

Unofficial Draft Copy

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Drafter: Sue O'Connell, 406-444-3597

67th Legislature

HB 39-1

1 \*\*\*\* BILL NO. \*\*\*\*

2 INTRODUCED BY \*\*\*\*

3 BY REQUEST OF THE \*\*\*\*

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, MCA; REPEALING  
13 SECTION 8, CHAPTER 529, LAWS OF 2021; AND PROVIDING EFFECTIVE DATES."

14

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

16

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

18 **"41-3-301. (Temporary) Emergency protective service.** (1) Any child protection specialist of the  
19 department, a peace officer, or the county attorney who has reason to believe any child is in immediate or  
20 apparent danger of harm may immediately remove the child and place the child in a protective facility. After  
21 ensuring that the child is safe, the department may make a request for further assistance from the law  
22 enforcement agency or take appropriate legal action.

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

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

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

1           ~~(e)~~(iii) provide contact information for the child protection specialist, the child protection specialist's  
2 supervisor, and the office of state public defender; and

3           ~~(d)~~(iv) 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:

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

6           ~~(ii)~~(B) has the right to attend and participate in an emergency protective services hearing, if one is  
7 requested, and the show cause hearing, including providing statements to the judge;

8           ~~(iii)~~(C) may have a support person present during any in-person meeting with the child protection  
9 specialist concerning emergency protective services, including the emergency protective services hearing  
10 provided for in 41-3-306; and

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

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

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

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

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

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

1 visitation with the person alleged to have committed partner or family member assault or strangulation of a  
2 partner or family member until the department determines that the alleged offender has met conditions  
3 considered necessary to protect the safety of the child.

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

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

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

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

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

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

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

28 **41-3-301. (Effective July 1, 2023) Emergency protective service.** (1) Any child protection specialist

1 of the department, a peace officer, or the county attorney who has reason to believe any child is in immediate  
2 or apparent danger of harm may immediately remove the child and place the child in a protective facility. After  
3 ensuring that the child is safe, the department may make a request for further assistance from the law  
4 enforcement agency or take appropriate legal action.

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

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

9 (b)(ii) include information regarding the emergency protective services and show cause hearings and  
10 the purpose of the hearings; and

11 (c)(ii) 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 may have a support person present during any in-  
13 person meeting with the child protection specialist concerning emergency protective services, including the  
14 emergency protective services hearing provided for in 41-3-306.

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

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

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

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

1 the child or another family or household member is in danger of partner or family member assault or  
2 strangulation of a partner or family member; and

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

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

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

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

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

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

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

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

3

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

5 **"41-3-306. (Temporary) Emergency protective services hearing on request—~~exceptions~~**

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

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

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

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

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

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

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

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

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

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

27 (7) This section does not apply:

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

1 ~~(b) to cases involving an Indian child who is subject to the Indian Child Welfare Act.~~  
2 (8) The emergency protective services hearing is an emergency proceeding for the purposes of the  
3 Indian Child Welfare Act and is not subject to the notice requirements of that act. (Terminates June 30, 2023--  
4 sec. 8, Ch. 529, L. 2021.)

5 **41-3-306. (Effective July 1, 2023) Emergency protective services hearing—~~exception.~~** (1) (a) A  
6 district court shall hold a hearing within 5 business days of a child's removal from the home pursuant to 41-3-  
7 301 to determine whether there is probable cause to continue the removal beyond 5 business days.

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

9 (c) 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, by videoconference, or, if no other means are available, by  
11 telephone.

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

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

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

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

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

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

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

28

1           **Section 3.** Section 41-3-307, MCA, is amended to read:

2           "**41-3-307. ~~(Temporary) Voluntary Availability of~~ prehearing conferences ~~— pilot project~~**  
3 **~~counties.~~** (1) The parents, parent, guardian, or other person having physical or legal custody of a child who has  
4 been removed from the home pursuant to 41-3-301 may participate in a conference within 5 days of the child's  
5 removal and before a ~~show-cause-hearing- an emergency protective services hearing~~ held by the court ~~if the~~  
6 ~~court is participating in a pilot project testing the effectiveness of prehearing conferences pursuant to 41-3-306.~~

7           (2) A prehearing conference ~~may be held under this section only if it involves~~ must include the  
8 following parties:

- 9           (a) the parents, parent, guardian, or other person having physical or legal custody of the child;
- 10           (b) the person's legal counsel;
- 11           (c) the county attorney's office; and
- 12           (d) a department social worker.

13           (3) To the greatest degree possible using available funding, the meetings must be conducted by an  
14 independent and trained facilitator.

15           (4) At a minimum, the meetings must involve discussion of:

- 16           (a) the child's current placement and options for continued placement if the child remains out of the  
17 home;
- 18           (b) whether other options exist for an in-home safety plan or resource that may allow the child to  
19 remain in the home;
- 20           (c) parenting time schedules; and
- 21           (d) treatment services for the family.

22           ~~(5) This section does not apply to cases involving an Indian child who is subject to the Indian Child~~  
23 ~~Welfare Act.~~

24           ~~(6) This section applies to a district court participating in the prehearing conference pilot project~~  
25 ~~funded by the court improvement program on May 14, 2021, and to any district court in a rural county or~~  
26 ~~multicounty district that chooses to hold conferences in accordance with this section on or after that date.~~

27 ~~(Terminates June 30, 2023—sec. 8, Ch. 529, L. 2021.)"~~

28



1            NEW SECTION. Section 4. **{standard} Repealer.** Section 8, Chapter 529, Laws of 2021, is  
2 repealed.

3

4            NEW SECTION. Section 5. **Appropriation.** (1) There is appropriated AN AMOUNT from the general  
5 fund to the office of court administrator in each year of the biennium beginning July 1, 2023, to pay for the costs  
6 of training and hiring facilitators for the prehearing conferences provided for in [section x].

7            (2) There is appropriated AN AMOUNT from the general fund to the office of state public defender in  
8 each year of the biennium beginning July 1, 2023, to pay for the costs of providing legal representation to  
9 parents and guardians during the emergency protective services hearing provided for in [section 2] and the  
10 prehearing conferences provided for in [section 3].

11

12            NEW SECTION. Section 6. **Effective dates.** (1) Except as provided in subsection (2), [this act] is  
13 effective on passage and approval.

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

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

16

- END -