

SENATE BILL NO. 464

INTRODUCED BY D. LENZ

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO THE APPOINTMENT OF SPECIAL ADVOCATES IN CHILD ABUSE AND NEGLECT PROCEEDINGS; REVISING DUTIES OF SPECIAL ADVOCATES; PROVIDING A DEFINITION OF "SPECIAL ADVOCATE"; AND AMENDING SECTIONS 41-3-102, 41-3-112, AND 41-3-425, MCA."

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

Section 1. Section 41-3-112, MCA, is amended to read:

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

(2) A prospective special advocate must meet the following minimum qualifications:

(a) be at least 21 years old and have demonstrated an interest in children and children's welfare;

(b) be willing to commit to the court for a minimum of 1 year of service to a child;

(c) have completed an application and have provided required background information; and

(d) have completed a screening interview.

(3) An appointed special advocate may not:

(a) accept any compensation for the duties and responsibilities of the special advocate's appointment;

(b) have any association that creates a conflict of interest with the special advocate's duties;

(c) be related to any party or attorney involved in a case;

(d) be employed in a position that could result in a conflict of interest or give rise to the appearance of a conflict; or

(e) use the special advocate's position to seek or accept gifts or special privileges.

(2)(4) The guardian-ad-litem special advocate must have received appropriate training that is specifically related to serving as an advocate for a child's court-appointed representative, the best interests of a child and that includes:

(a) completing preservice training, including instruction on recognizing child abuse and neglect, cultural awareness, child development, education standards, the juvenile court process, permanency planning, volunteer roles and responsibilities, advocacy, information gathering, and documentation; and

(b) observing court proceedings prior to appointment.

(3)(5) The guardian-ad-litem special advocate is charged with the representation of shall advocate for the child's best interests and shall perform the following general duties:

(a) to conduct investigations to ascertain the facts constituting the alleged abuse or neglect an independent review regarding the best interests of the child to provide factual information to the court regarding the child and the child's family;

(b) to interview or and observe the child who is the subject of the proceeding and other appropriate individuals and review relevant records and reports;

(c) to through the child's counsel, have access to court, medical, psychological, law enforcement, social services, and school records pertaining to the child, and the child's siblings and parents or custodians; including records of siblings, parents, or caretakers if the records are relevant to the issues in the case. Access to medical and psychological records of siblings, parents, or caretakers must be provided in compliance with the Health Insurance Portability and Accountability Act of 1996, 42 USC 1320d, et seq., and the legislative findings in 50-16-502.

(d) maintain confidentiality of all information regarding a case and not disclose the information except to the court, to the other parties, or to the department. A special advocate's duty of confidentiality is not extinguished by the dismissal of the case. Special advocates shall follow applicable law, administrative policies, and procedures regarding access to, use of, and release of information about the children served to ensure that confidentiality is maintained at all times.

1 ~~(d)(e)~~ to make ~~prepare~~ written reports for distribution to the court and the parties concerning the
2 child's welfare;

3 ~~(e)(f)~~ to appear and participate in all proceedings ~~to the degree necessary to adequately represent~~
4 ~~the child~~ and make recommendations to the court concerning the child's ~~welfare~~ best interests, including if
5 additional services are necessary;

6 (g) monitor the case to completion to ensure that the child's essential needs are met and that the
7 terms of the court's orders are fulfilled;

8 (h) seek to ensure that reasonable efforts are made to prevent unnecessary placement of the child
9 out of the home and facilitate reunification of the child with the child's family if it is in the child's best interests. In
10 determining whether reasonable efforts are made with respect to a child, the child's health and safety are the
11 paramount concern.

12 (i) if reunification is not possible, work with the child to assist the child in adjusting to another safe
13 and permanent living arrangement;

14 ~~(f)(j)~~ to perform other duties as directed by the court; and

15 ~~(g)(k)~~ ~~if an attorney, to file motions, including but not limited to filing to expedite proceedings or~~
16 ~~otherwise assert the child's rights~~ work directly with the child's legal representative to protect the constitutional
17 rights of the child and advocate for the child's best interests.

18 (4) ~~Information contained in a report filed by the guardian ad litem or testimony regarding a report~~
19 ~~filed by the guardian ad litem is not hearsay when it is used to form the basis of the guardian ad litem's opinion~~
20 ~~as to the best interests of the child.~~

21 (6) INFORMATION CONTAINED IN A REPORT FILED BY THE SPECIAL ADVOCATE OR TESTIMONY REGARDING A
22 REPORT FILED BY THE SPECIAL ADVOCATE IS NOT HEARSAY WHEN IT IS USED TO FORM THE BASIS OF THE SPECIAL
23 ADVOCATE'S OPINION AS TO THE BEST INTERESTS OF THE CHILD.

24 ~~(5)(6)(7)~~ Any party may petition the court for the removal and replacement of the ~~guardian ad~~
25 ~~litem~~ special advocate if the ~~guardian ad litem~~ special advocate fails to perform the duties of the appointment.

26 ~~(7)(8)~~ A special advocate may raise concerns to the court about conduct that is contrary to the best
27 interests of the child.

28 (9) THE COURT SHALL ACTIVELY PURSUE SERVICES OF A VOLUNTEER SPECIAL ADVOCATE PROGRAM. IF A

SPECIAL ADVOCATE IS NOT AVAILABLE FOR APPOINTMENT, A JUDGE MAY APPOINT AN ATTORNEY OR OTHER QUALIFIED PERSON TO SERVE AS SPECIAL ADVOCATE AND PERFORM THE DUTIES ENUMERATED IN SUBSECTION (5). WHEN NECESSARY, THE SPECIAL ADVOCATE MAY SERVE AT THE PUBLIC EXPENSE. FUNDS FROM THE ACCOUNT ESTABLISHED IN 3-1-707 MAY NOT BE USED FOR THE PURPOSE OF APPOINTING A PAID SPECIAL ADVOCATE."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) (a) "Adequate health care" means any medical care or nonmedical remedial health care

1 recognized by an insurer licensed to provide disability insurance under Title 33, including the prevention of the
2 withholding of medically indicated treatment or medically indicated psychological care permitted or authorized
3 under state law.

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

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

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

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

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

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

15 (iii)—— abandonment.

16 (b)—— (i) The term includes:

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

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

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

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

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

28 (d)—— The term does not include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(20) ~~"Permanent placement" means reunification of the child with the child's parent, adoption, placement with a legal guardian, placement with a fit and willing relative, or placement in another planned~~

permanent living arrangement until the child reaches 18 years of age.

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

(22) — "Physical neglect" means:

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

(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

1 social worker, a licensed psychiatrist, a licensed pediatrician, or a licensed advanced practice registered nurse
2 with a focused practice in psychiatry.

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

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

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

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

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

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

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

19 (a)——has expertise in the therapeutic needs assessment used for placement of youth in a
20 therapeutic group home;

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

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

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

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

28 (30)——"Safety and risk assessment" means an evaluation by a child protection specialist following an

initial report of child abuse or neglect to assess the following:

- (a) — the existing threat or threats to the child's safety;
- (b) — the protective capabilities of the parent or guardian;
- (c) — any particular vulnerabilities of the child;
- (d) — any interventions required to protect the child; and
- (e) — the likelihood of future physical or psychological harm to the child.

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

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

(32) — "Sexual exploitation" means:

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

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

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

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

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

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

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

(34) — "Treatment plan" means a written agreement between the department and the parent or

guardian or a court order that includes action that must be taken to resolve the condition or conduct of the parent or guardian that resulted in the need for protective services for the child. The treatment plan may involve court services, the department, and other parties, if necessary, for protective services.

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

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

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

(ii) — the provision of treatment would:

(A) — merely prolong dying;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) abandonment.

(b) (i) The term includes:

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

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

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

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

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

(d) The term does not include:

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

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

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

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

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

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

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

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

(a) a member of an Indian tribe; or

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

(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

1 parts 4 and 6 of this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) the existing threat or threats to the child's safety;
- (b) the protective capabilities of the parent or guardian;
- (c) any particular vulnerabilities of the child;
- (d) any interventions required to protect the child; and
- (e) the likelihood of future physical or psychological harm to the child.

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

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

(32) "Sexual exploitation" means:

- (a) allowing, permitting, or encouraging a child to engage in a prostitution offense, as described in 45-5-601;
- (b) allowing, permitting, or encouraging sexual abuse of children as described in 45-5-625; or
- (c) allowing, permitting, or encouraging sex trafficking as described in 45-5-702, 45-5-705, 45-5-706, or 45-5-711.

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

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

- (a) assesses the strengths and needs of the child using an age-appropriate, evidence-based, validated, functional assessment tool;
- (b) determines whether the needs of the child can be met with family members or through

1 placement in a youth foster home or, if not, which appropriate setting would provide the most effective and
2 appropriate level of care for the child in the least restrictive environment and be consistent with the short-term
3 and long-term goals for the child as specified in the child's permanency plan; and

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

5 ~~(34)~~ (35) "Treatment plan" means a written agreement between the department and the parent
6 or guardian or a court order that includes action that must be taken to resolve the condition or conduct of the
7 parent or guardian that resulted in the need for protective services for the child. The treatment plan may involve
8 court services, the department, and other parties, if necessary, for protective services.

9 ~~(35)~~ (36) (a) "Withholding of medically indicated treatment" means the failure to respond to an
10 infant's life-threatening conditions by providing treatment, including appropriate nutrition, hydration, and
11 medication, that, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be
12 effective in ameliorating or correcting the conditions.

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

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

17 (ii) the provision of treatment would:

18 (A) merely prolong dying;

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

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

21 (iii) the provision of treatment would be virtually futile in terms of the survival of the infant and the
22 treatment itself under the circumstances would be inhumane. For purposes of this subsection ~~(35)~~ (36), "infant"
23 means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously
24 hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The reference
25 to less than 1 year of age may not be construed to imply that treatment should be changed or discontinued
26 when an infant reaches 1 year of age or to affect or limit any existing protections available under state laws
27 regarding medical neglect of children 1 year of age or older.

28 ~~(36)~~ (37) "Youth in need of care" means a youth who has been adjudicated or determined, after

1 a hearing, to be or to have been abused, neglected, or abandoned."

2

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

4 **"41-3-425. Right to counsel.** (1) Any party involved in a petition filed pursuant to 41-3-422 has the
5 right to counsel in all proceedings held pursuant to the petition.

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

8 (a) any indigent parent, guardian, or other person having legal custody of a child or youth in a
9 removal, placement, or termination proceeding pursuant to 41-3-422, pending a determination of eligibility
10 pursuant to 47-1-111;

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

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

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

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

18 ~~(4)~~(3) Except as provided in the federal Indian Child Welfare Act ~~or the Montana Indian Child Welfare~~
19 ~~Act], a court may not appoint a public defender to a putative father, as defined in 42-2-201, of a child or youth in~~
20 a removal, placement, or termination proceeding pursuant to 41-3-422 until:

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

22 (b) the putative father makes a request to the court in writing to appoint the office of state public
23 defender to assign counsel. ~~(Bracketed language in subsections (2)(c) and (4) terminates June 30, 2025—sec.~~
24 ~~55, Ch. 716, L. 2023.)"~~

25 - END -