

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

2 INTRODUCED BY \*\*\*\*

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

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING CHILD ABUSE AND NEGLECT LAWS;

6 REQUIRING A WARRANT TO REMOVE A CHILD FROM THE CHILD'S HOME EXCEPT IN EXIGENT

7 CIRCUMSTANCES; REVISING THE TIMEFRAME IN WHICH AN ABUSE AND NEGLECT PETITION MUST

8 BE FILED WHEN A CHILD IS REMOVED; REVISING THE TIMEFRAME IN WHICH AN EMERGENCY

9 PROTECTIVE SERVICES HEARING MUST BE HELD; REVISING THE REQUIREMENTS FOR DISMISSING

10 AN ABUSE AND NEGLECT PETITION; AND AMENDING SECTIONS 41-3-101, 41-3-301, 41-3-306, 41-3-424,

11 AND 41-3-427, MCA; AMENDING SECTIONS 41-3-101, 41-3-301, 41-3-306, 41-3-424, AND 41-3-427, MCA;

12 PROVIDING AN EFFECTIVE DATE."

13

14 WHEREAS, Montana's child abuse and neglect statutes (Title 41, chapter 3, MCA) provide the

15 framework for state interference with the parent-child relationship; and

16 WHEREAS, the Legislature intends to amend the provisions of Title 41, chapter 3, MCA, to ensure

17 compliance with constitutional requirements.

18

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

20

21 NEW SECTION. Section 1. Warrant to remove child. (1) A child protection specialist of the

22 department, a peace officer, or a county attorney may apply, in writing, by telephone, or electronically, on oath

23 or affirmation, to a court identified in subsection (2) for the issuance of a warrant to remove a child and place

24 the child in a protective facility if necessary to prevent the child from being abused or neglected.

25 (2) A warrant may be issued in writing, by telephone, or electronically by:

26 (a) a city or municipal court judge or justice of the peace within the judge's geographical jurisdiction;

27 or

28 (b) a district court judge within this state.

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1 (3) If the court finds from the application that there is probable cause that removal is necessary to  
2 prevent the child from being abused or neglected, the court shall issue a warrant to remove the child. The  
3 warrant must:

4 (a) identify the child to be removed and the person responsible for removing the child;

5 (b) recite the facts upon which the conclusion that the child is abused or neglected or is in danger of  
6 being abused or neglected is based; and

7 (c) provide for the placement of the child, pending an emergency protective services hearing.

8 (4) The provisions of 46-5-222 apply when an application for a warrant is made telephonically or  
9 electronically or when a warrant is issued telephonically or electronically.

10

11 NEW SECTION. Section 2. Procedures for executing warrant to remove child. A warrant issued  
12 pursuant to [section 1]:

13 (1) may be served at any time of the day or night. The warrant must be served within 10 days from  
14 the time of issuance. A warrant not served within 10 days is void and must be returned to the issuing court and  
15 identified as not served.

16 (2) must be served by the person specifically named in the warrant and by no other person except in  
17 the aid of the person specifically named when that person is present;

18 Section 3. Section 2. Section 41-3-101, MCA, is amended to read:

19 "**41-3-101. Declaration of policy.** (1) It is the policy of the state of Montana to:

20 (a) provide for the protection of children whose health and welfare are or may be adversely affected  
21 and further threatened by the conduct of those responsible for the children's care and protection;

22 (b) achieve these purposes in a family environment and preserve the unity and welfare of the family  
23 whenever possible;

24 (c) ensure that there is no forced removal of a child from the family ~~based solely on an allegation of~~  
25 ~~abuse or neglect unless the department has reasonable cause to suspect that the child is at imminent risk of~~  
26 ~~harm~~ without first obtaining a warrant from a court unless the child is likely to experience sexual abuse or  
27 serious bodily injury in the time that would be required to obtain a warrant;

28 (d) recognize that a child is entitled to assert the child's constitutional rights;

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1 (e) ensure that all children have a right to a healthy and safe childhood in a permanent placement;  
2 and

3 (f) ensure that whenever removal of a child from the home is necessary, the child is entitled to  
4 maintain ethnic, cultural, and religious heritage whenever appropriate.

5 (2) It is intended that the mandatory reporting of abuse or endangerment cases by professional  
6 people and other community members to the appropriate authority will cause the protective services of the state  
7 to seek to prevent further abuses, protect and enhance the welfare of these children, and preserve family life  
8 whenever appropriate.

9 (3) In implementing this chapter, whenever it is necessary to remove a child from the child's home,  
10 the department shall, when it is in the best interests of the child, place the child with the child's noncustodial  
11 birth parent or with the child's extended family, including adult siblings, grandparents, great-grandparents,  
12 aunts, and uncles, when placement with the extended family is approved by the department, prior to placing the  
13 child in an alternative protective or residential facility. Prior to approving a placement, the department shall  
14 investigate whether anyone living in the home has been convicted of a crime involving serious harm to children.

15 (4) (a) The department shall create a registry for voluntary registration by close relatives of a child for  
16 purposes of notifying those relatives when a child that is related has been removed from the child's home  
17 pursuant to this chapter.

18 (b) The registry must contain the names of the child and the child's parents and may contain the  
19 names of the child's grandparents, aunts, uncles, adult brothers, and adult sisters and must contain the contact  
20 information for the child and parents and any of the relatives whose names appear in the registry.

21 (5) The department shall consult the registry and notify the relatives on the registry on the first  
22 working day after placing the child in accordance with 41-3-301.

23 (6) The department may charge a fee commensurate with the cost of operating the registry. The fee  
24 may be charged only to those persons whose names are voluntarily entered in the registry.

25 (7) The department shall ensure that department training and policies comply with constitutional  
26 requirements.

27 ~~(7)~~(8) In implementing the policy of this section, the child's health and safety are of paramount  
28 concern."



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Section 4. ~~Section 4.~~ Section 41-3-301, MCA, is amended to read:

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**"41-3-301. (Temporary) Emergency protective service.** (1) Any child protection specialist of the

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department, a peace officer, or the county attorney who has reason to believe any child is in immediate or

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apparent danger of harm may immediately remove the child and place the child in a protective facility. After

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ensuring that the child is safe, the department may make a request for further assistance from the law

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enforcement agency or take appropriate legal action. The person or agency placing the child shall notify the

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parents, parent, guardian, or other person having physical or legal custody of the child of the placement at the

9

time the placement is made or as soon after placement as possible. Notification under this subsection must:

10

(a) include the reason for removal;

11

(b) include information regarding the option for an emergency protective services hearing within 5

12

days under 41-3-306, the required show cause hearing within 20 days, and the purpose of the hearings;

13

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

14

supervisor, and the office of state public defender; and

15

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

16

that the parents, parent, guardian, or other person:

17

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

18

(ii) has the right to attend and participate in an emergency protective services hearing, if one is

19

requested, and the show cause hearing, including providing statements to the judge;

20

(iii) may have a support person present during any in-person meeting with the child protection

21

specialist concerning emergency protective services; and

22

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

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

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member of the household, the department shall take appropriate steps for the protection of the child, which may

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1 include:

2 (a) making reasonable efforts to protect the child and prevent the removal of the child from the parent  
3 or guardian who is a victim of alleged partner or family member assault or strangulation of a partner or family  
4 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 protection  
17 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 within 5 working days, excluding weekends and holidays, of the  
25 emergency removal of a child unless arrangements acceptable to the agency for the care of the child have  
26 been made by the parents or a written prevention plan has been entered into pursuant to 41-3-302.

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



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1 3-434.

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

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

8 **41-3-301. (Effective July 1, 2023) Emergency protective service.** (1) (a) Except as provided in  
 9 subsection (1)(b), Any a child protection specialist of the department, a peace officer, or the a county attorney  
 10 who has reason to believe any child is in immediate or apparent danger of harm may not immediately remove  
 11 the a child and place the child in a protective facility without first obtaining a warrant pursuant to [section 1].

12 (b) (i) A child protection specialist, a peace officer, or a county attorney may remove a child without a  
 13 warrant only when the person has probable cause to believe that the child is likely to experience sexual abuse  
 14 or serious bodily injury in the time that would be required to obtain a warrant under [section 1].

15 (ii) For the purposes of this subsection (1)(b), "serious bodily injury" has the meaning provided in 45-  
 16 2-101. A parent's or guardian's substance use, disorderly living conditions, or factors closely related to  
 17 economic status do not alone meet the requirement of subsection (1)(b)(i).

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

23 (a)(i) include the reason for removal or, if the child was removed pursuant to subsection (1)(b), the  
 24 factual basis for the child protection specialist's conclusion that the child is likely to experience sexual abuse or  
 25 serious bodily injury in the time that would be required to obtain a warrant;

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

28 (c)(iii) advise the parents, parent, guardian, or other person having physical or legal custody of the

1 child that the parents, parent, guardian, or other person may have a support person present during any in-  
2 person meeting with the child protection specialist concerning emergency protective services.

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

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

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

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

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

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

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



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1 (6) If a child is removed from the child's home by the department, a child protection specialist shall  
2 submit an affidavit regarding the circumstances of the emergency removal to the county attorney and provide a  
3 copy of the affidavit to the parents or guardian, if possible, within 2 working days of the emergency removal. An  
4 abuse and neglect petition must be filed in accordance with 41-3-422 within 5 working days, excluding  
5 weekends and holidays, 72 hours of the emergency removal of a child unless arrangements acceptable to the  
6 agency for the care of the child have been made by the parents or a written prevention plan has been entered  
7 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 required  
16 prior to the court hearing."  
17

18 ~~Section 5. Section 2.~~ Section 41-3-306, MCA, is amended to read:

19 "**41-3-306. (Temporary) Emergency protective services hearing on request -- exceptions.** (1) (a)  
20 If requested by the parents, parent, guardian, or other person having physical or legal custody of a child  
21 removed from the home pursuant to 41-3-301, a district court shall hold an emergency protective services  
22 hearing within 5 business days of the child's removal to determine whether to continue the removal beyond 5  
23 business days.

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

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

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

28 (3) The child and the child's parents, parent, guardian, or other person having physical or legal



1 custody of the child must be represented by counsel at the hearing.

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

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

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

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

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

13 (7) This section does not apply:

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

15 (b) to cases involving an Indian child who is subject to the Indian Child Welfare Act. (Terminates June  
16 30, 2023--sec. 8, Ch. 529, L. 2021.)

17 **41-3-306. (Effective July 1, 2023) Emergency protective services hearing -- exception.** (1) (a) A  
18 district court shall hold a hearing within ~~5 business days~~72 hours of a child's removal from the home pursuant to  
19 41-3-301 to determine whether there is probable cause to continue the removal beyond ~~5 business days~~the  
20 emergency protective services hearing.

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

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

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

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

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

28 (a) establish guidelines for visitation by the parents, parent, guardian, or other person having physical

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1 or legal custody of the child pending the show cause hearing; and

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

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

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

10 (7) This section does not apply to cases involving an Indian child who is subject to the Indian Child  
11 Welfare Act."

12

13 ~~Section 6.~~~~Section 5.~~ Section 41-3-424, MCA, is amended to read:

14 "**41-3-424. Dismissal.** Unless the petition has been previously dismissed, the court shall dismiss an  
15 abuse and neglect petition on the motion of a party, or on its own motion, in any case in which all one of the  
16 following criteria are met:

17 (1) a child who has been placed in foster care is reunited with the child's parents and returned home  
18 and the court finds, after a hearing, that the child is safe in the home;

19 (2) the child remains in the home for a minimum of 6 months with no additional confirmed reports of  
20 child abuse or neglect; ~~and/or~~

21 (3) the department determines and informs the court that the issues that led to department  
22 intervention have been resolved and that no reason exists for further department intervention or monitoring."

23

24 ~~Section 7.~~~~Section 3.~~ Section 41-3-427, MCA, is amended to read:

25 "**41-3-427. Petition for immediate protection and emergency protective services -- order --**

26 **service.** (1) (a) ~~In a case in which it appears that a child is abused or neglected or is in danger of~~ When

27 necessary to prevent a child from being abused or neglected, the county attorney, the attorney general, or an

28 attorney hired by the county may file a petition for immediate protection and emergency protective services. In



1 implementing the policy of this section, the child's health and safety are of paramount concern.

2 (b) A petition for immediate protection and emergency protective services must state the specific  
3 authority requested and must be supported by an affidavit signed by a representative of the department stating  
4 in detail the alleged facts upon which the request is based and the facts establishing probable cause or, if the  
5 case is subject to the federal Indian Child Welfare Act, clear and convincing evidence that a child is abused or  
6 neglected or is in danger of being abused or neglected. The affidavit of the department representative must  
7 contain information, if any, regarding statements made by the parents about the facts of the case.

8 (c) If from the alleged facts presented in the affidavit it appears to the court that there is probable  
9 cause or, if the case is subject to the federal Indian Child Welfare Act, clear and convincing evidence to believe  
10 that the child has been abused or neglected or is in danger of being abused and neglected, the judge shall  
11 grant emergency protective services and the relief authorized by subsection (2) until the adjudication hearing or  
12 the temporary investigative hearing. If it appears from the alleged facts contained in the affidavit that there is  
13 insufficient probable cause or, if the case is subject to the federal Indian Child Welfare Act, clear and convincing  
14 evidence to believe that the child has been abused or neglected or is in danger of being abused or neglected,  
15 the court shall dismiss the petition.

16 (d) If the parents, parent, guardian, person having physical or legal custody of the child, or attorney  
17 for the child disputes the material issues of fact contained in the affidavit or the veracity of the affidavit, the  
18 person may request a contested show cause hearing pursuant to 41-3-432 within 10 days following service of  
19 the petition and affidavit.

20 (e) The petition for immediate protection and emergency protective services must include a notice  
21 advising the parents, parent, guardian, or other person having physical or legal custody of the child that the  
22 parents, parent, guardian, or other person having physical or legal custody of the child may have a support  
23 person present during any in-person meeting with a child protection specialist concerning emergency protective  
24 services. Reasonable accommodation must be made in scheduling an in-person meeting with the child  
25 protection specialist.

26 (2) (a)—Pursuant to subsection (1), if the court finds probable cause or, if the case is subject to the  
27 federal Indian Child Welfare Act, clear and convincing evidence based on the petition and affidavit, the court  
28 may issue an order for immediate protection of the child. The court shall consider the parents' statements, if

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1 any, included with the petition and any accompanying affidavit or report to the court. If the court finds probable  
2 cause or, if the case is subject to the federal Indian Child Welfare Act, clear and convincing evidence, the court  
3 may issue an order granting the following forms of relief, which do not constitute a court-ordered treatment plan  
4 under 41-3-443:

5 ~~(a)(i)~~ the right of entry by a peace officer or department worker;

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

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

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

13 ~~(e)(v)~~ a requirement that the perpetrator of the alleged child abuse or neglect be removed from the  
14 home to allow the child to remain in the home;

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

17 ~~(g)(vii)~~ a requirement that the parent provide the department with the names and addresses of  
18 extended family members who may be considered as placement options for the child who is the subject of the  
19 proceeding; and

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

24 (b) An order issued under this subsection must articulate the factual basis for each finding.

25 (3) An order for removal of a child from the home must include a finding that continued residence of  
26 the child with the parent is contrary to the welfare of the child or that an out-of-home placement is in the best  
27 interests of the child.

28 (4) The order for immediate protection of the child must require the person served to comply



1 immediately with the terms of the order and to appear before the court issuing the order on the date specified  
2 for a show cause hearing. Upon a failure to comply or show cause, the court may hold the person in contempt  
3 or place temporary physical custody of the child with the department until further order.

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

6 NEW SECTION. Section 8. ~~Section 7.~~ **Codification instruction.** [Sections 1 and 2] are intended to  
7 be codified as an integral part of Title 41, chapter 3, part 3, and the provisions of Title 41, chapter 3, part 3,  
8 apply to [sections 1 and 2].  
9

10 NEW SECTION. Section 9. **Effective date.** [This act] is effective July 1, 2023.  
11

- END -

