

HOUSE BILL NO. 690

INTRODUCED BY B. MERCER

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING CHILD ABUSE AND NEGLECT LAWS; CLARIFYING THAT CERTAIN DEFINITIONS OF ABUSE AND NEGLECT DO NOT INCLUDE REFERRING TO OR RAISING A CHILD IN A MANNER CONSISTENT WITH THE CHILD'S BIOLOGICAL SEX; PROVIDING THAT A MEMBER OF THE UNITED STATES CONGRESS OR THE MONTANA LEGISLATURE MAY NOT DISCLOSE INFORMATION TO A PARENT OR GUARDIAN THAT IS SUBJECT TO ATTORNEY-CLIENT PRIVILEGE; PROVIDING AN EXCEPTION; PROVIDING THAT A MEMBER MAY CHALLENGE THE DEPARTMENT'S DESIGNATION OF A RECORD AS ATTORNEY-CLIENT PRIVILEGED; AND AMENDING SECTIONS 41-3-102 AND 41-3-205, MCA."

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

Section 1. Section 41-3-102, MCA, is amended to read:

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

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

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

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

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

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

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

- 1 (2) "A person responsible for a child's welfare" means:
- 2 (a) the child's parent, guardian, or foster parent or an adult who resides in the same home in which
- 3 the child resides;
- 4 (b) a person providing care in a day-care facility;
- 5 (c) an employee of a public or private residential institution, facility, home, or agency; or
- 6 (d) any other person responsible for the child's welfare in a residential setting.
- 7 (3) "Abused or neglected" means the state or condition of a child who has suffered child abuse or
- 8 neglect.
- 9 (4) (a) "Adequate health care" means any medical care or nonmedical remedial health care
- 10 recognized by an insurer licensed to provide disability insurance under Title 33, including the prevention of the
- 11 withholding of medically indicated treatment or medically indicated psychological care permitted or authorized
- 12 under state law.
- 13 (b) This chapter may not be construed to require or justify a finding of child abuse or neglect for the
- 14 sole reason that a parent or legal guardian, because of religious beliefs, does not provide adequate health care
- 15 for a child. However, this chapter may not be construed to limit the administrative or judicial authority of the
- 16 state to ensure that medical care is provided to the child when there is imminent substantial risk of serious harm
- 17 to the child.
- 18 (5) "Best interests of the child" means the physical, mental, and psychological conditions and
- 19 needs of the child and any other factor considered by the court to be relevant to the child.
- 20 (6) "Child" or "youth" means any person under 18 years of age.
- 21 (7) (a) "Child abuse or neglect" means:
- 22 (i) actual physical or psychological harm to a child;
- 23 (ii) substantial risk of physical or psychological harm to a child; or
- 24 (iii) abandonment.
- 25 (b) (i) The term includes:
- 26 (A) actual physical or psychological harm to a child or substantial risk of physical or psychological
- 27 harm to a child by the acts or omissions of a person responsible for the child's welfare;
- 28 (B) exposing a child to the criminal distribution of dangerous drugs, as prohibited by 45-9-101, the

1 criminal production or manufacture of dangerous drugs, as prohibited by 45-9-110, or the operation of an
2 unlawful clandestine laboratory, as prohibited by 45-9-132; or

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

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

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

9 (d) The term does not include:

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

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

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

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

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

21 (11) "Department" means the department of public health and human services provided for in 2-15-
22 2201.

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

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

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

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

28 (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;

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

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

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

(e) causing malnutrition or a failure to thrive.

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

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

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

(ii) to enable a child alleged to have been abused or neglected who has been removed from the

1 home to safely return to the home; or

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

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

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

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

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

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

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

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

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

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

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

1 therapeutic group home;

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

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

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

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

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

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

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

13 (c) any particular vulnerabilities of the child;

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

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

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

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

22 (32) "Sexual exploitation" means:

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

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

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

28 (33) "Therapeutic needs assessment" means an assessment performed by a qualified individual

1 within 30 days of placement of a child in a therapeutic group home that:

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

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

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

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

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

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

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

21 (ii) the provision of treatment would:

22 (A) merely prolong dying;

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

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

25 (iii) the provision of treatment would be virtually futile in terms of the survival of the infant and the
26 treatment itself under the circumstances would be inhumane. For purposes of this subsection (35), "infant"
27 means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously
28 hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The reference

1 to less than 1 year of age may not be construed to imply that treatment should be changed or discontinued
2 when an infant reaches 1 year of age or to affect or limit any existing protections available under state laws
3 regarding medical neglect of children 1 year of age or older.

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

7 **41-3-102. (Effective July 1, 2025) Definitions.** As used in this chapter, the following definitions
8 apply:

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

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

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

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

17 (iv) the voluntary surrender, as defined in 40-6-402, by a parent of a newborn who is no more than
18 30 days old to an emergency services provider, as defined in 40-6-402.

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

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

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

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

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

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

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

(b) The term does not include a child who has been referred to or raised in a manner consistent with the child's biological sex, including in the making of related mental health or medical decisions, unless the parent or guardian knows or should have known that raising the child in accordance with the child's biological sex will likely cause serious harm to the child, including but not limited to suicide.

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

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

(iii) referring to and raising the child in a manner consistent with the child's biological sex, including in the making of related mental health or medical decisions, unless the parent or guardian knows or should have known that raising the child in accordance with the child's biological sex will likely cause serious harm to the child, including but not limited to suicide.

(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.

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

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

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

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

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

10 (a) the state of Montana; or

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

13 (17) "Limited emancipation" means a status conferred on a youth by a court in accordance with 41-
14 1-503 under which the youth is entitled to exercise some but not all of the rights and responsibilities of a person
15 who is 18 years of age or older.

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

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

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

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

27 (22) (a) "Physical neglect" means:

28 (a)(i) failure to provide basic necessities, including but not limited to appropriate and adequate

1 nutrition, protective shelter from the elements, and appropriate clothing related to weather conditions;

2 ~~(b)~~(ii) failure to provide cleanliness and general supervision, or both;

3 ~~(c)~~(iii) exposing or allowing the child to be exposed to an unreasonable physical or psychological risk
4 to the child;

5 ~~(d)~~(iv) allowing sexual abuse or exploitation of the child; or

6 ~~(e)~~(v) causing malnutrition or a failure to thrive.

7 (b) The term does not include referring to and raising the child in a manner consistent with the
8 child's biological sex, including in the making of related mental health or medical decisions, unless the parent or
9 guardian knows or should have known that raising the child in accordance with the child's biological sex will
10 likely cause serious harm to the child, including but not limited to suicide.

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

14 (b) The term does not include referring to and raising the child in a manner consistent with the
15 child's biological sex, including in the making of related mental health or medical decisions, unless the parent or
16 guardian knows or should have known that raising the child in accordance with the child's biological sex will
17 likely cause serious harm to the child, including but not limited to suicide.

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

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

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

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

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

27 (25) (a) "Psychological abuse or neglect" means severe maltreatment, through acts or omissions,
28 that is injurious to the child's intellectual or psychological capacity to function and that is identified as

1 psychological abuse or neglect by a licensed psychologist, a licensed professional counselor, a licensed clinical
2 social worker, a licensed psychiatrist, a licensed pediatrician, or a licensed advanced practice registered nurse
3 with a focused practice in psychiatry.

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

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

8 (d) The term does not include referring to and raising the child in a manner consistent with the
9 child's biological sex, including in the making of related mental health or medical decisions, unless the parent or
10 guardian knows or should have known that raising the child in accordance with the child's biological sex will
11 likely cause serious harm to the child, including but not limited to suicide.

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

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

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

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

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

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

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

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

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

1 to the person.

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

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

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

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

8 (c) any particular vulnerabilities of the child;

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

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

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

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

17 (32) "Sexual exploitation" means:

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

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

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

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

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

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

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) "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.

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

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

(i) the infant is chronically and irreversibly comatose;

(ii) the provision of treatment would:

(A) merely prolong dying;

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

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

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

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

1

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

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

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

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

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

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

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

25 (d) a parent, grandparent, aunt, uncle, brother, sister, guardian, mandatory reporter provided for in
26 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
27 the records or other person responsible for the child's welfare, without disclosure of the identity of any person
28 who reported or provided information on the alleged child abuse or neglect incident contained in the records;

- 1 (e) a child named in the records who was allegedly abused or neglected or the child's legal
2 guardian or legal representative, including the child's guardian ad litem or attorney or a special advocate
3 appointed by the court to represent a child in a pending case;
- 4 (f) the state protection and advocacy program as authorized by 42 U.S.C. 15043(a)(2);
- 5 (g) approved foster and adoptive parents who are or may be providing care for a child;
- 6 (h) a person about whom a report has been made and that person's attorney, with respect to the
7 relevant records pertaining to that person only and without disclosing the identity of the reporter or any other
8 person whose safety may be endangered;
- 9 (i) an agency, including a probation or parole agency, that is legally responsible for the
10 supervision of an alleged perpetrator of child abuse or neglect;
- 11 (j) a person, agency, or organization that is engaged in a bona fide research or evaluation project
12 and that is authorized by the department to conduct the research or evaluation;
- 13 (k) the members of an interdisciplinary child protective team authorized under 41-3-108 or of a
14 family engagement meeting for the purposes of assessing the needs of the child and family, formulating a
15 treatment plan, and monitoring the plan;
- 16 (l) the coroner or medical examiner when determining the cause of death of a child;
- 17 (m) a child fatality review team recognized by the department;
- 18 (n) a department or agency investigating an applicant for a license or registration that is required to
19 operate a youth care facility, day-care facility, or child-placing agency;
- 20 (o) a person or entity who is carrying out background, employment-related, or volunteer-related
21 screening of current or prospective employees or volunteers who have or may have unsupervised contact with
22 children through employment or volunteer activities. A request for information under this subsection (3)(o) must
23 be made in writing. Disclosure under this subsection (3)(o) is limited to information that indicates a risk to
24 children posed by the person about whom the information is sought, as determined by the department.
- 25 (p) the news media, if disclosure is limited to confirmation of factual information regarding how the
26 case was handled and if disclosure does not violate the privacy rights of the child or the child's parent or
27 guardian, as determined by the department;
- 28 (q) an employee of the department or other state agency if disclosure of the records is necessary

1 for administration of programs designed to benefit the child;

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

5 (s) a juvenile probation officer who is working in an official capacity with the child who is the
6 subject of a report in the records;

7 (t) an attorney who is hired by or represents the department if disclosure is necessary for the
8 investigation, defense, or prosecution of a case involving child abuse or neglect;

9 (u) a foster care review committee established under 41-3-115 or, when applicable, a citizen
10 review board established under Title 41, chapter 3, part 10;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (B) The member may not disclose information to the parent or legal guardian that has been
22 designated by the department in writing as subject to attorney-client privilege. If the requirements of subsection
23 (4)(a) have been complied with, the right of a member to discuss records with a parent or legal guardian about
24 whom a report of alleged abuse or neglect is made may not be limited unless the department has provided the
25 member with a listing of documents designated as subject to attorney-client privilege.

26 (C) A member may challenge the department's designation of records as subject to attorney-client
27 privilege in district court. All court filings must be filed under seal so as to preserve the privilege asserted. If the
28 member retains an attorney to challenge the designation of a record as attorney-client privileged, the attorney

1 shall sign a confidentiality agreement with the department.

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

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

6 (i) the attorney general;

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

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

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

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

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

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

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

19 or

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

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

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

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

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

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

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

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

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

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

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

(9) A person who is authorized to receive records under this section shall maintain the confidentiality of the records and may not disclose information in the records to anyone other than the persons

1 described in subsections (3)(a), (4)(b)(iii), and (5). However, this subsection may not be construed to compel a
2 family member to keep the proceedings confidential.

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

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

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

13 - END -