

1 HOUSE BILL NO. 494

2 INTRODUCED BY K. DUDIK

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CHILD ABUSE AND NEGLECT REPORTING LAWS;
5 REQUIRING THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO PROVIDE NOTIFICATION TO THE
6 STATE PROTECTION AND ADVOCACY PROGRAM FOR INDIVIDUALS WITH DEVELOPMENTAL
7 DISABILITIES WHEN A CHILD SUFFERS ABUSE OR NEGLECT AT A FACILITY UNDER CERTAIN
8 CIRCUMSTANCES; AMENDING SECTION 41-3-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE
9 DATE."

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

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13 **Section 1.** Section 41-3-202, MCA, is amended to read:
14 **"41-3-202. Action on reporting.** (1) Upon receipt of a report that a child is or has been abused or
15 neglected, the department shall promptly assess the information contained in the report and make a
16 determination regarding the level of response required and the timeframe within which action must be initiated.
17 If the department determines that an investigation is required, a social worker, the county attorney, or a peace
18 officer shall promptly conduct a thorough investigation into the circumstances surrounding the allegations of
19 abuse or neglect of the child. The investigation may include an investigation at the home of the child involved,
20 the child's school or day-care facility, or any other place where the child is present and into all other nonfinancial
21 matters that in the discretion of the investigator are relevant to the investigation. In conducting an investigation
22 under this section, a social worker may not inquire into the financial status of the child's family or of any other
23 person responsible for the child's care, except as necessary to ascertain eligibility for state or federal assistance
24 programs or to comply with the provisions of 41-3-446.

25 (2) An initial investigation of alleged abuse or neglect may be conducted when an anonymous report is
26 received. However, the investigation must within 48 hours result in the development of independent,
27 corroborative, and attributable information in order for the investigation to continue. Without the development of
28 independent, corroborative, and attributable information, a child may not be removed from the home.

29 (3) The social worker is responsible for assessing the family and planning for the child. If the child is
30 treated at a medical facility, the social worker, county attorney, or peace officer, consistent with reasonable

1 medical practice, has the right of access to the child for interviews, photographs, and securing physical evidence
2 and has the right of access to relevant hospital and medical records pertaining to the child. If an interview of the
3 child is considered necessary, the social worker, county attorney, or peace officer may conduct an interview of
4 the child. The interview may be conducted in the presence of the parent or guardian or an employee of the school
5 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 audiotape
7 or videotape with audio track must be made available, upon request, for unencumbered review by the family.

8 (5) (a) If from the investigation the department has reasonable cause to suspect that the child suffered
9 abuse or neglect, the department may provide emergency protective services to the child, pursuant to 41-3-301,
10 or voluntary protective services pursuant to 41-3-302, and may provide protective services to any other child
11 under the same care. The department shall:

12 (i) after interviewing the parent or guardian, if reasonably available, document its determination regarding
13 abuse or neglect of a child; ~~and~~

14 (ii) notify the child's family of its investigation and determination, unless the notification can reasonably
15 be expected to result in harm to the child or other person; and

16 (iii) if the child suffered abuse or neglect while in the care of a facility and the person who is the subject
17 of the report is a staff member, employee, or contractor of the facility, send its documented determination to the
18 state protection and advocacy program for individuals with developmental disabilities as authorized by 42 U.S.C.
19 15043(a)(2).

20 (b) If from the investigation it is determined that the child has not suffered abuse or neglect and the initial
21 report is determined to be unfounded, the department and the social worker, county attorney, or peace officer
22 who conducted the investigation into the circumstances surrounding the allegations of abuse or neglect shall
23 destroy all of their records concerning the report and the investigation. The destruction must be completed within
24 30 days of the determination that the child has not suffered abuse or neglect.

25 (c) (i) If the report is unsubstantiated, the department and the social worker who conducted the
26 investigation into the circumstances surrounding the initial allegations of abuse or neglect shall destroy all of the
27 records, except for medical records, concerning the unsubstantiated report and the investigation within 30 days
28 after the end of the 3-year period starting from the date the report was determined to be unsubstantiated, unless:

29 (A) there had been a previous or there is a subsequent substantiated report concerning the same
30 person; or

1 (B) an order has been issued under this chapter based on the circumstances surrounding the initial
2 allegations.

3 (ii) A person who is the subject of an unsubstantiated report that was made prior to October 1, 2003, and
4 after which a period of 3 years has elapsed without there being submitted a subsequent substantiated report or
5 an order issued under this chapter based on the circumstances surrounding the initial allegations may request
6 that the department destroy all of the records concerning the unsubstantiated report as provided in subsection
7 (5)(c)(i).

8 (6) The investigating social worker, within 60 days of commencing an investigation, shall also furnish a
9 written report to the department and, upon request, to the family. Subject to subsections (5)(b) and (5)(c), the
10 department shall maintain a record system documenting investigations and determinations of child abuse and
11 neglect cases.

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

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

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19 **NEW SECTION. Section 2. Effective date.** [This act] is effective on passage and approval.

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