

1 HOUSE BILL NO. 16
2 INTRODUCED BY J. CARLSON
3 BY REQUEST OF THE CHILDREN, FAMILIES, HEALTH, AND HUMAN SERVICES INTERIM COMMITTEE
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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~~ AMENDING SECTION 8, CHAPTER 529, LAWS OF 2021; AND PROVIDING EFFECTIVE
14 DATES."

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16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
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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 (7) This section does not apply to cases involving an Indian child who is subject to The emergency
2 protective services hearing is an emergency proceeding for the purposes of the Indian Child Welfare Act and is
3 not subject to the notice requirements of that act."
4

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

6 **"41-3-307. (Temporary) Voluntary Availability of prehearing conferences -- pilot project**

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

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

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

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

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

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

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

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

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6 **SECTION 4. SECTION 41-3-427, MCA, IS AMENDED TO READ:**

7 **"41-3-427. Petition for immediate protection and emergency protective services -- order --**

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

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

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

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