



AN ACT PROVIDING FOR THE PROVISION OF CERTAIN INFORMATION TO A PARENT, GUARDIAN, OR OTHER PERSON HAVING PHYSICAL OR LEGAL CUSTODY OF A CHILD WHO IS THE SUBJECT OF A CHILD ABUSE OR NEGLECT INVESTIGATION.

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

Section 1. Provision of information about investigation procedure and rights to parents. (1) On removal of a child, the department shall verbally advise the parent, guardian, or other person having physical or legal custody of a child:

- (a) of the specific complaint or allegation made against the parent, guardian, or other person having physical or legal custody of a child;
- (b) of the fundamental rights of parents under 40-6-701 and 40-4-227 to direct the upbringing, education, health care, and mental health of their children without government interference, but this right should yield to the best interests of the child when the parent's conduct is contrary to the child-parent relationship;
- (c) of the right to seek counsel at any time and to consult with counsel before signing any documents; and
- (d) that the parent, guardian, or other person having physical or legal custody of a child:
 - (i) is not required to permit an investigator from the department to enter the home or submit to a drug or alcohol test, unless ordered to do so by the court;
 - (ii) is not required to speak with the investigator and any statements may be used in an administrative or court proceeding; and
 - (iii) may record any interactions with a department employee if the parent, guardian, or other person having physical or legal custody of a child informs the department employee that the interaction is being recorded.

- (2) During initial interactions with the parent, guardian, or other person having physical or legal custody of a child who is the subject of an investigation under 41-3-202, the department shall provide the parent, guardian, or other person having physical or legal custody of a child with a clear written description:
- (a) of the right to seek counsel at any time and to consult with counsel before signing any documents;
 - (b) that the parent, guardian, or other person having physical or legal custody of a child is not required to permit an investigator from the department to enter the home or submit to a drug or alcohol test, unless ordered to do so by the court;
 - (c) that the parent, guardian, or other person having physical or legal custody of a child is not required to speak with the investigator and any statements may be used in an administrative or court proceeding;
 - (d) of the right of the parent, guardian, or other person having physical or legal custody of a child to:
 - (i) be treated with dignity and respect without any form of discrimination; and
 - (ii) have the parent's, guardian's, or other person's culture, language, and religion respected; and
 - (e) of the department's procedures for conducting an investigation of alleged child abuse or neglect.
- (3) If applicable after initial contact, the department shall provide the parent, guardian, or other person having physical or legal custody of a child with a concise written description of:
- (a) the circumstances under which the department would seek to enter into a written prevention plan or services agreement with the parent or guardian under 41-3-302;
 - (b) the circumstances under which the department would remove the child from the home and seek a court order for immediate protection and emergency protective services under 41-3-427;
 - (c) an explanation of when the law requires the department to refer a report of alleged child abuse or neglect to a law enforcement agency for a separate determination of whether a criminal violation occurred;
 - (d) the right to withhold consent to release the parent's, guardian's, or other person's medical or mental health records unless ordered to do so by a court; and
 - (e) the right to accommodations under the Americans with Disabilities Act of 1990, 42 U.S.C.

12101, et seq.

(4) When the parent, guardian, or other person having physical or legal custody of a child requests to file a complaint, the department shall provide the parent, guardian, or person having physical or legal custody:

- (a) the procedures to file a complaint with the department and the child and family ombudsman;
- (b) the procedure for the department to disclose records to a member of the United States

congress or a member of the Montana legislature under 41-3-205(4); and

- (c) the process for reviewing the department's records of the investigation.

(5) When the court approves emergency protective services, the office of public defender shall provide the parent, guardian, or other person having physical or legal custody of a child:

- (a) timelines for hearings and determinations under this chapter; and
- (b) an explanation that a parent, guardian, or other person having physical or legal custody of a

child has the right to:

(i) receive a copy of the affidavit of the child protection specialist regarding the circumstances of the emergency removal as provided under 41-3-301;

- (ii) attend and participate in hearings, which includes providing a statement to the judge;

(iii) contest the allegations in a petition filed under 41-3-422;

(iv) call witnesses and cross-examine witnesses;

(v) have a support person or persons present during any meeting with a child protection specialist or other department staff;

(vi) request that the child be placed in a kinship foster home as defined in 52-2-602; and

(vii) be provided with services, including visitation with the child, unless otherwise ordered by the court.

(6) Except for the information provided in subsection (1)(a), the department shall post the information required to be given to a parent, guardian, or other person having physical or legal custody of a child on a publicly available website and in a conspicuous place in the publicly accessible area of the office of a child protection specialist.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 41, chapter 3, part 2, and the provisions of Title 41, chapter 3, part 2, apply to [section 1].

- END -

I hereby certify that the within bill,
SB 181, originated in the Senate.

Secretary of the Senate

President of the Senate

Signed this _____ day
of _____, 2023.

Speaker of the House

Signed this _____ day
of _____, 2023.

SENATE BILL NO. 181
INTRODUCED BY D. LENZ

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