

1 SENATE BILL NO. 113
2 INTRODUCED BY D. LENZ

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CHILD ABUSE AND NEGLECT LAWS TO MAKE
5 PERMANENT THE REQUIREMENT THAT ADDITIONAL NOTIFICATIONS BE PROVIDED TO A PARENT OR
6 LEGAL GUARDIAN FROM WHOM A CHILD IS REMOVED; AMENDING SECTION 41-3-301, MCA; AND
7 PROVIDING AN EFFECTIVE DATE."

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

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11 Section 1. Section 41-3-301, MCA, is amended to read:

12 "41-3-301. (Temporary) Emergency protective service. (1) Any child protection specialist of the
13 department, a peace officer, or the county attorney who has reason to believe any child is in immediate or
14 apparent danger of harm may immediately remove the child and place the child in a protective facility. After
15 ensuring that the child is safe, the department may make a request for further assistance from the law
16 enforcement agency or take appropriate legal action. The person or agency placing the child shall notify the
17 parents, parent, guardian, or other person having physical or legal custody of the child of the placement at the
18 time the placement is made or as soon after placement as possible. Notification under this subsection must:

- 19 (a) include the reason for removal;
- 20 (b) include information regarding the option for an emergency protective services hearing within 5
21 days under 41-3-306, the required show cause hearing within 20 days, and the purpose of the hearings;
- 22 (c) provide contact information for the child protection specialist, the child protection specialist's
23 supervisor, and the office of state public defender; and
- 24 (d) advise the parents, parent, guardian, or other person having physical or legal custody of the
25 child that the parents, parent, guardian, or other person:
 - 26 (i) has the right to receive a copy of the affidavit as provided in subsection (6);
 - 27 (ii) has the right to attend and participate in an emergency protective services hearing, if one is
28 requested, and the show cause hearing, including providing statements to the judge;

1 (iii) may have a support person present during any in-person meeting with the child protection
2 specialist concerning emergency protective services; and

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

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

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

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

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

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

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

27 (5) The department may locate and contact extended family members upon placement of a child in
28 out-of-home care. The department may share information with extended family members for placement and

1 case planning purposes.

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

8 (7) Except as provided in the federal Indian Child Welfare Act, if applicable, a show cause hearing
 9 must be held within 20 days of the filing of the petition unless otherwise stipulated by the parties pursuant to 41-
 10 3-434.

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

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

17 **41-3-301. (Effective July 1, 2023) Emergency protective service.** (1) Any child protection specialist
 18 of the department, a peace officer, or the county attorney who has reason to believe any child is in immediate
 19 or apparent danger of harm may immediately remove the child and place the child in a protective facility. After
 20 ensuring that the child is safe, the department may make a request for further assistance from the law
 21 enforcement agency or take appropriate legal action. The person or agency placing the child shall notify the
 22 parents, parent, guardian, or other person having physical or legal custody of the child of the placement at the
 23 time the placement is made or as soon after placement as possible. Notification under this subsection must:

24 (a) include the reason for removal;

25 (b) include information regarding the ~~emergency protective services and show cause hearings~~
 26 emergency protective services hearing within 5 days under 41-3-306, the required show cause hearing within
 27 20 days, and the purpose of the hearings; ~~and~~

28 (c) provide contact information for the child protection specialist, the child protection specialist's

1 supervisor, and the office of state public defender; and

2 ~~(e)~~(d) advise the parents, parent, guardian, or other person having physical or legal custody of the
3 child that the parents, parent, guardian, or other person:

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

5 (ii) has the right to attend and participate in the emergency protective services hearing and the
6 show cause hearing, including providing statements to the judge;

7 (iii) may have a support person present during any in-person meeting with the child protection
8 specialist concerning emergency protective services; and

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

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

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

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

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

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

1 family member assault or strangulation of a partner or family member, the department shall provide the adult
2 victim with a referral to a domestic violence program.

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

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

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

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."
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25 **NEW SECTION. Section 2. Effective date.** [This act] is effective July 1, 2023.

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