

Introduced by

Human Services Committee

(At the request of the Department of Health and Human Services)

1 A BILL for an Act to amend and reenact section 50-25.1-02, subsection 5 of section 50-25.1-05,
2 and sections 50-25.1-05.2, 50-25.1-05.5, 50-25.1-16, 50-25.1-17, 50-25.1-18, 50-25.1-20, and
3 50-25.1-21 of the North Dakota Century Code, relating to child abuse and neglect, the child
4 abuse information index, disclosure of records for child protection purposes, prenatal exposure
5 to controlled substances and alcohol, and alternative response assessments.

6 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

7 **SECTION 1. AMENDMENT.** Section 50-25.1-02 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **50-25.1-02. Definitions.**

10 In this chapter, unless the context or subject matter otherwise requires:

- 11 1. "A person responsible for the child's welfare" means an individual who has
12 responsibility for the care or supervision of a child and who is the child's parent, an
13 adult family member of the child, any member of the child's household, the child's
14 guardian, or the child's foster parent; or an employee of, or any person providing care
15 for the child in, a child care setting. For the purpose of institutional child abuse or
16 neglect, "A person responsible for the child's welfare" means an institution that has
17 responsibility for the care or supervision of a child.
- 18 2. ~~"Abuse of alcohol", "alcohol abuse", or "abused alcohol" means alcohol use disorder~~
19 ~~as defined in the current edition of the "Diagnostic and Statistical Manual of Mental~~
20 ~~Disorders" published by the American psychiatric association or a maladaptive use of~~
21 ~~alcohol with negative medical, sociological, occupational, or familial effects.~~
- 22 3. "Abused child" means an individual under the age of eighteen years who is suffering
23 from abuse as defined in section 14-09-22 caused by a person responsible for the
24 child's welfare, and includes a sexually abused child who is suffering from or was

1 subjected to any act in violation of sections 12.1-20-01 through 12.1-20-07, sections
2 12.1-20-11 through 12.1-20-12.3, or chapter 12.1-27.2, ~~by any individual, including a~~
3 juvenile.

4 4.3. "Alternative response assessment" means a child protection response involving
5 substance exposed ~~newborns~~infants which is designed to:
6 a. Provide referral services to and monitor support services for a person responsible
7 for the child's welfare and the substance exposed ~~newborn~~infant; and
8 b. Develop a plan of safe care for the substance exposed ~~newborn~~infant.

9 5.4. "Authorized agent" means the human service zone, unless another entity is
10 designated by the department.

11 6.5. "Child abuse information index" means a categorized registry of subjects of reports
12 confirmed or confirmed with unknown subjects for child abuse, neglect, or death
13 resulting from abuse or neglect which are filed pursuant to section 50-25.1-05.2.

14 6. "Child fatality review panel" means a multidisciplinary team consisting of a
15 representative of the department and, if possible, a forensic pathologist, a physician, a
16 representative of the department of health and human services injury prevention, a
17 representative of the attorney general, a representative of the superintendent of public
18 instruction, a representative of the department of corrections and rehabilitation, a
19 peace officer licensed in the state, a mental health professional, a representative of
20 emergency medical services, a medical services representative from a federally
21 recognized Indian tribe in this state, one or more representatives of the lay community,
22 and a designated tribal representative, as an ad hoc member, acting for each federally
23 recognized Indian tribe in this state. A team member, at the time of selection and while
24 serving on the panel, must be a staff member of the public or private agency the
25 member represents or shall serve without remuneration. The child fatality review panel
26 may not be composed of fewer than three individuals.

27 7. "Child in need of services" means a child who in any of the following instances is in
28 need of treatment or rehabilitation:
29 a. Is habitually and without justification truant from school or absent from school
30 without an authorized excuse for more than five days during a school year;

- 1 b. Is habitually disobedient of the reasonable and lawful commands of the child's
2 parent, guardian, or other custodian including runaway and is ungovernable or
3 who is willfully in a situation that is dangerous or injurious to the health, safety, or
4 morals of the child or others;
- 5 c. Except for an offense committed by a minor who is fourteen years of age or older
6 under subsection 2 of section 12.1-31-03 or an equivalent local ordinance or
7 resolution, has committed an offense applicable only to a child; or
- 8 d. Is under fourteen years of age and has purchased, possessed, smoked, or used
9 tobacco, a tobacco-related product, an electronic smoking device, or an
10 alternative nicotine product in violation of subsection 2 of section 12.1-31-03. As
11 used in this subdivision, "electronic smoking device" and "alternative nicotine
12 product" have the same meaning as in section 12.1-31-03.
- 13 8. "Child protection assessment" means a factfinding process designed to provide
14 information that enables a determination of whether a child meets the definition of an
15 abused or neglected child, including instances that may not identify a specific person
16 responsible for the child's welfare which is responsible for the abuse or neglect.
- 17 9. "Children's advocacy center" means a full or associate member of the national
18 children's alliance which assists in the coordination of the investigation in response to
19 allegations of child abuse by providing a dedicated child-friendly location at which to
20 conduct forensic interviews, forensic medical examinations, and other appropriate
21 services and which promotes a comprehensive multidisciplinary team response to
22 allegations of child abuse. The team response may include forensic interviews,
23 forensic medical examinations, mental health and related support services, advocacy,
24 and case review.
- 25 10. "Citizen review committee" means a committee appointed by the department to review
26 the department's provision of child welfare services.
- 27 11. "Confirmed" means that upon completion of a child protection assessment, the
28 department determines, based upon a preponderance of the evidence, that a child
29 meets the definition of an abused or neglected child, and the department confirms the
30 identity of a specific person responsible for the child's welfare which is responsible for
31 the abuse or neglect.

- 1 12. "Confirmed with unknown subject" means that upon completion of a child protection
2 assessment, the department determines, based upon a preponderance of the
3 evidence, that a child meets the definition of an abused or neglected child, but the
4 evidence does not confirm the identity of a specific person responsible for the child's
5 welfare which is responsible for the abuse or neglect.
- 6 13. "Department" means the department of health and human services.
- 7 14. "Family services assessment" means a child protection services response to reports of
8 suspected child abuse or neglect in which the child is determined to be at low risk and
9 safety concerns for the child are not evident according to guidelines developed by the
10 department.
- 11 15. "Impending danger" means a foreseeable state of danger in which a behavior, attitude,
12 motive, emotion, or situation can be reasonably anticipated to have severe effects on
13 a child according to criteria developed by the department.
- 14 16. "Indicated" means that upon completion of an assessment of a report of institutional
15 child abuse or neglect, the department determines based upon a preponderance of
16 the evidence, that a child meets the definition of an abused or neglected child.
- 17 17. "Institutional child abuse or neglect" means situations of known or suspected child
18 abuse or neglect when the institution responsible for the child's welfare is a public or
19 private school, a residential facility or setting either licensed, certified, or approved by
20 the department, or a residential facility or setting that receives funding from the
21 department. For purposes of this subsection, residential facilities and settings
22 excludes correctional, medical, home- and community-based residential rehabilitation,
23 and educational boarding care settings.
- 24 18. "Near death" means an act that, as certified by a physician, places a child in serious or
25 critical condition.
- 26 19. "Neglected child" means a child who, due to the action or inaction of a person
27 responsible for the child's welfare:
- 28 a. Is without proper care or control, subsistence, education as required by law, or
29 other care or control necessary for the child's physical, mental, or emotional
30 health, or morals, and is not due primarily to the lack of financial means of a
31 person responsible for the child's welfare;

- 1 b. Has been placed for care or adoption in violation of law;
- 2 c. Has been abandoned;
- 3 d. Is without proper care, control, or education as required by law, or other care and
- 4 control necessary for the child's well-being because of the physical, mental,
- 5 emotional, or other illness or disability of a person responsible for the child's
- 6 welfare, and that such lack of care is not due to a willful act of commission or act
- 7 of omission, and care is requested by a person responsible for the child's welfare;
- 8 e. Is in need of treatment and a person responsible for the child's welfare has
- 9 refused to participate in treatment as ordered by the juvenile court;
- 10 f. Was subject to prenatal exposure to chronic or severe use of alcohol or any
- 11 controlled substance as defined in section 19-03.1-01 in a manner not lawfully
- 12 prescribed by a practitioner;
- 13 g. Is present in an environment subjecting the child to exposure of a controlled
- 14 substance, chemical substance, or drug paraphernalia as prohibited by section
- 15 19-03.1-22.2, except as used in this subsection, controlled substance includes
- 16 any amount of marijuana; or
- 17 h. Is a victim of human trafficking as defined in title 12.1.
- 18 20. "Prenatal exposure to a controlled substance" means use of a controlled substance as
- 19 defined in chapter 19-03.1 by a pregnant woman for a nonmedical purpose during
- 20 pregnancy as evidenced by withdrawal symptoms in the child at birth, results of a
- 21 toxicology test performed on the mother at delivery or the child at birth, or medical
- 22 effects or developmental delays during the child's first year of life that medically
- 23 indicate prenatal exposure to a controlled substance.
- 24 21. "Protective services" includes services performed after an assessment of a report of
- 25 child abuse or neglect has been conducted, such as social assessment, service
- 26 planning, implementation of service plans, treatment services, referral services,
- 27 coordination with referral sources, progress assessment, monitoring service delivery,
- 28 and direct services.
- 29 22. "State child protection team" means a multidisciplinary team consisting of a
- 30 representative of the department, a representative of the attorney general, a
- 31 representative of law enforcement, a representative of the superintendent of public

1 instruction, a parent with lived experience, one or more representatives of the lay
2 community, and, as an ad hoc member, the designee of the chief executive official of
3 any institution named in a report of institutional abuse or neglect. All team members, at
4 the time of their selection and thereafter, must be staff members of the public or
5 private agency they represent or shall serve without remuneration. An attorney
6 member of the child protection team may not be appointed to represent the child or the
7 parents at any subsequent court proceeding nor may the child protection team be
8 composed of fewer than three individuals. A quorum of the state child protection team
9 consists of a minimum of one member from the department and two other state child
10 protection team members.

11 23. "~~Substance exposed newborn infant~~" means an infant younger than ~~twenty-eight-~~
12 ~~day~~twelve months of age at the time of the initial report of child abuse or neglect and
13 who is identified as being affected by substance ~~abuse~~use or withdrawal symptoms or
14 by a fetal alcohol spectrum disorder.

15 24. "Substance use disorder" means a substance-related or addictive disorder identified in
16 the "Diagnostic and Statistical Manual of Mental Disorders", American psychiatric
17 association, fifth edition, text revision (2013), or a future edition adapted by the
18 department.

19 25. "Unable to determine" means insufficient evidence is available to enable a
20 determination whether a child meets the definition of an abused or neglected child.

21 ~~25-26.~~ "Unconfirmed" means that upon completion of a child protection assessment, the
22 department has determined, based upon a preponderance of the evidence, that a
23 child does not meet the definition of an abused or neglected child.

24 **SECTION 2. AMENDMENT.** Subsection 5 of section 50-25.1-05 of the North Dakota
25 Century Code is amended and reenacted as follows:

26 5. Except as prohibited under title 42, Code of Federal Regulations, part 2, or title 34,
27 Code of Federal Regulations, part 99, a medical, dental, or mental health professional,
28 hospital, medical or mental health facility, ~~or~~ health care clinic, or a public or private
29 school shall disclose to the department or the authorized agent, upon request, the
30 records of a patient ~~or, client which are relevant to a child protection assessment of~~
31 ~~reported child abuse or neglect or to a confirmed decision, or student.~~ The

1 department, or the authorized agent, shall limit the request for records to the minimum
2 amount of records necessary to enable a determination to be made or to support a
3 determination of whether child abuse or neglect is confirmed, confirmed with unknown
4 subject, or unable to determine to provide for the protection and treatment of an
5 abused or neglected child.

6 **SECTION 3. AMENDMENT.** Section 50-25.1-05.2 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **50-25.1-05.2. Report to the court - Entry of report in the child abuse information**
9 **index.**

- 10 1. Upon confirmation that a child meets the definition of an abused or neglected child, the
11 department promptly shall make a written report of the decision to the juvenile court
12 having jurisdiction in the matter.
- 13 2. The department promptly shall file a report of a decision that a child meets the
14 definition of an abused or neglected child under this section in the child abuse
15 information index after the time to appeal the confirmed or confirmed with unknown
16 subject decision has expired.
- 17 3. The department may not file a report of a decision that a child meets the definition of
18 neglected child in the child abuse information index for a decision exclusively based
19 on educational neglect.

20 **SECTION 4. AMENDMENT.** Section 50-25.1-05.5 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **50-25.1-05.5. Child abuse information index - Establishment.**

23 The division of children and family services or other division as determined appropriate by
24 the department shall maintain a child abuse information index of all reports confirmed or
25 confirmed with unknown subjects for child abuse, neglect, or death resulting from abuse or
26 neglect which are filed pursuant to section 50-25.1-05.2. Reports must remain on the child
27 abuse information index for a period no greater than twenty-five years following the
28 determination. The department shall adopt rules for child abuse information index retention
29 schedules and expungement procedures from those confirmed subjects of child abuse, neglect,
30 or death resulting from abuse or neglect.

1 **SECTION 5. AMENDMENT.** Section 50-25.1-16 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **50-25.1-16. Prenatal exposure to controlled substances - Reporting requirements.**

- 4 1. An individual required to report under section 50-25.1-03 who has knowledge of or
5 reasonable cause to suspect that a woman is pregnant and has used a controlled
6 substance for a nonmedical purpose during the pregnancy shall report the
7 circumstances to the department or authorized agent if the knowledge or suspicion is
8 derived from information received by that individual in that individual's official or
9 professional capacity.
- 10 2. Any individual may make a voluntary report if the individual has knowledge of or
11 reasonable cause to suspect that a woman is pregnant and has used a controlled
12 substance for a nonmedical purpose during the pregnancy.
- 13 3. If a report alleges a pregnant woman's use of a controlled substance for a nonmedical
14 purpose, the department or authorized agent immediately shall initiate an appropriate
15 assessment and offer services indicated under the circumstances. ~~Services offered~~
16 ~~may~~that must include a referral for an ~~addiction~~ assessment, ~~a referral for~~ of the
17 presence of a substance use disorder with expectation to follow any treatment if
18 ~~recommended~~recommendations, ~~or~~and a referral for prenatal care. The department or
19 authorized agent may also take any appropriate action under chapter 25-03.1.
- 20 4. A report and assessment under this section is not required if the pregnant woman
21 voluntarily enters treatment in a licensed treatment program. If the pregnant woman
22 does not complete voluntary treatment, continues to use controlled substances for a
23 nonmedical purpose, or fails to follow treatment recommendations, an individual
24 required to report under section 50-25.1-03 who has knowledge of the failure to
25 complete voluntary treatment, continued use of controlled substance for nonmedical
26 purpose, or failure to follow treatment recommendations shall make a report as
27 required by this section.
- 28 5. A report under this section must be made as described in section 50-25.1-04 and must
29 be sufficient to identify the woman, the nature and extent of use, if known, and the
30 name and address of the individual making the report.

1 **SECTION 6. AMENDMENT.** Section 50-25.1-17 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **50-25.1-17. Toxicology testing - Requirements.**

- 4 1. If the woman has obstetrical complications that are a medical indication of possible
5 use of a controlled substance for a nonmedical purpose or severe or chronic use of
6 alcohol, upon the consent of the pregnant woman, or without consent if a specimen is
7 otherwise available, a physician shall administer a toxicology test to a pregnant
8 woman under the physician's care or to a woman under the physician's care within
9 eight hours after delivery to determine whether there is evidence that she has ingested
10 a controlled substance or alcohol. If the test results are positive, the physician shall
11 report the results under section 50-25.1-03.1. A negative test result or the pregnant
12 woman's refusal to consent to a test does not eliminate the obligation to report under
13 section 50-25.1-03 if other evidence gives the physician reason to believe the patient
14 has used a controlled substance for a nonmedical purpose or has engaged in severe
15 or chronic use of alcohol.
- 16 2. If a physician has reason to believe based on a medical assessment of the mother or
17 the infant that the mother used a controlled substance for a nonmedical purpose or
18 engaged in severe or chronic use of alcohol during the pregnancy, the physician shall
19 administer, without the consent of the child's parents or guardian, to the newborn
20 infant born under the physician's care a toxicology test to determine whether there is
21 evidence of prenatal exposure to a controlled substance or alcohol. If the test results
22 are positive, the physician shall report the results as neglect under section 50-25.1-03.
23 A negative test result does not eliminate the obligation to report under section
24 50-25.1-03 if other medical evidence of prenatal exposure to a controlled substance or
25 severe or chronic use of alcohol is present.
- 26 3. A physician or any other medical personnel administering a toxicology test to
27 determine the presence of a controlled substance or alcohol in a pregnant woman, in a
28 woman within eight hours after delivery, or in a child at birth or during the first month of
29 life is immune from civil or criminal liability arising from administration of the test if the
30 physician ordering the test believes in good faith that the test is required under this
31 section and the test is administered in accordance with an established protocol and

1 reasonable medical practice. A physician or any other medical personnel who
2 determines in good faith not to administer a toxicology test under this section is
3 immune from liability for not administering the test.

4 **SECTION 7. AMENDMENT.** Section 50-25.1-18 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **50-25.1-18. Prenatal exposure to severe or chronic use of alcohol abuse - Reporting**
7 **requirements.**

- 8 1. An individual required to report under section 50-25.1-03 who has knowledge of or
9 reasonable cause to suspect that a woman is pregnant and has ~~abused~~engaged in
10 severe or chronic use of alcohol after the woman knows of the pregnancy ~~may~~shall:
11 a. Arrange for an ~~addiction~~ assessment for the presence of a substance use
12 disorder conducted by a licensed treatment program and confirm that the
13 recommendations indicated by the assessment are followed; or
14 b. Immediately report the circumstances to the department or authorized agent if
15 the knowledge or suspicion is derived from information received by that individual
16 in that individual's official or professional capacity.
- 17 2. An individual may make a voluntary report if the individual has knowledge of or
18 reasonable cause to suspect that a woman is pregnant and has ~~abused~~engaged in
19 severe or chronic use of alcohol during the pregnancy.
- 20 3. If the woman is referred for an ~~addiction~~substance use disorder assessment under
21 subdivision a of subsection 1 and fails to obtain an assessment, continues to engage
22 in severe or chronic use of alcohol or refuses to comply with the recommendations of
23 the assessment, an individual required to report under section 50-25.1-03 who has
24 knowledge of the failure to obtain the assessment, continued severe or chronic use of
25 alcohol, or refusal to comply with recommendations of the assessment shall make a
26 report to the department or authorized agent.
- 27 4. If a report alleges a pregnant woman has ~~abused~~engaged in severe or chronic use of
28 alcohol, the department or authorized agent shall immediately initiate an appropriate
29 assessment ~~and offer services indicated under the circumstances. Services offered~~
30 ~~may~~that must include a referral for an ~~addiction~~ assessment, ~~a referral for the~~
31 presence of a substance use disorder with expectation to follow any treatment, if

1 recommended recommendations, ~~or~~ and a referral for prenatal care. The department
2 or authorized agent may also take any appropriate action under chapter 25-03.1.

3 5. A report and assessment under this section is not required if the pregnant woman
4 voluntarily enters treatment in a licensed treatment program. If the pregnant woman
5 does not complete voluntary treatment, continues to engage in severe or chronic use
6 of alcohol, or fails to follow treatment recommendations, an individual required to
7 report under section 50-25.1-03 who has knowledge of the failure to complete
8 voluntary treatment, continued severe or chronic use of alcohol, or failure to follow
9 treatment recommendations shall make a report as required by this section.

10 6. A report under this section must be made as described in section 50-25.1-04 and must
11 be sufficient to identify the woman, the ~~nature and~~ extent of the ~~abuse~~ current use of
12 alcohol, any ~~health risks~~ suspected symptoms and problems associated with the ~~abuse~~
13 of ~~alcohol~~ a substance use disorder, and the name and address of the individual
14 making the report.

15 **SECTION 8. AMENDMENT.** Section 50-25.1-20 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **50-25.1-20. Alternative response assessment - Compliance.**

18 If an alternative response assessment is initiated as a result of a report of child abuse or
19 neglect, a decision that a child is confirmed abused or neglected may not be made if the person
20 responsible for the child's welfare complies with the resulting referred services and plan of safe
21 care for the substance exposed ~~newborn~~ infant. The department or authorized agent shall
22 determine whether a person responsible for the child's welfare has complied with the referred
23 services and plan of safe care for the substance exposed ~~newborn~~ infant. If the department or
24 authorized agent determines a person responsible for the child's welfare has not complied with
25 the referred services and plan of safe care for the substance exposed ~~newborn~~ infant, an
26 assessment of the initial report of child abuse or neglect may be completed.

27 **SECTION 9. AMENDMENT.** Section 50-25.1-21 of the North Dakota Century Code is
28 amended and reenacted as follows:

29 **50-25.1-21. Alternative response assessment - Services.**

30 1. In response to an alternative response assessment, the department:

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- 1 a. Shall provide referral services to, and monitor support services for, the person
- 2 responsible for the child's welfare, the substance exposed ~~newborn~~infant, and
- 3 other children under the same care as may be necessary for their well-being and
- 4 safety;
- 5 b. Shall develop a plan of safe care for the substance exposed ~~newborn~~infant; and
- 6 c. May take any appropriate action under chapter 25-03.1.
- 7 2. The department may discharge the powers and duties provided under this section
- 8 through an authorized agent.