

1 HOUSE BILL NO. 16  
 2 INTRODUCED BY J. CARLSON  
 3 BY REQUEST OF THE CHILDREN, FAMILIES, HEALTH, AND HUMAN SERVICES INTERIM COMMITTEE  
 4  
 5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING PROCEDURES RELATED TO CHILD  
 6 ABUSE AND NEGLECT PROCEEDINGS; PROVIDING FOR SHARING OF INFORMATION WITH THE  
 7 OFFICE OF STATE PUBLIC DEFENDER; PROVIDING FOR PREHEARING CONFERENCES BEFORE  
 8 EMERGENCY PROTECTIVE SERVICES HEARINGS; REMOVING THE EXCEPTION FOR USE OF  
 9 PREHEARING CONFERENCES AND EMERGENCY PROTECTIVE SERVICES HEARINGS IN CASES  
 10 SUBJECT TO THE INDIAN CHILD WELFARE ACT; CLARIFYING THAT A SUPPORT PERSON MAY BE  
 11 PRESENT DURING AN EMERGENCY PROTECTIVE SERVICES HEARING; PROVIDING  
 12 APPROPRIATIONS; AMENDING SECTIONS 41-3-301, 41-3-306, ~~AND 41-3-307~~, AND 41-3-427, MCA;  
 13 REPEALING SECTION 8, CHAPTER 529, LAWS OF 2021; AND PROVIDING EFFECTIVE DATES."

14  
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16  
17 **Section 1.** Section 41-3-301, MCA, is amended to read:

18 **"41-3-301. (Temporary) Emergency protective service.** (1) (a) Any child protection specialist of the  
 19 department, a peace officer, or the county attorney who has reason to believe any child is in immediate or  
 20 apparent danger of harm may immediately remove the child and place the child in a protective facility. After  
 21 ensuring that the child is safe, the department may make a request for further assistance from the law  
 22 enforcement agency or take appropriate legal action.

23 (b) The person or agency placing the child shall notify the parents, parent, guardian, or other  
 24 person having physical or legal custody of the child of the placement at the time the placement is made or as  
 25 soon after placement as possible. Notification under this subsection (1)(b) must:

26 ~~(a)(i)~~ include the reason for removal;

27 ~~(b)(ii)~~ include information regarding the option for an emergency protective services hearing  
 28 within 5 days under 41-3-306, the required show cause hearing within 20 days, and the purpose of the

1 filed. The district court may immediately issue an order for immediate protection of the child.

2 (9) The department shall make the necessary arrangements for the child's well-being as are  
3 required prior to the court hearing."  
4

5 **Section 2.** Section 41-3-306, MCA, is amended to read:

6 **"41-3-306. (Temporary) Emergency protective services hearing on request —~~exceptions~~**

7 **exception.** (1) (a) If requested by the parents, parent, guardian, or other person having physical or legal  
8 custody of a child removed from the home pursuant to 41-3-301, a district court shall hold an emergency  
9 protective services hearing within 5 business days of the child's removal to determine whether to continue the  
10 removal beyond 5 business days.

11 (b) The department shall provide notification of the option for the hearing as required under 41-3-  
12 301.

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

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

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

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

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

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

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

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

1 (7) This section does not apply:

2 (a) ~~in judicial districts that are holding voluntary prehearing conferences pursuant to 41-3-307; or~~

3 ~~(b) to cases involving an Indian child who is subject to the Indian Child Welfare Act.~~

4 (8) The emergency protective services hearing is an emergency proceeding for the purposes of  
5 the Indian Child Welfare Act and is not subject to the notice requirements of that act. (Terminates June 30,  
6 2023--sec. 8, Ch. 529, L. 2021.)

7 **41-3-306. (Effective July 1, 2023) Emergency protective services hearing --exception.** (1) (a) A  
8 district court shall hold a hearing within 5 business days ~~72 hours~~ 5 business days of a child's removal from the  
9 home pursuant to 41-3-301 to determine whether there is probable cause to continue the removal beyond 5  
10 business days.

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

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

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

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

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

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

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

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

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

28 (7) ~~This section does not apply to cases involving an Indian child who is subject to~~ The emergency

1 protective services hearing is an emergency proceeding for the purposes of the Indian Child Welfare Act and is  
2 not subject to the notice requirements of that act."

3

4 **Section 3.** Section 41-3-307, MCA, is amended to read:

5 **"41-3-307. ~~(Temporary)~~ Voluntary Availability of prehearing conferences --pilot project**

6 **counties.** (1) The parents, parent, guardian, or other person having physical or legal custody of a child who has  
7 been removed from the home pursuant to 41-3-301 may participate in a conference within ~~5 days~~ 72 hours 5  
8 days of the child's removal and before ~~a show cause hearing an emergency protective services hearing~~ held by  
9 the court ~~if the court is participating in a pilot project testing the effectiveness of prehearing conferences~~  
10 pursuant to 41-3-306.

11 (2) ~~\_\_\_\_\_~~ A prehearing conference may be held under this section only if it involves must include the  
12 following parties:

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

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

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

- 20 (a) the child's current placement and options for continued placement if the child remains out of the  
21 home;
- 22 (b) whether other options exist for an in-home safety plan or resource that may allow the child to  
23 remain in the home;
- 24 (c) parenting time schedules; and
- 25 (d) treatment services for the family.

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

28 ~~(6) This section applies to a district court participating in the prehearing conference pilot project~~

1 funded by the court improvement program on May 14, 2021, and to any district court in a rural county or  
 2 multicounty district that chooses to hold conferences in accordance with this section on or after that date.  
 3 (~~Terminates June 30, 2023 sec. 8, Ch. 529, L. 2021.~~)"

4

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

6 **"41-3-427. Petition for immediate protection and emergency protective services -- order --**

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

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

17 (c) If from the alleged facts presented in the affidavit it appears to the court that there is probable  
 18 cause or, if the case is subject to the federal Indian Child Welfare Act, clear and convincing evidence to believe  
 19 that the child has been abused or neglected or is in danger of being abused and neglected, the judge shall  
 20 grant emergency protective services and the relief authorized by subsection (2) until the adjudication hearing or  
 21 the temporary investigative hearing. If it appears from the alleged facts contained in the affidavit that there is  
 22 insufficient probable cause or, if the case is subject to the federal Indian Child Welfare Act, clear and convincing  
 23 evidence to believe that the child has been abused or neglected or is in danger of being abused or neglected,  
 24 the court shall dismiss the petition.

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

1 (e) The petition for immediate protection and emergency protective services must include a notice  
2 advising the parents, parent, guardian, or other person having physical or legal custody of the child that the  
3 parents, parent, guardian, or other person having physical or legal custody of the child may have a support  
4 person present during any ~~in-person~~ meeting with a child protection specialist concerning emergency protective  
5 services. Reasonable accommodation must be made in scheduling an in-person meeting with the child  
6 protection specialist.

7 (2) Pursuant to subsection (1), if the court finds probable cause or, if the case is subject to the  
8 federal Indian Child Welfare Act, clear and convincing evidence based on the petition and affidavit, the court  
9 may issue an order for immediate protection of the child. The court shall consider the parents' statements, if  
10 any, included with the petition and any accompanying affidavit or report to the court. If the court finds probable  
11 cause or, if the case is subject to the federal Indian Child Welfare Act, clear and convincing evidence, the court  
12 may issue an order granting the following forms of relief, which do not constitute a court-ordered treatment plan  
13 under 41-3-443:

- 14 (a) the right of entry by a peace officer or department worker;
- 15 (b) the right to place the child in temporary medical or out-of-home care, including but not limited to  
16 care provided by a noncustodial parent, kinship or foster family, group home, or institution;
- 17 (c) the right of the department to locate, contact, and share information with any extended family  
18 members who may be considered as placement options for the child;
- 19 (d) a requirement that the parents, guardian, or other person having physical or legal custody  
20 furnish information that the court may designate and obtain evaluations that may be necessary to determine  
21 whether a child is a youth in need of care;
- 22 (e) a requirement that the perpetrator of the alleged child abuse or neglect be removed from the  
23 home to allow the child to remain in the home;
- 24 (f) a requirement that the parent provide the department with the name and address of the other  
25 parent, if known, unless parental rights to the child have been terminated;
- 26 (g) a requirement that the parent provide the department with the names and addresses of  
27 extended family members who may be considered as placement options for the child who is the subject of the  
28 proceeding; and

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

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

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

12 (5) The petition must be served as provided in 41-3-422."  
13

14 NEW SECTION. Section 5. Repealer. Section 8, Chapter 529, Laws of 2021, is repealed.  
15

16 NEW SECTION. Section 6. Appropriation. (1) There is appropriated \$450,000 from the general fund  
17 to the office of court administrator for the biennium beginning July 1, 2023, to pay for the costs of training and  
18 hiring facilitators for the prehearing conferences provided for in [section 3].

19 (2) There is appropriated \$300,000 from the general fund to the office of state public defender for  
20 the biennium beginning July 1, 2023, to pay for the costs of providing legal representation to parents and  
21 guardians during the emergency protective services hearing provided for in [section 2] and the prehearing  
22 conferences provided for in [section 3].  
23

24 NEW SECTION. Section 7. Notification to tribal governments. The secretary of state shall send a  
25 copy of [this act] to each federally recognized tribal government in Montana.  
26

27 NEW SECTION. Section 8. Effective dates. (1) Except as provided in subsections (2) and (3), [this  
28 act] is effective on passage and approval.

