

Testimony
House Bill 1089 - Department of Human Services
Senate Human Services Committee
Senator Judy Lee, Chairman
February 16, 2021

Chairman Lee, and members of the Senate Human Services Committee, I am Tina Bay, Director of the Developmental Disabilities Division for the Department of Human Services (Department). I am here today in support of House Bill 1089, which was introduced at the request of the Department.

The bill proposes changes to North Dakota Century Code chapters 25-01.2-09 and 25-03.1-40, relating to seclusion, restraint and the prohibition of shock treatment and aversive reinforcement conditioning.

On April 6, 2020, the U.S Food and Drug Administration (FDA) published a final rule to ban electrical stimulation devices (ESDs) used for self-injurious behavior or aggressive behavior. ESDs are aversive conditioning devices that apply a noxious electrical stimulus (a shock) to a person's skin to reduce or cease such behaviors. Addressing self-injurious behavior or aggressive behavior is now based on positive behavioral techniques, teaching appropriate skills and medication management.

The proposed changes in Section 1 of this Bill is to amend section 25-01.2-09 of the North Dakota Century Code regarding punishment, isolation, physical restraints, psychosurgery, sterilization and shock treatment. Page 1, line 11 adds shock treatment to state that an individual may not at any time be subject to shock treatment. In lines 14, 15, 18 and 20 of this section, language was updated to directly state that an individual may be secluded or restrained only when necessary to ensure immediate physical safety of themselves or others. On page 2, line 1, shock treatment was removed as it is no longer permitted, regardless of whether consent is provided by the individual or guardian.

The proposed changes in Section 2 of this Bill is to amend section 25-03.1-40 of the North Dakota Century Code regarding rights of patients. On page 2, line 25, aversive reinforcement conditioning is removed as this is no longer permitted, regardless of whether consent is provided by the individual or guardian. Line 31 is added to assure that a patient has a right to be free from aversive reinforcement conditioning.

This concludes my testimony, and I am happy to answer any questions you may have.