

1 SENATE BILL NO. 446

2 INTRODUCED BY D. LENZ

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO LEGISLATIVE AND CITIZEN
5 REVIEW OF CHILD PROTECTION CASES; ESTABLISHING A CHILD PROTECTION LEGISLATIVE REVIEW
6 COUNCIL; PROVIDING FOR CASE RECORD ACCESS AND CONFIDENTIALITY OF CASE REVIEW
7 PROCEEDINGS; AND AMENDING SECTIONS 41-3-205, 41-3-432, 41-3-445, 41-3-1001, 41-3-1003, 41-3-
8 1004, 41-3-1005, 41-3-1006, 41-3-1007, 41-3-1008, 41-3-1010, 41-3-1011, 41-3-1012, 41-3-1013, AND 52-2-
9 304, MCA."

10

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

12

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

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

16 (i) four members of the house of representatives chosen by the speaker, including one member
17 from the house human services committee and one member from the house judiciary committee; and18 (ii) four members of the senate chosen by the president, including one member from the senate
19 public health committee and one member from the senate judiciary committee.20 (b) Appointments made under subsection (1)(a) must be made by December 1, 2023. A vacancy
21 on the council must be filled in the manner of the original appointment.22 (c) Council members must be compensated as provided in 5-2-302 and reimbursed for travel
23 expenses as provided in 2-18-501 through 2-18-503.24 (2) The council shall meet at least twice annually and may meet more frequently as needed to
25 review citizen review panel reports and the department's response to the reports and to consider other child
26 protection issues.27 (3) The council shall appoint and support citizen review panels, including providing consultation at
28 the request of a panel and reviewing cases at the request of a panel.

1 (4) The council shall prepare an annual report summarizing the recommendations of the council,
2 the reports of citizen review panels, the department's response to reports, and any other information required
3 by the federal department of health and human services. The council shall submit the report to the federal
4 department of health and human services each year.

5

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

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

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

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

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

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

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

1 (d) a parent, grandparent, aunt, uncle, brother, sister, guardian, mandatory reporter provided for in
 2 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
 3 the records or other person responsible for the child's welfare, without disclosure of the identity of any person
 4 who reported or provided information on the alleged child abuse or neglect incident contained in the records;

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

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

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

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

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

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

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

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

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

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

24 (o) a person or entity who is carrying out background, employment-related, or volunteer-related
 25 screening of current or prospective employees or volunteers who have or may have unsupervised contact with
 26 children through employment or volunteer activities. A request for information under this subsection (3)(o) must
 27 be made in writing. Disclosure under this subsection (3)(o) is limited to information that indicates a risk to
 28 children posed by the person about whom the information is sought, as determined by the department.

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

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

6 (r) an agency of an Indian tribe, a qualified expert witness, or the relatives of an Indian child if
7 disclosure of the records is necessary to meet requirements of the federal Indian Child Welfare Act;

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

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

12 (u) a foster care review committee established under 41-3-115 or, ~~when applicable,~~ a citizen
13 review board panel or the child protection legislative review council established under Title 41, chapter 3, part
14 10;

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

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

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

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

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

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

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

28 (ii) the member submits a written request to the department requesting to review the records

1 relating to the written inquiry. The member's request must include a copy of the written inquiry, the name of the
2 child whose records are to be reviewed, and any other information that will assist the department in locating the
3 records.

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

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

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

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

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

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

16 (i) the attorney general;

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

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

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

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

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

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

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

1 or

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

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

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

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

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

14 (d) (i) Except as provided in subsection (5)(d)(ii), the records described in subsection (3) must be
15 released within 5 business days to the county attorney of the county in which the acts that are the subject of a
16 report occurred upon the department's receipt of a report that includes an allegation of sexual abuse or sexual
17 exploitation. The department shall also report to any other appropriate individual described in subsection (5)(a)
18 and to a county or regional interdisciplinary child information and school safety team established pursuant to
19 52-2-211.

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

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

28 (6) A school or school district may disclose, without consent, personally identifiable information

1 from the education records of a pupil to the department, the court, a citizen review board-panel, the child
2 protection legislative review council, and the child's assigned attorney, guardian ad litem, or special advocate.

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

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

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

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

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

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

22

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

24 **"41-3-432. Show cause hearing -- order.** (1) (a) Except as provided in the federal Indian Child
25 Welfare Act, a show cause hearing must be conducted within 20 days of the filing of an initial child abuse and
26 neglect petition unless otherwise stipulated by the parties pursuant to 41-3-434 or unless an extension of time
27 is granted by the court. A separate notice to the court stating the statutory time deadline for a hearing must
28 accompany any petition to which the time deadline applies.

1 (b) If a proceeding under this chapter involves an Indian child and is subject to the federal Indian
2 Child Welfare Act, a qualified expert witness is required to testify that the continued custody of the child by the
3 parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

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

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

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

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

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

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

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

28 (c) whether the department has made reasonable efforts to avoid protective placement of the child

1 or to make it possible to safely return the child to the child's home;

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

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

6 (6) The court may consider:

7 (a) terms and conditions for parental visitation; and

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

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

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

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

22

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

24 "**41-3-445. Permanency hearing.** (1) (a) (i) Subject to subsection (1)(b), a permanency hearing must
25 be held by the court or, subject to the approval of the court and absent an objection by a party to the
26 proceeding, by the foster care review committee, as provided in 41-3-115, or the citizen review ~~board~~ panel, as
27 provided in 41-3-1010:

28 (A) within 30 days of a determination that reasonable efforts to provide preservation or reunification

1 services are not necessary under 41-3-423, 41-3-438(6), or 41-3-442(1); or

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

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

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

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

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

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

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

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

27 (5) (a) The court's order must be issued within 20 days after the permanency hearing if the hearing
28 was conducted by the court. If a member of the child's extended family, including an adult sibling, grandparent,

1 great-grandparent, aunt, or uncle, has requested that custody be awarded to that family member or that a prior
2 grant of temporary custody with that family member be made permanent, the department shall investigate and
3 determine if awarding custody to that family member is in the best interests of the child. The department shall
4 provide the reasons for any denial to the court. If the court accepts the department's custody recommendation,
5 the court shall inform any denied family member of the reasons for the denial to the extent that confidentiality
6 laws allow. The court shall include the reasons for denial in the court order if the family member who is denied
7 custody requests it to be included.

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

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

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

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

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

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

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

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

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

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

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

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

- 1 resort after all family, insurance, and other resources have been examined.
- 2 (8) Permanency options include:
- 3 (a) reunification of the child with the child's parent or guardian;
- 4 (b) permanent placement of the child with the noncustodial parent, superseding any existing
- 5 custodial order;
- 6 (c) adoption;
- 7 (d) appointment of a guardian pursuant to 41-3-444; or
- 8 (e) long-term custody if the child is in a planned permanent living arrangement and if it is
- 9 established by a preponderance of the evidence, which is reflected in specific findings by the court, that:
- 10 (i) the child is being cared for by a fit and willing relative;
- 11 (ii) the child has an emotional or mental handicap that is so severe that the child cannot function in
- 12 a family setting and the best interests of the child are served by placement in a residential or group setting;
- 13 (iii) the child is at least 16 years of age and is participating in an independent living program and
- 14 that termination of parental rights is not in the best interests of the child;
- 15 (iv) the child's parent is incarcerated and circumstances, including placement of the child and
- 16 continued, frequent contact with the parent, indicate that it would not be in the best interests of the child to
- 17 terminate parental rights of that parent; or
- 18 (v) the child meets the following criteria:
- 19 (A) the child has been adjudicated a youth in need of care;
- 20 (B) the department has made reasonable efforts to reunite the parent and child, further efforts by
- 21 the department would likely be unproductive, and reunification of the child with the parent or guardian would be
- 22 contrary to the best interests of the child;
- 23 (C) there is a judicial finding that other more permanent placement options for the child have been
- 24 considered and found to be inappropriate or not to be in the best interests of the child; and
- 25 (D) the child has been in a placement in which the foster parent or relative has committed to the
- 26 long-term care and to a relationship with the child, and it is in the best interests of the child to remain in that
- 27 placement.
- 28 (9) For a child 14 years of age or older, the permanency plan must:

1 (a) be developed in consultation with the child and in consultation with up to two members of the
 2 child's case planning team who are chosen by the child and who are not a foster parent or child protection
 3 specialist for the child;

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

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

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

11 (11) The court may terminate a planned permanent living arrangement upon petition of the birth
 12 parents or the department if the court finds that the circumstances of the child or family have substantially
 13 changed and the best interests of the child are no longer being served."
 14

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

16 "**41-3-1001. Short title.** This part may be cited as the "Citizen Review ~~Board Program Panel~~ Act"."

17

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

19 "**41-3-1003. Establishment of board-panel -- definition -- membership -- duties.** (1) As used in
 20 this part, "board" "panel" means a citizen review board-panel appointed ~~as provided in this section~~ by the child
 21 protection legislative review council established in [section 1].

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

26 ~~(3) A board is composed of at least three and not more than five members appointed by the district~~
 27 ~~court judges. Each member appointed must be sworn in by a judge of the judicial district to which the member~~
 28 ~~is appointed to serve.~~

1 ~~(4) The board must be appointed according to the following guidelines:~~

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

4 ~~(b)(2)~~ (a) There is a citizen review panel in each of the service area regions established under Title
5 53, chapter 21, part 10. As far as practicable, members of a board each panel shall represent the various
6 socioeconomic and ethnic groups of the area served. Boards should include tribal representatives whenever
7 possible. Panel membership must include the following individuals who must live within the panel's service area
8 and must have a strong motivation to improve the lives of children:

9 (i) a past or present foster or kinship care family;

10 (ii) a licensed mental health professional experienced in child therapy;

11 (iii) a county commissioner;

12 (iv) a law enforcement officer;

13 (v) a peer support specialist;

14 (vi) a representative of the department of public health and human services with experience in child
15 protection services or a representative of the office of child and family ombudsman who does not have an
16 interest in the case; and

17 (vii) a member of a federally recognized Indian tribe in Montana with professional experience in
18 child welfare.

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

20 (i) submit an application to the child protection legislative review council;

21 (ii) interview with the council; and

22 (iii) undergo a criminal background check, including the nationwide sex offender registry.

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

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

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

1 subdivision are entitled to their regular compensation.

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

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

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

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

9 (a) trends and concerns in child protection;

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

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

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

13 (4) Each panel shall produce quarterly reports summarizing panel activities and recommendations.

14 The panel shall submit the reports to the child protection legislative review council, the director of the
15 department of public health and human services, the office of the child and family ombudsman, and the public.

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

18

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

20 **"41-3-1004. Administration -- training -- oversight -- procedures.** ~~(1) The office of the court~~
21 ~~administrator, as provided for in 3-1-701, shall, in accordance with the direction of the supreme court, oversee~~
22 ~~the program established in this part and shall, at the time prescribed by 5-11-210, prepare a report to the~~
23 ~~governor, the legislature, and the public regarding:~~

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

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

28 ~~(2) The office of the court administrator shall:~~

1 ~~(a) establish policies and procedures for adoption by the Montana supreme court for the operation of~~
2 ~~a board, including procedures for removing members;~~

3 (1) The legislative services division shall:

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

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

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

10 (ii) social work practice and policies;

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

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

13 Act;

14 (v) dynamics of domestic violence;

15 (vi) substance use disorder and mental health;

16 (vii) education and community resources; and

17 (viii) implicit bias and ethics.;

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

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

20

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

22 "**41-3-1005. Removal of members -- grounds.** Grounds for removal of a member of a ~~board~~ panel
23 ~~under 41-3-1004 may include but are not limited to the following:~~

24 (1) nonparticipation by a ~~board~~ panel member;

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

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

28 (4) other cause or grounds as necessary for the administration of ~~the program~~ this part."

1

2 **Section 9.** Section 41-3-1006, MCA, is amended to read:

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

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

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

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

10 (a) a presiding officer; and

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

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

13

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

15 **"41-3-1007. Confidentiality of information -- penalty.** (1) Before beginning to serve on the child
16 protection legislative review council established in [section 1] or a board panel, ~~each a~~ member shall ~~swear or~~
17 ~~affirm to the court that the member will sign a confidentiality agreement to keep confidential the information and~~
18 ~~case files~~ reviewed by the ~~board council or panel~~ and its actions and recommendations in individual cases.

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

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

23

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

25 **"41-3-1008. Access to records.** (1) Notwithstanding the provisions of 41-3-205, the child protection
26 legislative review council established in [section 1] and a board panel ~~has have~~ access to:

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

28 (b) pertinent electronic and paper records of the department or other agencies that would be

1 admissible in a dispositional hearing conducted pursuant to 41-3-438, including school records, police reports,
2 and reports of private service providers contained in the records of the department or other agencies.

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

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

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

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

12 (4) If a ~~board~~ the council or a panel is denied access to requested records, it may request a
13 hearing. The court may require the organization in possession of the records to show cause why the records
14 should not be made available as provided by this section."
15

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

17 **"41-3-1010. Review -- scope -- procedures -- immunity.** (1) (a) ~~The board~~ A panel shall review the
18 case of each child in foster care focusing on issues that are germane to the goals of permanency and to
19 accessing appropriate services for parents and children. In evaluating the accessibility, availability, and
20 appropriateness of services, the ~~board~~ panel may consider:

21 (i) the safety of the child;

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

24 (iii) whether caseworkers have diligently provided services;

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

26 (v) the results of intervention.

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

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

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

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

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

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

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

20 (c) compliance with the case plan;

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

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

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

25 and

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

28 (6) Whenever a member of a ~~board~~ panel has a potential conflict of interest in a case being

1 reviewed, the member shall declare to the ~~board~~panel the nature of the potential conflict prior to participating in
2 the case review. The following provisions apply:

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

4 (b) If, in the judgment of the majority of the ~~board~~panel, the potential conflict of interest may
5 prevent the member from fairly and objectively reviewing the case, the ~~board~~panel may remove the member
6 from participation in the review.

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

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

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

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

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

22

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

24 **"41-3-1011. Board Panel recommendations concerning foster care services and policy**

25 **considerations.** In addition to reviewing individual cases of children in foster care, a ~~board~~panel may make
26 recommendations to the district court and to the department concerning foster care services, policies,
27 procedures, and laws. Recommendations must be in writing and must be provided to the department."

28

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

2 **"41-3-1012. Presence of employees and participants at reviews and deliberations of ~~board~~**
3 **panel.** (1) Unless excused from doing so by the ~~board~~ panel, the department and any other agency directly
4 responsible for the care and placement of the child shall require the presence of employees having knowledge
5 of the case at ~~board~~ panel reviews.

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

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

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

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

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

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

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

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

3

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

5 **"41-3-1013. Court review of findings and recommendations of board panel.** (1) Upon receipt of
6 findings and recommendations from the board panel, the district court shall:

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

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

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

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

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

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

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

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

25 (4) Upon its own motion or upon the request of the department, the board panel, or any interested
26 party, the district court ~~may~~ shall appoint ~~an attorney-a mediator~~ or other person as special advocate pursuant
27 to 41-3-112 to represent or appear on behalf of the child. ~~Subject to the direction of the district court, the court-~~
28 ~~appointed special-~~ A child's advocate shall:

- 1 (a) investigate all relevant information about the case;
- 2 (b) advocate for the child, ensuring that all relevant facts are brought before the court;
- 3 (c) facilitate and negotiate to ensure that the district court, the department, and the child's attorney
- 4 fulfill their obligations to the child in a timely fashion; and
- 5 (d) monitor all district court orders to ensure compliance and to bring to the district court's attention
- 6 any change in circumstance that may require modification of the district court's order."

7

8 **Section 16.** Section 52-2-304, MCA, is amended to read:

9 **"52-2-304. Committee duties.** (1) The committee established in 52-2-303 shall, to the extent possible
10 within existing resources:

- 11 (a) develop policies aimed at eliminating or reducing barriers to the implementation of a system of
- 12 care;
- 13 (b) promote the development of an in-state quality array of core services in order to assist in
- 14 returning high-risk children with multiagency service needs from out-of-state placements, limiting and
- 15 preventing the placement of high-risk children with multiagency service needs out of state, and maintaining
- 16 high-risk children with multiagency service needs within the least restrictive and most appropriate setting;
- 17 (c) advise local agencies to ensure that the agencies comply with applicable statutes,
- 18 administrative rules, and department policy in committing funds and resources for the implementation of unified
- 19 plans of care for high-risk children with multiagency service needs and in making any determination that a high-
- 20 risk child with multiagency service needs cannot be served by an in-state provider;
- 21 (d) encourage the development of local interagency teams with participation from representatives
- 22 from child serving agencies who are authorized to commit resources and make decisions on behalf of the
- 23 agency represented;
- 24 (e) specify outcome indicators and measures to evaluate the effectiveness of the system of care;
- 25 (f) develop mechanisms to elicit meaningful participation from parents, family members, and youth
- 26 who are currently being served or who have been served in the children's system of care; and
- 27 (g) take into consideration the policies, plans, and budget developed by any service area authority
- 28 provided for in 53-21-1006.

1 (2) The committee shall coordinate responsibility for the development of a stable system of care for
2 high-risk children with multiagency service needs that may include, as appropriate within existing resources:

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

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

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

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

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

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

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

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

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

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

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

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

24 (b) If the local interagency team decides to coordinate and consolidate statutory teams, it shall
25 ensure that all state and federal rules, laws, and policies required of the individual statutory teams are fulfilled."
26

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

1

- END -