

1 HOUSE BILL NO. 503

2 INTRODUCED BY D. LENZ

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO CHILD ABUSE AND NEGLECT
5 PROCEEDINGS; ESTABLISHING A VOLUNTARY EMERGENCY PROTECTIVE SERVICES HEARING
6 WITHIN 5 DAYS OF A CHILD'S REMOVAL FROM THE HOME; PROVIDING FOR CONTINUATION AND
7 EXPANSION OF EXISTING PILOT PROJECTS DESIGNED TO IMPROVE THE EFFECTIVENESS OF CHILD
8 ABUSE AND NEGLECT PROCEEDINGS; AMENDING SECTION 41-3-301, MCA; AND PROVIDING
9 EFFECTIVE DATES AND A TERMINATION DATE."

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

12

13 NEW SECTION. **Section 1. Emergency protective services hearing on request -- exceptions. (1)**

14 (a) If requested by the parents, parent, guardian, or other person having physical or legal custody of a child
15 removed from the home pursuant to 41-3-301, a district court shall hold an emergency protective services
16 hearing within 5 business days of the child's removal to determine whether to continue the removal beyond 5
17 business days.

18 (b) The department shall provide notification of the option for 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 requested 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 physical
26 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
28 appropriate.

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

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

7 (7) This section does not apply:

- 8 (a) in judicial districts that are holding voluntary prehearing conferences pursuant to [section 2]; or
9 (b) to cases involving an Indian child who is subject to the Indian Child Welfare Act.

10
11 NEW SECTION. Section 2. Voluntary prehearing conferences -- pilot project counties. (1) The
12 parents, parent, guardian, or other person having physical or legal custody of a child who has been removed
13 from the home pursuant to 41-3-301 may participate in a conference within 5 days of the child's removal and
14 before a show cause hearing held by the court if the court is participating in a pilot project testing the
15 effectiveness of prehearing conferences.

16 (2) A prehearing conference may be held under this section only if it involves:

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

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

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

- 24 (a) the child's current placement and options for continued placement if the child remains out of the
25 home;
26 (b) whether other options exist for an in-home safety plan or resource that may allow the child to
27 remain in the home;
28 (c) parenting time schedules; and

1 (d) treatment services for the family.

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

4 (6) This section applies to a district court participating in the prehearing conference pilot project
5 funded by the court improvement program on [the effective date of this section] and to any district court in a
6 rural county or multicounty district that chooses to hold conferences in accordance with this section on or after
7 that date.

8

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

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

17 (a) include the reason for removal;

18 (b) include information regarding the option for an emergency protective services hearing WITHIN 5
19 DAYS under [section 1], the required show cause hearing WITHIN 20 DAYS, and the purpose of the show-cause
20 hearing-hearings; and

21 (c) PROVIDE CONTACT INFORMATION FOR THE SOCIAL WORKER, THE SOCIAL WORKER'S SUPERVISOR, AND
22 THE OFFICE OF STATE PUBLIC DEFENDER; AND

23 ~~(e)(D) must~~ advise the parents, parent, guardian, or other person having physical or legal custody of
24 the child that the parents, parent, guardian, or other person:

25 (i) HAS THE RIGHT TO RECEIVE A COPY OF THE AFFIDAVIT AS PROVIDED IN SUBSECTION (6);

26 (ii) HAS THE RIGHT TO ATTEND AND PARTICIPATE IN AN EMERGENCY PROTECTIVE SERVICES HEARING, IF ONE IS
27 REQUESTED, AND THE SHOW-CAUSE HEARING, INCLUDING PROVIDING STATEMENTS TO THE JUDGE;

28 (iii) may have a support person present during any in-person meeting with the social worker

1 concerning emergency protective services; AND

2 (IV) MAY REQUEST THAT THE CHILD BE PLACED IN A KINSHIP FOSTER HOME AS DEFINED IN 52-2-602.

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

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

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

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

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

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

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

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

7 (7) Except as provided in the federal Indian Child Welfare Act, if applicable, a show cause hearing
8 must be held within 20 days of the filing of the petition unless otherwise stipulated by the parties pursuant to 41-
9 3-434.

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

14 (9) The department shall make the necessary arrangements for the child's well-being as are required
15 prior to the court hearing."
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17 NEW SECTION. Section 4. Notification to tribal governments. The secretary of state shall send a
18 copy of [this act] to each federally recognized tribal government in Montana.
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20 NEW SECTION. Section 5. Directions to code commissioner. If both House Bill No. 90 and [this
21 act] are passed and approved, then [section 1] of both bills must be codified as the same section with different
22 effective dates.
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24 NEW SECTION. Section 6. Codification instruction. [Sections 1 and 2] are intended to be codified
25 as an integral part of Title 41, chapter 3, part 3, and the provisions of Title 41, chapter 3, part 3, apply to
26 [sections 1 and 2].
27

28 NEW SECTION. Section 7. Effective dates. (1) Except as provided in subsection (2), [this act] is

1 effective July 1, 2021.

2 (2) [Section 2] and this section are effective on passage and approval.

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4 NEW SECTION. **Section 8. Termination.** [This act] terminates June 30, 2023.

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