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**** BILL NO. ****

INTRODUCED BY ****

BY REQUEST OF THE ****

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING CHILD ABUSE AND NEGLECT LAWS; REQUIRING A WARRANT TO REMOVE A CHILD FROM THE CHILD'S HOME EXCEPT IN EXIGENT CIRCUMSTANCES; REVISING THE TIMEFRAME IN WHICH AN ABUSE AND NEGLECT PETITION MUST BE FILED WHEN A CHILD IS REMOVED; REVISING THE TIMEFRAME IN WHICH AN EMERGENCY PROTECTIVE SERVICES HEARING MUST BE HELD; REVISING THE REQUIREMENTS FOR DISMISSING AN ABUSE AND NEGLECT PETITION; AND AMENDING SECTIONS 41-3-101, 41-3-301, 41-3-306, 41-3-424, AND 41-3-427, MCA."

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

NEW SECTION. Section 1. Warrant to remove child. (1) A child protection specialist of the department, a peace officer, or a county attorney may file an application for the issuance of a warrant to remove a child and place the child in a protective facility if necessary to prevent the child from being abused or neglected.

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

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

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

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

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

(a) provide for the protection of children whose health and welfare are or may be adversely affected

1 and further threatened by the conduct of those responsible for the children's care and protection;

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

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

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

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

10 and

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

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

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

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

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

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

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

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

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

9
10 Section 3.~~Section 1.~~ Section 41-3-301, MCA, is amended to read:

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

15 (b) (i) A child protection specialist, a peace officer, or a county attorney may remove a child without a
16 court order only when the person has reasonable cause to believe that the child is likely to experience serious
17 bodily injury in the time that would be required to obtain a warrant under [section 1].

18 (ii) For the purposes of this subsection (1)(b), "serious bodily injury" has the meaning provided in 45-
19 2-101. A parent's or guardian's substance use, disorderly living conditions, or other factors closely related to
20 economic status do not alone meet the requirement of subsection (1)(b)(i).

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

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

1 (b)(ii) include information regarding the option for an emergency protective services hearing within 5
2 days~~72 hours~~ under 41-3-306, the required show cause hearing within 20 days, and the purpose of the
3 hearings;

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

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

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

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

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

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

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 parents or guardian, if possible, within ~~2 working days~~ of the emergency removal. An
15 abuse and neglect petition must be filed within ~~5 working days, excluding weekends and holidays,~~ 72 hours of
16 the emergency removal of a child unless arrangements acceptable to the agency for the care of the child have
17 been made by the parents or a written prevention plan has been entered into 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. (Terminates June 30, 2023--sec. 8, Ch. 529, L. 2021.)

27 **41-3-301. (Effective July 1, 2023) Emergency protective service.** (1) (a) Except as provided in
28 subsection (1)(b), Any a child protection specialist of the department, a peace officer, or the a county attorney

1 ~~who has reason to believe any child is in immediate or apparent danger of harm may not immediately remove~~
2 ~~the a child and place the child in a protective facility without first obtaining a warrant pursuant to [section 1].~~

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

6 (ii) For the purposes of this subsection (1)(b), "serious bodily injury" has the meaning provided in 45-
7 2-101. A parent's or guardian's substance use, disorderly living conditions, or factors closely related to
8 economic status do not alone meet the requirement of subsection (1)(b)(i).

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

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

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

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

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

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

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

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

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

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

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

20 (6) If a child is removed from the child's home by the department, a child protection specialist shall
21 submit an affidavit regarding the circumstances of the emergency removal to the county attorney and provide a
22 copy of the affidavit to the parents or guardian, if possible, within 2 working days of the emergency removal. An
23 abuse and neglect petition must be filed in accordance with 41-3-422 within 5 working days, excluding
24 weekends and holidays, 72 hours of the emergency removal of a child unless arrangements acceptable to the
25 agency for the care of the child have been made by the parents or a written prevention plan has been entered
26 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-

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."

8

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

10 **"41-3-306. (Temporary) Emergency protective services hearing on request -- exceptions.** (1) (a)

11 If requested by the parents, parent, guardian, or other person having physical or legal custody of a child
12 removed from the home pursuant to 41-3-301, a district court shall hold an emergency protective services
13 hearing within ~~5 business days~~72 hours of the child's removal to determine whether to continue the removal
14 beyond ~~5 business days~~the emergency protective services hearing.

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

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

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

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

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

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

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

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

1 a plan is developed.

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

4 (7) This section does not apply:

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

6 (b) to cases involving an Indian child who is subject to the Indian Child Welfare Act. (Terminates June
7 30, 2023--sec. 8, Ch. 529, L. 2021.)

8 **41-3-306. (Effective July 1, 2023) Emergency protective services hearing -- exception.** (1) (a) A
9 district court shall hold a hearing within ~~5-business days~~72 hours of a child's removal from the home pursuant to
10 41-3-301 to determine whether there is probable cause to continue the removal beyond ~~5-business days~~the
11 emergency protective services hearing.

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

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

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

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

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

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

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

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

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

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

3

4 **Section 5.** Section 41-3-424, MCA, is amended to read:

5 **"41-3-424. Dismissal.** Unless the petition has been previously dismissed, the court shall dismiss an
6 abuse and neglect petition on the motion of a party, or on its own motion, in any case in which all one of the
7 following criteria are met:

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

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

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

14

15 ~~Section 6.~~ ~~Section 3.~~ Section 41-3-427, MCA, is amended to read:

16 **"41-3-427. Petition for immediate protection and emergency protective services -- order --**

17 **service.** (1) (a) ~~In a case in which it appears that a child is abused or neglected or is in danger of~~ When
18 necessary to prevent a child from being abused or neglected, the county attorney, the attorney general, or an
19 attorney hired by the county may file a petition for immediate protection and emergency protective services. In
20 implementing the policy of this section, the child's health and safety are of paramount concern.

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

27 (c) If from the alleged facts presented in the affidavit it appears to the court that there is probable
28 cause or, if the case is subject to the federal Indian Child Welfare Act, clear and convincing evidence to believe

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

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

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

17 (2) (a)—Pursuant to subsection (1), if the court finds probable cause or, if the case is subject to the
18 federal Indian Child Welfare Act, clear and convincing evidence based on the petition and affidavit, the court
19 may issue an order for immediate protection of the child. The court shall consider the parents' statements, if
20 any, included with the petition and any accompanying affidavit or report to the court. If the court finds probable
21 cause or, if the case is subject to the federal Indian Child Welfare Act, clear and convincing evidence, the court
22 may issue an order granting the following forms of relief, which do not constitute a court-ordered treatment plan
23 under 41-3-443:

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

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

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

