

1 _____ BILL NO. _____

2 INTRODUCED BY _____

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING THE MARRIAGE OF PERSONS UNDER 18
5 YEARS OF AGE; AMENDING SECTIONS 1-1-215, 15-61-102, 19-6-101, 19-9-104, 19-13-104, 19-17-102, 19-
6 19-503, 20-5-501, 27-1-718, 28-2-706, 39-71-116, 40-1-202, 40-1-203, 40-1-401, 40-1-402, 40-5-201, 40-5-
7 278, 40-5-701, 40-6-221, 40-6-234, 40-6-501, 41-1-401, 41-1-402, 41-1-404, 41-3-102, 41-3-1303, 41-5-103,
8 41-5-1402, 42-2-201, 50-20-503, 70-1-404, 72-5-103, 72-5-104, 72-5-211, 72-5-222, 72-5-231, 72-5-233, 72-5-
9 427, AND 87-2-102, MCA; REPEALING SECTIONS 40-1-213 AND 40-2-315, MCA; AND PROVIDING AN
10 APPLICABILITY DATE."

11

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

13

14 **Section 1.** Section 1-1-215, MCA, is amended to read:

15 **"1-1-215. Residence -- rules for determining.** Every person has, in law, a residence. In determining
16 the place of residence, the following rules are to be observed:

17 (1) It is the place where a person remains when not called elsewhere for labor or other special or
18 temporary purpose and to which the person returns in seasons of repose.

19 (2) There may be only one residence. If a person claims a residence within Montana for any
20 purpose, then that location is the person's residence for all purposes unless there is a specific statutory
21 exception.

22 (3) A residence cannot be lost until another is gained.

23 (4) The residence of ~~an unmarried~~ a minor is:

24 (a) the residence of the minor's parents;

25 (b) if one of the parents is deceased or the parents do not share the same residence, the
26 residence of the parent having legal custody;

27 (c) if neither parent has legal custody, the residence of the legal guardian or custodian appointed
28 by a court of competent jurisdiction; or

1 (d) if the conditions in 20-5-502 are met, the residence of the caretaker relative.

2 (5) In the case of a controversy, the district court has jurisdiction over which residence is the
3 residence of ~~an unmarried~~ a minor.

4 (6) Except as provided in Title 20, chapter 5, part 5, and this section, the residence of ~~an~~
5 ~~unmarried~~ a minor who has a parent living cannot be changed by either the minor's own act or an act of the
6 minor's guardian.

7 (7) The residence can be changed only by the union of act and intent."
8

9 **Section 2.** Section 15-61-102, MCA, is amended to read:

10 **"15-61-102. Definitions.** As used in this chapter, unless it clearly appears otherwise, the following
11 definitions apply:

12 (1) "Account administrator" means:

13 (a) a state or federally chartered bank, savings and loan association, credit union, or trust
14 company;

15 (b) a health care insurer as defined in 33-22-125;

16 (c) a certified public accountant licensed to practice in this state pursuant to Title 37, chapter 50;

17 (d) an employer if the employer has a self-insured health plan under ERISA;

18 (e) the account holder or an employee for whose benefit the account in question is established;

19 (f) a broker, insurance producer, or investment adviser regulated by the commissioner of
20 insurance;

21 (g) an attorney licensed to practice law in this state;

22 (h) a person who is an enrolled agent allowed to practice before the United States internal revenue
23 service.

24 (2) "Account holder" means an individual who is a resident of this state and who establishes a
25 medical care savings account or for whose benefit the account is established.

26 (3) "Consumer price index" means the consumer price index, United States city average, for all
27 items, for all urban consumers, as published by the bureau of labor statistics of the United States department of
28 labor.

(4) "Dependent" means the spouse of the employee or account holder or a child of the employee or account holder if the child is:

(a) under 23 years of age and enrolled as a full-time student at an accredited college or university or is under 19 years of age;

(b) legally entitled to the provision of proper or necessary subsistence, education, medical care, or other care necessary for the health, guidance, or well-being of the child and is not otherwise emancipated, self-supporting, married if 18 years of age or older, or a member of the armed forces of the United States; or

(c) mentally or physically incapacitated to the extent that the child is not self-sufficient.

(5) "Eligible medical expense" means:

(a) an expense paid by the employee or account holder for medical care defined by 26 U.S.C. 213(d);

(b) an expense for long-term care, including long-term care insurance or a long-term care annuity;

(c) a family leave expense;

(d) any direct fee, as defined in 50-4-106, associated with a direct patient care agreement; and

(e) any expense paid by a member to a health care sharing ministry that meets the requirements of 50-4-111.

(6) "Employee" means an employed individual for whose benefit or for the benefit of whose dependents a medical care savings account is established. The term includes a self-employed individual.

(7) "ERISA" means the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001, et seq.

(8) "Family leave expense" means:

(a) an expense, calculated monthly, approximating wages lost while caring for an immediate family member for the purposes allowed under the Family and Medical Leave Act of 1993, 29 U.S.C. 2601, et seq., and 29 CFR, part 825. A family leave expense is calculated by multiplying the hourly wage that the caregiver would have been paid by the number of hours that would typically be spent working but were instead spent caring for an immediate family member. The hourly wage for a person paid a salary is the gross annual wage divided by 2,087.

(b) a premium paid for family leave insurance.

1 (9) "Immediate family member" means a parent, spouse, or child.

2 (10) "Medical care savings account" or "account" means an account established with an account
3 administrator in this state pursuant to 15-61-201."
4

5 **Section 3.** Section 19-6-101, MCA, is amended to read:

6 **"19-6-101. Definitions.** Unless the context requires otherwise, the following definitions apply in this
7 chapter:

8 (1) (a) "Compensation" means remuneration paid from funds controlled by an employer in payment
9 for the member's services or for time during which the member is excused from work because the member has
10 taken compensatory leave, sick leave, annual leave, or a leave of absence before any pretax deductions
11 allowed by state or federal law are made.

12 (b) Compensation does not include:

13 (i) maintenance, allowances, and expenses; or

14 (ii) bonuses provided after July 1, 2013, that are one-time, temporary payments in addition to and
15 not considered part of base pay.

16 (2) "Dependent child" means ~~an unmarried~~a child of a deceased retired member, who is:

17 (a) under 18 years of age; or

18 (b) unmarried, under 24 years of age, and attending an accredited postsecondary educational
19 institution as a full-time student in anticipation of receiving a certificate or degree.

20 (3) (a) "Highest average compensation" means a member's highest average monthly
21 compensation during any 36 consecutive months of membership service or, in the event a member has not
22 served at least 36 months, the total compensation earned divided by the number of months of service.

23 (b) Lump-sum payments for compensatory leave, sick leave, and annual leave paid to the member
24 upon termination of employment may be used in the calculation of a retirement benefit only to the extent that
25 they are used to replace, on a month-for-month basis, the normal compensation for a month or months included
26 in the calculation of the highest average compensation. A lump-sum payment may not be added to a single
27 month's compensation.

28 (c) Excess earnings limits must be applied to the calculation of the highest average compensation

1 pursuant to 19-2-1005(2).

2 (4) "Surviving spouse" means the spouse married to a retired member at the time of the retired
3 member's death.

4 (5) "Survivor" means a surviving spouse or dependent child of a member."
5

6 **Section 4.** Section 19-9-104, MCA, is amended to read:

7 **"19-9-104. Definitions.** Unless the context requires otherwise, the following definitions apply in this
8 chapter:

9 (1) (a) "Compensation" means the remuneration paid from funds controlled by an employer in
10 payment for the member's services before any pretax deductions allowed by state or federal law are made.

11 (b) Compensation does not include:

12 (i) overtime, holiday payments, shift differential payments, compensatory time payments, and
13 payments in lieu of sick leave and annual leave;

14 (ii) maintenance, allowances, and expenses; or

15 (iii) bonuses provided after July 1, 2013, that are one-time, temporary payments in addition to and
16 not considered part of base pay.

17 (2) "Dependent child" means a child of a deceased member:

18 (a) who is ~~unmarried~~ and under 18 years of age; or

19 (b) who is unmarried, under 24 years of age, and attending an accredited postsecondary
20 educational institution as a full-time student in anticipation of receiving a certificate or degree.

21 (3) "Employer" means any city that participated in a prior plan or that elects to join this retirement
22 system under 19-9-207.

23 (4) (a) "Final average compensation" means the monthly compensation of a member averaged
24 over the last 36 months of the member's service or, in the event a member has not served at least 36 months,
25 the total compensation earned divided by the number of months of service.

26 (b) Excess earnings limits must be applied to the calculation of the final average compensation
27 pursuant to 19-2-1005(2).

28 (5) "Minimum retirement date" means the first day of the month coinciding with or, if none

1 coincides, the date on which a member both becomes age 50 and completes 5 years of membership service.

2 (6) Any reference to "municipality", "city", or "town" includes those jurisdictions that, prior to the
3 effective date of a county-municipal consolidation, were incorporated municipalities, subsequent districts
4 created for urban law enforcement services, or the entire county included in the county-municipal consolidation.

5 (7) "Police officer" means an appointed, lawfully trained, appropriately salaried, and regularly
6 acting officer with the requisite professional certification and licensing.

7 (8) "Prior plan" means the local police reserve or pension trust fund of a city that elects to join the
8 retirement system under 19-9-207.

9 (9) "Retirement date" means the date on which the first payment of the retirement, disability, or
10 survivorship benefits of a member or a survivor is payable.

11 (10) "Surviving spouse" means the spouse married to a member at the time of the member's death.

12 (11) "Survivor" means a surviving spouse or dependent child of the member."
13

14 **Section 5.** Section 19-13-104, MCA, is amended to read:

15 **"19-13-104. Definitions.** Unless the context requires otherwise, the following definitions apply in this
16 chapter:

17 (1) Any reference to "city" or "town" includes those jurisdictions that, before the effective date of a
18 county-municipal consolidation, were incorporated municipalities, subsequent districts created for urban
19 firefighting services, or the entire county included in the county-municipal consolidation.

20 (2) "Compensation" means:

21 (a) for a full-paid firefighter, the remuneration paid from funds controlled by an employer in
22 payment for the member's services before any pretax deductions allowed by state and federal law are made;

23 (b) for a part-paid firefighter employed by a city of the second class:

24 (i) 15% of the regular remuneration, excluding overtime, holiday payments, shift differential
25 payments, compensatory time payments, and payments in lieu of sick leave, paid on July 1 of each year to a
26 newly confirmed, full-paid firefighter of the city that employs the part-paid firefighter; or

27 (ii) if that city does not employ a full-paid firefighter, 15% of the average regular remuneration,
28 excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments

1 in lieu of sick leave, paid on July 1 of each year to all newly confirmed, full-paid firefighters employed by cities
2 of the second class.

3 (c) Compensation for full-paid and part-paid firefighters does not include:

4 (i) overtime, holiday payments, shift differential payments, compensatory time payments, and
5 payments in lieu of sick leave;

6 (ii) maintenance, allowances, and expenses; or

7 (iii) bonuses provided after July 1, 2013, that are one-time, temporary payments in addition to and
8 not considered part of base pay.

9 (3) "Dependent child" means a child of a deceased member who is:

10 (a) ~~unmarried and~~ under 18 years of age; or

11 (b) unmarried, under 24 years of age, and attending an accredited postsecondary educational
12 institution as a full-time student in anticipation of receiving a certificate or degree.

13 (4) "Employer" means:

14 (a) any city that is of the first or second class or that elects to join this retirement system under 19-
15 13-211;

16 (b) a city or a rural fire district referred to in 19-13-210(3);

17 (c) with respect to firefighters covered in the retirement system pursuant to 19-13-210(2), the
18 department of military affairs established in 2-15-1201; and

19 (d) any other statutorily allowed entity that elects to join this retirement system pursuant to 19-13-
20 210.

21 (5) "Firefighter" means a person employed as a full-paid or part-paid firefighter by an employer.

22 (6) "Full-paid firefighter" means a person appointed pursuant to 7-33-4106 by an employer as a
23 firefighter meeting the standards provided in 7-33-4107.

24 (7) (a) "Highest average compensation" means the monthly compensation of a member averaged
25 over the highest consecutive 36 months of the member's active service or, in the event a member has not
26 served at least 36 consecutive months, the total compensation earned divided by the number of months of
27 service.

28 (b) Lump-sum payments for annual leave paid to the member upon termination of employment

1 may be used to replace, on a month-for-month basis, the regular compensation for a month or months included
2 in the calculation of highest average compensation.

3 (c) Excess earnings limits must be applied to the calculation of the highest average compensation
4 pursuant to 19-2-1005(2).

5 (8) "Minimum retirement date" means the first day of the month coinciding with or immediately
6 following, if none coincides, the date on which a member both reaches 50 years of age or older and completes
7 5 or more years of membership service.

8 (9) "Newly confirmed firefighter" means a new member of a fire department appointed pursuant to
9 7-33-4106 and meeting the standards of 7-33-4107.

10 (10) "Part-paid firefighter" means a person other than a full-paid firefighter employed by a second-
11 class city who receives compensation in excess of \$300 in a fiscal year for service as a firefighter and who is
12 appointed by an employer as a firefighter under the standards provided in 7-33-4106 and 7-33-4107.

13 (11) "Prior plan" means the fire department relief association plan of a city that elects to join the
14 retirement system under 19-13-211 or the fire department relief association plan of a city of the first or second
15 class.

16 (12) "Retirement date" means the date on which the first payment of benefits is payable.

17 (13) "Retirement system" means the firefighters' unified retirement system provided for in this
18 chapter.

19 (14) "Surviving spouse" means the spouse married to a member at the time of the member's death."
20

21 **Section 6.** Section 19-17-102, MCA, is amended to read:

22 **"19-17-102. Definitions.** Unless the context requires otherwise, the following definitions apply in this
23 chapter:

24 (1) "Active member" means a volunteer firefighter credited with service under this chapter as
25 provided in 19-17-108 during the most recently reportable fiscal year.

26 (2) "Allowance" means a total monetary and gift amount that is available to a volunteer firefighter
27 from a fire company pursuant to 19-17-110.

28 (3) "Benefit" means the pension, disability, or survivorship benefit provided under this chapter.

- 1 (4) "Board" means the public employees' retirement board provided for in 2-15-1009.
- 2 (5) "Claim" means a request from a member, surviving spouse, or dependent child for payment of
3 medical or funeral expenses.
- 4 (6) "Compensation" means remuneration for services rendered as a firefighter from the fire
5 company requesting credit for that firefighter.
- 6 (7) "Dependent child" means a child who is ~~unmarried, who is~~ under 18 years of age, and who is
7 the child of a deceased member.
- 8 (8) "Designated official" means a representative of a fire company appointed by the fire chief to
9 perform specified actions and includes but is not limited to a fire company supervisor, a fire company secretary,
10 and a fire company presiding officer as described in 7-33-2312.
- 11 (9) "Disability" or "permanent total disability" means a duty-related injury resulting in permanent
12 total disability as defined in 39-71-116.
- 13 (10) "Fire company" means an organization of volunteer firefighters created under the authority of a
14 governing board or commission to serve an unincorporated area, town, or village.
- 15 (11) "Fiscal year" means the 12-month period that begins on July 1 and ends on June 30 of the
16 following year.
- 17 (12) "Inactive member" means a member not credited with service under this chapter as provided in
18 19-17-108 during the most recently reportable fiscal year.
- 19 (13) "Member" means a volunteer firefighter who has service credited under this chapter.
- 20 (14) "Pension benefit" means a full or partial payment for service earned as a volunteer firefighter
21 and does not include payment for disability.
- 22 (15) "Pension trust fund" means the volunteer firefighters' pension trust fund established to pay
23 claims and benefits under this chapter.
- 24 (16) "Reimbursed" means the return by a fire company of an equivalent amount of money expended
25 by a member for the benefit of the fire company.
- 26 (17) "Retiree" or "retired member" means a member who is receiving full or partial pension benefits
27 or disability benefits from the pension trust fund.
- 28 (18) "Supplemental insurance" means insurance that is carried by a fire company for the purposes

1 of providing disability or death benefits. Supplemental insurance does not include any insurance required by
2 law, such as workers' compensation insurance.

3 (19) "Surviving spouse" means the spouse married to a member when the member dies.

4 (20) "Survivorship benefit" means the monthly benefit paid to the surviving spouse or dependent
5 child of a deceased member.

6 (21) "Training" means instruction pertaining to firefighting that is supervised by the chief or a
7 designated official.

8 (22) "Volunteer firefighter" means a person who is a member of an eligible fire company and is not
9 compensated for services as a firefighter."
10

11 **Section 7.** Section 19-19-503, MCA, is amended to read:

12 **"19-19-503. Death benefits.** (1) Upon the death of a police officer on the active list or retired list of a
13 city, the officer's surviving spouse, if there is one, must, as long as the spouse remains the surviving spouse, be
14 paid from the city's police retirement fund a sum equal to one-half the base salary, excluding overtime and
15 payments in lieu of sick leave and annual leave, that the officer was receiving as an active officer computed on
16 the highest salary received in any 1 month during the last year of active service.

17 (2) If the officer leaves one or more dependent minor children, upon the officer's death if there is
18 no surviving spouse or upon the death or remarriage of the surviving spouse, the surviving dependent minor
19 children, collectively if there is more than one, must receive the same monthly payments as a surviving spouse
20 would receive, until they reach 18 years of age ~~or are married~~. The payments must be made to their duly
21 appointed, qualified, and acting guardian for their use. If there is more than one child, upon each child reaching
22 18 years of age ~~or marrying~~, the pro rata payments to that child must cease and must be made to the remaining
23 children until all the children have ~~either reached 18 years of age or are married~~."
24

25 **Section 8.** Section 20-5-501, MCA, is amended to read:

26 **"20-5-501. Purpose -- legislative intent -- parental rights -- definitions.** (1) The legislature
27 recognizes that the rights of parents to the custody and control of a child are based upon liberties secured by
28 the United States and Montana constitutions and that a parent's rights to that custody and control of a child are

1 therefore normally supreme to the interests of other persons. The legislature also recognizes a growing
2 phenomenon in which absent or otherwise unavailable parents have temporarily surrendered the custody and
3 care of their children to a grandparent or other relative for lengthy periods of time. Regardless of the purpose of
4 the absence, a child willfully surrendered to a relative for an extended time period still has the same needs as a
5 child in the care of its parents. In this situation, a caretaker relative assumes responsibilities for the child but
6 has no legal right of control over the child, a situation that interferes in the caretaker relative's ability to perform
7 routine functions of child rearing, including tending to the educational and educationally related medical needs
8 of the child. It is therefore the purpose of the legislature in these instances to protect the rights of a child
9 granted by Article II, section 15, of the Montana constitution by granting a caretaker relative limited authority for
10 a child left in the relative's care.

11 (2) It is the intent of the legislature that a caretaker relative given the responsibility of caring for a
12 child with little or no warning and without any other provision having been made for the child's care, such as the
13 appointment of a guardian or the provision of a power of attorney, be granted authority to enroll the child in
14 school, discuss with the school district the child's educational progress, and consent to an educational service
15 and to medical care for the child related to an educational service without superseding any parental rights
16 regarding the child.

17 (3) This part is not intended to affect the rights and responsibilities of a parent, legal guardian, or
18 other custodian regarding the child, does not grant legal custody of the child to the caretaker relative, and does
19 not grant authority to the caretaker relative to consent to the ~~marriage or~~ adoption of the child or to receive
20 notice of a medical procedure, including abortion, not consented to by the relative, if notice is required by law,
21 for the child except as expressly provided in this section.

22 (4) For the purposes of this part, the following definitions apply:

23 (a) "Caretaker relative" or "relative" means an individual related by blood, marriage, or adoption by
24 another individual to the child whose care is undertaken by the relative, but who is not a parent, foster parent,
25 stepparent, or legal guardian of the child.

26 (b) "Caretaker relative educational authorization affidavit" or "affidavit" means an affidavit
27 completed in compliance with 20-5-503.

28 (c) "Health care provider" means a person who provides medical care.

1 (d) "Medical care" means care by a health care provider, for which parental consent is normally
2 required, for the prevention, diagnosis, or treatment of a mental, physical, or dental injury or disease.

3 (e) "Parent" means a biological parent, adoptive parent, or other legal guardian of the child whose
4 parental rights have not been terminated."
5

6 **Section 9.** Section 27-1-718, MCA, is amended to read:

7 **"27-1-718. Civil penalty for shoplifting.** (1) An adult or emancipated minor who takes possession of
8 any goods, wares, or merchandise displayed or offered for sale by any store or other mercantile establishment
9 without the consent of the owner or seller and with the intention of converting the goods to the taker's own use
10 without having paid the purchase price of the goods is liable to the owner or seller for a penalty, whether or not
11 the goods have been returned undamaged, in the amount of the greater of \$100 or the retail value of the goods,
12 not to exceed \$1,000. This amount is in addition to actual damages.

13 (2) When an unemancipated minor takes possession of any goods, wares, or merchandise
14 displayed or offered for sale by any store or other mercantile establishment without the consent of the owner or
15 seller and with the intention of converting the goods to the minor's own use without having paid the purchase
16 price of the goods, the minor's parent or legal guardian having custody of the minor is liable to the owner or
17 seller for a penalty, whether or not the goods have been returned undamaged, equal to the greater of \$100 or
18 the retail value of the goods, not to exceed \$1,000. For the purposes of this subsection (2), liability may not be
19 imposed upon any governmental or private agency that has been assigned responsibility for the minor child
20 pursuant to court order or action of the department of corrections or the department of public health and human
21 services.

22 (3) Judgments and claims arising under this section may be assigned.

23 (4) A conviction for violation of 45-6-301 is not a condition precedent to maintenance of a civil
24 action under this section.

25 (5) For purposes of this section, the term "emancipated minor" means a person under 18 years of
26 age who is self-supporting from personal earnings ~~or is married~~. A person who received more than 25% of the
27 cost of support from any person other than an agency of the government may not be considered an
28 emancipated minor."

1

2 **Section 10.** Section 28-2-706, MCA, is amended to read:

3 **"28-2-706. Contracts in restraint of marriage generally void.** Every contract in restraint of the
4 marriage of any person ~~other than a minor~~ is void."

5

6 **Section 11.** Section 39-71-116, MCA, is amended to read:

7 **"39-71-116. Definitions.** Unless the context otherwise requires, in this chapter, the following
8 definitions apply:

9 (1) "Actual wage loss" means that the wages that a worker earns or is qualified to earn after the
10 worker reaches maximum healing are less than the actual wages the worker received at the time of the injury.

11 (2) "Administer and pay" includes all actions by the state fund under the Workers' Compensation
12 Act necessary to:

13 (a) investigation, review, and settlement of claims;

14 (b) payment of benefits;

15 (c) setting of reserves;

16 (d) furnishing of services and facilities; and

17 (e) use of actuarial, audit, accounting, vocational rehabilitation, and legal services.

18 (3) "Aid or sustenance" means a public or private subsidy made to provide a means of support,
19 maintenance, or subsistence for the recipient.

20 (4) "Beneficiary" means:

21 (a) a surviving spouse living with or legally entitled to be supported by the deceased at the time of
22 injury;

23 (b) ~~an unmarried~~ a child under 18 years of age;

24 (c) an unmarried child under 22 years of age who is a full-time student in an accredited school or is
25 enrolled in an accredited apprenticeship program;

26 (d) an invalid child over 18 years of age who is dependent, as defined in 26 U.S.C. 152, upon the
27 decedent for support at the time of injury;

28 (e) a parent who is dependent, as defined in 26 U.S.C. 152, upon the decedent for support at the

1 time of the injury if a beneficiary, as defined in subsections (4)(a) through (4)(d), does not exist; and

2 (f) a brother or sister under 18 years of age if dependent, as defined in 26 U.S.C. 152, upon the
3 decedent for support at the time of the injury but only until the age of 18 years and only when a beneficiary, as
4 defined in subsections (4)(a) through (4)(e), does not exist.

5 (5) "Business partner" means the community, governmental entity, or business organization that
6 provides the premises for work-based learning activities for students.

7 (6) "Casual employment" means employment not in the usual course of the trade, business,
8 profession, or occupation of the employer.

9 (7) "Child" includes a posthumous child, a dependent stepchild, and a child legally adopted prior to
10 the injury.

11 (8) (a) "Claims examiner" means an individual who, as a paid employee of the department, of a
12 plan No. 1, 2, or 3 insurer, or of an administrator licensed under Title 33, chapter 17, examines claims under
13 chapter 71 to:

14 (i) determine liability;

15 (ii) apply the requirements of this title;

16 (iii) settle workers' compensation or occupational disease claims; or

17 (iv) determine survivor benefits.

18 (b) The term does not include an adjuster as defined in 33-17-102.

19 (9) (a) "Construction industry" means the major group of general contractors and operative
20 builders, heavy construction (other than building construction) contractors, and special trade contractors listed
21 in major group 23 in the North American Industry Classification System Manual.

22 (b) The term does not include office workers, design professionals, salespersons, estimators, or
23 any other related employment that is not directly involved on a regular basis in the provision of physical labor at
24 a construction or renovation site.

25 (10) "Days" means calendar days, unless otherwise specified.

26 (11) "Department" means the department of labor and industry.

27 (12) "Direct result" means that a diagnosed condition was caused or aggravated by an injury or
28 occupational disease.

1 (13) "Fiscal year" means the period of time between July 1 and the succeeding June 30.

2 (14) "Health care provider" means a person who is licensed, certified, or otherwise authorized by
3 the laws of this state to provide health care in the ordinary course of business or practice of a profession.

4 (15) (a) "Household or domestic employment" means employment of persons other than members
5 of the household for the purpose of tending to the aid and comfort of the employer or members of the
6 employer's family, including but not limited to housecleaning and yard work.

7 (b) The term does not include employment beyond the scope of normal household or domestic
8 duties, such as home health care or domiciliary care.

9 (16) (a) "Indemnity benefits" means any payment made directly to the worker or the worker's
10 beneficiaries, other than a medical benefit. The term includes payments made pursuant to a reservation of
11 rights.

12 (b) The term does not include stay-at-work/return-to-work assistance, auxiliary benefits, or
13 expense reimbursements for items such as meals, travel, or lodging.

14 (17) "Insurer" means an employer bound by compensation plan No. 1, an insurance company
15 transacting business under compensation plan No. 2, or the state fund under compensation plan No. 3.

16 (18) "Invalid" means one who is physically or mentally incapacitated.

17 (19) "Limited liability company" has the meaning provided in 35-8-102.

18 (20) "Maintenance care" means treatment designed to provide the optimum state of health while
19 minimizing recurrence of the clinical status.

20 (21) "Medical stability", "maximum medical improvement", "maximum healing", or "maximum
21 medical healing" means a point in the healing process when further material functional improvement would not
22 be reasonably expected from primary medical services.

23 (22) "Objective medical findings" means medical evidence, including range of motion, atrophy,
24 muscle strength, muscle spasm, or other diagnostic evidence, substantiated by clinical findings.

25 (23) (a) "Occupational disease" means harm, damage, or death arising out of or contracted in the
26 course and scope of employment caused by events occurring on more than a single day or work shift.

27 (b) The term does not include a physical or mental condition arising from emotional or mental
28 stress or from a nonphysical stimulus or activity.

1 (24) "Order" means any decision, rule, direction, requirement, or standard of the department or any
2 other determination arrived at by the department.

3 (25) "Palliative care" means treatment designed to reduce or ease symptoms without curing the
4 underlying cause of the symptoms.

5 (26) "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average annual
6 payroll of the employer for the preceding calendar year or, if the employer has not operated a sufficient or any
7 length of time during the calendar year, 12 times the average monthly payroll for the current year. However, an
8 estimate may be made by the department for any employer starting in business if average payrolls are not
9 available. This estimate must be adjusted by additional payment by the employer or refund by the department,
10 as the case may actually be, on December 31 of the current year. An employer's payroll must be computed by
11 calculating all wages, as defined in 39-71-123, that are paid by an employer.

12 (27) "Permanent partial disability" means a physical condition in which a worker, after reaching
13 maximum medical healing:

14 (a) has a permanent impairment, as determined by the sixth edition of the American medical
15 association's Guides to the Evaluation of Permanent Impairment, that is established by objective medical
16 findings for the ratable condition. The ratable condition must be a direct result of the compensable injury or
17 occupational disease and may not be based exclusively on complaints of pain.

18 (b) is able to return to work in some capacity but the permanent impairment impairs the worker's
19 ability to work; and

20 (c) has an actual wage loss as a result of the injury.

21 (28) "Permanent total disability" means a physical condition resulting from injury as defined in this
22 chapter, after a worker reaches maximum medical healing, in which a worker does not have a reasonable
23 prospect of physically performing regular employment. Lack of immediate job openings is not a factor to be
24 considered in determining if a worker is permanently totally disabled.

25 (29) "Primary medical services" means treatment prescribed by the treating physician, for conditions
26 resulting from the injury or occupational disease, necessary for achieving medical stability.

27 (30) "Prosthetic device" or "prosthesis" means an artificial substitute for a missing body part.

28 (31) "Public corporation" means the state or a county, municipal corporation, school district, city, city

1 under a commission form of government or special charter, town, or village.

2 (32) "Reasonably safe place to work" means that the place of employment has been made as free
3 from danger to the life or safety of the employee as the nature of the employment will reasonably permit.

4 (33) "Reasonably safe tools or appliances" are tools and appliances that are adapted to and that are
5 reasonably safe for use for the particular purpose for which they are furnished.

6 (34) "Regular employment" means work on a recurring basis performed for remuneration in a trade,
7 business, profession, or other occupation in this state.

8 (35) (a) "Secondary medical services" means those medical services or appliances that are
9 considered not medically necessary for medical stability. The services and appliances include but are not
10 limited to spas or hot tubs, work hardening, physical restoration programs and other restoration programs
11 designed to address disability and not impairment, or equipment offered by individuals, clinics, groups,
12 hospitals, or rehabilitation facilities.

13 (b) (i) As used in this subsection (35), "disability" means a condition in which a worker's ability to
14 engage in gainful employment is diminished as a result of physical restrictions resulting from an injury. The
15 restrictions may be combined with factors, such as the worker's age, education, work history, and other factors
16 that affect the worker's ability to engage in gainful employment.

17 (ii) Disability does not mean a purely medical condition.

18 (36) "Sole proprietor" means the person who has the exclusive legal right or title to or ownership of
19 a business enterprise.

20 (37) "State's average weekly wage" means the mean weekly earnings of all employees under
21 covered employment, as defined and established annually by the department before July 1 and rounded to the
22 nearest whole dollar number.

23 (38) "Temporary partial disability" means a physical condition resulting from an injury, as defined in
24 39-71-119, in which a worker, prior to maximum healing:

25 (a) is temporarily unable to return to the position held at the time of injury because of a medically
26 determined physical restriction;

27 (b) returns to work in a modified or alternative employment; and

28 (c) suffers a partial wage loss.

1 (39) "Temporary service contractor" means a person, firm, association, partnership, limited liability
2 company, or corporation conducting business that hires its own employees and assigns them to clients to fill a
3 work assignment with a finite ending date to support or supplement the client's workforce in situations resulting
4 from employee absences, skill shortages, seasonal workloads, and special assignments and projects.

5 (40) "Temporary total disability" means a physical condition resulting from an injury, as defined in
6 this chapter, that results in total loss of wages and exists until the injured worker reaches maximum medical
7 healing.

8 (41) "Temporary worker" means a worker whose services are furnished to another on a part-time or
9 temporary basis to fill a work assignment with a finite ending date to support or supplement a workforce in
10 situations resulting from employee absences, skill shortages, seasonal workloads, and special assignments
11 and projects.

12 (42) "Treating physician" means the person who, subject to the requirements of 39-71-1101, is
13 primarily responsible for delivery and coordination of the worker's medical services for the treatment of a
14 worker's compensable injury or occupational disease and is:

15 (a) a physician licensed by the state of Montana under Title 37, chapter 3, and has admitting
16 privileges to practice in one or more hospitals, if any, in the area where the physician is located;

17 (b) a chiropractor licensed by the state of Montana under Title 37, chapter 12;

18 (c) a physician assistant licensed by the state of Montana under Title 37, chapter 20, if there is not
19 a treating physician, as provided for in subsection (42)(a), in the area where the physician assistant is located;

20 (d) an osteopath licensed by the state of Montana under Title 37, chapter 3;

21 (e) a dentist licensed by the state of Montana under Title 37, chapter 4;

22 (f) for a claimant residing out of state or upon approval of the insurer, a treating physician defined
23 in subsections (42)(a) through (42)(e) who is licensed or certified in another state; or

24 (g) an advanced practice registered nurse licensed by the state of Montana under Title 37, chapter
25 8.

26 (43) "Work-based learning activities" means job training and work experience conducted on the
27 premises of a business partner as a component of school-based learning activities authorized by an
28 elementary, secondary, or postsecondary educational institution.

1 (44) "Year", unless otherwise specified, means calendar year."

2
3 **Section 12.** Section 40-1-202, MCA, is amended to read:

4 **"40-1-202. License issuance.** Except as provided in 40-1-301, when a marriage application has been
5 completed and signed by both parties to a prospective marriage and at least one party has appeared before the
6 clerk of the district court and paid the marriage license fee of \$53, the clerk of the district court shall issue a
7 license to marry and a marriage certificate form upon being furnished:

8 (1) satisfactory proof that each party to the marriage will have attained 18 years of age at the time
9 the marriage license is effective ~~or will have attained 16 years of age and has obtained judicial approval as~~
10 ~~provided in 40-1-213; and~~

11 (2) satisfactory proof that the marriage is not prohibited."
12

13 **Section 13.** Section 40-1-203, MCA, is amended to read:

14 **"40-1-203. Proof of age.** Before a person authorized by law to issue marriage licenses may issue a
15 marriage license, each applicant for a license shall provide a birth certificate or other satisfactory evidence of
16 age ~~and, if the applicant is a minor, the approval required by 40-1-213.~~"
17

18 **Section 14.** Section 40-1-401, MCA, is amended to read:

19 **"40-1-401. Prohibited marriages -- contracts.** (1) The following marriages are prohibited:

- 20 (a) a marriage entered into prior to the dissolution of an earlier marriage of one of the parties;
21 (b) a marriage between an ancestor and a descendant or between a brother and a sister, whether
22 the relationship is by the half or the whole blood, or between first cousins;
23 (c) a marriage between an uncle and a niece or between an aunt and a nephew, whether the
24 relationship is by the half or the whole blood;
25 (d) a marriage between persons of the same sex, as defined in 1-1-201; and
26 (e) a marriage entered into by a person under 18 years of age.

27 (2) Parties to a marriage prohibited under this section who cohabit after removal of the impediment
28 are lawfully married as of the date of the removal of the impediment.

1 (3) Children born of a prohibited marriage are legitimate.

2 (4) A contractual relationship entered into for the purpose of achieving a civil relationship that is
3 prohibited under subsection (1) is void as against public policy."
4

5 **Section 15.** Section 40-1-402, MCA, is amended to read:

6 **"40-1-402. Declaration of invalidity.** (1) The district court shall enter its decree declaring the
7 invalidity of a marriage entered into under the following circumstances:

8 (a) a party lacked capacity to consent to the marriage at the time that the marriage was entered
9 into, either because of mental incapacity or infirmity or because of the influence of alcohol, drugs, or other
10 incapacitating substances, or a party was induced to enter into a marriage by force or duress or by fraud
11 involving the essentials of marriage;

12 (b) a party lacks the physical capacity to consummate the marriage by sexual intercourse, and at
13 the time that the marriage was entered into, the other party did not know of the incapacity; or

14 ~~(c) a party was under 16 years of age or was 16 or 17 years of age and did not have the consent~~
15 ~~of the party's parents or guardian or judicial approval; or~~

16 ~~(d)(c)~~ the marriage is prohibited.

17 (2) A declaration of invalidity under subsections (1)(a) through ~~(1)(c)~~ (1)(b) may be sought by any
18 of the following persons and must be commenced within the times specified, but a declaration of invalidity may
19 not be sought after the death of either party to the marriage:

20 (a) for lack of capacity to consent because of mental incapacity or infirmity, no later than 1 year
21 after the petitioner obtained knowledge of the described condition;

22 (b) for lack of capacity to consent because of the influence of alcohol, drugs, or other
23 incapacitating substances, no later than 1 year after the petitioner obtained knowledge of the described
24 condition;

25 (c) for lack of capacity to consent because of force, duress, or fraud, no later than 2 years after the
26 petitioner obtained knowledge of the described condition;

27 (d) for the reason set forth in subsection (1)(b), by either party, no later than 4 years after the
28 petitioner obtained knowledge of the described condition;

(e) ~~for the reason set forth in subsection (1)(c), by the underaged party or the party's parent or guardian, before the time that the underaged party reaches the age at which the party could have married without satisfying the omitted requirement.~~

(3) A declaration of invalidity for the reason set forth in subsection ~~(1)(d)~~ (1)(c) may be sought by either party, the legal spouse in case of a bigamous marriage, the county attorney, or a child of either party, at any time before the death of one of the parties.

(4) Children born of a marriage declared invalid are legitimate.

(5) Unless the court finds, after a consideration of all relevant circumstances, including the effect of a retroactive decree on third parties, that the interests of justice would be served by making the decree not retroactive, it shall declare the marriage invalid as of the date of the marriage. The provisions of chapter 4 relating to property rights of the spouses, maintenance, support, and parenting of children on dissolution of marriage are applicable to nonretroactive decrees of invalidity.

(6) The clerk of the court shall give notice of the entry of a decree declaring the invalidity of a marriage:

(a) if the marriage is registered in this state, to the clerk of the district court of the county where the marriage is registered, who shall enter the fact of invalidity in the book in which the marriage license and certificate are recorded; or

(b) if the marriage is registered in another jurisdiction, to the appropriate official of that jurisdiction, with the request that the official enter the fact of invalidity in the appropriate record."

Section 16. Section 40-5-201, MCA, is amended to read:

"40-5-201. Definitions. As used in this part, the following definitions apply:

(1) "Alleged father" means a person who is alleged to have engaged in sexual intercourse with a child's mother during a possible time of conception of the child or a person who is presumed to be a child's father under the provisions of 40-6-105.

(2) (a) "Child" means:

(i) a person under 18 years of age who is not otherwise emancipated, self-supporting, ~~married~~, or a member of the armed forces of the United States;

- 1 (ii) a person under 19 years of age and still in high school;
- 2 (iii) a person who is mentally or physically incapacitated if the incapacity began prior to the
- 3 person's 18th birthday; or
- 4 (iv) in a IV-D case, a person for whom:
- 5 (A) support rights are assigned under 53-2-613;
- 6 (B) a public assistance payment has been made;
- 7 (C) the department is providing support enforcement services under 40-5-203; or
- 8 (D) the department has received a referral for IV-D services from an agency of another state or an
- 9 Indian tribe under the provisions of the Uniform Interstate Family Support Act, the Revised Uniform Reciprocal
- 10 Enforcement of Support Act, the Uniform Reciprocal Enforcement of Support Act, or Title IV-D of the Social
- 11 Security Act.
- 12 (b) The term may not be construed to limit the ability of the department to enforce a support order
- 13 according to its terms when the order provides for support to extend beyond the child's 18th birthday.
- 14 (3) "Department" means the department of public health and human services.
- 15 (4) "Director" means the director of the department of public health and human services or the
- 16 director's authorized representative.
- 17 (5) "Guidelines" means the child support guidelines adopted pursuant to 40-5-209.
- 18 (6) "Hearings officer" or "hearings examiner" means the hearings officer appointed by the
- 19 department for the purposes of this chapter.
- 20 (7) "Need" means the necessary costs of food, clothing, shelter, and medical care for the support
- 21 of a child or children.
- 22 (8) "Obligee" means:
- 23 (a) a person to whom a duty of support is owed and who is receiving support enforcement services
- 24 under this part; or
- 25 (b) a public agency of this or another state or an Indian tribe having the right to receive current or
- 26 accrued support payments.
- 27 (9) "Obligor" means a person, including an alleged father, who owes a duty of support.
- 28 (10) "Parent" means the natural or adoptive parent of a child.

(11) "Paternity genetic test" means a test that demonstrates through examination of genetic markers either that an alleged father is not the natural father of a child or that there is a probability that an alleged father is the natural father of a child. The genetic markers may be identified from a person's blood or tissue sample. The blood or tissue sample may be taken by blood drawing, buccal swab, or any other method approved by the American association of blood banks. Paternity genetic tests may include but are not limited to the human leukocyte antigen test and DNA probe technology.

(12) "Public assistance" means any type of monetary or other assistance for a child, including medical and foster care benefits. The term includes payments to meet the needs of a relative with whom the child is living, if assistance has been furnished with respect to the child by a state or county agency of this state or any other state.

(13) "Support debt" or "support obligation" means the amount created by:

(a) the failure to provide for the medical, health, and support needs of a child under the laws of this or any other state or under a support order;

(b) a support order for spousal maintenance of the custodial parent; or

(c) fines, fees, penalties, interest, and other funds and costs that the department is authorized under this chapter to collect by the use of any procedure available for the payment, enforcement, and collection of child support or spousal maintenance or support.

(14) "Support order" means an order, whether temporary or final, that:

(a) provides for the payment of a specific amount of money, expressed in periodic increments or as a lump-sum amount, for the support of the child, including an amount expressed in dollars for medical and health needs, child care, education, recreation, clothing, transportation, and other related expenses and costs specific to the needs of the child;

(b) is issued by:

(i) a district court of this state;

(ii) a court of appropriate jurisdiction of another state, Indian tribe, or foreign country;

(iii) an administrative agency pursuant to proceedings under this part; or

(iv) an administrative agency of another state, Indian tribe, or foreign country with a hearing function and process similar to those of the department under this part; and

- 1 (c) when the context requires, includes:
- 2 (i) judgments and orders providing periodic payments for the maintenance or support of the
- 3 custodial parent of a child receiving services under this chapter; and
- 4 (ii) amounts for the recovery of fines, fees, penalties, interest, and other funds and costs that the
- 5 department is authorized under this chapter to collect by the use of any procedure available for the payment,
- 6 enforcement, and collection of child support or spousal maintenance or support.

7 (15) "IV-D" means the provisions of Title IV-D of the Social Security Act and the regulations

8 promulgated under the act."

9

10 **Section 17.** Section 40-5-278, MCA, is amended to read:

11 **"40-5-278. Limited review of support order.** A party may apply for a limited review to address a

12 specific change that occurred after a support order was entered, that is not caused by an increase or decrease

13 in a party's annual net income, and that may have other effects on the existing support order. It is presumed

14 that all other facts relative to the existing support order, including income and deductions from income, remain

15 unchanged. Information gathered is limited to that which is necessary to verify the change, the value of the

16 change, and the expected duration of the change. The department's recommendation must be limited to

17 whether the value of the change should be added to or subtracted from the amount of the existing support

18 order. If a more detailed modification is required in a case presented for limited review, the case becomes

19 subject to the requirements of 40-5-277. The circumstances in which a limited review process is available are

20 confined to cases in which:

21 (1) there is a change in parenting time or residence of a child and a modified support order has not

22 been entered as a result of the change;

23 (2) a child's need for day-care services has increased or decreased and the increase or decrease

24 is expected to continue for at least 18 months;

25 (3) a child has developed special needs that did not exist when the existing support order was

26 issued and the needs are expected to continue for at least 18 months or a special need considered in the

27 support order no longer exists;

28 (4) the cost of health insurance coverage for a child provided by a parent has increased or

1 decreased by 25% of the support order and the increase or decrease is expected to continue for at least 18
2 months;

3 (5) there has been the birth of another child to the parties and the child's needs are to be added to
4 the existing support order; or

5 (6) a child has reached the age of majority, become emancipated, ~~married~~, entered military
6 service, or died."

7

8 **Section 18.** Section 40-5-701, MCA, is amended to read:

9 **"40-5-701. Definitions.** As used in this part, the following definitions apply:

10 (1) (a) "Child" means:

11 (i) a person under 18 years of age who is not emancipated, self-supporting, ~~married~~, or a member
12 of the armed forces of the United States;

13 (ii) a person under 19 years of age who is still in high school;

14 (iii) a person who is mentally or physically incapacitated when the incapacity began prior to that
15 person reaching 18 years of age; and

16 (iv) in IV-D cases, a person for whom:

17 (A) support rights are assigned under 53-2-613;

18 (B) a public assistance payment has been made;

19 (C) the department is providing support enforcement services under 40-5-203; or

20 (D) the department has received a referral for IV-D services under the provisions of the Uniform

21 Interstate Family Support Act, the Revised Uniform Reciprocal Enforcement of Support Act, the Uniform

22 Reciprocal Enforcement of Support Act, or Title IV-D of the Social Security Act.

23 (b) The term may not be construed to limit the ability of the department to enforce a support order
24 according to its terms when the order provides for support extending beyond the time the child reaches 18
25 years of age.

26 (2) "Conservation activity" means an activity for which a conservation license is issued by the
27 department of fish, wildlife, and parks pursuant to 87-2-201.

28 (3) "Delinquency" means a support debt or support obligation due under a support order in an

1 amount greater than or equal to 6 months' support payments as of the date of service of a notice of intent to
2 suspend a license.

3 (4) "Department" means the department of public health and human services.

4 (5) "License" means a license, certificate, registration, permit, or any other authorization issued by
5 an agency of the state of Montana granting a person a right or privilege to engage in a business, occupation,
6 profession, conservation activity, or any other privilege that is subject to suspension, revocation, forfeiture,
7 termination, or a declaration of ineligibility to purchase by the licensing authority prior to its date of expiration.

8 (6) "Licensing authority" means any department, division, board, agency, or instrumentality of this
9 state that issues a license.

10 (7) "Obligee" means:

11 (a) a person to whom a support debt or support obligation is owed; or

12 (b) a public agency of this or another state or an Indian tribe that has the right to receive current or
13 accrued support payments or that is providing support enforcement services under this chapter.

14 (8) "Obligor" means a person who owes a duty of support or who is subject to a subpoena or
15 warrant in a paternity or child support proceeding.

16 (9) "Order suspending a license" means an order issued by a support enforcement entity to
17 suspend a license. The order must contain the name of the obligor, the type of license, and, if known, the social
18 security number of the obligor.

19 (10) "Payment plan" includes but is not limited to a plan approved by the support enforcement entity
20 that provides sufficient security to ensure compliance with a support order and that incorporates voluntary or
21 involuntary income withholding under part 3 or 4 of this chapter or a similar plan for periodic payment of a
22 support debt and, if applicable, current and future support.

23 (11) "Subpoena" means a writ or order issued by a court or the department in a proceeding or as
24 part of an investigation related to the paternity or support of a child that commands a person to appear at a
25 particular place and time to testify or produce documents or things under the person's control.

26 (12) "Support debt" or "support obligation" means the amount created by the failure to provide or
27 pay:

28 (a) support to a child under the laws of this or any other state or under a support order;

1 (b) court-ordered spousal maintenance or other court-ordered support for the child's custodial
2 parent; or

3 (c) fines, fees, penalties, interest, and other funds and costs that the support enforcement entity is
4 authorized to collect by the use of any procedure available to the entity for the payment, enforcement, and
5 collection of child support or spousal maintenance or support.

6 (13) "Support enforcement entity" means:

7 (a) in IV-D cases, the department; or

8 (b) in all other cases, the district court that entered the support order or a district court in which the
9 support order is registered.

10 (14) (a) "Support order" means an order that provides a determinable amount for temporary or final
11 periodic payment of a support debt or support obligation and that may include payment of a determinable or
12 indeterminable amount for insurance covering the child issued by:

13 (i) a district court of this state;

14 (ii) a court of appropriate jurisdiction of another state, an Indian tribe, or a foreign country;

15 (iii) an administrative agency pursuant to proceedings under Title 40, chapter 5, part 2; or

16 (iv) an administrative agency of another state or an Indian tribe with a hearing function and process
17 similar to those of the department.

18 (b) If an action for child support is commenced under this part and the context so requires, support
19 order also includes:

20 (i) judgments and orders providing periodic payments for the maintenance or support of the child's
21 custodial parent; and

22 (ii) amounts for the recovery of fines, fees, penalties, interest, and other funds and costs that the
23 support enforcement entity is authorized to collect by the use of any procedure available to the entity for the
24 payment, enforcement, and collection of child support or spousal maintenance or support.

25 (15) "Suspension" includes the withdrawal, withholding, revocation, forfeiture, or nonissuance of a
26 license and license privileges.

27 (16) "Warrant" means a bench warrant, a warrant to appear, an order to show cause, or any other
28 order issued by a court relating to the appearance of a party in a paternity or child support proceeding.

1 (17) "IV-D case" means a case in which the department is providing support enforcement services
2 as a result of:
3 (a) an assignment of support rights under 53-2-613;
4 (b) a payment of public assistance;
5 (c) an application for support enforcement services under 40-5-203; or
6 (d) a referral for services from an agency of another state or an Indian tribe under the provisions of
7 the Uniform Reciprocal Enforcement of Support Act, the Revised Uniform Reciprocal Enforcement of Support
8 Act, the Uniform Interstate Family Support Act, or Title IV-D of the Social Security Act."
9

10 **Section 19.** Section 40-6-221, MCA, is amended to read:

11 **"40-6-221. Parenting, services, and earnings of child.** The father and mother of ~~an unmarried a~~
12 minor child are equally entitled to the parenting, services, and earnings of the child. If either parent is dead or
13 unable or refuses to exercise parenting or has abandoned the family, the other parent is entitled to the
14 parenting, services, and earnings of the child, unless care of the child is determined otherwise pursuant to 40-4-
15 221."
16

17 **Section 20.** Section 40-6-234, MCA, is amended to read:

18 **"40-6-234. When parental authority ceases.** The authority of the parent ceases:

- 19 (1) upon the appointment, by a court, of a guardian of the person of a child; or
20 (2) ~~upon the marriage of a child; or~~
21 (3)(2) upon its a child attaining majority."
22

23 **Section 21.** Section 40-6-501, MCA, is amended to read:

24 **"40-6-501. Purpose -- legislative intent -- parental rights -- definitions.** (1) The legislature
25 recognizes that the rights of parents to the custody and control of a child are based upon liberties secured by
26 the United States and Montana constitutions and that a parent's rights to that custody and control of a child are
27 therefore normally supreme to the interests of other persons. The legislature also recognizes a growing
28 phenomenon in which absent or otherwise unavailable parents have temporarily surrendered the custody and

1 care of their children to a grandparent or other relative for lengthy periods of time. Regardless of the purpose of
2 the absence, a child willfully surrendered to a relative for an extended time period still has the same needs as a
3 child in the care of its parents. In this situation, a caretaker relative assumes responsibilities for the child but
4 has no legal right of control over the child, a situation that interferes in the caretaker relative's ability to perform
5 routine functions of child rearing, including tending to the medical needs of the child. It is therefore the purpose
6 of the legislature in these instances to protect the rights of a child granted by Article II, section 15, of the
7 Montana constitution by granting a caretaker relative limited authority for a child left in the relative's care.

8 (2) It is the intent of the legislature that a caretaker relative given the responsibility of caring for a
9 child with little or no warning and without any other provision having been made for the child's care, such as the
10 appointment of a guardian or the provision of a power of attorney, be granted authority to consent to medical
11 care for the child without superseding any parental rights regarding the child.

12 (3) Section 40-6-502 and this section are not intended to affect the rights and responsibilities of a
13 parent, legal guardian, or other custodian regarding the child, do not grant legal custody of the child to the
14 caretaker relative, and do not grant authority to the caretaker relative to consent to the ~~marriage~~ or adoption of
15 the child or to receive notice of a medical procedure, including abortion, not consented to by the relative, if
16 notice is required by law, for the child except as expressly provided in this section.

17 (4) For the purposes of 40-6-502 and this section, the following definitions apply:

18 (a) "Caretaker relative" or "relative" means an individual related by blood, marriage, or adoption by
19 another individual to the child whose care is undertaken by the relative, but who is not a parent, foster parent,
20 stepparent, or legal guardian of the child.

21 (b) "Caretaker relative medical authorization affidavit" or "affidavit" means an affidavit completed in
22 compliance with 40-6-502.

23 (c) "Health care provider" means a person who provides medical care.

24 (d) "Medical care" means care by a health care provider, for which parental consent is normally
25 required, for the prevention, diagnosis, or treatment of a mental, physical, or dental injury or disease.

26 (e) "Parent" means a biological or adoptive parent or other legal guardian of a child."
27

28 **Section 22.** Section 41-1-401, MCA, is amended to read:

1 **"41-1-401. Definitions.** As used in this part, the following definitions apply:

2 (1) "Emancipated minor" means an individual under 18 years of age who:

3 ~~(a) is or has been married;~~

4 ~~(b)(a)~~ is separated from the individual's parent, parents, or legal guardian and is self-supporting; or

5 ~~(c)(b)~~ has been granted the right to consent to medical treatment pursuant to an order of limited
6 emancipation granted by a court pursuant to 41-3-438.

7 (2) "Health care facility" has the meaning provided in 50-5-101.

8 (3) "Health professional" includes only those persons licensed in Montana as physicians,
9 psychiatrists, psychologists, advanced practice registered nurses, dentists, physician assistants, professional
10 counselors, or social workers."
11

12 **Section 23.** Section 41-1-402, MCA, is amended to read:

13 **"41-1-402. Validity of consent of minor for health services.** (1) This part does not limit the right of
14 an emancipated minor to consent to the provision of health services or to control access to protected health
15 care information under applicable law.

16 (2) The consent to the provision of health services and to control access to protected health care
17 information by a health care facility or to the performance of health services by a health professional may be
18 given by a minor when the health professional, in good faith and with a reasonable belief supported by fact,
19 determines that the minor meets any of the following descriptions:

20 (a) the minor professes ~~to be or to have been married or to have had a child or to have graduated~~
21 from high school;

22 (b) the minor professes to be or is found to be separated from the minor's parent, parents, or legal
23 guardian for whatever reason and is providing self-support by whatever means;

24 (c) the minor professes or is found to be pregnant or afflicted with any reportable communicable
25 disease, including a sexually transmitted disease, or drug and substance abuse, including alcohol. This self-
26 consent applies only to the prevention, diagnosis, and treatment of those conditions specified in this subsection

27 (2)(c). The self-consent in the case of pregnancy, a sexually transmitted disease, or drug and substance abuse
28 also obliges the health professional, if the health professional accepts the responsibility for treatment, to

1 counsel the minor or to refer the minor to another health professional for counseling.

2 (d) the minor needs emergency care, including transfusions, necessary to prevent serious injury or
3 harm to the minor. If emergency care is rendered, the parent, parents, or legal guardian must be informed as
4 soon as practical except under the circumstances mentioned in this subsection (2).

5 (3) A minor who has had a child may give effective consent to health service for the child.

6 ~~(4) A minor may give consent for health care for the minor's spouse if the spouse is unable to give~~
7 ~~consent by reason of physical or mental incapacity."~~

8

9 **Section 24.** Section 41-1-404, MCA, is amended to read:

10 **"41-1-404. Financial responsibility of minor.** Consent of the minor shall not be subject to later
11 disaffirmance or revocation because of minority. The ~~spouse,~~ parent, parents, or legal guardian of a consenting
12 minor shall not be liable for payment for such service unless the ~~spouse,~~ parent, parents, or legal guardian
13 have expressly agreed to pay for such care. Minors so consenting for such health services shall thereby
14 assume financial responsibility for the cost of ~~said~~ the services, except those who are proven unable to pay and
15 who receive the services in public institutions. If the minor is covered by health insurance, payment may be
16 applied for services rendered."

17

18 **Section 25.** Section 41-3-102, MCA, is amended to read:

19 **"41-3-102. (Temporary) Definitions.** As used in this chapter, the following definitions apply:

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

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

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

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

28 (iv) the voluntary surrender, as defined in 40-6-402, by a parent of a newborn who is no more than

1 30 days old to an emergency services provider, as defined in 40-6-402.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (iii) abandonment.

28 (b) (i) The term includes:

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

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

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

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

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

12 (d) The term does not include:

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

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

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

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

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

24 (11) "Department" means the department of public health and human services provided for in 2-15-
25 2201.

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

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

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

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

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

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

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

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

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

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

18 (22) "Physical neglect" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (c) a professional person who has substantial education and experience in providing services to
28 children and families and who possesses significant knowledge of and experience with Indian culture, family

1 structure, and child-rearing practices in general.

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

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

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

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

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

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

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

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

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

16 (c) any particular vulnerabilities of the child;

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

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

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

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

25 (32) "Sexual exploitation" means:

26 (a) allowing, permitting, or encouraging a child to engage in a prostitution offense, as described in
27 45-5-601;

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

1 (c) allowing, permitting, or encouraging sex trafficking as described in 45-5-702, 45-5-705, 45-5-
2 706, or 45-5-711.

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

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

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

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

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

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

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

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

24 (ii) the provision of treatment would:

25 (A) merely prolong dying;

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

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

28 (iii) the provision of treatment would be virtually futile in terms of the survival of the infant and the

1 treatment itself under the circumstances would be inhumane. For purposes of this subsection (35), "infant"
2 means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously
3 hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The reference
4 to less than 1 year of age may not be construed to imply that treatment should be changed or discontinued
5 when an infant reaches 1 year of age or to affect or limit any existing protections available under state laws
6 regarding medical neglect of children 1 year of age or older.

7 (36) "Youth in need of care" means a youth who has been adjudicated or determined, after a
8 hearing, to be or to have been abused, neglected, or abandoned. (Terminates June 30, 2025--sec. 55, Ch. 716,
9 L. 2023.)

10 **41-3-102. (Effective July 1, 2025) Definitions.** As used in this chapter, the following definitions
11 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.

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

(d) The term does not include:

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

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

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

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

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

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

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

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

(a) a member of an Indian tribe; or

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

(14) "Indian child's tribe" means:

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

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

(15) "Indian custodian" means any Indian person who has legal custody of an Indian child under

1 tribal law or custom or under state law or to whom temporary physical care, custody, and control have been
2 transferred by the child's parent.

3 (16) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of
4 Indians recognized by:

5 (a) the state of Montana; or

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

8 (17) "Limited emancipation" means a status conferred on a youth by a court in accordance with 41-
9 1-503 under which the youth is entitled to exercise some but not all of the rights and responsibilities of a person
10 who is 18 years of age or older.

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

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

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

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

22 (22) "Physical neglect" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (b) a lay expert witness who has substantial experience in the delivery of child and family services
28 to Indians and extensive knowledge of prevailing social and cultural standards and child-rearing practices within

1 the Indian child's tribe; or

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

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

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

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

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

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

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

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

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

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

19 (c) any particular vulnerabilities of the child;

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

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

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

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

28 (32) "Sexual exploitation" means:

1 (a) allowing, permitting, or encouraging a child to engage in a prostitution offense, as described in
2 45-5-601;

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

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

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

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

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

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

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

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

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

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

27 (ii) the provision of treatment would:

28 (A) merely prolong dying;

- 1 (B) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or
- 2 (C) otherwise be futile in terms of the survival of the infant; or
- 3 (iii) the provision of treatment would be virtually futile in terms of the survival of the infant and the
- 4 treatment itself under the circumstances would be inhumane. For purposes of this subsection (35), "infant"
- 5 means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously
- 6 hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The reference
- 7 to less than 1 year of age may not be construed to imply that treatment should be changed or discontinued
- 8 when an infant reaches 1 year of age or to affect or limit any existing protections available under state laws
- 9 regarding medical neglect of children 1 year of age or older.

10 (36) "Youth in need of care" means a youth who has been adjudicated or determined, after a

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

12

13 **Section 26.** Section 41-3-1303, MCA, is amended to read:

14 **"41-3-1303. (Temporary) Definitions.** As used in this part, the following definitions apply:

15 (1) "Active efforts" means affirmative, active, thorough, and timely efforts meeting the requirements

16 of 41-3-1319 that are intended primarily to maintain or reunite an Indian child with the child's family and that are

17 tailored to the facts and circumstances of the case.

18 (2) "Adoptive placement" means the permanent placement of an Indian child for adoption,

19 including any action resulting in a final decree of adoption.

20 (3) (a) "Child custody proceeding" means any state or private proceeding, other than an

21 emergency proceeding, that may culminate in a foster care placement, termination of parental rights,

22 preadoptive placement, or adoptive placement.

23 (b) The term does not include a placement based on:

24 (i) an act that, if committed by an adult, would be considered a crime; or

25 (ii) an award, in a dissolution proceeding, of custody to one of the child's parents.

26 (4) "Court of competent jurisdiction" means a court that has jurisdiction over the relevant subject

27 matter under federal, state, or tribal law.

28 (5) "Department" means the department of public health and human services provided for in 2-15-

1 2201.

2 (6) "Foster care placement" means an action removing an Indian child from the child's parent or
3 Indian custodian for temporary placement in a foster home or institution or with a relative, guardian,
4 conservator, or suitable other person under which the parent or Indian custodian may not have the child
5 returned on demand but parental rights have not been terminated.

6 (7) "Indian" means a person who is a member of an Indian tribe or who is an Alaska Native and a
7 member of a regional corporation as established in 43 U.S.C. 1606.

8 (8) "Indian child" means an ~~unmarried~~ Indian person who is under 18 years of age and who is:

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

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

12 (9) (a) "Indian child's family" or "extended family member" means an individual defined by the law
13 or custom of the Indian child's tribe as a relative of the Indian child.

14 (b) If the Indian child's tribe does not identify family members by law or custom, the term means an
15 adult who is the Indian child's grandparent, aunt, uncle, brother, sister, brother-in-law, sister-in-law, niece,
16 nephew, cousin, stepparent, or stepgrandparent. A stepparent or stepgrandparent may be considered a family
17 member even following termination of the marriage.

18 (10) "Indian child's tribe" means a tribe or tribes in which an Indian child is a member or is
19 determined eligible for membership as provided in 41-3-1307.

20 (11) "Indian custodian" means an Indian person who under tribal law, tribal custom, or state law has
21 legal or temporary physical custody of an Indian child or to whom the parent has transferred temporary care,
22 physical custody, and control of the Indian child.

23 (12) (a) "Indian tribe" or "tribe" means any Indian tribe, band, nation, or other organized group or
24 community of Indians recognized as eligible for the services provided to Indians by the secretary of the interior
25 because of their status as Indians.

26 (b) The term includes an Alaska Native village as defined in 43 U.S.C. 1602.

27 (13) "Member" or "membership" means a determination by an Indian tribe that an individual is a
28 member of or eligible for membership in that Indian tribe.

1 (14) (a) "Parent" means a biological parent of an Indian child or an individual who has lawfully
2 adopted an Indian child, including adoptions made as tribal customary adoptions.

3 (b) The term does not include an unwed father whose paternity has not been acknowledged or
4 established under Title 40, chapter 6, part 1, or the applicable laws of another state.

5 (15) "Preadoptive placement" means the temporary placement of an Indian child in a foster home or
6 institution after the termination of parental rights but before or in lieu of adoptive placement.

7 (16) "Termination of parental rights" means any action resulting in the termination of the parent-child
8 relationship.

9 (17) "Tribal court" means a court or body vested by an Indian tribe with jurisdiction over child
10 custody proceedings. The term includes but is not limited to a federal court of Indian offenses, a court
11 established and operated under the code or custom of an Indian tribe, and an administrative body of an Indian
12 tribe vested with authority over child custody proceedings. (Terminates June 30, 2025--sec. 55, Ch. 716, L.
13 2023.)"

14
15 **Section 27.** Section 41-5-103, MCA, is amended to read:

16 **"41-5-103. Definitions.** As used in the Montana Youth Court Act, unless the context requires
17 otherwise, the following definitions apply:

18 (1) "Adult" means an individual who is 18 years of age or older.

19 (2) "Agency" means any entity of state or local government authorized by law to be responsible for
20 the care or rehabilitation of youth.

21 (3) "Assessment officer" means a person who is authorized by the court to provide initial intake
22 and evaluation for a youth who appears to be in need of intervention or an alleged delinquent youth.

23 (4) "Commit" means to transfer legal custody of a youth to the department or to the youth court.

24 (5) "Conditional release" means the release of a youth from a correctional facility subject to the
25 terms and conditions of the conditional release agreement provided for in 52-5-126.

26 (6) (a) "Correctional facility" means a public secure residential facility or a private secure
27 residential facility under contract with the department and operated to provide for the custody, treatment,
28 training, and rehabilitation of:

- 1 (i) formally adjudicated delinquent youth;
- 2 (ii) convicted adult offenders or criminally convicted youth; or
- 3 (iii) a combination of the populations described in subsections (6)(a)(i) and (6)(a)(ii) under
- 4 conditions set by the department in rule.
- 5 (b) The term does not include a state prison as defined in 53-30-101.
- 6 (7) "Cost containment pool" means an account from which funds are allocated by the office of
- 7 court administrator under 41-5-132 to a judicial district that exceeds its annual allocation for juvenile out-of-
- 8 home placements, programs, and services or to the department for costs incurred under 41-5-1504.
- 9 (8) "Cost containment review panel" means the panel established in 41-5-131.
- 10 (9) "Court", when used without further qualification, means the youth court of the district court.
- 11 (10) "Criminally convicted youth" means a youth who has been convicted in a district court pursuant
- 12 to 41-5-206.
- 13 (11) (a) "Custodian" means a person, other than a parent or guardian, to whom legal custody of the
- 14 youth has been given.
- 15 (b) The term does not include a person who has only physical custody.
- 16 (12) "Delinquent youth" means a youth who is adjudicated under formal proceedings under the
- 17 Montana Youth Court Act as a youth:
- 18 (a) who has committed an offense that, if committed by an adult, would constitute a criminal
- 19 offense;
- 20 (b) who has been placed on probation as a delinquent youth and who has violated any condition of
- 21 probation; or
- 22 (c) who has violated the terms and conditions of the youth's conditional release agreement.
- 23 (13) "Department" means the department of corrections provided for in 2-15-2301.
- 24 (14) (a) "Department records" means information or data, either in written or electronic form,
- 25 maintained by the department pertaining to youth who are committed under 41-5-1513(1)(b).
- 26 (b) The term does not include information provided by the department to the department of public
- 27 health and human services' management information system or information maintained by the youth court
- 28 through the office of court administrator.

1 (15) "Detention" means the holding or temporary placement of a youth in the youth's home under
2 home arrest or in a facility other than the youth's own home for:

3 (a) the purpose of ensuring the continued custody of the youth at any time after the youth is taken
4 into custody and before final disposition of the youth's case;

5 (b) contempt of court or violation of a valid court order; or

6 (c) violation of the terms and conditions of the youth's conditional release agreement.

7 (16) "Detention facility" means a physically restricting facility designed to prevent a youth from
8 departing at will. The term includes a youth detention facility, short-term detention center, and regional
9 detention facility.

10 (17) "Emergency placement" means placement of a youth in a youth care facility for less than 45
11 days to protect the youth when there is no alternative placement available.

12 (18) "Family" means the parents, guardians, legal custodians, and siblings or other youth with whom
13 a youth ordinarily lives.

14 (19) "Final disposition" means the implementation of a court order for the disposition or placement
15 of a youth as provided in 41-5-1422, 41-5-1503, 41-5-1504, 41-5-1512, 41-5-1513, and 41-5-1522 through 41-
16 5-1524.

17 (20) (a) "Formal youth court records" means information or data, either in written or electronic form,
18 on file with the clerk of district court pertaining to a youth under the jurisdiction of the youth court and includes
19 petitions, motions, other filed pleadings, court findings, verdicts, orders and decrees, and predispositional
20 studies.

21 (b) The term does not include information provided by the youth court to the department of public
22 health and human services' management information system.

23 (21) "Foster home" means a private residence licensed by the department of public health and
24 human services for placement of a youth.

25 (22) "Guardian" means an adult:

26 (a) who is responsible for a youth and has the reciprocal rights, duties, and responsibilities with the
27 youth; and

28 (b) whose status is created and defined by law.

(23) "Habitual truancy" means recorded unexcused absences of 9 or more days or 54 or more parts of a day, whichever is less, in 1 school year.

(24) (a) "Holdover" means a room, office, building, or other place approved by the board of crime control for the temporary detention and supervision of youth in a physically unrestricting setting for a period not to exceed 24 hours while the youth is awaiting a probable cause hearing, release, or transfer to an appropriate detention or shelter care facility.

(b) The term does not include a jail.

(25) (a) "Informal youth court records" means information or data, either in written or electronic form, maintained by youth court probation offices pertaining to a youth under the jurisdiction of the youth court and includes reports of preliminary inquiries, youth assessment materials, medical records, school records, and supervision records of probationers.

(b) The term does not include information provided by the youth court to the department of public health and human services' management information system.

(26) (a) "Jail" means a facility used for the confinement of adults accused or convicted of criminal offenses. The term includes a lockup or other facility used primarily for the temporary confinement of adults after arrest.

(b) The term does not include a colocated juvenile detention facility that complies with 28 CFR, part 31.

(27) "Judge", when used without further qualification, means the judge of the youth court.

(28) "Juvenile home arrest officer" means a court-appointed officer administering or supervising juveniles in a program for home arrest, as provided for in Title 46, chapter 18, part 10.

(29) "Law enforcement records" means information or data, either in written or electronic form, maintained by a law enforcement agency, as defined in 7-32-201, pertaining to a youth covered by this chapter.

(30) (a) "Legal custody" means the legal status created by order of a court of competent jurisdiction that gives a person the right and duty to:

(i) have physical custody of the youth;

(ii) determine with whom the youth shall live and for what period;

(iii) protect, train, and discipline the youth; and

- 1 (iv) provide the youth with food, shelter, education, and ordinary medical care.
- 2 (b) An individual granted legal custody of a youth shall personally exercise the individual's rights
- 3 and duties as guardian unless otherwise authorized by the court entering the order.
- 4 (31) "Necessary parties" includes the youth and the youth's parents, guardian, or custodian, ~~or~~
- 5 spouse.
- 6 (32) (a) "Out-of-home placement" means placement of a youth in a program, facility, or home, other
- 7 than a custodial parent's home, for purposes other than preadjudicatory detention.
- 8 (b) The term does not include shelter care or emergency placement of less than 45 days.
- 9 (33) (a) "Parent" means the natural or adoptive parent.
- 10 (b) The term does not include:
- 11 (i) a person whose parental rights have been judicially terminated; or
- 12 (ii) the putative father of an illegitimate youth unless the putative father's paternity is established by
- 13 an adjudication or by other clear and convincing proof.
- 14 (34) "Probable cause hearing" means the hearing provided for in 41-5-332.
- 15 (35) "Regional detention facility" means a youth detention facility established and maintained by two
- 16 or more counties, as authorized in 41-5-1804.
- 17 (36) "Restitution" means payments in cash to the victim or with services to the victim or the general
- 18 community when these payments are made pursuant to a consent adjustment, consent decree, or other youth
- 19 court order.
- 20 (37) "Running away from home" means that a youth has been reported to have run away from
- 21 home without the consent of a parent or guardian or a custodian having legal custody of the youth.
- 22 (38) "Secure detention facility" means a public or private facility that:
- 23 (a) is used for the temporary placement of youth or individuals accused or convicted of criminal
- 24 offenses or as a sanction for contempt of court, violation of the terms and conditions of the youth's conditional
- 25 release agreement, or violation of a valid court order; and
- 26 (b) is designed to physically restrict the movements and activities of youth or other individuals held
- 27 in lawful custody of the facility.
- 28 (39) "Serious juvenile offender" means a youth who has committed an offense that would be

1 considered a felony offense if committed by an adult and that is an offense against a person, an offense against
2 property, or an offense involving dangerous drugs.

3 (40) "Shelter care" means the temporary substitute care of youth in physically unrestricting facilities.

4 (41) "Shelter care facility" means a facility used for the shelter care of youth. The term is limited to
5 the facilities enumerated in 41-5-347.

6 (42) "Short-term detention center" means a detention facility licensed by the department for the
7 temporary placement or care of youth, for a period not to exceed 10 days excluding weekends and legal
8 holidays, pending a probable cause hearing, release, or transfer of the youth to an appropriate detention facility,
9 youth assessment center, or shelter care facility.

10 (43) "Substitute care" means full-time care of youth in a residential setting for the purpose of
11 providing food, shelter, security and safety, guidance, direction, and, if necessary, treatment to youth who are
12 removed from or are without the care and supervision of their parents or guardians.

13 (44) "Victim" means:

14 (a) a natural person who suffers property, physical, or emotional injury as a result of an offense
15 committed by a youth that would be a criminal offense if committed by an adult;

16 (b) an adult relative of the victim, as defined in subsection (44)(a), if the victim is a minor; and

17 (c) an adult relative of a homicide victim.

18 (45) "Youth" means an individual who is less than 18 years of age without regard to sex, as defined
19 in 1-1-201, or emancipation.

20 (46) "Youth assessment" means a multidisciplinary assessment of a youth as provided in 41-5-
21 1203.

22 (47) "Youth assessment center" means a staff-secured location that is licensed by the department
23 of public health and human services to hold a youth for up to 10 days for the purpose of providing an immediate
24 and comprehensive community-based youth assessment to assist the youth and the youth's family in
25 addressing the youth's behavior.

26 (48) "Youth care facility" has the meaning provided in 52-2-602.

27 (49) "Youth court" means the court established pursuant to this chapter to hear all proceedings in
28 which a youth is alleged to be a delinquent youth, a youth in need of intervention, or a youth alleged to have

1 violated the terms and conditions of the youth's conditional release agreement and includes the youth court
2 judge, juvenile probation officers, and assessment officers.

3 (50) "Youth detention facility" means a secure detention facility licensed by the department for the
4 temporary substitute care of youth that is:

5 (a) (i) operated, administered, and staffed separately and independently of a jail; or

6 (ii) a collocated secure detention facility that complies with 28 CFR, part 31; and

7 (b) used exclusively for the lawful detention of alleged or adjudicated delinquent youth or as a
8 sanction for contempt of court, violation of the terms and conditions of the youth's conditional release
9 agreement, or violation of a valid court order.

10 (51) "Youth in need of intervention" means a youth who is adjudicated as a youth and who:

11 (a) commits an offense prohibited by law that if committed by an adult would not constitute a
12 criminal offense, including but not limited to a youth who:

13 (i) violates any Montana municipal or state law regarding alcoholic beverages; or

14 (ii) continues to exhibit behavior, including running away from home or habitual truancy, beyond
15 the control of the youth's parents, foster parents, physical custodian, or guardian despite the attempt of the
16 youth's parents, foster parents, physical custodian, or guardian to exert all reasonable efforts to mediate,
17 resolve, or control the youth's behavior; or

18 (b) has committed any of the acts of a delinquent youth but whom the youth court, in its discretion,
19 chooses to regard as a youth in need of intervention."

20

21 **Section 28.** Section 41-5-1402, MCA, is amended to read:

22 **"41-5-1402. Petition -- form and content.** (1) A petition initiating proceedings under this chapter
23 must be signed by the county attorney, must be entitled "In the Matter of...., a youth", and must set forth with
24 specificity:

25 (a) the facts necessary to invoke the jurisdiction of the court, together with a statement alleging the
26 youth to be a delinquent youth or a youth in need of intervention;

27 (b) the charge of an offense, that must:

28 (i) state the name of the offense;

- 1 (ii) cite in customary form the statute, rule, or other provisions of law that the youth is alleged to
2 have violated;
- 3 (iii) state the facts constituting the offense in ordinary and concise language and in a manner that
4 enables a person of common understanding to know what is intended; and
- 5 (iv) state the time and place of the offense as definitely as possible;
- 6 (c) the name, birth date, and residence address of the youth;
- 7 (d) the names and residence addresses of the parents, or guardian, ~~or spouse~~ of the youth and, if
8 the parents, or guardian, ~~or spouse~~ do not reside or cannot be found within the state or if there is none, the
9 adult relative residing nearest to the court;
- 10 (e) whether the youth is in detention, a youth assessment center, or shelter care and, if so, the
11 place of detention, assessment, or shelter care and the time that the youth was detained or sheltered;
- 12 (f) if any of the matters required to be set forth by this section are not known, a statement of those
13 matters and the fact that they are not known; and
- 14 (g) a list of witnesses to be used in proving the commission of the offense or offenses charged in
15 the petition, together with their residence addresses. The names and addresses of any witnesses discovered
16 after the filing of the petition must be furnished to the youth upon request.
- 17 (2) When a county attorney files a delinquency petition alleging that a youth committed an offense
18 that would be a felony if committed by an adult and that is transferable under 41-5-206 or in which a youth 12
19 years of age or older allegedly used a firearm, the county attorney shall indicate in the petition whether the
20 county attorney designates the proceeding an extended jurisdiction juvenile prosecution. When the county
21 attorney files a delinquency petition alleging that a youth committed any other offense that would be a felony if
22 committed by an adult, the county attorney may request that the court designate the proceeding an extended
23 jurisdiction juvenile prosecution."

24
25 **Section 29.** Section 42-2-201, MCA, is amended to read:

26 **"42-2-201. Definitions.** As used in this part, unless the context requires otherwise, the following
27 definitions apply:

- 28 (1) "Child" includes an unborn child.

1 (2) (a) "Putative father" means an individual who may be a child's birth father but who:

2 (i) is not married to the child's mother on or before the date that the child is born; or

3 (ii) has not established paternity of the child prior to the filing of a petition for termination of
4 parental rights to the child for purposes of adoption.

5 (b) The term includes an individual who is:

6 (i) ~~less than 18 years of age; and~~

7 (ii) ~~not married to the child's mother even though the individual is a presumed father within the~~
8 ~~meaning of 40-6-105.~~

9 (3) "Registry" means the putative father registry established under 42-2-202."
10

11 **Section 30.** Section 50-20-503, MCA, is amended to read:

12 **"50-20-503. Definitions.** As used in this part, unless the context requires otherwise, the following
13 definitions apply:

14 (1) "Coerce" means to restrain or dominate the choice of a minor by force, threat of force, or
15 deprivation of food and shelter.

16 (2) "Consent" means a notarized written statement obtained on a form and executed in the manner
17 prescribed by 50-20-505 that is signed by a parent or legal guardian of a minor and that declares that the minor
18 intends to seek an abortion and that the parent or legal guardian of the minor consents to the abortion.

19 (3) "Emancipated minor" means a person under 18 years of age ~~who is or has been married or~~
20 ~~who has been granted an order of limited emancipation by a court as provided in 41-1-503.~~

21 (4) "Medical emergency" means a condition that, on the basis of the good faith clinical judgment of
22 a physician or physician assistant, so complicates the medical condition of a pregnant woman as to necessitate
23 the immediate abortion of the woman's pregnancy to avert the woman's death or a condition for which a delay
24 in treatment will create serious risk of substantial and irreversible impairment of a major bodily function.

25 (5) "Minor" means a pregnant female under 18 years of age who is not an emancipated minor.

26 (6) "Physical abuse" means any physical injury intentionally inflicted by a parent or legal guardian
27 on a minor.

28 (7) "Physician" means a person licensed to practice medicine under Title 37, chapter 3.

1 (8) "Physician assistant" means a person licensed pursuant to Title 37, chapter 20, who provides
2 medical services under the supervision of a physician.

3 (9) "Sexual abuse" has the meaning provided in 41-3-102."
4

5 **Section 31.** Section 70-1-404, MCA, is amended to read:

6 **"70-1-404. Conditions restraining marriage void.** Conditions imposing restraints upon marriage,
7 ~~except upon the marriage of a minor,~~ are void, but this does not affect limitations where the intent was not to
8 forbid marriage but only to give the use until marriage."
9

10 **Section 32.** Section 72-5-103, MCA, is amended to read:

11 **"72-5-103. Delegation of powers by parent or guardian.** (1) A parent or a guardian of a minor or
12 incapacitated person, by a properly executed power of attorney, may delegate to another person, for a period
13 not exceeding 6 months, any powers regarding care, custody, or property of the minor child or ward, except the
14 power to consent to ~~marriage or~~ adoption of a minor ward.

15 (2) The 6-month limitation provided in subsection (1) does not apply to:

16 (a) a member of the Montana national guard who serves for more than 180 continuous days on
17 duty pursuant to Title 10 or Title 32 of the United States Code or on state military duty as defined in 10-1-1003;

18 (b) a member of the active duty military forces of the United States; or

19 (c) a member of the federal reserves who serves for more than 180 continuous days on duty
20 pursuant to Title 10 of the United States Code.

21 (3) As used in this section, "federal reserves" means the United States air force reserve, army
22 reserve, navy reserve, marine corps reserve, or coast guard reserve."
23

24 **Section 33.** Section 72-5-104, MCA, is amended to read:

25 **"72-5-104. Informal discharge of duty to pay or deliver property to minor.** (1) A person under a
26 duty to pay or deliver money or personal property to a minor may perform this duty, in amounts not exceeding
27 \$5,000 a year, by paying or delivering the money or property to:

28 (a) the minor, if the minor has attained 18 years of age ~~or is married~~;

1 (b) any person having the care and custody of the minor with whom the minor resides;

2 (c) a guardian of the minor; or

3 (d) a financial institution incident to a deposit in a federally insured savings account in the sole
4 name of the minor and giving notice of the deposit to the minor.

5 (2) This section does not apply if the person making payment or delivery has actual knowledge
6 that a conservator has been appointed or proceedings for appointment of a conservator of the estate of the
7 minor are pending.

8 (3) The persons, other than the minor or any financial institution under subsection (1)(d), receiving
9 money or property for a minor are obligated to apply the money to the support and education of the minor but
10 may not pay themselves except by way of reimbursement for out-of-pocket expenses for goods and services
11 necessary for the minor's support. Any excess sums must be preserved for future support of the minor, and any
12 balance not so used and any property received for the minor must be turned over to the minor when the minor
13 attains majority. Persons who pay or deliver in accordance with provisions of this section are not responsible for
14 the proper application of the money or property."
15

16 **Section 34.** Section 72-5-211, MCA, is amended to read:

17 **"72-5-211. Testamentary appointment of guardian of minor -- when effective -- priorities --**

18 **notice of appointment.** (1) The parent of a minor may appoint by will a guardian of ~~an unmarried~~ a minor.

19 Subject to the right of the minor under 72-5-213, a testamentary appointment becomes effective upon filing the
20 guardian's acceptance in the court in which the will is probated if before acceptance both parents are dead or
21 the surviving parent is adjudged incapacitated. If both parents are dead, an effective appointment by the parent
22 who died later has priority.

23 (2) Upon acceptance of an appointment, written notice of acceptance must be given by the
24 guardian to the minor and to the person having the minor's care or to the minor's nearest adult relations."
25

26 **Section 35.** Section 72-5-222, MCA, is amended to read:

27 **"72-5-222. Court appointment of guardian of minor -- when allowed -- priority of testamentary**

28 **appointment.** (1) The court may appoint a guardian for ~~an unmarried~~ a minor if all parental rights of custody

1 have been terminated or if parental rights have been suspended or limited by circumstances or prior court
2 order.

3 (2) A guardian appointed by will as provided in 72-5-211 and 72-5-212 whose appointment has not
4 been prevented or nullified under 72-5-213 has priority over any guardian who may be appointed by the court,
5 but the court may proceed with an appointment upon a finding that the testamentary guardian has failed to
6 accept the testamentary appointment within 30 days after notice of the guardianship proceeding."

7

8 **Section 36.** Section 72-5-231, MCA, is amended to read:

9 **"72-5-231. Powers and duties of guardian of minor.** Unless otherwise limited by the court, a
10 guardian of a minor has the powers and responsibilities of a parent who has not been deprived of custody of
11 the parent's minor and unemancipated child, except that a guardian is not legally obligated to provide from the
12 guardian's own funds for the ward and is not liable to third persons by reason of the parental relationship for
13 acts of the ward. In particular and without qualifying the foregoing, a guardian has the following powers and
14 duties:

15 (1) The guardian shall take reasonable care of the ward's personal effects and commence
16 protective proceedings if necessary to protect other property of the ward.

17 (2) The guardian may receive money payable for the support of the ward to the ward's parent,
18 guardian, or custodian under the terms of any statutory benefit or insurance system or any private contract,
19 devise, trust, conservatorship, or custodianship. The guardian also may receive money or property of the ward
20 paid or delivered by virtue of 72-5-104. Any sums received must be applied to the ward's current needs for
21 support, care, and education. The guardian shall exercise due care to conserve any excess for the ward's
22 future needs unless a conservator has been appointed for the estate of the ward, in which case the excess
23 must be paid at least annually to the conservator. Sums received by the guardian may not be used for
24 compensation for the guardian's services except as approved by an order of the court or as determined by a
25 duly appointed conservator other than the guardian. A guardian may institute proceedings to compel the
26 performance by any person of a duty to support the ward or to pay sums for the welfare of the ward.

27 (3) The guardian is empowered to facilitate the ward's education, social, or other activities and to
28 authorize medical or other professional care, treatment, or advice. A guardian is not liable by reason of this

1 consent for injury to the ward resulting from the negligence or acts of third persons unless it would have been
2 illegal for a parent to have consented. A guardian may consent to the ~~marriage or~~ adoption of the ward.

3 (4) A guardian shall report the condition of the ward and of the ward's estate that has been subject
4 to the guardian's possession or control, as ordered by the court on petition of any person interested in the
5 minor's welfare or as required by court rule.

6 (5) Upon the death of a guardian's ward, the guardian, upon an order of the court and if there is no
7 personal representative authorized to do so, may make necessary arrangements for the removal,
8 transportation, and final disposition, including burial, entombment, or cremation, of the ward's physical remains
9 and for the receipt and disposition of the ward's clothing, furniture, and other personal effects that may be in the
10 possession of the person in charge of the ward's care, comfort, and maintenance at the time of the ward's
11 death."
12

13 **Section 37.** Section 72-5-233, MCA, is amended to read:

14 **"72-5-233. Termination of appointment -- how effected -- certain liabilities and obligations not**
15 **affected.** (1) A guardian's authority and responsibility terminates upon the death, resignation, or removal of the
16 guardian or upon the minor's death, except as provided in subsection (2), adoption, ~~marriage,~~ or attainment of
17 majority, but termination does not affect a guardian's liability for prior acts or a guardian's obligation to account
18 for funds and assets of the guardian's ward. Resignation of a guardian does not terminate the guardianship until
19 it has been approved by the court. A testamentary appointment under an informally probated will terminates if
20 the will is later denied probate in a formal proceeding.

21 (2) The guardian's authority and responsibility for a minor who dies while the minor is a ward of the
22 guardian terminates when the guardian has completed arrangements for the final disposition of the ward's
23 physical remains and personal effects as provided in 72-5-231(5)."
24

25 **Section 38.** Section 72-5-427, MCA, is amended to read:

26 **"72-5-427. Powers of conservator in administration.** (1) A conservator has all of the powers
27 conferred in this section and any additional powers conferred by law on trustees in this state. In addition, a
28 conservator of the estate of ~~an unmarried~~ a minor under 18 years of age, as to whom no one has parental

1 rights, has the duties and powers of a guardian of a minor described in 72-5-231 until the minor attains 18 years
2 of age ~~or marries~~, but the parental rights so conferred on a conservator do not preclude appointment of a
3 guardian as provided by Title 72, chapter 5, part 2.

4 (2) A conservator has power, without court authorization or confirmation, to invest and reinvest
5 funds of the estate as would a trustee.

6 (3) A conservator, acting reasonably in efforts to accomplish the purpose for which the conservator
7 was appointed, may act without court authorization or confirmation to:

8 (a) collect, hold, and retain assets of the estate, including land in another state, until in the
9 conservator's judgment disposition of the assets should be made, and the assets may be retained even though
10 they include an asset in which the conservator is personally interested;

11 (b) receive additions to the estate;

12 (c) continue or participate in the operation of any business or other enterprise;

13 (d) acquire an undivided interest in an estate asset in which the conservator in any fiduciary
14 capacity holds an undivided interest;

15 (e) invest and reinvest estate assets in accordance with subsection (2);

16 (f) deposit estate funds in a bank, including a bank operated by the conservator;

17 (g) acquire or dispose of an estate asset, including land in another state, for cash or on credit at
18 public or private sale and manage, develop, improve, exchange, partition, change the character of, or abandon
19 an estate asset;

20 (h) make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish
21 any improvements, raze existing or erect new party walls or buildings;

22 (i) subdivide, develop, or dedicate land to public use; make or obtain the vacation of plats and
23 adjust boundaries, adjust differences in valuation on exchange or partition by giving or receiving considerations,
24 and dedicate easements to public use without consideration;

25 (j) enter for any purpose into a lease as lessor or lessee, with or without option to purchase or
26 renew, for a term within or extending beyond the term of the conservatorship;

27 (k) enter into a lease or arrangement for exploration and removal of minerals or other natural
28 resources or enter into a pooling or unitization agreement;

1 (l) grant an option involving disposition of an estate asset or take an option for the acquisition of
2 any asset;

3 (m) vote a security in person or by general or limited proxy;

4 (n) pay calls, assessments, and any other sums chargeable or accruing against or on account of
5 securities;

6 (o) sell or exercise stock subscription or conversion rights or consent, directly or through a
7 committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a
8 corporation or other business enterprise;

9 (p) hold a security in the name of a nominee or in other form without disclosure of the
10 conservatorship so that title to the security may pass by delivery, but the conservator is liable for any act of the
11 nominee in connection with the stock so held;

12 (q) insure the assets of the estate against damage or loss and the conservator against liability with
13 respect to third persons;

14 (r) borrow money to be repaid from estate assets or otherwise or advance money for the
15 protection of the estate or the protected person and for all expenses, losses, and liability sustained in the
16 administration of the estate or because of the holding or ownership of any estate assets, and the conservator
17 has a lien on the estate as against the protected person for advances made;

18 (s) pay or contest any claim or settle a claim by or against the estate or the protected person by
19 compromise, arbitration, or otherwise and release, in whole or in part, any claim belonging to the estate to the
20 extent that the claim is uncollectible;

21 (t) pay taxes, assessments, compensation of the conservator, and other expenses incurred in the
22 collection, care, administration, and protection of the estate;

23 (u) allocate items of income or expense to either estate income or principal, as provided by law,
24 including creation of reserves out of income for depreciation, obsolescence, or amortization or for depletion in
25 mineral or timber properties;

26 (v) pay any sum distributable to a protected person or a dependent of the person who is a minor or
27 incompetent, without liability to the conservator, by paying the sum to the distributee or by paying the sum for
28 the use of the distributee either to the person's guardian or, if none, to a relative or other person with custody of

- 1 the person;
- 2 (w) employ persons, including attorneys, auditors, investment advisors, or agents, even though
- 3 they are associated with the conservator, to advise or assist the conservator in the performance of
- 4 administrative duties, act upon their recommendation without independent investigation, and instead of acting
- 5 personally, employ one or more agents to perform any act of administration, whether or not discretionary;
- 6 (x) prosecute or defend actions, claims, or proceedings in any jurisdiction for the protection of
- 7 estate assets and of the conservator in the performance of the conservator's duties; and
- 8 (y) execute and deliver all instruments that will accomplish or facilitate the exercise of the powers
- 9 vested in the conservator."

10

11 **Section 39.** Section 87-2-102, MCA, is amended to read:

12 **"87-2-102. Resident defined.** In determining whether a person is a resident for the purpose of issuing

13 resident hunting, fishing, and trapping licenses, the following provisions apply:

14 (1) (a) A member of the regular armed forces of the United States, a member's spouse or

15 dependent, as defined in subsection (1)(c), who resides in the member's household, or a member of the armed

16 forces of a foreign government attached to the regular armed forces of the United States is considered a

17 resident for the purposes of this chapter if:

18 (i) the member was a resident of Montana under the provisions of subsection (4) and continues to

19 meet the residency criteria of subsections (4)(b) through (4)(e); or

20 (ii) the member is currently stationed in and assigned to active duty in Montana, has resided in

21 Montana for at least 30 days, and presents official assignment orders and proof of completion of a hunter safety

22 and education course approved by the department, as provided in 87-2-105, a certificate verifying the

23 successful completion of a hunter safety course in any state or province, or, if applicable, proof of completion of

24 a trapper education course pursuant to 87-2-127. The 30-day residence requirement is waived in time of war.

25 Reassignment to another state, United States territory, or country terminates Montana residency for purposes

26 of this section, except that a reassigned member continues to qualify as a resident if the member's spouse and

27 dependents continue to physically reside in Montana and the member continues to meet the residency criteria

28 of subsections (4)(b) through (4)(e). The designation of Montana by a member of the regular armed forces as a

1 "home of record" or "home of residence" in that member's armed forces records does not determine the
2 member's residency for purposes of this section.

3 (b) A member of the regular armed forces of the United States who is otherwise considered a
4 Montana resident pursuant to subsection (1)(a)(i) does not forfeit that status as a resident because the
5 member, by virtue of that membership, also possesses, has applied for, or has received resident hunting,
6 fishing, or trapping privileges in another state or country.

7 (c) The term "dependent" means any of the following individuals over half of whose support was
8 received from the member:

- 9 (i) a son or daughter of the taxpayer or a descendant of either;
- 10 (ii) a stepson or stepdaughter of the taxpayer;
- 11 (iii) a brother, sister, stepbrother, or stepsister of the taxpayer;
- 12 (iv) the father or mother of the taxpayer or an ancestor of either;
- 13 (v) a stepfather or stepmother of the taxpayer;
- 14 (vi) a son or daughter of a brother or sister of the taxpayer;
- 15 (vii) a brother or sister of the father or mother of the taxpayer;
- 16 (viii) a son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the
17 taxpayer;
- 18 (ix) an individual who, for the tax year of the taxpayer, has as the individual's principal place of
19 abode the home of the taxpayer and is a member of the taxpayer's household; or
- 20 (x) an individual who:
- 21 (A) is a descendant of a brother or sister of the father or mother of the taxpayer;
- 22 (B) for the tax year of the taxpayer, received institutional care required by reason of a physical or
23 mental disability; and
- 24 (C) before receiving the institutional care, was a member of the same household as the taxpayer.
- 25 (d) For purposes of this section:
- 26 (i) the terms "brother" and "sister" include a brother or sister by the half blood; and
- 27 (ii) in determining whether any of the relationships specified in this section exist, a legally adopted
28 child of an individual must be treated as a child of the individual by blood.

(2) A person who has physically resided in Montana as the person's principal or primary home or place of abode for 180 consecutive days and who meets the criteria of subsection (4) immediately before making application for any license is eligible to receive resident hunting, fishing, and trapping licenses. As used in this section, a vacant lot or a premises used solely for business purposes is not considered a principal or primary home or place of abode.

(3) A person who obtains residency under subsection (2) may continue to be a resident for purposes of this section by physically residing in Montana as the person's principal or primary home or place of abode for not less than 120 days a year and by meeting the criteria of subsection (4) prior to making application for any resident hunting, fishing, or trapping license.

(4) In addition to the requirements of subsection (2) or (3), a person shall meet the following criteria to be considered a resident for purposes of this section:

(a) the person's principal or primary home or place of abode is in Montana;

(b) the person files Montana state income tax returns as a resident if required to file;

(c) the person licenses and titles in Montana as required by law any vehicles that the person owns and operates in Montana;

(d) except as provided in subsection (1)(b), the person does not possess or apply for any resident hunting, fishing, or trapping licenses from another state or country or exercise resident hunting, fishing, or trapping privileges in another state or country; and

(e) if the person registers to vote, the person registers only in Montana.

(5) A student who is enrolled full-time in a postsecondary educational institution out of state and who would qualify for Montana resident tuition or who otherwise meets the residence requirements of subsection (2) or (3) is considered a resident for purposes of this section.

(6) An enrollee of a job corps camp located within the state of Montana is, after a period of 30 days within Montana, considered a resident for the purpose of making application for a fishing license as long as the person remains an enrollee in a Montana camp.

(7) A person who does not reside in Montana but who meets all of the following requirements is a resident for purposes of obtaining hunting and fishing licenses:

(a) The person's principal employment is within this state and the income from this employment is

1 the principal source of the applicant's family income.

2 (b) The person is required to pay and has paid Montana income tax in a timely manner and proper
3 amount.

4 (c) The person has been employed within this state on a full-time basis for at least 12 consecutive
5 months immediately preceding each application.

6 (d) The person's state of residency has laws substantially similar to this subsection (7).

7 (8) ~~An unmarried~~ A minor is considered a resident for the purposes of this section if the minor's
8 parents, legal guardian, or parent with joint custody, sole custody, or visitation rights is a resident for purposes
9 of this section. The minor is considered a resident for purposes of this section regardless of whether the minor
10 resides primarily in the state or otherwise qualifies as a resident. The resident parent or guardian of the minor
11 may be required to show proof of the parental, guardianship, or custodial relationship to the minor.

12 (9) A person is not considered a resident for the purposes of this section if the person:

13 (a) claims residence in any other state or country for any purpose; or

14 (b) is an absentee property owner paying property tax on property in Montana.

15 (10) A license agent is not considered a representative of the state for the purpose of determining a
16 license applicant's residence status."

17
18 **NEW SECTION. Section 40. Repealer.** The following sections of the Montana Code Annotated are
19 repealed:

20 40-1-213. Judicial approval.

21 40-2-315. Marriage settlement by minors.

22

23 **NEW SECTION. Section 41. Saving clause.** [This act] does not affect rights and duties that
24 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

25

26 **NEW SECTION. Section 42. Applicability.** [This act] applies to marriages entered into on or after
27 [the effective date of this act].

28 - END -