

1 SENATE BILL NO. 328

2 INTRODUCED BY D. LENZ

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CHILD ABUSE AND NEGLECT LAWS; REVISING THE
5 DEFINITION OF "REASONABLE EFFORTS"; DEFINING "FICTIVE KIN"; ESTABLISHING PLACEMENT
6 PREFERENCES; AMENDING SECTIONS 41-3-101, 41-3-423, 41-3-438, 41-3-440, 41-3-444, AND 41-3-445,
7 MCA; AND REPEALING SECTION 41-3-439, MCA."

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9 WHEREAS, the federal Indian Child Welfare Act requires active efforts that are affirmative, active, and
10 thorough and timely efforts that are tailored, in a manner consistent with prevailing social and cultural
11 conditions, to each case to maintain or reunite an Indian child with the child's family; and

12 WHEREAS, the federal Indian Child Welfare Act outlines placement preferences for foster care,
13 preadoptive, or adoptive placements of Indian children, prioritizing placement with members of a child's
14 extended family; and

15 WHEREAS, the Legislature desires to incorporate the federal Indian Child Welfare Act's requirements
16 regarding active efforts and placement preferences into Montana's existing child abuse and neglect laws.

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

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20 NEW SECTION. **Section 1. Placement preferences.** (1) The placement preferences described in
21 this section apply in any foster care, preadoptive, or adoptive placement of a child unless there is a
22 determination under [section 2] that good cause exists to not follow the placement preferences or unless the
23 placement is governed by the federal Indian Child Welfare Act.

24 (2) (a) In any adoptive placement of a child, preference must be given in descending order to
25 placement of the child with:

26 (i) a member of the child's extended family, including fictive kin;

27 (ii) a member of the child's community with ethnic, cultural, and religious heritage similar to the
28 child's family; or

1 considered and found to be inappropriate or not to be in the best interests of the child; and

2 (D) the child has been in a placement in which the foster parent or relative has committed to the
3 long-term care and to a relationship with the child, and it is in the best interests of the child to remain in that
4 placement.

5 (9) For a child 14 years of age or older, the permanency plan must:

6 (a) be developed in consultation with the child and in consultation with up to two members of the
7 child's case planning team who are chosen by the child and who are not a foster parent or child protection
8 specialist for the child;

9 (b) identify one person from the case management team, who is selected by the child, to be
10 designated as the child's advisor and advocate for the application of the reasonable and prudent parenting
11 standard; and

12 (c) include services that will be needed to transition the child from foster care to adulthood.

13 (10) A permanency hearing must document the intensive, ongoing, and unsuccessful efforts made
14 by the department to return the child to the child's home or to secure a permanent placement of the child with a
15 relative, legal guardian, or adoptive parent.

16 (11) The court may terminate a planned permanent living arrangement upon petition of the birth
17 parents or the department if the court finds that the circumstances of the child or family have substantially
18 changed and the best interests of the child are no longer being served."

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20 **NEW SECTION. Section 9. Repealer.** The following section of the Montana Code Annotated is
21 repealed:

22 41-3-439. Department to give placement priority to extended family member of abandoned child.
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24 **NEW SECTION. Section 10. Direction to department of public health and human services.** The
25 director of the department of public health and human services shall consult with Indian tribes concerning the
26 federal Indian Child Welfare Act and child protection issues.
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28 **NEW SECTION. Section 11. Codification instruction.** [Sections 1 and 2] are intended to be codified