

HOUSE BILL NO. 207

INTRODUCED BY R. MARSHALL, E. BUTTREY

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THAT INTERVIEWS CONDUCTED DURING A CHILD ABUSE OR NEGLECT INVESTIGATION OR SAFETY AND RISK ASSESSMENT BE RECORDED; AND AMENDING SECTION 41-3-202, MCA."

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

Section 1. 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 (1)(b)(ii), 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 county in which the acts that are the subject of the report occurred.

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

(c) If the department determines that an investigation and a safety and risk assessment are required, a child protection specialist shall promptly conduct a thorough investigation into the circumstances surrounding the allegations of abuse or neglect of the child and perform a safety and risk assessment to

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

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

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

21 (4) All interviews conducted as part of an investigation or a safety and risk assessment must be
22 audiotaped or videotaped. Subject to 41-3-205(3), ~~if the child's interview is audiotaped or videotaped,~~ an
23 unedited audiotape or videotape with audio track of an interview must be made available, ~~upon~~on request, for
24 unencumbered review by the family.

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

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

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

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

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

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

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

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

15 (6) The investigating child protection specialist, within 60 days of commencing an investigation,
16 shall also furnish a written safety and risk assessment to the department and, ~~upon~~on request, to the family.
17 Subject to time periods set forth in subsections (5)(b) and (5)(c), the department shall maintain a record system
18 documenting investigations and safety and risk assessment determinations. Unless records are required to be
19 destroyed under subsections (5)(b) and (5)(c), the department shall retain records relating to the safety and risk
20 assessment, including case notes, correspondence, evaluations, videotapes, and interviews, for 25 years.

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

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

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