Testimony
Engrossed Senate Bill Number 2083 - Department of Human Services
House of Representatives; Human Services Committee
Representative Robin Weisz, Chairman
March 15, 2021

Chairman Weisz, and members of the House Human Services Committee, I am Cory Pedersen, Director of the Children and Family Services Division with the Department of Human Services (Department). I appear before you to support Engrossed Senate Bill 2083, which was introduced at the request of the Department.

The bill contains several updates necessary for clarification. Throughout the bill these changes clarify whether the provisions pertain to a “person”, which can mean either an individual or an entity, or pertain to an “individual”, which is a human being. Also throughout the bill clarification has been added to reflect when child protection services are to be conducted by the department directly or may be conducted through its authorized agent, Human Service Zones. These housekeeping changes will not be addressed in the remainder of the testimony.

The bill also contains several proposed changes related to child protection services, Institutional Child Protection, and the Child Fatality Review Panel, which I will review as we move through each section of the bill. In depth explanations will follow brief review of the definitions. The Department offered an amendment to the original bill after conferring with representatives of the education system, who requested certain changes. Explanation of the amended language is included in this testimony.

Section 1:

The proposed change on page 1, lines 16, 17 and 18, removes “public or private school” from the definition of “a person responsible for a child’s welfare” and adds a definition of “person responsible for a child’s welfare” specific to institutional abuse or neglect to define that the word “person” indicates an entity rather than an individual. The facility caring for the child is accountable for their safe care.

The change proposed on page 2 lines 1 through 6 clarifies the definitions of “abused child” and “sexually abused child” by clarifying that an abused child includes a “sexually abused child”, although the statutory references differ. There is no change in the meaning or implementation.

The proposed change on page 2, lines 14 through 26 creates a definition of “child fatality review panel” which separates panel membership from state child protection team membership and authorizes membership for the child fatality review panel to include representation from tribal medical services as well as representation from each federally recognized tribe in the state.

The proposed change on page 2, lines 28 through 30 and page 3, lines 1 and 2 amends the definition of “child protection assessment” and allows for determinations that a child may be found to have been abused or neglected in instances that may not identify a specific person responsible for a child’s welfare who is responsible for the abuse or neglect.

The proposed change on page 3, lines 13 through 17 changes the definition of the determination made when a child is determined to have been abused or neglected from “services required for the protection and treatment of an abused or neglected child” to “Confirmed”.

The proposed change on page 3, lines 18 through 22 creates a new definition of "Confirmed with unknown subject" which allows for abuse or neglect of a child to be confirmed in instances that may not identify a specific person responsible for a child's welfare.

The proposed change on page 3, lines 28 through 30 defines a state of "impending danger" which is a concept integral to adoption of a new practice model adopted by the department. A child may be found to be in a state of impending danger through the use of specific criteria.

The proposed change on page 4, lines 1 through 13 adds a definition of "indicated" which has been contained in N.D.C.C. 50-25.1-04.1 but was not previously defined and amends the definition of "Institutional child abuse and neglect" moving public and private schools from the child protection response typically focused on families to the more institutional structure of a school setting. This change also clarifies the entities which fall within the definition of "institutional child protection".

The proposed change on page 4, Lines 14 through 22 removes the definition of "Local Child Protection Team". Under the restructuring and redesign efforts within the department, local child protection teams are disbanded.

The proposed change on page 5, lines 14 and 15 revises the definition of "neglected child" to amend the definition of prenatal exposure to controlled substances to include those defined in section 19-03.1-01 rather than referencing the entire controlled substances act. The proposed change also revises environmental exposure of a child to controlled substances to include any amount of marijuana. The controlled substances act limits exposure to amounts less than one half ounce of marijuana for criminal charging purposes. While a laboratory test can indicate the presence of marijuana in the body of a child, these tests cannot determine the amount of marijuana nor the frequency of exposure required to produce a certain level in a child. There should not be an acceptable level of marijuana in a newborn or a child who is exposed in their home.

The proposed change on page 5, lines 28 through 31 and page 6, lines 1 through 11, addresses representation on the state child protection team, which reviews cases of institutional child abuse and neglect. The proposed definition adds representation from law enforcement and a parent with lived experience to the team and defines a quorum for the team.

The proposed change on page 6, lines 16 and 17 creates a new definition of “Unable to determine” which allows a determination to be made at the conclusion of a child protection assessment that insufficient evidence exists to make a determination whether a child has been abused or neglected.

The proposed change on page 6, lines 18 through 20 creates a new definition of “Unconfirmed” which allows a determination to be made at the conclusion of a child protection assessment that child abuse and neglect was not confirmed by evidence gathered in the assessment.

Section 4:

Moving into Section 4, page 7, line 31 and page 8, lines 1 through 31. It was called to our attention as the result of child fatality reviews that the current statute mandating certain professionals to report suspicion of child abuse and neglect requires a report to be filed by each employee within a single entity, without exception. It was pointed out that within large institutions, if each individual followed this mandate, hundreds of reports could be received resulting from a single case. Another phenomenon that has been recognized is a scenario in which multiple mandated reporters each believe it is the responsibility of another professional to make the ‘mandated’ report and no report is filed. Entities have also instituted ‘workarounds” such as directing reports through a designee or administrator, who may forward the report, or who may determine not to forward the report. In order to address these issues and any confusion for mandated reporters, the department is proposing that an entity who employs more than twenty-five mandated reporters may designate an individual to receive and forward reports of

suspected child abuse and neglect while prohibiting the entity from imposing conditions on a report or other methods for controlling reports which are mandated. The proposed language also allows a mandated reporter to report directly to the department or authorized agent.

Section 5:

Section 5, page 9, lines 4 through 31 and page 10, lines 1 through 6 addresses the state child protection team and institutional child abuse and neglect. As part of the redesign and reorganization efforts within the department it was recognized that the institutional child protection process had become outdated, inefficient, and not conducive to making timely and effective changes in facility practices for keeping children safe. For example, the state child protection team quarterly meetings often reviewed cases that were many months old, rendering state child protection team determinations and recommendations much less relevant to addressing root causes of the concerns reported.

For those facilities regulated or funded by the department the department will have the ability to hold facilities accountable through a variety of means and will be able to effect changes in facility policies and practices through licensing actions, corrective action plans, reports to accrediting bodies and fiscal sanctions when required.

Public and private school reports will be sent to the Department of Public Instruction and to the corresponding school district administrator and president or chairman of the school board or governing body for private schools for their actions. Reports of potential criminal activity by a person responsible for a child's welfare will be forwarded to law enforcement for investigation. The department will continue to conduct assessments of reports of suspected child abuse and neglect in school settings using the institutional child protection approach.

Section 6:

Section 6, page 10, lines 10 through 20 corresponds to the definition in Section 1, page 5, lines 28 through 31. Separating the membership of the child fatality review panel and

the state child protection team makes sense from the perspective of the purposes of each group and the skillsets and representation needed to fulfill those purposes. The proposed language specifies the department's responsibilities to preside over the child fatality review panel, set meetings, and prepare records and reports.

Section 7:

Section 7, page 10, lines 24 and 25, moves the meeting frequency of the child fatality review panel from at least every six months to meeting quarterly and extends the time period for reviewing deaths and near deaths to the preceding twelve months rather than six months. The additional time is required related to receiving records from other entities, time needed for criminal investigations to conclude and the numbers of deaths and near deaths to be reviewed. The bill also removes the use of local child protection team members from the duties of the child fatality review panel since these teams are being disbanded (page 11, line 12).

Section 8:

Section 8, page 12, lines 23 through 25, allows the department or authorized agent access to medical records which are relevant to support decisions whether child abuse or neglect is confirmed, confirmed with an unknown subject or unable to determine. These terms reflect proposed changes to the determinations allowed for child abuse and neglect assessments which will be explained in more depth later in this testimony.

Page 13, lines 1 and 2, adds the use of an evidence-based screening tool as it was removed from the definition of "child protection assessment" and "family services assessment". This change does not change the current practice of completing an evidence-based screening tool as it clarifies that an assessment and completing an evidence-based screening tool are two separate tasks.

Page 13, lines 3 through 5, permits the department or authorized agent to terminate an assessment in process upon determining that there is no credible evidence supporting that the reported abuse or neglect occurred.

Page 13, lines 6 through 17, adds new language related to conducting child abuse and neglect assessments of public and private schools under the definition of institutional child protection. This section contains language amended from the original bill. The new language provides that the department shall provide notice to the public or private school at the onset of the child protection assessment whenever it is practical to do so. This section also allows a public or private school to perform an investigation into conduct which may be concurrent with the child protection assessment and that the department and the public or private school shall coordinate the planning and execution of the child protection assessment and the public or private school investigation to avoid a duplication of factfinding efforts and multiple interviews, if it is practical to do so.

Section 9:

Section 9, page 13, lines 20 through 25, changes the decision-making matrix for child protection services. Under the current statute, at the conclusion of a child protection assessment, the department must decide whether services are required for the protection and treatment of an abused or neglected child. This is often reduced to a determination of “services required” or “no services required”, with “services required” reflecting that a preponderance of the evidence gathered during the assessment meets a definition of abused child or neglected child.

The language of requiring services is a misnomer and quite misleading to the public because there is not a mechanism for the department to “require” participation in a service other than petitioning the Juvenile Court. Petitions in the Juvenile Court require a level of evidence that is “clear and convincing”, a much higher standard than a simple preponderance. When a determination is made that “services are required” there is an expectation that participation in the service is a requirement when this is not the case. Additionally, a determination of “no services required” is also misleading and is often not descriptive of the findings of the assessment. The public interprets “no services required” to mean “everything here is okay”, when the reality may be that there are many concerns but not sufficient evidence that meets a definition of “abused child” or “neglected child”. North Dakota is the only state which uses this decision-making language.

The department is proposing that the allowable decision-making be changed to “Confirmed”, meaning that child abuse or neglect has been confirmed for instances where there exists a preponderance of evidence that meets a definition of “abused child” or “neglected child”. This language more accurately communicates a finding that child abuse or neglect was found to be true. The term “Unconfirmed” would then indicate that child abuse and neglect was not verified.

In addition to these two decisions, “Confirmed with an unknown subject” would be used to describe situations in which a preponderance of the evidence meets a definition of abused child or neglected child, but insufficient information exists to name the individual who is responsible. An example would be an infant with unexplained injuries where medical evidence indicates the injury was inflicted, but there is not a preponderance of evidence identifying an individual responsible for injuring the child.

Finally, a determination of “unable to determine” would indicate that insufficient evidence exists to determine whether a definition of abused child or neglected child has been met. An example would be situations in which the caregivers refuse to interview or interact with the child protection services worker. Under the current statute, and in the absence of other evidence, the determination would necessarily be “no services required”, yet that determination does not express the true conclusion and is misleading to those who are in a position to provide safety for the child, but who interpret the “no services required” determination to mean “everything here is okay”. The terms proposed here more accurately describe the true conclusion of the child protection assessment in plain language. I would emphasize that this change in language does not reflect a change in the assessment process, or level of evidence required. Definitions of these terms can be found in Section 1.

Also, page 13, lines 27 and 28, is a small change related to child protection assessments involving confirmation of abuse and neglect arising from religious practices. This change replaces the word “legitimate” with the word “lawful” to address situations in which a person responsible for the child’s welfare’s religious belief involves illegal activity, such as using an illegal substance or female genital mutilation. While the

department does not propose to restrict religious freedom, illegal acts impacting children should not be able to hide behind a veil of religious freedom.

Section 10:

Section 10, page 14, lines 5 through 9 directs that confirmed decisions where a child meets the definition of an abused child or neglected child will be reported to the Juvenile Court. Further, this section limits placement on the child abuse and neglect information index to those cases where child abuse or child neglect are confirmed. This replaces the determination of “services are required”.

Section 12:

Section 12, page 15, lines 7 and 8 updates the directive for the department to enact rules for resolution of complaints and the conduct of appeal hearings requested by a subject who is aggrieved by the department’s decision of “confirmed” child abuse or neglect. The Department will be updating the Administrative Code to coincide with the implementation of redesign and practice model changes.

Section 13:

Section 13, page 15, lines 13 and 14 directs placement of confirmed determinations on the child abuse and neglect information index, replacing the determination of “services are required”. It should be noted that when abuse or neglect is confirmed related to an unknown subject, no individual’s name is placed on the index, but the assessment is referenced as a confirmed decision.

Section 15:

Section 15, page 15, line 30 and 31 and page 16 lines 1 through 8 addresses protective services provided following a child protection assessment. Under the Safety Framework Practice Model adopted by Children and Family Services, a determination is made at

the conclusion of the assessment as to impending dangers identified. Referencing back to Section 1 of this bill, “impending danger” means a foreseeable state of danger in which a behavior, attitude, motive, emotion, or situation can be reasonably anticipated to have severe effects on a vulnerable child according to criteria developed by the department”. Criteria for identifying a state of impending danger is well defined in the adopted practice model.

Current statute requires that services be provided in all instances in which a child meets the definition of an abused child or neglected child. Services are also to be provided to “other children under the same care” as well as “parents, custodian, or other persons serving in loco parentis with respect to the child or the other children”. Approximately 1797 victims were identified in Federal Fiscal Year 2019, while this is a duplicated number (a child is counted once for each assessment during the FFY) it represents considerable resources expended for provision of these services.

With the criteria developed under the newly adopted practice model, a determination is able to be made as to the ongoing safety of the children. For example, it is possible for there to be instances in which child abuse or neglect has occurred, but upon assessment of family and parent functioning, impending dangers are not identified. For example, parents understand their behavior as damaging to their children and are able to control and correct this behavior. The child is safe. Under the current statute, however, services must still be provided, based on the determination that “services are required for the protection and treatment of an abused or neglected child”.

The proposed language in this bill changes the requirement for providing services to mandate services for abused or neglected children who are in an identified state of impending danger. Targeting limited services to children determined to be in a state of impending danger makes better use of service resources than mandating services for families who may be able to correct abusive or neglectful behaviors on their own. Proposed changes also allow services to be provided, as resources permit, to any

families upon concurrence of the parent, custodian, or other person serving in loco parentis.

Section 18:

Page 18, lines 23 through 26 are part of the amended language agreed upon with representatives of the school system and provides that a public or private school that is the subject of a report of institutional child abuse or neglect may receive the report and any other information obtained, with the identity of the individuals reporting or supplying information protected except if the individuals reporting or supplying information are employees of the public or private school.

Page 19, lines 6 through 10 allow confidentiality exceptions for institutional child protection assessments to notify the board of directors and notification to any entity which accredits the facility or setting of the determination that institutional child abuse or neglect is indicated and may share the written report of the state child protection team, the approved improvement plan and areas of deficiency that resulted in the notification.

Page 19, lines 11 through16 provides that records and information generated by a public or private school in response to the report, or during an investigation are confidential until the state child protection team makes a determination whether institutional child abuse or neglect is indicated.

Sections 25, 26, 27, and 28:

Sections 25, 26, 27 and 28, pages 24 through 26 are revised to reflect changes proposed in Section 9 regarding the use of “confirmed” to indicate identification of an abused or neglected child and to emphasize that the children’s safety must be included with well-being.

This concludes my testimony, and I am available to answer your questions. Thank you.