SENATE BILL NO. 116

INTRODUCED BY D. LENZ

A BILL FOR AN ACT ENTITLED: “AN ACT REVISING LAWS REGARDING THE DISCLOSURE OF CHILD ABUSE AND NEGLECT RECORDS; REQUIRING THAT CASE RECORDS BE DISCLOSED WITHIN 10 DAYS OF RECEIVING A REQUEST UNLESS A COURT DETERMINES THAT DISCLOSURE IS DETRIMENTAL TO A CHILD OR OTHER PERSON WHO IS THE SUBJECT OF THE RECORDS; PROVIDING A PENALTY FOR FAILING TO DISCLOSE RECORDS WITHIN 10 DAYS OF A REQUEST; REVISING PROCEDURES FOR DISCLOSING CASE RECORDS AND RECORDS OF THE OFFICE OF THE CHILD AND FAMILY OMBUDSMAN TO A MEMBER OF CONGRESS OR THE MONTANA LEGISLATURE; PROVIDING EXCEPTIONS TO CONFIDENTIALITY REQUIREMENTS FOR RECORDS DISCLOSED TO A MEMBER OF CONGRESS OR THE MONTANA LEGISLATURE; AMENDING SECTIONS 41-3-205 AND 41-3-1214, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.”

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

Section 1. 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.

(3) <u>(a)</u> Records, including case notes, correspondence, evaluations, videotapes, and interviews, unless otherwise protected by this section or unless disclosure of the records is determined <u>by a court</u> to be

detrimental to the child or harmful to another person who is a subject of information contained in the records, ~~may~~ must be disclosed to the following persons or entities in this state and any other state or country within 10 days of receiving the request for records:

~~(a)~~(i) a department, agency, or organization, including a federal agency, military enclave, or Indian tribal organization, that is legally authorized to receive, inspect, or investigate reports of child abuse or neglect and that otherwise meets the disclosure criteria contained in this section;

~~(b)~~(ii) a licensed youth care facility or a licensed child-placing agency that is providing services to the family or child who is the subject of a report in the records or to a person authorized by the department to receive relevant information for the purpose of determining the best interests of a child with respect to an adoptive placement;

~~(c)~~(iii) a health or mental health professional who is treating the family or child who is the subject of a report in the records;

~~(d)~~(iv) a parent, grandparent, aunt, uncle, brother, sister, guardian, mandatory reporter provided for in 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 the records or other person responsible for the child's welfare, without disclosure of the identity of any person who reported or provided information on the alleged child abuse or neglect incident contained in the records;

~~(e)~~(v) a child named in the records who was allegedly abused or neglected or the child's legal guardian or legal representative, including the child's guardian ad litem or attorney or a special advocate appointed by the court to represent a child in a pending case;

~~(f)~~(vi) the state protection and advocacy program as authorized by 42 U.S.C. 15043(a)(2);

~~(g)~~(vii) approved foster and adoptive parents who are or may be providing care for a child;

~~(h)~~(viii) a person about whom a report has been made and that person's attorney, with respect to the relevant records pertaining to that person only and without disclosing the identity of the reporter or any other person whose safety may be endangered;

~~(i)~~(ix) an agency, including a probation or parole agency, that is legally responsible for the supervision of an alleged perpetrator of child abuse or neglect;

~~(j)~~(x) a person, agency, or organization that is engaged in a bona fide research or evaluation project and that is authorized by the department to conduct the research or evaluation;

~~(k)~~(xi) the members of an interdisciplinary child protective team authorized under 41-3-108 or of a family engagement meeting for the purposes of assessing the needs of the child and family, formulating a treatment plan, and monitoring the plan;

~~(l)~~(xii) the coroner or medical examiner when determining the cause of death of a child;

~~(m)~~(xiii) a child fatality review team recognized by the department;

~~(n)~~(xiv) a department or agency investigating an applicant for a license or registration that is required to operate a youth care facility, day-care facility, or child-placing agency;

~~(o)~~(xv) a person or entity who is carrying out background, employment-related, or volunteer-related screening of current or prospective employees or volunteers who have or may have unsupervised contact with children through employment or volunteer activities. A request for information under this subsection (3)~~(o)~~ (a)(xv) must be made in writing. Disclosure under this subsection (3)~~(o)~~ (a)(xv) is limited to information that indicates a risk to children posed by the person about whom the information is sought, as determined by the department.

~~(p)~~(xvi) the news media, if disclosure is limited to confirmation of factual information regarding how the case was handled and if disclosure does not violate the privacy rights of the child or the child's parent or guardian, as determined by the department;

~~(q)~~(xvii) an employee of the department or other state agency if disclosure of the records is necessary for administration of programs designed to benefit the child;

~~(r)~~(xviii) an agency of an Indian tribe, a qualified expert witness, or the relatives of an Indian child if disclosure of the records is necessary to meet requirements of the federal Indian Child Welfare Act;

~~(s)~~(xix) a juvenile probation officer who is working in an official capacity with the child who is the subject of a report in the records;

~~(t)~~(xx) an attorney who is hired by or represents the department if disclosure is necessary for the investigation, defense, or prosecution of a case involving child abuse or neglect;

~~(u)~~(xxi) a foster care review committee established under 41-3-115 or, when applicable, a citizen review board established under Title 41, chapter 3, part 10;

~~(v)~~(xxii) a school employee participating in an interview of a child by a child protection specialist, county attorney, or peace officer, as provided in 41-3-202;

~~(w)~~(xxiii) a member of a county or regional interdisciplinary child information and school safety team formed under the provisions of 52-2-211;

~~(x)~~(xxiv) members of a local interagency staffing group provided for in 52-2-203;

~~(y)~~(xxv) a member of a youth placement committee formed under the provisions of 41-5-121; or

~~(z)~~(xxvi) a principal of a school or other employee of the school district authorized by the trustees of the district to receive the information with respect to a student of the district who is a client of the department.

(b) A person who purposely or negligently fails to provide records requested within the timeframe required under this subsection (3) is guilty of official misconduct and shall be punished as provided in 45-7-401.

(4) (a) The records described in subsection (3) must be disclosed to a member of the United States congress or a member of the Montana legislature if all of the following requirements are met:

(i) the member receives a written inquiry regarding a child and whether the laws of the United States or the state of Montana that protect children from abuse or neglect are being complied with or whether the laws need to be changed to enhance protections for children;

(ii) the member submits a written request to the department requesting to review the records relating to the written inquiry. The member's request must include a copy of the written inquiry, the name of the child whose records are to be reviewed, and any other information that will assist the department in locating the records.

(iii) before reviewing the records, the member:

(A) signs a form that outlines the state and federal laws regarding confidentiality and the penalties for unauthorized release of the information; and

(B) receives from the department an orientation of the content and structure of the records. The orientation must include a checklist of documents that are regularly included in records, including but not limited to the following:

(I) any petition filed pursuant to Title 41, chapter 3, part 4, including any supporting affidavits and evidence;

(II) any court orders issued pursuant to Title 41, chapter 3, parts 4 and 6;

(III) notes from family engagement meetings and foster care review meetings; and

(IV) notes included in electronic case records or in case files maintained in local offices regarding staffing and interactions with parents or legal guardians, providers, or attorneys.

(b) (i) Without disclosing the identity of a person who reported the alleged child abuse or neglect, the department shall make available to the member all records concerning the child who is the subject of the written inquiry.

(ii) ~~Records~~ Except as provided in subsection (4)(b)(iii), records disclosed pursuant to this subsection (4)~~(a)~~ are confidential, ~~must be made available for the member to view but~~ may not be copied, ~~recorded,~~ photographed, or otherwise replicated by the member, and must remain solely in the department's possession. The member must be allowed to view the records in the local office where the case is or was active.

(iii) A member may take notes to discuss the records with a parent or legal guardian about whom a report of alleged child abuse or neglect is made.

(c) Access to records requested pursuant to this subsection (4) is limited to 6 months from the date the written request to review records was received by the department.

(5) (a) The records described in subsection (3) must be promptly released to any of the following individuals upon a written request by the individual to the department or the department's designee:

(i) the attorney general;

(ii) a county attorney or deputy county attorney of the county in which the alleged abuse or neglect occurred;

(iii) a peace officer, as defined in 45-2-101, in the jurisdiction in which the alleged abuse or neglect occurred; or

(iv) the office of the child and family ombudsman.

(b) The records described in subsection (3) must be promptly disclosed by the department to an appropriate individual described in subsection (5)(a) or to a county or regional interdisciplinary child information and school safety team established pursuant to 52-2-211 upon the department's receipt of a report indicating that any of the following has occurred:

(i) the death of the child as a result of child abuse or neglect;

(ii) a sexual offense, as defined in 46-23-502, against the child;

(iii) exposure of the child to an actual and not a simulated violent offense as defined in 46-23-502; or

(iv) child abuse or neglect, as defined in 41-3-102, due to exposure of the child to circumstances constituting the criminal manufacture or distribution of dangerous drugs.

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

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

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

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

(d) (i) Except as provided in subsection (5)(d)(ii), the records described in subsection (3) must be released within 5 business days to the county attorney of the county in which the acts that are the subject of a report occurred upon the department's receipt of a report that includes an allegation of sexual abuse or sexual exploitation. The department shall also report to any other appropriate individual described in subsection (5)(a) and to a county or regional interdisciplinary child information and school safety team established pursuant to 52-2-211.

(ii) If the exception in 41-3-202(1)(b) applies, a contractor described in 41-3-201(2)(j) that provides confidential services to victims of sexual assault shall report to the department as provided in this part without disclosing the names of the victim and the alleged perpetrator of sexual abuse or sexual exploitation.

(iii) When a contractor described in 41-3-201(2)(j) that provides confidential services to victims of sexual assault provides services to youth over the age of 13 who are victims of sexual abuse and sexual exploitation, the contractor may not dissuade or obstruct a victim from reporting the criminal activity and, upon a request by the victim, shall facilitate disclosure to the county attorney and a law enforcement officer as described in Title 7, chapter 32, in the jurisdiction where the alleged abuse occurred.

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

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

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

(9) A person who is authorized to receive records under this section shall maintain the confidentiality of the records and may not disclose information in the records to anyone other than the persons described in subsections (3)(a)(i), (4)(b)(iii), and (5). However, this subsection may not be construed to compel a family member to keep the proceedings confidential.

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

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

(12) Copies of records, evaluations, reports, or other evidence obtained or generated pursuant to this section that are provided to the parent, grandparent, aunt, uncle, brother, sister, guardian, or parent's or guardian's attorney must be provided without cost."

Section 2. Section 41-3-1214, MCA, is amended to read:

"**41-3-1214. Legislator access to ombudsman records.** (1) Records of ombudsman investigations, including case notes, correspondence, and interviews, must be disclosed to a member of the legislature if:

(a) the legislator receives a written request from a person who has requested assistance from the ombudsman about whether laws protecting children from abuse or neglect are being complied with or whether

the laws need to be changed to enhance protections for children;

(b) the legislator submits a written request to the ombudsman asking to review the records relating to the written inquiry. The legislator's request must include a copy of the written inquiry, the name of the child whose records are to be reviewed, and any other information that will assist the ombudsman in locating the records.

(c) before reviewing the records, the legislator:

(i) signs a form that outlines the state and federal laws regarding confidentiality and the penalties for unauthorized release of the information; and

(ii) receives from the ombudsman an orientation of the content and structure of the records.

(2) (a) ~~Records~~ Except as provided in subsection (2)(b), records disclosed pursuant to this section are confidential.~~,~~ Records must be made available for the member to view but may not be copied, ~~recorded,~~ photographed, or otherwise replicated by the member, and must remain solely in the ombudsman's possession. The records may be viewed at any office maintained by the office of the child and family ombudsman.

(b) A member may:

(i) take notes in order to discuss the records with the party who submitted the written inquiry to the member; and

(ii) report to the appropriate authorities if the member suspects misconduct by a public servant as defined in 45-2-101."

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

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