

HOUSE BILL NO. 87

INTRODUCED BY K. DUDIK

BY REQUEST OF THE SUPREME COURT

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING CHILD ABUSE AND NEGLECT COURT DIVERSION LAWS; MAKING PERMANENT THE CHILD ABUSE AND NEGLECT COURT DIVERSION PILOT PROJECT; ELIMINATING THE REQUIREMENT THAT THE COURT ADMINISTRATOR REPORT TO THE LAW AND JUSTICE INTERIM COMMITTEE REGARDING THE PROJECT; REVISING TIMEFRAMES FOR PARTICIPATION IN THE PROJECT; REVISING THE GROUNDS FOR TERMINATION OF THE PROJECT BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; AMENDING SECTIONS 3-1-702, 41-3-302, AND 41-3-305; REPEALING SECTION 7, CHAPTER 376, LAWS OF 2015, AND SECTIONS 3, 5, AND 7, CHAPTER 141, LAWS OF 2017; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

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

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

- (1) prepare and present judicial budget requests to the legislature, including the costs of the state-funded district court program;
- (2) collect, compile, and report statistical and other data relating to the business transacted by the courts and provide the information to the legislature on request;
- (3) to the extent possible, provide that current and future information technology applications are coordinated and compatible with the standards and goals of the executive branch as expressed in the state strategic information technology plan provided for in 2-17-521;
- (4) recommend to the supreme court improvements in the judiciary;
- (5) administer legal assistance for indigent victims of domestic violence, as provided in 3-2-714;
- (6) administer state funding for district courts, as provided in chapter 5, part 9, of this title;
- (7) administer ~~and report on~~ the child abuse and neglect court diversion ~~pilot~~ project provided for in 41-3-305;

- 1 (8) administer the pretrial program provided for in 3-1-708;  
 2 (9) administer the judicial branch personnel plan; and  
 3 (10) perform other duties that the supreme court may assign. (~~Subsection (7) terminates June 30, 2019~~  
 4 ~~--secs. 5, 7, Ch. 141, L. 2017--~~)"

5  
 6 **Section 2.** Section 41-3-302, MCA, is amended to read:  
 7 **"41-3-302. (Temporary) Responsibility of providing protective services -- voluntary protective**  
 8 **services agreement.** (1) The department of public health and human services has the primary responsibility to  
 9 provide the protective services authorized by this chapter and has the authority pursuant to this chapter to take  
 10 temporary or permanent custody of a child when ordered to do so by the court, including the right to give consent  
 11 to adoption, or to take temporary custody of a child when the child has not remained in the home and when  
 12 consented to by a parent, guardian, or other person having physical or legal custody of the child as part of the  
 13 parent's, guardian's, or other person's participation in the child abuse and neglect court diversion pilot project  
 14 provided for in 41-3-305.

15 (2) The department shall respond to emergency reports of known or suspected child abuse or neglect  
 16 24 hours a day, 7 days a week.

17 (3) (a) The department may provide voluntary protective services by entering into a written voluntary  
 18 protective services agreement with a parent, guardian, or other person having physical or legal custody of the  
 19 child for the purpose of keeping the child safely in the home or for the purpose of returning the child to the home  
 20 within a 30-day temporary out-of-home protective placement.

21 (b) The department shall inform a parent, guardian, or other person having physical or legal custody of  
 22 a child who is considering entering into a voluntary protective services agreement that the parent, guardian, or  
 23 other person may have another person of the parent's, guardian's, or other person's choice present whenever  
 24 the terms of the voluntary protective services agreement are under discussion by the parent, guardian, or other  
 25 person and the department. Reasonable accommodations must be made regarding the time and place of  
 26 meetings at which a voluntary protective services agreement is discussed.

27 (4) A voluntary protective services agreement may include provisions for:

28 (a) a family group decisionmaking meeting and implementation of safety plans developed during the  
 29 meeting;

30 (b) a professional evaluation and treatment of the parent, guardian, or other person having physical or

1 legal custody of the child or of the child, or both;

2 (c) a safety plan for the child;

3 (d) in-home services aimed at permitting the child to remain safely in the home;

4 (e) temporary relocation of a parent, guardian, or other person having physical or legal custody of the  
5 child in order to permit the child to remain safely in the home;

6 (f) a 30-day temporary out-of-home protective placement; or

7 (g) any other terms or conditions agreed upon by the parties that would allow the child to remain safely  
8 in the home or allow the child to safely return to the home within the 30-day period, including referrals to other  
9 service providers.

10 (5) A voluntary protective services agreement is subject to termination by either party at any time.  
11 Termination of a voluntary protective services agreement does not preclude the department from filing a petition  
12 pursuant to 41-3-422 in any case in which the department determines that there is a risk of harm to a child.

13 (6) If a voluntary protective services agreement is terminated by a party to the agreement, a child who  
14 has been placed in a temporary out-of-home protective placement pursuant to the agreement must be returned  
15 to the parent, guardian, or other person having physical or legal custody of the child within 2 working days of  
16 termination of the agreement unless an abuse and neglect petition is filed by the department or unless the parent,  
17 guardian, or other person having physical or legal custody of the child and the department enter into a written  
18 agreement to participate in the child abuse and neglect court diversion pilot project provided for in 41-3-305 and  
19 any continuing out-of-home placement of the child does not exceed a period of 180 days from the date the child  
20 was placed in the temporary out-of-home protective placement. ~~(Terminates June 30, 2019--sec. 7, Ch. 141, L.~~  
21 ~~2017.)~~

22 ~~**41-3-302. (Effective July 1, 2019) Responsibility of providing protective services -- voluntary**~~  
23 ~~**protective services agreement.**~~ (1) ~~The department of public health and human services has the primary~~  
24 ~~responsibility to provide the protective services authorized by this chapter and has the authority pursuant to this~~  
25 ~~chapter to take temporary or permanent custody of a child when ordered to do so by the court, including the right~~  
26 ~~to give consent to adoption.~~

27 ~~————(2) The department shall respond to emergency reports of known or suspected child abuse or neglect~~  
28 ~~24 hours a day, 7 days a week.~~

29 ~~————(3) (a) The department may provide voluntary protective services by entering into a written voluntary~~  
30 ~~protective services agreement with a parent, guardian, or other person having physical or legal custody of the~~

1 child for the purpose of keeping the child safely in the home or for the purpose of returning the child to the home  
2 within a 30-day temporary out-of-home protective placement.

3 ~~———(b) The department shall inform a parent, guardian, or other person having physical or legal custody of  
4 a child who is considering entering into a voluntary protective services agreement that the parent, guardian, or  
5 other person may have another person of the parent's, guardian's, or other person's choice present whenever  
6 the terms of the voluntary protective services agreement are under discussion by the parent, guardian, or other  
7 person and the department. Reasonable accommodations must be made regarding the time and place of  
8 meetings at which a voluntary protective services agreement is discussed.~~

9 ~~———(4) A voluntary protective services agreement may include provisions for:~~

10 ~~———(a) a family group decisionmaking meeting and implementation of safety plans developed during the  
11 meeting;~~

12 ~~———(b) a professional evaluation and treatment of the parent, guardian, or other person having physical or  
13 legal custody of the child or of the child, or both;~~

14 ~~———(c) a safety plan for the child;~~

15 ~~———(d) in-home services aimed at permitting the child to remain safely in the home;~~

16 ~~———(e) temporary relocation of a parent, guardian, or other person having physical or legal custody of the  
17 child in order to permit the child to remain safely in the home;~~

18 ~~———(f) a 30-day temporary out-of-home protective placement; or~~

19 ~~———(g) any other terms or conditions agreed upon by the parties that would allow the child to remain safely  
20 in the home or allow the child to safely return to the home within the 30-day period, including referrals to other  
21 service providers.~~

22 ~~———(5) A voluntary protective services agreement is subject to termination by either party at any time.  
23 Termination of a voluntary protective services agreement does not preclude the department from filing a petition  
24 pursuant to 41-3-422 in any case in which the department determines that there is a risk of harm to a child.~~

25 ~~———(6) If a voluntary protective services agreement is terminated by a party to the agreement, a child who  
26 has been placed in a temporary out-of-home protective placement pursuant to the agreement must be returned  
27 to the parent, guardian, or other person having physical or legal custody of the child within 2 working days of  
28 termination of the agreement unless an abuse and neglect petition is filed by the department."~~

29

30 **Section 3.** Section 41-3-305, MCA, is amended to read:

1           **"41-3-305. (Temporary) Child abuse and neglect court diversion pilot project.** (1) There is a child  
 2 abuse and neglect court diversion ~~pilot~~ project. The purpose of the ~~pilot~~ project is to use meetings facilitated by  
 3 a court diversion officer to informally resolve cases, prior to the filing of an abuse and neglect petition under Title  
 4 41, chapter 3, part 4, in which the department has exercised emergency protective services pursuant to 41-3-301  
 5 and has removed a child from the custody of a parent, guardian, or other person having physical or legal custody  
 6 of the child or cases in which the department has provided voluntary protective services ~~pursuant to 41-3-302.~~

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

9           ~~(i)~~(a) selecting judicial districts in which to implement the ~~pilot~~ project;

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

11           ~~(iii)~~(c) establishing and measuring performance benchmarks.

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

14           (3) (a) (i) Within 2 working days of an emergency removal pursuant to 41-3-301 of a child from a parent,  
 15 guardian, or other person having physical or legal custody of the child or prior to or within 2 working days of the  
 16 termination of a voluntary protective services agreement, the department and the parent, guardian, or other  
 17 person having physical or legal custody of the child from whom the child was removed or with whom a voluntary  
 18 protective services agreement was or will be terminated may, if the requirements of subsection (3)(a)(ii) are met,  
 19 enter into a written agreement to participate in the ~~pilot~~ project for a period of not more than 180 days from either  
 20 the date of the emergency removal or the date the child was placed in a temporary out-of-home protective  
 21 placement pursuant to a voluntary protective services agreement or, if voluntary protective services were provided  
 22 and the child remained in the home, the date the ~~voluntary protective services agreement was terminated~~ written  
 23 agreement to participate in the project is executed. Execution of the written agreement to participate in the ~~pilot~~  
 24 project suspends the requirements provided in 41-3-301(6) for a period of not more than 180 days. A party to the  
 25 written agreement to participate in the ~~pilot~~ project may terminate the agreement at any time.

26           (ii) Before a person may enter into a written agreement to participate in the ~~pilot~~ project, the person:

27           (A) must be informed in writing of the person's rights, including:

28           (I) advisement on the person's rights if the person voluntarily participates in the ~~pilot~~ project or chooses  
 29 not to participate in the ~~pilot~~ project; and

30           (II) advisement that the person may have another person of the person's choosing present whenever the

1 terms of the written agreement to participate in the ~~pilot~~ project or the terms of the written diversion plan are under  
 2 discussion with the department or the court diversion officer; and

3 (B) shall sign and acknowledge that the person fully understands the person's rights and voluntarily  
 4 agrees to participate in the ~~pilot~~ project.

5 (b) Within 15 working days of executing the written agreement to participate in the ~~pilot~~ project, the  
 6 parties shall meet with the court diversion officer and execute a written diversion plan for the case, subject to the  
 7 court diversion officer's approval, which may include but is not limited to:

8 (i) an ongoing out-of-home placement of the child for a period of not more than 180 days from the date  
 9 of the emergency removal or initiation of the temporary out-of-home protective placement; and

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

13 (c) The written diversion plan may be amended in writing with the approval of the court diversion officer.

14 (d) If a written diversion plan is not executed by the parties; or is not approved by the court diversion  
 15 officer under this subsection (3) when the child has not remained in the home; or if a written diversion plan is not  
 16 successfully completed ~~or if and~~ reunification of the child with the parent, guardian, or other person having  
 17 physical or legal custody of the child will not occur before the written ~~agreement to participate in the pilot project~~  
 18 diversion plan expires, the department shall terminate ~~the written agreement to participate~~ participation in the ~~pilot~~  
 19 project and initiate the process for filing a petition for child abuse and neglect under Title 41, chapter 3, part 4.  
 20 The social worker shall submit an affidavit regarding the circumstances of the emergency removal or the provision  
 21 of voluntary protective services and a copy of the written agreement to participate in the ~~pilot~~ project, as well as  
 22 the written diversion plan if one exists, to the county attorney within 10 working days of the termination of ~~the~~  
 23 ~~written agreement to participate~~ participation in the ~~pilot~~ project.

24 (e) An audio recording must be made of each meeting that a court diversion officer has with the parties.

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

27 (5) A court may consider any services that are provided as part of the ~~pilot~~ project when making findings  
 28 required under Title 41, chapter 3, parts 4 and 6. ~~(Terminates June 30, 2019-- secs. 5, 7, Ch. 141, L. 2017.)"~~  
 29

30 NEW SECTION. Section 4. Repealer. Section 7, Chapter 376, Laws of 2015, and sections 3, 5, and

1 7, Chapter 141, Laws of 2017, are repealed.

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3 NEW SECTION. **Section 5. Effective date.** [This act] is effective on passage and approval.

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