



**House Judiciary Committee
Sixty-seventh Legislative Assembly of North Dakota
House Bill 1035
January 26, 2021
Representative Lawrence R. Klemin, Chair**

Good afternoon Chairman Klemin and Members of the House Judiciary Committee. I am Carlotta McCleary, Executive Director of Mental Health America North Dakota and Executive Director of the North Dakota Federation of Families for Children's Mental Health. Today I speak on behalf of the Mental Health Advocacy Network (MHAN). MHAN advocates for a consumer /family driven mental health system of care that provides an array of service choices that are timely, responsive and effective.

MHAN has provided testimony since the 64th interim human service committee meetings (2015-2016) regarding our priorities for mental health services. We argue that peer to peer and parent to parent support, consumer choice, diversion from corrections, a core services zero-reject model, and conflict free grievance and appeals processes, and the access to a full and functional continuum of care serve as the backbone to correcting the crisis in North Dakota's behavioral health system.

MHAN is speaking in support of HB 1035. During the Sixty sixth legislative session, MHAN stressed that North Dakota needed to put the HSRI Report of 2018 into action. That report, much like the Schulte Report of 2014 said that North Dakota needed to drastically reduce its reliance on institutionalization and make sure that it had a fully functional community-based mental health system for children, their families, and adults that is as near their home as possible. Among the accomplishments of the last legislative session were the commitment to apply for the 1915(i) State Plan Amendment, prevention and early intervention pilot program in schools, the behavioral health pilot program, and the behavioral health resource coordinator in our schools.

MHAN sees HB 1035 as a big piece to the puzzle in ensuring that children with mental health disorders and their families can receive the right service, at the right time, as nearest their home as possible.

Roughly 10% of all children in North Dakota have a serious emotional disturbance (SED). As of 2019, this translates to roughly 18,000 children. We are currently serving only 1 out of every 18 children who have a serious emotional disturbance. As a result of not having access to care, many children are being sent into the juvenile justice system. From 2011 to 2017, the number of children in juvenile corrections who had a serious emotional disturbance rose from 49% to 79%. Although there have been improvements, children with serious emotional disturbance still represent most children in the corrections system despite only accounting for 10% of all children in North Dakota. Youth that have a low risk to reoffend are more likely to recidivate and less likely to complete high school if they are arrested or referred to court as opposed to being diverted from formal juvenile justice system involvement. Research shows that outcomes improve if children and youth are given access to community-based services rather than receiving those services in the juvenile justice system.

The *Olmstead* decision of 1999 and subsequent litigation made clear that people with disabilities (including children with serious emotional disturbance) must be given access to community-based services before requiring that they seek only institutional care. Let me be clear: *Olmstead* applies to children too. It has always been a legal obligation for the state mental health system to provide children with SED and their families access to community-based services. Children who have been inappropriately referred to the juvenile justice system because of a lack of community-based mental health services still have a legal right to receive community-based services, irrespective of any hesitation to provide those services.

MHAN argues that the central strength of HB 1035 is its emphasis on ensuring that “low risk youth” (who are often children with serious emotional disturbances) have access to community-based services without necessitating the involvement of the Juvenile Justice System. HB 1035 would create a new legal category “Children in Need of Services” (CHINS), which would include children and youth who are engage in truancy, runaways,

and incorrigible behaviors. Those children and youth would no longer be under the jurisdiction of the Juvenile Court and can no longer be arrested or referred to court. Instead, the Human Service Zones and the Department of Human Services would be providing community-based services. To do this, the bill would establish a cross-systems, cross-agency service planning process to work together to develop a plan that youth at risk of or currently involved in the juvenile justice system can obtain research-based services to meet their needs. Once more, HB 1035 would prevent *Olmstead*-violating practices like denying a child access to community-based services due to claims of a lack of community-based services. It is no longer permissible to claim these children have no other options but the juvenile justice system to receive services they had a legal right to receive in the community. It is the responsibility of the Human Service Zones and the Department of Human Services to create programs for these children. Only youth that are a public safety risk should be considered for placement in secure facilities out of the home.

In the several decades' long mental health crisis in North Dakota, families have not had access to needed mental health services. Even families that had access to some services, their plans would often require them to call law enforcement if their child was in a mental health crisis. The justice system was never intended to be the system that served children with mental health needs, but for decades it has been the only system that had services. While we make these changes, we must ensure families have access to the services their children need. North Dakota has a legal and moral obligation to provide children and their families community-based mental health services.

Thank you for your time and I would be happy to answer any questions you may have.

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