

1 HOUSE BILL NO. 74

2 INTRODUCED BY M. MACDONALD

3 BY REQUEST OF THE LAW AND JUSTICE INTERIM COMMITTEE

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE RELEASE OR DISCLOSURE OF RECORDS OF
6 CHILD ABUSE OR NEGLECT TO CERTAIN LAW ENFORCEMENT, PROSECUTORIAL, AND CHILD WELFARE
7 ENTITIES AND INDIVIDUALS; REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN
8 SERVICES TO ADOPT AN IMPLEMENTING RULE; SPECIFYING THAT A DEPARTMENT EMPLOYEE MAY
9 NOT BE PENALIZED FOR FAILURE TO REPORT; AND AMENDING SECTIONS 41-3-205, ~~41-3-207~~, AND
10 41-3-208, MCA."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13
14 **Section 1.** Section 41-3-205, MCA, is amended to read:
15 **"41-3-205. Confidentiality -- disclosure exceptions.** (1) The case records of the department and its
16 local affiliate, the local office of public assistance, the county attorney, and the court concerning actions taken
17 under this chapter and all records concerning reports of child abuse and neglect must be kept confidential except
18 as provided by this section. Except as provided in subsections ~~(7)~~ (8) and ~~(8)~~ (9), a person who purposely or
19 knowingly permits or encourages the unauthorized dissemination of the contents of case records is guilty of a
20 misdemeanor.

21 (2) Records may be disclosed to a court for in camera inspection if relevant to an issue before it. The
22 court may permit public disclosure if it finds disclosure to be necessary for the fair resolution of an issue before
23 it.

24 (3) Records, including case notes, correspondence, evaluations, videotapes, and interviews, unless
25 otherwise protected by this section or unless disclosure of the records is determined to be detrimental to the child
26 or harmful to another person who is a subject of information contained in the records, may be disclosed to the
27 following persons or entities in this state and any other state or country:

28 (a) a department, agency, or organization, including a federal agency, military enclave, or Indian tribal
29 organization, that is legally authorized to receive, inspect, or investigate reports of child abuse or neglect and that
30 otherwise meets the disclosure criteria contained in this section;

- 1 (b) a licensed youth care facility or a licensed child-placing agency that is providing services to the family
2 or child who is the subject of a report in the records or to a person authorized by the department to receive
3 relevant information for the purpose of determining the best interests of a child with respect to an adoptive
4 placement;
- 5 (c) a health or mental health professional who is treating the family or child who is the subject of a report
6 in the records;
- 7 (d) a parent, guardian, or person designated by a parent or guardian of the child who is the subject of
8 a report in the records or other person responsible for the child's welfare, without disclosure of the identity of any
9 person who reported or provided information on the alleged child abuse or neglect incident contained in the
10 records;
- 11 (e) a child named in the records who was allegedly abused or neglected or the child's legal guardian or
12 legal representative, including the child's guardian ad litem or attorney or a special advocate appointed by the
13 court to represent a child in a pending case;
- 14 (f) the state protection and advocacy program as authorized by 42 U.S.C. 15043(a)(2);
- 15 (g) approved foster and adoptive parents who are or may be providing care for a child;
- 16 (h) a person about whom a report has been made and that person's attorney, with respect to the relevant
17 records pertaining to that person only and without disclosing the identity of the reporter or any other person whose
18 safety may be endangered;
- 19 (i) an agency, including a probation or parole agency, that is legally responsible for the supervision of
20 an alleged perpetrator of child abuse or neglect;
- 21 (j) a person, agency, or organization that is engaged in a bona fide research or evaluation project and
22 that is authorized by the department to conduct the research or evaluation;
- 23 (k) the members of an interdisciplinary child protective team authorized under 41-3-108 or of a family
24 group decisionmaking meeting for the purposes of assessing the needs of the child and family, formulating a
25 treatment plan, and monitoring the plan;
- 26 (l) the coroner or medical examiner when determining the cause of death of a child;
- 27 (m) a child fatality review team recognized by the department;
- 28 (n) a department or agency investigating an applicant for a license or registration that is required to
29 operate a youth care facility, day-care facility, or child-placing agency;
- 30 (o) a person or entity who is carrying out background, employment-related, or volunteer-related

1 screening of current or prospective employees or volunteers who have or may have unsupervised contact with
 2 children through employment or volunteer activities. A request for information under this subsection (3)(o) must
 3 be made in writing. Disclosure under this subsection (3)(o) is limited to information that indicates a risk to children,
 4 persons with developmental disabilities, or older persons posed by the person about whom the information is
 5 sought, as determined by the department.

6 (p) the news media, a member of the United States congress, or a state legislator, if disclosure is limited
 7 to confirmation of factual information regarding how the case was handled and if disclosure does not violate the
 8 privacy rights of the child or the child's parent or guardian, as determined by the department;

9 (q) an employee of the department or other state agency if disclosure of the records is necessary for
 10 administration of programs designed to benefit the child;

11 (r) an agency of an Indian tribe, a qualified expert witness, or the relatives of an Indian child if disclosure
 12 of the records is necessary to meet requirements of the federal Indian Child Welfare Act;

13 (s) a juvenile probation officer who is working in an official capacity with the child who is the subject of
 14 a report in the records;

15 (t) ~~a county attorney, peace officer, or an~~ attorney who is hired by or represents the department if
 16 disclosure is necessary for the investigation, defense, or prosecution of a case involving child abuse or neglect;

17 (u) a foster care review committee established under 41-3-115 or, when applicable, a citizen review
 18 board established under Title 41, chapter 3, part 10;

19 (v) a school employee participating in an interview of a child by a social worker, county attorney, or peace
 20 officer, as provided in 41-3-202;

21 (w) a member of a county interdisciplinary child information team formed under the provisions of
 22 52-2-211;

23 (x) members of a local interagency staffing group provided for in 52-2-203;

24 (y) a member of a youth placement committee formed under the provisions of 41-5-121; or

25 (z) a principal of a school or other employee of the school district authorized by the trustees of the district
 26 to receive the information with respect to a student of the district who is a client of the department.

27 (4) (a) The records described in subsection (3) must be promptly released to any of the following
 28 individuals upon a written request by the individual to the department or the department's designee:

29 (i) the attorney general;

30 (ii) a county attorney or deputy county attorney of the county in which the alleged abuse or neglect

1 occurred; or

2 (iii) a peace officer, as defined in 45-2-101, in the jurisdiction in which the alleged abuse or neglect
3 occurred.

4 (b) The records described in subsection (3) must be promptly disclosed by the department to an
5 appropriate individual described in subsection (4)(a) or to a county interdisciplinary child information team
6 established pursuant to 52-2-211 upon the department's receipt of a report indicating that any of the following has
7 occurred:

8 (i) the death of the child as a result of child abuse or neglect;

9 (ii) a sexual offense, as defined in 46-23-502, against the child;

10 (iii) exposure of the child to an actual and not a simulated violent offense as defined in 46-23-502; or

11 (iv) child abuse or neglect, as defined in 41-3-102, due to exposure of the child to circumstances
12 constituting the criminal manufacture or distribution of dangerous drugs.

13 ~~(4)~~(5) A school or school district may disclose, without consent, personally identifiable information from
14 the education records of a pupil to the department, the court, a review board, and the child's assigned attorney,
15 guardian ad litem, or special advocate.

16 ~~(5)~~(6) Information that identifies a person as a participant in or recipient of substance abuse treatment
17 services may be disclosed only as allowed by federal substance abuse confidentiality laws, including the consent
18 provisions of the law.

19 ~~(6)~~(7) The confidentiality provisions of this section must be construed to allow a court of this state to
20 share information with other courts of this state or of another state when necessary to expedite the interstate
21 placement of children.

22 ~~(7)~~(8) A person who is authorized to receive records under this section shall maintain the confidentiality
23 of the records and may not disclose information in the records to anyone other than the persons described in
24 ~~subsection~~ subsections (3)(a) and (4). However, this subsection may not be construed to compel a family member
25 to keep the proceedings confidential.

26 ~~(8)~~(9) A news organization or its employee, including a freelance writer or reporter, is not liable for
27 reporting facts or statements made by an immediate family member under subsection ~~(7)~~ (8) if the news
28 organization, employee, writer, or reporter maintains the confidentiality of the child who is the subject of the
29 proceeding.

30 ~~(9)~~(10) This section is not intended to affect the confidentiality of criminal court records, records of law

1 enforcement agencies, or medical records covered by state or federal disclosure limitations.

2 ~~(10)(11)~~ Copies of records, evaluations, reports, or other evidence obtained or generated pursuant to this
3 section that are provided to the parent, the guardian, or the parent or guardian's attorney must be provided
4 without cost."

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6 ~~Section 2. Section 41-3-207, MCA, is amended to read:~~

7 ~~"41-3-207. Penalty for failure to report. (1) Any person, official, or institution required by law to report
8 known or suspected child abuse or neglect who fails to do so or who prevents another person from reasonably
9 doing so is civilly liable for the damages proximately caused by such failure or prevention.~~

10 ~~(2) Any person or official required by law to report known or suspected child abuse or neglect who
11 purposely or knowingly fails to report known child abuse or neglect or purposely or knowingly prevents another
12 person from doing so is guilty of a misdemeanor.~~

13 ~~(3) This section does not apply to an individual employed by the department when the department is
14 required to release or disclose records pursuant to 41-3-205(4)."~~

15
16 **Section 2.** Section 41-3-208, MCA, is amended to read:

17 **"41-3-208. Rulemaking authority.** (1) The department of public health and human services shall adopt
18 rules to govern the procedures used by department personnel in preparing and processing reports and in making
19 investigations authorized by this chapter.

20 (2) The department may adopt rules to govern the disclosure of case records containing reports of child
21 abuse and neglect.

22 (3) The department shall adopt a rule specifying the procedure to be used for the release and disclosure
23 of records as provided in 41-3-205(4). In adopting the rule, the department shall collaborate with the attorney
24 general and appropriate county attorneys, law enforcement agencies, and county interdisciplinary child
25 information teams established pursuant to 52-2-211."

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