

## SENATE BILL NO. 304

INTRODUCED BY J. SHOCKLEY

1  
2  
3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING DEPENDENCY AND NEGLECT LAWS;  
5 CLARIFYING VENUE AND CREATING LONG-ARM JURISDICTION OVER CHILDREN WHO HAVE BEEN  
6 REMOVED FROM THE STATE; CLARIFYING THAT MANDATORY REPORTERS OF SUSPECTED CHILD  
7 ABUSE MUST REPORT ABUSE REGARDLESS OF THE IDENTITY OF THE ABUSER; REMOVING  
8 DUPLICATION IN THE SHOW CAUSE HEARING PROCESS AND THE ADJUDICATION HEARING PROCESS;  
9 MODIFYING THE PROCEDURE FOR OBTAINING EMERGENCY PROTECTIVE SERVICES; AND AMENDING  
10 SECTIONS 41-3-103, 41-3-201, 41-3-301, 41-3-427, AND 41-3-432, MCA."

11  
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13  
14 **Section 1.** Section 41-3-103, MCA, is amended to read:  
15 **"41-3-103. Jurisdiction and venue.** (1) In all matters arising under this chapter, a person is subject to  
16 a proceeding under this chapter and the district court has jurisdiction over:  
17 (a) a youth who is within the state of Montana for any purpose;  
18 (b) a youth or other person subject to this chapter who under a temporary or permanent order of the  
19 court has voluntarily or involuntarily left the state or the jurisdiction of the court; ~~or~~  
20 (c) a person who is alleged to have abused or neglected a youth who is in the state of Montana for any  
21 purpose;  
22 (d) a youth or youth's parent or guardian who resides in Montana;  
23 (e) a youth or youth's parent or guardian who resided in Montana within 180 days before the filing of a  
24 petition under this chapter if the alleged abuse and neglect is alleged to have occurred in whole or in part in  
25 Montana.  
26 (2) ~~Either Venue is proper in the county where a youth is located or has resided within 180 days before~~  
27 the filing of a petition under this part or a county where the youth's parent or guardian resides ~~has initial~~  
28 ~~jurisdiction over a youth alleged to be a youth in need of care~~ or has resided within 180 days before the filing of  
29 a petition under this part."

30

1           **Section 2.** Section 41-3-201, MCA, is amended to read:

2           **"41-3-201. Reports.** (1) When the professionals and officials listed in subsection (2) know or have  
3 reasonable cause to suspect, as a result of information they receive in their professional or official capacity, that  
4 a child is abused or neglected by anyone regardless of whether the person suspected of causing the abuse or  
5 neglect is a parent or other person responsible for the child's welfare, they shall report the matter promptly to the  
6 department of public health and human services.

7           (2) Professionals and officials required to report are:

8           (a) a physician, resident, intern, or member of a hospital's staff engaged in the admission, examination,  
9 care, or treatment of persons;

10           (b) a nurse, osteopath, chiropractor, podiatrist, medical examiner, coroner, dentist, optometrist, or any  
11 other health or mental health professional;

12           (c) religious healers;

13           (d) school teachers, other school officials, and employees who work during regular school hours;

14           (e) a social worker, operator or employee of any registered or licensed day-care or substitute care  
15 facility, staff of a resource and referral grant program organized under 52-2-711 or of a child and adult food care  
16 program, or an operator or employee of a child-care facility;

17           (f) a foster care, residential, or institutional worker;

18           (g) a peace officer or other law enforcement official;

19           (h) a member of the clergy, as defined in 15-6-201(2)(a);

20           (i) a guardian ad litem or a court-appointed advocate who is authorized to investigate a report of alleged  
21 abuse or neglect; or

22           (j) an employee of an entity that contracts with the department to provide direct services to children.

23           (3) A professional listed in subsection (2)(a) or (2)(b) involved in the delivery or care of an infant shall  
24 report to the department any infant known to the professional to be affected by a dangerous drug, as defined in  
25 50-32-101.

26           (4) Any person may make a report under this section if the person knows or has reasonable cause to  
27 suspect that a child is abused or neglected.

28           (5) (a) Except as provided in subsection (5)(b) or (5)(c), a person listed in subsection (2) may not refuse  
29 to make a report as required in this section on the grounds of a physician-patient or similar privilege.

30           (b) A member of the clergy or a priest is not required to make a report under this section if:

1 (i) the knowledge or suspicion of the abuse or neglect came from a statement or confession made to the  
2 member of the clergy or the priest in that person's capacity as a member of the clergy or as a priest;

3 (ii) the statement was intended to be a part of a confidential communication between the member of the  
4 clergy or the priest and a member of the church or congregation; and

5 (iii) the person who made the statement or confession does not consent to the disclosure by the member  
6 of the clergy or the priest.

7 (c) A member of the clergy or a priest is not required to make a report under this section if the  
8 communication is required to be confidential by canon law, church doctrine, or established church practice.

9 (6) The reports referred to under this section must contain:

10 (a) the names and addresses of the child and the child's parents or other persons responsible for the  
11 child's care;

12 (b) to the extent known, the child's age and the nature and extent of the child's injuries, including any  
13 evidence of previous injuries;

14 (c) any other information that the maker of the report believes might be helpful in establishing the cause  
15 of the injuries or showing the willful neglect and the identity of person or persons responsible for the injury or  
16 neglect; and

17 (d) the facts that led the person reporting to believe that the child has suffered injury or injuries or willful  
18 neglect, within the meaning of this chapter."

19

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

21 **"41-3-301. Emergency protective service.** (1) Any child protective social worker of the department,  
22 a peace officer, or the county attorney who has reason to believe any youth child is in immediate or apparent  
23 danger of harm may immediately remove the youth child and place the youth child in a protective facility. After  
24 ensuring that the child is safe, the department may make a request for further assistance from the law  
25 enforcement agency or take appropriate legal action. The person or agency placing the child shall notify the  
26 parents, parent, guardian, or other person having physical or legal custody of the youth child of the placement  
27 at the time the placement is made or as soon after placement as possible. Notification under this subsection must  
28 include the reason for removal, information regarding the show cause hearing, and the purpose of the show  
29 cause hearing and must advise the parents, parent, guardian, or other person having physical or legal custody  
30 of the youth child that the parents, parent, guardian, or other person may have a support person present during

1 any in-person meeting with the social worker concerning emergency protective services.

2 (2) If a social worker of the department, 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, against an adult member of the household or that the child  
5 needs protection as a result of the occurrence of partner or family member assault against an adult member of  
6 the household, the department shall take appropriate steps for the protection of the child, which may include:

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

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

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

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

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

19 (5) If a child is removed from the child's home by the department, a child protective social worker shall  
20 submit an affidavit regarding the circumstances of the emergency removal to the county attorney and provide a  
21 copy of the affidavit to the parents or guardian, if possible, within 2 working days of the emergency removal. An  
22 abuse and neglect petition must be filed within 5 working days, excluding weekends and holidays, of the  
23 emergency removal of a child unless arrangements acceptable to the agency for the care of the child have been  
24 made by the parents or voluntary protective services are provided pursuant to 41-3-302.

25 ~~(6) Except as provided in the federal Indian Child Welfare Act, if applicable, a show cause hearing must~~  
26 ~~be held within 20 days of the filing of the initial petition unless otherwise stipulated by the parties pursuant to~~  
27 ~~41-3-434.~~

28 ~~(7)~~(6) If the department determines that a petition for immediate protection and emergency protective  
29 services must be filed to protect the safety of the child, the social worker shall interview the parents of the child  
30 to whom the petition pertains, if the parents are reasonably available, before the petition may be filed. The district

1 court may immediately issue an order for immediate protection of the child. ~~The district court may not order further~~  
 2 ~~relief until the parents, if they are reasonably available, are given the opportunity to appear before the court or~~  
 3 ~~have their statements, if any, presented to the court for consideration before entry of an order granting the~~  
 4 ~~petition.~~

5 ~~(8)(7)~~ The department shall make the necessary arrangements for the child's well-being as are required  
 6 prior to the court hearing."

7

8 **Section 4.** Section 41-3-427, MCA, is amended to read:

9 **"41-3-427. Petition for immediate protection and emergency protective services -- order -- service.**

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

14 (b) A petition for immediate protection and emergency protective services must state the specific  
 15 authority requested and must be supported by an affidavit signed by a representative of the department stating  
 16 in detail the alleged facts upon which the request is based and the facts establishing probable cause that a child  
 17 is abused or neglected or is in danger of being abused or neglected. The affidavit of the department  
 18 representative must contain information, if any, regarding statements made by the parents about the facts of the  
 19 case.

20 (c) ~~The petition for immediate protection and emergency protective services must be supported by an~~  
 21 ~~affidavit signed by a representative of the department stating in detail the facts upon which the request is based.~~  
 22 ~~The petition or affidavit of the department must contain information regarding statements, if any, made by the~~  
 23 ~~parents detailing the parents' statement of the facts of the case. The parents, if available in person or by~~  
 24 ~~electronic means, must be given an opportunity to present evidence to the court before the court rules on the~~  
 25 ~~petition. If from the alleged facts presented in the affidavit it appears to the court that there is probable cause or,~~  
 26 ~~if the case is subject to the federal Indian Child Welfare Act, clear and convincing evidence to believe that the~~  
 27 ~~child has been abused or neglected or is in danger of being abused and neglected, the judge shall grant~~  
 28 ~~emergency protective services and the relief authorized by subsection (2) until the adjudication hearing or the~~  
 29 ~~temporary investigative hearing. If it appears from the alleged facts contained in the affidavit that there is~~  
 30 ~~insufficient probable cause or, if the case is subject to the federal Indian Child Welfare Act, clear and convincing~~

1 evidence to believe that the child has been abused or neglected or is in danger of being abused or neglected,  
 2 the court shall dismiss the petition.

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

7 ~~(d)~~(e) The petition for immediate protection and emergency protective services must include a notice  
 8 advising the parents, parent, guardian, or other person having physical or legal custody of the ~~youth~~ child that  
 9 the parents, parent, guardian, or other person having physical or legal custody of the child may have a support  
 10 person present during any in-person meeting with a social worker concerning emergency protective services.  
 11 Reasonable accommodation must be made in scheduling an in-person meeting with the social worker.

12 (2) ~~The person filing the petition for immediate protection and emergency protective services has the~~  
 13 ~~burden of presenting evidence establishing probable cause for the issuance of an order for immediate protection~~  
 14 ~~of the child, except as provided by the federal Indian Child Welfare Act, if applicable. Pursuant to subsection (1),~~  
 15 if the court finds probable cause or, if the case is subject to the federal Indian Child Welfare Act, clear and  
 16 convincing evidence based on the petition and affidavit, the court may issue an order for immediate protection  
 17 of the child. The court shall consider the parents' statements, if any, included with the petition and any  
 18 accompanying affidavit or report to the court. If the court finds probable cause or, if the case is subject to the  
 19 federal Indian Child Welfare Act, clear and convincing evidence, the court may issue an order granting the  
 20 following forms of relief, which do not constitute a court-ordered treatment plan under 41-3-443:

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

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

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

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

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

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

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

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

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

15 (5) The petition must be served as provided in 41-3-422."  
16

17 **Section 5.** Section 41-3-432, MCA, is amended to read:

18 **"41-3-432. Show cause hearing -- order.** (1) (a) Except as provided in the federal Indian Child Welfare  
19 Act, a show cause hearing must be conducted within 20 days of the filing of an initial child abuse and neglect  
20 petition unless otherwise stipulated by the parties pursuant to 41-3-434 or unless an extension of time is granted  
21 by the court. A separate notice to the court stating the statutory time deadline for a hearing must accompany any  
22 petition to which the time deadline applies.

23 (b) If a proceeding under this chapter involves an Indian child and is subject to the federal Indian Child  
24 Welfare Act, a qualified expert witness is required to testify that the continued custody of the child by the parent  
25 or Indian custodian is likely to result in serious emotional or physical damage to the child.

26 (c) The court may grant an extension of time for a show cause hearing only upon a showing of  
27 substantial injustice and shall order an appropriate remedy that considers the best interests of the child.

28 (2) The person filing the petition has the burden of presenting evidence establishing probable cause for  
29 the issuance of an order for temporary investigative authority after the show cause hearing, except as provided  
30 by the federal Indian Child Welfare Act, if applicable.

1           (3) ~~At the show cause hearing~~ If a contested show cause hearing is requested pursuant to 41-3-427  
2 based upon a disputed issue of material fact or a dispute regarding the veracity of the affidavit of the department,  
3 the court may consider all evidence and shall provide an opportunity for a parent, guardian, or other person  
4 having physical or legal custody of the child to provide testimony regarding the disputed issues. Hearsay evidence  
5 of statements made by the affected child is admissible at the hearing. The parent, guardian, or other person may  
6 be represented by legal counsel and may be appointed or assigned counsel as provided for in 41-3-425.

7           (4) At the show cause hearing, the court shall explain the procedures to be followed in the case and  
8 explain the parties' rights, including the right to request appointment or assignment of counsel if indigent or if  
9 appointment or assignment of counsel is required under the federal Indian Child Welfare Act, if applicable, and  
10 the right to challenge the allegations contained in the petition. The parent, guardian, or other person having  
11 physical or legal custody of the child must be given the opportunity to admit or deny the allegations contained in  
12 the petition at the show cause hearing. Inquiry must be made to determine whether the notice requirements of  
13 the federal Indian Child Welfare Act, if applicable, have been met.

14           (5) The court shall make written findings on issues including but not limited to the following:

15           (a) whether the child should be returned home immediately if there has been an emergency removal or  
16 remain in temporary out-of-home care or be removed from the home;

17           (b) if removal is ordered or continuation of removal is ordered, why continuation of the child in the home  
18 would be contrary to the child's best interests and welfare;

19           (c) whether the department has made reasonable efforts to avoid protective placement of the child or  
20 to make it possible to safely return the child to the child's home;

21           (d) financial support of the child, including inquiry into the financial ability of the parents, guardian, or  
22 other person having physical or legal custody of the child to contribute to the costs for the care, custody, and  
23 treatment of the child and requirements of a contribution for those costs pursuant to 41-3-446; and

24           (e) whether another hearing is needed and, if so, the date and time of the next hearing.

25           (6) The court may consider:

26           (a) terms and conditions for parental visitation; and

27           (b) whether orders for examinations, evaluations, counseling, immediate services, or protection are  
28 needed.

29           (7) Following the show cause hearing, the court may enter an order for the relief requested or amend  
30 a previous order for immediate protection of the child if one has been entered. The order must be in writing.



1           (8) If a child who has been removed from the child's home is not returned home after the show cause  
2 hearing or if removal is ordered, the parents or parent, guardian, or other person or agency having physical or  
3 legal custody of the child named in the petition may request that a citizen review board, if available pursuant to  
4 part 10 of this chapter, review the case within 30 days of the show cause hearing and make a recommendation  
5 to the district court, as provided in 41-3-1010.

6           (9) Adjudication of a child as a youth in need of care may be made at the show cause hearing if the  
7 requirements of 41-3-437(2) are met. If not made at the show cause hearing, adjudication under 41-3-437 must  
8 be made within the time limits required by 41-3-437 unless adjudication occurs earlier by stipulation of the parties  
9 pursuant to 41-3-434 and order of the court."

10

- END -