



North Dakota Association for Justice
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The Trial Lawyers of North Dakota

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Madam Chair Larson and members of the Senate Judiciary Committee, my name is Jaclyn Hall, I am the Executive Director of the North Dakota Association for Justice. Today, I am here to testify in opposition to SB2352. This legislation was already introduced as SB2115 and was defeated in January.

NDAJ is still opposed to SB2352 as the language in this legislation has not changed from when it was SB2115. will provide immunity for the Department of Corrections for newborns and children residing and utilizing overnight visitation at Heart River Correctional Center unless the injury was affirmatively caused by the negligent act of the employee at DOCR.

Affirmatively is defined as: acting in a deliberate or unequivocal way.

The Department of Corrections (DOCR) needs to be held accountable for newborns in their prisons and transition centers for several important reasons related to the safety, well-being, and rights of both the infants and their incarcerated parents. Holding the DOCR accountable helps ensure the ethical treatment of these vulnerable individuals, as well as upholding broader societal and legal responsibilities. Some key points for liability include:

Duty of Care and Child Welfare

Even in prison settings, the DOCR has a fundamental duty of care toward the safety and well-being of all individuals, including children. Newborns are particularly vulnerable and require proper care, nutrition, medical attention, and a safe environment. The DOCR is responsible for providing these essential needs to the infant while they are within its custody, much like how parents or guardians are held accountable for their child's welfare outside of incarceration.

Legal and Human Rights Protections

Newborns, like all individuals, have basic legal and human rights that must be protected, regardless of their parents' incarceration. Prisons are often high stress and not conducive to nurturing the parent – child bond. These newborns and children have the right to safety, adequate care, and a healthy environment. If the DOCR fails to meet these basic legal responsibilities, they should be held liable under both domestic and



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When an incarcerated parent is allowed to stay with their newborn, the DOCR has a responsibility to help facilitate a positive bond and ensure the parent has the proper resources and guidance to care for the child. This is part of the broader rehabilitative process that aims to strengthen family relationships, which can help reduce recidivism and improve outcomes for both the parent and the child after release. If the DOCR fails to provide adequate resources or opportunities for this, they may be seen as failing to meet their obligation to assist in rehabilitation and maintaining family integrity.

Ensuring Proper Transition and Aftercare

When an infant is born in prison or a transition center, the DOCR should also ensure that there are proper plans in place for the child's transition after the parent is released or if the child is moved out of the prison. Failing to make appropriate arrangements for the child's transition back to the community could have serious consequences on the child's stability, attachment, and long-term welfare. If immunity exists, can we ensure they meet the necessary standards for preparing both the parent and the child for reentry into society.

Prevention of Child Abuse or Neglect

Prison environments can create situations where neglect or abuse can occur, either by other prisoners or by the stress of the environment itself. If an inmate were to hurt the child, or assault an overnight teenager, where is the liability? Who will protect these children when employees are immune from liability unless they directly cause injury? The DOCR must be held accountable to ensure there is no risk of abuse, either physical or emotional, to infants or children within its care. If the department fails to adequately protect these vulnerable children, it should be held liable for any harm caused.

Public Accountability and Ethical Responsibility

Finally, holding the DOCR accountable for the well-being of infants within their care reinforces ethical standards in the criminal justice system. It sets a precedent that the treatment of incarcerated parents and their children is an important issue for society, demanding that the government and prison



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systems take responsibility for ensuring humane and just conditions for all individuals, including those born in custody.

Conclusion

Placing newborns and young children in a correctional facility creates several liability concerns due to the unique and sensitive nature of the environment.

Holding the Department of Corrections accountable for the well-being of newborns in their custody is essential to ensure the protection of the child's rights and to maintain ethical standards within the justice system. Staff training, establishing security standards, adhering to child welfare laws and creating a secure environment for these young children are essential. They also are not setup, so supporting immunity provisions are premature.

Immunity does not ensure these children will be cared for at the level they deserve. The DOCR has a responsibility to create environments where infants can be cared for appropriately, and where the safety and emotional health of both the child and the incarcerated parent are prioritized. If the DOCR fails in this duty, it must be held accountable for the consequences that arise.

Please consider a Do Not Pass on SB 2352. DOCR has not created the processes to ensure these young children and infants will be safe, so providing immunity is premature.