

1 SENATE BILL NO. 469
2 INTRODUCED BY J. TREBAS, L. BREWSTER

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A STATEWIDE CENTRAL REGISTRY FOR
5 SUBSTANTIATED REPORTS OF CHILD ABUSE OR NEGLECT; REQUIRING NOTICE ~~AND A HEARING~~
6 BEFORE AN INDIVIDUAL IS INCLUDED IN THE CENTRAL REGISTRY; ESTABLISHING PROCEDURES
7 FOR EXPUNGEMENT FROM THE CENTRAL REGISTRY; AMENDING SECTIONS 41-3-202 AND 41-3-205,
8 MCA; AND PROVIDING AN EFFECTIVE DATE."

9
10 WHEREAS, the 5th and 14th Amendments to the United States Constitution prohibit governments from
11 depriving individuals of their liberty or property interests without due process of the law; and

12 WHEREAS, this state has established procedures for collecting and maintaining child abuse and
13 neglect investigation records in a central registry that includes the identities of individuals alleged to have
14 abused or neglected a child; and

15 WHEREAS, the names maintained in Montana's central registry may be disclosed to certain third
16 parties in the course of background checks related to an individual's employment, licensure, and volunteer
17 activities; and

18 WHEREAS, the disclosures may have a significant negative impact on an individual's liberty and
19 property interests, including the loss or denial of employment and the loss of reputation in the community; and

20 WHEREAS, the Legislature wishes to ensure that this state's procedures for listing individuals on the
21 central registry comport with constitutional due process requirements.

22
23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

24
25 NEW SECTION. Section 1. Central registry -- purpose -- determinations. (1) There is established
26 a statewide central registry to maintain information on individuals who are the subject of substantiated
27 determinations of child abuse or neglect. The information may be made available during a background check of

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1 an individual as provided for in 41-3-205 and may affect the individual's ability to volunteer or obtain
2 employment or licensure in areas that the individual may have unsupervised contact with children, such as child
3 care, foster care, or group home care.

4 (2) For the purposes of [sections 1 through ~~4~~3], a determination of child abuse or neglect must be
5 categorized according to the following definitions:

6 (a) (i) "Substantiated" means that, following an investigation by the department and a hearing in
7 district court, the court has determined by a preponderance of the evidence that the reported act of child abuse
8 or neglect occurred.

9 (ii) A substantiated determination includes:

10 (A) an individual who admits to an allegation of abuse or neglect; and

11 (B) an individual who is convicted of a criminal offense related to child abuse or neglect or
12 exploitation of a child.

13 (iii) A substantiated determination may not be based solely on an individual's agreement to comply
14 with a treatment plan created by the department in order to receive services.

15 (iv) A substantiated determination must be reviewed and upheld by a district court as provided in
16 [section 3].

17 (v) The subject of a substantiated determination may be placed on the central registry and must be
18 notified of the consequences of being listed in the central registry, as well as the subject's rights and
19 procedures for requesting expungement from the registry.

20 (b) "Unsubstantiated" means that:

21 (i) following an investigation, the department could not determine that the reported act of abuse or
22 neglect occurred; or

23 (ii) following a hearing, the court could not determine by a preponderance of the evidence that the
24 reported act of abuse or neglect occurred.

25 (c) "Unfounded" means that, following an investigation, the department determined that:

26 (i) the report was false;

27 (ii) the report was inherently improbable;

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- 1 (iii) the report involved an accidental injury;
- 2 (iv) the reported act did not constitute child abuse or neglect; or
- 3 (v) evidence indicated the reported act of abuse or neglect could not have occurred.

4

5 NEW SECTION. Section 2. Central registry -- notice -- procedures. (1) An individual who is the
6 subject of a child abuse or neglect report that is determined by the department as substantiated may not be
7 added to the central registry absent notice ~~and a hearing.~~

8 (2) Within 14 days of determining that a reported act of abuse or neglect is substantiated and
9 before the department may add an individual to the central registry, the department shall ~~request a hearing~~
10 ~~before the district court and~~ provide the individual with certified written notice of the department's intent to list
11 the individual's name in the central registry. The notice must include:

12 (a) a clear statement of the specific allegations that will be added to the registry, including the
13 name of the alleged victim, the injuries or harm alleged to have resulted from abuse or neglect, and the date on
14 which the report was made;

15 (b) the consequences of being listed in the central registry, including possible negative impacts on
16 the individual's employment, licensure, and ability to have future contact with children, including volunteer and
17 school activities;

18 (c) the maximum amount of time the individual's name may be included in the central registry; and

19 (d) a complete copy of the record that will be added to the registry; ~~and~~

20 ~~(e) confirmation that the department has requested a hearing before the district court.~~

21 (3) The department may not add an individual to the central registry or release information to any
22 third parties until all appeals are exhausted or waived.

23 ~~(4) If a petition for emergency protective services has been filed with the district court pursuant to~~
24 ~~41-3-429 in which the allegations of abuse or neglect are at issue, the hearing on the substantiation~~
25 ~~determination provided under [section 3] may be held in combination with the show cause hearing provided for~~
26 ~~in 41-3-432. The individual has a right to counsel.~~

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1 ~~NEW SECTION. Section 3. Central registry -- hearing -- appeal.~~ (1) (a) Prior to the hearing, the
2 ~~department shall provide the individual with the full investigative file and any exculpatory evidence within the~~
3 ~~department's possession or control.~~
4 ~~(b) — Discovery prior to the hearing must be conducted in accordance with Title 25, chapter 20.~~
5 ~~(2) — Following the hearing, if the district court finds that there is a preponderance of the evidence~~
6 ~~supporting the department's substantiation determination, the substantiated allegations against the individual~~
7 ~~may be entered into the central registry for a period of time determined by the court, not to exceed 25 years and~~
8 ~~proportionate to:~~
9 ~~(a) — the severity of the act of abuse or neglect; and~~
10 ~~(b) — the risk of threat or harm to children that the individual poses.~~
11 ~~(3) — If the district court finds that there is insufficient evidence supporting the department's~~
12 ~~determination, the court shall order the department to amend its findings accordingly and the allegation may not~~
13 ~~be entered into the central registry.~~

15 **NEW SECTION. Section 3. Expungement from central registry.** (1) An individual listed in the
16 central registry may request to have the individual's name expunged from the registry by submitting a written
17 request to the district court accompanied by an affidavit sworn to by a person with personal knowledge stating
18 facts sufficient to show that there is good cause for a hearing. Good cause includes but is not be limited to:
19 (a) newly discovered evidence that a substantiated report of child abuse or neglect is inaccurate;
20 or
21 (b) evidence that the individual who is the subject of a substantiated report no longer poses a risk
22 and that no significant public purpose is served by continued listing of the individual in the state's central
23 registry.
24 (2) Prior to a hearing requested under this section, the department may administratively expunge
25 the requestor's name from the central registry.
26 (3) An individual who is listed on the central registry shall wait 2 years from the date of the original
27 substantiation determination before requesting expungement.

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1 (4) If an individual's request for expungement under this section is denied, the individual shall wait
2 2 years before submitting another request for expungement.

3 (5) An individual listed in the state's central registry prior to [the effective date of this act] may
4 request to have the individual's name expunged from the registry by submitting a written request to the district
5 court.

6 (6) Procedures for hearings, appeals, and expungement of centralized registry records, as well as
7 updated phone numbers, addresses, and other contact information for the district court and other relevant
8 parties, must be accessible to the public online and posted in a place that is open for public viewing in regional
9 offices.

10

11 **Section 4.** Section 41-3-202, MCA, is amended to read:

12 **"41-3-202. Action on reporting.** (1) (a) Upon receipt of a report that a child is or has been abused or
13 neglected, the department shall promptly assess the information contained in the report and make a
14 determination regarding the level of response required and the timeframe within which action must be initiated.

15 (b) (i) Except as provided in subsection (1)(b)(ii), upon receipt of a report that includes an
16 allegation of sexual abuse or sexual exploitation when the alleged perpetrator of the sexual abuse or sexual
17 exploitation was 12 years of age or older or if the department determines during any investigation that the
18 circumstances surrounding an allegation of child abuse or neglect include an allegation of sexual abuse or
19 sexual exploitation when the alleged perpetrator of the sexual abuse or sexual exploitation was 12 years of age
20 or older, the department shall immediately report the allegation to the county attorney of the county in which the
21 acts that are the subject of the report occurred.

22 (ii) If a victim of sexual abuse or sexual exploitation has attained the age of 14 and has sought
23 services from a contractor as described in 41-3-201(2)(j) that provides confidential services to victims of sexual
24 assault, conditioned upon an understanding that the criminal conduct will not be reported by the department to
25 the county attorney in the jurisdiction in which the alleged crime occurred, the department may not report
26 pursuant to 41-3-205(5)(d) and subsection (1)(b)(i) of this section.

27 (c) If the department determines that an investigation and a safety and risk assessment are

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1 required, a child protection specialist shall promptly conduct a thorough investigation into the circumstances
2 surrounding the allegations of abuse or neglect of the child and perform a safety and risk assessment to
3 determine whether the living arrangement presents an unsafe environment for the child. The safety and risk
4 assessment may include an investigation at the home of the child involved, the child's school or day-care
5 facility, or any other place where the child is present and into all other nonfinancial matters that in the discretion
6 of the investigator are relevant to the safety and risk assessment. In conducting a safety and risk assessment
7 under this section, a child protection specialist may not inquire into the financial status of the child's family or of
8 any other person responsible for the child's care, except as necessary to ascertain eligibility for state or federal
9 assistance programs or to comply with the provisions of 41-3-446.

10 (2) An initial investigation of alleged abuse or neglect may be conducted when an anonymous
11 report is received. However, if the initial investigation does not within 48 hours result in the development of
12 independent, corroborative, and attributable information indicating that there exists a current risk of physical or
13 psychological harm to the child, a child may not be removed from the living arrangement. If independent,
14 corroborative, and attributable information indicating an ongoing risk results from the initial investigation, the
15 department shall then conduct a safety and risk assessment.

16 (3) The child protection specialist is responsible for conducting the safety and risk assessment. If
17 the child is treated at a medical facility, the child protection specialist, county attorney, or peace officer,
18 consistent with reasonable medical practice, has the right of access to the child for interviews, photographs,
19 and securing physical evidence and has the right of access to relevant hospital and medical records pertaining
20 to the child. If an interview of the child is considered necessary, the child protection specialist, county attorney,
21 or peace officer may conduct an interview of the child. The interview may be conducted in the presence of the
22 parent or guardian or an employee of the school or day-care facility attended by the child.

23 (4) Subject to 41-3-205(3), if the child's interview is audiotaped or videotaped, an unedited
24 audiotape or videotape with audio track must be made available, upon request, for unencumbered review by
25 the family.

26 (5) (a) If from the safety and risk assessment the department has reasonable cause to suspect that
27 the child is suffering abuse or neglect, the department may provide emergency protective services to the child,

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1 pursuant to 41-3-301, or enter into a written prevention plan, pursuant to 41-3-302, and may provide protective
2 services to any other child under the same care. The department shall:

3 (i) after interviewing the parent or guardian, if reasonably available, document the determinations
4 of the safety and risk assessment; and

5 (ii) notify the child's family of the determinations of the safety and risk assessment, unless the
6 notification can reasonably be expected to result in harm to the child or other person.

7 ~~(b) Except as provided in subsection (5)(c), the department shall destroy all safety and risk
8 assessment determinations and associated records, except for medical records, within 30 days after the end of
9 the 3-year period starting from the date of completion of the safety and risk assessment.~~

10 (b) If the department determines that a report of child abuse or neglect is substantiated and a court
11 upholds this determination pursuant to [sections 1 through 3 2], the name of the individual who is the subject of
12 the report may be placed on the central registry and the records must be maintained for 25 years.

13 ~~(c) Safety and risk assessment determinations and associated records may be maintained for a
14 reasonable time as defined by department rule under the following circumstances:~~

15 ~~(i) the safety and risk assessment determines that abuse or neglect occurred;~~

16 ~~(ii) there had been a previous or there is a subsequent report and investigation resulting in a safety
17 and risk assessment concerning the same person; or~~

18 ~~(iii) an order has been issued by a court of competent jurisdiction adjudicating the child as a youth in
19 need of care based on the circumstances surrounding the initial allegations.~~

20 (c) If the department determines that a report of child abuse or neglect is unsubstantiated, the
21 records must be maintained for 2 years following the close of the investigation.

22 (d) If the department determines that a report of child abuse or neglect is unfounded, the records
23 must be destroyed within 60 days after the close of the investigation.

24 (e) As used in this subsection (5), "substantiated", "unsubstantiated", and "unfounded" have the
25 meanings provided in [section 1].

26 (6) The investigating child protection specialist, within 60 days of commencing an investigation,
27 shall also furnish a written safety and risk assessment to the department and, ~~upon request,~~ to the family.

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1 Subject to time periods set forth in subsections (5)(b), ~~and (5)(c), and (5)(d)~~, the department shall maintain a
2 record system documenting investigations and safety and risk assessment determinations. ~~Unless records are~~
3 ~~required to be destroyed under subsections (5)(b) and (5)(c), the department shall retain records relating to the~~
4 ~~safety and risk assessment, including case notes, correspondence, evaluations, videotapes, and interviews, for~~
5 ~~25 years.~~

6 (7) Any person reporting abuse or neglect that involves acts or omissions on the part of a public or
7 private residential institution, home, facility, or agency is responsible for ensuring that the report is made to the
8 department.

9 (8) The department shall, upon request from any reporter of alleged child abuse or neglect, verify
10 whether the report has been received, describe the level of response and timeframe for action that the
11 department has assigned to the report, and confirm that it is being acted upon."
12

13 **Section 5.** Section 41-3-205, MCA, is amended to read:

14 **"41-3-205. Confidentiality -- disclosure exceptions.** (1) The case records of the department and its
15 local affiliate, the local office of public assistance, the county attorney, and the court concerning actions taken
16 under this chapter and all records concerning reports of child abuse and neglect must be kept confidential
17 except as provided by this section. Except as provided in subsections (9) and (10), a person who purposely or
18 knowingly permits or encourages the unauthorized dissemination of the contents of case records is guilty of a
19 misdemeanor.

20 (2) Records may be disclosed to a court for in camera inspection if relevant to an issue before it.
21 The court may permit public disclosure if it finds disclosure to be necessary for the fair resolution of an issue
22 before it.

23 (3) Records, including case notes, correspondence, evaluations, videotapes, and interviews,
24 unless otherwise protected by this section or unless disclosure of the records is determined to be detrimental to
25 the child or harmful to another person who is a subject of information contained in the records, may be
26 disclosed to the following persons or entities in this state and any other state or country:

27 (a) a department, agency, or organization, including a federal agency, military enclave, or Indian

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1 organization, employee, writer, or reporter maintains the confidentiality of the child who is the subject of the
2 proceeding.

3 (11) This section is not intended to affect the confidentiality of criminal court records, records of law
4 enforcement agencies, or medical records covered by state or federal disclosure limitations.

5 (12) Copies of records, evaluations, reports, or other evidence obtained or generated pursuant to
6 this section that are provided to the parent, grandparent, aunt, uncle, brother, sister, guardian, or parent's or
7 guardian's attorney must be provided without cost."

8
9 **NEW SECTION. Section 6. Codification instruction.** [Sections 1 through 4.3] are intended to be
10 codified as a new part in Title 41, chapter 3, and the provisions of Title 41, chapter 3, apply to [sections 1
11 through 4.3].

12
13 **NEW SECTION. Section 7. Effective date.** [This act] is effective July 1, 2023.

14 - END -