

Amendment - 2nd Reading-yellow - Requested by: Jennifer Carlson - (H) Committee of the Whole

68th Legislature

Drafter: Alexis Sandru, 406-444-4026

HB0016.002.001

HOUSE BILL NO. 16

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 PROCEDURES RELATED TO CHILD ABUSE AND NEGLECT PROCEEDINGS; PROVIDING FOR SHARING OF INFORMATION WITH THE OFFICE OF STATE PUBLIC DEFENDER; PROVIDING FOR PREHEARING CONFERENCES BEFORE EMERGENCY PROTECTIVE SERVICES HEARINGS; REMOVING THE EXCEPTION FOR USE OF PREHEARING CONFERENCES AND EMERGENCY PROTECTIVE SERVICES HEARINGS IN CASES SUBJECT TO THE INDIAN CHILD WELFARE ACT; CLARIFYING THAT A SUPPORT PERSON MAY BE PRESENT DURING AN EMERGENCY PROTECTIVE SERVICES HEARING; PROVIDING APPROPRIATIONS; AMENDING SECTIONS 41-3-301, 41-3-306, AND 41-3-307, AND 41-3-427, MCA; ~~REPEALING~~ AMENDING SECTION 8, CHAPTER 529, LAWS OF 2021; AND PROVIDING EFFECTIVE DATES."

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

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

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

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

~~(a)(i)~~— include the reason for removal;

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(b)(ii)— _____ 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;

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

(d)(iv)— _____ 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)(A)— has the right to receive a copy of the affidavit as provided in subsection (6);

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

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

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

(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

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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 office of state public defender and, if possible, the parents or guardian, if possible,
19 within 2 working days of the emergency removal. An abuse and neglect petition must be filed within 5 working
20 days, excluding weekends and holidays, of the emergency removal of a child unless arrangements acceptable
21 to the agency for the care of the child have been made by the parents or a written prevention plan has been
22 entered into pursuant to 41-3-302.

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

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

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

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

13 (a)(i) include the reason for removal;

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

16 (c)(iii) advise the parents, parent, guardian, or other person having physical or legal custody
17 of the child that the parents, parent, guardian, or other person may have a support person present during any
18 in-person meeting with the child protection specialist concerning emergency protective services, including the
19 emergency protective services hearing provided for in 41-3-306.

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

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

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1 include:

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

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

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

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

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

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

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

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(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 2. Section 41-3-306, MCA, is amended to read:

"41-3-306. (Temporary) Emergency protective services hearing on request —~~exceptions~~
exception. (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 physical or legal custody of the child pending the show cause hearing; and

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

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1 appropriate.

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

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

8 (7) This section does not apply:

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

10 ~~(b) to cases involving an Indian child who is subject to the Indian Child Welfare Act.~~

11 (8) The emergency protective services hearing is an emergency proceeding for the purposes of
12 the Indian Child Welfare Act and is not subject to the notice requirements of that act. (Terminates June 30,
13 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.

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

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1 appropriate.

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

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

8 (7) This section does not apply to cases involving an Indian child who is subject to The emergency
9 protective services hearing is an emergency proceeding for the purposes of the Indian Child Welfare Act and is
10 not subject to the notice requirements of that act."

11

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

13 **"41-3-307. (Temporary) Voluntary Availability of prehearing conferences --pilot project**

14 **counties.** (1) The parents, parent, guardian, or other person having physical or legal custody of a child who has
15 been removed from the home pursuant to 41-3-301 may participate in a conference within 5 days 72 hours 5
16 DAYS of the child's removal and before a show cause hearing an emergency protective services hearing held by
17 the court if ~~the court is participating in a pilot project testing the effectiveness of prehearing conferences~~
18 pursuant to 41-3-306.

19 (2) ~~_____A prehearing conference may be held under this section only if it involves~~ must include the
20 following parties:

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

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

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

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(a) the child's current placement and options for continued placement if the child remains out of the home;

(b) whether other options exist for an in-home safety plan or resource that may allow the child to remain in the home;

(c) parenting time schedules; and

(d) treatment services for the family.

~~(5) This section does not apply to cases involving an Indian child who is subject to the Indian Child Welfare Act.~~

~~(6) This section applies to a district court participating in the prehearing conference pilot project funded by the court improvement program on May 14, 2021, and to any district court in a rural county or multicounty district that chooses to hold conferences in accordance with this section on or after that date. (Terminates June 30, 2023—sec. 8, Ch. 529, L. 2021.)"~~

SECTION 4. SECTION 41-3-427, MCA, IS AMENDED TO READ:

"41-3-427. Petition for immediate protection and emergency protective services -- order -- service. (1) (a) In a case in which it appears that a child is abused or neglected or is in danger of being abused or neglected, the county attorney, the attorney general, or an attorney hired by the county may file a petition for immediate protection and emergency protective services. In implementing the policy of this section, the child's health and safety are of paramount concern.

(b) A petition for immediate protection and emergency protective services must state the specific authority requested and must be supported by an affidavit signed by a representative of the department stating in detail the alleged facts upon which the request is based and the facts establishing probable cause or, if the case is subject to the federal Indian Child Welfare Act, clear and convincing evidence that a child is abused or neglected or is in danger of being abused or neglected. The affidavit of the department representative must contain information, if any, regarding statements made by the parents about the facts of the case.

(c) If from the alleged facts presented in the affidavit it appears to the court that there is probable cause or, if the case is subject to the federal Indian Child Welfare Act, clear and convincing evidence to believe

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1 that the child has been abused or neglected or is in danger of being abused and neglected, the judge shall
2 grant emergency protective services and the relief authorized by subsection (2) until the adjudication hearing or
3 the temporary investigative hearing. If it appears from the alleged facts contained in the affidavit that there is
4 insufficient probable cause or, if the case is subject to the federal Indian Child Welfare Act, clear and convincing
5 evidence to believe that the child has been abused or neglected or is in danger of being abused or neglected,
6 the court shall dismiss the petition.

7 (d) If the parents, parent, guardian, person having physical or legal custody of the child, or attorney
8 for the child disputes the material issues of fact contained in the affidavit or the veracity of the affidavit, the
9 person may request a contested show cause hearing pursuant to 41-3-432 within 10 days following service of
10 the petition and affidavit.

11 (e) The petition for immediate protection and emergency protective services must include a notice
12 advising the parents, parent, guardian, or other person having physical or legal custody of the child that the
13 parents, parent, guardian, or other person having physical or legal custody of the child may have a support
14 person present during any ~~in-person~~ meeting with a child protection specialist concerning emergency protective
15 services. Reasonable accommodation must be made in scheduling an in-person meeting with the child
16 protection specialist.

17 (2) Pursuant to subsection (1), if the court finds probable cause or, if the case is subject to the
18 federal Indian Child Welfare Act, clear and convincing evidence based on the petition and affidavit, the court
19 may issue an order for immediate protection of the child. The court shall consider the parents' statements, if
20 any, included with the petition and any accompanying affidavit or report to the court. If the court finds probable
21 cause or, if the case is subject to the federal Indian Child Welfare Act, clear and convincing evidence, the court
22 may issue an order granting the following forms of relief, which do not constitute a court-ordered treatment plan
23 under 41-3-443:

24 (a) the right of entry by a peace officer or department worker;

25 (b) the right to place the child in temporary medical or out-of-home care, including but not limited to
26 care provided by a noncustodial parent, kinship or foster family, group home, or institution;

27 (c) the right of the department to locate, contact, and share information with any extended family

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members who may be considered as placement options for the child;

(d) a requirement that the parents, guardian, or other person having physical or legal custody furnish information that the court may designate and obtain evaluations that may be necessary to determine whether a child is a youth in need of care;

(e) a requirement that the perpetrator of the alleged child abuse or neglect be removed from the home to allow the child to remain in the home;

(f) a requirement that the parent provide the department with the name and address of the other parent, if known, unless parental rights to the child have been terminated;

(g) a requirement that the parent provide the department with the names and addresses of extended family members who may be considered as placement options for the child who is the subject of the proceeding; and

(h) any other temporary disposition that may be required in the best interests of the child that does not require an expenditure of money by the department unless the court finds after notice and a hearing that the expenditure is reasonable and that resources are available for payment. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(3) An order for removal of a child from the home must include a finding that continued residence of the child with the parent is contrary to the welfare of the child or that an out-of-home placement is in the best interests of the child.

(4) The order for immediate protection of the child must require the person served to comply immediately with the terms of the order and to appear before the court issuing the order on the date specified for a show cause hearing. Upon a failure to comply or show cause, the court may hold the person in contempt or place temporary physical custody of the child with the department until further order.

(5) The petition must be served as provided in 41-3-422."

~~NEW SECTION. Section 5. Repealer. Section 8, Chapter 529, Laws of 2021, is repealed.~~

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Section 5. Section 8, Chapter 529, Laws of 2021, is amended to read:

"Section 8. Termination. ~~[This act]~~ Except for [section 2], [this act] terminates June 30, 2023."

NEW SECTION. **Section 6. Appropriation.** (1) There is appropriated \$450,000 from the general fund to the office of court administrator for the biennium beginning July 1, 2023, to pay for the costs of training and hiring facilitators for the prehearing conferences provided for in [section 3].

(2) There is appropriated \$300,000 from the general fund to the office of state public defender for the biennium beginning July 1, 2023, to pay for the costs of providing legal representation to parents and guardians during the emergency protective services hearing provided for in [section 2] and the prehearing conferences provided for in [section 3].

NEW SECTION. **Section 7. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each federally recognized tribal government in Montana.

NEW SECTION. **Section 8. Effective dates.** (1) Except as provided in ~~subsections (2) and (3)~~ subsection (2), [this act] is effective on passage and approval.

(2) ~~[Section 4 5] is effective June 30, 2023.~~

~~(3)~~ ~~—~~ [Sections 3 and 5 6] are effective July 1, 2023.

- END -