

1 _____ BILL NO. _____

2 INTRODUCED BY _____
3 (Primary Sponsor)

4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MONTANA INDIAN CHILD WELFARE ACT AND
5 RELATED LAWS; REQUIRING CULTURAL COMPACTS IN CERTAIN CIRCUMSTANCES; CLARIFYING THE
6 STANDARD FOR EMERGENCY REMOVAL; PROVIDING ADDITIONAL REQUIREMENTS FOR
7 GUARDIANSHIPS; REQUIRING CONSULTATION WITH AN INDIAN CHILD'S TRIBE ON A PERMANENCY
8 PLAN; PROVIDING ADDITIONAL GROUNDS THAT A COURT MAY HAVE REASON TO KNOW A CHILD IS
9 AN INDIAN CHILD; REQUIRING A DENIAL OF A TRANSFER OF JURISDICTION TO BE IN WRITING;
10 REVISING REQUIREMENTS FOR QUALIFIED EXPERT WITNESSES, ACTIVE EFFORTS, EVIDENCE, AND
11 PLACEMENT PREFERENCES; AMENDING SECTIONS 40-6-407, 41-3-306, 41-3-444, 41-3-445, 41-3-1306,
12 41-3-1310, 41-3-1318, 41-3-1319, 41-3-1320, 41-3-1325, 41-3-1328, AND 41-3-1329, MCA; REPEALING
13 SECTION 55, CHAPTER 716, LAWS OF 2023; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."
14

15 WHEREAS, the Montana Legislature recognizes the guiding principles it enacted in section 2-15-142,
16 MCA, that in formulating or implementing policies that have direct tribal implications, the state should consider
17 the following principles:

- 18 (1) a commitment to cooperation and collaboration;
19 (2) mutual understanding and respect;
20 (3) regular and early communication;
21 (4) a process of accountability for addressing issues; and
22 (5) preservation of the tribal-state relationship;

23 and in possibly no other area of concurrent tribal and state law is it more important that these principles be
24 followed as in an area as socially and culturally determinative as family relationships.
25

26 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
27

28 NEW SECTION. **Section 1. Cultural compacts.** (1) To ensure that all Indian children have the

1 opportunity to maintain strong connections to their culture, if the household into which an Indian child is placed
2 for adoption or guardianship does not include a parent who is a member of the Indian child's tribe, the court
3 shall require the prospective adoptive parents or guardians and the child's tribe to enter a cultural compact, at
4 the discretion of the Indian child's tribe, that documents the parties' agreement regarding how the Indian child
5 will continue to actively participate in the Indian child's cultural learning and activities and engagement with
6 family members.

7 (2) Each cultural compact must be specific to the Indian child and must articulate the Indian child's
8 understanding as the Indian child grows and matures.

9 (3) The cultural compact must:

10 (a) become part of the court record;

11 (b) be enforced by the court; and

12 (c) be included in the adoption or guardianship decree.
13

14 **Section 2.** Section 40-6-407, MCA, is amended to read:

15 **"40-6-407. ~~(Temporary)~~ Assumption of care, custody, and control by department -- placement**
16 **of child -- presumptions -- Montana birth certificate.** (1) Upon receipt of notice under 40-6-406, the
17 department shall:

18 (a) immediately assume the care, control, and temporary protective custody of the newborn;

19 (b) if a parent is known and willing, immediately meet with the parent;

20 (c) make a temporary placement of the newborn;

21 (d) immediately request assistance from law enforcement officials to investigate and determine,
22 through the national center for missing and exploited children and any other national and state missing children
23 information programs, whether the newborn is a missing child;

24 (e) not later than 48 hours after assuming the care, control, and temporary protective custody of
25 the newborn, file a petition with the court under the provisions of Title 41, chapter 3, part 4, and, if applicable,
26 the Montana Indian Child Welfare Act provided for in Title 41, chapter 3, part 13, requesting appropriate relief
27 with the goal of achieving permanent placement for the newborn at the earliest possible date; and

28 (f) within 30 days, make reasonable efforts to identify and locate a parent who did not surrender

1 the newborn. If the identity and address of that parent are unknown, the department shall provide notice by
2 publication in a newspaper of general circulation in the county where the newborn was surrendered.

3 (2) The department, after assuming the care, custody, and control of a newborn under subsection
4 (1), is not required to attempt to reunify the newborn with the newborn's parents. The Except as required under
5 the federal Indian Child Welfare Act and the Montana Indian Child Welfare Act provided for in Title 41, chapter
6 3, part 13, the department is not required to search for relatives of the newborn as a placement or permanency
7 option or to implement other placement requirements that give preference to relatives if the department does
8 not have information as to the identity of the newborn or either of the newborn's parents. The department shall
9 place the newborn with prospective adoptive parents as soon as possible. The adoptive parents must be
10 allowed access to information regarding the newborn's medical history, date of birth, or age if the department
11 has that information.

12 (3) A newborn surrendered under 40-6-405 is presumed to have been born in Montana unless the
13 biological parent otherwise informs the department or the emergency services provider to whom the newborn is
14 surrendered.

15 (4) A Montana birth certificate may be issued based on the presumption of birth in Montana as
16 provided in subsection (3). A birth certificate issued to a newborn surrendered under 40-6-405 must provide a
17 date of birth based on either the actual date of birth, if known, or on the date of birth determined by the
18 physician who performs the medical examination of the newborn under 40-6-406. (~~Terminates June 30, 2025--~~
19 ~~sec. 55, Ch. 716, L. 2023.~~)

20 ~~40-6-407. (Effective July 1, 2025) Assumption of care, custody, and control by department --~~
21 ~~placement of child -- presumptions -- Montana birth certificate. (1) Upon receipt of notice under 40-6-~~
22 ~~406, the department shall:~~

- 23 (a) ~~immediately assume the care, control, and temporary protective custody of the newborn;~~
24 (b) ~~if a parent is known and willing, immediately meet with the parent;~~
25 (c) ~~make a temporary placement of the newborn;~~
26 (d) ~~immediately request assistance from law enforcement officials to investigate and determine,~~
27 ~~through the national center for missing and exploited children and any other national and state missing children~~
28 ~~information programs, whether the newborn is a missing child;~~

(e) — not later than 48 hours after assuming the care, control, and temporary protective custody of the newborn, file a petition with the court under the provisions of Title 41, chapter 3, part 4, requesting appropriate relief with the goal of achieving permanent placement for the newborn at the earliest possible date; and

(f) — within 30 days, make reasonable efforts to identify and locate a parent who did not surrender the newborn. If the identity and address of that parent are unknown, the department shall provide notice by publication in a newspaper of general circulation in the county where the newborn was surrendered.

(2) — The department, after assuming the care, custody, and control of a newborn under subsection (1), is not required to attempt to reunify the newborn with the newborn's parents. The department is not required to search for relatives of the newborn as a placement or permanency option or to implement other placement requirements that give preference to relatives if the department does not have information as to the identity of the newborn or either of the newborn's parents. The department shall place the newborn with prospective adoptive parents as soon as possible. The adoptive parents must be allowed access to information regarding the newborn's medical history, date of birth, or age if the department has that information.

(3) — A newborn surrendered under 40-6-405 is presumed to have been born in Montana unless the biological parent otherwise informs the department or the emergency services provider to whom the newborn is surrendered.

(4) — A Montana birth certificate may be issued based on the presumption of birth in Montana as provided in subsection (3). A birth certificate issued to a newborn surrendered under 40-6-405 must provide a date of birth based on either the actual date of birth, if known, or on the date of birth determined by the physician who performs the medical examination of the newborn under 40-6-406."

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

"41-3-306. Emergency protective services hearing -- exception. (1) (a) A district court shall hold a hearing within 5 business days of a child's removal from the home pursuant to 41-3-301 to determine whether there is probable cause to continue the removal beyond 5 business days. If there is reason to know that the federal Indian Child Welfare Act or the Montana Indian Child Welfare Act provided for in Title 41, chapter 3, part 13, apply, the court shall determine whether there is clear and convincing evidence that the emergency removal

1 or placement is necessary to prevent imminent physical damage or harm to the child.

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

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

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

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

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

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

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

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

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

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

21 (8) The emergency protective services hearing is an emergency proceeding for the purposes of
22 the Montana Indian Child Welfare Act provided for in Title 41, chapter 3, part 13, and is not subject to the notice
23 requirements of the Montana Indian Child Welfare Act. ~~(Subsection (8) terminates June 30, 2025 -- sec. 55, Ch.~~
24 ~~716, L. 2023.)"~~

25

26 **Section 4.** Section 41-3-444, MCA, is amended to read:

27 **"41-3-444. Abuse and neglect proceedings -- appointment of guardian -- financial subsidies. (1)**

28 The court may, ~~upon~~on the petition of the department or guardian ad litem, enter an order appointing a

guardian for a child who has been placed in the temporary or permanent custody of the department pursuant to 41-3-438, 41-3-445, or 41-3-607. The guardianship may be subsidized by the department under subsection (8) (9) if the guardianship meets the department's criteria, or the guardianship may be nonsubsidized.

(2) The court may appoint a guardian for a child pursuant to this section if ~~the following facts are found by the court~~ finds by clear and convincing evidence that the following facts have been established:

(a) the department has given its written consent to the appointment of the guardian, whether the guardianship is to be subsidized or not;

(b) if the guardianship is to be subsidized, the department has given its written consent after the department has considered initiating or continuing financial subsidies pursuant to subsection (8) (9);

(c) the child has been adjudicated a youth in need of care;

(d) the department has made reasonable efforts, or, if the case is subject to the federal Indian Child Welfare Act or the Montana Indian Child Welfare Act provided for in Title 41, chapter 3, part 13, active efforts, to reunite the parent and child, further efforts to reunite the parent and child by the department would likely be unproductive, and reunification of the parent and child would be contrary to the best interests of the child;

(e) the child has lived with the potential guardian in a family setting and the potential guardian is committed to providing a long-term relationship with the child;

(f) if the case is subject to the federal Indian Child Welfare Act or the Montana Indian Child Welfare Act provided for in Title 41, chapter 3, part 13, and the department is the petitioning party, the department has consulted with the Indian child's tribe regarding the Indian child's potential guardians and whether the Indian child's tribe is in agreement with the proposed guardianship;

(g) if the case is subject to the federal Indian Child Welfare Act or the Montana Indian Child Welfare Act provided for in Title 41, chapter 3, part 13, the state has met the requirements for providing the Indian child's tribe with notice of the proceedings pursuant to 41-3-1311;

(h) if the case is subject to the federal Indian Child Welfare Act or the Montana Indian Child Welfare Act provided for in Title 41, chapter 3, part 13, that the court has reviewed a cultural compact, if any, entered into between the child's tribe and the child's guardian pursuant to [section 1];

(i) it is in the best interests of the child to remain or be placed with the potential guardian; and

(j) either termination of parental rights to the child is not in the child's best interests or parental rights to the child have been terminated, but adoption is not in the child's best interests; ~~and.~~

~~_____ if the child concerning whom the petition for guardianship has been filed is an Indian child, as defined in the [federal] Indian Child Welfare Act, 25 U.S.C. 1901, et seq., [or 41-3-1303,] the [Indian] child's tribe has received notification from the state of the initiation of the proceedings.~~

(3) The entry of a decree of guardianship pursuant to this section terminates the custody of the department and the involvement of the department with the child and the child's parents except for the department's provision of a financial subsidy, if any, pursuant to subsection (8) (9).

(4) (a) A guardian appointed under this section may exercise the powers and has the duties provided in 72-5-231.

(b) The court shall require a guardian appointed under this section to report annually on the condition of the ward, the ward's estate that has been subject to the guardian's possession or control, and the ward's contact with extended family.

(c) If the case is governed by the federal Indian Child Welfare Act or the Montana Indian Child Welfare Act provided for in Title 41, chapter 3, part 13, the guardian's report must also include:

(i) the Indian child's participation in cultural activities involving or reflective of the Indian child's tribe; and

(ii) the date the guardian served the report on the Indian child's tribe. Service on the Indian child's tribe must be made by first-class mail to the person identified in the most current federal register as the designated tribal agent for service of notice for the purposes of the federal Indian Child Welfare Act.

(5) On failure, as determined by the clerk of court, of the guardian to file an annual report pursuant to subsection (4), the court shall order the guardian to file the report and give good cause for the guardian's failure to file a timely report.

(6) The court may revoke a guardianship ordered pursuant to this section if the court finds, after hearing on a petition for removal of the child's guardian, that continuation of the guardianship is not in the best interests of the child. Notice of hearing on the petition must be provided by the moving party to the child's lawful guardian, the department, any court-appointed guardian ad litem, the child's parent if the rights of the parent have not been terminated, the child's tribe if the case is governed by the federal Indian Child Welfare Act or the

1 Montana Indian Child Welfare Act provided for in Title 41, chapter 3, part 13, and other persons directly
2 interested in the welfare of the child.

3 (7) A guardian may petition the court for permission to resign the guardianship. A petition may
4 include a request for appointment of a successor guardian.

5 (8) After notice and hearing on a petition for removal or permission to resign, the court may appoint
6 a successor guardian or may terminate the guardianship and restore temporary legal custody to the department
7 pursuant to 41-3-438.

8 (9) The department may provide a financial subsidy to a guardian appointed pursuant to this
9 section if the guardianship meets the department's criteria and if the department determines that a subsidy is in
10 the best interests of the child. The amount of the subsidy must be determined by the department.

11 (10) This section does not apply to guardians appointed pursuant to Title 72, chapter 5. ~~(Bracketed~~
12 ~~language in subsection (2)(h) terminates June 30, 2025--sec. 55, Ch. 716, L. 2023.)"~~

13

14 **Section 5.** Section 41-3-445, MCA, is amended to read:

15 **"41-3-445. Permanency hearing.** (1) (a) (i) Subject to subsection (1)(b), a permanency hearing must
16 be held by the court or, subject to the approval of the court and absent an objection by a party to the
17 proceeding, by the foster care review committee, as provided in 41-3-115, or the citizen review board, as
18 provided in 41-3-1010:

19 (A) within 30 days of a determination that reasonable efforts to provide preservation or reunification
20 services are not necessary under 41-3-423, 41-3-438(6), or 41-3-442(1); or

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

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

27 (b) A permanency hearing is not required if the proceeding has been dismissed, the child was not
28 removed from the home, the child has been returned to the child's parent or guardian, or the child has been

1 legally adopted or appointed a legal guardian.

2 (c) The permanency hearing may be combined with a hearing that is required in other sections of
3 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
4 permanency hearing is combined with another hearing or a review, the requirements of the court related to the
5 disposition of the other hearing or review must be met in addition to the requirements of this section.

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

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

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

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

18 (5) (a) The court's order must be issued within 20 days after the permanency hearing if the hearing
19 was conducted by the court.

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

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

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

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

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

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

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

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

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

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

7 (f) if the case is governed by the federal Indian Child Welfare Act or the Montana Indian Child
8 Welfare Act provided for in Title 41, chapter 3, part 13, whether the department has consulted with the child's
9 tribe regarding permanency and the tribe's position on the proposed permanency plan; and

10 (g) other necessary steps that the department is required to take to effectuate the terms of the
11 plan.

12 (7) In its discretion, the court may enter any other order that it determines to be in the best
13 interests of the child that does not conflict with the options provided in subsection (8) and that does not require
14 an expenditure of money by the department unless the court finds after notice and a hearing that the
15 expenditures are reasonable and that resources are available for payment. The department is the payor of last
16 resort after all family, insurance, and other resources have been examined.

17 (8) Permanency options include:

18 (a) reunification of the child with the child's parent or guardian;

19 (b) permanent placement of the child with the noncustodial parent, superseding any existing
20 custodial order;

21 (c) adoption;

22 (d) appointment of a guardian pursuant to 41-3-444; or

23 (e) long-term custody if the child is in a planned permanent living arrangement and if it is
24 established by a preponderance of the evidence, which is reflected in specific findings by the court, that:

25 (i) the child is being cared for by a fit and willing relative;

26 (ii) the child has an emotional or mental handicap that is so severe that the child cannot function in
27 a family setting and the best interests of the child are served by placement in a residential or group setting;

28 (iii) the child is at least 16 years of age and is participating in an independent living program and

1 that termination of parental rights is not in the best interests of the child;

2 (iv) the child's parent is incarcerated and circumstances, including placement of the child and
3 continued, frequent contact with the parent, indicate that it would not be in the best interests of the child to
4 terminate parental rights of that parent; or

5 (v) the child meets the following criteria:

6 (A) the child has been adjudicated a youth in need of care;

7 (B) the department has made reasonable efforts to reunite the parent and child, further efforts by
8 the department would likely be unproductive, and reunification of the child with the parent or guardian would be
9 contrary to the best interests of the child;

10 (C) there is a judicial finding that other more permanent placement options for the child have been
11 considered and found to be inappropriate or not to be in the best interests of the child; and

12 (D) the child has been in a placement in which the foster parent or relative has committed to the
13 long-term care and to a relationship with the child, and it is in the best interests of the child to remain in that
14 placement.

15 (9) For a child 14 years of age or older, the permanency plan must:

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

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

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

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

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

1

2 **Section 6.** Section 41-3-1306, MCA, is amended to read:

3 **"41-3-1306. (Temporary) Determination of Indian status -- confidentiality of records.** (1) (a) A
4 party seeking the emergency removal of, foster care placement of, termination of parental rights over, or
5 adoption of a child shall use due diligence to determine whether the child is an Indian child. The inquiry must be
6 made in consultation with:

7 (i) the child's parent or parents;

8 (ii) an individual who has custody of the child or with whom the child resides;

9 (iii) any other individual who reasonably may be expected to have information regarding the child's
10 possible membership or eligibility for membership in an Indian tribe; and

11 (iv) any Indian tribe of which the child may be a member or may be eligible for membership. The
12 consultation with a tribe must be made by contacting the tribe in writing.

13 (b) The inquiries required under this subsection (1) must be documented in the record.

14 (2) Preliminary contacts for the purpose of using due diligence to determine a child's possible
15 Indian status do not constitute legal notice as required by 41-3-1311.

16 (3) A court shall ask each participant in an emergency proceeding or voluntary or involuntary child
17 custody proceeding whether the participant knows or has reason to know that the child is an Indian child. The
18 inquiry must be made at the commencement of the proceeding and all responses must be on the record. The
19 court shall instruct the parties to inform the court if they subsequently receive information that provides reason
20 to know the child is an Indian child.

21 (4) If there is reason to know the child is an Indian child but the court does not have sufficient
22 evidence to determine that the child is or is not an Indian child, the court shall confirm, by way of a report,
23 declaration, or testimony included in the record, that the department or other party used due diligence to identify
24 and work with all tribes of which there is reason to know the child may be a member or eligible for membership
25 to verify whether the child is a member or eligible for membership.

26 (5) A court, on conducting the inquiry required in subsection (3), has reason to know that a child
27 involved in an emergency proceeding or child custody proceeding may be an Indian child if:

28 (a) any participant in the proceeding, officer of the court involved in the proceeding, Indian tribe,

1 Indian organization, or agency informs the court that:

2 (i) the child is an Indian child; or

3 (ii) it has discovered information indicating that the child is an Indian child;

4 (b) the child who is the subject of the proceeding gives the court reason to know the child is an
5 Indian child;

6 (c) the court is informed that the residence or domicile of the child, the child's parent, or the child's
7 Indian custodian is on a reservation or in an Alaska Native village;

8 (d) the court is informed that the child is or has been a ward of a tribal court;

9 (e) the court is informed that either of the parents or the child possesses an identification card
10 indicating membership in an Indian tribe; or

11 (f) the court determines from additional information provided that the child may be an Indian child.

12 ;

13 (g) the parent, guardian, Indian custodian, or child indicate they receive health care from the Indian
14 health services or an urban Indian health clinic; or

15 (h) the court determines from additional information provided that the child may be an Indian child.

16 (6) The court may not rely on prior determinations from past child custody proceedings.

17 (7) (a) When seeking verification of a child's Indian status during a voluntary proceeding, the court
18 shall keep relevant documents pertaining to the inquiry confidential and under seal if a consenting parent
19 expresses either orally or in writing a desire for anonymity. A request for anonymity does not relieve the court,
20 agency, or other party from any duty of compliance with this part, including the obligation to verify whether the
21 child is an Indian child.

22 (b) A tribe receiving information related to an inquiry of a child's status as an Indian child must
23 keep documents and information confidential.

24 (7) A written determination by an Indian tribe regarding the child's status as an Indian child is
25 conclusive that the child is an Indian child. ~~(Terminates June 30, 2025—sec. 55, Ch. 716, L. 2023.)~~"

26

27 **Section 7.** Section 41-3-1310, MCA, is amended to read:

28 **"41-3-1310. (Temporary) Jurisdiction -- transfer of jurisdiction.** (1) An Indian tribe has exclusive

1 jurisdiction over any child custody proceeding involving an Indian child who resides or is domiciled within the
2 reservation of that tribe unless:

3 (a) the tribe has consented to the state's concurrent jurisdiction pursuant to Public Law 280 or 25
4 U.S.C. 1919;

5 (b) the tribe has expressly declined to exercise its exclusive jurisdiction; or

6 (c) the state is exercising emergency jurisdiction in compliance with 41-3-1325.

7 (2) If an Indian child is already a ward of a tribal court at the start of the child custody proceeding,
8 the Indian tribe may retain exclusive jurisdiction regardless of the residence or domicile of the child.

9 (3) Except as provided in subsection (5), in a child custody proceeding involving an Indian child
10 who is not residing or domiciled within the reservation of the Indian child's tribe, the court shall, in the absence
11 of good cause to the contrary, transfer the proceeding to the jurisdiction of the Indian child's tribe on the motion
12 of any of the following:

13 (a) either of the Indian child's parents;

14 (b) the Indian child's Indian custodian; or

15 (c) the Indian child's tribe.

16 (4) If the Indian child's tribe has not formally intervened, the moving party shall serve a copy of the
17 motion and all supporting documents on the tribal court to which the moving party seeks transfer.

18 (5) If either of the Indian child's parents objects to transfer of the proceeding to the Indian child's
19 tribe, the court may not transfer the proceeding.

20 (6) (a) If a state court believes or any party asserts that good cause to deny transfer exists, the
21 reasons for that belief or assertion must be provided orally or in writing on the record and to the parties to the
22 child custody proceeding. Any party to the child custody proceeding must have the opportunity to provide the
23 court with the reasons that good cause exists to deny transfer of the proceeding.

24 (b) In determining whether good cause exists, the court may not consider:

25 (i) whether the child custody proceeding is at an advanced stage;

26 (ii) whether there have been prior proceedings involving the child for which no petition to transfer
27 was filed;

28 (iii) whether transfer could affect the placement of the child;

- 1 (iv) the child's cultural connections with the tribe or its reservation; or
- 2 (v) socioeconomic conditions or any negative perception of the tribal or bureau of Indian affairs
- 3 social services or judicial systems.
- 4 (c) If the court denies transfer of jurisdiction, the court shall state its reasons for the denial orally on
- 5 the record or in a written order.
- 6 (7) (a) Following entry of an order transferring jurisdiction to the Indian child's tribe and pending
- 7 receipt of a tribal court order accepting jurisdiction, the state court:
- 8 (i) may conduct additional hearings and enter orders that are in the best interests of the child and
- 9 strictly comply with the requirements of the federal Indian Child Welfare Act and this part; and
- 10 (ii) may not enter a final order in a child custody proceeding, except an order dismissing the
- 11 proceeding and returning the Indian child to the care of the parent or Indian custodian from whose care the
- 12 child was removed.
- 13 (b) On receipt of an order from a tribal court accepting jurisdiction, the court shall:
- 14 (i) dismiss the child custody proceeding with prejudice; and
- 15 (ii) expeditiously provide the tribal court with all records related to the proceeding, including but not
- 16 limited to the pleadings and any court record. The state court shall work with the tribal court to ensure the
- 17 transfer of the custody of the Indian child and the proceeding is accomplished smoothly and in a way that
- 18 minimizes the disruption of services to the family.
- 19 (8) If the Indian child's tribe accepts jurisdiction, the state court shall enter an order relieving the
- 20 office of the state public defender and any public defender assigned pursuant to 41-3-425 and 47-1-104 from
- 21 further representation.
- 22 (9) If the Indian child's tribe declines jurisdiction, the state court shall enter an order vacating the
- 23 order transferring jurisdiction and proceed with adjudication of the child custody proceeding in compliance with
- 24 the federal Indian Child Welfare Act, this part, and any applicable state-tribal agreement. (~~Terminates June 30,~~
- 25 ~~2025--sec. 55, Ch. 716, L. 2023.)"~~

26

27 **Section 8.** Section 41-3-1318, MCA, is amended to read:

28 **"41-3-1318. (Temporary) Qualified expert witness -- requirements -- prohibitions.** (1) A qualified

1 expert witness is an individual who provides testimony in a child custody proceeding under this part. The
2 purpose of the testimony is to assist a court in determining whether the continued custody of the child by or the
3 return of the child to the parent or Indian custodian is likely to result in serious emotional or physical damage to
4 the child.

5 (2) The parties may not waive the requirement for the qualified expert witness testimony. The court
6 may accept a declaration or affidavit from a qualified expert witness in lieu of testimony only if the parties have
7 so stipulated on the record and the court is satisfied that stipulation is made knowingly, intelligently, and
8 voluntarily.

9 (3) The petitioning party shall consult with the Indian child's tribe on the selection of the qualified
10 expert witness, including asking whether the tribe has a list of preferred qualified expert witnesses. To the
11 extent possible, the petitioning party shall use an individual preferred by the tribe. The petitioner shall file a
12 declaration with the court describing the efforts the petitioner made under this subsection to identity a qualified
13 expert witness.

14 (4) A qualified expert witness must be qualified to testify regarding whether the child's continued
15 custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child
16 and must be qualified to testify as to the prevailing social and cultural standards of the Indian child's tribe.

17 (5) (a) If the petitioner is the department, the child protection specialist assigned to the case and
18 the child protection specialist's supervisor may not testify as qualified expert witnesses in the case.

19 (b) Nothing in this subsection ~~(4)-(5)~~ may be construed as barring:

20 (i) the child protection specialist or the child protection specialist's supervisor from testifying as an
21 expert witness for other purposes in a proceeding under this part; or

22 (ii) the petitioner or another party in a proceeding under this part from providing additional
23 witnesses or expert testimony, subject to the approval of the court, on any issue before the court, including the
24 determination of whether the continued custody of the Indian child by or return of the Indian child to the parent,
25 parents, or Indian custodian is likely to result in serious emotional or physical damage to the Indian child.

26 (6) Unless stipulated to by the parties in accordance with subsection (2), a qualified expert witness
27 shall testify as to whether continued custody of an Indian child by or return of the Indian child to the parents or
28 Indian custodian is likely to result in serious emotional or physical damage to the Indian child at the show cause

1 hearing, adjudication hearing, dispositional hearing, guardianship hearing, and termination hearing. (Terminates
2 June 30, 2025—sec. 55, Ch. 716, L. 2023.)"

3
4 **Section 9.** Section 41-3-1319, MCA, is amended to read:

5 **"41-3-1319. (Temporary) Active efforts.** (1) Any party seeking to ~~effect~~ affect a foster care
6 placement of, or termination of parental rights to, an Indian child under state law shall satisfy the court that
7 active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the
8 breakup of the Indian family and that the efforts have proven unsuccessful. The party seeking to affect a foster
9 care placement shall demonstrate by clear and convincing evidence that it has engaged in active efforts to
10 prevent the breakup of the Indian family. The party seeking to terminate parental rights shall demonstrate by
11 proof beyond a reasonable doubt that it has engaged in active efforts to prevent the breakup of the Indian
12 family.

13 (2) The court shall make written findings that the petitioning party has provided active efforts and
14 the efforts must be documented in detail in the record.

15 (3) If the department is involved in the child custody proceeding, active efforts must include
16 assisting the parent, parents, or Indian custodian through the steps of a case plan and with accessing or
17 developing the resources necessary to satisfy the case plan.

18 (4) (a) To the maximum extent possible, active efforts must be provided in a manner consistent
19 with the prevailing social and cultural conditions and way of life of the Indian child's tribe and conducted in
20 partnership with the Indian child and the Indian child's parents, extended family members, Indian custodians,
21 and tribe. Active efforts are to be tailored to the facts and circumstances of the case and may include but are
22 not limited to:

23 (i) conducting a comprehensive assessment of the circumstances of the Indian child's family, with
24 a focus on safe reunification as the most desirable goal;

25 (ii) asking the parent, child, and Indian custodian who their support system is and utilizing this
26 support system whenever possible, including but not limited to the following:

27 (A) for meetings;

28 (B) for transportation;

- 1 (C) for parenting supervision; and
- 2 (D) for assistance locating parents not yet engaged with the department or whose whereabouts are
- 3 unknown;
- 4 (iii) facilitating contact between the child and the child's extended family whenever possible;
- 5 (iv) connecting or providing opportunities to connect the child with cultural activities, cultural
- 6 resources, and tribal contacts;
- 7 (v) in cooperation with the Indian child's tribe of affiliation, unless a parent objects, taking steps to
- 8 enroll the child in the tribe with the goal of finalizing enrollment before permanency;
- 9 (vi) assisting kin with practical supports through the licensing process and actively supporting
- 10 relatives in overcoming barriers for licensure;
- 11 (vii) identifying appropriate services and helping the parents to overcome barriers, including actively
- 12 assisting the parents in obtaining the services;
- 13 (viii) identifying, notifying, and inviting representatives of the Indian child's tribe to participate in
- 14 providing support and services to the Indian child's family and in family team meetings, permanency planning,
- 15 and resolution of placement issues;
- 16 (ix) conducting or causing to be conducted a diligent search for the Indian child's extended family
- 17 members and contacting and consulting with extended family members to provide family structure and support
- 18 for the Indian child and the Indian child's parents;
- 19 (x) offering and employing all available and culturally appropriate family preservation strategies
- 20 and facilitating the use of remedial and rehabilitative services provided by the child's tribe;
- 21 (xi) taking steps to keep siblings together whenever possible;
- 22 (xii) supporting regular visits with parents or Indian custodians in the most natural setting possible
- 23 as well as trial home visits of the Indian child during any period of removal, consistent with the need to ensure
- 24 the health, safety, and welfare of the child;
- 25 (xiii) identifying community resources, including housing, financial, transportation, mental health,
- 26 substance abuse, and peer support services and actively assisting the child's parents or, when appropriate, the
- 27 child's family, in accessing and using the resources;
- 28 (xiv) monitoring progress and participation in services;

1 (xv) considering alternative ways to address the needs of the Indian child's parents and, when
2 appropriate, the family, if the optimum services do not exist or are not available; and

3 (xvi) providing postreunification services and monitoring.

4 (b) Referral to a service or program does not constitute an active effort if the referral was the sole
5 action taken. Assistance with referrals may include, but is not limited to the following:

6 (i) seeking input and consultation from the parent and the child's tribe when determining which
7 providers to refer the parent to;

8 (ii) offering to assist the parent in contacting a provider to access a service and providing this
9 assistance if requested by the parent;

10 (iii) offering to assist the parent in completing application paperwork related to accessing the
11 service and providing this assistance if requested by the parent;

12 (iv) offering transportation assistance to access a provider; and

13 (v) following up with the parent and the provider to determine whether service has been
14 successfully coordinated and addressing any barriers. (Terminates June 30, 2025--sec. 55, Ch. 716, L. 2023.)"

15
16 **Section 10.** Section 41-3-1320, MCA, is amended to read:

17 **"41-3-1320. ~~(Temporary)~~ Evidentiary requirements.** (1) A court may not order a foster care
18 placement of an Indian child unless:

19 (a) the petitioning party has provided clear and convincing evidence that active efforts were made
20 to provide remedial services and rehabilitative programs to prevent the breakup of an Indian family and that the
21 efforts were unsuccessful; and

22 (b) clear and convincing evidence is presented, including the testimony of one or more qualified
23 expert witnesses, to demonstrate that continued custody by the child's parent or Indian custodian is likely to
24 result in serious emotional or physical damage to the child.

25 (2) The court may not terminate parental rights of the parents of an Indian child unless evidence
26 beyond a reasonable doubt is presented that:

27 (a) active efforts were made to prevent the breakup of the Indian family and the efforts were
28 unsuccessful; and

(b) continued custody of the child by the child's parent or Indian custodian is likely to result in serious emotional or physical damage to the child. The evidence must include testimony of one or more qualified expert witnesses;

(c) the department consulted with the child's tribe regarding termination of parental rights prior to the filing of the petition for termination of parental rights; and

(d) in cases in which the child's tribe does not support termination of parental rights, the department consulted with the child's tribe regarding alternatives to termination of parental rights, and there is good cause to not follow the tribe's alternate permanency plan.

(3) In a termination of parental rights proceeding, bonding between the Indian child and the Indian child's foster parent may not be considered as a factor in terminating parental rights.

(4) (a) Evidence required under this section must show a causal relationship between the specific conditions in the home and the likelihood that continued custody of the child will result in serious emotional or physical damage to the child who is the subject of the child custody proceeding.

(b) Evidence showing only the existence of community or family poverty, isolation, single parenthood, custodian age, crowded or inadequate housing, substance abuse, or nonconforming social behavior does not by itself constitute clear and convincing evidence or evidence beyond a reasonable doubt that continued custody is likely to result in serious emotional or physical damage to the child. ~~(Terminates June 30, 2025—sec. 55, Ch. 716, L. 2023.)~~"

Section 11. Section 41-3-1325, MCA, is amended to read:

"41-3-1325. (Temporary) Emergency removal of Indian child. (1) Nothing in this part may be construed to prevent the department from removing an Indian child from the Indian child's parent or Indian custodian or prevent the emergency placement of the Indian child in a foster home, under applicable state law, to prevent imminent physical damage or harm to the Indian child.

(2) An emergency removal or placement of an Indian child under state law must terminate immediately when the emergency removal or placement is no longer necessary to prevent imminent physical damage or harm to the child.

(3) A state court shall:

1 (a) make a finding on the record that there is clear and convincing evidence establishing that the
2 emergency removal or placement is necessary to prevent imminent physical damage or harm to the child;

3 (b) promptly hold a hearing on whether the emergency removal or placement continues to be
4 necessary whenever new information indicates that the emergency situation has ended;

5 (c) at any court hearing during the emergency proceeding, determine whether the emergency
6 removal or placement is no longer necessary to prevent imminent physical damage or harm to the child; and

7 (d) immediately terminate or direct the department to terminate the emergency removal if the court
8 or department possesses sufficient evidence to determine that the emergency removal or placement is no
9 longer necessary to prevent imminent physical damage or harm to the child.

10 (4) An emergency proceeding may be terminated by any of the following actions:

11 (a) initiation of a child custody proceeding subject to the provisions of the federal Indian Child
12 Welfare Act and this part;

13 (b) transfer of the child to the jurisdiction of the appropriate Indian tribe; or

14 (c) restoring the child to the parent or Indian custodian.

15 (5) A petition for a court order authorizing the emergency removal or placement, or its
16 accompanying documents, must contain a statement of the risk of imminent physical damage or harm to the
17 Indian child, any evidence that the emergency removal or placement continues to be necessary to prevent the
18 damage or harm, and if available:

19 (a) the full name, age, and last known address of the Indian child;

20 (b) the name and address of the child's parents and Indian custodians, if any;

21 (c) the steps taken to provide notice to the child's parents, Indian custodians, and tribe about the
22 emergency proceeding;

23 (d) if the child's and Indian custodians are unknown, a detailed explanation of the efforts made to
24 locate and contact the individuals, including contact with the appropriate bureau of Indian affairs regional
25 director;

26 (e) the residence or the domicile of the Indian child;

27 (f) if either the residence or the domicile of the Indian child is believed to be on a reservation or in
28 an Alaska Native village, the name of the tribe affiliated with that reservation or village;

1 (g) the tribal affiliation of the child and of the parents or Indian custodians;

2 (h) a specific and detailed account of the circumstances that led the agency responsible for the
3 emergency removal of the child to remove the child;

4 (i) if the child is believed to reside or be domiciled on a reservation where the tribe exercises
5 exclusive jurisdiction over child custody matters, a statement of the efforts made and being made to contact the
6 tribe and transfer the child to the tribe's jurisdiction; and

7 (j) a statement of the efforts made to assist the parents or Indian custodians so the Indian child
8 may be safely returned to the parents or Indian custodians.

9 (6) Contact made to provide notice of an emergency removal and reported pursuant to subsection
10 (5)(c) does not constitute the notice required under 41-3-1311 for the purposes of subsequent dependency,
11 termination of parental rights, or adoption proceedings.

12 (7) An emergency proceeding regarding an Indian child may not be continued for more than 30
13 days unless the court determines that:

14 (a) restoring the child to the parent or Indian custodian would subject the child to imminent physical
15 damage or harm;

16 (b) the court has been unable to transfer the proceeding to the jurisdiction of the appropriate Indian
17 tribe; and

18 (c) it has not been possible to initiate a child custody proceeding. (~~Terminates June 30, 2025--sec.~~
19 ~~55, Ch. 716, L. 2023.~~)"

20
21 **Section 12.** Section 41-3-1328, MCA, is amended to read:

22 **"41-3-1328. (~~Temporary~~) Removal of Indian child from adoptive or foster care placement.** (1) If a
23 final decree of adoption of an Indian child has been vacated or set aside or the adoptive parents voluntarily
24 consent to the termination of their parental rights to the Indian child, the department shall make diligent efforts
25 to contact the child's tribe. The biological parent or prior Indian custodian may petition to have the Indian child
26 returned to the custody of the parent or Indian custodian. The court shall grant the request unless there is a
27 showing by clear and convincing evidence that return of custody to the biological parent or Indian custodian is
28 not in the best interests of the child.

(2) If an Indian child is removed from a foster care placement or a preadoptive or adoptive home for the purposes of further foster care or a preadoptive or adoptive placement, the placement must be made in accordance with this part unless an Indian child is being returned to the parent or Indian custodian from whose custody the child was originally removed. (~~Terminates June 30, 2025—sec. 55, Ch. 716, L. 2023.~~)"

Section 13. Section 41-3-1329, MCA, is amended to read:

"41-3-1329. (Temporary) Placement preferences. (1) When an emergency removal, foster care placement, or preadoptive placement of an Indian child is necessary, the petitioning party shall, in the absence of good cause to the contrary, place the Indian child in the least restrictive setting that:

- (a) most closely approximates a family situation;
- (b) is in reasonable proximity to the Indian child's home; and
- (c) allows for the Indian child's special needs, if any, to be met.

(2) In a foster care or preadoptive placement, preference must be given, in the absence of good cause to the contrary, to the Indian child's placement with one of the following, in descending order of priority:

- (a) an Indian child's extended family member;
- (b) a foster home licensed, approved, or specified by the Indian child's tribe;
- (c) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
- (d) an institution for children approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the Indian child's needs.

(3) In the absence of good cause to the contrary, in an adoptive or other permanent placement of an Indian child, preference must be given to a placement with one of the following, in descending order of priority:

- (a) extended family members;
- (b) an Indian family of the same tribe as the Indian child;
- (c) another Indian family.

(4) Notwithstanding the placement preferences listed in subsections (2) and (3), if a different order of placement preference is established by the Indian child's tribe, the court or agency implementing the placement shall follow the order of preference established by the tribe if the placement is in the least restrictive

1 setting appropriate to the particular needs of the Indian child and within reasonable proximity to the child's
2 home.

3 (5) When appropriate, the preference of the Indian child or the child's parent must be considered
4 by the court.

5 (6) The standards to be applied in meeting the preference requirements of this section must be the
6 prevailing social and cultural standards of the Indian community in which the parent or extended family
7 members of an Indian child reside or with which the parent or extended family members maintain social and
8 cultural ties.

9 (7) Nothing in this section prevents the department or the court from placing an Indian child with a
10 parent to effectuate a permanency plan regardless of the parent's relationship to the Indian child's tribe.

11 (8) (a) If any party asserts that good cause to not follow the placement preferences exists, the
12 reasons for that belief or assertion must be stated orally on the record or provided in writing to the parties to the
13 child custody proceeding and the court.

14 (b) The party seeking departure from the placement preferences bears the burden of proving by
15 clear and convincing evidence that there is good cause to depart from the placement preferences.

16 (c) A court's determination of good cause to depart from the placement preferences must be made
17 on the record or in writing and must be based on one or more of the following considerations:

18 (i) the request of one or both of the Indian child's parents on attestation that they have reviewed
19 the placement options, if any, that comply with the order of preference provided for in subsections (2) and (3);

20 (ii) the request of the child, if the child is of sufficient age and capacity to understand the decision
21 that is being made;

22 (iii) the presence of a sibling attachment that can be maintained only through a particular
23 placement;

24 (iv) the extraordinary physical, mental, or emotional needs of the Indian child, including but not
25 limited to specialized treatment services that may be unavailable in the community where families who meet the
26 placement preferences live; or

27 (v) the unavailability of a suitable placement after a determination by the court that a diligent
28 search was conducted to find suitable placements meeting the preference criteria, but no suitable placement

1 was found. For the purposes of this analysis, the standards for determining whether a placement is unavailable
2 must conform to the prevailing social and cultural standards of the Indian community in which the Indian child's
3 parent or extended family resides or with which the Indian child's parent or extended family members maintain
4 social and cultural ties.

5 (d) A placement may not depart from the preferences based solely on the ordinary bonding or
6 attachment that developed from time spent in a nonpreferred placement.

7 (e) A placement may not depart from the preferences based on the socioeconomic status of any
8 placement relative to another placement.

9 (f) The obligation to engage in a diligent search for a preferred placement is ongoing throughout
10 the case and must be documented in the record. The court shall inquire into the efforts to secure a preferred
11 placement at each hearing.

12 (9) If an Indian child is in a foster care placement that is not a preferred placement, the court shall
13 hold a status hearing no less than every 30 days to review the department's efforts to place a child in a
14 preferred placement consistent with this section.

15 (10) Except in an emergency removal, in the event the department intends to change the placement
16 of the child and the change in placement does not involve reunification of the child with a natural parent or
17 Indian custodian, the department shall, at least 2 business days prior to the change in placement, provide
18 written notice of the change to the child's tribe, parents, Indian custodian, guardian ad litem, and counsel for the
19 child, parents, Indian custodian, and tribe. The notice must provide the date the placement change is to occur
20 and the reason for the placement change. If the child's tribe or a party objects, the child's tribe or counsel for
21 the party shall notify the court and other parties. (Terminates June 30, 2025—sec. 55, Ch. 716, L. 2023.)"

22
23 **NEW SECTION. Section 14. Repealer.** Section 55, Chapter 716, Laws of 2023, is repealed.

24
25 **NEW SECTION. Section 15. Notification to tribal governments.** The secretary of state shall send a
26 copy of [this act] to each federally recognized tribal government in Montana.

27
28 **NEW SECTION. Section 16. Codification instruction.** [Section 1] is intended to be codified as an

1 integral part of Title 41, chapter 3, part 13, and the provisions of Title 41, chapter 3, part 13, apply to [section 1].

2

3 NEW SECTION. **Section 17. Effective date.** [This act] is effective on passage and approval.

4 - END -