

HOUSE BILL NO. 743

INTRODUCED BY B. MERCER

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING REPORTING REQUIREMENTS RELATED TO ALLEGATIONS OF EXPLOITATION; REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO FORWARD MATERIALS PERTAINING TO AN ALLEGED OFFENSE OF EXPLOITATION OF AN INCAPACITATED PERSON OR VULNERABLE ADULT TO THE COUNTY ATTORNEY; REQUIRING EACH COUNTY ATTORNEY AND THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO REPORT TO THE ATTORNEY GENERAL; REVISING THE CONTENT OF REPORTS; AND AMENDING SECTION 52-3-812, MCA."

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

NEW SECTION. Section 1. County attorney duties -- ~~retention of records~~ -- report to attorney general and legislature -- attorney general report. (1) (a) If the department receives a report of an allegation of exploitation of a victim pursuant to 52-3-811 that would constitute a crime under 45-6-333 and determines the report to be credible following an investigation, the department shall forward materials pertaining to the allegation to the county attorney where the alleged victim resides. If the alleged perpetrator is not identified, the county attorney shall request the department to provide the name or other available information to assist in identifying the alleged perpetrator.

(b) The duty to provide records to the county attorney under subsection (1)(a) remains throughout the course of an investigation or the prosecution of a case involving the exploitation of an incapacitated person or vulnerable adult.

(2) On or before July 1 of each year, each county attorney shall report to the attorney general. The report to the attorney general must include, for each report from the department:

(a) a unique case identifier;

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

(c) the date any charges were filed;

(d) the date of any decision to decline to prosecute;

(e) if charges are filed against a defendant, whether a conviction was obtained and, if a conviction was obtained, the sentence imposed by the court;

(f) the number of referrals made to the county attorney pursuant to subsection (1); and

(g) the number of reports presented that have not resulted in a prosecution or a declination of prosecution within 2 years of the date of the initial report received by the county attorney, and the basis for not making a decision on whether to prosecute or decline prosecution in the matters reported.

(3) (a) The attorney general shall create a form for county attorneys to use when submitting reports required by subsection (2). The form must allow collection of the information required by subsection (2) on an aggregated, cumulative basis for a 5-year period until charges are filed or a decision is made to decline to prosecute.

(4) The attorney general shall report to the law and justice interim committee each year by September 1 in accordance with 5-11-210. Except as provided in subsection (4)(e), the report must provide by county:

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

(b) the number of cases declined for prosecution;

(c) the number of cases charged;

(d) after consideration of the information provided by the department pursuant to [section 2], any county attorney who failed to provide a complete report required by subsection (3); and

(e) any action in the past fiscal year that the attorney general took under the authority of 2-15-501 based on the reports submitted as required in subsection (2). A report made pursuant to this subsection (4)(e) may not include the name of the county.

NEW SECTION. Section 2. Department report to attorney general. (1) By September 15 of each even-numbered 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 BY COUNTY pursuant to 52-

3-811 for suspected offenses under 45-6-333.

(2) ~~If the department believes, based on its knowledge, that a prosecution should be pursued for exploitation of an incapacitated person or vulnerable adult, as defined in 45-6-333, and has not been charged, it shall advise the attorney general and summarize the facts supporting its conclusion~~ THE ATTORNEY GENERAL MAY REQUEST INVESTIGATIVE FINDINGS FROM THE DEPARTMENT AND THE COUNTY ATTORNEY FOR A CASE THAT THE COUNTY ATTORNEY DECLINED TO PROSECUTE UNDER 45-6-333 AND DETERMINE IF THE FACTS SUPPORT THE CONCLUSION.

Section 3. Section 52-3-812, MCA, is amended to read:

"52-3-812. Content of report. (1) The report required by 52-3-811 may be made in writing or orally, by telephone, in person, or electronically through the department. A person who receives an oral report shall prepare it in writing as soon as possible.

(2) The report referred to under this section must contain:

(a) the names and addresses of the vulnerable adult and the person, if any, responsible for the vulnerable adult's care;

(b) the name and address, if available, of the person who is alleged to have abused, sexually abused, neglected, or exploited the vulnerable adult;

(c) to the extent known, the vulnerable adult's age and the nature and extent of the abuse, sexual abuse, neglect, or exploitation, including any evidence of previous injuries, abuse, sexual abuse, neglect, or exploitation sustained by the vulnerable adult and any evidence of prior instances of abuse, sexual abuse, neglect, or exploitation of other vulnerable adults committed by the person alleged to have committed abuse, sexual abuse, neglect, or exploitation; and

(d) the name, telephone number, and address of the person making the report."

NEW SECTION. **Section 4. Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 52, chapter 3, part 8, and the provisions of Title 52, chapter 3, part 8, apply to [sections 1 and 2].

COORDINATION SECTION. **SECTION 5. COORDINATION INSTRUCTION.** IF BOTH HOUSE BILL NO. 532 AND

[THIS ACT] ARE PASSED AND APPROVED, AND IF HOUSE BILL NO. 532 CONTAINS A SECTION THAT REPEALS 45-6-333, A SECTION THAT ESTABLISHES THE OFFENSE OF EXPLOITATION OF AN INCAPACITATED PERSON OR VULNERABLE ADULT, AND A SECTION THAT AMENDS 45-6-332, THEN [SECTION 1 OF THIS ACT] IS VOID AND MUST BE REPLACED WITH:

"NEW SECTION. Section 1. County attorney duties -- report to attorney general and legislature -- attorney general report.(1) (a) If the department receives a report of an allegation of exploitation of a victim pursuant to 52-3-811 that would constitute a crime under [section 4 of House Bill No. 532] or the crime of theft of identity in which the victim is an incapacitated person or vulnerable adult pursuant to 45-6-332, and the department determines the report to be credible following an investigation, the department shall forward materials pertaining to the allegation to the county attorney where the alleged victim resides. If the alleged perpetrator is not identified, the county attorney shall request the department to provide the name or other available information to assist in identifying the alleged perpetrator.

(b) The duty to provide records to the county attorney under subsection (1)(a) remains throughout the course of an investigation or the prosecution of a case involving the exploitation or theft of identity of an incapacitated person or vulnerable adult.

(2) On or before July 1 of each year, each county attorney shall report to the attorney general. The report to the attorney general must include, for each report from the department:

- (a) a unique case identifier;
- (b) the date that the initial report or allegation was received by the county attorney;
- (c) the date any charges were filed;
- (d) the date of any decision to decline to prosecute;
- (e) if charges are filed against a defendant, whether a conviction was obtained and, if a conviction was obtained, the sentence imposed by the court;
- (f) the number of referrals made to the county attorney pursuant to subsection (1); and
- (g) the number of reports presented that have not resulted in a prosecution or a declination of prosecution within 2 years of the date of the initial report received by the county attorney, and the basis for not making a decision on whether to prosecute or decline prosecution in the matters reported.

(3) (a) The attorney general shall create a form for county attorneys to use when submitting reports required by subsection (2). The form must allow collection of the information required by subsection (2) on an

1 aggregated, cumulative basis for a 5-year period until charges are filed or a decision is made to decline to
2 prosecute.

3 (4) The attorney general shall report to the law and justice interim committee each year by
4 September 1 in accordance with 5-11-210. Except as provided in subsection (4)(e), the report must provide by
5 county:

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

9 (b) the number of cases declined for prosecution;

10 (c) the number of cases charged;

11 (d) after consideration of the information provided by the department pursuant to [section 2], any
12 county attorney who failed to provide a complete report required by subsection (3); and

13 (e) any action in the past fiscal year that the attorney general took under the authority of 2-15-501
14 based on the reports submitted as required in subsection (2). A report made pursuant to this subsection (4)(e)
15 may not include the name of the county."
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17 COORDINATION SECTION. SECTION 6. COORDINATION INSTRUCTION. IF BOTH HOUSE BILL NO. 532 AND
18 [THIS ACT] ARE PASSED AND APPROVED, AND IF HOUSE BILL NO. 532 CONTAINS A SECTION THAT REPEALS 45-6-333, A
19 SECTION THAT ESTABLISHES THE OFFENSE OF EXPLOITATION OF AN INCAPACITATED PERSON OR VULNERABLE ADULT,
20 AND A SECTION THAT AMENDS 45-6-332, THEN [SECTION 2 OF THIS ACT] IS VOID AND MUST BE REPLACED WITH:

21 "NEW SECTION. Section 2. Department report to attorney general. (1) By September 15 of each
22 even-numbered year, the department shall report to the attorney general and the law and justice interim
23 committee in accordance with 5-11-210 the number of referrals to county attorneys by county pursuant to 52-3-
24 811 for suspected offenses under [section 4 of House Bill No. 532] and suspected offenses of theft of identity of
25 an incapacitated person or vulnerable adult pursuant to 45-6-332.

26 (2) The attorney general may request investigative findings from the department and the county
27 attorney for a case that the county attorney declined to prosecute under [section 4 of House Bill No. 532] or 45-
28 6-332 and determine if the facts support the conclusion."

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