

DPHHS Monitoring: Child and Family Services Division ***State Laws on Emergency Removal of Children***

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Background

In March, the Children, Families, Health, and Human Services Interim Committee asked for information about how other states handle emergency removals of children who are in imminent danger because of abuse or neglect. The committee wanted to know whether Montana law differs from practices in other states.

This briefing paper summarizes Montana's emergency removal law and the approaches taken in other states.

Montana Law

Under 41-3-301, MCA, the following people may remove a child without a court order if they believe the child is in "immediate or apparent danger of harm:"

- a peace officer;
- a county attorney; or
- a child protective worker of the Department of Public Health and Human Services.

Laws in Other States

All states allow law enforcement officers to take emergency custody of children without a court order if an immediate danger exists. But the states are nearly evenly split on whether they allow child protective services employees to remove a child without a court order.

Twenty-six states limit such emergency removals to law enforcement officers. Twenty-four states, including Montana, also allow a caseworker to remove a child without a court order if the worker believes an imminent danger exists. Some states impose other requirements in those situations. For example, Maryland requires a law enforcement officer to accompany the caseworker.

Many states also allow physicians or hospitals to take custody of a child without a court order if they suspect the child has been abused or neglected and would be in danger if returned to the parents. No similar law exists in Montana.

The table on the following page shows which states require that emergency removals be conducted by law enforcement and which states also allow caseworkers to remove a child without a court order.

Emergency Removal Without a Court Order

Law Enforcement Only	Law Enforcement or CPS
Colorado	Alabama
Delaware	Alaska
Georgia	Arizona
Hawaii	Arkansas
Idaho	California
Iowa	Connecticut
Kansas	Florida
Kentucky	Illinois
Louisiana	Indiana
Maine	Massachusetts
Michigan	Maryland
Minnesota	Mississippi
Missouri	Montana
Nebraska	Nevada
New Hampshire	New Jersey
New Mexico	New York
North Dakota	North Carolina
Ohio	Oregon
Oklahoma	Rhode Island
Pennsylvania	Tennessee
South Carolina	Texas
South Dakota	Utah
Vermont	Virginia
Washington	West Virginia
Wisconsin	
Wyoming	