

OFFICE OF THE GOVERNOR
STATE OF MONTANA

GREG GIANFORTE
GOVERNOR



KRISTEN JURAS
LT. GOVERNOR

May 1, 2023

The Honorable Jason Ellsworth
President of the Senate
State Capitol
Helena, MT 59620

The Honorable Matt Regier
Speaker of the House
State Capitol
Helena, MT 59620

Dear President Ellsworth and Speaker Regier:

Like you and members of the Legislature, I recognize the importance of providing parents, guardians, or other individuals who are the subject of a child abuse and neglect case with the information needed to protect their legal rights during a child protective services (CPS) investigation.

I appreciate the Legislature's work to promote transparency and parental rights during child abuse and neglect cases. However, Senate Bill 181 can be improved to ensure the protection of vulnerable children and the ability of Montana Department of Public Health and Human Services (DPHHS) Child and Family Services Division (CFSD) staff, who are required under state and federal law to investigate reports of child abuse and neglect, to conduct timely and thorough investigations, while promoting transparency and parental rights.

Therefore, in accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby return with amendments Senate Bill 181: "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."

As approved by the Legislature, Senate Bill 181 shifts the focus of CPS investigations away from children's best interests in favor of the rights of parents who are the subject of an abuse or neglect investigation. Under Senate Bill 181, the prioritization of parental interests over a child's could delay and hinders CFSD's ability to fulfill its mandate to protect abused or neglected children when dangerous circumstances exist.

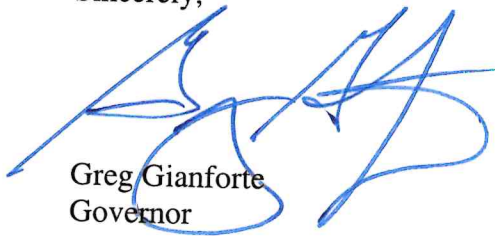
Specifically, Senate Bill 181 prevents DPHHS staff from properly investigating and providing for the safety of children in their home following an allegation of abuse and neglect. The legislation hinders DPHHS investigators as they engage with a parent, who is the subject of a child abuse and neglect case to protect and ensure the safety of the child. Further, Senate Bill 181 fails to prohibit actions that could be used to abuse, terrify, intimidate, threaten, harass, injure, or endanger DPHHS employees when a child is removed from the parental home.

While I share the Legislature's goal of promoting transparency and parental rights during CPS investigations, it is critical that the best interests of vulnerable children in Montana are not undermined and CFSD staff are not obstructed while protecting children who have been or are at substantial risk of abuse, neglect, or abandonment.

Therefore, I offer an amendment that strengthens the bill by ensuring the safety and well-being of Montana's children and safeguarding the ability of DPHHS staff to properly fulfill their duties, while also promoting parental engagement and full notice of their legal rights during a CPS investigation.

Senate Bill 181 can be improved with vulnerable Montana children in mind, and I respectfully ask for your support of this amendment.

Sincerely,



Greg Gianforte
Governor

Enclosure

cc: Legislative Services Division
Christi Jacobsen, Secretary of State

SENATE BILL NO. 181

INTRODUCED BY D. LENZ

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE PROVISION OF CERTAIN INFORMATION ON INITIAL CONTACT WITH 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:

NEW SECTION. Section 1. Provision of information about investigation procedure and rights

to parents. (1) ~~On first contact with a parent, guardian, or other person having physical or legal custody of a child who is the subject of an investigation under 41-3-202~~ 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 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;~~

~~(e) 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; and~~

~~(f) that the parent, guardian, or other person having physical or legal custody of a child 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

~~(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.~~

~~(d) that during any removal of a child, the parent, guardian, or other person having physical or
legal custody of a child 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. The act of recording may not obstruct the department employee or others responsible for
removal of a child, and the recording may not be published in any manner without the express written consent
of any department employee or other individuals recorded unless court ordered.~~

~~(2) On first contact 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 Upon initiation of an
investigation of alleged abuse or neglect conducted pursuant to 41-3-202(1)(c), but no later than 48 hours
thereafter, the department shall provide the parent, guardian, or other person having physical or legal custody
of a child with a brief and easily understood CLEAR written description of:~~

~~(a) the allegation that prompted the investigation;~~

~~(b) the investigation process that includes:~~

~~(i) a statement that the department is undertaking the investigation pursuant to 41-3-202 in
response to a report of child abuse or neglect;~~

~~(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

(iii)(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:

(iii)(A) a description of 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;

(iv)(B) a description of 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;

(v)(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:

(vi)(A) the procedures to file a complaint with the department, the office of the governor's citizens'

advocate, and the child and family ombudsman;

(vii)(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

(viii) ~~the procedure to request a review of the department's findings made during or at the conclusion of the investigation;~~

(ix)(C) the process for reviewing the department's records of the investigation;

(x) ~~an explanation of the right to seek legal counsel at any time and th at a court will appoint legal counsel under 41-3-425 for an indigent parent, guardian, or other person having physical or legal custody of a child if court proceedings are initiated under 41-3-422; and~~

(xi) ~~references to the statutory and regulatory provisions governing child abuse and neglect and how the person may obtain copies of those provisions;~~

(c) ~~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;~~

(ii) ~~have the parent's, guardian's, or other person's culture, language, and religion respected;~~

(iii) ~~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;~~

(iv) ~~refuse to submit to a drug or alcohol test unless ordered to do so by a court without threat of retaliation;~~

(v) ~~refuse to allow an investigator from the department to enter the home unless ordered to do so by a court without threat of retaliation; and~~

(vi) ~~be provided accommodations under the Americans with Disabilities Act of 1990, 42 U.S.C. 12101, et seq.; and~~

(d) ~~the process when a child is removed from the home under 41-3-301 or a petition is filed under 41-3-422 that includes:~~

(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:

(i)(A) timelines for hearings and determinations under this chapter; AND

(ii) ~~information about the option for an emergency protective services hearing within 5 days and~~

the required show cause hearing within 20 days ;

(iii)(B) an explanation that a parent, guardian, or other person having physical or legal custody of a child has the right to:

(A)(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;

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

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

(D)(IV) call witnesses and cross-examine witnesses;

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

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

(G)(VII) be provided with services, including visitation with the child, unless otherwise ordered by the court; and

(H) — have a citizen review board, if available pursuant to part 10 of this chapter, review the case within 30 days of the show cause hearing, and make a recommendation to the district court as provided in 41-3-4040.

(3)(6) The 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 under subsections (1)(b) through (1)(f) and subsections (2)(b) through (2)(d) on a publicly available website and in a conspicuous place in the publicly accessible area of the office of a child protection specialist.

NEW SECTION. 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].

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