

1 _____ BILL NO. _____

2 INTRODUCED BY _____
3 (Primary Sponsor)

4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO GUARDIAN AD
5 LITEM AND COURT-APPOINTED SPECIAL ADVOCATES; ELIMINATING CERTAIN REFERENCES TO
6 GUARDIAN AD LITEM; CLARIFYING THAT FUNDS IN THE COURT-APPOINTED SPECIAL ADVOCATE
7 ACCOUNT MAY NOT BE USED TO PROVIDE FUNDING FOR ATTORNEYS APPOINTED TO SERVE AS
8 PAID SPECIAL ADVOCATES; DEFINING "SPECIAL ADVOCATE"; AND AMENDING SECTIONS 3-1-707, 41-
9 3-102, 41-3-108, 41-3-112, 41-3-115, 41-3-201, 41-3-205, 41-3-425, 41-3-607, 41-3-1010, AND 41-3-1012,
10 MCA."

11

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

13

14 **Section 1.** Section 3-1-707, MCA, is amended to read:

15 **"3-1-707. Court-appointed special advocate account.** (1) There is a court-appointed special
16 advocate account in the state special revenue fund. There must be paid into this account the fees collected
17 pursuant to 3-1-318.

18 (2) _____ The money in the account must be used solely for the purpose of providing funding for court-
19 appointed special advocates as defined in 41-3-102. The money in this account may not be used for the
20 purpose of providing funding for attorneys who are appointed to serve as paid special advocates pursuant to
21 41-3-112.

22 (2) (3) The supreme court administrator shall establish procedures for the distribution and
23 accountability of money in the account. The supreme court administrator may designate nonprofit organizations
24 that ordinarily provide special advocate services to receive or administer the distribution of the fund."

25

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

27 **" 41-3-102. (Temporary) Definitions.** As used in this chapter, the following definitions apply:

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

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

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

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

8 (iv) ~~the voluntary surrender, as defined in 40-6-402, by a parent of a newborn who is no more than~~
9 ~~30 days old to an emergency services provider, as defined in 40-6-402.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) — abandonment.

(b) — (i) The term includes:

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

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

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

(ii) — For the purposes of this subsection (7), "dangerous drugs" means the compounds and 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 or the Montana Indian Child Welfare Act provided for in Title 41, chapter 3, part 13, are 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" has the meaning provided in 41-3-1303.

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

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

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

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

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

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

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

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

(22) — "Physical neglect" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 part 13, means:

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

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

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

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

11 (a) ~~— has expertise in the therapeutic needs assessment used for placement of youth in a~~
12 ~~therapeutic group home;~~

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

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

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

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

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

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

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

24 (c) ~~— any particular vulnerabilities of the child;~~

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

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

27 (31) (a) ~~"Sexual abuse" means the commission of sexual assault, sexual intercourse without~~
28 ~~consent, aggravated sexual intercourse without consent, indecent exposure, sexual abuse, ritual abuse of a~~

1 minor, or incest, as described in Title 45, chapter 5.

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

5 (32) ~~"Sexual exploitation" means:~~

6 (a) ~~allowing, permitting, or encouraging a child to engage in a prostitution offense, as described in~~
7 ~~45-5-601;~~

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

9 (c) ~~allowing, permitting, or encouraging sex trafficking as described in 45-5-702, 45-5-705, 45-5-~~
10 ~~706, or 45-5-711.~~

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

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

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

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

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

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

28 (b) ~~The term does not include the failure to provide treatment, other than appropriate nutrition,~~

1 hydration, or medication, to an infant when, in the treating physician's or physicians' reasonable medical
2 judgment:

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

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

18 **41-3-102. (Effective July 1, 2025) Definitions.** As used in this chapter, the following definitions
19 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 is applicable,
10 this term has the same meaning as "serious emotional or physical damage to the child" as used in 25 U.S.C.
11 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" means any unmarried person who is under 18 years of age and who is either:

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

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

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

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

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

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

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

13 (a) the state of Montana; or

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

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

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

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

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

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

1 function, or death.

2 (22) "Physical neglect" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (c) any particular vulnerabilities of the child;

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

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

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

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

(32) "Sexual exploitation" means:

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

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

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

(33) "Special advocate" means a trained volunteer who is appointed as an officer of the court to advocate for the best interest of a child or sibling group in the child welfare system pursuant to 41-3-112.

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

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

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

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

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

1 ~~(35)~~ (36) (a) "Withholding of medically indicated treatment" means the failure to respond to an
2 infant's life-threatening conditions by providing treatment, including appropriate nutrition, hydration, and
3 medication, that, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be
4 effective in ameliorating or correcting the conditions.

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

8 (i) the infant is chronically and irreversibly comatose;
9 (ii) the provision of treatment would:
10 (A) merely prolong dying;
11 (B) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or
12 (C) otherwise be futile in terms of the survival of the infant; or
13 (iii) the provision of treatment would be virtually futile in terms of the survival of the infant and the
14 treatment itself under the circumstances would be inhumane. For purposes of this subsection ~~(35)~~ (36), "infant"
15 means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously
16 hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The reference
17 to less than 1 year of age may not be construed to imply that treatment should be changed or discontinued
18 when an infant reaches 1 year of age or to affect or limit any existing protections available under state laws
19 regarding medical neglect of children 1 year of age or older.

20 ~~(36)~~ (37) "Youth in need of care" means a youth who has been adjudicated or determined, after
21 a hearing, to be or to have been abused, neglected, or abandoned."

22
23 **Section 3.** Section 41-3-108, MCA, is amended to read:

24 **"41-3-108. Child protective teams.** The county attorney, county commissioners, ~~guardian ad litem~~
25 ~~court-appointed special advocate, child's attorney,~~ or department may convene one or more temporary or
26 permanent interdisciplinary child protective teams. These teams may assist in assessing the needs of,
27 formulating and monitoring a treatment plan for, and coordinating services to the child and the child's family.
28 The supervisor of child protective services in a local service area or the supervisor's designee shall serve as the

1 team's coordinator. Members must include:

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

9

10 **Section 4.** Section 41-3-112, MCA, is amended to read:

11 **"41-3-112. Appointment of court-appointed special advocate --guardian ad litem.** (1) In every
 12 judicial proceeding, the court shall appoint a court-appointed special advocate as the guardian ad litem for any
 13 child alleged to be abused or neglected. If a court-appointed special advocate is not available for appointment,
 14 the court may appoint an attorney or other qualified person to serve as the guardian ad litem. The department
 15 or any member of its staff who has a direct conflict of interest may not be appointed as the guardian ad litem
 16 special advocate in a judicial proceeding under this title. ~~When necessary, the guardian ad litem may serve at~~
 17 ~~public expense.~~

18 (2) If a special advocate is not available for appointment, a judge may appoint an attorney to serve
 19 as special advocate and perform the duties enumerated in subsection (3). When necessary, the special
 20 advocate may serve at the public expense. Funds from the account established in 3-1-707 may not be used for
 21 the purpose of appointing a paid special advocate.

22 (2) (3) ~~The guardian ad litem special advocate~~ must have received appropriate training that is
 23 specifically related to serving as a child's court-appointed representative.

24 (3) (4) ~~The guardian ad litem special advocate~~ is charged with the representation of the child's best
 25 interests and shall perform the following general duties:

- 26 (a) to conduct investigations to ascertain the facts constituting the alleged abuse or neglect;
- 27 (b) to interview or observe the child who is the subject of the proceeding;
- 28 (c) to have access to court, medical, psychological, law enforcement, social services, and school

- 1 records pertaining to the child and the child's siblings and parents or custodians;
- 2 (d) to make written reports to the court concerning the child's welfare;
- 3 (e) to appear and participate in all proceedings to the degree necessary to adequately represent
- 4 the child and make recommendations to the court concerning the child's welfare; and
- 5 (f) to perform other duties as directed by the court; ~~and.~~
- 6 (g) ~~if an attorney, to file motions, including but not limited to filing to expedite proceedings or~~
- 7 ~~otherwise assert the child's rights.~~

8 (4) (5) Information contained in a report filed by the ~~guardian ad litem~~ special advocate or testimony

9 regarding a report filed by the ~~guardian ad litem~~ special advocate is not hearsay when it is used to form the

10 basis of the ~~guardian ad litem's~~ special advocate's opinion as to the best interests of the child.

11 (5) (6) Any party may petition the court for the removal and replacement of the ~~guardian ad litem~~

12 special advocate if the ~~guardian ad litem~~ special advocate fails to perform the duties of the appointment."

13

14 **Section 5.** Section 41-3-115, MCA, is amended to read:

15 **"41-3-115. Foster care review committee -- foster care reviews -- permanency hearings. (1)**

16 Except as provided in Title 41, chapter 3, part 10, in every judicial district the district court judge, in consultation

17 with the department, shall appoint a foster care review committee. The foster care review committee shall

18 conduct foster care reviews as provided in this section and may, at the discretion of the court and absent an

19 objection by a party to the proceeding, conduct permanency hearings as provided in 41-3-445.

20 (2) (a) The members of the committee must be willing to act without compensation. The committee

21 must be composed of not less than three or more than seven members. To the extent practicable, the members

22 of the committee must be representatives of the various socioeconomic, racial, and ethnic groups of the area

23 served.

24 (b) The members must include:

25 (i) one representative of the department who may not be responsible for the placement of the

26 child or have any other direct conflict of interest;

27 (ii) a person who is knowledgeable in the needs of children in foster care placements and who is

28 not employed by the department or the youth court; and

1 (iii) if the child whose care is under review is an Indian child, a person, preferably an Indian person,
2 who is knowledgeable about Indian cultural and family matters and who is appointed effective only for and
3 during that review.

4 (c) Members may also include but are not limited to:

5 (i) a representative of the youth court;

6 (ii) a representative of a local school district;

7 (iii) a public health nurse;

8 (iv) an at-large community member with knowledge of child protective services.

9 (3) (a) When a child is in foster care under the supervision of the department or if payment for care
10 is made pursuant to 52-2-611, the committee shall conduct a review of the foster care status of the child. The
11 review must be conducted within the time limit established under the Adoption and Safe Families Act of 1997,
12 42 U.S.C. 675(5).

13 (b) The committee shall hear the case of each child in foster care to review issues that are
14 germane to the goals of permanency and to accessing appropriate services for parents and children. In
15 evaluating the accessibility, availability, and appropriateness of services, the committee shall consider:

16 (i) the safety, history, and specific needs of the child;

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

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

20 (iv) the results of intervention.

21 (c) If the department has placed a child in foster care in another state, the committee shall
22 consider whether the placement is appropriate and in the best interests of the child. In the case of a child who
23 will not be returned to the parent, the committee shall consider both in-state and out-of-state placement options.

24 (d) The committee may hear the case of a child who remains in or returns to the child's home and
25 for whom the department retains legal custody.

26 (4) (a) Prior to the beginning of the review, reasonable notice of each review must be sent to the
27 following:

28 (i) the parents of the child or their attorneys;

1 (ii) if applicable, the foster parents, a relative caring for the child, the preadoptive parents, or the
2 surrogate parents;

3 (iii) the child who is the subject of the review if the child is 12 years of age or older;

4 (iv) the child's attorney, if any;

5 ~~(v) the guardian ad litem;~~

6 ~~(vi)~~ (v) the court-appointed attorney or special advocate of the child; and

7 ~~(vii)~~ (vi) the child's Indian tribe if the child is an Indian.

8 (b) When applicable, notice of each review may be sent to other interested persons who are
9 authorized by the committee to receive notice.

10 (c) All persons receiving notice are subject to the confidentiality provisions of 41-3-205.

11 (d) If a foster care review is held in conjunction with a permanency hearing, notice of both
12 proceedings must be provided.

13 (e) If a foster care review is held in conjunction with a permanency hearing, notice must be
14 provided to the attorney who initiated the child abuse or neglect proceedings.

15 (5) The committee may elect to hold joint or separate reviews for groups of siblings, but findings
16 and recommendations made by the committee must be specific to each child.

17 (6) After reviewing each case, the committee shall prepare written findings and recommendations
18 with respect to:

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

20 (b) compliance with the case plan;

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

22 (d) a likely date by which the child may be returned home or by which a permanent placement may
23 be finalized.

24 (7) Following the permanency hearing, the committee shall send copies of its minutes and written
25 findings and recommendations to the court and to the parties. If a party objects to the findings and
26 recommendations, the party may within 10 days serve written objections upon the other party and file them with
27 the court. A request for a hearing before the court upon the objections may be made by a party by motion. The
28 court, after hearing the objections or upon its own motion and without objection, may adopt the findings and

1 recommendations and shall issue an appropriate order.

2 (8) Because of the individual privacy involved, meetings of the committee, reports of the
3 committee, and information on individuals' cases shared by committee members are confidential and subject to
4 the confidentiality requirements of the department.

5 (9) The committee is subject to the call of the district court judge to meet and confer with the judge
6 on all matters pertaining to the foster care of a child before the district court."

7

8 **Section 6.** Section 41-3-201, MCA, is amended to read:

9 **"41-3-201. Reports.** (1) When the professionals and officials listed in subsection (2) know or have
10 reasonable cause to suspect, as a result of information they receive in their professional or official capacity, that
11 a child is abused or neglected by anyone regardless of whether the person suspected of causing the abuse or
12 neglect is a parent or other person responsible for the child's welfare, they shall report the matter promptly to
13 the department. The department shall follow the provisions of 41-3-212 in taking the report.

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

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

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

19 (c) religious healers;

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

21 (e) a social worker licensed pursuant to Title 37, child protection specialist, operator or employee
22 of any registered or licensed day-care or substitute care facility, staff of a resource and referral grant program
23 organized under 52-2-711 or of a child and adult food care program, or an operator or employee of a child-care
24 facility;

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

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

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

28 (i) ~~a guardian ad litem~~ or a court-appointed special advocate who is authorized to investigate a

1 report of alleged abuse or neglect;

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

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

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

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

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

13 (i) may share information with:

14 (A) that professional or official; or

15 (B) other individuals with whom the professional or official works in an official capacity if the
16 individuals are part of a team that responds to matters involving the child or the person about whom the report
17 was made and the professional or official has asked that the information be shared with the individuals; and
18 (ii) shall share information with the individuals listed in subsections (5)(a)(i)(A) and (5)(a)(i)(B) on
19 specific request. Information shared pursuant to this subsection (5)(a)(ii) may be limited to the outcome of the
20 investigation and any subsequent action that will be taken on behalf of the child who is the subject of the report.

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

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

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

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

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

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

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

7 (c) A member of the clergy or a priest is not required to make a report under this section if the
8 communication is required to be confidential by canon law, church doctrine, or established church practice.

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

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

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

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

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

19
20 **Section 7.** Section 41-3-205, MCA, is amended to read:

21 **"41-3-205. Confidentiality -- disclosure exceptions.** (1) The case records of the department and its
22 local affiliate, the local office of public assistance, the county attorney, and the court concerning actions taken
23 under this chapter and all records concerning reports of child abuse and neglect must be kept confidential
24 except as provided by this section. Except as provided in subsections (9) and (10), a person who purposely or
25 knowingly permits or encourages the unauthorized dissemination of the contents of case records is guilty of a
26 misdemeanor.

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

1 before it.

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

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

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

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

15 (d) a parent, grandparent, aunt, uncle, brother, sister, guardian, mandatory reporter provided for in
16 41-3-201(2) and (5), or person designated by a parent or guardian of the child who is the subject of a report in
17 the records or other person responsible for the child's welfare, without disclosure of the identity of any person
18 who reported or provided information on the alleged child abuse or neglect incident contained in the records;

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

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

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

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

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

- 1 (j) a person, agency, or organization that is engaged in a bona fide research or evaluation project
2 and that is authorized by the department to conduct the research or evaluation;
- 3 (k) the members of an interdisciplinary child protective team authorized under 41-3-108 or of a
4 family engagement meeting for the purposes of assessing the needs of the child and family, formulating a
5 treatment plan, and monitoring the plan;
- 6 (l) the coroner or medical examiner when determining the cause of death of a child;
- 7 (m) a child fatality review team recognized by the department;
- 8 (n) a department or agency investigating an applicant for a license or registration that is required to
9 operate a youth care facility, day-care facility, or child-placing agency;
- 10 (o) a person or entity who is carrying out background, employment-related, or volunteer-related
11 screening of current or prospective employees or volunteers who have or may have unsupervised contact with
12 children through employment or volunteer activities. A request for information under this subsection (3)(o) must
13 be made in writing. Disclosure under this subsection (3)(o) is limited to information that indicates a risk to
14 children posed by the person about whom the information is sought, as determined by the department.
- 15 (p) the news media, if disclosure is limited to confirmation of factual information regarding how the
16 case was handled and if disclosure does not violate the privacy rights of the child or the child's parent or
17 guardian, as determined by the department;
- 18 (q) an employee of the department or other state agency if disclosure of the records is necessary
19 for administration of programs designed to benefit the child;
- 20 (r) an agency of an Indian tribe, a qualified expert witness, or the relatives of an Indian child if
21 disclosure of the records is necessary to meet requirements of the federal Indian Child Welfare Act [or the
22 Montana Indian Child Welfare Act provided for in Title 41, chapter 3, part 13];
- 23 (s) a juvenile probation officer who is working in an official capacity with the child who is the
24 subject of a report in the records;
- 25 (t) an attorney who is hired by or represents the department if disclosure is necessary for the
26 investigation, defense, or prosecution of a case involving child abuse or neglect;
- 27 (u) a foster care review committee established under 41-3-115 or, when applicable, a citizen
28 review board established under Title 41, chapter 3, part 10;

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

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

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

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

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

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

11 (i) the member receives a written inquiry regarding a child and whether the laws of the United
12 States or the state of Montana that protect children from abuse or neglect are being complied with or whether
13 the laws need to be changed to enhance protections for children;

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

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

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

21 (B) receives from the department an orientation of the content and structure of the records. The
22 orientation must include a checklist of documents that are regularly included in records, including but not limited
23 to the following:

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

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

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

28 (IV) notes included in electronic case records or in case files maintained in local offices regarding

1 staffing and interactions with parents or legal guardians, providers, or attorneys.

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

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

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

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

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

15 (i) the attorney general;

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

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

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

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

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

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

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

28 or

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

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

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

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

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

13 (d) (i) Except as provided in subsection (5)(d)(ii), the records described in subsection (3) must be
14 released within 5 business days to the county attorney of the county in which the acts that are the subject of a
15 report occurred upon the department's receipt of a report that includes an allegation of sexual abuse or sexual
16 exploitation. The department shall also report to any other appropriate individual described in subsection (5)(a)
17 and to a county or regional interdisciplinary child information and school safety team established pursuant to
18 52-2-211.

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

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

27 (6) A school or school district may disclose, without consent, personally identifiable information
28 from the education records of a pupil to the department, the court, a review board, and the child's assigned

1 attorney, ~~guardian ad litem~~, or special advocate.

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

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

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

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

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

18 (12) Copies of records, evaluations, reports, or other evidence obtained or generated pursuant to
19 this section that are provided to the parent, grandparent, aunt, uncle, brother, sister, guardian, or parent's or
20 guardian's attorney must be provided without cost. (Bracketed language in subsection (3)(r) terminates June
21 30, 2025--sec. 55, Ch. 716, L. 2023.)"

22

23 **Section 8.** Section 41-3-425, MCA, is amended to read:

24 **"41-3-425. Right to counsel.** (1) Any party involved in a petition filed pursuant to 41-3-422 has the
25 right to counsel in all proceedings held pursuant to the petition.

26 (2) Except as provided in subsections (3) and (4), the court shall immediately appoint the office of
27 state public defender to assign counsel for:

28 (a) any indigent parent, guardian, or other person having legal custody of a child or youth in a

1 removal, placement, or termination proceeding pursuant to 41-3-422, pending a determination of eligibility
2 pursuant to 47-1-111;

3 (b) any child or youth involved in a proceeding under a petition filed pursuant to 41-3-422;

4 (c) any party entitled to counsel at public expense under the federal Indian Child Welfare Act [or
5 the Montana Indian Child Welfare Act provided for in Title 41, chapter 3, part 13]; and

6 (d) any child petitioning for reinstatement of parental rights pursuant to 41-3-615.

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

10 (4) Except as provided in the federal Indian Child Welfare Act [or the Montana Indian Child Welfare
11 Act], a court may not appoint a public defender to a putative father, as defined in 42-2-201, of a child or youth in
12 a removal, placement, or termination proceeding pursuant to 41-3-422 until:

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

14 (b) the putative father makes a request to the court in writing to appoint the office of state public
15 defender to assign counsel. (Bracketed language in subsections (2)(c) and (4) terminates June 30, 2025--sec.
16 55, Ch. 716, L. 2023.)"

17

18 **Section 9.** Section 41-3-607, MCA, is amended to read:

19 **"41-3-607. Petition for termination -- separate hearing -- no jury trial.** (1) Except as provided in
20 Title 40, chapter 6, part 10, the termination of a parent-child legal relationship may be considered only after the
21 filing of a petition pursuant to 41-3-422 alleging the factual grounds for termination pursuant to 41-3-609.

22 (2) If termination of a parent-child legal relationship is ordered, the court may:

23 (a) transfer permanent legal custody of the child, with the right to consent to the child's adoption,
24 to:

25 (i) the department;

26 (ii) a licensed child-placing agency; or

27 (iii) another individual who has been approved by the department and has received consent for the
28 transfer of custody from the department or agency that has custody of the child; or

(b) transfer permanent legal custody of the child to the department with the right to petition for appointment of a guardian pursuant to 41-3-444.

(3) If the court does not order termination of the parent-child legal relationship, the child's prior legal status remains in effect until further order of the court.

(4) A special advocate guardian ad litem must be appointed to represent the child's best interests in any hearing determining the involuntary termination of the parent-child legal relationship. The special advocate guardian ad litem shall continue to represent the child until the child is returned home or placed in an appropriate permanent placement. If a respondent parent is a minor, ~~a guardian ad litem~~ special advocate must be appointed to serve the minor parent in addition to any appointed or assigned counsel requested by the minor parent.

(5) There is no right to a jury trial at proceedings held to consider the termination of a parent-child legal relationship."

Section 10. Section 41-3-1010, MCA, is amended to read:

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

- (i) the safety of the child;
- (ii) whether an involved agency has selected services specifically relevant to the problems and needs of the child and family;
- (iii) whether caseworkers have diligently provided services;
- (iv) whether appropriate services have been available to the child and family on a timely basis; and
- (v) the results of intervention.

(b) The board may review the case of a child who remains in or returns to the child's home and for whom the department retains legal custody.

(2) The review must be conducted within the time limit established under the Adoption and Safe Families Act of 1997, 42 U.S.C. 675(5).

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

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

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

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

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

(c) compliance with the case plan;

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

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

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

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

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

(a) The declaration of the member must be recorded in the official records of the board.

(b) If, in the judgment of the majority of the board, the potential conflict of interest may prevent the

1 member from fairly and objectively reviewing the case, the board may remove the member from participation in
2 the review.

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

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

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

14 (10) A person who serves on a board in a volunteer capacity, as provided in this part, is considered
15 an agent of the judiciary and is entitled to immunity from suit as provided in 2-9-112.

16 (11) The board may, at the discretion of the court and absent an objection by a party to the
17 proceeding, conduct permanency hearings as provided in 41-3-445."

18

19 **Section 11.** Section 41-3-1012, MCA, is amended to read:

20 **"41-3-1012. Presence of employees and participants at reviews and deliberations of board. (1)**

21 Unless excused from doing so by the board, the department and any other agency directly responsible for the
22 care and placement of the child shall require the presence of employees having knowledge of the case at board
23 reviews.

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

28 (3) The persons who are allowed to be present at a review include representatives of the

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

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

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

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

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

16 (b) "Open" means that review participants may remain in attendance during the deliberations to
17 observe and be available for questions from the board.

18 (c) "Presence" includes telephone participation, except that a representative of the department
19 knowledgeable about the case at the time of the review must be physically present if required."

20 - END -