

SENATE BILL NO. 229

INTRODUCED BY F. MOORE, M. CAFERRO

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE RELEASE OR DISCLOSURE OF CHILD ABUSE OR NEGLECT RECORDS TO CERTAIN LAW ENFORCEMENT, PROSECUTORIAL, AND CHILD WELFARE ENTITIES AND INDIVIDUALS WHEN A CHILD HAS BEEN EXPOSED TO A DANGEROUS DRUG; AMENDING SECTION 41-3-205, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

Section 1. Section 41-3-205, MCA, is amended to read:

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

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

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

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

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

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

26 (o) a person or entity who is carrying out background, employment-related, or volunteer-related
27 screening of current or prospective employees or volunteers who have or may have unsupervised contact with
28 children through employment or volunteer activities. A request for information under this subsection (3)(o) must
29 be made in writing. Disclosure under this subsection (3)(o) is limited to information that indicates a risk to children,
30 persons with developmental disabilities, or older persons posed by the person about whom the information is

1 sought, as determined by the department.

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

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

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

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

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

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

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

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

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

20 (y) 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 district
22 to receive the information with respect to a student of the district who is a client of the department.

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

25 (i) the attorney general;

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

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

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

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

- 5 (i) the death of the child as a result of child abuse or neglect;
 6 (ii) a sexual offense, as defined in 46-23-502, against the child;
 7 (iii) exposure of the child to an actual and not a simulated violent offense as defined in 46-23-502; ~~or~~ OR
 8 (iv) child abuse or neglect, as defined in 41-3-102, due to exposure of the child to circumstances
 9 constituting the criminal manufacture or distribution of dangerous drugs; ~~or~~
 10 ~~(v) exposure of the child to a dangerous drug as defined in 50-32-101. For the purposes of this~~
 11 ~~subsection (4)(b)(v), exposure occurs when a child is caused or permitted to inhale, be exposed to, have contact~~
 12 ~~with, or ingest a dangerous drug or to be exposed to or have contact with drug paraphernalia as defined in~~
 13 ~~45-10-101.~~

14 (C) (I) THE DEPARTMENT SHALL PROMPTLY DISCLOSE THE RESULTS OF AN INVESTIGATION TO AN INDIVIDUAL
 15 DESCRIBED IN SUBSECTION (4)(A) OR TO A COUNTY INTERDISCIPLINARY CHILD INFORMATION AND SCHOOL SAFETY TEAM
 16 ESTABLISHED PURSUANT TO 52-2-211 UPON THE DETERMINATION THAT:

17 (A) THERE IS REASONABLE CAUSE TO SUSPECT THAT A CHILD HAS BEEN EXPOSED TO A SCHEDULE I OR
 18 SCHEDULE II DRUG WHOSE MANUFACTURE, SALE, OR POSSESSION IS PROHIBITED UNDER STATE LAW; OR

19 (B) A CHILD HAS BEEN EXPOSED TO DRUG PARAPHERNALIA USED FOR THE MANUFACTURE, SALE, OR POSSESSION
 20 OF A SCHEDULE I OR SCHEDULE II DRUG THAT IS PROHIBITED BY STATE LAW.

21 (II) FOR THE PURPOSES OF THIS SUBSECTION (4)(C), EXPOSURE OCCURS WHEN A CHILD IS CAUSED OR PERMITTED
 22 TO INHALE, HAVE CONTACT WITH, OR INGEST A SCHEDULE I OR SCHEDULE II DRUG THAT IS PROHIBITED BY STATE LAW OR
 23 HAVE CONTACT WITH DRUG PARAPHERNALIA AS DEFINED IN 45-10-101.

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 NEW SECTION. **Section 2. Effective date.** [This act] is effective July 1, 2017.

17

- END -