

Montana State Reporting Laws

THE PURPOSE OF THIS GUIDE IS TO PROVIDE GENERAL INFORMATION ONLY. IT IS NOT INTENDED AS LEGAL ADVICE OR TO APPLY TO ANY PARTICULAR SITUATION.

TITLE X

Background:

In 1970, Congress added Title X to the Public Health Services Act to make family planning and reproductive health services available to individuals who need them, with priority given to low-income individuals.

Providing family planning services:

All clients, including adolescents, who are seeking Title X services may consent to their own care, and these services must be provided to them on a voluntary and confidential basis.

Confidentiality and state law requirements for reporting abuse and neglect:

Although Title X providers are legally required to maintain confidentiality of all clients, including adolescents, they are not exempt from state laws that require the reporting of “child abuse, child molestation, sexual abuse, rape, or incest.” This reporting obligation creates a limited exception for the duty to maintain client confidentiality.

Please refer to the Supporting Statutes, which are attached.

DUTY TO REPORT

In public health clinics:

Applies to child abuse and abuse to older persons or persons with developmental disabilities.

A physician, resident, intern, or member of a hospital's staff engaged in the admission, examination, care, or treatment of persons; a nurse, or any other health or mental health professional or social worker, (under certain circumstances a privileged communication may exist with clergy or priest):

- who know or have reasonable cause to suspect (*cause that would lead a reasonable person to believe that child abuse or neglect may have occurred or is occurring, based on all the facts and circumstances known to the person*), as a result of information they receive in their professional or official capacity, that a child is abused or neglected.
 - If child abuse, shall report the matter promptly to the Department of Public Health and Human Services or its local affiliate.
 - If abuse to older persons or persons with developmental disabilities,
 - If the person is not a resident of a long-term care facility, report to the Department of Social Services or its local affiliate; or the county attorney of the county in which the person resides or in which the acts that are the subject of the report occurred;
 - If the person is a resident of a long-term care facility, report the matter to the long-term care ombudsman and to the Department of Social Services.

Sexual abuse or exploitation reported only if the victim is under 18 and the perpetrator is the child's:

- parent, guardian, foster parent or an adult who resides in the same home in which the child resides; or,
- a person providing care in a day-care facility; or,
- an employee of a public or private residential institution, facility, home, or agency; or
- any other person responsible for the child's welfare in a residential setting.

No age distinction for perpetrator provided in child abuse statutes.

No duty to report any other type of suspected crime.

AGE OF “CONSENT”

Sexual acts are considered to be without consent when:

- the victim is less than 16 years old; or
- the victim is less than 14 years old and the offender is 3 or more years older.

WHO ARE REPORTS MADE TO?

Department of Public Health and Human Services or local affiliate.

PROCEDURE FOR MAKING A REPORT

Report the matter promptly to the Department of Public Health and Human Services or its local affiliate.

CAN A REPORTER BE HELD LIABLE IF IT TURNS OUT THAT HER/HIS SUSPICIONS WERE WRONG?

All those required to report who do so in good faith are protected from penalties if suspicions are unfounded. Any person who intentionally makes a false report could be civilly liable.

CONSEQUENCES OF FAILURE TO REPORT

Penalties for failure to make a report is a misdemeanor.

VICTIMS SERVICES AGENCIES

Each clinic should contact their local District Attorney's Office or Sheriff's Department for Victims Service contact information, as it is not a state service, but a town/city or community service.

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Supporting Statutes

41-1-101. Minors are under 18 years of age.

41-3-102(2) A person responsible for a child's welfare means:

- The child's (*under 18*) parent, guardian, foster parent or an adult who resides in the same home in which the child resides; or
- A person providing care in a day-care facility; or
- an employee of a public or private residential institution, facility, home, or agency; or
- any other person responsible for the child's welfare in a residential setting.

41-3-102(7) Child abuse or neglect means:

- Actual physical or psychological harm, to a child that occurs whenever the *person responsible for the child's welfare*:
 - Inflicts or allows to be inflicted upon the child physical abuse (*an intentional act, an intentional omission, or gross negligence resulting in a physical injury or death*), physical neglect (*failure to provide basic necessities, or failure to provide cleanliness and general supervision, or both, or exposing or allowing the child to be exposed to an unreasonable physical or psychological risk*), or psychological abuse or neglect (*severe maltreatment through acts or omissions that are injurious to the child's emotional, intellectual, or psychological capacity to function, including the commission of acts of violence against another person residing in the child's home*),
 - Commits or allows sexual abuse (*the commission of sexual assault, sexual intercourse without consent, indecent exposure, deviate sexual conduct, sexual abuse, ritual abuse, or incest* ;or exploitation of the child (*allowing, permitting, or encouraging a child to engage in prostitution or sexual abuse*),
 - Induces or attempts to induce a child to give untrue testimony that the child or another child was abused or neglected by a parent or other person responsible for the child's welfare,
 - Causes malnutrition or a failure to thrive or otherwise fails to supply the child with adequate food or fails to supply clothing, shelter, education, or adequate health care, though financially able to do so or offered financial or other reasonable means to do so,
 - Exposes or allows the child to be exposed to an unreasonable risk to the child's health or welfare by failing to intervene or eliminate the risk,
 - Abandons the child,
 - Places a child of substantial risk of physical or psychological harm.

45-5-502. Sexual assault - A person who knowingly subjects another person to any sexual contact *without consent*.

45-5-507. Incest – A person who knowingly marries, cohabits with, has sexual intercourse with, or has sexual contact, as defined in **45-2-101**, with an ancestor, a descendant, a brother or sister of the whole or half blood, or any stepson or stepdaughter. The relationships referred to in this subsection include blood relationships without regard to legitimacy, relationships of parent and child by adoption, and relationships involving a stepson or stepdaughter.

45-5-625. Sexual abuse of children. A person commits the offense of sexual abuse of children if the person:

- Knowingly employs, uses, or permits the employment or use of a child in an exhibition of sexual conduct, actual or simulated;
- Knowingly photographs, films, videotapes, develops or duplicates the photographs, films, or videotapes, or records a child engaging in sexual conduct, actual or simulated;
- Knowingly persuades, entices, counsels, or procures a child to engage in sexual conduct, actual or simulated.