

Amendment to SB 539

1 Amend the bill by replacing all after the enacting clause with the following:

2
3 1 New Section; Child Protection Act; Access to Medical Records. Amend RSA 169-C by
4 inserting after section 25 the following new section:

5 169-C:25-a Access to Medical Records.

6 I. A law enforcement agency may request from the court an order compelling the
7 department or a health care provider to disclose a child's medical records for the purpose of the
8 investigation of child abuse or neglect, a child fatality, or any other crime against a child.

9 (a) The law enforcement agency shall present to the court the following evidence by
10 affidavit or orally under oath, including telephonically if necessary:

11 (1) A statement of facts establishing probable cause to suspect that a child has been
12 the victim of a crime, and that the child's medical records will contain evidence of that crime;

13 (2) A representation that the information is unavailable from another source; and

14 (3) The names and addresses of the child and the custodial parents, non-custodial
15 parents, legal custodians, or other guardians of the child, if known.

16 (b) Upon a showing of cause by a law enforcement agency why notice would compromise
17 the investigation, put the child at risk of harm, or for other good cause, the court shall prohibit the
18 health care provider and its attorneys, officers, directors, employees, contractors, or any other agent
19 for the provider from notifying the child and the custodial parents, non-custodial parents, legal
20 custodians, or other guardians of the child about the existence or contents of the order or that
21 information has been furnished pursuant to the order. Such a showing shall be based on facts made
22 by affidavit or orally under oath. Upon issuance of the order, the health care provider shall provide
23 the medical records within 12 hours unless otherwise provided by the court or by agreement. The
24 court shall order the law enforcement agency to notify the child's parent or guardian of the ex parte
25 order within 60 days of issuance; provided, however, that upon a showing of good cause, the court
26 may extend the period beyond 60 days, but in no event beyond 180 days.

27 (c) If the law enforcement agency satisfies the requirements of subparagraph (a) but not
28 subparagraph (b), the court shall order the law enforcement agency to immediately serve a parent
29 or guardian and the health care provider with notice of the request. The parent or guardian and
30 health care provider shall have 5 days from receipt of notice to file an objection. If no objection is
31 made, the court shall order the health care provider to produce the records to the law enforcement
32 agency within 7 days. If an objection is made, the health care provider shall be ordered to provide

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1 the records to the trial court within 7 days from the date of the objection by producing the records
2 under seal for in camera review by the court. The court shall issue an order within 30 days of
3 receipt of the records.

4 (d) The court may issue such order by telephone, facsimile, or email, and shall include
5 written findings.

6 (e) Nothing in this section shall be construed to limit the ability of a health care
7 provider to unilaterally disclose to a law enforcement agency a child's medical records or
8 information about a child's medical condition as otherwise permitted by law, including if the health
9 care provider, in the exercise of its professional judgment, believes the disclosure is necessary to
10 prevent serious harm to the child or other potential victims.

11 II. Upon notice by a law enforcement agency of a court order permitting access to records
12 for use in the investigation of the abuse or neglect of a child, a child fatality, or any other crime
13 against a child pursuant to RSA 169-C or the criminal code, a health care provider shall permit the
14 law enforcement agency to inspect and copy the medical records, including but not limited to
15 prenatal and birth records, of the child or children involved in the investigation without the consent
16 of the child, or parent or guardian of the child.

17 III. A health care provider who in good faith discloses medical records for the purpose of an
18 investigation of the abuse or neglect of a child to the law enforcement agency shall not be civilly or
19 criminally liable for the disclosure.

20 IV. The law enforcement agency in possession of medical records pursuant to this section
21 shall, upon the request of the department or another law enforcement agency, be authorized to re-
22 disclose the medical records to the department or other law enforcement agencies solely for the
23 purpose of conducting investigations of child abuse or neglect, child fatalities, other crimes against a
24 child, and any subsequent actions under this chapter or criminal proceedings. Medical records
25 disclosed under this section shall not be used or further disclosed for any other purpose without a
26 court order. Medical records provided pursuant to this section shall be exempt from disclosure
27 under RSA 91-A.

28 V. For the purposes of this section, the term "law enforcement agency" shall include the
29 attorney general, a county attorney, a county sheriff, the state police, and any local police
30 department.

31 2 Confidentiality of Case Records; Disclosure to Law Enforcement. RSA 170-G:8-a, II(a)(9) is
32 repealed and reenacted to read as follows:

33 (9) Another state's child welfare agency or other government entity, or any law
34 enforcement agency, including local and out-of-state law enforcement agencies, that requires the
35 information in order to carry out its responsibility under law to protect children from abuse or
36 neglect, including the investigation of child fatalities. For the purposes of this subparagraph, the
37 term "law enforcement agency" shall include the attorney general, a county attorney, a county

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1 sheriff, the state police, and any local police department.

2 3 Repeal. RSA 170-G:8-a, III(c), relative to rules governing access to case records by law
3 enforcement, is repealed.

4 4 Effective Date. This act shall take effect 60 days after its passage.

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AMENDED ANALYSIS

This bill establishes the procedure for law enforcement to obtain a court order compelling the department of health and human services or a health care provider to disclose a child's medical records for the purpose of an investigation of child abuse or neglect, a child fatality, or any other crime against a child.