

**HOUSE BILL NO. 1410**

Introduced by

Representatives Weisz, DeKrey

Senator J. Lee

1 A BILL ~~for an Act to amend and reenact section 12.1-35-04 and subsection 1 of section~~  
2 ~~31-04-04.1 of the North Dakota Century Code, relating to limitations on interviews with children~~  
3 ~~in cases involving physical or sexual abuse.~~ for an Act to amend and reenact section 50-25.1-05  
4 of the North Dakota Century Code, relating to interviews of children in cases of abuse or  
5 neglect.

6 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

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

9 ~~— **12.1-35-04. Limits on interviews and testimony.**~~

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

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

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

20 ~~— 1. In~~ Subject to the limitations of section 12.1-35-04, in any prosecution for a violation of  
21 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  
22 12.1-20-11 in which the victim is less than fifteen years of age, the oral statement of  
23 the child victim may be recorded before trial and, subject to subsection 2, is admissible

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

3 ~~a. The court determines there is reasonable cause to believe that the child victim  
4 would experience serious emotional trauma as a result of in-court participation in  
5 the proceeding;~~

6 ~~b. The accused must be given reasonable written notice of the time and place for  
7 taking the videotaped statement;~~

8 ~~c. The accused must be afforded the opportunity to hear and view the testimony  
9 from outside the presence of the child by means of a two-way mirror or other  
10 similar method that will ensure that the child cannot hear or see the accused;~~

11 ~~d. The accused must have the opportunity to communicate orally with counsel by  
12 electronic means while the videotaped statement is being made; and~~

13 ~~e. All questioning must be done by the prosecutor or counsel for the  
14 defendant unless the defendant is an attorney pro se. An attorney pro se must  
15 conduct all questioning from outside the presence of the child. Upon request of  
16 any of the parties or upon the determination of the court that it would be  
17 appropriate, the court may appoint a person who is qualified as an expert and  
18 who has dealt with the child in a therapeutic setting to aid the court throughout  
19 proceedings conducted under this section and the court may appoint a guardian  
20 ad litem to protect the interests of the child.~~

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

23 **50-25.1-05. Assessment.**

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

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

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