

SENATE BILL NO. 216

INTRODUCED BY R. WEBB

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 REVISING PROCEDURES RELATED TO THE OFFICE OF THE CHILD AND FAMILY OMBUDSMAN; REQUIRING NOTIFICATION TO A COURT OF A CASE UNDER OMBUDSMAN REVIEW; ESTABLISHING TIMELINES FOR DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES RESPONSES TO OMBUDSMAN REPORTS; REQUIRING THE ATTORNEY GENERAL TO NOTIFY COURTS OF REPEATED VIOLATIONS OF POLICIES OR PRACTICES; AND AMENDING SECTIONS 41-3-205, 41-3-1209, 41-3-1211, 41-3-1212, AND 41-3-1213, MCA."

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

NEW SECTION. **Section 1. Notification to courts.** (1) The ombudsman shall notify a court having jurisdiction in a case under investigation by the ombudsman that the ombudsman has accepted and will be investigating a request for assistance. When the investigation is complete, the ombudsman shall provide the court with the ombudsman's findings and conclusions.

(2) The information provided to a court about a specific case must also be provided to the parties to the case.

(3) The attorney general shall forward to all district courts of this state any reports of repeated violations of department policies, practices, or procedures identified by the ombudsman as required under 41-3-1212.

Section 2. 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 (9) and (10), 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.



- 1 (3) Records, including case notes, correspondence, evaluations, videotapes, and interviews, unless
2 otherwise protected by this section or unless disclosure of the records is determined to be detrimental to the child
3 or harmful to another person who is a subject of information contained in the records, may be disclosed to the
4 following persons or entities in this state and any other state or country:
- 5 (a) a department, agency, or organization, including a federal agency, military enclave, or Indian tribal
6 organization, that is legally authorized to receive, inspect, or investigate reports of child abuse or neglect and that
7 otherwise meets the disclosure criteria contained in this section;
- 8 (b) a licensed youth care facility or a licensed child-placing agency that is providing services to the family
9 or child who is the subject of a report in the records or to a person authorized by the department to receive
10 relevant information for the purpose of determining the best interests of a child with respect to an adoptive
11 placement;
- 12 (c) a health or mental health professional who is treating the family or child who is the subject of a report
13 in the records;
- 14 (d) a parent, grandparent, aunt, uncle, brother, sister, guardian, mandatory reporter provided for in
15 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
16 the records or other person responsible for the child's welfare, without disclosure of the identity of any person who
17 reported or provided information on the alleged child abuse or neglect incident contained in the records;
- 18 (e) a child named in the records who was allegedly abused or neglected or the child's legal guardian or
19 legal representative, including the child's guardian ad litem or attorney or a special advocate appointed by the
20 court to represent a child in a pending case;
- 21 (f) the state protection and advocacy program as authorized by 42 U.S.C. 15043(a)(2);
- 22 (g) approved foster and adoptive parents who are or may be providing care for a child;
- 23 (h) a person about whom a report has been made and that person's attorney, with respect to the relevant
24 records pertaining to that person only and without disclosing the identity of the reporter or any other person whose
25 safety may be endangered;
- 26 (i) an agency, including a probation or parole agency, that is legally responsible for the supervision of
27 an alleged perpetrator of child abuse or neglect;
- 28 (j) a person, agency, or organization that is engaged in a bona fide research or evaluation project and
29 that is authorized by the department to conduct the research or evaluation;
- 30 (k) the members of an interdisciplinary child protective team authorized under 41-3-108 or of a family

- 1 group decisionmaking meeting for the purposes of assessing the needs of the child and family, formulating a
2 treatment plan, and monitoring the plan;
- 3 (l) the coroner or medical examiner when determining the cause of death of a child;
- 4 (m) a child fatality review team recognized by the department[, including the child abuse and neglect
5 review commission established in 2-15-2019];
- 6 (n) a department or agency investigating an applicant for a license or registration that is required to
7 operate a youth care facility, day-care facility, or child-placing agency;
- 8 (o) a person or entity who is carrying out background, employment-related, or volunteer-related
9 screening of current or prospective employees or volunteers who have or may have unsupervised contact with
10 children through employment or volunteer activities. A request for information under this subsection (3)(o) must
11 be made in writing. Disclosure under this subsection (3)(o) is limited to information that indicates a risk to children,
12 persons with developmental disabilities, or older persons posed by the person about whom the information is
13 sought, as determined by the department.
- 14 (p) the news media, if disclosure is limited to confirmation of factual information regarding how the case
15 was handled and if disclosure does not violate the privacy rights of the child or the child's parent or guardian, as
16 determined by the department;
- 17 (q) an employee of the department or other state agency if disclosure of the records is necessary for
18 administration of programs designed to benefit the child;
- 19 (r) an agency of an Indian tribe, a qualified expert witness, or the relatives of an Indian child if disclosure
20 of the records is necessary to meet requirements of the federal Indian Child Welfare Act;
- 21 (s) a juvenile probation officer who is working in an official capacity with the child who is the subject of
22 a report in the records;
- 23 (t) an attorney who is hired by or represents the department if disclosure is necessary for the
24 investigation, defense, or prosecution of a case involving child abuse or neglect;
- 25 (u) a foster care review committee established under 41-3-115 or, when applicable, a citizen review
26 board established under Title 41, chapter 3, part 10;
- 27 (v) a school employee participating in an interview of a child by a social worker, county attorney, or peace
28 officer, as provided in 41-3-202;
- 29 (w) a member of a county interdisciplinary child information and school safety team formed under the
30 provisions of 52-2-211;

- 1 (x) members of a local interagency staffing group provided for in 52-2-203;
- 2 (y) a member of a youth placement committee formed under the provisions of 41-5-121; or
- 3 (z) a principal of a school or other employee of the school district authorized by the trustees of the district
- 4 to receive the information with respect to a student of the district who is a client of the department.
- 5 (4) (a) The records described in subsection (3) must be disclosed to a member of the United States
- 6 congress or a member of the Montana legislature if all of the following requirements are met:
- 7 (i) the member receives a written inquiry regarding a child and whether the laws of the United States or
- 8 the state of Montana that protect children from abuse or neglect are being complied with or whether the laws need
- 9 to be changed to enhance protections for children;
- 10 (ii) the member submits a written request to the department requesting to review the records relating to
- 11 the written inquiry. The member's request must include a copy of the written inquiry, the name of the child whose
- 12 records are to be reviewed, and any other information that will assist the department in locating the records.
- 13 (iii) before reviewing the records, the member:
- 14 (A) signs a form that outlines the state and federal laws regarding confidentiality and the penalties for
- 15 unauthorized release of the information; and
- 16 (B) receives from the department an orientation of the content and structure of the records.
- 17 (b) Records disclosed pursuant to subsection (4)(a) are confidential, must be made available for the
- 18 member to view at a location determined by the department but may not be copied, recorded, photographed, or
- 19 otherwise replicated by the member, and must remain solely in the department's possession.
- 20 (c) Access to records requested pursuant to this subsection (4) is limited to 6 months from the date the
- 21 written request to review records was received by the department.
- 22 (5) (a) The records described in subsection (3) must be promptly released to any of the following
- 23 individuals upon a written request by the individual to the department or the department's designee:
- 24 (i) the attorney general;
- 25 (ii) a county attorney or deputy county attorney of the county in which the alleged abuse or neglect
- 26 occurred;
- 27 (iii) a peace officer, as defined in 45-2-101, in the jurisdiction in which the alleged abuse or neglect
- 28 occurred; or
- 29 (iv) the office of the child and family ombudsman.
- 30 (b) The records described in subsection (3) must be promptly disclosed by the department to an

1 appropriate individual described in subsection (5)(a) or to a county interdisciplinary child information and school
2 safety team established pursuant to 52-2-211 upon the department's receipt of a report indicating that any of the
3 following has occurred:

- 4 (i) the death of the child as a result of child abuse or neglect;
5 (ii) a sexual offense, as defined in 46-23-502, against the child;
6 (iii) exposure of the child to an actual and not a simulated violent offense as defined in 46-23-502; or
7 (iv) child abuse or neglect, as defined in 41-3-102, due to exposure of the child to circumstances
8 constituting the criminal manufacture or distribution of dangerous drugs.

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

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

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

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

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

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

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

28 (9) A person who is authorized to receive records under this section shall maintain the confidentiality of
29 the records and may not disclose, except as required under [section 1] for the child and family ombudsman, any
30 information in the records to anyone other than the persons described in subsections (3)(a) and (5). However,

1 this subsection may not be construed to compel a family member to keep the proceedings confidential.

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

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

7 (12) Copies of records, evaluations, reports, or other evidence obtained or generated pursuant to this
8 section that are provided to the parent, grandparent, aunt, uncle, brother, sister, guardian, or parent's or
9 guardian's attorney must be provided without cost. (Bracketed language in subsection (3)(m) terminates
10 September 30, 2021--sec. 12, Ch. 235, L. 2017.) "

11

12 **Section 3.** Section 41-3-1209, MCA, is amended to read:

13 **"41-3-1209. Purpose and intent.** The legislature finds that an independent, impartial, and confidential
14 ombudsman serves:

15 (1) to protect the interests and rights of Montana's children and families; and

16 (2) to strengthen child and family services by working in collaboration with the department and with
17 appropriate county attorneys and district courts in cases under review."

18

19 **Section 4.** Section 41-3-1211, MCA, is amended to read:

20 **"41-3-1211. Powers and duties.** The powers and duties of the ombudsman are:

21 (1) to respond to requests for assistance regarding administrative acts and to investigate administrative
22 acts;

23 (2) to investigate circumstances surrounding reports that are provided to the ombudsman pursuant to
24 41-3-209;

25 (3) to inspect, copy, or subpoena records as needed to perform the ombudsman's duties under this part;

26 (4) to take appropriate steps to ensure that persons are made aware of the purpose, services, and
27 procedures of the ombudsman and how to contact the ombudsman;

28 (5) to share relevant findings related to an investigation, subject to disclosure restrictions and
29 confidentiality requirements, with individuals or entities legally authorized to receive, inspect, or investigate reports
30 of child abuse or neglect;

- 1 (6) to periodically review department procedures and promote best practices and effective programs by:
- 2 (a) working collaboratively with the department to improve procedures, practices, and programs; and
- 3 (b) notifying the attorney general and the governor when investigations show a repeated pattern of
- 4 violations by department employees of department policies, practices, or procedures;
- 5 (7) to undertake, participate in, and cooperate with persons and the department in activities, including
- 6 but not limited to conferences, inquiries, panels, meetings, or studies, that serve to improve the manner in which
- 7 the department functions;
- 8 (8) to provide education on the legal rights of children;
- 9 (9) to apply for and accept grants, gifts, contributions, and bequests of funds for the purpose of carrying
- 10 out the ombudsman's responsibilities; and
- 11 (10) to report annually to the attorney general and the children, families, health, and human services
- 12 interim committee. The report must be public and may contain recommendations from the ombudsman regarding
- 13 systematic improvements for the department."

14

15 **Section 5.** Section 41-3-1212, MCA, is amended to read:

16 **"41-3-1212. Investigations -- discretion -- procedure -- review and action by attorney general. (1)**

17 The ombudsman shall investigate a request for assistance unless:

- 18 (a) the request for assistance could reasonably be addressed by another remedy or channel;
- 19 (b) the request for assistance is trivial, frivolous, vexatious, or not made in good faith;
- 20 (c) the request for assistance is too delayed to justify an investigation;
- 21 (d) the person requesting assistance is not personally aggrieved by the subject matter of the request;

22 or

- 23 (e) the request for assistance has been previously investigated by the ombudsman.

24 (2) (a) After an investigation is completed, the ombudsman shall provide to the department any findings,

25 conclusions, and recommendations. No later than 10 days after the report is sent, the department shall notify the

26 ombudsman that the department has received and is reviewing the report.

27 ~~(b) At the ombudsman's request, the~~ The department shall inform the ombudsman ~~in a timely manner~~

28 no later than 30 days after receipt of the report about any action taken to address or how the department has

29 resolved or corrected any problems identified by the ombudsman.

30 (c) If the department has not resolved or corrected a problem:

1 (i) the department shall inform the ombudsman of any reasons for not addressing the ombudsman's
2 findings, conclusions, and recommendations; and

3 (ii) the ombudsman shall notify the governor, the attorney general, and the district court having
4 jurisdiction over the case involved.

5 (3) (a) The ombudsman shall review quarterly the findings and conclusions made in completed
6 investigations. If a review shows that the department has violated a department policy, practice, or procedure in
7 25% of the cases completed that quarter, the ombudsman shall provide a report on the violations to:

8 (i) the governor; and

9 (ii) the attorney general.

10 (b) The attorney general shall forward a copy of the report to each district court in this state."

11

12 **Section 6.** Section 41-3-1213, MCA, is amended to read:

13 **"41-3-1213. Privilege.** ~~The Except as necessary to enforce the provisions of this part, the ombudsman~~
14 ~~may not be compelled to testify or produce evidence in any judicial or administrative proceeding with respect to~~
15 ~~information provided to a court pursuant to [section 1] or 41-3-1212(2)(c) and any other matter involving the~~
16 ~~exercise of the ombudsman's official duties, except as necessary to enforce the provisions of this part."~~

17

18 NEW SECTION. Section 7. Codification instruction. [Section 1] is intended to be codified as an
19 integral part of Title 41, chapter 3, part 12, and the provisions of Title 41, chapter 3 apply to [section 1].

20

- END -