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[MONTANA CODE ANNOTATED](#)
[TITLE 41. MINORS](#)
[CHAPTER 3. CHILD ABUSE AND NEGLECT](#)
[PART 2. REPORTS AND INVESTIGATIONS](#)
[41-3-201. Reports](#)

(1) When the professionals and officials listed in subsection (2) know or have reasonable cause to suspect, as a result of information they receive in their professional or official capacity, that a child is abused or neglected, they shall report the matter promptly to the department of public health and human services or its local affiliate.

(2) Professionals and officials required to report are:

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

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

(c) Christian Science practitioners and religious healers;

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

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

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

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

(h) a member of the clergy;

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

(j) an employee of an entity that contracts with the department to provide direct services to children.

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

(4) (a) Except as provided in subsection (4)(b) or (4)(c), a person listed in subsection (2) may not refuse to make a report as required in this section on the grounds of a physician-patient or similar privilege.

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

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

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

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

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

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

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

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

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

(d) the facts that led the person reporting to believe that the child has suffered injury or injuries or willful neglect, within the meaning of this chapter.

History: En. Sec. 2, Ch. 178, L. 1965; amd. Sec. 2, Ch. 292, L. 1973; Sec. 10- 902, R.C.M. 1947; redes. 10-1304 by Sec. 14, Ch. 328, L. 1974; R.C.M. 1947, 10- 1304; amd. Sec. 6, Ch. 543, L. 1979; amd. Sec. 3, Ch. 511, L. 1981; amd. Sec. 11, Ch. 609, L. 1987; amd. Sec. 1, Ch. 79, L. 1989; amd. Sec. 1, Ch. 785, L. 1991; amd. Sec. 8, Ch. 458, L. 1995; amd. Sec. 162, Ch. 546, L. 1995; amd. Sec. 4, Ch. 514, L. 1997; amd. Sec. 4, Ch. 311, L. 2001.

<General Materials (GM) - References, Annotations, or Tables>

NOTES, REFERENCES, AND ANNOTATIONS

Compiler's Comments

2001 Amendment: Chapter 311 inserted (2)(j) relating to employees of certain department contractors; and made minor changes in style. Amendment effective October 1, 2001.

1997 Amendment: Chapter 514 at end of (1) deleted "which then shall notify the county attorney of the county where the child resides"; in (2)(e) inserted "staff of a resource and referral grant program organized under 52-2-711 or of a child and adult food care program"; and made minor changes in style. Amendment effective May 2, 1997.

1995 Amendments -- Composite Section: Chapter 458 inserted (2)(i) regarding guardian or advocate; and made minor changes in style. Amendment effective April 14, 1995.

Chapter 546 in (1) substituted "department of public health and human services" for "department of family services"; and made minor changes in style. Amendment effective July 1, 1995.

Style changes in the chapters were slightly different. In each case, the codifier chose the most appropriate.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1991 Amendment: Inserted (2)(h) including clergy in list of professionals and officials required to **report** suspected **child abuse** or neglect; at beginning of (4) inserted exception clause; inserted (4)(b) and (4)(c) concerning

clergy person or priest not being required to **report** if knowledge of abuse is result of confidential communication or confession and if person making statement does not authorize disclosure or if communication is required to be confidential by church law, doctrine, or practice; and made minor changes in style.

1989 Amendment: In (1), after "cause to suspect", substituted "as a result of information they receive in their professional or official capacity that a child is abused or neglected" for "that a child known to them in their professional or official capacity is an abused or neglected child"; and at end of (4) deleted "if the person came into possession of such information as a result of his treatment of the child".

1987 Amendment: Substituted "department of family services" for "department of social and rehabilitation services".

1981 Amendment: Substituted present subsection (2)(e) for former subsection (2)(e), which read: "(e) a social worker, licensed day-care center or any other licensed child-care facility;"

Cross-References

Duties of teacher -- nonpayment for failure to comply, 20-4-301.

Doctor-patient privilege, 26-1-805.

Adjudicatory hearing -- temporary disposition, 41-3-437.

Department of Public Health and Human Services to assist other agencies, 52-2- 116.

Standards for day care, 52-2-731.

Case Notes

Findings of District Court Regarding Custody of Child With Mother Not Erroneous Despite Evidence of Inappropriate Physical Contact Between Child and Mother's Relative: As part of a paternity action, the mother was awarded primary physical custody, and the father appealed. An amended parenting plan arrived at during mediation gave each parent physical custody of the child during alternating months. Near the end of one month's visit with the father, the child divulged that inappropriate physical contact with her stepgrandfather had occurred while in the mother's custody. The father moved for modification of the parenting plan. The District Court was faced with conflicting evidence in the case, receiving testimony from the stepgrandfather that no inappropriate touching occurred, as well as testimony from professionals who opined that sexual abuse had occurred. Additional expert testimony suggested that the child's constant travel was a possible cause of her troubling behavior and that the experts who suggested that sexual abuse occurred had not followed standard protocols when interviewing the child. Lay testimony indicated that it was unlikely that the stepgrandfather had an opportunity to commit the alleged abuse. The court ultimately determined that sexual abuse had not been proved. The father appealed on grounds that the court's findings were insufficient, that the court erred in not giving the father custody based on the evidence presented, and that the court erred by apparently rejecting the testimony of the child's clinical psychologist and the disclosures made by the child relating to sexual abuse. The Supreme Court noted that credibility determinations are within the province of the trier of fact and held that, in light of the conflicting testimony, the trial court's findings and conclusions were sufficient to support the court's decision. Although the trial court did not specifically articulate the elements of 40-4-212, it clearly made determinations that it considered to be in the child's best interests. Failure to list the contentions of a particular witness, such as the child's clinical psychologist, was not sufficient to determine a per se abuse of discretion on the part of the trial court. Without a clear showing of abuse of discretion, the Supreme Court declined to disturb the decision and affirmed the denial of the father's motion to modify the parenting plan. *In re Paternity & Custody of A.D.V.*, 2001 MT 74, 305 M 62, [22 P3d 1124 \(2001\)](#).

Jury to Be Informed of Duty to Report: In a negligence action alleging abuse of a foster child, the Supreme Court reversed, ruling that the District Court erred in refusing to instruct the jury of the Department's statutory duty to notify the County Attorney of a **child abuse report**. *Newville v. St.*, 267 M 237, 883 P2d 793, 51 St. Rep. 758 (1994).

Reporting Mandate and Immunity Applied to Social Worker Reporting Event Sixteen Years Previous: A clinical social worker running a therapy group was subject to the reporting mandate of this section, despite assurances of strict confidentiality and despite the fact that alleged incidents of sexual abuse occurred 16 years earlier. Absent evidence that the social worker acted in bad faith or with malicious purpose, the immunity granted by 41-3-203 was properly extended. [Gross v. Myers, 229 M 509, 748 P2d 459, 44 St. Rep. 2176 \(1987\).](#)

Ability to Support Child: Since ability of parents to support children was not determined in compliance with sections 10-506 and 10-507, R.C.M. 1947 (now repealed), but was left to testimony to be elicited at a later hearing, order compelling parents to pay support costs in action depriving them of the children was set aside. [In re Phelps, 145 M 557, 402 P2d 593 \(1965\).](#)

Attorney General's Opinions

Centralized Intake System Authorized -- Fulfillment of Reporting Requirements Absent Properly Adopted Administrative Rule:

By amendment in 2001, the Legislature required the Department of Public Health and Human Services to assess **reports** of **child abuse** or neglect in order to determine whether investigation or some lesser response is appropriate and granted the Department the authority to determine the appropriate response time, but did not specify how the Department was to implement the legislation. The Department developed the centralized intake system as the method to meet the statutory directive. However, the Department established the system without formal adoption as an administrative rule. Because the centralized intake system implements a law and affects private rights or procedures available to the public, the Attorney General held that the system is a rule, subject to the Montana Administrative Procedure Act. Thus, until adopted as an administrative rule, the centralized intake system may not be used to restrict which Department personnel may receive a report. Further, counties are no longer involved in providing child protective services, so they are no longer local affiliates of the Department, as the term is used in this section. Therefore, mandatory **reporters** may fulfill their **reporting** obligations by **reporting child abuse** and neglect to a local child protective services worker or supervisor or to the Department through the Centralized Intake Bureau. 50 A.G. Op. 4 (2004).

*Balance of Competing State Interests in Prevention and **Reporting** of **Child Abuse** -- Abrogation of Communication Privileges by Statute:*

Although the state has competing interests in the prevention of child abuse and neglect and in protecting the communication privileges between physicians or mental health practitioners and their patients, the communication privilege is abrogated under 41-3-201 in cases where the professional obtains the information as a result of his treatment of the child. 42 A.G. Op. 7 (1987).

Statutory Reporting Requirements Not Preempted by Federal Confidentiality Provisions:

The provisions of this section requiring disclosure of child abuse or neglect known by a chemical dependency counselor are not preempted by the confidentiality provisions of the federal Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act amendments of 1974, [42 U.S.C. 290dd-3](#). 42 A.G. Op. 7 (1987).

Collateral References

Infants + 208.

[Validity, construction, and application of state statute requiring doctor or other person to **report child abuse**. 73 ALR 4th 782.](#)

Custody of infant: [right of incarcerated mother to retain custody of infant in penal institution. 14 ALR 4th 748.](#)

Current through the 2003 Regular Session of the 58th Legislature

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