

1 \*\*\*\* BILL NO. \*\*\*\*  
2 INTRODUCED BY \*\*\*\*  
3 BY REQUEST OF THE \*\*\*\*  
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT \*\*\*; AMENDING SECTIONS 41-3-112, 41-3-301, 41-3-306, 41-3-  
6 425, AND 47-1-104, MCA; PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

9  
10 **Section 1.** Section 41-3-112, MCA, is amended to read:

11 **"41-3-112. Appointment of court-appointed special advocate -- guardian ad litem.** (1)(a) In every  
12 judicial proceeding except the emergency protective services hearing provided for in 41-3-306, the court shall  
13 appoint a court-appointed special advocate as the guardian ad litem for any child alleged to be abused or  
14 neglected. When necessary, the guardian ad litem may serve at public expense.

15 (b) If a court-appointed special advocate is not available for appointment, the court may appoint an  
16 attorney or other qualified person to serve as the guardian ad litem.

17 (c) The court may but is not required to appoint a person to serve as a guardian ad litem for a child for  
18 an emergency protective services hearing.

19 (d) The department or any member of its staff who has a direct conflict of interest may not be  
20 appointed as the guardian ad litem in a judicial proceeding under this title. ~~When necessary, the guardian ad~~  
21 ~~litem may serve at public expense.~~

22 (2) The guardian ad litem must have received appropriate training that is specifically related to serving  
23 as a child's court-appointed representative.

24 (3) The guardian ad litem is charged with the representation of the child's best interests and shall  
25 perform the following general duties:

26 (a) to conduct investigations to ascertain the facts constituting the alleged abuse or neglect;

27 (b) to interview or observe the child who is the subject of the proceeding;

28 (c) to have access to court, medical, psychological, law enforcement, social services, and school

1 records pertaining to the child and the child's siblings and parents or custodians;

2 (d) to make written reports to the court concerning the child's welfare;

3 (e) to appear and participate in all proceedings to the degree necessary to adequately represent the  
4 child and make recommendations to the court concerning the child's welfare;

5 (f) to perform other duties as directed by the court; and

6 (g) if an attorney, to file motions, including but not limited to filing to expedite proceedings or  
7 otherwise assert the child's rights.

8 (4) Information contained in a report filed by the guardian ad litem or testimony regarding a report filed  
9 by the guardian ad litem is not hearsay when it is used to form the basis of the guardian ad litem's opinion as to  
10 the best interests of the child.

11 (5) Any party may petition the court for the removal and replacement of the guardian ad litem if the  
12 guardian ad litem fails to perform the duties of the appointment."  
13

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

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

22 (a) include the reason for removal;

23 (b) include information regarding the option for an emergency protective services hearing within 5  
24 days under 41-3-306, the required show cause hearing within 20 days, and the purpose of the hearings;

25 (c) provide contact information for the child protection specialist, the child protection specialist's  
26 supervisor, and the office of state public defender; and

27 (d) advise the parents, parent, guardian, or other person having physical or legal custody of the child  
28 that the parents, parent, guardian, or other person:

- 1 (i) has the right to receive a copy of the affidavit as provided in subsection (6);
- 2 (ii) has the right to attend and participate in an emergency protective services hearing, if one is
- 3 requested, and the show cause hearing, including providing statements to the judge;
- 4 (iii) may have a support person present during any in-person meeting with the child protection
- 5 specialist concerning emergency protective services, including the hearing provided for in 41-3-306; and
- 6 (iv) may request that the child be placed in a kinship foster home as defined in 52-2-602.
- 7 (2) If a child protection specialist, a peace officer, or the county attorney determines in an
- 8 investigation of abuse or neglect of a child that the child is in danger because of the occurrence of partner or
- 9 family member assault, as provided for in 45-5-206, or strangulation of a partner or family member, as provided
- 10 for in 45-5-215, against an adult member of the household or that the child needs protection as a result of the
- 11 occurrence of partner or family member assault or strangulation of a partner or family member against an adult
- 12 member of the household, the department shall take appropriate steps for the protection of the child, which may
- 13 include:
  - 14 (a) making reasonable efforts to protect the child and prevent the removal of the child from the parent
  - 15 or guardian who is a victim of alleged partner or family member assault or strangulation of a partner or family
  - 16 member;
  - 17 (b) making reasonable efforts to remove the person who allegedly committed the partner or family
  - 18 member assault or strangulation of a partner or family member from the child's residence if it is determined that
  - 19 the child or another family or household member is in danger of partner or family member assault or
  - 20 strangulation of a partner or family member; and
  - 21 (c) providing services to help protect the child from being placed with or having unsupervised
  - 22 visitation with the person alleged to have committed partner or family member assault or strangulation of a
  - 23 partner or family member until the department determines that the alleged offender has met conditions
  - 24 considered necessary to protect the safety of the child.
- 25 (3) If the department determines that an adult member of the household is the victim of partner or
- 26 family member assault or strangulation of a partner or family member, the department shall provide the adult
- 27 victim with a referral to a domestic violence program.
- 28 (4) A child who has been removed from the child's home or any other place for the child's protection

1 or care may not be placed in a jail.

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

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

11 (7) Except as provided in the federal Indian Child Welfare Act, if applicable, a show cause hearing  
12 must be held within 20 days of the filing of the petition unless otherwise stipulated by the parties pursuant to 41-  
13 3-434.

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

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

20 **41-3-301. (Effective July 1, 2023) Emergency protective service.** (1)(a) Any child protection  
21 specialist of the department, a peace officer, or the county attorney who has reason to believe any child is in  
22 immediate or apparent danger of harm may immediately remove the child and place the child in a protective  
23 facility. After ensuring that the child is safe, the department may make a request for further assistance from the  
24 law enforcement agency or take appropriate legal action.

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

28 (a)(i) include the reason for removal;

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

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

7 (iv) include a case number.

8 (c) A copy of the notification required under subsection (1)(b) must be provided within 1 business day  
 9 to the office of state public defender.

10 (d) The case number assigned to the notification form must be provided within 1 business day to the  
 11 clerk of the district court having jurisdiction for the emergency protective services hearing provided for in 41-3-  
 12 306.

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

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

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

27 (c) providing services to help protect the child from being placed with or having unsupervised  
 28 visitation with the person alleged to have committed partner or family member assault or strangulation of a

1 partner or family member until the department determines that the alleged offender has met conditions  
2 considered necessary to protect the safety of the child.

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

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

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

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

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

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

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

27

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

1           **"41-3-306. (Temporary) Emergency protective services hearing on request --exceptions.** (1) (a)

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

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

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

8           (2) The hearing ~~may be held in person, shall be held~~ by videoconference, or, if no other means are  
9 available, by telephone unless the court determines, for good cause shown, that the parties must appear in  
10 person.

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

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

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

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

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

22           (6) If the court determines continued removal is not appropriate, the child must be immediately  
23 returned to the parents, parent, guardian, or other person having physical or legal custody of the child.

24           (7) This section does not apply:

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

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

27           (8) The emergency protective services hearing is an emergency proceeding for the purposes of the  
28 Indian Child Welfare Act and is not subject to the notice requirements of the act. (Terminates June 30, 2023--

1 sec. 8, Ch. 529, L. 2021.)

2 **41-3-306. (Effective July 1, 2023) Emergency protective services hearing**~~—exception.~~ (1) (a) A  
 3 district court shall, ~~hold a hearing within 5 business days of a child's~~ within the time limits provided for in  
 4 subsection (6), hold an emergency protective services hearing following a child's removal from the home  
 5 pursuant to 41-3-301 to determine whether:

6 (i) the department made a reasonable effort, as required under 41-3-423, to prevent the removal; and

7 (ii) there is probable cause to continue the removal beyond 5 business days the date of the hearing.

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

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

10 (2) ~~The hearing may be held in person; The parties to the hearing shall appear~~ by videoconference,  
 11 or, if no other means are available, by telephone unless the court determines, for good cause shown, that the  
 12 parties must appear in person.

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

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

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

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

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

24 (6) The hearing required under this section must be held:

25 (a) within 5 business days of a child's removal from the home if the hearing will occur in a judicial  
 26 district having three or more judges; or

27 (b) within HOW MANY business days of a child's removal from the home if the hearing will occur in a  
 28 judicial district that encompasses more than one county and has two or fewer judges.



1           ~~(6)(7)~~ If the court determines continued removal is not appropriate, the child must be immediately  
2 returned to the parents, parent, guardian, or other person having physical or legal custody of the child.

3           ~~(7)(8) This section does not apply to cases involving an Indian child who is subject to~~ The emergency  
4 protective services hearing is an emergency proceeding for the purposes of the Indian Child Welfare Act and is  
5 not subject to the notice requirements of the act."  
6

7           **Section 4.** Section 41-3-425, MCA, is amended to read:

8           **"41-3-425. Right to counsel.** (1) Any party involved in a petition filed pursuant to 41-3-422 has the  
9 right to counsel in all proceedings held pursuant to the petition.

10           (2) Except as provided in subsections (3) through (5), the court shall immediately appoint the office of  
11 state public defender to assign counsel for:

12           (a) any indigent parent, guardian, or other person having legal custody of a child or youth in a  
13 removal, placement, or termination proceeding pursuant to 41-3-422, pending a determination of eligibility  
14 pursuant to 47-1-111;

15           (b) any child or youth involved in a proceeding under a petition filed pursuant to 41-3-422 when a  
16 guardian ad litem is not appointed for the child or youth; and

17           (c) any party entitled to counsel at public expense under the federal Indian Child Welfare Act.

18           (3) When appropriate, the court may appoint the office of state public defender to assign counsel for  
19 any child or youth involved in a proceeding under a petition filed pursuant to 41-3-422 when a guardian ad litem  
20 is appointed for the child or youth.

21           (4) When appropriate and in accordance with judicial branch policy, the court may assign counsel at  
22 the court's expense for a guardian ad litem or a court-appointed special advocate involved in a proceeding  
23 under a petition filed pursuant to 41-3-422.

24           (5) Except as provided in the federal Indian Child Welfare Act, a court may not appoint a public  
25 defender to a putative father, as defined in 42-2-201, of a child or youth in a removal, placement, or termination  
26 proceeding pursuant to 41-3-422 until:

27           (a) the putative father is successfully served notice of a petition filed pursuant to 41-3-422; and

28           (b) the putative father makes a request to the court in writing to appoint the office of state public

1 defender to assign counsel."

2

3 **Section 5.** Section 47-1-104, MCA, is amended to read:

4 **"47-1-104. Statewide system -- structure and scope of services -- assignment of counsel at**

5 **public expense.** (1) There is a statewide public defender system, which is required to deliver public defender  
6 services in all courts in this state. The system is supervised by the director.

7 (2) The director shall approve a strategic plan for service delivery and divide the state into not more  
8 than 11 public defender regions. The director may establish a regional office to provide public defender services  
9 in each region, as provided in 47-1-215, establish a contracted services program to provide services in the  
10 region, or utilize other service delivery methods as appropriate and consistent with the purposes described in  
11 47-1-102.

12 (3) When a court orders the assignment of a public defender, the appropriate office shall immediately  
13 assign a public defender qualified to provide the required services. The director shall establish protocols to  
14 ensure that the offices make appropriate assignments in a timely manner.

15 (4) A court may order assignment of a public defender under this chapter in the following cases:

16 (a) in cases in which a person is entitled to assistance of counsel at public expense because of  
17 financial inability to retain private counsel, subject to a determination of indigence pursuant to 47-1-111, as  
18 follows:

19 (i) for a person charged with a felony or charged with a misdemeanor for which there is a possibility of  
20 incarceration, as provided in 46-8-101;

21 (ii) for a party in a proceeding to determine parentage under the Uniform Parentage Act, as provided in  
22 40-6-119;

23 (iii) for a parent, guardian, or other person with physical or legal custody of a child or youth in an  
24 emergency protective services hearing held pursuant to 41-3-306, any removal, placement, or termination  
25 proceeding pursuant 41-3-422, and as required under the federal Indian Child Welfare Act, as provided in 41-3-  
26 425;

27 (iv) for an applicant for sentence review pursuant to Title 46, chapter 18, part 9;

28 (v) for a petitioner in a proceeding for postconviction relief, as provided in 46-21-201;

- 1 (vi) for a petitioner in a habeas corpus proceeding pursuant to Title 46, chapter 22;
- 2 (vii) for a parent or guardian in a proceeding for the involuntary commitment of a developmentally
- 3 disabled person to a residential facility, as provided in 53-20-112;
- 4 (viii) for a respondent in a proceeding for involuntary commitment for a mental disorder, as provided in
- 5 53-21-116;
- 6 (ix) for a respondent in a proceeding for the involuntary commitment of a person for alcoholism, as
- 7 provided in 53-24-302; and
- 8 (x) for a witness in a criminal grand jury proceeding, as provided in 46-4-304.
- 9 (b) in cases in which a person is entitled by law to the assistance of counsel at public expense
- 10 regardless of the person's financial ability to retain private counsel, as follows:
- 11 (i) as provided for in 41-3-425;
- 12 (ii) for a youth in a proceeding under the Montana Youth Court Act alleging a youth is delinquent or in
- 13 need of intervention, as provided in 41-5-1413, and in a prosecution under the Extended Jurisdiction
- 14 Prosecution Act, as provided in 41-5-1607;
- 15 (iii) for a juvenile entitled to assigned counsel in a proceeding under the Interstate Compact on
- 16 Juveniles, as provided in 41-6-101;
- 17 (iv) for a minor who petitions for a waiver of parental consent requirements under the Parental Consent
- 18 for Abortion Act of 2013, as provided in 50-20-509;
- 19 (v) for a respondent in a proceeding for the involuntary commitment of a developmentally disabled
- 20 person to a residential facility, as provided in 53-20-112;
- 21 (vi) for a minor voluntarily committed to a mental health facility, as provided in 53-21-112;
- 22 (vii) for a person who is the subject of a petition for the appointment of a guardian or conservator in a
- 23 proceeding under the provisions of the Uniform Probate Code in Title 72, chapter 5;
- 24 (viii) for a ward when the ward's guardian has filed a petition to require medical treatment for a mental
- 25 disorder of the ward, as provided in 72-5-322; and
- 26 (c) for an eligible appellant in an appeal of a proceeding listed in this subsection (4).
- 27 (5) (a) Except as provided in subsection (5)(b), a public defender may not be assigned to act as a
- 28 court-appointed special advocate or guardian ad litem in a proceeding under the Montana Youth Court Act, Title

1 41, chapter 5, or in an abuse and neglect proceeding under Title 41, chapter 3.

2 (b) A private attorney who is contracted with under the provisions of 47-1-121 to provide public  
3 defender services under this chapter may be appointed as a court-appointed special advocate or guardian ad  
4 litem in a proceeding described in subsection (5)(a) if the appointment is separate from the attorney's service  
5 for the statewide public defender system and does not result in a conflict of interest."

6

7 NEW SECTION. **Section 6.** {standard} **Effective date.** [This act] is effective on passage and  
8 approval.

9

- END -

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