

SENATE BILL NO. 272

INTRODUCED BY D. EMRICH, T. MANZELLA

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING RULES OF CONDUCT FOR CHILD PROTECTION SPECIALISTS; PROVIDING FOR COMPLAINTS TO BE FILED WITH THE COMMISSIONER OF POLITICAL PRACTICES; AUTHORIZING THE COMMISSIONER OF POLITICAL PRACTICES TO INVESTIGATE COMPLAINTS; AUTHORIZING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO DISCLOSE CASE INFORMATION TO THE COMMISSIONER OF POLITICAL PRACTICES FOR THE PURPOSE OF INVESTIGATING COMPLAINTS; ESTABLISHING THAT AN INFORMAL CONTESTED HEARING RELATED TO ALLEGED VIOLATIONS OF THE RULES OF CONDUCT IS NOT OPEN TO THE PUBLIC AND CERTAIN DOCUMENTS ARE NOT PUBLIC INFORMATION; AND AMENDING SECTIONS 2-2-136 AND 41-3-205, MCA."

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

**NEW SECTION. Section 1. Rules of conduct for child protection specialists.** (1) A child

protection specialist or applicant for certification as a child protection specialist pursuant to 41-3-127 through 41-3-130 may not:

- (a) threaten a person with criminal charges to deter the person from contesting any matter in a child abuse and neglect proceeding; or
- (b) prevent a person from becoming a foster placement or guardian for a child solely because that person has:
  - (i) offered advice to a parent or foster parent in opposition to the department;
  - (ii) recommended that a person being investigated by the department obtain a lawyer; or
  - (iii) offered testimony to a public body, including a legislative interim committee or standing committee.

(2) A child protection specialist or applicant for certification as a child protection specialist pursuant to 41-3-127 through 41-3-130 shall, when coordinating services or evaluations for a parent or child, utilize

1 unbiased professionals with qualifications relevant to the needs of the parent or child.

2 (3) (a) A violation of any rule enumerated in this section is considered a breach of public duty.

3 (b) A person alleging a violation of this section may file a complaint with the commissioner of  
4 political practices pursuant to 2-2-136 for state employees. The commissioner has jurisdiction to investigate  
5 complaints under this section.

6 (c) Nothing in this section prohibits a person from disclosing information about a complaint the  
7 person has filed.

8

9 **Section 2.** Section 2-2-136, MCA, is amended to read:

10 **"2-2-136. Enforcement for judicial officers, state officers, legislators, and state employees --**  
11 **referral of complaint involving county attorney.** (1) (a) A person alleging a violation of this part by a judicial  
12 officer, state officer, legislator, or state employee or a violation of [section 1] by a state employee may file a  
13 complaint with the commissioner of political practices. The commissioner does not have jurisdiction for a  
14 complaint concerning a judicial officer if a judicial act is involved in the complaint or a legislator if a legislative  
15 act is involved in the complaint. The commissioner also has jurisdiction over complaints against a county  
16 attorney that are referred by a local government review panel pursuant to 2-2-144 or filed by a person directly  
17 with the commissioner pursuant to 2-2-144(6). If a complaint is filed against the commissioner or another  
18 individual employed in the office of the commissioner, the complaint must be resolved in the manner provided  
19 for in 13-37-111(5).

20 (b) The commissioner may request additional information from the complainant or the person who  
21 is the subject of the complaint to make an initial determination of whether the complaint states a potential  
22 violation of [section 1] or this part.

23 (c) The commissioner may dismiss a complaint that is frivolous, does not state a potential violation  
24 of [section 1] or this part, or does not contain sufficient allegations to enable the commissioner to determine  
25 whether the complaint states a potential violation of [section 1] or this part.

26 (d) When a complaint is filed, the commissioner may issue statements or respond to inquiries to  
27 confirm that a complaint has been filed, to identify against whom it has been filed, and to describe the  
28 procedural aspects and status of the case.

1           (2)     (a) If the commissioner determines that the complaint states a potential violation of [section 1]  
2 or this part, the commissioner shall hold an informal contested case hearing on the complaint as provided in  
3 Title 2, chapter 4, part 6. However, if the issues presented in a complaint have been addressed and decided in  
4 a prior decision and the commissioner determines that no additional factual development is necessary, the  
5 commissioner may issue a summary decision without holding an informal contested case hearing on the  
6 complaint.

7           (b)     (i) Except as provided in 2-3-203 and subsection (2)(b)(ii) of this section, an informal contested  
8 case proceeding must be open to the public. Except as provided in Title 2, chapter 6, part 10, and subsection  
9 (2)(b)(ii) of this section, documents submitted to the commissioner for the informal contested case proceeding  
10 are presumed to be public information.

11           (ii)     If the complaint involves a potential violation of [section 1], the informal contested case hearing  
12 must be closed to the public to protect the confidentiality of any related child abuse and neglect investigation or  
13 proceeding. Documents submitted to the commissioner as part of a complaint involving a child abuse and  
14 neglect investigation or proceeding are not public information open to inspection. The decision issued following  
15 an informal contested hearing is a public record.

16           (c)     The commissioner shall issue a decision based on the record established before the  
17 commissioner. The decision issued after a hearing is public information open to inspection.

18           (3)     (a) Except as provided in subsection (3)(b), if the commissioner determines that a violation of  
19 [section 1] or this part has occurred, the commissioner may impose an administrative penalty of not less than  
20 \$50 or more than \$1,000.

21           (b)     If the commissioner determines that a violation of 2-2-121(3)(b) has occurred, the  
22 commissioner may impose an administrative penalty of not less than \$500 or more than \$10,000.

23           (c)     If the violation was committed by a state employee, the commissioner may also recommend  
24 that the employing state agency discipline the employee. The employing entity of a state employee may take  
25 disciplinary action against an employee for a violation of this part, regardless of whether the commissioner  
26 makes a recommendation for discipline.

27           (d)     The commissioner may assess the costs of the proceeding against the person bringing the  
28 charges if the commissioner determines that a violation did not occur or against the officer or employee if the

1 commissioner determines that a violation did occur.

2 (4) A party may seek judicial review of the commissioner's decision, as provided in Title 2, chapter  
3 4, part 7, after a hearing, a dismissal, or a summary decision issued pursuant to this section.

4 (5) The commissioner may adopt rules to carry out the responsibilities and duties assigned by this  
5 part."

6

7 **Section 3.** Section 41-3-205, MCA, is amended to read:

8 **"41-3-205. Confidentiality -- disclosure exceptions.** (1) The case records of the department and its  
9 local affiliate, the local office of public assistance, the county attorney, and the court concerning actions taken  
10 under this chapter and all records concerning reports of child abuse and neglect must be kept confidential  
11 except as provided by this section. Except as provided in subsections (9) and (10), a person who purposely or  
12 knowingly permits or encourages the unauthorized dissemination of the contents of case records is guilty of a  
13 misdemeanor.

14 (2) Records may be disclosed to a court for in camera inspection if relevant to an issue before it.  
15 The court may permit public disclosure if it finds disclosure to be necessary for the fair resolution of an issue  
16 before it.

17 (3) Records, including case notes, correspondence, evaluations, videotapes, and interviews,  
18 unless otherwise protected by this section or unless disclosure of the records is determined to be detrimental to  
19 the child or harmful to another person who is a subject of information contained in the records, must, upon  
20 request, be disclosed to the following persons or entities in this state and any other state or country:

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

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

28 (c) a health or mental health professional who is treating the family or child who is the subject of a

1 report in the records;

2 (d) a parent, grandparent, aunt, uncle, brother, sister, guardian, mandatory reporter provided for in  
3 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  
4 the records or other person responsible for the child's welfare, without disclosure of the identity of any person  
5 who reported or provided information on the alleged child abuse or neglect incident contained in the records;

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

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

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

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

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

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

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

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

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

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

25 (o) a person or entity who is carrying out background, employment-related, or volunteer-related  
26 screening of current or prospective employees or volunteers who have or may have unsupervised contact with  
27 children through employment or volunteer activities. A request for information under this subsection (3)(o) must  
28 be made in writing. Disclosure under this subsection (3)(o) is limited to information that indicates a risk to

1 children posed by the person about whom the information is sought, as determined by the department.

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

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

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

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

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

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

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

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

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

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

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

24 (aa) the commissioner of political practices for the purposes of investigating complaints filed  
25 pursuant to [section 1].

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

28 (i) the member receives a written inquiry regarding a child and whether the laws of the United

1 States or the state of Montana that protect children from abuse or neglect are being complied with or whether  
2 the laws need to be changed to enhance protections for children;

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

7 (iii) before reviewing the records, the member:

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

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

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

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

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

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

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

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

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

28 (c) Access to records requested pursuant to this subsection (4) is limited to 6 months from the date

1 the written request to review records was received by the department.

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

4 (i) the attorney general;

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

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

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

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

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

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

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

17 or

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

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

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

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

27 (ii) For the purposes of this subsection (5)(c), exposure occurs when a child is caused or permitted  
28 to inhale, have contact with, or ingest a Schedule I or Schedule II drug that is prohibited by state law or have

1 contact with drug paraphernalia as defined in 45-10-101.

2 (d) (i) Except as provided in subsection (5)(d)(ii), the records described in subsection (3) must be  
3 released within 5 business days to the county attorney of the county in which the acts that are the subject of a  
4 report occurred upon the department's receipt of a report that includes an allegation of sexual abuse or sexual  
5 exploitation. The department shall also report to any other appropriate individual described in subsection (5)(a)  
6 and to a county or regional interdisciplinary child information and school safety team established pursuant to  
7 52-2-211.

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

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

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

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

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

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

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

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

7           (12)    Copies of records, evaluations, reports, or other evidence obtained or generated pursuant to  
8 this section that are provided to the parent, grandparent, aunt, uncle, brother, sister, guardian, or parent's or  
9 guardian's attorney must be provided without cost. (Bracketed language in subsection (3)(r) terminates June  
10 30, 2025--sec. 55, Ch. 716, L. 2023.)"

11

12           NEW SECTION. **Section 4. Codification instruction.** [Section 1] is intended to be codified as an  
13 integral part of Title 41, chapter 3, part 1, and the provisions of Title 41, chapter 3, part 1, apply to [section 1].

14

- END -