

HOUSE BILL NO. 694

INTRODUCED BY B. MERCER

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CHILD ABUSE AND NEGLECT LAWS; REVISING THE DECLARATION OF POLICY; REVISING PLACEMENT PREFERENCES TO PROVIDE THAT PLACEMENTS OUTSIDE OF THE UNITED STATES ARE DISFAVORED; AND AMENDING SECTIONS 41-3-101 AND 41-3-450, MCA."

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

**Section 1.** Section 41-3-101, MCA, is amended to read:

**"41-3-101. Declaration of policy.** (1) It is the policy of the state of Montana to:

- (a) provide for the protection of children whose health and welfare are or may be adversely affected by child abuse or neglect and further threatened by the conduct of those responsible for the children's care and protection;
- (b) achieve these purposes in a family environment and preserve the unity and welfare of the family whenever possible;
- (c) support the efforts of parents whose children have been removed to reunify the family, including by taking into account whether those efforts may be impeded by court-ordered support payments;
- (d) ensure that there is no forced removal of a child from the family based solely on an allegation of abuse or neglect unless the department has reasonable cause to suspect that the child is at imminent risk of harm;
- (e) return a child to the parent or guardian as soon as possible after removal if a finding of abuse or neglect cannot be established at the hearing;
- (f) ensure that the department does not maintain custody of a child absent a finding of abuse or neglect;
- (e)(g) recognize that a parent and child ~~is~~ are entitled to assert the individual parent's or child's

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1 constitutional rights;

2 ~~(f)~~(h) ensure that all children have a right to a healthy and safe childhood in a permanent placement;

3 and

4 ~~(g)~~(i) ensure that whenever removal of a child from the home is necessary, the child is entitled to

5 maintain ethnic, cultural, and religious heritage whenever appropriate.

6 (2) It is intended that the mandatory reporting of abuse or endangerment cases by professional  
7 people and other community members to the appropriate authority will cause the protective services of the state  
8 to seek to prevent further abuses, protect and enhance the welfare of these children, and preserve family life  
9 whenever appropriate.

10 (3) In implementing this chapter, whenever it is necessary to remove a child from the child's home  
11 due to child abuse or neglect, the department shall, when it is in the best interests of the child, place the child in  
12 accordance with 41-3-450 and 41-3-451. Prior to approving a placement, the department shall investigate  
13 whether anyone living in the home has been convicted of a crime involving serious harm to children.

14 (4) (a) The department shall create a registry for voluntary registration by close relatives of a child  
15 for purposes of notifying those relatives when a child that is related has been removed from the child's home  
16 pursuant to this chapter.

17 (b) The registry must contain the names of the child and the child's parents and may contain the  
18 names of the child's grandparents, aunts, uncles, adult brothers, and adult sisters and must contain the contact  
19 information for the child and parents and any of the relatives whose names appear in the registry.

20 (5) The department shall consult the registry and notify the relatives on the registry on the first  
21 working day after placing the child in accordance with 41-3-301.

22 (6) The department may charge a fee commensurate with the cost of operating the registry. The  
23 fee may be charged only to those persons whose names are voluntarily entered in the registry.

24 (7) In implementing the policy of this section, the child's health and safety are of paramount  
25 concern."

26

27 **Section 2.** Section 41-3-450, MCA, is amended to read:

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**"41-3-450. Placement preferences.** (1) The placement preferences described in this section apply in any foster care, preadoptive, or adoptive placement of a child unless there is a determination under 41-3-451 that good cause exists to not follow the placement preferences or unless the placement is governed by the federal Indian Child Welfare Act or the Montana Indian Child Welfare Act.

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

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

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

(iii) a family with ethnic, cultural, and religious heritage similar to the child's family.

(b) When appropriate, the placement preference of the child or the child's parent or legal guardian must be considered.

(3) Except as provided in 41-3-301(1), in any foster care or preadoptive placement of a child:

(a) the child must be placed in the least restrictive setting that:

(i) most approximates a family, taking into consideration sibling attachment;

(ii) allows the child's special needs, if any, to be met; and

(iii) is in reasonable proximity to the child's home, extended family, or siblings;

(b) preference must be given in descending order to placement of the child with:

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

(ii) a licensed foster home located in the child's community with ethnic, cultural, and religious heritage similar to the child's family;

(iii) a licensed foster home with ethnic, cultural, and religious heritage similar to the child's family;

or

(iv) an institution for children approved by the department that has a program suitable to meet the child's needs; and

(c) the preference of the child or the child's parent or legal guardian must be considered.

(4) (A) A EXCEPT AS PROVIDED IN SUBSECTION (4)(B), placement outside of the United States is

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1 disfavored under this section.

2 (B) A CHILD SUBJECT TO THE PROVISIONS OF THE FEDERAL INDIAN CHILD WELFARE ACT OR THE

3 MONTANA INDIAN CHILD WELFARE ACT ESTABLISHED IN TITLE 41, CHAPTER 3, PART 13, IS NOT SUBJECT TO

4 SUBSECTION (4)(A).

5 ~~(4)(5)~~ For the purposes of this section, "fictive kin" means a person to whom the child and the child's  
6 parent and family ascribe a family relationship and with whom the child has had a significant emotional tie that  
7 existed prior to the department's involvement with the child and the child's family."

8 - END -