

HOUSE BILL NO. 754

INTRODUCED BY L. SCHUBERT

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO CHILD ABUSE AND NEGLECT; PROHIBITING OPPOSITION TO A CHILD'S GENDER TRANSITION AS GROUNDS FOR ACTION IN CHILD ABUSE AND NEGLECT PROCEEDINGS; REQUIRING THE EMERGENCY REMOVAL OF A CHILD WHO IS TRANSITIONING GENDER WITH THE SUPPORT OF A PARENT OR GUARDIAN; AND AMENDING SECTIONS 41-3-135 AND 41-3-301, MCA."

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

Section 1. Section 41-3-135, MCA, is amended to read:

"41-3-135. Vaccination status and opposition to child's gender transition prohibited as grounds for action. The vaccination status of a parent or child or a parent's opposition to a child's gender transition may not be admitted as evidence or considered as a factor in any administrative or judicial decision regarding a petition filed under part 3, part 4, part 6, or part 10 of this chapter."

Section 2. Section 41-3-301, MCA, is amended to read:

"41-3-301. Emergency protective services. (1) (a) (i) 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 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.

(ii) For the purposes of this subsection (1), a child transitioning gender with the support of a parent or guardian is considered in immediate or apparent danger of harm.

(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:

- 1 (i) include the reason for removal;
- 2 (ii) include information regarding the emergency protective services hearing within 5 days under
3 41-3-306, the required show cause hearing within 20 days, and the purpose of the hearings;
- 4 (iii) provide contact information for the child protection specialist, the child protection specialist's
5 supervisor, and the office of state public defender; and
- 6 (iv) advise the parents, parent, guardian, or other person having physical or legal custody of the
7 child that the parents, parent, guardian, or other person:
- 8 (A) has the right to receive a copy of the affidavit as provided in subsection (6);
- 9 (B) has the right to attend and participate in the emergency protective services hearing and the
10 show cause hearing, including providing statements to the judge;
- 11 (C) may have a support person present during any meeting with the child protection specialist
12 concerning emergency protective services, including the emergency protective services hearing provided for in
13 41-3-306; and
- 14 (D) may request that the child be placed in a kinship foster home as defined in 52-2-602.
- 15 (c) A copy of the notification required under subsection (1)(b) must be provided within 24 hours to
16 the office of state public defender.
- 17 (2) If a child protection specialist, a peace officer, or the county attorney determines in an
18 investigation of abuse or neglect of a child that the child is in danger because of the occurrence of partner or
19 family member assault, as provided for in 45-5-206, or strangulation of a partner or family member, as provided
20 for in 45-5-215, against an adult member of the household or that the child needs protection as a result of the
21 occurrence of partner or family member assault or strangulation of a partner or family member against an adult
22 member of the household, the department shall take appropriate steps for the protection of the child, which may
23 include:
- 24 (a) making reasonable efforts to protect the child and prevent the removal of the child from the
25 parent or guardian who is a victim of alleged partner or family member assault or strangulation of a partner or
26 family member;
- 27 (b) making reasonable efforts to remove the person who allegedly committed the partner or family
28 member assault or strangulation of a partner or family member from the child's residence if it is determined that

1 the child or another family or household member is in danger of partner or family member assault or
2 strangulation of a partner or family member; and

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

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

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

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

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

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

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

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