

1 SENATE BILL NO. 250

2 INTRODUCED BY T. MANZELLA

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT ADOPTING THE SAFETY OF THE CHILD FIRST ACT;
5 PROVIDING REQUIREMENTS FOR ADMITTING EXPERT TESTIMONY AND EVIDENCE OF PAST
6 CONDUCT AND EVIDENCE OF PAST CONDUCT IN CHILD CUSTODY PROCEEDINGS IN WHICH
7 DOMESTIC VIOLENCE OR CHILD ABUSE IS ALLEGED; PROVIDING THAT CONTACT BETWEEN A CHILD
8 AND A PARENT WITH WHOM THE CHILD IS BONDED MAY NOT BE RESTRICTED IN ORDER TO
9 IMPROVE A DEFICIENT RELATIONSHIP BETWEEN THE CHILD AND ANOTHER PARENT; RESTRICTING
10 THE USE OF REUNIFICATION TREATMENT TO ESTABLISH A RELATIONSHIP BETWEEN A CHILD AND
11 AN ESTRANGED OR REJECTED PARENT; REQUIRING TRAINING REGARDING DOMESTIC VIOLENCE
12 AND CHILD ABUSE FOR PERSONNEL IN CHILD CUSTODY PROCEEDINGS; ESTABLISHING GRANT
13 PROGRAMS; PROVIDING DEFINITIONS; AND PROVIDING AN EFFECTIVE DATE DATES AND A
14 RETROACTIVE APPLICABILITY DATE."

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

17
18 NEW SECTION. Section 1. Short title. [Sections 1 through 7.8] may be cited as the "Safety of the
19 Child First Act".

20
21 NEW SECTION. Section 2. Purpose. The purpose of [sections 1 through 7.8] is to:

- 22 (1) increase the priority given to child safety in any child custody proceeding;
- 23 (2) strengthen the ability of courts to:
- 24 (a) recognize and adjudicate domestic violence and child abuse allegations based on valid,
25 admissible evidence; and
- 26 (b) enter orders that protect and minimize the risk of harm to children; and
- 27 (3) ensure that professionals involved in child custody proceedings containing domestic violence
28 or child abuse allegations receive trauma-informed and culturally appropriate training on the dynamics, signs,

1 and impact of domestic violence and child abuse, including child sexual abuse.

2

3 NEW SECTION. Section 3. Definitions. As used in [sections 1 through 7~~8~~], the following definitions
4 apply:

5 (1) (a) "Child custody proceeding" means a dissolution, separation, visitation, paternity, support,
6 custody, or civil protection order proceeding between the parents of a child involving the care or custody of the
7 child.

8 (b) The term does not include:

9 (i) a child protective, abuse, or neglect proceeding under Title 41, chapter 3;

10 (ii) a juvenile justice proceeding under Title 41, chapter 5; or

11 (iii) a child placement proceeding in which the state or a tribal government, a designee of the state
12 or a tribal government, or a contractor of the state or a tribal government is a party to the proceeding.

13 (2) "Reunification treatment" means a treatment or therapy aimed at reuniting or reestablishing a
14 relationship between a child and an estranged or rejected parent or other family member of the child.

15

16 NEW SECTION. Section 4. Admissibility of expert testimony -- PAST CONDUCT--~~past conduct.~~ (1)

17 (1) In a child custody proceeding in which a parent has been alleged to have committed domestic violence or
18 child abuse, including child sexual abuse:

19 (1)(A)(A) expert testimony from a court-appointed or outside professional, INCLUDING A LICENSED
20 PHYSICIAN, A NURSE PRACTITIONER, OR A PHYSICIAN ASSISTANT CARING FOR PEDIATRIC PATIENTS, relating to the
21 alleged abuse may be admitted ~~only~~ ONLY if:

22 (1)_____ the professional possesses demonstrated expertise and clinical experience in working with
23 victims of domestic violence or child abuse, including child sexual abuse, that is not solely of a forensic nature;
24 AND and

25 (2)_____ THE PROFESSIONAL POSSESSES DEMONSTRATED EXPERIENCE IN WORKING WITH DOMESTIC AND
26 SEXUAL VIOLENCE SURVIVORS, INCLUDING CHILD SURVIVORS, OR DOMESTIC AND SEXUAL VIOLENCE OFFENDERS IN
27 EVIDENCE-BASED INTERVENTIONS OR IN LAW ENFORCEMENT; OR

28 (3)_____ THE PROFESSIONAL POSSESSES DEMONSTRATED EXPERIENCE OR TRAINING IN WORKING WITH

1 DOMESTIC AND SEXUAL VIOLENCE SURVIVORS IN VICTIM ADVOCACY SETTINGS:

2 (B) IN MAKING A FINDING REGARDING ANY ALLEGATION OF DOMESTIC VIOLENCE OR CHILD ABUSE,
3 INCLUDING CHILD SEXUAL ABUSE, IN ADDITION TO ANY OTHER RELEVANT ADMISSIBLE EVIDENCE, EVIDENCE OF PAST
4 SEXUAL OR PHYSICAL ABUSE COMMITTED BY THE ACCUSED PARENT MUST BE CONSIDERED, INCLUDING BUT NOT LIMITED
5 TO:

- 6 (I) ANY PAST OR CURRENT PROTECTION OR RESTRAINING ORDERS AGAINST THE ACCUSED PARENT;
7 (II) SEXUAL VIOLENCE ABUSE PROTECTION ORDERS AGAINST THE ACCUSED PARENT;
8 (III) ARRESTS OF THE ACCUSED PARENT FOR DOMESTIC VIOLENCE, SEXUAL VIOLENCE, OR CHILD ABUSE; OR
9 (IV) CONVICTIONS OF THE ACCUSED PARENT FOR DOMESTIC VIOLENCE, SEXUAL VIOLENCE, OR CHILD
10 ABUSE.

11 (2) A PREVIOUS DENIAL OF AN ORDER OF PROTECTION AGAINST THE ACCUSED PARENT DOES NOT
12 PRECLUDE THE ADMISSION OF EVIDENCE UNDER THIS SECTION.

13 ~~(2)(B) in making a finding regarding any allegation of domestic violence or child abuse, including child~~
14 ~~sexual abuse, in addition to any other relevant admissible evidence, evidence of past sexual or physical abuse~~
15 ~~committed by the accused parent must be considered, including:~~

- 16 ~~(a)(i) any past or current protection or restraining orders against the accused parent;~~
17 ~~(b)(ii) sexual violence abuse protection orders against the accused parent;~~
18 ~~(c)(iii) arrests of the accused parent for domestic violence, sexual violence, or child abuse; or~~
19 ~~(d)(iv) convictions of the accused parent for domestic violence, sexual violence, or child abuse.~~

20 ~~(2) A PREVIOUS DENIAL OF AN ORDER OF PROTECTION AGAINST THE ACCUSED PARENT DOES NOT~~
21 ~~PRECLUDE THE ADMISSION OF EVIDENCE UNDER THIS SECTION.~~

22
23 NEW SECTION. Section 5. Prohibitions on parental contact -- reunification treatment. (1) A
24 court in a child custody proceeding INVOLVING ALLEGATIONS OF DOMESTIC AND SEXUAL VIOLENCE may not, solely in
25 order to improve a deficient relationship with the other parent of a child, REMOVE THE CHILD FROM OR RESTRICT
26 CONTACT BETWEEN THE CHILD AND A PARENT OR LITIGATING PARTY, ~~remove the child from or restrict contact~~
27 ~~between the child and a parent or litigating party:~~

28 (a) WHO IS COMPETENT, PROTECTIVE, AND NOT PHYSICALLY OR SEXUALLY ABUSE; AND who is

1 competent, protective, and not physically or sexually abusive; and ~~ORDER THAT THE CHILD BE REMOVED FROM THE~~
2 ~~CHILD'S HOME TO ATTEND THERAPEUTIC TREATMENT FOR THE PURPOSE OF ESTABLISHING OR IMPROVING A~~
3 ~~RELATIONSHIP WITH A NONCUSTODIAL PARENT; OR~~

4 (b) ~~WITH WHOM THE CHILD IS BONDED OR TO WHOM THE CHILD IS ATTACHED with whom the child is~~
5 ~~bonded or to whom the child is attached ORDER THAT THE CHILD BE REMOVED FROM THE CUSTODY OF THE PARENT~~
6 ~~WHO HAS NOT COMMITTED ABUSE.~~

7 (2) In a child custody proceeding a court may not order a reunification treatment unless:

8 (a) there is generally accepted and scientifically valid proof of the safety, effectiveness, and
9 therapeutic value of the reunification treatment; and

10 (b) the reunification treatment is not predicated on cutting off a child from a SAFE parent with whom
11 the child is bonded or to whom the child is attached, ~~UNLESS NECESSARY TO PROTECT THE CHILD FROM A VIOLENT~~
12 ~~OR ABUSIVE PARENT.~~

13 (3) Any order in a child custody proceeding to remediate the resistance of a child to have contact
14 with a violent or abusive parent must primarily address the behavior of that parent or the contributions of that
15 parent to the resistance of the child before ordering the other parent of the child to take steps to potentially
16 improve the relationship of the child with the parent with whom the child resists contact.

17
18 **NEW SECTION. Section 6. Training required in child custody proceedings.** (1) Any judge
19 presiding over child custody proceedings IS STRONGLY RECOMMENDED TO COMPLETE THE FOLLOWING TRAINING,
20 WHICH MUST BE ADMINISTERED AND OVERSEEN THROUGH THE BOARD OF CRIME CONTROL, and any other OTHER
21 relevant court personnel, WHO ARE NOT JUDGES, involved in child custody proceedings, including guardians ad
22 litem, counsel for children, COUNSEL FOR THE PARTIES, custody evaluators, PARENTING COORDINATORS, CHILD
23 SUPPORT ADMINISTRATORS, standing masters, and mediators, shall complete:

24 (a) not less than 20 hours of initial training; and

25 (b) not less than 15 hours of ongoing training every 2 years.

26 (2) THE INITIAL TRAINING REQUIREMENT UNDER SUBSECTION (1)(A) MUST BE COMPLETED BY RELEVANT
27 COURT PERSONNEL BEFORE JANUARY 1, 2024.

28 ~~(2)~~(3) The training required under this section:

- 1 (a) must focus solely on domestic and sexual violence and child abuse, including:
- 2 (i) child sexual abuse;
- 3 (ii) physical abuse;
- 4 (iii) emotional abuse;
- 5 (iv) coercive control;
- 6 (v) implicit and explicit bias, including biases relating to parents with disabilities;
- 7 (vi) trauma;
- 8 (vii) long-term and short-term impacts of domestic violence and child abuse on children; and
- 9 (viii) victim and perpetrator behavior patterns and relationship dynamics within the cycle of violence;
- 10 (b) must be provided by:
- 11 (i) a professional with substantive experience in assisting survivors of domestic violence or child
- 12 abuse, including a victim service provider as defined in 34 U.S.C. 12291; and
- 13 (ii) if possible, a survivor of domestic violence or child physical or sexual abuse;
- 14 (c) must rely on evidence-based and peer-reviewed research by recognized experts in the types of
- 15 abuse described in subsection ~~(2)(a)~~ (3)(A);
- 16 (d) may not include theories, concepts, or belief systems unsupported by the research described in
- 17 subsection ~~(2)(c)~~ (3)(C); and
- 18 (e) must be designed to improve the ability of courts to:
- 19 (i) recognize and respond to child physical abuse, child sexual abuse, domestic violence, and
- 20 trauma in all family victims, particularly children; and
- 21 (ii) make appropriate custody decisions that prioritize child safety and well-being and are culturally
- 22 sensitive and appropriate for diverse communities.

23

24 **NEW SECTION. SECTION 7. DOMESTIC AND FAMILY VIOLENCE PREVENTION GRANT PROGRAMS. (1) THERE**

25 **ARE ESTABLISHED WITHIN THE BOARD OF CRIME CONTROL A FAMILY VIOLENCE PREVENTION AND SERVICES ACT GRANT**

26 **PROGRAM AND A VIOLENCE AGAINST WOMEN ACT GRANT PROGRAM FOR THE PURPOSES OF ALLOCATING GRANT MONEY**

27 **TO LOCAL GOVERNMENT DOMESTIC AND FAMILY VIOLENCE PREVENTION PROGRAMS.**

28 **(2) THE BOARD OF CRIME CONTROL:**

- 1 (A) SHALL ADOPT RULES NECESSARY TO CARRY OUT THE PURPOSES OF [SECTION 6];
2 (B) MAY NOT SPEND MORE THAN 5% OF THE APPROPRIATED FUNDS FOR ADMINISTRATIVE COSTS OF THE
3 GRANT PROGRAMS;
4 (C) SHALL ACCEPT FEDERAL FUNDS THAT MAY BE AVAILABLE TO USE IN CARRYING OUT THE PROVISIONS OF
5 [SECTION 6];
6 (D) MAY USE STATE FUNDS AS A MATCH FOR FEDERAL FUNDS, IF REQUIRED; AND
7 (E) MAY CONDUCT RESEARCH AND COMPILE STATISTICS RELATED TO DOMESTIC AND FAMILY VIOLENCE.
8 (3) THE BOARD OF CRIME CONTROL SHALL AWARD PROGRAM GRANTS TO LOCAL DISTRICT COURTS, FAMILY
9 COURT PROGRAMS, AND FAMILY VIOLENCE PREVENTION PROGRAMS THAT ARE LOCALLY CONTROLLED. GRANTS MAY BE
10 AWARDED TO GOVERNMENT AGENCIES OR NONGOVERNMENT ORGANIZATIONS.

11
12 NEW SECTION. Section 8. Uniformity of application. The standards described in [sections 1
13 through 7.8] are uniform required standards that:

- 14 (1) APPLY TO A NEUTRAL PROFESSIONAL APPOINTED BY A COURT DURING A CHILD CUSTODY PROCEEDING
15 TO EXPRESS AN OPINION RELATING TO ABUSE, TRAUMA, OR THE BEHAVIORS OF VICTIMS AND PERPETRATORS OF ABUSE
16 AND TRAUMA; AND
17 (2) REQUIRE THAT A PROFESSIONAL DESCRIBED IN SUBSECTION (1) POSSESS DEMONSTRATED EXPERTISE
18 AND CLINICAL EXPERIENCE IN WORKING WITH VICTIMS OF DOMESTIC VIOLENCE OR CHILD ABUSE, INCLUDING CHILD
19 SEXUAL ABUSE, THAT IS NOT SOLELY OF A FORENSIC NATURE;

20 ~~(1) apply to a neutral professional appointed by a court during a child custody proceeding to~~
21 ~~express an opinion relating to abuse, trauma, or the behaviors of victims and perpetrators of abuse and trauma;~~
22 ~~and~~

23 ~~(2) require that a professional described in subsection (1) possess demonstrated expertise and~~
24 ~~clinical experience in working with victims of domestic violence or child abuse, including child sexual abuse,~~
25 ~~that is not solely of a forensic nature~~ APPLY TO THE PROFESSIONALS DESCRIBED IN [SECTION 4].

26
27 NEW SECTION. Section 9. Codification instruction. [Sections 1 through 7.8] are intended to be
28 codified as a new part in Title 40, chapter 4, and the provisions of Title 40, chapter 4, apply to [sections 1

1 through 7.8].

2

3 ~~NEW SECTION. Section 9. — Effective date. [This act] is effective July 1, 2023.~~

4

5 ~~NEW SECTION. Section 10. EFFECTIVE DATES. (1) EXCEPT AS PROVIDED IN SUBSECTION (2), [THIS ACT]~~

6 ~~IS EFFECTIVE ON PASSAGE AND APPROVAL.~~

7 ~~(2) [SECTION 6] IS EFFECTIVE JULY 1, 2023.~~

8

9 ~~NEW SECTION. Section 10. RETROACTIVE APPLICABILITY. [SECTIONS 1 THROUGH 5 AND 7] APPLY~~

10 ~~RETROACTIVELY, WITHIN THE MEANING OF 1-2-109, TO DETERMINATIONS IN CHILD CUSTODY PROCEEDINGS.~~

11

- END -