

1 SENATE BILL NO. 331

2 INTRODUCED BY T. MANZELLA

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS REGARDING THE PARENTAL
5 CARE, CUSTODY, AND CONTROL OF CHILDREN; REQUIRING GOVERNMENT EMPLOYEES TO NOTIFY
6 PARENTS WHEN A CRIME HAS BEEN COMMITTED AGAINST THEIR CHILD; PROVIDING THAT
7 GOVERNMENT EMPLOYEES MAY NOT ENCOURAGE OR COERCE CHILDREN TO WITHHOLD
8 INFORMATION FROM THEIR PARENTS OR TAKE OTHER ACTIONS IN BAD FAITH; REVISING CHILD
9 ABUSE NEGLECT LAWS REGARDING INFORMATION CONTAINED IN AFFIDAVITS SUBMITTED BY THE
10 DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; REVISING CHILD ABUSE AND NEGLECT
11 LAWS TO PROVIDE THAT PARENTS MAY HAVE SUPPORT PERSONS PRESENT AT HEARINGS;
12 REVISING CHILD ABUSE AND NEGLECT LAWS TO REQUIRE THE CONSIDERATION OF FAMILY
13 VALUES WHEN PLACING A CHILD; AMENDING SECTIONS 41-3-202, 41-3-422, 41-3-427, AND 41-3-440,
14 MCA; AND PROVIDING AN APPLICABILITY DATE."

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

17
18 **NEW SECTION. Section 1. Right to be notified of crime committed against child.** (1) Except as
19 provided in subsection (2), an employee, as defined in 2-9-101, shall promptly notify a minor's parent, guardian,
20 or custodian if the employee suspects that a criminal offense has been committed against the minor, unless the
21 incident has first been reported to law enforcement or the department of public health and human services and
22 notification of the parent, guardian, or custodian would impede an investigation by law enforcement or by child
23 protective services.

24 (2) An employee of a school district is not required to report manageable conflicts between students
25 at school, such as fighting or aggressive play, that are routinely addressed as student disciplinary matters by
26 the school district.

27
28 **NEW SECTION. Section 2. Withholding information from parents prohibited.** An employee, as

1 defined in 2-9-101, other than a law enforcement officer, may not encourage or coerce a minor:

2 (1) to withhold information from the minor's parent, guardian, or custodian; or

3 (2) to act in bad faith or with a malicious purpose.

4

5 **Section 3.** Section 41-3-202, MCA, is amended to read:

6 **"41-3-202. Action on reporting.** (1) (a) Upon receipt of a report that a child is or has been abused or
7 neglected, the department shall promptly assess the information contained in the report and make a
8 determination regarding the level of response required and the timeframe within which action must be initiated.

9 (b) (i) Except as provided in subsection (1)(b)(ii), upon receipt of a report that includes an allegation
10 of sexual abuse or sexual exploitation or if the department determines during any investigation that the
11 circumstances surrounding an allegation of child abuse or neglect include an allegation of sexual abuse or
12 sexual exploitation, the department shall immediately report the allegation to the county attorney of the county
13 in which the acts that are the subject of the report occurred.

14 (ii) If a victim of sexual abuse or sexual exploitation has attained the age of 14 and has sought services
15 from a contractor as described in 41-3-201(2)(j) that provides confidential services to victims of sexual assault,
16 conditioned upon an understanding that the criminal conduct will not be reported by the department to the
17 county attorney in the jurisdiction in which the alleged crime occurred, the department may not report pursuant
18 to 41-3-205(5)(d) and subsection (1)(b)(i) of this section.

19 (c) If the department determines that an investigation and a safety and risk assessment are required,
20 a social worker shall promptly conduct a thorough investigation into the circumstances surrounding the
21 allegations of abuse or neglect of the child and perform a safety and risk assessment to determine whether the
22 living arrangement presents an unsafe environment for the child. The safety and risk assessment may include
23 an investigation at the home of the child involved, the child's school or day-care facility, or any other place
24 where the child is present and into all other nonfinancial matters that in the discretion of the investigator are
25 relevant to the safety and risk assessment. In conducting a safety and risk assessment under this section, a
26 social worker may not:

27 (i) inquire into the financial status of the child's family or of any other person responsible for the child's
28 care, except as necessary to ascertain eligibility for state or federal assistance programs or to comply with the

1 provisions of 41-3-446; or

2 (ii) interview the child about the child's home environment unless there is reasonable cause to suspect
3 that the child is abused or neglected.

4 (2) An initial investigation of alleged abuse or neglect may be conducted when an anonymous report
5 is received. However, if the initial investigation does not within 48 hours result in the development of
6 independent, corroborative, and attributable information indicating that there exists a current risk of physical or
7 psychological harm to the child, a child may not be removed from the living arrangement. If independent,
8 corroborative, and attributable information indicating an ongoing risk results from the initial investigation, the
9 department shall then conduct a safety and risk assessment.

10 (3) ~~The social worker is responsible for conducting the safety and risk assessment. If the child is~~
11 ~~treated at a medical facility, if warranted, the social worker, county attorney, or peace officer, consistent with~~
12 reasonable medical practice, has the right of access to the child for interviews, photographs, and securing
13 physical evidence obtained by a medical facility and has the right of access to relevant hospital and medical
14 records pertaining to the child. If an interview of the child is considered necessary, the social worker, county
15 attorney, or peace officer may conduct an interview of the child. The interview ~~may~~ must be conducted in the
16 presence of the parent or guardian or an employee of the school or day-care facility attended by the child and
17 must be audiotaped or videotaped.

18 (4) Subject to 41-3-205(3), ~~if the child's interview is audiotaped or videotaped, an unedited audiotape~~
19 ~~or videotape with audio track of the child's interview must be made available, upon request, for unencumbered~~
20 review ~~by no later than 24 hours prior to any hearing conducted under this chapter to the following:~~

21 (a) the family parent, guardian, or custodian of the child and the parent's, guardian's, or custodian's
22 attorney;

23 (b) the child's guardian ad litem and attorney; and

24 (c) the court.

25 (5) (a) If from the safety and risk assessment the department has reasonable cause to suspect that
26 the child is suffering abuse or neglect, the department may provide emergency protective services to the child,
27 pursuant to 41-3-301, or voluntary protective services pursuant to 41-3-302, and may provide protective
28 services to any other child under the same care. The department shall:

1 (i) after interviewing the parent or guardian, if reasonably available, document the determinations of
2 the safety and risk assessment; and

3 (ii) notify the child's family of the determinations of the safety and risk assessment, unless the
4 notification can reasonably be expected to result in harm to the child or other person.

5 (b) Except as provided in subsection (5)(c), the department shall destroy all safety and risk
6 assessment determinations and associated records, except for medical records, within 30 days after the end of
7 the 3-year period starting from the date of completion of the safety and risk assessment.

8 (c) Safety and risk assessment determinations and associated records may be maintained for a
9 reasonable time as defined by department rule under the following circumstances:

10 (i) the safety and risk assessment determines that abuse or neglect occurred;

11 (ii) there had been a previous or there is a subsequent report and investigation resulting in a safety
12 and risk assessment concerning the same person; or

13 (iii) an order has been issued by a court of competent jurisdiction adjudicating the child as a youth in
14 need of care based on the circumstances surrounding the initial allegations.

15 (6) The investigating social worker, within 60 days of commencing an investigation, shall also furnish
16 a written safety and risk assessment to the department and, upon request, to the family. Subject to time periods
17 set forth in subsections (5)(b) and (5)(c), the department shall maintain a record system documenting
18 investigations and safety and risk assessment determinations. Unless records are required to be destroyed
19 under subsections (5)(b) and (5)(c), the department shall retain records relating to the safety and risk
20 assessment, including case notes, correspondence, evaluations, videotapes, and interviews, for 25 years.

21 (7) Any person reporting abuse or neglect that involves acts or omissions on the part of a public or
22 private residential institution, home, facility, or agency is responsible for ensuring that the report is made to the
23 department.

24 (8) The department shall, upon request from any reporter of alleged child abuse or neglect, verify
25 whether the report has been received, describe the level of response and timeframe for action that the
26 department has assigned to the report, and confirm that it is being acted upon."

27

28 **Section 4.** Section 41-3-422, MCA, is amended to read:

1 **"41-3-422. Abuse and neglect petitions -- burden of proof.** (1) (a) Proceedings under this chapter
2 must be initiated by the filing of a petition. A petition may request the following relief:

3 (i) immediate protection and emergency protective services, as provided in 41-3-427;

4 (ii) temporary investigative authority, as provided in 41-3-433;

5 (iii) temporary legal custody, as provided in 41-3-442;

6 (iv) long-term custody, as provided in 41-3-445;

7 (v) termination of the parent-child legal relationship, as provided in 41-3-607;

8 (vi) appointment of a guardian pursuant to 41-3-444;

9 (vii) a determination that preservation or reunification services need not be provided; or

10 (viii) any combination of the provisions of subsections (1)(a)(i) through (1)(a)(vii) or any other relief that
11 may be required for the best interests of the child.

12 (b) The petition may be modified for different relief at any time within the discretion of the court.

13 (c) A petition for temporary legal custody may be the initial petition filed in a case.

14 (d) A petition for the termination of the parent-child legal relationship may be the initial petition filed in
15 a case if a request for a determination that preservation or reunification services need not be provided is made
16 in the petition.

17 (2) The county attorney, attorney general, or an attorney hired by the county shall file all petitions
18 under this chapter. A petition filed by the county attorney, attorney general, or an attorney hired by the county
19 must be accompanied by the following:

20 (a) an affidavit by the department alleging that the child appears to have been abused or neglected
21 and stating the basis for the petition. Allegations must be supported by competent, material, and relevant
22 evidence. For the purposes of this subsection (2)(a), an uncorroborated confession made out of court is not
23 sufficient evidence of abuse or neglect.; and

24 (b) a separate notice to the court stating any statutory time deadline for a hearing.

25 (3) Abuse and neglect petitions must be given highest preference by the court in setting hearing
26 dates.

27 (4) An abuse and neglect petition is a civil action brought in the name of the state of Montana. The
28 Montana Rules of Civil Procedure and the Montana Rules of Evidence apply except as modified in this chapter.

1 Proceedings under a petition are not a bar to criminal prosecution.

2 (5) (a) Except as provided in subsection (5)(b), the person filing the abuse and neglect petition has
3 the burden of presenting evidence required to justify the relief requested and establishing:

4 (i) probable cause for the issuance of an order for immediate protection and emergency protective
5 services or an order for temporary investigative authority;

6 (ii) a preponderance of the evidence for an order of adjudication or temporary legal custody;

7 (iii) a preponderance of the evidence for an order of long-term custody; or

8 (iv) clear and convincing evidence for an order terminating the parent-child legal relationship.

9 (b) If a proceeding under this chapter involves an Indian child, as defined in the federal Indian Child
10 Welfare Act, 25 U.S.C. 1901, et seq., the standards of proof required for legal relief under the federal Indian
11 Child Welfare Act apply.

12 (6) (a) Except as provided in the federal Indian Child Welfare Act, if applicable, the parents or parent,
13 guardian, or other person or agency having legal custody of the child named in the petition, if residing in the
14 state, must be served personally with a copy of the initial petition and a petition to terminate the parent-child
15 legal relationship at least 5 days before the date set for hearing. If the person or agency cannot be served
16 personally, the person or agency may be served by publication as provided in 41-3-428 and 41-3-429.

17 (b) Copies of all other petitions must be served upon the person or the person's attorney of record by
18 certified mail, by personal service, or by publication as provided in 41-3-428 and 41-3-429. If service is by
19 certified mail, the department must receive a return receipt signed by the person to whom the notice was mailed
20 for the service to be effective. Service of the notice is considered to be effective if, in the absence of a return
21 receipt, the person to whom the notice was mailed appears at the hearing.

22 (7) If personal service cannot be made upon the parents or parent, guardian, or other person or
23 agency having legal custody, the court shall immediately provide for the appointment or assignment of an
24 attorney as provided for in 41-3-425 to represent the unavailable party when, in the opinion of the court, the
25 interests of justice require. If personal service cannot be made upon a putative father, the court may not provide
26 for the appointment or assignment of counsel as provided for in 41-3-425 to represent the father unless, in the
27 opinion of the court, the interests of justice require counsel to be appointed or assigned.

28 (8) If a parent of the child is a minor, notice must be given to the minor parent's parents or guardian,

1 and if there is no guardian, the court shall appoint one.

2 (9) (a) Any person interested in any cause under this chapter has the right to appear. Any foster
3 parent, preadoptive parent, or relative caring for the child must be given legal notice by the attorney filing the
4 petition of all judicial hearings for the child and has the right to be heard. The right to appear or to be heard
5 does not make that person a party to the action. Any foster parent, preadoptive parent, or relative caring for the
6 child must be given notice of all reviews by the reviewing body.

7 (b) A foster parent, preadoptive parent, or relative of the child who is caring for or a relative of the
8 child who has cared for a child who is the subject of the petition who appears at a hearing set pursuant to this
9 section may be allowed by the court to intervene in the action if the court, after a hearing in which evidence is
10 presented on those subjects provided for in 41-3-437(4), determines that the intervention of the person is in the
11 best interests of the child. A person granted intervention pursuant to this subsection (9)(b) is entitled to
12 participate in the adjudicatory hearing held pursuant to 41-3-437 and to notice and participation in subsequent
13 proceedings held pursuant to this chapter involving the custody of the child.

14 (10) An abuse and neglect petition must state:

15 (a) the nature of the alleged abuse or neglect and of the relief requested;

16 (b) the full name, age, and address of the child and the name and address of the child's parents or the
17 guardian or person having legal custody of the child; and

18 (c) the names, addresses, and relationship to the child of all persons who are necessary parties to the
19 action.

20 (11) Any party in a proceeding pursuant to this section is entitled to counsel as provided in 41-3-425.

21 (12) A parent, guardian, or other person having legal custody of the child named in the petition may
22 have court-approved support persons of the parent's, guardian's, or other person's choice present at any
23 hearing held under this chapter.

24 ~~(12)~~(13) At any stage of the proceedings considered appropriate by the court, the court may order an
25 alternative dispute resolution proceeding or the parties may voluntarily participate in an alternative dispute
26 resolution proceeding. An alternative dispute resolution proceeding under this chapter may include a family
27 group decisionmaking meeting, mediation, or a settlement conference. If a court orders an alternative dispute
28 resolution proceeding, a party who does not wish to participate may file a motion objecting to the order. If the

1 department is a party to the original proceeding, a representative of the department who has complete authority
 2 to settle the issue or issues in the original proceeding must be present at any alternative dispute resolution
 3 proceeding.

4 ~~(13)~~(14) Service of a petition under this section must be accompanied by a written notice advising the
 5 child's parent, guardian, or other person having physical or legal custody of the child of the:

6 (a) right, pursuant to 41-3-425, to appointment or assignment of counsel if the person is indigent or if
 7 appointment or assignment of counsel is required under the federal Indian Child Welfare Act, if applicable;

8 (b) right to have court-approved support persons present at any hearing held under this chapter;

9 ~~(b)~~(c) right to contest the allegations in the petition; and

10 ~~(e)~~(d) timelines for hearings and determinations required under this chapter.

11 ~~(14)~~(15) If appropriate, orders issued under this chapter must contain a notice provision advising a
 12 child's parent, guardian, or other person having physical or legal custody of the child that:

13 (a) the court is required by federal and state laws to hold a permanency hearing to determine the
 14 permanent placement of a child no later than 12 months after a judge determines that the child has been
 15 abused or neglected or 12 months after the first 60 days that the child has been removed from the child's home;

16 (b) if a child has been in foster care for 15 of the last 22 months, state law presumes that termination
 17 of parental rights is in the best interests of the child and the state is required to file a petition to terminate
 18 parental rights; and

19 (c) completion of a treatment plan does not guarantee the return of a child.

20 ~~(15)~~(16) A court may appoint a standing master to conduct hearings and propose decisions and orders
 21 to the court for court consideration and action. A standing master may not conduct a proceeding to terminate
 22 parental rights. A standing master must be a member of the state bar of Montana and must be knowledgeable
 23 in the area of child abuse and neglect laws."

24

25 **Section 5.** Section 41-3-427, MCA, is amended to read:

26 **"41-3-427. Petition for immediate protection and emergency protective services -- order --**

27 **service.** (1) (a) In a case in which it appears that a child is abused or neglected or is in danger of being abused
 28 or neglected, the county attorney, the attorney general, or an attorney hired by the county may file a petition for

1 immediate protection and emergency protective services. In implementing the policy of this section, the child's
2 health and safety are of paramount concern.

3 (b) A petition for immediate protection and emergency protective services must state the specific
4 authority requested and must be supported by an affidavit signed by a representative of the department stating
5 in detail the alleged facts upon which the request is based and the facts establishing probable cause or, if the
6 case is subject to the federal Indian Child Welfare Act, clear and convincing evidence that a child is abused or
7 neglected or is in danger of being abused or neglected. The affidavit of the department representative must
8 contain information, if any, regarding statements made by the parents about the facts of the case. An
9 uncorroborated confession made out of court is not sufficient evidence of abuse or neglect.

10 (c) If from the alleged facts presented in the affidavit it appears to the court that there is probable
11 cause or, if the case is subject to the federal Indian Child Welfare Act, clear and convincing evidence to believe
12 that the child has been abused or neglected or is in danger of being abused and neglected, the judge shall
13 grant emergency protective services and the relief authorized by subsection (2) until the adjudication hearing or
14 the temporary investigative hearing. If it appears from the alleged facts contained in the affidavit that there is
15 insufficient probable cause or, if the case is subject to the federal Indian Child Welfare Act, clear and convincing
16 evidence to believe that the child has been abused or neglected or is in danger of being abused or neglected,
17 the court shall dismiss the petition.

18 (d) If the parents, parent, guardian, person having physical or legal custody of the child, or attorney
19 for the child disputes the material issues of fact contained in the affidavit or the veracity of the affidavit, the
20 person may request a contested show cause hearing pursuant to 41-3-432 within 10 days following service of
21 the petition and affidavit.

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

27 (2) Pursuant to subsection (1), if the court finds probable cause or, if the case is subject to the federal
28 Indian Child Welfare Act, clear and convincing evidence based on the petition and affidavit, the court may issue

1 an order for immediate protection of the child. The court shall consider the parents' statements, if any, included
2 with the petition and any accompanying affidavit or report to the court. An uncorroborated confession made out
3 of court is not sufficient evidence of abuse or neglect. If the court finds probable cause or, if the case is subject
4 to the federal Indian Child Welfare Act, clear and convincing evidence, the court may issue an order granting
5 the following forms of relief, which do not constitute a court-ordered treatment plan under 41-3-443:

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

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

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

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

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

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

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

21 (h) any other temporary disposition that may be required in the best interests of the child that does not
22 require an expenditure of money by the department unless the court finds after notice and a hearing that the
23 expenditure is reasonable and that resources are available for payment. The department is the payor of last
24 resort after all family, insurance, and other resources have been examined.

25 (3) An order for removal of a child from the home must include a finding that continued residence of
26 the child with the parent is contrary to the welfare of the child or that an out-of-home placement is in the best
27 interests of the child.

28 (4) The order for immediate protection of the child must require the person served to comply

1 immediately with the terms of the order and to appear before the court issuing the order on the date specified
2 for a show cause hearing. Upon a failure to comply or show cause, the court may hold the person in contempt
3 or place temporary physical custody of the child with the department until further order.

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

6 **Section 6.** Section 41-3-440, MCA, is amended to read:

7 **"41-3-440. Limitation on placement -- consideration of religious, cultural, moral, and ethnic**
8 **values.** (1) Except as provided in 41-3-301(1) and in the absence of a dispute between the parties to the action
9 regarding the appropriate placement, the department shall determine the appropriate placement for a child
10 alleged to be or adjudicated as a youth in need of care. The court shall settle any dispute between the parties to
11 an action regarding the appropriate placement. The child may not be placed in a youth assessment center,
12 youth detention facility, detention center, or other facility intended or used for the confinement of adults or youth
13 accused or convicted of criminal offenses.

14 (2) In determining the appropriate placement for a child alleged to be or adjudicated as a youth in
15 need of care, the department or a court shall take into consideration the religious, cultural, moral, and ethnic
16 values of the child or of the child's parents, to the extent those values are known or reasonably ascertainable by
17 the department or the court."
18

19 **NEW SECTION. Section 7. Codification instruction.** [Sections 1 and 2] are intended to be codified
20 as a new part in Title 40, chapter 6, and the provisions of Title 40, chapter 6, apply to [sections 1 and 2].
21

22 **NEW SECTION. Section 8. Applicability.** [Section 1] applies to acts committed against a minor on
23 or after [the effective date of this act].
24

- END -