

1 HOUSE BILL NO. 78

2 INTRODUCED BY B. MERCER

3 BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT ADDING EMPLOYEES AND VOLUNTEERS OF ENTITIES THAT
6 PROVIDE ORGANIZED ACTIVITIES FOR CHILDREN TO THE LIST OF MANDATORY REPORTERS OF
7 CHILD ABUSE AND NEGLECT; AMENDING SECTIONS 41-3-201, 41-3-202, AND 41-3-205, MCA; AND
8 PROVIDING AN EFFECTIVE DATE."

9

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
11

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

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

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

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

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

23 (c) religious healers;

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

25 (e) directors, employees, and volunteers at entities that provide organized activities for children,
26 including but not limited to after-school programs, camps, day camps, youth centers, and recreational centers;

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

1 care program, or an operator or employee of a child-care facility;

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

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

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

5 ~~(i)~~(j) a guardian ad litem or a court-appointed advocate who is authorized to investigate a report of
6 alleged abuse or neglect;

7 ~~(j)~~(k) an employee of an entity that contracts with the department to provide direct services to
8 children; and

9 ~~(k)~~(l) an employee of the department while in conduct of the employee's duties.

10 (3) A professional listed in subsection (2)(a) or (2)(b) involved in the delivery or care of an infant shall
11 report to the department any infant known to the professional to be affected by a dangerous drug, as defined in
12 50-32-101.

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

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

17 (i) that professional or official;

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

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

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

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

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

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

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

4 (ii) the statement was intended to be a part of a confidential communication between the member of
5 the clergy or the priest and a member of the church or congregation; and

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

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

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

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

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

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

18 (d) the facts that led the person reporting to believe that the child has suffered injury or injuries or
19 willful neglect, within the meaning of this chapter. (Subsection (5)(a)(iii) terminates September 30, 2021--sec.
20 12, Ch. 235, L. 2017.)"

21
22 **Section 2.** Section 41-3-202, MCA, is amended to read:

23 **"41-3-202. Action on reporting.** (1) (a) Upon receipt of a report that a child is or has been abused or
24 neglected, the department shall promptly assess the information contained in the report and make a
25 determination regarding the level of response required and the timeframe within which action must be initiated.

26 (b) (i) Except as provided in subsection (1)(b)(ii), upon receipt of a report that includes an allegation
27 of sexual abuse or sexual exploitation or if the department determines during any investigation that the
28 circumstances surrounding an allegation of child abuse or neglect include an allegation of sexual abuse or

1 sexual exploitation, the department shall immediately report the allegation to the county attorney of the county
2 in which the acts that are the subject of the report occurred.

3 (ii) If a victim of sexual abuse or sexual exploitation has attained the age of 14 and has sought services
4 from a contractor as described in 41-3-201~~(2)(j)~~(2)(k) that provides confidential services to victims of sexual
5 assault, conditioned upon an understanding that the criminal conduct will not be reported by the department to
6 the county attorney in the jurisdiction in which the alleged crime occurred, the department may not report
7 pursuant to 41-3-205(5)(d) and subsection (1)(b)(i) of this section.

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

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

24 (3) The social worker is responsible for conducting the safety and risk assessment. If the child is
25 treated at a medical facility, the social worker, county attorney, or peace officer, consistent with reasonable
26 medical practice, has the right of access to the child for interviews, photographs, and securing physical
27 evidence and has the right of access to relevant hospital and medical records pertaining to the child. If an
28 interview of the child is considered necessary, the social worker, county attorney, or peace officer may conduct

1 an interview of the child. The interview may be conducted in the presence of the parent or guardian or an
2 employee of the school or day-care facility attended by the child.

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

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

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

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

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

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

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

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

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

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

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

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

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

"41-3-205. Confidentiality -- disclosure exceptions. (1) The case records of the department and its local affiliate, the local office of public assistance, the county attorney, and the court concerning actions taken under this chapter and all records concerning reports of child abuse and neglect must be kept confidential except as provided by this section. Except as provided in subsections (9) and (10), a person who purposely or knowingly permits or encourages the unauthorized dissemination of the contents of case records is guilty of a misdemeanor.

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

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

(a) a department, agency, or organization, including a federal agency, military enclave, or Indian tribal organization, that is legally authorized to receive, inspect, or investigate reports of child abuse or neglect and that otherwise meets the disclosure criteria contained in this section;

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

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

3 (d) a parent, grandparent, aunt, uncle, brother, sister, guardian, mandatory reporter provided for in
4 41-3-201(2) and (5), or person designated by a parent or guardian of the child who is the subject of a report in
5 the records or other person responsible for the child's welfare, without disclosure of the identity of any person
6 who reported or provided information on the alleged child abuse or neglect incident contained in the records;

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

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

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

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

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

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

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

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

23 (m) a child fatality review team recognized by the department[, including the child abuse and neglect
24 review commission established in 2-15-2019];

25 (n) a department or agency investigating an applicant for a license or registration that is required to
26 operate a youth care facility, day-care facility, or child-placing agency;

27 (o) a person or entity who is carrying out background, employment-related, or volunteer-related
28 screening of current or prospective employees or volunteers who have or may have unsupervised contact with

1 children through employment or volunteer activities. A request for information under this subsection (3)(o) must
2 be made in writing. Disclosure under this subsection (3)(o) is limited to information that indicates a risk to
3 children posed by the person about whom the information is sought, as determined by the department.

4 (p) the news media, if disclosure is limited to confirmation of factual information regarding how the
5 case was handled and if disclosure does not violate the privacy rights of the child or the child's parent or
6 guardian, as determined by the department;

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

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

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

13 (t) an attorney who is hired by or represents the department if disclosure is necessary for the
14 investigation, defense, or prosecution of a case involving child abuse or neglect;

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

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

19 (w) a member of a county or regional interdisciplinary child information and school safety team formed
20 under the provisions of 52-2-211;

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

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

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

25 (4) (a) The records described in subsection (3) must be disclosed to a member of the United States
26 congress or a member of the Montana legislature if all of the following requirements are met:

27 (i) the member receives a written inquiry regarding a child and whether the laws of the United States
28 or the state of Montana that protect children from abuse or neglect are being complied with or whether the laws

1 need to be changed to enhance protections for children;

2 (ii) the member submits a written request to the department requesting to review the records relating to
3 the written inquiry. The member's request must include a copy of the written inquiry, the name of the child
4 whose records are to be reviewed, and any other information that will assist the department in locating the
5 records.

6 (iii) before reviewing the records, the member:

7 (A) signs a form that outlines the state and federal laws regarding confidentiality and the penalties for
8 unauthorized release of the information; and

9 (B) receives from the department an orientation of the content and structure of the records.

10 (b) Records disclosed pursuant to subsection (4)(a) are confidential, must be made available for the
11 member to view but may not be copied, recorded, photographed, or otherwise replicated by the member, and
12 must remain solely in the department's possession. The member must be allowed to view the records in the
13 local office where the case is or was active.

14 (c) Access to records requested pursuant to this subsection (4) is limited to 6 months from the date
15 the written request to review records was received by the department.

16 (5) (a) The records described in subsection (3) must be promptly released to any of the following
17 individuals upon a written request by the individual to the department or the department's designee:

18 (i) the attorney general;

19 (ii) a county attorney or deputy county attorney of the county in which the alleged abuse or neglect
20 occurred;

21 (iii) a peace officer, as defined in 45-2-101, in the jurisdiction in which the alleged abuse or neglect
22 occurred; or

23 (iv) the office of the child and family ombudsman.

24 (b) The records described in subsection (3) must be promptly disclosed by the department to an
25 appropriate individual described in subsection (5)(a) or to a county or regional interdisciplinary child information
26 and school safety team established pursuant to 52-2-211 upon the department's receipt of a report indicating
27 that any of the following has occurred:

28 (i) the death of the child as a result of child abuse or neglect;

1 (ii) a sexual offense, as defined in 46-23-502, against the child;

2 (iii) exposure of the child to an actual and not a simulated violent offense as defined in 46-23-502; or

3 (iv) child abuse or neglect, as defined in 41-3-102, due to exposure of the child to circumstances
4 constituting the criminal manufacture or distribution of dangerous drugs.

5 (c) (i) The department shall promptly disclose the results of an investigation to an individual
6 described in subsection (5)(a) or to a county or regional interdisciplinary child information and school safety
7 team established pursuant to 52-2-211 upon the determination that:

8 (A) there is reasonable cause to suspect that a child has been exposed to a Schedule I or Schedule II
9 drug whose manufacture, sale, or possession is prohibited under state law; or

10 (B) a child has been exposed to drug paraphernalia used for the manufacture, sale, or possession of
11 a Schedule I or Schedule II drug that is prohibited by state law.

12 (ii) For the purposes of this subsection (5)(c), exposure occurs when a child is caused or permitted to
13 inhale, have contact with, or ingest a Schedule I or Schedule II drug that is prohibited by state law or have
14 contact with drug paraphernalia as defined in 45-10-101.

15 (d) (i) Except as provided in subsection (5)(d)(ii), the records described in subsection (3) must be
16 released within 5 business days to the county attorney of the county in which the acts that are the subject of a
17 report occurred upon the department's receipt of a report that includes an allegation of sexual abuse or sexual
18 exploitation. The department shall also report to any other appropriate individual described in subsection (5)(a)
19 and to a county or regional interdisciplinary child information and school safety team established pursuant to
20 52-2-211.

21 (ii) If the exception in 41-3-202(1)(b) applies, a contractor described in 41-3-201~~(2)(j)(2)(k)~~ that
22 provides confidential services to victims of sexual assault shall report to the department as provided in this part
23 without disclosing the names of the victim and the alleged perpetrator of sexual abuse or sexual exploitation.

24 (iii) When a contractor described in 41-3-201~~(2)(j)(2)(k)~~ that provides confidential services to victims of
25 sexual assault provides services to youth over the age of 13 who are victims of sexual abuse and sexual
26 exploitation, the contractor may not dissuade or obstruct a victim from reporting the criminal activity and, upon a
27 request by the victim, shall facilitate disclosure to the county attorney and a law enforcement officer as
28 described in Title 7, chapter 32, in the jurisdiction where the alleged abuse occurred.

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

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

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

(9) A person who is authorized to receive records under this section shall maintain the confidentiality of the records and may not disclose information in the records to anyone other than the persons described in subsections (3)(a) and (5). However, this subsection may not be construed to compel a family member to keep the proceedings confidential.

(10) A news organization or its employee, including a freelance writer or reporter, is not liable for reporting facts or statements made by an immediate family member under subsection (9) if the news organization, employee, writer, or reporter maintains the confidentiality of the child who is the subject of the proceeding.

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

(12) Copies of records, evaluations, reports, or other evidence obtained or generated pursuant to this section that are provided to the parent, grandparent, aunt, uncle, brother, sister, guardian, or parent's or guardian's attorney must be provided without cost. (Bracketed language in subsection (3)(m) terminates September 30, 2021--sec. 12, Ch. 235, L. 2017.)"

NEW SECTION. Section 4. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each federally recognized tribal government in Montana.

NEW SECTION. Section 5. Effective date. [This act] is effective July 1, 2021.

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