

1 HOUSE BILL NO. 37

2 INTRODUCED BY J. CARLSON

3 BY REQUEST OF THE CHILDREN, FAMILIES, HEALTH, AND HUMAN SERVICES INTERIM COMMITTEE

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING CHILD ABUSE AND NEGLECT LAWS;
6 REQUIRING A WARRANT TO REMOVE A CHILD FROM THE CHILD'S HOME EXCEPT IN EXIGENT
7 CIRCUMSTANCES; REQUIRING THAT A PEACE OFFICER BE PRESENT WHENEVER A CHILD IS
8 REMOVED FROM THE HOME; REVISING THE DEFINITIONS OF "CHILD ABUSE OR NEGLECT" AND
9 "REASONABLE EFFORTS"; REVISING THE REQUIREMENTS FOR DISCLOSURE OF CHILD ABUSE AND
10 NEGLECT RECORDS; REVISING THE TIMEFRAME IN WHICH AN ABUSE AND NEGLECT PETITION
11 MUST BE FILED WHEN A CHILD IS REMOVED; REVISING THE TIMEFRAME IN WHICH AN EMERGENCY
12 PROTECTIVE SERVICES HEARING MUST BE HELD; REVISING THE REQUIREMENTS FOR DISMISSING
13 AN ABUSE AND NEGLECT PETITION; AMENDING SECTIONS 41-3-101, 41-3-102, 41-3-205, 41-3-301, 41-
14 3-306, 41-3-423, 41-3-424, 41-3-425, AND 41-3-427, MCA; AND PROVIDING AN EFFECTIVE DATE."

15
16 WHEREAS, Montana's child abuse and neglect statutes (Title 41, chapter 3, MCA) provide the
17 framework for state interference with the parent-child relationship; and

18 WHEREAS, the Legislature intends to amend the provisions of Title 41, chapter 3, MCA, to ensure
19 compliance with constitutional requirements.

20
21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

22
23 NEW SECTION. Section 1. Warrant to remove child. (1) A child protection specialist of the
24 department, a peace officer, or a county attorney may apply, in writing, by telephone, or electronically, on oath
25 or affirmation, to a court identified in subsection (2) for the issuance of a warrant to remove a child and place
26 the child in a protective facility if necessary to prevent the child from being abused or neglected.

27 (2) A warrant may be issued in writing, by telephone, or electronically by:

28 (a) a city or municipal court judge or justice of the peace within the judge's geographic jurisdiction;

1 or

2 (b) a district court judge within the state.

3 (3) If the court finds from the application that there is probable cause that removal is necessary to
4 prevent the child from being abused or neglected, the court shall issue a warrant to remove the child. The
5 warrant must:

6 (a) identify the child to be removed and the person responsible for removing the child;

7 (b) recite the facts on which the conclusion that the child is abused or neglected or is in danger of
8 being abused or neglected is based; and

9 (c) provide for the placement of the child, pending an emergency protective services hearing.

10 (4) The provisions of 46-5-222 apply when an application for a warrant is made telephonically or
11 electronically or when a warrant is issued telephonically or electronically.

12

13 **NEW SECTION. Section 2. Procedures for executing warrant to remove child.** (1) A warrant
14 issued pursuant to [section 1] may be served at any time of the day or night. The warrant must be served within
15 10 days from the time of issuance. A warrant not served within 10 days is void and must be returned to the
16 issuing court and identified as not served.

17 (2) A warrant issued pursuant to [section 1] must be served by the person specifically named in the
18 warrant and by no other person unless the other person is acting in aid of and in the presence of the specifically
19 named person.

20

21 **Section 3.** Section 41-3-101, MCA, is amended to read:

22 **"41-3-101. Declaration of policy.** (1) It is the policy of the state of Montana to:

23 (a) provide for the protection of children whose health and welfare are or may be adversely
24 affected and further threatened by the conduct of those responsible for the children's care and protection;

25 (b) achieve these purposes in a family environment and preserve the unity and welfare of the
26 family whenever possible;

27 (c) ensure that there is no forced removal of a child from the family ~~based solely on an allegation~~
28 ~~of abuse or neglect unless the department has reasonable cause to suspect that the child is at imminent risk of~~

1 ~~harm~~ without first obtaining a warrant from a court unless the child is likely to experience sexual abuse or
2 serious bodily injury in the time that would be required to obtain a warrant;

3 (d) recognize that a child is entitled to assert the child's constitutional rights;

4 (e) ensure that all children have a right to a healthy and safe childhood in a permanent placement;
5 and

6 (f) ensure that whenever removal of a child from the home is necessary, the child is entitled to
7 maintain ethnic, cultural, and religious heritage whenever appropriate.

8 (2) It is intended that the mandatory reporting of abuse or endangerment cases by professional
9 people and other community members to the appropriate authority will cause the protective services of the state
10 to seek to prevent further abuses, protect and enhance the welfare of these children, and preserve family life
11 whenever appropriate.

12 (3) In implementing this chapter, whenever it is necessary to remove a child from the child's home,
13 the department shall, when it is in the best interests of the child, place the child with the child's noncustodial
14 birth parent or with the child's extended family, including adult siblings, grandparents, great-grandparents,
15 aunts, and uncles, when placement with the extended family is approved by the department, prior to placing the
16 child in an alternative protective or residential facility. Prior to approving a placement, the department shall
17 investigate whether anyone living in the home has been convicted of a crime involving serious harm to children.

18 (4) (a) The department shall create a registry for voluntary registration by close relatives of a child
19 for purposes of notifying those relatives when a child that is related has been removed from the child's home
20 pursuant to this chapter.

21 (b) The registry must contain the names of the child and the child's parents and may contain the
22 names of the child's grandparents, aunts, uncles, adult brothers, and adult sisters and must contain the contact
23 information for the child and parents and any of the relatives whose names appear in the registry.

24 (5) The department shall consult the registry and notify the relatives on the registry on the first
25 working day after placing the child in accordance with 41-3-301.

26 (6) The department may charge a fee commensurate with the cost of operating the registry. The
27 fee may be charged only to those persons whose names are voluntarily entered in the registry.

28 (7) The department shall ensure that department training and policies comply with constitutional

1 requirements.

2 ~~(7)~~(8) In implementing the policy of this section, the child's health and safety are of paramount
3 concern."

4

5 **Section 4.** Section 41-3-102, MCA, is amended to read:

6 **"41-3-102. Definitions.** As used in this chapter, the following definitions apply:

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

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

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

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

15 (iv) the voluntary surrender, as defined in 40-6-402, by a parent of a newborn who is no more than
16 30 days old to an emergency services provider, as defined in 40-6-402.

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

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

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

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

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

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

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

27 (4) (a) "Adequate health care" means any medical care or nonmedical remedial health care
28 recognized by an insurer licensed to provide disability insurance under Title 33, including the prevention of the

1 withholding of medically indicated treatment or medically indicated psychological care permitted or authorized
2 under state law.

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

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

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

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

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

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

14 (iii) abandonment.

15 (b) (i) The term includes:

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

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

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

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

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

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

1 guardian, disorderly living conditions, other factors closely related to economic status, or a child's obesity do not
2 alone constitute physical or psychological harm to a child.

3 (8) "Child protection specialist" means an employee of the department who investigates allegations
4 of child abuse, neglect, and endangerment and has been certified pursuant to 41-3-127.

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

7 (10) "Department" means the department of public health and human services provided for in 2-15-
8 2201.

9 (11) "Family engagement meeting" means a meeting that involves family members in either
10 developing treatment plans or making placement decisions, or both.

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

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

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

15 (13) "Indian child's tribe" means:

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

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

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

22 (15) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of
23 Indians recognized by:

24 (a) the state of Montana; or

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

27 (16) "Limited emancipation" means a status conferred on a youth by a court in accordance with 41-
28 1-503 under which the youth is entitled to exercise some but not all of the rights and responsibilities of a person

1 who is 18 years of age or older.

2 (17) "Parent" means a biological or adoptive parent or stepparent.

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

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

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

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

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

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

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

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

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

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

1 (vi) abandons the child.

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

4 (23) (a) "Protective services" means services provided by the department:

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

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

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

10 (b) The term includes emergency protective services provided pursuant to 41-3-301, written
11 prevention plans provided pursuant to 41-3-302, and court-ordered protective services provided pursuant to
12 parts 4 and 6 of this chapter.

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

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

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

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

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

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

28 (26) "Qualified individual" means a trained professional or licensed clinician who:

1 (a) has expertise in the therapeutic needs assessment used for placement of youth in a
2 therapeutic group home;

3 (b) is not an employee of the department; and

4 (c) is not connected to or affiliated with any placement setting in which children are placed.

5 (27) "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 (28) "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 (29) "Safety and risk assessment" means an evaluation by a child protection specialist following an
11 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 (30) (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~~ The term does not include any necessary touching of an infant's or toddler's
21 genital area while attending to the sanitary or health care needs of that infant or toddler by a parent or other
22 person responsible for the child's welfare.

23 (31) "Sexual exploitation" means:

24 (a) allowing, permitting, or encouraging a child to engage in a prostitution offense, as described in
25 45-5-601 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 (32) "Therapeutic needs assessment" means an assessment performed by a qualified individual

1 within 30 days of placement of a child in a therapeutic group home that:

2 (a) assesses the strengths and needs of the child using an age-appropriate, evidence-based,
3 validated, functional assessment tool;

4 (b) determines whether the needs of the child can be met with family members or through
5 placement in a youth foster home or, if not, which appropriate setting would provide the most effective and
6 appropriate level of care for the child in the least restrictive environment and be consistent with the short-term
7 and long-term goals for the child as specified in the child's permanency plan; and

8 (c) develops a list of child-specific short-term and long-term mental and behavioral health goals.

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

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

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

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

21 (ii) the provision of treatment would:

22 (A) merely prolong dying;

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

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

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

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

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

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

8 **"41-3-205. Confidentiality -- disclosure exceptions.** (1) The case records of the department and its
9 local affiliate, the local office of public assistance, the county attorney, and the court concerning actions taken
10 under this chapter and all records concerning reports of child abuse and neglect must be kept confidential
11 except as provided by this section. Except as provided in subsections (9) and (10), a person who purposely or
12 knowingly permits or encourages the unauthorized dissemination of the contents of case records is guilty of a
13 misdemeanor.

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

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

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

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

28 (c) a health or mental health professional who is treating the family or child who is the subject of a

1 report in the records;

2 (d) a parent, grandparent, aunt, uncle, brother, sister, guardian, mandatory reporter provided for in
3 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
4 the records or other person responsible for the child's welfare, without disclosure of the identity of any person
5 who reported or provided information on the alleged child abuse or neglect incident contained in the records;

6 (e) a child named in the records who was allegedly abused or neglected or the child's legal
7 guardian or legal representative, including:

8 (i) the child's guardian ad litem or attorney; or

9 (ii) the child's guardian ad litem or a special advocate appointed by the court to represent a child in
10 a pending case, unless the child or the child's parent or legal guardian objects to disclosure;

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

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

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

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

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

20 (k) the members of an interdisciplinary child protective team authorized under 41-3-108 or of a
21 family engagement meeting for the purposes of assessing the needs of the child and family, formulating a
22 treatment plan, and monitoring the plan;

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

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

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

27 (o) a person or entity who is carrying out background, employment-related, or volunteer-related
28 screening of current or prospective employees or volunteers who have or may have unsupervised contact with

1 children through employment or volunteer activities. A request for information under this subsection (3)(o) must
2 be made in writing. Disclosure under this subsection (3)(o) is limited to information that indicates a risk to
3 children posed by the person about whom the information is sought, as determined by the department.

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

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

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

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

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

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

17 (v) a school employee participating in an interview of a child by a child protection specialist, county
18 attorney, or peace officer, as provided in 41-3-202;

19 (w) a member of a county or regional interdisciplinary child information and school safety team
20 formed under the provisions of 52-2-211;

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

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

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

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

27 (i) the member receives a written inquiry regarding a child and whether the laws of the United
28 States or the state of Montana that protect children from abuse or neglect are being complied with or whether

1 the laws need to be changed to enhance protections for children;

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

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

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

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

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

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

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

18 (i) the attorney general;

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

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

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

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

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

- 1 (ii) a sexual offense, as defined in 46-23-502, against the child;
- 2 (iii) exposure of the child to an actual and not a simulated violent offense as defined in 46-23-502;
- 3 or
- 4 (iv) child abuse or neglect, as defined in 41-3-102, due to exposure of the child to circumstances
- 5 constituting the criminal manufacture or distribution of dangerous drugs.
- 6 (c) (i) The department shall promptly disclose the results of an investigation to an individual
- 7 described in subsection (5)(a) or to a county or regional interdisciplinary child information and school safety
- 8 team established pursuant to 52-2-211 upon the determination that:
- 9 (A) there is reasonable cause to suspect that a child has been exposed to a Schedule I or
- 10 Schedule II drug whose manufacture, sale, or possession is prohibited under state law; or
- 11 (B) a child has been exposed to drug paraphernalia used for the manufacture, sale, or possession
- 12 of a Schedule I or Schedule II drug that is prohibited by state law.
- 13 (ii) For the purposes of this subsection (5)(c), exposure occurs when a child is caused or permitted
- 14 to inhale, have contact with, or ingest a Schedule I or Schedule II drug that is prohibited by state law or have
- 15 contact with drug paraphernalia as defined in 45-10-101.
- 16 (d) (i) Except as provided in subsection (5)(d)(ii), the records described in subsection (3) must be
- 17 released within 5 business days to the county attorney of the county in which the acts that are the subject of a
- 18 report occurred upon the department's receipt of a report that includes an allegation of sexual abuse or sexual
- 19 exploitation. The department shall also report to any other appropriate individual described in subsection (5)(a)
- 20 and to a county or regional interdisciplinary child information and school safety team established pursuant to
- 21 52-2-211.
- 22 (ii) If the exception in 41-3-202(1)(b) applies, a contractor described in 41-3-201(2)(j) that provides
- 23 confidential services to victims of sexual assault shall report to the department as provided in this part without
- 24 disclosing the names of the victim and the alleged perpetrator of sexual abuse or sexual exploitation.
- 25 (iii) When a contractor described in 41-3-201(2)(j) that provides confidential services to victims of
- 26 sexual assault provides services to youth over the age of 13 who are victims of sexual abuse and sexual
- 27 exploitation, the contractor may not dissuade or obstruct a victim from reporting the criminal activity and, upon a
- 28 request by the victim, shall facilitate disclosure to the county attorney and a law enforcement officer as

1 described in Title 7, chapter 32, in the jurisdiction where the alleged abuse occurred.

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

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

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

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

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

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

21 (12) Copies of records, evaluations, reports, or other evidence obtained or generated pursuant to
22 this section that are provided to the parent, grandparent, aunt, uncle, brother, sister, guardian, or parent's or
23 guardian's attorney must be provided without cost."

24

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

26 **"41-3-301. (Temporary) Emergency protective ~~service~~ services.** (1) Any child protection specialist
27 of the department, a peace officer, or the county attorney who has reason to believe any child is in immediate
28 or apparent danger of harm may immediately remove the child and place the child in a protective facility. After

- 1 ensuring that the child is safe, the department may make a request for further assistance from the law
2 enforcement agency or take appropriate legal action. The person or agency placing the child shall notify the
3 parents, parent, guardian, or other person having physical or legal custody of the child of the placement at the
4 time the placement is made or as soon after placement as possible. Notification under this subsection (1) must:
- 5 (a) include the reason for removal;
 - 6 (b) include information regarding the option for an emergency protective services hearing within 5
7 days under 41-3-306, the required show cause hearing within 20 days, and the purpose of the hearings;
 - 8 (c) provide contact information for the child protection specialist, the child protection specialist's
9 supervisor, and the office of state public defender; and
 - 10 (d) advise the parents, parent, guardian, or other person having physical or legal custody of the
11 child that the parents, parent, guardian, or other person:
 - 12 (i) has the right to receive a copy of the affidavit as provided in subsection (6);
 - 13 (ii) has the right to attend and participate in an emergency protective services hearing, if one is
14 requested, and the show cause hearing, including providing statements to the judge;
 - 15 (iii) may have a support person present during any in-person meeting with the child protection
16 specialist concerning emergency protective services; and
 - 17 (iv) may request that the child be placed in a kinship foster home as defined in 52-2-602.
 - 18 (2) If a child protection specialist, a peace officer, or the county attorney determines in an
19 investigation of abuse or neglect of a child that the child is in danger because of the occurrence of partner or
20 family member assault, as provided for in 45-5-206, or strangulation of a partner or family member, as provided
21 for in 45-5-215, against an adult member of the household or that the child needs protection as a result of the
22 occurrence of partner or family member assault or strangulation of a partner or family member against an adult
23 member of the household, the department shall take appropriate steps for the protection of the child, which may
24 include:
 - 25 (a) making reasonable efforts to protect the child and prevent the removal of the child from the
26 parent or guardian who is a victim of alleged partner or family member assault or strangulation of a partner or
27 family member;
 - 28 (b) making reasonable efforts to remove the person who allegedly committed the partner or family

1 member assault or strangulation of a partner or family member from the child's residence if it is determined that
2 the child or another family or household member is in danger of partner or family member assault or
3 strangulation of a partner or family member; and

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

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

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

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

16 (6) If a child is removed from the child's home by the department, a child protection specialist shall
17 submit an affidavit regarding the circumstances of the emergency removal to the county attorney and provide a
18 copy of the affidavit to the parents or guardian, if possible, within 2 working days of the emergency removal. An
19 abuse and neglect petition must be filed within 5 working days, excluding weekends and holidays, of the
20 emergency removal of a child unless arrangements acceptable to the agency for the care of the child have
21 been made by the parents or a written prevention plan has been entered into pursuant to 41-3-302.

22 (7) Except as provided in the federal Indian Child Welfare Act, if applicable, a show cause hearing
23 must be held within 20 days of the filing of the petition unless otherwise stipulated by the parties pursuant to 41-
24 3-434.

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

1 (9) The department shall make the necessary arrangements for the child's well-being as are
2 required prior to the court hearing. (Terminates June 30, 2023--sec. 8, Ch. 529, L. 2021.)

3 **41-3-301. (Effective July 1, 2023) Emergency protective ~~service~~ services.** (1) (a) ~~Any~~ Except as
4 provided in subsection (1)(b), a child protection specialist of the department, a peace officer, or the a county
5 attorney who has reason to believe any child is in immediate or apparent danger of harm may immediately
6 ~~remove the~~ may not remove a child and place the child in a protective facility without first obtaining a warrant
7 pursuant to [section 1].

8 (b) (i) A child protection specialist, a peace officer, or a county attorney may remove a child without
9 a warrant only when the person has probable cause to believe that the child is likely to experience sexual
10 abuse or serious bodily injury in the time that would be required to obtain a warrant under [section 1].

11 (ii) For the purposes of this subsection (1)(b), "serious bodily injury" has the meaning provided in
12 45-2-101.

13 (c) A peace officer must be present whenever a child is removed from the home.

14 (d) After ensuring that the child is safe, the department may make a request for further assistance
15 from the law enforcement agency or take appropriate legal action. The person or agency placing the child shall
16 notify the parents, parent, guardian, or other person having physical or legal custody of the child of the
17 placement at the time the placement is made or as soon after placement as possible. Notification under this
18 subsection (1)(d) must:

19 (i) include the reason for removal or, if the child was removed pursuant to subsection (1)(b), the
20 factual basis for the conclusion that the child is likely to experience sexual abuse or serious bodily injury in the
21 time that would be required to obtain a warrant;

22 (ii) include information regarding the emergency protective services and show cause hearings and
23 the purpose of the hearings; and

24 (iii) advise the parents, parent, guardian, or other person having physical or legal custody of the
25 child that the parents, parent, guardian, or other person may have a support person present during any in-
26 person meeting with the child protection specialist concerning emergency protective services.

27 (2) If a child protection specialist, a peace officer, or the county attorney determines in an
28 investigation of abuse or neglect of a child that the child is in danger because of the occurrence of partner or

1 family member assault, as provided for in 45-5-206, or strangulation of a partner or family member, as provided
2 for in 45-5-215, against an adult member of the household or that the child needs protection as a result of the
3 occurrence of partner or family member assault or strangulation of a partner or family member against an adult
4 member of the household, the department shall take appropriate steps for the protection of the child, which may
5 include:

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

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

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

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

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

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

25 (6) If a child is removed from the child's home by the department, a child protection specialist shall
26 submit an affidavit regarding the circumstances of the emergency removal to the county attorney and provide a
27 copy of the affidavit to the parents or guardian, if possible, within 2 ~~working~~ days of the emergency removal. An
28 abuse and neglect petition must be filed in accordance with 41-3-422 within 5 ~~working~~ days, ~~excluding~~

1 ~~weekends and holidays, 72 hours~~ of the emergency removal of a child unless arrangements acceptable to the
2 agency for the care of the child have been made by the parents or a written prevention plan has been entered
3 into pursuant to 41-3-302.

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

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

11 (9) The department shall make the necessary arrangements for the child's well-being as are
12 required prior to the court hearing."
13

14 **Section 7.** Section 41-3-306, MCA, is amended to read:

15 **"41-3-306. (Temporary) Emergency protective services hearing on request -- exceptions.** (1) (a)
16 If requested by the parents, parent, guardian, or other person having physical or legal custody of a child
17 removed from the home pursuant to 41-3-301, a district court shall hold an emergency protective services
18 hearing within 5 business days of the child's removal to determine whether to continue the removal beyond 5
19 business days.

20 (b) The department shall provide notification of the option for the hearing as required under 41-3-
21 301.

22 (c) A hearing is not required if the child is released prior to the time of the requested hearing.

23 (2) The hearing may be held in person, by videoconference, or, if no other means are available, by
24 telephone.

25 (3) The child and the child's parents, parent, guardian, or other person having physical or legal
26 custody of the child must be represented by counsel at the hearing.

27 (4) If the court determines that continued out-of-home placement is needed, the court shall:

28 (a) establish guidelines for visitation by the parents, parent, guardian, or other person having

1 physical or legal custody of the child pending the show cause hearing; and

2 (b) review the availability of options for a kinship placement and make recommendations if
3 appropriate.

4 (5) The court may direct the department to develop and implement a treatment plan before the
5 show cause hearing if the parents, parent, guardian, or other person having physical or legal custody of the
6 child stipulates to a condition subject to a treatment plan and agrees to immediately comply with the treatment
7 plan if a plan is developed.

8 (6) If the court determines continued removal is not appropriate, the child must be immediately
9 returned to the parents, parent, guardian, or other person having physical or legal custody of the child.

10 (7) This section does not apply:

11 (a) in judicial districts that are holding voluntary prehearing conferences pursuant to 41-3-307; or

12 (b) to cases involving an Indian child who is subject to the Indian Child Welfare Act. (Terminates
13 June 30, 2023--sec. 8, Ch. 529, L. 2021.)

14 **41-3-306. (Effective July 1, 2023) Emergency protective services hearing -- exception.** (1) (a) A
15 district court shall hold a hearing within ~~5 business days~~ 72 hours of a child's removal from the home pursuant
16 to 41-3-301 to determine whether there is probable cause to continue the removal beyond ~~5 business days~~ the
17 emergency protective services hearing.

18 (b) The department shall provide notification of the hearing as required under 41-3-301.

19 (c) A hearing is not required if the child is released prior to the time of the required hearing.

20 (2) The hearing may be held in person, by videoconference, or, if no other means are available, by
21 telephone.

22 (3) The child and the child's parents, parent, guardian, or other person having physical or legal
23 custody of the child must be represented by counsel at the hearing.

24 (4) If the court determines that continued out-of-home placement is needed, the court shall:

25 (a) establish guidelines for visitation by the parents, parent, guardian, or other person having
26 physical or legal custody of the child pending the show cause hearing; and

27 (b) review the availability of options for a kinship placement and make recommendations if
28 appropriate.

1 (5) The court may direct the department to develop and implement a treatment plan before the
 2 show cause hearing if the parents, parent, guardian or other person having physical or legal custody of the child
 3 stipulates to a condition subject to a treatment plan and agrees to immediately comply with the treatment plan if
 4 a plan is developed.

5 (6) If the court determines continued removal is not appropriate, the child must be immediately
 6 returned to the parents, parent, guardian, or other person having physical or legal custody of the child.

7 (7) This section does not apply to cases involving an Indian child who is subject to the Indian Child
 8 Welfare Act."

9

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

11 **"41-3-423. Reasonable efforts required to prevent removal of child or to return -- exemption --**

12 **findings -- permanency plan.** (1) (a) The department shall make reasonable efforts to prevent the necessity of
 13 removal of a child from the child's home and to reunify families that have been separated by the state. The
 14 application for a warrant to remove a child from the child's home pursuant to [section 1] does not absolve the
 15 department from the duty to make reasonable efforts to prevent the necessity of removal.

16 (b) ~~(i) For the purposes of this subsection (1), the term "reasonable efforts" means the department~~
 17 ~~shall in good faith develop and implement voluntary services agreements and treatment plans that are designed~~
 18 ~~to preserve the parent-child relationship and the family unit and shall in good faith assist parents in completing~~
 19 ~~voluntary services agreements and treatment plans;~~

20 (i) conduct a comprehensive assessment of the circumstances of the family, with a focus on safe
 21 reunification as the most desirable goal. The assessment must be provided to the parents and to counsel for
 22 the parents.

23 (ii) identify appropriate services and help the parents overcome barriers, including actively
 24 assisting the parents in obtaining appropriate services;

25 (iii) with parental consent, identify and invite the extended family to participate in providing support
 26 and services to the family and to participate in family team meetings, permanency planning, and resolution of
 27 placement issues;

28 (iv) conduct or cause to be conducted a diligent search for the child's extended family members

1 and contact and consult with extended family members to provide family structure and support for the child and
 2 the parents;

3 (v) offer and employ all available and culturally appropriate family preservation strategies and
 4 facilitate the use of remedial and rehabilitative services;

5 (vi) take steps to keep siblings together whenever possible;

6 (vii) support regular visits with parents in the most natural setting possible, as well as trial home
 7 visits with the child during any period of removal, consistent with the need to ensure the health, safety, and
 8 welfare of the child;

9 (viii) identify community resources, including housing, financial, transportation, mental health,
 10 substance abuse, and peer support services, and actively assist the parents or, when appropriate, the child's
 11 family in utilizing and accessing the resources;

12 (ix) monitor progress and participation in services; and

13 (x) consider alternative ways to address the needs of the parents and, when appropriate, the
 14 family if the optimum services do not exist or are not available.

15 ~~(ii) The term includes but is not limited to:~~

16 ~~(A) written prevention plans;~~

17 ~~(B) development of individual written case plans specifying state efforts to preserve or reunify~~
 18 ~~families;~~

19 ~~(C) placement in the least disruptive setting possible with priority given to family placement as~~
 20 ~~provided in 41-3-439 ;~~

21 ~~(D) provision of services pursuant to a case plan that is designed to address the parent's treatment~~
 22 ~~and other needs precluding the parent from safely parenting, including but not limited to individual and family~~
 23 ~~therapy, parent education, substance abuse treatment, and trauma-related services; and~~

24 ~~(E) periodic review of each case to ensure timely progress toward reunification or permanent~~
 25 ~~placement.~~

26 (c) In determining preservation or reunification services to be provided and in making reasonable
 27 efforts at providing preservation or reunification services, the child's health and safety are of paramount
 28 concern.

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

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

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

11 (c) committed aggravated assault against a child;

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

13 (e) had parental rights to the child's sibling or other child of the parent involuntarily terminated and
14 the circumstances related to the termination of parental rights are relevant to the parent's ability to adequately
15 care for the child at issue.

16 (3) Preservation or reunification services are not required for a putative father, as defined in 42-2-
17 201, if the court makes a finding that the putative father has failed to do any of the following:

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

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

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

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

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

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

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

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

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

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

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

16 (7) When determining whether the department has made reasonable efforts to prevent the
17 necessity of removal of a child from the child's home or to reunify families that have been separated by the
18 state, the court shall review the services provided by the agency including, if applicable, protective services
19 provided pursuant to 41-3-302."
20

21 **Section 9.** Section 41-3-424, MCA, is amended to read:

22 "**41-3-424. Dismissal.** Unless the petition has been previously dismissed, the court shall dismiss an
23 abuse and neglect petition on the motion of a party, or on its own motion, in any case in which ~~all~~one of the
24 following criteria ~~are~~is met:

25 (1) a child who has been placed in foster care is reunited with the child's parents and returned
26 home and the court finds, after a hearing, that the child is safe in the home;

27 (2) the child remains in the home for a minimum of 6 months with no additional confirmed reports
28 of child abuse or neglect; ~~and~~ or

1 (3) the department determines and informs the court that the issues that led to department
2 intervention have been resolved and that no reason exists for further department intervention or monitoring."

3

4 **Section 10.** Section 41-3-425, MCA, is amended to read:

5 **"41-3-425. Right to counsel.** (1) Any party involved in a petition filed pursuant to 41-3-422 has the
6 right to counsel in all proceedings held pursuant to the petition.

7 (2) Except as provided in subsections (3) ~~through (5) and (4)~~, the court shall immediately appoint
8 the office of state public defender to assign counsel for:

9 (a) any indigent parent, guardian, or other person having legal custody of a child or youth in a
10 removal, placement, or termination proceeding pursuant to 41-3-422, pending a determination of eligibility
11 pursuant to 47-1-111;

12 (b) any child or youth involved in a proceeding under a petition filed pursuant to 41-3-422 ~~when a~~
13 ~~guardian ad litem is not appointed for the child or youth;~~ and

14 (c) any party entitled to counsel at public expense under the federal Indian Child Welfare Act.

15 ~~(3) When appropriate, the court may appoint the office of state public defender to assign counsel for~~
16 ~~any child or youth involved in a proceeding under a petition filed pursuant to 41-3-422 when a guardian ad litem~~
17 ~~is appointed for the child or youth.~~

18 ~~(4)(3)~~ When appropriate and in accordance with judicial branch policy, the court may assign counsel
19 at the court's expense for a guardian ad litem or a court-appointed special advocate involved in a proceeding
20 under a petition filed pursuant to 41-3-422.

21 ~~(5)(4)~~ Except as provided in the federal Indian Child Welfare Act, a court may not appoint a public
22 defender to a putative father, as defined in 42-2-201, of a child or youth in a removal, placement, or termination
23 proceeding pursuant to 41-3-422 until:

24 (a) the putative father is successfully served notice of a petition filed pursuant to 41-3-422; and

25 (b) the putative father makes a request to the court in writing to appoint the office of state public
26 defender to assign counsel."

27

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

- 1 **"41-3-427. Petition for immediate protection and emergency protective services -- order --**
 2 **service.** (1) (a) ~~In a case in which it appears that a child is abused or neglected or is in danger of~~ When
 3 necessary to prevent a child from being abused or neglected, the county attorney, the attorney general, or an
 4 attorney hired by the county may file a petition for immediate protection and emergency protective services. In
 5 implementing the policy of this section, the child's health and safety are of paramount concern.
- 6 (b) A petition for immediate protection and emergency protective services must state the specific
 7 authority requested and must be supported by an affidavit signed by a representative of the department stating
 8 in detail the alleged facts ~~upon on~~ which the request is based and the facts establishing probable cause or, if
 9 the case is subject to the federal Indian Child Welfare Act, clear and convincing evidence that ~~a child is abused~~
 10 ~~or neglected or is in danger of~~ the relief requested is necessary to prevent a child from being abused or
 11 neglected. The affidavit of the department representative must contain information, if any, regarding statements
 12 made by the parents about the facts of the case.
- 13 (c) If from the alleged facts presented in the affidavit it appears to the court that there is probable
 14 cause or, if the case is subject to the federal Indian Child Welfare Act, clear and convincing evidence to believe
 15 that the ~~child has been abused or neglected or is in danger of~~ relief requested is necessary to prevent the child
 16 from being abused and neglected, the judge shall grant emergency protective services and the relief authorized
 17 by subsection (2) until the adjudication hearing or the temporary investigative hearing. If it appears from the
 18 alleged facts contained in the affidavit that there is insufficient probable cause or, if the case is subject to the
 19 federal Indian Child Welfare Act, clear and convincing evidence to believe that the ~~child has been abused or~~
 20 ~~neglected or is in danger of~~ relief requested is necessary to prevent the child from being abused or neglected,
 21 the court shall dismiss the petition.
- 22 (d) If the parents, parent, guardian, person having physical or legal custody of the child, or attorney
 23 for the child disputes the material issues of fact contained in the affidavit or the veracity of the affidavit, the
 24 person may request a contested show cause hearing pursuant to 41-3-432 within 10 days following service of
 25 the petition and affidavit.
- 26 (e) The petition for immediate protection and emergency protective services must include a notice
 27 advising the parents, parent, guardian, or other person having physical or legal custody of the child that the
 28 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 child protection specialist concerning emergency protective
 2 services. Reasonable accommodation must be made in scheduling an in-person meeting with the child
 3 protection specialist.

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

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

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

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

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

26 ~~(h)~~(viii) any other temporary disposition that may be required in the best interests of the child that does
 27 not 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 (b) An order issued under subsection (2)(a) must articulate the factual basis for each finding.

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

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

10 (5) The petition must be served as provided in 41-3-422."
11

12 NEW SECTION. Section 12. Codification instruction. [Sections 1 and 2] are intended to be codified
13 as an integral part of Title 41, chapter 3, part 3, and the provisions of Title 41, chapter 3, part 3, apply to
14 [sections 1 and 2].
15

16 NEW SECTION. Section 13. Effective date. [This act] is effective July 1, 2023.
17

- END -