



Testimony prepared for the Senate Human Services Committee
HB 1268 - Mandatory drug testing by human service zones
Kim Jacobson, Agassiz Valley Human Service Zone Director
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Chair Lee, and members of the Senate Human Services Committee, my name is Kim Jacobson. I serve as the Director of Agassiz Valley Human Service Zone, which includes the counties of Traill and Steele, and as President of the North Dakota Human Service Zone Director Association. I am here today to provide testimony in opposition to HB 1268. In addition, at the request of the Cass County State's Attorney Office and Assistant Cass County State's Attorney Rebecca Jund, I share with the committee their support of this testimony and opposition to HB 1268.

Human Service Zones are the legal designee of the North Dakota Department of Health and Human Services (NDHHS). We manage a range of critical responsibilities, including foster care case management and the legal custody of children in the public foster care system.

In North Dakota, child welfare services are guided by a combination of law, policy, and the Safety Framework Practice Model (SFPM) adopted in 2020. This model ensures consistent, evidence-based practices across all Human Service Zones, focusing on child safety while respecting parental rights.

This approach distinguishes between immediate and potential dangers. It also tailors interventions to each family's unique circumstances. SFPM emphasizes minimizing trauma to children, prioritizing in-home safety plans whenever possible, and using removal from parent's home as a last resort. When removal is necessary, diligent efforts to reunify families begin immediately.

House Bill 1268 proposes a new human service mandate for drug testing before very unsupervised parent/child visit in cases where substance use was a contributing factor in out-of-home placement for a child. North Dakotans deeply value child safety, and this bill reflects that intent. But rarely do we have a situation where controlled substances are the only threats to child safety. Mental health, unsafe living conditions, neglect, and domestic violence in the forms of physical, psychological, or sexual abuse, may be amongst the presenting safety factors. Although the supervised visitation and drug testing are tools that human service zones can and do use when faced with substance abuse concerns, they are not our only tools. It is important to understand that drug testing itself is not a safety plan – nor does drug testing equal safety.

Safety planning begins from our first encounter with families and continues until our services are no longer needed. Frequently, engagement with the family and observation of behavior is a much stronger and more accurate indicator of a parent's ability to protect a child. Human service zones are in the business of working with and engaging with humans who are often in extraordinarily complex and challenging situations. There is no one test or assessment that can stand alone. To provide our best service, we need flexibility to develop safety plans and interventions that are fluid, results orientated and tailored to the child and family's unique needs.

To my understanding a motivating factor behind HB 1268 is the concern that not all human service zones are choosing to use drug testing in the same way or frequency. Assuming safety planning is not occurring, and that child safety is not being prioritized is presumptive and inaccurate. Drug testing is a point in time tool. By federal law, drug testing and results are protected and confidential information. System partners may not realize what is happening behind the scenes and guiding practice/decisions including drug testing. In addition, the human service zone is not the only entity that may be involved with the family. Some parents in the child welfare system are already getting drug tested through probation or as part of treatment. When this is the case, releases of information are sought so that critical service providers can communicate and assist the family.

The concept of tying drug test results to parent-child visitation is further complicated by the ways that drugs metabolize in the human body. The half-life of drugs can vary. For example, one drug may remain in your system for over 30 days versus another just a day or two. Different types of drug tests (blood, urine, saliva, or hair follicle) evaluate different exposure and ingestion timelines and can vary in cost. This can create great variability and complexity in interpretation of the results and should not be a sole determinate of visitation safety. In addition, if drug testing is tied to parent-child visitation and progress towards reunification, it is vital that the testing be court admissible, performed under controlled observation environments, and administered by a properly credentialed or certified professional. In addition, the individuals involved in testing and processing may be called to testify under subpoena.

North Dakota's current practice is consistent with national recommendations for the use of drug testing in foster care reunification planning. This allows children and families to reap the benefits of appropriate drug testing. We evaluate each family with its own unique circumstances. Our decisions are guided by considering all the information and avoiding a one-size-fits-all response to unique circumstances. We prioritize fair, equitable actions that support child safety, reunification goals, and family rights. When circumstances change, we adjust our plans as needed. Where controlled substances are a factor in child welfare cases, zones consider whether drug testing will help with:

- **Potential Risk Identification:** Is further intervention/treatment needed for the parent to improve their ability to provide a safe environment for the child?
- **Change Motivation:** Will knowing that they will be tested encourage the parent to seek treatment and maintain sobriety to facilitate reunification?
- **Progress Monitoring:** Will repeated testing be available and can it track the parent's progress in recovery and treatment plan goal achievement?

But human service zones also weigh potential adverse outcomes of drug testing, such as:

- **Limitations of Results:** A single test only provides a point-in-time view of substance use. This does not necessarily reflect ongoing patterns or severity of addiction or measure exposure risk.
- **False positives and Unreliable Results:** Mistaken positive results can unfairly impede reunification efforts. In addition, inaccurate or adulterated/tampered testing can result in false indications of sobriety level.
- **Stigma and Discrimination:** Parents may feel judged and stigmatized by the testing process. This may unduly hinder their engagement with services and reunification efforts.
- **Access:** Access is limited to reliable, professionally certified testing locations that provide timely, accurate, and court-admissible results. This is especially complex in rural communities. Frequently, the families we work with lack reliable transportation. This may result in undue barriers for the family and adversely impact their engagement, relationship with their child, and overall reunification efforts. In addition, this may duplicate drug testing that occurs in a parent's addiction treatment or probation plan.
- **Overreliance on Testing:** As a system, we work hard to have individualized care plans that focus on the safety needs of the child. Using drug tests as a primary factor of reunification can overlook the other important aspects of parental competency and child safety that are critical to the overall best interests of the child. The overall goal for reunification is to prepare the parent to have protective capacities so that they may keep their child safe regardless of the risks that may present.
- **Potential for Abuse:** Some parents may perceive or experience targeting based on bias or stereotypes.
- **Constitutionality and General Legal Risk:** Over testing of a parent and/or withholding child contact between parent and child may not be constitutional and may be considered grounds to initiate civil rights lawsuits. As the legal custodians of foster children, and as the employer of child welfare team members, our legal risks are significant. Flexibility and informed decision-making are key to mitigating these risks, while prioritizing child safety.
- **Statewide Impact Limitations:** If passed, House Bill 1268 would not impact tribal child welfare children and families. As they are sovereign nations, this law would not transfer.

Working with families in the child welfare system is complex and requires flexibility when working with families. While House Bill 1268 has positive intent, in practice it is likely to hinder delivery, unduly tie up resources, limit the rights of those we serve, and increase legal liability. It would be more effective for human service zones and partner with the Department to develop and strengthen policies around child welfare-related drug testing. I respectfully request a “do not pass” on House Bill 1268. Thank you for your consideration of my testimony. I stand for questions from the committee.