

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."

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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 ~~weekends and holidays, 72 hours~~ of the emergency removal of a child unless arrangements acceptable to the  
2 agency for the care of the child have been made by the parents or a written prevention plan has been entered  
3 into pursuant to 41-3-302.

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

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

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

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

15 **"41-3-306. (Temporary) Emergency protective services hearing on request -- exceptions.** (1) (a)  
16 If requested by the parents, parent, guardian, or other person having physical or legal custody of a child  
17 removed from the home pursuant to 41-3-301, a district court shall hold an emergency protective services  
18 hearing within 5 business days of the child's removal to determine whether to continue the removal beyond 5  
19 business days.

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

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

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

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

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

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

1 physical or legal custody of the child pending the show cause hearing; and

2 (b) review the availability of options for a kinship placement and make recommendations if  
3 appropriate.

4 (5) The court may direct the department to develop and implement a treatment plan before the  
5 show cause hearing if the parents, parent, guardian, or other person having physical or legal custody of the  
6 child stipulates to a condition subject to a treatment plan and agrees to immediately comply with the treatment  
7 plan if a plan is developed.

8 (6) If the court determines continued removal is not appropriate, the child must be immediately  
9 returned to the parents, parent, guardian, or other person having physical or legal custody of the child.

10 (7) This section does not apply:

11 (a) in judicial districts that are holding voluntary prehearing conferences pursuant to 41-3-307; or

12 (b) to cases involving an Indian child who is subject to the Indian Child Welfare Act. (Terminates  
13 June 30, 2023--sec. 8, Ch. 529, L. 2021.)

14 **41-3-306. (Effective July 1, 2023) Emergency protective services hearing -- exception.** (1) (a) A  
15 district court shall hold a hearing within ~~5 business days~~ 72 hours 5 business days of a child's removal from the  
16 home pursuant to 41-3-301 to determine whether there is probable cause to continue the removal beyond ~~5~~  
17 business days the emergency protective services hearing.

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

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

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

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

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

25 (a) establish guidelines for visitation by the parents, parent, guardian, or other person having  
26 physical or legal custody of the child pending the show cause hearing; and

27 (b) review the availability of options for a kinship placement and make recommendations if  
28 appropriate.

1 (5) The court may direct the department to develop and implement a treatment plan before the  
2 show cause hearing if the parents, parent, guardian or other person having physical or legal custody of the child  
3 stipulates to a condition subject to a treatment plan and agrees to immediately comply with the treatment plan if  
4 a plan is developed.

5 (6) If the court determines continued removal is not appropriate, the child must be immediately  
6 returned to the parents, parent, guardian, or other person having physical or legal custody of the child.

7 (7) This section does not apply to cases involving an Indian child who is subject to the Indian Child  
8 Welfare Act."

9

10 **Section 8.** Section 41-3-423, MCA, is amended to read:

11 **"41-3-423. Reasonable efforts required to prevent removal of child or to return -- exemption --**

12 **findings -- permanency plan.** (1) (a) The department shall make reasonable efforts to prevent the necessity of  
13 removal of a child from the child's home and to reunify families that have been separated by the state. The  
14 application for a warrant to remove a child from the child's home pursuant to [section 1] does not absolve the  
15 department from the duty to make reasonable efforts to prevent the necessity of removal.

16 (b) ~~(i) For the purposes of this subsection (1), the term "reasonable efforts" means the department~~  
17 ~~shall in good faith develop and implement voluntary services agreements and treatment plans that are designed~~  
18 ~~to preserve the parent-child relationship and the family unit and shall in good faith assist parents in completing~~  
19 ~~voluntary services agreements and treatment plans;~~

20 (i) conduct a comprehensive assessment of the circumstances of the family, with a focus on safe  
21 reunification as the most desirable goal. The assessment must be provided to the parents and to counsel for  
22 the parents.

23 (ii) identify appropriate services and help the parents overcome barriers, including actively  
24 assisting the parents in obtaining appropriate services;

25 (iii) with parental consent, identify and invite the extended family to participate in providing support  
26 and services to the family and to participate in family team meetings, permanency planning, and resolution of  
27 placement issues;

28 (iv) conduct or cause to be conducted a diligent search for the child's extended family members