SENATE BILL NO. 469

INTRODUCED BY J. TREBAS, L. BREWSTER

A BILL FOR AN ACT ENTITLED: “AN ACT ESTABLISHING A STATEWIDE CENTRAL REGISTRY FOR SUBSTANTIATED REPORTS OF CHILD ABUSE OR NEGLECT; REQUIRING NOTICE AND A HEARING BEFORE AN INDIVIDUAL IS INCLUDED IN THE CENTRAL REGISTRY; ESTABLISHING PROCEDURES FOR EXPUNGEMENT FROM THE CENTRAL REGISTRY; AMENDING SECTIONS 41-3-202 AND 41-3-205, MCA; AND PROVIDING AN EFFECTIVE DATE.”

WHEREAS, the 5th and 14th Amendments to the United States Constitution prohibit governments from depriving individuals of their liberty or property interests without due process of the law; and

WHEREAS, this state has established procedures for collecting and maintaining child abuse and neglect investigation records in a central registry that includes the identities of individuals alleged to have abused or neglected a child; and

WHEREAS, the names maintained in Montana’s central registry may be disclosed to certain third parties in the course of background checks related to an individual’s employment, licensure, and volunteer activities; and

WHEREAS, the disclosures may have a significant negative impact on an individual’s liberty and property interests, including the loss or denial of employment and the loss of reputation in the community; and

WHEREAS, the Legislature wishes to ensure that this state’s procedures for listing individuals on the central registry comport with constitutional due process requirements.

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

NEW SECTION. **Section 1. Central registry -- purpose -- determinations.** (1) There is established a statewide central registry to maintain information on individuals who are the subject of substantiated determinations of child abuse or neglect. The information may be made available during a background check of an individual as provided for in 41-3-205 and may affect the individual's ability to volunteer or obtain

employment or licensure in areas that the individual may have unsupervised contact with children, such as child care, foster care, or group home care.

(2) For the purposes of [sections 1 through 4], a determination of child abuse or neglect must be categorized according to the following definitions:

(a) (i) "Substantiated" means that, following an investigation by the department and a hearing in district court, the court has determined by a preponderance of the evidence that the reported act of child abuse or neglect occurred.

(ii) A substantiated determination includes:

(A) an individual who admits to an allegation of abuse or neglect; and

(B) an individual who is convicted of a criminal offense related to child abuse or neglect or exploitation of a child.

(iii) A substantiated determination may not be based solely on an individual's agreement to comply with a treatment plan created by the department in order to receive services.

(iv) A substantiated determination must be reviewed and upheld by a district court as provided in [section 3].

(v) The subject of a substantiated determination may be placed on the central registry and must be notified of the consequences of being listed in the central registry, as well as the subject's rights and procedures for requesting expungement from the registry.

(b) "Unsubstantiated" means that:

(i) following an investigation, the department could not determine that the reported act of abuse or neglect occurred; or

(ii) following a hearing, the court could not determine by a preponderance of the evidence that the reported act of abuse or neglect occurred.

(c) "Unfounded" means that, following an investigation, the department determined that:

(i) the report was false;

(ii) the report was inherently improbable;

(iii) the report involved an accidental injury;

(iv) the reported act did not constitute child abuse or neglect; or

(v) evidence indicated the reported act of abuse or neglect could not have occurred.

NEW SECTION. **Section 2. Central registry -- notice -- procedures.** (1) An individual who is the subject of a child abuse or neglect report that is determined by the department as substantiated may not be added to the central registry absent notice and a hearing.

(2) Within 14 days of determining that a reported act of abuse or neglect is substantiated and before the department may add an individual to the central registry, the department shall request a hearing before the district court and provide the individual with certified written notice of the department's intent to list the individual's name in the central registry. The notice must include:

(a) a clear statement of the specific allegations that will be added to the registry, including the name of the alleged victim, the injuries or harm alleged to have resulted from abuse or neglect, and the date on which the report was made;

(b) the consequences of being listed in the central registry, including possible negative impacts on the individual's employment, licensure, and ability to have future contact with children, including volunteer and school activities;

(c) the maximum amount of time the individual's name may be included in the central registry;

(d) a complete copy of the record that will be added to the registry; and

(e) confirmation that the department has requested a hearing before the district court.

(3) The department may not add an individual to the central registry or release information to any third parties until all appeals are exhausted or waived.

(4) If a petition for emergency protective services has been filed with the district court pursuant to 41-3-429 in which the allegations of abuse or neglect are at issue, the hearing on the substantiation determination provided under [section 3] may be held in combination with the show cause hearing provided for in 41-3-432. The individual has a right to counsel.

NEW SECTION. **Section 3. Central registry -- hearing -- appeal.** (1) (a) Prior to the hearing, the department shall provide the individual with the full investigative file and any exculpatory evidence within the department's possession or control.

(b) Discovery prior to the hearing must be conducted in accordance with Title 25, chapter 20.

(2) Following the hearing, if the district court finds that there is a preponderance of the evidence supporting the department's substantiation determination, the substantiated allegations against the individual may be entered into the central registry for a period of time determined by the court, not to exceed 25 years and proportionate to:

(a) the severity of the act of abuse or neglect; and

(b) the risk of threat or harm to children that the individual poses.

(3) If the district court finds that there is insufficient evidence supporting the department's determination, the court shall order the department to amend its findings accordingly and the allegation may not be entered into the central registry.

NEW SECTION. **Section 4. Expungement from central registry.** (1) An individual listed in the central registry may request to have the individual's name expunged from the registry by submitting a written request to the district court accompanied by an affidavit sworn to by a person with personal knowledge stating facts sufficient to show that there is good cause for a hearing. Good cause includes but is not be limited to:

(a) newly discovered evidence that a substantiated report of child abuse or neglect is inaccurate; or

(b) evidence that the individual who is the subject of a substantiated report no longer poses a risk and that no significant public purpose is served by continued listing of the individual in the state's central registry.

(2) Prior to a hearing requested under this section, the department may administratively expunge the requestor's name from the central registry.

(3) An individual who is listed on the central registry shall wait 2 years from the date of the original substantiation determination before requesting expungement.

(4) If an individual's request for expungement under this section is denied, the individual shall wait 2 years before submitting another request for expungement.

(5) An individual listed in the state's central registry prior to [the effective date of this act] may request to have the individual's name expunged from the registry by submitting a written request to the district

court.

(6) Procedures for hearings, appeals, and expungement of centralized registry records, as well as updated phone numbers, addresses, and other contact information for the district court and other relevant parties, must be accessible to the public online and posted in a place that is open for public viewing in regional offices.

Section 5. Section 41-3-202, MCA, is amended to read:

"**41-3-202. Action on reporting.** (1) (a) Upon receipt of a report that a child is or has been abused or neglected, the department shall promptly assess the information contained in the report and make a determination regarding the level of response required and the timeframe within which action must be initiated.

(b) (i) Except as provided in subsection (1)(b)(ii), upon receipt of a report that includes an allegation of sexual abuse or sexual exploitation when the alleged perpetrator of the sexual abuse or sexual exploitation was 12 years of age or older or if the department determines during any investigation that the circumstances surrounding an allegation of child abuse or neglect include an allegation of sexual abuse or sexual exploitation when the alleged perpetrator of the sexual abuse or sexual exploitation was 12 years of age or older, the department shall immediately report the allegation to the county attorney of the county in which the acts that are the subject of the report occurred.

(ii) If a victim of sexual abuse or sexual exploitation has attained the age of 14 and has sought services from a contractor as described in 41-3-201(2)(j) that provides confidential services to victims of sexual assault, conditioned upon an understanding that the criminal conduct will not be reported by the department to the county attorney in the jurisdiction in which the alleged crime occurred, the department may not report pursuant to 41-3-205(5)(d) and subsection (1)(b)(i) of this section.

(c) If the department determines that an investigation and a safety and risk assessment are required, a child protection specialist shall promptly conduct a thorough investigation into the circumstances surrounding the allegations of abuse or neglect of the child and perform a safety and risk assessment to determine whether the living arrangement presents an unsafe environment for the child. The safety and risk assessment may include an investigation at the home of the child involved, the child's school or day-care facility, or any other place where the child is present and into all other nonfinancial matters that in the discretion

of the investigator are relevant to the safety and risk assessment. In conducting a safety and risk assessment under this section, a child protection specialist may not inquire into the financial status of the child's family or of any other person responsible for the child's care, except as necessary to ascertain eligibility for state or federal assistance programs or to comply with the provisions of 41-3-446.

(2) An initial investigation of alleged abuse or neglect may be conducted when an anonymous report is received. However, if the initial investigation does not within 48 hours result in the development of independent, corroborative, and attributable information indicating that there exists a current risk of physical or psychological harm to the child, a child may not be removed from the living arrangement. If independent, corroborative, and attributable information indicating an ongoing risk results from the initial investigation, the department shall then conduct a safety and risk assessment.

(3) The child protection specialist is responsible for conducting the safety and risk assessment. If the child is treated at a medical facility, the child protection specialist, county attorney, or peace officer, consistent with reasonable medical practice, has the right of access to the child for interviews, photographs, and securing physical evidence and has the right of access to relevant hospital and medical records pertaining to the child. If an interview of the child is considered necessary, the child protection specialist, county attorney, or peace officer may conduct an interview of the child. The interview may be conducted in the presence of the parent or guardian or an employee of the school or day-care facility attended by the child.

(4) Subject to 41-3-205(3), if the child's interview is audiotaped or videotaped, an unedited audiotape or videotape with audio track must be made available, upon request, for unencumbered review by the family.

(5) (a) If from the safety and risk assessment the department has reasonable cause to suspect that the child is suffering abuse or neglect, the department may provide emergency protective services to the child, pursuant to 41-3-301, or enter into a written prevention plan, pursuant to 41-3-302, and may provide protective services to any other child under the same care. The department shall:

(i) after interviewing the parent or guardian, if reasonably available, document the determinations of the safety and risk assessment; and

(ii) notify the child's family of the determinations of the safety and risk assessment, unless the notification can reasonably be expected to result in harm to the child or other person.

~~(b) Except as provided in subsection (5)(c), the department shall destroy all safety and risk assessment determinations and associated records, except for medical records, within 30 days after the end of the 3-year period starting from the date of completion of the safety and risk assessment.~~

(b) If the department determines that a report of child abuse or neglect is substantiated and a court upholds this determination pursuant to [sections 1 through 3], the name of the individual who is the subject of the report may be placed on the central registry and the records must be maintained for 25 years.

~~(c) Safety and risk assessment determinations and associated records may be maintained for a reasonable time as defined by department rule under the following circumstances:~~

~~(i) the safety and risk assessment determines that abuse or neglect occurred;~~

~~(ii) there had been a previous or there is a subsequent report and investigation resulting in a safety and risk assessment concerning the same person; or~~

~~(iii) an order has been issued by a court of competent jurisdiction adjudicating the child as a youth in need of care based on the circumstances surrounding the initial allegations.~~

(c) If the department determines that a report of child abuse or neglect is unsubstantiated, the records must be maintained for 2 years following the close of the investigation.

(d) If the department determines that a report of child abuse or neglect is unfounded, the records must be destroyed within 60 days after the close of the investigation.

(e) As used in this subsection (5), "substantiated", "unsubstantiated", and "unfounded" have the meanings provided in [section 1].

(6) The investigating child protection specialist, within 60 days of commencing an investigation, shall also furnish a written safety and risk assessment to the department and~~, upon request,~~ to the family. Subject to time periods set forth in subsections (5)(b)~~,~~ ~~and~~ (5)(c), and (5)(d), the department shall maintain a record system documenting investigations and safety and risk assessment determinations. ~~Unless records are required to be destroyed under subsections (5)(b) and (5)(c), the department shall retain records relating to the safety and risk assessment, including case notes, correspondence, evaluations, videotapes, and interviews, for 25 years.~~

(7) Any person reporting abuse or neglect that involves acts or omissions on the part of a public or private residential institution, home, facility, or agency is responsible for ensuring that the report is made to the

department.

(8) The department shall, upon request from any reporter of alleged child abuse or neglect, verify whether the report has been received, describe the level of response and timeframe for action that the department has assigned to the report, and confirm that it is being acted upon."

Section 6. 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) 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, may 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;

(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 operate a youth care facility, day-care facility, or child-placing agency;

(o) 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) must be made in writing. Disclosure under this subsection (3)(o) 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~~ the

individual about whom the information is sought is the subject of a substantiated allegation of child abuse or neglect as defined in [section 1].

(p) 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) 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) 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) 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) 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) 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) 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) 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.

(b) Records disclosed pursuant to 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.

(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) 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."

NEW SECTION. **Section 7. Codification instruction.** [Sections 1 through 4] are intended to be codified as a new part in Title 41, chapter 3, and the provisions of Title 41, chapter 3, apply to [sections 1 through 4].

NEW SECTION. **Section 8. Effective date.** [This act] is effective July 1, 2023.

- END -