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HOUSE BILL 10

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY

Marian Matthews and Greg Nibert and Tara Jaramillo and
Meredith A. Dixon and Reena Szczepanski

AN ACT

RELATING TO CHILDREN; SPECIFYING TO WHOM AND UNDER WHAT
CIRCUMSTANCES INFORMATION THAT IS HELD BY THE CHILDREN, YOUTH
AND FAMILIES DEPARTMENT THAT PERTAINS TO CHILDREN MAY BE
SHARED; PRESCRIBING A PENALTY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new section of the Children's Code is
enacted to read:

"[NEW MATERIAL] DEPARTMENT INFORMATION--PUBLIC RECORD--
USE--CONFIDENTIALITY--CLASSIFICATION--VIOLATION.--

A. As used in this section:

(1) "department information" includes all
information the department gathers during the course of an
investigation conducted from the time a file is opened and
until it is closed. "Department information" does not include

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1 information that is contained in child welfare agency licensing
2 records; and

3 (2) "exigent circumstances" means a condition
4 or situation in which the death of or serious injury to a child
5 will likely result in the near future without immediate
6 intervention.

7 B. Department information shall be maintained by
8 the department as required by federal law as a condition of the
9 allocation of federal money to New Mexico. All exceptions for
10 the public release of department information shall be construed
11 as openly as possible under federal and state law.

12 C. The department, or a person who receives
13 department information pursuant to this subsection, shall
14 provide department information to a federal, state, tribal,
15 county or municipal law enforcement agency; a prosecutor; an
16 attorney or guardian ad litem representing a child victim of a
17 crime; a school; a community service provider; a contract
18 service provider; or any other person that is providing
19 services to a child pursuant to the Children's Code to:

20 (1) meet its duties to provide for the safety
21 and permanency of a child; provide services to a parent,
22 guardian or custodian; or provide services to family members to
23 strengthen the family;

24 (2) enforce or prosecute any violation
25 involving child abuse or neglect or to assert the rights of the

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1 child as a victim of a crime;

2 (3) provide information to a defendant after a
3 criminal charge has been filed as required by an order of the
4 criminal court; or

5 (4) help investigate and prosecute any
6 violation involving domestic violence or violent sexual assault
7 of a child.

8 D. The department shall disclose department
9 information to:

10 (1) a court, a party in a dependency or
11 termination of parental rights proceeding or the party's
12 attorney; a substitute care review board; or a court-appointed
13 special advocate;

14 (2) a domestic relations, family or
15 conciliation court if the department information is necessary
16 to promote the safety and well-being of children, and the court
17 shall notify the parties that it has received the department
18 information;

19 (3) a medical examiner directing an
20 investigation into the circumstances surrounding a death; or

21 (4) a person or agent of a person who is the
22 subject of department information, but shall have access only
23 to department information concerning that person.

24 E. To provide oversight of the department, the
25 department shall provide access to department information to

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1 the following persons, if the department information is
2 reasonably necessary for the person to perform the person's
3 official duties:

4 (1) federal or state auditors;

5 (2) persons conducting any accreditation
6 deemed necessary by the department;

7 (3) a standing committee of the legislature or
8 a special committee appointed by the president pro tempore of
9 the senate or the speaker of the house of representatives for
10 purposes of conducting investigations related to the
11 legislative oversight of the department; provided that any
12 department information disclosed to a legislative committee
13 shall not be further disclosed unless a court has ordered the
14 disclosure of the information, the information has been
15 disclosed in a public or court record or the information has
16 been disclosed in the course of a public meeting or court
17 proceeding;

18 (4) an independent oversight committee
19 established by the legislature or the governor;

20 (5) a citizen review panel as prescribed by
21 federal law or a child fatality review team of the department
22 of health; or

23 (6) the governor, who shall not disclose any
24 information unless a court has ordered the disclosure of the
25 information, the information has been disclosed in a public or

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1 court record or the information has been disclosed in the
2 course of a public meeting or court proceeding.

3 F. The department may provide department
4 information:

5 (1) to confirm, clarify, correct or supplement
6 information concerning an allegation or actual instance of
7 child abuse or neglect that has been made public by a source or
8 sources outside the department;

9 (2) to a person who is conducting bona fide
10 research, the results of which might provide department
11 information that is beneficial in improving the department;
12 provided that any disaggregated data or research using
13 department information shall not identify department clients;

14 (3) to the parent, guardian or custodian of a
15 child if the department information is reasonably necessary to
16 promote the safety, permanency and well-being of the child; and

17 (4) if an employee of the department has a
18 reasonable belief that exigent circumstances exist.

19 G. A person who has been denied department
20 information regarding a fatality or near fatality caused by
21 abuse, abandonment or neglect may bring a suit in the first
22 judicial district court to order the department to release that
23 department information. The court shall determine if the
24 person has standing to bring the action. The plaintiff shall
25 provide notice to the district attorney, who has standing and

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1 may participate in the action. The court shall review the
2 requested records in camera and order disclosure consistent
3 with this section and other sections of law pertaining to
4 confidentiality of child or medical records. The court shall
5 take reasonable steps to prevent any clearly unwarranted
6 invasions of privacy and protect the privacy and dignity of
7 victims of crime.

8 H. The department or a person who is not
9 specifically authorized by this section to obtain department
10 information may petition the first judicial district court for
11 Santa Fe county to order the department to release specified
12 department information. The plaintiff shall provide notice to
13 the district attorney and to the attorney and guardian ad litem
14 for the child, who have standing and may participate in the
15 action. The court shall review the requested records in camera
16 and shall balance the rights of the parties who are entitled to
17 confidentiality pursuant to this section against the rights of
18 the parties who are seeking the release of the department
19 information. The court may release otherwise confidential
20 department information only if the rights of the parties
21 seeking the department information and any benefits from
22 releasing the department information outweigh the rights of the
23 parties who are entitled to confidentiality and any harm that
24 may result from releasing the department information. The
25 court shall take reasonable steps to prevent any clearly

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1 unwarranted invasions of privacy and protect the privacy and
2 dignity of victims of crime.

3 I. Except as provided in Subsection J of this
4 section, before it releases records under this section or any
5 other confidentiality statute, the department shall take
6 whatever precautions it determines are reasonably necessary to
7 protect the identity and safety of a person who reports child
8 abuse or neglect and to protect any other person if the
9 department believes that disclosure of the department
10 information would be likely to endanger the life or safety of
11 that person. The department is not required by this section to
12 disclose department information if the disclosure would cause a
13 specific, material harm to a department investigation. The
14 department is not required by this section to disclose
15 department information if, after consultation with the district
16 attorney, the district attorney determines that disclosure
17 would cause a specific, material harm to a criminal
18 investigation or prosecution.

19 J. A person who is the subject of an unfounded
20 report or complaint and who believes that the report or
21 complaint was made in bad faith or with malicious intent may
22 petition the first judicial district court for Santa Fe county
23 to order the department to release the department information.
24 The petition shall specifically set forth reasons supporting
25 the person's belief that the report or complaint was made in

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1 bad faith or with malicious intent. The court shall review the
2 department information in camera and the person filing the
3 petition shall be allowed to present evidence in support of the
4 petition. If the court determines that there is a reasonable
5 question of fact as to whether the report or complaint was made
6 in bad faith or with malicious intent and that disclosure of
7 the identity of the person making the report or complaint would
8 not be likely to endanger the life or safety of the person
9 making the report or complaint, it shall provide a copy of the
10 department information to the person filing the petition and
11 the original department information is subject to discovery in
12 a subsequent civil action regarding the making of the report or
13 complaint.

14 K. The department shall provide the person who
15 conducts a forensic medical evaluation with any records the
16 person requests, including social history and family history
17 regarding the child, the child's siblings and the child's
18 parents or guardians.

19 L. The department shall provide department
20 information on request to a prospective adoptive parent, foster
21 parent or guardian if the information concerns a child the
22 prospective adoptive parent, foster parent or guardian seeks to
23 adopt or provide care for.

24 M. If the department receives information that is
25 confidential by law, the department shall maintain the

1 confidentiality of the information as prescribed in the
2 applicable law.

3 N. A person may authorize the release of department
4 information about that person but may not waive the
5 confidentiality of department information concerning any other
6 person.

7 O. The department may provide a summary of the
8 outcome of a department investigation to the person who
9 reported the suspected child abuse or neglect.

10 P. The department shall adopt rules to facilitate
11 the accessibility of department information.

12 Q. The department or a person who receives
13 department information pursuant to this section shall provide
14 department information to law enforcement and a court to
15 protect the safety of any employee of the department or the
16 office of the attorney general or to protect a family member of
17 such an employee.

18 R. A person who receives department information
19 shall maintain the confidentiality of the information and shall
20 not further disclose the information unless the disclosure is
21 authorized by law or a court order.

22 S. The department may charge a fee for copying
23 costs required to prepare department information.

24 T. A person who violates a provision of this
25 section regarding department information that is subject to

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confidentiality is guilty of a misdemeanor and may be punished
as provided in Section 31-19-1 NMSA 1978."

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