

1 HOUSE BILL NO. 468

2 INTRODUCED BY J. TREBAS

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING CHILD ABUSE AND NEGLECT LAWS;
5 REQUIRING OPEN COURT PROCEEDINGS; REVISING CONFIDENTIALITY PROVISIONS OF RECORDS;
6 REQUIRING COURT ORDERS FOR CERTAIN ACTIONS; REVISING TIMELINES FOR DESTROYING
7 CERTAIN INFORMATION; AMENDING SECTIONS 41-3-202, 41-3-205, AND 41-3-301, MCA; AND PROVIDING
8 AN APPLICABILITY DATE."

9

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

11

12 NEW SECTION. **Section 1. Legislative findings -- intent.** (1) The legislature finds that the state's
13 handling of child abuse and neglect cases has come under increasing scrutiny in recent years as people seek
14 to ensure that the cases are handled in a manner that protects the health, safety, and welfare of Montana's
15 children.

16 (2) The legislature further finds that the number of child abuse and neglect cases continues to increase,
17 creating the potential for cases to receive less scrutiny than necessary as they are investigated and adjudicated.

18 (3) The legislature further finds that a state interest exists in ensuring that court proceedings involving
19 child abuse and neglect cases proceed in a manner that supports the best interests of the child.

20 (4) It is the intent of the legislature to allow for open court proceedings in child abuse and neglect cases
21 except under limited circumstances.

22

23 NEW SECTION. **Section 2. Court proceedings to be open -- exceptions.** (1) Except as provided in
24 subsection (2), a court proceeding held under Title 41, chapter 3, must be open to the public.

25 (2) A court may close a hearing upon a motion by any party other than the state during the testimony
26 of a witness who is a child or who is the subject of the petition if the court finds that closing the hearing is
27 necessary to protect the welfare of the child. In making the determination, the court shall consider the desire of
28 the child or child's family or guardian to have the proceeding closed for the child's testimony.

29 (3) At the beginning of a hearing that is open to the public, the court shall:

30 (a) admonish all attendees that they are prohibited from disclosing any information that may identify any

1 person whose identity will be disclosed during the proceeding, including but not limited to the child and the child's
2 siblings, parents, guardians, and caregivers; and

3 (b) explain contempt of court and the possible consequences of violating an order of the court.

4 (4) A person who remains in court after the admonition required under subsection (3) shall abide by the
5 court's order prohibiting disclosure of the information. The court may find a person who fails to do so in contempt
6 of court.

7 (5) (a) Except as provided in subsection (5)(b), records involving court proceedings that are open to the
8 public under this section are public records and open to inspection.

9 (b) The record of any portion of a proceeding that is closed to the public is not a public record.

10 (6) If a court record is released to a person who was not present in court at the time the hearing was
11 held, the person must sign a statement agreeing not to disclose any information that may identify anyone whose
12 identity was disclosed during the proceeding. A person who discloses personally identifying information from the
13 records is subject to the penalties for false swearing provided in 45-7-202.

14

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

16 **"41-3-202. Action on reporting.** (1) Upon receipt of a report that a child is or has been abused or
17 neglected, the department shall promptly assess the information contained in the report and make a
18 determination regarding the level of response required and the timeframe within which action must be initiated.
19 If the department determines that an investigation is required, a social worker, the county attorney, or a peace
20 officer shall promptly conduct a thorough investigation into the circumstances surrounding the allegations of
21 abuse or neglect of the child. The investigation may include an investigation at the home of the child involved,
22 the child's school or day-care facility, or any other place where the child is present and into all other nonfinancial
23 matters that in the discretion of the investigator are relevant to the investigation. In conducting an investigation
24 under this section, a social worker may not inquire into the financial status of the child's family or of any other
25 person responsible for the child's care, except as necessary to ascertain eligibility for state or federal assistance
26 programs or to comply with the provisions of 41-3-446.

27 (2) An initial investigation of alleged abuse or neglect may be conducted when an anonymous report is
28 received. However, the investigation must within 48 hours result in the development of independent,
29 corroborative, and attributable information in order for the investigation to continue. Without the development of
30 independent, corroborative, and attributable information, a child may not be removed from the home.

1 (3) (a) The social worker is responsible for assessing the family and planning for the child. If the child
2 is treated at a medical facility, the social worker, county attorney, or peace officer, consistent with reasonable
3 medical practice, ~~has the right of access to~~ shall obtain a court order to access:

4 (i) the child for interviews, photographs, and securing physical evidence; and

5 (ii) ~~has the right of access to~~ relevant hospital and medical records pertaining to the child.

6 (b) If an interview of the child is considered necessary, the social worker, county attorney, or peace
7 officer may conduct an interview of the child upon obtaining a court order for the interview. The interview may be
8 conducted in the presence of the parent or guardian or an employee of the school or day-care facility attended
9 by the child.

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

12 (5) (a) If from the investigation the department has ~~reasonable~~ probable cause to suspect that the child
13 suffered abuse or neglect, the department may provide emergency protective services to the child, pursuant to
14 41-3-301, or voluntary protective services pursuant to 41-3-302, and may provide protective services to any other
15 child under the same care. The department shall:

16 (i) after interviewing the parent or guardian, if reasonably available, document its determination regarding
17 abuse or neglect of a child; and

18 (ii) notify the child's family of its investigation and determination, unless the notification can reasonably
19 be expected to result in harm to the child or other person.

20 (b) If from the investigation it is determined that the child has not suffered abuse or neglect and the initial
21 report is determined to be unfounded, the department and the social worker, county attorney, or peace officer
22 who conducted the investigation into the circumstances surrounding the allegations of abuse or neglect shall
23 ~~destroy~~ retain all of their records concerning the report and the investigation. ~~The destruction must be completed~~
24 ~~within 30 days of~~ for 1 year after the determination that the child has not suffered abuse or neglect. The records
25 must be destroyed after the 1-year period has elapsed.

26 (c) (i) If the report is unsubstantiated, the department and the social worker who conducted the
27 investigation into the circumstances surrounding the initial allegations of abuse or neglect shall destroy all of the
28 records, except for medical records, concerning the unsubstantiated report and the investigation within 30 days
29 after the end of the 3-year period starting from the date the report was determined to be unsubstantiated, unless:

30 (A) there had been a previous or there is a subsequent substantiated report concerning the same

1 person; or

2 (B) an order has been issued under this chapter based on the circumstances surrounding the initial
3 allegations.

4 (ii) A person who is the subject of an unsubstantiated report that was made prior to October 1, 2003, and
5 after which a period of 3 years has elapsed without there being submitted a subsequent substantiated report or
6 an order issued under this chapter based on the circumstances surrounding the initial allegations may request
7 that the department destroy all of the records concerning the unsubstantiated report as provided in subsection
8 (5)(c)(i).

9 (6) The investigating social worker, within 60 days of commencing an investigation, shall also furnish a
10 written report to the department and, upon request, to the family. Subject to subsections (5)(b) and (5)(c), the
11 department shall maintain a record system documenting investigations and determinations of child abuse and
12 neglect cases.

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

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

19

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

21 **"41-3-205. Confidentiality -- disclosure exceptions.** (1) The case records of the department and its
22 local affiliate, the local office of public assistance, and the county attorney,~~and the court~~ concerning actions taken
23 under this chapter and all records concerning reports of child abuse and neglect must be kept confidential except
24 as provided by this section. Records of the court concerning actions taken under this chapter are subject to the
25 requirements of [section 2]. Except as provided in subsections (8) and (9), a person who purposely or knowingly
26 permits or encourages the unauthorized dissemination of the contents of case records is guilty of a misdemeanor.

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

30 (3) Records, including case notes, correspondence, evaluations, videotapes, and interviews, unless

1 otherwise protected by this section or unless disclosure of the records is determined to be detrimental to the child
2 or harmful to another person who is a subject of information contained in the records, may be disclosed to the
3 following persons or entities in this state and any other state or country:

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

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

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

13 (d) a parent, grandparent, aunt, uncle, brother, sister, guardian, mandatory reporter provided for in
14 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
15 the records or other person responsible for the child's welfare, without disclosure of the identity of any person who
16 reported or provided information on the alleged child abuse or neglect incident contained in the records;

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

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

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

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

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

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

29 (k) the members of an interdisciplinary child protective team authorized under 41-3-108 or of a family
30 group decisionmaking meeting for the purposes of assessing the needs of the child and family, formulating a

- 1 treatment plan, and monitoring the plan;
- 2 (l) the coroner or medical examiner when determining the cause of death of a child;
- 3 (m) a child fatality review team recognized by the department;
- 4 (n) a department or agency investigating an applicant for a license or registration that is required to
5 operate a youth care facility, day-care facility, or child-placing agency;
- 6 (o) a person or entity who is carrying out background, employment-related, or volunteer-related
7 screening of current or prospective employees or volunteers who have or may have unsupervised contact with
8 children through employment or volunteer activities. A request for information under this subsection (3)(o) must
9 be made in writing. Disclosure under this subsection (3)(o) is limited to information that indicates a risk to children,
10 persons with developmental disabilities, or older persons posed by the person about whom the information is
11 sought, as determined by the department.
- 12 ~~(p) the news media, a member of the United States congress, or a state legislator, if disclosure is limited
13 to confirmation of factual information regarding how the case was handled and if disclosure does not violate the
14 privacy rights of the child or the child's parent or guardian, as determined by the department;~~
- 15 ~~(q)~~(p) an employee of the department or other state agency if disclosure of the records is necessary for
16 administration of programs designed to benefit the child;
- 17 ~~(r)~~(q) an agency of an Indian tribe, a qualified expert witness, or the relatives of an Indian child if
18 disclosure of the records is necessary to meet requirements of the federal Indian Child Welfare Act;
- 19 ~~(s)~~(r) a juvenile probation officer who is working in an official capacity with the child who is the subject
20 of a report in the records;
- 21 ~~(t)~~(s) an attorney who is hired by or represents the department if disclosure is necessary for the
22 investigation, defense, or prosecution of a case involving child abuse or neglect;
- 23 ~~(u)~~(t) a foster care review committee established under 41-3-115 or, when applicable, a citizen review
24 board established under Title 41, chapter 3, part 10;
- 25 ~~(v)~~(u) a school employee participating in an interview of a child by a social worker, county attorney, or
26 peace officer, as provided in 41-3-202;
- 27 ~~(w)~~(v) a member of a county interdisciplinary child information and school safety team formed under the
28 provisions of 52-2-211;
- 29 ~~(x)~~(w) members of a local interagency staffing group provided for in 52-2-203;
- 30 ~~(y)~~(x) a member of a youth placement committee formed under the provisions of 41-5-121; or

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

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

5 (i) the attorney general;

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

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

10 (iv) the office of the child and family ombudsman; or

11 (v) a state legislator, a member of the United States congress, or the news media. The information
12 disclosed under this subsection (4)(a)(v) may include the names of adults involved in the matter but may not
13 contain other personally identifiable information including but not limited to dates of birth, social security numbers,
14 or the names of children.

15 (b) The records described in subsection (3) must be promptly disclosed by the department to an
16 appropriate individual described in subsection (4)(a)(i) through (4)(a)(iv) or to a county interdisciplinary child
17 information and school safety team established pursuant to 52-2-211 upon the department's receipt of a report
18 indicating that any of the following has occurred:

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

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

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

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

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

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

30 (7) The confidentiality provisions of this section must be construed to allow a court of this state to share

1 information with other courts of this state or of another state when necessary to expedite the interstate placement
2 of children.

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

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

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

12 (11) Copies of records, evaluations, reports, or other evidence obtained or generated pursuant to this
13 section that are provided to the parent, grandparent, aunt, uncle, brother, sister, guardian, or parent's or
14 guardian's attorney must be provided without cost."

15

16 **Section 5.** Section 41-3-301, MCA, is amended to read:

17 **"41-3-301. Emergency protective service.** (1) Any child protective social worker of the department,
18 a peace officer, or the county attorney who has ~~reason~~ probable cause to believe any child is in immediate or
19 apparent danger of harm may immediately remove the child and place the child in a protective facility. After
20 ensuring that the child is safe, the department may make a request for further assistance from the law
21 enforcement agency or take appropriate legal action. The person or agency placing the child shall notify the
22 parents, parent, guardian, or other person having physical or legal custody of the child of the placement at the
23 time the placement is made or as soon after placement as possible. Notification under this subsection must
24 include the reason for removal, information regarding the show cause hearing, and the purpose of the show
25 cause hearing and must advise the parents, parent, guardian, or other person having physical or legal custody
26 of the child that the parents, parent, guardian, or other person may have a support person present during any
27 in-person meeting with the social worker concerning emergency protective services.

28 (2) If a social worker of the department, a peace officer, or the county attorney determines in an
29 investigation of abuse or neglect of a child that the child is in danger because of the occurrence of partner or
30 family member assault, as provided for in 45-5-206, against an adult member of the household or that the child

1 needs protection as a result of the occurrence of partner or family member assault against an adult member of
2 the household, the department shall take appropriate steps for the protection of the child, which may include:

3 (a) making reasonable efforts to protect the child and prevent the removal of the child from the parent
4 or guardian who is a victim of alleged partner or family member assault;

5 (b) making reasonable efforts to remove the person who allegedly committed the partner or family
6 member assault from the child's residence if it is determined that the child or another family or household member
7 is in danger of partner or family member assault; and

8 (c) providing services to help protect the child from being placed with or having unsupervised visitation
9 with the person alleged to have committed partner or family member assault until the department determines that
10 the alleged offender has met conditions considered necessary to protect the safety of the child.

11 (3) If the department determines that an adult member of the household is the victim of partner or family
12 member assault, the department shall provide the adult victim with a referral to a domestic violence program.

13 (4) A child who has been removed from the child's home or any other place for the child's protection or
14 care may not be placed in a jail.

15 (5) The department may locate and contact extended family members upon placement of a child in
16 out-of-home care. The department may share information with extended family members for placement and case
17 planning purposes.

18 (6) [Except as provided in 41-3-305,] if a child is removed from the child's home by the department, a
19 child protective social worker shall submit an affidavit regarding the circumstances of the emergency removal to
20 the county attorney and provide a copy of the affidavit to the parents or guardian, if possible, within 2 working
21 days of the emergency removal. An abuse and neglect petition must be filed within 5 working days, excluding
22 weekends and holidays, of the emergency removal of a child unless arrangements acceptable to the agency for
23 the care of the child have been made by the parents or voluntary protective services are provided pursuant to
24 41-3-302.

25 (7) Except as provided in the federal Indian Child Welfare Act, if applicable, a show cause hearing must
26 be held within 20 days of the filing of the petition unless otherwise stipulated by the parties pursuant to 41-3-434.

27 (8) If the department determines that a petition for immediate protection and emergency protective
28 services must be filed to protect the safety of the child, the social worker shall interview the parents of the child
29 to whom the petition pertains, if the parents are reasonably available, before the petition may be filed. The district
30 court may immediately issue an order for immediate protection of the child.

1 (9) The department shall make the necessary arrangements for the child's well-being as are required
2 prior to the court hearing. (Bracketed language in subsection (6) terminates June 30, 2017--sec. 7, Ch. 376, L.
3 2015.)"

4
5 **NEW SECTION. Section 6. Codification instruction.** [Sections 1 and 2] are intended to be codified
6 as an integral part of Title 41, chapter 3, part 4, and the provisions of Title 41, chapter 3, part 4, apply to [sections
7 1 and 2].

8
9 **NEW SECTION. Section 7. Applicability.** [This act] applies to court proceedings involving petitions
10 initiated on or after October 1, 2017.

11 - END -