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HOUSE BILL NO. 207

INTRODUCED BY R. MARSHALL, E. BUTTREY

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THAT INTERVIEWS CONDUCTED DURING A CHILD ABUSE OR NEGLECT INVESTIGATION OR SAFETY AND RISK ASSESSMENT BE RECORDED; AND AMENDING ~~SECTION SECTIONS~~ 41-3-202 AND 41-3-301, MCA."

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

Section 1. Section 41-3-202, MCA, is amended to read:

"41-3-202. Action on reporting. (1) (a) Upon receipt of a report that a child is or has been abused or neglected, the department shall promptly assess the information contained in the report and make a determination regarding the level of response required and the timeframe within which action must be initiated.

(b) (i) Except as provided in subsection (1)(b)(ii), upon receipt of a report that includes an allegation of sexual abuse or sexual exploitation when the alleged perpetrator of the sexual abuse or sexual exploitation was 12 years of age or older or if the department determines during any investigation that the circumstances surrounding an allegation of child abuse or neglect include an allegation of sexual abuse or sexual exploitation when the alleged perpetrator of the sexual abuse or sexual exploitation was 12 years of age or older, the department shall immediately report the allegation to the county attorney of the county in which the acts that are the subject of the report occurred.

(ii) If a victim of sexual abuse or sexual exploitation has attained the age of 14 and has sought services from a contractor as described in 41-3-201(2)(j) that provides confidential services to victims of sexual assault, conditioned upon an understanding that the criminal conduct will not be reported by the department to the county attorney in the jurisdiction in which the alleged crime occurred, the department may not report pursuant to 41-3-205(5)(d) and subsection (1)(b)(i) of this section.

(c) If the department determines that an investigation and a safety and risk assessment are required, a child protection specialist shall promptly conduct a thorough investigation into the circumstances surrounding the allegations of abuse or neglect of the child and perform a safety and risk assessment to

1 determine whether the living arrangement presents an unsafe environment for the child. The safety and risk
2 assessment may include an investigation at the home of the child involved, the child's school or day-care
3 facility, or any other place where the child is present and into all other nonfinancial matters that in the discretion
4 of the investigator are relevant to the safety and risk assessment. In conducting a safety and risk assessment
5 under this section, a child protection specialist may not inquire into the financial status of the child's family or of
6 any other person responsible for the child's care, except as necessary to ascertain eligibility for state or federal
7 assistance programs or to comply with the provisions of 41-3-446.

8 (2) An initial investigation of alleged abuse or neglect may be conducted when an anonymous
9 report is received. However, if the initial investigation does not within 48 hours result in the development of
10 independent, corroborative, and attributable information indicating that there exists a current risk of physical or
11 psychological harm to the child, a child may not be removed from the living arrangement. If independent,
12 corroborative, and attributable information indicating an ongoing risk results from the initial investigation, the
13 department shall then conduct a safety and risk assessment.

14 (3) The child protection specialist is responsible for conducting the safety and risk assessment. ~~If~~
15 ~~the child is treated at a medical facility, Accommodations for a child with a disability must be made during any~~
16 ~~exam or interview under this subsection (3). When considered necessary to an investigation or safety and risk~~
17 ~~assessment:~~

18 (i) ~~a physical examination may be conducted. The examination must be conducted by a licensed~~
19 ~~medical professional.~~ ~~The~~ The child protection specialist, county attorney, or peace officer, consistent with
20 ~~reasonable best~~ medical practice, has the right of access to the child for interviews, photographs, and securing
21 physical evidence ~~with a licensed medical professional present~~ and has the right of access to relevant hospital
22 and medical records pertaining to the child. ~~The name of the licensed medical professional and information~~
23 ~~release must be recorded in writing and attached to the safety and risk assessment or investigation report.~~

24 (iii) ~~a psychological evaluation may be conducted. A psychological evaluation must be conducted~~
25 ~~by a licensed mental health professional who has the credentials to evaluate children.~~

26 (iv) ~~If an interview of the child is considered necessary, the~~ the child may be interviewed. An
27 ~~interview with a child must be conducted by a~~ child protection specialist ~~who has completed national- or state-~~
28 ~~recognized child abuse forensic interview training that includes child development content,~~ county attorney, or

1 peace officer. ~~may conduct an interview of the child. The interview may be conducted in the presence of the~~
2 ~~parent or guardian or an employee of the school or day-care facility attended by the child. The interview must~~
3 ~~be audiotaped or videotaped. The child must be accompanied by an adult support person, such as a legal~~
4 ~~representative. The adult support person may not be involved in the safety and risk assessment or investigation~~
5 ~~as either a reporter or an alleged perpetrator of abuse or neglect.~~

6 (4) ~~All interviews conducted as part of an investigation or a safety and risk assessment must be~~
7 ~~audiotaped or videotaped.~~ Subject to 41-3-205(3), if the child's interview is audiotaped or videotaped, ~~an the~~
8 unedited audiotape or videotape with audio track ~~of an a child's~~ interview must be made available, ~~upon on~~
9 ~~court approval, request,~~ for unencumbered review by the family. ~~The recorded interview must be made~~
10 ~~available to the legal representative of the child and the presiding judge, and made discoverable during court~~
11 ~~proceedings.~~

12 (5) (a) If from the safety and risk assessment the department has reasonable cause to suspect that
13 the child is suffering abuse or neglect, the department may provide emergency protective services to the child,
14 pursuant to 41-3-301, or enter into a written prevention plan, pursuant to 41-3-302, and may provide protective
15 services to any other child under the same care. The department shall:

16 (i) after interviewing the parent or guardian, if reasonably available, document the determinations
17 of the safety and risk assessment; and

18 (ii) notify the child's family of the determinations of the safety and risk assessment, unless the
19 notification can reasonably be expected to result in harm to the child or other person.

20 (b) Except as provided in subsection (5)(c), the department shall destroy all safety and risk
21 assessment determinations and associated records, except for medical records, within 30 days after the end of
22 the 3-year period starting from the date of completion of the safety and risk assessment.

23 (c) Safety and risk assessment determinations and associated records may be maintained for a
24 reasonable time as defined by department rule under the following circumstances:

25 (i) the safety and risk assessment determines that abuse or neglect occurred;

26 (ii) there had been a previous or there is a subsequent report and investigation resulting in a
27 safety and risk assessment concerning the same person; or

28 (iii) an order has been issued by a court of competent jurisdiction adjudicating the child as a youth

1 in need of care based on the circumstances surrounding the initial allegations.

2 (6) The investigating child protection specialist, within 60 days of commencing an investigation,
3 shall also furnish a written safety and risk assessment to the department and, ~~upon~~on request, to the family.
4 Subject to time periods set forth in subsections (5)(b) and (5)(c), the department shall maintain a record system
5 documenting investigations and safety and risk assessment determinations. Unless records are required to be
6 destroyed under subsections (5)(b) and (5)(c), the department shall retain records relating to the safety and risk
7 assessment, including case notes, correspondence, evaluations, videotapes, and interviews, for 25 years.

8 (7) Any person reporting abuse or neglect that involves acts or omissions on the part of a public or
9 private residential institution, home, facility, or agency is responsible for ensuring that the report is made to the
10 department.

11 (8) The department shall, ~~upon~~on request from any reporter of alleged child abuse or neglect,
12 verify whether the report has been received, describe the level of response and timeframe for action that the
13 department has assigned to the report, and confirm that it is being acted ~~upon~~on."
14

15 **Section 2.** Section 41-3-301, MCA, is amended to read:

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

- 23 (a) include the reason for removal;
- 24 (b) include information regarding the option for an emergency protective services hearing within 5
25 days under 41-3-306, the required show cause hearing within 20 days, and the purpose of the hearings;
- 26 (c) provide contact information for the child protection specialist, the child protection specialist's
27 supervisor, and the office of state public defender; and
- 28 (d) advise the parents, parent, guardian, or other person having physical or legal custody of the

1 child that the parents, parent, guardian, or other person:

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

3 (ii) has the right to attend and participate in an emergency protective services hearing, if one is

4 requested, and the show cause hearing, including providing statements to the judge;

5 (iii) may have a support person present during any in-person meeting with the child protection

6 specialist concerning emergency protective services; and

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

8 (2) If a child protection specialist, a peace officer, or the county attorney determines in an

9 investigation of abuse or neglect of a child that the child is in danger because of the occurrence of partner or

10 family member assault, as provided for in 45-5-206, or strangulation of a partner or family member, as provided

11 for in 45-5-215, against an adult member of the household or that the child needs protection as a result of the

12 occurrence of partner or family member assault or strangulation of a partner or family member against an adult

13 member of the household, the department shall take appropriate steps for the protection of the child, which may

14 include:

15 (a) making reasonable efforts to protect the child and prevent the removal of the child from the

16 parent or guardian who is a victim of alleged partner or family member assault or strangulation of a partner or

17 family member;

18 (b) making reasonable efforts to remove the person who allegedly committed the partner or family

19 member assault or strangulation of a partner or family member from the child's residence if it is determined that

20 the child or another family or household member is in danger of partner or family member assault or

21 strangulation of a partner or family member; and

22 (c) providing services to help protect the child from being placed with or having unsupervised

23 visitation with the person alleged to have committed partner or family member assault or strangulation of a

24 partner or family member until the department determines that the alleged offender has met conditions

25 considered necessary to protect the safety of the child.

26 (3) If the department determines that an adult member of the household is the victim of partner or

27 family member assault or strangulation of a partner or family member, the department shall provide the adult

28 victim with a referral to a domestic violence program.

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

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

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

12 (b) If the child was removed due to imminent risk of sexual or physical abuse, the child must be
13 examined immediately by a licensed physician or advanced practiced registered nurse to verify sexual or
14 physical abuse. The results of the exam must be made available at the emergency protective services hearing.

15 (7) Except as provided in the federal Indian Child Welfare Act, if applicable, a show cause hearing
16 must be held within 20 days of the filing of the petition unless otherwise stipulated by the parties pursuant to 41-
17 3-434.

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

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

24 **41-3-301. (Effective July 1, 2023) Emergency protective service.** (1) Any child protection specialist
25 of the department, a peace officer, or the county attorney who has reason to believe any child is in immediate
26 or apparent danger of harm may immediately remove the child and place the child in a protective facility. After
27 ensuring that the child is safe, the department may make a request for further assistance from the law
28 enforcement agency or take appropriate legal action. The person or agency placing the child shall notify the

1 parents, parent, guardian, or other person having physical or legal custody of the child of the placement at the
2 time the placement is made or as soon after placement as possible. Notification under this subsection must:

3 (a) include the reason for removal;

4 (b) include information regarding the emergency protective services and show cause hearings and
5 the purpose of the hearings; and

6 (c) advise the parents, parent, guardian, or other person having physical or legal custody of the
7 child that the parents, parent, guardian, or other person may have a support person present during any in-
8 person meeting with the child protection specialist concerning emergency protective services.

9 (2) If a child protection specialist, a peace officer, or the county attorney determines in an
10 investigation of abuse or neglect of a child that the child is in danger because of the occurrence of partner or
11 family member assault, as provided for in 45-5-206, or strangulation of a partner or family member, as provided
12 for in 45-5-215, against an adult member of the household or that the child needs protection as a result of the
13 occurrence of partner or family member assault or strangulation of a partner or family member against an adult
14 member of the household, the department shall take appropriate steps for the protection of the child, which may
15 include:

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

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

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

27 (3) If the department determines that an adult member of the household is the victim of partner or
28 family member assault or strangulation of a partner or family member, the department shall provide the adult

1 victim with a referral to a domestic violence program.

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

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

7 (6) (a) If a child is removed from the child's home by the department, a child protection specialist
8 shall submit an affidavit regarding the circumstances of the emergency removal to the county attorney and
9 provide a copy of the affidavit to the parents or guardian, if possible, within 2 working days of the emergency
10 removal. An abuse and neglect petition must be filed in accordance with 41-3-422 within 5 working days,
11 excluding weekends and holidays, of the emergency removal of a child unless arrangements acceptable to the
12 agency for the care of the child have been made by the parents or a written prevention plan has been entered
13 into pursuant to 41-3-302.

14 (b) If the child was removed due to imminent risk of sexual or physical abuse, the child must be
15 examined immediately by a licensed physician or advanced practiced registered nurse to verify sexual or
16 physical abuse. The results of the exam must be made available at the emergency protective services hearing.

17 (7) Except as provided in the federal Indian Child Welfare Act, if applicable, a show cause hearing
18 must be held within 20 days of the filing of the petition unless otherwise stipulated by the parties pursuant to 41-
19 3-434.

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

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