

Sixty-fourth  
Legislative Assembly  
of North Dakota

ENGROSSED SENATE BILL NO. 2072

Introduced by

Judiciary Committee

(At the request of the Department of Human Services)

1 A BILL for an Act to amend and reenact subsection 7 of section 50-25.2-01 and sections  
2 50-25.2-03 and 50-25.2-05 of the North Dakota Century Code, relating to the definition of  
3 financial exploitation, allegation of abuse or neglect caused by an individual in the custody of  
4 law enforcement against another individual in custody, and access to records of an alleged  
5 vulnerable adult.

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

7 **SECTION 1. AMENDMENT.** Subsection 7 of section 50-25.2-01 of the North Dakota  
8 Century Code is amended and reenacted as follows:

9 7. "Financial exploitation" means use or receipt of services provided by the vulnerable  
10 adult without just compensation, the taking or misuse of property or resources of a  
11 vulnerable adult by means of undue influence, breach of a fiduciary relationship,  
12 deception, harassment, criminal coercion, theft, or other unlawful or improper means.

13 **SECTION 2. AMENDMENT.** Section 50-25.2-03 of the North Dakota Century Code is  
14 amended and reenacted as follows:

15 **50-25.2-03. Reporting of abuse or neglect - Method of reporting.**

16 1. Any medical or mental health professional or personnel, law enforcement officer,  
17 firefighter, member of the clergy, or caregiver having knowledge that a vulnerable adult  
18 has been subjected to abuse or neglect, or who observes a vulnerable adult being  
19 subjected to conditions or circumstances that reasonably would result in abuse or  
20 neglect, shall report the information to the department or the department's designee or  
21 to an appropriate law enforcement agency if the knowledge is derived from information  
22 received by that person in that person's official or professional capacity. A member of  
23 the clergy, however, is not required to report the information if the knowledge is  
24 derived from information received in the capacity of spiritual adviser. For purposes of

1           this subsection, "medical or mental health professional or personnel" means a  
2           professional or personnel providing health care or services to a vulnerable adult, on a  
3           full-time or part-time basis, on an individual basis or at the request of a caregiver, and  
4           includes a physician, nurse, medical examiner, coroner, dentist, dental hygienist,  
5           optometrist, pharmacist, chiropractor, podiatrist, physical therapist, occupational  
6           therapist, addiction counselor, counselor, marriage and family therapist, social worker,  
7           mental health professional, emergency medical services personnel, hospital  
8           personnel, nursing home personnel, congregate care personnel, or any other person  
9           providing medical and mental health services to a vulnerable adult.

10          2. A report, if required by section 25-01.3-04, satisfies all reporting requirements of this  
11          chapter.

12          3. Any person not required to report under subsection 1 who has reasonable cause to  
13          believe that a vulnerable adult has been subjected to abuse or neglect, or who  
14          observes a vulnerable adult being subjected to conditions or circumstances that  
15          reasonably would result in abuse or neglect, may report the information to the  
16          department or the department's designee or to an appropriate law enforcement  
17          agency. A law enforcement agency receiving a report under this section shall  
18          immediately notify the department or the department's designee of the report.

19          4. A person required to report under subsection 1 shall make an oral or written report and  
20          a person voluntarily reporting under subsection 2 may make an oral or written report,  
21          as soon as possible. To the extent reasonably possible, a person who makes a report  
22          under this section shall include in the report:

- 23          a. The name, age, and residence address of the alleged vulnerable adult;
- 24          b. The name and residence address of the caregiver, if any;
- 25          c. The nature and extent of the alleged abuse or neglect or the conditions and  
26          circumstances that would reasonably be expected to result in abuse or neglect;
- 27          d. Any evidence of previous abuse or neglect, including the nature and extent of the  
28          abuse or neglect; and
- 29          e. Any other information that in the opinion of the person making the report may be  
30          helpful in establishing the cause of the alleged abuse or neglect and the identity  
31          of the individual responsible for the alleged abuse or neglect.

1        5. A law enforcement officer or agency is not required to notify the department or the  
2        department's designee of an alleged abuse or neglect of a vulnerable adult if an  
3        individual in the custody of law enforcement is alleged to have caused the abuse or  
4        neglect against another individual in the custody of law enforcement.

5        **SECTION 3. AMENDMENT.** Section 50-25.2-05 of the North Dakota Century Code is  
6 amended and reenacted as follows:

7        **50-25.2-05. Evaluation and assessment - Participation by law enforcement agencies -**  
8 **Entry.**

- 9        1. The department or the department's designee shall immediately evaluate and assess  
10 any report received by the department or the department's designee under section  
11 50-25.2-03, including the residence of the alleged vulnerable adult and the  
12 circumstances surrounding the report. For the purpose of evaluating a report or  
13 providing other adult protective services, the department or the department's designee  
14 may:
- 15        a. Interview the alleged vulnerable adult, with or without notice to the caregiver or  
16 any other person, and interview the caregiver and any other person who may  
17 have knowledge of the circumstances surrounding the report;
  - 18        b. Enter any premises in which the alleged vulnerable adult is an occupant, with the  
19 consent of the alleged vulnerable adult or the caregiver; and
  - 20        c. ~~Have access to all records of the vulnerable adult:~~
    - 21            ~~(1) If the vulnerable adult, or the caregiver or legal representative of the~~  
22            ~~vulnerable adult, has authorized the department or the department's~~  
23            ~~designee to have access; or~~
    - 24            ~~(2) If the vulnerable adult, because of a substantial functional or mental~~  
25            ~~impairment, is unable to authorize the department or the department's~~  
26            ~~designee to have such access, does not have a legal guardian or other legal~~  
27            ~~representative, and is a person with respect to whom a report was received~~  
28            ~~by the department or the department's designee; and~~
  - 29        d. Coordinate the assessment and the provision of other adult protective services  
30 with other state or local agencies, departments, or institutions, including the  
31 agency of the protection and advocacy project, or private agencies,

1 organizations, and professionals providing services necessary or advisable for  
2 the vulnerable adult.

3 2. ~~Except as provided in subsection 3, the custodian of records of an alleged vulnerable~~  
4 ~~adult shall provide access to the department or the department's designee to all~~  
5 ~~records of the alleged vulnerable adult, except as prohibited by federal law, to the~~  
6 ~~extent necessary to conduct its evaluation or assessment.~~

7 ~~3. To the extent permitted by state or federal law, state and federal chartered banks shall~~  
8 ~~provide access to the department or the department's designee to all records of the~~  
9 ~~alleged vulnerable adult. The department may obtain records under the control of a~~  
10 ~~custodian other than a financial institution with the consent of the vulnerable adult or~~  
11 ~~the legal guardian of the vulnerable adult or pursuant to an administrative subpoena~~  
12 ~~duces tecum served on the custodian in accordance with rule 45 of the North Dakota~~  
13 ~~rules of civil procedure. The subpoena may be enforced by applying to any judge of~~  
14 ~~the district court for an order requiring the production of the records described in the~~  
15 ~~subpoena. Failure of a custodian to comply with the order of the district court is~~  
16 ~~contempt of court, which is punishable by the district court upon application. The judge~~  
17 ~~may award attorney's fees and costs to the prevailing party in an application under this~~  
18 ~~subsection. The department or its designee may use the records only for the purpose~~  
19 ~~of the evaluation or assessment of a report.~~

20 3. To obtain access to financial institution records, the department or its designee shall  
21 comply with the requirements of chapter 6-08.1 and applicable federal law.

22 4. If a report alleges, or circumstances surrounding the report indicate, a violation of a  
23 criminal statute or an imminent danger of serious physical injury or death of the  
24 vulnerable adult, the department or the department's designee shall notify the  
25 appropriate law enforcement agency. In such a case, the law enforcement agency  
26 may investigate the allegations in the report, take immediate steps if necessary to  
27 protect the vulnerable adult, and institute legal proceedings if appropriate. The law  
28 enforcement agency shall notify the department or the department's designee if such  
29 action is taken. This section does not limit the responsibilities of law enforcement  
30 agencies to enforce the laws of this state or preclude law enforcement agencies from  
31 investigating, as appropriate, any alleged criminal conduct. In all other cases of

1           alleged abuse or neglect, the department or the department's designee may request  
2           assistance in an evaluation or the provision of other adult protective services from an  
3           appropriate law enforcement agency if necessary under the circumstances.

4    3-5. If the alleged vulnerable adult, or the caregiver, does not consent to an ~~evaluation or~~  
5           investigation, a search warrant may be issued by a magistrate pursuant to law upon a  
6           showing of probable cause to believe that abuse or neglect has occurred. A law  
7           enforcement officer may make a reasonable entry of the premises without a search  
8           warrant or consent of the alleged vulnerable adult or caregiver for the purpose of  
9           rendering assistance if the officer has probable cause to believe that the delay of entry  
10          would cause the alleged vulnerable adult to be in imminent danger of serious physical  
11          injury or death.