

# **State and National Child Abuse and Neglect Data Comparisons, Definitions, and Burdens of Proof**

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In the "Fact Sheet on Child Abuse and Neglect Prevention in Montana", the following statistics were listed:

- 63% of substantiations of child abuse are for neglect or deprivation
- 17.46% are for emotional abuse
- 8.44% are for physical abuse
- 4.2% are for sexual abuse
- 4.83% are for other abuse or neglect and 1.34% are for medical neglect  
(FY 2004, CFSD data)

When compared to national data, the sexual abuse rate of 4.2% of the substantiations appeared low. In Child Welfare Outcomes 2002, the national median percentage for sexual abuse was reported at 9.2% (range was 3.5% to 54.3%). Research questions were raised about the percentages of sexual abuse in Montana differing from the national statistics and whether Montana's percentages were low, perhaps attributable to a burden of proof that was set too high.

This document will provide background information on:

- (1) the state and federal data--where it comes from and what it can tell us;
- (2) Montana's definitions of child abuse and neglect compared to other states and crimes related to child abuse and neglect; and
- (3) Montana's burden of proof compared to other states.

## **Data Issues**

The Child and Family Services Division (CFSD) data is collected and maintained in the Child and Adult Protection System (CAPS), a mainframe information system for case management and payment. CAPS is the official case record of the child protection services provided by the CFSD. Intake information, assessment/investigation results, person information, contacts, services provided, court history, paid and nonpaid placements, and payment information must be recorded on CAPS. The CFSD data reported to the Children, Families, Health, and Human Services Committee was state fiscal year data from 2004 and was based on 2,382 total substantiations (in which a child may be counted more than once).

Montana reports data to the federal government for the National Child Abuse and Neglect Data

System (NCANDS) at the National Clearinghouse on Child Abuse and Neglect and publishes annual reports such as Child Welfare Outcomes and Child Maltreatment. NCANDS consists of case-level data on children who receive an investigation or assessment. NCANDS reported 1,951 victims in Montana in 2003.

The state and federal data that was being compared was from two different time periods. The CFSD data was from the state fiscal year 2004 (July 1, 2003, through June 30, 2004), and the federal data was from fiscal year 2002 (October 1, 2001, through September 30, 2002). The data are not directly comparable, but the federal NCANDS data does provide state-specific data that can be compared to the national level statistics.

Montana's data in the table below differs from the Montana CFSD data reported above. The differences in Montana-specific data between the federal government and the data reported by CFSD can be attributed to the differences in time period and, predominantly, data collection and mapping differences.

The CFSD submits the data in different files to the federal government, and that data is aggregated at the federal level and then used to provide state-specific data. Because the federal government is trying to bring data from 50 states together, during the data mapping or translating all of the different state data into national data, variations will occur.

Child Welfare Outcomes 2002 reports individual state data on types of maltreatment experienced by victims for Montana, and national data is included in the table below.

<b>Type of Maltreatment</b>	<b>Percent Range (Difference)</b>	<b>Median Percent</b>	<b>Montana</b>
Neglect (not medical neglect)(N=51)	3.9 - 90.3 (86.4)	60.7	34.5
Physical abuse (N=51)	3.5 - 67.6 (64.1)	21.4	67.6
Psychological/emotional abuse (N=49)	0.2 - 55.0 (54.8)	3.3	0.6
Sexual abuse (N=51)	3.5 - 54.3 (50.8)	9.2	10.3
Medical neglect (N=39)	0.0 - 13.1 (13.1)	2.8	1.7

With ranges that are that large, there is great variation between the states and a conclusion comparing any one state to the national median does not provide much information to explain why a state may be different or how that would be judged.

Although the differences in the CAPS data, as reported, and the federal data may have been disconcerting regarding sexual abuse, when the Montana specific data is compared to the federal data in the same database, Montana's numbers for sexual abuse look fairly close to the median percentage. However, numbers related to other types of maltreatment seem much more lopsided. As Montana's physical abuse percentage was the highest in the range, it would appear that there is a data issue or problem, although the CFSD data is closer to the national data in reporting that about two-thirds of the substantiations are for neglect. Both databases include duplicated counts. The percentages reported above are of the total maltreatments in which a victim can appear in more than one category. Montana's data totaled 124%, which may explain part of the overreporting for physical abuse when compared to the CFSD data. Data for federal fiscal year 2003 has not yet been reported, but another document, Child Maltreatment 2003, has been released with very similar percentages, revealing that the federal data was consistent between 2002 and 2003, but varies considerably from earlier data as the system does undergo regular changes in data collection.

CFSD data for FY 2005 is consistent with the CFSD data above with slight variations:

- 67.6% of substantiations of child abuse are for neglect or deprivation
- 15% are for emotional abuse
- 8.33% are for physical abuse
- 3.6% are for sexual abuse
- 2.95% are for other abuse or neglect and 2.4% are for medical neglect (FY 2005, CFSD data).

With such great variations between federal and state data, the data should not be compared across the board. Within the reports on the federal data, state-specific data is reported and that may be a better comparison to see where Montana is in relation to other states. However, with such wide variations and ranges and without any detailed explanation as to how the Montana data was "mapped" or translated, even that comparison leaves many questions. Comparing anything between 50 states can be problematic. Looking at the definitions of child abuse and neglect provides a good example and may explain some of the differences.

### **Definitions**

Definitions of child abuse and neglect vary greatly between the states. A section on achieving safety outcomes from Child Welfare Outcomes 2002 states:

For example, in some states, psychological/emotional abuse is incorporated into the state definition of child abuse and neglect, while in other states this type of abuse generally is not part of the legal definition of child maltreatment. As another example, in Pennsylvania, neglect is handled by the Temporary Assistance to Needy Families agency and the State does not report allegations of neglect to NCANDS unless it is determined to be “severe neglect.” Consequently, for the NCANDS data, Pennsylvania had the lowest percentage of children reported as victims of neglect. Furthermore, because Pennsylvania does not include most neglect in NCANDS reporting, other categories of abuse, such as sexual abuse, appear magnified.

Although the Pennsylvania example may be extreme, it may point to the fact that a comparison to other states may not be useful, and perhaps Montana's data needs to be looked at specifically as it relates to what is happening in Montana. Do we have complaints that sexual abuse is not being reported or investigated? Are there reports of children being abused and neglected and the state not investigating, removing children, or providing services? If so, then the definitions of abuse and neglect or sexual abuse should be reviewed to see if they are sufficient to capture what is of concern.

The National Clearinghouse on Child Abuse and Neglect Information (NCCANI) publishes Definitions of Child Abuse and Neglect: Summary of State Laws (Summary). Child abuse and neglect are defined by both federal and state laws. The federal Child Abuse Prevention and Treatment Act provides minimum standards for the definition of child abuse and neglect that states must incorporate into their statutory definitions. Montana has made changes in the definition of "child abuse or neglect" or the terms that are referenced or included in that definition in the last three legislative sessions.

Child abuse or neglect, physical or psychological harm to a child, abandonment, physical abuse, physical neglect, psychological abuse or neglect, and sexual abuse are all defined terms in 41-3-102, MCA. The child abuse and neglect actions are considered civil actions. However, the definition of sexual abuse includes the terms sexual assault, sexual intercourse without consent, indecent exposure, deviate sexual conduct, sexual abuse, ritual abuse, or incest as described in the criminal code in Title 45, chapter 5, MCA. So if a person is convicted of a criminal offense, that can be used as proof of child abuse, but not all child abuse will be prosecuted as a crime in criminal court.

The Summary reports that each state provides its own definitions. Some states define child abuse and neglect as a single concept, while others, including Montana, provide separate

definitions. All states and territories provide definitions for physical abuse, neglect, and sexual abuse. Sexual exploitation is an element of the definition of sexual abuse in most jurisdictions, including in Montana through the definition and the inclusion of the reference to sexual abuse of children in Title 45, MCA. Substance abuse is an element of the definition of child abuse or neglect in some states. Montana specifically includes a reference to exposing a child to the criminal distribution, production, or manufacture of dangerous drugs or the operation of an unlawful clandestine laboratory. Abandonment is included in the definition of neglect in 18 states, and 13 states, including Montana, provide separate definitions for abandonment.

All states and territories, except Georgia and Washington, include emotional maltreatment as part of their definitions of abuse or neglect, and around half, including Montana, provide specific definitions. Pennsylvania's definition, as referred to above, considers only serious mental injury. In Montana, psychological abuse or neglect includes only "severe maltreatment", which is a higher standard than is allowed for "abuse" under statutes providing oversight of mental health facilities by the Board of Visitors. This distinction may be important in looking at instances of abuse or neglect of children who reside in institutions. (NCCANI, 2005)

The standards for reporting can be "harm or threatened harm", "acts or omissions", "recklessly fails or refuses to act", "willfully causes or permits", and "failure to provide". Montana uses virtually all of these terms in the various definitions and includes a reference to gross negligence in the definition of physical abuse. Several states provide specific definitions of persons whose actions are reportable. Montana defines "a person responsible for a child's welfare", which includes:

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

Some states provide exceptions for certain acts from the definitions of abuse or neglect. Montana includes exceptions for self-defense, defense of others, or actions taken to prevent the child from self-harm. Sexual abuse "does not include any necessary touching of an infant's or toddler's genital area while attending to the sanitary or health care needs of that infant or toddler by a parent or other person responsible for the child's welfare". 41-3-102, MCA.

The legal process and procedure for child protective services is under the jurisdiction of civil law. The behavior of a parent or other caretaker may be considered criminal, and law enforcement is often a partner in investigating child abuse and neglect. Parents may be involved

in the criminal justice system for other illegal behaviors, or their incarceration could be the trigger for a report of child neglect or abandonment. But in some cases, the child is the victim of a parent's or a caretaker's actions and a county attorney could choose to prosecute for a criminal offense. The county attorney has discretion on whether or not to charge a person with a crime.

In addition to the sexual offenses that are referred to in the definition of "sexual abuse" in the child protective services codes, criminal offenses could include the various forms of homicide, assault, kidnaping, or any of the crimes against persons. There are also crimes specifically against children such as assault on a minor, partner or family member assault, custodial interference, endangering welfare of children, unlawful transactions with children, ritual abuse of minor, and interference with parent-child contact. Most of these crimes are felonies, but assault, partner or family member assault, and endangering the welfare of children are or may be misdemeanors dependent on the degree of bodily injury or whether it is a first or second offense. Homicide and the sexual offenses carry mandatory minimum terms in prison of between 2 and 10 years, and partner and family member assault requires a sentence of at least 24 hours to 30 days in jail. However, Montana has an indeterminate sentencing system, which means that for the other crimes for which only a sentence range is provided for in law, the judge has the discretion to determine that the sentence and jail or prison time is not necessarily served, even for felonies. The charge is under the discretion of the county attorney and may be pled down to a lesser offense in the process. The sentence is under the judge's discretion within statutory ranges, and all or a part of the jail or prison time can be deferred or suspended.

If a parent is charged with a crime, it is not reported to the state CAPS system or to the NCANDS. A U.S. Department of Justice report called Child Abuse Reported to the Police used the National Incident-Based Reporting System (NIBRS) to determine the extent of law enforcement involvement in child abuse cases. The researcher determined that several crimes coded by NIBRS fell clearly within child maltreatment: simple assault, aggravated assault, and sex offenses, including both violent and nonforcible offenses. There is no NIBRS code for instances of neglect or psychological abuse, which may not be considered criminal and may not be reported to law enforcement, so this data is also not directly comparable to the child welfare data. (Finkelhor, 2001).

There is data that supports the fact that parents are charged for crimes against their children. Incidents of child abuse committed by parents and other caretakers make up 19% of violent crimes against children between 1 and 17 years of age reported to police and 4% of violent crimes against persons of any age. The majority, 73%, are physical assaults, and 23% are sexual assaults. Child abuse constitutes more than one-half of the crimes against children 2 years of age or younger. (Finkelhor, 2001). If one looks at the ratio of physical assaults to sexual assaults

and compares it to the ratio of physical abuse to sexual abuse, the state data roughly follows the same trend.

The comparability between child welfare and law enforcement agency data is not complete. Only three states (not including Montana) have both statewide child abuse data and close to 100% law enforcement agency participation in NIBRS. It is an area worthy of policy discussion. The NIBRS data confirms that large numbers of offenses against children under the age of 17 are reported to the police. The incidents are predominantly physical assaults involving more older children and more male caretakers than female. Only about one-half of these cases are associated with any recorded injury to the victim. (Finkelhor, 2001).

Inherent in discussions regarding child abuse are the legal presumptions of best interests of the child and legal mandates for reunification if possible, with safety paramount. Inherent in the best interests of the child is an assumption that the best family for a child is the birth family if at all possible. There is a certain logic that the child welfare system, because of the civil proceedings and the lower burdens of proof, would use its resources to protect the child and to preserve the family when possible and not have the case rise to a criminal prosecution. If the abuse rises to the criminal level, it appears that law enforcement is involved, but other parties in the system, the county attorney, and judges maintain some discretion.

The Committee received testimony in the panel discussions with regard to the close relationship between law enforcement and child welfare agencies in the process of investigating child abuse and crimes either involving children or occurring where children are present. There is also evidence that many parents fail in their treatment plans because of incarceration for various criminal offenses, and there are programs, such as treatment courts, that involve the social worker and attorneys in assisting the family in dealing with a multitude of legal issues. Statutory changes have also clearly connected child abuse and crime so that exposing a child to the distribution or production of drugs is child abuse by definition.

### **Burdens of Proof**

In Child Maltreatment, 2003,<sup>1</sup> information gathered on all states indicates that 25 states use preponderance of the evidence as the level of evidence required to find child abuse or neglect. Only one state, Pennsylvania, uses a higher standard of clear and convincing evidence or beyond a reasonable doubt--the standard for criminal conviction. Other states have lesser standards: reasonable cause (8), credible (10), probable cause (2), and material evidence (1), and three

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<sup>1</sup>Appendix D. State Commentary.

states did not indicate a level.

## **Conclusion**

Data comparison between state and national data is difficult because of the need for the federal agencies to match up data from over 50 states and territories. When the Committee receives information on the federal Child and Family Services Review, there may be additional data available to assist legislators in determining how Montana fares compared with other states and national standards. State data is best compared to national data within the same database, however it may not be directly comparable when looking at the various definitions between and among the several states and the wide ranges and variation in the statistics.

State data provides information and can be compared year to year to identify trends. The CAPS system, being based on a mainframe system, is old technology that is not easily mined for research and analysis purposes, and the legislators should plan on addressing the needs of that system in the near future.

Montana has very explicit definitions for the various types of child maltreatment, which provides much more definition than in other states. These definitions are brought about in attempting to balance the need to meet the federal minimum standards and to provide certainty to individuals that community standards are not violated. Definitions still require interpretation, by child welfare workers, county attorneys, judges, medical providers, and others and in the end is a qualitative interpretation that is not easily reflected in quantitative data.

Legislators must use multiple sources of information to make conclusions about this system. The data provides one aspect, the statutory law provides another aspect, and the testimony of the families and the professionals in the field provides the context and the background for interpretation.

## **Sources:**

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