

HOUSE BILL NO. 593

INTRODUCED BY B. MERCER

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING SEXUAL ABUSE AND EXPLOITATION REPORTING LAWS; REQUIRING THE COUNTY ATTORNEY TO REQUEST ASSISTANCE FROM THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES REGARDING IDENTIFICATION AND INCLUDE IN THE REPORT TO THE ATTORNEY GENERAL THE NUMBER OF REPORTS THAT WERE NOT PROSECUTED; PROVIDING REPORTING REQUIREMENTS FOR THE ATTORNEY GENERAL TO REPORT TO THE INTERIM BUDGET COMMITTEES; MODIFYING REPORTING REQUIREMENTS FOR REPORTS ON ADDITIONAL INFORMATION TO THE LAW AND JUSTICE INTERIM COMMITTEE; AND AMENDING SECTIONS 41-3-210, 41-3-211, AND 41-3-212, MCA."

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

Section 1. Section 41-3-210, MCA, is amended to read:

"41-3-210. County attorney duties -- certification -- retention of records -- reports to attorney general and legislature -- attorney general report. (1) (a) The county attorney shall gather all case notes, correspondence, evaluations, interviews, and other investigative materials pertaining to each report from the department or investigation by law enforcement of sexual abuse or sexual exploitation of a child made within the county when the alleged perpetrator of the sexual abuse or sexual exploitation is 12 years of age or older. If the alleged perpetrator of the sexual abuse or sexual exploitation 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. After a report is made or an investigation is commenced, the following individuals or entities shall provide to the county attorney all case notes, correspondence, evaluations, interviews, and other investigative materials related to the report or investigation:

- (i) the department;
- (ii) state and local law enforcement; and
- (iii) all members of a county or regional interdisciplinary child information and school safety team

1 established under 52-2-211.

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

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

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

13 (3) On or before January 1 and ~~June~~ July 1 of each year, each county attorney shall report to the
14 attorney general. The report to the attorney general must include, for each report from the department or
15 investigation by law enforcement:

16 (a) a unique case identifier;

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

18 (c) the date any charges were filed;

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

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

22 (f) the number of certifications made as required by subsection (1)(c), including the number of
23 certifications made to the department; and

24 (g) of the reports submitted pursuant to 41-3-202(1)(b), the number of reports presented that have
25 not resulted in a prosecution or a declination of prosecution within 2 years of the date of the initial report
26 received by the county attorney, and the basis for not making a decision on whether to prosecute or decline
27 prosecution in the matters reported.

28 (4) (a) The attorney general shall create a form for county attorneys to use when submitting reports

required by subsection (3). The form must allow collection of the information required by subsection (3) on an aggregated, cumulative basis for a 5-year period until charges are filed or a decision is made to decline to prosecute.

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

(5) The attorney general shall report to the law and justice interim committee and the interim budget committees in 5-12-501(2)(b) and (2)(d) each year by August 15 and as provided in 5-11-210. The reports must provide:

(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 in the prior fiscal year;

(c) the number of cases charged in the prior fiscal year;

(d) the name INITIALS of each defendant charged in the prior fiscal year who had been identified in the reports submitted pursuant to 41-3-202(1)(b) as an alleged perpetrator of sexual abuse or sexual exploitation and was charged based upon the conduct alleged;

(e) the name INITIALS of each defendant identified in the reports submitted pursuant to 41-3-202(1)(b) as an alleged perpetrator of sexual abuse or sexual exploitation for whom a conviction was obtained based upon the conduct alleged;

(f) the name INITIALS of each defendant identified in the reports submitted pursuant to 41-3-202(1)(b) as an alleged perpetrator of sexual abuse or sexual exploitation for whom a sentence was imposed based upon the conduct alleged and the sentence imposed by the court for the defendant;

~~(d)(g)~~ 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 (3). A report made pursuant to this subsection (5)~~(d)(g)~~ may not include the name of the county.

(h) the number of reports from the department pursuant to 41-3-211(2); and

~~(e)(i)~~ after consideration of the information provided by the department pursuant to 41-3-211, identification of any county attorney who failed to provide a complete report required by subsection (3)."

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2 **Section 2.** Section 41-3-211, MCA, is amended to read:

3 **"41-3-211. Department report to attorney general.** (1) By July 15 of each year, the department shall
4 report to the attorney general and the law and justice interim committee in accordance with 5-11-210 the
5 number of referrals to county attorneys pursuant to 41-3-202(1)(b)(i) that the department made for each county
6 in the previous fiscal year.

7 (2) If the department believes based upon its investigation or knowledge that a prosecution should
8 be pursued for sexual abuse or sexual exploitation that has not been charged, it shall advise the attorney
9 general and summarize the facts supporting its conclusion."

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11 **Section 3.** Section 41-3-212, MCA, is amended to read:

12 **"41-3-212. Department procedures for reports -- recording -- notifications.** (1) A department
13 employee receiving a report of abuse or neglect pursuant to this part shall:

14 (a) obtain the information and provide the notifications specified in this section; and

15 (b) make an audio recording when a report is made by phone. The department shall retain the
16 recording in the same manner as provided for safety and risk assessments in 41-3-202.

17 (2) A department employee receiving a report of abuse or neglect shall request the following
18 information:

19 (a) the specific facts giving rise to the reasonable suspicion of child abuse or neglect, including the
20 name or names of the alleged victims and the name or names of the alleged perpetrator or perpetrators if the
21 report discloses allegations consisting of sexual abuse or sexual exploitation, and the source or sources of the
22 information; and

23 (b) (i) if the person making the report is required under 41-3-201 to report suspected abuse or
24 neglect, the person's name and telephone number and the capacity that makes the person a mandatory
25 reporter under 41-3-201; or

26 (ii) if the person making the report is not a mandatory reporter under 41-3-201, the person's name
27 and telephone number. If the person is unwilling to provide the information, the person receiving the report shall
28 notify the caller that if the caller suspects the child is at serious risk of imminent harm, to call 9-1-1 so the call

will be prioritized as an emergency.

(3) Reports made under this part are confidential as provided in 41-3-205. The privacy of the person making the report must be protected as provided in 41-3-205(3)(d) and (3)(h).

(4) A department employee receiving a report pursuant to 41-3-201 shall:

(a) to the greatest extent possible, attempt to obtain the name and phone number of the person making the report and document any other identifying information available, including but not limited to the caller's phone number when identified by the phone system; and

(b) if the report is being made by phone, notify the caller that the report is being recorded and the person's identity will be kept confidential."

COORDINATION SECTION. **Section 4. Coordination instruction.** If both Senate Bill No. 69 and [this act] are passed and approved and if both contain a section that amends 41-3-210, then the sections amending 41-3-210 are void and 41-3-210 must be amended as follows:

"41-3-210. County attorney duties -- certification -- retention of records -- reports to attorney general and legislature -- attorney general report. (1) (a) The county attorney shall gather all case notes, correspondence, evaluations, interviews, and other investigative materials pertaining to each report from the department or investigation by law enforcement of sexual abuse or sexual exploitation of a child made within the county when the alleged perpetrator of the sexual abuse or sexual exploitation is 12 years of age or older. If the alleged perpetrator of the sexual abuse or sexual exploitation 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. After a report is made or an investigation is commenced, the following individuals or entities shall provide to the county attorney all case notes, correspondence, evaluations, interviews, and other investigative materials related to the report or investigation:

(i) the department;

(ii) state and local law enforcement; and

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

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

the course of an investigation, an abuse and neglect proceeding conducted pursuant to this part, or the prosecution of a case involving the sexual abuse of a child or sexual exploitation of a child.

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

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

(3) ~~On or before January 1 and June 1 of each year~~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 or investigation by law enforcement:

(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; ~~and~~

(f) the number of certifications made as required by subsection (1)(c), including the number of certifications made to the department; and

(g) of the reports submitted pursuant to 41-3-202(1)(b), 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.

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

1 prosecute.

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

4 (5) The attorney general shall report to the law and justice interim committee and the interim
5 budget committees in 5-12-501(2)(b) and (2)(d) each year by August 15 and as provided in 5-11-210. The
6 reports must provide:

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

10 (b) the number of cases declined for prosecution in the prior fiscal year;

11 (c) the number of cases charged in the prior fiscal year;

12 (d) the initials of each defendant charged in the prior fiscal year who had been identified in the
13 reports submitted pursuant to 41-3-202(1)(b) as an alleged perpetrator of sexual abuse or sexual exploitation
14 and was charged based upon the conduct alleged;

15 (e) the initials of each defendant identified in the reports submitted pursuant to 41-3-202(1)(b) as
16 an alleged perpetrator of sexual abuse or sexual exploitation for whom a conviction was obtained based upon
17 the conduct alleged;

18 (f) the initials of each defendant identified in the reports submitted pursuant to 41-3-202(1)(b) as
19 an alleged perpetrator of sexual abuse or sexual exploitation for whom a sentence was imposed based upon
20 the conduct alleged and the sentence imposed by the court for the defendant;

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

24 (h) the number of reports from the department pursuant to 41-3-211(2); and

25 ~~(e)~~(i) after consideration of the information provided by the department pursuant to 41-3-211, any
26 county attorney who failed to provide a complete report required by subsection (3)."

27 - END -