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HOUSE BILL 188

55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022

INTRODUCED BY

Rebecca Dow and Stefani Lord

AN ACT

RELATING TO CHILDREN; AMENDING THE ABUSE AND NEGLECT ACT TO
LIMIT RECORDS AND INFORMATION CONCERNING A PARTY TO A NEGLECT
OR ABUSE PROCEEDING THAT ARE CONFIDENTIAL AND CLOSED TO THE
PUBLIC.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 32A-4-33 NMSA 1978 (being Laws 1993,
Chapter 77, Section 127, as amended) is amended to read:

"32A-4-33. CONFIDENTIALITY--RECORDS--PENALTY.--

A. ~~[All]~~ The following records or information
concerning a party to a neglect or abuse proceeding ~~[including]~~
shall be confidential and closed to the public: social
records, diagnostic evaluations, psychiatric or psychological
reports, videotapes, transcripts and audio recordings of a
child's statement of abuse or medical reports incident to or

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1 obtained as a result of a neglect or abuse proceeding or that
2 were produced or obtained during an investigation in
3 anticipation of or incident to a neglect or abuse proceeding
4 ~~[shall be confidential and closed to the public].~~

5 B. The records described in Subsection A of this
6 section shall be disclosed only to the parties and:

7 (1) court personnel and persons or entities
8 authorized by contract with the court to review, inspect or
9 otherwise have access to records or information in the court's
10 possession;

11 (2) court-appointed special advocates
12 appointed to the neglect or abuse proceeding;

13 (3) the child's guardian ad litem;

14 (4) the attorney representing the child in an
15 abuse or neglect action, a delinquency action or any other
16 action under the Children's Code;

17 (5) department personnel and persons or
18 entities authorized by contract with the department to review,
19 inspect or otherwise have access to records or information in
20 the department's possession;

21 (6) any local substitute care review board or
22 any agency contracted to implement local substitute care review
23 boards;

24 (7) law enforcement officials, except when use
25 immunity is granted pursuant to Section 32A-4-11 NMSA 1978;

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1 (8) district attorneys, except when use
2 immunity is granted pursuant to Section 32A-4-11 NMSA 1978;

3 (9) any state government social services
4 agency in any state or when, in the opinion of the department
5 it is in the best interest of the child, a governmental social
6 services agency of another country;

7 (10) those persons or entities of an Indian
8 tribe specifically authorized to inspect the records pursuant
9 to the federal Indian Child Welfare Act of 1978 or any
10 regulations promulgated thereunder;

11 (11) a foster parent, if the records are those
12 of a child currently placed with that foster parent or of a
13 child being considered for placement with that foster parent
14 and the records concern the social, medical, psychological or
15 educational needs of the child;

16 (12) school personnel involved with the child
17 if the records concern the child's social or educational needs;

18 (13) a grandparent, parent of a sibling,
19 relative or fictive kin, if the records or information pertain
20 to a child being considered for placement with that
21 grandparent, parent of a sibling, relative or fictive kin and
22 the records or information concern the social, medical,
23 psychological or educational needs of the child;

24 (14) health care or mental health
25 professionals involved in the evaluation or treatment of the

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1 child or of the child's parents, guardian, custodian or other
2 family members;

3 (15) protection and advocacy representatives
4 pursuant to the federal Developmental Disabilities Assistance
5 and Bill of Rights Act and the federal Protection and Advocacy
6 for Mentally Ill Individuals Amendments Act of 1991;

7 (16) children's safehouse organizations
8 conducting investigatory interviews of children on behalf of a
9 law enforcement agency or the department;

10 (17) representatives of the federal government
11 or their contractors authorized by federal statute or
12 regulation to review, inspect, audit or otherwise have access
13 to records and information pertaining to neglect or abuse
14 proceedings;

15 (18) any person or entity attending a meeting
16 arranged by the department to discuss the safety, well-being
17 and permanency of a child, when the parent or child, or parent
18 or legal custodian on behalf of a child younger than fourteen
19 years of age, has consented to the disclosure; and

20 (19) any other person or entity, by order of
21 the court, having a legitimate interest in the case or the work
22 of the court.

23 C. A parent, guardian or legal custodian whose
24 child has been the subject of an investigation of abuse or
25 neglect where no petition has been filed shall have the right

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1 to inspect any medical report, psychological evaluation, law
2 enforcement reports or other investigative or diagnostic
3 evaluation; provided that any identifying information related
4 to the reporting party or any other party providing information
5 shall be deleted. The parent, guardian or legal custodian
6 shall also have the right to the results of the investigation
7 and the right to petition the court for full access to all
8 department records and information except those records and
9 information the department finds would be likely to endanger
10 the life or safety of any person providing information to the
11 department.

12 D. Whoever intentionally and unlawfully releases
13 any information or records closed to the public pursuant to the
14 Abuse and Neglect Act or releases or makes other unlawful use
15 of records in violation of that act is guilty of a petty
16 misdemeanor and shall be sentenced pursuant to the provisions
17 of Section 31-19-1 NMSA 1978.

18 E. The department shall promulgate rules for
19 implementing disclosure of records pursuant to this section and
20 in compliance with state and federal law and the Children's
21 Court Rules."