

SENATE BILL NO. 270

INTRODUCED BY Burnett Grando

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE DESTRUCTION OF RECORDS OF REPORTS OF CHILD ABUSE OR NEGLECT IF THE CHILD IS DETERMINED NOT TO HAVE BEEN ABUSED OR NEGLECTED; AND AMENDING SECTIONS 41-3-202 AND 41-3-204, MCA."

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

Section 1. Section 41-3-202, MCA, is amended to read:

"41-3-202. Action on reporting. (1) Upon receipt of a report, as required by 41-3-201, that a child is or has been abused or neglected, a social worker or the county attorney or a peace officer shall promptly conduct a thorough investigation into the home of the child involved or any other place where the child is present, into the circumstances surrounding the injury of the child, and into all other nonfinancial matters ~~which~~ that in the discretion of the investigator are relevant to the investigation. In conducting an investigation under this section, a social worker may not inquire into the financial status of the child's family or of any other person responsible for the child's care, except as necessary to ascertain eligibility for federal assistance programs or to comply with the provisions of 41-3-406.

(2) The social worker is responsible for assessing the family and planning for the child. If the child is treated at a medical facility, the social worker, county attorney, or peace officer ~~shall~~, consistent with reasonable medical practice, ~~have~~ has the right of access to the child for interviews, photographs, and securing physical evidence and ~~have~~ has the right of access to relevant hospital and medical records pertaining to the child. If considered appropriate by the social worker, county attorney, or peace officer conducting an interview of the child, an employee of the public school attended by the child involved may participate in any interview of the child if the child is enrolled in kindergarten through 8th grade.

(3) (a) If from the investigation it appears that the child suffered abuse or neglect, the department shall provide protective services to the child and may provide protective services to any other child under the same care. The department will advise the county attorney of its investigation.

(b) If from the investigation it appears that the child has not suffered abuse or neglect, the department shall destroy all records concerning the report and the investigation. The destruction must be

1 completed within 20 days of the determination that the child has not suffered abuse or neglect.

2 (4) The investigating social worker, within 60 days of commencing an investigation, shall also
3 furnish a written report to the department. ~~The~~ Subject to subsection (3)(b), the department shall maintain
4 a record system containing child abuse and neglect cases.

5 (5) Any person reporting abuse or neglect ~~which~~ that involves acts or omissions on the part of a
6 public or private residential institution, home, facility, or agency ~~shall be~~ is responsible for ensuring that the
7 report is made to the department ~~of family services,~~ its local affiliate, and the county attorney of the county
8 in which the facility is located."
9

10 **Section 2.** Section 41-3-204, MCA, is amended to read:

11 **"41-3-204. Admissibility and preservation of evidence.** (1) In any proceeding resulting from a report
12 made pursuant to the provisions of this chapter or in any proceeding ~~where~~ for which the report or its
13 contents are sought to be introduced into evidence, the report or its contents or any other fact related to
14 the report or to the condition of the child who is the subject of the report ~~shall~~ may not be excluded on the
15 ground that the matter is or may be the subject of a privilege related to the examination or treatment of the
16 child and granted in Title 26, chapter 1, part 8, except the attorney-client privilege granted by 26-1-803.

17 (2) Any person or official required to report under 41-3-201 may take or cause to be taken
18 photographs of the area of trauma visible on a child who is the subject of a report. The cost of photographs
19 taken under this section ~~shall~~ must be paid by the department.

20 (3) When any person required to report under 41-3-201 finds visible evidence that a child has
21 suffered abuse or neglect, ~~he must~~ the person shall include in ~~his~~ the report either a written description or
22 photographs of the evidence.

23 (4) A physician, either in the course of ~~his~~ providing medical care to a minor or after consultation
24 with child protective services, the county attorney, or a law enforcement officer, may require x-rays to be
25 taken when, ~~in his~~ in the physician's professional opinion, there is a need for radiological evidence of
26 suspected abuse or neglect. X-rays may be taken under this section without the permission of the parent
27 or guardian. The cost of the x-rays ordered and taken under this section ~~shall~~ must be paid by the county
28 child protective service agency.

29 (5) All written, photographic, or radiological evidence gathered under this section ~~shall~~ must be
30 sent to the local affiliate of the department at the time that the written confirmation report is sent or as

1 soon ~~hereafter~~ after the report is sent as is possible. If a confirmation report is not made, the evidence
2 and the initial report must be destroyed as provided in 41-3-202(3)(b)."

3 -END-

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2 INTRODUCED BY BURNETT, GRINDE

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16 investigation under this section, a social worker may not inquire into the financial status of the child's
17 family or of any other person responsible for the child's care, except as necessary to ascertain eligibility
18 for federal assistance programs or to comply with the provisions of 41-3-406.

19 (2) The social worker is responsible for assessing the family and planning for the child. If the child
20 is treated at a medical facility, the social worker, county attorney, or peace officer ~~shall~~, consistent with
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25 participate in any interview of the child if the child is enrolled in kindergarten through 8th grade.

26 (3) (a) If from the investigation it appears that the child suffered abuse or neglect, the department
27 shall provide protective services to the child and may provide protective services to any other child under
28 the same care. The department will advise the county attorney of its investigation.

29 (b) If from the investigation it appears that the child has not suffered abuse or neglect **AND THE**
30 **INITIAL REPORT IS DETERMINED TO BE UNFOUNDED**, the department shall destroy all records concerning

1 the report and the investigation. The destruction must be completed within 20 days of the determination
 2 that the child has not suffered abuse or neglect.

3 (4) The investigating social worker, within 60 days of commencing an investigation, shall also
 4 furnish a written report to the department. ~~The~~ Subject to subsection (3)(b), the department shall maintain
 5 a record system containing child abuse and neglect cases.

6 (5) Any person reporting abuse or neglect ~~which~~ that involves acts or omissions on the part of a
 7 public or private residential institution, home, facility, or agency ~~shall be~~ is responsible for ensuring that the
 8 report is made to the department ~~of family services,~~ its local affiliate, and the county attorney of the county
 9 in which the facility is located."
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11 **Section 2.** Section 41-3-204, MCA, is amended to read:

12 **"41-3-204. Admissibility and preservation of evidence.** (1) In any proceeding resulting from a report
 13 made pursuant to the provisions of this chapter or in any proceeding ~~where~~ for which the report or its
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 15 the report or to the condition of the child who is the subject of the report ~~shall~~ may not be excluded on the
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