



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; AMENDING SECTIONS 41-3-128, AND 41-3-427, 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

submit fingerprints for the purpose of fingerprint background checks by the Montana department of justice and the federal bureau of investigation as provided in 37-1-307.

(3) An applicant who has a history of criminal convictions has the opportunity to demonstrate to the department that the applicant is sufficiently rehabilitated to warrant the public trust. The department may deny the certificate if it determines that the applicant is not sufficiently rehabilitated."

~~"41-3-423. Reasonable efforts required to prevent removal of child or to return -- exemption -- findings -- permanency plan. (1) (a) The department shall make reasonable efforts to prevent the necessity of removal of a child from the child's home and to reunify families that have been separated by the state.~~

~~(b) (i) For the purposes of this subsection (1), the term "reasonable efforts" means the department shall in good faith develop and implement voluntary services agreements and treatment plans that are designed to preserve the parent-child relationship and the family unit and shall in good faith assist parents in completing voluntary services agreements and treatment plans.~~

~~(ii) The term includes but is not limited to:~~

~~(A) written prevention plans;~~

~~(B) development of individual written case plans specifying state efforts to preserve or reunify families;~~

~~(C) placement in the least disruptive setting possible with priority given to family placement as provided in 41-3-439;~~

~~(D) provision of services pursuant to a case plan that is designed to address the parent's treatment and other needs precluding the parent from safely parenting, including but not limited to individual and family therapy, parent education, substance abuse treatment, and trauma-related services; and~~

~~(E) periodic review of each case to ensure timely progress toward reunification or permanent placement.~~

~~(c) In determining preservation or reunification services to be provided and in making reasonable efforts at providing preservation or reunification services, the child's health and safety are of paramount concern.~~

~~(2) Except in a proceeding subject to the federal Indian Child Welfare Act, the department may, at any time during an abuse and neglect proceeding, make a request for a determination that preservation or~~

~~reunification services need not be provided. If an indigent parent is not already represented by counsel, the court shall immediately provide for the appointment or assignment of counsel to represent the indigent parent in accordance with the provisions of 41-3-425. A court may make a finding that the department need not make reasonable efforts to provide preservation or reunification services if the court finds that the parent has:~~

- ~~(a) — subjected a child to aggravated circumstances, including but not limited to abandonment, torture, chronic abuse, or sexual abuse or chronic, severe neglect of a child;~~
- ~~(b) — committed, aided, abetted, attempted, conspired, or solicited deliberate or mitigated deliberate homicide of a child;~~
- ~~(c) — committed aggravated assault against a child;~~
- ~~(d) — committed neglect of a child that resulted in serious bodily injury or death; or~~
- ~~(e) — had parental rights to the child's sibling or other child of the parent involuntarily terminated and the circumstances related to the termination of parental rights are relevant to the parent's ability to adequately care for the child at issue.~~

~~(3) — Preservation or reunification services are not required for a putative father, as defined in 42-2-201, if the court makes a finding that the putative father has failed to do any of the following:~~

- ~~(a) — contribute to the support of the child for an aggregate period of 1 year, although able to do so;~~
- ~~(b) — establish a substantial relationship with the child. A substantial relationship is demonstrated by:
 - ~~(i) — visiting the child at least monthly when physically and financially able to do so; or~~
 - ~~(ii) — having regular contact with the child or with the person or agency having the care and custody of the child when physically and financially able to do so; and~~
 - ~~(iii) — manifesting an ability and willingness to assume legal and physical custody of the child if the child was not in the physical custody of the other parent.~~~~

~~(c) — register with the putative father registry pursuant to Title 42, chapter 2, part 2, and the person has not been:~~

- ~~(i) — adjudicated in Montana to be the father of the child for the purposes of child support; or~~
- ~~(ii) — recorded on the child's birth certificate as the child's father.~~

~~(4) — A judicial finding that preservation or reunification services are not necessary under this section must be supported by clear and convincing evidence.~~

~~(5) — If the court finds that preservation or reunification services are not necessary pursuant to subsection (2) or (3), a permanency hearing must be held within 30 days of that determination and reasonable efforts, including consideration of both in-state and out-of-state permanent placement options for the child, must be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child.~~

~~(6) — If reasonable efforts have been made to prevent removal of a child from the home or to return a child to the child's home but continuation of the efforts is determined by the court to be inconsistent with the permanency plan for the child, the department shall make reasonable efforts to place the child in a timely manner in accordance with the permanency plan, including, if appropriate, placement in another state, and to complete whatever steps are necessary to finalize the permanent placement of the child. Reasonable efforts to place a child permanently for adoption or to make an alternative out-of-home permanent placement may be made concurrently with reasonable efforts to return a child to the child's home. Concurrent planning, including identifying in-state and out-of-state placements, may be used.~~

~~(7) — When determining whether the department has made reasonable efforts to prevent the necessity of removal of a child from the child's home or to reunify families that have been separated by the state, the court shall review the services provided by the agency including, if applicable, protective services provided pursuant to 41-3-302."~~

Section 2. Section 41-3-427, MCA, is amended to read:

"41-3-427. Petition for immediate protection and emergency protective services -- evidence and consideration of harm of removal -- order -- service. (1) (a) In a case in which it appears that a child is abused or neglected or is in danger of being abused or neglected, the county attorney, the attorney general, or an attorney hired by the county may file a petition for immediate protection and emergency protective services. In implementing the policy of this section, the child's health and safety are of paramount concern.

(b) A petition for immediate protection and emergency protective services must state the specific authority requested and must be supported by an affidavit signed by a representative of the department stating in detail the alleged facts upon which the request is based and the facts establishing probable cause or, if the case is subject to the federal Indian Child Welfare Act, clear and convincing evidence that a child is abused or

neglected or is in danger of being abused or neglected.

(c) _____ The affidavit of the department representative must contain:

(i) _____ information, if any, regarding statements made by the parents about the facts of the case; and

(ii) _____ specific, written documentation as to why the risk of allowing the child to remain at home

substantially outweighs the harm of removing the child, including consideration of:

(A) _____ the emotional trauma the child is likely to experience if separated from the family;

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

(C) _____ the child's schooling and social relationships that could be disrupted with a placement out of the neighborhood;

(D) _____ the impact the removal would have on services the child is receiving and on extracurricular activities that benefit the child; and

(E) _____ documentation of reasonable efforts made to keep the family intact.

~~(e)~~(d) If from the alleged facts presented in the affidavit it appears to the court that there is probable cause or, if the case is subject to the federal Indian Child Welfare Act, clear and convincing evidence to believe that the child has been abused or neglected or is in danger of being abused and neglected, the judge shall grant emergency protective services and the relief authorized by subsection (2) until the adjudication hearing or the temporary investigative hearing. If it appears from the alleged facts contained in the affidavit that there is insufficient probable cause or, if the case is subject to the federal Indian Child Welfare Act, clear and convincing evidence to believe that the child has been abused or neglected or is in danger of being abused or neglected, the court shall dismiss the petition.

~~(d)~~(e) If the parents, parent, guardian, person having physical or legal custody of the child, or attorney for the child disputes the material issues of fact contained in the affidavit or the veracity of the affidavit, the person may request a contested show cause hearing pursuant to 41-3-432 within 10 days following service of the petition and affidavit.

~~(e)~~(f) The petition for immediate protection and emergency protective services must include a notice advising the parents, parent, guardian, or other person having physical or legal custody of the child that the parents, parent, guardian, or other person having physical or legal custody of the child may have a support person present during any in-person meeting with a child protection specialist concerning emergency protective

services. Reasonable accommodation must be made in scheduling an in-person meeting with the child protection specialist.

(2) Pursuant to subsection (1), if the court finds probable cause or, if the case is subject to the federal Indian Child Welfare Act, clear and convincing evidence based on the petition and affidavit, the court may issue an order for immediate protection of the child. The court shall consider the parents' statements, if any, included with the petition and any accompanying affidavit or report to the court. If the court finds probable cause or, if the case is subject to the federal Indian Child Welfare Act, clear and convincing evidence, the court may issue an order granting the following forms of relief, which do not constitute a court-ordered treatment plan under 41-3-443:

- (a) the right of entry by a peace officer or department worker;
- (b) the right to place the child in temporary medical or out-of-home care, including but not limited to care provided by a noncustodial parent, kinship or foster family, group home, or institution;
- (c) the right of the department to locate, contact, and share information with any extended family members who may be considered as placement options for the child;
- (d) a requirement that the parents, guardian, or other person having physical or legal custody furnish information that the court may designate and obtain evaluations that may be necessary to determine whether a child is a youth in need of care;
- (e) a requirement that the perpetrator of the alleged child abuse or neglect be removed from the home to allow the child to remain in the home;
- (f) a requirement that the parent provide the department with the name and address of the other parent, if known, unless parental rights to the child have been terminated;
- (g) a requirement that the parent provide the department with the names and addresses of extended family members who may be considered as placement options for the child who is the subject of the proceeding; and
- (h) any other temporary disposition that may be required in the best interests of the child that does not require an expenditure of money by the department unless the court finds after notice and a hearing that the expenditure is reasonable and that resources are available for payment. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(3) When requesting emergency protective services under this section, the department shall provide the court with information on:

- (a) whether a kinship placement is available; or
- (b) if a family foster home has been identified:
 - (i) where the foster home is located in relation to the child's home;
 - (ii) whether the foster placement can accommodate the proposed visitation schedule;
 - (iii) whether siblings can be placed together;
 - (iv) the proximity of the foster home to the child's home and school;
 - (v) whether the child will be able to observe religious or cultural practices important to the child;

and

- (vi) whether the foster home is able to accommodate any special needs the child may have.

(4) In making a removal determination, the court shall weigh and evaluate, in the factual setting, the harm to the child that will result from removal and determine if allowing the child to remain in the home substantially outweighs the harm of removal. Factors for consideration of the best interests of the child include but are not limited to:

- (a) the factors identified in subsections (1)(c)(ii)(A) through (1)(c)(ii)(D); and
- (b) whether the department made reasonable efforts, as described in subsection (1)(c)(ii)(E), to

keep the family intact.

~~(3)~~(5) (a) An order for removal of a child from the home must include a finding that:

- (i) continued residence of the child with the parent is contrary to the welfare of the child;
- (ii) an out-of-home placement is in the best interests of the child; ~~or that an out-of-home placement~~

is in the best interests of the child and

(iii) the risk of allowing the child to remain in the home substantially outweighs the harm of removal.

(b) The court shall provide written findings to explain why the risk of the child's continued stay in the home outweighs the harm of removing the child.

~~(4)~~(6) The order for immediate protection of the child must require the person served to comply immediately with the terms of the order and to appear before the court issuing the order on the date specified for a show cause hearing. Upon a failure to comply or show cause, the court may hold the person in contempt

or place temporary physical custody of the child with the department until further order.

~~(5)~~(7) The petition must be served as provided in 41-3-422."

Section 3. Effective date. [This act] is effective July 1, 2023.

- END -

I hereby certify that the within bill,
HB 513, originated in the House.

Chief Clerk of the House

Speaker of the House

Signed this _____ day
of _____, 2023.

President of the Senate

Signed this _____ day
of _____, 2023.

HOUSE BILL NO. 513

INTRODUCED BY J. CARLSON

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