

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 DATES~~
 15 ~~AND A TERMINATION DATE.~~"

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

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

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

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

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

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

3 ~~or~~

4 ~~(b) a district court judge within the state.~~

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

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

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

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

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

14

15 **NEW SECTION. Section 2. Procedures for executing warrant to remove child.** (1) A warrant
16 issued pursuant to [section 1] may be served at any time of the day or night. The warrant must be served within
17 10 days from the time of issuance. A warrant not served within 10 days is void and must be returned to the
18 issuing court and identified as not served.

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

22

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

24 **"41-3-101. Declaration of policy.** (1) It is the policy of the state of Montana to:

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

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

Amendment - 1st Reading-white – (H) Judiciary

68th Legislature

Drafter: Rachel Weiss, 406-444-5367

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1 (c) ensure that there is no forced removal of a child from the family ~~based solely on an allegation~~
2 ~~of abuse or neglect unless the department has reasonable cause to suspect that the child is at imminent risk of~~
3 ~~harm~~ without first obtaining a warrant from a court unless the child is likely to experience sexual abuse or
4 serious bodily injury physical abuse in the time that would be required to obtain a warrant;

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

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

7 and

8 (f) ensure that whenever removal of a child from the home is necessary, the child is entitled to
9 maintain ethnic, cultural, and religious heritage whenever appropriate.

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

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

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

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

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

28 (6) The department may charge a fee commensurate with the cost of operating the registry. The

1 fee may be charged only to those persons whose names are voluntarily entered in the registry.

2 (7) The department shall ensure that department training and policies comply with constitutional
3 requirements.

4 ~~(7)~~(8) In implementing the policy of this section, the child's health and safety are of paramount
5 concern."

6

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

8 **"41-3-102. Definitions.** As used in this chapter, the following definitions apply:

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

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

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

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

17 (iv) the voluntary surrender, as defined in 40-6-402, by a parent of a newborn who is no more than
18 30 days old to an emergency services provider, as defined in 40-6-402.

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

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

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

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

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

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

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

1 means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously
2 hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The reference
3 to "less than 1 year of age" may not be construed to imply that treatment should be changed or discontinued
4 when an infant reaches 1 year of age or to affect or limit any existing protections available under state laws
5 regarding medical neglect of children 1 year of age or older.

6 (35) "Youth in need of care" means a youth who has been adjudicated or determined, after a
7 hearing, to be or to have been abused, neglected, or abandoned."

8

9 **Section 5. Section 41-3-205, MCA, is amended to read:**

10 ~~"41-3-205. Confidentiality—disclosure exceptions. (1) The case records of the department and its~~
11 ~~local affiliate, the local office of public assistance, the county attorney, and the court concerning actions taken~~
12 ~~under this chapter and all records concerning reports of child abuse and neglect must be kept confidential~~
13 ~~except as provided by this section. Except as provided in subsections (9) and (10), a person who purposely or~~
14 ~~knowingly permits or encourages the unauthorized dissemination of the contents of case records is guilty of a~~
15 ~~misdemeanor.~~

16 ~~(2) Records may be disclosed to a court for in camera inspection if relevant to an issue before it.~~
17 ~~The court may permit public disclosure if it finds disclosure to be necessary for the fair resolution of an issue~~
18 ~~before it.~~

19 ~~(3) Records, including case notes, correspondence, evaluations, videotapes, and interviews,~~
20 ~~unless otherwise protected by this section or unless disclosure of the records is determined to be detrimental to~~
21 ~~the child or harmful to another person who is a subject of information contained in the records, may be~~
22 ~~disclosed to the following persons or entities in this state and any other state or country:~~

23 ~~(a) a department, agency, or organization, including a federal agency, military enclave, or Indian~~
24 ~~tribal organization, that is legally authorized to receive, inspect, or investigate reports of child abuse or neglect~~
25 ~~and that otherwise meets the disclosure criteria contained in this section;~~

26 ~~(b) a licensed youth care facility or a licensed child-placing agency that is providing services to the~~
27 ~~family or child who is the subject of a report in the records or to a person authorized by the department to~~
28 ~~receive relevant information for the purpose of determining the best interests of a child with respect to an~~

1 ~~adoptive placement;~~

2 ~~(c) — a health or mental health professional who is treating the family or child who is the subject of a~~
3 ~~report in the records;~~

4 ~~(d) — a parent, grandparent, aunt, uncle, brother, sister, guardian, mandatory reporter provided for in~~
5 ~~41-3-201(2) and (5), or person designated by a parent or guardian of the child who is the subject of a report in~~
6 ~~the records or other person responsible for the child's welfare, without disclosure of the identity of any person~~
7 ~~who reported or provided information on the alleged child abuse or neglect incident contained in the records;~~

8 ~~(e) — a child named in the records who was allegedly abused or neglected or the child's legal~~
9 ~~guardian or legal representative, including:~~

10 ~~(i) — the child's guardian ad litem or attorney; or~~

11 ~~(ii) — the child's guardian ad litem or a special advocate appointed by the court to represent a child in~~
12 ~~a pending case, unless the child or the child's parent or legal guardian objects to disclosure;~~

13 ~~(f) — the state protection and advocacy program as authorized by 42 U.S.C. 15043(a)(2);~~

14 ~~(g) — approved foster and adoptive parents who are or may be providing care for a child;~~

15 ~~(h) — a person about whom a report has been made and that person's attorney, with respect to the~~
16 ~~relevant records pertaining to that person only and without disclosing the identity of the reporter or any other~~
17 ~~person whose safety may be endangered;~~

18 ~~(i) — an agency, including a probation or parole agency, that is legally responsible for the~~
19 ~~supervision of an alleged perpetrator of child abuse or neglect;~~

20 ~~(j) — a person, agency, or organization that is engaged in a bona fide research or evaluation project~~
21 ~~and that is authorized by the department to conduct the research or evaluation;~~

22 ~~(k) — the members of an interdisciplinary child protective team authorized under 41-3-108 or of a~~
23 ~~family engagement meeting for the purposes of assessing the needs of the child and family, formulating a~~
24 ~~treatment plan, and monitoring the plan;~~

25 ~~(l) — the coroner or medical examiner when determining the cause of death of a child;~~

26 ~~(m) — a child fatality review team recognized by the department;~~

27 ~~(n) — a department or agency investigating an applicant for a license or registration that is required to~~
28 ~~operate a youth care facility, day care facility, or child placing agency;~~

1 ~~(o) — a person or entity who is carrying out background, employment-related, or volunteer-related~~
2 ~~screening of current or prospective employees or volunteers who have or may have unsupervised contact with~~
3 ~~children through employment or volunteer activities. A request for information under this subsection (3)(o) must~~
4 ~~be made in writing. Disclosure under this subsection (3)(o) is limited to information that indicates a risk to~~
5 ~~children posed by the person about whom the information is sought, as determined by the department.~~

6 ~~(p) — the news media, if disclosure is limited to confirmation of factual information regarding how the~~
7 ~~case was handled and if disclosure does not violate the privacy rights of the child or the child's parent or~~
8 ~~guardian, as determined by the department;~~

9 ~~(q) — an employee of the department or other state agency if disclosure of the records is necessary~~
10 ~~for administration of programs designed to benefit the child;~~

11 ~~(r) — an agency of an Indian tribe, a qualified expert witness, or the relatives of an Indian child if~~
12 ~~disclosure of the records is necessary to meet requirements of the federal Indian Child Welfare Act;~~

13 ~~(s) — a juvenile probation officer who is working in an official capacity with the child who is the~~
14 ~~subject of a report in the records;~~

15 ~~(t) — an attorney who is hired by or represents the department if disclosure is necessary for the~~
16 ~~investigation, defense, or prosecution of a case involving child abuse or neglect;~~

17 ~~(u) — a foster care review committee established under 41-3-115 or, when applicable, a citizen~~
18 ~~review board established under Title 41, chapter 3, part 10;~~

19 ~~(v) — a school employee participating in an interview of a child by a child protection specialist, county~~
20 ~~attorney, or peace officer, as provided in 41-3-202;~~

21 ~~(w) — a member of a county or regional interdisciplinary child information and school safety team~~
22 ~~formed under the provisions of 52-2-211;~~

23 ~~(x) — members of a local interagency staffing group provided for in 52-2-203;~~

24 ~~(y) — a member of a youth placement committee formed under the provisions of 41-5-121; or~~

25 ~~(z) — a principal of a school or other employee of the school district authorized by the trustees of the~~
26 ~~district to receive the information with respect to a student of the district who is a client of the department.~~

27 ~~(4) — (a) The records described in subsection (3) must be disclosed to a member of the United~~
28 ~~States congress or a member of the Montana legislature if all of the following requirements are met:~~

1 ~~(i) — the member receives a written inquiry regarding a child and whether the laws of the United~~
2 ~~States or the state of Montana that protect children from abuse or neglect are being complied with or whether~~
3 ~~the laws need to be changed to enhance protections for children;~~

4 ~~(ii) — the member submits a written request to the department requesting to review the records~~
5 ~~relating to the written inquiry. The member's request must include a copy of the written inquiry, the name of the~~
6 ~~child whose records are to be reviewed, and any other information that will assist the department in locating the~~
7 ~~records.~~

8 ~~(iii) — before reviewing the records, the member:~~

9 ~~(A) — signs a form that outlines the state and federal laws regarding confidentiality and the penalties~~
10 ~~for unauthorized release of the information; and~~

11 ~~(B) — receives from the department an orientation of the content and structure of the records.~~

12 ~~(b) — Records disclosed pursuant to subsection (4)(a) are confidential, must be made available for~~
13 ~~the member to view but may not be copied, recorded, photographed, or otherwise replicated by the member,~~
14 ~~and must remain solely in the department's possession. The member must be allowed to view the records in~~
15 ~~the local office where the case is or was active.~~

16 ~~(c) — Access to records requested pursuant to this subsection (4) is limited to 6 months from the date~~
17 ~~the written request to review records was received by the department.~~

18 ~~(5) — (a) The records described in subsection (3) must be promptly released to any of the following~~
19 ~~individuals upon a written request by the individual to the department or the department's designee:~~

20 ~~(i) — the attorney general;~~

21 ~~(ii) — a county attorney or deputy county attorney of the county in which the alleged abuse or neglect~~
22 ~~occurred;~~

23 ~~(iii) — a peace officer, as defined in 45-2-101, in the jurisdiction in which the alleged abuse or neglect~~
24 ~~occurred; or~~

25 ~~(iv) — the office of the child and family ombudsman.~~

26 ~~(b) — The records described in subsection (3) must be promptly disclosed by the department to an~~
27 ~~appropriate individual described in subsection (5)(a) or to a county or regional interdisciplinary child information~~
28 ~~and school safety team established pursuant to 52-2-211 upon the department's receipt of a report indicating~~

1 that any of the following has occurred:

2 (i) ~~the death of the child as a result of child abuse or neglect;~~

3 (ii) ~~a sexual offense, as defined in 46-23-502, against the child;~~

4 (iii) ~~exposure of the child to an actual and not a simulated violent offense as defined in 46-23-502;~~

5 or

6 (iv) ~~child abuse or neglect, as defined in 41-3-102, due to exposure of the child to circumstances~~

7 ~~constituting the criminal manufacture or distribution of dangerous drugs.~~

8 (c) ~~(i) The department shall promptly disclose the results of an investigation to an individual~~
9 ~~described in subsection (5)(a) or to a county or regional interdisciplinary child information and school safety~~
10 ~~team established pursuant to 52-2-211 upon the determination that:~~

11 (A) ~~there is reasonable cause to suspect that a child has been exposed to a Schedule I or~~
12 ~~Schedule II drug whose manufacture, sale, or possession is prohibited under state law; or~~

13 (B) ~~a child has been exposed to drug paraphernalia used for the manufacture, sale, or possession~~
14 ~~of a Schedule I or Schedule II drug that is prohibited by state law.~~

15 (ii) ~~For the purposes of this subsection (5)(c), exposure occurs when a child is caused or permitted~~
16 ~~to inhale, have contact with, or ingest a Schedule I or Schedule II drug that is prohibited by state law or have~~
17 ~~contact with drug paraphernalia as defined in 45-10-101.~~

18 (d) ~~(i) Except as provided in subsection (5)(d)(ii), the records described in subsection (3) must be~~
19 ~~released within 5 business days to the county attorney of the county in which the acts that are the subject of a~~
20 ~~report occurred upon the department's receipt of a report that includes an allegation of sexual abuse or sexual~~
21 ~~exploitation. The department shall also report to any other appropriate individual described in subsection (5)(a)~~
22 ~~and to a county or regional interdisciplinary child information and school safety team established pursuant to~~
23 ~~52-2-211.~~

24 (ii) ~~If the exception in 41-3-202(1)(b) applies, a contractor described in 41-3-201(2)(j) that provides~~
25 ~~confidential services to victims of sexual assault shall report to the department as provided in this part without~~
26 ~~disclosing the names of the victim and the alleged perpetrator of sexual abuse or sexual exploitation.~~

27 (iii) ~~When a contractor described in 41-3-201(2)(j) that provides confidential services to victims of~~
28 ~~sexual assault provides services to youth over the age of 13 who are victims of sexual abuse and sexual~~

1 ~~exploitation, the contractor may not dissuade or obstruct a victim from reporting the criminal activity and, upon a~~
2 ~~request by the victim, shall facilitate disclosure to the county attorney and a law enforcement officer as~~
3 ~~described in Title 7, chapter 32, in the jurisdiction where the alleged abuse occurred.~~

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

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

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

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

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

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

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

26
27 **Section 5.** Section 41-3-301, MCA, is amended to read:

28 **"41-3-301. (Temporary) Emergency protective service services.** (1) Any child protection specialist

1 of the department, a peace officer, or the county attorney who has reason to believe any child is in immediate
2 or apparent danger of harm may immediately remove the child and place the child in a protective facility. After
3 ensuring that the child is safe, the department may make a request for further assistance from the law
4 enforcement agency or take appropriate legal action. The person or agency placing the child shall notify the
5 parents, parent, guardian, or other person having physical or legal custody of the child of the placement at the
6 time the placement is made or as soon after placement as possible. Notification under this subsection (1) must:

- 7 (a) include the reason for removal;
- 8 (b) include information regarding the option for an emergency protective services hearing within 5
9 days under 41-3-306, the required show cause hearing within 20 days, and the purpose of the hearings;
- 10 (c) provide contact information for the child protection specialist, the child protection specialist's
11 supervisor, and the office of state public defender; and
- 12 (d) advise the parents, parent, guardian, or other person having physical or legal custody of the
13 child that the parents, parent, guardian, or other person:
 - 14 (i) has the right to receive a copy of the affidavit as provided in subsection (6);
 - 15 (ii) has the right to attend and participate in an emergency protective services hearing, if one is
16 requested, and the show cause hearing, including providing statements to the judge;
 - 17 (iii) may have a support person present during any in-person meeting with the child protection
18 specialist concerning emergency protective services; and
 - 19 (iv) may request that the child be placed in a kinship foster home as defined in 52-2-602.
- 20 (2) If a child protection specialist, a peace officer, or the county attorney determines in an

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

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

1 family member;

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

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

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

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

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

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

24 (7) Except as provided in the federal Indian Child Welfare Act, if applicable, a show cause hearing
25 must be held within 20 days of the filing of the petition unless otherwise stipulated by the parties pursuant to 41-
26 3-434.

27 (8) If the department determines that a petition for immediate protection and emergency protective
28 services must be filed to protect the safety of the child, the child protection specialist shall interview the parents

1 of the child to whom the petition pertains, if the parents are reasonably available, before the petition may be
2 filed. The district court may immediately issue an order for immediate protection of the child.

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

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

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

14 ~~(ii) For the purposes of this subsection (1)(b), "serious bodily injury" has the meaning provided in~~
15 ~~45-2-101.~~

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

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

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

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

27 (iii) advise the parents, parent, guardian, or other person having physical or legal custody of the
28 child that the parents, parent, guardian, or other person may have a support person present during any in-

1 person meeting with the child protection specialist concerning emergency protective services.

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

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

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

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

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

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

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

28 (6) If a child is removed from the child's home by the department, a child protection specialist shall

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

7 (7) Except as provided in the federal Indian Child Welfare Act, if applicable, a show cause hearing
8 must be held within 20 days of the filing of the petition unless otherwise stipulated by the parties pursuant to 41-
9 3-434.

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

14 (9) The department shall make the necessary arrangements for the child's well-being as are
15 required prior to the court hearing."
16

17 **Section 6.** Section 41-3-306, MCA, is amended to read:

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

23 (b) The department shall provide notification of the option for the hearing as required under 41-3-
24 301.

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

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

28 (3) The child and the child's parents, parent, guardian, or other person having physical or legal

1 custody of the child must be represented by counsel at the hearing.

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

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

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

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

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

13 (7) This section does not apply:

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

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

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

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

22 (c) A hearing is not required if the child is released prior to the time of the required 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 child
6 stipulates to a condition subject to a treatment plan and agrees to immediately comply with the treatment plan if
7 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 to cases involving an Indian child who is subject to the Indian Child
11 Welfare Act."

12

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

14 **"41-3-306. (Temporary) Emergency protective services hearing on request -- exceptions. (1) (a)**

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

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

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

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

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

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

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

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

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

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

9 (7) This section does not apply:

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

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

13 **41-3-306. (Effective July 1, 2023) Emergency protective services hearing -- exception.** (1) (a) A
14 district court shall hold a hearing within 5-3 business days of a child's removal from the home pursuant to 41-3-
15 301 to determine whether there is probable cause to continue the removal beyond ~~5 business days~~ the
16 emergency protective services hearing.

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

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

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

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

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

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

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

28 (5) The court may direct the department to develop and implement a treatment plan before the

1 show cause hearing if the parents, parent, guardian or other person having physical or legal custody of the child
2 stipulates to a condition subject to a treatment plan and agrees to immediately comply with the treatment plan if
3 a plan is developed.

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

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

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

10 **"41-3-423. Reasonable efforts required to prevent removal of child or to return -- exemption --**
11 **findings -- permanency plan.** (1) (a) The department shall make reasonable efforts to prevent the necessity of
12 removal of a child from the child's home and to reunify families that have been separated by the state. The
13 application for a warrant to remove a child from the child's home pursuant to [section 1] does not absolve the
14 department from the duty to make reasonable efforts to prevent the necessity of removal.

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

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

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

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

27 (iv) conduct or cause to be conducted a diligent search for the child's extended family members
28 and contact and consult with extended family members to provide family structure and support for the child and

