

SENATE BILL NO. 256

INTRODUCED BY D. LENZ

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO THE ACCESS OF CHILD ABUSE AND NEGLECT INVESTIGATION RECORDS; REVISING EXCEPTIONS TO THE CONFIDENTIALITY OF RECORDS; REVISING DISCOVERY PROCEDURES IN ABUSE AND NEGLECT PROCEEDINGS; PROVIDING FOR ACCESS TO RECORDS IN CHILD CUSTODY PROCEEDINGS; AND AMENDING SECTIONS 41-3-205 AND 41-3-431, MCA."

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 the provisions of 41-3-431 and this section. Except as provided in 41-3-431 and subsections (9) and (10) of this section, 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) Records, including case notes, correspondence, evaluations, videotapes, and interviews, unless otherwise protected by this section or unless disclosure of the records is determined to be detrimental to the child or harmful to another person who is a subject of information contained in the records, must, upon request, be disclosed to the following persons or entities in this state and any other state or country:

(a) 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;

Amendment - 1st Reading-white - Requested by: Dennis Lenz - (H) Human Services

- 2025

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Drafter: Chanan Brown,

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

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

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

(h) 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) 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) 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) 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) the coroner or medical examiner when determining the cause of death of a child;

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

(n) a department or agency investigating an applicant for a license or registration that is required to

1 operate a youth care facility, day-care facility, or child-placing agency; ~~Disclosure A department or agency~~
2 under this subsection (3)(n) is limited to ~~using, for the purposes of a licensing decision,~~ information collected as
3 part of an investigation in which the allegation of child abuse or neglect is made against the person about whom
4 the information is sought and where the case determination is substantiated.

5 (o) a person or entity who is carrying out background, employment-related, or volunteer-related
6 screening of current or prospective employees or volunteers who have or may have unsupervised contact with
7 children through employment or volunteer activities. A request for information under this subsection (3)(o) must
8 be made in writing. Disclosure under this subsection (3)(o) is limited to information ~~that indicates a risk to~~
9 ~~children posed by the person about whom the information is sought, as determined by the department~~ collected
10 as part of an investigation in which the allegation of child abuse or neglect is made against the person about
11 whom the information is sought and where the case determination is substantiated.

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

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

17 (r) an agency of an Indian tribe, a qualified expert witness, or the relatives of an Indian child if
18 disclosure of the records is necessary to meet requirements of the federal Indian Child Welfare Act ~~[or the~~
19 ~~Montana Indian Child Welfare Act provided for in Title 41, chapter 3, part 13];~~

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

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

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

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

28 (w) a member of a county or regional interdisciplinary child information and school safety team

formed under the provisions of 52-2-211;

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

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

(z) 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.

(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

1 written inquiry.

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

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

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

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

12 (i) the attorney general;

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

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

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

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

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

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

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

25 or

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

28 (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

1 consent provisions of the law.

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

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

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

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

15 (12) Copies of records, evaluations, reports, or other evidence obtained or generated pursuant to
16 this section that are provided to the parent, grandparent, aunt, uncle, brother, sister, guardian, or parent's or
17 guardian's attorney must be provided without cost. ~~(Bracketed language in subsection (3)(r) terminates June~~
18 ~~30, 2025—sec. 55, Ch. 716, L. 2023.)"~~

19

20 **Section 2.** Section 41-3-431, MCA, is amended to read:

21 **"41-3-431. Discovery procedure.** (1) On request of a parent who is a party to the a proceeding under
22 Title 40 or Title 41, the department shall, pursuant to Rules 26 through 37 of the Montana Rules of Civil
23 Procedure, make available for examination and reproduction the following material and information within the
24 department's possession or control:

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

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

1 child;

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

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

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

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

10 (3) The department's obligation of disclosure extends to material and information in the possession
11 or control of members of the department's staff and of any other persons who have participated in the
12 investigation or evaluation of the a case.

13 (4) On motion showing that the parent has requested discovery relevant to the preparation of the a
14 case for additional material or information not otherwise provided for and that the parent is unable to obtain the
15 substantial equivalent by other means, the court shall order the department or any person to make it available
16 to the parent. ~~The court may, on the request of any person affected by the order, vacate or modify the order if~~
17 ~~compliance would be unreasonable or oppressive.~~

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

21 (a) ordering disclosure of the information not previously disclosed;

22 (b) granting a continuance;

23 (c) holding a witness, party, or counsel in contempt for an intentional violation; or

24 (d) precluding a party from calling a witness, offering evidence, or raising a defense not disclosed.

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

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

- 2025

Drafter: Chanan Brown,

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

5 - END -

- 9 -

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