

SENATE BILL NO. 266

INTRODUCED BY T. MANZELLA, B. BROWN, S. HINEBAUCH, D. EMRICH

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING CHILD ABUSE AND NEGLECT LAWS; PROVIDING REQUIREMENTS FOR PARENTAL CONTACT AND DECISIONMAKING WHEN THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES PROVIDES PROTECTIVE SERVICES; REVISING IMMUNITY LAWS TO EXEMPT FROM IMMUNITY ANYONE WHO ENCOURAGES OR COERCES A CHILD TO WITHHOLD INFORMATION FROM A PARENT OR PROVIDE FALSE INFORMATION ABOUT A PARENT; AND AMENDING SECTIONS 41-3-101 AND 41-3-203, MCA."

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

NEW SECTION. **Section 1. Protective services – parental contact and decisionmaking. (1)**

Whenever the department provides protective services pursuant to this chapter:

(a) the department may not presume that the relationship between a child and the child's parent is adversarial and shall facilitate regular, safe contact between the child and the child's parent, taking into consideration any accommodations required under the federal Americans with Disabilities Act of 1990;

(b) if a parent expresses concern about a safety issue related to an out-of-home placement, the department shall consider the concern credible and conduct a thorough investigation. A parent may contest the results of the investigation by requesting review by the court or an appropriate oversight board.

(c) a parent retains the primary control of and must be involved in decisionmaking regarding the child, unless ordered otherwise by the court, including but not limited to decisions regarding the following:

(i) medical decisions, including the parent's ability to request a second opinion and access the child's medical records;

(ii) the selection of mental health providers;

(iii) vaccinations and medical testing and screening;

(iv) religious practices, attendance, and training;

(v) changes to the child's physical appearance, including haircuts, hair dye, and body piercings;



1 and

2 (vi) education, including giving permission to participate in extracurricular activities, groups, or  
3 clubs and the right to access school curriculum and records; and

4 (d) the department shall obtain a parent's written consent before:

5 (i) a biometric scan of the child is made, shared, or stored;

6 (ii) a record of the child's blood or DNA is created, stored, or shared, except as required by court  
7 order; and

8 (iii) a video or voice recording of the child is made unless the recording is made as part of a  
9 criminal investigation or an investigation under this chapter.

10

11 **Section 2.** Section 41-3-101, MCA, is amended to read:

12 **"41-3-101. Declaration of policy.** (1) It is the policy of the state of Montana to:

13 (a) provide for the protection of children whose health and welfare are or may be adversely  
14 affected and further threatened by the conduct of those responsible for the children's care and protection;

15 (b) achieve these purposes in a family environment and preserve the unity and welfare of the  
16 family whenever possible;

17 (c) ensure that there is no forced removal of a child from the family based solely on an allegation  
18 of abuse or neglect unless the department has reasonable cause to suspect that the child is at imminent risk of  
19 harm;

20 (d) recognize that a child is entitled to assert the child's constitutional rights;

21 (e) ensure that all children have a right to a healthy and safe childhood in a permanent placement;

22 and

23 (f) ensure that whenever removal of a child from the home is necessary, the child is entitled to  
24 maintain ethnic, cultural, and religious heritage whenever appropriate, and parents are entitled to maintain  
25 contact with the child and be involved in decisionmaking regarding the child unless determined by a court to not  
26 be in the best interests of the child as defined in 40-4-212.

27 (2) It is intended that the mandatory reporting of abuse or endangerment cases by professional  
28 people and other community members to the appropriate authority will cause the protective services of the state

1 to seek to prevent further abuses, protect and enhance the welfare of these children, and preserve family life  
2 whenever appropriate.

3 (3) In implementing this chapter, whenever it is necessary to remove a child from the child's home,  
4 the department shall, when it is in the best interests of the child, place the child with the child's noncustodial  
5 birth parent or with the child's extended family, including adult siblings, grandparents, great-grandparents,  
6 aunts, and uncles, when placement with the extended family is approved by the department, prior to placing the  
7 child in an alternative protective or residential facility. Prior to approving a placement, the department shall  
8 investigate whether anyone living in the home has been convicted of a crime involving serious harm to children.

9 (4) (a) The department shall create a registry for voluntary registration by close relatives of a child  
10 for purposes of notifying those relatives when a child that is related has been removed from the child's home  
11 pursuant to this chapter.

12 (b) The registry must contain the names of the child and the child's parents and may contain the  
13 names of the child's grandparents, aunts, uncles, adult brothers, and adult sisters and must contain the contact  
14 information for the child and parents and any of the relatives whose names appear in the registry.

15 (5) The department shall consult the registry and notify the relatives on the registry on the first  
16 working day after placing the child in accordance with 41-3-301.

17 (6) The department may charge a fee commensurate with the cost of operating the registry. The  
18 fee may be charged only to those persons whose names are voluntarily entered in the registry.

19 (7) In implementing the policy of this section, the child's health and safety are of paramount  
20 concern."

21

22 **Section 3.** Section 41-3-203, MCA, is amended to read:

23 **"41-3-203. Immunity from liability.** (1) Anyone investigating or reporting any incident of child abuse  
24 or neglect under 41-3-201 or 41-3-202, participating in resulting judicial proceedings, or furnishing hospital or  
25 medical records as required by 41-3-202 is immune from any liability, civil or criminal, that might otherwise be  
26 incurred or imposed unless the person:

27 (a) \_\_\_\_\_ was grossly negligent or acted in bad faith or with malicious purpose; ~~or~~

28 (b) \_\_\_\_\_ provided information knowing the information to be false; or

