

## 1 HOUSE BILL NO. 274

2 INTRODUCED BY M. CAFERRO

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THAT APPLIED BEHAVIOR ANALYSIS IS A  
5 SERVICE AVAILABLE TO FAMILIES WHEN CHILDREN ARE AT RISK OF ABUSE OR NEGLECT;  
6 AMENDING SECTIONS 41-3-202 AND 41-3-302, MCA; AND PROVIDING AN EFFECTIVE DATE."

7

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

9

10 **Section 1.** Section 41-3-202, MCA, is amended to read:

11 **"41-3-202. Action on reporting.** (1) (a) Upon receipt of a report that a child is or has been abused or  
12 neglected, the department shall promptly assess the information contained in the report and make a  
13 determination regarding the level of response required and the timeframe within which action must be initiated.

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

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

24 (c) If the department determines that an investigation and a safety and risk assessment are required,  
25 a social worker shall promptly conduct a thorough investigation into the circumstances surrounding the  
26 allegations of abuse or neglect of the child and perform a safety and risk assessment to determine whether the  
27 living arrangement presents an unsafe environment for the child. The safety and risk assessment may include  
28 an investigation at the home of the child involved, the child's school or day-care facility, or any other place

1 where the child is present and into all other nonfinancial matters that in the discretion of the investigator are  
2 relevant to the safety and risk assessment. In conducting a safety and risk assessment under this section, a  
3 social worker may not inquire into the financial status of the child's family or of any other person responsible for  
4 the child's care, except as necessary to ascertain eligibility for state or federal assistance programs or to  
5 comply with the provisions of 41-3-446.

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

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

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

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

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

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

1           **(b)** If the department determines that the child is not suffering abuse or neglect but that the family  
2 circumstances may put the child at risk of abuse or neglect in the future, the department shall determine  
3 whether the family might benefit from the use of applied behavior analysis provided by a licensed behavior  
4 analyst.

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

8           ~~(e)(d)~~ Safety and risk assessment determinations and associated records may be maintained for a  
9 reasonable time as defined by department rule under the following circumstances:

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

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

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

15           (6) The investigating social worker, within 60 days of commencing an investigation, shall also furnish  
16 a written safety and risk assessment to the department and, upon request, to the family. Subject to time periods  
17 set forth in subsections ~~(5)(b)~~ (5)(c) and ~~(5)(e)~~ (5)(d), the department shall maintain a record system  
18 documenting investigations and safety and risk assessment determinations. Unless records are required to be  
19 destroyed under subsections ~~(5)(b)~~ (5)(c) and ~~(5)(e)~~ (5)(d), the department shall retain records relating to the  
20 safety and risk assessment, including case notes, correspondence, evaluations, videotapes, and interviews, for  
21 25 years.

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

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

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1           **Section 2.** Section 41-3-302, MCA, is amended to read:

2           **"41-3-302. Responsibility of providing protective services -- voluntary protective services**  
 3 **agreement.** (1) The department of public health and human services has the primary responsibility to provide  
 4 the protective services authorized by this chapter and has the authority pursuant to this chapter to take  
 5 temporary or permanent custody of a child when ordered to do so by the court, including the right to give  
 6 consent to adoption.

7           (2) The department shall respond to emergency reports of known or suspected child abuse or neglect  
 8 24 hours a day, 7 days a week.

9           (3) (a) The department may provide voluntary protective services by entering into a written voluntary  
 10 protective services agreement with a parent, guardian, or other person having physical or legal custody of the  
 11 child for the purpose of keeping the child safely in the home or for the purpose of returning the child to the  
 12 home within a 30-day temporary out-of-home protective placement.

13           (b) The department shall inform a parent, guardian, or other person having physical or legal custody  
 14 of a child who is considering entering into a voluntary protective services agreement that the parent, guardian,  
 15 or other person may have another person of the parent's, guardian's, or other person's choice present  
 16 whenever the terms of the voluntary protective services agreement are under discussion by the parent,  
 17 guardian, or other person and the department. Reasonable accommodations must be made regarding the time  
 18 and place of meetings at which a voluntary protective services agreement is discussed.

19           (4) A voluntary protective services agreement may include provisions for:

20           (a) a family group decisionmaking meeting and implementation of safety plans developed during the  
 21 meeting;

22           (b) a professional evaluation and treatment of the parent, guardian, or other person having physical or  
 23 legal custody of the child or of the child, or both;

24           (c) a safety plan for the child;

25           (d) in-home services aimed at permitting the child to remain safely in the home;

26           (e) applied behavior analysis provided by a licensed behavior analyst for the child and the parents,  
 27 guardians, or other persons having physical or legal custody of the child;

28           ~~(e)~~(f) temporary relocation of a parent, guardian, or other person having physical or legal custody of

1 the child in order to permit the child to remain safely in the home;  
2 ~~(f)~~(g) a 30-day temporary out-of-home protective placement; or  
3 ~~(g)~~(h) any other terms or conditions agreed upon by the parties that would allow the child to remain  
4 safely in the home or allow the child to safely return to the home within the 30-day period, including referrals to  
5 other service providers.

6 (5) A voluntary protective services agreement is subject to termination by either party at any time.  
7 Termination of a voluntary protective services agreement does not preclude the department from filing a petition  
8 pursuant to 41-3-422 in any case in which the department determines that there is a risk of harm to a child.

9 (6) If a voluntary protective services agreement is terminated by a party to the agreement, a child who  
10 has been placed in a temporary out-of-home protective placement pursuant to the agreement must be returned  
11 to the parent, guardian, or other person having physical or legal custody of the child within 2 working days of  
12 termination of the agreement unless an abuse and neglect petition is filed by the department."  
13

14 NEW SECTION. Section 3. Effective date. [This act] is effective July 1, 2021.

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