

Sixty-second
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1410

Introduced by

Representatives Weisz, DeKrey

Senator J. Lee

A BILL ~~for an Act to amend and reenact section 12.1-35-04 and subsection 1 of section 31-04-04.1 of the North Dakota Century Code, relating to limitations on interviews with children in cases involving physical or sexual abuse.~~ for an Act to amend and reenact section 50-25.1-05 of the North Dakota Century Code, relating to interviews of children in cases of abuse or neglect.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

~~**SECTION 1. AMENDMENT.** Section 12.1-35-04 of the North Dakota Century Code is amended and reenacted as follows:~~

~~**12.1-35-04. Limits on interviews and testimony.**~~

~~1. The prosecuting attorney, the court, and appropriate law enforcement personnel, to the extent possible, shall protect the victim or witness from the psychological damage of repeated or lengthy interview, testimony, or discovery proceedings while preserving the rights of the public, the victim, and the person charged with the violation.~~

~~2. In cases involving the direct or threatened physical or sexual abuse of a child, if the victim is interviewed by the prosecuting attorney, the court, or appropriate law enforcement personnel, the interview must be video recorded and the parent or a representative of the parent must be allowed to be physically present at the interview.~~

~~**SECTION 2. AMENDMENT.** Subsection 1 of section 31-04-04.1 of the North Dakota Century Code is amended and reenacted as follows:~~

~~1. InSubject to the limitations of section 12.1-35-04, in any prosecution for a violation of section 12.1-20-03, 12.1-20-03.1, 12.1-20-04, 12.1-20-05, 12.1-20-06, 12.1-20-07, or 12.1-20-11 in which the victim is less than fifteen years of age, the oral statement of the child victim may be recorded before trial and, subject to subsection 2, is admissible~~

as evidence in any court proceeding regarding the offense if the following conditions are satisfied:

- a. The court determines there is reasonable cause to believe that the child victim would experience serious emotional trauma as a result of in-court participation in the proceeding;
- b. The accused must be given reasonable written notice of the time and place for taking the videotaped statement;
- c. The accused must be afforded the opportunity to hear and view the testimony from outside the presence of the child by means of a two-way mirror or other similar method that will ensure that the child cannot hear or see the accused;
- d. The accused must have the opportunity to communicate orally with counsel by electronic means while the videotaped statement is being made; and
- e. All questioning must be done by the prosecutor or counsel for the defendant unless the defendant is an attorney pro se. An attorney pro se must conduct all questioning from outside the presence of the child. Upon request of any of the parties or upon the determination of the court that it would be appropriate, the court may appoint a person who is qualified as an expert and who has dealt with the child in a therapeutic setting to aid the court throughout proceedings conducted under this section and the court may appoint a guardian ad litem to protect the interests of the child.

SECTION 1. AMENDMENT. Section 50-25.1-05 of the North Dakota Century Code is amended and reenacted as follows:

50-25.1-05. Assessment.

1. The department, in accordance with rules adopted by the department, immediately shall initiate an assessment, or cause an assessment, of any report of child abuse or neglect including, when appropriate, the assessment of the home or the residence of the child, any school or child care facility attended by the child, and the circumstances surrounding the report of abuse or neglect. Unless the report alleges a violation of a criminal statute involving sexual or physical abuse, the department may not interview the alleged abused or neglected child and any other child who currently resides or who has resided with the person responsible for the child's welfare or the alleged

perpetrator unless the department has the consent of a person responsible for the child's welfare.

2. If the report alleges a violation of a criminal statute involving sexual or physical abuse, the department and an appropriate law enforcement agency shall coordinate the planning and execution of their investigation efforts to avoid a duplication of factfinding efforts and multiple interviews. The department or the law enforcement agency may:
 - a. Refer the case to a children's advocacy center for a forensic interview, forensic medical examination, and other services.
 - b. Interview, without the consent of a person responsible for the child's welfare, the alleged abused or neglected child and any other child who currently resides or who has resided with the person responsible for the child's welfare or the alleged perpetrator. The interview must be recorded electronically.
 - c. Conduct the interview at a school, child care facility, or any other place where the alleged abused or neglected child or other child is found.
3. Except as prohibited under title 42, Code of Federal Regulations, part 2, a regional human service center shall disclose to the department or the department's authorized agent, upon request, the records of a patient or client which are relevant to an assessment of reported child abuse or neglect.
4. The department shall adopt guidelines for case referrals to a children's advocacy center. When cases are referred to a children's advocacy center, all interviews of the alleged abused or neglected child conducted at the children's advocacy center under this section shall be audio-recorded or video-recorded.