

SENATE BILL NO. 50

INTRODUCED BY D. EMRICH

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

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO THE REMOVAL OF A CHILD FROM THE CHILD'S HOME; REQUIRING A WARRANT TO REMOVE A CHILD FROM THE CHILD'S HOME EXCEPT IN EXIGENT CIRCUMSTANCES; REQUIRING AN ABUSE AND NEGLECT PETITION TO BE FILED WITHIN 72 HOURS OF THE EMERGENCY REMOVAL OF A CHILD; AND AMENDING SECTIONS 41-3-101, 41-3-301, AND 41-3-423, MCA."

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

NEW SECTION. **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 from the child's home 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 being 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 by telephone or electronically or when a warrant is issued by telephone or electronically.

1 NEW SECTION. Section 2. Procedures for executing warrant to remove child. (1) A warrant
 2 issued pursuant to [section 1] may be served at any time of the day or night. The warrant must be served within
 3 10 days from the time of issuance. A warrant not served within 10 days is void and must be returned to the
 4 issuing court and identified as not served.

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

8

9 **Section 3.** Section 41-3-101, MCA, is amended to read:

10 **"41-3-101. Declaration of policy.** (1) It is the policy of the state of Montana to:

11 (a) provide for the protection of children whose health and welfare are or may be adversely
 12 affected and further threatened by the conduct of those responsible for the children's care and protection;

13 (b) achieve these purposes in a family environment and preserve the unity and welfare of the
 14 family whenever possible;

15 (c) support the efforts of parents whose children have been removed to reunify the family,
 16 including by taking into account whether those efforts may be impeded by court-ordered support payments;

17 (d) ensure that there is no forced removal of a child from the family ~~based solely on an allegation~~
 18 ~~of abuse or neglect unless the department has reasonable cause to suspect that the child is at imminent risk of~~
 19 ~~harm~~ without first obtaining a warrant from a court unless the child is likely to experience sexual abuse or
 20 physical abuse in the time that is required to obtain a warrant;

21 (e) recognize that a child is entitled to assert the child's constitutional rights;

22 (f) ensure that all children have a right to a healthy and safe childhood in a permanent placement;

23 and

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

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

1 whenever appropriate.

2 (3) In implementing this chapter, whenever it is necessary to remove a child from the child's home,
3 the department shall, when it is in the best interests of the child, place the child in accordance with 41-3-450
4 and 41-3-451. Prior to approving a placement, the department shall investigate whether anyone living in the
5 home has been convicted of a crime involving serious harm to children.

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

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

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

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

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

18 ~~(7)~~(8) In implementing the policy of this section, the child's health and safety are of paramount
19 concern."

20

21 **Section 4.** Section 41-3-301, MCA, is amended to read:

22 **"41-3-301. Emergency protective services.** (1) (a) Any Except as provided in subsection (1)(b), a
23 child protection specialist of the department, a peace officer, or the county attorney who has reason to believe
24 any child is in immediate or apparent danger of harm may immediately remove the may not remove a child and
25 place the child in a protective facility without first obtaining a warrant pursuant to [section 1]. After ensuring that
26 the child is safe, the department may make a request for further assistance from the law enforcement agency or
27 take appropriate legal action.

28 (b) A child protection specialist of the department, a peace officer, or a county attorney may

1 remove a child without a warrant only when the person has probable cause to believe that the child is likely to
 2 experience sexual abuse or physical abuse in the time that is required to obtain a warrant under [section 1].

3 (c) After ensuring that the child is safe, the department may make a request for further assistance
 4 from the law enforcement agency or take appropriate legal action.

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

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

11 (ii) include information regarding the emergency protective services hearing within 5 days under
 12 41-3-306, the required show cause hearing within 20 days, and the purpose of the hearings;

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

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

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

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

20 (C) may have a support person present during any meeting with the child protection specialist
 21 concerning emergency protective services, including the emergency protective services hearing provided for in
 22 41-3-306; and

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

24 ~~(e)(d)~~ A copy of the notification required under subsection ~~(1)(b)-(1)(c)~~ must be provided within 24
 25 hours to the office of state public defender.

26 (2) If a child protection specialist of the department, a peace officer, or ~~the~~ a county attorney
 27 determines in an investigation of abuse or neglect of a child that the child is in danger because of the
 28 occurrence of partner or family member assault, as provided for in 45-5-206, or strangulation of a partner or

1 family member, as provided for in 45-5-215, against an adult member of the household or that the child needs
2 protection as a result of the occurrence of partner or family member assault or strangulation of a partner or
3 family member against an adult member of the household, the department shall take appropriate steps for the
4 protection of the child, which may include:

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

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

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

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

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

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

24 (6) If a child is removed from the child's home by the department, a child protection specialist shall
25 submit an affidavit regarding the circumstances of the emergency removal to the county attorney and provide a
26 copy of the affidavit to the office of state public defender and, if possible, the parents, parent, or guardian within
27 2 working days of the emergency removal. An abuse and neglect petition must be filed in accordance with 41-3-
28 422 within ~~5 working days, excluding weekends and holidays,~~ 72 hours of the emergency removal of a child

1 unless arrangements acceptable to the agency for the care of the child have been made by the parents or a
2 written prevention plan has been entered into pursuant to 41-3-302.

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

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

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

13

14 **Section 5.** Section 41-3-423, MCA, is amended to read:

15 **"41-3-423. Reasonable efforts required to prevent removal of child or to return -- exemption --**
16 **findings -- permanency plan.** (1) (a) The department shall make reasonable efforts to prevent the necessity of
17 removal of a child from the child's home and to reunify families that have been separated by the state. The
18 application for a warrant to remove a child from the child's home pursuant to [section 1] does not absolve the
19 department from the duty to make reasonable efforts to prevent the necessity of removal.

20 (b) For the purposes of this subsection (1), the term "reasonable efforts" means the department
21 shall in good faith:

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

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

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

1 placement issues;

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

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

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

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

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

14 (ix) monitor progress and participation in services; and

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

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

20 (2) Except in a proceeding subject to the federal Indian Child Welfare Act [or the Montana Indian
21 Child Welfare Act provided for in Title 41, chapter 3, part 13], the department may, at any time during an abuse
22 and neglect proceeding, make a request for a determination that preservation or reunification services need not
23 be provided. If an indigent parent is not already represented by counsel, the court shall immediately provide for
24 the appointment or assignment of counsel to represent the indigent parent in accordance with the provisions of
25 41-3-425. A court may make a finding that the department need not make reasonable efforts to provide
26 preservation or reunification services if the court finds that the parent has:

27 (a) subjected a child to aggravated circumstances, including but not limited to abandonment,
28 torture, chronic abuse, or sexual abuse or chronic, severe neglect of a child;

1 (b) committed, aided, abetted, attempted, conspired, or solicited deliberate or mitigated deliberate
2 homicide of a child;

3 (c) committed aggravated assault against a child;

4 (d) committed neglect of a child that resulted in serious bodily injury or death; or

5 (e) had parental rights to the child's sibling or other child of the parent involuntarily terminated and
6 the circumstances related to the termination of parental rights are relevant to the parent's ability to adequately
7 care for the child at issue.

8 (3) Preservation or reunification services are not required for a putative father, as defined in 42-2-
9 201, if the court makes a finding that the putative father has failed to do any of the following:

10 (a) contribute to the support of the child for an aggregate period of 1 year, although able to do so;

11 (b) establish a substantial relationship with the child. A substantial relationship is demonstrated by:

12 (i) visiting the child at least monthly when physically and financially able to do so; or

13 (ii) having regular contact with the child or with the person or agency having the care and custody
14 of the child when physically and financially able to do so; and

15 (iii) manifesting an ability and willingness to assume legal and physical custody of the child if the
16 child was not in the physical custody of the other parent.

17 (c) register with the putative father registry pursuant to Title 42, chapter 2, part 2, and the person
18 has not been:

19 (i) adjudicated in Montana to be the father of the child for the purposes of child support; or

20 (ii) recorded on the child's birth certificate as the child's father.

21 (4) A judicial finding that preservation or reunification services are not necessary under this section
22 must be supported by clear and convincing evidence.

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

28 (6) If reasonable efforts have been made to prevent removal of a child from the home or to return a

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

8 (7) When determining whether the department has made reasonable efforts to prevent the
 9 necessity of removal of a child from the child's home or to reunify families that have been separated by the
 10 state, the court shall review the services provided by the agency including, if applicable, protective services
 11 provided pursuant to 41-3-302. (Bracketed language in subsection (2) terminates June 30, 2025--sec. 55, Ch.
 12 716, L. 2023.)"

13
 14 NEW SECTION. Section 6. Codification instruction. [Sections 1 and 2] are intended to be codified
 15 as an integral part of Title 41, chapter 3, part 3, and the provisions of Title 41, chapter 3, part 3, apply to
 16 [sections 1 and 2].

17 - END -