

HOUSE BILL NO. 131

INTRODUCED BY J. GURSKY

BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO SHARE LIMITED INFORMATION ABOUT AN INVESTIGATION INTO A REPORT OF CHILD ABUSE OR NEGLECT WITH A MANDATORY REPORTER WHO MADE A REQUIRED REPORT OF ALLEGED CHILD ABUSE OR NEGLECT OR INDIVIDUALS DESIGNATED BY THE MANDATORY REPORTER; AND AMENDING SECTIONS 41-3-201 AND 41-3-205, MCA."

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

Section 1. Section 41-3-201, MCA, is amended to read:

"41-3-201. Reports. (1) When the professionals and officials listed in subsection (2) know or have reasonable cause to suspect, as a result of information they receive in their professional or official capacity, that a child is abused or neglected by anyone regardless of whether the person suspected of causing the abuse or neglect is a parent or other person responsible for the child's welfare, they shall report the matter promptly to the department of public health and human services.

(2) Professionals and officials required to report are:

(a) a physician, resident, intern, or member of a hospital's staff engaged in the admission, examination, care, or treatment of persons;

(b) a nurse, osteopath, chiropractor, podiatrist, medical examiner, coroner, dentist, optometrist, or any other health or mental health professional;

(c) religious healers;

(d) school teachers, other school officials, and employees who work during regular school hours;

(e) a social worker, operator or employee of any registered or licensed day-care or substitute care facility, staff of a resource and referral grant program organized under 52-2-711 or of a child and adult food care program, or an operator or employee of a child-care facility;

(f) a foster care, residential, or institutional worker;

(g) a peace officer or other law enforcement official;



- 1 (h) a member of the clergy, as defined in 15-6-201(2)(b);
- 2 (i) a guardian ad litem or a court-appointed advocate who is authorized to investigate a report of alleged
3 abuse or neglect; or
- 4 (j) an employee of an entity that contracts with the department to provide direct services to children.
- 5 (3) A professional listed in subsection (2)(a) or (2)(b) involved in the delivery or care of an infant shall
6 report to the department any infant known to the professional to be affected by a dangerous drug, as defined in
7 50-32-101.
- 8 (4) Any person may make a report under this section if the person knows or has reasonable cause to
9 suspect that a child is abused or neglected.
- 10 (5) (A) When a professional or official required to report under subsection (2) makes a report, the
11 department may share information with:
- 12 (i) that professional or official regarding; OR
- 13 (ii) OTHER INDIVIDUALS WITH WHOM THE PROFESSIONAL OR OFFICIAL WORKS IN AN OFFICIAL CAPACITY IF THE
14 INDIVIDUALS ARE PART OF A TEAM THAT RESPONDS TO MATTERS INVOLVING THE CHILD OR THE PERSON ABOUT WHOM THE
15 REPORT WAS MADE AND THE PROFESSIONAL OR OFFICIAL HAS ASKED THAT THE INFORMATION BE SHARED WITH THE
16 INDIVIDUALS.
- 17 (B) THE DEPARTMENT MAY PROVIDE INFORMATION REGARDING:
- 18 (a)(i) whether an investigation into the report occurred or will occur;
- 19 (b)(ii) the timeframe in which the investigation occurred or will occur; and
- 20 (c)(iii) information about the investigation, limited to its outcome, the factual basis for the outcome, and
21 any subsequent action that will be taken on behalf of the child who is the subject of the report.
- 22 (C) INDIVIDUALS WHO RECEIVE INFORMATION PURSUANT TO THIS SUBSECTION (5) SHALL MAINTAIN THE
23 CONFIDENTIALITY OF THE INFORMATION AS REQUIRED BY 41-3-205.
- 24 ~~(5)(6)~~ (a) Except as provided in subsection ~~(5)(b) or (5)(c)~~ (6)(b) or (6)(c), a person listed in subsection
25 (2) may not refuse to make a report as required in this section on the grounds of a physician-patient or similar
26 privilege.
- 27 (b) A member of the clergy or a priest is not required to make a report under this section if:
- 28 (i) the knowledge or suspicion of the abuse or neglect came from a statement or confession made to the
29 member of the clergy or the priest in that person's capacity as a member of the clergy or as a priest;
- 30 (ii) the statement was intended to be a part of a confidential communication between the member of the

1 clergy or the priest and a member of the church or congregation; and

2 (iii) the person who made the statement or confession does not consent to the disclosure by the member
3 of the clergy or the priest.

4 (c) A member of the clergy or a priest is not required to make a report under this section if the
5 communication is required to be confidential by canon law, church doctrine, or established church practice.

6 ~~(6)~~(7) The reports referred to under this section must contain:

7 (a) the names and addresses of the child and the child's parents or other persons responsible for the
8 child's care;

9 (b) to the extent known, the child's age and the nature and extent of the child's injuries, including any
10 evidence of previous injuries;

11 (c) any other information that the maker of the report believes might be helpful in establishing the cause
12 of the injuries or showing the willful neglect and the identity of person or persons responsible for the injury or
13 neglect; and

14 (d) the facts that led the person reporting to believe that the child has suffered injury or injuries or willful
15 neglect, within the meaning of this chapter."

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17 **Section 2.** Section 41-3-205, MCA, is amended to read:

18 **"41-3-205. Confidentiality -- disclosure exceptions.** (1) The case records of the department and its
19 local affiliate, the local office of public assistance, the county attorney, and the court concerning actions taken
20 under this chapter and all records concerning reports of child abuse and neglect must be kept confidential except
21 as provided by this section. Except as provided in subsections (7) and (8), a person who purposely or knowingly
22 permits or encourages the unauthorized dissemination of the contents of case records is guilty of a misdemeanor.

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

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

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

1 organization, that is legally authorized to receive, inspect, or investigate reports of child abuse or neglect and that
2 otherwise meets the disclosure criteria contained in this section;

3 (b) a licensed youth care facility or a licensed child-placing agency that is providing services to the family
4 or child who is the subject of a report in the records or to a person authorized by the department to receive
5 relevant information for the purpose of determining the best interests of a child with respect to an adoptive
6 placement;

7 (c) a health or mental health professional who is treating the family or child who is the subject of a report
8 in the records;

9 (d) a parent, guardian, or person designated by a parent or guardian of the child who is the subject of
10 a report in the records or other person responsible for the child's welfare, without disclosure of the identity of any
11 person who reported or provided information on the alleged child abuse or neglect incident contained in the
12 records;

13 (e) a child named in the records who was allegedly abused or neglected or the child's legal guardian or
14 legal representative, including the child's guardian ad litem or attorney or a special advocate appointed by the
15 court to represent a child in a pending case;

16 (f) the state protection and advocacy program as authorized by 42 U.S.C. 15043(a)(2);

17 (g) approved foster and adoptive parents who are or may be providing care for a child;

18 (h) a person about whom a report has been made and that person's attorney, with respect to the relevant
19 records pertaining to that person only and without disclosing the identity of the reporter or any other person whose
20 safety may be endangered;

21 (i) an agency, including a probation or parole agency, that is legally responsible for the supervision of
22 an alleged perpetrator of child abuse or neglect;

23 (j) a person, agency, or organization that is engaged in a bona fide research or evaluation project and
24 that is authorized by the department to conduct the research or evaluation;

25 (k) the members of an interdisciplinary child protective team authorized under 41-3-108 or of a family
26 group decisionmaking meeting for the purposes of assessing the needs of the child and family, formulating a
27 treatment plan, and monitoring the plan;

28 (l) the coroner or medical examiner when determining the cause of death of a child;

29 (m) a child fatality review team recognized by the department;

30 (n) a department or agency investigating an applicant for a license or registration that is required to

1 operate a youth care facility, day-care facility, or child-placing agency;

2 (o) a person or entity who is carrying out background, employment-related, or volunteer-related
3 screening of current or prospective employees or volunteers who have or may have unsupervised contact with
4 children through employment or volunteer activities. A request for information under this subsection (3)(o) must
5 be made in writing. Disclosure under this subsection (3)(o) is limited to information that indicates a risk to children,
6 persons with developmental disabilities, or older persons posed by the person about whom the information is
7 sought, as determined by the department.

8 (p) the news media, a member of the United States congress, or a state legislator, if disclosure is limited
9 to confirmation of factual information regarding how the case was handled and if disclosure does not violate the
10 privacy rights of the child or the child's parent or guardian, as determined by the department;

11 (q) an employee of the department or other state agency if disclosure of the records is necessary for
12 administration of programs designed to benefit the child;

13 (r) an agency of an Indian tribe, a qualified expert witness, or the relatives of an Indian child if disclosure
14 of the records is necessary to meet requirements of the federal Indian Child Welfare Act;

15 (s) a juvenile probation officer who is working in an official capacity with the child who is the subject of
16 a report in the records;

17 (t) a county attorney, peace officer, or attorney who is hired by or represents the department if disclosure
18 is necessary for the investigation, defense, or prosecution of a case involving child abuse or neglect;

19 (u) a foster care review committee established under 41-3-115 or, when applicable, a citizen review
20 board established under Title 41, chapter 3, part 10;

21 (v) a school employee participating in an interview of a child by a social worker, county attorney, or peace
22 officer, as provided in 41-3-202;

23 (w) a member of a county interdisciplinary child information team formed under the provisions of
24 52-2-211;

25 (x) members of a local interagency staffing group provided for in 52-2-203;

26 (y) a member of a youth placement committee formed under the provisions of 41-5-121; ~~or~~

27 (z) a principal of a school or other employee of the school district authorized by the trustees of the district
28 to receive the information with respect to a student of the district who is a client of the department; or

29 (aa) a professional or official listed in 41-3-201(2) who has made a report of alleged child abuse or
30 neglect if disclosure is limited to the information described in 41-3-201(5).

1 (4) A school or school district may disclose, without consent, personally identifiable information from the
2 education records of a pupil to the department, the court, a review board, and the child's assigned attorney,
3 guardian ad litem, or special advocate.

4 (5) Information that identifies a person as a participant in or recipient of substance abuse treatment
5 services may be disclosed only as allowed by federal substance abuse confidentiality laws, including the consent
6 provisions of the law.

7 (6) The confidentiality provisions of this section must be construed to allow a court of this state to share
8 information with other courts of this state or of another state when necessary to expedite the interstate placement
9 of children.

10 (7) A person who is authorized to receive records under this section shall maintain the confidentiality of
11 the records and may not disclose information in the records to anyone other than the persons described in
12 subsection (3)(a). However, this subsection may not be construed to compel a family member to keep the
13 proceedings confidential.

14 (8) A news organization or its employee, including a freelance writer or reporter, is not liable for reporting
15 facts or statements made by an immediate family member under subsection (7) if the news organization,
16 employee, writer, or reporter maintains the confidentiality of the child who is the subject of the proceeding.

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

19 (10) Copies of records, evaluations, reports, or other evidence obtained or generated pursuant to this
20 section that are provided to the parent, the guardian, or the parent or guardian's attorney must be provided
21 without cost."

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