

Testimony in Opposition to Engrossed HB 1268  
69<sup>th</sup> Legislative Assembly  
Senate Judiciary Committee  
March 5, 2025  
Testimony of Travis W. Finck, Executive Director, NDCLCI

Madam Chair Lee, members of the Senate Human Services Committee, my name is Travis Finck and I am the Executive Director for the North Dakota Commission on Legal Counsel for Indigents. The Commission is the state agency responsible for the delivery of indigent defense services in North Dakota, including the representation of children and parents in Child in Need of Protection Cases. I rise today on behalf of the Commission to provide testimony in opposition to House Bill 1268.

House Bill 1268 requires a parent to pass a drug test prior to exercising a constitutional right to parent the child. This bill has several flaws as amended that cause concern on behalf of indigent defense.

Concern #1: The type of drug test is not identified.

HB 1268 does not specify which type of drug test shall be administered prior to the visit, which causes more questions than solves the issues the bill is intended to prevent. There are a wide variety of tests with varying degrees of accuracy, varying cutoff levels to determine a positive test, and varying substances for which they test. To simply say a drug test is vague. Furthermore, dictating what type of test will be undergone should be driving the fiscal note in this bill. For example, a simple five panel urinalysis is going to have a different cost than a hair follicle test. Because it is vague, laws of statutory construction may render the statute void for vagueness.

The Bill also does not address what behavior is seeking to be prevented. For example, if you are taking a proscribed opiate for pain, you will test positive for a screen for opiates. Will you be prevented from an unsupervised visit for taking a proscribed medicine? Will you be prevented from an unsupervised visit if you test positive for opiates in a hair follicle test? By most scientific research, this would still test positive 90 days after consumption. Is a parent still under the influence 90 days after consumption?

Concern #2: The Bill does not specify what happens when funds are expended.

HB 1268 provides for \$95,000 appropriation for drug testing by the zones.

However, there is no contingency in the bill for what happens when the funds are depleted. If a drug test is required to be passed for an unsupervised visit and the money appropriated to DHHS is depleted, one can assume a parent would have to pay for the test themselves. This could result in an equal protection challenge to the statute, as those with means would still be able to pay for a test to have the visit whereas those without would be left without unsupervised visits. A constitutional challenge to the equal protection violation could cause a Child in Need of Protection case to be thrown out by the Court. Further, by preventing unsupervised visits, the Court could find the state has not gone through reasonable efforts of reunification. Money should not be used as a determining factor whether you can parent your children.

Concern # 3: This Bill is better as a policy than a statute.

HB 1268 mandates drug testing in the triggering circumstances. Current law and policy allow for testing but does not require it and it certainly does not dictate visitation cannot take place. Other states have placed drug testing for visitation in their statute but provide due process rights for the parents. In North Carolina for example, a positive drug test is insufficient to deny the court ordered visitation. N.C.G.S. 7B-905.1(b). Parents expecting to exercise unsupervised visits are entitled to have the state file a petition and the court to hold a hearing to review the test result and modify visitation plan. North Dakota should heed the example of North Carolina in acknowledging the constitutional rights of the parent.

For the reasons states herein, the Commission is in opposition to HB 1268 and respectfully requests a do not pass recommendation.

Respectfully Submitted:



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