

1 HOUSE BILL NO. 410

2 INTRODUCED BY D. LENZ

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO CHILD PROTECTIVE
5 SERVICES; DEFINING "IMMEDIATE OR APPARENT DANGER"; REQUIRING CERTAIN EMPLOYEES TO
6 UNDERGO CONTINUING EDUCATION AND DRUG TESTING AND WEAR BODY CAMERAS DURING
7 CONTACT WITH A CHILD; REQUIRING APPOINTMENT OF A GUARDIAN AD LITEM WHEN ABUSE OR
8 NEGLECT IS ALLEGED; REVISING THE PROCEDURE FOR RECEIVING AND RESPONDING TO REPORTS
9 OF CHILD ABUSE OR NEGLECT; REVISING PURPOSES FOR WHICH CONFIDENTIAL CASE INFORMATION
10 MAY BE USED; REVISING EMERGENCY CHILD PROTECTIVE PROCEDURES AND STANDARDS;
11 REQUIRING THAT A PARENTAL VISITATION SCHEDULE BE INCLUDED IN A TREATMENT PLAN;
12 PREVENTING A CONTRIBUTION ORDER FROM BEING MODIFIED EXCEPT BY WRITTEN COURT ORDER;
13 AMENDING SECTIONS 40-4-205, 41-3-102, 41-3-108, 41-3-112, 41-3-202, 41-3-205, 41-3-301, 41-3-423,
14 41-3-427, 41-3-443, 41-3-446, 41-3-1010, AND 52-2-102, MCA; AND PROVIDING AN EFFECTIVE DATE."

15

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

17

18 **Section 1.** Section 40-4-205, MCA, is amended to read:

19 **"40-4-205. Guardian ad litem.** (1) The court may appoint a guardian ad litem to represent the interests
20 of a minor dependent child with respect to the child's support, parenting, and parental contact. The court shall
21 appoint a guardian ad litem in any case where abuse or neglect is alleged. The guardian ad litem may be an
22 attorney. The county attorney, a deputy county attorney, if any, or the department of public health and human
23 services or any of its staff may not be appointed for this purpose.

24 (2) The guardian ad litem has the following general duties:

25 (a) to conduct investigations that the guardian ad litem considers necessary to ascertain the facts related
26 to the child's support, parenting, and parental contact;

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

28 (c) to make written reports to the court concerning the child's support, parenting, and parental contact;

29 (d) to appear and participate in all proceedings to the degree necessary to adequately represent the child
30 and make recommendations to the court concerning the child's support, parenting, and parental contact; and

1 (e) to perform other duties as directed by the court.

2 (3) The guardian ad litem has access to court, medical, psychological, law enforcement, social services,
3 and school records pertaining to the child and the child's siblings and parents or caretakers.

4 (4) The court shall enter an order for costs and fees in favor of the child's guardian ad litem. The order
5 must be made against either or both parents, except that if the responsible party is indigent, the costs must be
6 waived.

7 (5) The guardian ad litem shall mail the report to counsel and to any party not represented by counsel
8 at least 10 days prior to the hearing."

9

10 **Section 2.** Section 41-3-102, MCA, is amended to read:

11 **"41-3-102. Definitions.** As used in this chapter, the following definitions apply:

12 (1) (a) "Abandon", "abandoned", and "abandonment" mean:

13 (i) leaving a child under circumstances that make reasonable the belief that the parent does not intend
14 to resume care of the child in the future;

15 (ii) willfully surrendering physical custody for a period of 6 months and during that period not manifesting
16 to the child and the person having physical custody of the child a firm intention to resume physical custody or to
17 make permanent legal arrangements for the care of the child;

18 (iii) that the parent is unknown and has been unknown for a period of 90 days and that reasonable efforts
19 to identify and locate the parent have failed; or

20 (iv) the voluntary surrender, as defined in 40-6-402, by a parent of a newborn who is no more than 30
21 days old to an emergency services provider, as defined in 40-6-402.

22 (b) The terms do not include the voluntary surrender of a child to the department solely because of
23 parental inability to access publicly funded services.

24 (2) "A person responsible for a child's welfare" means:

25 (a) the child's parent, guardian, or foster parent or an adult who resides in the same home in which the
26 child resides;

27 (b) a person providing care in a day-care facility;

28 (c) an employee of a public or private residential institution, facility, home, or agency; or

29 (d) any other person responsible for the child's welfare in a residential setting.

30 (3) "Abused or neglected" means the state or condition of a child who has suffered child abuse or

1 neglect.

2 (4) (a) "Adequate health care" means any medical care or nonmedical remedial health care recognized
3 by an insurer licensed to provide disability insurance under Title 33, including the prevention of the withholding
4 of medically indicated treatment or medically indicated psychological care permitted or authorized under state
5 law.

6 (b) This chapter may not be construed to require or justify a finding of child abuse or neglect for the sole
7 reason that a parent or legal guardian, because of religious beliefs, does not provide adequate health care for
8 a child. However, this chapter may not be construed to limit the administrative or judicial authority of the state to
9 ensure that medical care is provided to the child when there is imminent substantial risk of serious harm to the
10 child.

11 (5) "Best interests of the child" means the physical, mental, and psychological conditions and needs of
12 the child and any other factor considered by the court to be relevant to the child.

13 (6) "Child" or "youth" means any person under 18 years of age.

14 (7) (a) "Child abuse or neglect" means:

15 (i) actual physical or psychological harm to a child;

16 (ii) substantial risk of physical or psychological harm to a child; or

17 (iii) abandonment.

18 (b) (i) The term includes:

19 (A) actual physical or psychological harm to a child or substantial risk of physical or psychological harm
20 to a child by the acts or omissions of a person responsible for the child's welfare; or

21 (B) exposing a child to the criminal distribution of dangerous drugs, as prohibited by 45-9-101, the
22 criminal production or manufacture of dangerous drugs, as prohibited by 45-9-110, or the operation of an unlawful
23 clandestine laboratory, as prohibited by 45-9-132.

24 (ii) For the purposes of this subsection (7), "dangerous drugs" means the compounds and substances
25 described as dangerous drugs in Schedules I through IV in Title 50, chapter 32, part 2.

26 (c) In proceedings under this chapter in which the federal Indian Child Welfare Act is applicable, this term
27 has the same meaning as "serious emotional or physical damage to the child" as used in 25 U.S.C. 1912(f).

28 (d) The term does not include self-defense, defense of others, or action taken to prevent the child from
29 self-harm that does not constitute physical or psychological harm to a child.

30 (8) "Concurrent planning" means to work toward reunification of the child with the family while at the

1 same time developing and implementing an alternative permanent plan.

2 (9) "Department" means the department of public health and human services provided for in 2-15-2201.

3 (10) "Family group decisionmaking meeting" means a meeting that involves family members in either
4 developing treatment plans or making placement decisions, or both.

5 (11) "Immediate or apparent danger" means exposure or imminent exposure of a child to physical or
6 psychological harm and does not include indications of parenting shortcomings that can be addressed through
7 programs or services other than removal.

8 ~~(11)~~(12) "Indian child" means any unmarried person who is under 18 years of age and who is either:

9 (a) a member of an Indian tribe; or

10 (b) eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

11 ~~(12)~~(13) "Indian child's tribe" means:

12 (a) the Indian tribe in which an Indian child is a member or eligible for membership; or

13 (b) in the case of an Indian child who is a member of or eligible for membership in more than one Indian
14 tribe, the Indian tribe with which the Indian child has the more significant contacts.

15 ~~(13)~~(14) "Indian custodian" means any Indian person who has legal custody of an Indian child under tribal
16 law or custom or under state law or to whom temporary physical care, custody, and control have been transferred
17 by the child's parent.

18 ~~(14)~~(15) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of
19 Indians recognized by:

20 (a) the state of Montana; or

21 (b) the United States secretary of the interior as being eligible for the services provided to Indians or
22 because of the group's status as Indians, including any Alaskan native village as defined in federal law.

23 ~~(15)~~(16) "Limited emancipation" means a status conferred on a youth by a court in accordance with
24 41-1-503 under which the youth is entitled to exercise some but not all of the rights and responsibilities of a
25 person who is 18 years of age or older.

26 ~~(16)~~(17) "Parent" means a biological or adoptive parent or stepparent.

27 ~~(17)~~(18) "Parent-child legal relationship" means the legal relationship that exists between a child and the
28 child's birth or adoptive parents, as provided in Title 40, chapter 6, part 2, unless the relationship has been
29 terminated by competent judicial decree as provided in 40-6-234, Title 42, or part 6 of this chapter.

30 ~~(18)~~(19) "Permanent placement" means reunification of the child with the child's parent, adoption,

1 placement with a legal guardian, placement with a fit and willing relative, or placement in another planned
2 permanent living arrangement until the child reaches 18 years of age.

3 ~~(19)~~(20) "Physical abuse" means an intentional act, an intentional omission, or gross negligence resulting
4 in substantial skin bruising, internal bleeding, substantial injury to skin, subdural hematoma, burns, bone
5 fractures, extreme pain, permanent or temporary disfigurement, impairment of any bodily organ or function, or
6 death.

7 ~~(20)~~(21) "Physical neglect" means either failure to provide basic necessities, including but not limited to
8 appropriate and adequate nutrition, protective shelter from the elements, and appropriate clothing related to
9 weather conditions, or failure to provide cleanliness and general supervision, or both, or exposing or allowing the
10 child to be exposed to an unreasonable physical or psychological risk to the child.

11 ~~(24)~~(22) (a) "Physical or psychological harm to a child" means the harm that occurs whenever the parent
12 or other person responsible for the child's welfare:

13 (i) inflicts or allows to be inflicted upon the child physical abuse, physical neglect, or psychological abuse
14 or neglect;

15 (ii) commits or allows sexual abuse or exploitation of the child;

16 (iii) induces or attempts to induce a child to give untrue testimony that the child or another child was
17 abused or neglected by a parent or other person responsible for the child's welfare;

18 (iv) causes malnutrition or a failure to thrive or otherwise fails to supply the child with adequate food or
19 fails to supply clothing, shelter, education, or adequate health care, though financially able to do so or offered
20 financial or other reasonable means to do so;

21 (v) exposes or allows the child to be exposed to an unreasonable risk to the child's health or welfare by
22 failing to intervene or eliminate the risk; or

23 (vi) abandons the child.

24 (b) The term does not include a youth not receiving supervision solely because of parental inability to
25 control the youth's behavior.

26 ~~(22)~~(23) (a) "Protective services" means services provided by the department:

27 (i) to enable a child alleged to have been abused or neglected to remain safely in the home;

28 (ii) to enable a child alleged to have been abused or neglected who has been removed from the home
29 to safely return to the home; or

30 (iii) to achieve permanency for a child adjudicated as a youth in need of care when circumstances and

1 the best interests of the child prevent reunification with parents or a return to the home.

2 (b) The term includes emergency protective services provided pursuant to 41-3-301, voluntary protective
3 services provided pursuant to 41-3-302, and court-ordered protective services provided pursuant to parts 4 and
4 6 of this chapter.

5 ~~(23)~~(24) (a) "Psychological abuse or neglect" means severe maltreatment through acts or omissions that
6 are injurious to the child's emotional, intellectual, or psychological capacity to function, including the commission
7 of acts of violence against another person residing in the child's home.

8 (b) The term may not be construed to hold a victim responsible for failing to prevent the crime against
9 the victim.

10 ~~(24)~~(25) "Qualified expert witness" as used in cases involving an Indian child in proceedings subject to
11 the federal Indian Child Welfare Act means:

12 (a) a member of the Indian child's tribe who is recognized by the tribal community as knowledgeable in
13 tribal customs as they pertain to family organization and child-rearing practices;

14 (b) a lay expert witness who has substantial experience in the delivery of child and family services to
15 Indians and extensive knowledge of prevailing social and cultural standards and child-rearing practices within the
16 Indian child's tribe; or

17 (c) a professional person who has substantial education and experience in providing services to children
18 and families and who possesses significant knowledge of and experience with Indian culture, family structure,
19 and child-rearing practices in general.

20 ~~(25)~~(26) "Reasonable cause to suspect" means cause that would lead a reasonable person to believe
21 that child abuse or neglect may have occurred or is occurring, based on all the facts and circumstances known
22 to the person.

23 ~~(26)~~(27) "Residential setting" means an out-of-home placement where the child typically resides for longer
24 than 30 days for the purpose of receiving food, shelter, security, guidance, and, if necessary, treatment.

25 ~~(27)~~(28) (a) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent,
26 indecent exposure, sexual abuse, ritual abuse of a minor, or incest, as described in Title 45, chapter 5.

27 (b) Sexual abuse does not include any necessary touching of an infant's or toddler's genital area while
28 attending to the sanitary or health care needs of that infant or toddler by a parent or other person responsible for
29 the child's welfare.

30 ~~(28)~~(29) "Sexual exploitation" means allowing, permitting, or encouraging a child to engage in a

1 prostitution offense, as described in 45-5-601 through 45-5-603, or allowing, permitting, or encouraging sexual
2 abuse of children as described in 45-5-625.

3 ~~(29)~~(30) (a) "Social worker" means an employee of the department who, before the employee's field
4 assignment, has been educated or trained in a program of social work or a related field that includes cognitive
5 and family systems treatment or who has equivalent verified experience or verified training in the investigation
6 of child abuse, neglect, and endangerment.

7 (b) This definition does not apply to any provision of this code that is not in this chapter.

8 ~~(30)~~(31) "Treatment plan" means a written agreement between the department and the parent or guardian
9 or a court order that includes action that must be taken to resolve the condition or conduct of the parent or
10 guardian that resulted in the need for protective services for the child. The treatment plan may involve court
11 services, the department, and other parties, if necessary, for protective services.

12 ~~(31)~~(32) "Unfounded" means that after an investigation, the investigating person has determined that the
13 reported abuse, neglect, or exploitation has not occurred.

14 ~~(32)~~(33) "Unsubstantiated" means that after an investigation, the investigator was unable to determine
15 by a preponderance of the evidence that the reported abuse, neglect, or exploitation has occurred.

16 ~~(33)~~(34) (a) "Withholding of medically indicated treatment" means the failure to respond to an infant's
17 life-threatening conditions by providing treatment, including appropriate nutrition, hydration, and medication, that,
18 in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in
19 ameliorating or correcting the conditions.

20 (b) The term does not include the failure to provide treatment, other than appropriate nutrition, hydration,
21 or medication, to an infant when, in the treating physician's or physicians' reasonable medical judgment:

22 (i) the infant is chronically and irreversibly comatose;

23 (ii) the provision of treatment would:

24 (A) merely prolong dying;

25 (B) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or

26 (C) otherwise be futile in terms of the survival of the infant; or

27 (iii) the provision of treatment would be virtually futile in terms of the survival of the infant and the
28 treatment itself under the circumstances would be inhumane. For purposes of this subsection ~~(33)~~ (34), "infant"
29 means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously
30 hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The reference

1 to less than 1 year of age may not be construed to imply that treatment should be changed or discontinued when
 2 an infant reaches 1 year of age or to affect or limit any existing protections available under state laws regarding
 3 medical neglect of children 1 year of age or older.

4 ~~(34)~~(35) "Youth in need of care" means a youth who has been adjudicated or determined, after a hearing,
 5 to be or to have been abused, neglected, or abandoned."
 6

7 **Section 3.** Section 41-3-108, MCA, is amended to read:

8 **"41-3-108. Child protective teams.** (1) The county attorney, county commissioners, guardian ad litem,
 9 or department may convene one or more temporary or permanent interdisciplinary child protective teams. These
 10 teams may assist in assessing the needs of, formulating and monitoring a treatment plan for, and coordinating
 11 services to the child and the child's family. The supervisor of child protective services in a local service area or
 12 the supervisor's designee shall serve as the team's coordinator. Members must include:

13 ~~(1)~~(a) a social worker;

14 ~~(2)~~(b) a member of a local law enforcement agency;

15 ~~(3)~~(c) a representative of the medical profession;

16 ~~(4)~~(d) a representative of a public school system;

17 ~~(5)~~(e) a county attorney; ~~and~~

18 ~~(6)~~(f) if an Indian child or children are involved, someone, preferably an Indian person, knowledgeable
 19 about Indian culture and family matters; ~~and~~

20 (g) the parent's attorney, if applicable.

21 (2) A member of a child protective team who has direct contact with a child as part of the member's
 22 employment shall submit to a random drug testing program developed in accordance with 39-2-208.

23 (3) A member of a child protective team shall wear a body camera and record:

24 (a) any visit to the child's residence during an investigation; and

25 (b) any removal of a child from the child's parent or guardian regardless of whether the removal occurs
 26 at the child's residence.

27 (4) A member of a child protective team shall complete 30 hours of continuing education each year on
 28 subjects including:

29 (a) child welfare;

30 (b) ethics;

- 1 (c) trauma, including sexual trauma;
 2 (d) secondary trauma;
 3 (e) professional conduct, including crisis intervention training; and
 4 (f) evidence-based practices for family preservation and strengthening.
 5 (5) A member who is a social worker shall attend one law enforcement training on child protective
 6 investigations each year. Attendance at the law enforcement training may be counted toward the continuing
 7 education requirement in subsection (4)."

8
 9 **Section 4.** Section 41-3-112, MCA, is amended to read:

10 **"41-3-112. Appointment of court-appointed special advocate -- guardian ad litem.** (1) In every
 11 judicial proceeding, including a dissolution of marriage proceeding, the court shall appoint a court-appointed
 12 special advocate as the guardian ad litem for any child alleged to be abused or neglected. If a court-appointed
 13 special advocate is not available for appointment, the court may appoint an attorney or other qualified person to
 14 serve as the guardian ad litem. ~~The department or~~ An individual, including any member of its the department's
 15 staff, who has a direct conflict of interest may not be appointed as the guardian ad litem in a judicial proceeding
 16 under this title. When necessary, the guardian ad litem may serve at public expense.

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

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

21 (a) to conduct investigations to ascertain the facts constituting the alleged abuse or neglect, including
 22 interviewing the family and visiting the residence of the child;

23 (b) to interview or observe the child who is the subject of the proceeding and to include any opinions or
 24 desires expressed by the child with regard to the child's placement in the guardian ad litem's report to the court;

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

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

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

30 (f) to perform other duties as directed by the court; and

1 (g) if an attorney, to file motions, including but not limited to filing to expedite proceedings or otherwise
2 assert the child's rights.

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

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

9 **Section 5.** Section 41-3-202, MCA, is amended to read:

10 **"41-3-202. Action on reporting.** (1) Upon receipt of a report that a child is or has been abused or
11 neglected, the department shall promptly assess the information contained in the report and make a
12 determination regarding the level of response required and the timeframe within which action must be initiated.
13 If the department determines that an investigation is required, a social worker, the county attorney, or a peace
14 officer shall promptly conduct a thorough investigation into the circumstances surrounding the allegations of
15 abuse or neglect of the child. The investigation may include an investigation at the home of the child involved,
16 the child's school or day-care facility, or any other place where the child is present and into all other nonfinancial
17 matters that in the discretion of the investigator are relevant to the investigation. In conducting an investigation
18 under this section, a social worker may not inquire into the financial status of the child's family or of any other
19 person responsible for the child's care, except as necessary to ascertain eligibility for state or federal assistance
20 programs or to comply with the provisions of 41-3-446.

21 (2) An initial investigation of alleged abuse or neglect may be conducted when ~~an anonymous a~~
22 confidential report is received. When a report is received, the employee receiving the report shall collect the
23 caller's name and contact information and give the caller the option to receive updates as the investigation
24 proceeds. The department shall keep the name of the caller and all identifying information confidential. However,
25 the An investigation initiated by a confidential report must within 48 hours result in the development of
26 independent, corroborative, and attributable information in order for the investigation to continue. Without the
27 development of independent, corroborative, and attributable information, a child may not be removed from the
28 home.

29 (3) The social worker is responsible for assessing the family and planning for the child. If the child is
30 treated at a medical facility, the social worker, county attorney, or peace officer, consistent with reasonable

1 medical practice, has the right of access to the child for interviews, photographs, and securing physical evidence
 2 and has the right of access to relevant hospital and medical records pertaining to the child. If an interview of the
 3 child is considered necessary, the social worker, county attorney, or peace officer may conduct an interview of
 4 the child. The interview ~~may~~ must be conducted in the presence of the parent or guardian or an ~~employee of the~~
 5 ~~school or day-care facility attended by the child~~ adult support person of the child's choice that may be a relative,
 6 child care provider, counselor, teacher, or legal representative of the child. The interview must be recorded.
 7 Accommodations must be made for a child with a disability.

8 (4) Subject to 41-3-205(3), if the child's unedited audiotaped or videotaped interview ~~is audiotaped or~~
 9 ~~videotaped, an unedited audiotape or videotape with audio track~~ must be made available, upon request, for
 10 unencumbered review by the family, the legal representative of the child, and the presiding judge.

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

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

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

19 (b) If from the investigation it is determined that the child has not suffered abuse or neglect and the initial
 20 report is determined to be unfounded, the department and the social worker, county attorney, or peace officer
 21 who conducted the investigation into the circumstances surrounding the allegations of abuse or neglect shall
 22 destroy all of their records concerning the report and the investigation. The destruction must be completed within
 23 30 days of the determination that the child has not suffered abuse or neglect.

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

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

30 (B) an order has been issued under this chapter based on the circumstances surrounding the initial

1 allegations.

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

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

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

14 (8) The department shall, upon request from any reporter of alleged child abuse or neglect, verify
15 whether the report has been received, describe the level of response and timeframe for action that the
16 department has assigned to the report, and confirm that it is being acted upon."

17

18 **Section 6.** Section 41-3-205, MCA, is amended to read:

19 **"41-3-205. Confidentiality -- disclosure exceptions.** (1) The case records of the department and its
20 local affiliate, the local office of public assistance, the county attorney, and the court concerning actions taken
21 under this chapter and all records concerning reports of child abuse and neglect must be kept confidential except
22 as provided by this section. Except as provided in subsections (9) and (10), a person who purposely or knowingly
23 permits or encourages the unauthorized dissemination of the contents of case records is guilty of a misdemeanor.

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

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

- 1 (a) a department, agency, or organization, including a federal agency, military enclave, or Indian tribal
2 organization, that is legally authorized to receive, inspect, or investigate reports of child abuse or neglect and that
3 otherwise meets the disclosure criteria contained in this section;
- 4 (b) a licensed youth care facility or a licensed child-placing agency that is providing services to the family
5 or child who is the subject of a report in the records or to a person authorized by the department to receive
6 relevant information for the purpose of determining the best interests of a child with respect to an adoptive
7 placement;
- 8 (c) a health or mental health professional who is treating the family or child who is the subject of a report
9 in the records;
- 10 (d) a parent, grandparent, aunt, uncle, brother, sister, guardian, mandatory reporter provided for in
11 41-3-201(2) and (5), or person designated by a parent or guardian of the child who is the subject of a report in
12 the records or other person responsible for the child's welfare, without disclosure of the identity of any person who
13 reported or provided information on the alleged child abuse or neglect incident contained in the records;
- 14 (e) a child named in the records who was allegedly abused or neglected or the child's legal guardian or
15 legal representative, including the child's guardian ad litem or attorney or a special advocate appointed by the
16 court to represent a child in a pending case;
- 17 (f) the state protection and advocacy program as authorized by 42 U.S.C. 15043(a)(2);
- 18 (g) approved foster and adoptive parents who are or may be providing care for a child;
- 19 (h) a person about whom a report has been made and that person's attorney, with respect to the relevant
20 records pertaining to that person only and without disclosing the identity of the reporter or any other person whose
21 safety may be endangered;
- 22 (i) an agency, including a probation or parole agency, that is legally responsible for the supervision of
23 an alleged perpetrator of child abuse or neglect;
- 24 (j) a person, agency, or organization that is engaged in a bona fide research or evaluation project and
25 that is authorized by the department to conduct the research or evaluation;
- 26 (k) the members of an interdisciplinary child protective team authorized under 41-3-108 or of a family
27 group decisionmaking meeting for the purposes of assessing the needs of the child and family, formulating a
28 treatment plan, and monitoring the plan;
- 29 (l) the coroner or medical examiner when determining the cause of death of a child;
- 30 (m) a child fatality review team recognized by the department[, including the child abuse and neglect

1 review commission established in 2-15-2019];

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

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

10 (p) the news media, if disclosure is limited to confirmation of factual information regarding how the case
11 was handled and if disclosure does not violate the privacy rights of the child or the child's parent or guardian, as
12 determined by the department;

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

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

17 (s) a juvenile probation officer who is working in an official capacity with the child who is the subject of
18 a report in the records;

19 (t) an attorney who is hired by or represents the department if disclosure is necessary for the
20 investigation, defense, or prosecution of a case involving child abuse or neglect;

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

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

25 (w) a member of a county interdisciplinary child information and school safety team formed under the
26 provisions of 52-2-211;

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

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

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

1 (4) (a) The records described in subsection (3) must be disclosed to a member of the United States
2 congress or a member of the Montana legislature if all of the following requirements are met:

3 (i) the member receives a written inquiry regarding a child and whether the laws of the United States or
4 the state of Montana that protect children from abuse or neglect are being complied with or whether the laws need
5 to be changed to enhance protections for children;

6 (ii) the member submits a written request to the department requesting to review the records relating to
7 the written inquiry. The member's request must include a copy of the written inquiry, the name of the child whose
8 records are to be reviewed, and any other information that will assist the department in locating the records.

9 (iii) before reviewing the records, the member:

10 (A) signs a form that outlines the state and federal laws regarding confidentiality and the penalties for
11 unauthorized release of the information; and

12 (B) receives from the department an orientation of the content and structure of the records.

13 (b) Records disclosed pursuant to subsection (4)(a) are confidential; but must be made available for the
14 member to view at a location determined by the department, ~~but~~ The records may not be copied, recorded,
15 photographed, or otherwise replicated by the member; and must remain solely in the department's possession
16 in the local office where the case is or was active. The member must have the same access to information as the
17 social worker. The member may report any matters of concern to the office of the child and family ombudsman
18 and request a reinvestigation with a different judge.

19 (c) Access to records requested pursuant to this subsection (4) is limited to 6 months from the date the
20 written request to review records was received by the department.

21 (5) (a) The records described in subsection (3) must be promptly released to any of the following
22 individuals upon a written request by the individual to the department or the department's designee:

23 (i) the attorney general;

24 (ii) a county attorney or deputy county attorney of the county in which the alleged abuse or neglect
25 occurred;

26 (iii) a peace officer, as defined in 45-2-101, in the jurisdiction in which the alleged abuse or neglect
27 occurred; or

28 (iv) the office of the child and family ombudsman.

29 (b) The records described in subsection (3) must be promptly disclosed by the department to an
30 appropriate individual described in subsection (5)(a) or to a county interdisciplinary child information and school

1 safety team established pursuant to 52-2-211 upon the department's receipt of a report indicating that any of the
2 following has occurred:

- 3 (i) the death of the child as a result of child abuse or neglect;
4 (ii) a sexual offense, as defined in 46-23-502, against the child;
5 (iii) exposure of the child to an actual and not a simulated violent offense as defined in 46-23-502; or
6 (iv) child abuse or neglect, as defined in 41-3-102, due to exposure of the child to circumstances
7 constituting the criminal manufacture or distribution of dangerous drugs.

8 (c) (i) The department shall promptly disclose the results of an investigation to an individual described
9 in subsection (5)(a) or to a county interdisciplinary child information and school safety team established pursuant
10 to 52-2-211 upon the determination that:

11 (A) there is reasonable cause to suspect that a child has been exposed to a Schedule I or Schedule II
12 drug whose manufacture, sale, or possession is prohibited under state law; or

13 (B) a child has been exposed to drug paraphernalia used for the manufacture, sale, or possession of
14 a Schedule I or Schedule II drug that is prohibited by state law.

15 (ii) For the purposes of this subsection (5)(c), exposure occurs when a child is caused or permitted to
16 inhale, have contact with, or ingest a Schedule I or Schedule II drug that is prohibited by state law or have contact
17 with drug paraphernalia as defined in 45-10-101.

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

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

24 (8) The confidentiality provisions of this section must be construed to allow a court of this state to share
25 information with other courts of this state or of another state when necessary to expedite the interstate placement
26 of children.

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

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

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

6 (12) Copies of records, evaluations, reports, or other evidence obtained or generated pursuant to this
7 section that are provided to the parent, grandparent, aunt, uncle, brother, sister, guardian, or parent's or
8 guardian's attorney must be provided without cost. (Bracketed language in subsection (3)(m) terminates
9 September 30, 2021--sec. 12, Ch. 235, L. 2017.) "

10

11 **Section 7.** Section 41-3-301, MCA, is amended to read:

12 **"41-3-301. Emergency protective service.** (1) Any child protective social worker of the department,
13 a peace officer, or the county attorney who has ~~reason to believe~~ evidence suggesting that any child is in
14 immediate or apparent danger of harm may immediately remove the child and place the child in a protective
15 facility. After ensuring that the child is safe, the department ~~may make a request for further assistance from the~~
16 ~~law enforcement agency or take appropriate legal action~~ shall immediately file a petition for emergency protective
17 services and obtain a court order from a judge. If the child is placed in a protective facility and a kinship placement
18 is later identified, the child must be transported to the kinship placement within 14 days. The person or agency
19 placing the child shall notify the parents, parent, guardian, or other person having physical or legal custody of the
20 child of the placement at the time the placement is made or as soon after placement as possible. Notification
21 under this subsection must include the reason for removal, information regarding the show cause hearing, and
22 the purpose of the show cause hearing and must advise the parents, parent, guardian, or other person having
23 physical or legal custody of the child that the parents, parent, guardian, or other person may have a support
24 person present during any in-person meeting with the social worker concerning emergency protective services.

25 (2) If a social worker of the department, a peace officer, or the county attorney determines in an
26 investigation of abuse or neglect of a child that the child is in danger because of the occurrence of partner or
27 family member assault, as provided for in 45-5-206, or strangulation of a partner or family member, as provided
28 for in 45-5-215, against an adult member of the household or that the child needs protection as a result of the
29 occurrence of partner or family member assault or strangulation of a partner or family member against an adult
30 member of the household, the department shall take appropriate steps for the protection of the child, which may

1 include:

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

5 (b) making reasonable efforts to remove the person who allegedly committed the partner or family
6 member assault or strangulation of a partner or family member from the child's residence if it is determined that
7 the child or another family or household member is in danger of partner or family member assault or strangulation
8 of a partner or family member; 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 or strangulation of a partner or family
11 member until the department determines that the alleged offender has met conditions considered necessary to
12 protect the safety of the child.

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

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

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

21 (6) [Except as provided in 41-3-305,] if a child is removed from the child's home by the department, a
22 child protective social worker shall submit an affidavit regarding the circumstances of the emergency removal to
23 the county attorney and provide a copy of the affidavit to the parents or guardian, ~~if possible,~~ within 2 working
24 days of the emergency removal. ~~An abuse and neglect petition must be filed within 5 working days, excluding~~
25 ~~weekends and holidays, of the emergency removal of a child unless arrangements acceptable to the agency for~~
26 ~~the care of the child have been made by the parents or voluntary protective services are provided pursuant to~~
27 ~~41-3-302.~~

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

30 (8) If the department determines that a petition for immediate protection and emergency protective

1 services must be filed to protect the safety of the child, the social worker shall interview the parents of the child
2 to whom the petition pertains, if the parents are reasonably available, before the petition may be filed. The district
3 court may immediately issue an order for immediate protection of the child.

4 (9) The department shall make the necessary arrangements for the child's well-being as are required
5 prior to the court hearing. (Bracketed language in subsection (6) terminates June 30, 2019--sec. 5, Ch. 141, L.
6 2017.)"

7

8 **Section 8.** Section 41-3-423, MCA, is amended to read:

9 **"41-3-423. Reasonable efforts required to prevent removal of child or to return -- exemption --**
10 **findings -- permanency plan.** (1) The department shall make reasonable efforts to prevent the necessity of
11 removal of a child from the child's home and to reunify families that have been separated by the state.
12 Reasonable efforts include but are not limited to voluntary protective services agreements, development of
13 individual written case plans specifying state efforts to reunify families, placement in the least disruptive setting
14 possible, provision of services pursuant to a case plan, and periodic review of each case to ensure timely
15 progress toward reunification or permanent placement. In determining preservation or reunification services to
16 be provided and in making reasonable efforts at providing preservation or reunification services, the child's
17 physical, emotional, and mental health and safety are of paramount concern.

18 (2) Except in a proceeding subject to the federal Indian Child Welfare Act, the department may, at any
19 time during an abuse and neglect proceeding, make a request for a determination that preservation or
20 reunification services need not be provided. If an indigent parent is not already represented by counsel, the court
21 shall immediately provide for the appointment or assignment of counsel to represent the indigent parent in
22 accordance with the provisions of 41-3-425. A court may make a finding that the department need not make
23 reasonable efforts to provide preservation or reunification services if the court finds that the parent has:

24 (a) subjected a child to aggravated circumstances, including but not limited to abandonment, torture,
25 chronic abuse, or sexual abuse or chronic, severe neglect of a child;

26 (b) committed, aided, abetted, attempted, conspired, or solicited deliberate or mitigated deliberate
27 homicide of a child;

28 (c) committed aggravated assault against a child;

29 (d) committed neglect of a child that resulted in serious bodily injury or death; or

30 (e) had parental rights to the child's sibling or other child of the parent involuntarily terminated and the

1 circumstances related to the termination of parental rights are relevant to the parent's ability to adequately care
2 for the child at issue.

3 (3) Preservation or reunification services are not required for a putative father, as defined in 42-2-201,
4 if the court makes a finding that the putative father has failed to do any of the following:

5 (a) contribute to the support of the child for an aggregate period of 1 year, although able to do so;

6 (b) establish a substantial relationship with the child. A substantial relationship is demonstrated by:

7 (i) visiting the child at least monthly when physically and financially able to do so; or

8 (ii) having regular contact with the child or with the person or agency having the care and custody of the
9 child when physically and financially able to do so; and

10 (iii) manifesting an ability and willingness to assume legal and physical custody of the child if the child
11 was not in the physical custody of the other parent.

12 (c) register with the putative father registry pursuant to Title 42, chapter 2, part 2, and the person has
13 not been:

14 (i) adjudicated in Montana to be the father of the child for the purposes of child support; or

15 (ii) recorded on the child's birth certificate as the child's father.

16 (4) A judicial finding that preservation or reunification services are not necessary under this section must
17 be supported by clear and convincing evidence.

18 (5) If the court finds that preservation or reunification services are not necessary pursuant to subsection
19 (2) or (3), a permanency hearing must be held within 30 days of that determination and reasonable efforts,
20 including consideration of both in-state and out-of-state permanent placement options for the child, must be made
21 to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps
22 are necessary to finalize the permanent placement of the child.

23 (6) If reasonable efforts have been made to prevent removal of a child from the home or to return a child
24 to the child's home but continuation of the efforts is determined by the court to be inconsistent with the
25 permanency plan for the child, the department shall make reasonable efforts to place the child in a timely manner
26 in accordance with the permanency plan, including, if appropriate, placement in another state, and to complete
27 whatever steps are necessary to finalize the permanent placement of the child. Reasonable efforts to place a
28 child permanently for adoption or to make an alternative out-of-home permanent placement may be made
29 concurrently with reasonable efforts to return a child to the child's home. Concurrent planning, including identifying
30 in-state and out-of-state placements, may be used.

1 (7) When determining whether the department has made reasonable efforts to prevent the necessity of
2 removal of a child from the child's home or to reunify families that have been separated by the state, the court
3 shall review the services provided by the agency including, if applicable, protective services provided pursuant
4 to 41-3-302."

5

6 **Section 9.** Section 41-3-427, MCA, is amended to read:

7 **"41-3-427. Petition for immediate protection and emergency protective services -- order -- service.**

8 (1) (a) In a case in which it appears that a child is abused or neglected or is in danger of being abused or
9 neglected, the county attorney, the attorney general, or an attorney hired by the county ~~may~~ shall file a petition
10 for immediate protection and emergency protective services. In implementing the policy of this section, the child's
11 health and safety are of paramount concern.

12 (b) A petition for immediate protection and emergency protective services must state the specific
13 authority requested and must be supported by an affidavit signed by a representative of the department stating
14 in detail the alleged facts upon which the request is based and the facts establishing probable cause or, if the
15 case is subject to the federal Indian Child Welfare Act, clear and convincing evidence that a child is abused or
16 neglected or is in danger of being abused or neglected. The affidavit of the department representative must
17 contain complete information, if any, regarding statements made by the parents about the facts of the case.

18 (c) If from the alleged facts presented in the affidavit it appears to the court that there is probable cause
19 or, if the case is subject to the federal Indian Child Welfare Act, clear and convincing evidence to believe that the
20 child has been abused or neglected or is in danger of being abused and neglected, the judge shall grant
21 emergency protective services and the relief authorized by subsection (2) until the adjudication hearing or the
22 temporary investigative hearing. If it appears from the alleged facts contained in the affidavit that there is
23 insufficient probable cause or, if the case is subject to the federal Indian Child Welfare Act, clear and convincing
24 evidence to believe that the child has been abused or neglected or is in danger of being abused or neglected,
25 the court shall dismiss the petition.

26 (d) If the parents, parent, guardian, person having physical or legal custody of the child, or attorney for
27 the child disputes the material issues of fact contained in the affidavit or the veracity of the affidavit, the person
28 may request a contested show cause hearing pursuant to 41-3-432 within 10 days following service of the petition
29 and affidavit.

30 (e) The petition for immediate protection and emergency protective services must include a notice

1 advising the parents, parent, guardian, or other person having physical or legal custody of the child that the
2 parents, parent, guardian, or other person having physical or legal custody of the child may have a support
3 person present during any in-person meeting with a social worker concerning emergency protective services and
4 at any court proceeding, and that any in-person meeting may be recorded by request of any party for use by the
5 court. Reasonable accommodation must be made in scheduling an in-person meeting with the social worker.

6 (2) Pursuant to subsection (1), if the court finds probable cause or, if the case is subject to the federal
7 Indian Child Welfare Act, clear and convincing evidence based on the petition and affidavit, the court may issue
8 an order for immediate protection of the child. The court shall consider the parents' statements, if any, included
9 with the petition and any accompanying affidavit or report to the court. If the court finds probable cause or, if the
10 case is subject to the federal Indian Child Welfare Act, clear and convincing evidence, the court may issue an
11 order granting the following forms of relief, which do not constitute a court-ordered treatment plan under 41-3-443:

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

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

15 (c) the right of the department to locate, contact, and share information with any extended family
16 members who may be considered as placement options for the child;

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

20 (e) a requirement that the perpetrator of the alleged child abuse or neglect be removed from the home
21 to allow the child to remain in the home;

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

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

26 and

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

1 (3) An order for removal of a child from the home must include a finding that continued residence of the
 2 child with the parent is ~~contrary to the welfare of the child or that an out-of-home placement is in the best interests~~
 3 ~~of the child~~ would endanger the health or safety of the child.

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

8 (5) The petition must be served as provided in 41-3-422."
 9

10 **Section 10.** Section 41-3-443, MCA, is amended to read:

11 **"41-3-443. Treatment plan -- contents -- changes.** (1) The court may order a treatment plan if:

- 12 (a) the parent or parents admit the allegations of an abuse and neglect petition;
 13 (b) the parent or parents stipulate to the allegations of abuse or neglect pursuant to 41-3-434; or
 14 (c) the court has made an adjudication under 41-3-437 that the child is a youth in need of care.

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

- 16 (a) the identification of the problems or conditions that resulted in the abuse or neglect of a child;
 17 (b) the treatment goals and objectives for each condition or requirement established in the plan. If the
 18 child has been removed from the home, the treatment plan must include but is not limited to the conditions or
 19 requirements that must be established for the safe return of the child to the family.

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

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

23 (e) the signature of the parent or parents or guardian, unless the plan is ordered by the court;:

24 (f) any accommodations necessary for a child with a disability; and

25 (g) a plan for parental visitation time formulated in consideration of the age and attachment level of the
 26 child and with the goal of maintaining familial bonds. A parental visitation plan must allow a minimum of 2 hours
 27 of parent-child contact per week for each parent while the investigation is open, except that more than 2 hours
 28 may be necessary when an attachment is becoming more distant due to the length of separation and daily
 29 visitation is expected for breastfeeding infants. Parental visitation time must be scheduled so that it does not
 30 interfere with the child's school attendance or the parent's ability to maintain employment.

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

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

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

8 (c) the requirement of either the child or the child's parent or guardian to obtain psychological treatment
9 or counseling from a provider of the parent's or guardian's choice;

10 (d) the requirement of either the child or the child's parent or guardian to obtain and follow through with
11 alcohol or substance abuse evaluation and counseling through a provider of the parent's or guardian's choice,
12 if necessary;

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

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

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

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

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

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

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

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

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

1 (6) A treatment plan must be ordered by no later than 30 days after the date of the dispositional hearing
2 held pursuant to 41-3-438, except for good cause shown."

3

4 **Section 11.** Section 41-3-446, MCA, is amended to read:

5 **"41-3-446. Contributions by parents or guardians for youth's care.** (1) If physical or legal custody
6 of the youth is transferred to the department, the court shall examine the financial ability of the youth's parents
7 or guardians to pay a contribution covering all or part of the costs for the care, custody, and treatment of the
8 youth, including the costs of necessary medical, dental, and other health care.

9 (2) If the court determines that the youth's parents or guardians are financially able to pay a contribution
10 as provided in subsection (1), the court shall order the youth's parent or guardian to pay an amount based on the
11 uniform child support guidelines adopted by the department of public health and human services pursuant to
12 40-5-209. A contribution order must be in writing and cannot be altered except by written court order.

13 (3) (a) Except as provided in subsection (3)(b), contributions ordered under this section and each
14 modification of an existing order are enforceable by immediate or delinquency income withholding, or both, under
15 Title 40, chapter 5, part 4. An order for a contribution that is inconsistent with this section is nevertheless subject
16 to withholding for the payment of the contribution without need for an amendment of the support order or for any
17 further action by the court.

18 (b) A court-ordered exception from contributions under this section must be in writing and must be
19 included in the order. An exception from the immediate income-withholding requirement may be granted if the
20 court finds that there is:

21 (i) good cause not to require immediate income withholding; or

22 (ii) an alternative arrangement between the department and the person who is ordered to pay
23 contributions.

24 (c) A finding of good cause not to require immediate income withholding must, at a minimum, be based
25 upon:

26 (i) a written determination and explanation by the court of the reasons why the implementation of
27 immediate income withholding is not in the best interests of the child; and

28 (ii) proof of timely payment of previously ordered support in cases involving modification of contributions
29 ordered under this section.

30 (d) An alternative arrangement must:

- 1 (i) provide sufficient security to ensure compliance with the arrangement;
- 2 (ii) be in writing and be signed by a representative of the department and the person required to make
3 contributions; and
- 4 (iii) if approved by the court, be entered into the record of the proceeding.
- 5 (4) Upon a showing of a change in the financial ability of the youth's parent or guardian to pay, the court
6 may modify its order for the payment of contributions required under subsection (2).
- 7 (5) (a) If the court orders the payment of contributions under this section, the department shall apply to
8 the department of public health and human services for support enforcement services pursuant to Title IV-D of
9 the Social Security Act.
- 10 (b) The department of public health and human services may collect and enforce a contribution order
11 under this section by any means available under law, including the remedies provided for in Title 40, chapter 5,
12 parts 2 and 4."

13

14 **Section 12.** Section 41-3-1010, MCA, is amended to read:

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

- 19 (i) the safety of the child;
- 20 (ii) whether an involved agency has selected services specifically relevant to the problems and needs
21 of the child and family;
- 22 (iii) whether caseworkers have diligently provided services;
- 23 (iv) whether appropriate services have been available to the child and family on a timely basis; and
24 (v) the results of intervention.

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

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

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

1 scheduled board review.

2 (4) Notice of each review must be sent to the department, any agency directly responsible for the care
3 or placement of the child, the parents and their attorneys, the foster parents, a relative caring for the child, the
4 preadoptive parents, the surrogate parents, the child who is the subject of the review if 12 years of age or older,
5 the child's attorney or the child's assigned attorney, the guardian ad litem, the court-appointed special advocate
6 of the child, the county attorney or deputy attorney general actively involved in the case, the Indian child's tribe
7 if the child is an Indian, and other interested persons who are authorized by the board to receive notice and who
8 are subject to 41-3-205. The notice must include a statement that persons receiving a notice may participate in
9 the hearing and be accompanied by a representative.

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

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

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

15 (c) compliance with the case plan;

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

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

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

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

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

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

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

29 (7) The board shall keep accurate records and retain the records on file. The board shall send copies
30 of its written findings and recommendations to the district court, the department, and other participants in the

1 review unless prohibited by the confidentiality provisions of 41-3-205.

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

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

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

12 (11) The board may, at the discretion of the court and absent an objection by a party to the proceeding,
13 conduct permanency hearings as provided in 41-3-445."
14

15 **Section 13.** Section 52-2-102, MCA, is amended to read:

16 **"52-2-102. Recognition of parental control of children -- placement with extended family.** This title
17 may not be construed as authorizing any state or county official, agent, or representative, in carrying out any of
18 the provisions of this title, to take charge of any child over the objection of either of the parents of the child or the
19 person standing in loco parentis to the child, except pursuant to a proper court order. When it is necessary to take
20 charge of a child pursuant to a court order, the department shall, ~~when it is in the best interests of the child and~~
21 ~~when the home is approved by the department,~~ place the child with the child's extended family, including adult
22 siblings, grandparents, great-grandparents, aunts, and uncles, prior to placing the child in an alternative protective
23 or residential facility unless there is clear and convincing evidence that an extended family placement would
24 cause physical or psychological harm to the child."
25

26 NEW SECTION. **Section 14. Effective date.** [This act] is effective July 1, 2019.

27 - END -