

**2021 SENATE HUMAN SERVICES**

**SB 2134**

# 2021 SENATE STANDING COMMITTEE MINUTES

**Human Services Committee**  
Sakakawea Room, State Capitol

SB 2134  
1/18/2021

A BILL for an Act to amend and reenact sections 25-01.3-06 and 25-01.3-08 of the North Dakota Century Code, relating to duties of the protection and advocacy project.

**Madam Chair Lee** opened the hearing on SB 2134 at 11:30 a.m. All members present; Senator Lee, Senator K. Roers, Senator O. Larsen, Senator Hogan, Senator Clemens, Senator Anderson.

**Discussion Topics:**

- Annual report language
- Alternative dispute resolution
- Policy and practice

**[11:32] Senator Judy Lee, District 13.** Introduced SB 2134.

**[11:38] Theresa Larsen, Director, Protection and Advocacy.** Provided neutral oral testimony.

**[11:47] Leslie Bakken Oliver, Governor's Office.** Provided oral testimony in favor.

**Additional written testimony:** N/A

**Madam Chair Lee** closed the hearing on SB 2134 at 11:48 a.m.

*Justin Velez, Committee Clerk*

# 2021 SENATE STANDING COMMITTEE MINUTES

## Human Services Committee Sakakawea Room, State Capitol

SB 2134  
1/25/2021

A BILL for an Act to amend and reenact sections 25-01.3-06 and 25-01.3-08 of the North Dakota Century Code, relating to duties of the protection and advocacy project.

**Madam Chair Lee** opened committee discussion on SB 2134 at 3:16 p.m. Members present: Lee, Clemens, K. Roers, Hogan, Anderson. O. Larsen absent.

**Discussion Topics:**

- Voluntary compliance language change

**Additional written testimony:** N/A

**Madam Chair Lee** closed committee discussion on SB 2134 at 3:24 p.m.

*Justin Velez, Committee Clerk*

# 2021 SENATE STANDING COMMITTEE MINUTES

## Human Services Committee Sakakawea Room, State Capitol

SB 2134  
1/26/2021

A BILL for an Act to amend and reenact sections 25-01.3-06 and 25-01.3-08 of the North Dakota Century Code, relating to duties of the protection and advocacy project.

**Madam Chair Lee** opened committee discussion on SB 2134 at 3:09 p.m. Senators present: Lee, K. Roers, Hogan, Anderson, Clemens, O. Larsen.

### Discussion Topics:

- Amendment #21.0413.01001
- Appropriate measure V.S. appropriate remedies language in the amendment

**[3:09] Senator K. Roers.** Provided committee with overview of amendment 21.0413.01001 testimony #5563.

**Senator K. Roers** moves to **ADOPT AMENDMENT #21.0413.01001** and include; on page 3 line 14 page 4 change “measures” to “remedies” on both lines

**Senator Hogan** seconded

Voice vote – motion passed

**Senator Hogan** moves **DO PASS, AS AMENDED.**

**Senator Clemens** seconded.

Senators	Vote
Senator Judy Lee	Y
Senator Kristin Roers	Y
Senator Howard C. Anderson, Jr.	Y
Senator David A. Clemens	Y
Senator Kathy Hogan	Y
Senator Oley Larsen	N

The motion passed 5-1-0

**Senator Lee** will carry SB 2134.

**Additional written testimony: N/A**

**Madam Chair Lee** closed committee discussion on SB 2134 at 3:17 p.m.

*Justin Velez, Committee Clerk*

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PROPOSED AMENDMENTS TO SENATE BILL NO. 2134

Page 1, line 1, after "sections" insert "25-01.3-01,"

Page 1, line 1, after "25-01.3-06" insert a comma

Page 1, after line 3, insert:

**"SECTION 1. AMENDMENT.** Section 25-01.3-01 of the North Dakota Century Code is amended and reenacted as follows:

**25-01.3-01. Definitions.**

In sections 25-01.3-01 through 25-01.3-12, unless the context otherwise requires:

1. "Abuse" means:
  - a. Willful use of offensive, abusive, or demeaning language by a caretaker that causes mental anguish of any person with developmental disabilities;
  - b. Knowing, reckless, or intentional acts or failures to act which cause injury or death to a developmentally disabled or mentally ill person or which placed that person at risk of injury or death;
  - c. Rape or sexual assault of a developmentally disabled or mentally ill person;
  - d. Corporal punishment or striking of a developmentally disabled or mentally ill person;
  - e. Unauthorized use or the use of excessive force in the placement of bodily restraints on a developmentally disabled or mentally ill person; and
  - f. Use of bodily or chemical restraints on a developmentally disabled or mentally ill person which is not in compliance with federal or state laws and administrative regulations.
2. "Advocacy" means action to assist or represent a person or group of persons with developmental disabilities or mental illnesses in securing their rights, obtaining needed services, investigating complaints, and removing barriers to identified needs.
3. "Advocate" means an employee of the project.
4. "Caretaker" means a person, organization, association, or facility who has assumed legal responsibility or a contractual obligation for the care of a person with developmental disabilities or mental illness, or a parent, spouse, sibling, other relative, or person who has voluntarily assumed responsibility for the person's care.

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5. "Committee" means the committee on protection and advocacy.
6. "Complaint" means an allegation of a violation of human or legal rights, or a lack of needed services, which is not a report of abuse, neglect, or exploitation.
7. "Developmental disability" is a disability as defined in section 25-01.2-01.
8. "Eligibility for services" means persons eligible for services of the project, including:
  - a. An adult with developmental disabilities.
  - b. An adult suffering from a mental illness who is an inpatient or resident in a facility rendering care or treatment, even if the location of the person is unknown.
  - c. An adult suffering from a mental illness who is in the process of being admitted to a facility rendering care or treatment, including persons being transported to such a facility.
  - d. An adult suffering from a mental illness who within the last ninety days was an inpatient or resident of a facility rendering care or treatment.
  - e. A child with developmental disabilities or a child with mental illness who meets the criteria of subdivision b, c, or d is eligible for advocacy services.
  - f. A child with developmental disabilities or mental illness who is not an abused or neglected child as defined in chapter 50-25.1 is eligible for protective services.
9. "Exploitation", when committed by a caretaker or relative of, or any person in a fiduciary relationship with, a person with developmental disabilities or mental illness, means:
  - a. The taking or misuse of property or resources of a person with developmental disabilities or mental illness by means of undue influence, breach of fiduciary relationship, deception, harassment, criminal coercion, theft, or other unlawful or improper means;
  - b. The use of the services of a person with developmental disabilities or mental illness without just compensation; or
  - c. The use of a person with developmental disabilities or mental illness for the entertainment or sexual gratification of others under circumstances that cause degradation, humiliation, or mental anguish to the person with developmental disabilities or mental illness.
10. "Facility" means a school, residence center, group home, nursing home, foster home, boarding home, or other facility operated by any public or private agency, organization, or institution, which provides services to a person with developmental disabilities or mental illness.
11. "Individually identifiable health information" and "personal representative" have the meaning set forth in title 45, Code of Federal Regulations,



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3 of 4

part 160, section 103 and part 164, section 5-02, subsection g, respectively.

12. "Mental health professional" means a mental health professional as defined in section 25-03.1-02.
13. "Mental illness" means significant mental illness or emotional impairment as determined by a mental health professional.
14. "Neglect" means:
  - a. Inability of a person with developmental disabilities or mental illness to provide food, shelter, clothing, health care, or services necessary to maintain the mental and physical health of that person;
  - b. Failure by any caretaker of a person with developmental disabilities or mental illness to meet, either by commission or omission, any statutory obligation, court order, administrative rule or regulation, policy, procedure, or minimally accepted standard for care of persons with developmental disabilities or mental illnesses;
  - c. Negligent act or omission by any caretaker which causes injury or death to a person with developmental disabilities or mental illness or which places that person at risk of injury or death;
  - d. Failure by any caretaker, who is required by law or administrative rule, to establish or carry out an appropriate individual program or treatment plan for a person with developmental disabilities or mental illness;
  - e. Failure by any caretaker to provide adequate nutrition, clothing, or health care to a person with developmental disabilities or mental illness;
  - f. Failure by any caretaker to provide a safe environment for a person with developmental disabilities or mental illness; and
  - g. Failure by any caretaker to maintain adequate numbers of appropriately trained staff at a facility providing care and services for persons with developmental disabilities or mental illnesses.
15. "Other appropriate remedies" means remedies achieved through alternative dispute resolution, such as discussion, education, conciliation, and mediation.
16. "Project" means the protection and advocacy project.
- ~~46-17.~~ "Protective services" means actions to assist persons with developmental disabilities or mental illnesses who are unable to manage their own resources or to protect themselves from abuse, neglect, exploitation, or other hazards.
- ~~47-18.~~ "Report" means a verbal or written communication, including an anonymous communication, alleging the abuse, neglect, or exploitation of a person with developmental disabilities or mental illness."

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204

Page 3, line 14, after "compliance" insert "and other appropriate remedies"

Page 4, line 6, remove "education"

Page 4, line 7, remove "and"

Page 4, line 7, after "compliance" insert "and other appropriate remedies"

Renumber accordingly



**REPORT OF STANDING COMMITTEE**

**SB 2134: Human Services Committee (Sen. Lee, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2134 was placed on the Sixth order on the calendar.

Page 1, line 1, after "sections" insert "25-01.3-01,"

Page 1, line 1, after "25-01.3-06" insert a comma

Page 1, after line 3, insert:

**"SECTION 1. AMENDMENT.** Section 25-01.3-01 of the North Dakota Century Code is amended and reenacted as follows:

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1. "Abuse" means:
  - a. Willful use of offensive, abusive, or demeaning language by a caretaker that causes mental anguish of any person with developmental disabilities;
  - b. Knowing, reckless, or intentional acts or failures to act which cause injury or death to a developmentally disabled or mentally ill person or which placed that person at risk of injury or death;
  - c. Rape or sexual assault of a developmentally disabled or mentally ill person;
  - d. Corporal punishment or striking of a developmentally disabled or mentally ill person;
  - e. Unauthorized use or the use of excessive force in the placement of bodily restraints on a developmentally disabled or mentally ill person; and
  - f. Use of bodily or chemical restraints on a developmentally disabled or mentally ill person which is not in compliance with federal or state laws and administrative regulations.
2. "Advocacy" means action to assist or represent a person or group of persons with developmental disabilities or mental illnesses in securing their rights, obtaining needed services, investigating complaints, and removing barriers to identified needs.
3. "Advocate" means an employee of the project.
4. "Caretaker" means a person, organization, association, or facility who has assumed legal responsibility or a contractual obligation for the care of a person with developmental disabilities or mental illness, or a parent, spouse, sibling, other relative, or person who has voluntarily assumed responsibility for the person's care.
5. "Committee" means the committee on protection and advocacy.

6. "Complaint" means an allegation of a violation of human or legal rights, or a lack of needed services, which is not a report of abuse, neglect, or exploitation.
7. "Developmental disability" is a disability as defined in section 25-01.2-01.
8. "Eligibility for services" means persons eligible for services of the project, including:
  - a. An adult with developmental disabilities.
  - b. An adult suffering from a mental illness who is an inpatient or resident in a facility rendering care or treatment, even if the location of the person is unknown.
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  - f. A child with developmental disabilities or mental illness who is not an abused or neglected child as defined in chapter 50-25.1 is eligible for protective services.
9. "Exploitation", when committed by a caretaker or relative of, or any person in a fiduciary relationship with, a person with developmental disabilities or mental illness, means:
  - a. The taking or misuse of property or resources of a person with developmental disabilities or mental illness by means of undue influence, breach of fiduciary relationship, deception, harassment, criminal coercion, theft, or other unlawful or improper means;
  - b. The use of the services of a person with developmental disabilities or mental illness without just compensation; or
  - c. The use of a person with developmental disabilities or mental illness for the entertainment or sexual gratification of others under circumstances that cause degradation, humiliation, or mental anguish to the person with developmental disabilities or mental illness.
10. "Facility" means a school, residence center, group home, nursing home, foster home, boarding home, or other facility operated by any public or private agency, organization, or institution, which provides services to a person with developmental disabilities or mental illness.
11. "Individually identifiable health information" and "personal representative" have the meaning set forth in title 45, Code of Federal Regulations, part 160, section 103 and part 164, section 5-02, subsection g, respectively.
12. "Mental health professional" means a mental health professional as defined in section 25-03.1-02.

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- ~~17-18.~~ "Report" means a verbal or written communication, including an anonymous communication, alleging the abuse, neglect, or exploitation of a person with developmental disabilities or mental illness."

Page 3, line 14, remove "education and"

Page 3, line 14, after "compliance" insert "and other appropriate remedies"

Page 4, line 6, remove "education"

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Renumber accordingly

January 25, 2021

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- ~~17.~~18. "Report" means a verbal or written communication, including an anonymous communication, alleging the abuse, neglect, or exploitation of a person with developmental disabilities or mental illness."

Page 3, line 14, after "compliance" insert "and other appropriate measures"

Page 4, line 6, remove "education"

Page 4, line 7, remove "and"

Page 4, line 7, after "compliance" insert "and other appropriate measures"

Renumber accordingly



**2021 HOUSE HUMAN SERVICES**

**SB 2134**

# 2021 HOUSE STANDING COMMITTEE MINUTES

## Human Services Committee Pioneer Room, State Capitol

SB 2134  
3/8/2021

Relating to duties of the protection and advocacy project
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**Chairman Weisz** opened the hearing at 3:32 p.m.

Representatives	Attendance
Representative Robin Weisz	P
Representative Karen M. Rohr	P
Representative Mike Beltz	P
Representative Chuck Damschen	P
Representative Bill Devlin	P
Representative Gretchen Dobervich	P
Representative Clayton Fegley	P
Representative Dwight Kiefert	P
Representative Todd Porter	P
Representative Matthew Ruby	A
Representative Mary Schneider	P
Representative Kathy Skroch	P
Representative Bill Tveit	P
Representative Greg Westlind	P

### Discussion Topics:

- Education & voluntary compliance
- Service eligibility
- Other appropriate remedies
- Reports & complaints investigation

**Sen. Judy Lee, District 13 (3:32)** introduced the bill.

**Rep. Mary Schneider (3:48)** moved Do Pass

**Rep. Gretchen Dobervich (3:48)** second

Representatives	Vote
Representative Robin Weisz	Y
Representative Karen M. Rohr	Y
Representative Mike Beltz	Y
Representative Chuck Damschen	Y
Representative Bill Devlin	Y
Representative Gretchen Dobervich	Y
Representative Clayton Fegley	Y
Representative Dwight Kiefert	Y
Representative Todd Porter	A

Representative Matthew Ruby	A
Representative Mary Schneider	Y
Representative Kathy Skroch	Y
Representative Bill Tveit	Y
Representative Greg Westlind	Y

**Motion Carried Do Pass 12-0-2**

**Bill Carrier:** Rep. Mary Schneider

**Chairman Weisz** adjourned at 3:49 p.m.

*Tamara Krause, Committee Clerk*

**REPORT OF STANDING COMMITTEE**

**SB 2134**, as engrossed: **Human Services Committee (Rep. Weisz, Chairman)**  
recommends **DO PASS** (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING).  
Engrossed SB 2134 was placed on the Fourteenth order on the calendar.