

## 1 HOUSE BILL NO. 356

2 INTRODUCED BY D. LENZ

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING THE INVESTIGATION OF ANONYMOUS  
5 REPORTS OF SUSPECTED CHILD ABUSE AND NEGLECT; AMENDING SECTIONS 41-3-201, 41-3-202,  
6 AND 41-3-210, MCA; AND PROVIDING AN EFFECTIVE DATE."

7

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

9

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

11 **"41-3-201. Reports.** (1) When the professionals and officials listed in subsection (2) know or have  
12 reasonable cause to suspect, as a result of information they receive in their professional or official capacity, that  
13 a child is abused or neglected by anyone regardless of whether the person suspected of causing the abuse or  
14 neglect is a parent or other person responsible for the child's welfare, they shall report the matter promptly to  
15 the department of public health and human services.

16 (2) Professionals and officials required to report are:

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

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

21 (c) religious healers;

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

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

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

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

28 (h) a member of the clergy, as defined in 15-6-201(2)(b);

1 (i) a guardian ad litem or a court-appointed advocate who is authorized to investigate a report of  
2 alleged abuse or neglect;

3 (j) an employee of an entity that contracts with the department to provide direct services to children;  
4 and

5 (k) an employee of the department while in conduct of the employee's duties.

6 (3) A professional listed in subsection (2)(a) or (2)(b) involved in the delivery or care of an infant shall  
7 report to the department any infant known to the professional to be affected by a dangerous drug, as defined in  
8 50-32-101.

9 (4) Any person may make a report under this section if the person knows or has reasonable cause to  
10 suspect that a child is abused or neglected.

11 (5) (a) When a professional or official required to report under subsection (2) makes a report, the  
12 department may share information with:

13 (i) that professional or official;

14 (ii) other individuals with whom the professional or official works in an official capacity if the individuals  
15 are part of a team that responds to matters involving the child or the person about whom the report was made  
16 and the professional or official has asked that the information be shared with the individuals; or

17 (iii) the child abuse and neglect review commission established in 2-15-2019.

18 (b) The department may provide information in accordance with 41-3-202~~(8)~~(7) and also share  
19 information about the investigation, limited to its outcome and any subsequent action that will be taken on  
20 behalf of the child who is the subject of the report.

21 (c) Individuals who receive information pursuant to this subsection (5) shall maintain the  
22 confidentiality of the information as required by 41-3-205.

23 (6) (a) Except as provided in subsection (6)(b) or (6)(c), a person listed in subsection (2) may not  
24 refuse to make a report as required in this section on the grounds of a physician-patient or similar privilege.

25 (b) A member of the clergy or a priest is not required to make a report under this section if:

26 (i) the knowledge or suspicion of the abuse or neglect came from a statement or confession made to  
27 the member of the clergy or the priest in that person's capacity as a member of the clergy or as a priest;

28 (ii) the statement was intended to be a part of a confidential communication between the member of

1 the 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  
3 member 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 (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  
12 cause of the injuries or showing the willful neglect and the identity of the person or persons responsible for the  
13 injury or neglect; ~~and~~

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

16 (e) the name and address of the person making the report. (Subsection (5)(a)(iii) terminates  
17 September 30, 2021--sec. 12, Ch. 235, L. 2017.)"

18

19 **Section 2.** Section 41-3-202, MCA, is amended to read:

20 **"41-3-202. Action on reporting.** (1) (a) Upon receipt of a report that a child is or has been abused or  
21 neglected, the department shall promptly assess the information contained in the report and make a  
22 determination regarding the level of response required and the timeframe within which action must be initiated.

23 (b) (i) Except as provided in subsection (1)(b)(ii), upon receipt of a report that includes an allegation  
24 of sexual abuse or sexual exploitation or if the department determines during any investigation that the  
25 circumstances surrounding an allegation of child abuse or neglect include an allegation of sexual abuse or  
26 sexual exploitation, the department shall immediately report the allegation to the county attorney of the county  
27 in which the acts that are the subject of the report occurred.

28 (ii) If a victim of sexual abuse or sexual exploitation has attained the age of 14 and has sought services

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

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

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

21 ~~(3)(2)~~ The social worker is responsible for conducting the safety and risk assessment. If the child is  
22 treated at a medical facility, the social worker, county attorney, or peace officer, consistent with reasonable  
23 medical practice, has the right of access to the child for interviews, photographs, and securing physical  
24 evidence and has the right of access to relevant hospital and medical records pertaining to the child. If an  
25 interview of the child is considered necessary, the social worker, county attorney, or peace officer may conduct  
26 an interview of the child. The interview may be conducted in the presence of the parent or guardian or an  
27 employee of the school or day-care facility attended by the child.

28 ~~(4)(3)~~ Subject to 41-3-205(3), if the child's interview is audiotaped or videotaped, an unedited

1 audiotape or videotape with audio track must be made available, upon request, for unencumbered review by  
2 the family.

3 ~~(5)(4)~~ (a) If from the safety and risk assessment the department has reasonable cause to suspect  
4 that the child is suffering abuse or neglect, the department may provide emergency protective services to the  
5 child, pursuant to 41-3-301, or voluntary protective services pursuant to 41-3-302, and may provide protective  
6 services to any other child under the same care. The department shall:

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

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

11 (b) Except as provided in subsection ~~(5)(c)~~ (4)(c), the department shall destroy all safety and risk  
12 assessment determinations and associated records, except for medical records, within 30 days after the end of  
13 the 3-year period starting from the date of completion of the safety and risk assessment.

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

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

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

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

21 ~~(6)(5)~~ The investigating social worker, within 60 days of commencing an investigation, shall also  
22 furnish a written safety and risk assessment to the department and, upon request, to the family. Subject to time  
23 periods set forth in subsections ~~(5)(b)~~ (4)(b) and ~~(5)(c)~~ (4)(c), the department shall maintain a record system  
24 documenting investigations and safety and risk assessment determinations. Unless records are required to be  
25 destroyed under subsections ~~(5)(b)~~ (4)(b) and ~~(5)(c)~~ (4)(c), the department shall retain records relating to the  
26 safety and risk assessment, including case notes, correspondence, evaluations, videotapes, and interviews, for  
27 25 years.

28 ~~(7)(6)~~ Any person reporting abuse or neglect that involves acts or omissions on the part of a public or

1 private residential institution, home, facility, or agency is responsible for ensuring that the report is made to the  
2 department.

3 ~~(8)(7)~~ The department shall, upon request from any reporter of alleged child abuse or neglect, verify  
4 whether the report has been received, describe the level of response and timeframe for action that the  
5 department has assigned to the report, and confirm that it is being acted upon."

6

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

8 **"41-3-210. County attorney duties -- certification -- retention of records -- reports to attorney**

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

15 (i) the department;

16 (ii) state and local law enforcement; and

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

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

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

28 (2) The county attorney shall retain records relating to the report or investigation, including the

1 certification, case notes, correspondence, evaluations, videotapes, and interviews, for 25 years.

2 (3) Each county attorney shall report every 6 months to the attorney general. The report to the  
3 attorney general must include, for each report from the department or investigation by law enforcement:

4 (a) a unique case identifier;

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

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

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

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

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

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14 NEW SECTION. **Section 4. Effective date.** [This act] is effective July 1, 2021.

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