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HOUSE BILL 902

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

W. Ken Martinez

AN ACT

**RELATING TO CHILD ABUSE AND NEGLECT; EXPANDING THE NUMBER OF
PERSONS ELIGIBLE TO INSPECT RECORDS CONCERNING A PARTY TO A
NEGLECT OR ABUSE PROCEEDING.**

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

**Section 1. Section 32A-4-33 NMSA 1978 (being Laws 1993,
Chapter 77, Section 127) is amended to read:**

"32A-4-33. CONFIDENTIALITY--RECORDS--PENALTY.--

**A. All records concerning a party to a neglect or
abuse proceeding, including social records, diagnostic
evaluation, psychiatric or psychological reports, videotapes,
transcripts and audio recordings of a child's statement of
abuse or medical reports, that are in the possession of the
court or the department as the result of a neglect or abuse
proceeding or that were produced or obtained during an**

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1 investigation in anticipation of or incident to a neglect or
2 abuse proceeding shall be confidential and closed to the
3 public.

4 B. The records described in Subsection A of this
5 section shall be open to inspection only by:

6 (1) court personnel;
7 (2) court appointed special advocates;
8 (3) the child's guardian ad litem;
9 (4) department personnel;
10 (5) any local substitute care review board or
11 any agency contracted to implement local substitute care
12 review boards;

13 (6) law enforcement officials, except when
14 use immunity is granted pursuant to Section [~~32-4-11~~] 32A-4-11
15 NMSA 1978;

16 (7) district attorneys, except when use
17 immunity is granted pursuant to Section [~~32-4-11~~] 32A-4-11
18 NMSA 1978;

19 (8) any state government social services
20 agency in any state;

21 (9) those persons or entities of an Indian
22 tribe specifically authorized to inspect the records pursuant
23 to the federal Indian Child Welfare Act of 1978 or any
24 regulations promulgated thereunder;

25 (10) a foster parent, if the records are

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1 those of a child currently placed with that foster parent or
2 of a child being considered for placement with that foster
3 parent and the records concern the social, medical,
4 psychological or educational needs of the child;

5 (11) school personnel involved with the child
6 if the records concern the child's social or educational
7 needs;

8 (12) health care or mental health
9 professionals involved in the evaluation or treatment of the
10 child, the child's parents, guardian, custodian or other
11 family members;

12 (13) protection and advocacy representatives
13 pursuant to the federal Developmental Disabilities Assistance
14 and Bill of Rights Act and the federal Protection and Advocacy
15 for Mentally Ill Individuals Act of 1991;

16 (14) children's safehouse organizations
17 conducting investigatory interviews of children on behalf of a
18 law enforcement agency or the department; [~~and~~]

19 (15) accredited representatives of the news
20 media, subject to the condition that they refrain from
21 divulging information that would identify a child involved in
22 the proceedings or the parent, guardian or custodian of the
23 child and subject to enabling regulations as the court finds
24 necessary for the maintenance of order and decorum and for the
25 furtherance of the purposes of the Children's Code; and

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1 [~~(15)~~] (16) any other person or entity, by
2 order of the court, having a legitimate interest in the case
3 or the work of the court.

4 C. A parent, guardian or legal custodian whose
5 child has been the subject of an investigation of abuse or
6 neglect where no petition has been filed shall have the right
7 to inspect any medical report, psychological evaluation, law
8 enforcement reports or other investigative or diagnostic
9 evaluation; provided that any identifying information related
10 to the reporting party or any other party providing
11 information shall be deleted. The parent, guardian or legal
12 custodian shall also have the right to the results of the
13 investigation and the right to petition the court for full
14 access to all department records and information except those
15 records and information the department finds would be likely
16 to endanger the life or safety of any person providing
17 information to the department.

18 D. Whoever intentionally and unlawfully releases
19 any information or records closed to the public pursuant to
20 the Abuse and Neglect Act or releases or makes other unlawful
21 use of records in violation of that act is guilty of a petty
22 misdemeanor and shall be sentenced pursuant to the provisions
23 of Section 31-19-1 NMSA 1978.

24 E. When a child's death is allegedly caused by
25 abuse or neglect, the department may release information about

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the case after consultation with and the consent of the
district attorney. "