

1 HOUSE BILL NO. 303

2 INTRODUCED BY K. KELKER

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A CHILD ABUSE AND NEGLECT REVIEW
5 COMMISSION FOR CASES INVOLVING CHILD ABUSE AND NEGLECT, INCLUDING FATALITIES AND NEAR
6 FATALITIES; ESTABLISHING MEMBERSHIP REQUIREMENTS; ALLOWING FOR THE SHARING OF
7 MEDICAL AND CRIMINAL JUSTICE INFORMATION RELATED TO CHILD ABUSE AND NEGLECT FATALITIES
8 AND NEAR FATALITIES; PROVIDING CONFIDENTIALITY; REQUIRING A REPORT; AMENDING SECTIONS
9 41-3-201, 41-3-205, 44-5-303, 50-16-522, 50-16-525, 50-16-804, AND 50-16-805, MCA; AND PROVIDING AN
10 IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."
11

12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
13

14 NEW SECTION. **Section 1. Child abuse and neglect review commission.** (1) There is a
15 multidisciplinary child abuse and neglect review commission in the department of justice to carry out the duties
16 described in [section 2].

17 (2) The attorney general and governor shall appoint members to the commission.

18 (a) Members appointed by the attorney general must include:

19 (i) the child and family ombudsman;

20 (ii) a representative of the state crime laboratory;

21 (iii) a representative of law enforcement;

22 (iv) a representative of the judiciary;

23 (v) an attorney who litigates in the area of child abuse and neglect, including an attorney who represents
24 children and court-appointed special advocates;

25 (vi) a licensed foster parent;

26 (vii) an adult parent who was a victim of child abuse and neglect; and

27 (viii) a member of the legislature.

28 (b) Members appointed by the governor must include:

29 (i) a representative of the child and family services division of the department of public health and human
30 services;

- 1 (ii) a representative of private organizations that are involved in matters related to child abuse and
2 neglect;
- 3 (iii) a medical provider who is involved in matters related to child abuse and neglect;
- 4 (iv) a mental health provider with experience in treating co-occurring disorders;
- 5 (v) a representative of the Montana Indian tribes;
- 6 (vi) the state fetal, infant, child, and maternal mortality review coordinator;
- 7 (vii) a licensed provider who serves children with disabilities;
- 8 (viii) a representative of an organization that works with homeless children and youth; and
- 9 (ix) a representative of the university of Montana school of social work.

10 (3) The members shall serve without compensation by the commission but may be reimbursed for travel
11 expenses as provided for in 2-18-501 through 2-18-503. Members who are full-time salaried officers or employees
12 of the state or of any political subdivision of the state are entitled to their regular compensation.

13

14 **NEW SECTION. Section 2. Child abuse and neglect review commission -- duties -- confidentiality**

15 **-- liability -- report to legislature.** (1) The child abuse and neglect review commission established in [section
16 1] shall:

17 (a) examine the trends and patterns of child abuse and neglect, including fatalities and near fatalities
18 attributable to child abuse and neglect;

19 (b) educate the public, service providers, and policymakers about child abuse and neglect, including
20 fatalities and near fatalities attributable to child abuse and neglect, and about strategies for intervention in and
21 prevention of child abuse and neglect; and

22 (c) recommend policies, practices, and services that may encourage collaboration and reduce fatalities
23 and near fatalities attributable to child abuse and neglect.

24 (2) The commission members may determine the frequency with which the commission will meet, but
25 the commission must meet at least once a year.

26 (3) The commission shall select and review a representative sample of child abuse and neglect cases
27 that resulted in a fatality or near fatality.

28 (4) Upon written request from the commission, a person who possesses records necessary and relevant
29 to a review being conducted under this section shall, as soon as practicable, provide the commission with the
30 records.

1 (5) The meetings and proceedings of the commission are confidential and are exempt from the
2 provisions of Title 2, chapter 3.

3 (6) (a) The records of the commission are confidential and are exempt from the provisions of Title 2,
4 chapter 6. The records are not subject to subpoena, discovery, or introduction into evidence in a civil or criminal
5 action unless the records are reviewed by a district court judge in camera and ordered to be provided to the
6 person seeking access.

7 (b) The commission shall disclose conclusions and recommendations on request but may not disclose
8 records that are otherwise confidential.

9 (c) The commission may not use the records for purposes other than those allowed under subsections
10 (1)(a) and (1)(c).

11 (7) The commission may:

12 (a) require a person appearing before it to sign a confidentiality agreement created by the commission
13 in order to maintain the confidentiality of the proceedings; and

14 (b) enter into agreements with nonprofit organizations and private agencies to obtain otherwise
15 confidential records.

16 (8) A member of the commission who knowingly uses records obtained pursuant to subsection (4) for
17 a purpose not authorized in subsection (1) or who discloses records in violation of subsection (6) is subject to a
18 civil penalty of not more than \$500.

19 (9) (a) The commission shall report its findings and recommendations in writing to the children, families,
20 health, and human services interim committee, the governor, and the chief justice of the Montana supreme court
21 prior to each regular legislative session. The report shall contain the following information:

22 (i) the cause and circumstances of each fatality and near fatality attributable to child abuse or neglect
23 reviewed by the commission;

24 (ii) the age and gender of each child involved;

25 (iii) information describing any previous reports of child abuse or neglect and the results of any
26 investigations into those reports that are pertinent to the child abuse or neglect that led to each fatality or near
27 fatality; and

28 (iv) the services provided by and actions of the department on behalf of the child that are pertinent to the
29 child abuse or neglect that led to the fatality or near fatality.

30 (b) The commission periodically may issue other data or information in addition to the report.

1 (10) The biennial report may exclude information required under subsection (9) for cases in which
2 reporting the information would:

3 (a) be detrimental to the safety and well-being of the child, parents, or family;

4 (b) jeopardize a criminal investigation; or

5 (c) interfere with the protection of individuals who report child abuse or neglect.

6 (11) For the purposes of this section, "near fatality" means an incident in which a child was certified by
7 a physician to be in a medically serious or critical condition because of an action that constituted child abuse or
8 neglect.

9

10 **Section 3.** Section 41-3-201, MCA, is amended to read:

11 **"41-3-201. Reports.** (1) When the professionals and officials listed in subsection (2) know or have
12 reasonable cause to suspect, as a result of information they receive in their professional or official capacity, that
13 a child is abused or neglected by anyone regardless of whether the person suspected of causing the abuse or
14 neglect is a parent or other person responsible for the child's welfare, they shall report the matter promptly to the
15 department of public health and human services.

16 (2) Professionals and officials required to report are:

17 (a) a physician, resident, intern, or member of a hospital's staff engaged in the admission, examination,
18 care, or treatment of persons;

19 (b) a nurse, osteopath, chiropractor, podiatrist, medical examiner, coroner, dentist, optometrist, or any
20 other health or mental health professional;

21 (c) religious healers;

22 (d) school teachers, other school officials, and employees who work during regular school hours;

23 (e) a social worker, operator or employee of any registered or licensed day-care or substitute care
24 facility, staff of a resource and referral grant program organized under 52-2-711 or of a child and adult food care
25 program, or an operator or employee of a child-care facility;

26 (f) a foster care, residential, or institutional worker;

27 (g) a peace officer or other law enforcement official;

28 (h) a member of the clergy, as defined in 15-6-201(2)(b);

29 (i) a guardian ad litem or a court-appointed advocate who is authorized to investigate a report of alleged
30 abuse or neglect; or

- 1 (j) an employee of an entity that contracts with the department to provide direct services to children.
- 2 (3) A professional listed in subsection (2)(a) or (2)(b) involved in the delivery or care of an infant shall
3 report to the department any infant known to the professional to be affected by a dangerous drug, as defined in
4 50-32-101.
- 5 (4) Any person may make a report under this section if the person knows or has reasonable cause to
6 suspect that a child is abused or neglected.
- 7 (5) (a) When a professional or official required to report under subsection (2) makes a report, the
8 department may share information with:
- 9 (i) that professional or official; ~~or~~
- 10 (ii) other individuals with whom the professional or official works in an official capacity if the individuals
11 are part of a team that responds to matters involving the child or the person about whom the report was made
12 and the professional or official has asked that the information be shared with the individuals; or
- 13 (iii) the child abuse and neglect review commission established in [section 1].
- 14 (b) The department may provide information in accordance with 41-3-202(8) and also share information
15 about the investigation, limited to its outcome and any subsequent action that will be taken on behalf of the child
16 who is the subject of the report.
- 17 (c) Individuals who receive information pursuant to this subsection (5) shall maintain the confidentiality
18 of the information as required by 41-3-205.
- 19 (6) (a) Except as provided in subsection (6)(b) or (6)(c), a person listed in subsection (2) may not refuse
20 to make a report as required in this section on the grounds of a physician-patient or similar privilege.
- 21 (b) A member of the clergy or a priest is not required to make a report under this section if:
- 22 (i) the knowledge or suspicion of the abuse or neglect came from a statement or confession made to the
23 member of the clergy or the priest in that person's capacity as a member of the clergy or as a priest;
- 24 (ii) the statement was intended to be a part of a confidential communication between the member of the
25 clergy or the priest and a member of the church or congregation; and
- 26 (iii) the person who made the statement or confession does not consent to the disclosure by the member
27 of the clergy or the priest.
- 28 (c) A member of the clergy or a priest is not required to make a report under this section if the
29 communication is required to be confidential by canon law, church doctrine, or established church practice.
- 30 (7) The reports referred to under this section must contain:

1 (a) the names and addresses of the child and the child's parents or other persons responsible for the
2 child's care;

3 (b) to the extent known, the child's age and the nature and extent of the child's injuries, including any
4 evidence of previous injuries;

5 (c) any other information that the maker of the report believes might be helpful in establishing the cause
6 of the injuries or showing the willful neglect and the identity of the person or persons responsible for the injury
7 or neglect; and

8 (d) the facts that led the person reporting to believe that the child has suffered injury or injuries or willful
9 neglect, within the meaning of this chapter."
10

11 **Section 4.** Section 41-3-205, MCA, is amended to read:

12 **"41-3-205. Confidentiality -- disclosure exceptions.** (1) The case records of the department and its
13 local affiliate, the local office of public assistance, the county attorney, and the court concerning actions taken
14 under this chapter and all records concerning reports of child abuse and neglect must be kept confidential except
15 as provided by this section. Except as provided in subsections (8) and (9), a person who purposely or knowingly
16 permits or encourages the unauthorized dissemination of the contents of case records is guilty of a misdemeanor.

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

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

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

27 (b) a licensed youth care facility or a licensed child-placing agency that is providing services to the family
28 or child who is the subject of a report in the records or to a person authorized by the department to receive
29 relevant information for the purpose of determining the best interests of a child with respect to an adoptive
30 placement;

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

1 persons with developmental disabilities, or older persons posed by the person about whom the information is
2 sought, as determined by the department.

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

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

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

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

12 (t) an attorney who is hired by or represents the department if disclosure is necessary for the
13 investigation, defense, or prosecution of a case involving child abuse or neglect;

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

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

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

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

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

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

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

26 (i) the attorney general;

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

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

- 1 (iv) the office of the child and family ombudsman.
- 2 (b) The records described in subsection (3) must be promptly disclosed by the department to an
3 appropriate individual described in subsection (4)(a) or to a county interdisciplinary child information and school
4 safety team established pursuant to 52-2-211 upon the department's receipt of a report indicating that any of the
5 following has occurred:
- 6 (i) the death of the child as a result of child abuse or neglect;
- 7 (ii) a sexual offense, as defined in 46-23-502, against the child;
- 8 (iii) exposure of the child to an actual and not a simulated violent offense as defined in 46-23-502; or
- 9 (iv) child abuse or neglect, as defined in 41-3-102, due to exposure of the child to circumstances
10 constituting the criminal manufacture or distribution of dangerous drugs.
- 11 (5) A school or school district may disclose, without consent, personally identifiable information from the
12 education records of a pupil to the department, the court, a review board, and the child's assigned attorney,
13 guardian ad litem, or special advocate.
- 14 (6) Information that identifies a person as a participant in or recipient of substance abuse treatment
15 services may be disclosed only as allowed by federal substance abuse confidentiality laws, including the consent
16 provisions of the law.
- 17 (7) The confidentiality provisions of this section must be construed to allow a court of this state to share
18 information with other courts of this state or of another state when necessary to expedite the interstate placement
19 of children.
- 20 (8) A person who is authorized to receive records under this section shall maintain the confidentiality of
21 the records and may not disclose information in the records to anyone other than the persons described in
22 subsections (3)(a) and (4). However, this subsection may not be construed to compel a family member to keep
23 the proceedings confidential.
- 24 (9) A news organization or its employee, including a freelance writer or reporter, is not liable for reporting
25 facts or statements made by an immediate family member under subsection (8) if the news organization,
26 employee, writer, or reporter maintains the confidentiality of the child who is the subject of the proceeding.
- 27 (10) This section is not intended to affect the confidentiality of criminal court records, records of law
28 enforcement agencies, or medical records covered by state or federal disclosure limitations.
- 29 (11) Copies of records, evaluations, reports, or other evidence obtained or generated pursuant to this
30 section that are provided to the parent, grandparent, aunt, uncle, brother, sister, guardian, or parent's or

1 guardian's attorney must be provided without cost."

2

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

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

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

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

19 (4) The county attorney or the county attorney's designee is authorized to receive confidential criminal
20 justice information for the purpose of cooperating with the child abuse and neglect review commission established
21 in [section 1] and local fetal, infant, child, and maternal mortality review teams. The county attorney or the county
22 attorney's designee may, in that person's discretion, disclose information determined necessary to the goals of
23 the review commission or the review team. The review commission, the review team, and the county attorney or
24 the county attorney's designee shall maintain the confidentiality of the information.

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

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

1 or county's interest;

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

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

6 (iv) request the court to:

7 (A) conduct an in camera review of the confidential criminal justice information to determine whether the
8 demands of individual privacy do not clearly exceed the merits of public disclosure; and

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

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

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

17 (6) The procedures set forth in subsection (5) are not an exclusive remedy. A person or organization may
18 file any action for dissemination of information that the person or organization considers appropriate and
19 permissible."
20

21 **Section 6.** Section 50-16-522, MCA, is amended to read:

22 **"50-16-522. Representative of deceased patient.** Except as provided in [section 2] and 50-19-402,
23 a personal representative of a deceased patient may exercise all of the deceased patient's rights under this part.
24 If there is no personal representative or upon discharge of the personal representative, a deceased patient's
25 rights under this part may be exercised by the surviving spouse, a parent, an adult child, an adult sibling, or any
26 other person who is authorized by law to act for the deceased patient."
27

28 **Section 7.** Section 50-16-525, MCA, is amended to read:

29 **"50-16-525. Disclosure by health care provider.** (1) Except as authorized in [section 2], 50-16-529,
30 50-16-530, and 50-19-402 or as otherwise specifically provided by law or the Montana Rules of Civil Procedure,

1 a health care provider, an individual who assists a health care provider in the delivery of health care, or an agent
2 or employee of a health care provider may not disclose health care information about a patient to any other
3 person without the patient's written authorization. A disclosure made under a patient's written authorization must
4 conform to the authorization.

5 (2) A health care provider shall maintain, in conjunction with a patient's recorded health care information,
6 a record of each person who has received or examined, in whole or in part, the recorded health care information
7 during the preceding 3 years, except for a person who has examined the recorded health care information under
8 50-16-529(1) or (2). The record of disclosure must include the name, address, and institutional affiliation, if any,
9 of each person receiving or examining the recorded health care information, the date of the receipt or
10 examination, and to the extent practicable a description of the information disclosed."

11

12 **Section 8.** Section 50-16-804, MCA, is amended to read:

13 **"50-16-804. Representative of deceased patient's estate.** Except as provided in [section 2] and
14 50-19-402, a personal representative of a deceased patient's estate may exercise all of the deceased patient's
15 rights under this part. If there is no personal representative or upon discharge of the personal representative, a
16 deceased patient's rights under this part may be exercised by the surviving spouse, a parent, an adult child, an
17 adult sibling, or any other person who is authorized by law to act for the deceased person."

18

19 **Section 9.** Section 50-16-805, MCA, is amended to read:

20 **"50-16-805. Disclosure of information allowed for certain purposes.** (1) To the extent provided in
21 39-71-604 and 50-16-527, a signed claim for workers' compensation or occupational disease benefits authorizes
22 disclosure to the workers' compensation insurer, as defined in 39-71-116, by the health care provider.

23 (2) A health care provider may disclose health care information about an individual for law enforcement
24 purposes if the disclosure is to:

25 (a) federal, state, or local law enforcement authorities to the extent required by law; or

26 (b) a law enforcement officer about the general physical condition of a patient being treated in a health
27 care facility if the patient was injured by the possible criminal act of another.

28 (3) A health care provider may disclose health care information to:

29 (a) a fetal, infant, child, and maternal mortality review team for the purposes of 50-19-402; and

30 (b) the child abuse and neglect review commission established in [section 1]."

1
2 **NEW SECTION. Section 10. Codification instruction.** (1) [Section 1] is intended to be codified as an
3 integral part of Title 2, chapter 15, part 20, and the provisions of Title 2, chapter 15, part 20, apply to [section 1].

4 (2) [Section 2] is intended to be codified as an integral part of Title 41, chapter 3, and the provisions of
5 Title 41, chapter 3, apply to [section 2].

6
7 **NEW SECTION. Section 11. Effective date -- applicability.** [This act] is effective on passage and
8 approval and applies to child abuse and neglect cases resulting in a fatality or near fatality that occurred on or
9 after [the effective date of this act].

10 - END -