**** BILL NO. ****

INTRODUCED BY ****

BY REQUEST OF THE ****

A BILL FOR AN ACT ENTITLED: “AN ACT GENERALLY REVISING LAWS RELATING TO PROTECTIVE CARE; REQUIRING THE PERSON OR AGENCY WHO PLACES A CHILD IN PROTECTIVE CARE TO NOTIFY THE PREHEARING CONFERENCE FACILITATOR ABOUT THE PLACEMENT WITHIN 24 HOURS; REQUIRING A PREHEARING CONFERENCE BEFORE AN EMERGENCY PROTECTIVE SERVICES HEARING; AND AMENDING SECTIONS 41-3-301 AND 41-3-307, MCA.”

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

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

"**41-3-301. Emergency protective services.** (1) (a) 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.

(b) 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)(b) must:

(i) include the reason for removal;

(ii) include information regarding the 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;

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

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

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

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

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

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

(c) A copy of the notification required under subsection (1)(b) must be provided within 24 hours to the prehearing conference facilitator provided for in 41-3-307, or other person who conducts prehearing conferences in that district, and the office of state public defender.

(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 office of state public defender and, if possible, the parents or guardian 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, 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 [or the Montana Indian Child Welfare Act provided for in Title 41, chapter 3, part 13], 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. (Bracketed language in subsection (7) terminates June 30, 2025--sec. 55, Ch. 716, L. 2023.)"

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

"**41-3-307. Availability of prehearing conferences.** (1) ~~The parents, parent, guardian, or other~~

~~person having physical or legal custody of a child who has been removed from the home pursuant to 41-3-301 may participate in a conference within~~ A prehearing conference must be held within 5 days of ~~the~~ a child's removal and before an emergency protective services hearing held by the court pursuant to 41-3-306.

(2) A prehearing conference must include the following parties:

(a) the parents, parent, guardian, or other person having physical or legal custody of the child, if the person chooses to participate;

(b) the ~~person's~~ legal counsel of the participant prescribed in subsection (2)(a);

(c) the child's legal counsel;

~~(c)~~(d) the county attorney's office; and

~~(d)~~(e) a department social worker.

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

(4) At a minimum, the meetings must involve discussion of:

(a) the child's current placement and options for continued placement if the child remains out of the home;

(b) whether other options exist for an in-home safety plan or resource that may allow the child to remain in the home;

(c) parenting time schedules; and

(d) treatment services for the family."

- END -

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