

Child and Family Services Policy Manual: Investigation Third Party Abuse

Definition

A **person responsible for the welfare of a child** and who is legally capable of committing "child abuse" is limited by Montana law to the "child's parent, guardian, foster parent, or an adult who resides in the same home; a person providing care in a day care facility; an employee of a public or private residential institution, facility, home or agency; or any other person legally responsible for a child's welfare in a residential setting."

Third party abuse means harm to a child's health or welfare, as defined in Mont. Code Ann. § 41-3-102, that is committed by any party not mentioned in the legal definition quoted above. Such abuse is properly labeled assault, sexual intercourse without consent, or other appropriate label from the criminal code.

Pursuant to Mont. Code Ann. § 41-3-201, the Department shall receive calls of alleged third party abuse (i.e. alleged abuse or neglect where the alleged perpetrator is not a person responsible for the welfare of the child as defined above and in Mont. Code Ann. § 41-3-102). The Department shall refer these reports to the appropriate law enforcement agency for investigation. All reporters of third party abuse should be told that their identity will be shared with a county attorney, peace officer, or attorney who is hired by or represents the Department, as necessary for the investigation or prosecution of a case involving child abuse or neglect. In accordance with Mont. Code Ann. § 41-3-205, these entities shall maintain the confidentiality of the reporter.

DPHHS Role

The Department does not have specific legal authority to investigate reports of third party abuse. Such reports are the investigative responsibility of designated law enforcement agencies. However, historically in many Montana communities, DPHHS has played a role in assisting law enforcement with investigations involving minors.

In some communities, law enforcement officers have not been trained to interview child victims. In others, they operate under the misconception that the Department is responsible for investigating all abuse of children.

The law enforcement agency should be the lead agency in any investigation of third party abuse. The role of DPHHS may be one of providing assistance to the investigating officer(s) and

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county attorney.

Each local supervisor should ensure any written or oral agreements with each law enforcement agency in their area regarding reports and investigation of third party child abuse have been approved by the Regional Administrator and that all CPS specialists are aware these procedures.

CAPS

When providing assistance to law enforcement in interviewing third party assault victims, Centralized Intake will enter this service on CID1 under the category of 'CFS.'

If, during the course of a CPS investigation, the child protection specialist discovers the perpetrator was a third party rather than a person responsible for the welfare of a child, and also determines that no child abuse or neglect by a person responsible for the welfare of a child occurred, the child protection specialist will request a category change of the report from a CPS to CFS and ensure the report is, or has been, cross reported to law enforcement.

Reference

Mont. Code Ann. § 41-3-102.