

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~~ 5 WORKING DAYS OF THE EMERGENCY REMOVAL OF A CHILD; ~~AND AMENDING~~ SECTIONS 41-3-101, 41-3-102, 41-3-301, AND 41-3-423, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

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 hydration, or medication, to an infant when, in the treating physician's or physicians' reasonable medical  
2 judgment:

3 (i) the infant is chronically and irreversibly comatose;

4 (ii) the provision of treatment would:

5 (A) merely prolong dying;

6 (B) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or

7 (C) otherwise be futile in terms of the survival of the infant; or

8 (iii) the provision of treatment would be virtually futile in terms of the survival of the infant and the  
9 treatment itself under the circumstances would be inhumane. For purposes of this subsection ~~(35)~~ (36), "infant"  
10 means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously  
11 hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The reference  
12 to less than 1 year of age may not be construed to imply that treatment should be changed or discontinued  
13 when an infant reaches 1 year of age or to affect or limit any existing protections available under state laws  
14 regarding medical neglect of children 1 year of age or older.

15 ~~(36)~~(37) "Youth in need of care" means a youth who has been adjudicated or determined, after a  
16 hearing, to be or to have been abused, neglected, or abandoned."  
17

18 **Section 5.** Section 41-3-301, MCA, is amended to read:

19 **"41-3-301. Emergency protective services.** (1) (a) Any Except as provided in subsection (1)(b), a  
20 child protection specialist of the department, a peace officer, or the a county attorney who has reason to believe  
21 any child is in immediate or apparent danger of harm may immediately remove the may not remove a child and  
22 place the child in a protective facility without first obtaining a warrant pursuant to [section 1]. After ensuring that  
23 the child is safe, the department may make a request for further assistance from the law enforcement agency or  
24 take appropriate legal action.

25 (b) A child protection specialist of the department, a peace officer, or a county attorney may  
26 remove a child without a warrant only when the person has probable cause to believe that the child is likely to  
27 experience sexual abuse or physical abuse IMMINENT AND APPARENT DANGER in the time that is required to obtain  
28 a warrant under [section 1].

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

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

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

9 (ii) include information regarding the emergency protective services hearing within 5 days under  
10 41-3-306, the required show cause hearing within 20 days, and the purpose of the hearings;

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

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

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

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

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

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

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

24 (2) If a child protection specialist of the department, a peace officer, or ~~the~~ a county attorney  
25 determines in an investigation of abuse or neglect of a child that the child is in danger because of the  
26 occurrence of partner or family member assault, as provided for in 45-5-206, or strangulation of a partner or  
27 family member, as provided for in 45-5-215, against an adult member of the household or that the child needs  
28 protection as a result of the occurrence of partner or family member assault or strangulation of a partner or

1 family member against an adult member of the household, the department shall take appropriate steps for the  
2 protection of the child, which may include:

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

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

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

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

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

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

22 (6) If a child is removed from the child's home by the department, a child protection specialist shall  
23 submit an affidavit regarding the circumstances of the emergency removal to the county attorney and provide a  
24 copy of the affidavit to the office of state public defender and, if possible, the parents, parent, or guardian within  
25 2 working days of the emergency removal. An abuse and neglect petition must be filed in accordance with 41-3-  
26 422 within ~~5 working days, excluding weekends and holidays,~~ 72 hours 5 working days of the emergency  
27 removal of a child unless arrangements acceptable to the agency for the care of the child have been made by  
28 the parents or a written prevention plan has been entered into pursuant to 41-3-302.

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

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

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

**Section 6.** Section 41-3-423, MCA, is amended to read:

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

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

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

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

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

(iv) conduct or cause to be conducted a diligent search for the child's extended family members