

## 1 SENATE BILL NO. 119

2 INTRODUCED BY SCHMIDT

3 BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CHILD PROTECTIVE SERVICES AND ADOPTION  
6 STATUTES IN COMPLIANCE WITH FEDERAL REGULATIONS AND AN ATTORNEY GENERAL'S OPINION;  
7 CLARIFYING WHO MAY BE APPOINTED AS A GUARDIAN AD LITEM; AUTHORIZING A FOSTER CARE  
8 REVIEW COMMITTEE OR A CITIZEN REVIEW BOARD TO CONDUCT A PERMANENCY HEARING  
9 SUBJECT TO APPROVAL BY THE COURT AND ABSENT OBJECTION BY A PARTY TO THE PROCEEDING;  
10 AMENDING SECTIONS 41-3-112, 41-3-115, 41-3-201, 41-3-202, 41-3-438, 41-3-443, 41-3-445, 41-3-1010,  
11 AND 42-6-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

12

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

14

15 **Section 1.** Section 41-3-112, MCA, is amended to read:

16 **"41-3-112. Guardian ad litem.** (1) In every judicial proceeding, the court shall appoint a guardian ad  
17 litem for any child alleged to be abused or neglected ~~a guardian ad litem~~. The department or any member of its  
18 staff who has a direct conflict of interest may not be appointed as the guardian ad litem in a judicial proceeding  
19 under this title. When necessary, the guardian ad litem may serve at public expense.

20 (2) The guardian ad litem must have received appropriate training that is specifically related to serving  
21 as a child's court-appointed representative.

22 ~~(2)~~(3) The guardian ad litem is charged with the representation of the child's best interests and shall  
23 perform the following general duties:

24 (a) to conduct investigations to ascertain the facts constituting the alleged abuse or neglect;

25 (b) to interview or observe the child who is the subject of the proceeding;

26 (c) to have access to court, medical, psychological, law enforcement, social services, and school  
27 records pertaining to the child and the child's siblings and parents or custodians;

28 (d) to make written reports to the court concerning the child's welfare;

29 (e) to appear and participate in all proceedings to the degree necessary to adequately represent the  
30 child and make recommendations to the court concerning the child's welfare;

1 (f) to perform other duties as directed by the court; and  
 2 (g) if an attorney, to file motions, including but not limited to filing to expedite proceedings or otherwise  
 3 assert the child's rights.

4 ~~(3)~~(4) Information contained in a report filed by the guardian ad litem or testimony regarding a report  
 5 filed by the guardian ad litem is not hearsay when it is used to form the basis of the guardian ad litem's opinion  
 6 as to the best interests of the child.

7 ~~(4)~~(5) Any party may petition the court for the removal and replacement of the guardian ad litem if the  
 8 guardian ad litem fails to perform the duties of the appointment."  
 9

10 **Section 2.** Section 41-3-115, MCA, is amended to read:

11 **"41-3-115. Foster care review committee -- foster care reviews -- permanency hearings.** (1) Except  
 12 as provided in Title 41, chapter 3, part 10, in every judicial district the district court judge, in consultation with the  
 13 department, shall appoint a foster care review committee. The foster care review committee shall conduct foster  
 14 care reviews as provided in this section and may, at the discretion of the court AND ABSENT AN OBJECTION BY A  
 15 PARTY TO THE PROCEEDING, conduct permanency hearings as provided in 41-3-445.

16 (2) (a) The members of the committee must be willing to act without compensation. The committee must  
 17 be composed of not less than ~~five~~ three or more than seven members. To the extent practicable, the members  
 18 of the committee must be representatives of the various socioeconomic, racial, and ethnic groups of the area  
 19 served.

20 (b) The members must include:

21 ~~(a)~~(i) a one representative of the department who may not be responsible for the placement of the child  
 22 or have any other direct conflict of interest;

23 ~~(b)~~ a representative of the youth court;

24 ~~(c)~~(ii) someone a person who is knowledgeable in the needs of children in foster care placements and  
 25 who is not employed by the department or the youth court; and

26 ~~(d)~~ a representative of a local school district;

27 ~~(e)~~(iii) if the child whose care is under review is an Indian child, ~~someone a person~~, preferably an Indian  
 28 person, who is knowledgeable about Indian cultural and family matters and who is appointed effective only for  
 29 and during that review; ~~and~~

30 ~~(f) if there is one, the foster parent of the child whose care is under review. The foster parent's~~

1 ~~appointment is effective only for and during that review.~~

2 (c) Members may also include but are not limited to:

3 (i) a representative of the youth court;

4 (ii) a representative of a local school district;

5 (iii) a public health nurse;

6 (iv) an at-large community member with ~~an interest in~~ KNOWLEDGE OF child protective services.

7 ~~(2)(3) (a)~~ When a child is in foster care under the supervision of the department or if payment for care  
8 is made pursuant to 52-2-611, the committee shall conduct a review of the foster care status of the child. The  
9 review must be conducted within a the time limit established ~~by the department. The time limit must comply with~~  
10 under the Adoption and Safe Families Act of 1997, as enacted 42 U.S.C. 675(5).

11 (b) The committee shall hear the case of each child in foster care to review issues that are germane  
12 to the goals of permanency and to accessing appropriate services for parents and children. In evaluating the  
13 accessibility, availability, and appropriateness of services, the committee ~~may~~ SHALL consider:

14 (i) the safety, HISTORY, AND SPECIFIC NEEDS of the child;

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

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

18 (iv) the results of intervention.

19 (c) The committee may hear the case of a child who remains in or returns to the child's home and for  
20 whom the department retains legal custody.

21 ~~(3) The department shall provide the committee with guidelines for operation of the committee. Within~~  
22 ~~30 days of the foster care review, the committee shall provide the youth court and the department with a written~~  
23 ~~report of its findings and recommendations for further action by the youth court or the department.~~

24 ~~———— (4) The department shall adopt rules necessary to carry out the purposes of this section. The rules must~~  
25 ~~provide for policies and procedures consistent with the provisions regarding notice, written findings and~~  
26 ~~recommendations, conflict of interest, recordkeeping, sibling reviews, disclosure and immunity under 41-3-1010,~~  
27 ~~and the deliberation provisions of 41-3-1012.~~

28 (4) (a) ~~Notice~~ PRIOR TO THE BEGINNING OF THE REVIEW, REASONABLE NOTICE of each review must be sent  
29 to the following:

30 (i) the parents of the child or their attorneys;

- 1           (ii) if applicable, the foster parents, a relative caring for the child, the preadoptive parents, or the  
2 surrogate parents;
- 3           (iii) the child who is the subject of the review if the child is 12 years of age or older;  
4           (iv) the child's attorney, if any;  
5           (v) the guardian ad litem;  
6           (vi) the court-appointed attorney or special advocate of the child; and  
7           (vii) the child's Indian tribe if the child is an Indian.
- 8           (b) When applicable, notice of each review may be sent to other interested persons who are authorized  
9 by the committee to receive notice.
- 10           (c) All persons receiving notice are subject to the confidentiality provisions of 41-3-205.
- 11           (d) If a foster care review is held in conjunction with a permanency hearing, notice of both proceedings  
12 must be provided.
- 13           (e) If a foster care review is held in conjunction with a permanency hearing, notice must be provided  
14 to the attorney who initiated the child abuse or neglect proceedings.
- 15           (5) The committee may elect to hold joint or separate reviews for groups of siblings, but findings and  
16 recommendations made by the committee must be specific to each child.
- 17           (6) After reviewing each case, the committee shall prepare written findings and recommendations with  
18 respect to:
- 19           (a) the continuing need for the placement and the appropriateness and safety of the placement;  
20           (b) compliance with the case plan;  
21           (c) the progress that has been made toward alleviating the need for placement;  
22           (d) a likely date by which the child may be returned home or by which a permanent placement may be  
23 finalized.
- 24           (7) ~~In all cases~~ FOLLOWING THE PERMANENCY HEARING, the committee shall send copies of its MINUTES  
25 AND written findings and recommendations to the court. ~~The court may issue orders based on the findings of~~  
26 ~~the committee.~~ AND TO THE PARTIES. IF A PARTY OBJECTS TO THE FINDINGS AND RECOMMENDATIONS, THE PARTY MAY  
27 WITHIN 10 DAYS SERVE WRITTEN OBJECTIONS UPON THE OTHER PARTY AND FILE THEM WITH THE COURT. A REQUEST FOR  
28 A HEARING BEFORE THE COURT UPON THE OBJECTIONS MAY BE MADE BY A PARTY BY MOTION. THE COURT, AFTER  
29 HEARING THE OBJECTIONS OR UPON ITS OWN MOTION AND WITHOUT OBJECTION, MAY ADOPT THE FINDINGS AND  
30 RECOMMENDATIONS AND SHALL ISSUE AN APPROPRIATE ORDER.

1           ~~(5)(8)~~ Because of the individual privacy involved, meetings of the committee, reports of the committee,  
2 and information on individuals' cases shared by committee members are confidential and subject to the  
3 confidentiality requirements of the department.

4           ~~(6)(9)~~ The committee is subject to the call of the youth district court judge to meet and confer with the  
5 judge on all matters pertaining to the foster care of a child before the youth district court."  
6

7           **Section 3.** Section 41-3-201, MCA, is amended to read:

8           **"41-3-201. Reports.** (1) When the professionals and officials listed in subsection (2) know or have  
9 reasonable cause to suspect, as a result of information they receive in their professional or official capacity, that  
10 a child is abused or neglected, they shall report the matter promptly to the department of public health and  
11 human services ~~or its local affiliate.~~

12           (2) Professionals and officials required to report are:

13           (a) a physician, resident, intern, or member of a hospital's staff engaged in the admission, examination,  
14 care, or treatment of persons;

15           (b) a nurse, osteopath, chiropractor, podiatrist, medical examiner, coroner, dentist, optometrist, or any  
16 other health or mental health professional;

17           (c) Christian Science practitioners and religious healers;

18           (d) school teachers, other school officials, and employees who work during regular school hours;

19           (e) a social worker, operator or employee of any registered or licensed day-care or substitute care  
20 facility, staff of a resource and referral grant program organized under 52-2-711 or of a child and adult food care  
21 program, or an operator or employee of a child-care facility;

22           (f) a foster care, residential, or institutional worker;

23           (g) a peace officer or other law enforcement official;

24           (h) a member of the clergy;

25           (i) a guardian ad litem or a court-appointed advocate who is authorized to investigate a report of alleged  
26 abuse or neglect; or

27           (j) an employee of an entity that contracts with the department to provide direct services to children.

28           (3) Any person may make a report under this section if the person knows or has reasonable cause to  
29 suspect that a child is abused or neglected.

30           (4) (a) Except as provided in subsection (4)(b) or (4)(c), a person listed in subsection (2) may not refuse

1 to make a report as required in this section on the grounds of a physician-patient or similar privilege.

2 (b) A member of the clergy or a priest is not required to make a report under this section if:

3 (i) the knowledge or suspicion of the abuse or neglect came from a statement or confession made to  
4 the member of the clergy or the priest in that person's capacity as a member of the clergy or as a priest;

5 (ii) the statement was intended to be a part of a confidential communication between the member of the  
6 clergy or the priest and a member of the church or congregation; and

7 (iii) the person who made the statement or confession does not consent to the disclosure by the member  
8 of the clergy or the priest.

9 (c) A member of the clergy or a priest is not required to make a report under this section if the  
10 communication is required to be confidential by canon law, church doctrine, or established church practice.

11 (5) The reports referred to under this section must contain:

12 (a) the names and addresses of the child and the child's parents or other persons responsible for the  
13 child's care;

14 (b) to the extent known, the child's age and the nature and extent of the child's injuries, including any  
15 evidence of previous injuries;

16 (c) any other information that the maker of the report believes might be helpful in establishing the cause  
17 of the injuries or showing the willful neglect and the identity of person or persons responsible for the injury or  
18 neglect; and

19 (d) the facts that led the person reporting to believe that the child has suffered injury or injuries or willful  
20 neglect, within the meaning of this chapter."

21

22 **Section 4.** Section 41-3-202, MCA, is amended to read:

23 **"41-3-202. Action on reporting.** (1) Upon receipt of a report that a child is or has been abused or  
24 neglected, the department shall promptly assess the information contained in the report and make a  
25 determination regarding the level of response required and the timeframe within which action must be initiated.

26 If the department determines that an investigation is required, a social worker, the county attorney, or a peace  
27 officer shall promptly conduct a thorough investigation into the circumstances surrounding the allegations of  
28 abuse or neglect of the child. The investigation may include an investigation at the home of the child involved,  
29 the child's school or day-care facility, or any other place where the child is present and into all other nonfinancial  
30 matters that in the discretion of the investigator are relevant to the investigation. In conducting an investigation

1 under this section, a social worker may not inquire into the financial status of the child's family or of any other  
2 person responsible for the child's care, except as necessary to ascertain eligibility for state or federal assistance  
3 programs or to comply with the provisions of 41-3-446.

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

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

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

17 (5) (a) If from the investigation the department has reasonable cause to suspect that the child suffered  
18 abuse or neglect, the department may provide emergency protective services to the child, pursuant to 41-3-301,  
19 or voluntary protective services pursuant to 41-3-302, and may provide protective services to any other child  
20 under the same care. The department shall:

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

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

25 (b) If from the investigation it is determined that the child has not suffered abuse or neglect and the  
26 initial report is determined to be unfounded, the department and the social worker, county attorney, or peace  
27 officer who conducted the investigation into the circumstances surrounding the allegations of abuse or neglect  
28 shall destroy all of their records concerning the report and the investigation. The destruction must be completed  
29 within 30 days of the determination that the child has not suffered abuse or neglect.

30 (c) (i) If the report is unsubstantiated, the department and the social worker who conducted the

1 investigation into the circumstances surrounding the initial allegations of abuse or neglect shall destroy all of the  
2 records, except for medical records, concerning the unsubstantiated report and the investigation within 30 days  
3 after the end of the 3-year period starting from the date the report was determined to be unsubstantiated, unless:

4 (A) there had been a previous or there is a subsequent substantiated report concerning the same  
5 person; or

6 (B) an order has been issued under this chapter based on the circumstances surrounding the initial  
7 allegations.

8 (ii) A person who is the subject of an unsubstantiated report that was made prior to October 1, 2003, and  
9 after which a period of 3 years has elapsed without there being submitted a subsequent substantiated report or  
10 an order issued under this chapter based on the circumstances surrounding the initial allegations may request  
11 that the department destroy all of the records concerning the unsubstantiated report as provided in subsection  
12 (5)(c)(i).

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

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

20

21 **Section 5.** Section 41-3-438, MCA, is amended to read:

22 **"41-3-438. Disposition -- hearing -- order.** (1) Unless a petition is dismissed or unless otherwise  
23 stipulated by the parties pursuant to 41-3-434 or ordered by the court, a dispositional hearing must be held on  
24 every petition filed under this chapter within 20 days after an adjudicatory order has been entered under  
25 41-3-437. Exceptions to the time limit may be allowed only in cases involving newly discovered evidence,  
26 unavoidable delays, stipulation by the parties pursuant to 41-3-434, and unforeseen personal emergencies.

27 (2) (a) A dispositional order must be made after a dispositional hearing that is separate from the  
28 adjudicatory hearing under 41-3-437. The hearing process must be scheduled and structured so that  
29 dispositional issues are specifically addressed apart from adjudicatory issues. Hearsay evidence is admissible  
30 at the dispositional hearing.

- 1 (b) A dispositional hearing may follow an adjudicatory hearing in a bifurcated manner immediately after  
2 the adjudicatory phase of the proceedings if:
- 3 (i) all required reports are available and have been received by all parties or their attorneys at least 5  
4 working days in advance of the hearing; and
- 5 (ii) the judge has an opportunity to review the reports after the adjudication.
- 6 (c) The dispositional hearing may be held prior to the entry of written findings required by 41-3-437.
- 7 (3) If a child is found to be a youth in need of care under 41-3-437, the court may enter its judgment,  
8 making any of the following dispositions to protect the welfare of the child:
- 9 (a) permit the child to remain with the child's custodial parent or guardian, subject to those conditions  
10 and limitations the court may prescribe;
- 11 (b) order the placement of the child with the noncustodial parent, superseding any existing custodial  
12 order, and dismiss the proceeding with no further obligation on the part of the department to provide services  
13 to the parent with whom the child is placed or to work toward reunification of the child with the parent or guardian  
14 from whom the child was removed in the initial proceeding;
- 15 (c) grant an order of limited emancipation to a child who is 16 years of age or older, as provided in  
16 41-1-501;
- 17 (d) transfer temporary legal custody to any of the following:
- 18 (i) the department;
- 19 (ii) a licensed child-placing agency that is willing and able to assume responsibility for the education,  
20 care, and maintenance of the child and that is licensed or otherwise authorized by law to receive and provide  
21 care of the child; or
- 22 (iii) a relative or other individual who is recommended by the department or a licensed child-placing  
23 agency designated by the court and who is found by the court to be qualified to receive and care for the child;
- 24 (e) order a party to the action to do what is necessary to give effect to the final disposition, including  
25 undertaking medical and psychological evaluations, treatment, and counseling that does not require an  
26 expenditure of money by the department unless the department consents and informs the court that resources  
27 are available for payment. The department is the payor of last resort after all family, insurance, and other  
28 resources have been examined.
- 29 (f) order further care and treatment as the court considers in the best interests of the child that does not  
30 require an expenditure of money by the department unless the department consents and informs the court that

1 resources are available for the proposed care and treatment. The department is the payor of last resort after all  
2 family, insurance, and other resources have been examined pursuant to 41-3-446.

3 (4) (a) If the court awards temporary legal custody of an abandoned child other than to the department  
4 or to a noncustodial parent, the court shall award temporary legal custody of the child to a member of the child's  
5 extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, if:

6 (i) placement of the abandoned child with the extended family member is in the best interests of the  
7 child;

8 (ii) the extended family member requests that the child be placed with the family member; and

9 (iii) the extended family member is found by the court to be qualified to receive and care for the child.

10 (b) If more than one extended family member satisfies the requirements of subsection (4)(a), the court  
11 may award custody to the extended family member who can best meet the child's needs.

12 (5) If reasonable efforts have been made to prevent removal of a child from the home or to return a child  
13 to the child's home but continuation of the efforts is determined by the court to be inconsistent with permanency  
14 for the child, the department shall make reasonable efforts to place the child in a timely manner in accordance  
15 with a permanent plan and to complete whatever steps are necessary to finalize the permanent placement of  
16 the child.

17 (6) If the court finds that reasonable efforts are not necessary pursuant to 41-3-442(1) or subsection  
18 (5) of this section, a permanency ~~plan~~ hearing must be held within 30 days of that determination and reasonable  
19 efforts must be made to place the child in a timely manner in accordance with the permanency plan and to  
20 complete whatever steps are necessary to finalize the permanent placement of the child.

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

23

24 **Section 6.** Section 41-3-443, MCA, is amended to read:

25 **"41-3-443. Treatment plan -- contents -- changes.** (1) The court may order a treatment plan if:

26 (a) the parent or parents admit the allegations of an abuse and neglect petition;

27 (b) the parent or parents stipulate to the allegations of abuse or neglect pursuant to 41-3-434; or

28 (c) the court has made an adjudication under 41-3-437 that the child is a youth in need of care.

29 (2) Every treatment plan must contain the following information:

30 (a) the identification of the problems or conditions that resulted in the abuse or neglect of a child;

1 (b) the treatment goals and objectives for each condition or requirement established in the plan. If the  
2 child has been removed from the home, the treatment plan must include but is not limited to the conditions or  
3 requirements that must be established for the safe return of the child to the family.

4 (c) the projected time necessary to complete each of the treatment objectives;

5 (d) the specific treatment objectives that clearly identify the separate roles and responsibilities of all  
6 parties addressed in the treatment plan; and

7 (e) the signature of the parent or parents or guardian, unless the plan is ordered by the court.

8 (3) A treatment plan may include but is not limited to any of the following remedies, requirements, or  
9 conditions:

10 (a) the right of entry into the child's home for the purpose of assessing compliance with the terms and  
11 conditions of a treatment plan;

12 (b) the requirement of either the child or the child's parent or guardian to obtain medical or psychiatric  
13 diagnosis and treatment through a physician or psychiatrist licensed in the state of Montana;

14 (c) the requirement of either the child or the child's parent or guardian to obtain psychological treatment  
15 or counseling;

16 (d) the requirement of either the child or the child's parent or guardian to obtain and follow through with  
17 alcohol or substance abuse evaluation and counseling, if necessary;

18 (e) the requirement that either the child or the child's parent or guardian be restricted from associating  
19 with or contacting any individual who may be the subject of a department investigation;

20 (f) the requirement that the child be placed in temporary medical or out-of-home care;

21 (g) the requirement that the parent, guardian, or other person having physical or legal custody furnish  
22 services that the court may designate.

23 (4) A treatment plan may not be altered, amended, continued, or terminated without the approval of the  
24 parent or parents or guardian pursuant to a stipulation and order or order of the court.

25 (5) A treatment plan must contain a notice provision advising parents:

26 (a) of timelines for hearings and determinations required under this chapter;

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

30 (c) that if a child has been in foster care for 15 of the last 22 months, state law presumes that

1 termination of parental rights is in the best interests of the child and the state is required to file a petition to  
2 terminate parental rights; and

3 (d) that completion of a treatment plan does not guarantee the return of a child and that completion of  
4 the plan without a change in behavior that caused removal in the first instance may result in termination of  
5 parental rights."

6

7 **Section 7.** Section 41-3-445, MCA, is amended to read:

8 **"41-3-445. Permanency plan hearing.** (1) (a) (i) Subject to subsection (1)(b), a permanency plan  
9 hearing must be held by the court or, subject to the approval of the court AND ABSENT AN OBJECTION BY A PARTY  
10 TO THE PROCEEDING, by the foster care review committee, as provided in 41-3-115, or the citizen review board,  
11 as provided in 41-3-1010:

12 (A) within 30 days of a determination that reasonable efforts to provide preservation or reunification  
13 services are not necessary under 41-3-423, 41-3-438(6), or 41-3-442(1); ~~and or~~

14 (B) no later than 12 months after the initial court finding that the child has been subjected to abuse or  
15 neglect or 12 months after the child's first 60 days of removal from the home, whichever comes first.

16 (ii) Within 12 months of a hearing under subsection (1)(a)(i)(B) and every 12 months thereafter until the  
17 child is permanently placed in either an adoptive or a guardianship placement, the court or the court-approved  
18 entity holding the permanency hearing shall conduct a hearing and ~~make the court shall issue~~ a finding as to  
19 whether the department has made reasonable efforts to finalize the permanency plan for the child.

20 (b) A permanency plan hearing is not required if the proceeding has been dismissed, the child was not  
21 removed from the home, ~~or~~ the child has been returned to the child's parent or guardian, or the child has been  
22 legally adopted or appointed a legal guardian.

23 (c) The permanency plan hearing may be combined with a hearing that is required in other sections of  
24 this part or with a review held pursuant to 41-3-115 or 41-3-1010 if held within the applicable time limits of that  
25 section. If a permanency plan hearing is combined with another hearing or a review, the requirements of the  
26 court related to the disposition of the other hearing or review must be met in addition to the requirements of this  
27 section.

28 (d) The court-approved entity conducting the permanency hearing may elect to hold joint or separate  
29 reviews for groups of siblings, but the court shall issue specific findings for each child.

30 (2) At least 3 working days prior to the permanency plan hearing, the department ~~and the guardian ad~~

1 ~~item~~ shall ~~each~~ submit a report regarding the child to the ~~court~~ entity that will be conducting the hearing for  
 2 review. The report must address the department's efforts to effectuate the permanency plan for the child,  
 3 address the options for the child's permanent placement, examine the reasons for excluding higher priority  
 4 options, and set forth the proposed plan to carry out the placement decision, including specific times for  
 5 achieving the plan.

6 (3) At least 3 working days prior to the permanency ~~plan~~ hearing, the guardian ad litem or an attorney  
 7 or advocate for a parent or guardian may submit an informational report to the ~~court~~ entity that will be conducting  
 8 the hearing for review.

9 (4) (a) The court's order must be issued within a reasonable time 20 days after the permanency plan  
 10 hearing if the hearing was conducted by the court. The court shall make findings on whether the permanency  
 11 plan is in the best interests of the child and whether the department has made reasonable efforts to finalize the  
 12 plan. The court shall order the department to take whatever additional steps are necessary to effectuate the  
 13 terms of the plan.

14 (b) If an entity other than the court conducts the hearing, the ENTITY SHALL KEEP MINUTES OF THE HEARING  
 15 AND THE MINUTES AND written recommendations must be provided to the court within 20 days of the hearing.

16 (c) If an entity other than the court conducts the hearing and the court concurs with the  
 17 recommendations, the court may adopt the recommendations as findings with no additional hearing required.  
 18 In this case, the court shall issue written findings within 10 days of receipt of the written recommendations.

19 (5) The court shall approve a specific permanency plan for the child and make written findings on:

20 (a) whether the permanency plan is in the best interests of the child;

21 (b) whether the department has made reasonable efforts to finalize the plan; and

22 (c) other necessary steps that the department is required to take to effectuate the terms of the plan.

23 ~~(5)(6)~~ In its discretion, the court may enter any other order that it determines to be in the best interests  
 24 of the child that does not conflict with the options provided in subsection ~~(6)~~ (7) and that does not require an  
 25 expenditure of money by the department unless the court finds after notice and a hearing that the expenditures  
 26 are reasonable and that resources are available for payment. The department is the payor of last resort after  
 27 all family, insurance, and other resources have been examined.

28 ~~(6)(7)~~ Permanency options include:

29 (a) reunification of the child with the child's parent or guardian;

30 (b) adoption;

- 1 (c) appointment of a guardian pursuant to 41-3-444; or
- 2 (d) long-term custody if the child is in a planned permanent living arrangement established by a  
3 preponderance of the evidence, which is reflected in specific findings by the court, that:
- 4 (i) the child is being cared for by a fit and willing relative;
- 5 (ii) the child has an emotional or mental handicap that is so severe that the child cannot function in a  
6 family setting and the best interests of the child are served by placement in a residential or group setting;
- 7 (iii) the child is at least 16 years of age and is participating in an independent living program and that  
8 termination of parental rights is not in the best interests of the child;
- 9 (iv) the child's parent is incarcerated and circumstances, including placement of the child and continued,  
10 frequent contact with the parent, indicate that it would not be in the best interests of the child to terminate  
11 parental rights of that parent; or
- 12 (v) the child meets the following criteria:
- 13 (A) the child has been adjudicated a youth in need of care;
- 14 (B) the department has made reasonable efforts to reunite the parent and child, further efforts by the  
15 department would likely be unproductive, and reunification of the child with the parent or guardian would be  
16 contrary to the best interests of the child;
- 17 (C) there is a judicial finding that other more permanent placement options for the child have been  
18 considered and found to be inappropriate or not to be in the child's best interests; and
- 19 (D) the child has been in a placement in which the foster parent or relative has committed to the  
20 long-term care and to a relationship with the child, and it is in the best interests of the child to remain in that  
21 placement.
- 22 ~~(7)~~(8) The court may terminate a planned permanent living arrangement upon petition of the birth  
23 parents or the department if the court finds that the circumstances of the child or family have substantially  
24 changed and the best interests of the child are no longer being served."  
25

26 **Section 8.** Section 41-3-1010, MCA, is amended to read:

27 **"41-3-1010. Review -- scope -- procedures -- immunity.** (1) (a) The board shall review the case of  
28 each child in foster care focusing on issues that are germane to the goals of permanency and to accessing  
29 appropriate services for parents and children. In evaluating the accessibility, availability, and appropriateness  
30 of services, the board may consider:

- 1 (i) the safety of the child;
- 2 (ii) whether an involved agency has selected services specifically relevant to the problems and needs  
3 of the child and family;
- 4 (iii) whether caseworkers have diligently provided services;
- 5 (iv) whether appropriate services have been available to the child and family on a timely basis; and
- 6 (v) the results of intervention.
- 7 (b) The board may review the case of a child who remains in or returns to the child's home and for  
8 whom the department retains legal custody.
- 9 (2) The review must ~~take place at times set by the board. The time limit must comply with~~ be conducted  
10 within the time limit established under the Adoption and Safe Families Act of 1997, 42 U.S.C. 675(5).
- 11 (3) The district court, by rule of the court or on an individual case basis, may relieve the board of its  
12 responsibility to review a case if a complete judicial review has taken place within 60 days prior to the next  
13 scheduled board review.
- 14 (4) Notice of each review must be sent to the department, any agency directly responsible for the care  
15 or placement of the child, the parents and their attorneys, the foster parents, a relative caring for the child, the  
16 preadoptive parents, the surrogate parents, the child who is the subject of the review if 12 years of age or older,  
17 the child's attorney, the guardian ad litem, the court-appointed attorney or special advocate of the child, the  
18 county attorney or deputy attorney general actively involved in the case, the Indian child's tribe if the child is an  
19 Indian, and other interested persons who are authorized by the board to receive notice and who are subject to  
20 41-3-205. The notice must include a statement that persons receiving a notice may participate in the hearing  
21 and be accompanied by a representative.
- 22 (5) After reviewing each case, the board shall prepare written findings and recommendations with  
23 respect to:
- 24 (a) whether reasonable efforts were made prior to the placement to prevent or to eliminate the need  
25 for removal of the child from the home and to make it possible for the child to be returned home;
- 26 (b) the continuing need for the placement and the appropriateness and safety of the placement;
- 27 (c) compliance with the case plan;
- 28 (d) the progress that has been made toward alleviating the need for placement;
- 29 (e) a likely date by which the child may be returned home or ~~placed for adoption~~ by which a permanent  
30 placement will be finalized;

1 (f) other problems, solutions, or alternatives that the board determines should be explored; and  
2 (g) whether the district court should appoint an attorney or other person as special advocate to  
3 represent or appear on behalf of the child pursuant to 41-3-112.

4 (6) Whenever a member of a board has a potential conflict of interest in a case being reviewed, the  
5 member shall declare to the board the nature of the potential conflict prior to participating in the case review.  
6 The following provisions apply:

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

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

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

14 (8) The board may hold joint or separate reviews for groups of siblings, but the court shall issue specific  
15 findings for each child.

16 (9) The board may disclose to parents and their attorneys, foster parents, children who are 12 years  
17 of age or older, children's attorneys, and other persons authorized by the board to participate in the case review  
18 the records disclosed to the board pursuant to 41-3-1008. Before participating in a board case review, each  
19 participant, other than parents and children, shall swear or affirm to the board that the participant will keep  
20 confidential the information disclosed by the board in the case review and will disclose it only as authorized by  
21 law.

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

24 (11) The board may, at the discretion of the court AND ABSENT AN OBJECTION BY A PARTY TO THE  
25 PROCEEDING, conduct permanency hearings as provided in 41-3-445."

26

27 **Section 9.** Section 42-6-102, MCA, is amended to read:

28 **"42-6-102. Disclosure of records -- nonidentifying and identifying information -- consensual**  
29 **release.** (1) The department or an authorized person or agency may disclose:

30 (a) nonidentifying information to an adoptee, an adoptive or birth parent, or an extended family member

1 of an adoptee or birth parent;

2 (b) identifying information to a court-appointed confidential intermediary upon order of the court or as  
3 provided in 50-15-121 and 50-15-122; ~~and~~

4 (c) identifying information limited to the specific information required to assist an adoptee to become  
5 enrolled in or a member of an Indian tribe; and

6 (d) identifying information to authorized personnel during a federal child and family services review.

7 (2) Information may be disclosed to any person who consents in writing to the release of confidential  
8 information to other interested persons who have also consented. Identifying information pertaining to an  
9 adoption involving an adoptee who is still a child may not be disclosed based upon a consensual exchange of  
10 information unless the adoptee's adoptive parent consents in writing."

11

12 NEW SECTION. **Section 10. Effective date.** [This act] is effective on passage and approval.

13

- END -