

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 EMERGENCY PROTECTIVE SERVICES; REVISING HOW DISQUALIFYING CRIMINAL OFFENSES ARE
6 DESIGNATED FOR THE PURPOSES OF EMERGENCY PLACEMENTS; REVISING REQUIREMENTS FOR
7 INFORMATION CONTAINED IN A PETITION FOR IMMEDIATE PROTECTION AND EMERGENCY
8 PROTECTIVE SERVICES; REVISING REQUIREMENTS FOR COURT ORDERS REGARDING REMOVAL OF
9 A CHILD FROM THE CHILD'S HOME; AND AMENDING SECTIONS 41-3-304 AND 41-3-427, MCA."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12
13 **Section 1.** Section 41-3-304, MCA, is amended to read:

14 **"41-3-304. Criminal background checks of adults residing in potential emergency placements**

15 **authorized -- rulemaking.** (1) (a) If a child is removed from the child's parental or custodial home for
16 protective care pursuant to this part and an emergency placement is offered, the department or an authorized
17 tribe may request, in accordance with the procedures set forth in 28 CFR 901.1 through 901.4, that each adult
18 18 years of age or older who is residing in a home where the potential emergency placement is to be made
19 consent to a preliminary state and federal name-based background check that must be followed within 15
20 calendar days from the date that the name-based background search was conducted with the submission of
21 fingerprints to the state repository, as defined in 44-5-103, for a fingerprint-based background check conducted
22 in accordance with subsection (2) of this section.

23 (b) If a name-based background check demonstrates that none of the adults residing in the home
24 where the emergency placement is to be made has been convicted of a disqualifying criminal offense, the
25 department or authorized tribe may place the child in the home pending the outcome of the fingerprint-based
26 background check.

27 (c) If an adult refuses to consent to the department's or an authorized tribe's request for a name-
28 based and fingerprint-based background check, the department or authorized tribe may not place the child in a

1 home in which the adult resides, or if the child was already placed in the home, the department or authorized
2 tribe shall immediately remove the child from the home.

3 (2) An adult who consents to a name-based and fingerprint-based background check pursuant to
4 subsection (1) shall submit to the department or an authorized tribe a complete set of fingerprints and written
5 permission authorizing the department or the authorized tribe to submit the fingerprints to the state repository
6 for processing of the state and federal background check. Results of the name-based and fingerprint-based
7 background check must be provided to the quality assurance division of the department of public health and
8 human services or to an authorized tribe.

9 (3) If the department or an authorized tribe elects to perform an initial name-based background check
10 and a fingerprint-based background check pursuant to this section, the department or the authorized tribe may
11 not make an emergency placement or continue an emergency placement in a home in which an adult resident
12 has been convicted of a disqualifying criminal offense.

13 (4) The state repository and the federal bureau of investigation may charge a reasonable fee for
14 processing a fingerprint-based criminal background check.

15 (5) If an emergency placement is denied as a result of a name-based background check of a resident
16 and the resident contests the denial, the resident may within 15 calendar days of the denial submit to the
17 department or authorized tribe a complete set of fingerprints with written permission allowing the department or
18 authorized tribe to submit the fingerprints to the state repository for processing of the state and federal
19 background check.

20 (6) (a) The department shall by rule designate those criminal offenses that constitute a disqualifying
21 criminal offense under this section, which may include but are not limited to felony convictions for violent
22 crimes, crimes involving children, family members, or the elderly or disabled, and crimes involving drugs in
23 which the conviction occurred within a certain period of time.

24 (b) In designating disqualifying criminal offenses, the department shall make the designation based
25 on an individual's present ability to provide support, based on an understanding that an individual learns from
26 past challenges. An individual's criminal history and past involvement with the department must be evaluated
27 with reasonable scrutiny.

28 (c) Unsubstantiated reports of child abuse and neglect or nonviolent misdemeanor offenses may not

1 be considered disqualifying criminal offenses for the purposes of this section.

2 (7) For the purposes of this section, the following definitions apply:

3 (a) "Authorized tribe" means the tribal child services unit and its approved designees responsible for
4 overseeing foster care licensing for an Indian tribe located within the borders of Montana that has in place a
5 valid tribal fingerprint program user agreement with the Montana department of justice.

6 (b) "Emergency placement" means an instance in which the department or an authorized tribe
7 provides protective services and places a child in the home of private individuals, including but not limited to
8 family, neighbors, or friends of the child."

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10 **Section 2.** Section 41-3-427, MCA, is amended to read:

11 **"41-3-427. Petition for immediate protection and emergency protective services -- order --**

12 **service.** (1) (a) In a case in which it appears that a child is abused or neglected or is in danger of being abused
13 or neglected, the county attorney, the attorney general, or an attorney hired by the county may file a petition for
14 immediate protection and emergency protective services. In implementing the policy of this section, the child's
15 health and safety are of paramount concern.

16 (b) A petition for immediate protection and emergency protective services must state the specific
17 authority requested and must be supported by an affidavit signed by a representative of the department stating
18 in detail the alleged facts upon which the request is based and the facts establishing probable cause or, if the
19 case is subject to the federal Indian Child Welfare Act, clear and convincing evidence that a child is abused or
20 neglected or is in danger of being abused or neglected. The affidavit of the department representative must
21 contain:

22 (i) information, if any, regarding statements made by the parents about the facts of the case;

23 (ii) specific findings regarding why the risk of allowing the child to remain in the home substantially
24 outweighs the risks associated with removing the child from the home, which must include consideration of the
25 following factors:

26 (A) the child's emotional trauma likely to result from separation from family;

27 (B) the risk that the child will experience multiple placements;

28 (C) the heightened risk that the child could be abused or neglected in foster care;

- 1 (D) the child's attitude toward removal and the child's ties to the parent, guardian, or custodian;
- 2 (E) the child's relationships with other members of the household, including siblings;
- 3 (F) the child's schooling and social relationships that could be disrupted with a placement that is
- 4 outside of the child's neighborhood;
- 5 (G) the impact on services or extracurricular activities that benefit the child; and
- 6 (H) documentation of reasonable efforts made to keep the family intact and an asset scan that
- 7 identifies efforts made to maintain as many of the assets as possible; and
- 8 (iii) if an out-of-home placement is recommended, information regarding:
- 9 (A) whether a kinship placement has been identified; or
- 10 (B) whether a foster placement has been identified, including consideration of the following factors:
- 11 (I) whether the foster placement can accommodate the proposed visitation schedule;
- 12 (II) whether siblings can be placed together;
- 13 (III) where the foster placement is located in relation to the child's home and school;
- 14 (IV) whether the child will be able to observe religious or cultural practices that are important to the
- 15 child; and
- 16 (V) if the child has special needs, whether the foster placement is able to accommodate those needs.
- 17 (c) If from the alleged facts presented in the affidavit it appears to the court that there is probable
- 18 cause or, if the case is subject to the federal Indian Child Welfare Act, clear and convincing evidence to believe
- 19 that the child has been abused or neglected or is in danger of being abused and neglected, the judge shall
- 20 grant emergency protective services and the relief authorized by subsection (2) until the adjudication hearing or
- 21 the temporary investigative hearing. If it appears from the alleged facts contained in the affidavit that there is
- 22 insufficient probable cause or, if the case is subject to the federal Indian Child Welfare Act, clear and convincing
- 23 evidence to believe that the child has been abused or neglected or is in danger of being abused or neglected,
- 24 the court shall dismiss the petition.
- 25 (d) If the parents, parent, guardian, person having physical or legal custody of the child, or attorney
- 26 for the child disputes the material issues of fact contained in the affidavit or the veracity of the affidavit, the
- 27 person may request a contested show cause hearing pursuant to 41-3-432 within 10 days following service of
- 28 the petition and affidavit.

1 (e) The petition for immediate protection and emergency protective services must include a notice
2 advising the parents, parent, guardian, or other person having physical or legal custody of the child that the
3 parents, parent, guardian, or other person having physical or legal custody of the child may have a support
4 person present during any in-person meeting with a social worker concerning emergency protective services.
5 Reasonable accommodation must be made in scheduling an in-person meeting with the social worker.

6 (2) Pursuant to subsection (1), if the court finds probable cause or, if the case is subject to the federal
7 Indian Child Welfare Act, clear and convincing evidence based on the petition and affidavit, the court may issue
8 an order for immediate protection of the child. The court shall consider the parents' statements, if any, included
9 with the petition and any accompanying affidavit or report to the court. If the court finds probable cause or, if the
10 case is subject to the federal Indian Child Welfare Act, clear and convincing evidence, the court may issue an
11 order granting the following forms of relief, which do not constitute a court-ordered treatment plan under 41-3-
12 443:

13 (a) the right of entry by a peace officer or department worker;

14 (b) the right to place the child in temporary medical or out-of-home care, including but not limited to
15 care provided by a noncustodial parent, kinship or foster family, group home, or institution;

16 (c) the right of the department to locate, contact, and share information with any extended family
17 members who may be considered as placement options for the child;

18 (d) a requirement that the parents, guardian, or other person having physical or legal custody furnish
19 information that the court may designate and obtain evaluations that may be necessary to determine whether a
20 child is a youth in need of care;

21 (e) a requirement that the perpetrator of the alleged child abuse or neglect be removed from the home
22 to allow the child to remain in the home;

23 (f) a requirement that the parent provide the department with the name and address of the other
24 parent, if known, unless parental rights to the child have been terminated;

25 (g) a requirement that the parent provide the department with the names and addresses of extended
26 family members who may be considered as placement options for the child who is the subject of the
27 proceeding; and

28 (h) any other temporary disposition that may be required in the best interests of the child that does not

1 require an expenditure of money by the department unless the court finds after notice and a hearing that the
2 expenditure is reasonable and that resources are available for payment. The department is the payor of last
3 resort after all family, insurance, and other resources have been examined.

4 (3) An order for removal of a child from the home must include a finding that continued residence of
5 the child with the parent is contrary to the welfare of the child ~~or that an out-of-home placement is in the best~~
6 ~~interests of the child and that the risk of allowing the child to remain at home substantially outweighs the risks~~
7 associated with removal.

8 (4) The order for immediate protection of the child must require the person served to comply
9 immediately with the terms of the order and to appear before the court issuing the order on the date specified
10 for a show cause hearing. Upon a failure to comply or show cause, the court may hold the person in contempt
11 or place temporary physical custody of the child with the department until further order.

12 (5) The petition must be served as provided in 41-3-422."

13 - END -