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HOUSE BILL NO. 399

INTRODUCED BY B. MERCER

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING COUNTY ATTORNEY AND ATTORNEY GENERAL REPORTING REQUIREMENTS RELATED TO CHILDHOOD SEXUAL ABUSE; REVISING REPORTING REQUIREMENTS; PROVIDING A DEFINITION; AND AMENDING SECTIONS 41-3-102, 41-3-202, AND 41-3-210, MCA; ~~AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.~~"

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

NEW SECTION. **Section 1. Department report to attorney general.** By July 15 of each year, the department shall report to the attorney general and the law and justice interim committee in accordance with 5-11-210 the number of referrals to county attorneys pursuant to 41-3-202(1)(b)(i) that the department made for each county in the previous fiscal year.

Section 2. Section 41-3-102, MCA, is amended to read:

"41-3-102. Definitions. As used in this chapter, the following definitions apply:

(1) (a) "Abandon", "abandoned", and "abandonment" mean:

(i) leaving a child under circumstances that make reasonable the belief that the parent does not intend to resume care of the child in the future;

(ii) willfully surrendering physical custody for a period of 6 months and during that period not manifesting to the child and the person having physical custody of the child a firm intention to resume physical custody or to make permanent legal arrangements for the care of the child;

(iii) that the parent is unknown and has been unknown for a period of 90 days and that reasonable efforts to identify and locate the parent have failed; or

(iv) the voluntary surrender, as defined in 40-6-402, by a parent of a newborn who is no more than 30 days old to an emergency services provider, as defined in 40-6-402.

(b) The terms do not include the voluntary surrender of a child to the department solely because of

1 Subject to time periods set forth in subsections (5)(b) and (5)(c), the department shall maintain a record system
2 documenting investigations and safety and risk assessment determinations. Unless records are required to be
3 destroyed under subsections (5)(b) and (5)(c), the department shall retain records relating to the safety and risk
4 assessment, including case notes, correspondence, evaluations, videotapes, and interviews, for 25 years.

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

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

11

12 **Section 4.** Section 41-3-210, MCA, is amended to read:

13 **"41-3-210. County attorney duties -- certification -- retention of records -- reports to attorney**

14 **general and legislature -- attorney general report.** (1) (a) The county attorney shall gather all case notes,

15 correspondence, evaluations, interviews, and other investigative materials pertaining to each report from the

16 department or investigation by law enforcement of sexual abuse or sexual exploitation of a child made within

17 the county when the alleged perpetrator of the sexual abuse or sexual exploitation is 12 years of age or older.

18 After a report is made or an investigation is commenced, the following individuals or entities shall provide to the

19 county attorney all case notes, correspondence, evaluations, interviews, and other investigative materials

20 related to the report or investigation:

21 (i) the department;

22 (ii) state and local law enforcement; and

23 (iii) all members of a county or regional interdisciplinary child information and school safety team

24 established under 52-2-211.

25 (b) The duty to provide records to the county attorney under subsection (1)(a) remains throughout

26 the course of an investigation, an abuse and neglect proceeding conducted pursuant to this part, or the

27 prosecution of a case involving the sexual abuse of a child or sexual exploitation of a child.

28 (c) Upon receipt of a report from the department, as required in 41-3-202, that includes an

1 allegation of sexual abuse of a child or sexual exploitation of a child, the county attorney shall certify in writing
2 to the person who initially reported the information that the county attorney received the report. The certification
3 must include the date the report was received and the age and gender of the alleged victim. If the report was
4 anonymous, the county attorney shall provide the certification to the department. If the report was made to the
5 county attorney by a law enforcement officer, the county attorney is not required to provide the certification.

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

8 (3) By June 1 of each year ~~the 15th day after the end of each fiscal year quarter~~ EVERY 6 MONTHS
9 ON A DATE DETERMINED BY THE ATTORNEY GENERAL On or before January 1 and June 1 of each year, each county
10 attorney shall report to the attorney general. The report to the attorney general must include, for each report
11 from the department or investigation by law enforcement:

12 (a) a unique case identifier;

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

14 (c) ~~the date of any decision to prosecute based on a report or investigation~~ any charges were filed;

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

16 (e) if charges are filed against a defendant, ~~any known outcomes of the case~~ whether a conviction
17 was obtained and, if a conviction was obtained, the sentence imposed by the court; and

18 (f) the number of certifications made as required by subsection (1)(c), including separate
19 disclosures on the number of certifications made to the department and persons who made the report that
20 required certification.

21 (4) (a) The attorney general shall create a form for county attorneys to use when submitting reports
22 required by subsection (3). The form must allow collection of the information required by subsection (3) on an
23 aggregated, cumulative basis for a 5-year period until charges are filed or a decision is made to decline to
24 prosecute.

25 (b) The information provided by a county attorney on the forms is confidential criminal justice
26 information as defined in 44-5-103.

27 (4)(5) The attorney general shall report to the law and justice interim committee each year by
28 ~~September 1~~ August 15 and as provided in 5-11-210. The reports must provide:

1 (a) aggregated information regarding the status of the cases reported in subsection (3) by the
2 county attorneys, except for those cases pending review of the county attorney or uncharged cases still under
3 investigation, including data on the total number of cases reported;

4 (b) the number of cases declined for prosecution; and

5 (c) the number of cases charged;

6 (d) any action in the past fiscal year that the attorney general took under the authority of 2-15-501
7 based on the reports submitted as required in subsection (3). A report made pursuant to this subsection (5)(d)
8 may not include the name of the county.

9 (e) after consideration of the information provided by the department pursuant to [section 1], any
10 county attorney who failed to provide a complete report required by subsection (3)."

11
12 NEW SECTION. Section 5. Codification instruction. [Section 1] is intended to be codified as an
13 integral part of Title 41, chapter 3, part 2, and the provisions of Title 41, chapter 3, part 2, apply to [section 1].

14
15 ~~NEW SECTION. Section 6. Effective date. [This act] is effective on passage and approval.~~

16 - END -