

1 _____ BILL NO. _____

2 INTRODUCED BY _____
3 (Primary Sponsor)

4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CHILD ABUSE AND NEGLECT LAWS REGARDING
5 REASONABLE EFFORTS REQUIRED TO PREVENT REMOVAL OF A CHILD FROM THE HOME OR TO
6 REUNIFY FAMILIES SEPARATED BY THE STATE; DEFINING "REASONABLE EFFORTS"; AND AMENDING
7 SECTION 41-3-423, MCA."
8

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

10
11 **Section 1.** Section 41-3-423, MCA, is amended to read:

12 **"41-3-423. Reasonable efforts required to prevent removal of child or to return -- exemption --**
13 **findings -- permanency plan.** (1) (a) The department shall make reasonable efforts to prevent the necessity of
14 removal of a child from the child's home and to reunify families that have been separated by the state.

15 (b) (i) For the purposes of this subsection (1), the term "reasonable efforts" means the department
16 shall in good faith develop and implement voluntary services agreements and treatment plans that are designed
17 to preserve the parent-child relationship and the family unit and shall in good faith assist parents in completing
18 voluntary services agreements and treatment plans. ~~Reasonable efforts~~

19 (ii) The term includes but ~~are~~ is not limited to:

20 (A) services provided to foster care providers with equal financial support;

21 (B) voluntary protective services agreements;

22 (C) development of individual written case plans specifying state efforts to preserve or reunify
23 families;

24 (D) placement in the least disruptive setting possible with priority given to family placement as
25 provided in 41-3-439;

26 (E) provision of services pursuant to a case plan that is designed to address the parent's treatment
27 and other needs precluding the parent from safely parenting, including but not limited to individual and family
28 therapy, parent education, substance abuse treatment, and trauma-related services; and

1 (F) periodic review of each case to ensure timely progress toward reunification or permanent
2 placement.

3 (c) In determining preservation or reunification services to be provided and in making reasonable
4 efforts at providing preservation or reunification services, the child's health and safety are of paramount
5 concern.

6 (2) Except in a proceeding subject to the federal Indian Child Welfare Act, the department may, at any
7 time during an abuse and neglect proceeding, make a request for a determination that preservation or
8 reunification services need not be provided. If an indigent parent is not already represented by counsel, the
9 court shall immediately provide for the appointment or assignment of counsel to represent the indigent parent in
10 accordance with the provisions of 41-3-425. A court may make a finding that the department need not make
11 reasonable efforts to provide preservation or reunification services if the court finds that the parent has:

12 (a) subjected a child to aggravated circumstances, including but not limited to abandonment, torture,
13 chronic abuse, or sexual abuse or chronic, severe neglect of a child;

14 (b) committed, aided, abetted, attempted, conspired, or solicited deliberate or mitigated deliberate
15 homicide of a child;

16 (c) committed aggravated assault against a child;

17 (d) committed neglect of a child that resulted in serious bodily injury or death; or

18 (e) had parental rights to the child's sibling or other child of the parent involuntarily terminated and the
19 circumstances related to the termination of parental rights are relevant to the parent's ability to adequately care
20 for the child at issue.

21 (3) Preservation or reunification services are not required for a putative father, as defined in 42-2-201,
22 if the court makes a finding that the putative father has failed to do any of the following:

23 (a) contribute to the support of the child for an aggregate period of 1 year, although able to do so;

24 (b) establish a substantial relationship with the child. A substantial relationship is demonstrated by:

25 (i) visiting the child at least monthly when physically and financially able to do so; or

26 (ii) having regular contact with the child or with the person or agency having the care and custody of
27 the child when physically and financially able to do so; and

28 (iii) manifesting an ability and willingness to assume legal and physical custody of the child if the child

1 was not in the physical custody of the other parent.

2 (c) register with the putative father registry pursuant to Title 42, chapter 2, part 2, and the person has
3 not been:

4 (i) adjudicated in Montana to be the father of the child for the purposes of child support; or

5 (ii) recorded on the child's birth certificate as the child's father.

6 (4) A judicial finding that preservation or reunification services are not necessary under this section
7 must be supported by clear and convincing evidence.

8 (5) If the court finds that preservation or reunification services are not necessary pursuant to
9 subsection (2) or (3), a permanency hearing must be held within 30 days of that determination and reasonable
10 efforts, including consideration of both in-state and out-of-state permanent placement options for the child, must
11 be made to place the child in a timely manner in accordance with the permanency plan and to complete
12 whatever steps are necessary to finalize the permanent placement of the child.

13 (6) If reasonable efforts have been made to prevent removal of a child from the home or to return a
14 child to the child's home but continuation of the efforts is determined by the court to be inconsistent with the
15 permanency plan for the child, the department shall make reasonable efforts to place the child in a timely
16 manner in accordance with the permanency plan, including, if appropriate, placement in another state, and to
17 complete whatever steps are necessary to finalize the permanent placement of the child. Reasonable efforts to
18 place a child permanently for adoption or to make an alternative out-of-home permanent placement may be
19 made concurrently with reasonable efforts to return a child to the child's home. Concurrent planning, including
20 identifying in-state and out-of-state placements, may be used.

21 (7) When determining whether the department has made reasonable efforts to prevent the necessity
22 of removal of a child from the child's home or to reunify families that have been separated by the state, the
23 court shall review the services provided by the agency including, if applicable, protective services provided
24 pursuant to 41-3-302."

25 - END -