

HOUSE BILL NO. 250

INTRODUCED BY R. STOKER

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30

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

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

**Section 1.** Section 2-15-501, MCA, is amended to read:

**"2-15-501. General duties.** It is the duty of the attorney general:

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

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

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

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

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

(6) when required by the public service or directed by the governor, to assist the county attorney of any county in the discharge of the county attorney's duties or to prosecute or defend appropriate cases in which the

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

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

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

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

16 **"7-4-2716. Duties related to state matters.** The county attorney ~~must~~ shall:

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

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

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

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

26 **"41-3-202. Action on reporting.** (1) Upon receipt of a report that a child is or has been abused or  
 27 neglected, the department shall promptly assess the information contained in the report and make a  
 28 determination regarding the level of response required and the timeframe within which action must be initiated.  
 29 If the department determines that an investigation is required, a social worker, ~~the county attorney~~, or a peace  
 30 officer shall promptly conduct a thorough investigation into the circumstances surrounding the allegations of

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

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

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

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

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

24 (i) after interviewing the parent or guardian, if reasonably available, document its determination regarding  
25 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 initial  
29 report is determined to be unfounded, the department and the social worker, ~~county attorney~~, or peace officer  
30 who conducted the investigation into the circumstances surrounding the allegations of abuse or neglect shall

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

3 (c) (i) If the report is unsubstantiated, the department and the social worker who conducted the  
4 investigation into the circumstances surrounding the initial allegations of abuse or neglect shall destroy all of the  
5 records, except for medical records, concerning the unsubstantiated report and the investigation within 30 days  
6 after the end of the 3-year period starting from the date the report was determined to be unsubstantiated, unless:

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

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

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

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

20 (7) Any person reporting abuse or neglect that involves acts or omissions on the part of a public or  
21 private residential institution, home, facility, or agency is responsible for ensuring that the report is made to the  
22 department."  
23

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

25 **"41-3-204. Admissibility and preservation of evidence.** (1) In any proceeding resulting from a report  
26 made pursuant to the provisions of this chapter or in any proceeding for which the report or its contents are  
27 sought to be introduced into evidence, the report or its contents or any other fact related to the report or to the  
28 condition of the child who is the subject of the report may not be excluded on the ground that the matter is or may  
29 be the subject of a privilege related to the examination or treatment of the child and granted in Title 26, chapter  
30 1, part 8, except the attorney-client privilege granted by 26-1-803.

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

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

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

11 (5) All written, photographic, or radiological evidence gathered under this section must be sent to the  
 12 local affiliate of the department at the time that the written confirmation report is sent or as soon after the report  
 13 is sent as is possible. If a confirmation report is not made, the evidence and the initial report must be destroyed  
 14 as provided in 41-3-202."

15

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

17 **"41-3-205. Confidentiality -- disclosure exceptions.** (1) The case records of the department and its  
 18 local affiliate, the local office of public assistance, ~~the county attorney~~, and the court concerning actions taken  
 19 under this chapter and all records concerning reports of child abuse and neglect must be kept confidential except  
 20 as provided by this section. Except as provided in subsections (6) and (7), a person who purposely or knowingly  
 21 permits or encourages the unauthorized dissemination of the contents of case records is guilty of a misdemeanor.

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

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

29 (a) a department, agency, or organization, including a federal agency, military enclave, or Indian tribal  
 30 organization, that is legally authorized to receive, inspect, or investigate reports of child abuse or neglect and that

1 otherwise meets the disclosure criteria contained in this section;

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

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

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

12 (e) a child named in the records who was allegedly abused or neglected or the child's legal guardian or  
13 legal representative, including the child's guardian ad litem or attorney or a special advocate appointed by the  
14 court to represent a child in a pending case;

15 (f) the state protection and advocacy program as authorized by 42 U.S.C. 6042(a)(2)(B);

16 (g) approved foster and adoptive parents who are or may be providing care for a child;

17 (h) a person about whom a report has been made and that person's attorney, with respect to the relevant  
18 records pertaining to that person only and without disclosing the identity of the reporter or any other person whose  
19 safety may be endangered;

20 (i) an agency, including a probation or parole agency, that is legally responsible for the supervision of  
21 an alleged perpetrator of child abuse or neglect;

22 (j) a person, agency, or organization that is engaged in a bona fide research or evaluation project and  
23 that is authorized by the department to conduct the research or evaluation;

24 (k) the members of an interdisciplinary child protective team authorized under 41-3-108 or of a family  
25 group decisionmaking meeting for the purposes of assessing the needs of the child and family, formulating a  
26 treatment plan, and monitoring the plan;

27 (l) the coroner or medical examiner when determining the cause of death of a child;

28 (m) a child fatality review team recognized by the department;

29 (n) a department or agency investigating an applicant for a license or registration that is required to  
30 operate a youth care facility, day-care facility, or child-placing agency;

1 (o) a person or entity who is carrying out background, employment-related, or volunteer-related  
2 screening of current or prospective employees or volunteers who have or may have unsupervised contact with  
3 children through employment or volunteer activities. A request for information under this subsection (3)(o) must  
4 be made in writing. Disclosure under this subsection (3)(o) is limited to information that indicates a risk to children,  
5 persons with developmental disabilities, or older persons posed by the person about whom the information is  
6 sought, as determined by the department.

7 (p) the news media, a member of the United States congress, or a state legislator, if disclosure is limited  
8 to confirmation of factual information regarding how the case was handled and if disclosure does not violate the  
9 privacy rights of the child or the child's parent or guardian, as determined by the department;

10 (q) an employee of the department or other state agency if disclosure of the records is necessary for  
11 administration of programs designed to benefit the child;

12 (r) an agency of an Indian tribe, a qualified expert witness, or the relatives of an Indian child if disclosure  
13 of the records is necessary to meet requirements of the federal Indian Child Welfare Act;

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

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

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

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

22 (w) a member of a county interdisciplinary child information team formed under the provisions of  
23 52-2-211;

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

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

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

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

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

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

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

11 (8) This section is not intended to affect the confidentiality of criminal court records, records of law  
 12 enforcement agencies, or medical records covered by state or federal disclosure limitations.

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

16

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

18 **"41-3-301. Emergency protective service.** (1) Any child protective social worker of the department;  
 19 ~~or a peace officer, or the county attorney~~ who has reason to believe any youth is in immediate or apparent danger  
 20 of harm may immediately remove the youth and place the youth in a protective facility. After ensuring that the  
 21 child is safe, the department may make a request for further assistance from the law enforcement agency or take  
 22 appropriate legal action. The person or agency placing the child shall notify the parents, parent, guardian, or other  
 23 person having physical custody of the youth of the placement at the time the placement is made or as soon after  
 24 placement as possible. Notification under this subsection must include the reason for removal, information  
 25 regarding the show cause hearing, and the purpose of the show cause hearing and must advise the parents,  
 26 parent, guardian, or other person having physical custody of the youth that the parents, parent, guardian, or other  
 27 person may have a support person present during any in-person meeting with the social worker concerning  
 28 emergency protective services.

29 (2) If a social worker of the department, a peace officer, or the ~~county~~ department's attorney determines  
 30 in an investigation of abuse or neglect of a child that the child is in danger because of the occurrence of partner



1 or family member assault, as provided for in 45-5-206, against an adult member of the household or that the child  
2 needs protection as a result of the occurrence of partner or family member assault against an adult member of  
3 the household, the department shall take appropriate steps for the protection of the child, which may include:

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

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

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

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

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

16 (5) An abuse and neglect petition must be filed within 2 working days, excluding weekends and holidays,  
17 of emergency placement of a child unless arrangements acceptable to the agency for the care of the child have  
18 been made by the parents or voluntary protective services are provided pursuant to 41-3-302.

19 (6) Except as provided in the federal Indian Child Welfare Act, if applicable, a show cause hearing must  
20 be held within 20 days of the filing of the initial petition unless otherwise stipulated by the parties pursuant to  
21 41-3-434.

22 (7) If the department determines that a petition for immediate protection and emergency protective  
23 services must be filed to protect the safety of the child, the social worker shall interview the parents of the child  
24 to whom the petition pertains, if the parents are reasonably available, before the petition may be filed. The district  
25 court may immediately issue an order for immediate protection of the child. The district court may not order further  
26 relief until the parents, if they are reasonably available, are given the opportunity to appear before the court or  
27 have their statements, if any, presented to the court for consideration before entry of an order granting the  
28 petition.

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30

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

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

- (i) immediate protection and emergency protective services, as provided in 41-3-427;
- (ii) temporary investigative authority, as provided in 41-3-433;
- (iii) temporary legal custody, as provided in 41-3-442;
- (iv) long-term custody, as provided in 41-3-445;
- (v) termination of the parent-child legal relationship, as provided in 41-3-607;
- (vi) appointment of a guardian pursuant to 41-3-444;
- (vii) a determination that preservation or reunification services need not be provided; or
- (viii) any combination of the provisions of subsections (1)(a)(i) through (1)(a)(vii) or any other relief that may be required for the best interests of the child.

(b) The petition may be modified for different relief at any time within the discretion of the court.

(c) A petition for temporary legal custody may be the initial petition filed in a case.

(d) A petition for the termination of the parent-child legal relationship may be the initial petition filed in a case if a request for a determination that preservation or reunification services need not be provided is made in the petition.

(2) ~~The county attorney, attorney general, or an attorney hired by the county department shall file all petitions under this chapter. A petition filed by the county attorney, attorney general, or an attorney hired by the county~~ must be accompanied by:

(a) an affidavit by the department alleging that the child appears to have been abused or neglected and stating the basis for the petition; and

(b) a separate notice to the court stating any statutory time deadline for a hearing.

(3) Abuse and neglect petitions must be given highest preference by the court in setting hearing dates.

(4) An abuse and neglect petition is a civil action brought in the name of the state of Montana. The Montana Rules of Civil Procedure and the Montana Rules of Evidence apply except as modified in this chapter. Proceedings under a petition are not a bar to criminal prosecution.

(5) (a) Except as provided in subsection (5)(b), the person filing the abuse and neglect petition has the burden of presenting evidence required to justify the relief requested and establishing:

1 (i) probable cause for the issuance of an order for immediate protection and emergency protective  
2 services or an order for temporary investigative authority;

3 (ii) a preponderance of the evidence for an order of adjudication or temporary legal custody;

4 (iii) a preponderance of the evidence for an order of long-term custody; or

5 (iv) clear and convincing evidence for an order terminating the parent-child legal relationship.

6 (b) If a proceeding under this chapter involves an Indian child, as defined in the federal Indian Child  
7 Welfare Act, 25 U.S.C. 1901, et seq., the standards of proof required for legal relief under the federal Indian Child  
8 Welfare Act apply.

9 (6) (a) Except as provided in the federal Indian Child Welfare Act, if applicable, the parents or parent,  
10 guardian, or other person or agency having legal custody of the child named in the petition, if residing in the state,  
11 must be served personally with a copy of the initial petition and a petition to terminate the parent-child legal  
12 relationship at least 5 days before the date set for hearing. If the person or agency cannot be served personally,  
13 the person or agency may be served by publication as provided in 41-3-428 and 41-3-429.

14 (b) Copies of all other petitions must be served upon the person or the person's attorney of record by  
15 certified mail, by personal service, or by publication as provided in 41-3-428 and 41-3-429. If service is by certified  
16 mail, the department must receive a return receipt signed by the person to whom the notice was mailed for the  
17 service to be effective. Service of the notice is considered to be effective if, in the absence of a return receipt, the  
18 person to whom the notice was mailed appears at the hearing.

19 (7) If personal service cannot be made upon the parents or parent, guardian, or other person or agency  
20 having legal custody, the court shall immediately provide for the appointment or assignment of an attorney as  
21 provided for in 41-3-425 to represent the unavailable party when, in the opinion of the court, the interests of  
22 justice require.

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

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

30 (b) A foster parent, preadoptive parent, or relative of the child who is caring for or a relative of the child

1 who has cared for a child who is the subject of the petition who appears at a hearing set pursuant to this section  
2 may be allowed by the court to intervene in the action if the court, after a hearing in which evidence is presented  
3 on those subjects provided for in 41-3-437(4), determines that the intervention of the person is in the best  
4 interests of the child. A person granted intervention pursuant to this subsection is entitled to participate in the  
5 adjudicatory hearing held pursuant to 41-3-437 and to notice and participation in subsequent proceedings held  
6 pursuant to this chapter involving the custody of the child.

7 (10) An abuse and neglect petition must:

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

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

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

13 (11) Any party in a proceeding pursuant to this section is entitled to counsel as provided in 41-3-425.

14 (12) At any stage of the proceedings considered appropriate by the court, the court may order an  
15 alternative dispute resolution proceeding or the parties may voluntarily participate in an alternative dispute  
16 resolution proceeding. An alternative dispute resolution proceeding under this chapter may include a family group  
17 decisionmaking meeting, mediation, or a settlement conference. If a court orders an alternative dispute resolution  
18 proceeding, a party who does not wish to participate may file a motion objecting to the order. If the department  
19 is a party to the original proceeding, a representative of the department who has complete authority to settle the  
20 issue or issues in the original proceeding must be present at any alternative dispute resolution proceeding.

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

23 (a) right, pursuant to 41-3-425, to appointment or assignment of counsel if the person is indigent or if  
24 appointment or assignment of counsel is required under the federal Indian Child Welfare Act, if applicable;

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

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

27 (14) If appropriate, orders issued under this chapter must contain a notice provision advising a child's  
28 parent, guardian, or other person having physical or legal custody of the child that:

29 (a) the court is required by federal and state laws to hold a permanency hearing to determine the  
30 permanent placement of a child no later than 12 months after a judge determines that the child has been abused

- 1 or neglected or 12 months after the first 60 days that the child has been removed from the child's home;
- 2 (b) if a child has been in foster care for 15 of the last 22 months, state law presumes that termination of
- 3 parental rights is in the best interests of the child and the state is required to file a petition to terminate parental
- 4 rights; and
- 5 (c) completion of a treatment plan does not guarantee the return of a child.
- 6 (15) A court may appoint a standing master to conduct hearings and propose decisions and orders to
- 7 the court for court consideration and action. A standing master may not conduct a proceeding to terminate
- 8 parental rights. A standing master must be a member of the state bar of Montana and must be knowledgeable
- 9 in the area of child abuse and neglect laws."

10

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

12 **"41-3-427. Petition for immediate protection and emergency protective services -- order -- service.**

13 (1) (a) In a case in which it appears that a child is abused or neglected or is in danger of being abused or

14 neglected, ~~the county attorney~~, the attorney general; or an attorney hired by the ~~county~~ department may file a

15 petition for immediate protection and emergency protective services. In implementing the policy of this section,

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

17 (b) A petition for immediate protection and emergency protective services must state the specific

18 authority requested and the facts establishing probable cause that a child is abused or neglected or is in danger

19 of being abused or neglected.

20 (c) The petition for immediate protection and emergency protective services must be supported by an

21 affidavit signed by a representative of the department stating in detail the facts upon which the request is based.

22 The petition or affidavit of the department must contain information regarding statements, if any, made by the

23 parents detailing the parents' statement of the facts of the case. The parents, if available in person or by

24 electronic means, must be given an opportunity to present evidence to the court before the court rules on the

25 petition.

26 (d) The petition for immediate protection and emergency protective services must include a notice

27 advising the parents, parent, guardian, or other person having physical custody of the youth that the parents,

28 parent, guardian, or other person may have a support person present during any in-person meeting with a social

29 worker concerning emergency protective services. Reasonable accommodation must be made in scheduling an

30 in-person meeting with the social worker.

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

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

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

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

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

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

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

20          (g) any other temporary disposition that may be required in the best interests of the child that does not  
21 require an expenditure of money by the department unless the court finds after notice and a hearing that the  
22 expenditure is reasonable and that resources are available for payment. The department is the payor of last resort  
23 after all family, insurance, and other resources have been examined.

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

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

1 (5) The petition must be served as provided in 41-3-422."  
2

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

4 **"41-3-437. Adjudication -- temporary disposition -- findings -- order.** (1) Upon the filing of an  
5 appropriate petition, an adjudicatory hearing must be held within 90 days of a show cause hearing under  
6 41-3-432. Adjudication may take place at the show cause hearing if the requirements of subsection (2) are met  
7 or may be made by prior stipulation of the parties pursuant to 41-3-434 and order of the court. Exceptions to the  
8 time limit may be allowed only in cases involving newly discovered evidence, unavoidable delays, stipulation by  
9 the parties pursuant to 41-3-434, and unforeseen personal emergencies.

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

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

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

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

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

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

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

30 (A) whether a parent requesting return of the child was previously prevented from doing so as a result

1 of an order issued pursuant to Title 40, chapter 15, part 2, or of a conviction pursuant to 45-5-206; and

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

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

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

9 (b) If the child is adjudicated a youth in need of care, the court shall set a date for a dispositional hearing  
10 to be conducted within 20 days, as provided in 41-3-438(1), and order any necessary or required investigations.  
11 The court may issue a temporary dispositional order pending the dispositional hearing. The temporary  
12 dispositional order may provide for any of the forms of relief listed in 41-3-427(2).

13 (7) (a) Before making an adjudication, the court may make oral findings, and following the adjudicatory  
14 hearing, the court shall make written findings on issues, including but not limited to the following:

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

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

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

19 (b) The court may order:

20 (i) terms for visitation, support, and other intrafamily communication pending disposition if the child is  
21 to be placed or to remain in temporary out-of-home care prior to disposition;

22 (ii) examinations, evaluations, or counseling of the child or parents in preparation for the disposition  
23 hearing that does not require an expenditure of money by the department unless the court finds after notice and  
24 a hearing that the expenditure is reasonable and that resources are available for payment. The department is the  
25 payor of last resort after all family, insurance, and other resources have been examined.

26 (iii) the department to evaluate the noncustodial parent or relatives as possible caretakers, if not already  
27 done;

28 (iv) the perpetrator of the alleged child abuse or neglect to be removed from the home to allow the child  
29 to remain in the home; and

30 (v) the department to continue efforts to notify noncustodial parents.



1 (8) If a proceeding under this chapter involves an Indian child and is subject to the federal Indian Child  
2 Welfare Act, a qualified expert witness is required to testify that the continued custody of the child by the parent  
3 or Indian custodian is likely to result in serious emotional or physical damage to the child."  
4

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

6 **"41-3-442. Temporary legal custody.** (1) If a child is found to be a youth in need of care under  
7 41-3-437, the court may grant temporary legal custody under 41-3-438 if the court determines by a  
8 preponderance of the evidence that:

9 (a) dismissing the petition would create a substantial risk of harm to the child or would be a detriment  
10 to the child's physical or psychological well-being; and

11 (b) unless there is a finding that reasonable efforts are not required pursuant to 41-3-423, reasonable  
12 services have been provided to the parent or guardian to prevent the removal of the child from the home or to  
13 make it possible for the child to safely return home.

14 (2) An order for temporary legal custody may be in effect for no longer than 6 months.

15 (3) The granting of temporary legal custody to the department allows the department to place a child in  
16 care provided by a custodial or noncustodial parent, kinship foster home, youth foster home, youth group home,  
17 youth shelter care facility, or institution.

18 (4) Before the expiration of the order for temporary legal custody, ~~the county attorney,~~ the attorney  
19 general; or an attorney hired by the county department shall petition for one of the following:

20 (a) an extension of temporary legal custody, not to exceed 6 months, upon a showing that:

21 (i) additional time is necessary for the parent or guardian to successfully complete a treatment plan; or  
22 (ii) continuation of temporary legal custody is necessary because of the child's individual circumstances;

23 (b) termination of the parent-child legal relationship and either:

24 (i) permanent legal custody with the right of adoption; or

25 (ii) appointment of a guardian pursuant to 41-3-607;

26 (c) long-term custody when the child is in a planned permanent living arrangement pursuant to 41-3-445;

27 (d) appointment of a guardian pursuant to 41-3-444; or

28 (e) dismissal.

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

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

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

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

7 (9) A petition requesting temporary legal custody must be served as provided in 41-3-422."  
8

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

10 **"41-3-1010. Review -- scope -- procedures -- immunity.** (1) (a) The board shall review the case of  
11 each child in foster care focusing on issues that are germane to the goals of permanency and to accessing  
12 appropriate services for parents and children. In evaluating the accessibility, availability, and appropriateness of  
13 services, the board may consider:

14 (i) the safety 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 caseworkers have diligently provided services;

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

19 (v) the results of intervention.

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

22 (2) The review must be conducted within the time limit established under the Adoption and Safe Families  
23 Act of 1997, 42 U.S.C. 675(5).

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

27 (4) Notice of each review must be sent to the department, any agency directly responsible for the care  
28 or placement of the child, the parents and their attorneys, the foster parents, a relative caring for the child, the  
29 preadoptive parents, the surrogate parents, the child who is the subject of the review if 12 years of age or older,  
30 the child's attorney or the child's assigned attorney, the guardian ad litem, the court-appointed special advocate

1 of the child, the county department's attorney or deputy attorney general actively involved in the case, the Indian  
2 child's tribe if the child is an Indian, and other interested persons who are authorized by the board to receive  
3 notice and who are subject to 41-3-205. The notice must include a statement that persons receiving a notice may  
4 participate in the hearing and be accompanied by a representative.

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

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

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

10 (c) compliance with the case plan;

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

12 (e) a likely date by which the child may be returned home or by which a permanent placement will be  
13 finalized;

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

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

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

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

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

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

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

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

1 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 (11) The board may, at the discretion of the court and absent an objection by a party to the proceeding,  
8 conduct permanency hearings as provided in 41-3-445."

9

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

11 **"41-3-1012. Presence of employees and participants at reviews and deliberations of board.** (1)

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

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

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

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

30 (5) For the purposes of bringing criminal charges against a person who threatens a board member or

1 staff, the board members and board staff must be considered public servants as defined in 45-2-101.

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

3 (a) "Close", with regard to deliberations, means that only the board members and board staff may remain  
4 in attendance.

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

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

9

10 NEW SECTION. **Section 13. Effective date.** [This act] is effective July 1, 2007.

11

- END -