

HOUSE BILL NO. 64

INTRODUCED BY K. DUDIK

BY REQUEST OF THE SUPREME COURT

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE CHILD ABUSE AND NEGLECT COURT DIVERSION PILOT PROJECT; EXPANDING THE PILOT PROJECT TO INCLUDE PERSONS RECEIVING VOLUNTARY PROTECTIVE SERVICES; AMENDING SECTIONS 3-1-702, 41-3-302, AND 41-3-305, MCA; AMENDING SECTION 7, CHAPTER 376, LAWS OF 2015; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE."

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

**Section 1.** Section 3-1-702, MCA, is amended to read:

**"3-1-702. Duties.** The court administrator is the administrative officer of the court. Under the direction of the supreme court, the court administrator shall:

(1) prepare and present judicial budget requests to the legislature, including the costs of the state-funded district court program;

(2) collect, compile, and report statistical and other data relating to the business transacted by the courts and provide the information to the legislature on request;

(3) report annually to the law and justice interim committee and at the beginning of each regular legislative session report to the house appropriations subcommittee that considers general government on the status of development and procurement of information technology within the judicial branch, including any changes in the judicial branch information technology strategic plan and any problems encountered in deploying appropriate information technology within the judicial branch. The court administrator shall, to the extent possible, provide that current and future applications are coordinated and compatible with the standards and goals of the executive branch as expressed in the state strategic information technology plan provided for in 2-17-521.

(4) recommend to the supreme court improvements in the judiciary;

(5) administer legal assistance for indigent victims of domestic violence, as provided in 3-2-714;

(6) administer state funding for district courts, as provided in chapter 5, part 9;

(7) administer and report on the child abuse and neglect court diversion pilot project provided in



1 41-3-305;

2 (8) administer the judicial branch personnel plan; and

3 (9) perform other duties that the supreme court may assign. (Subsection (7) terminates June 30,

4 ~~2017--sec. 7, Ch. 376, L. 2015 2019.~~)"

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6 **Section 2.** Section 41-3-302, MCA, is amended to read:

7 **"41-3-302. Responsibility of providing protective services -- voluntary protective services**

8 **agreement.** (1) The department of public health and human services has the primary responsibility to provide

9 the protective services authorized by this chapter and has the authority pursuant to this chapter to take temporary

10 or permanent custody of a child when ordered to do so by the court, including the right to give consent to

11 adoption, or to take temporary custody of a child when consented to by a parent, guardian, or other person having

12 physical or legal custody of the child as part of the parent's, guardian's, or other person's participation in the child

13 abuse and neglect court diversion pilot project provided for in 41-3-305.

14 (2) The department shall respond to emergency reports of known or suspected child abuse or neglect

15 24 hours a day, 7 days a week.

16 (3) (a) The department may provide voluntary protective services by entering into a written voluntary

17 protective services agreement with a parent, ~~or other person responsible for a child's welfare~~ guardian, or other

18 person having physical or legal custody of the child for the purpose of keeping the child safely in the home or for

19 the purpose of returning the child to the home within a 30-day temporary out-of-home protective placement.

20 (b) The department shall inform a parent, ~~or other person responsible for a child's welfare~~ guardian, or

21 other person having physical or legal custody of a child who is considering entering into a voluntary protective

22 services agreement that the parent, guardian, or other person may have another person of the parent's, ~~or~~

23 ~~responsible person's~~ guardian's, or other person's choice present whenever the terms of the voluntary protective

24 services agreement are under discussion by the parent, ~~or other person responsible for the child's welfare~~

25 guardian, or other person and the department. Reasonable accommodations must be made regarding the time

26 and place of meetings at which a voluntary protective services agreement is discussed.

27 (4) A voluntary protective services agreement may include provisions for:

28 (a) a family group decisionmaking meeting and implementation of safety plans developed during the

29 meeting;

30 (b) a professional evaluation and treatment of a the parent, guardian, or other person having physical

1 or legal custody of the child or of the child, or both;

2 (c) a safety plan for the child;

3 (d) in-home services aimed at permitting the child to remain safely in the home;

4 (e) temporary relocation of a parent, guardian, or other person having physical or legal custody of the  
5 child in order to permit the child to remain safely in the home;

6 (f) a 30-day temporary out-of-home protective placement; or

7 (g) any other terms or conditions agreed upon by the parties that would allow the child to remain safely  
8 in the home or allow the child to safely return to the home within the 30-day period, including referrals to other  
9 service providers.

10 (5) A voluntary protective services agreement is subject to termination by either party at any time.  
11 Termination of a voluntary protective services agreement does not preclude the department from filing a petition  
12 pursuant to 41-3-422 in any case in which the department determines that there is a risk of harm to a child.

13 (6) If a voluntary protective services agreement is terminated by a party to the agreement, a child who  
14 has been placed in a temporary out-of-home protective placement pursuant to the agreement must be returned  
15 to the ~~parents~~ parent, guardian, or other person having physical or legal custody of the child within 2 working days  
16 of termination of the agreement unless an abuse and neglect petition is filed by the department or unless the  
17 parent, guardian, or other person having physical or legal custody of the child and the department enter into a  
18 written agreement to participate in the child abuse and neglect court diversion pilot project provided for in  
19 41-3-305 and any continuing out-of-home placement of the child does not exceed a period of 180 days from the  
20 date the child was placed in the temporary out-of-home protective placement."

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22 **Section 3.** Section 41-3-302, MCA, is amended to read:

23 **"41-3-302. Responsibility of providing protective services -- voluntary protective services**  
24 **agreement.** (1) The department of public health and human services has the primary responsibility to provide  
25 the protective services authorized by this chapter and has the authority pursuant to this chapter to take temporary  
26 or permanent custody of a child when ordered to do so by the court, including the right to give consent to  
27 adoption.

28 (2) The department shall respond to emergency reports of known or suspected child abuse or neglect  
29 24 hours a day, 7 days a week.

30 (3) (a) The department may provide voluntary protective services by entering into a written voluntary

1 protective services agreement with a parent, ~~or other person responsible for a child's welfare~~ guardian, or other  
2 person having physical or legal custody of the child for the purpose of keeping the child safely in the home or for  
3 the purpose of returning the child to the home within a 30-day temporary out-of-home protective placement.

4 (b) The department shall inform a parent, ~~or other person responsible for a child's welfare~~ guardian, or  
5 other person having physical or legal custody of a child who is considering entering into a voluntary protective  
6 services agreement that the parent, guardian, or other person may have another person of the parent's, ~~or~~  
7 ~~responsible person's~~ guardian's, or other person's choice present whenever the terms of the voluntary protective  
8 services agreement are under discussion by the parent, ~~or other person responsible for the child's welfare~~  
9 guardian, or other person and the department. Reasonable accommodations must be made regarding the time  
10 and place of meetings at which a voluntary protective services agreement is discussed.

11 (4) A voluntary protective services agreement may include provisions for:

12 (a) a family group decisionmaking meeting and implementation of safety plans developed during the  
13 meeting;

14 (b) a professional evaluation and treatment of ~~a~~ the parent, guardian, or other person having physical  
15 or legal custody of the child or of the child, or both;

16 (c) a safety plan for the child;

17 (d) in-home services aimed at permitting the child to remain safely in the home;

18 (e) temporary relocation of a parent, guardian, or other person having physical or legal custody of the  
19 child in order to permit the child to remain safely in the home;

20 (f) a 30-day temporary out-of-home protective placement; or

21 (g) any other terms or conditions agreed upon by the parties that would allow the child to remain safely  
22 in the home or allow the child to safely return to the home within the 30-day period, including referrals to other  
23 service providers.

24 (5) A voluntary protective services agreement is subject to termination by either party at any time.  
25 Termination of a voluntary protective services agreement does not preclude the department from filing a petition  
26 pursuant to 41-3-422 in any case in which the department determines that there is a risk of harm to a child.

27 (6) If a voluntary protective services agreement is terminated by a party to the agreement, a child who  
28 has been placed in a temporary out-of-home protective placement pursuant to the agreement must be returned  
29 to the ~~parents~~ parent, guardian, or other person having physical or legal custody of the child within 2 working days  
30 of termination of the agreement unless an abuse and neglect petition is filed by the department."

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**Section 4.** Section 41-3-305, MCA, is amended to read:

**"41-3-305. (Temporary) Child abuse and neglect court diversion pilot project.** (1) There is a child abuse and neglect court diversion pilot project. The purpose of the pilot project is to use meetings facilitated by a court diversion officer to informally resolve cases, prior to the filing of an abuse and neglect petition under Title 41, chapter 3, part 4, in which the department has exercised emergency protective services pursuant to 41-3-301 and has removed a child from the custody of a parent, guardian, or other person having physical or legal custody of the child or cases in which the department has provided voluntary protective services pursuant to 41-3-302.

(2) (a) The office of the court administrator provided for in Title 3, chapter 1, part 7, shall administer the pilot project, including:

- (i) selecting ~~three~~ judicial districts in which to implement the pilot project;
- (ii) hiring court diversion officers to staff a pilot project in each of the selected judicial districts; and
- (iii) establishing and measuring performance benchmarks.

(b) The office of the court administrator shall report to the law and justice interim committee regarding the administration and performance of the pilot project.

(3) (a) (i) Within 2 working days of an emergency removal pursuant to 41-3-301 of a child from a parent, guardian, or other person having physical or legal custody of the child or within 2 working days of the termination of a voluntary protective services agreement, the department and the parent, guardian, or other person having physical or legal custody of the child from whom the child was removed or with whom a voluntary protective services agreement was terminated may, if the requirements of subsection (3)(a)(ii) are met, enter into a written agreement to participate in the pilot project for a period of not more than ~~6 months~~ 180 days from either the date of the emergency removal or the date the child was placed in a temporary out-of-home protective placement pursuant to a voluntary protective services agreement or, if voluntary protective services were provided and the child remained in the home, the date the voluntary protective services agreement was terminated. Execution of the written agreement to participate in the pilot project suspends the requirements provided in 41-3-301(6) for a period of not more than ~~6 months~~ 180 days. A party to the written agreement to participate in the pilot project may terminate the agreement at any time.

(ii) Before a person may enter into a written agreement to participate in the pilot project, the person:

(A) must be informed in writing of the person's rights, including:

(l) advisement on the person's rights if the person voluntarily participates in the pilot project or chooses

1 not to participate in the pilot project; and

2 (II) advisement that the person may have another person of the person's choosing present whenever the  
 3 terms of the written agreement to participate in the pilot project or the terms of the written diversion plan are under  
 4 discussion with the department or the court diversion officer; and

5 (B) shall sign and acknowledge that the person fully understands the person's rights and voluntarily  
 6 agrees to participate in the pilot project.

7 (b) Within 15 working days of executing the written agreement to participate in the pilot project, the  
 8 parties shall meet with the court diversion officer and ~~the officer shall approve~~ execute a written diversion plan  
 9 for the case, subject to the court diversion officer's approval, which may include but is not limited to:

10 (i) an ongoing out-of-home placement of the child for a period of not more than ~~6 months~~ 180 days from  
 11 the date of the emergency removal or initiation of the temporary out-of-home protective placement; and

12 (ii) any other terms or conditions agreed to by the parties, including referrals to other service providers,  
 13 that would allow the child to safely return to the home within the time period covered by the agreement or safely  
 14 remain in the home.

15 (c) The written diversion plan may be amended in writing with the approval of the court diversion officer.

16 ~~(c)(d) If an agreement~~ a written diversion plan is not executed by the parties, is not approved by the court  
 17 diversion officer under this subsection (3), or is not successfully completed or if reunification of the child with the  
 18 parent, guardian, or other person having physical or legal custody of the child will not occur before the written  
 19 agreement to participate in the pilot project expires, the department shall terminate the written agreement to  
 20 participate in the pilot project and initiate the process for filing a petition for child abuse and neglect under Title  
 21 41, chapter 3, part 4. The social worker shall submit an affidavit regarding the circumstances of the emergency  
 22 removal or the provision of voluntary protective services and a copy of the written agreement to participate in the  
 23 pilot project, as well as the written diversion plan if one exists, to the county attorney within 10 working days of  
 24 the termination of the written agreement to participate in the pilot project.

25 (d) An audio recording must be made of each meeting that a court diversion officer has with the parties.

26 (4) A party involved in the pilot project does not have a right to counsel prior to the filing of an abuse and  
 27 neglect petition.

28 (5) A court may consider any services that are provided as part of the pilot project when making findings  
 29 required under Title 41, chapter 3, parts 4 and 6. (Terminates June 30, ~~2017--sec. 7, Ch. 376, L. 2015~~ 2019.)"

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