

HOUSE BILL NO. 612

INTRODUCED BY K. DUDIK, R. BRODEHL, K. HANSEN, K. HOLMLUND, C. WOLKEN

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A CHILD ABUSE COURT DIVERSION PILOT PROJECT; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 3-1-702 AND 41-3-301, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE."

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

NEW SECTION. Section 1. Child abuse court diversion pilot project. (1) There is a child abuse court

diversion pilot project. The purpose of the pilot project is to use meetings facilitated by a court diversion officer to informally resolve cases, prior to the filing of an abuse and neglect petition under Title 41, chapter 3, part 4, in which the department has exercised emergency protective services pursuant to 41-3-301 and has removed a child from the custody of a parent, guardian, or other person having physical or legal custody of the child.

(2) (a) The office of the court administrator provided for in Title 3, chapter 1, part 7, shall administer the pilot project, including:

(i) selecting three judicial districts in which to implement the pilot project;

(ii) hiring court diversion officers to staff a pilot project in each of the selected judicial districts; and

(iii) establishing and measuring performance benchmarks.

(b) The office of the court administrator shall report to the law and justice interim committee regarding the administration and performance of the pilot project.

(3) (a) (i) Within 2 working days of an emergency removal pursuant to 41-3-301 of a child from a parent, guardian, or other person having physical or legal custody of the child, the department and the parent, guardian, or other person having physical or legal custody of the child from whom the child was removed may, IF THE REQUIREMENTS OF SUBSECTION (3)(A)(II) ARE MET, enter into a written agreement to participate in the pilot project for a period of not more than 6 months from the date of the emergency removal. Execution of the agreement suspends the requirements provided in 41-3-301(6) for a period of not more than 6 months. A party to the agreement may terminate the agreement at any time.

(II) BEFORE A PERSON MAY ENTER INTO A WRITTEN AGREEMENT TO PARTICIPATE IN THE PILOT PROJECT, THE PERSON MUST BE INFORMED IN WRITING OF THE PERSON'S RIGHTS, INCLUDING ADVISEMENT ON THE PERSON'S RIGHTS



1 IF THE PERSON VOLUNTARILY PARTICIPATES IN THE PILOT PROJECT OR CHOOSES NOT TO PARTICIPATE IN THE PILOT
 2 PROJECT, AND MUST SIGN AND ACKNOWLEDGE THAT THE PERSON FULLY UNDERSTANDS THE PERSON'S RIGHTS AND
 3 VOLUNTARILY AGREES TO PARTICIPATE IN THE PILOT PROJECT.

4 (b) Within 15 working days of executing the agreement, the parties shall meet with the court diversion
 5 officer and the officer shall approve:

6 (i) an ongoing out-of-home placement of the child for a period of not more than 6 months from the date
 7 of the emergency removal; and

8 (ii) any other terms or conditions agreed to by the parties, including referrals to other service providers,
 9 that would allow the child to safely return to the home within the time period covered by the agreement.

10 (c) If an agreement approved by the court diversion officer under this subsection (3) is not successfully
 11 completed or if reunification of the child with the parent, guardian, or other person having physical or legal custody
 12 of the child will not occur before the agreement expires, the department shall terminate the agreement and initiate
 13 the process for filing a petition for child abuse and neglect under Title 41, chapter 3, part 4. The social worker
 14 shall submit an affidavit regarding the circumstances of the emergency removal and a copy of the agreement to
 15 the county attorney within 10 working days of the termination of the agreement.

16 (D) AN AUDIO RECORDING MUST BE MADE OF EACH MEETING THAT A COURT DIVERSION OFFICER HAS WITH THE
 17 PARTIES.

18 (4) A party involved in the pilot project does not have a right to counsel prior to the filing of an abuse and
 19 neglect petition.

20 (5) A court may consider any services that are provided as part of the pilot project when making findings
 21 required under Title 41, chapter 3, parts 4 and 6.

22

23 **Section 2.** Section 3-1-702, MCA, is amended to read:

24 **"3-1-702. Duties.** The court administrator is the administrative officer of the court. Under the direction
 25 of the supreme court, the court administrator shall:

26 (1) prepare and present judicial budget requests to the legislature, including the costs of the state-funded
 27 district court program;

28 (2) collect, compile, and report statistical and other data relating to the business transacted by the courts
 29 and provide the information to the legislature on request;

30 (3) report annually to the law and justice interim committee and at the beginning of each regular

1 legislative session report to the house appropriations subcommittee that considers general government on the
 2 status of development and procurement of information technology within the judicial branch, including any
 3 changes in the judicial branch information technology strategic plan and any problems encountered in deploying
 4 appropriate information technology within the judicial branch. The court administrator shall, to the extent possible,
 5 provide that current and future applications are coordinated and compatible with the standards and goals of the
 6 executive branch as expressed in the state strategic information technology plan provided for in 2-17-521.

7 (4) recommend to the supreme court improvements in the judiciary;

8 (5) administer legal assistance for indigent victims of domestic violence, as provided in 3-2-714;

9 (6) administer state funding for district courts, as provided in chapter 5, part 9;

10 (7) administer and report on the child abuse court diversion pilot project provided in [section 1];

11 ~~(7)~~(8) administer the judicial branch personnel plan; and

12 ~~(8)~~(9) perform other duties that the supreme court may assign."

13

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

15 **"41-3-301. Emergency protective service.** (1) Any child protective social worker of the department,
 16 a peace officer, or the county attorney who has reason to believe any child is in immediate or apparent danger
 17 of harm may immediately remove the child and place the child in a protective facility. After ensuring that the child
 18 is safe, the department may make a request for further assistance from the law enforcement agency or take
 19 appropriate legal action. The person or agency placing the child shall notify the parents, parent, guardian, or other
 20 person having physical or legal custody of the child of the placement at the time the placement is made or as
 21 soon after placement as possible. Notification under this subsection must include the reason for removal,
 22 information regarding the show cause hearing, and the purpose of the show cause hearing and must advise the
 23 parents, parent, guardian, or other person having physical or legal custody of the child that the parents, parent,
 24 guardian, or other person may have a support person present during any in-person meeting with the social worker
 25 concerning emergency protective services.

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

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

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

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

9 (3) If the department determines that an adult member of the household is the victim of partner or family
10 member assault, the department shall provide the adult 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 protection or
12 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 case
15 planning purposes.

16 (6) If Except as provided in [section 1], if a child is removed from the child's home by the department,
17 a child protective social worker shall submit an affidavit regarding the circumstances of the emergency removal
18 to the county attorney and provide a copy of the affidavit to the parents or guardian, if possible, within 2 working
19 days of the emergency removal. An abuse and neglect petition must be filed within 5 working days, excluding
20 weekends and holidays, of the emergency removal of a child unless arrangements acceptable to the agency for
21 the care of the child have been made by the parents or voluntary protective services are provided pursuant to
22 41-3-302.

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

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

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

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2 **NEW SECTION. Section 4. Appropriation.** There is appropriated \$300,000 from the state general fund
3 to the office of the court administrator for the biennium beginning July 1, 2015, for the purpose of administering
4 the child abuse court diversion pilot project described in [section 1].

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6 **NEW SECTION. Section 5. Codification instruction.** [Section 1] is intended to be codified as an
7 integral part of Title 41, chapter 3, part 3, and the provisions of Title 41, chapter 3, part 3, apply to [section 1].

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9 **NEW SECTION. Section 6. Effective date.** [This act] is effective July 1, 2015.

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11 **NEW SECTION. Section 7. Termination.** [This act] terminates June 30, 2017.

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