

1 SENATE BILL NO. 266
2 INTRODUCED BY T. MANZELLA, B. BROWN, S. HINEBAUCH, D. EMRICH
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING CHILD ABUSE AND NEGLECT LAWS;
5 PROVIDING REQUIREMENTS FOR PARENTAL CONTACT AND DECISIONMAKING WHEN THE
6 DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES PROVIDES PROTECTIVE SERVICES;
7 REVISING IMMUNITY LAWS TO EXEMPT FROM IMMUNITY ANYONE WHO ENCOURAGES OR COERCES
8 A CHILD TO WITHHOLD INFORMATION FROM A PARENT OR PROVIDE FALSE INFORMATION ABOUT A
9 PARENT; ~~AND~~ AMENDING SECTIONS 41-3-101 AND 41-3-203, MCA; AND PROVIDING AN IMMEDIATE
10 EFFECTIVE DATE."
11

12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
13

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

15 Whenever the department provides protective services pursuant to this chapter:

- 16 (a) the department may not presume that the relationship between a child and the child's parent is
17 adversarial and shall facilitate regular, safe contact between the child and the child's parent, taking into
18 consideration any accommodations required under the federal Americans with Disabilities Act of 1990;
- 19 (b) if a parent expresses concern about a safety issue related to an out-of-home placement, the
20 department shall consider the concern credible and conduct a thorough investigation. A parent may contest the
21 results of the investigation by requesting review by the court or an appropriate oversight board.
- 22 (c) a parent retains the primary control of and must be involved in decisionmaking regarding the
23 child, unless ordered otherwise by the court, including but not limited to decisions regarding the following:
- 24 (i) medical decisions, including the parent's ability to request a second opinion and access the
25 child's medical records;
- 26 (ii) the selection of mental health providers;
- 27 (iii) vaccinations and medical testing and screening;

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- 1 (iv) religious practices, attendance, and training;
- 2 (v) changes to the child's physical appearance, including haircuts, hair dye, and body piercings;
- 3 and
- 4 (vi) education, including giving permission to participate in extracurricular activities, groups, or
- 5 clubs and the right to access school curriculum and records; and
- 6 (d) the department shall obtain a parent's written consent before:
- 7 (i) a biometric scan of the child is made, shared, or stored;
- 8 (ii) a record of the child's blood or DNA is created, stored, or shared, except as required by court
- 9 order; and
- 10 (iii) a video or voice recording of the child is made unless the recording is made as part of a
- 11 criminal investigation or an investigation under this chapter.

12

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

14 **"41-3-101. Declaration of policy.** (1) It is the policy of the state of Montana to:

- 15 (a) provide for the protection of children whose health and welfare are or may be adversely
- 16 affected and further threatened by the conduct of those responsible for the children's care and protection;
- 17 (b) achieve these purposes in a family environment and preserve the unity and welfare of the
- 18 family whenever possible;
- 19 (c) ensure that there is no forced removal of a child from the family based solely on an allegation
- 20 of abuse or neglect unless the department has reasonable cause to suspect that the child is at imminent risk of
- 21 harm;
- 22 (d) recognize that a child is entitled to assert the child's constitutional rights;
- 23 (e) ensure that all children have a right to a healthy and safe childhood in a permanent placement;
- 24 and
- 25 (f) ensure that whenever removal of a child from the home is necessary, the child is entitled to
- 26 maintain ethnic, cultural, and religious heritage whenever appropriate, and parents are entitled to maintain
- 27 contact with the child and be involved in decisionmaking regarding the child unless determined by a court to not

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1 be in the best interests of the child as defined in 40-4-212.

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

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

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

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

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

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

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

24

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

26 **"41-3-203. Immunity from liability.** (1) Anyone investigating or reporting any incident of child abuse
27 or neglect under 41-3-201 or 41-3-202, participating in resulting judicial proceedings, or furnishing hospital or

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1 medical records as required by 41-3-202 is immune from any liability, civil or criminal, that might otherwise be
2 incurred or imposed unless the person:

3 (a) _____ was grossly negligent or acted in bad faith or with malicious purpose; or

4 (b) _____ provided information knowing the information to be false; or

5 (c) _____ encouraged or coerced a child to withhold information from the child's parent or to falsify or
6 provide false information about the child's parent.

7 (2) _____ An employee of a governmental entity, as defined in 2-9-101, who commits an act described in
8 subsections (1)(a) through (1)(c) or who violates [section 1] shall be subject to disciplinary action, which may
9 include termination of employment and criminal prosecution under federal and state laws.

10 (2)(3) A person who provides information pursuant to 41-3-201 or a person who uses information
11 received pursuant to 41-3-205 to refuse to hire or to discharge a prospective or current employee, volunteer, or
12 other person who through employment or volunteer activities may have unsupervised contact with children and
13 who may pose a risk to children is immune from civil liability unless the person acted in bad faith or with
14 malicious purpose."

15
16 **NEW SECTION. Section 4. Codification instruction.** [Section 1] is intended to be codified as an
17 integral part of Title 41, chapter 3, part 3, and the provisions of Title 41, chapter 3, part 3, apply to [section 1].

18
19 **NEW SECTION. Section 5. Effective date.** [This act] is effective on passage and approval.

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