

2011 HOUSE HUMAN SERVICES

HB 1410

2011 HOUSE STANDING COMMITTEE MINUTES

House Human Services Committee Fort Union Room, State Capitol

HB 1410
February 9, 2011
Job #14251

☐ Conference Committee

Committee Clerk Signature

Vicky Crabtree

Explanation or reason for introduction of bill/resolution:

Require presents of an electronic recording for every interview of a child. A representative of a person responsible for the child's welfare may observe the interview.

Minutes:

See attachments #1-6

Chairman Weisz: Opened the hearing on HB 1410.

(Vice-Chair Pietsch took over the hearing while Rep. Weisz testified.)

Rep. Robin Weisz: From District 14 sponsored and testified in support of the bill. I apologize the original bill was not at all what it was intended to be, but there wasn't time to get it fixed before the bill deadline. So everyone should have in front of them a hog house amendment. (See attachment #1.) It is in a completely different section and addressing something completely different. You should have a copy of the Century Code 50-25.1-05 which is where this bill will go into. (See attachment #2.) What this bill does is under the section for assessments when there is a report of abuse it is require that during an interview with a child, that the interview be recorded electronically. Audio or video either one. And if desired a representative from the person responsible be allowed to be present to observe the proceedings. One of the reasons this bill is in front of you is because I think that we have gone to an expansion beyond the current law and what it provides for. Policy currently is that on any report of neglect or abuse the children will be interviewed. If you look at the law it says currently, if the report alleges a violation of a criminal statute involving sexual or physical abuse they may refer the case to a child advocacy or they interview without the consent. But, the law is clear, if there is a report involving sexual or physical abuse violation of a criminal statute. Currently policy is that on any report there will be an interview. We are already going way beyond what the current law allows for. What this bill is intended to do is to protect the rights of the parents. Nobody is advocating abuse for children of any kind. If you understand the scenario on how this works; anybody can file a report, it is anonymous and they only know what the charges are. Then there will be an investigation and if it happens to show that services are required and you would say, no I don't think they are required; now you will end up in court defending yourself and your children. You don't know what happened in that interview you only have the word of the social worker who is going to be testifying. This would allow for you to know what was said, what types of questions were asked and know what has happened. The reality is the

parent is on pretty thin ground in many cases. I could tell you horror stories for an hour that I've had presented to me. There are cases where they had to go to court and fight to protect the rights of themselves and keep their children. And for things that I'm afraid especially growing up we would have all been in foster care for. Practically every one of us could have ended up being pulled from our home. This does not mean the parent has to give consent. It doesn't stop the interview. It helps protect the rights of the parents. Because, we have to remember the Supreme Court and I've looked up many of the cases and it makes it very clear there that the parents still have the supremacy of constitutional right. It can't override the safety of the children, but they still as a parent have a supremacy right to care for and take care of their children. This bill merely by a very small margin and it doesn't do much frankly, helps protect that right for the parent to ensure that they are on equal footing. We talk a lot about the trauma and things that happen to children, but think of the trauma that happens to a child that his parent is falsely accused of abuse and that child is being questioned. They know something wrong. Now they are fearful wondering what is going to happen to them. I could quote more cases where children have been removed from the home and then brought back because it turns out there wasn't a legitimate case. Think of the trauma that child has gone through thinking that his parents don't want him anymore and if they do, why didn't they come and get him. Be shuttled to a foster care home and I have nothing against foster care homes, but the child has been ripped away from his family and eventually returned. Think of the psychological issues that that poor child has to go through. All this does is help ensure that if abuse is going on they will find it and they will take the kid away. If it isn't it will be a whole lot more difficult to just run roughshod and either require services that don't need to be required or take a child away because all of the information wasn't available to both sides of the issue. I'll be glad to answer any questions. Again, I apologize that the bill wasn't in the correct form to start with.

Vice-Chair Pietsch: Apology accepted.

Rep. Weisz: Thank you Madam Chair.

Rep. Hofstad: When we talk about that person responsible may observe the interview. Does that mean within the same room or through a glass?

Rep. Weisz: I would assume they should be allowed in the same room because they are all strangers anyway. It's not like the children know who (drops sentence). It says to observe. They don't have the right to question the child, but have the right to be there as a legal representative of the family. I'm well aware you cannot have a parent there because of the intimidating factor. That was never the intent to allow a parent be present. The current law would stay in place where you don't have to have consent.

Opposition

Paula Condol: (See attachment #3.)

Louser: You mentioned 32% was the mother or father, but you also said the parent was with an advocate. I assume that is within the building?

Condol: If the parent is the alleged offender they aren't allowed in the building.

Rep. Damschen: They explained that this wouldn't allow a parent in the room. Just a representative of the parent and it probably be someone the child didn't know and that would elevate your concerns?

Condol: It would not. The way the bill reads it would be a person responsible for the child's welfare. Most cases would be the parent. This year we allowed a Grandfather to be in the room. Lots of times even with older kids they don't want the parents to know what has happened to them.

Rep. Damschen: But, the bill says a representative of the person responsible for the child's welfare. I read that as not being the parent. It could be an attorney representing the parent that the child didn't even know. They would be somewhat neutral, but at least an advocate. I don't think the purpose of the bill is to try to get the child to open up more about the experience, but it's for the parent who could be unjustly accused. I would think the interviewer wouldn't mind having someone scrutinizing the interview so the interviewer couldn't be accused later of leading the child in the interview process too.

Condol: We have protections in place for scrutiny. At least all of our interviews are recorded. We have a team that observes the interviews through a two way mirror or through a close circuit television and who offer questions to the interviewer who may not have thought of. We attend peer review process to scrutinize our interviews to make sure we are up to par and being unbiased.

Rep. Hofstad: This bill is truly about the parent. We are trying to find a way to protect the parent and we have all heard horror stories of children being ripped from parents falsely accused. You have given us some statistics about the child's side of this. Do you have any statistics or what has been your experience on parents who have been falsely accused? Speak to me about that a bit.

Condol: National statistics are very low. Done a number of studies on false reporting and allegations. One study talks about 5-12% of the cases have false reporting. The child being coached or lying. I read a report yesterday of 4-8%. Even if you take the high statistic, 88% the child is still telling the truth about what has happened.

Rep. Hofstad: Five percent, eight percent, ten percent, if you are that parent that is pretty devastating, life changing and life altering situation. This doesn't seem to me to be that intrusive. It is just granting that parent some of their rights they ought to have. I don't know if having that representative and it doesn't say parent, it says representative in the room would have that much of a negative impact. It seems to me sitting here that would not be that intrusive.

Condol: I don't know what number of the 12% is when one parent is coaching the child to say something against the other parent. Once the investigation is over sometimes law enforcement will let parent watch the video tape of the interview unless they are the alleged offender.

Rep. Holman: As I read the statement in the hog house bill, it does not imply in my mind that the caregiver whatever has to be in the room. It doesn't say real time and to me doesn't imply that interview has to be observed as it is happening.

Condol: It's not specified and maybe that needs to happen. I don't know.

Chip Ammerman: (See attachment #4.)

Rep. Damschen: I'm concerned the definition of neutral environment might vary from one party to the next. Could you describe neutral environment that the child is interviewed in?

Chip: We will try and interview the child at the location they are present at or use a setting such as the children's advocacy center that is child friendly. May be at a school setting that is in a private location.

Rep. Damschen: The person who is accused, do you assume they are guilty or innocent?

Chip: At the beginning of the report? Our stance is the information provided in the report is what we begin with and don't presume it is correct or inaccurate. A starting place for us to make a determination how urgent child needs to be contacted. A starting spot and maintaining neutrality and when information is gained that is when decision is made and what steps need to be taken to protect child.

Rep. Damschen: If we assume a neutral position as far as the accused person, what would be the objection of them having an representative present to observe the actual interview?

Chip: Reiterated what Paula Condol said.

Rep. Damschen: The whole concept is a little confusing to me I think with one person in the room I think a child could be influenced by the way the questions were asked by the interviewer. I'm sure in good intentions by the interviewer. You don't think in that process the child can be pressured to give incorrect answers? Obviously we have some false accusations that have happened. If there is only one person interviewing that child, is that person responsible for those false reports? Where is the accountability?

Chip: The person completing the interview has been trained in the interview process. Is there a possibility that the interviewer can influence the child's direction? Yes. It is always a two way street in any communication. There is always a possibility they will have an influence on the way the child goes.

Rep. Holman: Much discussion around parents, but the abuser could be a sibling or caregiver or someone else. This is video taped and recorded and who has access to this?

Chip: When recorded in children's advocacy center there is a forensic interviewer, county social worker in observation room if they aren't the interviewer, law enforcement representative in the room and maybe a medical representative viewing the interview. Each one of the team members have a specific role they play in the collaboration in helping

the child and protecting the child and making the assessment that this is a true or accurate report. Social worker not part of law enforcement process. Our process is making a determination if the child is in need of protection and starting the process of recovery and treatment or case plan. Law enforcement determines if there if credible legal information is being obtained define whether or not a crime has occurred. Medical makes assessment whether the child needs medical assessment further past the interview based on what is disclosed. There is also potentially a therapeutic representative to make an assessment of the uh uh status of the child at the present time.

Rep. Holman: What access do the representatives or the parents or caregivers have to the recording that was (drops sentence).

Chip: They have access to it. The parents are informed of what the disclosure is.

Rep. Hofstad: Have you reviewed the amendment to this bill and is your objection still as strong as with the amendment or are they better?

Chip: There is two different things in the amendment. One is the clarification of what does it mean by viewing. If the intent is viewing the video tape and listening to the audio, that is a process that is available to them through the legal course to begin with. If it means being present or during the process, the biggest concern I have is that means we have to coordinate with the parent or representative. They could intentionally or unintentionally influence the child prior to the interview taking place.

Rep. Hofstad: You talked a lot about the interview process and the interviewer. Give me the qualifications and educational experience of that interviewer please.

Chip: Two levels of interviewers. One is forensic which all interviews have to be done at the CAC. Pass off to Paula what accreditations they have to have. I know they have different levels of accreditation. They have had expanded training on forensic interviews. In our agency we have six forensically trained interviewers which is national training they must complete and be certified with. In other child abuse and neglect when it doesn't go directly through a CAC they are at least bachelor degree social workers. And are primarily social workers II and III which means that they have to have 2-3 years of experience in the social work field.

Rep. Devlin: Of the 13,794 reports and roughly 15% were confirmed child abuse and neglect. How many of the 85% that were not? Were all of those children interviewed? What percentage of children were interviewed out of the ones where nothing happened so to speak?

Chip: Can't give you a specific percentage. The vast majority were interviewed, but there are cases where they will get a report and begin the process by collecting information from collateral contacts or other sources. And then are able to make a determination that either the concerns after further clarification do not meet the criteria or to be considered abuse and neglect. Or, that we have made contact with the parents directly in certain situations and that the interview of the child is not required to make an accurate assessment to the needs of the family.

Rep. Schmidt: On page 4 you indicate obtaining a consent and interviews can be done without obtaining the consent of the parent and I understand that. But, what I don't see mentioned is are you required to contact the parent and tell them you are going to interview the child?

Chip: We are required to contact the parent after the interview has taken place.

Rep. Schmidt: I'm not referring to consent prior to because I understand that part. I'm saying, you pick up the child and you are going to interview the child. Do you call the parent and say, we are going to interview your child? Do you do it before or after you interview the child.

Chip: We are required to inform the parent that the child was interviewed. We are not required to contact the parent and inform them that the child is going to be interviewed prior to the interview occurring.

Rep. Louser: You mentioned the recorded interview is available to the caregiver through the legal process. You also mentioned that the non-offending caregiver is debriefed. Does that debriefing include allowing them to see the interview or just the interviewer summarizing the interview?

Chip: A lot of the decisions that are made are based upon the circumstances and each individual case. In certain situations especially where a child does arrive at the CAC or a location with a support person, we want to interview the child. And again, most of the information that we obtain from the child if they are disclosing some mal-treatment or sexual assault, is very difficult for a parent to hear because of the detail. Because of the sensitivity of the material. When we debrief a parent what we do is the investigative or therapeutic team may elect to give not give away word by word detail of what the child disclosed. But, will give a generality of what has happened. Based on the reaction and ability of the parent to be able to absorb what is happening. The parent will grieve what has happened to the child. To help them be prepared to be the support for the child upon return. Depends on the parent and how they respond to it at what level they get the detail. Eventually through the therapeutic process they may get to view the tape. They may elect not to.

Rep. Schmidt: Are all of the interviews you do with children recorded?

Chip: No.

Rep. Schmidt: How do you determine which ones are and which ones aren't?

Chip: The ones at CAC are always recorded. In the process of the investigation it is determined which ones will be audio or video taped. One factor to consider is what is happening at that particular time. If we go interview a child because of school attendance issues or absenteeism and educational neglect issues, and the child discloses abuse or sexual assault, that investigator may not have an audio equipment available for them.

They'll interview child and determine what is necessary at that particular moment. A second interview may be required at CAC because we didn't have the appropriate tools.

Jim Duckowitz: Told of story of a ND who was married and molested his daughter and spent time in prison. He got out remarried and molested his step daughter. He was convicted again. Spoke of another man who molested his daughter for 6 years. He said if you know of interview in advance you will take steps to influence the child. Said law enforcement doesn't record all interviews.

Rosa Larsen: From States Attorney Association and Ward County State's Attorney voiced opposition to the bill.

Dave Shipman: I've been in law enforcement for 25 years and 16 years as an investigator and done my share of child abuse investigations. My experience is that children will rarely speak with somebody else in the room other than forensic interviewer. Child abuse and sexual abuse investigations are very time consuming and lengthy. I think letting anyone in the room jeopardizes our attempts to secure preserve any evidence the child has.

Steve Reiser: Director of Social Services at Dakota Central Social Services. There were over 13,000 reports we dealt with last year and only 768 caregivers were found services required. If we have to record all those in between it will be quite an expense especially to smaller social services. We prioritize as A, B, or C. If an A we need to see child face to face within 24 hours. It will slow us down if we ask parent if they want a representative there.

Rep. Devlin: You said what A was. What is B and C?

Steve: If we categorize as a B we need to see child within 72 hours. If a C we need to be there within 14 days.

Rep. Damschen: I want to make it clear that we are not advocating for the guilty abuser. We are concerned for the kids and falsely accused parents. Even if it is only 5% there is permanent damage done to that family if the kids are put in a foster home unnecessarily. I think this bill is attempting to address this. I'd be open to suggestions that would accomplish the protection of the innocent parent and child who are affected by cases that aren't valid.

Steve: I appreciate your concern and think it is fair, but I do need point out that you are empowering social service a little bit more than they are. Social services must have a court order and the parents get their day in court.

Rep. Holman: The confidentiality from the parent, what process do you go through to interview the child?

Steve: I think it will always depend on how the case is categorized. If one is an A we don't do that ourselves. We make a referral to the CAC and then we have to work with the non-offending parent if it is a parent. This is what we want to do and interview we want to have and the process we do. There will be professional interviewing your child and one to help

you. If a B or C try to talk to child in neutral setting like a school where most of our interviews are done. Talk to child in morning and parent in afternoon whenever possible.

Rep. Holman: Do you ever have a problem getting into the school to interview?

Steve: We view the schools as one of our greatest allies. No problem getting in.

Rep. Devlin: Can you get us some printed criteria that you go by listing the A,B, and C?

Steve: Marlys Baker, can you take care of that for me? She said she could.

John Byers: From the attorney general's office. Spoke in opposition. Regards to cases with false report. The interviewers get to the bottom of the reports. Trained to identify when they use age inappropriate language and when they make allegations that have no depth to them. Let interviewers conduct their interviews like they are currently doing if you want them to expose any false reports. I will also say to this committee, you mentioned about horror stories out there, but I caution you that many times the horror stories brought to you legislators as constituents are never what they are portrayed to be. And you may never find that out because the constituent can say whatever they want and the investigators are bound by confidentiality and can't defend themselves. Be very careful not to make any assumption that the truth is anything close that has been revealed to you. Recorded interviews a good idea. Mandated is a bad idea. The parents have access to the recorded interview and doesn't have to go to court for it.

Tim Hathaway: (See Testimony #5.)

Vice-Chair Peitsch: Closed the hearing on HB 1410.

(Handed in after hearing)

Marlys Baker: (Information) (See Testimony #6.)

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Committee Clerk Signature

Ticky Crastree

Minutes:

See attachment #1

Chairman Weisz: Called the meeting to order on HB 1410. There are some proposed amendments here. (See attachment #1.) (Some inaudible discussion not about the bill.) Definitely during the hearing there was a lot of confusion over what the bill did. I'll explain what the amendment does and the committee can do as it sees fit. There was concern over having a representative observe the interview. I had looked at changing it to a legal representative. Instead I just took that language out. It will be required to be electronically recorded. It doesn't have to be videoed, but can be. Has to at least be taped recorded. The cost concerns are irrelevant in that part. At least it has a record so if it ends up in court, there is a record of the interview, questions that were asked and how the child responded. The other part of the amendment; I think the language that is currently in law is very clear in that it was only in the cases where the report alleged a violation of a criminal statute involving sexual or physical abuse. Only in that case does it then say that they may interview the child without consent. I think that was pretty clear. As we have had the testimony, I believe 13,900 reports filed. Almost everyone of those was an interview with the child. Only 12,000 of them actually required intervention. So what this says is that they may not accept under the conditions that are already in current statute. For other reports they may only interview the child with the parents consent. You don't have to have any consent if that report alleges sexual or physical abuse.

Rep. Porter: Can you give me an example of what may trigger that interview? If it is not a criminal statute involving sexual or physical abuse then what?

Chairman Weisz: The report triggered the interview. The child was not properly supervised say playing in a vacant lot. Someone might think they are malnourished or not being fed well enough. I can attest to a court case my wife had, that the whole argument was even though there was testimony from a specialist that the child was malnourished and that required an intervention. There are cases maybe the parent is watching the child from the house and the kids playing in the vacant lot and somebody sees that, but doesn't see anybody around. So, they file a report. Someone could file a report because you spanked the child in public and decided it was excessive.

Rep. Porter: And that one could trigger the next level.

Chairman Weisz: And it could.

Rep. Porter: I'm just unclear with what isn't physical or sexual abuse.

Chairman Weisz: Neglect is generally the area.

Rep. Porter: So that would be the trigger.

Chairman Weisz: Yes. If someone comes in and looks like they are bruised, even if it was accidental. My assumption would be that could trigger an interview without the consent.

Rep. Porter: Do we know out of 13,900 reports what the breakout would be as far as which ones you think would and wouldn't trigger under this new language?

Chairman Weisz: That I don't have information on. I assuming a substantial number would still necessitate an interview. My intent wasn't for someone one sexually abusing their kids or burning them with cigarettes. This to me will not take away any (drops sentence). I don't know why they wouldn't be happy to have a recording so if they got into a legal battle there couldn't be an argument that they led the child or asked misleading questions. The kid goes through a fair amount of trauma in just the fact they are being interviewed even if there is nothing going on. They know something isn't right.

Rep. Porter: Out of that number of reports do we know how many interviews or is that consistent

Chairman Weisz: The policy is that all reports require an interview with the child. That doesn't mean everyone has one. The policy is to interview the child with or without the consent. That doesn't mean that in some of those cases they don't notify the parent that they are going to interview the child.

Rep. Holstad: We heard testimony that 8-10% of the cases the parents were falsely accused. I was wondering out loud if we take out sexual and physical abuse cases what kind of a number that gets us to. If it is a significant number to address the issue or if we have or don't have a problem. Just wondering out loud what that number might be.

Chairman Weisz: I do think it is important that there is a difference between falsely accused and a report. Falsely accused means somebody, (uses an example) Mr. X is divorced and his ex-spouse accused him of sexual abuse. That is falsely accused. A report can be as I pointed out, a child that appears unsupervised and they will report it. They are accusing anybody, just reporting there was an unattended child. The department has the obligation to investigate the reports.

Rep. Porter: Out of the 13,900 how many of those required a further action?

Chairman Weisz: I was looking for that because they had it broke down.

Rep. Porter: I wonder if Ms. Muhlhauser couldn't (sentence dropped).

Chairman Weisz: We you have some information here?

Rep. Porter: I'd have two questions for her. That one and with the new language, the number of reports that would fall out of their current practice now.

Chairman Weisz: We had testimony and I'm looking for it here and we had something like 13,900 reports filed and of those around 1,250 some. I don't know if that was convictions or. So the question from Rep. Porter would be of those 13,900 reports. How many required some intervention and how many went past that under the definition of physical and sexual abuse? Do you have some general numbers? I don't mean to put you on the spot.

Tara Muhlhauser: From the DHS. I have the data walking down the stairs as we speak. We will have all of that in front of us in a second. And then we can give you the numbers out of that 13,000 that required further action. What we call services required or no services required or sometimes services recommended.

Chairman Weisz: I guess this testimony came from Chip Ammerman of Cass County. He said there were 13,795 reports of suspected child abuse and neglect. 11,052 children who were confirmed victims of child abuse and neglect and 768 caregivers who were subject for these assessments. Does that 11,052 mean services required or just a conviction in court?

Tara: Do you have other questions or want me to speak to the new amendment or?

Rep. Holman: When you look at the 11,000 versus the much smaller number of actions taken, it seems to me that in many cases there would be an attempt of disrupting the situation for the child if corrective action can be taken without legal action taken. Could you address that?

Tara: If we have a situation our first opportunity is to redress or educate the parent.

Rep. Holman: In situations of child abuse and neglect, when are these criminal offenses and when are they not?

Tara: We can't always tell from the report. If from a doctor that is a clear clue that would likely be of a criminal nature. What is charged criminally is not our decision. We go in and assess the safety of the child. There are different standards as to what is and isn't charged as a criminal offense. Burleigh County has a high number of criminal charges coming out of child abuse and neglect, but in Pembina or Grand Forks County they are substantially lower. It is up to the prosecutor working with law enforcement.

Chairman Weisz: The current is pretty clear. If the report alleges a violation, then it says, the department and appropriate law enforcement agencies shall coordinate. That is current law. So you have been working with this a long time, but now you are telling me you don't know what to do?

Tara: I'm not saying we don't know what to do. If we get a report about broken bones or head trauma we call law enforcement to do the process together. If a neglect situation we go in without law enforcement and look and determine if neglect. Someone else makes the decision later on it might be charged as a criminal offense.

Chairman Weisz: Based on my reading the law, if you went in there and your assessment would lead you to believe that one of those to occur, you don't think you would fall within that section of law that says, I can now go in and interview the kid?

Tara: I'm suggesting when you read this depending on how you read it, it could be every case we have could be potentially criminal. Let me ask Les from law enforcement if he wants to add anything to that.

Chairman Weisz: We normally don't allow additional testimony. If your initial assessment when you first get a report, makes it look like it could be sexual assault. I assume you can under the current statute and even under my proposal would be able to say, we are going to go in and interview that kid without their consent or knowledge; because we think there is more here than the initial report. You don't think this limits you do you?

Tara: I think this puts us in a difficult position. The difficulty in getting consent is when you ask a parent if you can interview their child it is only my imagination what that might reveal. I guess many parent will say no. Then we have to get a court order to talk with this child.

Chairman Weisz: The current law is already saying that. To me it is very clear. It doesn't say anything in Section 1 that you have the ability to interview the child only in Section 2 and it says, if the report alleges a violation, then they may interview. There is no permissive language in Section 1 under current law. I'm curious then where that authority came from. It doesn't appear to be in the law now so you have already been dealing with this situation for years now starting in 1975.

Tara: Maybe I'm misunderstanding your question, but almost always we interview the victim. That is a threshold place to start unless there is an indication that we might compromise the safety of the child in interviewing them.

Rep. Holman: Can you address the security precautions you take when getting into an interview situation?

Tara: Are you talking about confidentiality? I don't quite understand. The work that we do is confidential. There is a section in the law that allows us to share information back to a parent or guardian about assessment we do. Any identifying information on the collaterals is protected. At the end of the assessment we hand the parent the report and they can read it. The interview is confidential. The social worker puts generalities of what is said in the report. The name of child is blocked.

Rep. Holman: This about protecting the falsely accused or community getting wind of what is going on. How does word get out to wrong people sometimes.

Tara: I surmise the parents provide that. Kids can.

Chairman Weisz: Committee, we aren't reopening the hearing here, so if there are questions specific to the changes for Tara you can ask her. We aren't starting another hearing which it appears we've already started.

Marlys Baker: Administrator of Child Protection Services DHS. (Started testifying and not giving answers to original questions by Rep. Porter.)

Chairman Weisz: Excuse me, could you give us the numbers please that is what we are after.

Marlys: Of 13,794 reports, 6,680 that were in the jurisdiction of the ND child protection services and met the criteria for an assessment. Those reports were then assigned to 5,752 assessments. There were 3,887 of those assessments that were completed. We have the ability to terminate in progress if we find that there is nothing to it.

Chairman Weisz: Clarify simply if you can, you had 13,794 reports and approximately 7,100 never were referred for an assessment? So what happened to the 7,100?

Marlys: If reports don't meet the criteria, if child is not under 18, if the child doesn't live in ND and report doesn't contain a valid allocation (stops)

Chairman Weisz: Then they just, ok. That clarifies that.

Marlys: Out of that 4,145 full assessments, there were services required decision. A decision that the child was abused or neglected, in 582 and that accounts for the 1,552 children. Multiple children.

Chairman Weisz: Thank you. That helps a lot. Any questions on the numbers from the committee as far as understanding the different numbers?

Rep. Paur: We have an amendment 01.0001 and the one we are discussing has number. Are the two going to get confused?

Chairman Weisz: The amendment that doesn't have a number will replace the (drops sentence).

Rep. Paur: I knew it would. That is not going to be a problem? Ok. I make a motion that we adopt the amendment without a number.

Rep. Porter: Second.

Chairman Weisz: We do have an amended bill in front of us and I do understand it is controversial. I agree there is a fine line between parental rights and obviously the protection of the children.

Rep. Holman: I struggle with this. We should primarily protect children. I know of someone who was falsely accused and he said it was the worse two weeks of his life until he was cleared. I need the confidentiality answer, but apologize for it. I can't support this because it might hinder the department to protect children.

Rep. Damschen: I move a Do Pass as amended.

Rep. Paur: Second.

Rep. Louser: With the example of neglect, in this case the parent will be notified that an interview is coming. Correct?

Chairman Weisz: First they decide if it is a legitimate report and then if it qualifies, they will do an assessment part. If at that point they think there is more to it than just a child out on the street, they would have the ability to interview that child without any consent or notification. If it appeared that the child got loose and was running on the street, they would not be able to interview the child without consent of the parent, that is correct. Frankly, I think the current law already states that. Obviously there is disagreement on that because I don't think there is any permission in the statute unless it is alleged to be physical or sexual.

Rep. Damschen: I agree with Rep. Holman that we need to protect the kids. My moving this forward isn't to not protect children. I think each of us may have heard of where a child was taken even temporarily out of custody of their parents and I think the result of that would be some people would probably consider that abuse. So I think it alright to safe guard and I don't think this is asking a lot. If we are arrested we have the right to an attorney and a phone call if we committed a crime. And not even notifying or allowing the parent any access is assuming guilt and I don't think that is proper either. I don't think it is what our system says. We are innocent until proven guilty, not guilty until proven innocent. No way am I advocating not protecting kids. In some ways this protects them further.

VOTE: 7 y 6 n
DO PASS AS AMENDED

Bill Carrier: Rep. Damschen

Chairman Weisz: We have some students here. Where are you from? Enderlin. Welcome. Closed the meeting.

H-1

Proposed Amendments for HB 1410

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact subdivision b of subsection 2 of section 50-25.1-05 of the North Dakota Century Code, relating to interviews of children in cases of abuse or neglect."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 50-25.1-05 of the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 2. AMENDMENT. Subdivision b of subsection 2 of section 50-25.1-05 of the North Dakota Century Code is amended and reenacted as follows:

- b. Interview, without the consent of a person responsible for the child's welfare, the alleged abused or neglected child and any other child who currently resides or who has resided with the person responsible for the child's welfare or the alleged perpetrator. The interview must be recorded electronically."

Date: 2-16-11
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1410

House HUMAN SERVICES Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Paur Seconded By Rep. Porter

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN WEISZ			REP. CONKLIN		
VICE-CHAIR PIETSCH			REP. HOLMAN		
REP. ANDERSON			REP. KILICHOWSKI		
REP. DAMSCHEN					
REP. DEVLIN					
REP. HOFSTAD					
REP. LOUSER					
REP. PAUR					
REP. PORTER					
REP. SCHMIDT					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

*Voice Vote.
Motion Carried*

February 16, 2011

VK
2/16/11
102

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1410

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact section 50-25.1-05 of the North Dakota Century Code, relating to interviews of children in cases of abuse or neglect.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

50-25.1-05. Assessment.

1. The department, in accordance with rules adopted by the department, immediately shall initiate an assessment, or cause an assessment, of any report of child abuse or neglect including, when appropriate, the assessment of the home or the residence of the child, any school or child care facility attended by the child, and the circumstances surrounding the report of abuse or neglect. Unless the report alleges a violation of a criminal statute involving sexual or physical abuse, the department may not interview the alleged abused or neglected child and any other child who currently resides or who has resided with the person responsible for the child's welfare or the alleged perpetrator unless the department has the consent of a person responsible for the child's welfare.
2. If the report alleges a violation of a criminal statute involving sexual or physical abuse, the department and an appropriate law enforcement agency shall coordinate the planning and execution of their investigation efforts to avoid a duplication of factfinding efforts and multiple interviews. The department or the law enforcement agency may:
 - a. Refer the case to a children's advocacy center for a forensic interview, forensic medical examination, and other services.
 - b. Interview, without the consent of a person responsible for the child's welfare, the alleged abused or neglected child and any other child who currently resides or who has resided with the person responsible for the child's welfare or the alleged perpetrator. The interview must be recorded electronically.
 - c. Conduct the interview at a school, child care facility, or any other place where the alleged abused or neglected child or other child is found.
3. Except as prohibited under title 42, Code of Federal Regulations, part 2, a regional human service center shall disclose to the department or the department's authorized agent, upon request, the records of a patient or client which are relevant to an assessment of reported child abuse or neglect.

4. The department shall adopt guidelines for case referrals to a children's advocacy center. When cases are referred to a children's advocacy center, all interviews of the alleged abused or neglected child conducted at the children's advocacy center under this section shall be audio-recorded or video-recorded."

Renumber accordingly

Date: 2-16-11
Roll Call Vote # 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1410

House HUMAN SERVICES Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Damschen Seconded By Rep. Paur

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN WEISZ	<input checked="" type="checkbox"/>	<input type="checkbox"/>	REP. CONKLIN	<input type="checkbox"/>	<input checked="" type="checkbox"/>
VICE-CHAIR PIETSCH	<input checked="" type="checkbox"/>	<input type="checkbox"/>	REP. HOLMAN	<input type="checkbox"/>	<input checked="" type="checkbox"/>
REP. ANDERSON	<input type="checkbox"/>	<input checked="" type="checkbox"/>	REP. KILICHOWSKI	<input type="checkbox"/>	<input checked="" type="checkbox"/>
REP. DAMSCHEN	<input checked="" type="checkbox"/>	<input type="checkbox"/>			
REP. DEVLIN	<input checked="" type="checkbox"/>	<input type="checkbox"/>			
REP. HOFSTAD	<input checked="" type="checkbox"/>	<input type="checkbox"/>			
REP. LOUSER	<input type="checkbox"/>	<input checked="" type="checkbox"/>			
REP. PAUR	<input checked="" type="checkbox"/>	<input type="checkbox"/>			
REP. PORTER	<input type="checkbox"/>	<input checked="" type="checkbox"/>			
REP. SCHMIDT	<input checked="" type="checkbox"/>	<input type="checkbox"/>			

Total (Yes) 7 No 6

Absent _____

Floor Assignment Rep. Damschen

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1410: Human Services Committee (Rep. Weisz, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 6 NAYS, 0 ABSENT AND NOT VOTING). HB 1410 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact section 50-25.1-05 of the North Dakota Century Code, relating to interviews of children in cases of abuse or neglect.

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2. If the report alleges a violation of a criminal statute involving sexual or physical abuse, the department and an appropriate law enforcement agency shall coordinate the planning and execution of their investigation efforts to avoid a duplication of factfinding efforts and multiple interviews. The department or the law enforcement agency may:
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 - c. Conduct the interview at a school, child care facility, or any other place where the alleged abused or neglected child or other child is found.
3. Except as prohibited under title 42, Code of Federal Regulations, part 2, a regional human service center shall disclose to the department or the department's authorized agent, upon request, the records of a patient or client which are relevant to an assessment of reported child abuse or neglect.
4. The department shall adopt guidelines for case referrals to a children's advocacy center. When cases are referred to a children's advocacy center, all interviews of the alleged abused or neglected child conducted at the children's advocacy center under this section shall be audio-recorded or video-recorded."

Renumber accordingly

2011 TESTIMONY

HB 1410

#1

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1410

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BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision b of subsection 2 of section 50-25.1-05 of the North Dakota Century Code is amended and reenacted as follows:

- b. Interview, without the consent of a person responsible for the child's welfare, the alleged abused or neglected child and any other child who currently resides or who has resided with the person responsible for the child's welfare or the alleged perpetrator. The interview must be recorded electronically. A representative of a person responsible for the child's welfare may observe the interview.

Renumber accordingly

50-25.1-05. Assessment.

1. The department, in accordance with rules adopted by the department, immediately shall initiate an assessment, or cause an assessment, of any report of child abuse or neglect including, when appropriate, the assessment of the home or the residence of the child, any school or child care facility attended by the child, and the circumstances surrounding the report of abuse or neglect.
2. If the report alleges a violation of a criminal statute involving sexual or physical abuse, the department and an appropriate law enforcement agency shall coordinate the planning and execution of their investigation efforts to avoid a duplication of factfinding efforts and multiple interviews. The department or the law enforcement agency may:
 - a. Refer the case to a children's advocacy center for a forensic interview, forensic medical examination, and other services.
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 - c. Conduct the interview at a school, child care facility, or any other place where the alleged abused or neglected child or other child is found.
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Human Services Committee

Testimony in Opposition of House Bill #1410

2-9-11

Mr. Chairman, Members of the committee.

For the record, my name is Paula Condol. I am the coordinator and forensic interviewer of the Dakota Children's Advocacy Center in Bismarck, ND. I am here today to ask you to oppose House Bill 1410.

The Dakota Children's Advocacy Center is a program of Medcenter One, Inc. that is committed to improving the response to child abuse. We are a community partnership that utilizes a comprehensive multidisciplinary team approach to supporting victims and investigating child abuse. Professionals meet under one roof so that a child only has to tell of his or her abuse one time. Sensitivity to the needs and abilities of children is the hallmark of Children's Advocacy Centers.

Children's Advocacy Center's were started in Huntsville, AL in 1987 to ensure that children are not further victimized by the systems intended to protect them. Since then Children's Advocacy Centers have developed in all 50 states, including three here in North Dakota: the Dakota Children's Advocacy Center here in Bismarck, the Red River Child Advocacy Center in Fargo and the UND, Northern Plains Children's Advocacy Center in Minot. The centers currently serve children in all 53 counties of North Dakota.

Child abuse happens in North Dakota. In 2010 the Dakota Children's Advocacy Center alone saw 378 children and provided 3020 services to them. Every year our centers see children that are raped, beaten, burned and threatened, and in any case of abuse, the child has already experienced a great deal of mental and physical anguish. Children's Advocacy Centers offer environments that are free

of intimidation. This welcoming atmosphere makes the situation less stressful for the child, enabling them to start the process of healing.

As a forensic interviewer who has interviewed over 1000 children in North Dakota, I am concerned about the impact that HB 1410 will have on our ability to provide the best services we can to child victims. Children's Advocacy Centers exist to provide a safe environment for the child to tell their story and begin to heal. Putting a parent in the forensic interview room would negatively affect this process.

The forensic interview process allows the child to tell their story in a safe, child friendly environment. Children meet with forensic interviewer before hand and spend time in the room before telling their story to a specially trained interviewer. At the DCAC we even have a therapy dog who sits in the room with the child to provide comfort and support. The parent or caregiver is with an advocate during this time. The advocate's job is to offer support, services, information, and most importantly a listening ear. After the interview the caregiver meets with the team to discuss the interview. We understand the importance to the child victim of having the support of the non-offending caregiver or parent(s). Indeed, the support of the non offending parents/caregivers is the most important factor in the child's recovery. However, putting the parent in the interview room would be detrimental for many reasons including:

- Many parents are also traumatized by just the thought of knowing what has happened to their child. Putting the parent in the forensic interview where they will hear grueling details of their child's story won't benefit anyone. Most parents just want to know what they can do to help their child deal with what they have been through.
- The forensic interview is supposed to be a neutral environment to allow the child to tell "their" story. Having the parent in the room will influence the entire process. Research has shown that young children often look to their parents to answer questions for them – and while this is

developmentally appropriate, in an interview it would raise questions about coaching. Parents can't be neutral about such an allegation, they cry, they want the kids to talk, they don't want the kids to talk, they are afraid of what they might hear, etc. From experience we know that many kids don't tell simply because they don't want to upset their parents.

- Unfortunately 39% of all reported sexual assaults on children are committed by family members. The younger the child victim, the more likely it is the abuser is a family member. According to our statistics in 2010, in 32% of cases the reported offender was the mother or father. Nearly 90% of physical abuse cases are committed by the parent. You can imagine the likelihood of a child disclosing or feeling safe when their abuser is in the room.
- Many parents or caregivers come to the CAC with the child but arrive unwilling or unable to imagine that their husband, stepson, boyfriend or girlfriend, neighbor or friend would ever do such a thing to their child. And the disbelief of the parent when evidenced in the parent's expressions or demeanor in an interview could stop the child cold from making the disclosure and would result in decreased safety for them. Unfortunately this is not a rare event. Last week alone I worked with 2 families where the child initially disclosed to the mother, who did not believe and did not report it until years later, leaving the child in an impossible situation.
- A parent that watches the interview is a potential witness in later judicial proceedings. Witnesses are often times sequestered and not allowed to be in the court room while the child testifies. This day more than any day the child needs their parent by their side.
- While it is not an easy process, children are never forced to tell their stories and our protocol has a provision for children who are too scared

and would like a care giver in the room. However, this has been a very rare occasion and rarely has been helpful to the process. Having the parent in the room did not increase the child's wiliness to talk.

Again, I urge you to oppose HB 1410. The forensic interview process is a well thought out; nationally accepted intervention intended to provide safety to the child. Professionals are committed to putting the needs of the children first; this includes giving them a safe, neutral place to tell whatever story they have to tell.

Mr. Chairman and Members of the Committee, thank you for allowing me the opportunity to testify before you today and I will be happy to try and answer any of your questions.

Thank You.

~~CONFIDENTIAL~~

**Testimony
House Bill 1410
House Human Services Committee
Representative Robin Weisz, Chairman
February 9, 2011**

Chairman Weisz, members of the House Human Services Committee, I am Chip Ammerman, the Director of Cass County Social Services. I am here today to speak against HB 1410.

In 2010, there were 13,794 reports of suspected child abuse and neglect in North Dakota. There were 1,152 children who were confirmed victims of child abuse and neglect and 768 caregivers who were the subjects of these assessments. A caregiver is defined in NDCC 50-25.1 as a "person responsible for the child's welfare". This includes parents, adult family members, guardians, foster parents or persons who provide care for children in public or private school or child care settings, and who have responsibility for the care or supervision of a child.

Reports of suspected child abuse and neglect are received by county social service agencies. Most of these reports are statements and observations from persons mandated to report their suspicions. These statements alone are not enough to support the confirmation of child abuse or neglect without further corroboration. The North Dakota Department of Human Services Policy Manual 640-10 outlines the expected practice of child abuse/neglect assessments. The first stage of this assessment is a direct interview with the suspected child victim. Guidelines for best practice in child protection advise that an interview of the child should take place in a neutral setting, away from pressures or influences in order to obtain the most reliable, unbiased information possible. Children are inherently vulnerable and are often reluctant to disclose abuse. Doing so requires a child to disclose and

describe events that are unpleasant; events perpetrated against them by someone who may be related or have a close relationship with them.

Often, the person suspected of abusing or neglecting a child is a parent, family member or a member of the child's household. The child is dependent on that person for basic care and needs. There may not be witnesses to the abuse and often, physical evidence is not present. Requiring a parent's consent or allowing their presence in the interview provides an opportunity to deliberately or inadvertently influence the child's statements. Children are very susceptible to efforts to prevent them from disclosing abuse.

Requiring permission or physical presence from a caregiver that is not suspected of the offence can also have a negative impact on the accuracy of the information provided by the child. During the interview, potential information that is revealed by the child can be emotionally charged and extremely difficult for a person that is emotionally connected to the child to hear and not react to. The primary concern is that this caregiver's presence may intentionally or unintentionally interfere in obtaining accurate information due to verbal or non-verbal cues that the child picks up from the caregiver. This has a great potential in contaminating the reliability of the information from the child. This leads to questions of the accuracy and credibility of the information provided since the child may repeat what he/she believes the caregiver wants them to say or be inhibited out of fear of hurting the caregiver or fear of being blamed or not believed.

The professionals that are mandated to intervene are trained to provide a structured and focused discussion with the child in a sensitive manner.

They are trained not to lead the child, to proceed in a supportive pace, not to react to the information disclosed and be sensitive to signs of distress in

the child. The interview process is a structured conversation with a child that is designed to elicit accurate and detailed information on the experiences of the child. The purpose of the interview is to gather detail from the child to refute or corroborate the concerns to get as accurate of a picture of what has occurred. The presence of an emotionally connected person will inhibit the mandated professional in obtaining this information or assessing the credibility of this information.

Of great concern is the absence of a provision in this bill for excluding a parent or parent representative who is also the suspected child abuser. There is no other area of law enforcement which requires the suspect to be present or represented during an interview with a victim. Where there are two adults in the household, a non-offending caregiver often has an intimate relationship with the suspected abuser and may be pressured by financial, physical, or other forms of power that can lead the non-offending caregiver to protect an abuser rather than the child. In the case of unmarried or divorced parents, the language in the bill does not address which parent must be present or give consent. Insistence by each parent to be present during a forensic interview of the suspected child victim will result in multiple interviews, less reliability in the information and potential for additional trauma to the child.

We recognize the importance that the non-offending caregiver plays in the recovery process for the family and child. Following the completion of the interview, the non-offending caregiver is "debriefed" on the disclosed information, provided support to grieve the experience of the child, and prepare for the contact with the child.

Many states, including North Dakota, have committed to statute the circumstances under which children suspected of being abused or neglected may be interviewed without parental permission. Indeed, the United States Congress in 25 U.S.C. 3206(B) has codified that when authorities in Indian country have "reason to believe" that an Indian child has been abused, the investigating agencies "shall be allowed to interview the child without first obtaining the consent of the parent, guardian, or legal custodian." North Dakota statute currently states in NDCC 50-25.1-05 (2) (b), "The Department or the law enforcement agency may... Interview, without the consent of a person responsible for the child's welfare, the alleged abused or neglected child and any other child who currently resides or who has resided with the person responsible for the child's welfare or the alleged perpetrator." This section in statute also requires the department and law enforcement to coordinate their efforts to avoid duplication of efforts and multiple interviews.

County social service agencies refer children suspected to have been physically/sexually abused to be interviewed at Children's Advocacy Centers. These centers provide a child-friendly, neutral environment equipped with audio/video recording equipment, where a child can be interviewed by a trained forensic interviewer and which may be observed by law enforcement, prosecutors and social service personnel. Child interviews completed in these settings protect child victims from repeated interviews, provide accurate recordings of the interview and reduce the potential for undue influence of the child.

I ask that you consider this information as you contemplate action on House bill 1410.

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February 9, 2011

Testimony for HB 1410

Chairperson Weisz and Members of the House Human Services Committee,

My name is Tim Hathaway, Executive Director of Prevent Child Abuse North Dakota. Our organization exists for the purpose of eliminating child maltreatment in its various forms.

Sharing a secret about your darkest experiences is challenging at best but overwhelming for those individuals who have been violated sexually. Between 85 and 90% of child sexual abuse is perpetrated by a close friend or a parent. Often the abuse is accompanied by severe threats about what will happen to the child if the secret is revealed. Given the intimidation about disclosure and the significant possibility that the parent has a stake in keeping the secret; this bill will have the effect of increasing the likelihood that abuse will go unreported and unpunished.

This bill is the wrong thing for our children and the ultimately will help perpetrators of abuse. I urge you to vote Do Not Pass on HB 1410. Thank you.

#6

MEMO

February 9, 2011

To: Chairman Weisz

From: Marlys Baker



Re: Request for additional information on 1410

In response to questions and a request to view the Department of Human Services policies concerning timeframe requirements for assessments of suspected child abuse and neglect, I have compiled the attached information.

The information includes Department policy, Administrative Code and current state statute which address many of the questions raised by members of the House Human Services Committee during this morning's testimony.

The information contains:

- The requirement for a parent to be informed of the specific allegations made, at the initial time of contact with the parent (NDAC 75-03-19-09).
- Department of Human Services policy requirements to notify both the subject (person suspected of abuse or neglect) as well as a non-subject parent when it is determined that a child has been abused or neglected.
- Confidentiality exceptions specific to parents.
- Guidelines for the referral of reports of suspected child abuse and neglect to Children's Advocacy Centers.

I hope this will assist you in discussion of this bill. If you have additional questions, Tara Muhlhauser and I are available to talk with you.

HB 1410

Requested Information

Department of Human Services Policies

- Categories for Initiation of Assessment and Face-to-Face Contact Requirements for Suspected Child Victims - pages 4 - 7
- Requirements for notification of parents – pages 3 & 4
- Guidelines for Case Referrals to a Children's Advocacy Center – page 11

North Dakota Administrative Code CHAPTER 75-03-19

- 75-03-19-09 Child abuse or neglect complaint or allegation - page 3

Current statute

- 50-25.1-11 Confidentiality of records - Authorized disclosures – page 8 & 9
- 50-25.1-05 Assessment of child abuse and neglect reports – page 10

Department of Human Services Administrative Rule:

75-03-19-09. Child abuse or neglect complaint or allegation. At the initial contact, the department or its authorized agent shall advise the subject of a report of suspected child abuse or neglect of the specific complaints or allegations made against the individual.

History: Effective July 1, 2006.

General Authority: NDCC 50-25.1-05

Law Implemented: **NDCC 50-25.1-05, 50-25.1-11**

Department of Human Services policy manual:

Notification to the Subject of Case Decision 640-15-30-01

(Revised 5/1/06 ML #2977)

Informing the **subject** of the outcome of the assessment is an important activity performed by Social Workers in the final stage of the assessment process as provided in NDCC 50-25.1-11. This notification will serve to bridge the assessment and follow-up services the agency offers.

The Child Protection Social Worker completing the assessment of a report of suspected child abuse or neglect shall provide notification of the case decision to, the subject of the report. This notification shall be made in person. When the case decision is "Services Required", the notification to the subject shall be made face-to-face. If a face-to-face notification cannot be done, the reason needs to be documented. When the case decision is "No Services Required, the notification may be made either face-to-face or by telephone. Written notification must also be provided.

If the subject of the report cannot be located to receive in-person notification, or notifying the subject in-person presents a danger to the Social Worker, the case file must reflect this.

SFN 499 (Affidavit of Mailing) (50kb pdf) must be completed and mailed to the subject with the written notification of the case decision. A copy of this form becomes a part of the case file and is sent to the regional human service center with the completed written report.

Notification to a Non-Subject Parent or Legally Appointed Guardian 640-15-30-05

(Revised 5/1/06 ML #2977)

When a decision is made that services are required to provide for the protection or treatment of an abused or neglected child, the Child Protection Social Worker shall provide written notice of the decision to the parents or legally appointed guardian who is not the subject of the report of suspected child abuse or neglect. The Social Worker shall consider any known domestic violence when providing this notification. If parent or legally appointed guardian cannot be located, this needs to be documented in the case file.

Department of Human Services policy manual:

Categories for Initiation of Assessment and Face-to-Face Contact Requirements for Suspected Child Victims 640-05-01-10-01

(Revised 12/3/07 ML #3122)

There is a three-tiered category system indicating the assessed level of safety and/or risk to the child and dictating the procedure (law enforcement notification, interviews conducted, and information gathered) to be followed. The category of each report is periodically reevaluated during the assessment. As the level of risk increases, the category assignment and the depth of the assessment increases. (The reverse is also true.)

The initial category assignment is made in light of the concerns of the report, which are associated with varying levels of potential safety concerns or risk. If there is a record of a previous serious report, the Social Worker may decide to upgrade the category; however, the category rank should not be downgraded prior to beginning the assessment interviews.

"Face-to-face contact" is defined as making visual contact with the suspected victim(s) named in the Report of Suspected Child Abuse and Neglect. A county child welfare social worker can also rely on identified community partners for assistance with face-to-face contact when necessary. Face-to-face contact can be made by the professionals mentioned who have access to the legal process to insure the immediate safety of the child if immediate action is necessary (Child Welfare Social Worker, Law Enforcement, Medical Personnel, Juvenile Court staff, or Military Family Advocacy staff). If the agency relies on the face-to-face contact(s) made by these professionals, this must be documented in the Log of Contacts. If county social services staff are already in the home working with the family, these staff can make

the required face-to-face contact to meet the timeline standards above as they are in a position to assess, evaluate and take action on an immediate safety concern.

"Receiving the report" is defined as the time the agency receives first notice of the alleged abuse or neglect or is made aware of the suspected abuse or neglect. A hard copy of the report in hand may be the first notice or the first point of receipt of information; however a hard copy of the report may not always be the first notice that indicates the receipt of information.

If the required face-to-face contact timelines cannot be met, the situation must be staffed with an agency supervisor and/or regional supervisor to discuss circumstances and response. The social worker or supervisor must assess and document the reasoned assurance the suspected victim's immediate safety is not compromised. This documentation, (to include the reason for the delay and the anticipated date and time of contact) must be included in the Log of Contacts.

Face-to-face contacts with suspected victims (as previously defined), is critical to CPS assessments. Face-to-face contact is seen as related to assessment of immediate safety; however, the safety assessment is a distinct assessment requirement. Face-to-face contact is a component of this safety assessment. There will be times when assessment of initial safety and face-to-face contact with suspected victims are one-in-the-same and can take place simultaneously.

There are circumstances when face-to-face contact within the required timelines is not possible. For instance, there are situations when a child cannot be located or this contact is not the best case plan in the judgment of the assessing social worker and/or supervisor (e.g. sexual abuse assessment where law enforcement is leading the investigation). Face-to-face contact must be made as soon as possible in these situations with detailed, concise documentation in the Log of Contacts. A safety assessment is required in all circumstances.

If on-call personnel receive a report during evening or weekend hours (outside of normal business hours), on-call personnel are required to address any immediate safety concerns. On the following business day, the report must be forwarded to CPS staff for possible assignment and/or case determination. The timelines will initiate upon receipt by CPS on the first hour of the first working day after the report is made.

Face-to-face contact standards and initiation of the assessment:

Category A

For Category A cases a law enforcement agency must be contacted immediately to request assistance in the assessment process and, when necessary, to remove child(ren) in an emergency.

All cases involving a child death are considered Category A cases. The Regional Supervisor shall notify the Administrator of CPS of any child's death within 24 hours of receiving notification of the child's death.

The assessment must begin within 24 hours of the receipt of a report in a Category A case. Law enforcement official will provide direction in regard to who is interviewed and when.

- **Face-to-face contact must be made within 24 hours.**
- **A full forensic interview is not needed within this timeframe if it is not possible to secure this interview; however, face-to-face contact with the suspected victim is still required in this timeframe.**

Category B

For Category B cases, if there is a possibility of criminal charges arising out of the suspected child abuse or neglect, or if the Social Worker can get an indication from the report that the children are not safe removal appears evident, contact with law enforcement must be made. **The assessment must begin within 24 hours of the receipt of a report in Category B cases.**

- **Face-to-face contact must be made within 3 calendar days.**

Category C

In Category C cases, the Social Worker must begin an assessment within 72 hours after the receipt of the report.

- **Face-to-face contact with the victim should occur as soon as possible but must be made within 14 calendar days.**

Category Examples

The following are examples of types of suspected maltreatment and should be used as a guide to determining the category of every case (**If safety concerns are identified, earlier intervention is warranted**):

Category A	Category B	Category C
Fatal	Burns, Scalding	Psychological maltreatment
Brain damage/ skull fracture	Intentional poisoning	Inadequate shelter
Bone fracture	minor fracture	Inadequate clothing
Subdural hemorrhage or hematoma	Excessive corporal punishment	Educational neglect
Internal injuries	Minor cuts/ bruises/welts Sprains/ dislocations Twisting/shaking	Inadequate supervision Inadequate nourishment Inadequate health care
Sexual fondling	Malnutrition	Other neglect
Sexual intercourse	Abandonment	
Sexual exploitation	Failure to thrive Tying/close confinement	
Stabbing		
Gunshot wounds	Prenatal exposure to chronic and severe use of alcohol or any controlled substance	
Other major physical injury	Meth present at birth Alcohol present at birth Drug(s) present at birth Severe cuts/ lacerations/bruises and other minor injury	

Current Statute:

50-25.1-11. Confidentiality of records - Authorized disclosures. (emphasis added)

A report made under this chapter, as well as any other information obtained, is confidential and must be made available to:

1. A physician who has before the physician a child whom the physician reasonably suspects may have been abused or neglected.
2. A person who is authorized to place a child in protective custody and has before the person a child whom the person reasonably suspects may have been abused or neglected and the person requires the information to determine whether to place the child in protective custody.
3. Authorized staff of the department and its authorized agents, children's advocacy centers, and appropriate state and local child protection team members, and citizen review committee members.
4. **Any person who is the subject of the report; provided, however, that the identity of persons reporting or supplying information under this chapter is protected until the information is needed for use in an administrative proceeding arising out of the report.**
5. Public officials and their authorized agents who require the information in connection with the discharge of their official duties.
6. A court, including an administrative hearing office, whenever the court determines that the information is necessary for the determination of an issue before the court.
7. A person engaged in a bona fide research purpose approved by the department's institutional review board; provided, however, that no individually identifiable information as defined in section 50-06-15 is made available to the researcher unless the information is absolutely essential to the research purpose and the department gives prior approval.
8. A person who is identified in subsection 1 of section 50-25.1-03, and who has made a report of suspected child abuse or neglect, if the child is likely to or continues to come before the reporter in the reporter's official or professional capacity.
9. **A parent or a legally appointed guardian of the child identified in the report as suspected of being, or having been, abused or neglected, provided the identity of persons making the report or supplying information under this chapter is protected. Unless the information is confidential under section 44-04-18.7, when a decision is made under section 50-25.1-05.1 that services are required to provide for the protection and treatment of an abused or neglected child, the department shall make a good-faith effort to provide written notice of the decision to persons**

identified in this subsection. The department shall consider any known domestic violence when providing notification under this section.

Current Statute

50-25.1-05. Assessment. (emphasis added):

- 1. The department, in accordance with rules adopted by the department, immediately shall initiate an assessment, or cause an assessment, of any report of child abuse or neglect including, when appropriate, the assessment of the home or the residence of the child, any school or child care facility attended by the child, and the circumstances surrounding the report of abuse or neglect.**
- 2. If the report alleges a violation of a criminal statute involving sexual or physical abuse, the department and an appropriate law enforcement agency shall coordinate the planning and execution of their investigation efforts to avoid a duplication of factfinding efforts and multiple interviews. The department or the law enforcement agency may:**
 - a. Refer the case to a children's advocacy center for a forensic interview, forensic medical examination, and other services.**
 - b. Interview, without the consent of a person responsible for the child's welfare, the alleged abused or neglected child and any other child who currently resides or who has resided with the person responsible for the child's welfare or the alleged perpetrator.**
 - c. Conduct the interview at a school, child care facility, or any other place where the alleged abused or neglected child or other child is found.**
- 3. Except as prohibited under title 42, Code of Federal Regulations, part 2, a regional human service center shall disclose to the department or the department's authorized agent, upon request, the records of a patient or client which are relevant to an assessment of reported child abuse or neglect.**
- 4. The department shall adopt guidelines for case referrals to a children's advocacy center. When cases are referred to a children's advocacy center, all interviews of the alleged abused or neglected child conducted at the children's advocacy center under this section shall be audio-recorded or video-recorded.**

Physical Examinations and Observation 640-10-70
(Revised 10/1/09 ML #3197)

Guidelines for Case Referrals to a Children's Advocacy Center

Referral to a Children's Advocacy Center should be considered for any child who is a suspected victim in a report where the initial category is "A" (see "Categories for Initiation of Assessment and Face-to-Face Contact Requirements for Suspected Child Victims 640-05-01-10-01), particularly children who are suspected to have been sexually abused. Children who are suspected victims in reports where the initial category is "B", but there exists the potential for significant physical effects resulting from abuse or neglect or there is a need for a forensic interview to be conducted, should also be considered for referral to a Children's Advocacy Center. Children who are suspected victims in reports where the initial category is "B" or "C" may also be considered for referral to a CAC if it is deemed appropriate. In any case, the actual referral of a child to a Children's Advocacy Center shall be based on the individual circumstances of the report and the appropriateness of the referral and is the responsibility of the lead agency. When an active criminal investigation is conducted concurrently with the CPS assessment, the decision to refer to a Children's Advocacy Center is at the discretion of the investigating law enforcement agency.

When it has determined that the child will not be referred to a Children's Advocacy Center, the Social Worker may observe the child's body for evidence of physical abuse. When a physical examination is necessary to verify the concerns, the Social Worker may offer the options below.

The caregiver can take the child to a physician or hospital emergency room for a physical examination.

The caregiver or another adult and the Social Worker can jointly conduct a cursory physical observation of the child. This may necessitate the child to partially disrobe with some assistance as appropriate for age and physical limitations.

If the caregiver agrees to take the child to a physician, a time and day should be established before the Social Worker leaves the home. The Social Worker should follow up after the scheduled visit to assure that the caregiver complied with the agreement. If the caregiver did not, the Social Worker should locate the child, reassess for safety and take appropriate action. When a child has been seriously harmed and requires immediate medical attention, the doctor or hospital physician who is treating the child is the appropriate examiner.