

HOUSE BILL NO. 317

INTRODUCED BY J. WINDY BOY, M. WEATHERWAX, C. KEOGH, D. HAWK, E. KERR-CARPENTER, A. BUCKLEY, K. SULLIVAN, K. KORTUM, T. FRANCE, E. STAFMAN, M. CAFERRO, M. THANE, F. SMITH, M. FOX, S. MORIGEAU, J. ETCHART, K. ABBOTT, P. TUSS, S. STEWART PEREGOY, B. CARTER, Z. ZEPHYR, M. ROMANO, L. SMITH, D. BAUM, E. MATTHEWS, S. HOWELL

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE MONTANA INDIAN CHILD WELFARE ACT; PROVIDING REQUIREMENTS FOR DETERMINING INDIAN STATUS AND INDIAN TRIBE; ESTABLISHING REQUIREMENTS FOR COURT PROCEEDINGS, EVIDENCE, AND CONSENT; PROVIDING DEFINITIONS; AMENDING SECTIONS 40-6-405, 40-6-407, 40-6-413, 40-6-414, 40-6-1001, 40-7-135, 41-3-102, 41-3-103, 41-3-109, 41-3-128, 41-3-205, 41-3-301, 41-3-306, 41-3-307, 41-3-422, 41-3-423, 41-3-425, 41-3-427, 41-3-432, 41-3-437, 41-3-444, 41-3-609, 42-2-102, 42-2-604, 42-4-102, 42-4-103, 42-4-203, 42-4-209, 42-5-101, 42-5-107, 47-1-104, AND 52-2-117, MCA; AND PROVIDING EFFECTIVE DATES."

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

NEW SECTION. **Section 1. Short title.** [Sections 1 through 20] may be cited as the "Montana Indian Child Welfare Act".

NEW SECTION. **Section 2. Legislative findings -- purpose.** (1) The legislature recognizes that in possibly no other area of concurrent tribal and state law is it more important that tribal sovereignty be respected than in an area as socially and culturally determinative as family relationships. The legislature finds that the state is committed to protecting the essential tribal relations and best interests of Indian children by promoting practices designed to prevent out-of-home placement of Indian children that is inconsistent with the rights of the parents, the health, safety, or welfare of the child, or the interests of the child's tribe. Whenever out-of-home placement of an Indian child is necessary in a proceeding subject to the terms of the federal Indian Child Welfare Act and [sections 1 through 20], the best interests of the Indian child may be served by placing the Indian child in accordance with the placement priorities expressed in [sections 1 through 20].

(2) The legislature further finds that when placement away from the parent or Indian custodian is necessary for the Indian child's safety, the state is committed to a placement that reflects and honors the unique values of the Indian child's tribal culture and is best able to assist the Indian child in establishing, developing, and maintaining a political, cultural, social, and spiritual relationship with the Indian child's tribe and tribal community.

(3) It is the intent of the legislature that [sections 1 through 20] serve as a means of clarifying existing laws and codifying existing policies and practices.

(4) The legislature further intends that nothing in [sections 1 through 20] interfere with policies and procedures that are derived from agreements entered into between the department and a tribe or tribes, as authorized by 25 U.S.C. 1919. The legislature finds that [sections 1 through 20] specify the minimum requirements that must be applied in a child custody proceeding and do not prevent the department from providing a higher standard of protection to the rights of an Indian child, parent, Indian custodian, or Indian child's tribe.

(5) It is also the legislature's intent that any department policy manual covering Indian child welfare and any relevant local agreements between individual federally recognized tribes and the department should serve as persuasive guides in the interpretation and implementation of the federal Indian Child Welfare Act, [sections 1 through 20], and other relevant state laws.

NEW SECTION. Section 3. Applicability. [Sections 1 through 20] apply in all child custody proceedings. Whenever a child custody proceeding involves an Indian child and a conflict exists between [sections 1 through 20] and Title 40, chapter 6, Title 41, chapter 3 or 4, or Title 42, the provisions of [sections 1 through 20] apply.

NEW SECTION. Section 4. Definitions. As used in [sections 1 through 20], the following definitions apply:

(1) "Active efforts" means affirmative, active, thorough, and timely efforts meeting the requirements of [section 14] that are intended primarily to maintain or reunite an Indian child with the child's family and that are tailored to the facts and circumstances of the case.

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Drafter: Milly Allen, 406-444-9280

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(2) "Adoptive placement" means the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

(3) "Best interests of the Indian child" means the use of practices in accordance with the federal Indian Child Welfare Act, [sections 1 through 20], and other applicable law that are designed to:

(a) protect the safety, well-being, development, and stability of the Indian child;

(b) prevent the unnecessary out-of-home placement of the Indian child;

(c) acknowledge the right of Indian tribes to maintain their existence and integrity in order to promote the stability and security of their children and families; and

(d) recognize the value to the Indian child of establishing, developing, or maintaining a political, cultural, social, and spiritual relationship with the Indian child's tribe and tribal community.

(4) (a) "Child custody proceeding" means any state or private proceeding, other than an emergency proceeding, that may culminate in a foster care placement, termination of parental rights, preadoptive placement, or adoptive placement.

(b) The term does not include a placement based on:

(i) an act that, if committed by an adult, would be considered a crime; or

(ii) an award, in a dissolution proceeding, of custody to one of the child's parents.

(5) "Court of competent jurisdiction" means a court that has jurisdiction over the relevant subject matter under federal, state, or tribal law.

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

(7) "Foster care placement" means an action removing an Indian child from the child's parent or Indian custodian for temporary placement in a foster home or institution or with a relative, guardian, conservator, or suitable other person under which the parent or Indian custodian may not have the child returned on demand but parental rights have not been terminated.

(8) "Indian" means a person who is a member of an Indian tribe or who is an Alaska Native and a member of a regional corporation as established in 43 U.S.C. 1606.

(9) "Indian child" means an unmarried Indian person who is under 18 years of age and who is:

(a) a member of an Indian tribe; or

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1 (b) eligible for membership in an Indian tribe.

2 (10) (a) "Indian child's family" or "extended family member" means an individual defined by the law
3 or custom of the Indian child's tribe as a relative of the Indian child.

4 (b) If the Indian child's tribe does not identify family members by law or custom, the term means an
5 adult who is the Indian child's grandparent, aunt, uncle, brother, sister, brother-in-law, sister-in-law, niece,
6 nephew, cousin, stepparent, or stepgrandparent. A stepparent or stepgrandparent may be considered a family
7 member even following termination of the marriage.

8 (11) "Indian child's tribe" means a tribe or tribes in which an Indian child is a member or is
9 determined eligible for membership as provided in [section 6].

10 (12) "Indian custodian" means an Indian person who under tribal law, tribal custom, or state law has
11 legal or temporary physical custody of an Indian child or to whom the parent has transferred temporary care,
12 physical custody, and control of the Indian child.

13 (13) (a) "Indian tribe" or "tribe" means any Indian tribe, band, nation, or other organized group or
14 community of Indians recognized as eligible for the services provided to Indians by the secretary of the interior
15 because of their status as Indians.

16 (b) The term includes an Alaska Native village as defined in 43 U.S.C. 1602.

17 (14) "Member" or "membership" means a determination by an Indian tribe that an individual is a
18 member of or eligible for membership in that Indian tribe.

19 (15) (a) "Parent" means a biological parent of an Indian child or an individual who has lawfully
20 adopted an Indian child, including adoptions made as tribal customary adoptions.

21 (b) The term does not include an unwed father whose paternity has not been acknowledged or
22 established under Title 40, chapter 6, part 1, or the applicable laws of another state.

23 (16) "Preadoptive placement" means the temporary placement of an Indian child in a foster home or
24 institution after the termination of parental rights but before or in lieu of adoptive placement.

25 (17) "Qualified expert witness" means a person who meets the provisions of [section 13].

26 (18) "Termination of parental rights" means any action resulting in the termination of the parent-child
27 relationship.

28 (19) "Tribal court" means a court or body vested by an Indian tribe with jurisdiction over child

1 custody proceedings. The term includes but is not limited to a federal court of Indian offenses, a court
2 established and operated under the code or custom of an Indian tribe, and an administrative body of an Indian
3 tribe vested with authority over child custody proceedings.

4 (20) (a) "Tribal customary adoption" means adoption or another process through the tribal custom,
5 traditions, or laws of an Indian child's tribe by which the Indian child is permanently placed with a nonparent and
6 through which the nonparent is vested with the rights, privileges, and obligations of a legal parent.

7 (b) Termination of the parent-child relationship between the Indian child and the biological parent
8 is not required to recognize a tribal customary adoption.

9
10 **NEW SECTION. Section 5. Determination of Indian status -- confidentiality of records.** (1) (a) A
11 party seeking the foster care placement of, termination of parental rights over, or adoption of a child shall use
12 due diligence to determine whether the child is an Indian child. The inquiry must be made in consultation with:

13 (i) the child's parent or parents;
14 (ii) an individual who has custody of the child or with whom the child resides;
15 (iii) any other individual who reasonably may be expected to have information regarding the child's
16 possible membership or eligibility for membership in an Indian tribe; and

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

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

20 (2) Preliminary contacts for the purpose of using due diligence to determine a child's possible
21 Indian status do not constitute legal notice as required by [section 8].

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

27 (4) If there is reason to know the child is an Indian child but the court does not have sufficient
28 evidence to determine that the child is or is not an Indian child, the court shall:

(a) confirm, by way of a report, declaration, or testimony included in the record, that the department or other party used due diligence to identify and work with all tribes of which there is reason to know the child may be a member or eligible for membership to verify whether the child is a member or eligible for membership; and

(b) treat the child as an Indian child, unless and until it is determined on the record that the child does not meet the definition of an Indian child.

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

(a) any participant in the proceeding, officer of the court involved in the proceeding, Indian tribe, Indian organization, or agency informs the court that:

(i) the child is an Indian child; or

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

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

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

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

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

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

(6) (a) When seeking verification of a child's Indian status during a voluntary proceeding, the court shall keep relevant documents pertaining to the inquiry confidential and under seal if a consenting parent expresses either orally or in writing a desire for anonymity. A request for anonymity does not relieve the court, agency, or other party from any duty of compliance with [sections 1 through 20], including the obligation to verify whether the child is an Indian child.

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

(7) (a) A written determination by an Indian tribe regarding the child's status as an Indian child is

1 conclusive that the child is an Indian child.

2 (b) If a tribe provides no response to the department's written request for verification of the child's
3 membership status, the nonresponse does not constitute evidence that the child is not a member of or eligible
4 for membership in the tribe.

5 (8) If a child has been determined not to be an Indian child, any party to the proceeding or an
6 Indian tribe that subsequently determines the child is a member or is eligible for membership may move, during
7 the pendency of a child custody proceeding to which the federal Indian Child Welfare Act or [sections 1 through
8 20] applies, for redetermination of the child's Indian status based on:

9 (a) new evidence;

10 (b) a redetermination by the child's tribe;

11 (c) newly conferred federal recognition of the tribe; or

12 (d) a prior mistaken determination on the part of the tribe.

13
14 **NEW SECTION. Section 6. Determination of Indian tribe.** (1) If the Indian child is a member of or
15 eligible for membership in only one tribe, that tribe must be designated as the Indian child's tribe.

16 (2) If the Indian child meets the definition of Indian child through more than one tribe, deference
17 must be given to the tribe in which the Indian child is already a member, unless otherwise agreed to by the
18 tribes.

19 (3) (a) If the Indian child meets the definition of Indian child through more than one tribe because
20 the child is a member in more than one tribe or the child is not a member of but is eligible for membership in
21 more than one tribe, the court shall provide the opportunity in any involuntary child custody proceeding for the
22 tribes to determine which tribe should be designated as the Indian child's tribe.

23 (b) If the tribes are able to reach an agreement, the court shall designate the agreed-on tribe as
24 the Indian child's tribe.

25 (c) If the tribes are unable to reach an agreement, for the purposes of [sections 1 through 20] the
26 court shall designate as the child's tribe the tribe with which the child has the more significant contacts as the
27 Indian child's tribe. In making the designation, the court shall consider:

28 (i) the preference of the parents for membership of the child;

- 1 (ii) the length of the child's past residence or domicile on or near the reservation of each tribe;
- 2 (iii) the tribal membership of the child's custodial parent or Indian custodian;
- 3 (iv) the interest asserted by each tribe in the child custody proceeding;
- 4 (v) whether there has been a previous adjudication with respect to the child by a court of one of
- 5 the tribes; and
- 6 (vi) self-identification by the child, if the child is of sufficient age and capacity to meaningfully self-
- 7 identify with a tribe.

8 (4) A determination of the Indian child's tribe for the purposes of [sections 1 through 20] does not

9 constitute a determination for any other purpose.

10

11 **NEW SECTION. Section 7. Jurisdiction -- transfer of jurisdiction.** (1) An Indian tribe has exclusive

12 jurisdiction over any child custody proceeding involving an Indian child who resides or is domiciled within the

13 reservation of that tribe unless:

- 14 (a) the tribe has consented to the state's concurrent jurisdiction;
- 15 (b) the tribe has expressly declined to exercise its exclusive jurisdiction; or
- 16 (c) the state is exercising emergency jurisdiction in compliance with [section 16].
- 17 (2) If an Indian child is already a ward of a tribal court at the start of the child custody proceeding,
- 18 the Indian tribe may retain exclusive jurisdiction regardless of the residence or domicile of the child.

19 (3) Except as provided in subsections (4) and (6), in a child custody proceeding involving an Indian

20 child who is not residing or domiciled within the reservation of the Indian child's tribe, the court shall, in the

21 absence of good cause to the contrary, transfer the proceeding to the jurisdiction of the Indian child's tribe on

22 the motion of any of the following:

- 23 (a) either of the Indian child's parents;
- 24 (b) the Indian child's Indian custodian;
- 25 (c) the Indian child's tribe; or
- 26 (d) the Indian child if the child is 12 years of age or older.

27 (4) A tribe to which jurisdiction is being transferred shall respond within 75 days to a motion or

28 order transferring jurisdiction to the tribal court. A failure of the tribe to respond within 75 days must be

1 construed as a declination to accept the transfer of the case.

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

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

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

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

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

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

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

15 (iv) the child's cultural connections with the tribe or its reservation; or

16 (v) socioeconomic conditions or any negative perception of the tribal or bureau of Indian affairs
17 social services or judicial systems.

18 (c) If the court denies transfer of jurisdiction, the court shall state its reasons for the denial orally on
19 the record or in a written order.

20 (8) (a) Following entry of an order transferring jurisdiction to the Indian child's tribe and pending
21 receipt of a tribal court order accepting jurisdiction, the state court:

22 (i) may conduct additional hearings and enter orders that are in the best interests of the child and
23 strictly comply with the requirements of the federal Indian Child Welfare Act and [sections 1 through 20]; and

24 (ii) may not enter a final order in a child custody proceeding, except an order dismissing the
25 proceeding and returning the Indian child to the care of the parent or Indian custodian from whose care the
26 child was removed.

27 (b) On receipt of an order from a tribal court accepting jurisdiction, the court shall:

28 (i) dismiss the child custody proceeding with prejudice; and

(ii) expeditiously provide the tribal court with all records related to the proceeding, including but not limited to the pleadings and any court record. The state court shall work with the tribal court to ensure the transfer of the custody of the Indian child and the proceeding is accomplished smoothly and in a way that minimizes the disruption of services to the family.

(9) If the Indian child's tribe accepts jurisdiction, the state court shall enter an order relieving the office of the state public defender and any public defender assigned pursuant to 41-3-425 and 47-1-104 from further representation.

(10) If the Indian child's tribe declines jurisdiction, the state court shall enter an order vacating the order transferring jurisdiction and proceed with adjudication of the child custody proceeding in compliance with the federal Indian Child Welfare Act, [sections 1 through 20], and any applicable state-tribal agreement.

NEW SECTION. Section 8. Notice. (1) The petitioning party shall provide notice of the initial petition filed in an involuntary child custody proceeding and a petition seeking termination of parental rights when the petitioning party knows or has reason to know that the child is or may be an Indian child. Notice must be provided as required in subsection (2) to:

(a) the Indian child's parent or Indian custodian; and

(b) the child's tribe or tribes.

(2) (a) Notice to the tribe must be made by certified mail, return receipt requested, and must meet the requirements of subsection (4). The notice must be sent to the person designated 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. The petitioning party shall file the return receipt with the court as proof of notice.

(b) Notice to the parent or Indian custodian must be made by personal service, or alternative means as provided in 41-3-422 if personal service cannot be accomplished, and must meet the requirements of subsection (4).

(c) If the identity or location of the parent or Indian custodian and the tribe cannot be determined, the notice must be given to the secretary of the U.S. department of the interior by certified mail, return receipt requested, in accordance with the provisions of 25 CFR, part 23.

(d) Service of all other petitions, other than the initial petition and a petition for termination of

1 parental rights, must be served on the tribe by first-class mail unless otherwise directed by the tribe's
2 designated agent for notice.

3 (e) When notice of the initial petition and a petition for termination of parental rights to the parent or
4 Indian custodian is required under this subsection (2), personal service, and alternative means of personal
5 service when personal service cannot be accomplished, as provided in 41-3-422, takes the place of certified
6 mail with return receipt requested.

7 (3) A foster care placement or a termination of parental rights proceeding may not be held until at
8 least 10 days after receipt of the notice by the parent or Indian custodian, the tribe, and, if applicable, the
9 secretary. The parent, Indian custodian, or tribe shall, on request, be granted up to 20 additional days to
10 prepare for the proceeding. The 10-day notice requirement does not limit a court's ability to hold an emergency
11 protective services hearing pursuant to 41-3-306.

12 (4) Notice provided under this section must be in clear and understandable language and include
13 the following:

14 (a) the child's name, date of birth, and place of birth;

15 (b) all known names of the child's parents, including maiden, married, and former names or
16 aliases;

17 (c) the parents' dates of birth, places of birth, and tribal enrollment numbers, if known;

18 (d) the names, dates of birth, places of birth, and tribal enrollment information of other direct lineal
19 ancestors of the child, if known;

20 (e) the name of each Indian tribe in which the child is a member or may be eligible for membership
21 if a biological parent is a member; and

22 (f) a copy of the petition, complaint, or other document by which the child custody proceeding was
23 initiated and, if a hearing has been scheduled, information on the date, time, and location of the hearing.

24

25 **NEW SECTION. Section 9. Tribal participation in proceedings -- intervention.** (1) A state court
26 shall allow a designated tribal representative to represent a tribe in all proceedings under [sections 1 through
27 20], in person or by electronic means. The court may not require that the tribal representative be an attorney or
28 that the person be licensed in Montana if the person is an attorney.

(2) An attorney may appear in a proceeding involving an Indian child under [sections 1 through 20] without complying with any rule of the Montana supreme court regarding admission to practice in the state or paying the associated fees or assessments related to admission to practice if the attorney is:

(a) permitted to practice in another state, tribe, or territory of the United States or District of Columbia; and

(b) in good standing with the bar association of that state, tribe, or territory.

(3) The Indian child's tribe or tribes may file as an intervenor at any point in a child custody proceeding involving the Indian child.

NEW SECTION. Section 10. Full faith and credit. The state shall give full faith and credit to the public acts, records, judicial proceedings, and judgments of any Indian tribe that are applicable to Indian child custody proceedings.

NEW SECTION. Section 11. Right to counsel. In a child custody proceeding under [sections 1 through 20] in which the court determines that the Indian child's parent or Indian custodian is indigent, the parent or Indian custodian has the right to court-appointed counsel. The court may, in its discretion, appoint counsel for the Indian child pursuant to 41-3-425.

NEW SECTION. Section 12. Right of access to evidence. Each party to a child custody proceeding involving an Indian child has the right to examine all reports or other documents filed with the court on which any decision with respect to the proceeding may be based.

NEW SECTION. Section 13. Qualified expert witness -- requirements -- prohibitions. (1) A qualified expert witness is an individual who provides testimony in a child custody proceeding under [sections 1 through 20]. The purpose of the testimony is to assist a court in determining whether the continued custody of the child by or the return of the child to the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. The parties may not waive the requirement for qualified expert witness testimony.

(2) The petitioning party shall consult with the Indian child's tribe on the selection of the qualified

expert witness, including asking whether the tribe has a list of preferred qualified expert witnesses. To the extent possible, the petitioning party shall use an individual preferred by the tribe.

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

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

(b) Nothing in this subsection (4) may be construed as barring:

(i) the child protection specialist or the child protection specialist's supervisor from testifying as an expert witness for other purposes in a proceeding under [sections 1 through 20]; or

(ii) the petitioner or another party in a proceeding under [sections 1 through 20] from providing additional witnesses or expert testimony, subject to the approval of the court, on any issue before the court, including the determination of whether the continued custody of the Indian child by or return of the Indian child to the parent, parents, or Indian custodian is likely to result in serious emotional or physical damage to the Indian child.

NEW SECTION. Section 14. Active efforts. (1) Any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under state law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that the efforts have proven unsuccessful.

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

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

(4) (a) To the maximum extent possible, active efforts must be provided in a manner consistent with the prevailing social and cultural conditions and way of life of the Indian child's tribe and conducted in partnership with the Indian child and the Indian child's parents, extended family members, Indian custodians,

1 and tribe. Active efforts are to be tailored to the facts and circumstances of the case and may include but are
2 not limited to:

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

5 (ii) identifying appropriate services and helping the parents to overcome barriers, including actively
6 assisting the parents in obtaining the services;

7 (iii) identifying, notifying, and inviting representatives of the Indian child's tribe to participate in
8 providing support and services to the Indian child's family and in family team meetings, permanency planning,
9 and resolution of placement issues;

10 (iv) conducting or causing to be conducted a diligent search for the Indian child's extended family
11 members and contacting and consulting with extended family members to provide family structure and support
12 for the Indian child and the Indian child's parents;

13 (v) offering and employing all available and culturally appropriate family preservation strategies
14 and facilitating the use of remedial and rehabilitative services provided by the child's tribe;

15 (vi) taking steps to keep siblings together whenever possible;

16 (vii) supporting regular visits with parents or Indian custodians in the most natural setting possible
17 as well as trial home visits of the Indian child during any period of removal, consistent with the need to ensure
18 the health, safety, and welfare of the child;

19 (viii) identifying community resources, including housing, financial, transportation, mental health,
20 substance abuse, and peer support services and actively assisting the child's parents or, when appropriate, the
21 child's family, in accessing and using the resources;

22 (ix) monitoring progress and participation in services;

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

25 (xi) providing postreunification services and monitoring.

26 (b) Referral to a service or program does not constitute an active effort if the referral was the sole
27 action taken.

28

NEW SECTION. Section 15. Evidentiary requirements. (1) A court may not order a foster care

placement of an Indian child unless:

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

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

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

(a) active efforts were made to prevent the breakup of the Indian family and the efforts were 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.

(3) For the purposes of this section, any harm that may result from interfering with the bond or attachment that may have formed between the child and a foster care provider may not be the sole basis or primary reason for continuing a foster care placement or terminating the parental rights of a parent of an Indian child.

(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.

NEW SECTION. Section 16. Emergency removal of Indian child. (1) Nothing in [sections 1 through

20] 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:

(a) make a finding on the record that the emergency removal or placement is necessary to prevent imminent physical damage or harm to the child;

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

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

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

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

(a) initiation of a child custody proceeding subject to the provisions of the federal Indian Child Welfare Act and [sections 1 through 20];

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

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

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

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

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

(c) the steps taken to provide notice to the child's parents, Indian custodians, and tribe about the

emergency proceeding;

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

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

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

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

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

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

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

(6) Contact made to provide notice of an emergency removal and reported pursuant to subsection (5)(c) does not constitute the notice required under [section 8] for the purposes of subsequent dependency, termination of parental rights, or adoption proceedings.

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

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

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

(c) it has not been possible to initiate a child custody proceeding.

NEW SECTION. Section 17. Consent. (1) At an involuntary foster care placement hearing, a stipulation or consent by the parent or Indian custodian is not valid unless the court certifies on the record that

1 the terms and consequences of the stipulation or consent were fully explained in detail and were fully
2 understood by the parent or Indian custodian. The court shall certify on the record that the parent or Indian
3 custodian fully understood the explanation in English or that the explanation was translated into a language that
4 the parent or Indian custodian understood.

5 (2) In a voluntary proceeding for foster care placement or termination of parental rights, consent by
6 a parent or Indian custodian is not valid unless the consent is:

7 (a) executed in writing and recorded before a judge of a court of competent jurisdiction; and

8 (b) accompanied by the judge's written certificate that:

9 (i) the terms and consequences of the consent were fully explained in detail and were fully
10 understood by the parent or Indian custodian; and

11 (ii) the parent or Indian custodian fully understood the explanation in English or that the
12 explanation was translated into a language that the parent or Indian custodian understood.

13 (3) Voluntary consent for release of custody given prior to or within 10 days after the birth of an
14 Indian child may not be considered valid.

15 (4) An Indian child's parent or Indian custodian may withdraw consent to a voluntary foster care
16 placement at any time. On withdrawal of consent, the Indian child must be returned to the parent or Indian
17 custodian.

18 (5) In a voluntary proceeding for termination of parental rights to or adoptive placement of an
19 Indian child, the consent of the parent may be withdrawn for any reason at any time prior to the entry of an
20 order terminating parental rights or a final decree of adoption, and the Indian child must be returned to the
21 parent.

22 (6) (a) After the entry of a final decree of adoption of an Indian child, the parent may withdraw
23 consent to the adoption on the grounds that consent was obtained through fraud or duress. On a finding that
24 consent was obtained through fraud or duress, the court shall vacate the decree and return the Indian child to
25 the parent.

26 (b) An adoption that has been effective for at least 2 years may not be invalidated under this
27 section unless otherwise allowed by law.

28

1 **NEW SECTION. Section 18. Improper removal of Indian child.** If a petitioner in a child custody
2 proceeding under [sections 1 through 20] has improperly removed an Indian child from the custody of the
3 parent or Indian custodian or has improperly retained custody after a visit or other temporary relinquishment of
4 custody, the court shall decline jurisdiction over the petition and shall immediately return the Indian child to the
5 parent or Indian custodian unless returning the Indian child to the parent or Indian custodian would subject the
6 Indian child to substantial and immediate danger or threat of substantial or immediate danger.

7
8 **NEW SECTION. Section 19. Removal of Indian child from adoptive or foster care placement.** (1)
9 If a final decree of adoption of an Indian child has been vacated or set aside or the adoptive parents voluntarily
10 consent to the termination of their parental rights to the Indian child, the biological parent or prior Indian
11 custodian may petition to have the Indian child returned to the custody of the parent or Indian custodian. The
12 court shall grant the request unless there is a showing by clear and convincing evidence that return of custody
13 to the biological parent or Indian custodian is not in the best interests of the child.

14 (2) If an Indian child is removed from a foster care placement or a preadoptive or adoptive home
15 for the purposes of further foster care or a preadoptive or adoptive placement, the placement must be made in
16 accordance with [sections 1 through 20] unless an Indian child is being returned to the parent or Indian
17 custodian from whose custody the child was originally removed.

18
19 **NEW SECTION. Section 20. Placement preferences.** (1) When an emergency removal, foster care
20 placement, or preadoptive placement of an Indian child is necessary, the petitioning party shall, in the absence
21 of good cause to the contrary, place the Indian child in the least restrictive setting that:

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

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

- 27 (a) an Indian child's extended family member;
28 (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) an Indian family that is of a similar culture to the Indian child's tribe; or
- (d) 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 setting appropriate to the particular needs of the Indian child and within reasonable proximity to the child's home.

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

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

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

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

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

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

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

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

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

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

(v) the unavailability of a suitable placement after a determination by the court that a diligent search was conducted to find suitable placements meeting the preference criteria, but no suitable placement was found. For the purposes of this analysis, the standards for determining whether a placement is unavailable must conform to the prevailing social and cultural standards of the Indian community in which the Indian child's parent or extended family resides or with which the Indian child's parent or extended family members maintain social and cultural ties.

(d) A placement may not depart from the preferences based:

(i) on the socioeconomic status of any placement relative to another placement; or

(ii) solely on ordinary bonding or attachment.

Section 21. Section 40-6-405, MCA, is amended to read:

"40-6-405. Surrender of newborn to emergency services provider -- temporary protective custody. (1) If a parent surrenders an infant who may be a newborn to an emergency services provider, the emergency services provider shall comply with the requirements of this section under the assumption that the infant is a newborn. The emergency services provider shall, without a court order, immediately accept the newborn, taking the newborn into temporary protective custody, and shall take action necessary to protect the physical health and safety of the newborn.

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- (2) The emergency services provider shall make a reasonable effort to do all of the following:
- (a) if possible, inform the parent that by surrendering the newborn, the parent is releasing the newborn to the department to be placed for adoption according to law;
- (b) if possible, inform the parent that the parent has 60 days to petition the court to regain custody of the newborn;
- (c) if possible, ascertain whether the newborn has a tribal affiliation and, if so, ascertain relevant information pertaining to any Indian heritage of the newborn;
- (d) provide the parent with written material approved by or produced by the department, which includes but is not limited to all of the following statements:
- (i) by surrendering the newborn, the parent is releasing the newborn to the department to be placed for adoption and the department shall initiate court proceedings according to law to place the newborn for adoption, including proceedings to terminate parental rights;
- (ii) the parent has 60 days after surrendering the newborn to petition the court to regain custody of the newborn;
- (iii) the parent may not receive personal notice of the court proceedings begun by the department;
- (iv) information that the parent provides to an emergency services provider will not be made public;
- (v) a parent may contact the department for more information and counseling; and
- (vi) any Indian heritage of the newborn brings the newborn within the jurisdiction of the federal Indian Child Welfare Act, 25 U.S.C. 1901, et seq., and [sections 1 through 20].
- (3) After providing a parent with the information described in subsection (1), if possible, an emergency services provider shall make a reasonable effort to:
- (a) encourage the parent to provide any relevant family or medical information, including information regarding any tribal affiliation;
- (b) provide the parent with information that the parent may receive counseling or medical attention;
- (c) inform the parent that information that the parent provides will not be made public;
- (d) ask the parent for the parent's name;
- (e) inform the parent that in order to place the newborn for adoption, the state is required to make a reasonable attempt to identify the other parent and to obtain relevant medical family history and then ask the

1 parent to identify the other parent;

2 (f) inform the parent that the department can provide confidential services to the parent; and

3 (g) inform the parent that the parent may sign a relinquishment for the newborn to be used at a
4 hearing to terminate parental rights."

5

6 **Section 22.** Section 40-6-407, MCA, is amended to read:

7 **"40-6-407. Assumption of care, custody, and control by department -- placement of child --**

8 **presumptions -- Montana birth certificate.** (1) Upon receipt of notice under 40-6-406, the department shall:

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

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

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

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

15 (e) not later than 48 hours after assuming the care, control, and temporary protective custody of
16 the newborn, file a petition with the court under the provisions of Title 41, chapter 3, part 4, and, if applicable,
17 [sections 1 through 20], requesting appropriate relief with the goal of achieving permanent placement for the
18 newborn at the earliest possible date; and

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

22 (2) The department, after assuming the care, custody, and control of a newborn under subsection
23 (1), is not required to attempt to reunify the newborn with the newborn's parents. The department is not required
24 to search for relatives of the newborn as a placement or permanency option or to implement other placement
25 requirements that give preference to relatives if the department does not have information as to the identity of
26 the newborn or either of the newborn's parents. The department shall place the newborn with prospective
27 adoptive parents as soon as possible. The adoptive parents must be allowed access to information regarding
28 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 23. Section 40-6-413, MCA, is amended to read:

"40-6-413. Custody action -- order. Based on the court's finding of the newborn's best interest under 40-6-412, the court may issue an order:

(1) granting legal or physical custody, or both, of the newborn to the parent and either retaining or relinquishing jurisdiction; or

(2) denying custody of the newborn to the parent and referring the matter to the department or county attorney for proceedings under Title 41, chapter 3, and, if applicable, [sections 1 through 20]."

Section 24. Section 40-6-414, MCA, is amended to read:

"40-6-414. Presumption of waiver of parental rights -- department to file petition. (1) A-Except as provided in [section 17], a parent who surrenders a newborn under 40-6-405 and who does not file a custody action under 40-6-411 is presumed to have knowingly waived the parent's parental rights to the newborn.

(2) If a custody action is not filed under 40-6-411 or if the parent is denied custody of the newborn under 40-6-413, the department shall file a petition under Title 41, chapter 3, part 4, or, if applicable, [sections 1 through 20], requesting appropriate relief with the goal of achieving permanent placement for the newborn at the earliest possible date."

Section 25. Section 40-6-1001, MCA, is amended to read:

"40-6-1001. Petition for termination -- criteria -- process. (1) A district court may order a termination of the parent-child legal relationship after the filing of a petition pursuant to this section alleging the

1 factual grounds for termination as provided for in subsection (2).

2 (2) Grounds for termination pursuant to this section exist when the parent of a child:

3 (a) is convicted of a felony in which sexual intercourse occurred or is a minor adjudicated a
4 delinquent youth because of an act that, if committed by an adult, would be a felony in which sexual intercourse
5 occurred and, as a result of the sexual intercourse, the child is born; or

6 (b) at a fact-finding hearing is found by clear and convincing evidence, except as provided in the
7 federal Indian Child Welfare Act and [sections 1 through 20], if applicable, to have committed an act of sexual
8 intercourse without consent, sexual assault, or incest that caused the child to be conceived.

9 (3) The court's order must state the reasons for the decision.

10 (4) The victim of the crime or act may file a petition pursuant to this section. If the victim is a minor,
11 the victim's parent or guardian may file a petition on the victim's behalf.

12 (5) The respondent to the petition has the right to counsel in all proceedings held pursuant to the
13 petition.

14 (6) Before termination of the parent-child legal relationship may be ordered, the court shall
15 determine whether the provisions of 40-6-1002 and 40-6-1003 have been followed.

16 (7) There is no right to a jury trial at proceedings held to consider the termination of a parent-child
17 legal relationship.

18 (8) (a) An order for the termination of the parent-child legal relationship divests the child and the
19 parent of all legal rights, powers, immunities, duties, and obligations with respect to each other as provided in
20 Title 40, chapter 6, part 2, and Title 41, chapter 3, part 2, except:

21 (i) the right of the child to inherit from the parent; and

22 (ii) that nothing in this section may be construed to relieve the parent whose rights are terminated
23 as provided in this part of any child support obligations as provided in Title 40, chapters 4 and 5.

24 (b) An order or decree entered pursuant to this part may not disentitle a child to any benefit due to
25 the child from a third person, including but not limited to an Indian tribe, an agency, a state, or the United
26 States."

27
28 **Section 26.** Section 40-7-135, MCA, is amended to read:

1 **"40-7-135. Application to Indian tribes.** (1) A child custody proceeding that pertains to an Indian
2 child as defined in the federal Indian Child Welfare Act, 25 U.S.C. 1901, et seq., or [section 4] is not subject to
3 this chapter to the extent that it is governed by the federal Indian Child Welfare Act or [sections 1 through 20].

4 (2) A court of this state shall treat a tribe as if it were a state of the United States for the purpose of
5 applying 40-7-101, 40-7-103, 40-7-105 through 40-7-110, 40-7-112, 40-7-119, 40-7-125, 40-7-134 through 40-
6 7-140, and part 2 of this chapter.

7 (3) A child custody determination made by a tribe under factual circumstances in substantial
8 conformity with the jurisdictional standards of this chapter must be recognized and enforced under part 3 of this
9 chapter."

10
11 **Section 27.** Section 41-3-102, MCA, is amended to read:

12 **"41-3-102. Definitions.** As used in this chapter, the following definitions apply:

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

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

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

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

21 (iv) the voluntary surrender, as defined in 40-6-402, by a parent of a newborn who is no more than
22 30 days old to an emergency services provider, as defined in 40-6-402.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (iii) abandonment.

21 (b) (i) The term includes:

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

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

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

28 (ii) For the purposes of this subsection (7), "dangerous drugs" means the compounds and

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1 substances described as dangerous drugs in Schedules I through IV in Title 50, chapter 32, part 2.

2 (c) In proceedings under this chapter in which the federal Indian Child Welfare Act ~~is or~~ [sections 1
3 through 20] are applicable, this term has the same meaning as "serious emotional or physical damage to the
4 child" as used in 25 U.S.C. 1912(f).

5 (d) The term does not include self-defense, defense of others, or action taken to prevent the child
6 from self-harm that does not constitute physical or psychological harm to a child.

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

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

11 (10) "Department" means the department of public health and human services provided for in 2-15-
12 2201.

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

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

16 ~~(a) a member of an Indian tribe; or~~

17 ~~(b) eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe~~
18 has the meaning provided in [section 4].

19 (13) "Indian child's tribe" ~~means:~~

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

21 ~~(b) in the case of an Indian child who is a member of or eligible for membership in more than one~~
22 ~~Indian tribe, the Indian tribe with which the Indian child has the more significant contacts~~ has the meaning
23 provided in [section 4].

24 (14) "Indian custodian" ~~means any Indian person who has legal custody of an Indian child under~~
25 ~~tribal law or custom or under state law or to whom temporary physical care, custody, and control have been~~
26 ~~transferred by the child's parent~~ has the meaning provided in [section 4].

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

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1 ~~(a) the state of Montana; or~~

2 ~~(b) the United States secretary of the interior as being eligible for the services provided to Indians or~~
3 ~~because of the group's status as Indians, including any Alaskan native village as defined in federal law~~ has the
4 meaning provided in [section 4].

5 (16) "Limited emancipation" means a status conferred on a youth by a court in accordance with 41-
6 1-503 under which the youth is entitled to exercise some but not all of the rights and responsibilities of a person
7 who is 18 years of age or older.

8 (17) "Parent" means a biological or adoptive parent or stepparent.

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

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

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

19 (21) "Physical neglect" means either failure to provide basic necessities, including but not limited to
20 appropriate and adequate nutrition, protective shelter from the elements, and appropriate clothing related to
21 weather conditions, or failure to provide cleanliness and general supervision, or both, or exposing or allowing
22 the child to be exposed to an unreasonable physical or psychological risk to the child.

23 (22) (a) "Physical or psychological harm to a child" means the harm that occurs whenever the
24 parent or other person responsible for the child's welfare:

25 (i) inflicts or allows to be inflicted upon the child physical abuse, physical neglect, or psychological
26 abuse or neglect;

27 (ii) commits or allows sexual abuse or exploitation of the child;

28 (iii) induces or attempts to induce a child to give untrue testimony that the child or another child

1 was abused or neglected by a parent or other person responsible for the child's welfare;

2 (iv) causes malnutrition or a failure to thrive or otherwise fails to supply the child with adequate
3 food or fails to supply clothing, shelter, education, or adequate health care, though financially able to do so or
4 offered financial or other reasonable means to do so;

5 (v) exposes or allows the child to be exposed to an unreasonable risk to the child's health or
6 welfare by failing to intervene or eliminate the risk; or

7 (vi) abandons the child.

8 (b) The term does not include a youth not receiving supervision solely because of parental inability
9 to control the youth's behavior.

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

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

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

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

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

19 (24) (a) "Psychological abuse or neglect" means severe maltreatment through acts or omissions
20 that are injurious to the child's emotional, intellectual, or psychological capacity to function, including the
21 commission of acts of violence against another person residing in the child's home.

22 (b) The term may not be construed to hold a victim responsible for failing to prevent the crime
23 against the victim.

24 (25) "Qualified expert witness" as used in cases involving an Indian child in proceedings subject to
25 the federal Indian Child Welfare Act or [sections 1 through 20] means:

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

28 ~~(b) a lay expert witness who has substantial experience in the delivery of child and family services to~~

~~Indians and extensive knowledge of prevailing social and cultural standards and child-rearing practices within the Indian child's tribe; or~~

~~(c) a professional person who has substantial education and experience in providing services to children and families and who possesses significant knowledge of and experience with Indian culture, family structure, and child-rearing practices in general~~ a person who meets the provisions of [section 13].

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

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

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

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

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

(28) "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.

(29) "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.

(30) (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.

1 (31) "Sexual exploitation" means:

2 (a) allowing, permitting, or encouraging a child to engage in a prostitution offense, as described in
3 45-5-601 through 45-5-603;

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

5 (c) allowing, permitting, or encouraging sexual servitude as described in 45-5-704 or 45-5-705.

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

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

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

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

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

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

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

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

27 (ii) the provision of treatment would:

28 (A) merely prolong dying;

- 1 (B) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or
- 2 (C) otherwise be futile in terms of the survival of the infant; or
- 3 (iii) the provision of treatment would be virtually futile in terms of the survival of the infant and the
- 4 treatment itself under the circumstances would be inhumane. For purposes of this subsection (34), "infant"
- 5 means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously
- 6 hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The reference
- 7 to less than 1 year of age may not be construed to imply that treatment should be changed or discontinued
- 8 when an infant reaches 1 year of age or to affect or limit any existing protections available under state laws
- 9 regarding medical neglect of children 1 year of age or older.

10 (35) "Youth in need of care" means a youth who has been adjudicated or determined, after a

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

12

13 **Section 28.** Section 41-3-103, MCA, is amended to read:

14 **"41-3-103. Jurisdiction and venue.** (1) Except as provided in the federal Indian Child Welfare Act or

15 [sections 1 through 20], in all matters arising under this chapter, a person is subject to a proceeding under this

16 chapter and the district court has jurisdiction over:

- 17 (a) a youth who is within the state of Montana for any purpose;
- 18 (b) a youth or other person subject to this chapter who under a temporary or permanent order of
- 19 the court has voluntarily or involuntarily left the state or the jurisdiction of the court;
- 20 (c) a person who is alleged to have abused or neglected a youth who is in the state of Montana for
- 21 any purpose;
- 22 (d) a youth or youth's parent or guardian who resides in Montana;
- 23 (e) a youth or youth's parent or guardian who resided in Montana within 180 days before the filing
- 24 of a petition under this chapter if the alleged abuse and neglect is alleged to have occurred in whole or in part in
- 25 Montana.
- 26 (2) Venue is proper in the county where a youth is located or has resided within 180 days before
- 27 the filing of a petition under this part or a county where the youth's parent or guardian resides or has resided
- 28 within 180 days before the filing of a petition under this part."

1

2 **Section 29.** Section 41-3-109, MCA, is amended to read:

3 **"41-3-109. Proceedings subject to Indian Child Welfare Act Acts.** If a proceeding under this
4 chapter involves an Indian child, as defined in the federal Indian Child Welfare Act, 25 U.S.C. 1901, et seq., or
5 [section 4], the proceeding is subject to the federal Indian Child Welfare Act and [sections 1 through 20]."

6

7 **Section 30.** Section 41-3-128, MCA, is amended to read:

8 **"41-3-128. Certificate requirements -- supervision -- fees.** (1) An applicant for certification as a
9 child protection specialist shall:

10 (a) successfully complete a course in child protection, as defined by the department by rule, which
11 must include training in:

- 12 (i) ethics;
- 13 (ii) governing statutory and regulatory framework;
- 14 (iii) role of law enforcement;
- 15 (iv) crisis intervention techniques;
- 16 (v) childhood trauma research;
- 17 (vi) evidence-based practices for family preservation and strengthening; and
- 18 (vii) the provisions of the federal Indian Child Welfare Act, 25 U.S.C. 1902, et seq., and [sections 1
19 through 20]; and

20 (b) demonstrate the applicant's ability to perform all essential functions of the certified child
21 protection role by earning a passing score on a competency examination developed pursuant to 41-3-130.

22 (2) As a prerequisite to the issuance of a certificate, the department shall require the applicant to
23 submit fingerprints for the purpose of fingerprint background checks by the Montana department of justice and
24 the federal bureau of investigation as provided in 37-1-307.

25 (3) An applicant who has a history of criminal convictions has the opportunity to demonstrate to the
26 department that the applicant is sufficiently rehabilitated to warrant the public trust. The department may deny
27 the certificate if it determines that the applicant is not sufficiently rehabilitated."

28

Section 31. Section 41-3-205, MCA, is amended to read:

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

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

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

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

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

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

(d) a parent, grandparent, aunt, uncle, brother, sister, guardian, mandatory reporter provided for in 41-3-201(2) and (5), or person designated by a parent or guardian of the child who is the subject of a report in the records or other person responsible for the child's welfare, without disclosure of the identity of any person who reported or provided information on the alleged child abuse or neglect incident contained in the records;

(e) a child named in the records who was allegedly abused or neglected or the child's legal

1 guardian or legal representative, including the child's guardian ad litem or attorney or a special advocate
2 appointed by the court to represent a child in a pending case;

3 (f) the state protection and advocacy program as authorized by 42 U.S.C. 15043(a)(2);
4 (g) approved foster and adoptive parents who are or may be providing care for a child;
5 (h) a person about whom a report has been made and that person's attorney, with respect to the
6 relevant records pertaining to that person only and without disclosing the identity of the reporter or any other
7 person whose safety may be endangered;

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

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

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

15 (l) the coroner or medical examiner when determining the cause of death of a child;
16 (m) a child fatality review team recognized by the department;

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

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

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

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

(r) an agency of an Indian tribe, a qualified expert witness, or the relatives of an Indian child if disclosure of the records is necessary to meet requirements of the federal Indian Child Welfare Act or [sections 1 through 20];

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

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

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

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

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

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

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

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

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

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

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

(iii) before reviewing the records, the member:

(A) signs a form that outlines the state and federal laws regarding confidentiality and the penalties

1 for unauthorized release of the information; and

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

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

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

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

11 (i) the attorney general;

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

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

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

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

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

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

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

24 or

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

27 (c) (i) The department shall promptly disclose the results of an investigation to an individual
28 described in subsection (5)(a) or to a county or regional interdisciplinary child information and school safety

1 team established pursuant to 52-2-211 upon the determination that:

2 (A) there is reasonable cause to suspect that a child has been exposed to a Schedule I or

3 Schedule II drug whose manufacture, sale, or possession is prohibited under state law; or

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

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

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

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

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

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

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

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

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

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

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

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

Section 32. Section 41-3-301, MCA, is amended to read:

" 41-3-301. (Temporary) Emergency protective service. (1) Any child protection specialist of the department, a peace officer, or the county attorney who has reason to believe any child is in immediate or apparent danger of harm may immediately remove the child and place the child in a protective facility. After ensuring that the child is safe, the department may make a request for further assistance from the law enforcement agency or take appropriate legal action. The person or agency placing the child shall notify the parents, parent, guardian, or other person having physical or legal custody of the child of the placement at the time the placement is made or as soon after placement as possible. Notification under this subsection must:

(a) include the reason for removal;

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

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

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

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

(ii) has the right to attend and participate in an emergency protective services hearing, if one is requested, and the show cause hearing, including providing statements to the judge;

(iii) may have a support person present during any in-person meeting with the child protection specialist concerning emergency protective services; and

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

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

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

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

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

Amendment - 1st Reading-white - Requested by: Jennifer Carlson - (H) Human Services

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Drafter: Milly Allen, 406-444-9280

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

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

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

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

(7) Except as provided in the federal Indian Child Welfare Act or [sections 1 through 20], if applicable, a show cause hearing must be held within 20 days of the filing of the petition unless otherwise stipulated by the parties pursuant to 41-3-434.

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

(9) The department shall make the necessary arrangements for the child's well-being as are required prior to the court hearing. (Terminates June 30, 2023--sec. 8, Ch. 529, L. 2021.)

41-3-301. (Effective July 1, 2023) Emergency protective service. (1) Any child protection specialist of the department, a peace officer, or the county attorney who has reason to believe any child is in immediate or apparent danger of harm may immediately remove the child and place the child in a protective facility. After ensuring that the child is safe, the department may make a request for further assistance from the law enforcement agency or take appropriate legal action. The person or agency placing the child shall notify the

1 parents, parent, guardian, or other person having physical or legal custody of the child of the placement at the
2 time the placement is made or as soon after placement as possible. Notification under this subsection must:

3 (a) include the reason for removal;

4 (b) include information regarding the emergency protective services and show cause hearings and
5 the purpose of the hearings; and

6 (c) advise the parents, parent, guardian, or other person having physical or legal custody of the
7 child that the parents, parent, guardian, or other person may have a support person present during any in-
8 person meeting with the child protection specialist concerning emergency protective services.

9 (2) If a child protection specialist, a peace officer, or the county attorney determines in an
10 investigation of abuse or neglect of a child that the child is in danger because of the occurrence of partner or
11 family member assault, as provided for in 45-5-206, or strangulation of a partner or family member, as provided
12 for in 45-5-215, against an adult member of the household or that the child needs protection as a result of the
13 occurrence of partner or family member assault or strangulation of a partner or family member against an adult
14 member of the household, the department shall take appropriate steps for the protection of the child, which may
15 include:

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

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

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

27 (3) If the department determines that an adult member of the household is the victim of partner or
28 family member assault or strangulation of a partner or family member, the department shall provide the adult

1 victim with a referral to a domestic violence program.

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

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

7 (6) If a child is removed from the child's home by the department, a child protection specialist shall
8 submit an affidavit regarding the circumstances of the emergency removal to the county attorney and provide a
9 copy of the affidavit to the parents or guardian, if possible, within 2 working days of the emergency removal. An
10 abuse and neglect petition must be filed in accordance with 41-3-422 within 5 working days, excluding
11 weekends and holidays, of the emergency removal of a child unless arrangements acceptable to the agency for
12 the care of the child have been made by the parents or a written prevention plan has been entered into
13 pursuant to 41-3-302.

14 (7) Except as provided in the federal Indian Child Welfare Act or [sections 1 through 20], if
15 applicable, a show cause hearing must be held within 20 days of the filing of the petition unless otherwise
16 stipulated by the parties pursuant to 41-3-434.

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

21 (9) The department shall make the necessary arrangements for the child's well-being as are
22 required prior to the court hearing."
23

24 **Section 33.** Section 41-3-306, MCA, is amended to read:

25 **"41-3-306. (Temporary) Emergency protective services hearing on request -- exceptions. (1) (a)**

26 If requested by the parents, parent, guardian, or other person having physical or legal custody of a child
27 removed from the home pursuant to 41-3-301, a district court shall hold an emergency protective services
28 hearing within 5 business days of the child's removal to determine whether to continue the removal beyond 5

1 business days.

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

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

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

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

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

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

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

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

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

20 (7) This section does not apply:

21 (a) in judicial districts that are holding voluntary prehearing conferences pursuant to 41-3-307; or

22 (b) to cases involving an Indian child who is subject to the federal Indian Child Welfare Act.

23 (8) The emergency protective services hearing is an emergency proceeding for the purposes of
24 [sections 1 through 20] and is not subject to the notice requirements of [sections 1 through 20]. (Terminates
25 June 30, 2023--sec. 8, Ch. 529, L. 2021.)

26 **41-3-306. (Effective July 1, 2023) Emergency protective services hearing -- exception.** (1) (a) A
27 district court shall hold a hearing within 5 business days of a child's removal from the home pursuant to 41-3-
28 301 to determine whether there is probable cause to continue the removal beyond 5 business days.

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

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

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

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

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

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

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

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

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

(7) This section does not apply to cases involving an Indian child who is subject to the federal Indian Child Welfare Act.

(8) The emergency protective services hearing is an emergency proceeding for the purposes of [sections 1 through 20] and is not subject to the notice requirements of [sections 1 through 20]."

Section 34. Section 41-3-307, MCA, is amended to read:

"41-3-307. (Temporary) Voluntary prehearing conferences -- pilot project counties. (1) The parents, parent, guardian, or other person having physical or legal custody of a child who has been removed from the home pursuant to 41-3-301 may participate in a conference within 5 days of the child's removal and before a show cause hearing held by the court if the court is participating in a pilot project testing the effectiveness of prehearing conferences.

(2) A prehearing conference may be held under this section only if it involves:

(a) the parents, parent, guardian, or other person having physical or legal custody of the child;

(b) the person's legal counsel;

(c) the county attorney's office; and

(d) a department social worker.

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

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

(a) the child's current placement and options for continued placement if the child remains out of the home;

(b) whether other options exist for an in-home safety plan or resource that may allow the child to remain in the home;

(c) parenting time schedules; and

(d) treatment services for the family.

(5) This section does not apply to cases involving an Indian child who is subject to the federal Indian Child Welfare Act or [sections 1 through 20].

(6) This section applies to a district court participating in the prehearing conference pilot project funded by the court improvement program on May 14, 2021, and to any district court in a rural county or multicounty district that chooses to hold conferences in accordance with this section on or after that date. (Terminates June 30, 2023--sec. 8, Ch. 529, L. 2021.)"

Section 35. Section 41-3-422, MCA, is amended to read:

"41-3-422. Abuse and neglect petitions -- burden of proof. (1) (a) Proceedings under this chapter must be initiated by the filing of a petition. A petition may request the following relief:

(i) immediate protection and emergency protective services, as provided in 41-3-427;

(ii) temporary investigative authority, as provided in 41-3-433;

(iii) temporary legal custody, as provided in 41-3-442;

(iv) long-term custody, as provided in 41-3-445;

(v) termination of the parent-child legal relationship, as provided in 41-3-607;

(vi) appointment of a guardian pursuant to 41-3-444;

(vii) a determination that preservation or reunification services need not be provided; or

(viii) any combination of the provisions of subsections (1)(a)(i) through (1)(a)(vii) or any other relief that may be required for the best interests of the child.

(b) The petition may be modified for different relief at any time within the discretion of the court.

(c) A petition for temporary legal custody may be the initial petition filed in a case.

(d) A petition for the termination of the parent-child legal relationship may be the initial petition filed in a case if a request for a determination that preservation or reunification services need not be provided is made in the petition.

(2) The county attorney, attorney general, or an attorney hired by the county shall file all petitions under this chapter. A petition filed by the county attorney, attorney general, or an attorney hired by the county must be accompanied by:

(a) an affidavit by the department alleging that the child appears to have been abused or neglected and stating the basis for the petition; and

(b) a separate notice to the court stating any statutory time deadline for a hearing.

(3) Abuse and neglect petitions must be given highest preference by the court in setting hearing dates.

(4) An abuse and neglect petition is a civil action brought in the name of the state of Montana. The Montana Rules of Civil Procedure and the Montana Rules of Evidence apply except as modified in this chapter. Proceedings under a petition are not a bar to criminal prosecution.

(5) (a) Except as provided in subsection (5)(b), the person filing the abuse and neglect petition has the burden of presenting evidence required to justify the relief requested and establishing:

(i) probable cause for the issuance of an order for immediate protection and emergency protective services or an order for temporary investigative authority;

(ii) a preponderance of the evidence for an order of adjudication or temporary legal custody;

(iii) a preponderance of the evidence for an order of long-term custody; or

(iv) clear and convincing evidence for an order terminating the parent-child legal relationship.

(b) If a proceeding under this chapter involves an Indian child, as defined in the federal Indian Child Welfare Act, 25 U.S.C. 1901, et seq., or [section 4], the standards of proof required for legal relief under the federal Indian Child Welfare Act and [sections 1 through 20] apply.

(6) (a) Except as provided in the federal Indian Child Welfare Act and [sections 1 through 20], if applicable, the parents or parent, guardian, or other person or agency having legal custody of the child named in the petition, if residing in the state, must be served personally with a copy of the initial petition and a petition to terminate the parent-child legal relationship at least 5 days before the date set for hearing. If the person or agency cannot be served personally, the person or agency may be served by publication as provided in 41-3-428 and 41-3-429.

(b) Copies of all other petitions must be served upon the person or the person's attorney of record by certified mail, by personal service, or by publication as provided in 41-3-428 and 41-3-429. If service is by certified mail, the department must receive a return receipt signed by the person to whom the notice was mailed for the service to be effective. Service of the notice is considered to be effective if, in the absence of a return receipt, the person to whom the notice was mailed appears at the hearing.

(7) If personal service cannot be made upon the parents or parent, guardian, or other person or agency having legal custody, the court shall immediately provide for the appointment or assignment of an attorney as provided for in 41-3-425 to represent the unavailable party when, in the opinion of the court, the interests of justice require. If personal service cannot be made upon a putative father, the court may not provide for the appointment or assignment of counsel as provided for in 41-3-425 to represent the father unless, in the opinion of the court, the interests of justice require counsel to be appointed or assigned.

(8) If a parent of the child is a minor, notice must be given to the minor parent's parents or guardian, and if there is no guardian, the court shall appoint one.

(9) (a) Any person interested in any cause under this chapter has the right to appear. Any foster parent, preadoptive parent, or relative caring for the child must be given legal notice by the attorney filing the petition of all judicial hearings for the child and has the right to be heard. The right to appear or to be heard does not make that person a party to the action. Any foster parent, preadoptive parent, or relative caring for the child must be given notice of all reviews by the reviewing body.

(b) A foster parent, preadoptive parent, or relative of the child who is caring for or a relative of the

child who has cared for a child who is the subject of the petition who appears at a hearing set pursuant to this section may be allowed by the court to intervene in the action if the court, after a hearing in which evidence is presented on those subjects provided for in 41-3-437(4), determines that the intervention of the person is in the best interests of the child. A person granted intervention pursuant to this subsection is entitled to participate in the adjudicatory hearing held pursuant to 41-3-437 and to notice and participation in subsequent proceedings held pursuant to this chapter involving the custody of the child.

(10) An abuse and neglect petition must state:

(a) the nature of the alleged abuse or neglect and of the relief requested;

(b) the full name, age, and address of the child and the name and address of the child's parents or the guardian or person having legal custody of the child; and

(c) the names, addresses, and relationship to the child of all persons who are necessary parties to the action.

(11) Any party in a proceeding pursuant to this section is entitled to counsel as provided in 41-3-425.

(12) At any stage of the proceedings considered appropriate by the court, the court may order an alternative dispute resolution proceeding or the parties may voluntarily participate in an alternative dispute resolution proceeding. An alternative dispute resolution proceeding under this chapter may include a family engagement meeting, mediation, or a settlement conference. If a court orders an alternative dispute resolution proceeding, a party who does not wish to participate may file a motion objecting to the order. If the department is a party to the original proceeding, a representative of the department who has complete authority to settle the issue or issues in the original proceeding must be present at any alternative dispute resolution proceeding.

(13) Service of a petition under this section must be accompanied by a written notice advising the child's parent, guardian, or other person having physical or legal custody of the child of the:

(a) right, pursuant to 41-3-425, to appointment or assignment of counsel if the person is indigent or if appointment or assignment of counsel is required under the federal Indian Child Welfare Act or [sections 1 through 20], if applicable;

(b) right to contest the allegations in the petition; and

(c) timelines for hearings and determinations required under this chapter.

(14) If appropriate, orders issued under this chapter must contain a notice provision advising a child's parent, guardian, or other person having physical or legal custody of the child that:

(a) the court is required by federal and state laws to hold a permanency hearing to determine the permanent placement of a child no later than 12 months after a judge determines that the child has been abused or neglected or 12 months after the first 60 days that the child has been removed from the child's home;

(b) if a child has been in foster care for 15 of the last 22 months, state law presumes that termination of parental rights is in the best interests of the child and the state is required to file a petition to terminate parental rights; and

(c) completion of a treatment plan does not guarantee the return of a child.

(15) A court may appoint a standing master to conduct hearings and propose decisions and orders to the court for court consideration and action. A standing master may not conduct a proceeding to terminate parental rights. A standing master must be a member of the state bar of Montana and must be knowledgeable in the area of child abuse and neglect laws."

Section 36. Section 41-3-423, MCA, is amended to read:

"41-3-423. Reasonable efforts required to prevent removal of child or to return -- exemption -- findings -- permanency plan. (1) (a) The department shall make reasonable efforts to prevent the necessity of removal of a child from the child's home and to reunify families that have been separated by the state.

(b) (i) For the purposes of this subsection (1), the term "reasonable efforts" means the department shall in good faith develop and implement voluntary services agreements and treatment plans that are designed to preserve the parent-child relationship and the family unit and shall in good faith assist parents in completing voluntary services agreements and treatment plans.

(ii) The term includes but is not limited to:

(A) written prevention plans;

(B) development of individual written case plans specifying state efforts to preserve or reunify families;

(C) placement in the least disruptive setting possible with priority given to family placement as provided in 41-3-439;

(D) provision of services pursuant to a case plan that is designed to address the parent's treatment and other needs precluding the parent from safely parenting, including but not limited to individual and family therapy, parent education, substance abuse treatment, and trauma-related services; and

(E) periodic review of each case to ensure timely progress toward reunification or permanent placement.

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

(2) Except in a proceeding subject to the federal Indian Child Welfare Act or [sections 1 through 20], the department may, at any time during an abuse and neglect proceeding, make a request for a determination that preservation or reunification services need not be provided. If an indigent parent is not already represented by counsel, the court shall immediately provide for the appointment or assignment of counsel to represent the indigent parent in accordance with the provisions of 41-3-425. A court may make a finding that the department need not make reasonable efforts to provide preservation or reunification services if the court finds that the parent has:

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

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

(c) committed aggravated assault against a child;

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

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

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

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

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

- 1 (i) visiting the child at least monthly when physically and financially able to do so; or
- 2 (ii) having regular contact with the child or with the person or agency having the care and custody
- 3 of the child when physically and financially able to do so; and
- 4 (iii) manifesting an ability and willingness to assume legal and physical custody of the child if the
- 5 child was not in the physical custody of the other parent.
- 6 (c) register with the putative father registry pursuant to Title 42, chapter 2, part 2, and the person
- 7 has not been:
- 8 (i) adjudicated in Montana to be the father of the child for the purposes of child support; or
- 9 (ii) recorded on the child's birth certificate as the child's father.
- 10 (4) A judicial finding that preservation or reunification services are not necessary under this section
- 11 must be supported by clear and convincing evidence.
- 12 (5) If the court finds that preservation or reunification services are not necessary pursuant to
- 13 subsection (2) or (3), a permanency hearing must be held within 30 days of that determination and reasonable
- 14 efforts, including consideration of both in-state and out-of-state permanent placement options for the child, must
- 15 be made to place the child in a timely manner in accordance with the permanency plan and to complete
- 16 whatever steps are necessary to finalize the permanent placement of the child.
- 17 (6) If reasonable efforts have been made to prevent removal of a child from the home or to return a
- 18 child to the child's home but continuation of the efforts is determined by the court to be inconsistent with the
- 19 permanency plan for the child, the department shall make reasonable efforts to place the child in a timely
- 20 manner in accordance with the permanency plan, including, if appropriate, placement in another state, and to
- 21 complete whatever steps are necessary to finalize the permanent placement of the child. Reasonable efforts to
- 22 place a child permanently for adoption or to make an alternative out-of-home permanent placement may be
- 23 made concurrently with reasonable efforts to return a child to the child's home. Concurrent planning, including
- 24 identifying in-state and out-of-state placements, may be used.
- 25 (7) When determining whether the department has made reasonable efforts to prevent the
- 26 necessity of removal of a child from the child's home or to reunify families that have been separated by the
- 27 state, the court shall review the services provided by the agency including, if applicable, protective services
- 28 provided pursuant to 41-3-302."

1

2 **Section 37.** Section 41-3-425, MCA, is amended to read:

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

5 (2) Except as provided in subsections (3) through (5), the court shall immediately appoint the office
6 of state public defender to assign counsel for:

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

10 (b) any child or youth involved in a proceeding under a petition filed pursuant to 41-3-422 when a
11 guardian ad litem is not appointed for the child or youth; and

12 (c) any party entitled to counsel at public expense under the federal Indian Child Welfare Act or
13 [sections 1 through 20].

14 (3) When appropriate, the court may appoint the office of state public defender to assign counsel
15 for any child or youth involved in a proceeding under a petition filed pursuant to 41-3-422 when a guardian ad
16 litem is appointed for the child or youth.

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

20 (5) Except as provided in the federal Indian Child Welfare Act or [sections 1 through 20], a court
21 may not appoint a public defender to a putative father, as defined in 42-2-201, of a child or youth in a removal,
22 placement, or termination proceeding pursuant to 41-3-422 until:

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

24 (b) the putative father makes a request to the court in writing to appoint the office of state public
25 defender to assign counsel."

26

27 **Section 38.** Section 41-3-427, MCA, is amended to read:

28 **"41-3-427. Petition for immediate protection and emergency protective services -- order --**

1 **service.** (1) (a) In a case in which it appears that a child is abused or neglected or is in danger of being abused
2 or neglected, the county attorney, the attorney general, or an attorney hired by the county may file a petition for
3 immediate protection and emergency protective services. In implementing the policy of this section, the child's
4 health and safety are of paramount concern.

5 (b) A petition for immediate protection and emergency protective services must state the specific
6 authority requested and must be supported by an affidavit signed by a representative of the department stating
7 in detail the alleged facts upon which the request is based and the facts establishing probable cause or, if the
8 case is subject to the federal Indian Child Welfare Act or [sections 1 through 20], clear and convincing evidence
9 that a child is abused or neglected or is in danger of being abused or neglected. The affidavit of the department
10 representative must contain information, if any, regarding statements made by the parents about the facts of
11 the case.

12 (c) If from the alleged facts presented in the affidavit it appears to the court that there is probable
13 cause or, if the case is subject to the federal Indian Child Welfare Act or [sections 1 through 20], clear and
14 convincing evidence to believe that the child has been abused or neglected or is in danger of being abused and
15 neglected, the judge shall grant emergency protective services and the relief authorized by subsection (2) until
16 the adjudication hearing or the temporary investigative hearing. If it appears from the alleged facts contained in
17 the affidavit that there is insufficient probable cause or, if the case is subject to the federal Indian Child Welfare
18 Act or [sections 1 through 20], clear and convincing evidence to believe that the child has been abused or
19 neglected or is in danger of being abused or neglected, the court shall dismiss the petition.

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

24 (e) The petition for immediate protection and emergency protective services must include a notice
25 advising the parents, parent, guardian, or other person having physical or legal custody of the child that the
26 parents, parent, guardian, or other person having physical or legal custody of the child may have a support
27 person present during any in-person meeting with a child protection specialist concerning emergency protective
28 services. Reasonable accommodation must be made in scheduling an in-person meeting with the child

1 protection specialist.

2 (2) Pursuant to subsection (1), if the court finds probable cause or, if the case is subject to the
3 federal Indian Child Welfare Act or [sections 1 through 20], clear and convincing evidence based on the petition
4 and affidavit, the court may issue an order for immediate protection of the child. The court shall consider the
5 parents' statements, if any, included with the petition and any accompanying affidavit or report to the court. If
6 the court finds probable cause or, if the case is subject to the federal Indian Child Welfare Act or [sections 1
7 through 20], clear and convincing evidence, the court may issue an order granting the following forms of relief,
8 which do not constitute a court-ordered treatment plan under 41-3-443:

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

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

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

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

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

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

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

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

28 (3) An order for removal of a child from the home must include a finding that continued residence

of the child with the parent is contrary to the welfare of the child or that an out-of-home placement is in the best interests of the child.

(4) The order for immediate protection of the child must require the person served to comply immediately with the terms of the order and to appear before the court issuing the order on the date specified for a show cause hearing. Upon a failure to comply or show cause, the court may hold the person in contempt or place temporary physical custody of the child with the department until further order.

(5) The petition must be served as provided in 41-3-422 or, if the case involves an Indian child, as provided in [section 8]."

Section 39. Section 41-3-432, MCA, is amended to read:

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

(b) If a proceeding under this chapter involves an Indian child and is subject to the federal Indian Child Welfare Act or [sections 1 through 20], a qualified expert witness is required to testify that the continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child.

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

(2) The person filing the petition has the burden of presenting evidence establishing probable cause for the issuance of an order for temporary investigative authority after the show cause hearing, except as provided by the federal Indian Child Welfare Act or [sections 1 through 20], if applicable.

(3) If a contested show cause hearing is requested pursuant to 41-3-427 based upon a disputed issue of material fact or a dispute regarding the veracity of the affidavit of the department, the court may consider all evidence and shall provide an opportunity for a parent, guardian, or other person having physical or legal custody of the child to provide testimony regarding the disputed issues. Hearsay evidence of statements

made by the affected child is admissible at the hearing. The parent, guardian, or other person may be represented by legal counsel and may be appointed or assigned counsel as provided for in 41-3-425.

(4) At the show cause hearing, the court shall explain the procedures to be followed in the case and explain the parties' rights, including the right to request appointment or assignment of counsel if indigent or if appointment or assignment of counsel is required under the federal Indian Child Welfare Act or [sections 1 through 20], if applicable, and the right to challenge the allegations contained in the petition. The parent, guardian, or other person having physical or legal custody of the child must be given the opportunity to admit or deny the allegations contained in the petition at the show cause hearing. Inquiry must be made to determine whether the notice requirements of the federal Indian Child Welfare Act or [section 8], if applicable, have been met.

(5) Except as provided in the federal Indian Child Welfare Act or [sections 1 through 20], if applicable, the court shall make written findings on issues including but not limited to the following:

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

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

(c) whether the department has made reasonable efforts to avoid protective placement of the child or to make it possible to safely return the child to the child's home;

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

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

(6) The court may consider:

(a) terms and conditions for parental visitation; and

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

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

1 writing.

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

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

11

12 **Section 40.** Section 41-3-437, MCA, is amended to read:

13 **"41-3-437. Adjudication -- temporary disposition -- findings -- order.** (1) Upon the filing of an
14 appropriate petition, an adjudicatory hearing must be held within 90 days of a show cause hearing under 41-3-
15 432. Adjudication may take place at the show cause hearing if the requirements of subsection (2) are met or
16 may be made by prior stipulation of the parties pursuant to 41-3-434 and order of the court. Exceptions to the
17 time limit may be allowed only in cases involving newly discovered evidence, unavoidable delays, stipulation by
18 the parties pursuant to 41-3-434, and unforeseen personal emergencies.

19 (2) The court may make an adjudication on a petition under 41-3-422 if the court determines by a
20 preponderance of the evidence, except as provided in the federal Indian Child Welfare Act or [sections 1
21 through 20], if applicable, that the child is a youth in need of care. Except as otherwise provided in this part, the
22 Montana Rules of Civil Procedure and the Montana Rules of Evidence apply to adjudication and to an
23 adjudicatory hearing. Adjudication must determine the nature of the abuse and neglect and establish facts that
24 resulted in state intervention and upon which disposition, case work, court review, and possible termination are
25 based.

26 (3) The court shall hear evidence regarding the residence of the child, paternity, if in question, the
27 whereabouts of the parents, guardian, or nearest adult relative, and any other matters the court considers
28 relevant in determining the status of the child. Hearsay evidence of statements made by the affected youth is

1 admissible according to the Montana Rules of Evidence.

2 (4) In a case in which abandonment has been alleged by the county attorney, the attorney general,
3 or an attorney hired by the county, the court shall hear offered evidence, including evidence offered by a person
4 appearing pursuant to 41-3-422(9)(a) or (9)(b), regarding any of the following subjects:

5 (a) the extent to which the child has been cared for, nurtured, or supported by a person other than
6 the child's parents; and

7 (b) whether the child was placed or allowed to remain by the parents with another person for the
8 care of the child, and, if so, then the court shall accept evidence regarding:

9 (i) the intent of the parents in placing the child or allowing the child to remain with that person;

10 (ii) the continuity of care the person has offered the child by providing permanency or stability in
11 residence, schooling, and activities outside of the home; and

12 (iii) the circumstances under which the child was placed or allowed to remain with that other
13 person, including:

14 (A) whether a parent requesting return of the child was previously prevented from doing so as a
15 result of an order issued pursuant to Title 40, chapter 15, part 2, or of a conviction pursuant to 45-5-206; and

16 (B) whether the child was originally placed with the other person to allow the parent to seek
17 employment or attend school.

18 (5) In all civil and criminal proceedings relating to abuse or neglect, the privileges related to the
19 examination or treatment of the child do not apply, except the attorney-client privilege granted by 26-1-803 and
20 the mediation privilege granted by 26-1-813.

21 (6) (a) If the court determines that the child is not an abused or neglected child, the petition must
22 be dismissed and any order made pursuant to 41-3-427 or 41-3-432 must be vacated.

23 (b) If the child is adjudicated a youth in need of care, the court shall set a date for a dispositional
24 hearing to be conducted within 20 days, as provided in 41-3-438(1), and order any necessary or required
25 investigations. The court may issue a temporary dispositional order pending the dispositional hearing. The
26 temporary dispositional order may provide for any of the forms of relief listed in 41-3-427(2).

27 (7) (a) Before making an adjudication, the court may make oral findings, and following the
28 adjudicatory hearing, the court shall make written findings on issues, including but not limited to the following:

(i) which allegations of the petition have been proved or admitted, if any;

(ii) whether there is a legal basis for continued court and department intervention; and

(iii) whether the department has made reasonable efforts to avoid protective placement of the child or to make it possible to safely return the child to the child's home.

(b) The court may order:

(i) terms for visitation, support, and other intrafamily communication pending disposition if the child is to be placed or to remain in temporary out-of-home care prior to disposition;

(ii) examinations, evaluations, or counseling of the child or parents in preparation for the disposition hearing that does not require an expenditure of money by the department unless the court finds after notice and a hearing that the expenditure is reasonable and that resources are available for payment. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(iii) the department to evaluate the noncustodial parent or relatives as possible caretakers, if not already done;

(iv) the perpetrator of the alleged child abuse or neglect to be removed from the home to allow the child to remain in the home; and

(v) the department to continue efforts to notify noncustodial parents.

(8) If a proceeding under this chapter involves an Indian child and is subject to the federal Indian Child Welfare Act or [sections 1 through 20], a qualified expert witness is required to testify that the continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child."

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

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

The court may, upon 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 (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

1 found by the court:

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

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

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

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

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

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

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

15 (h) if the child concerning whom the petition for guardianship has been filed is an Indian child, as
16 defined in the federal Indian Child Welfare Act, 25 U.S.C. 1901, et seq., or [section 4], the Indian child's tribe
17 has received notification from the state of the initiation of the proceedings.

18 (3) In the case of an abandoned child, the court may give priority to a member of the abandoned
19 child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, if
20 placement with the extended family member is in the best interests of the child. If more than one extended
21 family member has requested to be appointed as guardian, the court may determine which extended family
22 member to appoint in the same manner provided for in 41-3-438(4).

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

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

28 (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, and other persons directly interested in the welfare of the child.

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

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

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

(10) This section does not apply to guardians appointed pursuant to Title 72, chapter 5."

Section 42. Section 41-3-609, MCA, is amended to read:

"41-3-609. Criteria for termination. (1) The court may order a termination of the parent-child legal relationship upon a finding established by clear and convincing evidence, except as provided in the federal Indian Child Welfare Act or [sections 1 through 20], if applicable, that any of the following circumstances exist:

- (a) the parents have relinquished the child pursuant to 42-2-402 and 42-2-412;
- (b) the child has been abandoned by the parents;
- (c) the parent is convicted of a felony in which sexual intercourse occurred or is a minor adjudicated a delinquent youth because of an act that, if committed by an adult, would be a felony in which sexual intercourse occurred and, as a result of the sexual intercourse, the child is born;
- (d) the parent has subjected a child to any of the circumstances listed in 41-3-423(2)(a) through (2)(e);
- (e) the putative father meets any of the criteria listed in 41-3-423(3)(a) through (3)(c); or
- (f) the child is an adjudicated youth in need of care and both of the following exist:
 - (i) an appropriate treatment plan that has been approved by the court has not been complied with

1 by the parents or has not been successful; and

2 (ii) the conduct or condition of the parents rendering them unfit is unlikely to change within a
3 reasonable time.

4 (2) In determining whether the conduct or condition of the parents is unlikely to change within a
5 reasonable time, the court shall enter a finding that continuation of the parent-child legal relationship will likely
6 result in continued abuse or neglect or that the conduct or the condition of the parents renders the parents unfit,
7 unable, or unwilling to give the child adequate parental care. In making the determinations, the court shall
8 consider but is not limited to the following:

9 (a) emotional illness, mental illness, or mental deficiency of the parent of a duration or nature as to
10 render the parent unlikely to care for the ongoing physical, mental, and emotional needs of the child within a
11 reasonable time;

12 (b) a history of violent behavior by the parent;

13 (c) excessive use of intoxicating liquor or of a narcotic or dangerous drug that affects the parent's
14 ability to care and provide for the child; and

15 (d) present judicially ordered long-term confinement of the parent.

16 (3) In considering any of the factors in subsection (2) in terminating the parent-child relationship,
17 the court shall give primary consideration to the physical, mental, and emotional conditions and needs of the
18 child.

19 (4) A treatment plan is not required under this part upon a finding by the court following hearing if:

20 (a) the parent meets the criteria of subsections (1)(a) through (1)(e);

21 (b) two medical doctors or clinical psychologists submit testimony that the parent cannot assume
22 the role of parent within a reasonable time;

23 (c) the parent is or will be incarcerated for more than 1 year and reunification of the child with the
24 parent is not in the best interests of the child because of the child's circumstances, including placement options,
25 age, and developmental, cognitive, and psychological needs; or

26 (d) the death or serious bodily injury, as defined in 45-2-101, of a child caused by abuse or neglect
27 by the parent has occurred.

28 (5) If a proceeding under this chapter involves an Indian child and is subject to the federal Indian

Child Welfare Act or [sections 1 through 20], a qualified expert witness is required to testify that the continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child."

Section 43. Section 42-2-102, MCA, is amended to read:

"42-2-102. Proceedings subject to Indian Child Welfare Act Acts. A proceeding under this title that pertains to an Indian child, as defined in ~~the Indian Child Welfare Act of 1978, 25 U.S.C. 1901, et seq., [section 4],~~ is subject to that act the federal Indian Child Welfare Act of 1978, 25 U.S.C. 1901, et seq., and [sections 1 through 20]."

Section 44. Section 42-2-604, MCA, is amended to read:

"42-2-604. Contents of petition for termination of parental rights. (1) The petition for termination of parental rights must state:

- (a) the identity of the petitioner;
- (b) the date and location of the birth of the child;
- (c) the date of the relinquishment by the birth mother or relinquishing parent;
- (d) the current location of the child;
- (e) the names and locations, if known, of any putative or presumed father of the child;
- (f) whether a parent is one from whom consent is not required;
- (g) whether court orders from any other proceeding have been issued terminating parental rights to the child that is the subject of the petition;
- (h) any other evidence supporting termination of the legal rights that a person has with regard to the child; and
- (i) a request for temporary custody of the child prior to the adoption.

(2) The petitioner shall file with the petition for termination of parental rights the following documents received in support of the petition:

- (a) any relinquishments and consents to adoption;
- (b) any denials of paternity;

- 1 (c) any acknowledgments of paternity and denial of parental rights;
- 2 (d) any affidavits from the putative father registry that have been executed by the department;
- 3 (e) the adoptive decision support services report required under 42-2-409;
- 4 (f) proof of prior service of any notice or acknowledgment of service or waiver of service received;
- 5 and
- 6 (g) proof of compliance with the federal Indian Child Welfare Act of 1978, [sections 1 through 20],
- 7 and Interstate Compact on the Placement of Children, if applicable."
- 8

9 **Section 45.** Section 42-4-102, MCA, is amended to read:

10 **"42-4-102. Duties of placing parent.** (1) A parent who is directly placing a child for adoption shall

11 execute a voluntary relinquishment and consent to adopt, including:

- 12 (a) receiving the adoptive decision support services required by 42-2-409; and
- 13 (b) if the parent is a minor, being advised by legal counsel other than the attorney representing the
- 14 prospective adoptive parent.

15 (2) A placing parent shall identify and provide information on the location of any other legal parent

16 or guardian of the child and any other person required to receive notice under 42-2-605, including:

- 17 (a) any current spouse;
- 18 (b) any spouse who is the other birth parent and to whom the parent was married at the probable
- 19 time of conception or birth of the child; and
- 20 (c) any adoptive parent.

21 (3) A placing parent shall identify and provide information pertaining to any Indian heritage of the

22 child that would bring the child within the jurisdiction of the federal Indian Child Welfare Act, 25 U.S.C. 1901, et

23 seq., or [sections 1 through 20].

24 (4) A parent placing a child for adoption in a direct parental placement adoption shall provide:

- 25 (a) the disclosures of medical and social history required pursuant to 42-3-101;
- 26 (b) a certified copy of the child's birth certificate or other document certifying the place and date of
- 27 the child's birth; and
- 28 (c) a certified copy of any existing court orders pertaining to custody or visitation of the child.

(5) A parent placing a child for adoption in a direct parental placement adoption shall file a notice of parental placement.

(6) A parent placing a child for adoption in a direct parental placement adoption shall file a disclosure of all disbursements made to or for the benefit of the parent by the prospective adoptive parent or any person acting on behalf of the prospective adoptive parent.

(7) Subject to the limitations set in 42-7-102, expenses for adoptive decision support services, postadoptive counseling, outpatient mental health services, legal fees, and the reasonable costs of preparing reports documenting the required disclosures of medical and social history and the disclosures documenting disbursements are allowable expenses that can be paid for by the prospective adoptive parent."

Section 46. Section 42-4-103, MCA, is amended to read:

"42-4-103. Direct parental placement -- information to be filed. (1) A parent who proposes to place a child for adoption with a prospective adoptive parent who resides in Montana and who is not the child's stepparent or an extended family member shall file with the court of the county in which the prospective adoptive parent or the parent making the placement resides the following:

(a) a notice of parental placement containing the following information:

(i) the name and address of the placing parent;

(ii) the name and address of each prospective adoptive parent;

(iii) the name and address or expected date and place of birth of the child;

(iv) the identity and information on the location of any other legal parent or guardian of the child and any other person required to receive notice under 42-2-605, including any current spouse, any spouse who is the other birth parent and to whom the parent was married at the probable time of conception or birth of the child, and any adoptive parent;

(v) all relevant information pertaining to any Indian heritage of the child that would bring the child within the jurisdiction of the federal Indian Child Welfare Act, 25 U.S.C. 1901, et seq., or sections 1 through 20]; and

(vi) the name and address of counsel, a guardian ad litem, or other representative, if any, of each of the parties mentioned in subsections (1)(a)(i) through (1)(a)(iii);

- (b) a relinquishment and consent to adoption of the child by the adoptive parent;
 - (c) the adoptive decision support services report required by 42-2-409;
 - (d) the medical and social history disclosures required by 42-3-101;
 - (e) a report of disbursements identifying all payments made to or to the benefit of the placing parent by the prospective adoptive parent or anyone acting on the parent's behalf that contains a statement by each person furnishing information in the report attesting to the truthfulness of the information furnished by that person;
 - (f) a certified copy of the child's birth certificate or other document certifying the place and date of the child's birth;
 - (g) a certified copy of any existing court orders pertaining to custody or visitation of the child; and
 - (h) the preplacement evaluation.
- (2) The notice of parental placement must be signed by the parent making the placement."

Section 47. Section 42-4-203, MCA, is amended to read:

"42-4-203. Duties of placing parent. (1) A parent who is placing a child for adoption shall comply with the provisions for executing a voluntary relinquishment and consent to adopt.

(2) A parent placing a child for adoption shall identify and provide information on the location of:

(a) any other legal parent or guardian of the child and any other person required to receive notice under 42-2-605, including any current spouse; and

(b) any spouse who is the other birth parent and to whom the parent was married at the probable time of conception or birth of the child.

(3) A parent placing a child for adoption shall identify and provide information pertaining to any Indian heritage of the child that would bring the child within the jurisdiction of the federal Indian Child Welfare Act, 25 U.S.C. 1901, et seq., or [sections 1 through 20].

(4) A parent placing a child for adoption shall provide:

(a) the disclosures of medical and social history;

(b) a certified copy of the child's birth certificate or other document certifying the place and date of the child's birth; and

(c) a certified copy of any existing court orders pertaining to custody or visitation of the child."

Section 48. Section 42-4-209, MCA, is amended to read:

"42-4-209. Postplacement department or agency evaluation. (1) The department or agency shall complete a written postplacement evaluation. The postplacement evaluation must be conducted according to the department's or agency's standards for placement of a child and at a minimum must include a personal interview with the prospective adoptive parent in that person's home and observation of the relationship between the child and the prospective adoptive parent.

(2) Upon the filing of a petition for adoption by the prospective adoptive parent, the department or agency shall file the postplacement evaluation.

(3) The evaluation must include the following information:

(a) whether the child is legally free for adoption;

(b) whether the proposed home is suitable for the child;

(c) a statement that the medical and social histories of the birth parents and child have been provided to the prospective adoptive parent;

(d) an assessment of adaptation by the prospective adoptive parent to parenting the child;

(e) a statement that the 6-month postplacement evaluation period has been complied with or should be waived;

(f) any other circumstances and conditions that may have a bearing on the adoption and of which the court should have knowledge;

(g) whether the agency waives notice of the proceeding;

(h) a statement that any applicable provision of law governing an interstate or intercountry placement of the child has been complied with; and

(i) a statement of compliance with any applicable provisions of the federal Indian Child Welfare Act, 25 U.S.C. 1901, et seq., and [sections 1 through 20].

(4) The evaluation must contain a definite recommendation stating the reasons for or against the proposed adoption."

Section 49. Section 42-5-101, MCA, is amended to read:

"42-5-101. Petition for adoption. (1) A petition for adoption must be verified and must specify:

(a) the full names, ages, and place and duration of residence of the petitioners;

(b) the current marital status of petitioners and, if married, the place and date of the marriage;

(c) the circumstances under which the petitioners obtained physical custody of the child and the name of the individual or agency that placed the child;

(d) the date and place of birth of the child, if known;

(e) the name used for the child in the proceeding and, if a change in name is desired, the full name by which the child is to be known;

(f) that it is the desire of the petitioners that the relationship of parent and child be established between the petitioners and the child and to have all the rights and be subject to all the duties of that relationship;

(g) a full description and statement of value of all property owned or possessed by the child;

(h) the facts, if any, that excuse consent on the part of a person whose consent is required for the adoption;

(i) that any applicable law governing interstate or intercountry placement was complied with;

(j) that, if applicable, the federal Indian Child Welfare Act, 25 U.S.C. 1901, et seq., ~~was and~~ [sections 1 through 20] were complied with;

(k) whether a previous petition has been filed by the petitioners to adopt the child at issue or any other child in any court and the disposition of the petitions; and

(l) the name and address, if known, of any person who is entitled to receive notice of the petition for adoption.

(2) There must be attached to or accompanying the petition:

(a) any written consent required by 42-2-301;

(b) a certified copy of any court order terminating the rights of the child's parents;

(c) a certified copy of any existing court order in any pending proceeding concerning custody of or visitation with the child;

(d) a copy of any agreement with a public agency to provide a subsidy for the benefit of the child

- 1 with a special need;
- 2 (e) the postplacement evaluation prepared pursuant to 42-4-113 or 42-4-209;
- 3 (f) a disclosure of any disbursements made in connection with the adoption proceeding.
- 4 (3) One copy of the petition must be retained by the court. A copy must be sent to:
- 5 (a) the department or to the agency participating in the adoption proceeding;
- 6 (b) the parent placing the child for adoption in a direct parental placement adoption; or
- 7 (c) the child's guardian ad litem if the child has one.
- 8 (4) Proceedings initiated under this part are subject to the Montana Rules of Civil Procedure
- 9 except as modified by this part."

10

11 **Section 50.** Section 42-5-107, MCA, is amended to read:

12 **"42-5-107. Best interests of child.** (1) In determining whether to grant a petition to adopt, the court

13 shall consider all relevant factors in determining the best interests of the child. The court shall consider factors

14 relevant to the determination of a prospective adoptive parent's parenting ability, the future security for a child,

15 and familial stability.

16 (2) In a contested adoption proceeding involving a child, the court shall consider the factors set out

17 in subsection (1) and shall also consider:

18 (a) the nature and length of any relationship already established between a child and any person

19 seeking to adopt the child;

20 (b) the nature of any family relationship between the child and any person seeking to adopt the

21 child and whether that person has established a positive emotional relationship with the child;

22 (c) the harm that could result to the child from a change in placement;

23 (d) whether any person seeking to adopt the child has adopted a sibling or half-sibling of the child;

24 (e) which, if any, of the persons seeking to adopt the child were selected by the placing parent or

25 the department or agency whose consent to the adoption is required.

26 (3) In an Indian child placement, the court shall determine if the requirements of the federal Indian

27 Child Welfare Act, 25 U.S.C. 1901, et seq., and [sections 1 through 20] have been met."

28

Section 51. Section 47-1-104, MCA, is amended to read:

"47-1-104. Statewide system -- structure and scope of services -- assignment of counsel at public expense. (1) There is a statewide public defender system, which is required to deliver public defender services in all courts in this state. The system is supervised by the director.

(2) The director shall approve a strategic plan for service delivery and divide the state into not more than 11 public defender regions. The director may establish a regional office to provide public defender services in each region, as provided in 47-1-215, establish a contracted services program to provide services in the region, or utilize other service delivery methods as appropriate and consistent with the purposes described in 47-1-102.

(3) When a court orders the assignment of a public defender, the appropriate office shall immediately assign a public defender qualified to provide the required services. The director shall establish protocols to ensure that the offices make appropriate assignments in a timely manner.

(4) A court may order assignment of a public defender under this chapter in the following cases:

(a) in cases in which a person is entitled to assistance of counsel at public expense because of financial inability to retain private counsel, subject to a determination of indigence pursuant to 47-1-111, as follows:

(i) for a person charged with a felony or charged with a misdemeanor for which there is a possibility of incarceration, as provided in 46-8-101;

(ii) for a party in a proceeding to determine parentage under the Uniform Parentage Act, as provided in 40-6-119;

(iii) for a parent, guardian, or other person with physical or legal custody of a child or youth in any removal, placement, or termination proceeding pursuant 41-3-422 and as required under the federal Indian Child Welfare Act and [section 11], as provided in 41-3-425;

(iv) for an applicant for sentence review pursuant to Title 46, chapter 18, part 9;

(v) for a petitioner in a proceeding for postconviction relief, as provided in 46-21-201;

(vi) for a petitioner in a habeas corpus proceeding pursuant to Title 46, chapter 22;

(vii) for a parent or guardian in a proceeding for the involuntary commitment of a developmentally disabled person to a residential facility, as provided in 53-20-112;

(viii) for a respondent in a proceeding for involuntary commitment for a mental disorder, as provided in 53-21-116;

(ix) for a respondent in a proceeding for the involuntary commitment of a person for alcoholism, as provided in 53-24-302; and

(x) for a witness in a criminal grand jury proceeding, as provided in 46-4-304.

(b) in cases in which a person is entitled by law to the assistance of counsel at public expense regardless of the person's financial ability to retain private counsel, as follows:

(i) as provided for in 41-3-425;

(ii) for a youth in a proceeding under the Montana Youth Court Act alleging a youth is delinquent or in need of intervention, as provided in 41-5-1413, and in a prosecution under the Extended Jurisdiction Prosecution Act, as provided in 41-5-1607;

(iii) for a juvenile entitled to assigned counsel in a proceeding under the Interstate Compact on Juveniles, as provided in 41-6-101;

(iv) for a minor who petitions for a waiver of parental consent requirements under the Parental Consent for Abortion Act of 2013, as provided in 50-20-509;

(v) for a respondent in a proceeding for the involuntary commitment of a developmentally disabled person to a residential facility, as provided in 53-20-112;

(vi) for a minor voluntarily committed to a mental health facility, as provided in 53-21-112;

(vii) for a person who is the subject of a petition for the appointment of a guardian or conservator in a proceeding under the provisions of the Uniform Probate Code in Title 72, chapter 5;

(viii) for a ward when the ward's guardian has filed a petition to require medical treatment for a mental disorder of the ward, as provided in 72-5-322; and

(c) for an eligible appellant in an appeal of a proceeding listed in this subsection (4).

(5) (a) Except as provided in subsection (5)(b), a public defender may not be assigned to act as a court-appointed special advocate or guardian ad litem in a proceeding under the Montana Youth Court Act, Title 41, chapter 5, or in an abuse and neglect proceeding under Title 41, chapter 3.

(b) A private attorney who is contracted with under the provisions of 47-1-121 to provide public defender services under this chapter may be appointed as a court-appointed special advocate or guardian ad

1 item in a proceeding described in subsection (5)(a) if the appointment is separate from the attorney's service
2 for the statewide public defender system and does not result in a conflict of interest."

3
4 **Section 52.** Section 52-2-117, MCA, is amended to read:

5 **"52-2-117. Indian child welfare specialist.** (1) The director of the department shall appoint a
6 qualified person to act as an Indian child welfare specialist.

7 (2) The duties of the specialist include:

- 8 (a) developing Indian foster homes and other Indian placement resources;
9 (b) providing technical advice to tribal, state, and county agencies and district courts on matters
10 pertaining to Indian child welfare;
11 (c) providing assistance in negotiating cooperative agreements to provide foster care services to
12 Indian children;
13 (d) conducting training seminars on implementing the federal Indian Child Welfare Act of 1978, (25
14 U.S.C. 1901, et seq.,) and [sections 1 through 20];
15 (e) applying for and accepting grants and other funds for Indian child welfare activities;
16 (f) developing and maintaining a list of attorneys to represent indigent parents and Indian
17 custodians in Indian child welfare proceedings;
18 (g) making recommendations to the department on legislation and rules concerning Indian child
19 welfare matters; and
20 (h) performing other duties concerning Indian child welfare matters as determined by the director."

21
22 **NEW SECTION. Section 53. Notification to tribal governments.** The secretary of state shall send a
23 copy of [this act] to each federally recognized tribal government in Montana.

24
25 **NEW SECTION. Section 54. Codification instruction.** [Sections 1 through 20] are intended to be
26 codified as an integral part of Title 41, chapter 3, and the provisions of Title 41, chapter 3, apply to [sections 1
27 through 20].
28

- 2023

Drafter: Milly Allen, 406-444-9280

1 COORDINATION SECTION. **Section 55. Coordination instruction.** If both Senate Bill No. 328 and
2 [this act] are passed and approved, then [this act] is void.

3

4 NEW SECTION. **Section 56. Effective dates.** (1) Except as provided in subsection (2), [this act] is

5 effective July 1, 2023.

6 (2) [Section 33] and this section are effective on passage and approval.

7 - END -



**Legislative
Services
Division**