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Sixty-eighth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2103

Introduced by

Human Services Committee

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

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

50-25.1-02. Definitions.

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

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

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

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

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

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

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

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

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

~~6.~~7. "Child fatality review panel" means a multidisciplinary team consisting of a representative of the department and, if possible, a forensic pathologist, a physician, a representative of the department of health and human services injury prevention, a representative of the attorney general, a representative of the superintendent of public instruction, a representative of the department of corrections and rehabilitation, a peace officer licensed in the state, a mental health professional, a representative of emergency medical services, a medical services representative from a federally recognized Indian tribe in this state, one or more representatives of the lay community, and a designated tribal representative, as an ad hoc member, acting for each federally recognized Indian tribe in this state. A team member, at the time of selection and while serving on the panel, must be a staff member of the public or private agency the member represents or shall serve without remuneration. The child fatality review panel may not be composed of fewer than three individuals.

~~7.~~8. "Child in need of services" means a child who in any of the following instances is in need of treatment or rehabilitation:

a. Is habitually and without justification truant from school or absent from school without an authorized excuse for more than five days during a school year;

b. Is habitually disobedient of the reasonable and lawful commands of the child's parent, guardian, or other custodian including runaway and is ungovernable or who is willfully in a situation that is dangerous or injurious to the health, safety, or morals of the child or others;

c. Except for an offense committed by a minor who is fourteen years of age or older under subsection 2 of section 12.1-31-03 or an equivalent local ordinance or resolution, has committed an offense applicable only to a child; or

d. Is under fourteen years of age and has purchased, possessed, smoked, or used tobacco, a tobacco-related product, an electronic smoking device, or an alternative nicotine product in violation of subsection 2 of section 12.1-31-03. As used in this subdivision, "electronic smoking device" and "alternative nicotine product" have the same meaning as in section 12.1-31-03.

~~8.~~9. "Child protection assessment" means a factfinding process designed to provide information that enables a determination of whether a child meets the definition of an abused or neglected child, including instances that may not identify a specific person responsible for the child's welfare which is responsible for the abuse or neglect.

~~9.~~10. "Children's advocacy center" means a full or associate member of the national children's alliance which assists in the coordination of the investigation in response to allegations of child abuse by providing a dedicated child-friendly location at which to conduct forensic interviews, forensic medical examinations, and other appropriate services and which promotes a comprehensive multidisciplinary team response to allegations of child abuse. The team response may include forensic interviews, forensic medical examinations, mental health and related support services, advocacy, and case review.

~~10.~~11. "Citizen review committee" means a committee appointed by the department to review the department's provision of child welfare services.

~~11.~~12. "Confirmed" means that upon completion of a child protection assessment, the department determines, based upon a preponderance of the evidence, that a child meets the definition of an abused or neglected child, and the department confirms the

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

~~12.~~13. "Confirmed with unknown subject" means that upon completion of a child protection assessment, the department determines, based upon a preponderance of the evidence, that a child meets the definition of an abused or neglected child, but the evidence does not confirm the identity of a specific person responsible for the child's welfare which is responsible for the abuse or neglect.

~~13.~~14. "Department" means the department of health and human services.

~~14.~~15. "Family services assessment" means a child protection services response to reports of suspected child abuse or neglect in which the child is determined to be at low risk and safety concerns for the child are not evident according to guidelines developed by the department.

~~15.~~16. "Impending danger" means a foreseeable state of danger in which a behavior, attitude, motive, emotion, or situation can be reasonably anticipated to have severe effects on a child according to criteria developed by the department.

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

~~17.~~18. "Institutional child abuse or neglect" means situations of known or suspected child abuse or neglect when the institution responsible for the child's welfare is a public or private school, a residential facility or setting either licensed, certified, or approved by the department, or a residential facility or setting that receives funding from the department. For purposes of this subsection, residential facilities and settings excludes correctional, medical, home- and community-based residential rehabilitation, and educational boarding care settings.

~~18.~~19. "Near death" means an act that, as certified by a physician, places a child in serious or critical condition.

~~19.~~20. "Neglected child" means a child who, due to the action or inaction of a person responsible for the child's welfare:

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

health, or morals, and is not due primarily to the lack of financial means of a person responsible for the child's welfare;

b. Has been placed for care or adoption in violation of law;

c. Has been abandoned;

d. Is without proper care, control, or education as required by law, or other care and control necessary for the child's well-being because of the physical, mental, emotional, or other illness or disability of a person responsible for the child's welfare, and that such lack of care is not due to a willful act of commission or act of omission, and care is requested by a person responsible for the child's welfare;

e. Is in need of treatment and a person responsible for the child's welfare has refused to participate in treatment as ordered by the juvenile court;

f. Was subject to prenatal exposure to ~~chronic or severe use of~~ alcohol misuse or any controlled substance as defined in section 19-03.1-01 in a manner not lawfully prescribed by a practitioner;

g. Is present in an environment subjecting the child to exposure of a controlled substance, chemical substance, or drug paraphernalia as prohibited by section 19-03.1-22.2, except as used in this subsection, controlled substance includes any amount of marijuana; or

h. Is a victim of human trafficking as defined in title 12.1.

~~20.~~21. "Prenatal exposure to a controlled substance" means use of a controlled substance as defined in chapter 19-03.1 by a pregnant woman for a nonmedical purpose during pregnancy as evidenced by withdrawal symptoms in the child at birth, results of a toxicology test performed on the mother at delivery or the child at birth, or medical effects or developmental delays during the child's first year of life that medically indicate prenatal exposure to a controlled substance.

~~21.~~22. "Protective services" includes services performed after an assessment of a report of child abuse or neglect has been conducted, such as social assessment, service planning, implementation of service plans, treatment services, referral services, coordination with referral sources, progress assessment, monitoring service delivery, and direct services.

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

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

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

~~25.~~26. "Unable to determine" means insufficient evidence is available to enable a determination whether a child meets the definition of an abused or neglected child.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

50-25.1-17. Toxicology testing - Requirements.

1. If the woman has obstetrical complications that are a medical indication of possible use of a controlled substance for a nonmedical purpose or ~~severe or chronic use of~~ alcohol misuse, upon the consent of the pregnant woman, or without consent if a specimen is otherwise available, a physician shall administer a toxicology test to a pregnant woman under the physician's care or to a woman under the physician's care within eight hours after delivery to determine whether there is evidence that she has ingested a controlled substance or alcohol. If the test results are positive, the physician shall report the results under section 50-25.1-03.1. A negative test result or the pregnant woman's refusal to consent to a test does not eliminate the obligation to report under section 50-25.1-03 if other evidence gives the physician reason to believe the patient has used a controlled substance for a nonmedical purpose or has engaged in ~~severe or chronic use of~~ alcohol misuse.
2. If a physician has reason to believe based on a medical assessment of the mother or the infant that the mother used a controlled substance for a nonmedical purpose or engaged in ~~severe or chronic use of~~ alcohol misuse during the pregnancy, the physician shall administer, without the consent of the child's parents or guardian, to the newborn infant born under the physician's care a toxicology test to determine whether there is evidence of prenatal exposure to a controlled substance or alcohol. If the test results are positive, the physician shall report the results as neglect under section 50-25.1-03. A negative test result does not eliminate the obligation to report under section 50-25.1-03 if other medical evidence of prenatal exposure to a controlled substance or ~~severe or chronic use of~~ alcohol misuse is present.
3. A physician or any other medical personnel administering a toxicology test to determine the presence of a controlled substance or alcohol in a pregnant woman, in a woman within eight hours after delivery, or in a child at birth or during the first month of

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

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

50-25.1-18. Prenatal exposure to ~~severe or chronic use of~~ alcohol ~~abuse~~misuse - Reporting requirements.

1. An individual required to report under section 50-25.1-03 who has knowledge of or reasonable cause to suspect that a woman is pregnant and has ~~abused~~engaged in ~~severe or chronic use of~~ alcohol misuse after the woman knows of the pregnancy ~~may~~shall:
   a. Arrange for an ~~addiction~~ assessment for the presence of a substance use disorder conducted by a licensed treatment program and confirm that the recommendations indicated by the assessment are followed; or
   b. Immediately report the circumstances to the department or authorized agent if the knowledge or suspicion is derived from information received by that individual in that individual's official or professional capacity.
2. An individual may make a voluntary report if the individual has knowledge of or reasonable cause to suspect that a woman is pregnant and has ~~abused~~engaged in ~~severe or chronic use of~~ alcohol misuse during the pregnancy.
3. If the woman is referred for an ~~addiction~~substance use disorder assessment under subdivision a of subsection 1 and fails to obtain an assessment, continues to engage in ~~severe or chronic use of~~ alcohol misuse or refuses to comply with the recommendations of the assessment, an individual required to report under section 50-25.1-03 who has knowledge of the failure to obtain the assessment, continued ~~severe or chronic use of~~ alcohol misuse, or refusal to comply with recommendations of the assessment shall make a report to the department or authorized agent.

4. If a report alleges a pregnant woman has ~~abused~~engaged in ~~severe or chronic use of~~ alcohol misuse, the department or authorized agent shall immediately initiate an appropriate assessment ~~and offer services indicated under the circumstances. Services offered may~~that must include a referral for ~~an addiction~~ assessment~~, a referral~~ for the presence of a substance use disorder with expectation to follow any treatment~~, if recommended~~ recommendations, ~~or~~and a referral for prenatal care. The department or authorized agent may also take any appropriate action under chapter 25-03.1.
5. A report and assessment under this section is not required if the pregnant woman voluntarily enters treatment in a licensed treatment program. If the pregnant woman does not complete voluntary treatment, continues to engage in ~~severe or chronic use of~~ alcohol misuse, or fails to follow treatment recommendations, an individual required to report under section 50-25.1-03 who has knowledge of the failure to complete voluntary treatment, continued ~~severe or chronic use of~~ alcohol misuse, or failure to follow treatment recommendations shall make a report as required by this section.
6. A report under this section must be made as described in section 50-25.1-04 and must be sufficient to identify the woman, the ~~nature and~~ extent of the ~~abuse~~current use of alcohol, any ~~health risk~~suspected symptoms and problems associated with ~~the abuse of alcohol~~a substance use disorder, and the name and address of the individual making the report.

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

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

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

the referred services and plan of safe care for the substance exposed ~~newborn~~infant, an assessment of the initial report of child abuse or neglect may be completed.

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

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

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