

SENATE BILL NO. 2271

Introduced by

Senator J. Lee

Representative Price

1 A BILL for an Act to create and enact two new subsections to section 50-25.1-02 and three new
2 sections to chapter 50-25.1 of the North Dakota Century Code, relating to child abuse and
3 neglect reporting requirements; and to amend and reenact section 50-25.1-09 of the North
4 Dakota Century Code, relating to child abuse and neglect reporting requirements.

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

6 **SECTION 1.** Two new subsections to section 50-25.1-02 of the North Dakota Century
7 Code are created and enacted as follows:

8 "Abuse of alcohol" means the person has required detoxification for alcohol
9 intoxication during the pregnancy or the person is found to have a possible alcohol
10 problem through the use of a validated alcohol screening test approved by the
11 department.

12 "Prenatal exposure to a controlled substance" means use of controlled substances
13 as defined in chapter 19-03.1 by the pregnant woman for a nonmedical purpose
14 during pregnancy, as evidenced by withdrawal symptoms in the child at birth,
15 results of a toxicology test performed on the mother at delivery or the child at birth,
16 or medical effects or developmental delays during the child's first year of life that
17 medically indicate prenatal exposure to a controlled substance.

18 **SECTION 2.** Three new sections to chapter 50-25.1 of the North Dakota Century Code
19 are created and enacted as follows:

20 **Reporting prenatal exposure to controlled substances.**

21 1. A person required to report under subsection 1 of section 50-25.1-03 who has
22 knowledge of or reasonable cause to suspect that a woman is pregnant and has
23 used a controlled substance for a nonmedical purpose during the pregnancy shall

1 report the circumstances to the department if the knowledge or suspicion is derived
2 from information received by that person in that person's official or professional
3 capacity. A member of the clergy, however, is not required to report such
4 circumstances if the knowledge or suspicion is derived from information received in
5 the capacity of spiritual adviser.

6 2. Any person may make a voluntary report if the person 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.

9 3. If a report alleges a pregnant woman's use of a controlled substance for a
10 nonmedical purpose, the department or its designee shall immediately conduct an
11 appropriate assessment and offer services indicated under the circumstances.
12 Services offered may include a referral for chemical dependency assessment, a
13 referral for chemical dependency treatment, if recommended, or a referral for
14 prenatal care. The department or its designee may also take any appropriate
15 action under chapter 25-03.1, including seeking an emergency admission under
16 section 25-03.1-25. The department or its designee shall seek an emergency
17 admission under chapter 25-03.1 if the pregnant woman refuses recommended
18 voluntary services or fails recommended treatment.

19 4. A report under this section must be made as described in section 50-25.1-04, and
20 must be sufficient to identify the woman, the nature and extent of use, if known,
21 and the name and address of the reporter.

22 **Toxicology testing required.**

23 1. A physician shall administer a toxicology test to a pregnant woman under the
24 physician's care or to a woman under the physician's care within eight hours after
25 delivery to determine whether there is evidence that she has ingested a controlled
26 substance if the woman has obstetrical complications that are a medical indication
27 of possible use of a controlled substance for a nonmedical purpose. If the test
28 results are positive, the physician shall report the results under section
29 50-25.1-03.1. A negative test result does not eliminate the obligation to report
30 under section 50-25.1-03.1 if other evidence gives the physician reason to believe
31 the patient has used a controlled substance for a nonmedical purpose.

- 1 2. A physician shall administer to each newborn infant born under the physician's
2 care a toxicology test to determine whether there is evidence of prenatal exposure
3 to a controlled substance if the physician has reason to believe based on a medical
4 assessment of the mother or the infant that the mother used a controlled substance
5 for a nonmedical purpose during the pregnancy. If the test results are positive, the
6 physician shall report the results as neglect under section 50-25.1-03. A negative
7 test result does not eliminate the obligation to report under section 50-25.1-03 if
8 other medical evidence of prenatal exposure to a controlled substance is present.
- 9 3. Immunity from liability. A physician or other medical personnel administering a
10 toxicology test to determine the presence of a controlled substance in a pregnant
11 woman, in a woman within eight hours after delivery, or in a child at birth or during
12 the first month of life is immune from civil or criminal liability arising from
13 administration of the test if the physician ordering the test believes in good faith
14 that the test is required under this section and the test is administered in
15 accordance with an established protocol and reasonable medical practice. A
16 physician or other medical personnel who determines in good faith not to
17 administer a toxicology test under this section is immune from liability for not
18 administering the test.

19 **Reporting prenatal exposure to alcohol abuse.**

- 20 1. A person required to report under subsection 1 of section 50-25.1-03 who has
21 knowledge of or reasonable cause to suspect that a woman is pregnant and has
22 knowingly abused alcohol after she knows of the pregnancy may:
- 23 a. Arrange for a chemical use assessment conducted according to rules adopted
24 by the department and confirm that the recommendations indicated by the
25 assessment are followed; or
- 26 b. Immediately report the circumstances to the department, if the knowledge or
27 suspicion is derived from information received by that person in that person's
28 official or professional capacity. A member of the clergy, however, is not
29 required to report such circumstances if the knowledge or suspicion is derived
30 from information received in the capacity of spiritual adviser.

- 1 2. An adult household member may make a voluntary report if the person has
2 knowledge of or reasonable cause to suspect that a woman in the household is
3 pregnant and has knowingly abused alcohol during the pregnancy.
- 4 3. If the woman is referred for a chemical use assessment under subdivision b of
5 subsection 1 and fails to obtain an assessment or refuses to comply with the
6 recommendations of the assessment, a person required to report under
7 subsection 1 of section 50-25.1-03 who has knowledge of the failure or refusal
8 must make a report to the department.
- 9 4. If a report is made under this section, the department or its designee shall within
10 five working days conduct an appropriate assessment and offer services indicated
11 under the circumstances. Services must include a chemical use assessment
12 according to rules adopted by the department. If the chemical use assessment
13 indicates that the woman is in need of chemical dependency treatment, the
14 department must arrange for provision of the indicated level of chemical
15 dependency care.
- 16 5. A report under this section must be made as described in section 50-25.1-04, and
17 must be sufficient to identify the woman, the nature and extent of the abuse of
18 alcohol, any health risk associated with the abuse of alcohol, and the name and
19 address of the reporter.

20 **SECTION 3. AMENDMENT.** Section 50-25.1-09 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **50-25.1-09. Immunity from liability.** Any person, other than the alleged violator,
23 participating in good faith in the making of a report, assisting in an investigation or assessment,
24 furnishing information, or in providing protective services under this chapter or who is a member
25 of the child fatality review panel, is immune from any liability, civil or criminal, except for criminal
26 liability as provided by section 50-25.1-13, that otherwise might result from reporting the alleged
27 case of abuse, neglect, or death resulting from child abuse or neglect. An individual making a
28 determination not to report in good faith pursuant to this section is immune from liability for not
29 making a report. For the purpose of any proceeding, civil or criminal, the good faith of any
30 person required to report cases of child abuse, neglect, or death resulting from abuse or neglect
31 must be presumed.