



AN ACT REVISING LAWS RELATED TO CONFIDENTIAL CRIMINAL JUSTICE INFORMATION; PROVIDING CERTAIN NOTICE REQUIREMENTS TO INDIVIDUALS WHO MAY HAVE A PRIVACY INTEREST IN THE INFORMATION REQUESTED THAT MUST BE MET BY THE TIME A DECLARATORY JUDGMENT ACTION IS FILED; AND AMENDING SECTION 44-5-303, MCA.

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

Section 1. Section 44-5-303, MCA, is amended to read:

"44-5-303. (Temporary) Dissemination of confidential criminal justice information -- procedure for dissemination through court. (1) Except as provided in subsections (2) through (4), dissemination of confidential criminal justice information is restricted to criminal justice agencies, to those authorized by law to receive it, and to those authorized to receive it by a district court upon a written finding that the demands of individual privacy do not clearly exceed the merits of public disclosure. Permissible dissemination of confidential criminal justice information under this subsection includes receiving investigative information from and sharing investigative information with a chief of a governmental fire agency organized under Title 7, chapter 33, or fire marshal concerning the criminal investigation of a fire.

(2) If the prosecutor determines that dissemination of confidential criminal justice information would not jeopardize a pending investigation or other criminal proceeding, the information may be disseminated to a victim of the offense by the prosecutor or by the investigating law enforcement agency after consultation with the prosecutor.

(3) Unless otherwise ordered by a court, a person or criminal justice agency that accepts confidential criminal justice information assumes equal responsibility for the security of the information with the originating agency. Whenever confidential criminal justice information is disseminated, it must be designated as confidential.

(4) The county attorney or the county attorney's designee is authorized to receive confidential criminal justice information for the purpose of cooperating with the child abuse and neglect review commission established in 2-15-2019 and local fetal, infant, child, and maternal mortality review teams. The county attorney or the county attorney's designee may, in that person's discretion, disclose information determined necessary to the goals of the review commission or the review team. The review commission, the review team, and the county attorney or the county attorney's designee shall maintain the confidentiality of the information.

(5) (a) If a prosecutor receives a written request for release of confidential criminal justice information relating to a criminal investigation that has been terminated by declination of prosecution or relating to a criminal prosecution that has been completed by entry of judgment, dismissal, or acquittal, or if the disclosure may be in the public interest, the prosecutor may file a declaratory judgment action with the district court pursuant to the provisions of the Uniform Declaratory Judgments Act, Title 27, chapter 8, for release of the information. The prosecutor shall:

(i) file the action in the name of the city or county that the prosecutor represents and describe the city's or county's interest;

(ii) list as defendants anyone known to the prosecutor who has requested the confidential criminal justice information ~~and anyone affected by release of the information~~;

(iii) no later than the time of the filing of the declaratory judgment action:

(A) make reasonable efforts to provide notice to a victim of the alleged offense and any person with a protected privacy interest in information contained in the confidential criminal justice information and any other individual who would be affected by the release of the information of the request for release of confidential criminal justice information and the filing of the declaratory judgment action; and

(B) provide notice that the person may file an objection to disclosure with the district court if the person believes a privacy interest that they possess exceeds the merits of public disclosure;

~~(iii)~~(iv) request that the prosecutor be allowed to deposit the investigative file and any edited version of the file with the court pursuant to the provisions of Title 27, chapter 8; and

~~(iv)~~(v) request the court to:

(A) no sooner than 30 calendar days following the filing of the declaratory judgment action to ensure an opportunity for a person seeking to protect a privacy interest, conduct an in camera review of the confidential

criminal justice information to determine whether the demands of individual privacy do not clearly exceed the merits of public disclosure; and

(B) order the release to the requesting party defendant of whatever portion of the investigative information or edited version of the information the court determines appropriate.

(b) In making an order authorizing the release of information under subsection (5)(a), the court shall make a written finding that the demands of individual privacy do not clearly exceed the merits of public disclosure and authorize, upon payment of reasonable reproduction costs, the release of appropriate portions of the edited or complete confidential criminal justice information to persons who request the information.

(c) In an action filed for the court-ordered release of confidential criminal justice information under subsection (5)(a), the parties shall bear their respective costs and attorney fees.

(6) The procedures set forth in subsection (5) are not an exclusive remedy. A person or organization may file any action for dissemination of information that the person or organization considers appropriate and permissible. (Terminates September 30, 2021--sec. 12, Ch. 235, L. 2017.)

44-5-303. (Effective October 1, 2021) Dissemination of confidential criminal justice information -- procedure for dissemination through court. (1) Except as provided in subsections (2) through (4), dissemination of confidential criminal justice information is restricted to criminal justice agencies, to those authorized by law to receive it, and to those authorized to receive it by a district court upon a written finding that the demands of individual privacy do not clearly exceed the merits of public disclosure. Permissible dissemination of confidential criminal justice information under this subsection includes receiving investigative information from and sharing investigative information with a chief of a governmental fire agency organized under Title 7, chapter 33, or fire marshal concerning the criminal investigation of a fire.

(2) If the prosecutor determines that dissemination of confidential criminal justice information would not jeopardize a pending investigation or other criminal proceeding, the information may be disseminated to a victim of the offense by the prosecutor or by the investigating law enforcement agency after consultation with the prosecutor.

(3) Unless otherwise ordered by a court, a person or criminal justice agency that accepts confidential criminal justice information assumes equal responsibility for the security of the information with the originating agency. Whenever confidential criminal justice information is disseminated, it must be designated as

confidential.

(4) The county attorney or the county attorney's designee is authorized to receive confidential criminal justice information for the purpose of cooperating with local fetal, infant, child, and maternal mortality review teams. The county attorney or the county attorney's designee may, in that person's discretion, disclose information determined necessary to the goals of the review team. The review team and the county attorney or the designee shall maintain the confidentiality of the information.

(5) (a) If a prosecutor receives a written request for release of confidential criminal justice information relating to a criminal investigation that has been terminated by declination of prosecution or relating to a criminal prosecution that has been completed by entry of judgment, dismissal, or acquittal, or if the disclosure may be in the public interest, the prosecutor may file a declaratory judgment action with the district court pursuant to the provisions of the Uniform Declaratory Judgments Act, Title 27, chapter 8, for release of the information. The prosecutor shall:

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(ii) list as defendants anyone known to the prosecutor who has requested the confidential criminal justice information ~~and anyone affected by release of the information~~;

(iii) no later than the time of the filing of the declaratory judgment action:

(A) make reasonable efforts to provide notice to a victim of the alleged offense and any person with a protected privacy interest in information contained in the confidential criminal justice information and any other individual who would be affected by release of the information of the request for release of confidential criminal justice information and the filing of the declaratory judgment action; and

(B) provide notice that the person may file an objection to disclosure with the district court if the person believes a privacy interest that they possess exceeds the merits of public disclosure;

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(B) order the release to the requesting party defendant of whatever portion of the investigative information or edited version of the information the court determines appropriate.

(b) In making an order authorizing the release of information under subsection (5)(a), the court shall make a written finding that the demands of individual privacy do not clearly exceed the merits of public disclosure and authorize, upon payment of reasonable reproduction costs, the release of appropriate portions of the edited or complete confidential criminal justice information to persons who request the information.

(c) In an action filed for the court-ordered release of confidential criminal justice information under subsection (5)(a), the parties shall bear their respective costs and attorney fees.

(6) The procedures set forth in subsection (5) are not an exclusive remedy. A person or organization may file any action for dissemination of information that the person or organization considers appropriate and permissible."

- END -

I hereby certify that the within bill,
HB 559, originated in the House.

Chief Clerk of the House

Speaker of the House

Signed this _____ day
of _____, 2021.

President of the Senate

Signed this _____ day
of _____, 2021.

HOUSE BILL NO. 559

INTRODUCED BY B. MERCER

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