



AN ACT REVISING LAWS RELATED TO CRIMINAL BACKGROUND CHECKS; PROVIDING FOR CRIMINAL BACKGROUND CHECKS OF RESIDENTS IN HOMES WHERE A POTENTIAL EMERGENCY PLACEMENT MAY BE MADE; PROVIDING REQUIREMENTS FOR EMERGENCY PLACEMENT OF A CHILD IN A HOME; PROVIDING REQUIREMENTS FOR CONDUCTING BACKGROUND CHECKS; AND PROVIDING RULEMAKING AUTHORITY.

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

Section 1. Criminal background checks of adults residing in potential emergency placements authorized. (1) (a) If a child is removed from the child's parental or custodial home for protective care pursuant to this part and an emergency placement is offered, the department or an authorized tribe may request, in accordance with the procedures set forth in 28 CFR 901.1 through 901.4, that each adult 18 years of age or older who is residing in a home where the potential emergency placement is to be made consent to a preliminary state and federal name-based background check that must be followed within 15 calendar days from the date that the name-based background search was conducted with the submission of fingerprints to the state repository, as defined in 44-5-103, for a fingerprint-based background check conducted in accordance with subsection (2) of this section.

(b) If a name-based background check demonstrates that none of the adults residing in the home where the emergency placement is to be made has been convicted of a disqualifying criminal offense, the department or authorized tribe may place the child in the home pending the outcome of the fingerprint-based background check.

(c) If an adult refuses to consent to the department's or an authorized tribe's request for a name-based and fingerprint-based background check, the department or authorized tribe may not place the child in a home in which the adult resides, or if the child was already placed in the home, the department or authorized tribe shall immediately remove the child from the home.

(2) An adult who consents to a name-based and fingerprint-based background check pursuant to

subsection (1) shall submit to the department or an authorized tribe a complete set of fingerprints and written permission authorizing the department or the authorized tribe to submit the fingerprints to the state repository for processing of the state and federal background check. Results of the name-based and fingerprint-based background check must be provided to the quality assurance division of the department of public health and human services or to an authorized tribe.

(3) If the department or an authorized tribe elects to perform an initial name-based background check and a fingerprint-based background check pursuant to this section, the department or the authorized tribe may not make an emergency placement or continue an emergency placement in a home in which an adult resident has been convicted of a disqualifying criminal offense.

(4) The state repository and the federal bureau of investigation may charge a reasonable fee for processing a fingerprint-based criminal background check.

(5) If an emergency placement is denied as a result of a name-based background check of a resident and the resident contests the denial, the resident may within 15 calendar days of the denial submit to the department or authorized tribe a complete set of fingerprints with written permission allowing the department or authorized tribe to submit the fingerprints to the state repository for processing of the state and federal background check.

(6) The department shall by rule designate those criminal offenses that constitute a disqualifying criminal offense under this section, which may include but are not limited to felony convictions for violent crimes, crimes involving children, family members, or the elderly or disabled, and crimes involving drugs in which the conviction occurred within a certain period of time.

(7) For the purposes of this section, the following definitions apply:

(a) "Authorized tribe" means the tribal child services unit and its approved designees responsible for overseeing foster care licensing for an Indian tribe located within the borders of Montana that has in place a valid tribal fingerprint program user agreement with the Montana department of justice.

(b) "Emergency placement" means an instance in which the department or an authorized tribe provides protective services and places a child in the home of private individuals, including but not limited to family, neighbors, or friends of the child.

Section 2. Notification to tribal governments. The secretary of state shall send a copy of [this act] to

each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

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

- END -

I hereby certify that the within bill,
SB 0351, originated in the Senate.

Secretary of the Senate

President of the Senate

Signed this _____ day
of _____, 2013.

Speaker of the House

Signed this _____ day
of _____, 2013.

SENATE BILL NO. 351

INTRODUCED BY A. OLSON

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