

Provisional Draft

As of: 2024/09/11 01:37:33

Drafter: Griffin Burns, 406-444-3595

68th Legislature 2023

PD 0002

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

5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO HEARINGS AFTER THE
6 EMERGENCY REMOVAL AND PROTECTIVE PLACEMENT OF A CHILD; REQUIRING AN EMERGENCY
7 PROTECTIVE SERVICES HEARING WITHIN 5 BUSINESS DAYS OF THE REMOVAL; REQUIRING A SHOW
8 CAUSE HEARING WITHIN 21 DAYS OF THE REMOVAL; AND AMENDING SECTIONS 41-3-301, 41-3-306,
9 41-3-307, 41-3-432, MCA."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12
13 **Section 1.** Section 41-3-301, MCA, is amended to read:

14 **"41-3-301. Emergency protective services.** (1) (a) Any child protection specialist of the department,
15 a peace officer, or the county attorney who has reason to believe any child is in immediate or apparent danger
16 of harm may immediately remove the child and place the child in a protective facility. After ensuring that the
17 child is safe, the department may make a request for further assistance from the law enforcement agency or
18 take appropriate legal action.

19 (b) The person or agency placing the child shall notify the parents, parent, guardian, or other person
20 having physical or legal custody of the child of the placement at the time the placement is made or as soon
21 after placement as possible. Notification under this subsection (1)(b) must:

- 22 (i) include the reason for removal;
- 23 (ii) include information regarding the emergency protective services hearing within 5 business days
24 under 41-3-306, the required show cause hearing within 20 21 days, and the purpose of the hearings;
- 25 (iii) provide contact information for the child protection specialist, the child protection specialist's
26 supervisor, and the office of state public defender; and

27 (iv) 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:

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

2 (B) has the right to attend and participate in the emergency protective services hearing and the show
3 cause hearing, including providing statements to the judge;

4 (C) may have a support person present during any meeting with the child protection specialist
5 concerning emergency protective services, including the emergency protective services hearing provided for in
6 41-3-306; and

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

8 (c) A copy of the notification required under subsection (1)(b) must be provided within 24 hours to the
9 office of state public defender.

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

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

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

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

27 (3) If the department determines that an adult member of the household is the victim of partner or
28 family member assault or strangulation of a partner or family member, the department shall provide the adult

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1 victim with a referral to a domestic violence program.

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

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

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

14 (7) Except as provided in the federal Indian Child Welfare Act [or the Montana Indian Child Welfare Act
15 provided for in Title 41, chapter 3, part 13], if applicable, a show cause hearing must be held within 20-21 days
16 of the filing of the petition unless otherwise stipulated by the parties pursuant to 41-3-434.

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

21 (9) The department shall make the necessary arrangements for the child's well-being as are required
22 prior to the court hearing. (Bracketed language in subsection (7) terminates June 30, 2025--sec. 55, Ch. 716, L.
23 2023.)"

24 **Section 2.** Section 41-3-307, MCA, is amended to read:

25 **"41-3-307. Availability of prehearing conferences.** (1) The parents, parent, guardian, or other
26 person having physical or legal custody of a child who has been removed from the home pursuant to 41-3-301
27 may participate in a conference within 5 business days of the child's removal and before an emergency
28 protective services hearing held by the court pursuant to 41-3-306.

- 1 (2) A prehearing conference must include the following parties:
- 2 (a) the parents, parent, guardian, or other person having physical or legal custody of the child;
- 3 (b) the person's legal counsel;
- 4 (c) the county attorney's office; and
- 5 (d) a department social worker.

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

- 8 (4) At a minimum, the meetings must involve discussion of:
- 9 (a) the child's current placement and options for continued placement if the child remains out of the
 10 home;
- 11 (b) whether other options exist for an in-home safety plan or resource that may allow the child to remain
 12 in the home;
- 13 (c) parenting time schedules; and
- 14 (d) treatment services for the family."

15
 16 **Section 3.** Section 41-3-432, MCA, is amended to read:

17 **"41-3-432. (Temporary) Show cause hearing -- order.** (1) (a) Except as provided in the federal
 18 Indian Child Welfare Act or the Montana Indian Child Welfare Act provided for in Title 41, chapter 3, part 13, a
 19 show cause hearing must be conducted within 20-21 days of the filing of an initial child abuse and neglect
 20 petition unless otherwise stipulated by the parties pursuant to 41-3-434 or unless an extension of time is
 21 granted by the court. A separate notice to the court stating the statutory time deadline for a hearing must
 22 accompany any petition to which the time deadline applies.

23 (b) If a proceeding under this chapter involves an Indian child and is subject to the federal Indian Child
 24 Welfare Act or the Montana Indian Child Welfare Act, a qualified expert witness is required to testify that the
 25 continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or
 26 physical damage to the Indian child.

27 (c) The court may grant an extension of time for a show cause hearing only upon a showing of
 28 substantial injustice and shall order an appropriate remedy that considers the best interests of the child.

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1 (2) The person filing the petition has the burden of presenting evidence establishing probable cause for
2 the issuance of an order for temporary investigative authority after the show cause hearing, except as provided
3 by the federal Indian Child Welfare Act or the Montana Indian Child Welfare Act, if applicable.

4 (3) If a contested show cause hearing is requested pursuant to 41-3-427 based upon a disputed issue
5 of material fact or a dispute regarding the veracity of the affidavit of the department, the court may consider all
6 evidence and shall provide an opportunity for a parent, guardian, or other person having physical or legal
7 custody of the child to provide testimony regarding the disputed issues. Hearsay evidence of statements made
8 by the affected child is admissible at the hearing. The parent, guardian, or other person may be represented by
9 legal counsel and may be appointed or assigned counsel as provided for in 41-3-425.

10 (4) At the show cause hearing, the court shall explain the procedures to be followed in the case and
11 explain the parties' rights, including the right to request appointment or assignment of counsel if indigent or if
12 appointment or assignment of counsel is required under the federal Indian Child Welfare Act or the Montana
13 Indian Child Welfare Act, if applicable, and the right to challenge the allegations contained in the petition. The
14 parent, guardian, or other person having physical or legal custody of the child must be given the opportunity to
15 admit or deny the allegations contained in the petition at the show cause hearing. Inquiry must be made to
16 determine whether the notice requirements of the federal Indian Child Welfare Act or 41-3-1311, if applicable,
17 have been met.

18 (5) Except as provided in the federal Indian Child Welfare Act or the Montana Indian Child Welfare Act,
19 if applicable, the court shall make written findings on issues including but not limited to the following:

20 (a) whether the child should be returned home immediately if there has been an emergency removal or
21 remain in temporary out-of-home care or be removed from the home;

22 (b) if removal is ordered or continuation of removal is ordered, why continuation of the child in the home
23 would be contrary to the child's best interests and welfare;

24 (c) whether the department has made reasonable efforts to avoid protective placement of the child or to
25 make it possible to safely return the child to the child's home;

26 (d) financial support of the child, including inquiry into the financial ability of the parents, guardian, or
27 other person having physical or legal custody of the child to contribute to the costs for the care, custody, and
28 treatment of the child and requirements of a contribution for those costs pursuant to 41-3-446; and

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1 (e) whether another hearing is needed and, if so, the date and time of the next hearing.

2 (6) The court may consider:

3 (a) terms and conditions for parental visitation; and

4 (b) whether orders for examinations, evaluations, counseling, immediate services, or protection are
5 needed.

6 (7) Following the show cause hearing, the court may enter an order for the relief requested or amend a
7 previous order for immediate protection of the child if one has been entered. The order must be in writing.

8 (8) If a child who has been removed from the child's home is not returned home after the show cause
9 hearing or if removal is ordered, the parents or parent, guardian, or other person or agency having physical or
10 legal custody of the child named in the petition may request that a citizen review board, if available pursuant to
11 part 10 of this chapter, review the case within 30 days of the show cause hearing and make a recommendation
12 to the district court, as provided in 41-3-1010.

13 (9) Adjudication of a child as a youth in need of care may be made at the show cause hearing if the
14 requirements of 41-3-437(2) are met. If not made at the show cause hearing, adjudication under 41-3-437 must
15 be made within the time limits required by 41-3-437 unless adjudication occurs earlier by stipulation of the
16 parties pursuant to 41-3-434 and order of the court. (Terminates June 30, 2025--sec. 55, Ch. 716, L. 2023.)

17 **41-3-432. (Effective July 1, 2025) Show cause hearing -- order.** (1) (a) Except as provided in the
18 federal Indian Child Welfare Act, a show cause hearing must be conducted within 20-21 days of the filing of an
19 initial child abuse and neglect petition unless otherwise stipulated by the parties pursuant to 41-3-434 or unless
20 an extension of time is granted by the court. A separate notice to the court stating the statutory time deadline
21 for a hearing must accompany any petition to which the time deadline applies.

22 (b) If a proceeding under this chapter involves an Indian child and is subject to the federal Indian Child
23 Welfare Act, a qualified expert witness is required to testify that the continued custody of the child by the parent
24 or Indian custodian is likely to result in serious emotional or physical damage to the child.

25 (c) The court may grant an extension of time for a show cause hearing only upon a showing of
26 substantial injustice and shall order an appropriate remedy that considers the best interests of the child.

27 (2) The person filing the petition has the burden of presenting evidence establishing probable cause for
28 the issuance of an order for temporary investigative authority after the show cause hearing, except as provided

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1 by the federal Indian Child Welfare Act, if applicable.

2 (3) If a contested show cause hearing is requested pursuant to 41-3-427 based upon a disputed issue
3 of material fact or a dispute regarding the veracity of the affidavit of the department, the court may consider all
4 evidence and shall provide an opportunity for a parent, guardian, or other person having physical or legal
5 custody of the child to provide testimony regarding the disputed issues. Hearsay evidence of statements made
6 by the affected child is admissible at the hearing. The parent, guardian, or other person may be represented by
7 legal counsel and may be appointed or assigned counsel as provided for in 41-3-425.

8 (4) At the show cause hearing, the court shall explain the procedures to be followed in the case and
9 explain the parties' rights, including the right to request appointment or assignment of counsel if indigent or if
10 appointment or assignment of counsel is required under the federal Indian Child Welfare Act, if applicable, and
11 the right to challenge the allegations contained in the petition. The parent, guardian, or other person having
12 physical or legal custody of the child must be given the opportunity to admit or deny the allegations contained in
13 the petition at the show cause hearing. Inquiry must be made to determine whether the notice requirements of
14 the federal Indian Child Welfare Act, if applicable, have been met.

15 (5) Except as provided in the federal Indian Child Welfare Act, if applicable, the court shall make written
16 findings on issues including but not limited to the following:

17 (a) whether the child should be returned home immediately if there has been an emergency removal or
18 remain in temporary out-of-home care or be removed from the home;

19 (b) if removal is ordered or continuation of removal is ordered, why continuation of the child in the home
20 would be contrary to the child's best interests and welfare;

21 (c) whether the department has made reasonable efforts to avoid protective placement of the child or to
22 make it possible to safely return the child to the child's home;

23 (d) financial support of the child, including inquiry into the financial ability of the parents, guardian, or
24 other person having physical or legal custody of the child to contribute to the costs for the care, custody, and
25 treatment of the child and requirements of a contribution for those costs pursuant to 41-3-446; and

26 (e) whether another hearing is needed and, if so, the date and time of the next hearing.

27 (6) The court may consider:

28 (a) terms and conditions for parental visitation; and

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1 (b) whether orders for examinations, evaluations, counseling, immediate services, or protection are
2 needed.

3 (7) Following the show cause hearing, the court may enter an order for the relief requested or amend a
4 previous order for immediate protection of the child if one has been entered. The order must be in writing.

5 (8) If a child who has been removed from the child's home is not returned home after the show cause
6 hearing or if removal is ordered, the parents or parent, guardian, or other person or agency having physical or
7 legal custody of the child named in the petition may request that a citizen review board, if available pursuant to
8 part 10 of this chapter, review the case within 30 days of the show cause hearing and make a recommendation
9 to the district court, as provided in 41-3-1010.

10 (9) Adjudication of a child as a youth in need of care may be made at the show cause hearing if the
11 requirements of 41-3-437(2) are met. If not made at the show cause hearing, adjudication under 41-3-437 must
12 be made within the time limits required by 41-3-437 unless adjudication occurs earlier by stipulation of the
13 parties pursuant to 41-3-434 and order of the court."

14

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- END -