

North Dakota Legislative Management
Juvenile Justice System Study
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Touchpoints between Juvenile Court and Child Protection Services

I am Marlys Baker, Child Protection Services Administrator for the Department of Human Services. I am here today to provide you with information regarding the touchpoints between Child Protection Services and the Juvenile Court.

Although the Uniform Juvenile Court Act as well as the Child Abuse and Neglect law have been amended several times since they were originally enacted; 1969 and 1978, respectively. Over that same period, monumental changes have occurred in the way we understand the developmental needs of children and, even more importantly, in the way we understand the impact of child abuse and neglect on the trajectory of a child's life. In 1999, as a new employee of the Department after 6 years in the county doing child protection assessments, I attended a conference where Dr. Vincent Felitti presented the results of the ACE study. ACE refers to Adverse Childhood Experiences and includes physical, sexual and emotional abuse, physical and emotional neglect and exposure to domestic violence, substance abuse and mental illness. The ACE study was a groundbreaking public health study that revealed childhood trauma leads to the adult onset of chronic diseases, depression and other mental illness, violence and being a victim of violence, as well as financial and social problems. The ACE Study has resulted in about 70 research papers since 1998. Hundreds of additional research papers based on the ACE Study have also been published. This research has contributed to our understanding of brain science, how toxic stress caused by ACEs damages the function and structure of kids' developing brains; how the toxic stress caused by ACEs contribute to diseases such as arthritis, heart disease and types of cancers later in life; historical and generational trauma – how toxic stress can alter how our DNA functions, through the study of epigenetics, and how that can be passed on from one generation to the next. Research has also looked at how the brain of a child can be healed with evidence-based therapies and how resilience can be built by implementing trauma informed, evidence-based practices. It is time to build our practices based on what the science is telling us.

Another significant advance in our understanding is recognition of the effects of traumatic experiences. When a person feels intensely threatened by an event he or she is involved in or witnesses, we call that event a trauma. Members of the military experience trauma when exposed to the threats and tragedies of war. Children, even very young children, also experience trauma when an event is frightening, dangerous or violent. Traumatic experiences can initiate strong emotions and physical reactions that can persist long after the event. As a result of research into trauma, the National Traumatic Stress Network has determined that traumatic reactions can include intense responses in children, such as ongoing emotional upset, depressive symptoms, anxiety, behavior changes, difficulty with self-regulation, problems relating to others or forming attachments, attention and academic problems. When a child experiences trauma,

these reactions interfere with the child's daily life and ability to function in society. Research reveals that repeated exposure to traumatic events can affect the brain and nervous system and can lead to long-term health problems, increased use of health and mental health services and increased involvement in child welfare and juvenile justice systems.

The science of early brain development, studied by the Harvard University Center on the Developing Child, tells us that the basic architecture of a child's brain is built over time from the bottom up. In the first few years of life, more than one million new neural connections form for every second. Just as a weak foundation compromises the quality and strength of a house, adverse experiences early in life can impair brain architecture, with negative effects lasting into adulthood. A major ingredient in this developmental process is the interaction between children and their parents and other caregivers in the family or community. In the absence of responsive caregiving—or if responses are unreliable or inappropriate—the brain's architecture does not form as expected, which can lead to disparities in learning and behavior.

Increasingly, it is being recognized that there is a large degree of overlap between the child welfare and juvenile justice systems. This overlap is evidenced by maltreated children who become juvenile delinquents, delinquent children who have histories of maltreatment, and families that have intergenerational histories with both systems. Despite recognition of the overlap, both systems struggle daily with trying to meet their basic mandates: in the child welfare system, to keep children safe and to secure permanent homes for them, and in the juvenile justice system, to hold youth accountable for their delinquent acts, provide treatment to correct their behavior, and promote public safety. Several research studies have documented that child maltreatment increases the likelihood of future delinquency and criminality. Studies have also shown that maltreated children were younger at the time of their first arrest, committed nearly twice as many offenses and were arrested more frequently than children who were not maltreated.

There are 5 touchpoints I will walk through between Child Protection Services and the Juvenile Justice system:

- Communication between Juvenile Court and Child Protection whenever child abuse or neglect is confirmed
- Identification of, and work with, dual status youth and their families
- Communicating about child safety clearly and consistently
- Requiring services when abuse/neglect is confirmed
- Children present in an environment which subjects the child to exposure of a controlled substance, chemical substance, or drug paraphernalia

First Touchpoint:

1. When CPS 'confirms' the presence of child abuse or neglect through the reporting and assessment process by making a determination that "services are

required for the protection and treatment of an abused or neglected child, N.D.C.C. 50-25.1-05.2 requires that the Department (through its authorized agent) make a written report to the juvenile court.

- a. In the South Central Judicial District, a letter acknowledging receipt of the report and encouraging the parent to follow through with services is returned to the county caseworker. The letter may be shared with the family to let them know that the court is aware of the decision of abuse and neglect and that the case worker will be updating the court on their progress.
- b. This was put in place to complete the feedback loop between the court and the social service agency and to provide encouragement to families who may be reluctant to participate in services.
- c. This process was put in place in January 2018 and is in the process of data analysis to determine whether this practice has resulted in an increase in the number of families willing to accept required services.

Disconnect

N.D.C.C. 50-25.1 requires CPS to make a determination whether services are required for the protection and treatment of an abused or neglected child, as well as to provide those services to the child, their caregivers and other children under the same care.

- CPS bases the ‘services required determination’ on a preponderance of evidence as stated in N.D.C.C. Chapter 28-32. **Scope of and procedure on appeal from determination of administrative agency.** Simply stated, CPS decisions require a preponderance of evidence in order to be sustained upon appeal by the subject of a report.
- By contrast, N.D.C.C. 27-20-29. **Hearing - Findings – Dismissal**, states, “If the court finds from clear and convincing evidence that the child is deprived or that the child is in need of treatment or rehabilitation as a delinquent or unruly child, the court shall proceed immediately or at a postponed hearing to make a proper disposition of the case. (emphasis added)
- There is no mechanism to require family or caregiver participation in the “required” services decision in CPS, thus rendering the “services required” determination a misnomer, and leaving a large gap in early intervention for abuse and neglect as well as a gap in credibility for child protection.
- When a preponderance of evidence of abuse or neglect is confirmed, but the level of evidence does not yet reach the “clear and convincing” standard, there is very little the child-serving system can do other than wait for the situation to “get worse” to the point that “clear and convincing evidence”, as interpreted by the

county's States Attorney, is met in order to go forward with a deprivation action in the Juvenile Court.

Proposed resolution:

Amend N.D.C.C. 27-20-02 to include the ability to show clear and convincing evidence of deprivation based on parents' refusal to participate in services to address identified abuse and neglect. In cases where services are required, allow the Court to order services for the protection and treatment of abused and neglected children.

Proposed language:

- i. Is in need of services to provide for the protection and treatment of an abused or neglected child and whose parents, guardian, or other custodian have refused to participate under the services required decision made by the department of human services and court ordered services are necessary

Second touchpoint:

2. When a youth that is involved in the juvenile justice system through an unruly/delinquent referral and is identified as a having a current child protection assessment or a recent services required determination, a protocol has been developed to work jointly between social services, and Juvenile Court, and the family to prevent the youth from deeper involvement in the Juvenile Justice system. This is the Dual Status Youth Initiative (DSYI).
 - a. The DSYI was implemented statewide in January 2019. An evaluation plan is in place to study the effectiveness of the program.
 - b. The goal is reduction in the length and depth of involvement of youth with child abuse and neglect family history in the juvenile justice system by working in synchronicity across both systems.

Third touchpoint:

3. When a CPS worker encounters a child who is not safe to remain in their home, that worker may contact the Juvenile Court for an emergency custody order to take the child into emergency custody under N.D.C.C. 27-20-06. When the order is granted, there must be a hearing within 96 hours, commonly referred to as a shelter care hearing. At this hearing, it is determined whether the child will remain in agency custody for up to 60 days while additional assessment takes place, or whether the child is safe to return home at the time of the hearing.

Disconnect

- There are no clear and universally used criteria or definitions governing emergency orders for removal of a child from the home. No clear definition of when a child should be determined unsafe to remain in the home.
- Each Juvenile Court Director and each social service agency/worker appears to communicate differently across the state.
- There isn't data in either system that counts the numbers and types of denials of requests for emergency custody orders.
- Anecdotally, when speaking with CPS workers from different Judicial Districts, I hear varying accounts about the types of cases where emergency orders are granted or denied. Workers in one county/region describe cases where emergency custody orders are denied, and workers from another region will reply that they routinely receive emergency custody orders in similar cases.
- In some areas, workers tell me their supervisors have advised them not to request an emergency order on certain cases, "because you won't get one." This is based on "lessons learned" rather than on established criteria. This response could leave a vulnerable child in a dangerous situation.
- The lack of clear and consistent criteria for removal not only makes it difficult to provide solid training for CPS workers but is an injustice to children and families.

Proposed resolution:

As part of the Social Service redesign, with technical assistance from Casey Family Programs, the Department will be implementing a screening tool to be used across child welfare programs to determine the appropriate level of intervention into families where abuse or neglect are identified and whether/when services can be safely be discontinued or when a removed child can safely return home.

- The current tool under consideration is a four-question screening which will indicate when a child is safe to remain in the home without intervention; when a child is safe to remain in the home with appropriate safety services in place and when a child must be removed from the home for safety and protection. The tool is based upon an American Bar Association publication entitled "Child Safety: A Guide for Judges and Attorneys." At the most basic level, the questions in the tool are:
 - *Is there a home-like setting where the parents and children live?*
 - *Is there confidence that the place where a parent is residing is stable enough to be able to establish and sustain and in-home safety plan in that location?*
 - *Is the home calm enough to allow safety service providers and activities to occur?*

- The home environment must be absent from a high-frequency of people coming and going; people are not aggressively arguing or physically fighting; and there aren't day-to-day crises that disrupt home life, impede the safety plan and would be unsafe for service providers
- *Is at least one parent willing and able to cooperate with the safety plan?*
 - Willingness is qualified by a parent understanding what the safety plan will entail; acceptance of who will be involved; the frequency and intrusiveness during daily and weekly home life that is necessary; and acceptance of the plan and people involved with no intent to disrupt the plan. There must be confidence that a parent is willing to cooperate with a safety plan to ensure sustainability.
- *Are the necessary safety activities and resources available to implement the plan?*
 - Sufficient resources relates to specifically to having adequate safety services and safety service providers at the level required to sufficiently manage child safety in the home.

It is not yet known whether the Court will adopt this type of framework for determining child safety, safety decision-making and determining the appropriate level of intervention into a family. This and similar models are being used successfully in a number of states' child welfare systems and is recognized as a "best practice" by Casey Family Programs.

Touchpoint #4

When it has been determined that a child has been abused or neglected, but the maltreatment does not meet the level of immediate danger which would warrant an emergency protective order, a petition for deprivation is filed by the county agency under N.D.C.C. 27-20. These petitions are filed through the county's States Attorney. These petitions typically request legal and physical custody to be removed from the parents and placed with the agency for a period up to one year.

Disconnects

Disconnect #1

- The county prosecutor determines the criteria for filing of a petition for deprivation. Some counties have prosecutors who have an interest or passion for child deprivation cases and some do not.

- Each prosecutor has different requirements for county agencies to meet before the prosecutor will agree to go forward with a petition for deprivation.
- Juvenile Court deprivation cases often resemble criminal prosecutions, in which primary goal seems to be proving “who done it” or whether a parent is “guilty”.
- Definitions of “abused child”, “neglected child” in NDCC 50-25.1-02 and “deprived child” on NDCC 27-20-02 are all descriptive of the condition of the child, yet the legal and court systems focus on the ‘guilt’ or ‘not guilt’ of the caregiver rather than on whether the child is in need of services or protection.

Example: There have been cases of head-injured infants living in the home with 2 caregivers (parent and married or unmarried partner). The child presents at a medical facility with an inflicted head injury as testified to by a physician and supported by medical tests and documentation, yet, if it can’t be proven by clear and convincing evidence which of the caregivers caused the injury, the child is returned to the home, often without any protective supervision. A reasonable person can discern that this child is at high risk for further abuse or neglect and clearly meets a definition of an abused child, yet the adjudication revolves around which parent is responsible for the actual injury rather than the child’s need for additional monitoring and medical follow up.

Proposed resolution #1:

Strengthen N.D.C.C. 27-20 to emphasize decision-making focused on the condition, impacts and risks of being “without proper care” (as defined in 27-20-02) to pertain to the child rather than to caregiver ‘guilt’ or ‘not guilt’ and assure that the child receives the ‘protection and treatment’ required in N.D.C.C. 50-25.1-06.

Require and provide training for States Attorneys presenting cases of deprived children in Juvenile Court and judges and referees presiding over deprivation cases.

Disconnect #2

Child protection services conducts assessments of reports of suspected child abuse or neglect whenever abuse or neglect is alleged to be caused by a “person responsible for a child’s welfare”. When abuse or neglect is “confirmed”, but the subject of the assessment is a “person responsible for a child’s welfare, other than a parent, guardian or legal custodian there is no remedy or recourse to protect the child or to impact change in the behavior of the subject through the Juvenile Court. Juvenile Court only has jurisdiction over a parent, guardian or custodian.

For example, when a parent's live-in partner or a step-parent abuses or neglects the child, Child Protection Services has no recourse to remove that individual from the home and no avenue to intervene through the juvenile court, other than to petition for deprivation of the child against the parent. Sometimes that parent may also be a victim of the "person responsible", such as in cases of domestic violence. Child protection services conducts assessments involving many "persons responsible", such as adult family members or unrelated other adults in the child's home where there is no recourse for holding the subject of the assessment accountable or affecting change through services.

Conducting child protection assessments that include individuals who cannot be held accountable by the juvenile system is not a good use of resources that could be better directed to assisting children and their families. Additionally, Child Protection Services staff have related to me that using the terms "services are required for the protection and treatment of an abused or neglected child" as stated in N.D.C.C. 50-25.1-05.1, undermines the credibility of the social service system when there is no mechanism that actually requires the service.

N.D.C.C. 50-25.1-02(1) defines a "person responsible for a child's welfare", as a "person who has responsibility for the care and supervision of a child and who is...":

- The child's parent
- An adult family member of the child
- Any member of the child's household,
- The child's guardian
- The child's foster parent
- An employee or any person providing care for the child in a public or private school
- Any person providing care for the child in a child care setting

N.D.C.C. 27-20-02 (8) defines "Deprived child" as a child who:

a. Is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for the child's physical, mental, or emotional health, or morals, and the deprivation is not due primarily to the lack of financial means of the child's parents, guardian, or other custodian;

NDCC 27-20-03. Jurisdiction, states:

1. The juvenile court has exclusive original jurisdiction of the following proceedings, which are governed by this chapter:
 - a. Proceedings in which a child is alleged to be delinquent, unruly, or deprived;

Proposed resolution:

Provide jurisdiction to the Juvenile Court over “persons responsible for a child’s welfare” in a child’s home in N.D.C.C. 27-20 or conversely, remove those who are not a child's parents, guardian, or other custodian from N.D.C.C. 50-25.1.

Touchpoint #5

N.D.C.C. 27-20-02(8) as well as N.D.C.C. 50-25.1-02(14g) address children present in an environment which subjects the child to exposure of a controlled substance, chemical substance, or drug paraphernalia as prohibited by N.D.C.C. section 19-03.1-22.2. Endangerment of child or vulnerable adult.

- NDCC 19-03.1-22.2(c) defines “controlled substance” (NDCC 19-03.1-01) but excludes less than one-half ounce of marijuana.
- Children in child protection assessments are sometimes medically screened for exposure to controlled substances. In two recent cases, a 4 year-old and a 2 year-old tested positive for THC in hair follicle tests. While a hair follicle test can specify an amount of certain chemical substances in the child’s hair sample , the tests cannot reveal whether a child has been exposed to less than half an ounce of marijuana at any one time, or whether a child is exposed to less than half an ounce of marijuana multiple times per day or any specific amount of marijuana.

Proposed resolution

- Amend N.D.C.C. 19-03.1-22.2(c) to remove the exception of less than one half ounce of marijuana from the statute on child endangerment.
- Amend NDCC 50-25.1-02(14g) and N.D.C.C. 27-20- 02(8g) to remove reference to N.D.C.C. 19-03.1-22.2(c)
- The legislature should reconsider the amount of marijuana exposure that is acceptable for children birth to age 18

19-03.1-22.2. Endangerment of child or vulnerable adult. (emphasis added)

1. For purposes of this section:

- a. "Chemical substance" means a substance intended to be used as a precursor in the manufacture of a controlled substance or any other chemical intended to be used in the manufacture of a controlled substance. Intent under this subsection may be demonstrated by the substance's use, quantity, manner of storage, or proximity to other precursors or to manufacturing equipment.
- b. "Child" means an individual who is under the age of eighteen years.
- c. "Controlled substance" means the same as that term is defined in section 19-03.1-01, except the term does not include less than one-half ounce of marijuana.

The United States Surgeon General's Advisory: Marijuana Use and the Developing Human Brain contains the following information:

"The human brain continues to develop from before birth into the mid-20s and is vulnerable to the effects of addictive substances. Frequent marijuana use is associated with:

- Changes in the areas of the brain involved in attention, memory, decision-making, and motivation. Deficits in attention and memory have been detected in marijuana-using teens even after a month of abstinence.
- Impaired learning in adolescents. Chronic use is linked to declines in IQ, school performance that jeopardizes professional and social achievements, and life satisfaction.
- Increased rates of school absence and drop-out, as well as suicide attempts.
- Risk for and early onset of psychotic disorders, such as schizophrenia. The risk for psychotic disorders increases with frequency of use, potency of the marijuana product, and as the age at first use decreases."

Children's exposure to marijuana can begin prenatally, as mothers use this substance while pregnant as well as while breastfeeding, and environmental exposure can continue through childhood and adolescence, even when the child, him/herself doesn't use the substance directly. The vulnerability of the developing brain to repeated exposure to marijuana can have serious consequences for the child's future.

In closing, these 5 touchpoints between Child Protection Services and Juvenile Court:

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represent the threshold into the human service/juvenile justice systems for far too many of our children. When done well and effectively, these junctures have the potential to reverse the course of the 'child welfare to juvenile justice pipeline' by intervening early and effectively, providing the right service to the people at the right time. But when disconnected, have the potential to cause confusion, frustration and exhaustion for the families involved as well as for the staff who are trying to help and the communities that are looking to these systems for solutions. While child welfare and juvenile justice should not be the 'gateway to services' for children and families who are struggling, these two systems need to be closely aligned and communicate clearly in order to effectively serve our communities, and most importantly, our children.