

HOUSE BILL NO. 227

INTRODUCED BY T. MOORE, . DURAM, D. LENZ

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO CONTRIBUTIONS BY PARENTS OR GUARDIANS FOR THE COST OF A YOUTH'S CARE WHILE THE YOUTH IS IN THE CUSTODY OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; PROVIDING THAT A COURT MAY ONLY ORDER CONTRIBUTION FROM A PARENT OR GUARDIAN FOR THE COST OF THE OUT-OF-HOME CARE OF A YOUTH IF THE COURT FINDS THAT CONTRIBUTION IS IN THE YOUTH'S BEST INTERESTS AND WILL NOT IMPEDE THE PARENT'S OR GUARDIAN'S ABILITY TO ENGAGE IN REUNIFICATION EFFORTS; CREATING A PRESUMPTION THAT ORDERING CONTRIBUTION FROM A PARENT OR GUARDIAN FOR A YOUTH'S OUT-OF-HOME CARE BEFORE THE YOUTH HAS BEEN OUT OF THE HOME FOR 18 MONTHS IS CONTRARY TO THE YOUTH'S BEST INTERESTS; AND AMENDING SECTIONS 41-3-101 AND 41-3-446, MCA."

WHEREAS, it is the policy of the State of Montana to support and preserve the family as the single most powerful influence for ensuring the healthy social development and mental and physical well-being of Montana's children pursuant to section 41-7-102, MCA; and

WHEREAS, it is the policy of the State of Montana to preserve the unity and welfare of the family whenever possible pursuant to section 41-3-101, MCA; and

WHEREAS, the federal Children's Bureau released new guidance to states on June 8, 2022, that under 42 U.S.C. 671(a)(17), an assignment of rights to child support for children in foster care receiving maintenance payments under Title IV-E of the Social Security Act "is not required except in very rare instances where there will be positive or no adverse effects on the child, or the assignment will not impede successful achievement of the child's permanency plan."

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

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

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

2           (a)       provide for the protection of children whose health and welfare are or may be adversely  
3 affected and further threatened by the conduct of those responsible for the children's care and protection;

4           (b)       achieve these purposes in a family environment and preserve the unity and welfare of the  
5 family whenever possible;

6           (c)       support the efforts of parents whose children have been removed to reunify the family,  
7 including by taking into account whether those efforts may be impeded by court-ordered support payments;

8           ~~(e)~~(d)      ensure that there is no forced removal of a child from the family based solely on an allegation  
9 of abuse or neglect unless the department has reasonable cause to suspect that the child is at imminent risk of  
10 harm;

11          ~~(d)~~(e)      recognize that a child is entitled to assert the child's constitutional rights;

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

14          ~~(f)~~(g)      ensure that whenever removal of a child from the home is necessary, the child is entitled to  
15 maintain ethnic, cultural, and religious heritage whenever appropriate.

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

20          (3)       In implementing this chapter, whenever it is necessary to remove a child from the child's home,  
21 the department shall, when it is in the best interests of the child, place the child with the child's noncustodial  
22 birth parent or with the child's extended family, including adult siblings, grandparents, great-grandparents,  
23 aunts, and uncles, when placement with the extended family is approved by the department, prior to placing the  
24 child in an alternative protective or residential facility. Prior to approving a placement, the department shall  
25 investigate whether anyone living in the home has been convicted of a crime involving serious harm to children.

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

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

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

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

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

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11 **Section 2.** Section 41-3-446, MCA, is amended to read:

12 **"41-3-446. Contributions by parents or guardians for youth's care.** (1) (a) If in accordance with  
 13 subsections (1)(b) and (1)(c), if physical or legal custody of the youth is transferred to the department, the court  
 14 shall examine the financial ability of the youth's ~~parents~~ parent or ~~guardians~~ guardian to pay a contribution  
 15 covering all or part of the costs for the care, custody, and treatment of the youth, including the costs of  
 16 necessary medical, dental, and other health care.

17 (b) The court may order contribution only upon a finding that:

18 (i) the payment is in the best interests of the child; and

19 (ii) the payment will not impede successful achievement of the child's permanency plan or the  
 20 parent's or guardian's ability to engage in reunification efforts.

21 (c) In making a determination under this section, the court shall presume that it is not in the best  
 22 interests of a child to order a contribution from the child's parent or guardian unless the child has been in the  
 23 physical or legal custody of the state for 18 consecutive months or more.

24 (2) If the court determines that the youth's ~~parents~~ parent or ~~guardians~~ are financially guardian is  
 25 able to pay a contribution as provided in subsection (1), the court shall order the youth's parent or guardian to  
 26 pay an amount based on the uniform child support guidelines adopted by the department of public health and  
 27 human services pursuant to 40-5-209. The court may not order a retroactive contribution from the parent or  
 28 guardian for costs incurred before the order is issued. An order under this subsection must be in writing.

1           (3)     (a) Except as provided in subsection (3)(b), contributions ordered under this section and each  
2 modification of an existing order are enforceable by immediate or delinquency income withholding, or both,  
3 under Title 40, chapter 5, part 4. An order for a contribution that is inconsistent with this section is nevertheless  
4 subject to withholding for the payment of the contribution without need for an amendment of the support order  
5 or for any further action by the court.

6           (b)     A court-ordered exception from contributions under this section must be in writing and must be  
7 included in the order. An exception from the immediate income-withholding requirement may be granted if the  
8 court finds that there is:

9           (i)     good cause not to require immediate income withholding; or

10          (ii)    an alternative arrangement between the department and the person who is ordered to pay  
11 contributions.

12          (c)     A finding of good cause not to require immediate income withholding must, at a minimum, be  
13 based upon:

14          (i)     a written determination and explanation by the court of the reasons why the implementation of  
15 immediate income withholding is not in the best interests of the child; and

16          (ii)    proof of timely payment of previously ordered support in cases involving modification of  
17 contributions ordered under this section.

18          (d)     When assessing whether the implementation of immediate income withholding is in the best  
19 interest of the child under subsection (3)(c)(i), the court shall consider whether immediate income withholding  
20 would impede successful achievement of the child's permanency plan or the parent's or guardian's ability to  
21 engage in reunification efforts.

22          ~~(d)~~(e)   An alternative arrangement must:

23          (i)     provide sufficient security to ensure compliance with the arrangement;

24          (ii)    be in writing and be signed by a representative of the department and the person required to  
25 make contributions; and

26          (iii)   if be approved by the court, ~~be~~ and entered into the record of the proceeding.

27          (4)     Upon a showing of a change in the financial ability of the youth's parent or guardian to pay, the  
28 court may modify its order for the payment of contributions required under subsection (2).

