

**State and Tribal Laws Regarding
Child Abuse and Neglect**

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**How Health-care Professionals Can
Assist in Child Welfare Cases**

- Be aware of the types of child maltreatment, including physical abuse, sexual abuse, emotional abuse, and child maltreatment;
- Know the reporting standards, protocols, and penalties for failure to report;
- Know and understand laws about confidentiality and privacy;
- Keep open lines of communication with both state and tribal child welfare agencies and families to serve as a resource for medical expertise and access to necessary services.

What is Child Welfare? A Guide for Health-Care Professionals: <http://www.abbhsd.com>

North Dakota Century Code 50-25.1

The purpose of this chapter “is 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; providing of adequate services for the protection and treatment of abused and neglected children to protect them from further harm...”

Mandatory Reporters

Professionals who have a reasonable suspicion that a child is abused or neglected must make a report to Child Protection Services. These individuals include:

- Physicians, nurses, medical examiners, and any other medical professional;
- Mental health professional;
- Religious practitioner;
- School teacher, administrator, and school counselors;
- Addiction counselors;
- Social workers;
- Day care center or child care workers;
- Police or law enforcement officer;
- Member of the clergy;
- Any other person having reasonable cause to suspect abuse or neglect.

ND Century Code 50-25.1-03

Medical Professionals

Must report:

- Any reasonable suspicion of child abuse or neglect
- Parents or guardians who fail to provide needed health care treatment, if their failure creates a significant risk of danger, illness, or developmental delays for the child
- Infants who are affected by illegal substance abuse, have withdrawal symptoms from prenatal drug exposure, or have been identified as having Fetal Alcohol Spectrum disorder
- The withholding of medical treatment when, in the physician's reasonable medical judgment, providing the treatment will likely help or correct an infant's life-threatening condition

Prenatal Exposure to Controlled Substances

A physician must report knowledge of or reasonable suspicion that a pregnant woman has used a controlled substance for nonmedical purposes during pregnancy

- Must administer a toxicology test to her within eight hours after delivery, either with her consent, or if a specimen is otherwise available, without consent.
- Must administer toxicology test to newborn infants to determine exposure to a controlled substance. This can be done **without the consent** of the child's parent or guardian.
 - If test results are positive—Report
 - If test results are negative—Report if there are other reasons to believe the woman has used a controlled substance for a non-medical purpose

ND Century Code 50-25.1-16

Abrogation of Privileged Communication

- The doctor-patient privilege **does not apply** in cases of abuse or neglect and **does not exempt** doctors from reporting;
- The child's medical records supporting the suspicion of abuse or neglect should be included as part of the report.

ND Century Code 50-25.1-10

Where to Report?

- A person wanting to report suspected child abuse or neglect should contact the County Social Services Office in the county where the child is located. Each county office serves as the ND Dept of Human Services' designee for Child Protection Services.
- When appropriate, a reporter may also contact the Tribal Child Protection Services Office.
- Because of complex jurisdictional issues involving the Indian Child Welfare Act, the reporter should contact both state and tribal child protection services when a Native American child is involved.

How to Report?

- Oral or written reports are acceptable
- Oral reports must be followed by written reports within forty-eight hours if requested by the department
- The reporting form, SFN 960, is available online or at county social services offices

ND Century Code 50-25.1-04

Supporting Documentation

Any person required to report child abuse and/or neglect may document or request a medical professional or law enforcement officer to document visible signs of trauma on a child who the person has reasonable cause to suspect is abused or neglected. Documentation may be in the form of:

- Photographs, x-rays, and other medical tests including laboratory tests, coloscopies

This may be done **without the consent** of the child's parent or guardian.

ND Century Code 50-25.1-01.1

Photographs and Visual Images of Abuse

- Must be taken by law enforcement officials, physicians, or medical facility professionals
- Must be sent to the CPS Department at the time the initial report of child abuse or neglect is made or as soon thereafter as possible.

ND Century Code 50-25.1-01.1

Protective Custody

Any physician who has reasonable cause to suspect child abuse or neglect may keep the child in the custody of the hospital or medical facility for **not to exceed ninety-six hours (+ days)**.

- Must make a reasonable attempt to advise parents, guardian, or other person having responsibility for the care of the child
- Must immediately notify the Department of Social Services (CPS) and the juvenile court in order that child protective proceedings may be instituted.

ND Century Code 50-25.1-07

What Happens Next?

After receiving a report of suspected child abuse or neglect, the CPS Department:

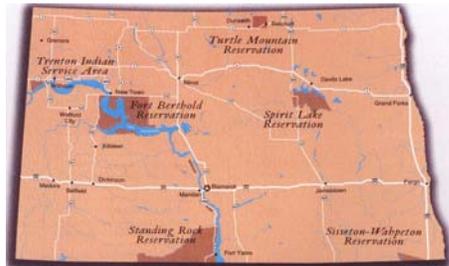
1. Analyzes the information in the report to determine what actions to take;
2. Assesses the concerns and facts in the report;
3. Makes a decision about whether services are required for the protection and treatment of an abused or neglected child;
4. Refers to juvenile court for review if services are determined to be required
5. Makes provisions for protective services to the family such as parenting education, counseling, supporting services, and/or foster care.

Adjudication Process

After the social worker/government files a petition for protective custody, the parent(s)/guardian(s) has the ability to either admit or deny the allegations contained in the petition.

- Admit: The Court will grant legal care, custody, and control to Social Services to act in the best interests of the child. Placement may be out of home or in home depending on the circumstances and the respondent(s) will be required to comply with a case plan.
- Deny: The Court will set an adjudication, which may require any witnesses to the abuse to testify.

Tribal Jurisdiction



Tribal Jurisdiction over Child Abuse and Neglect Cases

- Generally, a tribe has jurisdiction over a child welfare case when the child is domiciled on or is a resident of the Reservation (regardless of whether that child is a tribal member).
- A tribe may also transfer state child welfare cases under the Indian Child Welfare Act when the child(ren) are tribal members.

Indian Child Welfare Act (ICWA) of 1978 25 U.S.C. § § 1901 et seq.

- Gives Tribes exclusive jurisdiction of child welfare cases when the child resides on, or is domiciled on the reservation, or if the child is a war of the Tribe.
- Gives Tribes conclusive, but presumptive, jurisdiction over child welfare cases in State Courts that involve Native American children.

ICWA Purpose



Prior to 1978, there was high rate of removal of Indian children from their homes and places with non-Indian families/schools, stripping them of their culture and traditional way of life.

Procedure

- Once a state child welfare proceeding is initiated, the state must notify the parents and the child's tribe at least 10 days before the proceeding.
- State agencies are required to make "active efforts" to prevent removal of the child from the family, rather than "reasonable efforts" which are required in state court.
- An Indian child may not be temporarily removed from the home unless there is a likelihood of "serious emotional or physical damage" to the child if they remain in the home.
- The Tribe and/or the parents have the right to intervene in the case at any time and to make a motion to transfer the case to tribal jurisdiction

Importance of Family and Culture

The ICWA presumes that being with an Indian family, particularly an extended family member or member of the same tribe, is in a Native child's best interest.

Placement preferences :

1. A member of the Indian child's extended family;
2. A foster home licensed, approved, or specified by the Indian child's tribe;
3. An Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
4. An institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.

* A Tribe can also substitute its own codified placement preferences.

Cultural Differences Impacting Child Welfare Decisions for Native American Children

- Most Indian Tribes value extended family and a general community child-care network, in contrast to a view emphasizing the primary responsibility/critical role of parents.
- Family circumstances, particularly in cases of poverty, may lead to an over-reporting of child neglect or abuse.
- Cultural differences, such as reluctance to share information or not making eye contact, may be misinterpreted as suspicious behavior.

Implications

- When reporting suspected abuse or neglect of an Indian child, it is not always apparent whether the state or Tribe will have jurisdiction due to ICWA.
- It is best to report to both the State CPS and Tribal CPS offices and allow the Departments to determine who will initiate proceedings.
- Because ICWA creates a preference for tribal jurisdiction, the proceedings and possible adjudication may take place at a Tribal Court. Distance and communication with tribal agencies is crucial.

Resources

[North Dakota Child Protection Program](#)

[North Dakota County Social Services Index](#)
<http://www.nd.gov/division/county/socialservices/index.html>

[Spirit Lake Social Services](#)

PO Box 39
Fort Totten, ND 58335
Phone: (701) 766-4404
Fax: (701) 766-4722

[Standing Rock Social Services](#)

PO Box 640
Fort Yates, ND 58538
Phone: (701) 854-3431
Fax: (701) 854-2119
South Dakota 605.823.4634

[Three Affiliated Tribes \(Fort Berthold Reservation\) Child Protection Services](#)

404 Frontage Road
New Town, ND 58763
Phone: (701) 627-4781

[Sisseton-Wahpeton Sioux Tribe Child Protection Services](#)

509 Veterans Memorial Drive
P.O. Box 509
Agency Village, SD 57262
Phone: (605) 698-3993
On-Call Worker: (800) 958-0551
Fax: (605) 698-3999

[Turtle Mountain Child Protection Services](#)

Bureau of Indian Affairs (BIA)
Turtle Mountain Agency
PO Box 60
Bekcourt, ND 58316
Social Services Phone: (701) 477-6147
Child Welfare Services
PO Box 900
Bekcourt, ND 58316
Phone: (701) 477-5688
