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HOUSE BILL NO. 40

INTRODUCED BY A. REGIER

BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO FETAL, INFANT, CHILD, AND MATERNAL MORTALITY REVIEW TEAMS; ALLOWING FOR CREATION OF A STATE REVIEW TEAM; ESTABLISHING REQUIREMENTS FOR MEMBERSHIP OF A STATE REVIEW TEAM; PROVIDING FOR SHARING OF INFORMATION; PROVIDING CONFIDENTIALITY; AMENDING SECTIONS 44-5-303, 50-19-402, 50-19-403, AND 50-19-404, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

NEW SECTION. Section 1. State fetal, infant, child, and maternal mortality review team --

membership. (1) The director of the department of public health and human services may establish a state fetal, infant, child, and maternal mortality review team. The director shall designate a representative of the department to lead the review team.

(2) The designated department representative shall select the members and manage the work of the review team.

(3) (a) The review team must be multidisciplinary and consist of at least five individuals who have agreed to serve on the team.

(b) At least one member must be an obstetrician, a physician who is board-certified in family medicine, an advanced practice registered nurse, or a physician assistant whose duties and delegation agreement includes obstetrical care.

(4) The designated department representative and the review team shall develop a plan that includes, at a minimum, operating policies that cover the collection, use, and destruction of information obtained pursuant to 44-5-303(4) or 50-19-402(2).

1 **Section 2.** Section 44-5-303, MCA, is amended to read:

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

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

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

18 (4) The county attorney or the county attorney's designee is authorized to receive confidential
19 criminal justice information for the purpose of cooperating with a local or state fetal, infant, child, and maternal
20 mortality review ~~teams~~ team. The county attorney or the county attorney's designee may, in that person's
21 discretion, disclose information determined necessary to the goals of the review team. The review team and the
22 county attorney or the designee shall maintain the confidentiality of the information.

23 (5) (a) If a prosecutor receives a written request for release of confidential criminal justice
24 information relating to a criminal investigation that has been terminated by declination of prosecution or relating
25 to a criminal prosecution that has been completed by entry of judgment, dismissal, or acquittal, or if the
26 disclosure may be in the public interest, the prosecutor may file a declaratory judgment action with the district
27 court pursuant to the provisions of the Uniform Declaratory Judgments Act, Title 27, chapter 8, for release of
28 the information. The prosecutor shall:

- 1 (i) file the action in the name of the city or county that the prosecutor represents and describe the
2 city's or county's interest;
- 3 (ii) list as defendants anyone known to the prosecutor who has requested the confidential criminal
4 justice information;
- 5 (iii) no later than the time of the filing of the declaratory judgment action:
- 6 (A) make reasonable efforts to provide notice to a victim of the alleged offense and any person
7 with a protected privacy interest in information contained in the confidential criminal justice information and any
8 other individual who would be affected by release of the information of the request for release of confidential
9 criminal justice information and the filing of the declaratory judgment action; and
- 10 (B) provide notice that the person may file an objection to disclosure with the district court if the
11 person believes a privacy interest that they possess exceeds the merits of public disclosure;
- 12 (iv) request that the prosecutor be allowed to deposit the investigative file and any edited version of
13 the file with the court pursuant to the provisions of Title 27, chapter 8; and
- 14 (v) request the court to:
- 15 (A) no sooner than 30 calendar days following the filing of the declaratory judgment action to
16 ensure an opportunity for a person seeking to protect a privacy interest, conduct an in camera review of the
17 confidential criminal justice information to determine whether the demands of individual privacy do not clearly
18 exceed the merits of public disclosure; and
- 19 (B) order the release to the requesting party defendant of whatever portion of the investigative
20 information or edited version of the information the court determines appropriate.
- 21 (b) In making an order authorizing the release of information under subsection (5)(a), the court
22 shall make a written finding that the demands of individual privacy do not clearly exceed the merits of public
23 disclosure and authorize, upon payment of reasonable reproduction costs, the release of appropriate portions
24 of the edited or complete confidential criminal justice information to persons who request the information.
- 25 (c) In an action filed for the court-ordered release of confidential criminal justice information under
26 subsection (5)(a), the parties shall bear their respective costs and attorney fees.
- 27 (6) The procedures set forth in subsection (5) are not an exclusive remedy. A person or
28 organization may file any action for dissemination of information that the person or organization considers

1 appropriate and permissible."

2

3 **Section 3.** Section 50-19-402, MCA, is amended to read:

4 **"50-19-402. Statement of policy -- access to information.** (1) The prevention of fetal, infant, child,
5 and maternal deaths is both the policy of the state of ~~Montana~~ and a community responsibility. Many
6 community professionals have expertise that can be used to promote the health, safety, and welfare of fetuses,
7 infants, children, and ~~postnatal~~ postpartum women. The use of these professionals in reviewing fetal, infant,
8 child, and maternal deaths can lead to a greater understanding of the causes of death and the methods of
9 preventing deaths. It is the intent of the legislature to:

10 (a) encourage local communities to establish voluntary multidisciplinary fetal, infant, child, and
11 maternal mortality review teams to study the incidence and causes of fetal, infant, child, and maternal deaths
12 and to make recommendations for community or statewide change, if appropriate, that may help prevent future
13 deaths; and

14 (b) allow the state, through the department of public health and human services, to establish a
15 multidisciplinary review team for the same purposes.

16 (2) (a) A health care provider may disclose information about a patient without the patient's
17 authorization or without the authorization of the representative of a patient who is deceased upon request of a
18 ~~local~~ fetal, infant, child, and maternal mortality review team. ~~The~~ A review team may request and may receive
19 information from:

20 (i) a county attorney as provided in 44-5-303(4);

21 (ii) a tribal attorney; and

22 (iii) a health care provider as permitted in:

23 (A) Title 50, chapter 16, part 5 or 8; or

24 (B) applicable federal law.

25 (b) ~~The~~ A review team shall maintain the confidentiality of the information received.

26 (3) (a) ~~The local~~ A fetal, infant, child, and maternal mortality review team may:

27 (i) perform an ~~indepth~~ in-depth analysis of fetal, infant, and child deaths;

28 (ii) perform an ~~indepth~~ in-depth analysis of maternal deaths that occur within a year of ~~the time a~~

1 ~~woman gave birth~~ delivery;

2 (iii) compile statistics of fetal, infant, child, and maternal mortality and, for a local review team,
3 communicate the statistics to the department of public health and human services for inclusion in statistical
4 reports;

5 (iv) analyze the preventable causes of fetal, infant, child, and maternal deaths, including child
6 abuse and neglect and postpartum complications; and

7 (v) recommend measures to prevent future fetal, infant, child, and maternal deaths.

8 (b) The analysis authorized under this subsection (3) may include a review of records available by
9 law.

10 (4) To the extent possible, state and local review teams shall cooperate, share information, and
11 avoid duplication of efforts.

12 ~~(4)(5)~~ A ~~local~~ fetal, infant, child, and maternal mortality review team may not review deaths under this
13 section if:

14 (a) the deaths involve fetuses, infants, children, or women who are Indians;

15 (b) the deaths occur within the boundaries of an Indian reservation; and

16 (c) the tribal government opposes the review."
17

18 **Section 4.** Section 50-19-403, MCA, is amended to read:

19 **"50-19-403. Local fetal, infant, child, and maternal mortality review team.** (1) A local fetal, infant,
20 child, and maternal mortality review team must be approved by the department of public health and human
21 services. Approval may be given if:

22 (a) the county health department, a tribal health department if the tribal government agrees, or
23 both are represented on the team and the plan provided for in subsection (1)(e) includes the roles of the county
24 health department, tribal health department, or both;

25 (b) a lead person has been designated for the purposes of management of the review team;

26 (c) at least five of the individuals listed in subsection (2) have agreed to serve on the review team;

27 (d) a team reviewing a maternal death includes at least one obstetrician, one family practice
28 physician, one advanced practice registered nurse, or one physician assistant whose duties and delegation

1 agreement includes obstetrical care; and

2 (e) the team has developed a plan that includes, at a minimum, operating policies of the review
3 team covering collection and destruction of information obtained pursuant to 44-5-303(4) or 50-19-402(2).

4 (2) If a local fetal, infant, child, and maternal mortality review team is established, the team must
5 be multidisciplinary and, in addition to the member required under subsection (1)(d), may include only:

6 (a) the county attorney or a designee;

7 (b) a law enforcement officer;

8 (c) the medical examiner or coroner for the jurisdiction;

9 (d) a physician;

10 (e) a school district representative;

11 (f) a representative of the local health department;

12 (g) a representative from a tribal health department, appointed by the tribal government;

13 (h) a representative from a neighboring county or tribal government if there is an agreement to
14 review deaths for that county or tribe;

15 (i) ~~a representative~~ representatives of the department of public health and human services;

16 (j) a forensic pathologist;

17 (k) a pediatrician;

18 (l) a family practice physician;

19 (m) an obstetrician;

20 (n) a nurse practitioner;

21 (o) a public health nurse;

22 (p) a mental health professional;

23 (q) a local trauma coordinator;

24 (r) a representative of the bureau of Indian affairs or the Indian health service, or both, who is
25 located within the county; and

26 (s) representatives of the following:

27 (i) local emergency medical services;

28 (ii) a local hospital;

- 1 (iii) a local hospital medical records department;
- 2 (iv) a local governmental fire agency organized under Title 7, chapter 33; and
- 3 (v) the local registrar.
- 4 (3) The designated lead person for the team shall submit membership lists to the department of
- 5 public health and human services annually."

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7 **Section 5.** Section 50-19-404, MCA, is amended to read:

8 **"50-19-404. Records -- confidentiality.** (1) Material and information obtained by a local fetal, infant,

9 child, and maternal mortality review team are not subject to disclosure under the public records law. Material

10 and information obtained by a review team are not subject to subpoena and may not be introduced into

11 evidence in a civil or criminal action.

12 (2) Review team meetings and proceedings are confidential and are exempt from the provisions of

13 Title 2, chapter 3. "

14

15 NEW SECTION. Section 6. Codification instruction. [Section 1] is intended to be codified as an

16 integral part of Title 50, chapter 19, part 4, and the provisions of Title 50, chapter 19, part 4, apply to [section 1].

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18 NEW SECTION. Section 7. Effective date. [This act] is effective on passage and approval.

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