

HOUSE BILL NO. 502

INTRODUCED BY T. BURNETT

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 GENERALLY REVISING INVESTIGATIONS BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES INTO CHILD ABUSE AND NEGLECT REPORTS; REVISING WHERE A LEGISLATOR MAY VIEW CERTAIN RECORDS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 41-3-102, 41-3-202, 41-3-203, 41-3-204, 41-3-205, 41-3-208, AND 50-16-603, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

**Section 1.** Section 41-3-102, MCA, is amended to read:

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

19 (iii) abandonment.

20 (b) (i) The term includes:

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

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

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

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

30 (d) The term does not include self-defense, defense of others, or action taken to prevent the child from

1 self-harm that does not constitute physical or psychological harm to a child.

2 (8) "Concurrent planning" means to work toward reunification of the child with the family while at the  
3 same time developing and implementing an alternative permanent plan.

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

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

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

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

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

10 (12) "Indian child's tribe" means:

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

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

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

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

19 (a) the state of Montana; or

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

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

25 (16) "Parent" means a biological or adoptive parent or stepparent.

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

29 (18) "Permanent placement" means reunification of the child with the child's parent, adoption, placement  
30 with a legal guardian, placement with a fit and willing relative, or placement in another planned permanent living

1 arrangement until the child reaches 18 years of age.

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

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

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

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

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

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

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

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

22 (vi) abandons the child.

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

25 (22) (a) "Protective services" means services provided by the department:

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

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

29 (iii) to achieve permanency for a child adjudicated as a youth in need of care when circumstances and  
30 the best interests of the child prevent reunification with parents or a return to the home.

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

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

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

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

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

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

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

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

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

24 (27) "Safety and risk assessment" means an evaluation by a social worker following an initial report of  
25 child abuse or neglect to assess the following:

26 (a) the existing threat or threats to the child's safety;

27 (b) the protective capabilities of the parent or guardian;

28 (c) any particular vulnerabilities of the child;

29 (d) any interventions required to protect the child; and

30 (e) the likelihood of future physical or psychological harm to the child.

1 ~~(27)~~(28) (a) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent,  
2 indecent exposure, sexual abuse, ritual abuse of a minor, or incest, as described in Title 45, chapter 5.

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

6 ~~(28)~~(29) "Sexual exploitation" means allowing, permitting, or encouraging a child to engage in a  
7 prostitution offense, as described in 45-5-601 through 45-5-603, or allowing, permitting, or encouraging sexual  
8 abuse of children as described in 45-5-625.

9 ~~(29)~~(30) (a) "Social worker" means an employee of the department who, before the employee's field  
10 assignment, has been educated or trained in a program of social work or a related field that includes cognitive  
11 and family systems treatment or who has equivalent verified experience or verified training in the investigation  
12 of child abuse, neglect, and endangerment.

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

14 ~~(30)~~(31) "Treatment plan" means a written agreement between the department and the parent or guardian  
15 or a court order that includes action that must be taken to resolve the condition or conduct of the parent or  
16 guardian that resulted in the need for protective services for the child. The treatment plan may involve court  
17 services, the department, and other parties, if necessary, for protective services.

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

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

22 ~~(33)~~(32) (a) "Withholding of medically indicated treatment" means the failure to respond to an infant's  
23 life-threatening conditions by providing treatment, including appropriate nutrition, hydration, and medication, that,  
24 in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in  
25 ameliorating or correcting the conditions.

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

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

29 (ii) the provision of treatment would:

30 (A) merely prolong dying;

1 (B) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or  
 2 (C) otherwise be futile in terms of the survival of the infant; or  
 3 (iii) the provision of treatment would be virtually futile in terms of the survival of the infant and the  
 4 treatment itself under the circumstances would be inhumane. For purposes of this subsection ~~(33)~~ (32), "infant"  
 5 means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously  
 6 hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The reference  
 7 to less than 1 year of age may not be construed to imply that treatment should be changed or discontinued when  
 8 an infant reaches 1 year of age or to affect or limit any existing protections available under state laws regarding  
 9 medical neglect of children 1 year of age or older.

10 ~~(34)~~(33) "Youth in need of care" means a youth who has been adjudicated or determined, after a hearing,  
 11 to be or to have been abused, neglected, or abandoned."  
 12

13 **Section 2.** Section 41-3-202, MCA, is amended to read:

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

27 (2) An initial investigation of alleged abuse or neglect may be conducted when an anonymous report is  
 28 received. However, if the initial investigation must does not within 48 hours result in the development of  
 29 independent, corroborative, and attributable information indicating that there exists a current risk of physical or  
 30 psychological harm to the child, ~~in order for the investigation to continue. Without the development of~~

1 ~~independent, corroborative, and attributable information~~, a child may not be removed from the home living  
 2 arrangement. If independent, corroborative, and attributable information indicating an ongoing risk results from  
 3 the initial investigation, the department shall then conduct a safety and risk assessment.

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

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

14 (5) (a) If from the ~~investigation~~ safety and risk assessment the department has reasonable cause to  
 15 suspect that the ~~child suffered abuse or neglect~~ child's living arrangement presents an unsafe environment, the  
 16 department may provide emergency protective services to the child, pursuant to 41-3-301, or voluntary protective  
 17 services pursuant to 41-3-302, and may provide protective services to any other child under the same care. The  
 18 department shall:

19 (i) after interviewing the parent or guardian, if reasonably available, document ~~its determination regarding~~  
 20 ~~abuse or neglect of a child~~ the determinations of the safety and risk assessment; and

21 (ii) notify the child's family of ~~its investigation and determination~~ the determinations of the safety and risk  
 22 assessment, unless the notification can reasonably be expected to result in harm to the child or other person.

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

28 ~~\_\_\_\_\_ (c) (i) If the report is unsubstantiated;~~

29 (b) Except as provided in subsection (5)(c), the department shall destroy all safety and risk assessment  
 30 determinations and associated ~~the department and the social worker who conducted the investigation into the~~



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

5 ~~(A)~~(c) Safety and risk assessment determinations and associated records may be maintained for a  
 6 reasonable time as defined by department rule under the following circumstances:

7 (i) the safety and risk assessment determines that abuse or neglect occurred;

8 (ii) there had been a previous or there is a subsequent substantiated report and investigation resulting  
 9 in a safety and risk assessment concerning the same person; or

10 ~~(B)~~(iii) an order has been issued under this chapter by a court of competent jurisdiction adjudicating the  
 11 child as a youth in need of care based on the circumstances surrounding the initial allegations.

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

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

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

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

27

28 **Section 3.** Section 41-3-203, MCA, is amended to read:

29 **"41-3-203. Immunity from liability.** (1) Anyone investigating or reporting any incident of child abuse  
 30 or neglect under 41-3-201 or 41-3-202, participating in resulting judicial proceedings, or furnishing hospital or

1 medical records as required by 41-3-202 is immune from any liability, civil or criminal, that might otherwise be  
 2 incurred or imposed unless the person was grossly negligent or acted in bad faith or with malicious purpose or  
 3 provided information knowing the information to be false.

4 (2) A person who provides information pursuant to 41-3-201 ~~that is substantiated by the department~~ or  
 5 a person who uses information received pursuant to 41-3-205 ~~that is substantiated by the department~~ to refuse  
 6 to hire or to discharge a prospective or current employee, volunteer, or other person who through employment  
 7 or volunteer activities may have unsupervised contact with children and who may pose a risk to children is  
 8 immune from civil liability unless the person acted in bad faith or with malicious purpose."  
 9

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

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

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

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

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

27 (5) All written, photographic, or radiological evidence gathered under this section must be sent to the  
 28 local affiliate of the department at the time that the written confirmation report is sent or as soon after the report  
 29 is sent as is possible. ~~If a confirmation report is not made, the evidence and the initial report must be destroyed~~  
 30 ~~as provided in~~ The initial report and associated evidence must be handled in accordance with 41-3-202."

1

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

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

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

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

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

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

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

24           (d) a parent, grandparent, aunt, uncle, brother, sister, guardian, mandatory reporter provided for in  
25 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  
26 the records or other person responsible for the child's welfare, without disclosure of the identity of any person who  
27 reported or provided information on the alleged child abuse or neglect incident contained in the records;

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

- 1 (f) the state protection and advocacy program as authorized by 42 U.S.C. 15043(a)(2);
- 2 (g) approved foster and adoptive parents who are or may be providing care for a child;
- 3 (h) a person about whom a report has been made and that person's attorney, with respect to the relevant
- 4 records pertaining to that person only and without disclosing the identity of the reporter or any other person whose
- 5 safety may be endangered;
- 6 (i) an agency, including a probation or parole agency, that is legally responsible for the supervision of
- 7 an alleged perpetrator of child abuse or neglect;
- 8 (j) a person, agency, or organization that is engaged in a bona fide research or evaluation project and
- 9 that is authorized by the department to conduct the research or evaluation;
- 10 (k) the members of an interdisciplinary child protective team authorized under 41-3-108 or of a family
- 11 group decisionmaking meeting for the purposes of assessing the needs of the child and family, formulating a
- 12 treatment plan, and monitoring the plan;
- 13 (l) the coroner or medical examiner when determining the cause of death of a child;
- 14 (m) a child fatality review team recognized by the department[, including the child abuse and neglect
- 15 review commission established in 2-15-2019];
- 16 (n) a department or agency investigating an applicant for a license or registration that is required to
- 17 operate a youth care facility, day-care facility, or child-placing agency;
- 18 (o) a person or entity who is carrying out background, employment-related, or volunteer-related
- 19 screening of current or prospective employees or volunteers who have or may have unsupervised contact with
- 20 children through employment or volunteer activities. A request for information under this subsection (3)(o) must
- 21 be made in writing. Disclosure under this subsection (3)(o) is limited to information that indicates a risk to children;
- 22 ~~persons with developmental disabilities, or older persons~~ posed by the person about whom the information is
- 23 sought, as determined by the department.
- 24 (p) the news media, if disclosure is limited to confirmation of factual information regarding how the case
- 25 was handled and if disclosure does not violate the privacy rights of the child or the child's parent or guardian, as
- 26 determined by the department;
- 27 (q) an employee of the department or other state agency if disclosure of the records is necessary for
- 28 administration of programs designed to benefit the child;
- 29 (r) an agency of an Indian tribe, a qualified expert witness, or the relatives of an Indian child if disclosure
- 30 of the records is necessary to meet requirements of the federal Indian Child Welfare Act;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (b) Records disclosed pursuant to subsection (4)(a) are confidential, must be made available for the  
28 member to view ~~at a location determined by the department~~ but may not be copied, recorded, photographed, or  
29 otherwise replicated by the member, and must remain solely in the department's possession. THE MEMBER MUST  
30 BE ALLOWED TO VIEW THE RECORDS IN THE LOCAL OFFICE WHERE THE CASE IS OR WAS ACTIVE.

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

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

5 (i) the attorney general;

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

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

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

11 (b) The records described in subsection (3) must be promptly disclosed by the department to an  
12 appropriate individual described in subsection (5)(a) or to a county interdisciplinary child information and school  
13 safety team established pursuant to 52-2-211 upon the department's receipt of a report indicating that any of the  
14 following has occurred:

15 (i) the death of the child as a result of child abuse or neglect;

16 (ii) a sexual offense, as defined in 46-23-502, against the child;

17 (iii) exposure of the child to an actual and not a simulated violent offense as defined in 46-23-502; or

18 (iv) child abuse or neglect, as defined in 41-3-102, due to exposure of the child to circumstances  
19 constituting the criminal manufacture or distribution of dangerous drugs.

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

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

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

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

30 (6) A school or school district may disclose, without consent, personally identifiable information from the

1 education records of a pupil to the department, the court, a review board, and the child's assigned attorney,  
2 guardian ad litem, or special advocate.

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

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

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

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

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

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

22

23 **Section 6.** Section 41-3-208, MCA, is amended to read:

24 **"41-3-208. Rulemaking authority.** (1) The department of public health and human services shall adopt  
25 rules to govern the procedures used by department personnel in preparing and processing reports and in ~~making~~  
26 conducting investigations and safety and risk assessments authorized by this chapter.

27 (2) The department ~~may~~ shall adopt rules to govern the retention period and disclosure of safety and risk  
28 assessments and associated case records containing information related to reports and investigations of child  
29 abuse and neglect.

30 (3) The department shall adopt ~~a rule~~ rules specifying the procedure to be used for the release and

1 disclosure of records as provided in 41-3-205(5). In adopting the rule, the department shall collaborate with the  
2 attorney general, the office of the child and family ombudsman, and appropriate county attorneys, law  
3 enforcement agencies, and county interdisciplinary child information and school safety teams established  
4 pursuant to 52-2-211."

5

6 **Section 7.** Section 50-16-603, MCA, is amended to read:

7 **"50-16-603. Confidentiality of health care information.** Health care information in the possession of  
8 the department, a local board, a local health officer, or the entity's authorized representatives may not be released  
9 except:

10 (1) for statistical purposes, if no identification of individuals can be made from the information released;

11 (2) when the health care information pertains to a person who has given written consent to the release  
12 and has specified the type of information to be released and the person or entity to whom it may be released;

13 (3) to medical personnel in a medical emergency as necessary to protect the health, life, or well-being  
14 of the named person;

15 (4) as allowed by Title 50, chapters 17 and 18;

16 (5) to another state or local public health agency, including those in other states, whenever necessary  
17 to continue health services to the named person or to undertake public health efforts to prevent or interrupt the  
18 transmission of a communicable disease or to alleviate and prevent injury caused by the release of biological,  
19 chemical, or radiological agents capable of causing imminent disability, death, or infection;

20 (6) in the case of a minor, as required by 41-3-201 or pursuant to an investigation or a safety and risk  
21 assessment under 41-3-202 or if the health care information is to be presented as evidence in a court proceeding  
22 involving child abuse pursuant to Title 41, chapter 3. Documents containing the information must be sealed by  
23 the court upon conclusion of the proceedings.

24 (7) to medical personnel, the department, a local health officer or board, or a district court when  
25 necessary to implement or enforce state statutes or state or local health rules concerning the prevention or control  
26 of diseases designated as reportable pursuant to 50-1-202, if the release does not conflict with any other  
27 provision contained in this part."

28

29 **NEW SECTION. Section 8. Effective date.** [This act] is effective October 1, 2019.

30



1           NEW SECTION. **Section 9. Applicability.** [This act] applies to all reports received on or after [the  
2 effective date of this act].

3   - END -