



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 DEFINITIONS OF "CHILD ABUSE OR NEGLECT" AND "REASONABLE EFFORTS"; 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; AMENDING SECTIONS 41-3-101, 41-3-102, 41-3-301, 41-3-306, 41-3-423, 41-3-424, 41-3-425, AND 41-3-427, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.

WHEREAS, Montana's child abuse and neglect statutes (Title 41, chapter 3, MCA) provide the framework for state interference with the parent-child relationship; and

WHEREAS, the Legislature intends to amend the provisions of Title 41, chapter 3, MCA, to ensure compliance with constitutional requirements.

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

**Section 1. Warrant to remove child.** (1) A child protection specialist of the department, a peace officer, or a county attorney may apply, in writing, by telephone, or electronically, on oath or affirmation, to a district court within the state 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) A warrant may be issued in writing, by telephone, or electronically.

(3) 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) identify the child to be removed and the person responsible for removing the child;
- (b) recite the facts on which the conclusion that the child is abused or neglected or is in danger of being abused or neglected is based; and
- (c) provide for the placement of the child, pending an emergency protective services hearing.
- (4) The provisions of 46-5-222 apply when an application for a warrant is made telephonically or electronically or when a warrant is issued telephonically or electronically.

**Section 2. Procedures for executing warrant to remove child.** (1) A warrant issued pursuant to [section 1] may be served at any time of the day or night. The warrant must be served within 10 days from the time of issuance. A warrant not served within 10 days is void and must be returned to the issuing court and identified as not served.

(2) A warrant issued pursuant to [section 1] must be served by the person specifically named in the warrant and by no other person unless the other person is acting in aid of and in the presence of the specifically named person.

**Section 3.** 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 and further threatened by the conduct of those responsible for the children's care and protection;
  - (b) achieve these purposes in a family environment and preserve the unity and welfare of the family whenever possible;
  - (c) ensure that there is no forced removal of a child from the family ~~based solely on an allegation of abuse or neglect unless the department has reasonable cause to suspect that the child is at imminent risk of harm~~ without first obtaining a warrant from a court unless the child is likely to experience sexual abuse or physical abuse in the time that would be required to obtain a warrant;
  - (d) recognize that a child is entitled to assert the child's constitutional rights;
  - (e) ensure that all children have a right to a healthy and safe childhood in a permanent placement;
- and

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

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

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

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

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

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

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

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

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

**Section 4.** Section 41-3-102, MCA, is amended to read:

**"41-3-102. Definitions.** As used in this chapter, the following definitions apply:

- (1) (a) "Abandon", "abandoned", and "abandonment" mean:
  - (i) leaving a child under circumstances that make reasonable the belief that the parent does not intend to resume care of the child in the future;
  - (ii) willfully surrendering physical custody for a period of 6 months and during that period not manifesting to the child and the person having physical custody of the child a firm intention to resume physical custody or to make permanent legal arrangements for the care of the child;
  - (iii) that the parent is unknown and has been unknown for a period of 90 days and that reasonable efforts to identify and locate the parent have failed; or
  - (iv) the voluntary surrender, as defined in 40-6-402, by a parent of a newborn who is no more than 30 days old to an emergency services provider, as defined in 40-6-402.
- (b) The terms do not include the voluntary surrender of a child to the department solely because of parental inability to access publicly funded services.
- (2) "A person responsible for a child's welfare" means:
  - (a) the child's parent, guardian, or foster parent or an adult who resides in the same home in which the child resides;
  - (b) a person providing care in a day-care facility;
  - (c) an employee of a public or private residential institution, facility, home, or agency; or
  - (d) any other person responsible for the child's welfare in a residential setting.
- (3) "Abused or neglected" means the state or condition of a child who has suffered child abuse or neglect.
- (4) (a) "Adequate health care" means any medical care or nonmedical remedial health care recognized by an insurer licensed to provide disability insurance under Title 33, including the prevention of the withholding of medically indicated treatment or medically indicated psychological care permitted or authorized under state law.
  - (b) This chapter may not be construed to require or justify a finding of child abuse or neglect for the sole reason that a parent or legal guardian, because of religious beliefs, does not provide adequate health care for a child. However, this chapter may not be construed to limit the administrative or judicial authority of the

state to ensure that medical care is provided to the child when there is imminent substantial risk of serious harm to the child.

(5) "Best interests of the child" means the physical, mental, and psychological conditions and needs of the child and any other factor considered by the court to be relevant to the child.

(6) "Child" or "youth" means any person under 18 years of age.

(7) (a) "Child abuse or neglect" means:

(i) actual physical or psychological harm to a child;

(ii) substantial risk of physical or psychological harm to a child; or

(iii) abandonment.

(b) (i) The term includes:

(A) actual physical or psychological harm to a child or substantial risk of physical or psychological harm to a child by the acts or omissions of a person responsible for the child's welfare;

(B) exposing a child to the criminal distribution of dangerous drugs, as prohibited by 45-9-101, the criminal production or manufacture of dangerous drugs, as prohibited by 45-9-110, or the operation of an unlawful clandestine laboratory, as prohibited by 45-9-132; or

(C) any form of child sex trafficking or human trafficking.

(ii) For the purposes of this subsection (7), "dangerous drugs" means the compounds and substances described as dangerous drugs in Schedules I through IV in Title 50, chapter 32, part 2.

(c) In proceedings under this chapter in which the federal Indian Child Welfare Act is applicable, this term has the same meaning as "serious emotional or physical damage to the child" as used in 25 U.S.C. 1912(f).

(d) The term does not include self-defense, defense of others, or action taken to prevent the child from self-harm that does not constitute physical or psychological harm to a child. Substance use by a parent or guardian, disorderly living conditions, other factors closely related to economic status, or a child's obesity do not alone constitute physical or psychological harm to a child.

(8) "Child protection specialist" means an employee of the department who investigates allegations of child abuse, neglect, and endangerment and has been certified pursuant to 41-3-127.

(9) "Concurrent planning" means to work toward reunification of the child with the family while at

the same time developing and implementing an alternative permanent plan.

(10) "Department" means the department of public health and human services provided for in 2-15-2201.

(11) "Family engagement meeting" means a meeting that involves family members in either developing treatment plans or making placement decisions, or both.

(12) "Indian child" means any unmarried person who is under 18 years of age and who is either:

- (a) a member of an Indian tribe; or
- (b) eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

(13) "Indian child's tribe" means:

- (a) the Indian tribe in which an Indian child is a member or eligible for membership; or
- (b) in the case of an Indian child who is a member of or eligible for membership in more than one Indian tribe, the Indian tribe with which the Indian child has the more significant contacts.

(14) "Indian custodian" means any Indian person who has legal custody of an Indian child under tribal law or custom or under state law or to whom temporary physical care, custody, and control have been transferred by the child's parent.

(15) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized by:

- (a) the state of Montana; or
- (b) the United States secretary of the interior as being eligible for the services provided to Indians or because of the group's status as Indians, including any Alaskan native village as defined in federal law.

(16) "Limited emancipation" means a status conferred on a youth by a court in accordance with 41-1-503 under which the youth is entitled to exercise some but not all of the rights and responsibilities of a person who is 18 years of age or older.

(17) "Parent" means a biological or adoptive parent or stepparent.

(18) "Parent-child legal relationship" means the legal relationship that exists between a child and the child's birth or adoptive parents, as provided in Title 40, chapter 6, part 2, unless the relationship has been terminated by competent judicial decree as provided in 40-6-234, Title 42, or part 6 of this chapter.

(19) "Permanent placement" means reunification of the child with the child's parent, adoption, placement with a legal guardian, placement with a fit and willing relative, or placement in another planned permanent living arrangement until the child reaches 18 years of age.

(20) "Physical abuse" means an intentional act, an intentional omission, or gross negligence resulting in substantial skin bruising, internal bleeding, substantial injury to skin, subdural hematoma, burns, bone fractures, extreme pain, permanent or temporary disfigurement, impairment of any bodily organ or function, or death.

(21) "Physical neglect" means either failure to provide basic necessities, including but not limited to appropriate and adequate nutrition, protective shelter from the elements, and appropriate clothing related to weather conditions, or failure to provide cleanliness and general supervision, or both, or exposing or allowing the child to be exposed to an unreasonable physical or psychological risk to the child.

(22) (a) "Physical or psychological harm to a child" means the harm that occurs whenever the parent or other person responsible for the child's welfare:

(i) inflicts or allows to be inflicted upon the child physical abuse, physical neglect, or psychological abuse or neglect;

(ii) commits or allows sexual abuse or exploitation of the child;

(iii) induces or attempts to induce a child to give untrue testimony that the child or another child was abused or neglected by a parent or other person responsible for the child's welfare;

(iv) causes malnutrition or a failure to thrive or otherwise fails to supply the child with adequate food or fails to supply clothing, shelter, education, or adequate health care, though financially able to do so or offered financial or other reasonable means to do so;

(v) exposes or allows the child to be exposed to an unreasonable risk to the child's health or welfare by failing to intervene or eliminate the risk; or

(vi) abandons the child.

(b) The term does not include a youth not receiving supervision solely because of parental inability to control the youth's behavior.

(23) (a) "Protective services" means services provided by the department:

(i) to enable a child alleged to have been abused or neglected to remain safely in the home;

(ii) to enable a child alleged to have been abused or neglected who has been removed from the home to safely return to the home; or

(iii) to achieve permanency for a child adjudicated as a youth in need of care when circumstances and the best interests of the child prevent reunification with parents or a return to the home.

(b) The term includes emergency protective services provided pursuant to 41-3-301, written prevention plans provided pursuant to 41-3-302, and court-ordered protective services provided pursuant to parts 4 and 6 of this chapter.

(24) (a) "Psychological abuse or neglect" means severe maltreatment through acts or omissions that are injurious to the child's emotional, intellectual, or psychological capacity to function, including the commission of acts of violence against another person residing in the child's home.

(b) The term may not be construed to hold a victim responsible for failing to prevent the crime against the victim.

(25) "Qualified expert witness" as used in cases involving an Indian child in proceedings subject to the federal Indian Child Welfare Act means:

(a) a member of the Indian child's tribe who is recognized by the tribal community as knowledgeable in tribal customs as they pertain to family organization and child-rearing practices;

(b) a lay expert witness who has substantial experience in the delivery of child and family services to Indians and extensive knowledge of prevailing social and cultural standards and child-rearing practices within the Indian child's tribe; or

(c) a professional person who has substantial education and experience in providing services to children and families and who possesses significant knowledge of and experience with Indian culture, family structure, and child-rearing practices in general.

(26) "Qualified individual" means a trained professional or licensed clinician who:

(a) has expertise in the therapeutic needs assessment used for placement of youth in a therapeutic group home;

(b) is not an employee of the department; and

(c) is not connected to or affiliated with any placement setting in which children are placed.

(27) "Reasonable cause to suspect" means cause that would lead a reasonable person to believe



that child abuse or neglect may have occurred or is occurring, based on all the facts and circumstances known to the person.

(28) "Residential setting" means an out-of-home placement where the child typically resides for longer than 30 days for the purpose of receiving food, shelter, security, guidance, and, if necessary, treatment.

(29) "Safety and risk assessment" means an evaluation by a child protection specialist following an initial report of child abuse or neglect to assess the following:

- (a) the existing threat or threats to the child's safety;
- (b) the protective capabilities of the parent or guardian;
- (c) any particular vulnerabilities of the child;
- (d) any interventions required to protect the child; and
- (e) the likelihood of future physical or psychological harm to the child.

(30) (a) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent, aggravated sexual intercourse without consent, indecent exposure, sexual abuse, ritual abuse of a minor, or incest, as described in Title 45, chapter 5.

(b) ~~Sexual abuse~~ The term does not include any necessary touching of an infant's or toddler's genital area while attending to the sanitary or health care needs of that infant or toddler by a parent or other person responsible for the child's welfare.

(31) "Sexual exploitation" means:

(a) allowing, permitting, or encouraging a child to engage in a prostitution offense, as described in 45-5-601 through 45-5-603;

(b) allowing, permitting, or encouraging sexual abuse of children as described in 45-5-625; or

(c) allowing, permitting, or encouraging sexual servitude as described in 45-5-704 or 45-5-705.

(32) "Therapeutic needs assessment" means an assessment performed by a qualified individual within 30 days of placement of a child in a therapeutic group home that:

(a) assesses the strengths and needs of the child using an age-appropriate, evidence-based, validated, functional assessment tool;

(b) determines whether the needs of the child can be met with family members or through placement in a youth foster home or, if not, which appropriate setting would provide the most effective and

appropriate level of care for the child in the least restrictive environment and be consistent with the short-term and long-term goals for the child as specified in the child's permanency plan; and

(c) develops a list of child-specific short-term and long-term mental and behavioral health goals.

(33) "Treatment plan" means a written agreement between the department and the parent or guardian or a court order that includes action that must be taken to resolve the condition or conduct of the parent or guardian that resulted in the need for protective services for the child. The treatment plan may involve court services, the department, and other parties, if necessary, for protective services.

(34) (a) "Withholding of medically indicated treatment" means the failure to respond to an infant's life-threatening conditions by providing treatment, including appropriate nutrition, hydration, and medication, that, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting the conditions.

(b) The term does not include the failure to provide treatment, other than appropriate nutrition, hydration, or medication, to an infant when, in the treating physician's or physicians' reasonable medical judgment:

(i) the infant is chronically and irreversibly comatose;

(ii) the provision of treatment would:

(A) merely prolong dying;

(B) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or

(C) otherwise be futile in terms of the survival of the infant; or

(iii) the provision of treatment would be virtually futile in terms of the survival of the infant and the treatment itself under the circumstances would be inhumane. For purposes of this subsection (34), "infant" means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The reference to "less than 1 year of age" may not be construed to imply that treatment should be changed or discontinued when an infant reaches 1 year of age or to affect or limit any existing protections available under state laws regarding medical neglect of children 1 year of age or older.

(35) "Youth in need of care" means a youth who has been adjudicated or determined, after a hearing, to be or to have been abused, neglected, or abandoned."

**Section 5.** Section 41-3-301, MCA, is amended to read:

**"41-3-301. (Temporary) Emergency protective ~~service~~ services.** (1) Any child protection specialist of the department, a peace officer, or the county attorney who has reason to believe any child is in immediate or apparent danger of harm may immediately remove the child and place the child in a protective facility. After ensuring that the child is safe, the department may make a request for further assistance from the law enforcement agency or take appropriate legal action. The person or agency placing the child shall notify the parents, parent, guardian, or other person having physical or legal custody of the child of the placement at the time the placement is made or as soon after placement as possible. Notification under this subsection (1) must:

- (a) include the reason for removal;
  - (b) include information regarding the option for an emergency protective services hearing within 5 days under 41-3-306, the required show cause hearing within 20 days, and the purpose of the hearings;
  - (c) provide contact information for the child protection specialist, the child protection specialist's supervisor, and the office of state public defender; and
  - (d) advise the parents, parent, guardian, or other person having physical or legal custody of the child that the parents, parent, guardian, or other person:
    - (i) has the right to receive a copy of the affidavit as provided in subsection (6);
    - (ii) has the right to attend and participate in an emergency protective services hearing, if one is requested, and the show cause hearing, including providing statements to the judge;
    - (iii) may have a support person present during any in-person meeting with the child protection specialist concerning emergency protective services; and
    - (iv) may request that the child be placed in a kinship foster home as defined in 52-2-602.
- (2) If a child protection specialist, a peace officer, or the county attorney determines in an investigation of abuse or neglect of a child that the child is in danger because of the occurrence of partner or family member assault, as provided for in 45-5-206, or strangulation of a partner or family member, as provided for in 45-5-215, against an adult member of the household or that the child needs protection as a result of the occurrence of partner or family member assault or strangulation of a partner or family member against an adult member of the household, the department shall take appropriate steps for the protection of the child, which may

include:

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

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

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

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

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

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

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

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

3-434.

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

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

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

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

(c) After ensuring that the child is safe, the department may make a request for further assistance from the law enforcement agency or take appropriate legal action. The person or agency placing the child shall notify the parents, parent, guardian, or other person having physical or legal custody of the child of the placement at the time the placement is made or as soon after placement as possible. Notification under this subsection (1)(c) must:

(i) include the reason for removal or, if the child was removed pursuant to subsection (1)(b), the factual basis for the conclusion that the child is likely to experience sexual abuse or physical abuse in the time that would be required to obtain a warrant;

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

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

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

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

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

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

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

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

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

(6) If a child is removed from the child's home by the department, a child protection specialist shall submit an affidavit regarding the circumstances of the emergency removal to the county attorney and provide a

copy of the affidavit to the parents or guardian, if possible, within 2 ~~working~~ days of the emergency removal. An abuse and neglect petition must be filed in accordance with 41-3-422 within 5 ~~working days, excluding weekends and holidays,~~ 72 hours of the emergency removal of a child unless arrangements acceptable to the agency for the care of the child have been made by the parents or a written prevention plan has been entered into pursuant to 41-3-302.

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

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

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

**Section 6.** Section 41-3-306, MCA, is amended to read:

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

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

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

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

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

- (4) If the court determines that continued out-of-home placement is needed, the court shall:
- (a) establish guidelines for visitation by the parents, parent, guardian, or other person having physical or legal custody of the child pending the show cause hearing; and
- (b) review the availability of options for a kinship placement and make recommendations if appropriate.
- (5) The court may direct the department to develop and implement a treatment plan before the show cause hearing if the parents, parent, guardian, or other person having physical or legal custody of the child stipulates to a condition subject to a treatment plan and agrees to immediately comply with the treatment plan if a plan is developed.
- (6) If the court determines continued removal is not appropriate, the child must be immediately returned to the parents, parent, guardian, or other person having physical or legal custody of the child.
- (7) This section does not apply:
- (a) in judicial districts that are holding voluntary prehearing conferences pursuant to 41-3-307; or
- (b) to cases involving an Indian child who is subject to the Indian Child Welfare Act. (Terminates June 30, 2023--sec. 8, Ch. 529, L. 2021.)

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

- (b) The department shall provide notification of the hearing as required under 41-3-301.
- (c) A hearing is not required if the child is released prior to the time of the required hearing.
- (2) The hearing may be held in person, by videoconference, or, if no other means are available, by telephone.
- (3) The child and the child's parents, parent, guardian, or other person having physical or legal custody of the child must be represented by counsel at the hearing.
- (4) If the court determines that continued out-of-home placement is needed, the court shall:
- (a) establish guidelines for visitation by the parents, parent, guardian, or other person having physical or legal custody of the child pending the show cause hearing; and



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

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

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

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

**Section 7.** Section 41-3-306, MCA, is amended to read:

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

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

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

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

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

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

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

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

appropriate.

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

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

(7) This section does not apply:

- (a) in judicial districts that are holding voluntary prehearing conferences pursuant to 41-3-307; or
- (b) to cases involving an Indian child who is subject to the Indian Child Welfare Act. (Terminates June 30, 2023--sec. 8, Ch. 529, L. 2021.)

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

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

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

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

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

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

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

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

(5) The court may direct the department to develop and implement a treatment plan before the show cause hearing if the parents, parent, guardian or other person having physical or legal custody of the child

stipulates to a condition subject to a treatment plan and agrees to immediately comply with the treatment plan if a plan is developed.

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

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

**Section 8.** Section 41-3-423, MCA, is amended to read:

**"41-3-423. Reasonable efforts required to prevent removal of child or to return -- exemption -- findings -- permanency plan.** (1) (a) The department shall make reasonable efforts to prevent the necessity of removal of a child from the child's home and to reunify families that have been separated by the state. The application for a warrant to remove a child from the child's home pursuant to [section 1] does not absolve the department from the duty to make reasonable efforts to prevent the necessity of removal.

(b) ~~(i)–For the purposes of this subsection (1), the term "reasonable efforts" means the department shall in good faith develop and implement voluntary services agreements and treatment plans that are designed to preserve the parent-child relationship and the family unit and shall in good faith assist parents in completing voluntary services agreements and treatment plans;~~

(i) conduct a comprehensive assessment of the circumstances of the family, with a focus on safe reunification as the most desirable goal. The assessment must be provided to the parents and to counsel for the parents.

(ii) identify appropriate services and help the parents overcome barriers, including actively assisting the parents in obtaining appropriate services;

(iii) with parental consent, identify and invite the extended family to participate in providing support and services to the family and to participate in family team meetings, permanency planning, and resolution of placement issues;

(iv) conduct or cause to be conducted a diligent search for the child's extended family members and contact and consult with extended family members to provide family structure and support for the child and the parents;

(v) offer and employ all available and culturally appropriate family preservation strategies and facilitate the use of remedial and rehabilitative services;

(vi) take steps to keep siblings together whenever possible;

(vii) support regular visits with parents in the most natural setting possible, as well as trial home visits with the child during any period of removal, consistent with the need to ensure the health, safety, and welfare of the child;

(viii) identify community resources, including housing, financial, transportation, mental health, substance abuse, and peer support services, and actively assist the parents or, when appropriate, the child's family in utilizing and accessing the resources;

(ix) monitor progress and participation in services; and

(x) consider alternative ways to address the needs of the parents and, when appropriate, the family if the optimum services do not exist or are not available.

~~(ii) The term includes but is not limited to:~~

~~(A) written prevention plans;~~

~~(B) development of individual written case plans specifying state efforts to preserve or reunify families;~~

~~(C) placement in the least disruptive setting possible with priority given to family placement as provided in 41-3-439 ;~~

~~(D) provision of services pursuant to a case plan that is designed to address the parent's treatment and other needs precluding the parent from safely parenting, including but not limited to individual and family therapy, parent education, substance abuse treatment, and trauma-related services; and~~

~~(E) periodic review of each case to ensure timely progress toward reunification or permanent placement.~~

(c) In determining preservation or reunification services to be provided and in making reasonable efforts at providing preservation or reunification services, the child's health and safety are of paramount concern.

(2) Except in a proceeding subject to the federal Indian Child Welfare Act, the department may, at any time during an abuse and neglect proceeding, make a request for a determination that preservation or

reunification services need not be provided. If an indigent parent is not already represented by counsel, the court shall immediately provide for the appointment or assignment of counsel to represent the indigent parent in accordance with the provisions of 41-3-425. A court may make a finding that the department need not make reasonable efforts to provide preservation or reunification services if the court finds that the parent has:

- (a) subjected a child to aggravated circumstances, including but not limited to abandonment, torture, chronic abuse, or sexual abuse or chronic, severe neglect of a child;
- (b) committed, aided, abetted, attempted, conspired, or solicited deliberate or mitigated deliberate homicide of a child;
- (c) committed aggravated assault against a child;
- (d) committed neglect of a child that resulted in serious bodily injury or death; or
- (e) had parental rights to the child's sibling or other child of the parent involuntarily terminated and the circumstances related to the termination of parental rights are relevant to the parent's ability to adequately care for the child at issue.

(3) Preservation or reunification services are not required for a putative father, as defined in 42-2-201, if the court makes a finding that the putative father has failed to do any of the following:

- (a) contribute to the support of the child for an aggregate period of 1 year, although able to do so;
  - (b) establish a substantial relationship with the child. A substantial relationship is demonstrated by:
    - (i) visiting the child at least monthly when physically and financially able to do so; or
    - (ii) having regular contact with the child or with the person or agency having the care and custody of the child when physically and financially able to do so; and
    - (iii) manifesting an ability and willingness to assume legal and physical custody of the child if the child was not in the physical custody of the other parent.
  - (c) register with the putative father registry pursuant to Title 42, chapter 2, part 2, and the person has not been:
    - (i) adjudicated in Montana to be the father of the child for the purposes of child support; or
    - (ii) recorded on the child's birth certificate as the child's father.
- (4) A judicial finding that preservation or reunification services are not necessary under this section must be supported by clear and convincing evidence.

(5) If the court finds that preservation or reunification services are not necessary pursuant to subsection (2) or (3), a permanency hearing must be held within 30 days of that determination and reasonable efforts, including consideration of both in-state and out-of-state permanent placement options for the child, must be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

(6) If reasonable efforts have been made to prevent removal of a child from the home or to return a child to the child's home but continuation of the efforts is determined by the court to be inconsistent with the permanency plan for the child, the department shall make reasonable efforts to place the child in a timely manner in accordance with the permanency plan, including, if appropriate, placement in another state, and to complete whatever steps are necessary to finalize the permanent placement of the child. Reasonable efforts to place a child permanently for adoption or to make an alternative out-of-home permanent placement may be made concurrently with reasonable efforts to return a child to the child's home. Concurrent planning, including identifying in-state and out-of-state placements, may be used.

(7) When determining whether the department has made reasonable efforts to prevent the necessity of removal of a child from the child's home or to reunify families that have been separated by the state, the court shall review the services provided by the agency including, if applicable, protective services provided pursuant to 41-3-302."

**Section 9.** Section 41-3-424, MCA, is amended to read:

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

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

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

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

**Section 10.** Section 41-3-425, MCA, is amended to read:

**"41-3-425. Right to counsel.** (1) Any party involved in a petition filed pursuant to 41-3-422 has the right to counsel in all proceedings held pursuant to the petition.

(2) Except as provided in subsections (3) ~~through (5)~~ and (4), the court shall immediately appoint the office of state public defender to assign counsel for:

(a) any indigent parent, guardian, or other person having legal custody of a child or youth in a removal, placement, or termination proceeding pursuant to 41-3-422, pending a determination of eligibility pursuant to 47-1-111;

(b) any child or youth involved in a proceeding under a petition filed pursuant to 41-3-422 ~~when a guardian ad litem is not appointed for the child or youth;~~ and

(c) any party entitled to counsel at public expense under the federal Indian Child Welfare Act.

~~(3) When appropriate, the court may appoint the office of state public defender to assign counsel for any child or youth involved in a proceeding under a petition filed pursuant to 41-3-422 when a guardian ad litem is appointed for the child or youth.~~

~~(4)~~(3) When appropriate and in accordance with judicial branch policy, the court may assign counsel at the court's expense for a guardian ad litem or a court-appointed special advocate involved in a proceeding under a petition filed pursuant to 41-3-422.

~~(5)~~(4) Except as provided in the federal Indian Child Welfare Act, a court may not appoint a public defender to a putative father, as defined in 42-2-201, of a child or youth in a removal, placement, or termination proceeding pursuant to 41-3-422 until:

(a) the putative father is successfully served notice of a petition filed pursuant to 41-3-422; and

(b) the putative father makes a request to the court in writing to appoint the office of state public defender to assign counsel."

**Section 11.** Section 41-3-427, MCA, is amended to read:

**"41-3-427. Petition for immediate protection and emergency protective services -- order -- service.** (1) (a) ~~In a case in which it appears that a child is abused or neglected or is in danger of~~ When

necessary to prevent a child from being abused or neglected, the county attorney, the attorney general, or an attorney hired by the county may file a petition for immediate protection and emergency protective services. In implementing the policy of this section, the child's health and safety are of paramount concern.

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

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

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

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



protection specialist.

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

- ~~(a)~~(i) the right of entry by a peace officer or department worker;
- ~~(b)~~(ii) the right to place the child in temporary medical or out-of-home care, including but not limited to care provided by a noncustodial parent, kinship or foster family, group home, or institution;
- ~~(c)~~(iii) the right of the department to locate, contact, and share information with any extended family members who may be considered as placement options for the child;
- ~~(d)~~(iv) a requirement that the parents, guardian, or other person having physical or legal custody furnish information that the court may designate and obtain evaluations that may be necessary to determine whether a child is a youth in need of care;
- ~~(e)~~(v) a requirement that the perpetrator of the alleged child abuse or neglect be removed from the home to allow the child to remain in the home;
- ~~(f)~~(vi) a requirement that the parent provide the department with the name and address of the other parent, if known, unless parental rights to the child have been terminated;
- ~~(g)~~(vii) a requirement that the parent provide the department with the names and addresses of extended family members who may be considered as placement options for the child who is the subject of the proceeding; and
- ~~(h)~~(viii) any other temporary disposition that may be required in the best interests of the child that does not require an expenditure of money by the department unless the court finds after notice and a hearing that the expenditure is reasonable and that resources are available for payment. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(b) An order issued under subsection (2)(a) must articulate the factual basis for each finding.

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

(4) The order for immediate protection of the child must require the person served to comply immediately with the terms of the order and to appear before the court issuing the order on the date specified for a show cause hearing. Upon a failure to comply or show cause, the court may hold the person in contempt or place temporary physical custody of the child with the department until further order.

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

**Section 12. Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 41, chapter 3, part 3, and the provisions of Title 41, chapter 3, part 3, apply to [sections 1 and 2].

**Section 13. Effective dates.** (1) Except as provided in subsection (2), [this act] is effective July 1, 2023.

(2) [Section 7] is effective July 1, 2025.

**Section 14. Termination.** [Section 6] terminates June 30, 2025.

- END -

I hereby certify that the within bill,  
HB 37, originated in the House.

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Chief Clerk of the House

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Speaker of the House

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2023.

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President of the Senate

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2023.

HOUSE BILL NO. 37

INTRODUCED BY J. CARLSON

BY REQUEST OF THE CHILDREN, FAMILIES, HEALTH, AND HUMAN SERVICES INTERIM COMMITTEE

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 DEFINITIONS OF "CHILD ABUSE OR NEGLECT" AND "REASONABLE EFFORTS"; 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; AMENDING SECTIONS 41-3-101, 41-3-102, 41-3-301, 41-3-306, 41-3-423, 41-3-424, 41-3-425, AND 41-3-427, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.