

**2021 HOUSE HUMAN SERVICES**

**HB 1089**

# 2021 HOUSE STANDING COMMITTEE MINUTES

## Human Services Committee Pioneer Room, State Capitol

HB 1089  
1/18/2021 AM

Relating to seclusion, restraint, and the prohibition of shock treatment & aversive reinforcement conditioning

**Chairman Weisz** called the hearing to order at 10:02 a.m.

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

### Discussion Topics:

- Electrical Stimulation Devices (ESDs)
- Century Code Regarding Rights of Patients
- Psychosurgery
- Electroconvulsive Treatment

**Tina Bay, Director Development Disabilities Division Department of Human Services (10:04)** testified in favor and submitted testimony #1081.

**Additional written testimony:** #1042

**Chairman Weisz** adjourned the hearing at 10:13 a.m.

*Tamara Krause, Committee Clerk*

**Testimony**  
**House Bill 1089 - Department of Human Services**  
**House Human Services Committee**  
**Representative Robin Weisz, Chairman**  
**January 18, 2021**

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

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

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

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

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

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

HB 1089  
House Human Services Committee  
Testimony of the ND Behavioral Health Planning Council  
January 18, 2021

Chair Weisz and members of the Committee, I'm Brenda Bergsrud, Chair of the Behavioral Health Planning Council. The Council is a federally mandated body operating out of the ND Department of Human Services/Behavioral Health Division. The Council is made up of 30 diverse members including consumers, family members, and other stakeholders.

The Council supports HB 1089. In particular, the Council believes that patients and residents should be free from aversive reinforcement conditioning; that this should not be an option, or available tool from the toolbox, for treatment or care regardless of consent from the individual or his/her guardian. Aversive reinforcement conditioning subjects the individual to a stimulus, usually uncomfortable and sometimes harmful, when he/she exhibits a particular behavior. It is an archaic.

Please support HB 1089. Thank you.

# 2021 HOUSE STANDING COMMITTEE MINUTES

## Human Services Committee Pioneer Room, State Capitol

HB 1089  
1/18/2021 PM

Relating to seclusion, restraint, and the prohibition of shock treatment and aversive reinforcement conditioning.
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**Chairman Weisz** opened the committee meeting at 3:11 p.m.

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

**Discussion Topics:** Aversive reinforcement conditioning.

**Rep. Mary Schneider** made a motion for **Do Pass. Rep.**

**Mike Beltz** second.

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

**Motion carried Do Pass 14-0-0**

**Bill Carrier:** Rep. Mike Beltz

**Chairman Weisz** adjourned at 3:14 p.m.

*Tamara Krause, Committee Clerk*

**REPORT OF STANDING COMMITTEE**

**HB 1089: Human Services Committee (Rep. Weisz, Chairman)** recommends **DO PASS**  
(14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1089 was placed on the  
Eleventh order on the calendar.



**2021 SENATE HUMAN SERVICES**

**HB 1089**

# 2021 SENATE STANDING COMMITTEE MINUTES

## Human Services Committee Sakakawea Room, State Capitol

HB 1089  
2/16/2021

A BILL for an Act to amend and reenact sections 25-01.2-09 and 25-03.1-40 of the North Dakota Century Code, relating to seclusion, restraint, and the prohibition of shock treatment and aversive reinforcement conditioning.

**Madam Chair Lee** opened the hearing on HB 1089 at 9:58 a.m. Members present: Lee, K. Roers, Hogan, Anderson, Clemens, O. Larsen.

### Discussion Topics:

- Struggle and restraint
- Seclusion definition broadness
- Aversive reinforcement conditioning

**[9:59] Tina Bay, Director, Developmental Disabilities Division, DHS.** Provided testimony #6747 in favor.

**[10:18] Senator Judy Lee, District 13.** Provided the committee with an overview of written testimonies by Katherine Terras; In favor (testimony #6599) and Laura Wolf; In favor (testimony #6697).

**Senator K. Roers** moves **DO PASS**.

**Senator Hogan** seconded.

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

The motion passed 6-0-0

**Senator K. Roers** will carry HB 1089.

**Additional written testimony:** N/A

**Madam Chair Lee** closed the hearing on HB 1089 at 10:26 a.m.

*Justin Velez, Committee Clerk*

**REPORT OF STANDING COMMITTEE**

**HB 1089: Human Services Committee (Sen. Lee, Chairman)** recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1089 was placed on the Fourteenth order on the calendar.

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

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

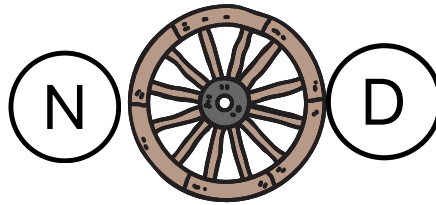
The bill proposes changes to North Dakota Century Code chapters 25-01.2-09 and 25-03.1-40, relating to seclusion, restraint and the prohibition of shock treatment and aversive reinforcement conditioning.

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

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

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



**ND SPECIAL EDUCATION CONSORTIUM**  
• EST 2020 •

**Written Testimony in Support of HB 1089**

Good Morning, Chairman Lee and Senate Education Committee:

For the record, my name is Dr. Katherine Terras and I represent the newly formed North Dakota Special Education Consortium that is comprised of stakeholders groups across the state that are dedicated to moving the field of special education forward for our most vulnerable population of students. We are in support of HB 1089, as this legislation further protects individuals with developmental disabilities from seclusion and physical restraint when safety for themselves and others is not at immediate risk. This legislation illuminates the importance of positive behavioral supports which should be the foundation of programming for these individuals.

**HB 1089**

**Human Services Committee**

**Testimony of Laura Wolf, in support**

**Date**

Ms. Chairman and members of the committee:

I am here to testify in support of this bill as I find the declination of this bill to be troublesome. The original wording of sections 25-01.2-09 and 25-03.1-40 of the North Dakota Century Code is faulty and will cause further harm if these amendments do not stand.

By adding “or shock treatment” to the first line of this bill and removing it from section five, this furthers the level of abuse that is not allotted and minimizes the ruling of if a situation should be of concern. Also, it removes the possibility of guardians consenting to the use of shock treatment on an individual, which is no longer a use of treatment.

Furthermore, these amendments add an additional right to the patients which reads “To be free from aversive reinforcement conditioning” and removing this form of treatment to be used on patients, with consent from the guardian. This amendment allows for the discontinuation of aversive reinforcement conditioning. This form of conditioning has been seen to be harmful long-term for patients and they should be allowed the right to not be subjected to this form of treatment.

I thank you for your time and urge for your support and pass on this bill.