

HOUSE BILL NO. 77

INTRODUCED BY S. HOWELL

BY REQUEST OF THE CHILD PROTECTIVE SERVICES GROUP

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO CHILD ABUSE AND NEGLECT INVESTIGATIONS BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; REMOVING TEMPORARY INVESTIGATIVE AUTHORITY; AMENDING SECTIONS 3-5-901, 41-3-422, 41-3-427, AND 41-3-432, MCA; AND REPEALING SECTION 41-3-433, MCA."

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

Section 1. Section 3-5-901, MCA, is amended to read:

"3-5-901. State assumption of district court expenses. (1) There is a state-funded district court program under the judicial branch. Under this program, the office of court administrator shall fund all district court costs, except as provided in subsection (3). These costs include but are not limited to the following:

(a) salaries and benefits for:

(i) district court judges;

(ii) law clerks;

(iii) court reporters, as provided in 3-5-601;

(iv) juvenile probation officers, youth division offices staff, and assessment officers of the youth court;

(v) standing masters; and

(vi) other employees of the district court;

(b) in criminal cases:

(i) fees for transcripts of proceedings, as provided in 3-5-604;

(ii) witness fees and necessary expenses, as provided in 46-15-116;

(iii) juror fees and necessary expenses;

(iv) for a psychiatric examination under 46-14-202, the cost of the examination and other

1 associated expenses, as provided in 46-14-202(4); and

2 (v) for commitment under 46-14-221, the cost of transporting the defendant to the custody of the
3 director of the department of public health and human services to be placed in an appropriate facility of the
4 department of public health and human services and of transporting the defendant back for any proceedings, as
5 provided in 46-14-221(5);

6 (c) except as provided in 47-1-119, the district court expenses in all postconviction proceedings
7 held pursuant to Title 46, chapter 21, and in all habeas corpus proceedings held pursuant to Title 46, chapter
8 22, and appeals from those proceedings;

9 (d) except as provided in 47-1-119, the following expenses incurred by the state in federal habeas
10 corpus cases that challenge the validity of a conviction or of a sentence:

11 (i) transcript fees;

12 (ii) witness fees; and

13 (iii) expenses for psychiatric examinations;

14 (e) except as provided in 47-1-119, the following expenses incurred by the state in a proceeding
15 held pursuant to Title 41, chapter 3, part 4 or 6, that seeks ~~temporary investigative authority of a youth,~~
16 temporary legal custody of a youth, or termination of the parent-child legal relationship and permanent custody:

17 (i) transcript fees;

18 (ii) witness fees;

19 (iii) expenses for medical and psychological evaluation of a youth or the youth's parent, guardian,
20 or other person having physical or legal custody of the youth except for expenses for services that a person is
21 eligible to receive under a public program that provides medical or psychological evaluation;

22 (iv) expenses associated with appointment of a guardian ad litem or child advocate for the youth;

23 and

24 (v) expenses associated with court-ordered alternative dispute resolution;

25 (f) except as provided in 47-1-119, costs of juror and witness fees and witness expenses before a
26 grand jury;

27 (g) costs of the court-sanctioned educational program concerning the effects of dissolution of
28 marriage on children, as required in 40-4-226, and expenses of education when ordered for the investigation

1 and preparation of a report concerning parenting arrangements, as provided in 40-4-215(2)(a);

2 (h) except as provided in 47-1-119, all district court expenses associated with civil jury trials if
3 similar expenses were paid out of the district court fund or the county general fund in any previous year;

4 (i) all other costs associated with the operation and maintenance of the district court, including
5 contract costs for court reporters who are independent contractors; and

6 (j) costs associated with the operation and maintenance of the youth court and youth court
7 division operations pursuant to 41-5-111 and subsection (1)(a) of this section, except for those costs paid by
8 other entities identified in Title 41, chapter 5.

9 (2) If a cost is not paid directly by the office of court administrator, the county shall pay the cost
10 and the office of court administrator shall reimburse the county within 30 days of receipt of a claim.

11 (3) For the purposes of subsection (1), district court costs paid by the office of court administrator
12 do not include:

13 (a) costs for clerks of district court and employees and expenses of the offices of the clerks of
14 district court;

15 (b) costs of providing and maintaining district court office space; or

16 (c) charges incurred against a county by virtue of any provision of Title 7 or 46."
17

18 **Section 2.** Section 41-3-422, MCA, is amended to read:

19 "~~41-3-422. (Temporary) Abuse and neglect petitions -- burden of proof.~~ (1)(a) Proceedings
20 under this chapter must be initiated by the filing of a petition. A petition may request the following relief:

21 (i) ~~immediate protection and emergency protective services, as provided in 41-3-427 ;~~

22 (ii) ~~temporary investigative authority, as provided in 41-3-433 ;~~

23 (iii) ~~temporary legal custody, as provided in 41-3-442 ;~~

24 (iv) ~~long-term custody, as provided in 41-3-445 ;~~

25 (v) ~~termination of the parent-child legal relationship, as provided in 41-3-607 ;~~

26 (vi) ~~appointment of a guardian pursuant to 41-3-444 ;~~

27 (vii) ~~a determination that preservation or reunification services need not be provided; or~~

28 (viii) ~~any combination of the provisions of subsections (1)(a)(i) through (1)(a)(vii) or any other relief~~

1 that may be required for the best interests of the child.

2 (b) — The petition may be modified for different relief at any time within the discretion of the court.

3 (c) — A petition for temporary legal custody may be the initial petition filed in a case.

4 (d) — A petition for the termination of the parent-child legal relationship may be the initial petition filed
5 in a case if a request for a determination that preservation or reunification services need not be provided is
6 made in the petition.

7 (2) — The county attorney, attorney general, or an attorney hired by the county shall file all petitions
8 under this chapter. A petition filed by the county attorney, attorney general, or an attorney hired by the county
9 must be accompanied by:

10 (a) — an affidavit by the department alleging that the child appears to have been abused or neglected
11 and stating the basis for the petition; and

12 (b) — a separate notice to the court stating any statutory time deadline for a hearing.

13 (3) — Abuse and neglect petitions must be given highest preference by the court in setting hearing
14 dates.

15 (4) — An abuse and neglect petition is a civil action brought in the name of the state of Montana. The
16 Montana Rules of Civil Procedure and the Montana Rules of Evidence apply except as modified in this chapter.
17 Proceedings under a petition are not a bar to criminal prosecution.

18 (5) — (a) Except as provided in subsection (5)(b), the person filing the abuse and neglect petition has
19 the burden of presenting evidence required to justify the relief requested and establishing:

20 (i) — probable cause for the issuance of an order for immediate protection and emergency protective
21 services or an order for temporary investigative authority ;

22 (ii) — a preponderance of the evidence for an order of adjudication or temporary legal custody;

23 (iii) — a preponderance of the evidence for an order of long-term custody; or

24 (iv) — clear and convincing evidence for an order terminating the parent-child legal relationship.

25 (b) — If a proceeding under this chapter involves an Indian child, as defined in the federal Indian
26 Child Welfare Act, 25 U.S.C. 1901, et seq., or 41-3-1303, the standards of proof required for legal relief under
27 the federal Indian Child Welfare Act and the Montana Indian Child Welfare Act provided for in Title 41, chapter
28 3, part 13, apply.

1 (6) — (a) Except as provided in the federal Indian Child Welfare Act and the Montana Indian Child
2 Welfare Act, if applicable, the parents or parent, guardian, or other person or agency having legal custody of
3 the child named in the petition, if residing in the state, must be served personally with a copy of the initial
4 petition and a petition to terminate the parent-child legal relationship at least 5 days before the date set for
5 hearing. If the person or agency cannot be served personally, the person or agency may be served by
6 publication as provided in 41-3-428 and 41-3-429.

7 (b) — Copies of all other petitions must be served upon the person or the person's attorney of record
8 by certified mail, by personal service, or by publication as provided in 41-3-428 and 41-3-429. If service is by
9 certified mail, the department must receive a return receipt signed by the person to whom the notice was mailed
10 for the service to be effective. Service of the notice is considered to be effective if, in the absence of a return
11 receipt, the person to whom the notice was mailed appears at the hearing.

12 (7) — If personal service cannot be made upon the parents or parent, guardian, or other person or
13 agency having legal custody, the court shall immediately provide for the appointment or assignment of an
14 attorney as provided for in 41-3-425 to represent the unavailable party when, in the opinion of the court, the
15 interests of justice require. If personal service cannot be made upon a putative father, the court may not provide
16 for the appointment or assignment of counsel as provided for in 41-3-425 to represent the father unless, in the
17 opinion of the court, the interests of justice require counsel to be appointed or assigned.

18 (8) — If a parent of the child is a minor, notice must be given to the minor parent's parents or
19 guardian, and if there is no guardian, the court shall appoint one.

20 (9) — (a) Any person interested in any cause under this chapter has the right to appear. Any foster
21 parent, preadoptive parent, or relative caring for the child must be given legal notice by the attorney filing the
22 petition of all judicial hearings for the child and has the right to be heard. The right to appear or to be heard
23 does not make that person a party to the action. Any foster parent, preadoptive parent, or relative caring for the
24 child must be given notice of all reviews by the reviewing body.

25 (b) — A foster parent, preadoptive parent, or relative of the child who is caring for or a relative of the
26 child who has cared for a child who is the subject of the petition who appears at a hearing set pursuant to this
27 section may be allowed by the court to intervene in the action if the court, after a hearing in which evidence is
28 presented on those subjects provided for in 41-3-437 (4), determines that the intervention of the person is in the

1 best interests of the child. A person granted intervention pursuant to this subsection is entitled to participate in
2 the adjudicatory hearing held pursuant to 41-3-437 and to notice and participation in subsequent proceedings
3 held pursuant to this chapter involving the custody of the child.

4 (c) — Whenever a child is placed with a foster parent, preadoptive parent, or relative, the department
5 shall provide written notice to the foster parent, preadoptive parent, or relative explaining the foster parent's,
6 preadoptive parent's, or relative's rights under this subsection (9) to receive notice, to appear and be heard, and
7 to attempt to intervene in proceedings under this chapter.

8 (10) — An abuse and neglect petition must state:

9 (a) — the nature of the alleged abuse or neglect and of the relief requested;

10 (b) — the full name, age, and address of the child and the name and address of the child's parents or
11 the guardian or person having legal custody of the child; and

12 (c) — the names, addresses, and relationship to the child of all persons who are necessary parties to
13 the action.

14 (11) — Any party in a proceeding pursuant to this section is entitled to counsel as provided in 41-3-
15 425.

16 (12) — At any stage of the proceedings considered appropriate by the court, the court may order an
17 alternative dispute resolution proceeding or the parties may voluntarily participate in an alternative dispute
18 resolution proceeding. An alternative dispute resolution proceeding under this chapter may include a family
19 engagement meeting, mediation, or a settlement conference. If a court orders an alternative dispute resolution
20 proceeding, a party who does not wish to participate may file a motion objecting to the order. If the department
21 is a party to the original proceeding, a representative of the department who has complete authority to settle the
22 issue or issues in the original proceeding must be present at any alternative dispute resolution proceeding.

23 (13) — Service of a petition under this section must be accompanied by a written notice advising the
24 child's parent, guardian, or other person having physical or legal custody of the child of the:

25 (a) — right, pursuant to 41-3-425, to appointment or assignment of counsel if the person is indigent or
26 if appointment or assignment of counsel is required under the federal Indian Child Welfare Act or the Montana
27 Indian Child Welfare Act, if applicable;

28 (b) — right to contest the allegations in the petition; and

1 (c) — timeliness for hearings and determinations required under this chapter.

2 (14) — If appropriate, orders issued under this chapter must contain a notice provision advising a
3 child's parent, guardian, or other person having physical or legal custody of the child that:

4 (a) — the court is required by federal and state laws to hold a permanency hearing to determine the
5 permanent placement of a child no later than 12 months after a judge determines that the child has been
6 abused or neglected or 12 months after the first 60 days that the child has been removed from the child's home;

7 (b) — if a child has been in foster care for 15 of the last 22 months, state law presumes that
8 termination of parental rights is in the best interests of the child and the state is required to file a petition to
9 terminate parental rights; and

10 (c) — completion of a treatment plan does not guarantee the return of a child.

11 (15) — A court may appoint a standing master to conduct hearings and propose decisions and orders
12 to the court for court consideration and action. A standing master may not conduct a proceeding to terminate
13 parental rights. A standing master must be a member of the state bar of Montana and must be knowledgeable
14 in the area of child abuse and neglect laws. (Terminates June 30, 2025—sec. 55, Ch. 716, L. 2023.)

15 **41-3-422. (Effective July 1, 2025) Abuse and neglect petitions -- burden of proof.** (1) (a)

16 Proceedings under this chapter must be initiated by the filing of a petition. A petition may request the following
17 relief:

18 (i) immediate protection and emergency protective services, as provided in 41-3-427;

19 (ii) — temporary investigative authority, as provided in 41-3-433 ;

20 (iii)(ii) temporary legal custody, as provided in 41-3-442;

21 (iv)(iii) long-term custody, as provided in 41-3-445;

22 (v)(iv) termination of the parent-child legal relationship, as provided in 41-3-607;

23 (vi)(v) appointment of a guardian pursuant to 41-3-444;

24 (vii)(vi) a determination that preservation or reunification services need not be provided; or

25 (viii)(vii) any combination of the provisions of subsections (1)(a)(i) through (1)(a)(vii)-(1)(a)(vi) or any
26 other relief that may be required for the best interests of the child.

27 (b) The petition may be modified for different relief at any time within the discretion of the court.

28 (c) A petition for temporary legal custody may be the initial petition filed in a case.

1 (d) A petition for the termination of the parent-child legal relationship may be the initial petition filed
2 in a case if a request for a determination that preservation or reunification services need not be provided is
3 made in the petition.

4 (2) The county attorney, attorney general, or an attorney hired by the county shall file all petitions
5 under this chapter. A petition filed by the county attorney, attorney general, or an attorney hired by the county
6 must be accompanied by:

7 (a) an affidavit by the department alleging that the child appears to have been abused or neglected
8 and stating the basis for the petition; and

9 (b) a separate notice to the court stating any statutory time deadline for a hearing.

10 (3) Abuse and neglect petitions must be given highest preference by the court in setting hearing
11 dates.

12 (4) An abuse and neglect petition is a civil action brought in the name of the state of Montana. The
13 Montana Rules of Civil Procedure and the Montana Rules of Evidence apply except as modified in this chapter.
14 Proceedings under a petition are not a bar to criminal prosecution.

15 (5) (a) Except as provided in subsection (5)(b), the person filing the abuse and neglect petition has
16 the burden of presenting evidence required to justify the relief requested and establishing:

17 (i) probable cause for the issuance of an order for immediate protection and emergency protective
18 services ~~or an order for temporary investigative authority;~~

19 (ii) a preponderance of the evidence for an order of adjudication or temporary legal custody;

20 (iii) a preponderance of the evidence for an order of long-term custody; or

21 (iv) clear and convincing evidence for an order terminating the parent-child legal relationship.

22 (b) If a proceeding under this chapter involves an Indian child, as defined in the federal Indian
23 Child Welfare Act, 25 U.S.C. 1901, et seq., the standards of proof required for legal relief under the federal
24 Indian Child Welfare Act apply.

25 (6) (a) Except as provided in the federal Indian Child Welfare Act, if applicable, the parents or
26 parent, guardian, or other person or agency having legal custody of the child named in the petition, if residing in
27 the state, must be served personally with a copy of the initial petition and a petition to terminate the parent-child
28 legal relationship at least 5 days before the date set for hearing. If the person or agency cannot be served

1 personally, the person or agency may be served by publication as provided in 41-3-428 and 41-3-429.

2 (b) Copies of all other petitions must be served upon the person or the person's attorney of record
3 by certified mail, by personal service, or by publication as provided in 41-3-428 and 41-3-429. If service is by
4 certified mail, the department must receive a return receipt signed by the person to whom the notice was mailed
5 for the service to be effective. Service of the notice is considered to be effective if, in the absence of a return
6 receipt, the person to whom the notice was mailed appears at the hearing.

7 (7) If personal service cannot be made upon the parents or parent, guardian, or other person or
8 agency having legal custody, the court shall immediately provide for the appointment or assignment of an
9 attorney as provided for in 41-3-425 to represent the unavailable party when, in the opinion of the court, the
10 interests of justice require. If personal service cannot be made upon a putative father, the court may not provide
11 for the appointment or assignment of counsel as provided for in 41-3-425 to represent the father unless, in the
12 opinion of the court, the interests of justice require counsel to be appointed or assigned.

13 (8) If a parent of the child is a minor, notice must be given to the minor parent's parents or
14 guardian, and if there is no guardian, the court shall appoint one.

15 (9) (a) Any person interested in any cause under this chapter has the right to appear. Any foster
16 parent, preadoptive parent, or relative caring for the child must be given legal notice by the attorney filing the
17 petition of all judicial hearings for the child and has the right to be heard. The right to appear or to be heard
18 does not make that person a party to the action. Any foster parent, preadoptive parent, or relative caring for the
19 child must be given notice of all reviews by the reviewing body.

20 (b) A foster parent, preadoptive parent, or relative of the child who is caring for or a relative of the
21 child who has cared for a child who is the subject of the petition who appears at a hearing set pursuant to this
22 section may be allowed by the court to intervene in the action if the court, after a hearing in which evidence is
23 presented on those subjects provided for in 41-3-437(4), determines that the intervention of the person is in the
24 best interests of the child. A person granted intervention pursuant to this subsection is entitled to participate in
25 the adjudicatory hearing held pursuant to 41-3-437 and to notice and participation in subsequent proceedings
26 held pursuant to this chapter involving the custody of the child.

27 (c) Whenever a child is placed with a foster parent, preadoptive parent, or relative, the department
28 shall provide written notice to the foster parent, preadoptive parent, or relative explaining the foster parent's,

1 preadoptive parent's, or relative's rights under this subsection (9) to receive notice, to appear and be heard, and
2 to attempt to intervene in proceedings under this chapter.

3 (10) An abuse and neglect petition must state:

4 (a) the nature of the alleged abuse or neglect and of the relief requested;

5 (b) the full name, age, and address of the child and the name and address of the child's parents or
6 the guardian or person having legal custody of the child; and

7 (c) the names, addresses, and relationship to the child of all persons who are necessary parties to
8 the action.

9 (11) Any party in a proceeding pursuant to this section is entitled to counsel as provided in 41-3-
10 425.

11 (12) At any stage of the proceedings considered appropriate by the court, the court may order an
12 alternative dispute resolution proceeding or the parties may voluntarily participate in an alternative dispute
13 resolution proceeding. An alternative dispute resolution proceeding under this chapter may include a family
14 engagement meeting, mediation, or a settlement conference. If a court orders an alternative dispute resolution
15 proceeding, a party who does not wish to participate may file a motion objecting to the order. If the department
16 is a party to the original proceeding, a representative of the department who has complete authority to settle the
17 issue or issues in the original proceeding must be present at any alternative dispute resolution proceeding.

18 (13) Service of a petition under this section must be accompanied by a written notice advising the
19 child's parent, guardian, or other person having physical or legal custody of the child of the:

20 (a) right, pursuant to 41-3-425, to appointment or assignment of counsel if the person is indigent or
21 if appointment or assignment of counsel is required under the federal Indian Child Welfare Act, if applicable;

22 (b) right to contest the allegations in the petition; and

23 (c) timelines for hearings and determinations required under this chapter.

24 (14) If appropriate, orders issued under this chapter must contain a notice provision advising a
25 child's parent, guardian, or other person having physical or legal custody of the child that:

26 (a) the court is required by federal and state laws to hold a permanency hearing to determine the
27 permanent placement of a child no later than 12 months after a judge determines that the child has been
28 abused or neglected or 12 months after the first 60 days that the child has been removed from the child's home;

1 (b) if a child has been in foster care for 15 of the last 22 months, state law presumes that
 2 termination of parental rights is in the best interests of the child and the state is required to file a petition to
 3 terminate parental rights; and

4 (c) completion of a treatment plan does not guarantee the return of a child.

5 (15) A court may appoint a standing master to conduct hearings and propose decisions and orders
 6 to the court for court consideration and action. A standing master may not conduct a proceeding to terminate
 7 parental rights. A standing master must be a member of the state bar of Montana and must be knowledgeable
 8 in the area of child abuse and neglect laws."

9

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

11 ~~" 41-3-427. (Temporary) Petition for immediate protection and emergency protective services --~~
 12 ~~evidence and consideration of harm of removal -- order -- service. (1) (a) In a case in which it appears that~~
 13 ~~a child is abused or neglected or is in danger of being abused or neglected, the county attorney, the attorney~~
 14 ~~general, or an attorney hired by the county may file a petition for immediate protection and emergency~~
 15 ~~protective services. In implementing the policy of this section, the child's health and safety are of paramount~~
 16 ~~concern.~~

17 ~~(b) — A petition for immediate protection and emergency protective services must state the specific~~
 18 ~~authority requested and must be supported by an affidavit signed by a representative of the department stating~~
 19 ~~in detail the alleged facts upon which the request is based and the facts establishing probable cause or, if the~~
 20 ~~case is subject to the federal Indian Child Welfare Act or the Montana Indian Child Welfare Act provided for in~~
 21 ~~Title 41, chapter 3, part 13, clear and convincing evidence that a child is abused or neglected or is in danger of~~
 22 ~~being abused or neglected.~~

23 ~~(c) — The affidavit of the department representative must contain:~~

24 ~~(i) — information, if any, regarding statements made by the parents about the facts of the case; and~~

25 ~~(ii) — specific, written documentation as to why the risk of allowing the child to remain at home~~
 26 ~~substantially outweighs the harm of removing the child, including consideration of:~~

27 ~~(A) — the emotional trauma the child is likely to experience if separated from the family;~~

28 ~~(B) — the child's relationships with other members of the household, including siblings;~~

1 (C) — the child's schooling and social relationships that could be disrupted with a placement out of
2 the neighborhood;

3 (D) — the impact the removal would have on services the child is receiving and on extracurricular
4 activities that benefit the child; and

5 (E) — documentation of reasonable efforts made to keep the family intact.

6 (d) — If from the alleged facts presented in the affidavit it appears to the court that there is probable
7 cause or, if the case is subject to the federal Indian Child Welfare Act or the Montana Indian Child Welfare Act,
8 clear and convincing evidence to believe that the child has been abused or neglected or is in danger of being
9 abused and neglected, the judge shall grant emergency protective services and the relief authorized by
10 subsection (2) until the adjudication hearing or the temporary investigative hearing. If it appears from the
11 alleged facts contained in the affidavit that there is insufficient probable cause or, if the case is subject to the
12 federal Indian Child Welfare Act or the Montana Indian Child Welfare Act, clear and convincing evidence to
13 believe that the child has been abused or neglected or is in danger of being abused or neglected, the court
14 shall dismiss the petition.

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

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

25 (2) — Pursuant to subsection (1), if the court finds probable cause or, if the case is subject to the
26 federal Indian Child Welfare Act or the Montana Indian Child Welfare Act, clear and convincing evidence based
27 on the petition and affidavit, the court may issue an order for immediate protection of the child. The court shall
28 consider the parents' statements, if any, included with the petition and any accompanying affidavit or report to

1 the court. If the court finds probable cause or, if the case is subject to the federal Indian Child Welfare Act or the
2 Montana Indian Child Welfare Act, clear and convincing evidence, the court may issue an order granting the
3 following forms of relief, which do not constitute a court-ordered treatment plan under 41-3-443 :

4 (a) — the right of entry by a peace officer or department worker;

5 (b) — the right to place the child in temporary medical or out-of-home care, including but not limited to
6 care provided by a noncustodial parent, kinship or foster family, group home, or institution;

7 (c) — the right of the department to locate, contact, and share information with any extended family
8 members who may be considered as placement options for the child;

9 (d) — a requirement that the parents, guardian, or other person having physical or legal custody
10 furnish information that the court may designate and obtain evaluations that may be necessary to determine
11 whether a child is a youth in need of care;

12 (e) — a requirement that the perpetrator of the alleged child abuse or neglect be removed from the
13 home to allow the child to remain in the home;

14 (f) — a requirement that the parent provide the department with the name and address of the other
15 parent, if known, unless parental rights to the child have been terminated;

16 (g) — a requirement that the parent provide the department with the names and addresses of
17 extended family members who may be considered as placement options for the child who is the subject of the
18 proceeding; and

19 (h) — any other temporary disposition that may be required in the best interests of the child that does
20 not require an expenditure of money by the department unless the court finds after notice and a hearing that the
21 expenditure is reasonable and that resources are available for payment. The department is the payor of last
22 resort after all family, insurance, and other resources have been examined.

23 (3) — When requesting emergency protective services under this section, the department shall
24 provide the court with information on:

25 (a) — whether a kinship placement is available; or

26 (b) — if a family foster home has been identified:

27 (i) — where the foster home is located in relation to the child's home;

28 (ii) — whether the foster placement can accommodate the proposed visitation schedule;

- 1 (iii) — whether siblings can be placed together;
- 2 (iv) — the proximity of the foster home to the child's home and school;
- 3 (v) — whether the child will be able to observe religious or cultural practices important to the child;
- 4 and
- 5 (vi) — whether the foster home is able to accommodate any special needs the child may have.
- 6 (4) — In making a removal determination, the court shall weigh and evaluate, in the factual setting,
- 7 the harm to the child that will result from removal and determine if allowing the child to remain in the home
- 8 substantially outweighs the harm of removal. Factors for consideration of the best interests of the child include
- 9 but are not limited to:
- 10 (a) — the factors identified in subsections (1)(c)(ii)(A) through (1)(c)(ii)(D); and
- 11 (b) — whether the department made reasonable efforts, as described in subsection (1)(c)(ii)(E), to
- 12 keep the family intact.
- 13 (5) — (a) An order for removal of a child from the home must include a finding that:
- 14 (i) — continued residence of the child with the parent is contrary to the welfare of the child;
- 15 (ii) — an out-of-home placement is in the best interests of the child; and
- 16 (iii) — the risk of allowing the child to remain in the home substantially outweighs the harm of removal.
- 17 (b) — The court shall provide written findings to explain why the risk of the child's continued stay in
- 18 the home outweighs the harm of removing the child.
- 19 (6) — The order for immediate protection of the child must require the person served to comply
- 20 immediately with the terms of the order and to appear before the court issuing the order on the date specified
- 21 for a show cause hearing. Upon a failure to comply or show cause, the court may hold the person in contempt
- 22 or place temporary physical custody of the child with the department until further order.
- 23 (7) — The petition must be served as provided in 41-3-422 or, if the case involves an Indian child, as
- 24 provided in 41-3-1311. (Terminates June 30, 2025—sec. 55, Ch. 716, L. 2023.)

25 **41-3-427. (Effective July 1, 2025) Petition for immediate protection and emergency protective**
 26 **services -- evidence and consideration of harm of removal -- order -- service.** (1) (a) In a case in which it
 27 appears that a child is abused or neglected or is in danger of being abused or neglected, the county attorney,
 28 the attorney general, or an attorney hired by the county may file a petition for immediate protection and

1 emergency protective services. In implementing the policy of this section, the child's health and safety are of
2 paramount concern.

3 (b) A petition for immediate protection and emergency protective services must state the specific
4 authority requested and must be supported by an affidavit signed by a representative of the department stating
5 in detail the alleged facts upon which the request is based and the facts establishing probable cause or, if the
6 case is subject to the federal Indian Child Welfare Act, clear and convincing evidence that a child is abused or
7 neglected or is in danger of being abused or neglected.

8 (c) The affidavit of the department representative must contain:

9 (i) information, if any, regarding statements made by the parents about the facts of the case; and

10 (ii) specific, written documentation as to why the risk of allowing the child to remain at home
11 substantially outweighs the harm of removing the child, including consideration of:

12 (A) the emotional trauma the child is likely to experience if separated from the family;

13 (B) the child's relationships with other members of the household, including siblings;

14 (C) the child's schooling and social relationships that could be disrupted with a placement out of
15 the neighborhood;

16 (D) the impact the removal would have on services the child is receiving and on extracurricular
17 activities that benefit the child; and

18 (E) documentation of reasonable efforts made to keep the family intact.

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

27 (e) If the parents, parent, guardian, person having physical or legal custody of the child, or attorney
28 for the child disputes the material issues of fact contained in the affidavit or the veracity of the affidavit, the

1 person may request a contested show cause hearing pursuant to 41-3-432 within 10 days following service of
2 the petition and affidavit.

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

9 (g) An order for immediate protection and emergency protective services may not be issued for a
10 period longer than 90 days.

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

18 (a) the right of entry by a peace officer or department worker;

19 (b) the right to place the child in temporary medical or out-of-home care, including but not limited to
20 care provided by a noncustodial parent, kinship or foster family, group home, or institution;

21 (c) the right of the department to locate, contact, and share information with any extended family
22 members who may be considered as placement options for the child;

23 (d) a requirement that the parents, guardian, or other person having physical or legal custody
24 furnish information that the court may designate and obtain evaluations that may be necessary to determine
25 whether a child is a youth in need of care;

26 (e) a requirement that the perpetrator of the alleged child abuse or neglect be removed from the
27 home to allow the child to remain in the home;

28 (f) a requirement that the parent provide the department with the name and address of the other

1 parent, if known, unless parental rights to the child have been terminated;

2 (g) a requirement that the parent provide the department with the names and addresses of
3 extended family members who may be considered as placement options for the child who is the subject of the
4 proceeding; and

5 (h) any other temporary disposition that may be required in the best interests of the child that does
6 not require an expenditure of money by the department unless the court finds after notice and a hearing that the
7 expenditure is reasonable and that resources are available for payment. The department is the payor of last
8 resort after all family, insurance, and other resources have been examined.

9 (3) When requesting emergency protective services under this section, the department shall
10 provide the court with information on:

11 (a) whether a kinship placement is available; or

12 (b) if a family foster home has been identified:

13 (i) where the foster home is located in relation to the child's home;

14 (ii) whether the foster placement can accommodate the proposed visitation schedule;

15 (iii) whether siblings can be placed together;

16 (iv) the proximity of the foster home to the child's home and school;

17 (v) whether the child will be able to observe religious or cultural practices important to the child;

18 and

19 (vi) whether the foster home is able to accommodate any special needs the child may have.

20 (4) In making a removal determination, the court shall weigh and evaluate, in the factual setting,
21 the harm to the child that will result from removal and determine if allowing the child to remain in the home
22 substantially outweighs the harm of removal. Factors for consideration of the best interests of the child include
23 but are not limited to:

24 (a) the factors identified in subsections (1)(c)(ii)(A) through (1)(c)(ii)(D); and

25 (b) whether the department made reasonable efforts, as described in subsection (1)(c)(ii)(E), to
26 keep the family intact.

27 (5) (a) An order for removal of a child from the home must include a finding that:

28 (i) continued residence of the child with the parent is contrary to the welfare of the child;

- 1 (ii) an out-of-home placement is in the best interests of the child; and
- 2 (iii) the risk of allowing the child to remain in the home substantially outweighs the harm of removal.

3 (b) The court shall provide written findings to explain why the risk of the child's continued stay in
 4 the home outweighs the harm of removing the child.

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

9 (7) The petition must be served as provided in 41-3-422."
 10

11 **Section 4.** Section 41-3-432, MCA, is amended to read:

12 "~~41-3-432. (Temporary) Show cause hearing -- order.~~ (1) (a) Except as provided in the federal
 13 Indian Child Welfare Act or the Montana Indian Child Welfare Act provided for in Title 41, chapter 3, part 13, a
 14 show cause hearing must be conducted within 20 days of the filing of an initial child abuse and neglect petition
 15 unless otherwise stipulated by the parties pursuant to 41-3-434 or unless an extension of time is granted by the
 16 court. A separate notice to the court stating the statutory time deadline for a hearing must accompany any
 17 petition to which the time deadline applies.

18 (b) ~~— If a proceeding under this chapter involves an Indian child and is subject to the federal Indian~~
 19 ~~Child Welfare Act or the Montana Indian Child Welfare Act, a qualified expert witness is required to testify that~~
 20 ~~the continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional~~
 21 ~~or physical damage to the Indian child.~~

22 (c) ~~— The court may grant an extension of time for a show cause hearing only upon a showing of~~
 23 ~~substantial injustice and shall order an appropriate remedy that considers the best interests of the child.~~

24 (2) ~~— The person filing the petition has the burden of presenting evidence establishing probable~~
 25 ~~cause for the issuance of an order for temporary investigative authority after the show cause hearing, except as~~
 26 ~~provided by the federal Indian Child Welfare Act or the Montana Indian Child Welfare Act, if applicable.~~

27 (3) ~~— If a contested show cause hearing is requested pursuant to 41-3-427 based upon a disputed~~
 28 ~~issue of material fact or a dispute regarding the veracity of the affidavit of the department, the court may~~

1 consider all evidence and shall provide an opportunity for a parent, guardian, or other person having physical or
2 legal custody of the child to provide testimony regarding the disputed issues. Hearsay evidence of statements
3 made by the affected child is admissible at the hearing. The parent, guardian, or other person may be
4 represented by legal counsel and may be appointed or assigned counsel as provided for in 41-3-425.

5 (4) — At the show cause hearing, the court shall explain the procedures to be followed in the case
6 and explain the parties' rights, including the right to request appointment or assignment of counsel if indigent or
7 if appointment or assignment of counsel is required under the federal Indian Child Welfare Act or the Montana
8 Indian Child Welfare Act, if applicable, and the right to challenge the allegations contained in the petition. The
9 parent, guardian, or other person having physical or legal custody of the child must be given the opportunity to
10 admit or deny the allegations contained in the petition at the show cause hearing. Inquiry must be made to
11 determine whether the notice requirements of the federal Indian Child Welfare Act or 41-3-1311, if applicable,
12 have been met.

13 (5) — Except as provided in the federal Indian Child Welfare Act or the Montana Indian Child Welfare
14 Act, if applicable, the court shall make written findings on issues including but not limited to the following:

15 (a) — whether the child should be returned home immediately if there has been an emergency
16 removal or remain in temporary out-of-home care or be removed from the home;

17 (b) — if removal is ordered or continuation of removal is ordered, why continuation of the child in the
18 home would be contrary to the child's best interests and welfare;

19 (c) — whether the department has made reasonable efforts to avoid protective placement of the child
20 or to make it possible to safely return the child to the child's home;

21 (d) — financial support of the child, including inquiry into the financial ability of the parents, guardian,
22 or other person having physical or legal custody of the child to contribute to the costs for the care, custody, and
23 treatment of the child and requirements of a contribution for those costs pursuant to 41-3-446; and

24 (e) — whether another hearing is needed and, if so, the date and time of the next hearing.

25 (6) — The court may consider:

26 (a) — terms and conditions for parental visitation; and

27 (b) — whether orders for examinations, evaluations, counseling, immediate services, or protection are
28 needed.

1 (7) — Following the show cause hearing, the court may enter an order for the relief requested or
 2 amend a previous order for immediate protection of the child if one has been entered. The order must be in
 3 writing.

4 (8) — If a child who has been removed from the child's home is not returned home after the show
 5 cause hearing or if removal is ordered, the parents or parent, guardian, or other person or agency having
 6 physical or legal custody of the child named in the petition may request that a citizen review board, if available
 7 pursuant to part 10 of this chapter, review the case within 30 days of the show cause hearing and make a
 8 recommendation to the district court, as provided in 41-3-1010.

9 (9) — Adjudication of a child as a youth in need of care may be made at the show cause hearing if
 10 the requirements of 41-3-437(2) are met. If not made at the show cause hearing, adjudication under 41-3-437
 11 must be made within the time limits required by 41-3-437 unless adjudication occurs earlier by stipulation of the
 12 parties pursuant to 41-3-434 and order of the court. (Terminates June 30, 2025 -- sec. 55, Ch. 716, L. 2023.)

13 **41-3-432. (Effective July 1, 2025) Show cause hearing -- order.** (1) (a) Except as provided in the
 14 federal Indian Child Welfare Act, a show cause hearing must be conducted within 20 days of the filing of an
 15 initial child abuse and neglect petition unless otherwise stipulated by the parties pursuant to 41-3-434 or unless
 16 an extension of time is granted by the court. A separate notice to the court stating the statutory time deadline
 17 for a hearing must accompany any petition to which the time deadline applies.

18 (b) If a proceeding under this chapter involves an Indian child and is subject to the federal Indian
 19 Child Welfare Act, a qualified expert witness is required to testify that the continued custody of the child by the
 20 parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

21 (c) The court may grant an extension of time for a show cause hearing only upon a showing of
 22 substantial injustice and shall order an appropriate remedy that considers the best interests of the child.

23 (2) — The person filing the petition has the burden of presenting evidence establishing probable
 24 cause for the issuance of an order for temporary investigative authority after the show cause hearing, except as
 25 provided by the federal Indian Child Welfare Act, if applicable.

26 (3)(2) If a contested show cause hearing is requested pursuant to 41-3-427 based upon a disputed
 27 issue of material fact or a dispute regarding the veracity of the affidavit of the department, the court may
 28 consider all evidence and shall provide an opportunity for a parent, guardian, or other person having physical or

1 legal custody of the child to provide testimony regarding the disputed issues. Hearsay evidence of statements
2 made by the affected child is admissible at the hearing. The parent, guardian, or other person may be
3 represented by legal counsel and may be appointed or assigned counsel as provided for in 41-3-425.

4 ~~(4)~~(3) At the show cause hearing, the court shall explain the procedures to be followed in the case
5 and explain the parties' rights, including the right to request appointment or assignment of counsel if indigent or
6 if appointment or assignment of counsel is required under the federal Indian Child Welfare Act, if applicable,
7 and the right to challenge the allegations contained in the petition. The parent, guardian, or other person having
8 physical or legal custody of the child must be given the opportunity to admit or deny the allegations contained in
9 the petition at the show cause hearing. Inquiry must be made to determine whether the notice requirements of
10 the federal Indian Child Welfare Act, if applicable, have been met.

11 ~~(5)~~(4) Except as provided in the federal Indian Child Welfare Act, if applicable, the court shall make
12 written findings on issues including but not limited to the following:

13 (a) whether the child should be returned home immediately if there has been an emergency
14 removal or remain in temporary out-of-home care or be removed from the home;

15 (b) if removal is ordered or continuation of removal is ordered, why continuation of the child in the
16 home would be contrary to the child's best interests and welfare;

17 (c) whether the department has made reasonable efforts to avoid protective placement of the child
18 or to make it possible to safely return the child to the child's home;

19 (d) financial support of the child, including inquiry into the financial ability of the parents, guardian,
20 or other person having physical or legal custody of the child to contribute to the costs for the care, custody, and
21 treatment of the child and requirements of a contribution for those costs pursuant to 41-3-446; and

22 (e) whether another hearing is needed and, if so, the date and time of the next hearing.

23 ~~(6)~~(5) The court may consider:

24 (a) terms and conditions for parental visitation; and

25 (b) whether orders for examinations, evaluations, counseling, immediate services, or protection are
26 needed.

27 ~~(7)~~(6) Following the show cause hearing, the court may enter an order for the relief requested or
28 amend a previous order for immediate protection of the child if one has been entered. The order must be in

1 writing.

2 ~~(8)~~(7) If a child who has been removed from the child's home is not returned home after the show
3 cause hearing or if removal is ordered, the parents or parent, guardian, or other person or agency having
4 physical or legal custody of the child named in the petition may request that a citizen review board, if available
5 pursuant to part 10 of this chapter, review the case within 30 days of the show cause hearing and make a
6 recommendation to the district court, as provided in 41-3-1010.

7 ~~(9)~~(8) Adjudication of a child as a youth in need of care may be made at the show cause hearing if
8 the requirements of 41-3-437(2) are met. If not made at the show cause hearing, adjudication under 41-3-437
9 must be made within the time limits required by 41-3-437 unless adjudication occurs earlier by stipulation of the
10 parties pursuant to 41-3-434 and order of the court."
11

12 NEW SECTION. Section 5. Repealer. The following sections of the Montana Code Annotated are
13 repealed:

14 41-3-433. Temporary investigative authority.
15

16 NEW SECTION. Section 6. Notification to tribal governments. The secretary of state shall send a
17 copy of [this act] to each federally recognized tribal government in Montana.
18

- END -