

1 HOUSE BILL NO. 90

2 INTRODUCED BY D. LENZ

3 BY REQUEST OF THE CHILDREN, FAMILIES, HEALTH, AND HUMAN SERVICES INTERIM COMMITTEE,

4 STATE-TRIBAL RELATIONS COMMITTEE

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING A HEARING WITHIN 5 BUSINESS DAYS OF A
7 CHILD'S REMOVAL FROM THE HOME; PROVIDING AN EXCEPTION; ~~AND~~-AMENDING SECTION 41-3-301,
8 MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

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

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12 **NEW SECTION. Section 1. Emergency protective services hearing -- EXCEPTION.** (1) (a) A district
13 court shall hold a hearing within 5 business days of a child's removal from the home pursuant to 41-3-301 to
14 determine whether THERE IS PROBABLE CAUSE to continue the removal beyond 5 business days.

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

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

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

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

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

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

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

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

1 a plan is developed.

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

4 (7) THIS SECTION DOES NOT APPLY TO CASES INVOLVING AN INDIAN CHILD WHO IS SUBJECT TO THE INDIAN
5 CHILD WELFARE ACT.

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7 **Section 2.** Section 41-3-301, MCA, is amended to read:

8 **"41-3-301. Emergency protective service.** (1) Any child protective social worker of the department,
9 a peace officer, or the county attorney who has reason to believe any child is in immediate or apparent danger
10 of harm may immediately remove the child and place the child in a protective facility. After ensuring that the
11 child is safe, the department may make a request for further assistance from the law enforcement agency or
12 take appropriate legal action. The person or agency placing the child shall notify the parents, parent, guardian,
13 or other person having physical or legal custody of the child of the placement at the time the placement is made
14 or as soon after placement as possible. Notification under this subsection must:

15 (a) include the reason for removal;

16 (b) include information regarding the emergency protective services and show cause hearing
17 hearings, and the purpose of the ~~show cause hearing~~ hearings; and

18 (c) ~~must~~ advise the parents, parent, guardian, or other person having physical or legal custody of the
19 child that the parents, parent, guardian, or other person may have a support person present during any in-
20 person meeting with the social worker concerning emergency protective services.

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

28 (a) making reasonable efforts to protect the child and prevent the removal of the child from the parent

1 or guardian who is a victim of alleged partner or family member assault or strangulation of a partner or family
2 member;

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

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

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

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

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

19 (6) 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 IN ACCORDANCE WITH 41-3-422 within 5 working days, excluding
23 weekends and holidays, of the emergency removal of a child unless arrangements acceptable to the agency for
24 the care of the child have been made by the parents or voluntary protective services are provided pursuant to
25 41-3-302.

26 (7) Except as provided in the federal Indian Child Welfare Act, if applicable, a show cause hearing
27 must be held within 20 days of the filing of the petition unless otherwise stipulated by the parties pursuant to 41-
28 3-434.

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

5 (9) The department shall make the necessary arrangements for the child's well-being as are required
6 prior to the court hearing."
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8 NEW SECTION. Section 3. Notification to tribal governments. The secretary of state shall send a
9 copy of [this act] to each federally recognized tribal government in Montana.
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11 NEW SECTION. Section 4. Codification instruction. [Section 1] is intended to be codified as an
12 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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14 NEW SECTION. SECTION 5. EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE JULY 1, 2023.
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