Amendment - 2nd Reading/2nd House-tan - Requested by: Jonathan Windy Boy - (H) Committee of the Whole - 2023						
68th Legislature 2023		Drafter: Madelyn Krezowski, (406) 444-6857	SB0328.003.001			
1		SENATE BILL NO. 328				
2		INTRODUCED BY D. LENZ				
3						
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 RE	EPEALING SECTION 41-3-439, MCA."				
8						
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 fami	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.					
17						
18	BE IT ENACT	ED BY THE LEGISLATURE OF THE STATE OF MONTANA:				
19						
20	NEW	SECTION. Section 1. Placement preferences. (1) The placement preferences.	references described in			
21	this section ap	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			

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1	(10)	A permanency hearing must document the intensive, ongoing, and unsuc	cessful efforts made		
2	by the departm	ment to return the child to the child's home or to secure a permanent placement of the child with a			
3	relative, legal ç	guardian, or adoptive parent.			
4	(11)	The court may terminate a planned permanent living arrangement upon p	etition of the birth		
5	parents or the department if the court finds that the circumstances of the child or family have substantially				
6	changed and t	he best interests of the child are no longer being served."			
7					
8	NEW S	SECTION. Section 9. Repealer. The following section of the Montana Code	e Annotated is		
9	repealed:				
10	41-3-439.	Department to give placement priority to extended family member of abar	ndoned child.		
11					
12	NEW S	SECTION. Section 10. Direction to department of public health and i	HUMAN SERVICES. THE		
13	DIRECTOR OF TI	HE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES SHALL CONSULT WITH	INDIAN TRIBES		
14	CONCERNING TI	HE FEDERAL INDIAN CHILD WELFARE ACT AND CHILD PROTECTION ISSUES.			
15					
16	NEW S	SECTION. Section 10. Codification instruction. [Sections 1 and 2] are i	ntended to be codified		
17	as an integral	part of Title 41, chapter 3, part 4, and the provisions of Title 41, chapter 3, p	art 4, apply to		
18	[sections 1 and	d 2].			
19					
20	COOF	RDINATION SECTION. Section 11. COORDINATION INSTRUCTION. IF BOTH H	OUSE BILL NO. 317		
21	AND [THIS ACT]	ARE PASSED AND APPROVED, THEN [SECTION 1(1) OF THIS ACT] MUST BE AMENDE	D AS FOLLOWS:		
22	"(1) Tł	ne placement preferences described in this section apply in any foster care,	preadoptive, or		
23	adoptive place	ment of a child unless there is a determination under [section 2] that good o	ause exists to not		
24	follow the plac	ement preferences or unless the placement is governed by the federal India	an Child Welfare Act		
25	or the Montana	a Indian Child Welfare Act."			
26		- END -			

