

HOUSE BILL NO. 323

INTRODUCED BY C. HINKLE, S. KERNS, J. SCHILLINGER, B. MITCHELL, J. HINKLE, B. LER, A. REGIER,  
R. MARSHALL, J. READ, T. MANZELLA, B. BROWN, B. USHER, B. PHALEN

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS PERTAINING TO CHILD PROTECTIVE TEAMS;  
REQUIRING THE BOARD OF COUNTY COMMISSIONERS TO ESTABLISH A CHILD PROTECTIVE TEAM  
IN EACH COUNTY; REVISING MEMBERSHIP AND DUTIES OF CHILD PROTECTIVE TEAMS; REQUIRING  
THAT CHILD PROTECTIVE TEAMS REVIEW DETERMINATIONS TO REMOVE A CHILD FROM A PARENT  
OR LEGAL GUARDIAN; AMENDING SECTIONS 41-3-108 AND 41-3-301, MCA; AND PROVIDING AN  
EFFECTIVE DATE."

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

**Section 1.** Section 41-3-108, MCA, is amended to read:

**"41-3-108. Child protective teams.** ~~The county attorney, county commissioners, guardian ad litem,~~  
~~or department may convene one or more temporary or permanent interdisciplinary child protective teams.~~  
~~These teams may assist in assessing the needs of, formulating and monitoring a treatment plan for, and~~  
~~coordinating services to the child and the child's family. The supervisor of child protective services in a local~~  
~~service area or the supervisor's designee shall serve as the team's coordinator. Members must include (1) (a)~~  
The board of county commissioners in each county in the state shall establish by resolution a child protective  
team consisting of the following eight voting members:

~~(1)(i)~~ a child protection specialist. If the child protection specialist is involved in a case being  
reviewed, the department shall replace the child protection specialist with another representative of the  
department.

(ii) a local victim advocate;

(iii) two members of the public, one of whom must be an Indian person or knowledgeable about  
Indian culture and family members if an Indian child or children are involved;

~~(2)(iv)~~ a member of a local law enforcement agency;

- 1           ~~(3)(v)~~ a representative of ~~the~~ a local medical profession;
- 2           ~~(4)(vi)~~ a representative of a local public school system; and
- 3           ~~(5)(vii)~~ a county attorney; and
- 4           ~~(6)~~ if an Indian child or children are involved, someone, preferably an Indian person, knowledgeable
- 5 about Indian culture and family matters.

6           (b) The board of county commissioners shall appoint a member of the child protective team to  
 7 serve as the team coordinator.

8           (2) A child protective team shall meet:

- 9           (a) at least monthly as established by resolution;
- 10          (b) at the call of any member of the team; and
- 11          (c) to review removals as provided in subsection (4).

12          (3) A child protective team shall assist in assessing the needs of and formulating and monitoring a  
 13 treatment plan for each child who is removed from one or both parents or a legal guardian or for any child  
 14 whose parent is subject to a treatment plan.

15          (4) (a) Except as provided in subsection (4)(b), a child protective team shall convene no more than  
 16 48 hours before a child is removed from a parent or legal guardian to determine, by a majority vote, whether the  
 17 determination to remove the child should be approved and whether the child abuse or neglect investigation  
 18 should be continued.

19          (b) In an emergency in which a child is at risk of death or serious physical harm, a child protective  
 20 team shall convene within 72 hours of the removal of the child from a parent or legal guardian to determine, by  
 21 a majority vote, whether the determination to remove the child should be upheld and whether the child abuse or  
 22 neglect investigation should be terminated.

23          (c) A determination by a child protective team under this subsection (4) is subject to review by the  
 24 court."

25

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

27          **"41-3-301. (Temporary) Emergency protective service.** (1) Any child protection specialist of the  
 28 department, a peace officer, or the county attorney who has reason to believe any child is in immediate or

1   apparent danger of harm may immediately remove the child and place the child in a protective facility. After  
2   ensuring that the child is safe, the department may make a request for further assistance from the law  
3   enforcement agency or take appropriate legal action. The person or agency placing the child shall notify the  
4   parents, parent, guardian, or other person having physical or legal custody of the child of the placement at the  
5   time the placement is made or as soon after placement as possible. Notification under this subsection must:  
6       (a)    include the reason for removal;  
7       (b)    include information regarding the option for an emergency protective services hearing within 5  
8   days under 41-3-306, the required show cause hearing within 20 days, and the purpose of the hearings;  
9       (c)    provide contact information for the child protection specialist, the child protection specialist's  
10   supervisor, and the office of state public defender; and  
11       (d)    advise the parents, parent, guardian, or other person having physical or legal custody of the  
12   child that the parents, parent, guardian, or other person:  
13       (i)    has the right to receive a copy of the affidavit as provided in subsection (6);  
14       (ii)   has the right to attend and participate in an emergency protective services hearing, if one is  
15   requested, and the show cause hearing, including providing statements to the judge;  
16       (iii)   may have a support person present during any in-person meeting with the child protection  
17   specialist concerning emergency protective services; and  
18       (iv)   may request that the child be placed in a kinship foster home as defined in 52-2-602.  
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 parents or guardian, if possible, within 2 working days of the emergency removal. An  
20 abuse and neglect petition must be filed within 5 working days, excluding weekends and holidays, of the  
21 emergency removal of a child unless arrangements acceptable to the agency for the care of the child have  
22 been made by the parents or a written prevention plan has been entered into pursuant to 41-3-302.

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

26 (8) If the department determines that a petition for immediate protection and emergency protective  
27 services must be filed to protect the safety of the child, the child protection specialist shall interview the parents  
28 of the child to whom the petition pertains, if the parents are reasonably available, before the petition may be

1 filed. The district court may immediately issue an order for immediate protection of the child.

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

4 **41-3-301. (Effective July 1, 2023) Emergency protective service.** (1) ~~(a) Any~~ Except as provided in  
5 subsection (1)(b), a child protection specialist of the department, a peace officer, or the county attorney who  
6 has reason to believe any child is in immediate or apparent danger of harm may, on approval by the local child  
7 protective team as provided in 41-3-108, immediately remove the child and place the child in a protective  
8 facility.

9 (b) In an emergency in which a child is at risk of death or serious physical harm, a child protection  
10 specialist, a peace officer, or the county attorney may remove the child without prior approval of the local child  
11 protective team. The child protective team shall review the removal in accordance with 41-3-108.

12 (c) After ensuring that the child is safe, the department may make a request for further assistance  
13 from the law enforcement agency or take appropriate legal action. The person or agency placing the child shall  
14 notify the parents, parent, guardian, or other person having physical or legal custody of the child of the  
15 placement at the time the placement is made or as soon after placement as possible. Notification under this  
16 subsection (1)(c) must:

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

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

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

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

1 include:

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

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

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

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

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

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

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

28 (7) Except as provided in the federal Indian Child Welfare Act, if applicable, a show cause hearing

1 must be held within 20 days of the filing of the petition unless otherwise stipulated by the parties pursuant to 41-  
2 3-434.

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

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

9

10 NEW SECTION. **Section 3. Effective date.** [This act] is effective July 1, 2023.

11

- END -