

SENATE BILL NO. 368

INTRODUCED BY J. TREBAS

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO MINORS; REQUIRING INTERVIEWS OF A CHILD IN PARENTING PLAN PROCEEDINGS; PROVIDING ADDITIONAL RIGHTS FOR CHILDREN IN PARENTING PLAN PROCEEDINGS AND CHILD ABUSE AND NEGLECT PROCEEDINGS; REVISING THE DEFINITION OF "BEST INTERESTS OF THE CHILD" IN CHILD ABUSE AND NEGLECT PROCEEDINGS; PROVIDING AN EXCEPTION AND ADDITIONAL PENALTIES IN PARENTING INTERFERENCE CASES; AND AMENDING SECTIONS 40-4-205, 40-4-212, 40-4-214, 40-4-227, 41-3-102, 41-3-437, 41-3-440, AND 45-5-634, MCA."

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

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

"40-4-205. Guardian ad litem or legal representative. (1) The court may appoint a guardian ad litem or legal representative to represent the best interests of a minor dependent child with respect to the child's support, parenting, and parental contact under the standards provided in 40-4-212. The guardian ad litem may be an attorney. The county attorney, a deputy county attorney, if any, or the department of public health and human services or any of its staff may not be appointed for this purpose. The guardian ad litem cannot serve as the child's attorney on the same case.

(2) The guardian ad litem or legal representative has the following general duties:

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

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

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

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

1 contact; and

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

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

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

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

11

12 **Section 2.** Section 40-4-212, MCA, is amended to read:

13 **"40-4-212. Best interest of child.** (1) The court shall determine the parenting plan in accordance with
14 the best interest of the child. The court shall consider all relevant parenting factors, which may include but are
15 not limited to:

16 (a) ~~the wishes of the child's parent or parents~~ the wishes of the child;

17 (b) ~~the wishes of the child~~ the wishes of the child's parent or parents;

18 (c) the interaction and interrelationship of the child with the child's parent or parents and siblings
19 and with any other person who significantly affects the child's best interest;

20 (d) the child's adjustment to home, school, and community;

21 (e) the mental and physical health of all individuals involved;

22 (f) physical abuse or threat of physical abuse by one parent against the other parent or the child;

23 (g) chemical dependency, as defined in 53-24-103, or chemical abuse on the part of either parent;

24 (h) continuity and stability of care;

25 (i) developmental needs of the child;

26 (j) whether a parent has knowingly failed to pay birth-related costs that the parent is able to pay,
27 which is considered to be not in the child's best interests;

28 (k) whether a parent has knowingly failed to financially support a child that the parent is able to

1 support, which is considered to be not in the child's best interests;

2 (l) whether the child has ~~frequent~~ and continuing contact with both parents, which is considered to
3 be in the child's best interests unless the court determines, after a hearing at which evidence is presented and
4 considered, that contact with a parent would be detrimental to the child's best interests. In making that
5 determination, the court shall consider evidence of physical abuse or threat of physical abuse by one parent
6 against the other parent or the child, including but not limited to whether a parent or other person residing in
7 that parent's household has been convicted of any of the crimes enumerated in 40-4-219(8)(b).

8 (m) adverse effects on the child resulting from continuous and vexatious parenting plan
9 amendment actions.

10 (2) When determining the best interest of the child of a parent in military service, the court shall
11 consider all relevant parenting factors provided in subsection (1) and may not determine the best interest of the
12 child based only upon the parent's military service.

13 (3) A de facto parenting arrangement, in the absence of a prior parenting decree, does not require
14 the child's parent or parents to prove the factors set forth in 40-4-219.

15 (4) The following are rebuttable presumptions and apply unless contrary to the best interest of the
16 child:

17 (a) A parenting plan action brought by a parent within 6 months after a child support action against
18 that parent is vexatious.

19 (b) ~~A~~ Absent verifiable child abuse arising following issuance of the final parenting plan, a motion
20 to amend a final parenting plan pursuant to 40-4-219 is vexatious if a parent seeks to amend a final parenting
21 plan without making a good faith effort to comply with the provisions of the parenting plan or with dispute
22 resolution provisions of the final parenting plan."
23

24 **Section 3.** Section 40-4-214, MCA, is amended to read:

25 "**40-4-214. Interviews.** (1) The court ~~may~~ shall make every effort to interview ~~the~~ each child in
26 ~~chambers~~ to ascertain the child's wishes as to residence and parental contact. The court ~~may~~ shall permit
27 counsel for the child, if any, to be present at the interview. The court shall cause ~~a~~ an audio or video record of
28 the interview to be made and to be part of the record in the case and to be made available to counsel.

1 (2) The court may seek the advice of professional personnel, whether or not employed by the court
2 on a regular basis. The advice given must be in writing and made available by the court to counsel upon
3 request. Counsel may examine as a witness any professional personnel consulted by the court."
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5 **Section 4.** Section 40-4-227, MCA, is amended to read:

6 **"40-4-227. Rights of parents and children -- policy -- findings.** (1) It is the policy of the state of
7 Montana:

8 (a) to recognize the constitutionally protected rights of parents and the integrity of the family unit;

9 (b) to recognize a child's constitutionally protected rights, including all fundamental rights unless
10 those rights are specifically precluded by laws that enhance their protection; ~~and~~ The state recognizes a child's
11 constitutionally protected right to be heard and the right to legal representation, which includes the legal
12 obligation to represent the child's wishes if the child is able to express the child's wishes, specifically to
13 enhance the protection of children.

14 (c) to allow a child to state the child's opinion as to whom the child feels safe with and wants to
15 spend time with in custody matters and proceedings under Title 41, chapter 3;

16 (d) to recognize that a child has a right to refuse a relationship with an unsafe parent;

17 ~~(e)~~(e) to ensure that the wishes of the child and the best interests of the child as described in 40-4-
18 212 are met represented in parenting proceedings and in proceedings under Title 41, chapter 3;

19 (f) to recognize that a child has a right to refuse a relationship with an unsafe sibling or extended
20 family member;

21 (g) to recognize that a child has a right to be protected from unsafe foster parents and unsafe
22 institutional settings in which they have been placed by the state.

23 (2) The legislature finds:

24 (a) that while it is in the best interests of a child to maintain a relationship with a natural parent, a
25 natural parent's inchoate interest in the child requires constitutional protection only when the parent has
26 demonstrated a timely commitment to the responsibilities of parenthood; and

27 (b) that a parent's constitutionally protected interest in the parental control of a child should yield to
28 the best interests of the child when the parent's conduct is contrary to the child-parent relationship."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) This chapter may not be construed to require or justify a finding of child abuse or neglect for the

1 sole reason that a parent or legal guardian, because of religious beliefs, does not provide adequate health care
2 for a child. However, this chapter may not be construed to limit the administrative or judicial authority of the
3 state to ensure that medical care is provided to the child when there is imminent substantial risk of serious harm
4 to the child.

5 (5) "Best interests of the child" means the physical, mental, and psychological conditions and
6 needs of the child and any other factor considered by the court to be relevant to the child, including the factors
7 listed in 40-4-212, as applicable.

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

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

- 10 (i) actual physical or psychological harm to a child;
- 11 (ii) substantial risk of physical or psychological harm to a child; or
- 12 (iii) abandonment.

13 (b) (i) The term includes:

- 14 (A) actual physical or psychological harm to a child or substantial risk of physical or psychological
15 harm to a child by the acts or omissions of a person responsible for the child's welfare;
- 16 (B) exposing a child to the criminal distribution of dangerous drugs, as prohibited by 45-9-101, the
17 criminal production or manufacture of dangerous drugs, as prohibited by 45-9-110, or the operation of an
18 unlawful clandestine laboratory, as prohibited by 45-9-132; or
- 19 (C) any form of child sex trafficking or human trafficking.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (a) the state of Montana; or

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

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

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

27 (18) "Parent-child legal relationship" means the legal relationship that exists between a child and the
28 child's birth or adoptive parents, as provided in Title 40, chapter 6, part 2, unless the relationship has been

1 terminated by competent judicial decree as provided in 40-6-234, Title 42, or part 6 of this chapter.

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

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

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

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

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

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

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

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

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

25 (vi) abandons the child.

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

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

- 1 (i) to enable a child alleged to have been abused or neglected to remain safely in the home;
- 2 (ii) to enable a child alleged to have been abused or neglected who has been removed from the
- 3 home to safely return to the home; or
- 4 (iii) to achieve permanency for a child adjudicated as a youth in need of care when circumstances
- 5 and the best interests of the child prevent reunification with parents or a return to the home.

6 (b) The term includes emergency protective services provided pursuant to 41-3-301, written

7 prevention plans provided pursuant to 41-3-302, and court-ordered protective services provided pursuant to

8 parts 4 and 6 of this chapter.

9 (24) (a) "Psychological abuse or neglect" means severe maltreatment through acts or omissions

10 that are injurious to the child's emotional, intellectual, or psychological capacity to function, including the

11 commission of acts of violence against another person residing in the child's home.

12 (b) The term may not be construed to hold a victim responsible for failing to prevent the crime

13 against the victim.

14 (25) "Qualified expert witness" as used in cases involving an Indian child in proceedings subject to

15 the federal Indian Child Welfare Act means:

16 (a) a member of the Indian child's tribe who is recognized by the tribal community as

17 knowledgeable in tribal customs as they pertain to family organization and child-rearing practices;

18 (b) a lay expert witness who has substantial experience in the delivery of child and family services

19 to Indians and extensive knowledge of prevailing social and cultural standards and child-rearing practices within

20 the Indian child's tribe; or

21 (c) a professional person who has substantial education and experience in providing services to

22 children and families and who possesses significant knowledge of and experience with Indian culture, family

23 structure, and child-rearing practices in general.

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

25 (a) has expertise in the therapeutic needs assessment used for placement of youth in a

26 therapeutic group home;

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

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

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

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

6 (29) "Safety and risk assessment" means an evaluation by a child protection specialist following an
7 initial report of child abuse or neglect to assess the following:

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

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

10 (c) any particular vulnerabilities of the child;

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

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

13 (30) (a) "Sexual abuse" means the commission of sexual assault, sexual intercourse without
14 consent, aggravated sexual intercourse without consent, indecent exposure, sexual abuse, ritual abuse of a
15 minor, or incest, as described in Title 45, chapter 5.

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

19 (31) "Sexual exploitation" means:

20 (a) allowing, permitting, or encouraging a child to engage in a prostitution offense, as described in
21 45-5-601 through 45-5-603;

22 (b) allowing, permitting, or encouraging sexual abuse of children as described in 45-5-625; or

23 (c) allowing, permitting, or encouraging sexual servitude as described in 45-5-704 or 45-5-705.

24 (32) "Therapeutic needs assessment" means an assessment performed by a qualified individual
25 within 30 days of placement of a child in a therapeutic group home that:

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

28 (b) determines whether the needs of the child can be met with family members or through

1 placement in a youth foster home or, if not, which appropriate setting would provide the most effective and
2 appropriate level of care for the child in the least restrictive environment and be consistent with the short-term
3 and long-term goals for the child as specified in the child's permanency plan; and

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

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

9 (34) (a) "Withholding of medically indicated treatment" means the failure to respond to an infant's
10 life-threatening conditions by providing treatment, including appropriate nutrition, hydration, and medication,
11 that, in 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 (34), "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 (35) "Youth in need of care" means a youth who has been adjudicated or determined, after a

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

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3 **Section 6.** Section 41-3-437, MCA, is amended to read:

4 **"41-3-437. Adjudication -- temporary disposition -- findings -- order.** (1) Upon the filing of an
5 appropriate petition, an adjudicatory hearing must be held within 90 days of a show cause hearing under 41-3-
6 432. Adjudication may take place at the show cause hearing if the requirements of subsection (2) are met or
7 may be made by prior stipulation of the parties pursuant to 41-3-434 and order of the court. Exceptions to the
8 time limit may be allowed only in cases involving newly discovered evidence, unavoidable delays, stipulation by
9 the parties pursuant to 41-3-434, and unforeseen personal emergencies.

10 (2) The court may make an adjudication on a petition under 41-3-422 if the court determines by a
11 preponderance of the evidence, except as provided in the federal Indian Child Welfare Act, if applicable, that
12 the child is a youth in need of care. Except as otherwise provided in this part, the Montana Rules of Civil
13 Procedure and the Montana Rules of Evidence apply to adjudication and to an adjudicatory hearing.
14 Adjudication must determine the nature of the abuse and neglect and establish facts that resulted in state
15 intervention and upon which disposition, case work, court review, and possible termination are based.

16 (3) The court shall hear evidence regarding the residence of the child, paternity, if in question, the
17 whereabouts of the parents, guardian, or nearest adult relative, and any other matters the court considers
18 relevant in determining the status of the child. Hearsay evidence of statements made by the affected youth
19 during a forensic interview is admissible according to the Montana Rules of Evidence.

20 (4) In a case in which abandonment has been alleged by the county attorney, the attorney general,
21 or an attorney hired by the county, the court shall hear offered evidence, including evidence offered by a person
22 appearing pursuant to 41-3-422(9)(a) or (9)(b), regarding any of the following subjects:

23 (a) the extent to which the child has been cared for, nurtured, or supported by a person other than
24 the child's parents; and

25 (b) whether the child was placed or allowed to remain by the parents with another person for the
26 care of the child, and, if so, then the court shall accept evidence regarding:

27 (i) the intent of the parents in placing the child or allowing the child to remain with that person;

28 (ii) the continuity of care the person has offered the child by providing permanency or stability in

1 residence, schooling, and activities outside of the home; and

2 (iii) the circumstances under which the child was placed or allowed to remain with that other
3 person, including:

4 (A) whether a parent requesting return of the child was previously prevented from doing so as a
5 result of an order issued pursuant to Title 40, chapter 15, part 2, or of a conviction pursuant to 45-5-206; and

6 (B) whether the child was originally placed with the other person to allow the parent to seek
7 employment or attend school.

8 (5) In all civil and criminal proceedings relating to abuse or neglect, the privileges related to the
9 examination or treatment of the child do not apply, except the attorney-client privilege granted by 26-1-803 and
10 the mediation privilege granted by 26-1-813.

11 (6) (a) If the court determines that the child is not an abused or neglected child, the petition must
12 be dismissed and any order made pursuant to 41-3-427 or 41-3-432 must be vacated.

13 (b) If the child is adjudicated a youth in need of care, the court shall set a date for a dispositional
14 hearing to be conducted within 20 days, as provided in 41-3-438(1), and order any necessary or required
15 investigations. The court may issue a temporary dispositional order pending the dispositional hearing. The
16 temporary dispositional order may provide for any of the forms of relief listed in 41-3-427(2).

17 (7) (a) Before making an adjudication, the court may make oral findings, and following the
18 adjudicatory hearing, the court shall make written findings on issues, including but not limited to the following:

19 (i) which allegations of the petition have been proved or admitted, if any;

20 (ii) whether there is a legal basis for continued court and department intervention; and

21 (iii) whether the department has made reasonable efforts to avoid protective placement of the child
22 or to make it possible to safely return the child to the child's home.

23 (b) The court may order:

24 (i) terms for visitation, support, and other intrafamily communication pending disposition if the
25 child is to be placed or to remain in temporary out-of-home care prior to disposition;

26 (ii) examinations, evaluations, or counseling of the child or parents in preparation for the
27 disposition hearing that does not require an expenditure of money by the department unless the court finds
28 after notice and a hearing that the expenditure is reasonable and that resources are available for payment. The

1 department is the payor of last resort after all family, insurance, and other resources have been examined.

2 (iii) the department to evaluate the noncustodial parent or relatives as possible caretakers, if not
3 already done;

4 (iv) the perpetrator of the alleged child abuse or neglect to be removed from the home to allow the
5 child to remain in the home; and

6 (v) the department to continue efforts to notify noncustodial parents.

7 (8) If a proceeding under this chapter involves an Indian child and is subject to the federal Indian
8 Child Welfare Act, a qualified expert witness is required to testify that the continued custody of the child by the
9 parent or Indian custodian is likely to result in serious emotional or physical damage to the child."

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11 **Section 7.** Section 41-3-440, MCA, is amended to read:

12 **"41-3-440. Limitation on placement.** (1) Except as provided in 41-3-301(1) and in the absence of a
13 dispute between the parties to the action regarding the appropriate placement, the department shall determine
14 the appropriate placement for a child alleged to be or adjudicated as a youth in need of care. The court shall
15 settle any dispute between the parties to an action regarding the appropriate placement. The child may not be
16 placed in a youth assessment center, youth detention facility, detention center, or other facility intended or used
17 for the confinement of adults or youth accused or convicted of criminal offenses.

18 (2) A child placed by the department pursuant to this section must have access to private
19 interviews or conversations with a trusted adult outside of the presence of a foster parent or staff of a youth
20 care facility as defined in 52-2-602 to address safety concerns without fear of retaliation, coercion, or
21 manipulation. If the child raises safety concerns with the trusted adult, the trusted adult may object to the
22 placement of the child under this section and the court may order the child to be moved to a new placement."

23

24 **Section 8.** Section 45-5-634, MCA, is amended to read:

25 **"45-5-634. Parenting interference.** (1) A Except as provided in subsection (2), a person commits the
26 offense of parenting interference if, ~~knowing that the person has no legal right to do so,~~ the person:

27 (a) before the entry of a court order determining parenting rights, takes, entices, or withholds a
28 child from the other parent when the action manifests a purpose to substantially deprive that parent of parenting

1 rights; or

2 (b) is one of two persons who has parenting authority of a child under a court order and takes,
3 entices, or withholds the child from the other when the action manifests a purpose to substantially deprive the
4 other parent of parenting rights.

5 (2) Subsection (1) does not apply to any individual found to be reasonably acting in good faith to
6 protect the child from threat of serious physical, emotional, or psychological harm.

7 ~~(2)~~(3) A person convicted of the offense of parenting interference shall be imprisoned in the state
8 prison for any term not to exceed 10 years or be fined an amount not to exceed \$50,000, or both. The court
9 shall order the offender to pay any court costs incurred by the nonoffending parent as a result of the parenting
10 interference as restitution. The court shall order the offender to attend parenting classes that address healthy
11 parenting and parenting without conflict.

12 ~~(3)~~(4) With respect to the first alleged commission of the offense only, a person who has not left the
13 state does not commit an offense under this section if the person voluntarily returns the child before
14 arraignment. With respect to the first alleged commission of the offense only, a person who has left the state
15 does not commit an offense under this section if the person voluntarily returns the child before arrest."

16 - END -