

1 HOUSE BILL NO. 513
2 INTRODUCED BY J. CARLSON

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING CONSIDERATION OF THE HARM OF REMOVAL IN
5 CHILD ABUSE AND NEGLECT CASES; REQUIRING EVIDENCE OF THE HARM OF REMOVAL TO BE
6 PRESENTED AND CONSIDERED IN CHILD ABUSE AND NEGLECT PROCEEDINGS; REQUIRING CHILD
7 PROTECTION SPECIALISTS TO RECEIVE TRAINING IN TRAUMA RELATED TO REMOVALS; ~~REVISING A~~
8 ~~DEFINITION~~; AMENDING SECTIONS 41-3-128; ~~AND 41-3-423~~, 41-3-427, ~~41-3-604~~, ~~AND 41-3-609~~, MCA;
9 AND PROVIDING AN EFFECTIVE DATE."

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

12
13 **Section 1.** Section 41-3-128, MCA, is amended to read:

14 **"41-3-128. Certificate requirements -- supervision -- fees.** (1) An applicant for certification as a
15 child protection specialist shall:

16 (a) successfully complete a course in child protection, as defined by the department by rule, which
17 must include training in:

- 18 (i) ethics;
- 19 (ii) governing statutory and regulatory framework;
- 20 (iii) role of law enforcement;
- 21 (iv) crisis intervention techniques;
- 22 (v) childhood trauma research, including research on the trauma a child experiences when

23 removed from the home;

- 24 (vi) evidence-based practices for family preservation and strengthening; and
- 25 (vii) the provisions of the Indian Child Welfare Act, 25 U.S.C. 1902, et seq.; and

26 (b) demonstrate the applicant's ability to perform all essential functions of the certified child
27 protection role by earning a passing score on a competency examination developed pursuant to 41-3-130.

28 (2) As a prerequisite to the issuance of a certificate, the department shall require the applicant to

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1 submit fingerprints for the purpose of fingerprint background checks by the Montana department of justice and
2 the federal bureau of investigation as provided in 37-1-307.

3 (3) An applicant who has a history of criminal convictions has the opportunity to demonstrate to the
4 department that the applicant is sufficiently rehabilitated to warrant the public trust. The department may deny
5 the certificate if it determines that the applicant is not sufficiently rehabilitated."

6

7 **Section 2.** Section 41-3-423, MCA, is amended to read:

8 ~~"41-3-423. Reasonable efforts required to prevent removal of child or to return exemption~~
9 ~~findings permanency plan. (1) (a) The department shall make reasonable efforts to prevent the necessity of~~
10 ~~removal of a child from the child's home and to reunify families that have been separated by the state.~~

11 (b) (i) For the purposes of this subsection (1) ~~section~~, the term "reasonable efforts" means the
12 department shall in good faith;

13 (A) ~~develop and implement voluntary services agreements and treatment plans that are designed~~
14 ~~to preserve the parent-child relationship and the family unit;~~

15 (B) ~~offer protection and assistance in a manner that preserves the family unit; and~~

16 (C) ~~shall in good faith assist parents in completing voluntary services agreements and treatment~~
17 ~~plans.~~

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

19 (A) ~~identifying community resources that would allow the family to remain intact;~~

20 (B) ~~engaging in safety planning to address concerns that could lead to a child's removal;~~

21 (C) ~~offering services to allow the child to remain in the home;~~

22 (A) ~~written prevention plans;~~

23 (B)(D) ~~development of developing individual written case plans specifying that specify state efforts to~~
24 ~~preserve or reunify families;~~

25 (C)(E) ~~placement in the least disruptive setting possible with priority given to family placement as~~
26 ~~provided in 41-3-439;~~

27 (D)(F) ~~provision of providing services pursuant to a case plan that is designed to address the parent's~~
28 ~~treatment and other needs precluding the parent from safely parenting, including but not limited to individual~~

1 ~~and family therapy, parent education, substance abuse treatment, and trauma-related services; and~~
 2 ~~(E)(G) periodic review of reviewing at each subsequent hearing each case to ensure timely progress~~
 3 ~~toward reunification or permanent placement and to review a written statement describing the ongoing~~
 4 ~~reasonable efforts being made to prevent removal or reunify a family. The written statement must contain facts~~
 5 ~~specific to the case.~~

6 ~~(iii) The department shall demonstrate its good faith efforts by describing in writing the attempts it~~
 7 ~~has made to engage with families in a manner that allows children to remain safely in their homes.~~

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

11 ~~(2) If the department is unable to provide reasonable efforts to the family to prevent the removal of~~
 12 ~~a child, the child protection specialist shall document why reasonable efforts could not be made and provide the~~
 13 ~~information in writing to the court with the petition required under 41-3-427.~~

14 ~~(2)(3) Except in a proceeding subject to the federal Indian Child Welfare Act, the department may, at~~
 15 ~~any time during an abuse and neglect proceeding, make a request for a determination that preservation or~~
 16 ~~reunification services need not be provided. If an indigent parent is not already represented by counsel, the~~
 17 ~~court shall immediately provide for the appointment or assignment of counsel to represent the indigent parent in~~
 18 ~~accordance with the provisions of 41-3-425. A court may make a finding that the department need not make~~
 19 ~~reasonable efforts to provide preservation or reunification services if the court finds that the parent has:~~

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

22 ~~(b) committed, aided, abetted, attempted, conspired, or solicited deliberate or mitigated deliberate~~
 23 ~~homicide of a child;~~

24 ~~(c) committed aggravated assault against a child;~~

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

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

1 ~~(3)(4)~~—Preservation or reunification services are not required for a putative father, as defined in 42-2-
2 201, if the court makes a finding that the putative father has failed to do any of the following:

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

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

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

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

8 ~~(iii)~~—manifesting an ability and willingness to assume legal and physical custody of the child if the
9 child was not in the physical custody of the other parent.

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

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

13 ~~(ii)~~—recorded on the child's birth certificate as the child's father.

14 ~~(4)(5)~~—A judicial finding that preservation or reunification services are not necessary under this section
15 must be supported by clear and convincing evidence.

16 ~~(5)(6)~~—If the court finds that preservation or reunification services are not necessary pursuant to
17 subsection (2) ~~(3)~~ or ~~(3) (4)~~, a permanency hearing must be held within 30 days of that determination and
18 reasonable efforts, including consideration of both in-state and out-of-state permanent placement options for
19 the child, must be made to place the child in a timely manner in accordance with the permanency plan and to
20 complete whatever steps are necessary to finalize the permanent placement of the child.

21 ~~(6)(7)~~—If reasonable efforts have been made to prevent removal of a child from the home or to return a
22 child to the child's home but continuation of the efforts is determined by the court to be inconsistent with the
23 permanency plan for the child, the department shall make reasonable efforts to place the child in a timely
24 manner in accordance with the permanency plan, including, if appropriate, placement in another state, and to
25 complete whatever steps are necessary to finalize the permanent placement of the child. Reasonable efforts to
26 place a child permanently for adoption or to make an alternative out-of-home permanent placement may be
27 made concurrently with reasonable efforts to return a child to the child's home. Concurrent planning, including
28 identifying in-state and out-of-state placements, may be used.

1 ~~(7)(8) —When determining whether the department has made reasonable efforts to prevent the~~
2 ~~necessity of removal of a child from the child's home or to reunify families that have been separated by the~~
3 ~~state, the court shall review the services provided by the agency including, if applicable, protective services~~
4 ~~provided pursuant to 41-3-302."~~

5

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

7 **"41-3-427. Petition for immediate protection and emergency protective services -- evidence**
8 **and consideration of harm of removal -- order -- service.** (1) (a) In a case in which it appears that a child is
9 abused or neglected or is in danger of being abused or neglected, the county attorney, the attorney general, or
10 an attorney hired by the county may file a petition for immediate protection and emergency protective services.
11 In implementing the policy of this section, the child's health and safety are of paramount concern.

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

17 (c) The affidavit of the department representative must contain:

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

19 (ii) specific, written findings documentation as to why the risk of allowing the child to remain at
20 home substantially outweighs the harm of removing the child, including consideration of:

21 (A) the emotional trauma the child is likely to experience if separated from the family;

22 (B) the risk that the child will experience multiple out-of-home placements;

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

24 ~~(D) —the child's attitude toward removal and the child's ties to the child's parent, guardian, or~~
25 ~~custodian;~~

26 ~~(E)(D) the child's relationships with other members of the household, including siblings;~~

27 ~~(F)(E) the child's schooling and social relationships that could be disrupted with a placement out of~~
28 the neighborhood;

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1 ~~(G)(F)~~ the impact the removal would have on services the child is receiving and on extracurricular
2 activities that benefit the child; and

3 ~~(H)(G)~~ documentation of reasonable efforts made to keep the family intact.

4 ~~(d)~~ — The written findings required under subsection (1)(c)(ii) must include the results of an
5 assessment of the child's strengths and the efforts made to maintain the strengths through preservation of the
6 family in a safe environment.

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

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

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

25 (2) Pursuant to subsection (1), if the court finds probable cause or, if the case is subject to the
26 federal Indian Child Welfare Act, clear and convincing evidence based on the petition and affidavit, the court
27 may issue an order for immediate protection of the child. The court shall consider the parents' statements, if
28 any, included with the petition and any accompanying affidavit or report to the court. If the court finds probable

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1 cause or, if the case is subject to the federal Indian Child Welfare Act, clear and convincing evidence, the court
2 may issue an order granting the following forms of relief, which do not constitute a court-ordered treatment plan
3 under 41-3-443:

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

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

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

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

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

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

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

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

23 (3) When requesting emergency protective services under this section, the department shall
24 provide the court with information on:

25 (a) whether, ~~based on an assessment conducted in accordance with subsection (4),~~ a kinship
26 placement is available; or

27 (b) if a family foster home has been identified:

28 (i) where the foster home is located in relation to the child's home;

- 1 (ii) whether the foster placement can accommodate the proposed visitation schedule;
- 2 (iii) whether siblings can be placed together;
- 3 (iv) the proximity of the foster home to the child's home and school;
- 4 (v) whether the child will be able to observe religious or cultural practices important to the child;
- 5 and
- 6 (vi) whether the foster home is able to accommodate any special needs the child may have.

7 ~~(4) In reviewing options for a kinship placement, the department shall assess family members~~
 8 ~~based on the current ability of the family members to provide support to the child. Criminal history and past~~
 9 ~~involvement with the department must be evaluated with reasonable scrutiny. The department may not consider~~
 10 ~~either of the following as an adequate reason for denying placement with an immediate or extended family~~
 11 ~~member:~~

- 12 ~~(a) past reports of child abuse and neglect that were found to be unsubstantiated; or~~
- 13 ~~(b) conviction of a nonviolent misdemeanor offense.~~

14 ~~(5)(4)~~ In making a removal determination, the court shall weigh and evaluate, in the factual setting,
 15 the harm to the child that will result from removal and determine if allowing the child to remain in the home
 16 substantially outweighs the harm of removal. Factors for consideration of the best interests of the child include
 17 but are not limited to:

- 18 (a) the factors identified in subsections (1)(c)(ii)(A) through ~~(1)(c)(ii)(G)~~ (1)(c)(ii)(F); and
- 19 (b) whether the department made reasonable efforts, as described in subsection ~~(1)(c)(ii)(H)~~
 20 (1)(c)(ii)(G), to keep the family intact.

21 ~~(3)(6)(5)~~ (a) An order for removal of a child from the home must include a finding that:
 22 (i) continued residence of the child with the parent is contrary to the welfare of the child;
 23 (ii) an out-of-home placement is in the best interests of the child; ~~or that an out-of-home placement~~
 24 is in the best interests of the child and

25 ~~(iii) that~~ the risk of allowing the child to remain in the home substantially outweighs the harm of
 26 removal.

27 ~~(b)~~ The court shall provide written findings to explain why the risk of the child's continued stay in
 28 the home outweighs the harm of removing the child.

1 ~~(4)(7)(6)~~ The order for immediate protection of the child must require the person served to
2 comply immediately with the terms of the order and to appear before the court issuing the order on the date
3 specified for a show cause hearing. Upon a failure to comply or show cause, the court may hold the person in
4 contempt or place temporary physical custody of the child with the department until further order.

5 ~~(5)(8)(7)~~ The petition must be served as provided in 41-3-422."
6

7 **Section 4.** Section 41-3-604, MCA, is amended to read:

8 ~~"41-3-604.—When petition to terminate parental rights required. (1) If a child has been in foster
9 care under the physical custody of the state for 15 months of the most recent 22 months, the best interests of
10 the child must be presumed to be served by termination of parental rights. If a child has been in foster care for
11 15 months of the most recent 22 months or if the court has found that reasonable efforts to preserve or reunify
12 a child with the child's parent or guardian are not required pursuant to 41-3-423, a petition to terminate parental
13 rights must be filed unless:~~

14 ~~(a) — the child is being cared for by a relative;~~

15 ~~(b) — the department has not provided the services considered necessary for the safe return of the
16 child to the child's home; or~~

17 ~~(c) — the department has documented a compelling reason, available for court review, for
18 determining that filing a petition to terminate parental rights would not be in the best interests of the child.~~

19 ~~(2) — Compelling reasons for not filing a petition to terminate parental rights include but are not
20 limited to the following:~~

21 ~~(a) — There are insufficient grounds for filing a petition.~~

22 ~~(b) — There is adequate documentation that termination of parental rights is not the appropriate plan
23 and not in the best interests of the child.~~

24 ~~(3) — If a child has been in foster care for 15 months of the most recent 22 months and a petition to
25 terminate parental rights regarding that child has not been filed with the court, the department shall file a report
26 to the court or review panel at least 3 days prior to the next hearing or review detailing the reasons that the
27 petition was not filed.~~

28 ~~(4) — If a hearing results in a finding of abandonment or that the parent has subjected the child to~~

1 any of the circumstances listed in 41-3-423(2)(a) ~~41-3-423(3)(a) through (2)(e) (3)(e)~~ and that reasonable
2 efforts to provide preservation or reunification are not necessary, unless there is an exception made pursuant to
3 subsections (1)(a) through (1)(c) of this section, a petition to terminate parental rights must be filed within 60
4 days of the finding.

5 (5) ~~— If an exception in subsections (1)(a) through (1)(c) of this section applies, a petition for an~~
6 ~~extension of temporary legal custody pursuant to 41-3-438, a petition for long-term custody pursuant to 41-3-~~
7 ~~445, or a petition to dismiss must be filed.~~

8 (6) ~~— A hearing on a petition for termination of parental rights must be held no later than 45 days~~
9 ~~from the date the petition was served on the parent or parents, except for good cause shown."~~

10

11 **Section 5.** Section 41-3-609, MCA, is amended to read:

12 **"41-3-609. — Criteria for termination.** (1) The court may order a termination of the parent-child legal
13 relationship upon a finding established by clear and convincing evidence, except as provided in the federal
14 Indian Child Welfare Act, if applicable, that any of the following circumstances exist:

15 (a) ~~— the parents have relinquished the child pursuant to 42-2-402 and 42-2-412;~~

16 (b) ~~— the child has been abandoned by the parents;~~

17 (c) ~~— the parent is convicted of a felony in which sexual intercourse occurred or is a minor~~
18 ~~adjudicated a delinquent youth because of an act that, if committed by an adult, would be a felony in which~~
19 ~~sexual intercourse occurred and, as a result of the sexual intercourse, the child is born;~~

20 (d) ~~— the parent has subjected a child to any of the circumstances listed in 41-3-423(2)(a) through~~
21 ~~(2)(e) 41-3-423(3)(a) through (3)(e);~~

22 (e) ~~— the putative father meets any of the criteria listed in 41-3-423(3)(a) through (3)(c) 41-3-~~
23 ~~423(4)(a) through (4)(c); or~~

24 (f) ~~— the child is an adjudicated youth in need of care and both of the following exist:~~

25 (i) ~~— an appropriate treatment plan that has been approved by the court has not been complied with~~
26 ~~by the parents or has not been successful; and~~

27 (ii) ~~— the conduct or condition of the parents rendering them unfit is unlikely to change within a~~
28 ~~reasonable time.~~

1 ~~(2) — In determining whether the conduct or condition of the parents is unlikely to change within a~~
 2 ~~reasonable time, the court shall enter a finding that continuation of the parent-child legal relationship will likely~~
 3 ~~result in continued abuse or neglect or that the conduct or the condition of the parents renders the parents unfit,~~
 4 ~~unable, or unwilling to give the child adequate parental care. In making the determinations, the court shall~~
 5 ~~consider but is not limited to the following:~~

6 ~~(a) — emotional illness, mental illness, or mental deficiency of the parent of a duration or nature as to~~
 7 ~~render the parent unlikely to care for the ongoing physical, mental, and emotional needs of the child within a~~
 8 ~~reasonable time;~~

9 ~~(b) — a history of violent behavior by the parent;~~

10 ~~(c) — excessive use of intoxicating liquor or of a narcotic or dangerous drug that affects the parent's~~
 11 ~~ability to care and provide for the child; and~~

12 ~~(d) — present judicially ordered long-term confinement of the parent.~~

13 ~~(3) — In considering any of the factors in subsection (2) in terminating the parent-child relationship,~~
 14 ~~the court shall give primary consideration to the physical, mental, and emotional conditions and needs of the~~
 15 ~~child.~~

16 ~~(4) — A treatment plan is not required under this part upon a finding by the court following hearing if:~~

17 ~~(a) — the parent meets the criteria of subsections (1)(a) through (1)(e);~~

18 ~~(b) — two medical doctors or clinical psychologists submit testimony that the parent cannot assume~~
 19 ~~the role of parent within a reasonable time;~~

20 ~~(c) — the parent is or will be incarcerated for more than 1 year and reunification of the child with the~~
 21 ~~parent is not in the best interests of the child because of the child's circumstances, including placement options,~~
 22 ~~age, and developmental, cognitive, and psychological needs; or~~

23 ~~(d) — the death or serious bodily injury, as defined in 45-2-101, of a child caused by abuse or neglect~~
 24 ~~by the parent has occurred.~~

25 ~~(5) — If a proceeding under this chapter involves an Indian child and is subject to the federal Indian~~
 26 ~~Child Welfare Act, a qualified expert witness is required to testify that the continued custody of the child by the~~
 27 ~~parent or Indian custodian is likely to result in serious emotional or physical damage to the child."~~

28

