1   HOUSE BILL NO. 37

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 CHILD ABUSE AND NEGLECT LAWS;

6   REQUIRING A WARRANT TO REMOVE A CHILD FROM THE CHILD'S HOME EXCEPT IN EXIGENT

7   CIRCUMSTANCES; REQUIRING THAT A PEACE OFFICER BE PRESENT WHENEVER A CHILD IS

8   REMOVED FROM THE HOME; REVISING THE DEFINITIONS OF "CHILD ABUSE OR NEGLECT" AND

9   "REASONABLE EFFORTS"; REVISING THE REQUIREMENTS FOR DISCLOSURE OF CHILD ABUSE AND

10   NEGLECT RECORDS; REVISING THE TIMEFRAME IN WHICH AN ABUSE AND NEGLECT PETITION

11   MUST BE FILED WHEN A CHILD IS REMOVED; REVISING THE TIMEFRAME IN WHICH AN EMERGENCY

12   PROTECTIVE SERVICES HEARING MUST BE HELD; REVISING THE REQUIREMENTS FOR DISMISSING

13   AN ABUSE AND NEGLECT PETITION; AMENDING SECTIONS 41-3-101, 41-3-102, 41-3-205, 41-3-301, 41-

14   3-306, 41-3-423, 41-3-424, 41-3-425, AND 41-3-427, MCA; AND PROVIDING AN EFFECTIVE DATE."

15

16   WHEREAS, Montana's child abuse and neglect statutes (Title 41, chapter 3, MCA) provide the

17   framework for state interference with the parent-child relationship; and

18   WHEREAS, the Legislature intends to amend the provisions of Title 41, chapter 3, MCA, to ensure

19   compliance with constitutional requirements.

20

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

22

23   NEW SECTION. **Section 1.   Warrant to remove child.** (1) A child protection specialist of the

24   department, a peace officer, or a county attorney may apply, in writing, by telephone, or electronically, on oath

25   or affirmation, to a district court ~~identified in subsection (2)~~ within the state for the issuance of a warrant to

26   remove a child and place the child in a protective facility if necessary to prevent the child from being abused or

27   neglected.

28   (2)   A warrant may be issued in writing, by telephone, or electronically ~~by:~~

1   ~~(a)   a city or municipal court judge or justice of the peace within the judge's geographic jurisdiction;~~

2   ~~or~~

3   ~~(b)   a district court judge within the state~~.

4   (3)   If the court finds from the application that there is probable cause that removal is necessary to

5   prevent the child from being abused or neglected, the court shall issue a warrant to remove the child. The

6   warrant must:

7   (a)   identify the child to be removed and the person responsible for removing the child;

8   (b)   recite the facts on which the conclusion that the child is abused or neglected or is in danger of

9   being abused or neglected is based; and

10   (c)   provide for the placement of the child, pending an emergency protective services hearing.

11   (4)   The provisions of 46-5-222 apply when an application for a warrant is made telephonically or

12   electronically or when a warrant is issued telephonically or electronically.

13

14   NEW SECTION. **Section 2.   Procedures for executing warrant to remove child.** (1) A warrant

15   issued pursuant to [section 1] may be served at any time of the day or night. The warrant must be served within

16   10 days from the time of issuance. A warrant not served within 10 days is void and must be returned to the

17   issuing court and identified as not served.

18   (2)   A warrant issued pursuant to [section 1] must be served by the person specifically named in the

19   warrant and by no other person unless the other person is acting in aid of and in the presence of the specifically

20   named person.

21

22   **Section 3.** Section 41-3-101, MCA, is amended to read:

23   "**41-3-101.   Declaration of policy.** (1) It is the policy of the state of Montana to:

24   (a)   provide for the protection of children whose health and welfare are or may be adversely

25   affected and further threatened by the conduct of those responsible for the children's care and protection;

26   (b)   achieve these purposes in a family environment and preserve the unity and welfare of the

27   family whenever possible;

28   (c)   ensure that there is no forced removal of a child from the family ~~based solely on an allegation~~

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