

Fifty-eighth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2271

Introduced by

Senator J. Lee

Representative Price

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

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

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

8 **50-25.1-02. Definitions.**

- 9 1. "A person responsible for the child's welfare" means the child's parent, guardian,
10 or foster parent; an employee of a public or private school or nonresidential child
11 care facility; an employee of a public or private residential home, institution, or
12 agency; or a person responsible for the child's welfare in a residential setting.
- 13 2. "Abuse of alcohol", "alcohol abuse", or "abused alcohol" means alcohol abuse or
14 dependence as defined in the current diagnostic and statistical manual published
15 by the American psychiatric association or a maladaptive use of alcohol with
16 negative medical, sociological, occupational, or familial effects.
- 17 3. "Abused child" means an individual under the age of eighteen years who is
18 suffering from serious physical harm or traumatic abuse caused by other than
19 accidental means by a person responsible for the child's welfare, or who is
20 suffering from or was subjected to any act involving that individual in violation of
21 sections 12.1-20-01 through 12.1-20-08.
- 22 ~~3.~~ 4. "Assessment" means a factfinding process designed to provide information that
23 enables a determination to be made that services are required to provide for the
24 protection and treatment of an abused or neglected child.

- 1 ~~4.~~ 5. "Department" means the department of human services or its designee.
- 2 ~~5.~~ 6. "Harm" means negative changes in a child's health which occur when a person
3 responsible for the child's welfare:
- 4 a. Inflicts, or allows to be inflicted, upon the child, physical or mental injury,
5 including injuries sustained as a result of excessive corporal punishment; or
- 6 b. Commits, allows to be committed, or conspires to commit, against the child, a
7 sex offense as defined in chapter 12.1-20.
- 8 ~~6.~~ 7. "Institutional child abuse or neglect" means situations of known or suspected child
9 abuse or neglect where the person responsible for the child's welfare is an
10 employee of a residential child care facility, a treatment or care center for mentally
11 retarded, a public or private residential educational facility, a maternity home, or
12 any residential facility owned or managed by the state or a political subdivision of
13 the state.
- 14 ~~7.~~ 8. "Local child protection team" means a multidisciplinary team consisting of the
15 designee of the director of the regional human service center, together with such
16 other representatives as that director might select for the team with the consent of
17 the director of the county social service board. All team members, at the time of
18 their selection and thereafter, must be staff members of the public or private
19 agencies they represent or shall serve without remuneration. An attorney member
20 of the child protection team may not be appointed to represent the child or the
21 parents at any subsequent court proceeding nor may the child protection team be
22 composed of fewer than three members. The department shall coordinate the
23 organization of local child protection teams on a county or multicounty basis.
- 24 ~~8.~~ 9. "Neglected child" means a deprived child as defined in chapter 27-20.
- 25 ~~9.~~ 10. "Prenatal exposure to a controlled substance" means use of a controlled
26 substance as defined in chapter 19-03.1 by a pregnant woman for a nonmedical
27 purpose during pregnancy as evidenced by withdrawal symptoms in the child at
28 birth, results of a toxicology test performed on the mother at delivery of the child at
29 birth, or medical effects or developmental delays during the child's first year of life
30 that medically indicate prenatal exposure to a controlled substance.

- 1 3. If a report alleges a pregnant woman's use of a controlled substance for a
2 nonmedical purpose, the department or its designee shall immediately initiate an
3 appropriate assessment and offer services indicated under the circumstances.
4 Services offered may include a referral for chemical dependency assessment, a
5 referral for chemical dependency treatment if recommended, or a referral for
6 prenatal care. The department or its designee may also take any appropriate
7 action under chapter 25-03.1.
- 8 4. A report and assessment under this section is not required if the pregnant woman
9 voluntarily enters treatment in a licensed treatment program. If the pregnant
10 woman does not complete voluntary treatment or fails to follow treatment
11 recommendations, an individual required to report under section 50-25.1-03 who
12 has knowledge of the failure to complete voluntary treatment or failure to follow
13 treatment recommendations shall make a report as required by this section.
- 14 5. A report under this section must be made as described in section 50-25.1-04 and
15 must be sufficient to identify the woman, the nature and extent of use, if known,
16 and the name and address of the individual making the report.

17 **SECTION 3.** A new section to chapter 50-25.1 of the North Dakota Century Code is
18 created and enacted as follows:

19 **Toxicology testing - Requirements.**

- 20 1. If the woman has obstetrical complications that are a medical indication of possible
21 use of a controlled substance for a nonmedical purpose, upon the consent of the
22 pregnant woman, or without consent if a specimen is otherwise available, a
23 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 test results are positive, the physician shall report the results
27 under section 50-25.1-03.1. A negative test result or the pregnant woman's refusal
28 to consent to a test does not eliminate the obligation to report under section
29 50-25.1-03 if other evidence gives the physician reason to believe the patient has
30 used a controlled substance for a nonmedical purpose.

1 2. If a physician has reason to believe based on a medical assessment of the mother
2 or the infant that the mother used a controlled substance for a nonmedical purpose
3 during the pregnancy, the physician shall administer, without the consent of the
4 child's parents or guardian, to the newborn infant born under the physician's care a
5 toxicology test to determine whether there is evidence of prenatal exposure to a
6 controlled substance. If the test results are positive, the physician shall report the
7 results as neglect under section 50-25.1-03. A negative test result does not
8 eliminate the obligation to report under section 50-25.1-03 if other medical
9 evidence of prenatal exposure to a controlled substance is present.

10 3. A physician or any other medical personnel administering a toxicology test to
11 determine the presence of a controlled substance in a pregnant woman, in a
12 woman within eight hours after delivery, or in a child at birth or during the first
13 month of life is immune from civil or criminal liability arising from administration of
14 the test if the physician ordering the test believes in good faith that the test is
15 required under this section and the test is administered in accordance with an
16 established protocol and reasonable medical practice. A physician or any other
17 medical personnel who determines in good faith not to administer a toxicology test
18 under this section is immune from liability for not administering the test.

19 **SECTION 4.** A new section to chapter 50-25.1 of the North Dakota Century Code is
20 created and enacted as follows:

21 **Prenatal exposure to alcohol abuse - Reporting requirements.**

- 22 1. An individual required to report under section 50-25.1-03 who has knowledge of or
23 reasonable cause to suspect that a woman is pregnant and has abused alcohol
24 after the woman knows of the pregnancy may:
- 25 a. Arrange for a chemical dependency assessment conducted by a licensed
26 treatment program and confirm that the recommendations indicated by the
27 assessment are followed; or
 - 28 b. Immediately report the circumstances to the department if the knowledge or
29 suspicion is derived from information received by that individual in that
30 individual's official or professional capacity.

- 1 2. An individual may make a voluntary report if the individual has knowledge of or
2 reasonable cause to suspect that a woman is pregnant and has abused alcohol
3 during the pregnancy.
- 4 3. If the woman is referred for a chemical dependency assessment under
5 subdivision a of subsection 1 and fails to obtain an assessment or refuses to
6 comply with the recommendations of the assessment, an individual required to
7 report under section 50-25.1-03 who has knowledge of the failure to obtain the
8 assessment or refusal to comply with recommendations of the assessment shall
9 make a report to the department.
- 10 4. If a report alleges a pregnant woman has abused alcohol, the department or its
11 designee shall immediately initiate an appropriate assessment and offer services
12 indicated under the circumstances. Services offered may include a referral for
13 chemical dependency assessment, a referral for chemical dependency treatment,
14 if recommended, or a referral for prenatal care. The department or its designee
15 may also take any appropriate action under chapter 25-03.1.
- 16 5. A report and assessment under this section is not required if the pregnant woman
17 voluntarily enters treatment in a licensed treatment program. If the pregnant
18 woman does not complete voluntary treatment or fails to follow treatment
19 recommendations, an individual required to report under section 50-25.1-03 who
20 has knowledge of the failure to complete voluntary treatment or failure to follow
21 treatment recommendations shall make a report as required by this section.
- 22 6. A report under this section must be made as described in section 50-25.1-04 and
23 must be sufficient to identify the woman, the nature and extent of the abuse of
24 alcohol, any health risk associated with the abuse of alcohol, and the name and
25 address of the individual making the report.