

March 13, 2024

Chairman Lee and members of the Senate Human Services Committee,

My name is Rozanna Larson, I am the State's Attorney for Ward County. I am writing to you in opposition of HB 1360.

First, the Constitution, ND Supreme Court, and the US Supreme Court have already addressed parental rights being paramount. It would seem that additional statutes are unnecessary and redundant. However, that being said, there are times when the government does find it necessary to intervene in the best interests of the child(ren).

I would remind the committee that just last session legislature revamped the Juvenile Code completely to come into compliance with Federal law. See NDCC Chapters 27.2 through 27.4. It would appear HB 1360 would supersede the process and procedures in those chapters.

When children are removed from their parents, NDCC Chapters 27.2 through 27.4 and the North Dakota Rules of Juvenile Procedure already provide for the parents' right to due process. These chapters already address the threshold and burden of keeping children in custody (foster care), by clear and convincing evidence. When a child is placed into the legal custody of the Human Service Zone, the Zone becomes the decision-maker of the child. This bill would seem to supersede that authority and ability to provide for the best interests of the child.

I'm also concerned about subsection 3 of the bill, "If a parent's fundamental rights protected by this section are violated, a parent may assert that violation as a claim or defense in a judicial proceeding and may obtain appropriate relief against a governmental entity. The prevailing party in an action filed under this section is entitled to reasonable attorney's fees and costs." The bill does not address "governmental agency." In cases that involve Human Service Zones, is it the "State" – DHS? The Zone workers are under DHS, but paid through counties. Some Zones are made of up of more than one County. Does this potential liability then trigger that each removal will/should be noticed to NDIRF for potential suit and coverage? Does this mean then that NDIRF should be involved in all foster care matters and have a seat at the table during these proceedings to protect the interests of the County? I would also point out, that when a child is removed and placed in Foster Care, the parents, when determined to be indigent, receive court-appointed attorneys.

In closing, I would urge you to DO NOT PASS this bill. There are already statutes in place that protect the parents' interests. Child welfare is a vital interest to the State as well as the parents. There are already statutes, and constitutional protections available. There are also administrative procedures available to parents when there are adverse findings.