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HOUSE BILL NO. 513

INTRODUCED BY J. CARLSON

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

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

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

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

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

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

removed from the home;

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

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

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

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

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

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

3 ~~(H)(G)(E)~~ 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

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)(iii)(F), (1)(c)(ii)(D); and~~

19 ~~(b) whether the department made reasonable efforts, as described in subsection (1)(c)(ii)(H)~~

20 ~~(1)(c)(iii)(G), (1)(c)(ii)(E), 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~~
24 ~~placement 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~~