

HOUSE BILL NO. 408

INTRODUCED BY D. LENZ

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS REGARDING EMERGENCY REMOVAL OF A CHILD AND PROVIDING THAT A CHILD MAY BE REMOVED ONLY WHEN A CHILD IS AT RISK FOR SERIOUS BODILY INJURY OR STARVATION; AND AMENDING SECTION 41-3-301, 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 service. (1) Any child protective social worker 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 and at risk of serious bodily injury, as defined in 45-2-101, or malnutrition or starvation 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 must include the reason for removal, information regarding the show cause hearing, and the purpose of the show cause hearing and must 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 social worker concerning emergency protective services.

(2) If a social worker of the department, 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



1 or guardian who is a victim of alleged partner or family member assault or strangulation of a partner or family
2 member;

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

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

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

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

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

19 (6) [Except as provided in 41-3-305,] if a child is removed from the child's home by the department, a
20 child protective social worker shall submit an affidavit regarding the circumstances of the emergency removal to
21 the county attorney and provide a copy of the affidavit to the parents or guardian, if possible, within 2 working
22 days of the emergency removal. An abuse and neglect petition must be filed within 5 working days, excluding
23 weekends and holidays, of the emergency removal of a child unless arrangements acceptable to the agency for
24 the care of the child have been made by the parents or voluntary protective services are provided pursuant to
25 41-3-302.

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

28 (8) If the department determines that a petition for immediate protection and emergency protective
29 services must be filed to protect the safety of the child, the social worker shall interview the parents of the child
30 to whom the petition pertains, if the parents are reasonably available, before the petition may be filed. The district

1 court may immediately issue an order for immediate protection of the child.

2 (9) The department shall make the necessary arrangements for the child's well-being as are required
3 prior to the court hearing. (Bracketed language in subsection (6) terminates June 30, 2019--sec. 5, Ch. 141, L.
4 2017.)"

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