

HOUSE BILL NO. 385

INTRODUCED BY J. CARLSON, J. WINDY BOY, L. SHELDON-GALLOWAY, B. LER, A. REGIER, J. READ,
E. BOLDMAN, B. USHER, D. BARTEL, K. BOGNER, J. TREBAS, S. STEWART PEREGOY

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

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

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

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

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

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

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

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

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

(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~~ REQUESTED DISCOVERY RELEVANT
4 TO the preparation of the case for additional material or information not otherwise provided for and that the
5 parent is unable, ~~without undue hardship,~~ to obtain the substantial equivalent by other means, the court, ~~in its~~
6 ~~discretion, may~~ SHALL order the department or any person to make it available to the parent. The court may, on
7 the request of any person affected by the order, vacate or modify the order if compliance would be
8 unreasonable or oppressive.

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

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

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

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

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

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

27
28 NEW SECTION. Section 2. Codification instruction. [Section 1] is intended to be codified as an

1 integral part of Title 41, chapter 3, part 4, and the provisions of Title 41, chapter 3, part 4, apply to [section 1].

2

3 NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval.

4

5 NEW SECTION. **Section 4. Applicability.** [This act] applies to proceedings pending on [the effective
6 date of this act] and proceedings filed on or after [the effective date of this act].

7

- END -