

SENATE BILL NO. 230

INTRODUCED BY D. EMRICH

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE STANDARD FOR PROVIDING EMERGENCY PROTECTIVE SERVICES IN CHILD ABUSE AND NEGLECT PROCEEDINGS; AND AMENDING SECTIONS 41-3-202 AND 41-3-301, MCA."

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

Section 1. Section 41-3-202, MCA, is amended to read:

"41-3-202. Action on reporting. (1) (a) Upon receipt of a report that a child is or has been abused or neglected, the department shall promptly assess the information contained in the report and make a determination regarding the level of response required and the timeframe within which action must be initiated.

(b) (i) Except as provided in subsections (1)(b)(ii) and (1)(b)(iii), upon receipt of a report that includes an allegation of sexual abuse or sexual exploitation when the alleged perpetrator of the sexual abuse or sexual exploitation was 12 years of age or older or if the department determines during any investigation that the circumstances surrounding an allegation of child abuse or neglect include an allegation of sexual abuse or sexual exploitation when the alleged perpetrator of the sexual abuse or sexual exploitation was 12 years of age or older, the department shall immediately report the allegation to the county attorney of the county in which the acts that are the subject of the report occurred.

(ii) If a victim of sexual abuse or sexual exploitation has attained the age of 14 and has sought services from a contractor as described in 41-3-201(2)(j) that provides confidential services to victims of sexual assault, conditioned upon an understanding that the criminal conduct will not be reported by the department to the county attorney in the jurisdiction in which the alleged crime occurred, the department may not report pursuant to 41-3-205(5)(d) and subsection (1)(b)(i) of this section.

(iii) If the department or law enforcement determines that the allegation involves the county attorney or an employee in the county attorney's office in the county in which the acts that are subject to reporting occurred, the department or law enforcement shall report as required in subsection (1)(b)(i) to the

1 attorney general.

2 (c) If the department determines that an investigation and a safety and risk assessment are
3 required, a child protection specialist shall promptly conduct a thorough investigation into the circumstances
4 surrounding the allegations of abuse or neglect of the child and perform a safety and risk assessment to
5 determine whether the living arrangement presents an unsafe environment for the child. The safety and risk
6 assessment may include an investigation at the home of the child involved, the child's school or day-care
7 facility, or any other place where the child is present and into all other nonfinancial matters that in the discretion
8 of the investigator are relevant to the safety and risk assessment. In conducting a safety and risk assessment
9 under this section, a child protection specialist may not inquire into the financial status of the child's family or of
10 any other person responsible for the child's care, except as necessary to ascertain eligibility for state or federal
11 assistance programs or to comply with the provisions of 41-3-446.

12 (2) An initial investigation of alleged abuse or neglect may be conducted when an anonymous
13 report is received. However, if the initial investigation does not within 48 hours result in the development of
14 independent, corroborative, and attributable information indicating that there exists a current risk of physical or
15 psychological harm to the child, a child may not be removed from the living arrangement. If independent,
16 corroborative, and attributable information indicating an ongoing risk results from the initial investigation, the
17 department shall then conduct a safety and risk assessment.

18 (3) The child protection specialist is responsible for conducting the safety and risk assessment. If
19 the child is treated at a medical facility, the child protection specialist, county attorney, or peace officer,
20 consistent with reasonable medical practice, has the right of access to the child for interviews, photographs,
21 and securing physical evidence and has the right of access to relevant hospital and medical records pertaining
22 to the child. If an interview of the child is considered necessary, the child protection specialist, county attorney,
23 or peace officer may conduct an interview of the child. The interview may be conducted in the presence of the
24 parent or guardian or an employee of the school or day-care facility attended by the child.

25 (4) Subject to 41-3-205(3), if the child's interview is audiotaped or videotaped, an unedited
26 audiotape or videotape with audio track must be made available, upon request, for unencumbered review by
27 the family.

28 (5) (a) If from the safety and risk assessment the department has reasonable cause to suspect that

1 the child is suffering abuse or neglect, the department may provide emergency protective services to the child if
2 the child is in immediate or imminent danger of harm, pursuant to 41-3-301, or enter into a written prevention
3 plan, pursuant to 41-3-302, and may provide protective services to any other child under the same care. The
4 department shall:

5 (i) after interviewing the parent or guardian, if reasonably available, document the determinations
6 of the safety and risk assessment; and

7 (ii) notify the child's family of the determinations of the safety and risk assessment, unless the
8 notification can reasonably be expected to result in harm to the child or other person.

9 (b) Except as provided in subsection (5)(c), the department shall destroy all safety and risk
10 assessment determinations and associated records, except for medical records, within 30 days after the end of
11 the 3-year period starting from the date of completion of the safety and risk assessment.

12 (c) Safety and risk assessment determinations and associated records may be maintained for a
13 reasonable time as defined by department rule under the following circumstances:

14 (i) the safety and risk assessment determines that abuse or neglect occurred;

15 (ii) there had been a previous or there is a subsequent report and investigation resulting in a
16 safety and risk assessment concerning the same person; or

17 (iii) an order has been issued by a court of competent jurisdiction adjudicating the child as a youth
18 in need of care based on the circumstances surrounding the initial allegations.

19 (6) The investigating child protection specialist, within 60 days of commencing an investigation,
20 shall also furnish a written safety and risk assessment to the department and, upon request, to the family.

21 Subject to time periods set forth in subsections (5)(b) and (5)(c), the department shall maintain a record system
22 documenting investigations and safety and risk assessment determinations. Unless records are required to be
23 destroyed under subsections (5)(b) and (5)(c), the department shall retain records relating to the safety and risk
24 assessment, including case notes, correspondence, evaluations, videotapes, and interviews, for 25 years.

25 (7) Any person reporting abuse or neglect that involves acts or omissions on the part of a public or
26 private residential institution, home, facility, or agency is responsible for ensuring that the report is made to the
27 department.

28 (8) The department shall, upon request from any reporter of alleged child abuse or neglect, verify

whether the report has been received, describe the level of response and timeframe for action that the department has assigned to the report, and confirm that it is being acted upon."

Section 2. 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~~ imminent 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 office of state public defender.

1 (2) If a child protection specialist, a peace officer, or the county attorney determines in an
2 investigation of abuse or neglect of a child that the child is in danger because of the occurrence of partner or
3 family member assault, as provided for in 45-5-206, or strangulation of a partner or family member, as provided
4 for in 45-5-215, against an adult member of the household or that the child needs protection as a result of the
5 occurrence of partner or family member assault or strangulation of a partner or family member against an adult
6 member of the household, the department shall take appropriate steps for the protection of the child, which may
7 include:

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

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

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

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

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

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

27 (6) If a child is removed from the child's home by the department, a child protection specialist shall
28 submit an affidavit regarding the circumstances of the emergency removal to the county attorney and provide a

1 copy of the affidavit to the office of state public defender and, if possible, the parents or guardian within 2
2 working days of the emergency removal. An abuse and neglect petition must be filed in accordance with 41-3-
3 422 within 5 working days, excluding weekends and holidays, of the emergency removal of a child unless
4 arrangements acceptable to the agency for the care of the child have been made by the parents or a written
5 prevention plan has been entered into pursuant to 41-3-302.

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

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

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

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