

HOUSE BILL NO. 37

INTRODUCED BY J. CARLSON

BY REQUEST OF THE CHILDREN, FAMILIES, HEALTH, AND HUMAN SERVICES INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING CHILD ABUSE AND NEGLECT LAWS; REQUIRING A WARRANT TO REMOVE A CHILD FROM THE CHILD'S HOME EXCEPT IN EXIGENT CIRCUMSTANCES; ~~REQUIRING THAT A PEACE OFFICER BE PRESENT WHENEVER A CHILD IS REMOVED FROM THE HOME~~; REVISING THE DEFINITIONS OF "CHILD ABUSE OR NEGLECT" AND "REASONABLE EFFORTS"; REVISING THE REQUIREMENTS FOR DISCLOSURE OF CHILD ABUSE AND NEGLECT RECORDS; REVISING THE TIMEFRAME IN WHICH AN ABUSE AND NEGLECT PETITION MUST BE FILED WHEN A CHILD IS REMOVED; REVISING THE TIMEFRAME IN WHICH AN EMERGENCY PROTECTIVE SERVICES HEARING MUST BE HELD; REVISING THE REQUIREMENTS FOR DISMISSING AN ABUSE AND NEGLECT PETITION; AMENDING SECTIONS 41-3-101, 41-3-102, 41-3-205, 41-3-301, 41-3-306, 41-3-423, 41-3-424, 41-3-425, AND 41-3-427, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

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

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

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

(2) A warrant may be issued in writing, by telephone, or electronically by:

(a) a city or municipal court judge or justice of the peace within the judge's geographic jurisdiction;

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

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

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

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

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

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

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

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

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

**"41-3-301. (Temporary) Emergency protective service services.** (1) 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. 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) must:

(a) include the reason for removal;

(b) include information regarding the option for an emergency protective services hearing within 5 days under 41-3-306, the required show cause hearing within 20 days, and the purpose of the hearings;

(c) provide contact information for the child protection specialist, the child protection specialist's supervisor, and the office of state public defender; and

(d) advise the parents, parent, guardian, or other person having physical or legal custody of the child that the parents, parent, guardian, or other person:

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

(ii) has the right to attend and participate in an emergency protective services hearing, if one is requested, and the show cause hearing, including providing statements to the judge;

(iii) may have a support person present during any in-person meeting with the child protection specialist concerning emergency protective services; and

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

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

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

(b) making reasonable efforts to remove the person who allegedly committed the partner or family

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.

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

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

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

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

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

~~(d)(c)~~ 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. 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)(d)(1)(c)~~ must:

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

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

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

(2) If a child protection specialist, a peace officer, or the county attorney determines in an investigation of abuse or neglect of a child that the child is in danger because of the occurrence of partner or

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

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

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

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

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

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

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

25 (6) If a child is removed from the child's home by the department, a child protection specialist shall  
26 submit an affidavit regarding the circumstances of the emergency removal to the county attorney and provide a  
27 copy of the affidavit to the parents or guardian, if possible, within 2 ~~working~~ days of the emergency removal. An  
28 abuse and neglect petition must be filed in accordance with 41-3-422 within 5 ~~working~~ days, ~~excluding~~

~~weekends and holidays, 72 hours~~ 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, if applicable, a show cause hearing must be held within 20 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."

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

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

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

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

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

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

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

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

(a) establish guidelines for visitation by the parents, parent, guardian, or other person having