

STATE OF NORTH DAKOTA
ATTORNEY GENERAL'S OPINION 94-F-12

Date issued: April 5, 1994

Requested by: Henry C. Wessman, Executive Director,
Department of Human Services

- QUESTIONS PRESENTED -

I.

Whether the State Child Protection Team appointed by the Department of Human Services must provide to the public information reflecting the disposition of reports of institutional child abuse or neglect received by the Department.

II.

Whether the information reflecting the disposition of reports of institutional child abuse or neglect provided to the public may include a description of the investigation, the findings of the investigation, the determination whether there exists probable cause to believe that child abuse or neglect is indicated, and any recommendations made by the State Child Protection Team.

- ATTORNEY GENERAL'S OPINION -

I.

It is my opinion that the State Child Protection Team appointed by the Department of Human Services must provide to the public information reflecting the disposition of reports of institutional child abuse or neglect received by the Department, provided the identity of the persons reporting the child abuse or neglect, the children, and their parents, is protected.

II.

It is my further opinion that the information reflecting the disposition of reports of institutional child abuse or neglect provided to the public may include a description of the investigation, the findings of the investigation, the determination whether there exists probable cause to believe that child abuse or neglect is indicated, and any

recommendations made by the State Child Protection Team.

- ANALYSES -

I.

North Dakota state law requires the reporting of suspected child abuse or neglect under certain circumstances. N.D.C.C. ? 50-25.1-03 states in pertinent part:

1. Any physician, nurse, dentist, optometrist, medical examiner or coroner, or any other medical or mental health professional, religious practitioner of the healing arts, schoolteacher or administrator, school counselor, addiction counselor, social worker, day care center or any other child care worker, police or law enforcement officer, or member of the clergy having knowledge of or reasonable cause to suspect that a child is abused or neglected shall report the circumstances to the department if the knowledge or suspicion is derived from information received by that person in that person's official or professional capacity. . .
.
2. Any person having reasonable cause to suspect that a child is abused or neglected may report such circumstances to the department or the department's designee.

The Department of Human Services "shall immediately initiate an investigation, or cause an investigation, of any report of child abuse or neglect." N.D.C.C. ? 50-25.1-05. In all cases of alleged institutional child abuse or neglect, the State Child Protection Team is to determine whether there exists probable cause to believe that child abuse or neglect is indicated. N.D.C.C. ? 50-25.1-05.1(1)(a). The State Child Protection Team, which is appointed by the Department of Human Services, "may issue reports or recommendations on any aspect of child abuse or neglect it deems appropriate." N.D.C.C. ? 50-25.1-04.1.

Generally, "[a]ll reports made under [N.D.C.C. ch. 50-25.1], as well as any other information obtained, are confidential"

ATTORNEY GENERAL'S OPINION 94-12
April 5, 1994

but must be made available to individuals specified in the statute. N.D.C.C. ? 50-25.1-11. "All reports or recommendations issued [by the State Child Protection Team after an investigation of reported institutional child abuse or neglect] are subject to the provisions of section 50-25.1-11, except that the team shall make available information reflecting the disposition of reports of institutional child abuse or neglect, where the identity of persons reporting, and of the children and parents of children involved, is protected." N.D.C.C. ? 50-25.1-04.1. (Emphasis supplied.) It is my opinion that N.D.C.C. ? 50-25.1-04.1 requires that information reflecting the disposition of reports of institutional child abuse or neglect be made available to the public.

Therefore it is my opinion that the State Child Protection Team appointed by the Department of Human Services must provide to the public information reflecting the disposition of reports of institutional child abuse or neglect received by the Department, provided the identity of the persons reporting the child abuse or neglect, the children, and their parents, is protected.

II.

The State Child Protection Team must make available to the public "information reflecting the disposition of reports [to the Department] of institutional child abuse or neglect. . ." N.D.C.C. ? 50-25.1-04.1. (Emphasis supplied.)

N.D.C.C. ? 50-25.1-04.1 does not indicate the content or extent of the "information reflecting the disposition of reports of institutional child abuse or neglect" that must be made available to the public, therefore the statute arguably is ambiguous in this regard. The only statutory limitation is that the information which is made public may not identify the person reporting the institutional child abuse or neglect, or the children and their parents involved in the investigation.

N.D.C.C. ? 50-25.1-04.1. In determining the intent of legislation, the object sought to be obtained and the legislative history may be considered. N.D.C.C. ? 1-02-39. The release of information must promote the legislative purpose of N.D.C.C. ch. 50-25.1, which is "to protect the health and welfare of children." N.D.C.C. ? 50-25.1-01. The purpose of making the disposition of the reports public is to

ATTORNEY GENERAL'S OPINION 94-12
April 5, 1994

provide the public with adequate information to restore public confidence in an institution for which probable cause was not determined and to inform the public of corrective actions regarding institutions where a finding of probable cause was made. Hearing on H.1169 Before the Senate Soc. Serv. & Vet. Affairs Comm., 49th N.D. Leg. (Feb. 22, 1985) (Statement of Gladys Cairns, D.H.S.). The public, and particularly parents, have an interest in being informed about the status of institutions to which they entrust the care of their children. To meet this purpose the information provided about the disposition of reports of institutional child abuse or neglect must be such that the public could reasonably be reassured by the actions taken by the State Child Protection Team in response to a report of institutional child abuse or neglect.

Information which reflects the disposition of a report of child abuse or neglect would include a description of what the State Child Protection Team did upon receiving a report of institutional child abuse or neglect. The State Child Protection Team has several statutory duties to fulfill when disposing of a report of institutional child abuse or neglect. The Team must conduct an investigation. N.D.C.C. ? 50-25.1-05. The Team also must determine whether there does or does not exist probable cause to believe that child abuse or neglect is indicated, see N.D.C.C. ? 50-25.1-05.1. Also, the Team "may issue reports or recommendations on any aspect of child abuse or neglect it deems appropriate." N.D.C.C. ? 50-25.1-04.1.

Therefore, it is my opinion that the information reflecting the disposition of reports of institutional child abuse or neglect which the State Child Protection Team may release pursuant to N.D.C.C. ? 50-25.1-04.1 may include a description of the investigation, the findings of the investigation, the determination whether there exists probable cause to believe that child abuse or neglect is indicated, and any recommendations made by the State Child Protection Team. The description must be adequate to fairly advise the public that corrective action is not necessary or that proper corrective action has been taken "to protect the health and welfare of children." N.D.C.C. ? 50-25.1-01.

- EFFECT -

ATTORNEY GENERAL'S OPINION 94-12
April 5, 1994

This opinion is issued pursuant to N.D.C.C. ? 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.

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