

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; ALLOWING THE RULES OF
 12 CIVIL PROCEDURE TO BE SUSPENDED DURING AN EMERGENCY PROTECTIVE SERVICES HEARING;
 13 PROVIDING APPROPRIATIONS; AMENDING SECTIONS 41-3-301, 41-3-306, AND 41-3-307, MCA;
 14 REPEALING SECTION 8, CHAPTER 529, LAWS OF 2021; AND PROVIDING EFFECTIVE DATES."

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

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

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

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

27 (a)(i)____ include the reason for removal;

28 (b)(ii)____ include information regarding the option for an emergency protective services hearing

1 within 5 days under 41-3-306, the required show cause hearing within 20 days, and the purpose of the
2 hearings;

3 (e)(iii) — _____ provide contact information for the child protection specialist, the child protection
4 specialist's supervisor, and the office of state public defender; and

5 (d)(iv) — _____ advise the parents, parent, guardian, or other person having physical or legal custody
6 of the child that the parents, parent, guardian, or other person:

7 (i)(A) — has the right to receive a copy of the affidavit as provided in subsection (6);

8 (ii)(B) — has the right to attend and participate in an emergency protective services hearing, if one is
9 requested, and the show cause hearing, including providing statements to the judge;

10 (iii)(C) — may have a support person present during any in-person meeting with the child protection
11 specialist concerning emergency protective services, including the emergency protective services hearing
12 provided for in 41-3-306 as long as none of the parties object; and

13 (iv)(D) — _____ may request that the child be placed in a kinship foster home as defined in 52-2-602.

14 (c) _____ A copy of the notification required under subsection (1)(b) must be provided within 24 hours to
15 the office of state public defender. If a draft notification is provided to the office of state public defender to
16 satisfy the deadline, the filed notification must be provided as soon as possible.

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

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

27 (b) making reasonable efforts to remove the person who allegedly committed the partner or family
28 member assault or strangulation of a partner or family member from the child's residence if it is determined that

1 the child or another family or household member is in danger of partner or family member assault or
2 strangulation of a partner or family member; and

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

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

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

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

15 (6) If a child is removed from the child's home by the department, a child protection specialist shall
16 submit an affidavit regarding the circumstances of the emergency removal to the county attorney and provide a
17 copy of the affidavit to the office of state public defender and, if possible, the parents or guardian, if possible,
18 within 2 working days of the emergency removal. An abuse and neglect petition must be filed within 5 working
19 days, excluding weekends and holidays, of the emergency removal of a child unless arrangements acceptable
20 to the agency for the care of the child have been made by the parents or a written prevention plan has been
21 entered into pursuant to 41-3-302.

22 (7) Except as provided in the federal Indian Child Welfare Act, if applicable, a show cause hearing
23 must be held within 20 days of the filing of the petition unless otherwise stipulated by the parties pursuant to 41-
24 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 child protection specialist shall interview the parents
27 of the child to whom the petition pertains, if the parents are reasonably available, before the petition may be
28 filed. The district court may immediately issue an order for immediate protection of the child.

1 (9) The department shall make the necessary arrangements for the child's well-being as are
2 required prior to the court hearing. (Terminates June 30, 2023--sec. 8, Ch. 529, L. 2021.)

3 **41-3-301. (Effective July 1, 2023) Emergency protective service.** (1)(a) Any child protection
4 specialist of the department, a peace officer, or the county attorney who has reason to believe any child is in
5 immediate or apparent danger of harm may immediately remove the child and place the child in a protective
6 facility. After ensuring that the child is safe, the department may make a request for further assistance from the
7 law enforcement agency or take appropriate legal action.

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

11 (a)(i) include the reason for removal;

12 (b)(ii) include information regarding the emergency protective services and show cause
13 hearings and the purpose of the hearings; and

14 (c)(iii) advise the parents, parent, guardian, or other person having physical or legal custody
15 of the child that the parents, parent, guardian, or other person may have a support person present during any
16 in-person meeting with the child protection specialist concerning emergency protective services, including the
17 emergency protective services hearing provided for in 41-3-306 as long as none of the parties object.

18 (c) A copy of the notification required under subsection (1)(b) must be provided within 24 hours to
19 the office of state public defender. If a draft notification is provided to the office of state public defender to
20 satisfy the deadline, the filed notification must be provided as soon as possible.

21 (2) If a child protection specialist, 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

1 parent or guardian who is a victim of alleged partner or family member assault or strangulation of a partner or
2 family 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
15 protection 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 protection specialist 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 office of state public defender and, if possible, the parents or guardian, ~~if possible,~~
22 within 2 working days of the emergency removal. An abuse and neglect petition must be filed in accordance
23 with 41-3-422 within 5 working days, excluding weekends and holidays, of the emergency removal of a child
24 unless arrangements acceptable to the agency for the care of the child have been made by the parents or a
25 written prevention plan has been entered into pursuant to 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 child protection specialist shall interview the parents
3 of the child to whom the petition pertains, if the parents are reasonably available, before the petition may be
4 filed. The 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
6 required prior to the court hearing."

7

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

9 **"41-3-306. (Temporary) Emergency protective services hearing on request ~~—exceptions~~**

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

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

16 (c) A hearing is not required if the child is released prior to the time of the requested 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
23 physical 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
27 show cause hearing if the parents, parent, guardian, or other person having physical or legal custody of the
28 child stipulates to a condition subject to a treatment plan and agrees to immediately comply with the treatment

1 plan if 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:

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

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

7 (8) The emergency protective services hearing is an emergency proceeding for the purposes of
8 the Indian Child Welfare Act and is not subject to the notice requirements of that act.

9 (9) The rules of evidence may be suspended for an emergency protective services hearing.

10 (Terminates June 30, 2023--sec. 8, Ch. 529, L. 2021.)

11 **41-3-306. (Effective July 1, 2023) Emergency protective services hearing ~~exception.~~** (1) (a) A
12 district court shall hold a hearing within ~~5 business days~~ 72 hours of a child's removal from the home pursuant
13 to 41-3-301 to determine whether there is probable cause or, if the case is subject to the federal Indian Child
14 Welfare Act, clear and convincing evidence 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
23 physical 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
27 show cause hearing if the parents, parent, guardian, or other person having physical or legal custody of the
28 child stipulates to a condition subject to a treatment plan and agrees to immediately comply with the treatment

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

7 (8) The rules of evidence may be suspended for an emergency protective services hearing."

8
9 **Section 3.** Section 41-3-307, MCA, is amended to read:

10 **"41-3-307. ~~(Temporary) Voluntary Availability of prehearing conferences --pilot project~~**

11 **counties.** (1) The parents, parent, guardian, or other person having physical or legal custody of a child who has
12 been removed from the home pursuant to 41-3-301 may participate in a conference within ~~5 days~~72 hours of
13 the child's removal and before a ~~show cause hearing~~an emergency protective services hearing held by the
14 court ~~if the court is participating in a pilot project testing the effectiveness of prehearing conferences pursuant to~~
15 41-3-306.

16 (2) ~~_____A prehearing conference may be held under this section only if it involves~~ must include the
17 following parties:

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

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

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

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

1 (c) parenting time schedules; and

2 (d) treatment services for the family.

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

5 ~~(6) This section applies to a district court participating in the prehearing conference pilot project~~
6 ~~funded by the court improvement program on May 14, 2021, and to any district court in a rural county or~~
7 ~~multicounty district that chooses to hold conferences in accordance with this section on or after that date.~~
8 ~~(Terminates June 30, 2023—sec. 8, Ch. 529, L. 2021.)"~~

9

10 NEW SECTION. Section 4. Repealer. Section 8, Chapter 529, Laws of 2021, is repealed.

11

12 NEW SECTION. Section 5. Appropriation. (1) There is appropriated \$450,000 from the general fund
13 to the office of court administrator for the biennium beginning July 1, 2023, to pay for the costs of training and
14 hiring facilitators for the prehearing conferences provided for in [section 3].

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

19

20 NEW SECTION. Section 6. Notification to tribal governments. The secretary of state shall send a
21 copy of [this act] to each federally recognized tribal government in Montana.

22

23 NEW SECTION. Section 7. Effective dates. (1) Except as provided in subsections (2) and (3), [this
24 act] is effective on passage and approval.

25 (2) [Section 4] is effective June 30, 2023.

26 (3) [Sections 3 and 5] are effective July 1, 2023.

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- END -