

SENATE BILL NO. 468

INTRODUCED BY D. LENZ

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR A STATEWIDE CENTRAL REGISTRY FOR SUBSTANTIATED REPORTS OF CHILD ABUSE OR NEGLECT; ~~REQUIRING NOTICE AND A HEARING BEFORE AN INDIVIDUAL IS INCLUDED IN THE CENTRAL REGISTRY;~~ ESTABLISHING PROCEDURES FOR EXPUNGEMENT FROM THE CENTRAL REGISTRY; PROVIDING DEFINITIONS; ~~AMENDING SECTIONS 41-3-202 AND 41-3-205, MCA;~~ ESTABLISHING REPORTING REQUIREMENTS; AND PROVIDING AN EFFECTIVE DATE."

WHEREAS, the 5th and 14th Amendments to the United States Constitution prohibit governments from depriving individuals of their liberty or property interests without due process of the law; and

WHEREAS, this state has established procedures for collecting and maintaining child abuse and neglect investigation records in a central registry that includes the identities of individuals alleged to have abused or neglected a child; and

WHEREAS, the names maintained in Montana's central registry may be disclosed to certain third parties in the course of background checks related to an individual's employment, licensure, and volunteer activities; and

WHEREAS, the disclosures may have a significant negative impact on an individual's liberty and property interests, including the loss or denial of employment and the loss of reputation in the community; and

WHEREAS, the Legislature wishes to ensure that this state's procedures for listing individuals on the central registry comport with constitutional due process requirements.

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

NEW SECTION. **Section 1. Central registry -- purpose -- determinations.** (1) There is established a statewide central registry to maintain information on individuals who are the subject of substantiated determinations of child abuse or neglect. The information may be made available during a background check of

an individual as provided for in 41-3-205 and may affect the individual's ability to volunteer or obtain employment or licensure in areas in which the individual may have unsupervised contact with children, such as child care, foster care, or group home care.

(2) For the purposes of [sections 1 through 4 AND 2], a determination of child abuse or neglect must be categorized according to the following definitions:

(a) (i) "Substantiated" means that, ~~following an investigation by the department and a hearing in district court, the court has~~ the department has investigated the reported act of child abuse or neglect and determined by a preponderance of the evidence that ~~the reported~~ an act of child abuse or neglect occurred.

~~(ii) — A substantiated determination includes:~~

~~(A) — an individual who admits to an allegation of child abuse or neglect; or~~

~~(B) — an individual who is convicted of a criminal offense related to child abuse or neglect or exploitation of a child.~~

~~(iii) — A substantiated determination may not be based solely on an individual's agreement to comply with a treatment plan created by the department to receive services.~~

~~(iv) — A substantiated determination must be reviewed and upheld by a district court as provided in [section 3].~~

~~(v)(iv)(ii)~~ The subject of a substantiated determination may be added to the central registry and must be notified of the consequences of being listed in the central registry, as well as the subject's rights and procedures for requesting expungement from the central registry.

(b) "Unfounded" means that, ~~following an investigation,~~ the department ~~determined that:~~ has investigated the reported act of child abuse or neglect and there is no evidence to corroborate the report.

~~(i) — the report was false;~~

~~(ii) — the report was inherently improbable;~~

~~(iii) — the report involved an accidental injury;~~

~~(iv) — the reported act did not constitute child abuse or neglect; or~~

~~(v) — evidence indicated that the reported act of child abuse or neglect could not have occurred.~~

(c) "Unsubstantiated" means that: the department has investigated the reported act of child abuse or neglect and is unable to determine by a preponderance of the evidence that an act of child abuse or neglect

1 occurred.

2 ~~(i) — following an investigation, the department could not determine that the reported act of child~~  
3 ~~abuse or neglect occurred; or~~

4 ~~(ii) — following a hearing, the court could not determine by a preponderance of the evidence that the~~  
5 ~~reported act of child abuse or neglect occurred.~~

6  
7 **NEW SECTION. Section 2. Central registry — notice — procedures.** (1) An individual who is the  
8 subject of a child abuse or neglect report that is determined by the department to be substantiated may not be  
9 added to the central registry absent notice and a hearing during the adjudication process.

10 (2) — Within 14 days of determining that a reported act of child abuse or neglect is substantiated, the  
11 department shall provide the individual with certified written notice of the department's intent to add the  
12 individual to the central registry. The notice must include:

13 (a) — a clear statement of the specific allegations that will be added to the central registry, including  
14 the name of the alleged victim, the injuries or harm alleged to have resulted from the child abuse or neglect,  
15 and the date on which the report was made;

16 (b) — the consequences of being listed in the central registry, including possible negative impacts on  
17 the individual's employment, licensure, and ability to have future contact with children, including volunteer and  
18 school activities;

19 (c) — the maximum amount of time the individual's name may be included in the central registry;

20 (d) — a complete copy of the record that will be added to the central registry; and

21 (e) — confirmation that the department has requested a substantiation hearing before the district  
22 court during the adjudication hearing.

23 (3) — The department may not add an individual to the central registry or release information to any  
24 third parties until all appeals have been exhausted or waived.

25 (4) — If a petition for emergency protective services has been filed with the district court pursuant to  
26 41-3-427 in which the allegations of child abuse or neglect are at issue, the hearing on the substantiation  
27 determination provided under [section 3] must be held in conjunction with the adjudication hearing provided for  
28 in 41-3-437. The individual has a right to counsel as provided in 41-3-425.

~~NEW SECTION. Section 3. Central registry hearing appeal.~~ (1) Prior to the adjudication hearing, the department shall provide the individual with the full investigative file and any exculpatory evidence within the department's possession or control in accordance with 41-3-205.

~~(2) Discovery prior to the hearing must be conducted in accordance with Title 25, chapter 20, and 41-3-431. Following the adjudication hearing, if the district court finds that there is a preponderance of the evidence supporting the department's substantiation determination, the substantiated allegations against the individual may be added to the central registry for a period of time determined by the court, not to exceed 25 years and proportionate to:~~

~~(a) the severity of the act of child abuse or neglect; and~~

~~(b) the risk of threat or harm to children that the individual poses.~~

~~(3) If the district court finds that there is insufficient evidence supporting the department's determination, the court shall order the department to amend its findings accordingly and the allegation may not be added to the central registry.~~

~~(4) The individual has a right to appeal the decision of the district court regarding placement on the central registry.~~

**NEW SECTION. Section 2. Expungement from central registry -- report to legislature.** (1) An individual listed in the central registry may request to have the individual's name expunged from the central registry by submitting a written request to the department accompanied by an affidavit sworn to by a person with personal knowledge stating facts sufficient to show that there is good cause for expungement. Good cause includes but is not limited to:

(a) newly discovered evidence that a substantiated report of child abuse or neglect is inaccurate;

(b) evidence that the requester no longer poses a risk and that no significant public purpose is served by continued listing of the requester in the state's central registry;

(c) evidence that the underlying case on which the substantiated determination was based was closed or dismissed, resulting in reunification, and the requester no longer poses a risk to children;

(d) evidence that circumstances that contributed to the finding of abuse or neglect no longer exist;

1 or

2 (e) evidence that actions taken by the requester since the incident of abuse or neglect prevent the  
3 reoccurrence of abuse or neglect.

4 (2) (a) An administrator of the department shall review the request within 30 days of receiving the  
5 request and determine whether to grant the request.

6 (b) If the request is granted, the department shall expunge the requester's name from the central  
7 registry within 30 days and shall:

8 (i) destroy any written electronic or hardcopy records of the department related to the requester's  
9 substantiation determination; and

10 (ii) notify the requester and other entities, if appropriate, that the expungement process has been  
11 completed.

12 (c) If the request is denied, the department shall notify the requester in writing within 30 days and  
13 shall notify the requester of the right to petition the district court for expungement under subsection (3).

14 (3) (a) An individual whose written request for expungement has been denied by the department  
15 pursuant to subsection (2) may petition the district court in the county in which the individual resides, requesting  
16 that the court expunge the individual's name from the central registry. The petition must name the department  
17 as a respondent and must be accompanied by an affidavit sworn to by a person with personal knowledge  
18 stating facts sufficient to show that there is good cause for expungement as provided in subsection (1).

19 (b) The court shall hold a hearing on the petition and any response provided by the department  
20 unless a hearing is waived by agreement of the parties. At the hearing, the petitioner must be afforded an  
21 opportunity to present evidence supporting the petitioner's request for expungement.

22 (c) If the court finds that the petitioner has established good cause for expunging the petitioner's  
23 name from the central registry, the court shall grant the petition and shall order the department to:

24 (i) expunge the petitioner's name from the central registry within 30 days:

25 (ii) destroy any written, electronic, or hardcopy records of the department related to the petitioner's  
26 substantiation determination; and

27 (iii) notify the petitioner, the court, and other entities, if appropriate, that the expungement process  
28 has been completed.

(4) An individual who is listed in the central registry shall wait 2 years from the date of the original substantiation determination before requesting expungement.

(5) If an individual's request for expungement under this section is denied, the individual shall wait 2 years before submitting another request for expungement.

(6) (a) An individual listed in the state's central registry prior to [the effective date of this act] may request to have the individual's name expunged from the central registry by following the procedures described in this section.

(b) The department shall notify all individuals listed in the central registry on [the effective date of this act] of the right to request expungement under this section.

(7) Procedures for the expungement of central registry records, as well as updated phone numbers, addresses, and other contact information for the district court and other relevant parties, must be accessible to the public online and posted in a place that is open for public viewing in child and family services offices.

(8) Nothing in this section constitutes a waiver of any right or remedy otherwise available to an individual seeking expungement under this section.

(9) By September 1 of each year, the department shall report to the children, families, health, and human services interim committee in accordance with 5-11-210 on the following:

(a) the total number of individuals listed in the registry;

(b) the number of individuals added to the registry in the past calendar year;

(c) the number of individuals who requested expungement from the registry in the past calendar year, including the number of:

(i) first-time expungement requests submitted pursuant to subsection (4); and

(ii) second or subsequent requests submitted pursuant to subsection (5);

(d) the number of expungement requests granted in the past calendar year, including the number of granted expungement requests that are:

(i) first-time requests pursuant to subsection (4); and

(ii) second or subsequent requests submitted pursuant to subsection (5); and

(e) the number of expungement requests denied in the past calendar year, including:

- (i) the number of denied expungement requests that are:
- (A) first-time requests pursuant to subsection (4); and
- (B) second or subsequent requests pursuant to subsection (5); and
- (ii) the reason for each denied expungement request.

**Section 5.** Section 41-3-202, MCA, is amended to read:

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

(b) (i) Except as provided in subsections (1)(b)(ii) and (1)(b)(iii), upon receipt of a report that includes an allegation of sexual abuse or sexual exploitation when the alleged perpetrator of the sexual abuse or sexual exploitation was 12 years of age or older or if the department determines during any investigation that the circumstances surrounding an allegation of child abuse or neglect include an allegation of sexual abuse or sexual exploitation when the alleged perpetrator of the sexual abuse or sexual exploitation was 12 years of age or older, the department shall immediately report the allegation to the county attorney of the county in which the acts that are the subject of the report occurred.

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

(iii) If the department or law enforcement determines that the allegation involves the county attorney or an employee in the county attorney's office in the county in which the acts that are subject to reporting occurred, the department or law enforcement shall report as required in subsection (1)(b)(i) to the attorney general.

(c) If the department determines that an investigation and a safety and risk assessment are required, a child protection specialist shall promptly conduct a thorough investigation into the circumstances surrounding the allegations of abuse or neglect of the child and perform a safety and risk assessment to