

## **CHAPTER 50-25.1 CHILD ABUSE AND NEGLECT**

### **50-25.1-01. Purpose.**

It is the purpose of this chapter to protect the health and welfare of children by encouraging the reporting of children who are known to be or suspected of being abused or neglected; the providing of adequate services for the protection and treatment of abused and neglected children and to protect them from further harm; the identifying of the cause of children's deaths, when possible; the identifying of those circumstances that contribute to children's deaths; and the recommending of changes in policy, practices, and law to prevent children's deaths.

### **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. "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.
4. "Alternative response assessment" means a child protection response involving substance exposed newborns 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; and
  - b. Develop a plan of safe care for the substance exposed newborn.
5. "Authorized agent" means the human service zone, unless another entity is designated by the department.
6. "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. "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. "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. "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. "Citizen review committee" means a committee appointed by the department to review the department's provision of child welfare services.
  11. "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. "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. "Department" means the department of health and human services.
  14. "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. "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. "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. "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. "Near death" means an act that, as certified by a physician, places a child in serious or critical condition.
  19. "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 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. "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. "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. "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. "Substance exposed newborn" means an infant younger than twenty-eight days of age at the time of the initial report of child abuse or neglect and who is identified as being affected by substance abuse or withdrawal symptoms or by a fetal alcohol spectrum disorder.
24. "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. "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.

### **50-25.1-03. Persons required and permitted to report - To whom reported.**

1. Any dentist; optometrist; dental hygienist; medical examiner or coroner; tier 1 mental health professional, tier 2 mental health professional, tier 3 mental health professional, or tier 4 mental health professional as defined under section 25-01-01; or any other medical or mental health professional, religious practitioner of the healing arts, schoolteacher or administrator, school counselor, child care worker, foster parent, police or law enforcement officer, juvenile court personnel, probation officer, division of juvenile services employee, licensed social worker, family service specialist, child care licenser, or member of the clergy having knowledge of or reasonable cause to suspect a child is abused or neglected, or has died as a result of abuse or neglect, 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. A member of the clergy, however, is not required to report such circumstances if the knowledge or suspicion is derived from information received in the capacity of spiritual adviser.
2. Any person having reasonable cause to suspect a child is abused or neglected, or has died as a result of abuse or neglect, may report such circumstances to the department or authorized agent.
3. A person having knowledge of or reasonable cause to suspect a child is abused or neglected, based on images of sexual conduct by a child discovered on a workplace computer, shall report the circumstances to the department or authorized agent.

### **50-25.1-03.1. Photographs - X-rays - Medical tests.**

Any individual or official required to report under this chapter may cause to be taken color photographs of the areas of trauma visible on a child who the individual or official has knowledge or reasonable cause to suspect is an abused or neglected child and, if indicated by medical consultation, cause to be performed imaging studies, laboratory tests, coloscopies, and other medical tests of the child without the consent of the child's parents or guardian. All photographs and other visual images taken pursuant to this section must be taken by law enforcement officials, physicians, or medical facility professionals upon the request of any individual or official required to report under this chapter. Photographs and visual images, or copies of them, must be sent to the department or authorized agent at the time the initial report of child abuse or neglect is made or as soon thereafter as possible.

### **50-25.1-04. Method of reporting.**

1. All persons mandated or permitted to report cases of known or suspected child abuse or neglect immediately shall cause oral or written reports to be made to the department or authorized agent. Oral reports must be followed by written reports within forty-eight hours if so requested by the department or authorized agent. A requested written report must include information specifically sought by the department or authorized agent if the reporter possesses or has reasonable access to that information. Reports involving known or suspected institutional child abuse or neglect must be made and received in the same manner as all other reports made under this chapter.
2. The chief administrator of an entity employing more than twenty-five individuals who are required to report suspected child abuse or neglect under this chapter may designate an agent within the entity to file reports of suspected child abuse or neglect on behalf of the staff members and volunteers of the entity. Under no circumstances may a designated agent to whom such report has been made impose conditions, including prior approval or prior notification, upon a staff member or volunteer reporting suspected child abuse or neglect under this chapter or exercise any control, restraint, or modification, or make any changes to the information provided by the staff member or volunteer. A report filed by the designated agent must include the first and last name, title, and contact information for every staff member or volunteer of the entity who is believed to have direct knowledge of the facts surrounding the report. A single report from the designated agent under this subsection is adequate to meet the

reporting requirement on behalf of staff members and volunteers of the entity listed with the required information.

3. If a staff member or volunteer makes a report of suspected child abuse and neglect to a designated agent of an entity as authorized in subsection 2, and the designated agent files a report on behalf of the staff member or volunteer, the staff member or volunteer will be considered to be fully compliant with the reporting requirements in this chapter. However, this section does not preclude the staff member or volunteer from also reporting the suspected child abuse and neglect directly to the department or authorized agent. A staff member or volunteer reporting suspected child abuse or neglect under this subsection who has knowledge the designated agent has failed to report on behalf of the staff member or volunteer immediately shall make a report directly to the department or authorized agent.

#### **50-25.1-04.1. State child protection team - How created - Duties.**

1. The department shall name the members of the state child protection team. The department is responsible for all reports made pursuant to this chapter. The department shall set meetings for the purposes of fulfilling the duties set forth in sections 50-25.1-02 and 50-25.1-04.
2. Under procedures adopted by the team, the team may meet at any time, confer with any individuals, groups, and agencies, and may issue reports or recommendations on any aspect of child abuse, neglect, or death resulting from abuse or neglect the team deems appropriate. All reports or recommendations issued are subject to section 50-25.1-11, except that the team shall make available information reflecting the disposition of reports of institutional child abuse, neglect, or death resulting from abuse or neglect, when the identity of persons reporting, and of the children and parents of children involved, is protected.
3. In every case of alleged institutional child abuse or neglect, the state child protection team shall make a determination whether child abuse or neglect is indicated. Upon a determination that institutional child abuse or neglect is indicated, the state child protection team promptly shall make a written report of the determination. When a report includes an allegation or report of institutional child abuse and neglect as defined in section 50-25.1-02, the state child protection team promptly shall notify the executive director of the department of the determination. Notwithstanding section 50-25.1-11, the department shall notify the superintendent of public instruction, the school district administrator, and the president or chairman of the school board or a private school's governing body or entity if the subject of the report is a public or private school.
4. If a determination that institutional child abuse or neglect is indicated relative to 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, that facility or setting shall engage in an improvement plan approved by the department. Failure to complete the approved improvement plan must result in notification to the residential facility or setting's board of directors and to any entity that accredits the facility or setting. Notification must include the written report of the state child protection team, the approved improvement plan, and areas of deficiency that resulted in the notification.

#### **50-25.1-04.2. Child fatality review panel.**

The child fatality review panel is a multidisciplinary panel and incorporates representatives of agencies that are directly or indirectly involved in responding to the death of a child. The department may designate any other person as appropriate to assist the panel in the performance of the panel's duties. The department shall adopt rules for the operation of the panel. Panel members are not entitled to compensation or reimbursement of expenses for service on the panel. The representative of the department shall serve as presiding officer and is responsible for gathering records and preparing reports to review. The presiding officer shall

set meetings for the purpose of fulfilling the duties set forth in sections 50-25.1-04.3 and 50-25.1-04.5.

**50-25.1-04.3. Child fatality review panel - Duties.**

The child fatality review panel shall meet at least quarterly to review the deaths and near deaths of all minors which occurred in the state during the preceding twelve months and to identify trends or patterns in the deaths and near deaths of minors. The panel may review near deaths alleged to have resulted only from child abuse and neglect. The panel shall promote:

1. Interagency communication for the management of child death cases and for the management of future nonfatal cases.
2. Effective criminal, civil, and social intervention for families with fatalities.
3. Intervention and counseling of surviving and at-risk siblings, and offer the same.
4. Interagency use of cases to audit the total health and social service systems and to minimize misclassification of cause of death.
5. Evaluation of the impact of specific risk factors including substance abuse, domestic violence, and prior child abuse.
6. Interagency services to high-risk families.
7. Data collection for surveillance of deaths and the study of categories of causes of death.
8. The use of media to educate the public about child abuse prevention.
9. Intercounty, interhuman service zones, and interstate communications regarding child death.
10. Information that appraises a parent or guardian of the parent's or guardian's rights and the procedures taken after the death of a child.

**50-25.1-04.4. Child fatality review panel - Access to records.**

Upon the request of a coroner or the presiding officer of a child fatality review panel, any hospital, physician, medical professional, medical facility, mental health professional, mental health facility, school counselor, or division of juvenile services employee shall disclose all records of that entity with respect to any child who has or is eligible to receive a certificate of live birth and who has died. The person submitting the request shall reimburse the disclosing entity for the actual costs of assembling and disclosing the information.

**50-25.1-04.5. Child fatality review panel - Confidentiality of meetings, documentation, and reports.**

1. Notwithstanding section 44-04-19, all meetings of the panel are closed to the public. Notwithstanding section 44-04-18, all documentation and reports of the panel are confidential, except for annual reports. The annual report involving child abuse and neglect deaths and near deaths must include the following:
  - a. The cause of and circumstances regarding the death or near death;
  - b. The age and gender of the child;
  - c. Information describing any previous child abuse and neglect reports or assessments that pertain to the child abuse or neglect that led to the death or near death;
  - d. The result of any such assessments; and
  - e. The services provided in accordance with section 50-25.1-06, unless disclosure is otherwise prohibited by law.
2. The panel shall make available to the persons designated in section 50-25.1-11 the documentation and reports of the panel.

**50-25.1-05. Child protection assessment - Alternative response assessment - Family services assessment.**

1. The department or authorized agent, in accordance with rules adopted by the department, immediately shall initiate a child protection assessment, alternative response assessment, or family services assessment or cause an assessment, of any

- report of child abuse or neglect including, when appropriate, the child protection assessment, alternative response assessment, or family services assessment of the home or the residence of the child, any school or child care facility attended by the child, and the circumstances surrounding the report of abuse or neglect.
2. According to guidelines developed by the department, the department or authorized agent may initiate an alternative response assessment or family services assessment if the department or authorized agent determines initiation is appropriate.
  3. If the report alleges a violation of a criminal statute involving sexual or physical abuse, the department or authorized agent shall initiate a child protection assessment by contacting the law enforcement agency having jurisdiction over the alleged criminal violation. The department or authorized agent and an appropriate law enforcement agency shall coordinate the planning and execution of the child protection assessment and law enforcement investigation efforts to avoid a duplication of factfinding efforts and multiple interviews. If the law enforcement agency declines to investigate, the department or authorized agent shall continue the child protection assessment to a determination.
  4. The department, the authorized agent, or the law enforcement agency may:
    - a. Refer the case to a children's advocacy center for a forensic interview, forensic medical examination, and other services.
    - b. Interview, without the consent of a person responsible for the child's welfare, the alleged abused or neglected child and any other child who currently resides or who has resided with the person responsible for the child's welfare or the alleged perpetrator.
    - c. Conduct the interview at a school, child care facility, or any other place where the alleged abused or neglected child or other child is found.
  5. Except as prohibited under title 42, Code of Federal Regulations, part 2, a medical, dental, or mental health professional, hospital, medical or mental health facility, or health care clinic 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. 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.
  6. The department shall adopt guidelines for case referrals to a children's advocacy center. When cases are referred to a children's advocacy center, all interviews of the alleged abused or neglected child conducted at the children's advocacy center under this section must be audio-recorded or video-recorded.
  7. The department or authorized agent shall complete an evidence-based screening tool during a child protection assessment or a family services assessment.
  8. The department or authorized agent may terminate in process a child protection assessment upon a determination there is no credible evidence supporting the reported abuse or neglect occurred.
  9. If a report alleges institutional child abuse or neglect involving a public or private school, the department or the department's authorized agent shall conduct a child protection assessment. If practical, the department or the department's authorized agent shall provide notice of the onset of a child protection assessment to the public or private school. A public or private school may complete an investigation into any conduct reported or alleged to constitute institutional child abuse or neglect at the school's institution concurrently with a child protection assessment. If a public or private school conducts an investigation concurrently with a child protection assessment, the department or the department's authorized agent and the public or private school shall coordinate the planning and execution of the child protection assessment and public or private school investigation efforts to avoid a duplication of fact finding efforts and multiple interviews if practical.

**50-25.1-05.1. Child abuse or neglect assessment decision - How determined.**

Upon completion of the child protection assessment of the initial report of child abuse or neglect, a decision must be made whether confirmed, confirmed with unknown subject, unconfirmed, or unable to determine abuse or neglect of a child.

1. This determination is the responsibility of the department.
2. A decision of confirmed may not be made if the suspected child abuse or neglect arises solely out of conduct involving the lawful practice of religious beliefs by a parent or guardian. This exception does not preclude a court from ordering that medical services be provided to the child if the child's life or safety requires such an order or the child is subject to harm or threatened harm.

**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.

**50-25.1-05.3. Disposition of reports implicating a person not responsible for the child's health or welfare.**

1. Upon determination by the department or authorized agent that a report made under this chapter implicates a person other than a person responsible for a child's welfare, the department or authorized agent shall refer the report to an appropriate law enforcement agency for investigation and disposition.
2. If law enforcement determines a minor committed an act in violation of sections 12.1-20-01 through 12.1-20-04, section 12.1-20-07, sections 12.1-20-11 through 12.1-20-12.2, or chapter 12.1-27.2 against another minor, law enforcement shall provide the report to the department or authorized agent. Law enforcement shall conduct a criminal investigation and shall coordinate with the department or authorized agent for the provision of services to the minors, parents, custodians, or other persons serving in loco parentis with respect to the minors.
3. The department or authorized agent shall provide risk assessment, safety planning, and any appropriate evidence-based screening for the minors and any other minors under the same care. The department or authorized agent shall refer the minors, parents, custodians, or other persons serving in loco parentis with respect to the minors, for appropriate services.

**50-25.1-05.4. Department to adopt rules for review of child protection assessment findings.**

The department shall adopt rules to resolve complaints and conduct appeal hearings requested by the subject of a report of suspected child abuse, neglect, or death resulting from abuse or neglect who is aggrieved by the confirmed decision.

**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.

**50-25.1-05.6. Interviews on school property.**

The department, authorized agent, or appropriate law enforcement agency shall notify the school principal or other appropriate school administrator of its intent to conduct an interview on school property pursuant to section 50-25.1-05. The school administrator may not disclose the nature of the notification or any other related information concerning the interview to any person,



including a person responsible for the child's welfare. The school administrator and department, authorized agent, or law enforcement agency shall make every effort to reduce the disruption of the educational program of the child, other students, or school staff when an interview is conducted on school property.

**50-25.1-06. Protective and other services to be provided.**

1. The department shall provide protective services for a child meeting the definition of an abused or neglected child and who is at substantial risk of continued abuse or neglect due to a supported state of impending danger, as well as other children under the same care as may be necessary for their well-being and safety and shall provide other appropriate social services, as the circumstances warrant, to the parents, custodian, or other persons serving in loco parentis with respect to the child or the other children. The department may discharge the duties described in this section through an authorized agent. The department may provide protective services, as resources permit, for any child, other children under the same care, parents, custodian, or other persons serving in loco parentis upon concurrence of the parent, custodian, or other persons serving in loco parentis.
2. The department shall provide appropriate services to a child referred as a child in need of services and shall provide appropriate services to the person responsible for the child's welfare and the children under the same care as may be necessary for the well-being and safety of the children.

**50-25.1-06.1. Caseload standards - Reimbursement.**

Repealed by S.L. 2019, ch 391, § 139.

**50-25.1-07. Protective custody.**

Any physician examining a child with respect to whom abuse or neglect is known or suspected, after reasonable attempts to advise the parents, guardian, or other person having responsibility for the care of the child that the physician suspects has been abused or neglected, may keep the child in the custody of the hospital or medical facility for not to exceed ninety-six hours and must immediately notify the juvenile court and the department or authorized agent in order that child protective proceedings may be instituted.

**50-25.1-08. Guardian ad litem.**

The court, in every case involving an abused or neglected child which results in a judicial proceeding, shall appoint a guardian ad litem for the child in those proceedings.

**50-25.1-09. Immunity from liability.**

Any person, other than the alleged violator, participating in good faith in the making of a report, assisting in an investigation, assisting or furnishing information in a child protection assessment, assisting or furnishing information in an alternative response assessment, assisting or furnishing information in a family services assessment, or in providing protective services under this chapter or who is a member of the child fatality review panel, is immune from any liability, civil or criminal, except for criminal liability as provided by section 50-25.1-13, that otherwise might result from reporting the alleged case of abuse, neglect, or death resulting from child abuse or neglect. For the purpose of any proceeding, civil or criminal, the good faith of any person required to report cases of child abuse, neglect, or death resulting from abuse or neglect must be presumed.

**50-25.1-09.1. Employer retaliation prohibited - Penalty.**

1. An employer that retaliates against an employee solely because the employee in good faith reported having reasonable cause to suspect that a child was abused or neglected, or died as a result of abuse or neglect, or because the employee is a child with respect to whom a report was made, is guilty of a class B misdemeanor. It is a

- defense to any charge brought under this section that the presumption of good faith, described in section 50-25.1-09, has been rebutted.
2. The employer of an individual required or permitted to report pursuant to section 50-25.1-03 which retaliates against the individual because of a report of abuse or neglect, or a report of a death resulting from child abuse or neglect, is liable to that individual in a civil action for all damages, including exemplary damages, costs of the litigation, and reasonable attorney's fees.
  3. There is a rebuttable presumption that any adverse action within ninety days of a report is retaliatory. For purposes of this subsection, an "adverse action" is action taken by an employer against the individual making the report or the child with respect to whom a report was made, including:
    - a. Discharge, suspension, termination, or transfer from any facility, institution, school, agency, or other place of employment;
    - b. Discharge from or termination of employment;
    - c. Demotion or reduction in remuneration for services; or
    - d. Restriction or prohibition of access to any facility, institution, school, agency, or other place of employment or individuals affiliated with it.

**50-25.1-10. Abrogation of privileged communications.**

Any privilege of communication between husband and wife or between any professional person and the person's patient or client, except between attorney and client, is abrogated and does not constitute grounds for preventing a report to be made or for excluding evidence in any proceeding regarding child abuse, neglect, or death resulting from abuse or neglect resulting from a report made under this chapter.

**50-25.1-11. Confidentiality of records - Authorized disclosures.**

1. A report made under this chapter, as well as any other information obtained, is confidential and must be made available to:
  - a. A physician who has before the physician a child whom the physician reasonably suspects may have been abused or neglected.
  - b. A person who is authorized to place a child in protective custody and has before the person a child whom the person reasonably suspects may have been abused or neglected and the person requires the information to determine whether to place the child in protective custody.
  - c. Authorized staff of the department and its authorized agents, children's advocacy centers, and appropriate state child protection team members, and citizen review committee members.
  - d. Any person who is the subject of the report; provided, however, that the identity of persons reporting or supplying information under this chapter is protected until the information is needed for use in an administrative proceeding arising out of the report.
  - e. Public officials and their authorized agents who require the information in connection with the discharge of their official duties.
  - f. A court, including an administrative hearing office, whenever the court determines that the information is necessary for the determination of an issue before the court.
  - g. A person engaged in a bona fide research purpose approved by the department's institutional review board; provided, however, that no individually identifiable information as defined in section 50-06-15 is made available to the researcher unless the information is absolutely essential to the research purpose and the department gives prior approval.
  - h. An individual who is identified in subsection 1 of section 50-25.1-03, and who has made a report of suspected child abuse or neglect, if the child is likely to or continues to come before the reporter in the reporter's official or professional capacity.

- i. A parent or a legally appointed guardian of the child identified in the report as suspected of being, or having been, abused or neglected, provided the identity of persons making the report or supplying information under this chapter is protected. Unless the information is confidential under section 44-04-18.7, when a decision is made under section 50-25.1-05.1 that a child is abused or neglected, the department or authorized agent shall make a good-faith effort to provide written notice of the decision to individuals identified in this subsection. The department or authorized agent shall consider any known domestic violence when providing notification under this section.
  - j. A public or private school that is the subject of a report of institutional child abuse or neglect, provided the identity of the persons reporting or supplying the information under this chapter is protected, except if the individuals reporting or supplying information are employees of the public or private school.
- 2. In accordance with subsection 3 of section 50-11.1-07.8, the department or authorized agent shall notify the owner, operator, holder of a self-declaration, or in-home provider and shall notify the parent or legally appointed guardian of a child, who at the time of notification is receiving early childhood services under chapter 50-11.1, of the name of the subject and provide a summary of the facts and the results of a child protection assessment conducted under this chapter if the report made under this chapter involves the owner, operator, holder of a self-declaration, or in-home provider; or involves an adult or minor staff member or adult or minor household member of the early childhood program, self-declaration, or in-home provider, who is providing care to the child.
- 3. In accordance with subsection 4 of section 50-25.1-04.1, the department may notify the residential facility or setting's board of directors and any entity that accredits the facility or setting of the institutional child abuse or neglect indicated determination, written report of the state child protection team, the approved improvement plan, and areas of deficiency that resulted in the notification.
- 4. If a public or private school is the subject of a report of institutional child abuse or neglect, any records and information obtained, created, generated, or gathered by the public or private school in response to the report or during an investigation by the public or private school of the alleged conduct set forth in the report, are confidential until the state child protection team makes a determination in accordance with section 50-25.1-04.1 whether institutional child abuse or neglect is indicated.

**50-25.1-11.1. Children's advocacy centers - Confidentiality of records - Criminal history record checks.**

- 1. Records and digital media in the possession of a children's advocacy center relating to a forensic medical examination, forensic interview, or therapy are confidential and may be released only to a person other than a law enforcement agency, the department or the department's authorized agent, or a medical or mental health professional when the child comes before the medical or mental health professional in that person's professional capacity, upon service of a subpoena signed by a judge.
- 2. The department may submit a request for a criminal history record check under section 12-60-24 on an employee, final applicant for employment, contractor, multidisciplinary team member, or volunteer of a children's advocacy center who has contact with a child at or through a children's advocacy center.

**50-25.1-12. Cooperation required.**

All law enforcement officials, courts of competent jurisdiction, and appropriate state agencies shall cooperate in fulfillment of the purposes of this chapter.

**50-25.1-13. Penalty for failure to report - Penalty and civil liability for false reports.**

Any individual required by this chapter to report or to supply information concerning a case of known or suspected child abuse, neglect, or death resulting from abuse or neglect who

willfully, as defined in section 12.1-02-02, fails to do so is guilty of a class B misdemeanor. Any individual who willfully, as defined in section 12.1-02-02, makes a false report, or provides false information that causes a report to be made, under this chapter is guilty of a class B misdemeanor unless the false report is made to a law enforcement official, in which case the individual who causes the false report to be made is guilty of a class A misdemeanor. An individual who willfully makes a false report, or willfully provides false information that causes a report to be made, under this chapter is also liable in a civil action for all damages suffered by the person reported, including exemplary damages.

**50-25.1-14. Unauthorized disclosure of reports - Penalty.**

Any individual who permits or encourages the unauthorized disclosure of reports made or confidential information obtained under the provisions of this chapter is guilty of a class B misdemeanor.

**50-25.1-15. Abandoned infant - Approved location procedure - Reporting immunity.**

1. As used in this section:
  - a. "Abandoned infant" means an infant who has been abandoned at birth at a hospital or before reaching the age of one year regardless of the location of birth and who has been left with an on-duty staff member at an approved location in an unharmed condition.
  - b. "Approved location" means a hospital or other location as designated by administrative rule adopted by the department.
  - c. "Hospital" means a facility licensed under chapter 23-16.
2. A parent of an infant under the age of one year, or an agent of the parent with the parent's consent, may leave the infant with an on-duty staff member at an approved location. Neither the parent nor the agent is subject to prosecution under sections 14-07-15 and 14-09-22 for leaving an abandoned infant.
3. An approved location shall accept an infant left under this section. The approved location may request information regarding the parents and shall provide the parent or the agent with a medical history form and an envelope with the approved location's return address. If a hospital accepting the infant has the infant's medical history, the hospital is not required to provide the parent or the agent with a medical history form. Neither the parent nor the agent is required to provide any information.
4. If an infant is left at a hospital, the hospital shall provide the parent or the agent with a numbered identification bracelet to link the parent or the agent to the infant, unless due to birth of the infant, the infant and parent currently have an identification bracelet. Possession of an identification bracelet does not entitle the bracelet holder to take custody of the infant on demand. If an individual possesses a bracelet linking the individual to an infant left at a hospital under this section and parental rights have not been terminated, possession of the bracelet creates a presumption that the individual has standing to participate in a protection services action brought under this chapter or chapter 27-20.3. Possession of the bracelet does not create a presumption of maternity, paternity, or custody.
5. The approved location may provide the parent or the agent with any relevant information, including:
  - a. Information about the safe place for abandoned infant programs;
  - b. Information about adoption and counseling services; and
  - c. Information about whom to contact if reunification is sought.
6. Within twenty-four hours of receiving an infant under this section, the approved location shall report to the department or authorized agent, as required by section 50-25.1-03, that an infant has been left at the approved location. The report may not be made before the parent or the agent leaves the approved location.
7. The approved location and its employees and agents are immune from any criminal or civil liability for accepting an infant under this section.
8. Upon receiving a report of an abandoned infant under this section, the department or authorized agent shall proceed as required under this chapter if it appears that the

abandoned infant was not harmed, except the department or authorized agent may not attempt to identify or contact the parent or the agent. If it appears the infant who was left was harmed, the department or authorized agent shall initiate a child protection assessment of the matter as required by law.

9. If an individual claiming to be the parent or the agent contacts the department or authorized agent and requests to be reunited with the infant who was left, the department or authorized agent may identify or contact the individual as required under this chapter and all other applicable laws. If an individual contacts the department or authorized agent seeking information only, the department or authorized agent may attempt to obtain information regarding the identity and medical history of the parents and may provide information regarding the procedures in a case involving an infant who was left at an approved location. The individual is under no obligation to respond to the request for information, and the department or authorized agent may not attempt to compel response to investigate the identity or background of the individual.
10. The department shall develop and implement a public awareness campaign to provide information, public service announcements, and educational materials regarding this section to the public, including medical providers, law enforcement, and social service agencies.

**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 include a referral for an addiction assessment, a referral for substance use disorder treatment if recommended, or 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 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 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.

**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, 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. 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.
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 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. 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 is present.
  3. A physician or any other medical personnel administering a toxicology test to determine the presence of a controlled substance 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.

**50-25.1-18. Prenatal exposure to alcohol abuse - 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 alcohol after the woman knows of the pregnancy may:
  - a. Arrange for an addiction assessment 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 alcohol during the pregnancy.
3. If the woman is referred for an addiction assessment under subdivision a of subsection 1 and fails to obtain an assessment 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 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 alcohol, the department or authorized agent shall immediately initiate an appropriate assessment and offer services indicated under the circumstances. Services offered may include a referral for an addiction assessment, a referral for substance use disorder treatment, if recommended, or 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 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 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 of alcohol, any health risk associated with the abuse of alcohol, and the name and address of the individual making the report.

**50-25.1-19. Child protective services duties - Training requirements.**

1. The department or authorized agent, at the initial time of contact with an individual subject to a child abuse or neglect assessment, shall advise the individual of the specific complaints or allegations made against the individual.
2. The department or authorized agent shall provide training to all representatives of the child protective services system regarding the legal duties of the representatives. The training may consist of various methods of informing the representatives of these duties, to protect the legal rights and safety of children and families from the initial time of contact during assessment through treatment.
3. The department shall adopt rules to implement the requirements of this section.

**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. 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. 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, an assessment of the initial report of child abuse or neglect may be completed.

**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, 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; 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.

**50-25.1-22. Family services assessment - Compliance.**

If a family services 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 a person responsible for the child's welfare complies with the resulting referred services for the child. The department or authorized agent shall determine whether a person responsible for the child's welfare has complied with the referred services. If the department or authorized agent determines a person responsible for the child's welfare has not complied with the referred services for the child, a child protection assessment of the initial report of child abuse or neglect may be completed.

**50-25.1-23. Family services assessment - Services.**

1. In response to a family services assessment, the department shall provide appropriate referral services to a person responsible for the child's welfare and the children under the same care as may be necessary for the well-being and safety of the children.
2. The department may discharge the powers and duties provided under this section through an authorized agent.

**50-25.1-24. Evidence-based screening tool records - Confidentiality - Admissibility - Privileged.**

1. Evidence-based screening tool records are confidential and may be only used for conducting a screening, treatment, referral for services, and receiving services.
2. Evidence-based screening tool records are not subject to section 50-25.1-11.

3. The department may release reports, data compilations, analyses, and summaries, which identify or analyze trends.
4. Evidence-based screening tool records are privileged and are not subject to subpoena or discovery or introduction into evidence in any civil or administrative action.