

1 HOUSE BILL NO. 559

2 INTRODUCED BY B. MERCER

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO CONFIDENTIAL CRIMINAL
5 JUSTICE INFORMATION; PROVIDING CERTAIN NOTICE REQUIREMENTS TO INDIVIDUALS WHO MAY
6 HAVE A PRIVACY INTEREST IN THE INFORMATION REQUESTED THAT MUST BE MET BY THE TIME A
7 DECLARATORY JUDGMENT ACTION IS FILED; AND AMENDING SECTION 44-5-303, MCA."

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

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11 **Section 1.** Section 44-5-303, MCA, is amended to read:

12 **"44-5-303. (Temporary) Dissemination of confidential criminal justice information -- procedure**
13 **for dissemination through court.** (1) Except as provided in subsections (2) through (4), dissemination of
14 confidential criminal justice information is restricted to criminal justice agencies, to those authorized by law to
15 receive it, and to those authorized to receive it by a district court upon a written finding that the demands of
16 individual privacy do not clearly exceed the merits of public disclosure. Permissible dissemination of confidential
17 criminal justice information under this subsection includes receiving investigative information from and sharing
18 investigative information with a chief of a governmental fire agency organized under Title 7, chapter 33, or fire
19 marshal concerning the criminal investigation of a fire.

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

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

28 (4) The county attorney or the county attorney's designee is authorized to receive confidential criminal

1 justice information for the purpose of cooperating with the child abuse and neglect review commission
 2 established in 2-15-2019 and local fetal, infant, child, and maternal mortality review teams. The county attorney
 3 or the county attorney's designee may, in that person's discretion, disclose information determined necessary to
 4 the goals of the review commission or the review team. The review commission, the review team, and the
 5 county attorney or the county attorney's designee shall maintain the confidentiality of the information.

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

11 (i) file the action in the name of the city or county that the prosecutor represents and describe the
 12 city's or county's interest;

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

15 (iii) no later than the time of the filing of the declaratory judgment action:

16 (A) provide notice to a person with a privacy interest in information contained in the confidential
 17 criminal justice information and any other individual who would be affected by the release of the information of
 18 the request for release of confidential criminal justice information and the filing of the declaratory judgment
 19 action; and

20 (B) provide notice that the person may file an objection to disclosure with the district court if the
 21 person believes a privacy interest that they possess exceeds the merits of public disclosure;

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

24 ~~(iv)~~(v) request the court to:

25 (A) no sooner than 60 days following the filing of the declaratory judgment action to ensure an
 26 opportunity for a person seeking to protect a privacy interest, conduct an in camera review of the confidential
 27 criminal justice information to determine whether the demands of individual privacy do not clearly exceed the
 28 merits of public disclosure; and

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

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

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

9 (6) The procedures set forth in subsection (5) are not an exclusive remedy. A person or organization
10 may file any action for dissemination of information that the person or organization considers appropriate and
11 permissible. (Terminates September 30, 2021--sec. 12, Ch. 235, L. 2017.)

12 **44-5-303. (Effective October 1, 2021) Dissemination of confidential criminal justice information**
13 **-- procedure for dissemination through court.** (1) Except as provided in subsections (2) through (4),
14 dissemination of confidential criminal justice information is restricted to criminal justice agencies, to those
15 authorized by law to receive it, and to those authorized to receive it by a district court upon a written finding that
16 the demands of individual privacy do not clearly exceed the merits of public disclosure. Permissible
17 dissemination of confidential criminal justice information under this subsection includes receiving investigative
18 information from and sharing investigative information with a chief of a governmental fire agency organized
19 under Title 7, chapter 33, or fire marshal concerning the criminal investigation of a fire.

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

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

28 (4) The county attorney or the county attorney's designee is authorized to receive confidential criminal

1 justice information for the purpose of cooperating with local fetal, infant, child, and maternal mortality review
 2 teams. The county attorney or the county attorney's designee may, in that person's discretion, disclose
 3 information determined necessary to the goals of the review team. The review team and the county attorney or
 4 the designee shall maintain the confidentiality of the information.

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

14 (iii) no later than the time of the filing of the declaratory judgment action:

15 (A) provide notice to a person with a privacy interest in information contained in the confidential
 16 criminal justice information and any other individual who would be affected by release of the information of the
 17 request for release of confidential criminal justice information and the filing of the declaratory judgment action;

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19 (B) provide notice that the person may file an objection to disclosure with the district court if the
 20 person believes a privacy interest that they possess exceeds the merits of public disclosure;

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 26 criminal justice information to determine whether the demands of individual privacy do not clearly exceed the
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28 (B) order the release to the requesting party defendant of whatever portion of the investigative

1 information or edited version of the information the court determines appropriate.

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

6 (c) In an action filed for the court-ordered release of confidential criminal justice information under
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9 may file any action for dissemination of information that the person or organization considers appropriate and
10 permissible."

11 - END -