

1 HOUSE BILL NO. 386

2 INTRODUCED BY R. STOKER

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING AND CLARIFYING THE AUTHORITY AND
5 RESPONSIBILITY FOR INVESTIGATING AND PROSECUTING CASES INVOLVING CHILD ABUSE OR
6 NEGLECT; AMENDING SECTIONS 2-15-501, 7-4-2716, 41-3-202, 41-3-204, 41-3-205, 41-3-301, 41-3-422,
7 41-3-427, 41-3-437, 41-3-442, 41-3-1010, AND 41-3-1012, MCA; REPEALING SECTION 53-2-303, MCA; AND
8 PROVIDING AN EFFECTIVE DATE."

9

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

11

12 **Section 1.** Section 2-15-501, MCA, is amended to read:13 **"2-15-501. General duties.** It is the duty of the attorney general:

14 (1) to prosecute or defend all causes in the supreme court in which the state or any officer of the state
15 in the officer's official capacity is a party or in which the state has an interest;

16 (2) to represent the state in all bankruptcy proceedings in which the state's interest may be affected and
17 in other debt collection proceedings at the request of a state agency;

18 (3) after judgment in any of the causes referred to in subsections (1) and (2), to direct the issuing of a
19 process as may be necessary to carry the judgment into execution;

20 (4) to keep a register of all cases prosecuted or defended by the attorney general. The register must
21 be open to the inspection of the public during business hours. The attorney general shall deliver the register to
22 the attorney general's successor in office.

23 (5) to exercise supervisory powers over county attorneys in all matters pertaining to the duties of their
24 offices and from time to time require of them reports as to the condition of public business entrusted to their
25 charge. The supervisory powers granted to the attorney general by this subsection include the power to order
26 and direct county attorneys in all matters pertaining to the duties of their office. The county attorney shall, when
27 ordered or directed by the attorney general, promptly institute and diligently prosecute in the proper court and
28 in the name of the state of Montana any criminal or civil action or special proceeding other than proceedings
29 under Title 41, chapter 3.

30 (6) when required by the public service or directed by the governor, to assist the county attorney of any

1 county in the discharge of the county attorney's duties or to prosecute or defend appropriate cases in which the
2 state or any officer of the state in the officer's official capacity is a party or in which the state has an interest;
3 (7) to give an opinion in writing, without fee, to the legislature or either house of the legislature, to any
4 state officer, board, or commission, to any county attorney, to the city attorney of any city or town, or to the board
5 of county commissioners of any county of the state when required upon any question of law relating to their
6 respective offices. The attorney general shall give the opinion within 3 months following the date that it is
7 requested unless the attorney general certifies in writing to the requesting party that the question is of sufficient
8 complexity to require additional time. If an opinion issued by the attorney general conflicts with an opinion issued
9 by a city attorney, county attorney, or an attorney employed or retained by any state officer, board, commission,
10 or department, the attorney general's opinion is controlling unless overruled by a state district court or the
11 supreme court.

12 (8) to discharge the duties of a member of the board of examiners and state board of land
13 commissioners;

14 (9) to perform all other duties as required by law."
15

16 **Section 2.** Section 7-4-2716, MCA, is amended to read:

17 **"7-4-2716. Duties related to state matters.** The county attorney must:

18 (1) attend the district court and conduct, on behalf of the state, all prosecutions for public offenses and
19 represent the state in all matters and proceedings to which it is a party or in which it may be beneficially
20 interested except proceedings under Title 41, chapter 3, at all times and in all places within the limits of ~~his~~ the
21 county;

22 (2) when ordered or directed by the attorney general to do so, promptly institute and diligently prosecute
23 in the proper court and in the name of the state of Montana any criminal or civil action or special proceeding;

24 (3) defend all suits brought against the state."
25

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

27 **"41-3-202. Action on reporting.** (1) Upon receipt of a report that a child is or has been abused or
28 neglected, the department shall promptly assess the information contained in the report and make a
29 determination regarding the level of response required and the timeframe within which action must be initiated.
30 If the department determines that an investigation is required, a social worker, ~~the county attorney~~, or a peace

1 officer shall promptly conduct a thorough investigation into the circumstances surrounding the allegations of
2 abuse or neglect of the child. The investigation may include an investigation at the home of the child involved,
3 the child's school or day-care facility, or any other place where the child is present and into all other nonfinancial
4 matters that in the discretion of the investigator are relevant to the investigation. In conducting an investigation
5 under this section, a social worker may not inquire into the financial status of the child's family or of any other
6 person responsible for the child's care, except as necessary to ascertain eligibility for state or federal assistance
7 programs or to comply with the provisions of 41-3-446.

8 (2) An initial investigation of alleged abuse or neglect may be conducted when an anonymous report
9 is received. However, the investigation must within 48 hours develop independent, corroborative, and
10 attributable information in order for the investigation to continue. Without the development of independent,
11 corroborative, and attributable information, a child may not be removed from the home.

12 (3) The social worker is responsible for assessing the family and planning for the child. If the child is
13 treated at a medical facility, the social worker, ~~county attorney~~, or peace officer, consistent with reasonable
14 medical practice, has the right of access to the child for interviews, photographs, and securing physical evidence
15 and has the right of access to relevant hospital and medical records pertaining to the child. If a child interview
16 is considered necessary, the social worker, ~~county attorney~~, or peace officer may conduct an interview of the
17 child. The interview may be conducted in the presence of the parent or guardian or an employee of the school
18 or day-care facility attended by the child.

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

21 (5) (a) If from the investigation the department has reasonable cause to suspect that the child suffered
22 abuse or neglect, the department may provide protective services to the child pursuant to 41-3-301 and may
23 provide protective services to any other child under the same care. The department shall:

24 (i) after interviewing the parent or guardian, if reasonably available, document its determination
25 regarding abuse or neglect of a child; and

26 (ii) notify the child's family of its investigation and determination, unless the notification can reasonably
27 be expected to result in harm to the child or other person.

28 (b) If from the investigation it is determined that the child has not suffered abuse or neglect and the
29 initial report is determined to be unfounded, the department and the social worker, ~~county attorney~~, or peace
30 officer who conducted the investigation into the circumstances surrounding the allegations of abuse or neglect

1 shall destroy all of their records concerning the report and the investigation. The destruction must be completed
2 within 30 days of the determination that the child has not suffered abuse or neglect.

3 (6) The investigating social worker, within 60 days of commencing an investigation, shall also furnish
4 a written report to the department and, upon request, to the family. Subject to subsection (5)(b), the department
5 shall maintain a record system documenting investigations and determinations of child abuse and neglect cases.

6 (7) Any person reporting abuse or neglect that involves acts or omissions on the part of a public or
7 private residential institution, home, facility, or agency is responsible for ensuring that the report is made to the
8 department through its local office."

9

10 **Section 4.** Section 41-3-204, MCA, is amended to read:

11 **"41-3-204. Admissibility and preservation of evidence.** (1) In any proceeding resulting from a report
12 made pursuant to the provisions of this chapter or in any proceeding for which the report or its contents are
13 sought to be introduced into evidence, the report or its contents or any other fact related to the report or to the
14 condition of the child who is the subject of the report may not be excluded on the ground that the matter is or
15 may be the subject of a privilege related to the examination or treatment of the child and granted in Title 26,
16 chapter 1, part 8, except the attorney-client privilege granted by 26-1-803.

17 (2) A person or official required to report under 41-3-201 may take or cause to be taken photographs
18 of the area of trauma visible on a child who is the subject of a report. The cost of photographs taken under this
19 section must be paid by the department.

20 (3) When a person required to report under 41-3-201 finds visible evidence that a child has suffered
21 abuse or neglect, the person shall include in the report either a written description or photographs of the
22 evidence.

23 (4) A physician, either in the course of providing medical care to a minor or after consultation with child
24 protective services, ~~the county attorney,~~ or a law enforcement officer, may require x-rays to be taken when, in
25 the physician's professional opinion, there is a need for radiological evidence of suspected abuse or neglect.
26 X-rays may be taken under this section without the permission of the parent or guardian. The cost of the x-rays
27 ordered and taken under this section must be paid by the ~~county~~ child protective service agency.

28 (5) All written, photographic, or radiological evidence gathered under this section must be sent to the
29 local affiliate of the department at the time that the written confirmation report is sent or as soon after the report
30 is sent as is possible. If a confirmation report is not made, the evidence and the initial report must be destroyed

1 as provided in 41-3-202."

2

3 **Section 5.** Section 41-3-205, MCA, is amended to read:

4 **"41-3-205. Confidentiality -- disclosure exceptions.** (1) The case records of the department and its
5 local affiliate, the local office of public assistance, ~~the county attorney,~~ and the court concerning actions taken
6 under this chapter and all records concerning reports of child abuse and neglect must be kept confidential except
7 as provided by this section. Except as provided in subsections (6) and (7), a person who purposely or knowingly
8 permits or encourages the unauthorized dissemination of the contents of case records is guilty of a
9 misdemeanor.

10 (2) Records may be disclosed to a court for in camera inspection if relevant to an issue before it. The
11 court may permit public disclosure if it finds disclosure to be necessary for the fair resolution of an issue before
12 it.

13 (3) Records, including case notes, correspondence, evaluations, videotapes, and interviews, unless
14 otherwise protected by this section or unless disclosure of the records is determined to be detrimental to the child
15 or harmful to another person who is a subject of information contained in the records, may be disclosed to the
16 following persons or entities in this state and any other state or country:

17 (a) a department, agency, or organization, including a federal agency, military enclave, or Indian tribal
18 organization, that is legally authorized to receive, inspect, or investigate reports of child abuse or neglect and
19 that otherwise meets the disclosure criteria contained in this section;

20 (b) a licensed youth care facility or a licensed child-placing agency that is providing services to the
21 family or child who is the subject of a report in the records or to a person authorized by the department to receive
22 relevant information for the purpose of determining the best interests of a child with respect to an adoptive
23 placement;

24 (c) a health or mental health professional who is treating the family or child who is the subject of a report
25 in the records;

26 (d) a parent, guardian, or person designated by a parent or guardian of the child who is the subject of
27 a report in the records or other person responsible for the child's welfare, without disclosure of the identity of any
28 person who reported or provided information on the alleged child abuse or neglect incident contained in the
29 records;

30 (e) a child named in the records who was allegedly abused or neglected or the child's legal guardian

- 1 or legal representative, including the child's guardian ad litem or attorney or a special advocate appointed by
2 the court to represent a child in a pending case;
- 3 (f) the state protection and advocacy program as authorized by 42 U.S.C. 6042(a)(2)(B);
- 4 (g) approved foster and adoptive parents who are or may be providing care for a child;
- 5 (h) a person about whom a report has been made and that person's attorney, with respect to the
6 relevant records pertaining to that person only and without disclosing the identity of the reporter or any other
7 person whose safety may be endangered;
- 8 (i) an agency, including a probation or parole agency, that is legally responsible for the supervision of
9 an alleged perpetrator of child abuse or neglect;
- 10 (j) a person, agency, or organization that is engaged in a bona fide research or evaluation project and
11 that is authorized by the department to conduct the research or evaluation;
- 12 (k) the members of an interdisciplinary child protective team authorized under 41-3-108 or of a family
13 group conference for the purposes of assessing the needs of the child and family, formulating a treatment plan,
14 and monitoring the plan;
- 15 (l) the coroner or medical examiner when determining the cause of death of a child;
- 16 (m) a child fatality review team recognized by the department;
- 17 (n) a department or agency investigating an applicant for a license or registration that is required to
18 operate a youth care facility, day-care facility, or child-placing agency;
- 19 (o) a person or entity who is carrying out background, employment-related, or volunteer-related
20 screening of current or prospective employees or volunteers who have or may have unsupervised contact with
21 children through employment or volunteer activities. A request for information under this subsection (3)(o) must
22 be made in writing. Disclosure under this subsection (3)(o) is limited to information that indicates a risk to
23 children, persons with developmental disabilities, or older persons posed by the person about whom the
24 information is sought, as determined by the department.
- 25 (p) the news media, a member of the United States congress, or a state legislator, if disclosure is limited
26 to confirmation of factual information regarding how the case was handled and if disclosure does not violate the
27 privacy rights of the child or the child's parent or guardian, as determined by the department;
- 28 (q) an employee of the department or other state agency if disclosure of the records is necessary for
29 administration of programs designed to benefit the child;
- 30 (r) an agency of an Indian tribe or the relatives of an Indian child if disclosure of the records is necessary

1 to meet requirements of the federal Indian Child Welfare Act;

2 (s) a youth probation officer who is working in an official capacity with the child who is the subject of a
3 report in the records;

4 (t) a ~~county attorney~~, peace officer, or attorney who is hired by or represents the department if disclosure
5 is necessary for the investigation, defense, or prosecution of a case involving child abuse or neglect;

6 (u) a foster care review committee established under 41-3-115 or, when applicable, a citizen review
7 board established under Title 41, chapter 3, part 10;

8 (v) a school employee participating in an interview of a child by a social worker, ~~county attorney~~, or
9 peace officer, as provided in 41-3-202;

10 (w) a member of a county interdisciplinary child information team formed under the provisions of
11 52-2-211;

12 (x) members of a local interagency staffing group provided for in 52-2-203;

13 (y) a member of a youth placement committee formed under the provisions of 41-5-121; or

14 (z) a principal of a school or other employee of the school district authorized by the trustees of the
15 district to receive the information with respect to a student of the district who is a client of the department.

16 (4) A school or school district may disclose, without consent, personally identifiable information from
17 the education records of a pupil to the department, the court, a review board, and the child's court-appointed
18 attorney, guardian ad litem, or special advocate.

19 (5) Information that identifies a person as a participant in or recipient of substance abuse treatment
20 services may be disclosed only as allowed by federal substance abuse confidentiality laws, including the consent
21 provisions of the law.

22 (6) A person who is authorized to receive records under this section shall maintain the confidentiality
23 of the records and may not disclose information in the records to anyone other than the persons described in
24 subsection (3)(a). However, this subsection may not be construed to compel a family member to keep the
25 proceedings confidential.

26 (7) A news organization or its employee, including a freelance writer or reporter, is not liable for
27 reporting facts or statements made by an immediate family member under subsection (6) if the news
28 organization, employee, writer, or reporter maintains the confidentiality of the child who is the subject of the
29 proceeding.

30 (8) This section is not intended to affect the confidentiality of criminal court records, records of law

1 enforcement agencies, or medical records covered by state or federal disclosure limitations.

2 (9) Copies of records, evaluations, reports, or other evidence obtained or generated pursuant to this
3 section that are provided to the parent, the guardian, or the parent or guardian's attorney must be provided
4 without cost."

5

6 **Section 6.** Section 41-3-301, MCA, is amended to read:

7 **"41-3-301. Emergency protective service.** (1) Any child protective social worker of the department;
8 ~~or a peace officer, or the county attorney~~ who has reason to believe any youth is in immediate or apparent
9 danger of harm may immediately remove the youth and place the youth in a protective facility. The department
10 may make a request for further assistance from the law enforcement agency or take appropriate legal action.
11 The person or agency placing the child shall notify the parents, parent, guardian, or other person having legal
12 custody of the youth at the time the placement is made or as soon after placement as possible. Notification under
13 this subsection must include the reason for removal, information regarding the show cause hearing, and the
14 purpose of the show cause hearing.

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

17 (3) An abuse and neglect petition must be filed within 2 working days, excluding weekends and
18 holidays, of emergency placement of a child unless arrangements acceptable to the agency for the care of the
19 child have been made by the parents. A show cause hearing must be held within 10 days, excluding weekends
20 and holidays, of the filing of the initial petition unless otherwise stipulated by the parties pursuant to 41-3-434.

21 (4) The department shall make the necessary arrangements for the child's well-being as are required
22 prior to the court hearing."

23

24 **Section 7.** Section 41-3-422, MCA, is amended to read:

25 **"41-3-422. Abuse and neglect petitions -- burden of proof.** (1) (a) Proceedings under this chapter
26 must be initiated by the filing of a petition. A petition may request the following relief:

27 (i) immediate protection and emergency protective services, as provided in 41-3-427;

28 (ii) temporary investigative authority, as provided in 41-3-433;

29 (iii) temporary legal custody, as provided in 41-3-442;

30 (iv) termination of the parent-child legal relationship, as provided in 41-3-607;

- 1 (v) appointment of a guardian pursuant to 41-3-444;
- 2 (vi) a determination that preservation or reunification services need not be provided; or
- 3 (vii) any combination of the provisions of subsections (1)(a)(i) through (1)(a)(vi) or any other relief that
- 4 may be required for the best interests of the child.
- 5 (b) The petition may be modified for different relief at any time within the discretion of the court.
- 6 (c) A petition for temporary legal custody may be the initial petition filed in a case.
- 7 (d) A petition for the termination of the parent-child legal relationship may be the initial petition filed in
- 8 a case if a request for a determination that preservation or reunification services need not be provided is made
- 9 in the petition.
- 10 (2) The ~~county attorney~~, attorney general; or an attorney hired by the ~~county~~ department shall file all
- 11 petitions under this chapter. A petition ~~filed by the county attorney, attorney general, or an attorney hired by the~~
- 12 ~~county~~ must be accompanied by an affidavit by the department alleging that the child appears to have been
- 13 abused or neglected and stating the basis for the petition.
- 14 (3) Abuse and neglect petitions must be given highest preference by the court in setting hearing dates.
- 15 (4) An abuse and neglect petition is a civil action brought in the name of the state of Montana. The
- 16 Montana Rules of Civil Procedure and the Montana Rules of Evidence apply except as modified in this chapter.
- 17 Proceedings under a petition are not a bar to criminal prosecution.
- 18 (5) (a) Except as provided in subsection (5)(b), the person filing the abuse and neglect petition has the
- 19 burden of presenting evidence required to justify the relief requested and establishing:
- 20 (i) probable cause for the issuance of an order for immediate protection and emergency protective
- 21 services or an order for temporary investigative authority;
- 22 (ii) a preponderance of the evidence for an order of adjudication or temporary legal custody; or
- 23 (iii) clear and convincing evidence for an order terminating the parent-child legal relationship.
- 24 (b) If a proceeding under this chapter involves an Indian child, as defined in the federal Indian Child
- 25 Welfare Act, 25 U.S.C. 1901, et seq., the standards of proof required for legal relief under the federal Indian
- 26 Child Welfare Act apply.
- 27 (6) Except as provided in the federal Indian Child Welfare Act, if applicable, the parents or parent,
- 28 guardian, or other person or agency having legal custody of the child named in the petition, if residing in the
- 29 state, must be served personally with a copy of all petitions at least 5 days before the date set for hearing. If the
- 30 person or agency cannot be served personally, the person or agency may be served by publication as provided

1 in 41-3-428 and 41-3-429.

2 (7) If personal service cannot be made upon the parents or parent, guardian, or other person or agency
3 having legal custody, the court shall appoint an attorney to represent the unavailable party when, in the opinion
4 of the court, the interests of justice require.

5 (8) If a parent of the child is a minor, notice must be given to the minor parent's parents or guardian,
6 and if there is no guardian, the court shall appoint one.

7 (9) (a) Any person interested in any cause under this chapter has the right to appear. Any foster parent,
8 preadoptive parent, or relative caring for the child must be given legal notice by the attorney filing the petition
9 of all judicial hearings for the child and must be given an opportunity to be heard. The right to appear or to be
10 heard does not make that person a party to the action. Any foster parent, preadoptive parent, or relative caring
11 for the child must be given notice of all reviews by the reviewing body.

12 (b) A foster parent, preadoptive parent, or relative of the child who is caring for or a relative of the child
13 who has cared for a child who is the subject of the petition who appears at a hearing set pursuant to this section
14 may be allowed by the court to intervene in the action if the court, after a hearing in which evidence is presented
15 on those subjects provided for in 41-3-437(4), determines that the intervention of the person is in the best
16 interests of the child. A person granted intervention pursuant to this subsection is entitled to participate in the
17 adjudicatory hearing held pursuant to 41-3-437 and to notice and participation in subsequent proceedings held
18 pursuant to this chapter involving the custody of the child.

19 (10) An abuse and neglect petition must:

20 (a) state the nature of the alleged abuse or neglect and of the relief requested;

21 (b) state the full name, age, and address of the child and the name and address of the child's parents
22 or guardian or person having legal custody of the child;

23 (c) state the names, addresses, and relationship to the child of all persons who are necessary parties
24 to the action.

25 (11) The court may at any time on its own motion or the motion of any party appoint counsel for any
26 indigent party. If an indigent parent is not already represented by counsel, counsel must be appointed for an
27 indigent parent at the time that a request is made for a determination that preservation or reunification services
28 need not be provided.

29 (12) At any stage of the proceedings considered appropriate by the court, the court may order an
30 alternative dispute resolution proceeding or the parties may voluntarily participate in an alternative dispute

1 resolution proceeding. An alternative dispute resolution proceeding under this chapter may include a family
 2 group conference, mediation, or a settlement conference. If a court orders an alternative dispute resolution
 3 proceeding, a party who does not wish to participate may file a motion objecting to the order. If the department
 4 is a party to the original proceeding, a representative of the department who has complete authority to settle the
 5 issue or issues in the original proceeding must be present at any alternative dispute resolution proceeding.

6 (13) Service of a petition under this section must be accompanied by a written notice advising the child's
 7 parent, guardian, or other person having physical or legal custody of the child of the:

8 (a) right to request the appointment of counsel if the person is indigent or if appointment of counsel is
 9 required under the federal Indian Child Welfare Act, if applicable;

10 (b) right to contest the allegations in the petition; and

11 (c) timelines for hearings and determinations required under this chapter.

12 (14) Orders issued under this chapter must contain a notice provision advising a child's parent, guardian,
 13 or other person having physical or legal custody of the child that:

14 (a) the court is required by federal and state laws to hold a permanency hearing to determine the
 15 permanent placement of a child no later than 12 months after a judge determines that the child has been abused
 16 or neglected or 12 months after the first 60 days that the child has been removed from the child's home;

17 (b) if a child has been in foster care for 15 of the last 22 months, state law presumes that termination
 18 of parental rights is in the best interests of the child and the state is required to file a petition to terminate parental
 19 rights; and

20 (c) completion of a treatment plan does not guarantee the return of a child.

21 (15) A court may appoint a standing master to conduct hearings and propose decisions and orders to
 22 the court for court consideration and action. A standing master may not conduct a proceeding to terminate
 23 parental rights. A standing master must be a member of the state bar of Montana and must be knowledgeable
 24 in the area of child abuse and neglect laws."

25

26 **Section 8.** Section 41-3-427, MCA, is amended to read:

27 **"41-3-427. Petition for immediate protection and emergency protective services -- order --**
 28 **service.** (1) (a) In a case in which it appears that a child is abused or neglected or is in danger of being abused
 29 or neglected, ~~the county attorney~~; the attorney general; or an attorney hired by the ~~county~~ department may file
 30 a petition for immediate protection and emergency protective services. In implementing the policy of this section,

1 the child's health and safety are of paramount concern.

2 (b) A petition for immediate protection and emergency protective services must state the specific
3 authority requested and the facts establishing probable cause that a child is abused or neglected or is in danger
4 of being abused or neglected.

5 (c) The petition for immediate protection and emergency protective services must be supported by an
6 affidavit signed by a representative of the department stating in detail the facts upon which the request is based.
7 The petition or affidavit of the department must contain information regarding statements, if any, made by the
8 parents detailing the parents' statement of the facts of the case. The parents, if available in person or by
9 electronic means, must be given an opportunity to present evidence to the court before the court rules on the
10 petition.

11 (2) The person filing the petition for immediate protection and emergency protective services has the
12 burden of presenting evidence establishing probable cause for the issuance of an order for immediate protection
13 of the child, except as provided by the federal Indian Child Welfare Act, if applicable. The court shall consider
14 the parents' statements, if any, included with the petition and any accompanying affidavit or report to the court.
15 If the court finds probable cause, the court may issue an order granting the following forms of relief, which do
16 not constitute a court-ordered treatment plan under 41-3-443:

17 (a) the right of entry by a peace officer or department worker;

18 (b) the right to place the child in temporary medical or out-of-home care, including but not limited to care
19 provided by a noncustodial parent, kinship or foster family, group home, or institution;

20 (c) a requirement that the parents, guardian, or other person having physical or legal custody furnish
21 information that the court may designate and obtain evaluations that may be necessary to determine whether
22 a child is a youth in need of care;

23 (d) a requirement that the perpetrator of the alleged child abuse or neglect be removed from the home
24 to allow the child to remain in the home;

25 (e) a requirement that the parent provide the department with the name and address of the other parent,
26 if known, unless parental rights to the child have been terminated;

27 (f) a requirement that the parent provide the department with the names and addresses of extended
28 family members who may be considered as placement options for the child who is the subject of the proceeding;
29 and

30 (g) any other temporary disposition that may be required in the best interests of the child that does not

1 require an expenditure of money by the department unless the department is notified and a court hearing is set
2 in a timely manner on the proposed expenditure. The department is the payor of last resort after all family,
3 insurance, and other resources have been examined.

4 (3) An order for removal of a child from the home must include a finding that continued residence of the
5 child with the parent is contrary to the welfare of the child or that an out-of-home placement is in the best
6 interests of the child.

7 (4) The order for immediate protection of the child must require the person served to comply
8 immediately with the terms of the order and to appear before the court issuing the order on the date specified
9 for a show cause hearing. Upon a failure to comply or show cause, the court may hold the person in contempt
10 or place temporary physical custody of the child with the department until further order.

11 (5) The petition must be served as provided in 41-3-422."
12

13 **Section 9.** Section 41-3-437, MCA, is amended to read:

14 **"41-3-437. Adjudication -- temporary disposition -- findings -- order.** (1) Upon the filing of an
15 appropriate petition, an adjudicatory hearing must be held within 90 days of a show cause hearing under
16 41-3-432. Adjudication may take place at the show cause hearing if the requirements of subsection (2) are met
17 or may be made by prior stipulation of the parties pursuant to 41-3-434 and order of the court. Exceptions to the
18 time limit may be allowed only in cases involving newly discovered evidence, unavoidable delays in the
19 notification of parties, and unforeseen personal emergencies.

20 (2) The court may make an adjudication on a petition under 41-3-422 if the court determines by a
21 preponderance of the evidence, except as provided in the federal Indian Child Welfare Act, if applicable, that
22 the child is a youth in need of care and ascertains, as far as possible, the cause. Except as otherwise provided
23 in this part, the Montana Rules of Civil Procedure and the Montana Rules of Evidence apply to adjudication and
24 to an adjudicatory hearing. Adjudication must determine the nature of the abuse and neglect and establish facts
25 that resulted in state intervention and upon which disposition, case work, court review, and possible termination
26 are based.

27 (3) The court shall hear evidence regarding the residence of the child, paternity, if in question, the
28 whereabouts of the parents, guardian, or nearest adult relative, and any other matters the court considers
29 relevant in determining the status of the child. Hearsay evidence of statements made by the youth is admissible
30 according to the Montana Rules of Evidence.

1 (4) In a case in which abandonment has been alleged by ~~the county attorney~~, the attorney general; or
2 an attorney hired by the county department, the court shall hear offered evidence, including evidence offered
3 by a person appearing pursuant to 41-3-422(9)(a) or (9)(b), regarding any of the following subjects:

4 (a) the extent to which the child has been cared for, nurtured, or supported by a person other than the
5 child's parents; and

6 (b) whether the child was placed or allowed to remain by the parents with another person for the care
7 of the child, and, if so, then the court shall accept evidence regarding:

8 (i) the intent of the parents in placing the child or allowing the child to remain with that person; and

9 (ii) the circumstances under which the child was placed or allowed to remain with that other person,
10 including:

11 (A) whether a parent requesting return of the child was previously prevented from doing so as a result
12 of an order issued pursuant to Title 40, chapter 15, part 2, or of a conviction pursuant to 45-5-206; and

13 (B) whether the child was originally placed with the other person to allow the parent to seek employment
14 or attend school.

15 (5) In all civil and criminal proceedings relating to abuse or neglect, the privileges related to the
16 examination or treatment of the child do not apply, except the attorney-client privilege granted by 26-1-803 and
17 the mediation privilege granted by 26-1-813.

18 (6) (a) If the court determines that the child is not an abused or neglected child, the petition must be
19 dismissed and any order made pursuant to 41-3-427 or 41-3-432 must be vacated.

20 (b) If the child is adjudicated a youth in need of care, the court shall set a date for a dispositional hearing
21 to be conducted within 20 days, as provided in 41-3-438(2), and order any necessary or required investigations.
22 The court may issue a temporary dispositional order pending the dispositional hearing. The temporary
23 dispositional order may provide for any of the forms of relief listed in 41-3-427(2).

24 (7) (a) Before making an adjudication, the court shall make written findings on issues, including but not
25 limited to the following:

26 (i) which allegations of the petition have been proved or admitted, if any;

27 (ii) whether there is a legal basis for continued court and department intervention; and

28 (iii) whether the department has made reasonable efforts to avoid protective placement of the child or
29 to make it possible to safely return the child to the child's home.

30 (b) The court may order:

- 1 (i) terms for visitation, support, and other intrafamily communication pending disposition if the child is
2 to be placed or to remain in temporary out-of-home care prior to disposition;
- 3 (ii) examinations, evaluations, or counseling of the child or parents in preparation for the disposition
4 hearing;
- 5 (iii) the department to evaluate the noncustodial parent or relatives as possible caretakers, if not already
6 done;
- 7 (iv) the perpetrator of the alleged child abuse or neglect to be removed from the home to allow the child
8 to remain in the home; and
- 9 (v) the department to continue efforts to notify noncustodial parents."
10

11 **Section 10.** Section 41-3-442, MCA, is amended to read:

12 **"41-3-442. Temporary legal custody.** (1) If a child is found to be a youth in need of care under
13 41-3-437, the court may grant temporary legal custody under 41-3-438 if the court determines by a
14 preponderance of the evidence that:

- 15 (a) dismissing the petition would create a substantial risk of harm to the child or would be a detriment
16 to the child's physical or psychological well-being; and
- 17 (b) unless there is a finding that reasonable efforts are not required pursuant to 41-3-423, reasonable
18 services have been provided to the parent or guardian to prevent the removal of the child from the home or to
19 make it possible for the child to safely return home.

20 (2) An order for temporary legal custody may be in effect for no longer than 6 months. Before the
21 expiration of the order for temporary legal custody, ~~the county attorney~~, the attorney general; or an attorney hired
22 by the ~~county~~ department shall petition for one of the following:

- 23 (a) an extension of temporary legal custody, not to exceed a total of 6 months, upon a showing that
24 additional time is necessary for the parent or guardian to successfully complete a treatment plan;
- 25 (b) termination of the parent-child legal relationship and either:
- 26 (i) permanent legal custody with the right of adoption; or
- 27 (ii) appointment of a guardian pursuant to 41-3-607;
- 28 (c) planned alternative permanent placement pursuant to 41-3-445;
- 29 (d) appointment of a guardian pursuant to 41-3-444; or
- 30 (e) dismissal.

1 (3) The court may continue an order for temporary legal custody pending a hearing on a petition
2 provided for in subsection (2).

3 (4) If an extension of temporary legal custody is granted to the department, the court shall state the
4 reasons why the child was not returned home and the conditions upon which the child may be returned home
5 and shall specifically find that an extension is in the child's best interests.

6 (5) If the time limitations of this section are not met, the court shall review the reasons for the failure and
7 order an appropriate remedy that considers the best interests of the child.

8 (6) In implementing the policy of this section, the child's health and safety are of paramount concern.

9 (7) A petition requesting temporary legal custody must be served as provided in 41-3-422."
10

11 **Section 11.** Section 41-3-1010, MCA, is amended to read:

12 **"41-3-1010. Review -- scope -- procedures -- immunity.** (1) (a) The board shall review the case of
13 each child in foster care focusing on issues that are germane to the goals of permanency and to accessing
14 appropriate services for parents and children. In evaluating the accessibility, availability, and appropriateness
15 of services, the board may consider:

16 (i) the safety of the child;

17 (ii) whether an involved agency has selected services specifically relevant to the problems and needs
18 of the child and family;

19 (iii) whether caseworkers have diligently provided services;

20 (iv) whether appropriate services have been available to the child and family on a timely basis; and

21 (v) the results of intervention.

22 (b) The board may review the case of a child who remains in or returns to the child's home and for
23 whom the department retains legal custody.

24 (2) The review must take place at times set by the board. The time limit must comply with the Adoption
25 and Safe Families Act of 1997.

26 (3) The district court, by rule of the court or on an individual case basis, may relieve the board of its
27 responsibility to review a case if a complete judicial review has taken place within 60 days prior to the next
28 scheduled board review.

29 (4) Notice of each review must be sent to the department, any agency directly responsible for the care
30 or placement of the child, the parents and their attorneys, the foster parents, a relative caring for the child, the

1 preadoptive parents, the surrogate parents, the child who is the subject of the review if 12 years of age or older,
2 the child's attorney, the guardian ad litem, the court-appointed attorney or special advocate of the child, the
3 ~~county~~ department's attorney or deputy attorney general actively involved in the case, the child's tribe if the child
4 is an Indian, and other interested persons who are authorized by the board to receive notice and who are subject
5 to 41-3-205. The notice must include a statement that persons receiving a notice may participate in the hearing
6 and be accompanied by a representative.

7 (5) After reviewing each case, the board shall prepare written findings and recommendations with
8 respect to:

9 (a) whether reasonable efforts were made prior to the placement to prevent or to eliminate the need
10 for removal of the child from the home and to make it possible for the child to be returned home;

11 (b) the continuing need for the placement and the appropriateness and safety of the placement;

12 (c) compliance with the case plan;

13 (d) the progress that has been made toward alleviating the need for placement;

14 (e) a likely date by which the child may be returned home or placed for adoption;

15 (f) other problems, solutions, or alternatives that the board determines should be explored; and

16 (g) whether the district court should appoint an attorney or other person as special advocate to
17 represent or appear on behalf of the child pursuant to 41-3-112.

18 (6) Whenever a member of a board has a potential conflict of interest in a case being reviewed, the
19 member shall declare to the board the nature of the potential conflict prior to participating in the case review.

20 The following provisions apply:

21 (a) The declaration of the member must be recorded in the official records of the board.

22 (b) If, in the judgment of the majority of the board, the potential conflict of interest may prevent the
23 member from fairly and objectively reviewing the case, the board may remove the member from participation
24 in the review.

25 (7) The board shall keep accurate records and retain the records on file. The board shall send copies
26 of its written findings and recommendations to the district court, the department, and other participants in the
27 review unless prohibited by the confidentiality provisions of 41-3-205.

28 (8) The board may hold joint or separate reviews for groups of siblings.

29 (9) The board may disclose to parents and their attorneys, foster parents, children who are 12 years
30 of age or older, childrens' attorneys, and other persons authorized by the board to participate in the case review

1 the records disclosed to the board pursuant to 41-3-1008. Before participating in a board case review, each
2 participant, other than parents and children, shall swear or affirm to the board that the participant will keep
3 confidential the information disclosed by the board in the case review and will disclose it only as authorized by
4 law.

5 (10) A person who serves on a board in a volunteer capacity, as provided in this part, is considered an
6 agent of the judiciary and is entitled to immunity from suit as provided in 2-9-112."

7

8 **Section 12.** Section 41-3-1012, MCA, is amended to read:

9 **"41-3-1012. Presence of employees and participants at reviews and deliberations of board.** (1)

10 Unless excused from doing so by the board, the department and any other agency directly responsible for the
11 care and placement of the child shall require the presence of employees having knowledge of the case at board
12 reviews.

13 (2) The board may require the presence of specific employees of the department or any other agency
14 or other persons at board reviews. If an employee fails to be present at the review, the board may request a
15 court order. The court may require the employee to be present and show cause why the employee should not
16 be compelled to appear before the board.

17 (3) The persons who are allowed to be present at a review include representatives of the department
18 or any agency directly responsible for the care or placement of the child, the parents and their attorneys, the
19 foster parents, a relative caring for the child, the preadoptive parents, the surrogate parents, the child who is the
20 subject of the review if 12 years of age or older, the child's attorney, the guardian ad litem, the court-appointed
21 attorney or special advocate of the child, the ~~county~~ department's attorney or deputy attorney general actively
22 involved in the case, a representative of the child's tribe if the child is an Indian, and other interested persons
23 subject to 41-3-205 and authorized to be present by the board.

24 (4) Deliberations concerning the recommendations that will be made by the board must be open to all
25 present at the review, except that the presiding officer may close all or part of a deliberation if there has been
26 a threat of a reprisal made by someone who will attend the review or if confidentiality laws preclude open
27 deliberations.

28 (5) For the purposes of bringing criminal charges against a person who threatens a board member or
29 staff, the board members and board staff must be considered public servants as defined in 45-2-101.

30 (6) As used in this section, the following definitions apply:

1 (a) "Presence" includes telephone participation, except that a representative of the department
2 knowledgeable about the case at the time of the review must be physically present if required.

3 (b) "Open" means that review participants may remain in attendance during the deliberations to observe
4 and be available for questions from the board.

5 (c) "Close", with regard to deliberations, means that only the board members and board staff may
6 remain in attendance."

7

8 NEW SECTION. **Section 13. Repealer.** Section 53-2-303, MCA, is repealed.

9

10 NEW SECTION. **Section 14. Effective date.** [This act] is effective July 1, 2003.

11

- END -