

1 SENATE BILL NO. 206
2 INTRODUCED BY D. LENZ

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO CHILD ABUSE AND
5 NEGLECT PROCEEDINGS AND INVESTIGATIONS; PROVIDING FOR A CHILD PROTECTION
6 INVESTIGATOR AND CHILD REUNIFICATION SPECIALIST; ESTABLISHING THE AUTHORITY OF AND
7 CERTIFICATION REQUIREMENTS FOR CHILD PROTECTION INVESTIGATORS AND CHILD
8 REUNIFICATION SPECIALISTS; AMENDING SECTIONS 41-3-102, 41-3-108, 41-3-127, 41-3-128, 41-3-129,
9 41-3-130, 41-3-201, 41-3-202, 41-3-205, 41-3-216, 41-3-301, 41-3-307, 41-3-427, AND 41-3-445, MCA; AND
10 PROVIDING AN EFFECTIVE DATE."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13
14 NEW SECTION. **Section 1. Child protection investigator and child reunification specialist --**
15 **scope of authority.** (1) The role of a child protection investigator is to investigate allegations of child abuse or
16 neglect. A child protection investigator serves as the primary representative of the department in child abuse
17 and neglect investigations and proceedings prior to the removal of a child. The authority of a child protection
18 investigator includes:

- 19 (a) investigating reported allegations of child abuse or neglect under the requirements 41-3-202;
- 20 (b) removing a child under the requirements of 41-3-301;
- 21 (c) participating in a prehearing conference under 41-3-307;
- 22 (d) furnishing an affidavit to support a petition filed under 41-3-422 for the relief available under 41-
23 3-422(1)(a);
- 24 (e) testifying to the facts surrounding an investigation of child abuse or neglect and removal of a
25 child or reasonable efforts to prevent removal of a child at:
 - 26 (i) an emergency protective services hearing, as provided in 41-3-306;
 - 27 (ii) a show cause hearing, as provided in 41-3-432;
 - 28 (iii) an adjudicatory hearing, as provided in 41-3-437;

- 1 (iv) a dispositional hearing, as provided in 41-3-438;
- 2 (v) a permanency hearing, as provided in 41-3-445; or
- 3 (vi) proceedings held to consider the termination of a parent-child relationship, as provided in 41-3-
- 4 607;
- 5 (f) engaging in reasonable efforts to prevent the necessity of removal of a child, as provided in 41-
- 6 3-423; and
- 7 (g) participating on behalf of the department in formal or informal proceedings related to an
- 8 investigation of child abuse or neglect or removal of a child in which the facts surrounding an investigation or
- 9 removal are at issue and the facts surrounding an investigation or removal are not prohibited from disclosure.
- 10 (2) The role of a child reunification specialist is to coordinate reunification services for a child after
- 11 removal. A child reunification specialist serves as the primary representative of the department in child abuse
- 12 and neglect investigations and proceedings after the removal of a child. The authority of a child reunification
- 13 specialist includes:
- 14 (a) participating in a prehearing conference under 41-3-307;
- 15 (b) testifying to the facts surrounding a temporary or permanent placement of a child or reasonable
- 16 efforts to reunify a family at:
- 17 (i) an emergency protective services hearing, as provided in 41-3-306;
- 18 (ii) a show cause hearing, as provided in 41-3-432;
- 19 (iii) an adjudicatory hearing, as provided in 41-3-437;
- 20 (iv) a dispositional hearing, as provided in 41-3-438;
- 21 (v) a permanency hearing, as provided in 41-3-445;
- 22 (vi) a review hearing, as provided in 41-3-441; or
- 23 (vii) proceedings held to consider the termination of a parent-child relationship, as provided in 41-3-
- 24 607;
- 25 (c) engaging in reasonable efforts to reunify families that are separated by the state, as provided in
- 26 41-3-423;
- 27 (d) determining the appropriate placement for a child, as provided in 41-3-440;
- 28 (e) documenting and reporting the requirements of a treatment plan and the progress of a parent

1 or parents toward completion of a treatment plan, as provided in 41-3-443;

2 (f) investigating and evaluating the availability of placement preferences and exceptions to
3 placement preferences, as provided in 41-3-450 and 41-3-451; and

4 (g) participating on behalf of the department in formal or informal proceedings related to a
5 placement or reunification of a child in which the facts surrounding a placement or reunification are at issue and
6 the facts surrounding a placement or reunification are not prohibited from disclosure.

7 (3) The role of child protection investigator and the role of child reunification specialist may not be
8 performed by the same person in a single matter involving the same child or children.

9

10 **Section 2.** Section 41-3-102, MCA, is amended to read:

11 **"41-3-102. (Temporary) Definitions.** ~~As used in this chapter, the following definitions apply:~~

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

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

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

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

20 (iv) ~~the voluntary surrender, as defined in 40-6-402, by a parent of a newborn who is no more than~~
21 ~~30 days old to an emergency services provider, as defined in 40-6-402.~~

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

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

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

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

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

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

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

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

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

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

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

16 (7) — (a) "Child abuse or neglect" means:

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

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

19 (iii) — abandonment.

20 (b) — (i) The term includes:

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

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

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

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

1 (c) — In proceedings under this chapter in which the federal Indian Child Welfare Act or the Montana
2 Indian Child Welfare Act provided for in Title 41, chapter 3, part 13, are applicable, this term has the same
3 meaning as "serious emotional or physical damage to the child" as used in 25 U.S.C. 1912(f).

4 (d) — The term does not include:

5 (i) — self-defense, defense of others, or action taken to prevent the child from self-harm that does
6 not constitute physical or psychological harm to a child; or

7 (ii) — a youth not receiving supervision solely because of parental inability to control the youth's
8 behavior.

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

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

13 (10) — "Decline to prosecute" means a decision not to file criminal charges based on the matter
14 reported by the department or investigation by law enforcement for any reason, including but not limited to
15 insufficient evidence.

16 (11) — "Department" means the department of public health and human services provided for in 2-15-
17 2201.

18 (12) — "Family engagement meeting" means a meeting that involves family members in either
19 developing treatment plans or making placement decisions, or both.

20 (13) — "Indian child" has the meaning provided in 41-3-1303.

21 (14) — "Indian child's tribe" has the meaning provided in 41-3-1303.

22 (15) — "Indian custodian" has the meaning provided in 41-3-1303.

23 (16) — "Indian tribe" has the meaning provided in 41-3-1303.

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

27 (18) — "Parent" means a biological or adoptive parent or stepparent.

28 (19) — "Parent-child legal relationship" means the legal relationship that exists between a child and the

1 child's birth or adoptive parents, as provided in Title 40, chapter 6, part 2, unless the relationship has been
2 terminated by competent judicial decree as provided in 40-6-234, Title 42, or part 6 of this chapter.

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

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

10 (22) — "Physical neglect" means:

11 (a) — failure to provide basic necessities, including but not limited to appropriate and adequate
12 nutrition, protective shelter from the elements, and appropriate clothing related to weather conditions;

13 (b) — failure to provide cleanliness and general supervision, or both;

14 (c) — exposing or allowing the child to be exposed to an unreasonable physical or psychological risk
15 to the child;

16 (d) — allowing sexual abuse or exploitation of the child; or

17 (e) — causing malnutrition or a failure to thrive.

18 (23) — "Physical or psychological harm to a child" means the harm that occurs whenever the parent or
19 other person responsible for the child's welfare inflicts or allows to be inflicted on the child physical abuse,
20 physical neglect, or psychological abuse or neglect.

21 (24) — (a) "Protective services" means services provided by the department:

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

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

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

27 (b) — The term includes emergency protective services provided pursuant to 41-3-301, written
28 prevention plans provided pursuant to 41-3-302, and court-ordered protective services provided pursuant to

1 parts 4 and 6 of this chapter.

2 (25) — (a) "Psychological abuse or neglect" means severe maltreatment, through acts or omissions,
3 that is injurious to the child's intellectual or psychological capacity to function and that is identified as
4 psychological abuse or neglect by a licensed psychologist, a licensed professional counselor, a licensed clinical
5 social worker, a licensed psychiatrist, a licensed pediatrician, or a licensed advanced practice registered nurse
6 with a focused practice in psychiatry.

7 (b) — The term includes but is not limited to the commission of acts of violence against another
8 person residing in the child's home.

9 (c) — The term may not be construed to hold a victim responsible for failing to prevent the crime
10 against the victim.

11 (26) — "Qualified expert witness" as used in cases involving an Indian child in proceedings subject to
12 the federal Indian Child Welfare Act or the Montana Indian Child Welfare Act provided for in Title 41, chapter 3,
13 part 13, means:

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

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

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

22 (27) — "Qualified individual" means a trained professional or licensed clinician who:

23 (a) — has expertise in the therapeutic needs assessment used for placement of youth in a
24 therapeutic group home;

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

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

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

1 to the person.

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

4 (30) — "Safety and risk assessment" means an evaluation by a child protection specialist following an
5 initial report of child abuse or neglect to assess the following:

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

7 (b) — the protective capabilities of the parent or guardian;

8 (c) — any particular vulnerabilities of the child;

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

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

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

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

17 (32) — "Sexual exploitation" means:

18 (a) — allowing, permitting, or encouraging a child to engage in a prostitution offense, as described in
19 45-5-601;

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

21 (c) — allowing, permitting, or encouraging sex trafficking as described in 45-5-702, 45-5-705, 45-5-
22 706, or 45-5-711.

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

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

27 (b) — determines whether the needs of the child can be met with family members or through
28 placement in a youth foster home or, if not, which appropriate setting would provide the most effective and

1 appropriate level of care for the child in the least restrictive environment and be consistent with the short-term
2 and long-term goals for the child as specified in the child's permanency plan; and

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

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

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

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

15 (i) — the infant is chronically and irreversibly comatose;

16 (ii) — the provision of treatment would:

17 (A) — merely prolong dying;

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

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

20 (iii) — the provision of treatment would be virtually futile in terms of the survival of the infant and the
21 treatment itself under the circumstances would be inhumane. For purposes of this subsection (35), "infant"
22 means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously
23 hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The reference
24 to less than 1 year of age may not be construed to imply that treatment should be changed or discontinued
25 when an infant reaches 1 year of age or to affect or limit any existing protections available under state laws
26 regarding medical neglect of children 1 year of age or older.

27 (36) — "Youth in need of care" means a youth who has been adjudicated or determined, after a
28 hearing, to be or to have been abused, neglected, or abandoned. (Terminates June 30, 2025—sec. 55, Ch. 716,

1 L. 2023.)

2 **41-3-102. (Effective July 1, 2025) Definitions.** As used in this chapter, the following definitions
3 apply:

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

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

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

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

12 (iv) the voluntary surrender, as defined in 40-6-402, by a parent of a newborn who is no more than
13 30 days old to an emergency services provider, as defined in 40-6-402.

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

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

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

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

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

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

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

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

28 (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.

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

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

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

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

11 (iii) abandonment.

12 (b) (i) The term includes:

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

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

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

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

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

24 (d) The term does not include:

25 (i) self-defense, defense of others, or action taken to prevent the child from self-harm that does
26 not constitute physical or psychological harm to a child; or

27 (ii) a youth not receiving supervision solely because of parental inability to control the youth's
28 behavior.

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

4 (9) "Child reunification specialist" means an employee of the department who coordinates
5 reunification services for a child after removal and has been certified pursuant to 41-3-127.

6 ~~(9)~~(10) "Concurrent planning" means to work toward reunification of the child with the family while at
7 the same time developing and implementing an alternative permanent plan.

8 ~~(10)~~(11) "Decline to prosecute" means a decision not to file criminal charges based on the matter
9 reported by the department or investigation by law enforcement for any reason, including but not limited to
10 insufficient evidence.

11 ~~(11)~~(12) "Department" means the department of public health and human services provided for in 2-15-
12 2201.

13 ~~(12)~~(13) "Family engagement meeting" means a meeting that involves family members in either
14 developing treatment plans or making placement decisions, or both.

15 ~~(13)~~(14) "Indian child" means any unmarried person who is under 18 years of age and who is either:

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

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

19 ~~(14)~~(15) "Indian child's tribe" means:

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

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

23 ~~(15)~~(16) "Indian custodian" means any Indian person who has legal custody of an Indian child under
24 tribal law or custom or under state law or to whom temporary physical care, custody, and control have been
25 transferred by the child's parent.

26 ~~(16)~~(17) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of
27 Indians recognized by:

28 (a) the state of Montana; or

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

3 ~~(17)~~(18)"Limited emancipation" means a status conferred on a youth by a court in accordance with 41-
4 1-503 under which the youth is entitled to exercise some but not all of the rights and responsibilities of a person
5 who is 18 years of age or older.

6 ~~(18)~~(19)"Parent" means a biological or adoptive parent or stepparent.

7 ~~(19)~~(20)"Parent-child legal relationship" means the legal relationship that exists between a child and the
8 child's birth or adoptive parents, as provided in Title 40, chapter 6, part 2, unless the relationship has been
9 terminated by competent judicial decree as provided in 40-6-234, Title 42, or part 6 of this chapter.

10 ~~(20)~~(21)"Permanent placement" means reunification of the child with the child's parent, adoption,
11 placement with a legal guardian, placement with a fit and willing relative, or placement in another planned
12 permanent living arrangement until the child reaches 18 years of age.

13 ~~(21)~~(22)"Physical abuse" means an intentional act, an intentional omission, or gross negligence
14 resulting in substantial skin bruising, internal bleeding, substantial injury to skin, subdural hematoma, burns,
15 bone fractures, extreme pain, permanent or temporary disfigurement, impairment of any bodily organ or
16 function, or death.

17 ~~(22)~~(23)"Physical neglect" means:

18 (a) failure to provide basic necessities, including but not limited to appropriate and adequate
19 nutrition, protective shelter from the elements, and appropriate clothing related to weather conditions;

20 (b) failure to provide cleanliness and general supervision, or both;

21 (c) exposing or allowing the child to be exposed to an unreasonable physical or psychological risk
22 to the child;

23 (d) allowing sexual abuse or exploitation of the child; or

24 (e) causing malnutrition or a failure to thrive.

25 ~~(23)~~(24)"Physical or psychological harm to a child" means the harm that occurs whenever the parent or
26 other person responsible for the child's welfare inflicts or allows to be inflicted on the child physical abuse,
27 physical neglect, or psychological abuse or neglect.

28 ~~(24)~~(25)(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 ~~(25)(26)~~(a) "Psychological abuse or neglect" means severe maltreatment, through acts or omissions,
 10 that is injurious to the child's intellectual or psychological capacity to function and that is identified as
 11 psychological abuse or neglect by a licensed psychologist, a licensed professional counselor, a licensed clinical
 12 social worker, a licensed psychiatrist, a licensed pediatrician, or a licensed advanced practice registered nurse
 13 with a focused practice in psychiatry.

14 (b) The term includes but is not limited to the commission of acts of violence against another
 15 person residing in the child's home.

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

18 ~~(26)(27)~~"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 ~~(27)(28)~~"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 ~~(28)~~(29)"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 ~~(29)~~(30)"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 ~~(30)~~(31)"Safety and risk assessment" means an evaluation by a child protection specialist investigator
11 following an initial report of child abuse or neglect to assess the following:

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

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

14 (c) any particular vulnerabilities of the child;

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

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

17 ~~(31)~~(32)(a) "Sexual abuse" means the commission of sexual assault, sexual intercourse without
18 consent, aggravated sexual intercourse without consent, indecent exposure, sexual abuse, ritual abuse of a
19 minor, or incest, as described in Title 45, chapter 5.

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

23 ~~(32)~~(33)"Sexual exploitation" means:

24 (a) allowing, permitting, or encouraging a child to engage in a prostitution offense, as described in
25 45-5-601;

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

27 (c) allowing, permitting, or encouraging sex trafficking as described in 45-5-702, 45-5-705, 45-5-
28 706, or 45-5-711.

1 ~~(33)~~(34)"Therapeutic needs assessment" means an assessment performed by a qualified individual
2 within 30 days of placement of a child in a therapeutic group home that:

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

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

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

10 ~~(34)~~(35)"Treatment plan" means a written agreement between the department and the parent or
11 guardian or a court order that includes action that must be taken to resolve the condition or conduct of the
12 parent or guardian that resulted in the need for protective services for the child. The treatment plan may involve
13 court services, the department, and other parties, if necessary, for protective services.

14 ~~(35)~~(36)(a) "Withholding of medically indicated treatment" means the failure to respond to an infant's
15 life-threatening conditions by providing treatment, including appropriate nutrition, hydration, and medication,
16 that, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in
17 ameliorating or correcting the conditions.

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

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

22 (ii) the provision of treatment would:

23 (A) merely prolong dying;

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

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

26 (iii) the provision of treatment would be virtually futile in terms of the survival of the infant and the
27 treatment itself under the circumstances would be inhumane. For purposes of this subsection ~~(35)~~ (36), "infant"
28 means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously

1 hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The reference
 2 to less than 1 year of age may not be construed to imply that treatment should be changed or discontinued
 3 when an infant reaches 1 year of age or to affect or limit any existing protections available under state laws
 4 regarding medical neglect of children 1 year of age or older.

5 ~~(36)~~(37)"Youth in need of care" means a youth who has been adjudicated or determined, after a
 6 hearing, to be or to have been abused, neglected, or abandoned."

7

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

9 **"41-3-108. Child protective teams.** The county attorney, county commissioners, guardian ad litem,
 10 or department may convene one or more temporary or permanent interdisciplinary child protective teams.
 11 These teams may assist in assessing the needs of, formulating and monitoring a treatment plan for, and
 12 coordinating services to the child and the child's family. The supervisor of child protective services in a local
 13 service area or the supervisor's designee shall serve as the team's coordinator. Members must include:

- 14 (1) a child protection ~~specialist~~ investigator or a child reunification specialist;
- 15 (2) a member of a local law enforcement agency;
- 16 (3) a representative of the medical profession;
- 17 (4) a representative of a public school system;
- 18 (5) a county attorney; and
- 19 (6) if an Indian child or children are involved, someone, preferably an Indian person,
 20 knowledgeable about Indian culture and family matters."

21

22 **Section 4.** Section 41-3-127, MCA, is amended to read:

23 **"41-3-127. Certification required for use of title -- exceptions.** (1) On certification in accordance
 24 with 41-3-127 through 41-3-130, a person may use the title "certified child protection ~~specialist~~ investigator" or
 25 "certified child reunification specialist".

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

1 addiction counselor, or marriage and family therapist licensed pursuant to Title 37, chapter 39, from performing
 2 duties and services consistent with the person's licensure or certification and the code of ethics of the person's
 3 profession.

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

10

11 **Section 5.** Section 41-3-128, MCA, is amended to read:

12 ~~"41-3-128. (Temporary) Certificate requirements -- supervision -- fees.~~ (1) An applicant for
 13 certification as a child protection specialist shall:

14 (a) ~~successfully complete a course in child protection, as defined by the department by rule, which~~
 15 ~~must include training in:~~

16 (i) ~~ethics;~~

17 (ii) ~~governing statutory and regulatory framework;~~

18 (iii) ~~role of law enforcement;~~

19 (iv) ~~crisis intervention techniques;~~

20 (v) ~~childhood trauma research, including research on the trauma a child experiences when~~
 21 ~~removed from the home;~~

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

23 (vii) ~~the provisions of the federal Indian Child Welfare Act, 25 U.S.C. 1902, et seq., and the~~
 24 ~~Montana Indian Child Welfare Act provided for in Title 41, chapter 3, part 13; and~~

25 (b) ~~demonstrate the applicant's ability to perform all essential functions of the certified child~~
 26 ~~protection role by earning a passing score on a competency examination developed pursuant to 41-3-130.~~

27 (2) ~~As a prerequisite to the issuance of a certificate, the department shall require the applicant to~~
 28 ~~submit fingerprints for the purpose of fingerprint background checks by the Montana department of justice and~~

1 the federal bureau of investigation as provided in 37-1-307.

2 (3) — An applicant who has a history of criminal convictions has the opportunity to demonstrate to the
3 department that the applicant is sufficiently rehabilitated to warrant the public trust. The department may deny
4 the certificate if it determines that the applicant is not sufficiently rehabilitated. (Terminates June 30, 2025—sec.
5 55, Ch. 716, L. 2023.)

6 **41-3-128. (Effective July 1, 2025) Certificate requirements -- supervision -- fees.** (1) An applicant
7 for certification as a child protection specialist investigator or a child reunification specialist shall:

8 (a) successfully complete a course in child protection, as defined by the department by rule, which
9 must include training in:

10 (i) ethics;

11 (ii) governing statutory and regulatory framework;

12 (iii) role of law enforcement;

13 (iv) crisis intervention techniques;

14 (v) childhood trauma research, including research on the trauma a child experiences when
15 removed from the home;

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

17 (vii) evidence-based interventions and services to support family reunification; and

18 ~~(vii)~~(viii) the provisions of the Indian Child Welfare Act, 25 U.S.C. 1902, et seq.; and

19 (b) demonstrate the applicant's ability to perform all essential functions of the certified child
20 protection investigator role or the certified child reunification specialist role by earning a passing score on a
21 competency examination developed pursuant to 41-3-130.

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

25 (3) An applicant who has a history of criminal convictions has the opportunity to demonstrate to the
26 department that the applicant is sufficiently rehabilitated to warrant the public trust. The department may deny
27 the certificate if it determines that the applicant is not sufficiently rehabilitated."
28

1 **Section 6.** Section 41-3-129, MCA, is amended to read:

2 **"41-3-129. Certificate renewal -- continuing education.** (1) A certified child protection specialist
3 investigator or a certified child reunification specialist shall renew the specialist's certification annually using a
4 process specified by department rule, which must include proof of completion of at least 20 hours of continuing
5 education developed or approved by the department.

6 (2) The continuing education may include any topic listed in subsection (1) of 41-3-128 and must
7 include at least one unit focused on:

8 (a) ethics; and

9 (b) recent developments in governing law or rule."

10

11 **Section 7.** Section 41-3-130, MCA, is amended to read:

12 **"41-3-130. Implementation of certification requirement for child protection specialists**
13 **investigators and child reunification specialists.** (1) (a) The department shall engage and collaborate with
14 an external organization to develop a child welfare certification and training program, including a competency
15 examination, that must be an ongoing component of the department's child welfare work.

16 (b) The program and examination must be reevaluated every 2 years to ensure that they:

17 (i) reflect current trends, research, and developments in the law; and

18 (ii) promote evidence-based or evidence-informed practices.

19 (2) A person hired by the department for a child-facing position ~~after October 1, 2021,~~ shall
20 become a certified child protection ~~specialist~~ investigator or a certified child reunification specialist pursuant to
21 41-3-127 through 41-3-130 within 1 year of the date of hire.

22 ~~(3) — A person already employed by the department in a child-facing position before October 1,~~
23 ~~2021, shall obtain child protection specialist certification pursuant to 41-3-127 through 41-3-130 by October 1,~~
24 ~~2023.~~

25 ~~(4)~~(3) For the purpose of this section, "child-facing position" means an employee role under this
26 chapter that involves regular interaction with minors, including but not limited to investigating reports of child
27 abuse, neglect, or endangerment and coordinating reunification services.

28

1 **Section 8.** Section 41-3-201, MCA, is amended to read:

2 **"41-3-201. Reports.** (1) When the professionals and officials listed in subsection (2) know or have
3 reasonable cause to suspect, as a result of information they receive in their professional or official capacity, that
4 a child is abused or neglected by anyone regardless of whether the person suspected of causing the abuse or
5 neglect is a parent or other person responsible for the child's welfare, they shall report the matter promptly to
6 the department. The department shall follow the provisions of 41-3-212 in taking the report.

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

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

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

12 (c) religious healers;

13 (d) school teachers, other school officials, and employees who work during regular school hours;

14 (e) a social worker licensed pursuant to Title 37, child protection ~~specialist~~ investigator, child
15 reunification specialist, operator or employee of any registered or licensed day-care or substitute care facility,
16 staff of a resource and referral grant program organized under 52-2-711 or of a child and adult food care
17 program, or an operator or employee of a child-care facility;

18 (f) a foster care, residential, or institutional worker;

19 (g) a peace officer or other law enforcement official;

20 (h) a member of the clergy, as defined in 15-6-201(2)(b);

21 (i) a guardian ad litem or a court-appointed advocate who is authorized to investigate a report of
22 alleged abuse or neglect;

23 (j) an employee of an entity that contracts with the department to provide direct services to
24 children; and

25 (k) an employee of the department while in conduct of the employee's duties.

26 (3) A professional listed in subsection (2)(a) or (2)(b) involved in the delivery or care of an infant
27 shall report to the department any infant known to the professional to be affected by a dangerous drug, as
28 defined in 50-32-101.

1 (4) Any person may make a report under this section if the person knows or has reasonable cause
2 to suspect that a child is abused or neglected. The department shall follow the provisions of 41-3-212 when
3 taking the report.

4 (5) (a) When a professional or official required to report under subsection (2) makes a report, the
5 department:

6 (i) may share information with:

7 (A) that professional or official; or

8 (B) other individuals with whom the professional or official works in an official capacity if the
9 individuals are part of a team that responds to matters involving the child or the person about whom the report
10 was made and the professional or official has asked that the information be shared with the individuals; and

11 (ii) shall share information with the individuals listed in subsections (5)(a)(i)(A) and (5)(a)(i)(B) on
12 specific request. Information shared pursuant to this subsection (5)(a)(ii) may be limited to the outcome of the
13 investigation and any subsequent action that will be taken on behalf of the child who is the subject of the report.

14 (b) The department may provide information in accordance with 41-3-202(8) and also share
15 information about the investigation, limited to its outcome and any subsequent action that will be taken on
16 behalf of the child who is the subject of the report.

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

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

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

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

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

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

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

1 communication is required to be confidential by canon law, church doctrine, or established church practice.

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

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

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

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

10 (d) the facts that led the person reporting to believe that the child has suffered injury or injuries or
11 willful neglect, within the meaning of this chapter."

12

13 **Section 9.** Section 41-3-202, MCA, is amended to read:

14 **"41-3-202. Action on reporting.** (1) (a) Upon receipt of a report that a child is or has been abused or
15 neglected, the department shall promptly assess the information contained in the report and make a
16 determination regarding the level of response required and the timeframe within which action must be initiated.

17 (b) (i) Except as provided in subsections (1)(b)(ii) and (1)(b)(iii), upon receipt of a report that
18 includes an allegation of sexual abuse or sexual exploitation when the alleged perpetrator of the sexual abuse
19 or sexual exploitation was 12 years of age or older or if the department determines during any investigation that
20 the circumstances surrounding an allegation of child abuse or neglect include an allegation of sexual abuse or
21 sexual exploitation when the alleged perpetrator of the sexual abuse or sexual exploitation was 12 years of age
22 or older, the department shall immediately report the allegation to the county attorney of the county in which the
23 acts that are the subject of the report occurred.

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

1 (iii) If the department or law enforcement determines that the allegation involves the county
2 attorney or an employee in the county attorney's office in the county in which the acts that are subject to
3 reporting occurred, the department or law enforcement shall report as required in subsection (1)(b)(i) to the
4 attorney general.

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

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

21 (3) The child protection ~~specialist~~ investigator is responsible for conducting the safety and risk
22 assessment. If the child is treated at a medical facility, the child protection ~~specialist~~ investigator, county
23 attorney, or peace officer, consistent with reasonable medical practice, has the right of access to the child for
24 interviews, photographs, and securing physical evidence and has the right of access to relevant hospital and
25 medical records pertaining to the child. If an interview of the child is considered necessary, the child protection
26 ~~specialist~~ investigator, county attorney, or peace officer may conduct an interview of the child. The interview
27 may be conducted in the presence of the parent or guardian or an employee of the school or day-care facility
28 attended by the child.

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

4 (5) (a) If from the safety and risk assessment the department has reasonable cause to suspect that
5 the child is suffering abuse or neglect, the department may provide emergency protective services to the child,
6 pursuant to 41-3-301, or enter into a written prevention plan, pursuant to 41-3-302, and may provide protective
7 services to any other child under the same care. The department shall:

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

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

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

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

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

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

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

22 (6) The investigating child protection ~~specialist~~ investigator, within 60 days of commencing an
23 investigation, shall also furnish a written safety and risk assessment to the department and, ~~upon~~ on request, to
24 the family. Subject to time periods set forth in subsections (5)(b) and (5)(c), the department shall maintain a
25 record system documenting investigations and safety and risk assessment determinations. Unless records are
26 required to be destroyed under subsections (5)(b) and (5)(c), the department shall retain records relating to the
27 safety and risk assessment, including case notes, correspondence, evaluations, videotapes, and interviews, for
28 25 years.

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

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

7

8 **Section 10.** Section 41-3-205, MCA, is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (o) a person or entity who is carrying out background, employment-related, or volunteer-related
27 screening of current or prospective employees or volunteers who have or may have unsupervised contact with
28 children through employment or volunteer activities. A request for information under this subsection (3)(o) must

1 be made in writing. Disclosure under this subsection (3)(o) is limited to information that indicates a risk to
2 children posed by the person about whom the information is sought, as determined by the department.

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

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

8 (r) an agency of an Indian tribe, a qualified expert witness, or the relatives of an Indian child if
9 disclosure of the records is necessary to meet requirements of the federal Indian Child Welfare Act ~~for the~~
10 ~~Montana Indian Child Welfare Act provided for in Title 41, chapter 3, part 13~~;

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
18 investigator, county 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. The
10 orientation must include a checklist of documents that are regularly included in records, including but not limited
11 to the following:

12 (I) any petition filed pursuant to Title 41, chapter 3, part 4, including any supporting affidavits and
13 evidence;

14 (II) any court orders issued pursuant to Title 41, chapter 3, parts 4 and 6;

15 (III) notes from family engagement meetings and foster care review meetings; and

16 (IV) notes included in electronic case records or in case files maintained in local offices regarding
17 staffing and interactions with parents or legal guardians, providers, or attorneys.

18 (b) (i) Without disclosing the identity of a person who reported the alleged child abuse or neglect,
19 the department shall make available to the member all records concerning the child who is the subject of the
20 written inquiry.

21 (ii) Except as provided in subsection (4)(b)(iii), records disclosed pursuant to this subsection (4)
22 are confidential, may not be copied, photographed, or otherwise replicated by the member, and must remain
23 solely in the department's possession. The member must be allowed to view the records in the local office
24 where the case is or was active.

25 (iii) A member may take notes to discuss the records with a parent or legal guardian about whom a
26 report of alleged child abuse or neglect is made.

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

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

3 (i) the attorney general;

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

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

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

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

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

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

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

16 or

17 (iv) child abuse or neglect, as defined in 41-3-102, due to exposure of the child to circumstances
18 constituting the criminal manufacture or distribution of dangerous drugs.

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

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

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

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

1 (d) (i) Except as provided in subsection (5)(d)(ii), the records described in subsection (3) must be
2 released within 5 business days to the county attorney of the county in which the acts that are the subject of a
3 report occurred upon the department's receipt of a report that includes an allegation of sexual abuse or sexual
4 exploitation. The department shall also report to any other appropriate individual described in subsection (5)(a)
5 and to a county or regional interdisciplinary child information and school safety team established pursuant to
6 52-2-211.

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

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

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

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

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

24 (9) A person who is authorized to receive records under this section shall maintain the
25 confidentiality of the records and may not disclose information in the records to anyone other than the persons
26 described in subsections (3)(a), (4)(b)(iii), and (5). However, this subsection may not be construed to compel a
27 family member to keep the proceedings confidential.

28 (10) A news organization or its employee, including a freelance writer or reporter, is not liable for

1 reporting facts or statements made by an immediate family member under subsection (9) if the news
2 organization, employee, writer, or reporter maintains the confidentiality of the child who is the subject of the
3 proceeding.

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

6 (12) Copies of records, evaluations, reports, or other evidence obtained or generated pursuant to
7 this section that are provided to the parent, grandparent, aunt, uncle, brother, sister, guardian, or parent's or
8 guardian's attorney must be provided without cost. ~~(Bracketed language in subsection (3)(r) terminates June~~
9 ~~30, 2025—sec. 55, Ch. 716, L. 2023.)"~~

10

11 **Section 11.** Section 41-3-216, MCA, is amended to read:

12 **"41-3-216. Provision of information about investigation procedure and rights to parents.** (1) On
13 removal of a child, the department shall verbally advise the parent, guardian, or other person having physical or
14 legal custody of a child:

15 (a) of the specific complaint or allegation made against the parent, guardian, or other person
16 having physical or legal custody of a child;

17 (b) of the fundamental rights of parents under 40-6-701 and 40-4-227 to direct the upbringing,
18 education, health care, and mental health of their children without government interference, but this right should
19 yield to the best interests of the child when the parent's conduct is contrary to the child-parent relationship;

20 (c) of the right to seek counsel at any time and to consult with counsel before signing any
21 documents; and

22 (d) that the parent, guardian, or other person having physical or legal custody of a child:

23 (i) is not required to permit an investigator from the department to enter the home or submit to a
24 drug or alcohol test, unless ordered to do so by the court;

25 (ii) is not required to speak with the investigator and any statements may be used in an
26 administrative or court proceeding; and

27 (iii) may record any interactions with a department employee if the parent, guardian, or other
28 person having physical or legal custody of a child informs the department employee that the interaction is being

1 recorded.

2 (2) During initial interactions with the parent, guardian, or other person having physical or legal
3 custody of a child who is the subject of an investigation under 41-3-202, the department shall provide the
4 parent, guardian, or other person having physical or legal custody of a child with a clear written description:

5 (a) of the right to seek counsel at any time and to consult with counsel before signing any
6 documents;

7 (b) that the parent, guardian, or other person having physical or legal custody of a child is not
8 required to permit an investigator from the department to enter the home or submit to a drug or alcohol test,
9 unless ordered to do so by the court;

10 (c) that the parent, guardian, or other person having physical or legal custody of a child is not
11 required to speak with the investigator and any statements may be used in an administrative or court
12 proceeding;

13 (d) of the right of the parent, guardian, or other person having physical or legal custody of a child
14 to:

15 (i) be treated with dignity and respect without any form of discrimination; and

16 (ii) have the parent's, guardian's, or other person's culture, language, and religion respected; and

17 (e) of the department's procedures for conducting an investigation of alleged child abuse or
18 neglect.

19 (3) If applicable after initial contact, the department shall provide the parent, guardian, or other
20 person having physical or legal custody of a child with a concise written description of:

21 (a) the circumstances under which the department would seek to enter into a written prevention
22 plan or services agreement with the parent or guardian under 41-3-302;

23 (b) the circumstances under which the department would remove the child from the home and
24 seek a court order for immediate protection and emergency protective services under 41-3-427;

25 (c) an explanation of when the law requires the department to refer a report of alleged child abuse
26 or neglect to a law enforcement agency for a separate determination of whether a criminal violation occurred;

27 (d) the right to withhold consent to release the parent's, guardian's, or other person's medical or
28 mental health records unless ordered to do so by a court; and

1 (e) the right to accommodations under the Americans with Disabilities Act of 1990, 42 U.S.C.

2 12101, et seq.

3 (4) When the parent, guardian, or other person having physical or legal custody of a child requests
4 to file a complaint, the department shall provide the parent, guardian, or person having physical or legal
5 custody:

6 (a) the procedures to file a complaint with the department and the child and family ombudsman;

7 (b) the procedure for the department to disclose records to a member of the United States
8 congress or a member of the Montana legislature under 41-3-205(4); and

9 (c) the process for reviewing the department's records of the investigation.

10 (5) When the court approves emergency protective services, the office of public defender shall
11 provide the parent, guardian, or other person having physical or legal custody of a child:

12 (a) timelines for hearings and determinations under this chapter; and

13 (b) an explanation that a parent, guardian, or other person having physical or legal custody of a
14 child has the right to:

15 (i) receive a copy of the affidavit of the child protection ~~specialist~~ investigator regarding the
16 circumstances of the emergency removal as provided under 41-3-301;

17 (ii) attend and participate in hearings, which includes providing a statement to the judge;

18 (iii) contest the allegations in a petition filed under 41-3-422;

19 (iv) call witnesses and cross-examine witnesses;

20 (v) have a support person or persons present during any meeting with a child protection ~~specialist~~
21 investigator or other department staff;

22 (vi) request that the child be placed in a kinship foster home as defined in 52-2-602; and

23 (vii) be provided with services, including visitation with the child, unless otherwise ordered by the
24 court.

25 (6) Except for the information provided in subsection (1)(a), the department shall post the
26 information required to be given to a parent, guardian, or other person having physical or legal custody of a
27 child on a publicly available website and in a conspicuous place in the publicly accessible area of the office of a
28 child protection ~~specialist~~ investigator and a child reunification specialist."

1

2 **Section 12.** Section 41-3-301, MCA, is amended to read:

3 **"41-3-301. Emergency protective services.** (1) (a) Any child protection specialist investigator of the
4 department, a peace officer, or the county attorney who has reason to believe any child is in immediate or
5 apparent danger of harm may immediately remove the child and place the child in a protective facility. After
6 ensuring that the child is safe, the department may make a request for further assistance from the law
7 enforcement agency or take appropriate legal action.

8 (b) The person or agency placing the child shall notify the parents, parent, guardian, or other
9 person having physical or legal custody of the child of the placement at the time the placement is made or as
10 soon after placement as possible. Notification under this subsection (1)(b) must:

11 (i) include the reason for removal;

12 (ii) include information regarding the emergency protective services hearing within 5 days under
13 41-3-306, the required show cause hearing within 20 days, and the purpose of the hearings;

14 (iii) provide contact information for the child protection specialist investigator, the child protection
15 specialist's investigator's supervisor, the child reunification specialist, and the office of state public defender;
16 and

17 (iv) advise the parents, parent, guardian, or other person having physical or legal custody of the
18 child that the parents, parent, guardian, or other person:

19 (A) has the right to receive a copy of the affidavit as provided in subsection (6);

20 (B) has the right to attend and participate in the emergency protective services hearing and the
21 show cause hearing, including providing statements to the judge;

22 (C) may have a support person present during any meeting with the child protection specialist
23 investigator concerning emergency protective services, including the emergency protective services hearing
24 provided for in 41-3-306; and

25 (D) may request that the child be placed in a kinship foster home as defined in 52-2-602.

26 (c) A copy of the notification required under subsection (1)(b) must be provided within 24 hours to
27 the office of state public defender.

28 (2) If a child protection specialist investigator, a peace officer, or the county attorney determines in

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

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

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

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

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

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

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

26 (6) If a child is removed from the child's home by the department, a child protection specialist
27 investigator shall submit an affidavit regarding the circumstances of the emergency removal to the county
28 attorney and provide a copy of the affidavit to the office of state public defender and, if possible, the parents or

1 guardian within 2 working days of the emergency removal. An abuse and neglect petition must be filed in
2 accordance with 41-3-422 within 5 working days, excluding weekends and holidays, of the emergency removal
3 of a child unless arrangements acceptable to the agency for the care of the child have been made by the
4 parents or a written prevention plan has been entered into pursuant to 41-3-302.

5 (7) Except as provided in the federal Indian Child Welfare Act ~~[or the Montana Indian Child Welfare~~
6 ~~Act provided for in Title 41, chapter 3, part 13]~~, if applicable, a show cause hearing must be held within 20 days
7 of the filing of the petition unless otherwise stipulated by the parties pursuant to 41-3-434.

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

12 (9) The department shall make the necessary arrangements for the child's well-being as are
13 required prior to the court hearing. ~~(Bracketed language in subsection (7) terminates June 30, 2025—sec. 55,~~
14 ~~Ch. 716, L. 2023.)"~~

15

16 **Section 13.** Section 41-3-307, MCA, is amended to read:

17 **"41-3-307. Availability of prehearing conferences.** (1) The parents, parent, guardian, or other
18 person having physical or legal custody of a child who has been removed from the home pursuant to 41-3-301
19 may participate in a conference within 5 days of the child's removal and before an emergency protective
20 services hearing held by the court pursuant to 41-3-306.

21 (2) A prehearing conference must include the following parties:

22 (a) the parents, parent, guardian, or other person having physical or legal custody of the child;

23 (b) the person's legal counsel;

24 (c) the county attorney's office; and

25 (d) ~~a department social worker~~ the child protection investigator; and

26 (e) the child reunification specialist.

27 (3) To the greatest degree possible using available funding, the meetings must be conducted by
28 an independent and trained facilitator.

- 1 (4) At a minimum, the meetings must involve discussion of:
- 2 (a) the child's current placement and options for continued placement if the child remains out of the
- 3 home;
- 4 (b) whether other options exist for an in-home safety plan or resource that may allow the child to
- 5 remain in the home;
- 6 (c) parenting time schedules; and
- 7 (d) treatment services for the family."

8

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

10 ~~"41-3-427. (Temporary) Petition for immediate protection and emergency protective services --~~
 11 ~~evidence and consideration of harm of removal -- order -- service.~~ (1) (a) In a case in which it appears that
 12 a child is abused or neglected or is in danger of being abused or neglected, the county attorney, the attorney
 13 general, or an attorney hired by the county may file a petition for immediate protection and emergency
 14 protective services. In implementing the policy of this section, the child's health and safety are of paramount
 15 concern.

16 (b) ~~— A petition for immediate protection and emergency protective services must state the specific~~
 17 ~~authority requested and must be supported by an affidavit signed by a representative of the department stating~~
 18 ~~in detail the alleged facts upon which the request is based and the facts establishing probable cause or, if the~~
 19 ~~case is subject to the federal Indian Child Welfare Act or the Montana Indian Child Welfare Act provided for in~~
 20 ~~Title 41, chapter 3, part 13, clear and convincing evidence that a child is abused or neglected or is in danger of~~
 21 ~~being abused or neglected.~~

- 22 (c) ~~— The affidavit of the department representative must contain:~~
- 23 (i) ~~— information, if any, regarding statements made by the parents about the facts of the case; and~~
 - 24 (ii) ~~— specific, written documentation as to why the risk of allowing the child to remain at home~~
 25 ~~substantially outweighs the harm of removing the child, including consideration of:~~
 - 26 (A) ~~— the emotional trauma the child is likely to experience if separated from the family;~~
 - 27 (B) ~~— the child's relationships with other members of the household, including siblings;~~
 - 28 (C) ~~— the child's schooling and social relationships that could be disrupted with a placement out of~~

1 the neighborhood;

2 (D) — the impact the removal would have on services the child is receiving and on extracurricular
3 activities that benefit the child; and

4 (E) — documentation of reasonable efforts made to keep the family intact.

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

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

18 (f) — The petition for immediate protection and emergency protective services must include a notice
19 advising the parents, parent, guardian, or other person having physical or legal custody of the child that the
20 parents, parent, guardian, or other person having physical or legal custody of the child may have a support
21 person present during any meeting with a child protection specialist concerning emergency protective services.
22 Reasonable accommodation must be made in scheduling an in-person meeting with the child protection
23 specialist.

24 (2) — Pursuant to subsection (1), if the court finds probable cause or, if the case is subject to the
25 federal Indian Child Welfare Act or the Montana Indian Child Welfare Act, clear and convincing evidence based
26 on the petition and affidavit, the court may issue an order for immediate protection of the child. The court shall
27 consider the parents' statements, if any, included with the petition and any accompanying affidavit or report to
28 the court. If the court finds probable cause or, if the case is subject to the federal Indian Child Welfare Act or the

- 1 Montana Indian Child Welfare Act, clear and convincing evidence, the court may issue an order granting the
2 following forms of relief, which do not constitute a court-ordered treatment plan under 41-3-443:
- 3 (a) — the right of entry by a peace officer or department worker;
- 4 (b) — the right to place the child in temporary medical or out-of-home care, including but not limited to
5 care provided by a noncustodial parent, kinship or foster family, group home, or institution;
- 6 (c) — the right of the department to locate, contact, and share information with any extended family
7 members who may be considered as placement options for the child;
- 8 (d) — a requirement that the parents, guardian, or other person having physical or legal custody
9 furnish information that the court may designate and obtain evaluations that may be necessary to determine
10 whether a child is a youth in need of care;
- 11 (e) — a requirement that the perpetrator of the alleged child abuse or neglect be removed from the
12 home to allow the child to remain in the home;
- 13 (f) — a requirement that the parent provide the department with the name and address of the other
14 parent, if known, unless parental rights to the child have been terminated;
- 15 (g) — a requirement that the parent provide the department with the names and addresses of
16 extended family members who may be considered as placement options for the child who is the subject of the
17 proceeding; and
- 18 (h) — any other temporary disposition that may be required in the best interests of the child that does
19 not require an expenditure of money by the department unless the court finds after notice and a hearing that the
20 expenditure is reasonable and that resources are available for payment. The department is the payor of last
21 resort after all family, insurance, and other resources have been examined.
- 22 (3) — When requesting emergency protective services under this section, the department shall
23 provide the court with information on:
- 24 (a) — whether a kinship placement is available; or
- 25 (b) — if a family foster home has been identified:
- 26 (i) — where the foster home is located in relation to the child's home;
- 27 (ii) — whether the foster placement can accommodate the proposed visitation schedule;
- 28 (iii) — whether siblings can be placed together;

1 (iv) — the proximity of the foster home to the child's home and school;

2 (v) — whether the child will be able to observe religious or cultural practices important to the child;

3 and

4 (vi) — whether the foster home is able to accommodate any special needs the child may have.

5 (4) — In making a removal determination, the court shall weigh and evaluate, in the factual setting,

6 the harm to the child that will result from removal and determine if allowing the child to remain in the home

7 substantially outweighs the harm of removal. Factors for consideration of the best interests of the child include

8 but are not limited to:

9 (a) — the factors identified in subsections (1)(c)(ii)(A) through (1)(c)(ii)(D); and

10 (b) — whether the department made reasonable efforts, as described in subsection (1)(c)(ii)(E), to

11 keep the family intact.

12 (5) — (a) An order for removal of a child from the home must include a finding that:

13 (i) — continued residence of the child with the parent is contrary to the welfare of the child;

14 (ii) — an out-of-home placement is in the best interests of the child; and

15 (iii) — the risk of allowing the child to remain in the home substantially outweighs the harm of removal.

16 (b) — The court shall provide written findings to explain why the risk of the child's continued stay in

17 the home outweighs the harm of removing the child.

18 (6) — The order for immediate protection of the child must require the person served to comply

19 immediately with the terms of the order and to appear before the court issuing the order on the date specified

20 for a show cause hearing. Upon a failure to comply or show cause, the court may hold the person in contempt

21 or place temporary physical custody of the child with the department until further order.

22 (7) — The petition must be served as provided in 41-3-422 or, if the case involves an Indian child, as

23 provided in 41-3-1311. (Terminates June 30, 2025—sec. 55, Ch. 716, L. 2023.)

24 **41-3-427. (Effective July 1, 2025) Petition for immediate protection and emergency protective**

25 **services -- evidence and consideration of harm of removal -- order -- service.** (1) (a) In a case in which it

26 appears that a child is abused or neglected or is in danger of being abused or neglected, the county attorney,

27 the attorney general, or an attorney hired by the county may file a petition for immediate protection and

28 emergency protective services. In implementing the policy of this section, the child's health and safety are of

1 paramount concern.

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

7 (c) The affidavit of the department representative must contain:

8 (i) information, if any, regarding statements made by the parents about the facts of the case; and

9 (ii) specific, written documentation as to why the risk of allowing the child to remain at home

10 substantially outweighs the harm of removing the child, including consideration of:

11 (A) the emotional trauma the child is likely to experience if separated from the family;

12 (B) the child's relationships with other members of the household, including siblings;

13 (C) the child's schooling and social relationships that could be disrupted with a placement out of
14 the neighborhood;

15 (D) the impact the removal would have on services the child is receiving and on extracurricular
16 activities that benefit the child; and

17 (E) documentation of reasonable efforts made to keep the family intact.

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

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

1 the petition and affidavit.

2 (f) The petition for immediate protection and emergency protective services must include a notice
3 advising the parents, parent, guardian, or other person having physical or legal custody of the child that the
4 parents, parent, guardian, or other person having physical or legal custody of the child may have a support
5 person present during any meeting with a child protection ~~specialist investigator~~ or a child reunification
6 specialist concerning emergency protective services. Reasonable accommodation must be made in scheduling
7 an in-person meeting with the child protection ~~specialist investigator~~ and the child reunification specialist.

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

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

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

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

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

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

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

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

1 proceeding; and

2 (h) any other temporary disposition that may be required in the best interests of the child that does
3 not require an expenditure of money by the department unless the court finds after notice and a hearing that the
4 expenditure is reasonable and that resources are available for payment. The department is the payor of last
5 resort after all family, insurance, and other resources have been examined.

6 (3) When requesting emergency protective services under this section, the department shall
7 provide the court with information on:

8 (a) whether a kinship placement is available; or

9 (b) if a family foster home has been identified:

10 (i) where the foster home is located in relation to the child's home;

11 (ii) whether the foster placement can accommodate the proposed visitation schedule;

12 (iii) whether siblings can be placed together;

13 (iv) the proximity of the foster home to the child's home and school;

14 (v) whether the child will be able to observe religious or cultural practices important to the child;

15 and

16 (vi) whether the foster home is able to accommodate any special needs the child may have.

17 (4) In making a removal determination, the court shall weigh and evaluate, in the factual setting,
18 the harm to the child that will result from removal and determine if allowing the child to remain in the home
19 substantially outweighs the harm of removal. Factors for consideration of the best interests of the child include
20 but are not limited to:

21 (a) the factors identified in subsections (1)(c)(ii)(A) through (1)(c)(ii)(D); and

22 (b) whether the department made reasonable efforts, as described in subsection (1)(c)(ii)(E), to
23 keep the family intact.

24 (5) (a) An order for removal of a child from the home must include a finding that:

25 (i) continued residence of the child with the parent is contrary to the welfare of the child;

26 (ii) an out-of-home placement is in the best interests of the child; and

27 (iii) the risk of allowing the child to remain in the home substantially outweighs the harm of removal.

28 (b) The court shall provide written findings to explain why the risk of the child's continued stay in

1 the home outweighs the harm of removing the child.

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

6 (7) The petition must be served as provided in 41-3-422."
7

8 **Section 15.** Section 41-3-445, MCA, is amended to read:

9 **"41-3-445. Permanency hearing.** (1) (a) (i) Subject to subsection (1)(b), a permanency hearing must
10 be held by the court or, subject to the approval of the court and absent an objection by a party to the
11 proceeding, by the foster care review committee, as provided in 41-3-115, or the citizen review board, as
12 provided in 41-3-1010:

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

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

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

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

24 (c) The permanency hearing may be combined with a hearing that is required in other sections of
25 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
26 permanency hearing is combined with another hearing or a review, the requirements of the court related to the
27 disposition of the other hearing or review must be met in addition to the requirements of this section.

28 (d) The court-approved entity conducting the permanency hearing may elect to hold joint or

1 separate reviews for groups of siblings, but the court shall issue specific findings for each child.

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

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

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

12 (5) (a) The court's order must be issued within 20 days after the permanency hearing if the hearing
13 was conducted by the court.

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

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

20 (6) The court shall approve a specific permanency plan for the child and make written findings on:

21 (a) whether the child has been asked about the desired permanency outcome;

22 (b) whether the permanency plan is in the best interests of the child;

23 (c) whether the department has made reasonable efforts to effectuate the permanency plan for the
24 individual child;

25 (d) whether the department has made reasonable efforts to finalize the plan;

26 (e) whether there are compelling reasons why it is not in the best interest of the individual child to:

27 (i) return to the child's home; or

28 (ii) be placed for adoption, with a legal guardian, or with a fit and willing relative; and

1 (f) other necessary steps that the department is required to take to effectuate the terms of the
2 plan.

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

8 (8) Permanency options include:

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

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

12 (c) adoption;

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

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

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

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

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

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

24 (v) the child meets the following criteria:

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

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

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

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

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

7 (a) be developed in consultation with the child and in consultation with up to two members of the
8 child's case planning team who are chosen by the child and who are not a foster parent or, child protection
9 specialist investigator, or child reunification specialist for the child;

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

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

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

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

20
21 **NEW SECTION. Section 16. Codification instruction.** [Section 1] is intended to be codified as an
22 integral part of Title 41, chapter 3, part 1, and the provisions of Title 41, chapter 3, part 1, apply to [section 1].

23
24 **NEW SECTION. Section 17. Effective date.** [This act] is effective July 1, 2025.

25 - END -