

Sixty-eighth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2103

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 3. "Alcohol misuse" means a pattern of drinking that results in harm to one's health,
5 interpersonal relationships, or ability to work.

6 4. "Alternative response assessment" means a child protection response involving
7 substance exposed ~~newborns~~infants which is designed to:

8 a. Provide referral services to and monitor support services for a person responsible
9 for the child's welfare and the substance exposed ~~newborn~~infant; and

10 b. Develop a plan of safe care for the substance exposed ~~newborn~~infant.

11 5. "Authorized agent" means the human service zone, unless another entity is
12 designated by the department.

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

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

29 ~~7.8.~~ "Child in need of services" means a child who in any of the following instances is in
30 need of treatment or rehabilitation:

- 1 a. Is habitually and without justification truant from school or absent from school
2 without an authorized excuse for more than five days during a school year;
- 3 b. Is habitually disobedient of the reasonable and lawful commands of the child's
4 parent, guardian, or other custodian including runaway and is ungovernable or
5 who is willfully in a situation that is dangerous or injurious to the health, safety, or
6 morals of the child or others;
- 7 c. Except for an offense committed by a minor who is fourteen years of age or older
8 under subsection 2 of section 12.1-31-03 or an equivalent local ordinance or
9 resolution, has committed an offense applicable only to a child; or
- 10 d. Is under fourteen years of age and has purchased, possessed, smoked, or used
11 tobacco, a tobacco-related product, an electronic smoking device, or an
12 alternative nicotine product in violation of subsection 2 of section 12.1-31-03. As
13 used in this subdivision, "electronic smoking device" and "alternative nicotine
14 product" have the same meaning as in section 12.1-31-03.
- 15 ~~8-9.~~ "Child protection assessment" means a factfinding process designed to provide
16 information that enables a determination of whether a child meets the definition of an
17 abused or neglected child, including instances that may not identify a specific person
18 responsible for the child's welfare which is responsible for the abuse or neglect.
- 19 ~~9-10.~~ "Children's advocacy center" means a full or associate member of the national
20 children's alliance which assists in the coordination of the investigation in response to
21 allegations of child abuse by providing a dedicated child-friendly location at which to
22 conduct forensic interviews, forensic medical examinations, and other appropriate
23 services and which promotes a comprehensive multidisciplinary team response to
24 allegations of child abuse. The team response may include forensic interviews,
25 forensic medical examinations, mental health and related support services, advocacy,
26 and case review.
- 27 ~~10-11.~~ "Citizen review committee" means a committee appointed by the department to review
28 the department's provision of child welfare services.
- 29 ~~11-12.~~ "Confirmed" means that upon completion of a child protection assessment, the
30 department determines, based upon a preponderance of the evidence, that a child
31 meets the definition of an abused or neglected child, and the department confirms the

1 identity of a specific person responsible for the child's welfare which is responsible for
2 the abuse or neglect.

3 ~~42.13.~~ "Confirmed with unknown subject" means that upon completion of a child protection
4 assessment, the department determines, based upon a preponderance of the
5 evidence, that a child meets the definition of an abused or neglected child, but the
6 evidence does not confirm the identity of a specific person responsible for the child's
7 welfare which is responsible for the abuse or neglect.

8 ~~43.14.~~ "Department" means the department of health and human services.

9 ~~44.15.~~ "Family services assessment" means a child protection services response to reports of
10 suspected child abuse or neglect in which the child is determined to be at low risk and
11 safety concerns for the child are not evident according to guidelines developed by the
12 department.

13 ~~45.16.~~ "Impending danger" means a foreseeable state of danger in which a behavior, attitude,
14 motive, emotion, or situation can be reasonably anticipated to have severe effects on
15 a child according to criteria developed by the department.

16 ~~46.17.~~ "Indicated" means that upon completion of an assessment of a report of institutional
17 child abuse or neglect, the department determines based upon a preponderance of
18 the evidence, that a child meets the definition of an abused or neglected child.

19 ~~47.18.~~ "Institutional child abuse or neglect" means situations of known or suspected child
20 abuse or neglect when the institution responsible for the child's welfare is a public or
21 private school, a residential facility or setting either licensed, certified, or approved by
22 the department, or a residential facility or setting that receives funding from the
23 department. For purposes of this subsection, residential facilities and settings
24 excludes correctional, medical, home- and community-based residential rehabilitation,
25 and educational boarding care settings.

26 ~~48.19.~~ "Near death" means an act that, as certified by a physician, places a child in serious or
27 critical condition.

28 ~~49.20.~~ "Neglected child" means a child who, due to the action or inaction of a person
29 responsible for the child's welfare:

30 a. Is without proper care or control, subsistence, education as required by law, or
31 other care or control necessary for the child's physical, mental, or emotional

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

1 ~~22-23.~~ "State child protection team" means a multidisciplinary team consisting of a
2 representative of the department, a representative of the attorney general, a
3 representative of law enforcement, a representative of the superintendent of public
4 instruction, a parent with lived experience, one or more representatives of the lay
5 community, and, as an ad hoc member, the designee of the chief executive official of
6 any institution named in a report of institutional abuse or neglect. All team members, at
7 the time of their selection and thereafter, must be staff members of the public or
8 private agency they represent or shall serve without remuneration. An attorney
9 member of the child protection team may not be appointed to represent the child or the
10 parents at any subsequent court proceeding nor may the child protection team be
11 composed of fewer than three individuals. A quorum of the state child protection team
12 consists of a minimum of one member from the department and two other state child
13 protection team members.

14 ~~23-24.~~ "Substance exposed ~~newborn~~infant" means an infant younger than ~~twenty-eight-~~
15 ~~day~~twelve months of age at the time of the initial report of child abuse or neglect and
16 who is identified as being affected by substance ~~abuse~~use or withdrawal symptoms or
17 by a fetal alcohol spectrum disorder.

18 ~~24-25.~~ "Substance use disorder" means a substance-related or addictive disorder identified in
19 the "Diagnostic and Statistical Manual of Mental Disorders", American psychiatric
20 association, fifth edition, text revision (2013), or a future edition adapted by the
21 department.

22 ~~26.~~ "Unable to determine" means insufficient evidence is available to enable a
23 determination whether a child meets the definition of an abused or neglected child.

24 ~~25-27.~~ "Unconfirmed" means that upon completion of a child protection assessment, the
25 department has determined, based upon a preponderance of the evidence, that a
26 child does not meet the definition of an abused or neglected child.

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

29 5. Except as prohibited under title 42, Code of Federal Regulations, part 2, or title 34,
30 Code of Federal Regulations, part 99, a medical, dental, or mental health professional,
31 hospital, medical or mental health facility, ~~or health care clinic,~~ or a public or private

1 school shall disclose to the department or the authorized agent, upon request, the
2 records of a patient or client ~~which are relevant to a child protection assessment of~~
3 ~~reported child abuse or neglect or to a confirmed decision,~~ or student. The
4 department, or the authorized agent, shall limit the request for records to the minimum
5 amount of records necessary to enable a determination to be made or to support a
6 determination of whether child abuse or neglect is confirmed, confirmed with unknown
7 subject, or unable to determine to provide for the protection and treatment of an
8 abused or neglected child.

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

11 **50-25.1-05.2. Report to the court - Entry of report in the child abuse information**
12 **index.**

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

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

25 **50-25.1-05.5. Child abuse information index - Establishment.**

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

1 schedules and expungement procedures from those confirmed subjects of child abuse, neglect,
2 or death resulting from abuse or neglect.

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

5 **50-25.1-16. Prenatal exposure to controlled substances - Reporting requirements.**

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

- 1 5. A report under this section must be made as described in section 50-25.1-04 and must
2 be sufficient to identify the woman, the nature and extent of use, if known, and the
3 name and address of the individual making the report.

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

6 **50-25.1-17. Toxicology testing - Requirements.**

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

1 life is immune from civil or criminal liability arising from administration of the test if the
2 physician ordering the test believes in good faith that the test is required under this
3 section and the test is administered in accordance with an established protocol and
4 reasonable medical practice. A physician or any other medical personnel who
5 determines in good faith not to administer a toxicology test under this section is
6 immune from liability for not administering the test.

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

9 **50-25.1-18. Prenatal exposure to alcohol ~~abuse~~misuse - Reporting requirements.**

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

1 include a referral for an ~~addiction~~ assessment, ~~a referral for~~ the presence of a
2 substance use disorder with expectation to follow any treatment, if recommended
3 recommendations, ~~or~~ and a referral for prenatal care. The department or authorized
4 agent may also take any appropriate action under chapter 25-03.1.

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

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

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

19 **50-25.1-20. Alternative response assessment - Compliance.**

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

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

1 **50-25.1-21. Alternative response assessment - Services.**

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

3 a. Shall provide referral services to, and monitor support services for, the person
4 responsible for the child's welfare, the substance exposed ~~newborn~~infant, and
5 other children under the same care as may be necessary for their well-being and
6 safety;

7 b. Shall develop a plan of safe care for the substance exposed ~~newborn~~infant; and

8 c. May take any appropriate action under chapter 25-03.1.

9 2. The department may discharge the powers and duties provided under this section
10 through an authorized agent.