

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~~ AMENDING SECTION 8, CHAPTER 529, LAWS OF 2021; AND PROVIDING EFFECTIVE

14 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 ~~(i)(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; 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.

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

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

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

1 strangulation of a partner or family member; and

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

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

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

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

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

21 (7) Except as provided in the federal Indian Child Welfare Act, if applicable, a show cause hearing
22 must be held within 20 days of the filing of the petition unless otherwise stipulated by the parties pursuant to 41-
23 3-434.

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

28 (9) The department shall make the necessary arrangements for the child's well-being as are

1 required prior to the court hearing. (Terminates June 30, 2023--sec. 8, Ch. 529, L. 2021.)

2 **41-3-301. (Effective July 1, 2023) Emergency protective service.** (1)(a) Any child protection
3 specialist of the department, a peace officer, or the county attorney who has reason to believe any child is in
4 immediate or apparent danger of harm may immediately remove the child and place the child in a protective
5 facility. After ensuring that the child is safe, the department may make a request for further assistance from the
6 law enforcement agency or take appropriate legal action.

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

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

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

13 ~~(c)~~(iii) advise the parents, parent, guardian, or other person having physical or legal custody
14 of the child that the parents, parent, guardian, or other person may have a support person present during any
15 ~~in-person~~ meeting with the child protection specialist concerning emergency protective services, including the
16 emergency protective services hearing provided for in 41-3-306.

17 (c) A copy of the notification required under subsection (1)(b) must be provided within 24 hours to
18 the office of state public defender.

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

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

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

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

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

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

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

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

24 (7) Except as provided in the federal Indian Child Welfare Act, if applicable, a show cause hearing
25 must be held within 20 days of the filing of the petition unless otherwise stipulated by the parties pursuant to 41-
26 3-434.

27 (8) If the department determines that a petition for immediate protection and emergency protective
28 services must be filed to protect the safety of the child, the child protection specialist shall interview the parents

1 of the child to whom the petition pertains, if the parents are reasonably available, before the petition may be
2 filed. The district court may immediately issue an order for immediate protection of the child.

3 (9) The department shall make the necessary arrangements for the child's well-being as are
4 required prior to the court hearing."
5

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

7 **"41-3-306. (Temporary) Emergency protective services hearing on request --exceptions**

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

12 (b) The department shall provide notification of the option for the hearing as required under 41-3-
13 301.

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

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

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

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

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

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

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

28 (6) If the court determines continued removal is not appropriate, the child must be immediately

1 returned to the parents, parent, guardian, or other person having physical or legal custody of the child.

2 (7) This section does not apply:

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

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

5 (8) The emergency protective services hearing is an emergency proceeding for the purposes of
 6 the Indian Child Welfare Act and is not subject to the notice requirements of that act. (Terminates June 30,
 7 2023--sec. 8, Ch. 529, L. 2021.)

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

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

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

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

1 the petition and affidavit.

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

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

15 (a) the right of entry by a peace officer or department worker;

16 (b) the right to place the child in temporary medical or out-of-home care, including but not limited to
17 care provided by a noncustodial parent, kinship or foster family, group home, or institution;

18 (c) the right of the department to locate, contact, and share information with any extended family
19 members who may be considered as placement options for the child;

20 (d) a requirement that the parents, guardian, or other person having physical or legal custody
21 furnish information that the court may designate and obtain evaluations that may be necessary to determine
22 whether a child is a youth in need of care;

23 (e) a requirement that the perpetrator of the alleged child abuse or neglect be removed from the
24 home to allow the child to remain in the home;

25 (f) a requirement that the parent provide the department with the name and address of the other
26 parent, if known, unless parental rights to the child have been terminated;

27 (g) a requirement that the parent provide the department with the names and addresses of
28 extended family members who may be considered as placement options for the child who is the subject of the

1 proceeding; and

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

6 (3) An order for removal of a child from the home must include a finding that continued residence
7 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
8 interests of the child.

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

13 (5) The petition must be served as provided in 41-3-422."
14

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

16

17 SECTION 5. SECTION 8, CHAPTER 529, LAWS OF 2021, IS AMENDED TO READ:

18 "**Section 8. Termination.** ~~[This act]~~ Except for [section 2], [this act] terminates June 30, 2023."
19

20

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

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

28

NEW SECTION. Section 7. Notification to tribal governments. The secretary of state shall send a

1 copy of [this act] to each federally recognized tribal government in Montana.

2

3 NEW SECTION. Section 8. Effective dates. (1) Except as provided in ~~subsections (2) and (3)~~

4 SUBSECTION (2), [this act] is effective on passage and approval.

5 (2) ~~[Section 4 5] is effective June 30, 2023.~~

6 ~~(3)~~ [Sections 3 and 5 6] are effective July 1, 2023.

7

- END -