

1 HOUSE BILL NO. 539

2 INTRODUCED BY B. USHER

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO COUNTY
5 ATTORNEYS; LIMITING WHEN THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES IS
6 REQUIRED TO REPORT ALLEGATIONS OF CHILD SEXUAL ABUSE OR CHILD SEXUAL EXPLOITATION
7 TO A COUNTY ATTORNEY; REVISING INFORMATION RELATED TO CHILD SEXUAL ABUSE AND CHILD
8 SEXUAL EXPLOITATION CASES THAT COUNTY ATTORNEYS MUST REPORT TO THE ATTORNEY
9 GENERAL; REVISING THE CONTENTS OF A REPORT THE ATTORNEY GENERAL SUBMITS TO THE
10 LEGISLATURE; AND AMENDING SECTIONS 41-3-202 AND 41-3-210, MCA."

11

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

13

14 **Section 1.** Section 41-3-202, MCA, is amended to read:

15 **"41-3-202. Action on reporting.** (1) (a) Upon receipt of a report that a child is or has been abused or
16 neglected, the department shall promptly assess the information contained in the report and make a
17 determination regarding the level of response required and the timeframe within which action must be initiated.

18 (b) (i) Except as provided in subsection (1)(b)(ii), upon receipt of a report that includes an allegation
19 of sexual abuse or sexual exploitation when the alleged perpetrator of the sexual abuse or sexual exploitation
20 was 12 years of age or older or if the department determines during any investigation that the circumstances
21 surrounding an allegation of child abuse or neglect include an allegation of sexual abuse or sexual exploitation
22 when the alleged perpetrator of the sexual abuse or sexual exploitation was 12 years of age or older, the
23 department shall immediately report the allegation to the county attorney of the county in which the acts that are
24 the subject of the report occurred.

25 (ii) If a victim of sexual abuse or sexual exploitation has attained the age of 14 and has sought services
26 from a contractor as described in 41-3-201(2)(j) that provides confidential services to victims of sexual assault,
27 conditioned upon an understanding that the criminal conduct will not be reported by the department to the
28 county attorney in the jurisdiction in which the alleged crime occurred, the department may not report pursuant

1 to 41-3-205(5)(d) and subsection (1)(b)(i) of this section.

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

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

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

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

27 (5) (a) If from the safety and risk assessment the department has reasonable cause to suspect that
28 the child is suffering abuse or neglect, the department may provide emergency protective services to the child,

1 pursuant to 41-3-301, or voluntary protective services pursuant to 41-3-302, and may provide protective
2 services to any other child under the same care. The department shall:

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

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

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

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

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

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

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

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

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

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

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2 **Section 2.** Section 41-3-210, MCA, is amended to read:

3 **"41-3-210. County attorney duties -- certification -- retention of records -- reports to attorney**

4 **general and legislature.** (1) (a) The county attorney shall gather all case notes, correspondence, evaluations,
5 interviews, and other investigative materials pertaining to each report from the department or investigation by
6 law enforcement of sexual abuse or sexual exploitation of a child made within the county when the alleged
7 perpetrator of the sexual abuse or sexual exploitation is 12 years of age or older. After a report is made or an
8 investigation is commenced, the following individuals or entities shall provide to the county attorney all case
9 notes, correspondence, evaluations, interviews, and other investigative materials related to the report or
10 investigation:

11 (i) the department;

12 (ii) state and local law enforcement; and

13 (iii) all members of a county or regional interdisciplinary child information and school safety team
14 established under 52-2-211.

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

18 (c) Upon receipt of a report from the department, as required in 41-3-202, that includes an allegation
19 of sexual abuse of a child or sexual exploitation of a child, the county attorney shall certify in writing to the
20 person who initially reported the information that the county attorney received the report. The certification must
21 include the date the report was received and the age and gender of the alleged victim. If the report was
22 anonymous, the county attorney shall provide the certification to the department. If the report was made to the
23 county attorney by a law enforcement officer, the county attorney is not required to provide the certification.

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

26 (3) ~~Each~~ By June 1 of each year, each county attorney shall report ~~every 6 months~~ to the attorney
27 general. The report to the attorney general must include, ~~for each report~~ the total cases reported from the
28 department or investigation by law enforcement during the previous 12 months and the total number of criminal

1 or juvenile charges filed within the previous 12 months regardless of when the charged cases were reported:

2 ~~(a) a unique case identifier;~~

3 ~~(b) the date that the initial report or allegation was received by the county attorney;~~

4 ~~(c) the date of any decision to prosecute based on a report or investigation;~~

5 ~~(d) the date of any decision to decline to prosecute based on a report or investigation; and~~

6 ~~(e) if charges are filed against a defendant, any known outcomes of the case.~~

7 (4) The attorney general shall report to the law and justice interim committee each year by September
8 1 and as provided in 5-11-210. The reports must provide aggregated information regarding the ~~status of the~~
9 number of cases reported to and charged by the county attorneys, ~~including data on the total number of cases~~
10 ~~reported, the number of cases declined for prosecution, and the number of cases charged.~~"

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