

HOUSE BILL NO. 191

INTRODUCED BY J. ECK, A. WITTICH

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS GOVERNING THE INVESTIGATION OF ALLEGED ABUSE OR NEGLECT OF MONTANA STATE HOSPITAL RESIDENTS; ~~REQUIRING THAT REPORTS OF ALLEGED ABUSE OR NEGLECT BE SUBMITTED TO THE STATE PROTECTION AND ADVOCACY PROGRAM;~~ PROVIDING THAT THE DEPARTMENT OF JUSTICE INVESTIGATE ALLEGATIONS OF ABUSE OR NEGLECT; AND AMENDING SECTION 53-21-107, MCA."

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

Section 1. Section 53-21-107, MCA, is amended to read:

"53-21-107. Abuse and neglect of persons admitted to mental health facility prohibited -- reporting -- investigations. (1) Any form of abuse or neglect of a person admitted to a mental health facility is prohibited.

(2) Each mental health facility shall publish policies and procedures that define the facility's guidelines for detecting, reporting, investigating, determining the validity, and resolving allegations of abuse or neglect.

(3) Each allegation of abuse or neglect must be reported as follows:

(a) Any employee of the mental health facility with knowledge of the allegation shall immediately report the allegation to the professional person in charge of the facility.

(b) The professional person in charge of the mental health facility shall report the allegation by the end of the next business day, in writing, to the board.

(c) When the allegation of abuse or neglect may constitute a criminal act, the professional person in charge of the mental health facility shall immediately report the allegation to the appropriate law enforcement authority.

(4) Each mental health facility shall provide a mechanism for reporting allegations of abuse or neglect that in no way deters or discourages an individual from reporting the allegations.

(5) Investigations of allegations of abuse or neglect must be initiated by the professional person in charge of the facility as soon as possible after the initial report of the incident, but not later than by the end of the next business day. Initiation of each investigation may not be delayed in any way that adversely affects the efficacy of the investigation. However, the investigation must be initiated immediately when there is a report of an alleged

1 criminal act.

2 (6) The investigation of each allegation of abuse or neglect must be concluded within the minimum period
3 of time necessary to gather the information relative to each allegation and to come to a conclusion following the
4 initial report of the allegation.

5 (7) (a) Each A mental health facility other than the state hospital shall document the following in writing
6 regarding each allegation of abuse or neglect:

7 ~~(a)(i)~~ details of each allegation of abuse or neglect, including the names of any facility staff against whom
8 the allegation is made;

9 ~~(b)(ii)~~ a description of the rationale for conducting the investigation with either in-house or outside
10 personnel;

11 ~~(c)(iii)~~ details of the process of the investigation of each allegation of abuse or neglect;

12 ~~(d)(iv)~~ details of the conclusions of the investigation; and

13 ~~(e)(v)~~ details of corrective action taken.

14 ~~(8)(b)~~ Mental health facilities other than the state hospital shall provide a copy of the written report
15 described in ~~subsections subsection~~ subsection (7)(a) through (7)(e) within 5 working days of the completion of each
16 investigation to the director of the department of public health and human services and to the board.

17 (8) (a) The state hospital shall document the details of each allegation of abuse or neglect, including the
18 names of any hospital staff against whom the allegation is made, and the details of any injury from an unknown
19 source. The hospital shall provide the information:

20 (i) immediately to the department of justice; and

21 (ii) within 5 business days of the incident to the board and the state protection and advocacy program
22 that is authorized under 42 U.S.C. 10801(b)(2) to investigate incidents of abuse and neglect involving individuals
23 with mental illness.

24 (b) The state hospital may not redact any information that is provided pursuant to this subsection (8).

25 (c) The board and the state protection and advocacy program shall maintain the confidentiality of any
26 report received under this subsection (8) to the same extent that the reports are confidential under state and
27 federal laws applicable to the state hospital.

28 (9) (a) On receipt of a report of an allegation of abuse or neglect or of an injury from an unknown source,
29 the department of justice shall conduct a thorough investigation of each allegation or each injury and. THE
30 DEPARTMENT OF JUSTICE SHALL CONTRACT WITH AN INDEPENDENT INVESTIGATOR TO INVESTIGATE A REPORT OF AN

1 ALLEGATION OF ABUSE OR NEGLECT. THE INVESTIGATOR SHALL REPORT TO THE DEPARTMENT OF JUSTICE, THE
2 DEPARTMENT OF HEALTH AND HUMAN SERVICES, AND THE CHILDREN, FAMILIES, HEALTH, AND HUMAN SERVICES INTERIM
3 COMMITTEE. THE DEPARTMENT OF JUSTICE SHALL provide a written report of its investigation and findings to the
4 superintendent of the state hospital and the director of the department of public health and human services. The
5 report must include the elements listed in subsections (7)(a)(i), (ii), (iv), and (v) of this section.

6 (b) The department of justice shall provide the written report in the minimum amount of time necessary
7 to obtain the information relative to each allegation and come to a conclusion after the initial report of the
8 allegation or injury but no later than 10 business days after the date of the incident.

9 (c) The department of justice shall notify the board ~~and the state protection and advocacy program of~~
10 the completion of the investigation at the same time that it provides the report to the superintendent and the
11 director of the department of public health and human services.

12 (10) The state hospital shall provide the department of justice with access to records and other
13 information necessary to conduct investigations under this section. The department of justice shall maintain the
14 confidentiality of any information received in the course of conducting investigations under this section to the
15 same extent that the information is confidential under state and federal laws applicable to the state hospital.

16 (11) If a state licensing authority or federal medicaid certification authority issues a statement of
17 deficiency indicating that the state hospital has failed to meet licensing or certification standards due to the
18 thoroughness or timeliness of an investigation conducted under this section, the department of justice shall
19 participate in preparing a plan of correction to restore the state hospital's compliance with licensing or certification
20 standards.

21 (12) If in the course of conducting an investigation under this section the department of justice develops
22 reasonable cause to believe that a criminal offense has occurred, the department of justice shall refer the matter
23 to the appropriate local law enforcement agency."

24 - END -