SENATE BILL NO. 446
INTRODUCED BY D. Lenz

A BILL FOR AN ACT ENTITLED: “AN ACT REVISING LAWS RELATED TO LEGISLATIVE AND CITIZEN REVIEW OF CHILD PROTECTION CASES; ESTABLISHING A CHILD PROTECTION LEGISLATIVE REVIEW COUNCIL; PROVIDING FOR CASE RECORD ACCESS AND CONFIDENTIALITY OF CASE REVIEW PROCEEDINGS; AND AMENDING SECTIONS 41-3-205, 41-3-432, 41-3-445, 41-3-1001, 41-3-1003, 41-3-1004, 41-3-1005, 41-3-1006, 41-3-1007, 41-3-1008, 41-3-1010, 41-3-1011, 41-3-1012, 41-3-1013, AND 52-2-304, MCA.”

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

NEW SECTION. Section 1. Child protection legislative review council. (1) There is a child protection legislative review council.

(a) The council consists of eight members as follows:

(i) four members of the house of representatives chosen by the speaker, including one member from the house human services committee and one member from the house judiciary committee; and

(ii) four members of the senate chosen by the president, including one member from the senate public health committee and one member from the senate judiciary committee.

(b) Appointments made under subsection (1)(a) must be made by December 1, 2023. A vacancy on the council must be filled in the manner of the original appointment.

(c) Council members must be compensated as provided in 5-2-302 and reimbursed for travel expenses as provided in 2-18-501 through 2-18-503.

(2) The council shall meet at least twice annually and may meet more frequently as needed to review citizen review panel reports and the department’s response to the reports and to consider other child protection issues.

(3) The council shall appoint and support citizen review panels, including providing consultation at the request of a panel and reviewing cases at the request of a panel.
The council shall prepare an annual report summarizing the recommendations of the council, the reports of citizen review panels, the department’s response to reports, and any other information required by the federal department of health and human services. The council shall submit the report to the federal department of health and human services each year.

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

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

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

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

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

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

(c) a health or mental health professional who is treating the family or child who is the subject of a report in the records;
(d) a parent, grandparent, aunt, uncle, brother, sister, guardian, mandatory reporter provided for in 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 the records or other person responsible for the child's welfare, without disclosure of the identity of any person who reported or provided information on the alleged child abuse or neglect incident contained in the records;

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

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

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

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

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

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

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

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

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

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

(o) a person or entity who is carrying out background, employment-related, or volunteer-related screening of current or prospective employees or volunteers who have or may have unsupervised contact with children through employment or volunteer activities. A request for information under this subsection (3)(o) must be made in writing. Disclosure under this subsection (3)(o) is limited to information that indicates a risk to children posed by the person about whom the information is sought, as determined by the department.
(p) the news media, if disclosure is limited to confirmation of factual information regarding how the
case was handled and if disclosure does not violate the privacy rights of the child or the child's parent or
guardian, as determined by the department;
(q) an employee of the department or other state agency if disclosure of the records is necessary
for administration of programs designed to benefit the child;
(r) an agency of an Indian tribe, a qualified expert witness, or the relatives of an Indian child if
disclosure of the records is necessary to meet requirements of the federal Indian Child Welfare Act;
(s) a juvenile probation officer who is working in an official capacity with the child who is the
subject of a report in the records;
t) an attorney who is hired by or represents the department if disclosure is necessary for the
investigation, defense, or prosecution of a case involving child abuse or neglect;
u) a foster care review committee established under 41-3-115 or, when applicable, a citizen
review board panel or the child protection legislative review council established under Title 41, chapter 3, part
10;
v) a school employee participating in an interview of a child by a child protection specialist, county
attorney, or peace officer, as provided in 41-3-202;
w) a member of a county or regional interdisciplinary child information and school safety team
formed under the provisions of 52-2-211;
x) members of a local interagency staffing group provided for in 52-2-203;
y) a member of a youth placement committee formed under the provisions of 41-5-121; or
(z) a principal of a school or other employee of the school district authorized by the trustees of the
district to receive the information with respect to a student of the district who is a client of the department.

(4) (a) The records described in subsection (3) must be disclosed to a member of the United
States congress or a member of the Montana legislature if all of the following requirements are met:
(i) the member receives a written inquiry regarding a child and whether the laws of the United
States or the state of Montana that protect children from abuse or neglect are being complied with or whether
the laws need to be changed to enhance protections for children;
(ii) the member submits a written request to the department requesting to review the records
relating to the written inquiry. The member's request must include a copy of the written inquiry, the name of the
child whose records are to be reviewed, and any other information that will assist the department in locating the records.

(iii) before reviewing the records, the member:

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

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

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

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

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

(i) the attorney general;

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

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

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

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

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

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

(iii) exposure of the child to an actual and not a simulated violent offense as defined in 46-23-502;
(iv) child abuse or neglect, as defined in 41-3-102, due to exposure of the child to circumstances constituting the criminal manufacture or distribution of dangerous drugs.

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

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

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

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

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

(ii) If the exception in 41-3-202(1)(b) applies, a contractor described in 41-3-201(2)(j) that provides confidential services to victims of sexual assault shall report to the department as provided in this part without disclosing the names of the victim and the alleged perpetrator of sexual abuse or sexual exploitation.

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

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

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

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

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

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

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

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

Section 3. Section 41-3-432, MCA, is amended to read:

"41-3-432. Show cause hearing -- order. (1) (a) Except as provided in the federal Indian Child Welfare Act, a show cause hearing must be conducted within 20 days of the filing of an initial child abuse and neglect petition unless otherwise stipulated by the parties pursuant to 41-3-434 or unless an extension of time is granted by the court. A separate notice to the court stating the statutory time deadline for a hearing must accompany any petition to which the time deadline applies."
(b) If a proceeding under this chapter involves an Indian child and is subject to the federal Indian Child Welfare Act, a qualified expert witness is required to testify that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(c) The court may grant an extension of time for a show cause hearing only upon a showing of substantial injustice and shall order an appropriate remedy that considers the best interests of the child.

(2) The person filing the petition has the burden of presenting evidence establishing probable cause for the issuance of an order for temporary investigative authority after the show cause hearing, except as provided by the federal Indian Child Welfare Act, if applicable.

(3) If a contested show cause hearing is requested pursuant to 41-3-427 based upon a disputed issue of material fact or a dispute regarding the veracity of the affidavit of the department, the court may consider all evidence and shall provide an opportunity for a parent, guardian, or other person having physical or legal custody of the child to provide testimony regarding the disputed issues. Hearsay evidence of statements made by the affected child is admissible at the hearing. The parent, guardian, or other person may be represented by legal counsel and may be appointed or assigned counsel as provided for in 41-3-425.

(4) At the show cause hearing, the court shall explain the procedures to be followed in the case and explain the parties' rights, including the right to request appointment or assignment of counsel if indigent or if appointment or assignment of counsel is required under the federal Indian Child Welfare Act, if applicable, and the right to challenge the allegations contained in the petition. The parent, guardian, or other person having physical or legal custody of the child must be given the opportunity to admit or deny the allegations contained in the petition at the show cause hearing. Inquiry must be made to determine whether the notice requirements of the federal Indian Child Welfare Act, if applicable, have been met.

(5) Except as provided in the federal Indian Child Welfare Act, if applicable, the court shall make written findings on issues including but not limited to the following:

(a) whether the child should be returned home immediately if there has been an emergency removal or remain in temporary out-of-home care or be removed from the home;

(b) if removal is ordered or continuation of removal is ordered, why continuation of the child in the home would be contrary to the child's best interests and welfare;

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

(d) financial support of the child, including inquiry into the financial ability of the parents, guardian, or other person having physical or legal custody of the child to contribute to the costs for the care, custody, and treatment of the child and requirements of a contribution for those costs pursuant to 41-3-446; and

(e) whether another hearing is needed and, if so, the date and time of the next hearing.

(6) The court may consider:

(a) terms and conditions for parental visitation; and

(b) whether orders for examinations, evaluations, counseling, immediate services, or protection are needed.

(7) Following the show cause hearing, the court may enter an order for the relief requested or amend a previous order for immediate protection of the child if one has been entered. The order must be in writing.

(8) If a child who has been removed from the child's home is not returned home after the show cause hearing or if removal is ordered, the parents or parent, guardian, or other person or agency having physical or legal custody of the child named in the petition may request that a citizen review board, panel if available pursuant to part 10 of this chapter, review the case within 30 days of the show cause hearing and make a recommendation to the district court, as provided in 41-3-1010.

(9) Adjudication of a child as a youth in need of care may be made at the show cause hearing if the requirements of 41-3-437(2) are met. If not made at the show cause hearing, adjudication under 41-3-437 must be made within the time limits required by 41-3-437 unless adjudication occurs earlier by stipulation of the parties pursuant to 41-3-434 and order of the court."

Section 4. Section 41-3-445, MCA, is amended to read:

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

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

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

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

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

(c) The permanency hearing may be combined with a hearing that is required in other sections of this part or with a review held pursuant to 41-3-115 or 41-3-1010 if held within the applicable time limits. If a permanency hearing is combined with another hearing or a review, the requirements of the court related to the disposition of the other hearing or review must be met in addition to the requirements of this section.

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

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

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

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

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

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

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

(6) The court shall approve a specific permanency plan for the child and make written findings on:
(a) whether the child has been asked about the desired permanency outcome;
(b) whether the permanency plan is in the best interests of the child;
(c) whether the department has made reasonable efforts to effectuate the permanency plan for the
individual child;
(d) whether the department has made reasonable efforts to finalize the plan;
(e) whether there are compelling reasons why it is not in the best interest of the individual child to:
(i) return to the child’s home; or
(ii) be placed for adoption, with a legal guardian, or with a fit and willing relative; and
(f) other necessary steps that the department is required to take to effectuate the terms of the
plan.

(7) In its discretion, the court may enter any other order that it determines to be in the best
interests of the child that does not conflict with the options provided in subsection (8) and that does not require
an expenditure of money by the department unless the court finds after notice and a hearing that the
expenditures are reasonable and that resources are available for payment. The department is the payor of last
resort after all family, insurance, and other resources have been examined.

(8) Permanency options include:

(a) reunification of the child with the child's parent or guardian;

(b) permanent placement of the child with the noncustodial parent, superseding any existing custodial order;

(c) adoption;

(d) appointment of a guardian pursuant to 41-3-444; or

(e) long-term custody if the child is in a planned permanent living arrangement and if it is established by a preponderance of the evidence, which is reflected in specific findings by the court, that:

(i) the child is being cared for by a fit and willing relative;

(ii) the child has an emotional or mental handicap that is so severe that the child cannot function in a family setting and the best interests of the child are served by placement in a residential or group setting;

(iii) the child is at least 16 years of age and is participating in an independent living program and that termination of parental rights is not in the best interests of the child;

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

(v) the child meets the following criteria:

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

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

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

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

(9) For a child 14 years of age or older, the permanency plan must:
(a) be developed in consultation with the child and in consultation with up to two members of the child's case planning team who are chosen by the child and who are not a foster parent or child protection specialist for the child;

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

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

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

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

Section 5. Section 41-3-1001, MCA, is amended to read:

"41-3-1001. Short title. This part may be cited as the "Citizen Review Board Program Panel Act"."

Section 6. Section 41-3-1003, MCA, is amended to read:

"41-3-1003. Establishment of board-panel -- definition -- membership -- duties. (1) As used in this part, "board" "panel" means a citizen review board-panel appointed as provided in this section by the child protection legislative review council established in [section 1].

(2) Subject to the availability of funds, a district court judge who has indicated in writing an interest in having a board shall establish at least one board in the judicial district to review the case of each child in the custody of the department and in foster care. A board may review a case of a child who remains in or returns to the child's home and for whom the department retains legal custody.

(3) A board is composed of at least three and not more than five members appointed by the district court judges. Each member appointed must be sworn in by a judge of the judicial district to which the member is appointed to serve.
(4) The board must be appointed according to the following guidelines:

(a) Members of a board must be recruited from groups with special knowledge of or interest in foster care and child welfare.

(b)(2) (a) There is a citizen review panel in each of the service area regions established under Title 53, chapter 21, part 10. As far as practicable, members of each panel shall represent the various socioeconomic and ethnic groups of the area served. Boards should include tribal representatives whenever possible. Panel membership must include the following individuals who must live within the panel's service area and must have a strong motivation to improve the lives of children:

(i) a past or present foster or kinship care family;
(ii) a licensed mental health professional experienced in child therapy;
(iii) a county commissioner;
(iv) a law enforcement officer;
(v) a peer support specialist;
(vi) a representative of the department of public health and human services with experience in child protection services or a representative of the office of child and family ombudsman who does not have an interest in the case; and
(vii) a member of a federally recognized Indian tribe in Montana with professional experience in child welfare.

(b) An individual desiring to serve on a panel shall:

(i) submit an application to the child protection legislative review council;
(ii) interview with the council; and
(iii) undergo a criminal background check, including the nationwide sex offender registry.

(c) The council may not impose a deadline for applying to a panel or impose any costs on an individual applying to serve on a panel.

(d) Appointments made under this subsection (2) must be made by March 1, 2024. A vacancy on a panel must be filled within 60 days in the manner of the original appointment.

(e) Panel members must be reimbursed for travel expenses as provided in 2-18-501 through 2-18-503. Members of the panel who are full-time salaried officers or employees of this state or any political
subdivision are entitled to their regular compensation.

(c) A person employed by the department who has a direct conflict of interest may not serve on a board.

(d) A member of a board must be a resident of one of the counties of the judicial district that the member is appointed to serve.

(5) The members of a board must be willing to serve without compensation.

(3) Each panel shall meet at least once each calendar quarter to discuss and review child protection issues in its service area, including:

(a) trends and concerns in child protection;

(b) child protection cases open more than 120 days;

(c) a child protection case brought to the panel’s attention by a citizen; and

(d) decisions made by any administrative board regarding child protection issues.

(4) Each panel shall produce quarterly reports summarizing panel activities and recommendations. The panel shall submit the reports to the child protection legislative review council, the director of the department of public health and human services, the office of the child and family ombudsman, and the public.

(5) A panel may request that the child protection legislative review council review a child protection case reviewed by the panel.”

Section 7. Section 41-3-1004, MCA, is amended to read:

"41-3-1004. Administration -- training -- oversight -- procedures. (1) The office of the court administrator, as provided for in 3-1-701, shall, in accordance with the direction of the supreme court, oversee the program established in this part and shall, at the time prescribed by 5-11-210, prepare a report to the governor, the legislature, and the public regarding:

(a) state laws, policies, and practices affecting permanence and appropriate care for children in the custody of the department and other agencies; and

(b) the effectiveness of the boards in bringing about permanence and appropriate care for children in the custody of the department and other agencies.

(2) The office of the court administrator shall:
(a) establish policies and procedures for adoption by the Montana supreme court for the operation of a board, including procedures for removing members;

(1) The legislative services division shall:

(a) employ staff and provide for support services for panels and the child protection legislative review council; and

(b) provide training programs for board members of panels and the child protection legislative review council members consisting of orientation training of at least 16 hours and a minimum of 8 hours of continuing education training annually. The training may include but is not limited to the following topics:

(i) child abuse and neglect laws, policies, and practices;

(ii) social work practice and policies;

(iii) child development and attachment, including the impacts of child removal;

(iv) cultural considerations, including heritage preservation and the federal Indian Child Welfare Act;

(v) dynamics of domestic violence;

(vi) substance use disorder and mental health;

(vii) education and community resources; and

(viii) implicit bias and ethics;

(c) provide consultation services on request to a board; and

(d) employ staff and provide for support services for boards.

Section 8. Section 41-3-1005, MCA, is amended to read:

"41-3-1005. Removal of members -- grounds. Grounds for removal of a member of a board panel under 41-3-1004 may include but are not limited to the following:

(1) nonparticipation by a board panel member;

(2) a member establishing residence in a judicial district service area other than the judicial district service area in which the court the person was appointed to serve is located;

(3) violation of the confidentiality of information established under 41-3-1007; or

(4) other cause or grounds as necessary for the administration of the program this part."
Section 9. Section 41-3-1006, MCA, is amended to read:

"41-3-1006. Terms -- officers. (1) A board panel member shall serve at the pleasure of the appointing authority child protection legislative review council established in [section 1]. However, if not otherwise released from service on a board panel, the following provisions apply:

(a) A member shall serve a term of 2 years, except that if a vacancy occurs, a successor must be appointed to serve the unexpired term.

(b) A member may be reappointed and continue to serve until a successor is appointed.

(2) A board panel shall elect annually from its membership:

(a) a presiding officer; and

(b) a vice presiding officer to serve in the absence of the presiding officer; and

(c) a representative to serve on the child and family services state advisory council."

Section 10. Section 41-3-1007, MCA, is amended to read:

"41-3-1007. Confidentiality of information -- penalty. (1) Before beginning to serve on the child protection legislative review council established in [section 1] or a board panel, each a member shall swear or affirm to the court that the member will sign a confidentiality agreement to keep confidential the information and case files reviewed by the board council or panel and its actions and recommendations in individual cases.

(2) A member of the council or a board panel who violates the duty imposed by subsection (1) is guilty of a misdemeanor punishable by a fine not to exceed $1,000.

(3) The legislative services division shall develop a records privacy and retention policy that prioritizes the confidentiality of children and families."

Section 11. Section 41-3-1008, MCA, is amended to read:

"41-3-1008. Access to records. (1) Notwithstanding the provisions of 41-3-205, the child protection legislative review council established in [section 1] and a board panel has have access to:

(a) any records of the district court that are pertinent to the case; and

(b) pertinent electronic and paper records of the department or other agencies that would be
admissible in a dispositional hearing conducted pursuant to 41-3-438, including school records, police reports, and reports of private service providers contained in the records of the department or other agencies.

(2) All requested records not already before the board council or a panel must be submitted by the department within 10 working days after receipt of a request.

(3) A board The council or a panel may retain a reference copy of case material used by the council or a panel the board to make its recommendation if:

(a) the material is necessary for the ongoing work of the board council or the panel with regard to the particular case or to work of the board council or the panel; and

(b) the confidentiality of the material is continued and protected in the same manner as other material received from the department. Material retained by the boards council or the panel is not subject to disclosure under the public records law.

(4) If a board the council or a panel is denied access to requested records, it may request a hearing. The court may require the organization in possession of the records to show cause why the records should not be made available as provided by this section.

Section 12. Section 41-3-1010, MCA, is amended to read:

"41-3-1010. Review -- scope -- procedures -- immunity. (1) (a) The board A panel shall review the case of each child in foster care focusing on issues that are germane to the goals of permanency and to accessing appropriate services for parents and children. In evaluating the accessibility, availability, and appropriateness of services, the board panel may consider:

(i) the safety of the child;

(ii) whether an involved agency has selected services specifically relevant to the problems and needs of the child and family;

(iii) whether caseworkers have diligently provided services;

(iv) whether appropriate services have been available to the child and family on a timely basis; and

(v) the results of intervention.

(b) The board panel may review the case of a child who remains in or returns to the child's home and for whom the department retains legal custody."
(2) The review must be conducted within the time limit established under the Adoption and Safe Families Act of 1997, 42 U.S.C. 675(5).

(3) The district court, by rule of the court or on an individual case basis, may relieve the board panel of its responsibility to review a case if a complete judicial review has taken place within 60 days prior to the next scheduled board panel review.

(4) Notice of each review must be sent to the department, any agency directly responsible for the care or placement of the child, the parents and their attorneys, the foster parents, a relative caring for the child, the preadoptive parents, the surrogate parents, the child who is the subject of the review if 12 years of age or older, the child's attorney or the child's assigned attorney, the guardian ad litem, the court-appointed special advocate of the child, the county attorney or deputy attorney general actively involved in the case, the Indian child's tribe if the child is an Indian, and other interested persons who are authorized by the board panel to receive notice and who are subject to 41-3-205. The notice must include a statement that persons receiving a notice may participate in the hearing and be accompanied by a representative.

(5) After reviewing each case, the board panel shall prepare written findings and recommendations with respect to:

(a) whether reasonable efforts as defined in 41-3-423 were made prior to the placement to prevent or to eliminate the need for removal of the child from the home and to make it possible for the child to be returned home;

(b) the continuing need for the placement and the appropriateness and safety of the placement;

(c) compliance with the case plan;

(d) the progress that has been made toward alleviating the need for placement;

(e) a likely date by which the child may be returned home or by which a permanent placement will be finalized;

(f) other problems, solutions, or alternatives that the board panel determines should be explored; and

(g) whether the district court should appoint an attorney or other person as special advocate to represent or appear on behalf of the child pursuant to 41-3-112.

(6) Whenever a member of a board panel has a potential conflict of interest in a case being
reviewed, the member shall declare to the board panel the nature of the potential conflict prior to participating in the case review. The following provisions apply:

(a) The declaration of the member must be recorded in the official records of the board panel.  
(b) If, in the judgment of the majority of the board panel, the potential conflict of interest may prevent the member from fairly and objectively reviewing the case, the board panel may remove the member from participation in the review.

(7) The board panel shall keep accurate records and retain the records on file. The board panel shall send copies of its written findings and recommendations to the district court, the department, and other participants in the review unless prohibited by the confidentiality provisions of 41-3-205.  

(8) The board panel may hold joint or separate reviews for groups of siblings, but the court shall issue specific findings for each child.

(9) The board panel may disclose to parents and their attorneys, foster parents, children who are 12 years of age or older, childrens' attorneys, and other persons authorized by the board panel to participate in the case review the records disclosed to the board panel pursuant to 41-3-1008. Before participating in a board panel case review, each participant, other than parents and children, shall swear or affirm to the board panel that the participant will keep confidential the information disclosed by the board panel in the case review and will disclose it only as authorized by law.

(10) A person who serves on a board panel in a volunteer capacity, as provided in this part, is considered an agent of the judiciary and is entitled to immunity from suit as provided in 2-9-112.  
(11) The board panel may, at the discretion of the court and absent an objection by a party to the proceeding, conduct permanency hearings as provided in 41-3-445."

Section 13. Section 41-3-1011, MCA, is amended to read:

"41-3-1011. Board Panel recommendations concerning foster care services and policy considerations. In addition to reviewing individual cases of children in foster care, a board panel may make recommendations to the district court and to the department concerning foster care services, policies, procedures, and laws. Recommendations must be in writing and must be provided to the department."

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Section 14. Section 41-3-1012, MCA, is amended to read:

"41-3-1012. Presence of employees and participants at reviews and deliberations of board panel. (1) Unless excused from doing so by the board panel, the department and any other agency directly responsible for the care and placement of the child shall require the presence of employees having knowledge of the case at board panel reviews.

(2) The board panel may require the presence of specific employees of the department or any other agency or other persons at board panel reviews. If an employee fails to be present at the review, the board panel may request a court order. The court may require the employee to be present and show cause why the employee should not be compelled to appear before the board panel.

(3) The persons who are allowed to be present at a review include representatives of the department or any agency directly responsible for the care or placement of the child, the parents and their attorneys, the foster parents, a relative caring for the child, the preadoptive parents, the surrogate parents, the child who is the subject of the review if 12 years of age or older, the child's attorney or the child's assigned attorney, the guardian ad litem, the court-appointed special advocate of the child, the county attorney or deputy attorney general actively involved in the case, a representative of the child's tribe if the child is an Indian, and other interested persons subject to 41-3-205 and authorized to be present by the board panel.

(4) Deliberations concerning the recommendations that will be made by the board panel must be open to all present at the review, except that the presiding officer may close all or part of a deliberation if there has been a threat of a reprisal made by someone who will attend the review or if confidentiality laws preclude open deliberations.

(5) For the purposes of bringing criminal charges against a person who threatens a board panel member or staff, the board panel members and board panel staff must be considered public servants as defined in 45-2-101.

(6) As used in this section, the following definitions apply:

(a) "Close", with regard to deliberations, means that only the board panel members and board panel staff may remain in attendance.

(b) "Open" means that review participants may remain in attendance during the deliberations to observe and be available for questions from the board panel.
(c) "Presence" includes telephone and virtual participation, except that a representative of the department knowledgeable about the case at the time of the review must be physically present if required."

Section 15. Section 41-3-1013, MCA, is amended to read:

41-3-1013. Court review of findings and recommendations of board panel. (1) Upon receipt of findings and recommendations from the board panel, the district court shall:

(a) review the findings and recommendations of the board panel within 20 days. If the district court finds it appropriate, the district court may on its own motion schedule a review hearing.

(b) cause the findings and recommendations of the board panel to become part of the district court file; and

(c) give the board panel written notice if the district court modifies, alters, or takes action on a case as a result of the board's panel's recommendations or refuses to take action on the board's panel's recommendations in any case.

(2) Upon receipt of findings and recommendations from the board panel, the department shall:

(a) review the findings and recommendations of the board panel within 10 days. The recommendations must be implemented and the case plan must be modified as the department considers appropriate and as resources permit.

(b) give the board panel written notice as soon as practicable, but in no case later than 17 days after receipt of the findings and recommendations, of any reasons why the department objects to or is not able to implement the recommendations; and

(c) include the findings and recommendations of the board panel as part of the case file of the department.

(3) The court may schedule a hearing on any recommendations that the department objects to or contends that it is unable to implement.

(4) Upon its own motion or upon the request of the department, the board panel, or any interested party, the district court may shall appoint an attorney or mediator or other person as special advocate pursuant to 41-3-112 to represent or appear on behalf of the child. Subject to the direction of the district court, the court-appointed special A child's advocate shall:
investigate all relevant information about the case;
(b) advocate for the child, ensuring that all relevant facts are brought before the court;
(c) facilitate and negotiate to ensure that the district court, the department, and the child’s attorney
fulfill their obligations to the child in a timely fashion; and
(d) monitor all district court orders to ensure compliance and to bring to the district court’s attention
any change in circumstance that may require modification of the district court’s order."

Section 16. Section 52-2-304, MCA, is amended to read:
"52-2-304. Committee duties. (1) The committee established in 52-2-303 shall, to the extent possible
within existing resources:
(a) develop policies aimed at eliminating or reducing barriers to the implementation of a system of
care;
(b) promote the development of an in-state quality array of core services in order to assist in
returning high-risk children with multiagency service needs from out-of-state placements, limiting and
preventing the placement of high-risk children with multiagency service needs out of state, and maintaining
high-risk children with multiagency service needs within the least restrictive and most appropriate setting;
(c) advise local agencies to ensure that the agencies comply with applicable statutes,
administrative rules, and department policy in committing funds and resources for the implementation of unified
plans of care for high-risk children with multiagency service needs and in making any determination that a high-
risk child with multiagency service needs cannot be served by an in-state provider;
(d) encourage the development of local interagency teams with participation from representatives
from child serving agencies who are authorized to commit resources and make decisions on behalf of the
agency represented;
(e) specify outcome indicators and measures to evaluate the effectiveness of the system of care;
(f) develop mechanisms to elicit meaningful participation from parents, family members, and youth
who are currently being served or who have been served in the children’s system of care; and
(g) take into consideration the policies, plans, and budget developed by any service area authority
provided for in 53-21-1006.
The committee shall coordinate responsibility for the development of a stable system of care for high-risk children with multiagency service needs that may include, as appropriate within existing resources:

(a) pooling funding from federal, state, and local sources to maximize the most cost-effective use of funds to provide services in the least restrictive and most appropriate setting to high-risk children with multiagency service needs;

(b) applying for federal waivers and grants to improve the delivery of integrated services to high-risk children with multiagency service needs;

(c) providing for multiagency data collection and for analysis relevant to the creation of an accurate profile of the state's high-risk children with multiagency service needs in order to provide for the use of services based on client needs and outcomes and use of the analysis in the decisionmaking process;

(d) developing mechanisms for the pooling of human and fiscal resources; and

(e) providing training and technical assistance, as funds permit, at the local level regarding governance, development of a system of care, and delivery of integrated multiagency children's services.

(a) In order to maximize integration and minimize duplication, the local interagency team, provided for in subsection (1)(d), may be facilitated in conjunction with an existing statutory team for providing youth services, including:

(i) a child protective team as provided for in 41-3-108;

(ii) a youth placement committee as provided for in 41-5-121 and 41-5-122;

(iii) a county or regional interdisciplinary child information and school safety team or an auxiliary team as provided for in 52-2-211;

(iv) a foster care review committee as provided for in 41-3-115;

(v) a local citizen review board as provided for in 41-3-1003; and

(vi) a local advisory council as provided for in 53-21-702.

(b) If the local interagency team decides to coordinate and consolidate statutory teams, it shall ensure that all state and federal rules, laws, and policies required of the individual statutory teams are fulfilled."

NEW SECTION. Section 17. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 41, chapter 3, part 10, and the provisions of Title 41, chapter 3, part 10, apply to [section 1].
- END -