

1 HOUSE BILL NO. 37
2 INTRODUCED BY J. CARLSON
3 BY REQUEST OF THE CHILDREN, FAMILIES, HEALTH, AND HUMAN SERVICES INTERIM COMMITTEE
4
5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING CHILD ABUSE AND NEGLECT LAWS;
6 REQUIRING A WARRANT TO REMOVE A CHILD FROM THE CHILD'S HOME EXCEPT IN EXIGENT
7 CIRCUMSTANCES; REQUIRING THAT A PEACE OFFICER BE PRESENT WHENEVER A CHILD IS
8 REMOVED FROM THE HOME; REVISING THE DEFINITIONS OF "CHILD ABUSE OR NEGLECT" AND
9 "REASONABLE EFFORTS"; REVISING THE REQUIREMENTS FOR DISCLOSURE OF CHILD ABUSE AND
10 NEGLECT RECORDS; REVISING THE TIMEFRAME IN WHICH AN ABUSE AND NEGLECT PETITION
11 MUST BE FILED WHEN A CHILD IS REMOVED; REVISING THE TIMEFRAME IN WHICH AN EMERGENCY
12 PROTECTIVE SERVICES HEARING MUST BE HELD; REVISING THE REQUIREMENTS FOR DISMISSING
13 AN ABUSE AND NEGLECT PETITION; AMENDING SECTIONS 41-3-101, 41-3-102, 41-3-205, 41-3-301, 41-
14 3-306, 41-3-423, 41-3-424, 41-3-425, AND 41-3-427, MCA; AND PROVIDING AN EFFECTIVE DATE."

15
16 WHEREAS, Montana's child abuse and neglect statutes (Title 41, chapter 3, MCA) provide the
17 framework for state interference with the parent-child relationship; and

18 WHEREAS, the Legislature intends to amend the provisions of Title 41, chapter 3, MCA, to ensure
19 compliance with constitutional requirements.

20
21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
22

23 NEW SECTION. Section 1. Warrant to remove child. (1) A child protection specialist of the
24 department, a peace officer, or a county attorney may apply, in writing, by telephone, or electronically, on oath
25 or affirmation, to a court identified in subsection (2) for the issuance of a warrant to remove a child and place
26 the child in a protective facility if necessary to prevent the child from being abused or neglected.

- 27 (2) A warrant may be issued in writing, by telephone, or electronically by:
28 (a) a city or municipal court judge or justice of the peace within the judge's geographic jurisdiction;

1 or

2 (b) a district court judge within the state.

3 (3) If the court finds from the application that there is probable cause that removal is necessary to
4 prevent the child from being abused or neglected, the court shall issue a warrant to remove the child. The
5 warrant must:

6 (a) identify the child to be removed and the person responsible for removing the child;

7 (b) recite the facts on which the conclusion that the child is abused or neglected or is in danger of
8 being abused or neglected is based; and

9 (c) provide for the placement of the child, pending an emergency protective services hearing.

10 (4) The provisions of 46-5-222 apply when an application for a warrant is made telephonically or
11 electronically or when a warrant is issued telephonically or electronically.

12

13 **NEW SECTION. Section 2. Procedures for executing warrant to remove child.** (1) A warrant
14 issued pursuant to [section 1] may be served at any time of the day or night. The warrant must be served within
15 10 days from the time of issuance. A warrant not served within 10 days is void and must be returned to the
16 issuing court and identified as not served.

17 (2) A warrant issued pursuant to [section 1] must be served by the person specifically named in the
18 warrant and by no other person unless the other person is acting in aid of and in the presence of the specifically
19 named person.

20

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

22 **"41-3-101. Declaration of policy.** (1) It is the policy of the state of Montana to:

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

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

27 (c) ensure that there is no forced removal of a child from the family ~~based solely on an allegation~~
28 ~~of abuse or neglect unless the department has reasonable cause to suspect that the child is at imminent risk of~~

1 ~~harm~~ without first obtaining a warrant from a court unless the child is likely to experience sexual abuse or

2 serious bodily injury-physical abuse in the time that would be required to obtain a warrant;

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

4 (e) ensure that all children have a right to a healthy and safe childhood in a permanent placement;

5 and

6 (f) ensure that whenever removal of a child from the home is necessary, the child is entitled to

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

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

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

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

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

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

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

28 (7) The department shall ensure that department training and policies comply with constitutional

1 requirements.

2 (~~7~~)(8) In implementing the policy of this section, the child's health and safety are of paramount
3 concern."

4

5 **Section 4.** Section 41-3-102, MCA, is amended to read:

6 **"41-3-102. Definitions.** As used in this chapter, the following definitions apply:

7 (1) (a) "Abandon", "abandoned", and "abandonment" mean:

8 (i) leaving a child under circumstances that make reasonable the belief that the parent does not
9 intend to resume care of the child in the future;

10 (ii) willfully surrendering physical custody for a period of 6 months and during that period not
11 manifesting to the child and the person having physical custody of the child a firm intention to resume physical
12 custody or to make permanent legal arrangements for the care of the child;

13 (iii) that the parent is unknown and has been unknown for a period of 90 days and that reasonable
14 efforts to identify and locate the parent have failed; or

15 (iv) the voluntary surrender, as defined in 40-6-402, by a parent of a newborn who is no more than
16 30 days old to an emergency services provider, as defined in 40-6-402.

17 (b) The terms do not include the voluntary surrender of a child to the department solely because of
18 parental inability to access publicly funded services.

19 (2) "A person responsible for a child's welfare" means:

20 (a) the child's parent, guardian, or foster parent or an adult who resides in the same home in which
21 the child resides;

22 (b) a person providing care in a day-care facility;

23 (c) an employee of a public or private residential institution, facility, home, or agency; or

24 (d) any other person responsible for the child's welfare in a residential setting.

25 (3) "Abused or neglected" means the state or condition of a child who has suffered child abuse or
26 neglect.

27 (4) (a) "Adequate health care" means any medical care or nonmedical remedial health care
28 recognized by an insurer licensed to provide disability insurance under Title 33, including the prevention of the

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1 described in Title 7, chapter 32, in the jurisdiction where the alleged abuse occurred.

2 (6) A school or school district may disclose, without consent, personally identifiable information
3 from the education records of a pupil to the department, the court, a review board, and the child's assigned
4 attorney, guardian ad litem, or special advocate.

5 (7) Information that identifies a person as a participant in or recipient of substance abuse treatment
6 services may be disclosed only as allowed by federal substance abuse confidentiality laws, including the
7 consent provisions of the law.

8 (8) The confidentiality provisions of this section must be construed to allow a court of this state to
9 share information with other courts of this state or of another state when necessary to expedite the interstate
10 placement of children.

11 (9) A person who is authorized to receive records under this section shall maintain the
12 confidentiality of the records and may not disclose information in the records to anyone other than the persons
13 described in subsections (3)(a) and (5). However, this subsection may not be construed to compel a family
14 member to keep the proceedings confidential.

15 (10) A news organization or its employee, including a freelance writer or reporter, is not liable for
16 reporting facts or statements made by an immediate family member under subsection (9) if the news
17 organization, employee, writer, or reporter maintains the confidentiality of the child who is the subject of the
18 proceeding.

19 (11) This section is not intended to affect the confidentiality of criminal court records, records of law
20 enforcement agencies, or medical records covered by state or federal disclosure limitations.

21 (12) Copies of records, evaluations, reports, or other evidence obtained or generated pursuant to
22 this section that are provided to the parent, grandparent, aunt, uncle, brother, sister, guardian, or parent's or
23 guardian's attorney must be provided without cost."

24

25 **Section 6.** Section 41-3-301, MCA, is amended to read:

26 **"41-3-301. (Temporary) Emergency protective ~~service~~ services.** (1) Any child protection specialist
27 of the department, a peace officer, or the county attorney who has reason to believe any child is in immediate
28 or apparent danger of harm may immediately remove the child and place the child in a protective facility. After

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- 1 ensuring that the child is safe, the department may make a request for further assistance from the law
2 enforcement agency or take appropriate legal action. The person or agency placing the child shall notify the
3 parents, parent, guardian, or other person having physical or legal custody of the child of the placement at the
4 time the placement is made or as soon after placement as possible. Notification under this subsection (1) must:
- 5 (a) include the reason for removal;
 - 6 (b) include information regarding the option for an emergency protective services hearing within 5
7 days under 41-3-306, the required show cause hearing within 20 days, and the purpose of the hearings;
 - 8 (c) provide contact information for the child protection specialist, the child protection specialist's
9 supervisor, and the office of state public defender; and
 - 10 (d) advise the parents, parent, guardian, or other person having physical or legal custody of the
11 child that the parents, parent, guardian, or other person:
 - 12 (i) has the right to receive a copy of the affidavit as provided in subsection (6);
 - 13 (ii) has the right to attend and participate in an emergency protective services hearing, if one is
14 requested, and the show cause hearing, including providing statements to the judge;
 - 15 (iii) may have a support person present during any in-person meeting with the child protection
16 specialist concerning emergency protective services; and
 - 17 (iv) may request that the child be placed in a kinship foster home as defined in 52-2-602.
- 18 (2) If a child protection specialist, a peace officer, or the county attorney determines in an
19 investigation of abuse or neglect of a child that the child is in danger because of the occurrence of partner or
20 family member assault, as provided for in 45-5-206, or strangulation of a partner or family member, as provided
21 for in 45-5-215, against an adult member of the household or that the child needs protection as a result of the
22 occurrence of partner or family member assault or strangulation of a partner or family member against an adult
23 member of the household, the department shall take appropriate steps for the protection of the child, which may
24 include:
- 25 (a) making reasonable efforts to protect the child and prevent the removal of the child from the
26 parent or guardian who is a victim of alleged partner or family member assault or strangulation of a partner or
27 family member;
 - 28 (b) making reasonable efforts to remove the person who allegedly committed the partner or family

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1 member assault or strangulation of a partner or family member from the child's residence if it is determined that
2 the child or another family or household member is in danger of partner or family member assault or
3 strangulation of a partner or family member; and

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

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

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

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

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

22 (7) Except as provided in the federal Indian Child Welfare Act, if applicable, a show cause hearing
23 must be held within 20 days of the filing of the petition unless otherwise stipulated by the parties pursuant to 41-
24 3-434.

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

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1 (9) The department shall make the necessary arrangements for the child's well-being as are
2 required prior to the court hearing. (Terminates June 30, 2023--sec. 8, Ch. 529, L. 2021.)

3 **41-3-301. (Effective July 1, 2023) Emergency protective service services.** (1) (a) Any Except as
4 provided in subsection (1)(b), a child protection specialist of the department, a peace officer, or the a county
5 attorney who has reason to believe any child is in immediate or apparent danger of harm may immediately
6 remove the may not remove a child and place the child in a protective facility without first obtaining a warrant
7 pursuant to [section 1].

8 (b) ~~(i)~~ A child protection specialist, a peace officer, or a county attorney may remove a child without
9 a warrant only when the person has probable cause to believe that the child is likely to experience sexual
10 abuse or ~~serious bodily injury~~ physical abuse in the time that would be required to obtain a warrant under
11 [section 1].

12 ~~(ii) For the purposes of this subsection (1)(b), "serious bodily injury" has the meaning provided in~~
13 ~~45-2-101.~~

14 (c) A peace officer must be present whenever a child is removed from the home.

15 (d) After ensuring that the child is safe, the department may make a request for further assistance
16 from the law enforcement agency or take appropriate legal action. The person or agency placing the child shall
17 notify the parents, parent, guardian, or other person having physical or legal custody of the child of the
18 placement at the time the placement is made or as soon after placement as possible. Notification under this
19 subsection (1)(d) must:

20 (i) include the reason for removal or, if the child was removed pursuant to subsection (1)(b), the
21 factual basis for the conclusion that the child is likely to experience sexual abuse or ~~serious bodily injury~~
22 physical abuse in the time that would be required to obtain a warrant;

23 (ii) include information regarding the emergency protective services and show cause hearings and
24 the purpose of the hearings; and

25 (iii) advise the parents, parent, guardian, or other person having physical or legal custody of the
26 child that the parents, parent, guardian, or other person may have a support person present during any in-
27 person meeting with the child protection specialist concerning emergency protective services.

28 (2) If a child protection specialist, a peace officer, or the county attorney determines in an

1 investigation of abuse or neglect of a child that the child is in danger because of the occurrence of partner or
2 family member assault, as provided for in 45-5-206, or strangulation of a partner or family member, as provided
3 for in 45-5-215, against an adult member of the household or that the child needs protection as a result of the
4 occurrence of partner or family member assault or strangulation of a partner or family member against an adult
5 member of the household, the department shall take appropriate steps for the protection of the child, which may
6 include:

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

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

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

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

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

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

26 (6) If a child is removed from the child's home by the department, a child protection specialist shall
27 submit an affidavit regarding the circumstances of the emergency removal to the county attorney and provide a
28 copy of the affidavit to the parents or guardian, if possible, within 2 working days of the emergency removal. An

1 abuse and neglect petition must be filed in accordance with 41-3-422 within ~~5 working days, excluding~~
2 ~~weekends and holidays, 72 hours~~ of the emergency removal of a child unless arrangements acceptable to the
3 agency for the care of the child have been made by the parents or a written prevention plan has been entered
4 into pursuant to 41-3-302.

5 (7) Except as provided in the federal Indian Child Welfare Act, if applicable, a show cause hearing
6 must be held within 20 days of the filing of the petition unless otherwise stipulated by the parties pursuant to 41-
7 3-434.

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

12 (9) The department shall make the necessary arrangements for the child's well-being as are
13 required prior to the court hearing."
14

15 **Section 7.** Section 41-3-306, MCA, is amended to read:

16 **"41-3-306. (Temporary) Emergency protective services hearing on request -- exceptions.** (1) (a)

17 If requested by the parents, parent, guardian, or other person having physical or legal custody of a child
18 removed from the home pursuant to 41-3-301, a district court shall hold an emergency protective services
19 hearing within 5 business days of the child's removal to determine whether to continue the removal beyond 5
20 business days.

21 (b) The department shall provide notification of the option for the hearing as required under 41-3-
22 301.

23 (c) A hearing is not required if the child is released prior to the time of the requested hearing.

24 (2) The hearing may be held in person, by videoconference, or, if no other means are available, by
25 telephone.

26 (3) The child and the child's parents, parent, guardian, or other person having physical or legal
27 custody of the child must be represented by counsel at the hearing.

28 (4) If the court determines that continued out-of-home placement is needed, the court shall: