

1 _____ BILL NO. _____

2 INTRODUCED BY _____

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING CHILD ABUSE AND NEGLECT LAWS;
5 REQUIRING A WARRANT TO REMOVE A CHILD FROM THE CHILD'S HOME EXCEPT IN EXIGENT
6 CIRCUMSTANCES; REVISING THE DEFINITIONS OF "CHILD ABUSE OR NEGLECT" AND "REASONABLE
7 EFFORTS"; REVISING THE TIMEFRAME IN WHICH AN ABUSE AND NEGLECT PETITION MUST BE FILED
8 WHEN A CHILD IS REMOVED; REVISING THE TIMEFRAME IN WHICH AN EMERGENCY PROTECTIVE
9 SERVICES HEARING MUST BE HELD; REVISING THE REQUIREMENTS FOR DISMISSING AN ABUSE
10 AND NEGLECT PETITION; AMENDING SECTIONS 41-3-101, 41-3-102, 41-3-301, 41-3-306, 41-3-307, 41-3-
11 423, 41-3-424, AND 41-3-427, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE."

12

13 WHEREAS, Montana's child abuse and neglect statutes (Title 41, chapter 3, MCA) provide the
14 framework for state interference with the parent-child relationship; and

15 WHEREAS, the Legislature intends to amend the provisions of Title 41, chapter 3, MCA, to ensure
16 compliance with constitutional requirements.

17

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

19

20 NEW SECTION. **Section 1. Warrant to remove child.** (1) A child protection specialist of the
21 department, a peace officer, or a county attorney may apply, in writing, by telephone, or electronically, on oath
22 or affirmation, to a district court within the state for the issuance of a warrant to remove a child and place the
23 child in a protective facility if necessary to prevent the child from being abused or neglected.

24 (2) A warrant may be issued in writing, by telephone, or electronically.

25 (3) If the court finds from the application that there is probable cause that removal is necessary to
26 prevent the child from being abused or neglected, the court shall issue a warrant to remove the child. The
27 warrant must:

28 (a) identify the child to be removed and the person responsible for removing the child;

1 (b) recite the facts on which the conclusion that the child is abused or neglected or is in danger of
2 being abused or neglected is based; and

3 (c) provide for the placement of the child, pending an emergency protective services hearing.

4 (4) The provisions of 46-5-222 apply when an application for a warrant is made by telephone or
5 electronically or when a warrant is issued by telephone or electronically.

6

7 **NEW SECTION. Section 2. Procedures for executing warrant to remove child.** (1) A warrant
8 issued pursuant to [section 1] may be served at any time of the day or night. The warrant must be served within
9 10 days from the time of issuance. A warrant not served within 10 days is void and must be returned to the
10 issuing court and identified as not served.

11 (2) A warrant issued pursuant to [section 1] must be served by the person specifically named in the
12 warrant and by no other person unless the other person is acting in aid of and in the presence of the specifically
13 named person.

14

15 **Section 3.** Section 41-3-101, MCA, is amended to read:

16 **"41-3-101. Declaration of policy.** (1) It is the policy of the state of Montana to:

17 (a) provide for the protection of children whose health and welfare are or may be adversely
18 affected and further threatened by the conduct of those responsible for the children's care and protection;

19 (b) achieve these purposes in a family environment and preserve the unity and welfare of the
20 family whenever possible;

21 (c) support the efforts of parents whose children have been removed to reunify the family,
22 including by taking into account whether those efforts may be impeded by court-ordered support payments;

23 (d) ensure that there is no forced removal of a child from the family ~~based solely on an allegation~~
24 ~~of abuse or neglect unless the department has reasonable cause to suspect that the child is at imminent risk of~~
25 ~~harm~~ without first obtaining a warrant from a court unless the child is likely to experience sexual abuse or
26 physical abuse in the time that is required to obtain a warrant;

27 (e) recognize that a child is entitled to assert the child's constitutional rights;

28 (f) ensure that all children have a right to a healthy and safe childhood in a permanent placement;

1 and

2 (g) ensure that whenever removal of a child from the home is necessary, the child is entitled to
3 maintain ethnic, cultural, and religious heritage whenever appropriate.

4 (2) It is intended that the mandatory reporting of abuse or endangerment cases by professional
5 people and other community members to the appropriate authority will cause the protective services of the state
6 to seek to prevent further abuses, protect and enhance the welfare of these children, and preserve family life
7 whenever appropriate.

8 (3) In implementing this chapter, whenever it is necessary to remove a child from the child's home,
9 the department shall, when it is in the best interests of the child, place the child in accordance with 41-3-450
10 and 41-3-451. Prior to approving a placement, the department shall investigate whether anyone living in the
11 home has been convicted of a crime involving serious harm to children.

12 (4) (a) The department shall create a registry for voluntary registration by close relatives of a child
13 for purposes of notifying those relatives when a child that is related has been removed from the child's home
14 pursuant to this chapter.

15 (b) The registry must contain the names of the child and the child's parents and may contain the
16 names of the child's grandparents, aunts, uncles, adult brothers, and adult sisters and must contain the contact
17 information for the child and parents and any of the relatives whose names appear in the registry.

18 (5) The department shall consult the registry and notify the relatives on the registry on the first
19 working day after placing the child in accordance with 41-3-301.

20 (6) The department may charge a fee commensurate with the cost of operating the registry. The
21 fee may be charged only to those persons whose names are voluntarily entered in the registry.

22 (7) The department shall ensure that department training and policies comply with constitutional
23 requirements.

24 ~~(7)(8)~~ In implementing the policy of this section, the child's health and safety are of paramount
25 concern."
26

27 **Section 4.** Section 41-3-102, MCA, is amended to read:

28 **"41-3-102. (Temporary) Definitions.** As used in this chapter, the following definitions apply:

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

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

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

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

9 (iv) the voluntary surrender, as defined in 40-6-402, by a parent of a newborn who is no more than
10 30 days old to an emergency services provider, as defined in 40-6-402.

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

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

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

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

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

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

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

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

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

1 to the child.

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

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

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

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

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

8 (iii) abandonment.

9 (b) (i) The term includes:

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

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

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

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

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

21 (d) The term does not include:

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

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

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

28 (9) "Concurrent planning" means to work toward reunification of the child with the family while at

1 the same time developing and implementing an alternative permanent plan.

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

5 (11) "Department" means the department of public health and human services provided for in 2-15-
6 2201.

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

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

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

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

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

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) "Physical neglect" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

28 (26) "Qualified expert witness" as used in cases involving an Indian child in proceedings subject to

1 the federal Indian Child Welfare Act or the Montana Indian Child Welfare Act provided for in Title 41, chapter 3,
2 part 13, means:

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

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

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

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

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

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

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

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

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

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

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

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

25 (c) any particular vulnerabilities of the child;

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

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

28 (31) (a) "Sexual abuse" means the commission of sexual assault, sexual intercourse without

1 consent, aggravated sexual intercourse without consent, indecent exposure, sexual abuse, ritual abuse of a
2 minor, or incest, as described in Title 45, chapter 5.

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

6 (32) "Sexual exploitation" means:

7 (a) allowing, permitting, or encouraging a child to engage in a prostitution offense, as described in
8 45-5-601;

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

10 (c) allowing, permitting, or encouraging sex trafficking as described in 45-5-702, 45-5-705, 45-5-
11 706, or 45-5-711.

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

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

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

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

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

25 (35) (a) "Withholding of medically indicated treatment" means the failure to respond to an infant's
26 life-threatening conditions by providing treatment, including appropriate nutrition, hydration, and medication,
27 that, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in
28 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. (Terminates June 30, 2025--sec. 55, Ch. 716, L. 2023.)

41-3-102. (Effective July 1, 2025) 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

1 (iv) the voluntary surrender, as defined in 40-6-402, by a parent of a newborn who is no more than
2 30 days old to an emergency services provider, as defined in 40-6-402.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 (iii) abandonment.

1 (b) (i) The term includes:

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

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

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

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

10 (c) In proceedings under this chapter in which the federal Indian Child Welfare Act is applicable,
11 this term has the same meaning as "serious emotional or physical damage to the child" as used in 25 U.S.C.
12 1912(f).

13 (d) The term does not include:

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

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

18 (e) Substance use by a parent or guardian, disorderly living conditions, other factors closely
19 related to economic status, or a child's obesity do not alone constitute physical or psychological harm to a child.

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

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

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

27 (11) "Department" means the department of public health and human services provided for in 2-15-
28 2201.

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

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

(a) a member of an Indian tribe; or

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

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

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

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

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

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

(a) the state of Montana; or

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

(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 home to safely return to the home; or

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

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

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

1 with a focused practice in psychiatry.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2 (c) any particular vulnerabilities of the child;

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

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

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

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

11 (32) "Sexual exploitation" means:

12 (a) allowing, permitting, or encouraging a child to engage in a prostitution offense, as described in
13 45-5-601;

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

15 (c) allowing, permitting, or encouraging sex trafficking as described in 45-5-702, 45-5-705, 45-5-
16 706, or 45-5-711.

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

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

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

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

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

1 court services, the department, and other parties, if necessary, for protective services.

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

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

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

10 (ii) the provision of treatment would:

11 (A) merely prolong dying;

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

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

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

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

23

24 **Section 5.** Section 41-3-301, MCA, is amended to read:

25 **"41-3-301. Emergency protective services.** (1) (a) Any Except as provided in subsection (1)(b), a
26 child protection specialist of the department, a peace officer, or the a county attorney who has reason to believe
27 any child is in immediate or apparent danger of harm may immediately remove the may not remove a child and
28 place the child in a protective facility without first obtaining a warrant pursuant to [section 1].

1 **(b)** A child protection specialist of the department, a peace officer, or a county attorney may
 2 remove a child without a warrant only when the person has probable cause to believe that the child is likely to
 3 experience sexual abuse or physical abuse in the time that is required to obtain a warrant under [section 1].

4 **(c)** After ensuring that the child is safe, the department may make a request for further assistance
 5 from the law enforcement agency or take appropriate legal action.

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

9 (i) include the reason for removal or, if the child is removed pursuant to subsection (1)(b), the
 10 factual basis for the conclusion that the child is likely to experience sexual abuse or physical abuse in the time
 11 that is required to obtain a warrant;

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

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

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

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

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

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

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

25 ~~(e)(e)~~ A copy of the notification required under subsection ~~(1)(b)-(1)(d)~~ must be provided within 24
 26 hours to the office of state public defender.

27 (2) If a child protection specialist, a peace officer, or the county attorney determines in an
 28 investigation of abuse or neglect of a child that the child is in danger because of the occurrence of partner or

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

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

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

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

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

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

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

25 (6) If a child is removed from the child's home by the department, a child protection specialist shall
26 submit an affidavit regarding the circumstances of the emergency removal to the county attorney and provide a
27 copy of the affidavit to the office of state public defender and, if possible, the parents or guardian within 2
28 working days of the emergency removal. An abuse and neglect petition must be filed in accordance with 41-3-

422 within ~~5 working days, excluding weekends and holidays,~~ 72 hours of the emergency removal of a child unless arrangements acceptable to the agency for the care of the child have been made by the parents or a written prevention plan has been entered into pursuant to 41-3-302.

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

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

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

Section 6. Section 41-3-301, MCA, is amended to read:

"41-3-301. Emergency protective services. (1) (a) ~~Any~~ Except as provided in subsection (1)(b), a child protection specialist of the department, a peace officer, or ~~the a~~ a county attorney ~~who has reason to believe~~ any child is in immediate or apparent danger of harm may immediately remove the ~~may not remove a~~ child and place the child in a protective facility without first obtaining a warrant pursuant to [section 1].

(b) A child protection specialist of the department, a peace officer, or a county attorney may remove a child without a warrant only when the person has probable cause to believe that the child is likely to experience sexual abuse or physical abuse in the time that is required to obtain a warrant under [section 1].

(c) After ensuring that the child is safe, the department may make a request for further assistance from the law enforcement agency or take appropriate legal action.

(b)(d) The person or agency placing the child shall notify the parents, parent, guardian, or other person having physical or legal custody of the child of the placement at the time the placement is made or as soon after placement as possible. Notification under this subsection ~~(4)(b)~~ (1)(d) must:

(i) include the reason for removal or, if the child was removed pursuant to subsection (1)(b), the

1 factual basis for the conclusion that the child is likely to experience sexual abuse or physical abuse in the time
2 that is required to obtain a warrant;

3 (ii) include information regarding the emergency protective services hearing within ~~5~~ 3 days under
4 41-3-306, the required show cause hearing within 20 days, and the purpose of the hearings;

5 (iii) provide contact information for the child protection specialist, the child protection specialist's
6 supervisor, and the office of state public defender; and

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

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

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

12 (C) may have a support person present during any meeting with the child protection specialist
13 concerning emergency protective services, including the emergency protective services hearing provided for in
14 41-3-306; and

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

16 ~~(e)(e)~~ A copy of the notification required under subsection ~~(1)(b)-(1)(d)~~ must be provided within 24
17 hours to the office of state public defender.

18 (2) If a child protection specialist, a peace officer, or the county attorney determines in an
19 investigation of abuse or neglect of a child that the child is in danger because of the occurrence of partner or
20 family member assault, as provided for in 45-5-206, or strangulation of a partner or family member, as provided
21 for in 45-5-215, against an adult member of the household or that the child needs protection as a result of the
22 occurrence of partner or family member assault or strangulation of a partner or family member against an adult
23 member of the household, the department shall take appropriate steps for the protection of the child, which may
24 include:

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

28 (b) making reasonable efforts to remove the person who allegedly committed the partner or family

1 member assault or strangulation of a partner or family member from the child's residence if it is determined that
2 the child or another family or household member is in danger of partner or family member assault or
3 strangulation of a partner or family member; and

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

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

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

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

16 (6) If a child is removed from the child's home by the department, a child protection specialist shall
17 submit an affidavit regarding the circumstances of the emergency removal to the county attorney and provide a
18 copy of the affidavit to the office of state public defender and, if possible, the parents or guardian within 2
19 working days of the emergency removal. An abuse and neglect petition must be filed in accordance with 41-3-
20 422 within ~~5 working days, excluding weekends and holidays,~~ 72 hours of the emergency removal of a child
21 unless arrangements acceptable to the agency for the care of the child have been made by the parents or a
22 written prevention plan has been entered into pursuant to 41-3-302.

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

26 (8) If the department determines that a petition for immediate protection and emergency protective
27 services must be filed to protect the safety of the child, the child protection specialist shall interview the parents
28 of the child to whom the petition pertains, if the parents are reasonably available, before the petition may be

1 filed. The district court may immediately issue an order for immediate protection of the child.

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

5

6 **Section 7.** Section 41-3-306, MCA, is amended to read:

7 **"41-3-306. Emergency protective services hearing -- exception.** (1) (a) A district court shall hold a
8 hearing within ~~5 business days~~ 5 days of a child's removal from the home pursuant to 41-3-301 to determine
9 whether there is probable cause to continue the removal beyond ~~5 business days~~ the emergency protective
10 services hearing.

11 (b) The department shall provide notification of the hearing as required under 41-3-301.

12 (c) A hearing is not required if the child is released prior to the time of the required hearing.

13 (2) The hearing may be held in person, by videoconference, or, if no other means are available, by
14 telephone.

15 (3) The child and the child's parents, parent, guardian, or other person having physical or legal
16 custody of the child must be represented by counsel at the hearing.

17 (4) If the court determines that continued out-of-home placement is needed, the court shall:

18 (a) establish guidelines for visitation by the parents, parent, guardian, or other person having
19 physical or legal custody of the child pending the show cause hearing; and

20 (b) review the availability of options for a kinship placement and make recommendations if
21 appropriate.

22 (5) The court may direct the department to develop and implement a treatment plan before the
23 show cause hearing if the parents, parent, guardian or other person having physical or legal custody of the child
24 stipulates to a condition subject to a treatment plan and agrees to immediately comply with the treatment plan if
25 a plan is developed.

26 (6) If the court determines continued removal is not appropriate, the child must be immediately
27 returned to the parents, parent, guardian, or other person having physical or legal custody of the child.

28 (7) The emergency protective services hearing is an emergency proceeding for the purposes of

1 the federal Indian Child Welfare Act and is not subject to the notice requirements of that act.

2 (8) The emergency protective services hearing is an emergency proceeding for the purposes of
3 the Montana Indian Child Welfare Act provided for in Title 41, chapter 3, part 13, and is not subject to the notice
4 requirements of the Montana Indian Child Welfare Act. (Subsection (8) terminates June 30, 2025--sec. 55, Ch.
5 716, L. 2023.)"

6

7 **Section 8.** Section 41-3-306, MCA, is amended to read:

8 **"41-3-306. Emergency protective services hearing -- exception.** (1) (a) A district court shall hold a
9 hearing within 5-3 business days of a child's removal from the home pursuant to 41-3-301 to determine whether
10 there is probable cause to continue the removal beyond ~~5-business days~~ the emergency protective services
11 hearing.

12 (b) The department shall provide notification of the hearing as required under 41-3-301.

13 (c) A hearing is not required if the child is released prior to the time of the required hearing.

14 (2) The hearing may be held in person, by videoconference, or, if no other means are available, by
15 telephone.

16 (3) The child and the child's parents, parent, guardian, or other person having physical or legal
17 custody of the child must be represented by counsel at the hearing.

18 (4) If the court determines that continued out-of-home placement is needed, the court shall:

19 (a) establish guidelines for visitation by the parents, parent, guardian, or other person having
20 physical or legal custody of the child pending the show cause hearing; and

21 (b) review the availability of options for a kinship placement and make recommendations if
22 appropriate.

23 (5) The court may direct the department to develop and implement a treatment plan before the
24 show cause hearing if the parents, parent, guardian or other person having physical or legal custody of the child
25 stipulates to a condition subject to a treatment plan and agrees to immediately comply with the treatment plan if
26 a plan is developed.

27 (6) If the court determines continued removal is not appropriate, the child must be immediately
28 returned to the parents, parent, guardian, or other person having physical or legal custody of the child.

1 (7) The emergency protective services hearing is an emergency proceeding for the purposes of
2 the federal Indian Child Welfare Act and is not subject to the notice requirements of that act.

3 (8) The emergency protective services hearing is an emergency proceeding for the purposes of
4 the Montana Indian Child Welfare Act provided for in Title 41, chapter 3, part 13, and is not subject to the notice
5 requirements of the Montana Indian Child Welfare Act. (Subsection (8) terminates June 30, 2025--sec. 55, Ch.
6 716, L. 2023.)"

7
8 **Section 9.** Section 41-3-307, MCA, is amended to read:

9 **"41-3-307. Availability of prehearing conferences.** (1) The parents, parent, guardian, or other
10 person having physical or legal custody of a child who has been removed from the home pursuant to 41-3-301
11 may participate in a conference within 5 3 days of the child's removal and before an emergency protective
12 services hearing held by the court pursuant to 41-3-306.

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

- 14 (a) the parents, parent, guardian, or other person having physical or legal custody of the child;
15 (b) the person's legal counsel;
16 (c) the county attorney's office; and
17 (d) a department social worker.

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

20 (4) At a minimum, the meetings must involve discussion of:

- 21 (a) the child's current placement and options for continued placement if the child remains out of the
22 home;
23 (b) whether other options exist for an in-home safety plan or resource that may allow the child to
24 remain in the home;
25 (c) parenting time schedules; and
26 (d) treatment services for the family."

27
28 **Section 10.** Section 41-3-423, MCA, is amended to read:

1 **"41-3-423. Reasonable efforts required to prevent removal of child or to return -- exemption --**
2 **findings -- permanency plan.** (1) (a) The department shall make reasonable efforts to prevent the necessity of
3 removal of a child from the child's home and to reunify families that have been separated by the state. The
4 application for a warrant to remove a child from the child's home pursuant to [section 1] does not absolve the
5 department from the duty to make reasonable efforts to prevent the necessity of removal.

6 (b) For the purposes of this subsection (1), the term "reasonable efforts" means the department
7 shall in good faith:

8 (i) conduct a comprehensive assessment of the circumstances of the family, with a focus on safe
9 reunification as the most desirable goal. The assessment must be provided to the parents and to counsel for
10 the parents.

11 (ii) identify appropriate services and help the parents overcome barriers, including actively
12 assisting the parents in obtaining appropriate services;

13 (iii) with parental consent, identify and invite the extended family to participate in providing support
14 and services to the family and to participate in family team meetings, permanency planning, and resolution of
15 placement issues;

16 (iv) conduct or cause to be conducted a diligent search for the child's extended family members
17 and contact and consult with extended family members to provide family structure and support for the child and
18 the parents;

19 (v) offer and employ all available and culturally appropriate family preservation strategies and
20 facilitate the use of remedial and rehabilitative services;

21 (vi) take steps to keep siblings together whenever possible;

22 (vii) support regular visits with parents in the most natural setting possible, as well as trial home
23 visits with the child during any period of removal, consistent with the need to ensure the health, safety, and
24 welfare of the child;

25 (viii) identify community resources, including housing, financial, transportation, mental health,
26 substance abuse, and peer support services, and actively assist the parents or, when appropriate, the child's
27 family in utilizing and accessing the resources;

28 (ix) monitor progress and participation in services; and

1 (x) consider alternative ways to address the needs of the parents and, when appropriate, the
2 family if the optimum services do not exist or are not available.

3 (c) In determining preservation or reunification services to be provided and in making reasonable
4 efforts at providing preservation or reunification services, the child's health and safety are of paramount
5 concern.

6 (2) Except in a proceeding subject to the federal Indian Child Welfare Act [or the Montana Indian
7 Child Welfare Act provided for in Title 41, chapter 3, part 13], the department may, at any time during an abuse
8 and neglect proceeding, make a request for a determination that preservation or reunification services need not
9 be provided. If an indigent parent is not already represented by counsel, the court shall immediately provide for
10 the appointment or assignment of counsel to represent the indigent parent in accordance with the provisions of
11 41-3-425. A court may make a finding that the department need not make reasonable efforts to provide
12 preservation or reunification services if the court finds that the parent has:

13 (a) subjected a child to aggravated circumstances, including but not limited to abandonment,
14 torture, chronic abuse, or sexual abuse or chronic, severe neglect of a child;

15 (b) committed, aided, abetted, attempted, conspired, or solicited deliberate or mitigated deliberate
16 homicide of a child;

17 (c) committed aggravated assault against a child;

18 (d) committed neglect of a child that resulted in serious bodily injury or death; or

19 (e) had parental rights to the child's sibling or other child of the parent involuntarily terminated and
20 the circumstances related to the termination of parental rights are relevant to the parent's ability to adequately
21 care for the child at issue.

22 (3) Preservation or reunification services are not required for a putative father, as defined in 42-2-
23 201, if the court makes a finding that the putative father has failed to do any of the following:

24 (a) contribute to the support of the child for an aggregate period of 1 year, although able to do so;

25 (b) establish a substantial relationship with the child. A substantial relationship is demonstrated by:

26 (i) visiting the child at least monthly when physically and financially able to do so; or

27 (ii) having regular contact with the child or with the person or agency having the care and custody
28 of the child when physically and financially able to do so; and

1 (iii) manifesting an ability and willingness to assume legal and physical custody of the child if the
2 child was not in the physical custody of the other parent.

3 (c) register with the putative father registry pursuant to Title 42, chapter 2, part 2, and the person
4 has not been:

5 (i) adjudicated in Montana to be the father of the child for the purposes of child support; or

6 (ii) recorded on the child's birth certificate as the child's father.

7 (4) A judicial finding that preservation or reunification services are not necessary under this section
8 must be supported by clear and convincing evidence.

9 (5) If the court finds that preservation or reunification services are not necessary pursuant to
10 subsection (2) or (3), a permanency hearing must be held within 30 days of that determination and reasonable
11 efforts, including consideration of both in-state and out-of-state permanent placement options for the child, must
12 be made to place the child in a timely manner in accordance with the permanency plan and to complete
13 whatever steps are necessary to finalize the permanent placement of the child.

14 (6) If reasonable efforts have been made to prevent removal of a child from the home or to return a
15 child to the child's home but continuation of the efforts is determined by the court to be inconsistent with the
16 permanency plan for the child, the department shall make reasonable efforts to place the child in a timely
17 manner in accordance with the permanency plan, including, if appropriate, placement in another state, and to
18 complete whatever steps are necessary to finalize the permanent placement of the child. Reasonable efforts to
19 place a child permanently for adoption or to make an alternative out-of-home permanent placement may be
20 made concurrently with reasonable efforts to return a child to the child's home. Concurrent planning, including
21 identifying in-state and out-of-state placements, may be used.

22 (7) When determining whether the department has made reasonable efforts to prevent the
23 necessity of removal of a child from the child's home or to reunify families that have been separated by the
24 state, the court shall review the services provided by the agency including, if applicable, protective services
25 provided pursuant to 41-3-302. (Bracketed language in subsection (2) terminates June 30, 2025--sec. 55, Ch.
26 716, L. 2023.)"

27
28 **Section 11.** Section 41-3-424, MCA, is amended to read:

1 **"41-3-424. Dismissal.** Unless the petition has been previously dismissed, the court shall dismiss an
2 abuse and neglect petition on the motion of a party, or on its own motion, in any case in which ~~all~~ one of the
3 following ~~criteria are~~ criterion is met:

4 (1) a child who has been placed in foster care is reunited with the child's parents and returned
5 home and the court finds, after a hearing, that the child is safe in the home;

6 (2) the child remains in the home for a minimum of 6 months with no additional confirmed reports
7 of child abuse or neglect; ~~and or~~

8 (3) the department determines and informs the court that the issues that led to department
9 intervention have been resolved and that no reason exists for further department intervention or monitoring."

10
11 **Section 12.** Section 41-3-427, MCA, is amended to read:

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

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

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

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

26 (ii) specific, written documentation as to why the risk of allowing the child to remain at home
27 substantially outweighs the harm of removing the child, including consideration of:

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

- 1 (B) the child's relationships with other members of the household, including siblings;
- 2 (C) the child's schooling and social relationships that could be disrupted with a placement out of
- 3 the neighborhood;
- 4 (D) the impact the removal would have on services the child is receiving and on extracurricular
- 5 activities that benefit the child; and
- 6 (E) documentation of reasonable efforts made to keep the family intact.
- 7 (d) If from the alleged facts presented in the affidavit it appears to the court that there is probable
- 8 cause or, if the case is subject to the federal Indian Child Welfare Act or the Montana Indian Child Welfare Act,
- 9 clear and convincing evidence to believe that the child has been abused or neglected or is in danger of being
- 10 abused and neglected, the judge shall grant emergency protective services and the relief authorized by
- 11 subsection (2) until the adjudication hearing or the temporary investigative hearing. If it appears from the
- 12 alleged facts contained in the affidavit that there is insufficient probable cause or, if the case is subject to the
- 13 federal Indian Child Welfare Act or the Montana Indian Child Welfare Act, clear and convincing evidence to
- 14 believe that the child has been abused or neglected or is in danger of being abused or neglected, the court
- 15 shall dismiss the petition.
- 16 (e) If the parents, parent, guardian, person having physical or legal custody of the child, or attorney
- 17 for the child disputes the material issues of fact contained in the affidavit or the veracity of the affidavit, the
- 18 person may request a contested show cause hearing pursuant to 41-3-432 within 10 days following service of
- 19 the petition and affidavit.
- 20 (f) The petition for immediate protection and emergency protective services must include a notice
- 21 advising the parents, parent, guardian, or other person having physical or legal custody of the child that the
- 22 parents, parent, guardian, or other person having physical or legal custody of the child may have a support
- 23 person present during any meeting with a child protection specialist concerning emergency protective services.
- 24 Reasonable accommodation must be made in scheduling an in-person meeting with the child protection
- 25 specialist.
- 26 (2) Pursuant to subsection (1), if the court finds probable cause or, if the case is subject to the
- 27 federal Indian Child Welfare Act or the Montana Indian Child Welfare Act, clear and convincing evidence based
- 28 on the petition and affidavit, the court may issue an order for immediate protection of the child. The court shall

1 consider the parents' statements, if any, included with the petition and any accompanying affidavit or report to
2 the court. If the court finds probable cause or, if the case is subject to the federal Indian Child Welfare Act or the
3 Montana Indian Child Welfare Act, clear and convincing evidence, the court may issue an order granting the
4 following forms of relief, which do not constitute a court-ordered treatment plan under 41-3-443:

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

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

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

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

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

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

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

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

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

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

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

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

- 1 (ii) whether the foster placement can accommodate the proposed visitation schedule;
- 2 (iii) whether siblings can be placed together;
- 3 (iv) the proximity of the foster home to the child's home and school;
- 4 (v) whether the child will be able to observe religious or cultural practices important to the child;
- 5 and
- 6 (vi) whether the foster home is able to accommodate any special needs the child may have.
- 7 (4) In making a removal determination, the court shall weigh and evaluate, in the factual setting,
- 8 the harm to the child that will result from removal and determine if allowing the child to remain in the home
- 9 substantially outweighs the harm of removal. Factors for consideration of the best interests of the child include
- 10 but are not limited to:
- 11 (a) the factors identified in subsections (1)(c)(ii)(A) through (1)(c)(ii)(D); and
- 12 (b) whether the department made reasonable efforts, as described in subsection (1)(c)(ii)(E), to
- 13 keep the family intact.
- 14 (5) (a) An order for removal of a child from the home must include a finding that:
- 15 (i) continued residence of the child with the parent is contrary to the welfare of the child;
- 16 (ii) an out-of-home placement is in the best interests of the child; and
- 17 (iii) the risk of allowing the child to remain in the home substantially outweighs the harm of removal.
- 18 (b) The court shall provide written findings to explain why the risk of the child's continued stay in
- 19 the home outweighs the harm of removing the child.
- 20 (6) The order for immediate protection of the child must require the person served to comply
- 21 immediately with the terms of the order and to appear before the court issuing the order on the date specified
- 22 for a show cause hearing. Upon a failure to comply or show cause, the court may hold the person in contempt
- 23 or place temporary physical custody of the child with the department until further order.
- 24 (7) The petition must be served as provided in 41-3-422 or, if the case involves an Indian child, as
- 25 provided in 41-3-1311. (Terminates June 30, 2025--sec. 55, Ch. 716, L. 2023.)

26 **41-3-427. (Effective July 1, 2025) Petition for immediate protection and emergency protective**

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

28 ~~appears that a child is abused or neglected or is in danger of~~ When necessary to prevent a child from being

1 abused or neglected, the county attorney, the attorney general, or an attorney hired by the county may file a
2 petition for immediate protection and emergency protective services. In implementing the policy of this section,
3 the child's health and safety are of paramount concern.

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

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

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

11 (ii) specific, written documentation as to why the risk of allowing the child to remain at home
12 substantially outweighs the harm of removing the child, including consideration of:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 (f) a requirement that the parent provide the department with the name and address of the other

1 parent, if known, unless parental rights to the child have been terminated;

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

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

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

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

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

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

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

15 (iii) whether siblings can be placed together;

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

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

18 and

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

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

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

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

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

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

- 1 (ii) an out-of-home placement is in the best interests of the child; and
- 2 (iii) the risk of allowing the child to remain in the home substantially outweighs the harm of removal.
- 3 (b) The court shall provide written findings to explain why the risk of the child's continued stay in
- 4 the home outweighs the harm of removing the child. The court shall articulate the factual basis for each finding.
- 5 (6) The order for immediate protection of the child must require the person served to comply
- 6 immediately with the terms of the order and to appear before the court issuing the order on the date specified
- 7 for a show cause hearing. Upon a failure to comply or show cause, the court may hold the person in contempt
- 8 or place temporary physical custody of the child with the department until further order.
- 9 (7) The petition must be served as provided in 41-3-422."

10

11 NEW SECTION. **Section 13. Codification instruction.** [Sections 1 and 2] are intended to be codified

12 as an integral part of Title 41, chapter 3, part 3, and the provisions of Title 41, chapter 3, part 3, apply to

13 [sections 1 and 2].

15 NEW SECTION. **Section 14. Effective dates.** (1) Except as provided in subsection (2), [this act] is
16 effective July 1, 2025.

17 (2) [Sections 6, 8, and 9] are effective July 1, 2027.

19 NEW SECTION. Section 15. Termination. [Sections 5 and 7] terminate June 30, 2027.

20 - END -