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Information Brief

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Overview of the Child Abuse Reporting Act

ACQUISITIONS

The Minnesota Child Abuse Reporting Act establishes a system for reporting possible child abuse and neglect to government agencies that are authorized to provide protective services for the child or to conduct criminal investigations. The act also contains provisions governing agency responses to reports and access to information generated under the act. Some of the system's features are determined by requirements in federal law that the state must satisfy in order to qualify for federal child abuse prevention and treatment grants.

This information brief provides an overview of the Child Abuse Reporting Act, Minn. Stat. §626.556 and related laws and rules, with changes effective through the 1994 legislative session.

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The Reporter

Who is permitted to report child abuse or neglect?

Anyone who knows, has reason to believe, or suspects that abuse or neglect is occurring.

Who is required to report child abuse or neglect?

An individual who knows or has reason to believe a child is being neglected or abused, and who is

- (1) a member of the clergy who receives the information while engaged in ministerial duties, excluding information exempt under the confessional privilege; or
- (2) a professional or the professional's delegate who is engaged in
 - ▶ the healing arts
 - ▶ social services, including employee assistance counseling and guardian ad litem services
 - ▶ hospital administration
 - ▶ psychological or psychiatric treatment
 - ▶ child care
 - ▶ education
 - ▶ law enforcement

A parent, guardian, or caretaker who knows or reasonably should know a child's health is in serious danger, must report neglect and is subject to criminal penalties for failing to report if the child suffers substantial or great bodily harm or dies because of the lack of medical care. The criminal law provision allowing such individuals to rely on spiritual means or prayer for health care does not eliminate this reporting duty.

What are an employer's obligations to an employee who reports neglect or abuse?

The employer may not retaliate against an employee who is required to report and does so in good faith. Examples of presumed retaliation are provided in the act. The employee may recover actual damages and an additional penalty up to \$10,000.

What is the penalty for failing to make a required report?

It is a misdemeanor exclusively prosecuted by the county attorney rather than the city attorney, who usually prosecutes misdemeanors.

What are the consequences of making a false report?

An individual who makes a false report in good faith is immune from civil or criminal liability. An individual who knowingly and recklessly makes a false report is liable in a civil suit for actual and punitive damages.

Reportable Abuse and Neglect

Whose abuse or neglect is reportable under the act?

- (1) A "person responsible for the child's care," which includes a
 - ▶ parent
 - ▶ guardian
 - ▶ teacher
 - ▶ school administrator
 - ▶ day care provider
 - ▶ paid or unpaid babysitter
 - ▶ counselor
 - ▶ coach
 - ▶ other lawful custodian with care responsibilities
- (2) A "person in a position of authority": a parent or someone acting in a parent's place who has responsibility for the health, welfare, or supervision of a child for any period of time, however brief.

"Persons in a position of authority" are covered by the act only when they commit sexual abuse.
- (3) A person who has a significant relationship to the child because of being a relative, step parent, or intermittently residing in the child's home.

This group of individuals is covered by the act if they commit sexual abuse.

What is "abuse" under the act?

- (1) Physical abuse or threatened physical abuse occurring within the preceding three years
 - ▶ physical or mental injury¹ inflicted other than by accident
 - ▶ physical or mental injury not reasonably explained by the child's history of injuries
 - ▶ aversive and deprivation procedures (e.g. electric shock) not authorized by Human Service Department rules
- (2) Sexual abuse or threatened sexual abuse occurring within the preceding three years
 - ▶ criminal sexual conduct
 - ▶ soliciting a child to practice prostitution
 - ▶ receiving profit derived from prostitution by a child
 - ▶ hiring or agreeing to hire a child as a prostitute
 - ▶ using a minor in a sexual performance

What is "neglect" under the act?

Within the preceding three years

- ▶ failure to supply necessary food, clothing, shelter, or medical care
- ▶ failure to protect a child from imminent, serious danger to physical or mental health when reasonably able to do so
- ▶ withholding medically indicated treatment from a disabled infant with a life-threatening condition
- ▶ prenatal exposure to specified controlled substances²
- ▶ failure to ensure that a child is educated in accordance with state law

What else must be reported under the act?

A mandated reporter must report to law enforcement kidnapping or actions that deprive a parent of custodial or visitation rights. This report does not trigger a social service agency assessment.

¹ "Mental injury" means injury to a child's psychological capacity or emotional stability, evidenced by observable or substantial impairment in the child's ability to function within normal performance and behavior ranges for the child's culture. Subdivision 2(k)

² Assessment, child testing, and services to women using prohibited drugs is governed by Minn. Stat., sections 626.5561 and 626.5562. Shapiro and McKnight, Prenatal Exposure to Controlled Substances, House Research Information Brief, 1994.

Creation of Reports

Where can a child abuse report be made?

- (1) In most cases a person may report to either
 - ▶ the police or county sheriff
 - ▶ the local social service agency
- (2) Exceptions
 - ▶ If a person required to report believes a child died because of neglect or abuse, the report must be made to the medical examiner.
 - ▶ If abuse or neglect occurs in a licensed facility (day care, foster care, etc.) a person required to report must report to the agency that licenses the facility.

How is a report made?

The initial report may be oral. If the reporter is an individual required to report under the act, a verbal report must be followed by a written report within 72 hours, exclusive of weekends and holidays.

What must be included in the report?

- ▶ the child's identity
- ▶ the person believed responsible for the abuse or neglect, if known
- ▶ the nature and extent of abuse or neglect
- ▶ the reporter's name and address

Investigation or Assessment of Reports

How are reports of abuse or neglect in the home handled?

The local social service agency will conduct an assessment and determine (1) whether there was maltreatment, and (2) whether protective services are needed. If an incident results in the death of a child, the local social service agency may rely on the law enforcement investigation to determine whether there was maltreatment.

"Maltreatment" includes neglect, sexual abuse, and any assault or physical contact which is (1) severe or recurring, and (2) causes injury or significant risk of injury. Maltreatment does not include reliance on prayer for treatment, but if lack of medical care may cause serious danger to health, the agency may ensure that the child receives necessary medical services.

A determination that protective services are needed should result when a child protection worker concludes that (1) there is significant risk of maltreatment, and (2) persons responsible for the child's care are not likely to protect the child from maltreatment. When necessary the agency may remove the child from the home.

In cases alleging physical sexual abuse, physical abuse, minor child neglect or endangerment, the social service agency and local law enforcement must coordinate efforts to avoid duplicate fact-finding and multiple interviews. The social service or law enforcement agency may interview the alleged victim and other children (1) without parental consent, and (2) outside the parent or perpetrator's presence.

How are reports of abuse or neglect in a licensed facility handled?

The Commissioner of Human Services must conduct these investigations or delegate the responsibility to the local social service agency. These investigations must conclude with the same determinations regarding maltreatment or need for protective services that are required for abuse or neglect in the home.

How are reports of abuse or neglect in other settings handled?

Law enforcement will investigate, and the local social service agency will offer child protective services if appropriate.

What is the potential legal liability of those involved in child abuse cases?

If action is taken in good faith, there is immunity from civil or criminal liability for

- ▶ anyone who participates in a case assessment
- ▶ a school or licensed facility that permits interviews and helps with an assessment or investigation
- ▶ a local social service agency social worker or supervisor giving notification or administering report records under the act

What is the role of the multi-disciplinary child protection team?³

A county may form such a team, consisting of the director of the local social service agency or designee, county attorney or designee, coroner or sheriff or designee, representatives of health, mental health or similar agencies, and parent groups. A committee of this team may provide case consultation to the local social service agency. Case consultation is a review process resulting in recommendations about services for an identified child and family.

Access to Reports

What law controls access to child abuse reports?

The classification of law enforcement records on child abuse, other than the report itself, is found in the Data Practices Act.⁴ The Child Abuse Reporting Act determines the classification of child abuse records and access to those records when held by the local social service agency. In all cases, reports are to be collected and maintained according to standards in the Data Practices Act (accuracy, security of files, etc.).

³ Minn. Stat., §626.558.

⁴ Minn. Stat., §13.01 subds. 5, 5a, and 5b.

How are child abuse reports shared among government agencies?

- (1) If filed with the police or sheriff, a copy of the report must be forwarded to the local social service agency within 24 hours and maintained by both agencies as private data (available to the alleged abuser but not to anyone else).⁵

Law enforcement must also notify the social service agency orally within 24 hours.

- (2) If filed with the local social service agency, a copy of the report must be forwarded to the police or sheriff within 24 hours and maintained by both agencies as private data. The social service agency must also notify law enforcement orally within 24 hours. If a report involves a child who is a mental health or retardation client, the agency must also immediately inform the ombudsman for mental health and mental retardation. For purposes of compiling statistics, the local agency must inform the Department of Human Services of every incident report it receives, exclusive of individual identifying information.⁶

Notifications required under (1) and (2) must be given by a designated law enforcement or social service agency employee. Failure to provide the notification will subject that employee to disciplinary action under the applicable personnel policy or collective bargaining agreement.

- (3) If a report is filed with the medical examiner because a death has occurred, the medical examiner must investigate and report the results to the police or sheriff and the local social service agency. If a deceased child was receiving residential treatment from a mental health or mental retardation agency, the coroner must notify the state ombudsman for mental health and mental retardation.
- (4) Both the local social service agency and the police or sheriff must make their report records available to the petitioning authority in a court proceeding for a child in need of protective services or a parental rights termination action or to the prosecuting authority, including the medical examiner, in a criminal action.
- (5) The local social service agency may share report records with the case consultation committee of the multi-disciplinary team, and committee members may share information with each other to assist in case consultation.⁷
- (6) The Commissioner of Human Services, local social service agencies, the police or sheriff, and the ombudsman for mental health and mental retardation may examine and copy a licensed facility's records when investigating possible abuse in the facility.

⁵ The federal Child Abuse Protection Act provides that, in order to qualify for federal grants, a state must not make child abuse records public, but may permit sharing by involved government agencies.

⁶ Department of Human Services Rule.

⁷ Minn. Stat., §626.558.

When doing so, investigators may tell the facility that they are investigating an abuse report, may disclose the alleged abuser's name and may give the facility a copy of the report and the investigative findings.

- (7) Personnel of any other government agency (such as the one reporting the abuse) that keeps a written copy of an abuse report must treat the report as confidential (not available to anyone, including the alleged abuser).
- (8) Social service and law enforcement agencies may share records with a social service agency in another state which needs the information to do a child protection assessment.

What information besides access to the report itself is shared by government agencies dealing with a child abuse report?

- (1) Law enforcement or local social service agency personnel may interview an alleged victim at school if they notify the school in writing that the purpose of the interview is to investigate a child abuse report. Not later than the close of the investigation they must also notify the child's parent or guardian that the interview has occurred, unless a juvenile court order is obtained to allow withholding of this notice.
- (2) The agency receiving a child abuse report must give the person who made the report, on request, a summary of the disposition of the report, unless that would be harmful to the child.⁸ A mandated reporter must be given a summary automatically, without first making a request.
- (3) If a report involves actions in the home within ten working days after the assessment ends, the local social service agency must notify the parent or guardian (a) of the determinations made; and (b) if no maltreatment or need for protective service is found, of the right to have records destroyed.
- (4) When a child abuse report involves a licensed facility the parents must be notified before children are interviewed, unless reasonable attempts to reach parents of a child in out-of home placement fail.

⁸ This is permitted by the regulations accompanying the federal law.

- (5) When a child abuse report involves personnel in a licensed facility, the social service agency (a) must tell the alleged victim's parent, guardian or legal custodian and (b) if the agency has reason to believe abuse or neglect has occurred, may tell other children's parents, guardians, or legal custodians

- that a report was filed involving the facility
- the kind of abuse or neglect alleged
- that an investigation is occurring
- any corrective measures being taken
- that a written memorandum will be provided when the investigation ends

Within ten working days after a licensed facility investigation is completed, the local social service agency must give notice of the determinations made to the alleged abuser, facility director, and parent or guardian. If there is no determination of maltreatment or need for protective services, the alleged abuser must also be told of the right to have records destroyed.

The written memorandum at the close of the investigation must be provided

- to the alleged victim's parent, guardian or legal custodian
- to other parents, guardians, or legal custodians who were notified of the investigation
- to all parents, guardians, or legal custodians of children in a facility where maltreatment was determined to exist

The memorandum must include

- name of the facility
- nature of the alleged abuse or neglect
- investigator's name
- summary of findings
- whether maltreatment was determined to exist
- protective or corrective measures being taken

The memorandum must protect the identities of the reporter, alleged victim, perpetrator, and those interviewed during the investigation, to the extent possible.

- (6) A local social service agency may release data on an active assessment or investigation to a court services agency if (a) the court services agency has an active case involving the subject of the data and (b) the data are necessary to effectively process the case.
- (7) Police investigative data and data from social service agencies that worked with the family of a child believed to have died from maltreatment must be provided upon request to the Child Mortality Review Panel created pursuant to Minn. Stat. section 256.01, subdivision 12.

May the alleged abuser examine the child abuse report record during the investigation?

Yes, in the case of records created by the local social service agency, except that the reporter's name must not be disclosed. No, in the case of records held by a law enforcement agency or given to a social service agency by law enforcement. Anyone performing a child abuse assessment or investigation who intentionally violates this restriction is guilty of a misdemeanor.

May anyone else examine the child abuse report record during the investigation?

No. The act provides that the record must be kept private or confidential, with the exceptions for government agency sharing and access by the alleged abuser summarized here.

What are the access rules when an investigation becomes inactive?

Law enforcement records identifying the victim remain private (available only to the victim). Those identifying the reporter are confidential (no one may see them), except as provided below.

Local social service agency records, whether or not received from law enforcement, become private (available to the subject of the record).

Destruction of Report Records

How long may child abuse reports and records be kept?

Records held by local social service agencies and schools will be destroyed on the following schedule.

- (1) If there is no determination of maltreatment or need for child protective services, records may be kept for four years. After the alleged abuser is notified of the determination and the right to have records destroyed, records will be destroyed within 30 days, if the individual so requests.
- (2) If there is a determination of maltreatment or need for child protective services, reports must be maintained for at least ten years after the final entry in the record.

Records held by law enforcement agencies will be destroyed according to the same schedule each agency has adopted pursuant to state law for destruction of all other types of records.

Records given to a court services agency by a local social service agency must be destroyed when the local social service agency directs, following the general timetable that applies to the local social service agency.

May the alleged abuser learn the reporter's name after the investigation ends?

Yes

- (1) if the reporter consents; or
- (2) upon a written court finding that the report was false and there is evidence that it was made in bad faith.