

SENATE BILL NO. 17

INTRODUCED BY D. LENZ

BY REQUEST OF THE COURT SYSTEM DEPENDENCY NEGLECT TASK FORCE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO DEADLINES FOR HEARINGS AFTER THE EMERGENCY REMOVAL AND PROTECTIVE PLACEMENT OF A CHILD; CHANGING CERTAIN DEADLINES RELATED TO EMERGENCY PROTECTIVE SERVICE HEARINGS AND PREHEARING CONFERENCES FROM 5 DAYS TO 5 WORKING DAYS; CHANGING THE DEADLINE FOR A SHOW CAUSE HEARING FROM 20 DAYS TO 21 DAYS; AMENDING SECTIONS 41-3-301, 41-3-307, AND 41-3-432, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

Section 1. Section 41-3-301, MCA, is amended to read:

"41-3-301. Emergency protective services. (1) (a) Any child protection specialist of the department, a peace officer, or the county attorney who has reason to believe any child is in immediate or apparent danger of harm may immediately remove the child and place the child in a protective facility. After ensuring that the child is safe, the department may make a request for further assistance from the law enforcement agency or take appropriate legal action.

(b) The person or agency placing the child shall notify the parents, parent, guardian, or other person having physical or legal custody of the child of the placement at the time the placement is made or as soon after placement as possible. Notification under this subsection (1)(b) must:

- (i) include the reason for removal;
- (ii) include information regarding the emergency protective services hearing within 5 working days under 41-3-306, the required show cause hearing within 2021 days, and the purpose of the hearings;
- (iii) provide contact information for the child protection specialist, the child protection specialist's supervisor, and the office of state public defender; and
- (iv) advise the parents, parent, guardian, or other person having physical or legal custody of the

1 child that the parents, parent, guardian, or other person:

2 (A) has the right to receive a copy of the affidavit as provided in subsection (6);

3 (B) has the right to attend and participate in the emergency protective services hearing and the
4 show cause hearing, including providing statements to the judge;

5 (C) may have a support person present during any meeting with the child protection specialist
6 concerning emergency protective services, including the emergency protective services hearing provided for in
7 41-3-306; and

8 (D) may request that the child be placed in a kinship foster home as defined in 52-2-602.

9 (c) A copy of the notification required under subsection (1)(b) must be provided within 24 hours to
10 the office of state public defender.

11 (2) If a child protection specialist, a peace officer, or the county attorney determines in an
12 investigation of abuse or neglect of a child that the child is in danger because of the occurrence of partner or
13 family member assault, as provided for in 45-5-206, or strangulation of a partner or family member, as provided
14 for in 45-5-215, against an adult member of the household or that the child needs protection as a result of the
15 occurrence of partner or family member assault or strangulation of a partner or family member against an adult
16 member of the household, the department shall take appropriate steps for the protection of the child, which may
17 include:

18 (a) making reasonable efforts to protect the child and prevent the removal of the child from the
19 parent or guardian who is a victim of alleged partner or family member assault or strangulation of a partner or
20 family member;

21 (b) making reasonable efforts to remove the person who allegedly committed the partner or family
22 member assault or strangulation of a partner or family member from the child's residence if it is determined that
23 the child or another family or household member is in danger of partner or family member assault or
24 strangulation of a partner or family member; and

25 (c) providing services to help protect the child from being placed with or having unsupervised
26 visitation with the person alleged to have committed partner or family member assault or strangulation of a
27 partner or family member until the department determines that the alleged offender has met conditions
28 considered necessary to protect the safety of the child.

(3) If the department determines that an adult member of the household is the victim of partner or family member assault or strangulation of a partner or family member, the department shall provide the adult victim with a referral to a domestic violence program.

(4) A child who has been removed from the child's home or any other place for the child's protection or care may not be placed in a jail.

(5) The department may locate and contact extended family members upon placement of a child in out-of-home care. The department may share information with extended family members for placement and case planning purposes.

(6) If a child is removed from the child's home by the department, a child protection specialist shall submit an affidavit regarding the circumstances of the emergency removal to the county attorney and provide a copy of the affidavit to the office of state public defender and, if possible, the parents or guardian within 2 working days of the emergency removal. An abuse and neglect petition must be filed in accordance with 41-3-422 within 5 working days, excluding weekends and holidays, of the emergency removal of a child unless arrangements acceptable to the agency for the care of the child have been made by the parents or a written prevention plan has been entered into pursuant to 41-3-302.

(7) Except as provided in the federal Indian Child Welfare Act [or the Montana Indian Child Welfare Act provided for in Title 41, chapter 3, part 13], if applicable, a show cause hearing must be held within 2021 days of the filing of the petition unless otherwise stipulated by the parties pursuant to 41-3-434.

(8) If the department determines that a petition for immediate protection and emergency protective services must be filed to protect the safety of the child, the child protection specialist shall interview the parents of the child to whom the petition pertains, if the parents are reasonably available, before the petition may be filed. The district court may immediately issue an order for immediate protection of the child.

(9) The department shall make the necessary arrangements for the child's well-being as are required prior to the court hearing. (Bracketed language in subsection (7) terminates June 30, 2025--sec. 55, Ch. 716, L. 2023.)"

Section 2. Section 41-3-307, MCA, is amended to read:

"41-3-307. Availability of prehearing conferences. (1) The parents, parent, guardian, or other

1 person having physical or legal custody of a child who has been removed from the home pursuant to 41-3-301
2 may participate in a conference within 5 working days of the child's removal and before an emergency
3 protective services hearing held by the court pursuant to 41-3-306.

4 (2) A prehearing conference must include the following parties:

- 5 (a) the parents, parent, guardian, or other person having physical or legal custody of the child;
- 6 (b) the person's legal counsel;
- 7 (c) the county attorney's office; and
- 8 (d) a department social worker.

9 (3) To the greatest degree possible using available funding, the meetings must be conducted by
10 an independent and trained facilitator.

11 (4) At a minimum, the meetings must involve discussion of:

- 12 (a) the child's current placement and options for continued placement if the child remains out of the
13 home;
- 14 (b) whether other options exist for an in-home safety plan or resource that may allow the child to
15 remain in the home;
- 16 (c) parenting time schedules; and
- 17 (d) treatment services for the family."

18
19 **Section 3.** Section 41-3-432, MCA, is amended to read:

20 **"41-3-432. (Temporary) Show cause hearing -- order.** (1) (a) Except as provided in the federal
21 Indian Child Welfare Act or the Montana Indian Child Welfare Act provided for in Title 41, chapter 3, part 13, a
22 show cause hearing must be conducted within 20 days of the filing of an initial child abuse and neglect petition
23 unless otherwise stipulated by the parties pursuant to 41-3-434 or unless an extension of time is granted by the
24 court. A separate notice to the court stating the statutory time deadline for a hearing must accompany any
25 petition to which the time deadline applies.

26 (b) If a proceeding under this chapter involves an Indian child and is subject to the federal Indian
27 Child Welfare Act or the Montana Indian Child Welfare Act, a qualified expert witness is required to testify that
28 the continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional

1 or physical damage to the Indian child.

2 (c) The court may grant an extension of time for a show cause hearing only upon a showing of
3 substantial injustice and shall order an appropriate remedy that considers the best interests of the child.

4 (2) The person filing the petition has the burden of presenting evidence establishing probable
5 cause for the issuance of an order for temporary investigative authority after the show cause hearing, except as
6 provided by the federal Indian Child Welfare Act or the Montana Indian Child Welfare Act, if applicable.

7 (3) If a contested show cause hearing is requested pursuant to 41-3-427 based upon a disputed
8 issue of material fact or a dispute regarding the veracity of the affidavit of the department, the court may
9 consider all evidence and shall provide an opportunity for a parent, guardian, or other person having physical or
10 legal custody of the child to provide testimony regarding the disputed issues. Hearsay evidence of statements
11 made by the affected child is admissible at the hearing. The parent, guardian, or other person may be
12 represented by legal counsel and may be appointed or assigned counsel as provided for in 41-3-425.

13 (4) At the show cause hearing, the court shall explain the procedures to be followed in the case
14 and explain the parties' rights, including the right to request appointment or assignment of counsel if indigent or
15 if appointment or assignment of counsel is required under the federal Indian Child Welfare Act or the Montana
16 Indian Child Welfare Act, if applicable, and the right to challenge the allegations contained in the petition. The
17 parent, guardian, or other person having physical or legal custody of the child must be given the opportunity to
18 admit or deny the allegations contained in the petition at the show cause hearing. Inquiry must be made to
19 determine whether the notice requirements of the federal Indian Child Welfare Act or 41-3-1311, if applicable,
20 have been met.

21 (5) Except as provided in the federal Indian Child Welfare Act or the Montana Indian Child Welfare
22 Act, if applicable, the court shall make written findings on issues including but not limited to the following:

23 (a) whether the child should be returned home immediately if there has been an emergency
24 removal or remain in temporary out-of-home care or be removed from the home;

25 (b) if removal is ordered or continuation of removal is ordered, why continuation of the child in the
26 home would be contrary to the child's best interests and welfare;

27 (c) whether the department has made reasonable efforts to avoid protective placement of the child
28 or to make it possible to safely return the child to the child's home;

(d) financial support of the child, including inquiry into the financial ability of the parents, guardian, or other person having physical or legal custody of the child to contribute to the costs for the care, custody, and treatment of the child and requirements of a contribution for those costs pursuant to 41-3-446; and

(e) whether another hearing is needed and, if so, the date and time of the next hearing.

(6) The court may consider:

(a) terms and conditions for parental visitation; and

(b) whether orders for examinations, evaluations, counseling, immediate services, or protection are needed.

(7) Following the show cause hearing, the court may enter an order for the relief requested or amend a previous order for immediate protection of the child if one has been entered. The order must be in writing.

(8) If a child who has been removed from the child's home is not returned home after the show cause hearing or if removal is ordered, the parents or parent, guardian, or other person or agency having physical or legal custody of the child named in the petition may request that 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 41-3-1010.

(9) Adjudication of a child as a youth in need of care may be made at the show cause hearing if the requirements of 41-3-437(2) are met. If not made at the show cause hearing, adjudication under 41-3-437 must be made within the time limits required by 41-3-437 unless adjudication occurs earlier by stipulation of the parties pursuant to 41-3-434 and order of the court. (Terminates June 30, 2025--sec. 55, Ch. 716, L. 2023.)

41-3-432. (Effective July 1, 2025) Show cause hearing -- order. (1) (a) Except as provided in the federal Indian Child Welfare Act, a show cause hearing must be conducted within ~~20~~21 days of the filing of an initial child abuse and neglect petition unless otherwise stipulated by the parties pursuant to 41-3-434 or unless an extension of time is granted by the court. A separate notice to the court stating the statutory time deadline for a hearing must accompany any petition to which the time deadline applies.

(b) If a proceeding under this chapter involves an Indian child and is subject to the federal Indian Child Welfare Act, a qualified expert witness is required to testify that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

1 (c) The court may grant an extension of time for a show cause hearing only upon a showing of
2 substantial injustice and shall order an appropriate remedy that considers the best interests of the child.

3 (2) The person filing the petition has the burden of presenting evidence establishing probable
4 cause for the issuance of an order for temporary investigative authority after the show cause hearing, except as
5 provided by the federal Indian Child Welfare Act, if applicable.

6 (3) If a contested show cause hearing is requested pursuant to 41-3-427 based upon a disputed
7 issue of material fact or a dispute regarding the veracity of the affidavit of the department, the court may
8 consider all evidence and shall provide an opportunity for a parent, guardian, or other person having physical or
9 legal custody of the child to provide testimony regarding the disputed issues. Hearsay evidence of statements
10 made by the affected child is admissible at the hearing. The parent, guardian, or other person may be
11 represented by legal counsel and may be appointed or assigned counsel as provided for in 41-3-425.

12 (4) At the show cause hearing, the court shall explain the procedures to be followed in the case
13 and explain the parties' rights, including the right to request appointment or assignment of counsel if indigent or
14 if appointment or assignment of counsel is required under the federal Indian Child Welfare Act, if applicable,
15 and the right to challenge the allegations contained in the petition. The parent, guardian, or other person having
16 physical or legal custody of the child must be given the opportunity to admit or deny the allegations contained in
17 the petition at the show cause hearing. Inquiry must be made to determine whether the notice requirements of
18 the federal Indian Child Welfare Act, if applicable, have been met.

19 (5) Except as provided in the federal Indian Child Welfare Act, if applicable, the court shall make
20 written findings on issues including but not limited to the following:

21 (a) whether the child should be returned home immediately if there has been an emergency
22 removal or remain in temporary out-of-home care or be removed from the home;

23 (b) if removal is ordered or continuation of removal is ordered, why continuation of the child in the
24 home would be contrary to the child's best interests and welfare;

25 (c) whether the department has made reasonable efforts to avoid protective placement of the child
26 or to make it possible to safely return the child to the child's home;

27 (d) financial support of the child, including inquiry into the financial ability of the parents, guardian,
28 or other person having physical or legal custody of the child to contribute to the costs for the care, custody, and

1 treatment of the child and requirements of a contribution for those costs pursuant to 41-3-446; and

2 (e) whether another hearing is needed and, if so, the date and time of the next hearing.

3 (6) The court may consider:

4 (a) terms and conditions for parental visitation; and

5 (b) whether orders for examinations, evaluations, counseling, immediate services, or protection are
6 needed.

7 (7) Following the show cause hearing, the court may enter an order for the relief requested or
8 amend a previous order for immediate protection of the child if one has been entered. The order must be in
9 writing.

10 (8) If a child who has been removed from the child's home is not returned home after the show
11 cause hearing or if removal is ordered, the parents or parent, guardian, or other person or agency having
12 physical or legal custody of the child named in the petition may request that a citizen review board, if available
13 pursuant to part 10 of this chapter, review the case within 30 days of the show cause hearing and make a
14 recommendation to the district court, as provided in 41-3-1010.

15 (9) Adjudication of a child as a youth in need of care may be made at the show cause hearing if
16 the requirements of 41-3-437(2) are met. If not made at the show cause hearing, adjudication under 41-3-437
17 must be made within the time limits required by 41-3-437 unless adjudication occurs earlier by stipulation of the
18 parties pursuant to 41-3-434 and order of the court."

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20 NEW SECTION. **Section 4. Notification to tribal governments.** The secretary of state shall send a
21 copy of [this act] to each federally recognized tribal government in Montana.

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23 NEW SECTION. **Section 5. Effective date.** [This act] is effective July 1, 2025.

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