

## 1 HOUSE BILL NO. 459

2 INTRODUCED BY D. LENZ

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO PROVIDING FOR  
5 CERTIFICATION OF CHILD PROTECTION SPECIALISTS INVESTIGATING MATTERS OF SUSPECTED  
6 CHILD ABUSE, NEGLECT, OR ENDANGERMENT; PROVIDING IMPLEMENTATION INSTRUCTIONS;  
7 PROVIDING RULEMAKING AUTHORITY; PROVIDING DEFINITIONS; AND AMENDING SECTIONS 37-22-  
8 201, 41-3-102, 41-3-108, 41-3-201, 41-3-202, 41-3-205, 41-3-301, 41-3-427, AND 41-3-445, MCA."

9  
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11  
12 NEW SECTION. Section 1. Child protection specialist. The profession of child protection specialist  
13 is subject to certification requirements set forth in [sections 1 through 5] and by rules promulgated by the board  
14 of behavioral health.

15  
16 NEW SECTION. Section 2. Definitions. As used in [sections 1 through 5], unless the context clearly  
17 indicates otherwise, the following definitions apply:

- 18 (1) "Board" means the board of behavioral health established under 2-15-1744.  
19 (2) "Certified child protection specialist" means a person who:  
20 (a) has obtained the education and skills needed to investigate, respond to, prevent, and resolve  
21 reports of abuse, neglect, and endangerment experienced by children; and  
22 (b) possesses a valid and current certification.

23  
24 NEW SECTION. Section 3. Certification required for use of title -- exceptions. (1) On certification  
25 in accordance with [sections 1 through 5], a person may use the title "certified child protection specialist".

26 (2) Subsection (1) does not prohibit a qualified member of another profession, such as a law  
27 enforcement officer, lawyer, psychologist, pastoral counselor, probation officer, court employee, nurse, school  
28 counselor, educator, baccalaureate, master's, or clinical social worker licensed pursuant to Title 37, chapter 22,

1 clinical professional counselor licensed pursuant to Title 37, chapter 23, addiction counselor licensed pursuant  
2 to Title 37, chapter 35, or marriage and family therapist licensed pursuant to Title 37, chapter 37, from  
3 performing duties and services consistent with the person's licensure or certification and the code of ethics of  
4 the person's profession.

5 (3) Subsection (1) does not prohibit a qualified member of another profession, business, educational  
6 program, or volunteer organization who is not licensed or certified or for whom there is no applicable code of  
7 ethics, including a guardian ad litem, child advocate, or law enforcement officer, from performing duties and  
8 services consistent with the person's training, as long as the person does not represent by title that the person  
9 is a certified child protection specialist.

10

11 **NEW SECTION. Section 4. Certificate requirements -- supervision -- fees.** (1) An applicant for  
12 certification as a child protection specialist shall submit a written application on a form provided by the board  
13 and an application fee prescribed by the board. A certification must be renewed as provided in [section 5].

14 (2) An applicant must have:

15 (a) successfully completed a course in child protection, as defined by the board by rule, which must  
16 include training in:

17 (i) ethics;

18 (ii) governing statutory and regulatory framework;

19 (iii) role of law enforcement;

20 (iv) crisis intervention techniques;

21 (v) childhood trauma research; and

22 (vi) evidence-based practices for family preservation and strengthening; and

23 (b) demonstrated the applicant's ability to perform all essential functions of the certified child  
24 protection role by earning a passing score on a competency examination as provided for by the board.

25 (3) As a prerequisite to the issuance of a certificate, the board shall require the applicant to submit  
26 fingerprints for the purpose of fingerprint background checks by the Montana department of justice and the  
27 federal bureau of investigation as provided in 37-1-307.

28 (4) Pursuant to 37-1-203, an applicant who has a history of criminal convictions has the opportunity to

1 demonstrate to the board that the applicant is sufficiently rehabilitated to warrant the public trust. The board  
2 may deny the license if it determines that the applicant is not sufficiently rehabilitated.

3  
4 **NEW SECTION. Section 5. Certificate renewal -- continuing education.** A certified child protection  
5 specialist shall renew the specialist's certification annually using a process specified by board rule, which must  
6 include:

7 (1) payment of a fee prescribed by the board; and

8 (2) proof of completion of at least 20 hours of continuing education developed or approved by the  
9 department, which may include any topic listed in subsection (2) of [section 4] and must include at least one  
10 unit focused on:

11 (a) ethics; and

12 (b) recent developments in governing law or rule.

13  
14 **NEW SECTION. Section 6. Implementation of certification requirement for child protection**  
15 **specialists.** (1) A person hired by the department for a child-facing position after [the effective date of this act]  
16 shall become a certified child protection specialist pursuant to [sections 1 through 5] before beginning work that  
17 involves interaction with minors.

18 (2) A person already employed by the department in a child-facing position before [the effective date  
19 of this act] shall obtain child protection specialist certification pursuant to [sections 1 through 5] by October 1,  
20 2023.

21 (3) For the purpose of this section, "child-facing position" means an employee role under this chapter  
22 that involves regular interaction with minors, including but not limited to investigating reports of child abuse,  
23 neglect, or endangerment.

24  
25 **Section 7.** Section 37-22-201, MCA, is amended to read:

26 **"37-22-201. Duties of board.** The board:

27 (1) shall recommend prosecutions for violations of 37-22-411, 37-23-311, Title 37, chapter 35, ~~and~~  
28 Title 37, chapter 37, and [sections 1 through 5], to the attorney general or the appropriate county attorney, or

1 both;

2 (2) shall meet at least once every 3 months to perform the duties described in Title 37, chapters 1, 23,  
3 35, and 37, [sections 1 through 5], and this chapter. The board may, once a year by a consensus of board  
4 members, determine that there is no necessity for a board meeting.

5 (3) shall adopt rules that set professional, practice, and ethical standards for social workers, marriage  
6 and family therapists, addiction counselors, child protection specialists, and professional counselors and other  
7 rules as may be reasonably necessary for the administration of chapters 23, 35, and 37, [sections 1 through 5],  
8 and this chapter; and

9 (4) may adopt rules governing the issuance of licenses of special competence in particular areas of  
10 practice as a licensed professional counselor. The board shall establish criteria for each particular area for  
11 which a license is issued."

12

13 **Section 8.** Section 41-3-102, MCA, is amended to read:

14 **"41-3-102. Definitions.** As used in this chapter, the following definitions apply:

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

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

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

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

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

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

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

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

1 the child resides;

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

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

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

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

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

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

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

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

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

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

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

22 (iii) abandonment.

23 (b) (i) The term includes:

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

26 (B) exposing a child to the criminal distribution of dangerous drugs, as prohibited by 45-9-101, the  
27 criminal production or manufacture of dangerous drugs, as prohibited by 45-9-110, or the operation of an  
28 unlawful clandestine laboratory, as prohibited by 45-9-132; or

1 (C) any form of child sex trafficking or human trafficking.

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

4 (c) In proceedings under this chapter in which the federal Indian Child Welfare Act is applicable, this  
5 term has the same meaning as "serious emotional or physical damage to the child" as used in 25 U.S.C.  
6 1912(f).

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

9 (8) "Child protection specialist" means an employee of the department who investigates allegations of  
10 child abuse, neglect, and endangerment and has been certified pursuant to [section 3].

11 ~~(8)(9)~~ "Concurrent planning" means to work toward reunification of the child with the family while at  
12 the same time developing and implementing an alternative permanent plan.

13 ~~(9)(10)~~ "Department" means the department of public health and human services provided for in 2-15-  
14 2201.

15 ~~(10)(11)~~ "Family group decisionmaking meeting" means a meeting that involves family members in  
16 either developing treatment plans or making placement decisions, or both.

17 ~~(11)(12)~~ "Indian child" means any unmarried person who is under 18 years of age and who is either:

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

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

20 ~~(12)(13)~~ "Indian child's tribe" means:

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

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

24 ~~(13)(14)~~ "Indian custodian" means any Indian person who has legal custody of an Indian child under  
25 tribal law or custom or under state law or to whom temporary physical care, custody, and control have been  
26 transferred by the child's parent.

27 ~~(14)(15)~~ "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of  
28 Indians recognized by:

1 (a) the state of Montana; or

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

4 ~~(15)~~(16) "Limited emancipation" means a status conferred on a youth by a court in accordance with 41-  
5 1-503 under which the youth is entitled to exercise some but not all of the rights and responsibilities of a person  
6 who is 18 years of age or older.

7 ~~(16)~~(17) "Parent" means a biological or adoptive parent or stepparent.

8 ~~(17)~~(18) "Parent-child legal relationship" means the legal relationship that exists between a child and  
9 the child's birth or adoptive parents, as provided in Title 40, chapter 6, part 2, unless the relationship has been  
10 terminated by competent judicial decree as provided in 40-6-234, Title 42, or part 6 of this chapter.

11 ~~(18)~~(19) "Permanent placement" means reunification of the child with the child's parent, adoption,  
12 placement with a legal guardian, placement with a fit and willing relative, or placement in another planned  
13 permanent living arrangement until the child reaches 18 years of age.

14 ~~(19)~~(20) "Physical abuse" means an intentional act, an intentional omission, or gross negligence  
15 resulting in substantial skin bruising, internal bleeding, substantial injury to skin, subdural hematoma, burns,  
16 bone fractures, extreme pain, permanent or temporary disfigurement, impairment of any bodily organ or  
17 function, or death.

18 ~~(20)~~(21) "Physical neglect" means either failure to provide basic necessities, including but not limited to  
19 appropriate and adequate nutrition, protective shelter from the elements, and appropriate clothing related to  
20 weather conditions, or failure to provide cleanliness and general supervision, or both, or exposing or allowing  
21 the child to be exposed to an unreasonable physical or psychological risk to the child.

22 ~~(21)~~(22) (a) "Physical or psychological harm to a child" means the harm that occurs whenever the  
23 parent or other person responsible for the child's welfare:

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

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

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

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

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

6 (vi) abandons the child.

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

9 ~~(22)~~(23) (a) "Protective services" means services provided by the department:

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

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

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

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

18 ~~(23)~~(24) (a) "Psychological abuse or neglect" means severe maltreatment through acts or omissions  
19 that are injurious to the child's emotional, intellectual, or psychological capacity to function, including the  
20 commission of acts of violence against another person residing in the child's home.

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

23 ~~(24)~~(25) "Qualified expert witness" as used in cases involving an Indian child in proceedings subject to  
24 the federal Indian Child Welfare Act means:

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

27 (b) a lay expert witness who has substantial experience in the delivery of child and family services to  
28 Indians and extensive knowledge of prevailing social and cultural standards and child-rearing practices within



1 the Indian child's tribe; or

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

5 ~~(25)~~(26) "Reasonable cause to suspect" means cause that would lead a reasonable person to believe  
6 that child abuse or neglect may have occurred or is occurring, based on all the facts and circumstances known  
7 to the person.

8 ~~(26)~~(27) "Residential setting" means an out-of-home placement where the child typically resides for  
9 longer than 30 days for the purpose of receiving food, shelter, security, guidance, and, if necessary, treatment.

10 ~~(27)~~(28) "Safety and risk assessment" means an evaluation by a ~~social worker~~ child protection  
11 specialist following an initial report of child abuse or neglect to assess the following:

- 12 (a) the existing threat or threats to the child's safety;
- 13 (b) the protective capabilities of the parent or guardian;
- 14 (c) any particular vulnerabilities of the child;
- 15 (d) any interventions required to protect the child; and
- 16 (e) the likelihood of future physical or psychological harm to the child.

17 ~~(28)~~(29) (a) "Sexual abuse" means the commission of sexual assault, sexual intercourse without  
18 consent, aggravated sexual intercourse without consent, indecent exposure, sexual abuse, ritual abuse of a  
19 minor, or incest, as described in Title 45, chapter 5.

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

23 ~~(29)~~(30) "Sexual exploitation" means:

- 24 (a) allowing, permitting, or encouraging a child to engage in a prostitution offense, as described in 45-  
25 5-601 through 45-5-603;
- 26 (b) allowing, permitting, or encouraging sexual abuse of children as described in 45-5-625; or
- 27 (c) allowing, permitting, or encouraging sexual servitude as described in 45-5-704 or 45-5-705.

28 ~~(30)~~ (a) "Social worker" means an employee of the department who, before the employee's field

1 assignment, has been educated or trained in a program of social work or a related field that includes cognitive  
2 and family systems treatment or who has equivalent verified experience or verified training in the investigation  
3 of child abuse, neglect, and endangerment.

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

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

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

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

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

17 (ii) the provision of treatment would:

18 (A) merely prolong dying;

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

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

21 (iii) the provision of treatment would be virtually futile in terms of the survival of the infant and the  
22 treatment itself under the circumstances would be inhumane. For purposes of this subsection (32), "infant"  
23 means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously  
24 hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The reference  
25 to less than 1 year of age may not be construed to imply that treatment should be changed or discontinued  
26 when an infant reaches 1 year of age or to affect or limit any existing protections available under state laws  
27 regarding medical neglect of children 1 year of age or older.

28 (33) "Youth in need of care" means a youth who has been adjudicated or determined, after a hearing,

1 to be or to have been abused, neglected, or abandoned."

2

3 **Section 9.** Section 41-3-108, MCA, is amended to read:

4 **"41-3-108. Child protective teams.** The county attorney, county commissioners, guardian ad litem,  
5 or department may convene one or more temporary or permanent interdisciplinary child protective teams.  
6 These teams may assist in assessing the needs of, formulating and monitoring a treatment plan for, and  
7 coordinating services to the child and the child's family. The supervisor of child protective services in a local  
8 service area or the supervisor's designee shall serve as the team's coordinator. Members must include:

9 (1) a ~~social worker~~ child protection specialist;

10 (2) a member of a local law enforcement agency;

11 (3) a representative of the medical profession;

12 (4) a representative of a public school system;

13 (5) a county attorney; and

14 (6) if an Indian child or children are involved, someone, preferably an Indian person, knowledgeable  
15 about Indian culture and family matters."

16

17 **Section 10.** Section 41-3-201, MCA, is amended to read:

18 **"41-3-201. Reports.** (1) When the professionals and officials listed in subsection (2) know or have  
19 reasonable cause to suspect, as a result of information they receive in their professional or official capacity, that  
20 a child is abused or neglected by anyone regardless of whether the person suspected of causing the abuse or  
21 neglect is a parent or other person responsible for the child's welfare, they shall report the matter promptly to  
22 the department of public health and human services.

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

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

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

28 (c) religious healers;

- 1 (d) school teachers, other school officials, and employees who work during regular school hours;
- 2 (e) a social worker licensed pursuant to Title 37, child protection specialist, operator or employee of
- 3 any registered or licensed day-care or substitute care facility, staff of a resource and referral grant program
- 4 organized under 52-2-711 or of a child and adult food care program, or an operator or employee of a child-care
- 5 facility;
- 6 (f) a foster care, residential, or institutional worker;
- 7 (g) a peace officer or other law enforcement official;
- 8 (h) a member of the clergy, as defined in 15-6-201(2)(b);
- 9 (i) a guardian ad litem or a court-appointed advocate who is authorized to investigate a report of
- 10 alleged abuse or neglect;
- 11 (j) an employee of an entity that contracts with the department to provide direct services to children;
- 12 and
- 13 (k) an employee of the department while in conduct of the employee's duties.
- 14 (3) A professional listed in subsection (2)(a) or (2)(b) involved in the delivery or care of an infant shall
- 15 report to the department any infant known to the professional to be affected by a dangerous drug, as defined in
- 16 50-32-101.
- 17 (4) Any person may make a report under this section if the person knows or has reasonable cause to
- 18 suspect that a child is abused or neglected.
- 19 (5) (a) When a professional or official required to report under subsection (2) makes a report, the
- 20 department may share information with:
- 21 (i) that professional or official;
- 22 (ii) other individuals with whom the professional or official works in an official capacity if the individuals
- 23 are part of a team that responds to matters involving the child or the person about whom the report was made
- 24 and the professional or official has asked that the information be shared with the individuals; or
- 25 (iii) the child abuse and neglect review commission established in 2-15-2019.
- 26 (b) The department may provide information in accordance with 41-3-202(8) and also share
- 27 information about the investigation, limited to its outcome and any subsequent action that will be taken on
- 28 behalf of the child who is the subject of the report.

1 (c) Individuals who receive information pursuant to this subsection (5) shall maintain the  
2 confidentiality of the information as required by 41-3-205.

3 (6) (a) Except as provided in subsection (6)(b) or (6)(c), a person listed in subsection (2) may not  
4 refuse to make a report as required in this section on the grounds of a physician-patient or similar privilege.

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

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

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

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

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

14 (7) The reports referred to under this section must contain:

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

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

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

22 (d) the facts that led the person reporting to believe that the child has suffered injury or injuries or  
23 willful neglect, within the meaning of this chapter. (Subsection (5)(a)(iii) terminates September 30, 2021--sec.  
24 12, Ch. 235, L. 2017.)"

25

26 **Section 11.** Section 41-3-202, MCA, is amended to read:

27 **"41-3-202. Action on reporting.** (1) (a) Upon receipt of a report that a child is or has been abused or  
28 neglected, the department shall promptly assess the information contained in the report and make a

1 determination regarding the level of response required and the timeframe within which action must be initiated.

2 (b) (i) Except as provided in subsection (1)(b)(ii), upon receipt of a report that includes an allegation  
3 of sexual abuse or sexual exploitation or if the department determines during any investigation that the  
4 circumstances surrounding an allegation of child abuse or neglect include an allegation of sexual abuse or  
5 sexual exploitation, the department shall immediately report the allegation to the county attorney of the county  
6 in which the acts that are the subject of the report occurred.

7 (ii) If a victim of sexual abuse or sexual exploitation has attained the age of 14 and has sought services  
8 from a contractor as described in 41-3-201(2)(j) that provides confidential services to victims of sexual assault,  
9 conditioned upon an understanding that the criminal conduct will not be reported by the department to the  
10 county attorney in the jurisdiction in which the alleged crime occurred, the department may not report pursuant  
11 to 41-3-205(5)(d) and subsection (1)(b)(i) of this section.

12 (c) If the department determines that an investigation and a safety and risk assessment are required,  
13 a ~~social worker~~ child protection specialist shall promptly conduct a thorough investigation into the  
14 circumstances surrounding the allegations of abuse or neglect of the child and perform a safety and risk  
15 assessment to determine whether the living arrangement presents an unsafe environment for the child. The  
16 safety and risk assessment may include an investigation at the home of the child involved, the child's school or  
17 day-care facility, or any other place where the child is present and into all other nonfinancial matters that in the  
18 discretion of the investigator are relevant to the safety and risk assessment. In conducting a safety and risk  
19 assessment under this section, a ~~social worker~~ child protection specialist may not inquire into the financial  
20 status of the child's family or of any other person responsible for the child's care, except as necessary to  
21 ascertain eligibility for state or federal assistance programs or to comply with the provisions of 41-3-446.

22 (2) An initial investigation of alleged abuse or neglect may be conducted when an anonymous report  
23 is received. However, if the initial investigation does not within 48 hours result in the development of  
24 independent, corroborative, and attributable information indicating that there exists a current risk of physical or  
25 psychological harm to the child, a child may not be removed from the living arrangement. If independent,  
26 corroborative, and attributable information indicating an ongoing risk results from the initial investigation, the  
27 department shall then conduct a safety and risk assessment.

28 (3) The ~~social worker~~ child protection specialist is responsible for conducting the safety and risk

1 assessment. If the child is treated at a medical facility, the ~~social worker~~ child protection specialist, county  
2 attorney, or peace officer, consistent with reasonable medical practice, has the right of access to the child for  
3 interviews, photographs, and securing physical evidence and has the right of access to relevant hospital and  
4 medical records pertaining to the child. If an interview of the child is considered necessary, the ~~social worker~~  
5 child protection specialist, county attorney, or peace officer may conduct an interview of the child. The interview  
6 may be conducted in the presence of the parent or guardian or an employee of the school or day-care facility  
7 attended by the child.

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

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

14 (i) after interviewing the parent or guardian, if reasonably available, document the determinations of  
15 the safety and risk assessment; and

16 (ii) notify the child's family of the determinations of the safety and risk assessment, unless the  
17 notification can reasonably be expected to result in harm to the child or other person.

18 (b) Except as provided in subsection (5)(c), the department shall destroy all safety and risk  
19 assessment determinations and associated records, except for medical records, within 30 days after the end of  
20 the 3-year period starting from the date of completion of the safety and risk assessment.

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

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

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

26 (iii) an order has been issued by a court of competent jurisdiction adjudicating the child as a youth in  
27 need of care based on the circumstances surrounding the initial allegations.

28 (6) The investigating ~~social worker~~ child protection specialist, within 60 days of commencing an

1 investigation, shall also furnish a written safety and risk assessment to the department and, upon request, to  
2 the family. Subject to time periods set forth in subsections (5)(b) and (5)(c), the department shall maintain a  
3 record system documenting investigations and safety and risk assessment determinations. Unless records are  
4 required to be destroyed under subsections (5)(b) and (5)(c), the department shall retain records relating to the  
5 safety and risk assessment, including case notes, correspondence, evaluations, videotapes, and interviews, for  
6 25 years.

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

10 (8) The department shall, upon request from any reporter of alleged child abuse or neglect, verify  
11 whether the report has been received, describe the level of response and timeframe for action that the  
12 department has assigned to the report, and confirm that it is being acted upon."  
13

14 **Section 12.** Section 41-3-205, MCA, is amended to read:

15 **"41-3-205. Confidentiality -- disclosure exceptions.** (1) The case records of the department and its  
16 local affiliate, the local office of public assistance, the county attorney, and the court concerning actions taken  
17 under this chapter and all records concerning reports of child abuse and neglect must be kept confidential  
18 except as provided by this section. Except as provided in subsections (9) and (10), a person who purposely or  
19 knowingly permits or encourages the unauthorized dissemination of the contents of case records is guilty of a  
20 misdemeanor.

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

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

28 (a) a department, agency, or organization, including a federal agency, military enclave, or Indian tribal



1 organization, that is legally authorized to receive, inspect, or investigate reports of child abuse or neglect and  
2 that otherwise meets the disclosure criteria contained in this section;

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

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

9 (d) a parent, grandparent, aunt, uncle, brother, sister, guardian, mandatory reporter provided for in  
10 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  
11 the records or other person responsible for the child's welfare, without disclosure of the identity of any person  
12 who reported or provided information on the alleged child abuse or neglect incident contained in the records;

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

16 (f) the state protection and advocacy program as authorized by 42 U.S.C. 15043(a)(2);

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

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

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

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

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

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

1 (m) a child fatality review team recognized by the department[, including the child abuse and neglect  
2 review commission established in 2-15-2019];

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

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

10 (p) the news media, if disclosure is limited to confirmation of factual information regarding how the  
11 case was handled and if disclosure does not violate the privacy rights of the child or the child's parent or  
12 guardian, as 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  
16 disclosure 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 participating in an interview of a child by a ~~social worker~~ child protection  
24 specialist, county attorney, or peace officer, as provided in 41-3-202;

25 (w) a member of a county or regional interdisciplinary child information and school safety team formed  
26 under the 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

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

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

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

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

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

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

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

16 (b) Records disclosed pursuant to subsection (4)(a) are confidential, must be made available for the  
17 member to view but may not be copied, recorded, photographed, or otherwise replicated by the member, and  
18 must remain solely in the department's possession. The member must be allowed to view the records in the  
19 local office where the case is or was active.

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

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

24 (i) the attorney general;

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

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

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

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

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

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

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

9 (iv) child abuse or neglect, as defined in 41-3-102, due to exposure of the child to circumstances

10 constituting the criminal manufacture or distribution of dangerous drugs.

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

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

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

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

21 (d) (i) Except as provided in subsection (5)(d)(ii), the records described in subsection (3) must be  
22 released within 5 business days to the county attorney of the county in which the acts that are the subject of a  
23 report occurred upon the department's receipt of a report that includes an allegation of sexual abuse or sexual  
24 exploitation. The department shall also report to any other appropriate individual described in subsection (5)(a)  
25 and to a county or regional interdisciplinary child information and school safety team established pursuant to  
26 52-2-211.

27 (ii) If the exception in 41-3-202(1)(b) applies, a contractor described in 41-3-201(2)(j) that provides  
28 confidential services to victims of sexual assault shall report to the department as provided in this part without

1 disclosing the names of the victim and the alleged perpetrator of sexual abuse or sexual exploitation.

2 (iii) When a contractor described in 41-3-201(2)(j) that provides confidential services to victims of  
3 sexual assault provides services to youth over the age of 13 who are victims of sexual abuse and sexual  
4 exploitation, the contractor may not dissuade or obstruct a victim from reporting the criminal activity and, upon a  
5 request by the victim, shall facilitate disclosure to the county attorney and a law enforcement officer as  
6 described in Title 7, chapter 32, in the jurisdiction where the alleged abuse occurred.

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

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

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

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

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

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

26 (12) Copies of records, evaluations, reports, or other evidence obtained or generated pursuant to this  
27 section that are provided to the parent, grandparent, aunt, uncle, brother, sister, guardian, or parent's or  
28 guardian's attorney must be provided without cost. (Bracketed language in subsection (3)(m) terminates

1 September 30, 2021--sec. 12, Ch. 235, L. 2017.)"

2

3 **Section 13.** Section 41-3-301, MCA, is amended to read:

4 **"41-3-301. Emergency protective service.** (1) Any child ~~protective social worker~~ protection specialist  
5 of the department, a peace officer, or the county attorney who has reason to believe any child is in immediate  
6 or apparent danger of harm may immediately remove the child and place the child in a protective facility. After  
7 ensuring that the child is safe, the department may make a request for further assistance from the law  
8 enforcement agency or take appropriate legal action. The person or agency placing the child shall notify the  
9 parents, parent, guardian, or other person having physical or legal custody of the child of the placement at the  
10 time the placement is made or as soon after placement as possible. Notification under this subsection must  
11 include the reason for removal, information regarding the show cause hearing, and the purpose of the show  
12 cause hearing and must advise the parents, parent, guardian, or other person having physical or legal custody  
13 of the child that the parents, parent, guardian, or other person may have a support person present during any  
14 in-person meeting with the ~~social worker~~ child protection specialist concerning emergency protective services.

15 (2) If a ~~social worker of the department~~ child protection specialist, a peace officer, or the county  
16 attorney determines in an investigation of abuse or neglect of a child that the child is in danger because of the  
17 occurrence of partner or family member assault, as provided for in 45-5-206, or strangulation of a partner or  
18 family member, as provided for in 45-5-215, against an adult member of the household or that the child needs  
19 protection as a result of the occurrence of partner or family member assault or strangulation of a partner or  
20 family member against an adult member of the household, the department shall take appropriate steps for the  
21 protection of the child, which may include:

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

25 (b) making reasonable efforts to remove the person who allegedly committed the partner or family  
26 member assault or strangulation of a partner or family member from the child's residence if it is determined that  
27 the child or another family or household member is in danger of partner or family member assault or  
28 strangulation of a partner or family member; and

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

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

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

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

13 (6) If a child is removed from the child's home by the department, a child ~~protective social worker~~  
14 protection specialist shall submit an affidavit regarding the circumstances of the emergency removal to the  
15 county attorney and provide a copy of the affidavit to the parents or guardian, if possible, within 2 working days  
16 of the emergency removal. An abuse and neglect petition must be filed within 5 working days, excluding  
17 weekends and holidays, of the emergency removal of a child unless arrangements acceptable to the agency for  
18 the care of the child have been made by the parents or voluntary protective services are provided pursuant to  
19 41-3-302.

20 (7) Except as provided in the federal Indian Child Welfare Act, if applicable, a show cause hearing  
21 must be held within 20 days of the filing of the petition unless otherwise stipulated by the parties pursuant to 41-  
22 3-434.

23 (8) If the department determines that a petition for immediate protection and emergency protective  
24 services must be filed to protect the safety of the child, the ~~social worker~~ child protection specialist shall  
25 interview the parents of the child to whom the petition pertains, if the parents are reasonably available, before  
26 the petition may be filed. The district court may immediately issue an order for immediate protection of the child.

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

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**Section 14.** Section 41-3-427, MCA, is amended to read:

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

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

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

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

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

(e) The petition for immediate protection and emergency protective services must include a notice advising the parents, parent, guardian, or other person having physical or legal custody of the child that the parents, parent, guardian, or other person having physical or legal custody of the child may have a support



1 person present during any in-person meeting with a ~~social worker~~child protection specialist concerning  
2 emergency protective services. Reasonable accommodation must be made in scheduling an in-person meeting  
3 with the ~~social worker~~ child protection specialist.

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

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

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

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

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

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

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

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

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

1 resort after all family, insurance, and other resources have been examined.

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

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

9 (5) The petition must be served as provided in 41-3-422."  
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11 **Section 15.** Section 41-3-445, MCA, is amended to read:

12 **"41-3-445. Permanency hearing.** (1) (a) (i) Subject to subsection (1)(b), a permanency hearing  
13 must be held by the court or, subject to the approval of the court and absent an objection by a party to the  
14 proceeding, by the foster care review committee, as provided in 41-3-115, or the citizen review board, as  
15 provided in 41-3-1010:

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

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

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

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

27 (c) The permanency hearing may be combined with a hearing that is required in other sections of this  
28 part or with a review held pursuant to 41-3-115 or 41-3-1010 if held within the applicable time limits. If a

1 permanency hearing is combined with another hearing or a review, the requirements of the court related to the  
2 disposition of the other hearing or review must be met in addition to the requirements of this section.

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

5 (2) At least 3 working days prior to the permanency hearing, the department shall submit a report  
6 regarding the child to the entity that will be conducting the hearing for review. The report must address the  
7 department's efforts to effectuate the permanency plan for the child, address the options for the child's  
8 permanent placement, examine the reasons for excluding higher priority options, and set forth the proposed  
9 plan to carry out the placement decision, including specific times for achieving the plan.

10 (3) At least 3 working days prior to the permanency hearing, the guardian ad litem or an attorney or  
11 advocate for a parent or guardian may submit an informational report to the entity that will be conducting the  
12 hearing for review.

13 (4) In a permanency hearing, the court or other entity conducting the hearing shall consult, in an age-  
14 appropriate manner, with the child regarding the proposed permanency or transition plan for the child.

15 (5) (a) The court's order must be issued within 20 days after the permanency hearing if the hearing  
16 was conducted by the court. If a member of the child's extended family, including an adult sibling, grandparent,  
17 great-grandparent, aunt, or uncle, has requested that custody be awarded to that family member or that a prior  
18 grant of temporary custody with that family member be made permanent, the department shall investigate and  
19 determine if awarding custody to that family member is in the best interests of the child. The department shall  
20 provide the reasons for any denial to the court. If the court accepts the department's custody recommendation,  
21 the court shall inform any denied family member of the reasons for the denial to the extent that confidentiality  
22 laws allow. The court shall include the reasons for denial in the court order if the family member who is denied  
23 custody requests it to be included.

24 (b) If an entity other than the court conducts the hearing, the entity shall keep minutes of the hearing  
25 and the minutes and written recommendations must be provided to the court within 20 days of the hearing.

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

- 1 (6) The court shall approve a specific permanency plan for the child and make written findings on:
- 2 (a) whether the child has been asked about the desired permanency outcome;
- 3 (b) whether the permanency plan is in the best interests of the child;
- 4 (c) whether the department has made reasonable efforts to effectuate the permanency plan for the
- 5 individual child;
- 6 (d) whether the department has made reasonable efforts to finalize the plan;
- 7 (e) whether there are compelling reasons why it is not in the best interest of the individual child to:
- 8 (i) return to the child's home; or
- 9 (ii) be placed for adoption, with a legal guardian, or with a fit and willing relative; and
- 10 (f) other necessary steps that the department is required to take to effectuate the terms of the plan.
- 11 (7) In its discretion, the court may enter any other order that it determines to be in the best interests of
- 12 the child that does not conflict with the options provided in subsection (8) and that does not require an
- 13 expenditure of money by the department unless the court finds after notice and a hearing that the expenditures
- 14 are reasonable and that resources are available for payment. The department is the payor of last resort after all
- 15 family, insurance, and other resources have been examined.
- 16 (8) Permanency options include:
- 17 (a) reunification of the child with the child's parent or guardian;
- 18 (b) permanent placement of the child with the noncustodial parent, superseding any existing custodial
- 19 order;
- 20 (c) adoption;
- 21 (d) appointment of a guardian pursuant to 41-3-444; or
- 22 (e) long-term custody if the child is in a planned permanent living arrangement and if it is established
- 23 by a preponderance of the evidence, which is reflected in specific findings by the court, that:
- 24 (i) the child is being cared for by a fit and willing relative;
- 25 (ii) the child has an emotional or mental handicap that is so severe that the child cannot function in a
- 26 family setting and the best interests of the child are served by placement in a residential or group setting;
- 27 (iii) the child is at least 16 years of age and is participating in an independent living program and that
- 28 termination of parental rights is not in the best interests of the child;

1 (iv) the child's parent is incarcerated and circumstances, including placement of the child and  
2 continued, frequent contact with the parent, indicate that it would not be in the best interests of the child to  
3 terminate parental rights of that parent; or

4 (v) the child meets the following criteria:

5 (A) the child has been adjudicated a youth in need of care;

6 (B) the department has made reasonable efforts to reunite the parent and child, further efforts by the  
7 department would likely be unproductive, and reunification of the child with the parent or guardian would be  
8 contrary to the best interests of the child;

9 (C) there is a judicial finding that other more permanent placement options for the child have been  
10 considered and found to be inappropriate or not to be in the best interests of the child; and

11 (D) the child has been in a placement in which the foster parent or relative has committed to the long-  
12 term care and to a relationship with the child, and it is in the best interests of the child to remain in that  
13 placement.

14 (9) For a child 14 years of age or older, the permanency plan must:

15 (a) be developed in consultation with the child and in consultation with up to two members of the  
16 child's case planning team who are chosen by the child and who are not a foster parent or ~~social worker~~ child  
17 protection specialist for the child;

18 (b) identify one person from the case management team, who is selected by the child, to be  
19 designated as the child's advisor and advocate for the application of the reasonable and prudent parenting  
20 standard; and

21 (c) include services that will be needed to transition the child from foster care to adulthood.

22 (10) A permanency hearing must document the intensive, ongoing, and unsuccessful efforts made by  
23 the department to return the child to the child's home or to secure a permanent placement of the child with a  
24 relative, legal guardian, or adoptive parent.

25 (11) The court may terminate a planned permanent living arrangement upon petition of the birth  
26 parents or the department if the court finds that the circumstances of the child or family have substantially  
27 changed and the best interests of the child are no longer being served."  
28

1  
2 **NEW SECTION. Section 16. Codification instruction.** (1) [Sections 1 through 5] are intended to be  
3 codified as a new chapter in Title 37, and the provisions of Title 37 apply to [sections 1 through 5].  
4 (2) [Section 6] is intended to be codified as an integral part of Title 40, chapter 3, part 1, and the  
5 provisions of Title 40, chapter 3, part 1, apply to [section 6].  
6 - END -