

Testimony Prepared for the
House Human Services Committee

January 21, 2025

By: Kim Jacobson, Agassiz Valley Human Service Zone Director

RE: HB 1268: Mandatory drug testing by human service zones

Chair Ruby, and members of the House Human Services Committee, my name is Kim Jacobson. I serve as the Director of Agassiz Valley Human Service Zone, which includes the counties of Traill and Steele and as President of the North Dakota Human Service Zone Director Association. I am here today to provide testimony in opposition to HB 1268.

Human Service Zones are the legal designee of the North Dakota Department of Health and Human Services (NDHHS), managing a range of critical responsibilities including the legal custody of children in the public foster care system and foster care case management services. North Dakotans deeply value child safety, and this bill reflects that intent. However, good intentions can sometimes lead to unintended consequences. I am here today to share the concerns of the North Dakota Human Service Zone Director Association regarding HB 1268's practical application.

In North Dakota, child welfare services are guided by a combination of law, policy, and the Safety Framework Practice Model (SFPM), adopted in 2020 as part of social services redesign (SB 2124). This model ensures consistent, evidence-based practices across all Human Service Zones, focusing on child safety while respecting parental rights.

Key to this approach is distinguishing between immediate and potential dangers and tailoring interventions to each family's unique circumstances. SFPM emphasizes minimizing trauma to children, prioritizing in-home safety plans whenever possible, and using removal from

parental home as a last resort. When removal is necessary, diligent efforts to reunify families begin immediately.

HB 1268 speaks to the period after a child has been removed from the parental home. Unmitigated safety threats to children resulting in removal from a parental home can vary significantly. Often, those threats are multi-factored. Mental health, substance abuse, domestic violence, unsafe living conditions, along with physical/psychological/sexual abuse and/or neglect may be amongst the presenting safety factors. HB 1268 focuses on situations where controlled substances, chemical substances, or presence of drug paraphernalia were a contributing factor to out-of-home placement and places stipulations on visitation between a parent and child. Rarely, do we have a situation where only controlled substances are the contributing factor to child safety. Most frequently, this risk factor is present along with multiple other factors.

Supervised visitation and drug testing are existing options for human service zones, as legal custodians, when faced with concerns about substance abuse. These are part of the tools we have in our tool kit. However, they are not our only tools. As a system we continually focus on child safety. Drug testing is one example that can be used at various stages of our work with families. Frequently, engagement with the family and observation of behavior is a much stronger and more accurate indicator of a parent's ability to protect a child. Human service zones are in the business of working with and engaging with humans who are often in extraordinarily complex and challenging situations. There is no one test or assessment that can stand alone. To provide our best service, we need flexibility to develop safety plans and interventions that are fluid, results orientated and tailored to the child and family's unique needs.

To my understanding a motivating factor behind HB 1268 is the concern that not all human service zones are choosing to use drug testing in the same way or frequency. Assuming

that testing is not happening or that child safety is not being addressed is presumptive and inaccurate. Drug testing is confidential, results should not be shared. System partners may not realize what is happening behind the scenes and guiding practice/decisions. In addition, the human service zone is not the only entity that may be involved with the family. Some parents in the child welfare system are already getting drug tested through probation or as part of treatment. The exchange of drug testing information is highly regulated and not available to share with others.

The concept of tying drug test results to parent-child visitation can be complex. The half-life of drugs can vary. For example, one drug may remain in your system for over 30 days versus another just a day or two. The type of drug testing (blood, urine, saliva, or hair follicle) all look at different exposure/ingestion timelines and can vary greatly in cost. This can create great variability and complexity in interpretation of the results and should not be a sole determinate of visitation safety.

Drug testing research indicates that using drug testing to assist in foster care reunification can have both pros and cons. There is a risk relying solely on testing results without considering other factors impacting child safety and family stability. It is nationally recommended that drug testing be used as one piece of the child welfare comprehensive assessment process.

North Dakota's practice is consistent with national recommendations. We evaluate each family with its own unique circumstances; our decision making is guided by considering all the information that is available to us. We weigh the options for fair, equitable case management actions that support child safety and determine the course to move forward. When circumstances change, we re-evaluate and change course as appropriate. The actions we take may or may not include drug testing. When considering drug testing, potential pro considerations may include:

- **Potential Risk Identification:** Is further intervention/treatment needed for the parent to improve their ability to provide a safe environment for the child?
- **Change Motivation:** Will knowing that they will be tested encourage the parent to seek treatment and maintain sobriety to facilitate reunification?
- **Progress Monitoring:** Will repeated testing be available and can it track a the parent's progress in recovery and treatment plan goal achievement?
- **Decision-making Evidence:** Will the drug test results be used as part of a larger picture to inform decisions about child safety and reunification?

In contrast, adverse impact considerations that Human Service Zones consider include:

- **Information Limitations:** A single test only provides a point-in-time view of substance use. This does not necessarily reflect ongoing patterns or severity of addiction or measure exposure risk.
- **False positives or Unreliable Results:** Mistaken positive results can unfairly impede reunification efforts. In addition, inaccurate or adulterated/tampered testing can result in false indications of sobriety level.
- **Stigma and Discrimination:** Parents may feel judged and stigmatized by the testing process. This may unduly hinder their engagement with services and reunification efforts.
- **Access:** Access to reliable testing locations that offer timely and accurate results is limited. This is especially complex in rural communities. Frequently, the families we work with lack reliable transportation. This may result in undue barriers for the family and adversely impact their engagement, relationship with their child, and overall reunification efforts. In addition, is this duplicative to others working with this parent such as treatment or probation?
- **Overreliance on Testing:** As a system we work hard to have individualized care plans that focus on the safety needs of the child. Using drug tests as a primary factor of reunification can overlook the other important aspects of parental competency and child safety that are critical to the overall best interests of the child. The overall goal for reunification is to prepare the parent to have protective capacities so that they may keep their child safe regardless of the risks that may present.
- **Potential for Abuse:** Some parents may perceive, or experience being targeted based on bias or stereotypes.
- **Constitutionality:** Over testing of a parent and/or withholding child contact between parent and child may not be constitutional.

Working with families in the child welfare system is complex and requires flexibility and nimbleness when working with families. While House Bill 1268 has positive intent, the practical application is likely to hinder our system, unduly tie up resources, and could limit the rights of those we serve. For these reasons, I respectfully request a “do not pass” on House Bill 1268.

Thank you for your consideration of my testimony. I stand for questions from the committee.