

SENATE BILL NO. 259

INTRODUCED BY J. TREBAS

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO CHILD SAFETY;
PROVIDING A DEFINITION FOR "IMMINENT DANGER"; 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 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 danger of harm~~ imminent danger may immediately remove the child and place the child in a protective facility.

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

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

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

(e) After ~~If the immediate removal of a child is performed, 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.

(f) 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

1 soon after placement as possible. Notification under this subsection ~~(1)(b)~~ (1)(f) must:

2 (i) include the reason for removal;

3 (ii) include information regarding the emergency protective services hearing within 5 days under
4 41-3-306, the required show cause hearing within 20 days, and the purpose of the hearings;

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

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

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

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

12 (C) may have a support person present during any meeting with the child protection specialist
13 concerning emergency protective services, including the emergency protective services hearing provided for in
14 41-3-306; and

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

16 (g) A copy of the notification required under subsection ~~(1)(b)~~ (1)(f) must be provided within 24
17 hours to the office of state public defender.

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

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

28 (b) making reasonable efforts to remove the person who allegedly committed the partner or family

1 member assault or strangulation of a partner or family member from the child's residence if it is determined that
2 the child or another family or household member is in danger of partner or family member assault or
3 strangulation of a partner or family member; and

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

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

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

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

16 (6) If a child is removed from the child's home by the department, a child protection specialist shall
17 submit an affidavit regarding the circumstances of the emergency removal to the county attorney and provide a
18 copy of the affidavit to the office of state public defender and, if possible, the parents or guardian within 2
19 working days of the emergency removal. An abuse and neglect petition must be filed in accordance with 41-3-
20 422 within 5 working days, excluding weekends and holidays, of the emergency removal of a child unless
21 arrangements acceptable to the agency for the care of the child have been made by the parents or a written
22 prevention plan has been entered into pursuant to 41-3-302.

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

26 (8) If the department determines that a petition for immediate protection and emergency protective
27 services must be filed to protect the safety of the child, the child protection specialist shall interview the parents
28 of the child to whom the petition pertains, if the parents are reasonably available, before the petition may be

1 filed. The district 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
3 required prior to the court hearing.

4 (10) (a) Except as provided in subsection (10)(b), for the purposes of this section, "imminent
5 danger" means certain, immediate, and impending danger in which the chance of the individual dying or being
6 seriously injured is highly probable.

7 (b) If no other immediate safety concerns exist, a parent's disability, parenting skills that may be
8 considered neglect, or positive drug test alone do not constitute imminent danger. (Bracketed language in
9 subsection (7) terminates June 30, 2025--sec. 55, Ch. 716, L. 2023.)"

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