Testimony
House Bill Number 1189 - Department of Human Services
House Human Services Committee
Representative Robin Weisz, Chairman
January 23, 2019

Chairman Weisz and members of the House Human Services Committee, I am Marlys Baker, Child Protection Services Administrator for the Department of Human Services (Department). I appear today to provide testimony in opposition to House Bill 1189.

Before I begin my testimony, I would like to apprise the Committee that under provisions of chapter 50-25.1 of the North Dakota Century Code all information concerning a specific report or assessment for child abuse or neglect is confidential. There is no confidentiality exception that allows information to be released in a public forum, such as a legislative hearing.

Section 1, page 1, lines 9 through 11, of the bill requires continuing education focused on custody issues if a licensee (licensed social worker, licensed certified social worker, or a licensed independent clinical social worker) conducts a child abuse and neglect assessment under chapter 50-25.1. If the intention of this amendment is to ensure that child protection service workers who conduct child abuse and neglect assessments, receive particular training, requiring that all social workers receive training on custody issues in order to be licensed will not be effective. Counties employ a number of Family Service Specialists who may also conduct child abuse and neglect assessments under chapter 50-25.1, and who are not subject to licensing requirements. Additionally, child abuse and neglect assessments encompass nearly every aspect of the human condition, including substance abuse, mental illness, and domestic violence, and to single out custody issues in licensing requirements seems excessive. It is not possible for a single child protection worker to develop a professional level of expertise in all aspects of the human condition in addition to family dynamics, abuse and neglect, and legal requirements involved assessing child abuse and neglect.

Section 2, page 1, lines 18 through 20**,** requires the Department to ensure that assessments conducted by the Department's authorized agent, county social services, have followed law and Department policy in making the determination. While the Department is responsible for the decision whether services are required for the protection and treatment of an abused or neglected child, this determination is based on information provided to the Department by the authorized agent. Child abuse and neglect assessment decisions were made in 7,547 assessments conducted by county social service agencies in FFY 2017. In order to conduct compliance audits of this number of assessments, additional staff will be needed and trained in conducting this type of detailed and specific audit prior to making an assessment decision and to assure that decisions are made in a timely manner.

In regard to **Section 3**, page 2, lines 11 through 18, decisions that services are required may be administratively resolved through negotiation with an appellant in the appeal process or through a change of decision by the Department after review of the assessment by program administrators. When a decision is not affirmed by the Office of Administrative Hearings (OAH), the term used is "reversed". I would request that the terms "withdrawn" or "overruled" be replaced with "administratively resolved" and "reversed".

Page 2, line 13, requires that notification be made to the Juvenile Court having jurisdiction in the matter, and Page 2, lines 15 and 16 requires that notification to a mandated reporter when a decision that services are required is "withdrawn" or "overruled". Given the small number of these, providing these notifications will not be burdensome.

Page 2, line 14, requires that the report be removed from the child abuse information index. This is currently standard practice when a decision is administratively resolved with a change in the decision, or a decision is reversed on appeal. A law change is not needed.

Page 2, lines 17 and 18, requires notification of the subject of the initial decision whether the change in the decision resulted in remedial training is inappropriate and unreasonable. Remedial action taken by a county toward the county's employee is normally not shared with the Department. In fact, the Department plays no role in performance management of county employees. Certain information contained in public employee personnel files is currently an open record. Any individual may request from the employing agency, information which comes under open record provisions, including remedial actions taken. The information must, however, be requested from the employing agency. The Department does not maintain personnel files for county employees.

Section 4, page 2, lines 27 through 31 and page 3, lines 1 through 11; adds language regarding grievances and expedited appeals. Page 2, lines 27 and 28, which requires the Department to adopt rules for filing of grievances is not necessary. North Dakota Administrative Code chapter 75-03-18.1 Child Abuse and Neglect Assessment Grievance Procedure for Conduct of the Assessment has been in place since 1997. The Grievance Procedure applies to the fact-finding process, or conduct, of the assessment and not to the actual decision. The grievance process is a county function, since the county agency is the entity responsible for conducting the child abuse and neglect assessment. If there was an error, misstep, or performance issue involved in the conduct of the assessment, this must be addressed by the county entity that employs the worker who conducted the assessment. The Department plays a minimal role in the grievance process. Existing protocol in Administrative Code chapter 75-03-18.1 requires that a summary and resolution of the grievance be provided to the grievant and to the Regional Representative by the County Director. Regional Representatives are employees of the Department.

Page 2, lines 29 through page 3, line 4 and page 3, lines 9 through 11 are vague and overbroad. The language on page 3, lines 2 through 4, "expenses incurred, the provision of services to address the grievance and the payment of the cost of services to address the grievance" and page 3, lines 10 and 11, "any expenses incurred,

including loss of earnings" leaves the Department in an untenable position and opens the State up to additional liability. In nearly every child protection action, there is some pre-existing stressor, family situation or dysfunction that leads to a report being filed with the county, or contributes to the need for a child abuse and neglect assessment. For a family already under some measure of stress, the presence of a child abuse and neglect assessment will increase that stress level. This is not avoidable. However, families react in many different ways to the added stress of child protection services involvement. Some may hire attorneys or assemble a group of other professionals, or both, to bolster their claims or attempt to deter child protection services from carrying out the mandate to complete an assessment. Others may feel so stressed they take time off from work out of feelings of overwhelm. Some will claim mental health services are needed because they experienced a large degree of stress. It is not clear how it could be determined whether a need for remedial services was due to stressors already present in the family, the degree of individual stress tolerance, or whether stress experienced by any individual could have been avoided while still meeting the mandate for assessment of a report of suspected child abuse or neglect. Any claims by an appellant or grievant could be construed to encompass any number of unnecessary expenses incurred through an appellant's personal choice, whether related to the actions of the Department or not. There is not a practical way to quantify a process to reasonably sort this out. Section 28-32-50 of the North Dakota Century Code already addresses the State's responsibility for attorney fees and costs in regard to an action against administrative agencies. This proposal would hold the Department to a higher standard compared to other agencies.

To address the issue of false reporting or providing false information on page 2, line 31 through page 3, line 2, chapter 50-25.1-13 of the North Dakota Century Code, entitled "Penalty for failure to report – Penalty and civil liability for false reports" provides a penalty for making a false report, providing false information which causes a report to be made, or willfully providing false information that causes a report to be made is guilty of a class B misdemeanor, unless the false report is made to a law enforcement officer, then it becomes a class A misdemeanor. Chapter 50-25.1-09 Immunity from Liability,

states in part, “Any person other than the alleged violator, participating in good faith in the making of a report, assisting in an investigation, assisting in an assessment, assisting in an alternative response assessment, furnishing information or in providing protective services or who is a member of the child fatality review panel is immune from any liability, civil or criminal, except for criminal liability as provided by section 50-25.1-13, that might otherwise result from reporting the alleged case of abuse or neglect or death resulting from child abuse or neglect.”. The “good faith” of a report must be presumed. Department policy directs that when there is reason to believe that the reporter is willfully making a false report, specific information that can establish that claim shall be documented, and the information is to be given to the state’s attorney for possible criminal prosecution. It is left to the legal system to determine whether a report was made falsely.

In any discussion of false reports, it is important to distinguish between a report that is “willfully” false and a report that is simply not supported by facts gathered in the assessment or information that may be true but doesn’t meet a legal definition of abused or neglected child under the statute. Quite often, the perspective of different individuals causes differences in the information those individuals relate. It is not unusual nor surprising that when questioned about the possibility of child abuse or neglect that people deny that which is true, lie to shield themselves from consequences, or attempt to cast themselves or others in the best or worst possible light, dependent upon their personal perspective. It is not possible to determine whether some information is “false” or only the result of differing perspectives or efforts obfuscate the facts. The Department provides guidance to the county and regional representatives on weighing the veracity and credibility of the individuals who provide information. The Department has no control over the quality or truthfulness of information provided by individuals who provide information in an assessment. Out of necessity, child protection workers and regional representatives must make human judgements about the credibility and validity of information and must focus attention on weighing the information in relation to making an assessment decision rather than investigating the perspectives of individuals providing information.

Page 3, lines 5 through 8, states that the Department may suspend all or some of the services required during an appeal. Let me clarify that the label “services required” is ‘shorthand’ for “services are required for the protection and treatment of an abused or neglected child” as required by section 50-25.1-05.1 of the North Dakota Century Code. It is the decision that indicates that information gathered in an assessment meets a legal definition in section 50-25.1-02 of the North Dakota Century Code of “abused child”, “sexually abused child” or “neglected child”. This decision is based upon the standard of a ‘preponderance of evidence” to support the decision. Section 50-25.1-06 of the North Dakota Century Code requires the Department to provide services for the abused or neglected child and other children under the same care, as well as to the parents, custodian, or other persons serving in loco parentis with respect to the child or the other children. There is no requirement for the parent and children to comply with those services. The remedy for non-compliance with services is to petition the Juvenile Court to order participation in the services or to grant temporary protective custody to the public agency when the child’s safety is in jeopardy. When a determination of “services required” has been made, social service agencies attempt to engage families as early as possible in the process in order to most effectively intervene in in troubling family situations. Quite often, families refuse services when they have filed a request for appeal, sometimes, families engage in the services that are offered, even completing the services prior to review of the appealed case. Unless a petition has been filed with the Juvenile Court, there is not a mechanism to compel a family to participate in the services the Department is required to provide.

Section 6, page 3, line 1 through page 4, line 2, requires the Department to advise the subject of a report of the right to file a grievance. The Department currently advises a subject of their right to appeal. Informing a subject of the right to file a grievance will not be burdensome.

Page 4, lines7 through 10, mandates that training for all representatives of the child protection services must include remedial training for representatives who fail to

conform substantially with Department policy and that training must be made a part of the representatives' personnel files. The children and family services division currently maintains a contract for training of child welfare workers with the University of North Dakota. There is a standard curriculum and all workers must begin the training within the first year of their employment. There are no provisions in the contract with the University of North Dakota to provide specific remedial training and additional staff and resources will be required to develop and deliver this type of individual, remedial training. There is not a reliable way to estimate these costs. Remedial training is not included in the current proposed budget.

As previously addressed in this testimony, the Department does not maintain personnel files for county employees and cannot be held accountable for personnel files maintained by another entity.

It is my belief that the redesign of the child protection services process, currently being pilot tested in two regions of the state, with plans for statewide, progressive roll out, will address many of the concerns brought forward by this bill. Salient features of this redesign include:

- Dedicated intake workers using a consistent and robust intake to gather more information about a family situation at the time of the report so the child protection services worker will be better informed from the beginning of the assessment
- Establishment of a supervisor to worker ratio of 1 supervisor to each 6 workers to provide qualified casework supervision to the child protection services workers 2 to 5 times per week
- Face to face contact with reported child victims within 3 days of case assignment
- Assessment of service needs to commence during the assessment rather than waiting for a decision to be made before providing services
- Shortened timeframes for completion of assessments

Implementation of these steps should address concerns for both the timeliness and quality of child abuse and neglect assessments.

Additionally, provision in the current Department bills, Senate Bill 2124 and House Bill 1108 will also address issues brought forth in this bill.

This concludes my testimony. I am available to answer your questions.