

HOUSE BILL NO. 399

INTRODUCED BY B. MERCER

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING COUNTY ATTORNEY AND ATTORNEY GENERAL REPORTING REQUIREMENTS RELATED TO CHILDHOOD SEXUAL ABUSE; REVISING REPORTING REQUIREMENTS; PROVIDING A DEFINITION; AMENDING SECTIONS 41-3-102, 41-3-202, AND 41-3-210, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

NEW SECTION. Section 1. Department report to attorney general. By July 15 of each year, the department shall report to the attorney general and the law and justice interim committee in accordance with 5-11-210 the number of referrals to county attorneys pursuant to 41-3-202(1)(b)(i) that the department made for each county in the previous fiscal year.

Section 2. Section 41-3-102, MCA, is amended to read:

"41-3-102. Definitions. As used in this chapter, the following definitions apply:

(1) (a) "Abandon", "abandoned", and "abandonment" mean:

(i) leaving a child under circumstances that make reasonable the belief that the parent does not intend to resume care of the child in the future;

(ii) willfully surrendering physical custody for a period of 6 months and during that period not manifesting to the child and the person having physical custody of the child a firm intention to resume physical custody or to make permanent legal arrangements for the care of the child;

(iii) that the parent is unknown and has been unknown for a period of 90 days and that reasonable efforts to identify and locate the parent have failed; or

(iv) the voluntary surrender, as defined in 40-6-402, by a parent of a newborn who is no more than 30 days old to an emergency services provider, as defined in 40-6-402.

(b) The terms do not include the voluntary surrender of a child to the department solely because of

1 parental inability to access publicly funded services.

2 (2) "A person responsible for a child's welfare" means:

3 (a) the child's parent, guardian, or foster parent or an adult who resides in the same home in which
4 the child resides;

5 (b) a person providing care in a day-care facility;

6 (c) an employee of a public or private residential institution, facility, home, or agency; or

7 (d) any other person responsible for the child's welfare in a residential setting.

8 (3) "Abused or neglected" means the state or condition of a child who has suffered child abuse or
9 neglect.

10 (4) (a) "Adequate health care" means any medical care or nonmedical remedial health care
11 recognized by an insurer licensed to provide disability insurance under Title 33, including the prevention of the
12 withholding of medically indicated treatment or medically indicated psychological care permitted or authorized
13 under state law.

14 (b) This chapter may not be construed to require or justify a finding of child abuse or neglect for the
15 sole reason that a parent or legal guardian, because of religious beliefs, does not provide adequate health care
16 for a child. However, this chapter may not be construed to limit the administrative or judicial authority of the
17 state to ensure that medical care is provided to the child when there is imminent substantial risk of serious harm
18 to the child.

19 (5) "Best interests of the child" means the physical, mental, and psychological conditions and
20 needs of the child and any other factor considered by the court to be relevant to the child.

21 (6) "Child" or "youth" means any person under 18 years of age.

22 (7) (a) "Child abuse or neglect" means:

23 (i) actual physical or psychological harm to a child;

24 (ii) substantial risk of physical or psychological harm to a child; or

25 (iii) abandonment.

26 (b) (i) The term includes:

27 (A) actual physical or psychological harm to a child or substantial risk of physical or psychological
28 harm to a child by the acts or omissions of a person responsible for the child's welfare;

(B) exposing a child to the criminal distribution of dangerous drugs, as prohibited by 45-9-101, the criminal production or manufacture of dangerous drugs, as prohibited by 45-9-110, or the operation of an unlawful clandestine laboratory, as prohibited by 45-9-132; or

(C) any form of child sex trafficking or human trafficking.

(ii) For the purposes of this subsection (7), "dangerous drugs" means the compounds and substances described as dangerous drugs in Schedules I through IV in Title 50, chapter 32, part 2.

(c) In proceedings under this chapter in which the federal Indian Child Welfare Act is applicable, this term has the same meaning as "serious emotional or physical damage to the child" as used in 25 U.S.C. 1912(f).

(d) The term does not include self-defense, defense of others, or action taken to prevent the child from self-harm that does not constitute physical or psychological harm to a child.

(8) "Child protection specialist" means an employee of the department who investigates allegations of child abuse, neglect, and endangerment and has been certified pursuant to 41-3-127.

(9) "Concurrent planning" means to work toward reunification of the child with the family while at the same time developing and implementing an alternative permanent plan.

(10) "Decline to prosecute" means a decision not to file criminal charges based on the matter reported by the department or investigation by law enforcement for any reason, including but not limited to insufficient evidence.

~~(10)~~(11) "Department" means the department of public health and human services provided for in 2-15-2201.

~~(11)~~(12) "Family engagement meeting" means a meeting that involves family members in either developing treatment plans or making placement decisions, or both.

~~(12)~~(13) "Indian child" means any unmarried person who is under 18 years of age and who is either:

(a) a member of an Indian tribe; or

(b) eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

~~(13)~~(14) "Indian child's tribe" means:

(a) the Indian tribe in which an Indian child is a member or eligible for membership; or

(b) in the case of an Indian child who is a member of or eligible for membership in more than one Indian tribe, the Indian tribe with which the Indian child has the more significant contacts.

~~(14)~~(15) "Indian custodian" means any Indian person who has legal custody of an Indian child under tribal law or custom or under state law or to whom temporary physical care, custody, and control have been transferred by the child's parent.

~~(15)~~(16) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized by:

(a) the state of Montana; or

(b) the United States secretary of the interior as being eligible for the services provided to Indians or because of the group's status as Indians, including any Alaskan native village as defined in federal law.

~~(16)~~(17) "Limited emancipation" means a status conferred on a youth by a court in accordance with 41-1-503 under which the youth is entitled to exercise some but not all of the rights and responsibilities of a person who is 18 years of age or older.

~~(17)~~(18) "Parent" means a biological or adoptive parent or stepparent.

~~(18)~~(19) "Parent-child legal relationship" means the legal relationship that exists between a child and the child's birth or adoptive parents, as provided in Title 40, chapter 6, part 2, unless the relationship has been terminated by competent judicial decree as provided in 40-6-234, Title 42, or part 6 of this chapter.

~~(19)~~(20) "Permanent placement" means reunification of the child with the child's parent, adoption, placement with a legal guardian, placement with a fit and willing relative, or placement in another planned permanent living arrangement until the child reaches 18 years of age.

~~(20)~~(21) "Physical abuse" means an intentional act, an intentional omission, or gross negligence resulting in substantial skin bruising, internal bleeding, substantial injury to skin, subdural hematoma, burns, bone fractures, extreme pain, permanent or temporary disfigurement, impairment of any bodily organ or function, or death.

~~(21)~~(22) "Physical neglect" means either failure to provide basic necessities, including but not limited to appropriate and adequate nutrition, protective shelter from the elements, and appropriate clothing related to weather conditions, or failure to provide cleanliness and general supervision, or both, or exposing or allowing the child to be exposed to an unreasonable physical or psychological risk to the child.

1 ~~(22)~~(23) (a) "Physical or psychological harm to a child" means the harm that occurs whenever the
2 parent or other person responsible for the child's welfare:

3 (i) inflicts or allows to be inflicted upon the child physical abuse, physical neglect, or psychological
4 abuse or neglect;

5 (ii) commits or allows sexual abuse or exploitation of the child;

6 (iii) induces or attempts to induce a child to give untrue testimony that the child or another child
7 was abused or neglected by a parent or other person responsible for the child's welfare;

8 (iv) causes malnutrition or a failure to thrive or otherwise fails to supply the child with adequate
9 food or fails to supply clothing, shelter, education, or adequate health care, though financially able to do so or
10 offered financial or other reasonable means to do so;

11 (v) exposes or allows the child to be exposed to an unreasonable risk to the child's health or
12 welfare by failing to intervene or eliminate the risk; or

13 (vi) abandons the child.

14 (b) The term does not include a youth not receiving supervision solely because of parental inability
15 to control the youth's behavior.

16 ~~(23)~~(24) (a) "Protective services" means services provided by the department:

17 (i) to enable a child alleged to have been abused or neglected to remain safely in the home;

18 (ii) to enable a child alleged to have been abused or neglected who has been removed from the
19 home to safely return to the home; or

20 (iii) to achieve permanency for a child adjudicated as a youth in need of care when circumstances
21 and the best interests of the child prevent reunification with parents or a return to the home.

22 (b) The term includes emergency protective services provided pursuant to 41-3-301, written
23 prevention plans provided pursuant to 41-3-302, and court-ordered protective services provided pursuant to
24 parts 4 and 6 of this chapter.

25 ~~(24)~~(25) (a) "Psychological abuse or neglect" means severe maltreatment through acts or omissions
26 that are injurious to the child's emotional, intellectual, or psychological capacity to function, including the
27 commission of acts of violence against another person residing in the child's home.

28 (b) The term may not be construed to hold a victim responsible for failing to prevent the crime

1 against the victim.

2 ~~(25)~~(26) "Qualified expert witness" as used in cases involving an Indian child in proceedings subject to
3 the federal Indian Child Welfare Act means:

4 (a) a member of the Indian child's tribe who is recognized by the tribal community as
5 knowledgeable in tribal customs as they pertain to family organization and child-rearing practices;

6 (b) a lay expert witness who has substantial experience in the delivery of child and family services
7 to Indians and extensive knowledge of prevailing social and cultural standards and child-rearing practices within
8 the Indian child's tribe; or

9 (c) a professional person who has substantial education and experience in providing services to
10 children and families and who possesses significant knowledge of and experience with Indian culture, family
11 structure, and child-rearing practices in general.

12 ~~(26)~~(27) "Qualified individual" means a trained professional or licensed clinician who:

13 (a) has expertise in the therapeutic needs assessment used for placement of youth in a
14 therapeutic group home;

15 (b) is not an employee of the department; and

16 (c) is not connected to or affiliated with any placement setting in which children are placed.

17 ~~(27)~~(28) "Reasonable cause to suspect" means cause that would lead a reasonable person to believe
18 that child abuse or neglect may have occurred or is occurring, based on all the facts and circumstances known
19 to the person.

20 ~~(28)~~(29) "Residential setting" means an out-of-home placement where the child typically resides for
21 longer than 30 days for the purpose of receiving food, shelter, security, guidance, and, if necessary, treatment.

22 ~~(29)~~(30) "Safety and risk assessment" means an evaluation by a child protection specialist following an
23 initial report of child abuse or neglect to assess the following:

24 (a) the existing threat or threats to the child's safety;

25 (b) the protective capabilities of the parent or guardian;

26 (c) any particular vulnerabilities of the child;

27 (d) any interventions required to protect the child; and

28 (e) the likelihood of future physical or psychological harm to the child.

1 ~~(30)~~(31) (a) "Sexual abuse" means the commission of sexual assault, sexual intercourse without
2 consent, aggravated sexual intercourse without consent, indecent exposure, sexual abuse, ritual abuse of a
3 minor, or incest, as described in Title 45, chapter 5.

4 (b) Sexual abuse does not include any necessary touching of an infant's or toddler's genital area
5 while attending to the sanitary or health care needs of that infant or toddler by a parent or other person
6 responsible for the child's welfare.

7 ~~(31)~~(32) "Sexual exploitation" means:

8 (a) allowing, permitting, or encouraging a child to engage in a prostitution offense, as described in
9 45-5-601 through 45-5-603;

10 (b) allowing, permitting, or encouraging sexual abuse of children as described in 45-5-625; or

11 (c) allowing, permitting, or encouraging sexual servitude as described in 45-5-704 or 45-5-705.

12 ~~(32)~~(33) "Therapeutic needs assessment" means an assessment performed by a qualified individual
13 within 30 days of placement of a child in a therapeutic group home that:

14 (a) assesses the strengths and needs of the child using an age-appropriate, evidence-based,
15 validated, functional assessment tool;

16 (b) determines whether the needs of the child can be met with family members or through
17 placement in a youth foster home or, if not, which appropriate setting would provide the most effective and
18 appropriate level of care for the child in the least restrictive environment and be consistent with the short-term
19 and long-term goals for the child as specified in the child's permanency plan; and

20 (c) develops a list of child-specific short-term and long-term mental and behavioral health goals.

21 ~~(33)~~(34) "Treatment plan" means a written agreement between the department and the parent or
22 guardian or a court order that includes action that must be taken to resolve the condition or conduct of the
23 parent or guardian that resulted in the need for protective services for the child. The treatment plan may involve
24 court services, the department, and other parties, if necessary, for protective services.

25 ~~(34)~~(35) (a) "Withholding of medically indicated treatment" means the failure to respond to an infant's
26 life-threatening conditions by providing treatment, including appropriate nutrition, hydration, and medication,
27 that, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in
28 ameliorating or correcting the conditions.

(b) The term does not include the failure to provide treatment, other than appropriate nutrition, hydration, or medication, to an infant when, in the treating physician's or physicians' reasonable medical judgment:

(i) the infant is chronically and irreversibly comatose;

(ii) the provision of treatment would:

(A) merely prolong dying;

(B) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or

(C) otherwise be futile in terms of the survival of the infant; or

(iii) the provision of treatment would be virtually futile in terms of the survival of the infant and the treatment itself under the circumstances would be inhumane. For purposes of this subsection (34), "infant" means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The reference to less than 1 year of age may not be construed to imply that treatment should be changed or discontinued when an infant reaches 1 year of age or to affect or limit any existing protections available under state laws regarding medical neglect of children 1 year of age or older.

~~(35)~~(36) "Youth in need of care" means a youth who has been adjudicated or determined, after a hearing, to be or to have been abused, neglected, or abandoned."

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

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

(b) (i) Except as provided in ~~subsection~~ subsections (1)(b)(ii) and (1)(b)(iii), upon receipt of a report that includes an allegation of sexual abuse or sexual exploitation when the alleged perpetrator of the sexual abuse or sexual exploitation was 12 years of age or older or if the department determines during any investigation that the circumstances surrounding an allegation of child abuse or neglect include an allegation of sexual abuse or sexual exploitation when the alleged perpetrator of the sexual abuse or sexual exploitation was 12 years of age or older, the department shall immediately report the allegation to the county attorney of the

1 county in which the acts that are the subject of the report occurred.

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

7 (iii) If the department or law enforcement determines that the allegation involves the county
8 attorney or an employee in the county attorney's office in the county in which the acts that are subject to
9 reporting occurred, the department or law enforcement shall report as required in subsection (1)(b)(i) to the
10 attorney general.

11 (c) If the department determines that an investigation and a safety and risk assessment are
12 required, a child protection specialist shall promptly conduct a thorough investigation into the circumstances
13 surrounding the allegations of abuse or neglect of the child and perform a safety and risk assessment to
14 determine whether the living arrangement presents an unsafe environment for the child. The safety and risk
15 assessment may include an investigation at the home of the child involved, the child's school or day-care
16 facility, or any other place where the child is present and into all other nonfinancial matters that in the discretion
17 of the investigator are relevant to the safety and risk assessment. In conducting a safety and risk assessment
18 under this section, a child protection specialist may not inquire into the financial status of the child's family or of
19 any other person responsible for the child's care, except as necessary to ascertain eligibility for state or federal
20 assistance programs or to comply with the provisions of 41-3-446.

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

27 (3) The child protection specialist is responsible for conducting the safety and risk assessment. If
28 the child is treated at a medical facility, the child protection specialist, county attorney, or peace officer,

1 consistent with reasonable medical practice, has the right of access to the child for interviews, photographs,
2 and securing physical evidence and has the right of access to relevant hospital and medical records pertaining
3 to the child. If an interview of the child is considered necessary, the child protection specialist, county attorney,
4 or peace officer may conduct an interview of the child. The interview may be conducted in the presence of the
5 parent or guardian or an employee of the school or day-care facility attended by the child.

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

9 (5) (a) If from the safety and risk assessment the department has reasonable cause to suspect that
10 the child is suffering abuse or neglect, the department may provide emergency protective services to the child,
11 pursuant to 41-3-301, or enter into a written prevention plan, pursuant to 41-3-302, and may provide protective
12 services to any other child under the same care. The department shall:

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

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

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

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

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

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

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

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

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

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

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

11
12 **Section 4.** Section 41-3-210, MCA, is amended to read:

13 **"41-3-210. County attorney duties -- certification -- retention of records -- reports to attorney**
14 **general and legislature -- attorney general report.** (1) (a) The county attorney shall gather all case notes,
15 correspondence, evaluations, interviews, and other investigative materials pertaining to each report from the
16 department or investigation by law enforcement of sexual abuse or sexual exploitation of a child made within
17 the county when the alleged perpetrator of the sexual abuse or sexual exploitation is 12 years of age or older.
18 After a report is made or an investigation is commenced, the following individuals or entities shall provide to the
19 county attorney all case notes, correspondence, evaluations, interviews, and other investigative materials
20 related to the report or investigation:

21 (i) the department;
22 (ii) state and local law enforcement; and
23 (iii) all members of a county or regional interdisciplinary child information and school safety team
24 established under 52-2-211.

25 (b) The duty to provide records to the county attorney under subsection (1)(a) remains throughout
26 the course of an investigation, an abuse and neglect proceeding conducted pursuant to this part, or the
27 prosecution of a case involving the sexual abuse of a child or sexual exploitation of a child.

28 (c) Upon receipt of a report from the department, as required in 41-3-202, that includes an

1 allegation of sexual abuse of a child or sexual exploitation of a child, the county attorney shall certify in writing
 2 to the person who initially reported the information that the county attorney received the report. The certification
 3 must include the date the report was received and the age and gender of the alleged victim. If the report was
 4 anonymous, the county attorney shall provide the certification to the department. If the report was made to the
 5 county attorney by a law enforcement officer, the county attorney is not required to provide the certification.

6 (2) The county attorney shall retain records relating to the report or investigation, including the
 7 certification, case notes, correspondence, evaluations, videotapes, and interviews, for 25 years.

8 (3) ~~By June 1 of each year~~ the 15th day after the end of each fiscal year quarter, each county
 9 attorney shall report to the attorney general. The report to the attorney general must include, for each report
 10 from the department or investigation by law enforcement:

- 11 (a) a unique case identifier;
- 12 (b) the date that the initial report or allegation was received by the county attorney;
- 13 (c) ~~the date of any decision to prosecute based on a report or investigation~~ any charges were filed;
- 14 (d) ~~the date of any decision to decline to prosecute based on a report or investigation; and~~
- 15 (e) ~~if charges are filed against a defendant, any known outcomes of the case whether a conviction~~
 16 was obtained and, if a conviction was obtained, the sentence imposed by the court; and

17 (f) the number of certifications made as required by subsection (1)(c), including separate
 18 disclosures on the number of certifications made to the department and persons who made the report that
 19 required certification.

20 (4) (a) The attorney general shall create a form for county attorneys to use when submitting reports
 21 required by subsection (3). The form must allow collection of the information required by subsection (3) on an
 22 aggregated, cumulative basis for a 5-year period until charges are filed or a decision is made to decline to
 23 prosecute.

24 (b) The information provided by a county attorney on the forms is confidential criminal justice
 25 information as defined in 44-5-103.

26 (4)(5) The attorney general shall report to the law and justice interim committee each year by
 27 ~~September 1~~ August 15 and as provided in 5-11-210. The reports must provide:

- 28 (a) aggregated information regarding the status of the cases reported in subsection (3) by the

1 county attorneys, including data on the total number of cases reported;
2 (b) the number of cases declined for prosecution, and;
3 (c) the number of cases charged;
4 (d) any action in the past fiscal year that the attorney general took under the authority of 2-15-501
5 based on the reports submitted as required in subsection (3). A report made pursuant to this subsection (5)(d)
6 may not include the name of the county.
7 (e) after consideration of the information provided by the department pursuant to [section 1], any
8 county attorney who failed to provide a complete report required by subsection (3)."

9
10 **NEW SECTION. Section 5. Codification instruction.** [Section 1] is intended to be codified as an
11 integral part of Title 41, chapter 3, part 2, and the provisions of Title 41, chapter 3, part 2, apply to [section 1].

12
13 **NEW SECTION. Section 6. Effective date.** [This act] is effective on passage and approval.

14 - END -