



AN ACT REVISING LAWS RELATED TO CONTRIBUTIONS BY PARENTS OR GUARDIANS FOR THE COST OF A YOUTH'S CARE WHILE THE YOUTH IS IN THE CUSTODY OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; PROVIDING THAT A COURT MAY ONLY ORDER CONTRIBUTION FROM A PARENT OR GUARDIAN FOR THE COST OF THE OUT-OF-HOME CARE OF A YOUTH IF THE COURT FINDS THAT CONTRIBUTION IS IN THE YOUTH'S BEST INTERESTS AND WILL NOT IMPEDE THE PARENT'S OR GUARDIAN'S ABILITY TO ENGAGE IN REUNIFICATION EFFORTS; CREATING A PRESUMPTION THAT ORDERING CONTRIBUTION FROM A PARENT OR GUARDIAN FOR A YOUTH'S OUT-OF-HOME CARE BEFORE THE YOUTH HAS BEEN OUT OF THE HOME FOR 18 MONTHS IS CONTRARY TO THE YOUTH'S BEST INTERESTS; AND AMENDING SECTIONS 41-3-101 AND 41-3-446, MCA.

WHEREAS, it is the policy of the State of Montana to support and preserve the family as the single most powerful influence for ensuring the healthy social development and mental and physical well-being of Montana's children pursuant to section 41-7-102, MCA; and

WHEREAS, it is the policy of the State of Montana to preserve the unity and welfare of the family whenever possible pursuant to section 41-3-101, MCA; and

WHEREAS, the federal Children's Bureau released new guidance to states on June 8, 2022, that under 42 U.S.C. 671(a)(17), an assignment of rights to child support for children in foster care receiving maintenance payments under Title IV-E of the Social Security Act "is not required except in very rare instances where there will be positive or no adverse effects on the child, or the assignment will not impede successful achievement of the child's permanency plan."

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

Section 1. Section 41-3-101, MCA, is amended to read:

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

- (a) provide for the protection of children whose health and welfare are or may be adversely affected and further threatened by the conduct of those responsible for the children's care and protection;
 - (b) achieve these purposes in a family environment and preserve the unity and welfare of the family whenever possible;
 - (c) support the efforts of parents whose children have been removed to reunify the family, including by taking into account whether those efforts may be impeded by court-ordered support payments;
 - ~~(e)~~(d) ensure that there is no forced removal of a child from the family based solely on an allegation of abuse or neglect unless the department has reasonable cause to suspect that the child is at imminent risk of harm;
 - ~~(d)~~(e) recognize that a child is entitled to assert the child's constitutional rights;
 - ~~(e)~~(f) ensure that all children have a right to a healthy and safe childhood in a permanent placement;
- and
- ~~(f)~~(g) ensure that whenever removal of a child from the home is necessary, the child is entitled to maintain ethnic, cultural, and religious heritage whenever appropriate.

(2) It is intended that the mandatory reporting of abuse or endangerment cases by professional people and other community members to the appropriate authority will cause the protective services of the state to seek to prevent further abuses, protect and enhance the welfare of these children, and preserve family life whenever appropriate.

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

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

pursuant to this chapter.

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

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

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

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

Section 2. Section 41-3-446, MCA, is amended to read:

"41-3-446. Contributions by parents or guardians for youth's care. (1) (a) ~~If~~ In accordance with subsections (1)(b) and (1)(c), if physical or legal custody of the youth is transferred to the department, the court shall examine the financial ability of the youth's ~~parents~~ parent or ~~guardians~~ guardian to pay a contribution covering all or part of the costs for the care, custody, and treatment of the youth, including the costs of necessary medical, dental, and other health care.

(b) The court may order contribution only upon a finding that:

(i) the payment is in the best interests of the child; and

(ii) the payment will not impede successful achievement of the child's permanency plan or the parent's or guardian's ability to engage in reunification efforts.

(c) In making a determination under this section, the court shall presume that it is not in the best interests of a child to order a contribution from the child's parent or guardian unless the child has been in the physical or legal custody of the state for 18 consecutive months or more.

(2) If the court determines that the youth's ~~parents~~ parent or ~~guardians~~ are financially guardian is able to pay a contribution as provided in subsection (1), the court shall order the youth's parent or guardian to pay an amount based on the uniform child support guidelines adopted by the department of public health and human services pursuant to 40-5-209. The court may not order a retroactive contribution from the parent or

guardian for costs incurred before the order is issued. An order under this subsection must be in writing.

(3) (a) Except as provided in subsection (3)(b), contributions ordered under this section and each modification of an existing order are enforceable by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 4. An order for a contribution that is inconsistent with this section is nevertheless subject to withholding for the payment of the contribution without need for an amendment of the support order or for any further action by the court.

(b) A court-ordered exception from contributions under this section must be in writing and must be included in the order. An exception from the immediate income-withholding requirement may be granted if the court finds that there is:

(i) good cause not to require immediate income withholding; or

(ii) an alternative arrangement between the department and the person who is ordered to pay contributions.

(c) A finding of good cause not to require immediate income withholding must, at a minimum, be based upon:

(i) a written determination and explanation by the court of the reasons why the implementation of immediate income withholding is not in the best interests of the child; and

(ii) proof of timely payment of previously ordered support in cases involving modification of contributions ordered under this section.

(d) When assessing whether the implementation of immediate income withholding is in the best interest of the child under subsection (3)(c)(i), the court shall consider whether immediate income withholding would impede successful achievement of the child's permanency plan or the parent's or guardian's ability to engage in reunification efforts.

~~(d)~~(e) An alternative arrangement must:

(i) provide sufficient security to ensure compliance with the arrangement;

(ii) be in writing and be signed by a representative of the department and the person required to make contributions; and

(iii) ~~if~~ be approved by the court, ~~be~~ and entered into the record of the proceeding.

(4) Upon a showing of a change in the financial ability of the youth's parent or guardian to pay, the

court may modify its order for the payment of contributions required under subsection (2).

(5) (a) If the court orders the payment of contributions under this section, the department shall apply to the department of public health and human services for support enforcement services pursuant to Title IV-D of the Social Security Act.

(b) The department of public health and human services may collect and enforce a contribution order under this section by any means available under law, including the remedies provided for in Title 40, chapter 5, parts 2 and 4.

(6) Unless a youth receives benefits under Title 53, chapter 4, part 2, the department may not seek a contribution from a parent or guardian of a youth whose physical or legal custody has been transferred to the department under this chapter except under the provisions of this section or pursuant to a preexisting support order under 40-5-290."

- END -

I hereby certify that the within bill,
HB 227, originated in the House.

Chief Clerk of the House

Speaker of the House

Signed this _____ day
of _____, 2023.

President of the Senate

Signed this _____ day
of _____, 2023.

HOUSE BILL NO. 227

INTRODUCED BY T. MOORE, D. LENZ, N. DURAM

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