Human Services Committee
Representative Robin Weisz, Chairman
March 15, 2021

Chairman Weisz and members of the House Human Services Committee, I am Melissa Hauer, General Counsel for the North Dakota Hospital Association (NDHA). I testify in support of Engrossed Senate Bill 2083 and ask that you give this bill a **Do Pass** recommendation.

Hospitals support the change provided in section four of the bill because it will streamline and clarify the process of child abuse and neglect reporting for mandated reporters, including those working in health care, such as physicians and nurses. In a hospital, there can be hundreds of employees who are mandated to report suspected child abuse and neglect. One patient can trigger the duty for several employees to report, such as when a child comes into the emergency department and is treated by several nurses and physicians. One such episode of care may require five, six, or more employees to report the suspected abuse or neglect of one child. If each one does not file a separate report, have they failed to fulfill their duty to report? That is the question that would be resolved by this bill.

The bill would allow an entity employing more than 25 individuals who are required to report suspected child abuse or neglect to designate one individual to file reports on behalf of the staff members and volunteers of the entity. This will ensure that the reports are made more efficiently and timely. And it will ensure that each person who dealt with the same case has fulfilled his or her duty to report. A report filed by the designated individual will supply the first and last name, title, and contact information for every staff member or volunteer of the entity who is believed to have direct knowledge of the facts surrounding the report. The bill clarifies that this single report from the designated individual will meet the reporting requirement on behalf of staff members and volunteers of the entity.

This change would not preclude a staff member or volunteer from also reporting the suspected child abuse and neglect directly to the department. It does require a staff member or volunteer who has knowledge that the designated individual failed to report on behalf of the staff member or volunteer to immediately to make a report. We agree with these important safeguards to ensure all suspected child abuse and neglect is reported promptly.

We also believe this change will assist the Department of Human Services in its work because it will not receive multiple reports from mandated reporters which all deal with the same incident. It will make their response to the report a bit easier if they do not have to ensure that multiple reports are reviewed to determine if they spring from the same incident and really should be assessed as one case.

In summary, we support the bill for these reasons and ask that you give it a Do Pass recommendation. I would be happy to respond to any questions you may have. Thank you.

Respectfully Submitted,

Melissa Hauer, General Counsel/VP
North Dakota Hospital Association

HB 2083
Senate Human Services Committee
Testimony of Mary Kolars
In Support
February 19, 2021

Mr. Chairman and Members of the Committee:

I am offering testimony in support of HB 2083, which would provide a penalty to perpetrators involved in child abuse and neglect. In the state of North Dakota alone, the Department of Human Services received nine-hundred and forty cases of child abuse and neglect: making it a forty percent decrease in 2019. This decrease only counts the reports of child abuse actually being recorded. However, not all child abuse and neglect are being reported not only in North Dakota but all over the country which is alarming.

One main reason for having a decline in reports is because of the coronavirus pandemic. In North Dakota, almost all institutions shut down last spring and have just started to open back up this past fall. Teachers, school nurses, social workers, coaches, doctors, school counselors and other faculty at institutions make the majority of child abuse and neglect reports. However, since the pandemic, children have not been able to interact with their teachers and mentors they see at school or through other activities on a daily basis. As a result of this, children have not been able open up to anyone since the start of the pandemic. Going to school or other activities like sports, is a way to escape from abusive living situations for many children and open up to their teachers and faculty about what may be going on in their personal lives at home.

As things have started to open back up in North Dakota, I believe there will an increase in child abuse and neglect reports in the state of North Dakota but all over the United States. The experience of isolation has had negative impacts from all walks of life since the pandemic, especially those who come from abusive homes. No one, not matter the age, should ever be

abused or neglected; especially children. In my career as a future social worker, I have learned about many cases of children being abused and neglected and am passionate about being part of the change to end child abuse in neglect in the country; starting with the state of North Dakota. I believe those who commit acts of neglect and abuse should be punished for the consequences. On behalf of those who have worked to develop this bill and make this sentencing option a reality, I urge a “do pass” recommendation on HB 2083. I thank you for your time and consideration.

References

<https://www.grandforksherald.com/newsmd/health-news/6476069-Massive-drop-in-child-abuse-reports-during-pandemic-troubles-experts-activists>

2021 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee Pioneer Room, State Capitol

SB 2083
3/16/2021

Relating to child abuse and neglect; and to provide a penalty

Chairman Weisz opened the committee meeting at 9:51 a.m.

Representatives	Attendance
Representative Robin Weisz	P
Representative Karen M. Rohr	P
Representative Mike Beltz	P
Representative Chuck Damschen	P
Representative Bill Devlin	P
Representative Gretchen Dobervich	A
Representative Clayton Fegley	P
Representative Dwight Kiefert	P
Representative Todd Porter	P
Representative Matthew Ruby	P
Representative Mary Schneider	P
Representative Kathy Skroch	P
Representative Bill Tveit	P
Representative Greg Westlind	P

Discussion Topics:

- Department of Human Services investigation
- Team experts
- Service clarification

Rep. Todd Porter (9:59) moved **Do Pass**

Rep. Chuck Damschen (9:59) second

Representatives	Vote
Representative Robin Weisz	Y
Representative Karen M. Rohr	Y
Representative Mike Beltz	Y
Representative Chuck Damschen	Y
Representative Bill Devlin	Y
Representative Gretchen Dobervich	A
Representative Clayton Fegley	Y
Representative Dwight Kiefert	N
Representative Todd Porter	Y
Representative Matthew Ruby	Y
Representative Mary Schneider	Y
Representative Kathy Skroch	Y

Representative Bill Tveit	Y
Representative Greg Westlind	N

Motion Carried Do Pass 11-2-1

Bill Carrier: Rep. Todd Porter

Chairman Weisz adjourned at 10:01 a.m.

Tamara Krause, Committee Clerk

REPORT OF STANDING COMMITTEE

SB 2083, as engrossed: Human Services Committee (Rep. Weisz, Chairman)
recommends **DO PASS** (11 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING).
Engrossed SB 2083 was placed on the Fourteenth order on the calendar.