

1 HOUSE BILL NO. 515

2 INTRODUCED BY ****

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4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO CHILD SAFETY;
5 PROVIDING A DEFINITION FOR "IMMINENT DANGER"; AND AMENDING SECTION 41-3-301, MCA."

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

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

10 **"41-3-301. Emergency protective service.** (1) (a) Any child protective social worker of the
11 department, a peace officer, or the county attorney who has reason to believe any child is in ~~immediate or~~
12 ~~apparent danger of harm~~ imminent danger may immediately remove the child and place the child in a protective
13 facility.

14 (b) (i) Except as provided in subsection (1)(b)(ii), for the purposes of this section, "imminent danger"
15 means certain, immediate, and impending danger in which the chance of the individual dying or being seriously
16 injured is highly probable.

17 (ii) If no other immediate safety concerns exist, disability, parenting skills that may be considered
18 neglect, or a positive drug test alone does not constitute imminent danger.

19 (c) If imminent danger is present and a parent is unable to immediately parent, child protective
20 services and law enforcement may act in protecting a child to ensure the safety of the child.

21 (d) Absent imminent danger, child protective services and law enforcement may complete an
22 investigation and shall make reasonable efforts to prevent the removal of the child before obtaining an ex parte
23 court order prior to removal of the child.

24 (e) If body camera footage is used when law enforcement is involved with a removal of a child, the
25 law enforcement officer shall provide the judge and family or family representative copies of the body camera
26 footage by the initial hearing in order to provide proof that a delay in removal would have jeopardized the safety
27 of the child.

28 (f) ~~After~~ If an immediate removal of a child is performed, after ensuring that the child is safe, the

1 department may make a request for further assistance from the law enforcement agency or take appropriate
2 legal action. The person or agency placing the child shall notify the parents, parent, guardian, or other person
3 having physical or legal custody of the child of the placement at the time the placement is made or as soon
4 after placement as possible. Notification under this subsection must include the reason for removal, information
5 regarding the show cause hearing, and the purpose of the show cause hearing and must advise the parents,
6 parent, guardian, or other person having physical or legal custody of the child that the parents, parent,
7 guardian, or other person may have a support person present during any in-person meeting with the social
8 worker concerning emergency protective services.

9 (2) If a social worker of the department, a peace officer, or the county attorney determines in an
10 investigation of abuse or neglect of a child that the child is in danger because of the occurrence of partner or
11 family member assault, as provided for in 45-5-206, or strangulation of a partner or family member, as provided
12 for in 45-5-215, against an adult member of the household or that the child needs protection as a result of the
13 occurrence of partner or family member assault or strangulation of a partner or family member against an adult
14 member of the household, the department shall take appropriate steps for the protection of the child, which may
15 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
24 visitation with the person alleged to have committed partner or family member assault or strangulation of a
25 partner or family member until the department determines that the alleged offender has met conditions
26 considered 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

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
3 or 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
5 out-of-home care. The department may share information with extended family members for placement and
6 case planning purposes.

7 (6) If a child is removed from the child's home by the department, a child protective social worker 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 parents or guardian, if possible, within 2 working days of the emergency removal. An
10 abuse and neglect petition must be filed within 5 working days, excluding weekends and holidays, of the
11 emergency removal of a child unless arrangements acceptable to the agency for the care of the child have
12 been made by the parents or voluntary protective services are provided pursuant to 41-3-302.

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

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

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

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