

1 HOUSE BILL NO. 385
2 INTRODUCED BY J. CARLSON, J. WINDY BOY, L. SHELDON-GALLOWAY, B. LER, A. REGIER, J. READ,
3 E. BOLDMAN, B. USHER, D. BARTEL, K. BOGNER, J. TREBAS, S. STEWART PEREGOY
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING DISCOVERY PROCEDURES IN CHILD ABUSE AND
6 NEGLECT PROCEEDINGS; REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN
7 SERVICES TO DISCLOSE INFORMATION ON REQUEST TO PARENTS WHO ARE PARTIES TO THE
8 PROCEEDING; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."
9

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
11

12 NEW SECTION. Section 1. Discovery procedure. (1) On request of a parent who is a party to the
13 proceeding, the department shall make available for examination and reproduction the following material and
14 information within the department's possession or control:

15 (a) the names, addresses, and statements of all persons who the department may call to provide
16 testimony;

17 (b) all written or oral statements, reports, case notes, correspondence, evaluations, interviews, and
18 documentation produced by the department or in the department's possession that addresses the parent or
19 child;

20 (c) all written reports or statements of experts who have personally examined the child or any
21 evidence, together with the results of any physical or psychological examinations;

22 (d) all papers, documents, photographs, videotapes, or tangible objects that the department may
23 use at trial or that were obtained from or purportedly belong to the parent; and

24 (e) all material or information that tends to support, mitigate, or negate the department's case
25 concerning the custody of and parental rights to the child.

26 (2) The department may impose reasonable conditions, including an appropriate stipulation
27 concerning the chain of custody, to protect physical evidence produced under subsection (1)(d).

28 (3) The department's obligation of disclosure extends to material and information in the possession

1 or control of members of the department's staff and of any other persons who have participated in the
2 investigation or evaluation of the case.

3 (4) On motion showing that the parent has a substantial need in the preparation of the case for
4 additional material or information not otherwise provided for and that the parent is unable, without undue
5 hardship, to obtain the substantial equivalent by other means, the court, in its discretion, may order the
6 department or any person to make it available to the parent. The court may, on the request of any person
7 affected by the order, vacate or modify the order if compliance would be unreasonable or oppressive.

8 ~~(5)~~ A court may establish reasonable restrictions to discovery with regard to children involved in
9 the matter.

10 ~~(5)(6)~~ If at any time during the course of the proceeding it is brought to the attention of the court that a
11 party has failed to comply with any of the provisions of this section or any order issued pursuant to this section,
12 the court may order any remedy that it finds just under the circumstances, including but not limited to:

- 13 (a) ordering disclosure of the information not previously disclosed;
- 14 (b) granting a continuance;
- 15 (c) holding a witness, party, or counsel in contempt for an intentional violation; or
- 16 (d) precluding a party from calling a witness, offering evidence, or raising a defense not disclosed.

17 ~~(6)(7)~~ The identity of any person who reported or provided information on an alleged child abuse or
18 neglect incident is protected from disclosure as provided under 41-3-205.

19 ~~(7)(8)~~ Any materials furnished to an attorney under this section may not be disclosed to the public but
20 may be disclosed to others only to the extent necessary for the proper conduct of the case.

21 ~~(8)(9)~~ If at any time after a disclosure has been made the department discovers additional material or
22 information that would be subject to disclosure had it been known at the time of disclosure, the department shall
23 promptly notify the parent of the existence of the additional material or information and make an appropriate
24 disclosure.

25 ~~(9)(10)~~ Except as to matters to which discovery is restricted and except as to the parent's counsel
26 advising the parent, a party or agent of a party may not discourage or obstruct communication between any
27 person and any party or otherwise obstruct a party's investigation of the case.

28