

HOUSE BILL NO. 554

INTRODUCED BY J. CARLSON, S. VINTON, D. LENZ

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CONFIDENTIALITY OF CHILD ABUSE AND NEGLECT RECORDS; REQUIRING COURT APPROVAL FOR RELEASE OF INFORMATION TO CERTAIN INDIVIDUALS OR ENTITIES; REQUIRING CONSENT FROM THE SUBJECT OF A REPORT UNDER CERTAIN CIRCUMSTANCES; AND AMENDING SECTIONS 41-3-202, 41-3-205, AND 41-3-208, MCA."

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

Section 1. Section 41-3-202, MCA, is amended to read:

"41-3-202. Action on reporting. (1) (a) Upon receipt of a report that a child is or has been abused or neglected, the department shall promptly assess the information contained in the report and make a determination regarding the level of response required and the timeframe within which action must be initiated.

(b) (i) Except as provided in subsection (1)(b)(ii), upon receipt of a report that includes an allegation of sexual abuse or sexual exploitation when the alleged perpetrator of the sexual abuse or sexual exploitation was 12 years of age or older or if the department determines during any investigation that the circumstances surrounding an allegation of child abuse or neglect include an allegation of sexual abuse or sexual exploitation when the alleged perpetrator of the sexual abuse or sexual exploitation was 12 years of age or older, the department shall immediately report the allegation to the county attorney of the county in which the acts that are the subject of the report occurred.

(ii) If a victim of sexual abuse or sexual exploitation has attained the age of 14 and has sought services from a contractor as described in 41-3-201(2)(j) that provides confidential services to victims of sexual assault, conditioned upon an understanding that the criminal conduct will not be reported by the department to the county attorney in the jurisdiction in which the alleged crime occurred, the department may not report pursuant to 41-3-205(5)(d)(6)(d) and subsection (1)(b)(i) of this section.

(c) If the department determines that an investigation and a safety and risk assessment are required, a child protection specialist shall promptly conduct a thorough investigation into the circumstances

1 surrounding the allegations of abuse or neglect of the child and perform a safety and risk assessment to
2 determine whether the living arrangement presents an unsafe environment for the child. The safety and risk
3 assessment may include an investigation at the home of the child involved, the child's school or day-care
4 facility, or any other place where the child is present and into all other nonfinancial matters that in the discretion
5 of the investigator are relevant to the safety and risk assessment. In conducting a safety and risk assessment
6 under this section, a child protection specialist may not inquire into the financial status of the child's family or of
7 any other person responsible for the child's care, except as necessary to ascertain eligibility for state or federal
8 assistance programs or to comply with the provisions of 41-3-446.

9 (2) An initial investigation of alleged abuse or neglect may be conducted when an anonymous
10 report is received. However, if the initial investigation does not within 48 hours result in the development of
11 independent, corroborative, and attributable information indicating that there exists a current risk of physical or
12 psychological harm to the child, a child may not be removed from the living arrangement. If independent,
13 corroborative, and attributable information indicating an ongoing risk results from the initial investigation, the
14 department shall then conduct a safety and risk assessment.

15 (3) The child protection specialist is responsible for conducting the safety and risk assessment. If
16 the child is treated at a medical facility, the child protection specialist, county attorney, or peace officer,
17 consistent with reasonable medical practice, has the right of access to the child for interviews, photographs,
18 and securing physical evidence and has the right of access to relevant hospital and medical records pertaining
19 to the child. If an interview of the child is considered necessary, the child protection specialist, county attorney,
20 or peace officer may conduct an interview of the child. The interview may be conducted in the presence of the
21 parent or guardian or an employee of the school or day-care facility attended by the child.

22 (4) Subject to 41-3-205(3), if the child's interview is audiotaped or videotaped, an unedited
23 audiotape or videotape with audio track must be made available, upon request, for unencumbered review by
24 the family.

25 (5) (a) If from the safety and risk assessment the department has reasonable cause to suspect that
26 the child is suffering abuse or neglect, the department may provide emergency protective services to the child,
27 pursuant to 41-3-301, or enter into a written prevention plan, pursuant to 41-3-302, and may provide protective
28 services to any other child under the same care. The department shall:

1 (i) after interviewing the parent or guardian, if reasonably available, document the determinations
2 of the safety and risk assessment; and

3 (ii) notify the child's family of the determinations of the safety and risk assessment, unless the
4 notification can reasonably be expected to result in harm to the child or other person.

5 (b) Except as provided in subsection (5)(c), the department shall destroy all safety and risk
6 assessment determinations and associated records, except for medical records, within 30 days after the end of
7 the 3-year period starting from the date of completion of the safety and risk assessment.

8 (c) Safety and risk assessment determinations and associated records may be maintained for a
9 reasonable time as defined by department rule under the following circumstances:

10 (i) the safety and risk assessment determines that abuse or neglect occurred;

11 (ii) there had been a previous or there is a subsequent report and investigation resulting in a
12 safety and risk assessment concerning the same person; or

13 (iii) an order has been issued by a court of competent jurisdiction adjudicating the child as a youth
14 in need of care based on the circumstances surrounding the initial allegations.

15 (6) The investigating child protection specialist, within 60 days of commencing an investigation,
16 shall also furnish a written safety and risk assessment to the department and, upon request, to the family.
17 Subject to time periods set forth in subsections (5)(b) and (5)(c), the department shall maintain a record system
18 documenting investigations and safety and risk assessment determinations. Unless records are required to be
19 destroyed under subsections (5)(b) and (5)(c), the department shall retain records relating to the safety and risk
20 assessment, including case notes, correspondence, evaluations, videotapes, and interviews, for 25 years.

21 (7) Any person reporting abuse or neglect that involves acts or omissions on the part of a public or
22 private residential institution, home, facility, or agency is responsible for ensuring that the report is made to the
23 department.

24 (8) The department shall, upon request from any reporter of alleged child abuse or neglect, verify
25 whether the report has been received, describe the level of response and timeframe for action that the
26 department has assigned to the report, and confirm that it is being acted upon."

27

28 **Section 2.** Section 41-3-205, MCA, is amended to read:

1 **"41-3-205. Confidentiality -- disclosure exceptions.** (1) (a) The case records of the department and
2 its local affiliate, the local office of public assistance, the county attorney, and the court concerning actions
3 taken under this chapter and all records concerning reports of child abuse and neglect must be kept confidential
4 except as provided by this section. Except as provided in subsections ~~(9)~~(10) and ~~(40)~~(11), a person who
5 purposely or knowingly permits or encourages the unauthorized dissemination of the contents of case records
6 is guilty of a misdemeanor.

7 (b) Confidential case records may not be disclosed without consent from the person to whom the
8 records pertain or, in the case of a child, from the child's parent or legal guardian unless the records are being
9 disclosed to:

10 (i) a state agency;

11 (ii) a person authorized by law to receive the records; or

12 (iii) a person authorized by a district court to receive the records based on a written finding that the
13 demands of individual privacy do not clearly exceed the merits of public disclosure.

14 (c) Unless otherwise ordered by a court to disclose the records, a person or agency that accepts
15 confidential case records assumes equal responsibility, with the originating agency, for the security of the
16 records.

17 (d) Whenever confidential case records are disseminated, the records must be designated as
18 confidential.

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

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

26 (a) a department, or agency, ~~or organization,~~ including a federal agency, military enclave, or Indian
27 tribal organization, that is legally authorized to receive, inspect, or investigate reports of child abuse or neglect
28 and that 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
 2 family or child who is the subject of a report in the records or to a person authorized by the department to
 3 receive relevant information for the purpose of determining the best interests of a child with respect to an
 4 adoptive placement;

5 ~~(c) a health or mental health professional who is treating the family or child who is the subject of a~~
 6 ~~report in the records;~~

7 ~~(d)(c) a parent, grandparent, aunt, uncle, brother, sister, guardian, mandatory reporter provided for in~~
 8 ~~41-3-201(2) and (5), or person designated by a parent or guardian of the child who is the subject of a report in~~
 9 ~~the records or other person responsible for the child's welfare~~ of a child who is the subject of a report in the
 10 records, without disclosure of the identity of any person who reported or provided information on the alleged
 11 child abuse or neglect incident contained in the records;

12 ~~(e)(d) a child named in the records who was allegedly abused or neglected or the child's legal~~
 13 ~~guardian or legal representative, including the child's guardian ad litem or attorney or a special advocate~~
 14 appointed by the court to represent a child in a pending case;

15 ~~(f)(e) the state protection and advocacy program as authorized by 42 U.S.C. 15043(a)(2);~~

16 ~~(g) approved foster and adoptive parents who are or may be providing care for a child;~~

17 ~~(h)(f) a person about whom a report has been made and that person's attorney, with respect to the~~
 18 relevant records pertaining to that person only and without disclosing the identity of the reporter or any other
 19 person whose safety may be endangered;

20 ~~(i)(g) an agency, including a probation or parole agency, that is legally responsible for the~~
 21 supervision of an alleged perpetrator of child abuse or neglect;

22 ~~(j) a person, agency, or organization that is engaged in a bona fide research or evaluation project and~~
 23 ~~that is authorized by the department to conduct the research or evaluation;~~

24 ~~(k)(h) the members of an interdisciplinary~~ a child protective team authorized under 41-3-108 or of a
 25 family engagement meeting for the purposes of assessing the needs of the child and family, formulating a
 26 treatment plan, and monitoring the plan;

27 ~~(l) the coroner or medical examiner when determining the cause of death of a child;~~

28 ~~(m)(i) a child fatality review team recognized by the department;~~

1 ~~(n) a department or agency investigating an applicant for a license or registration that is required to~~
2 ~~operate a youth care facility, day care facility, or child-placing agency;~~

3 ~~(o) a person or entity who is carrying out background, employment-related, or volunteer-related~~
4 ~~screening of current or prospective employees or volunteers who have or may have unsupervised contact with~~
5 ~~children through employment or volunteer activities. A request for information under this subsection (3)(o) must~~
6 ~~be made in writing. Disclosure under this subsection (3)(o) is limited to information that indicates a risk to~~
7 ~~children posed by the person about whom the information is sought, as determined by the department.~~

8 ~~(p) the news media, if disclosure is limited to confirmation of factual information regarding how the~~
9 ~~case was handled and if disclosure does not violate the privacy rights of the child or the child's parent or~~
10 ~~guardian, as determined by the department;~~

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

13 ~~(+)(j)~~ an agency of an Indian tribe, a qualified expert witness, or the relatives of an Indian child if
14 disclosure of the records is necessary to meet requirements of the federal Indian Child Welfare Act;

15 ~~(s)(k)~~ a juvenile probation officer who is working in an official capacity with the child who is the
16 subject of a report in the records;

17 ~~(+)(l)~~ an attorney who is hired by or represents the department if disclosure is necessary for the
18 investigation, defense, or prosecution of a case involving child abuse or neglect; or

19 ~~(+)(m)~~ a foster care review committee established under 41-3-115 ~~or, when applicable, a citizen~~
20 ~~review board established under Title 41, chapter 3, part 10;~~

21 ~~(v) a school employee participating in an interview of a child by a child protection specialist, county~~
22 ~~attorney, or peace officer, as provided in 41-3-202;~~

23 (4) After weighing the right of individual privacy, a court may permit limited disclosure to the
24 following persons or entities if the court finds that disclosure is necessary to the fair resolution of an issue
25 before the court or is based on the need to know and is relevant to the issue being addressed:

26 (a) a court-appointed health or mental health professional who is treating the family or child who is
27 the subject of a report in the records;

28 (b) a court-appointed organization or volunteer organization;

1 (c) an approved foster or adoptive parent who is or may be providing care for a child;

2 (d) a coroner or a medical examiner when determining the cause of death of a child;

3 (e) a person, agency, or organization that is engaged in a bona fide research or evaluation project
4 and that is authorized by the department to conduct the research or evaluation;

5 (f) a department or agency investigating an applicant for a license or registration that is required to
6 operate a youth care facility, day-care facility, or child-placing agency;

7 (g) a person or entity who is carrying out background, employment-related, or volunteer-related
8 screening of current or prospective employees or volunteers who have or may have unsupervised contact with
9 children through employment or volunteer activities. A request for information under this subsection (4)(g) must
10 be made in writing. Disclosure under this subsection (4)(g) is limited to information that indicates a risk to
11 children posed by the person about whom the information is sought, as determined by the department.

12 (h) the news media, if disclosure is limited to confirmation of factual information regarding how the
13 case was handled and if disclosure does not violate the privacy rights of the child or the child's parent or
14 guardian, as determined by the department;

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

17 ~~(w)~~(j) a member of a county or regional interdisciplinary child information and school safety team
18 formed under the provisions of 52-2-211;

19 ~~(x)~~(k) members of a local interagency staffing group provided for in 52-2-203; or

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

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

23 ~~(4)(5)~~ (a) The records described in subsection (3) must be disclosed to a member of the United
24 States congress or a member of the Montana legislature if all of the following requirements are met:

25 (i) the member receives a written inquiry regarding a child and whether the laws of the United
26 States or the state of Montana that protect children from abuse or neglect are being complied with or whether
27 the laws need to be changed to enhance protections for children;

28 (ii) the member submits a written request to the department requesting to review the records

1 relating to the written inquiry. The member's request must include a copy of the written inquiry, the name of the
2 child whose records are to be reviewed, and any other information that will assist the department in locating the
3 records.

4 (iii) before reviewing the records, the member:

5 (A) signs a form that outlines the state and federal laws regarding confidentiality and the penalties
6 for unauthorized release of the information; and

7 (B) receives from the department an orientation of the content and structure of the records.

8 (b) Records disclosed pursuant to subsection ~~(4)(a)~~(5)(a) are confidential, must be made available
9 for the member to view but may not be copied, recorded, photographed, or otherwise replicated by the member,
10 and must remain solely in the department's possession. The member must be allowed to view the records in
11 the local office where the case is or was active.

12 (c) Access to records requested pursuant to this subsection ~~(4)~~(5) is limited to 6 months from the
13 date the written request to review records was received by the department.

14 ~~(5)(6)~~ (a) The records described in subsection (3) must be promptly released to any of the following
15 individuals upon a written request by the individual to the department or the department's designee:

16 (i) the attorney general;

17 (ii) a county attorney or deputy county attorney of the county in which the alleged abuse or neglect
18 occurred;

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

21 (iv) the office of the child and family ombudsman.

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

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

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

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

1 or

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

4 (c) (i) The department shall promptly disclose the results of an investigation to an individual
5 described in subsection ~~(5)(a)(6)(a)~~ or to a county or regional interdisciplinary child information and school
6 safety team established pursuant to 52-2-211 upon the determination that:

7 (A) there is reasonable cause to suspect that a child has been exposed to a Schedule I or
8 Schedule II drug whose manufacture, sale, or possession is prohibited under state law; or

9 (B) a child has been exposed to drug paraphernalia used for the manufacture, sale, or possession
10 of a Schedule I or Schedule II drug that is prohibited by state law.

11 (ii) For the purposes of this subsection ~~(5)(c)(6)(c)~~, exposure occurs when a child is caused or
12 permitted to inhale, have contact with, or ingest a Schedule I or Schedule II drug that is prohibited by state law
13 or have contact with drug paraphernalia as defined in 45-10-101.

14 (d) (i) Except as provided in subsection ~~(5)(d)(ii)(6)(d)(ii)~~, the records described in subsection (3)
15 must be released within 5 business days to the county attorney of the county in which the acts that are the
16 subject of a report occurred upon the department's receipt of a report that includes an allegation of sexual
17 abuse or sexual exploitation. The department shall also report to any other appropriate individual described in
18 subsection ~~(5)(a)(6)(a)~~ and to a county or regional interdisciplinary child information and school safety team
19 established pursuant to 52-2-211.

20 (ii) If the exception in 41-3-202(1)(b) applies, a contractor described in 41-3-201(2)(j) that provides
21 confidential services to victims of sexual assault shall report to the department as provided in this part without
22 disclosing the names of the victim and the alleged perpetrator of sexual abuse or sexual exploitation.

23 (iii) When a contractor described in 41-3-201(2)(j) that provides confidential services to victims of
24 sexual assault provides services to youth over the age of 13 who are victims of sexual abuse and sexual
25 exploitation, the contractor may not dissuade or obstruct a victim from reporting the criminal activity and, upon a
26 request by the victim, shall facilitate disclosure to the county attorney and a law enforcement officer as
27 described in Title 7, chapter 32, in the jurisdiction where the alleged abuse occurred.

28 ~~(6)(7)~~ A school or school district may disclose, without consent, personally identifiable information

1 from the education records of a pupil to the department, the court, a review board, and the child's assigned
2 attorney, guardian ad litem, or special advocate.

3 ~~(7)~~(8) Information that identifies a person as a participant in or recipient of substance abuse treatment
4 services may be disclosed only as allowed by federal substance abuse confidentiality laws, including the
5 consent provisions of the law.

6 ~~(8)~~(9) The confidentiality provisions of this section must be construed to allow a court of this state to
7 share information with other courts of this state or of another state when necessary to expedite the interstate
8 placement of children.

9 ~~(9)~~(10) A person who is authorized to receive records under this section shall maintain the
10 confidentiality of the records and may not disclose information in the records to anyone other than the persons
11 described in subsections (3)(a) and ~~(5)~~(6). However, this subsection may not be construed to compel a family
12 member to keep the proceedings confidential.

13 ~~(10)~~(11) A news organization or its employee, including a freelance writer or reporter, is not liable for
14 reporting facts or statements made by an immediate family member under subsection ~~(9)~~(10) if the news
15 organization, employee, writer, or reporter maintains the confidentiality of the child who is the subject of the
16 proceeding.

17 ~~(11)~~(12) This section is not intended to affect the confidentiality of criminal court records, records of
18 law enforcement agencies, or medical records covered by state or federal disclosure limitations.

19 ~~(12)~~(13) Copies of records, evaluations, reports, or other evidence obtained or generated pursuant to
20 this section that are provided to the parent, grandparent, aunt, uncle, brother, sister, guardian, or parent's or
21 guardian's attorney must be provided without cost and within 30 days of the date the request was made."

22

23 **Section 3.** Section 41-3-208, MCA, is amended to read:

24 **"41-3-208. Rulemaking authority.** (1) The department of public health and human services shall
25 adopt rules to govern the procedures used by department personnel in preparing and processing reports and in
26 conducting investigations and safety and risk assessments authorized by this chapter.

27 (2) The department shall adopt rules to govern the retention period and disclosure of safety and
28 risk assessments and associated case records containing information related to reports and investigations of

1 child abuse and neglect.

2 (3) The department shall adopt rules specifying the procedure to be used for the release and
3 disclosure of records as provided in 41-3-205~~(5)~~(6). In adopting the rule, the department shall collaborate with
4 the attorney general, the office of the child and family ombudsman, and appropriate county attorneys, law
5 enforcement agencies, and county or regional interdisciplinary child information and school safety teams
6 established pursuant to 52-2-211."

7 - END -