

SENATE BILL NO. 272

INTRODUCED BY J. WINDY BOY

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4 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE MONTANA INDIAN CHILD WELFARE ACT;
5 ESTABLISHING THAT PROCEDURES FOR CHILD CUSTODY PROCEEDINGS INVOLVING INDIAN
6 CHILDREN ARE SUBJECT TO THE MONTANA INDIAN CHILD WELFARE ACT; AND AMENDING SECTIONS
7 2-15-1028, 40-6-405, 40-6-414, 40-7-135, 41-3-102, 41-3-103, 41-3-109, 41-3-205, 41-3-301, 41-3-422,
8 41-3-423, 41-3-425, 41-3-427, 41-3-432, 41-3-437, 41-3-444, 41-3-445, 41-3-609, 42-2-102, 42-2-604, 42-4-102,
9 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 AN
10 APPLICABILITY DATE."

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

13
14 NEW SECTION. **Section 1. Short title.** [Sections 1 through 21] may be cited as the "Montana Indian
15 Child Welfare Act".

16
17 NEW SECTION. **Section 2. Legislative intent.** (1) The legislature finds that the state is committed to
18 protecting the essential tribal relations and best interests of Indian children by promoting practices designed to
19 prevent out-of-home placement of Indian children that is inconsistent with the rights of the parents, the health,
20 safety, or welfare of the child, or the interests of the child's tribe. Whenever out-of-home placement of an Indian
21 child is necessary in a proceeding subject to the terms of the federal Indian Child Welfare Act and [sections 1
22 through 21], the best interests of the Indian child may be served by placing the Indian child in accordance with
23 the placement priorities expressed in [sections 1 through 21].

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

28 (3) It is the intent of the legislature that [sections 1 through 21] serve as a means of clarifying existing
29 laws and codifying existing policies and practices. [Sections 1 through 21] may not be construed to reject or
30 eliminate current policies and practices that are not included in the provisions of [sections 1 through 21].



1 (4) The legislature further intends that nothing in [sections 1 through 21] interfere with policies and
2 procedures that are derived from agreements entered into between the department and a tribe or tribes, as
3 authorized by 25 U.S.C. 1919. The legislature finds that [sections 1 through 21] specify the minimum
4 requirements that must be applied in a child custody proceeding and do not prevent the department from
5 providing a higher standard of protection to the rights of an Indian child, parent, Indian custodian, or Indian child's
6 tribe.

7 (5) It is also the legislature's intent that any department policy manual covering Indian child welfare and
8 any relevant local agreements between individual federally recognized tribes and the department should serve
9 as persuasive guides in the interpretation and implementation of the federal Indian Child Welfare Act, [sections
10 1 through 21], and other relevant state laws.

11
12 **NEW SECTION. Section 3. Applicability.** [Sections 1 through 21] apply in all child custody
13 proceedings. Whenever a child custody proceeding involves an Indian child and a conflict exists between
14 [sections 1 through 21] and Title 40, chapter 6, Title 41, chapter 3 or 4, or Title 42, the provisions of [sections 1
15 through 21] apply.

16
17 **NEW SECTION. Section 4. Definitions.** As used in [sections 1 through 21], the following definitions
18 apply:

19 (1) "Active efforts" means the activities identified in [section 14].

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

22 (3) "Best interests of the Indian child" means the use of practices in accordance with the federal Indian
23 Child Welfare Act, [sections 1 through 21], and other applicable law that are designed to:

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

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

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

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

30 (e) in a proceeding under [sections 1 through 21] in which out-of-home placement is necessary, prioritize

1 placement of the Indian child in accordance with the placement preferences of [sections 1 through 21].

2 (4) (a) "Child custody proceeding" means a foster care placement, termination of parental rights,
3 preadoptive placement, or adoptive placement.

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

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

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

7 (5) "Court of competent jurisdiction" means:

8 (a) a federal court;

9 (b) a state court that entered an order in a child custody proceeding involving an Indian child if the state
10 court had proper subject matter jurisdiction in accordance with [sections 1 through 21] and the laws of that state;

11 or

12 (c) a tribal court that had or has exclusive or concurrent jurisdiction pursuant to 25 U.S.C. 1911.

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

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

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

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

22 (a) a member of an Indian tribe; or

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

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

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

30 (11) "Indian child's tribe" means a tribe in which an Indian child is a member or is eligible for

1 membership.

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

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

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

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

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

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

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

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

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

20 (19) "Tribal court" means a court or body vested by an Indian tribe with jurisdiction over child custody
21 proceedings. The term includes but is not limited to a federal court of Indian offenses, a court established and
22 operated under the code or custom of an Indian tribe, and an administrative body of an Indian tribe vested with
23 authority over child custody proceedings.

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

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

29

30 **NEW SECTION. Section 5. Determination of Indian status.** (1) A party seeking the foster care

1 placement of, termination of parental rights over, or adoption of a child shall make a good faith effort to determine
2 whether the child is an Indian child. The good faith effort must be made in consultation with:

3 (a) the child's parent or parents;

4 (b) an individual who has custody of the child or with whom the child resides; and

5 (c) any other individual who reasonably may be expected to have information regarding the child's
6 possible membership or eligibility for membership in an Indian tribe to determine if the child is an Indian child.

7 (2) The good faith effort must include contacting any Indian tribe in which the child may be a member
8 or may be eligible for membership.

9 (3) Preliminary contacts for the purpose of making a good faith effort to determine a child's possible
10 Indian status do not constitute legal notice as required by [section 7].

11

12 **NEW SECTION. Section 6. Jurisdiction.** (1) An Indian tribe has exclusive jurisdiction over any child
13 custody proceeding involving an Indian child who resides or is domiciled within the 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, the
18 Indian tribe may retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.

19

20 **NEW SECTION. Section 7. Notice.** (1) (a) If a petitioning party or a court in an involuntary child
21 custody proceeding seeking foster care placement of or termination of parental rights to a child knows or has
22 reason to know that the child is or may be an Indian child, the petitioning party shall notify the parent or Indian
23 custodian and the Indian child's tribe or tribes, by certified mail, return receipt requested, and by use of a
24 mandatory Indian Child Welfare Act notice.

25 (b) If the identity or location of the parent or Indian custodian and the tribe cannot be determined, the
26 notice must be given to the secretary of the U.S. department of the interior by registered mail, return receipt
27 requested, in accordance with the regulations of the bureau of Indian affairs.

28 (c) The secretary of the interior has 15 days after receipt to provide the requisite notice to the parent or
29 Indian custodian and the tribe.

30 (2) A foster care placement or termination of parental rights proceeding may not be held until at least

1 10 days after receipt of the notice by the parent or Indian custodian and tribe. The parent, Indian custodian, or
2 tribe must, upon request, be granted up to 20 additional days to prepare for the proceeding.

3 (3) The determination of a child's Indian status must be made as soon as practicable in order to serve
4 the best interests of the Indian child and protect the interests of the Indian child's tribe.

5 (4) (a) A written determination by an Indian tribe that a child is a member of or eligible for membership
6 in the tribe or testimony by members of the tribe attesting to that status is conclusive that the child is an Indian
7 child.

8 (b) A written determination by an Indian tribe that a child is not a member of or eligible for membership
9 in the tribe or testimony by members of the tribe attesting to that status is conclusive that the child is not a
10 member of or eligible for membership in that tribe.

11 (5) A determination made under this section is presumed to be a determination of the tribe if the
12 determination is:

13 (a) in the form of a tribal resolution; or

14 (b) signed by or testified to in writing by:

15 (i) the person authorized by the tribe's governing body to speak for the tribe; or

16 (ii) the agent of the tribe designated to receive notice under the federal Indian Child Welfare Act for
17 designations published in the Federal Register.

18 (6) (a) If a tribe provides no response to the notice required pursuant to this section, the nonresponse
19 does not constitute evidence that the child is not a member of or eligible for membership in the tribe.

20 (b) When a tribe provides no response, the party asserting application of the federal Indian Child Welfare
21 Act or [sections 1 through 21] shall prove by a preponderance of the evidence that the child is an Indian child.

22 (7) (a) If a child has been determined not to be an Indian child, any party to the proceeding or an Indian
23 tribe that subsequently determines the child is a member may, during the pendency of a child custody proceeding
24 to which the federal Indian Child Welfare Act or [sections 1 through 21] applies, move the court for
25 redetermination of the child's Indian status based on:

26 (i) new evidence;

27 (ii) redetermination by the child's tribe; or

28 (iii) newly conferred federal recognition of the tribe.

29 (b) This subsection (7) does not affect the rights afforded under 25 U.S.C. 1914.

30

1 **NEW SECTION. Section 8. Transfer of jurisdiction.** (1) Except as provided in subsection (2), in a
2 proceeding for the foster care placement of or termination of parental rights to an Indian child who is not domiciled
3 or residing within the reservation of the Indian child's tribe, the court shall, in the absence of good cause to the
4 contrary, transfer the proceeding to the jurisdiction of the Indian child's tribe upon the motion of any of the
5 following:

- 6 (a) either of the Indian child's parents;
- 7 (b) the Indian child's Indian custodian;
- 8 (c) the Indian child's tribe; or
- 9 (d) the Indian child if the child is 12 years of age or older.

10 (2) The transfer is subject to declination by the tribe. The tribe has 75 days to affirmatively respond to
11 a motion or order transferring jurisdiction to the tribal court. A failure of the tribe to respond within 75 days must
12 be construed as a declination to accept transfer of the case.

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

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

17 (5) Following entry of an order transferring jurisdiction to the Indian child's tribe:

18 (a) upon receipt of an order from a tribal court accepting jurisdiction, the state court shall dismiss the
19 child custody proceeding without prejudice;

20 (b) pending receipt of a tribal court order, the state court may conduct additional hearings and enter
21 orders that strictly comply with the requirements of the federal Indian Child Welfare Act and [sections 1 through
22 21]. The state court may not enter a final order in a child custody proceeding, except an order dismissing the
23 proceeding and returning the Indian child to the care of the parent or Indian custodian from whose care the child
24 was removed, while awaiting receipt of a tribal court order accepting jurisdiction or in the absence of a tribal court
25 order or other formal written declination of jurisdiction.

26 (6) If the Indian child's tribe declines jurisdiction, the state court shall enter an order vacating the order
27 transferring jurisdiction and proceed with adjudication of the child custody matter in compliance with the federal
28 Indian Child Welfare Act, [sections 1 through 21], and any applicable state-tribal agreement.

29

30 **NEW SECTION. Section 9. Intervention.** The Indian child, the Indian child's tribe or tribes, and the

1 Indian custodian may intervene at any point in any child custody proceeding involving the Indian child.

2

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

6

7 NEW SECTION. Section 11. Right to counsel. In a child custody proceeding under [sections 1 through
8 21] in which the court determines that the Indian child's parent or Indian custodian is indigent, the parent or Indian
9 custodian has the right to court-appointed counsel. The court may, in its discretion, appoint counsel for the Indian
10 child when a guardian ad litem has not been appointed pursuant to 41-5-1411 or upon a finding that the
11 appointment is in the best interests of the Indian child.

12

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

16

17 NEW SECTION. Section 13. Qualified expert witness -- requirements -- prohibitions. (1) A qualified
18 expert witness is an individual who provides testimony in a child custody proceeding under [sections 1 through
19 21]. The purpose of the testimony is to assist a court in the determination of whether the continued custody of
20 the child by or the return of the child to the parent or Indian custodian is likely to result in serious emotional or
21 physical damage to the child.

22 (2) (a) An Indian child's tribe may identify a qualified expert witness when the tribe has:

23 (i) intervened in a child custody proceeding pursuant to [section 9]; or

24 (ii) entered into an agreement with the department for the provision of child welfare services.

25 (b) If the department is providing child welfare services under an agreement with the tribe, the petitioner
26 shall contact the tribe and ask the tribe to identify a tribal member or other person of the tribe's choice who is
27 knowledgeable regarding tribal customs as they pertain to family organization or child-rearing practices to serve
28 as a qualified expert witness. The petitioner shall notify the tribe of the need to provide a qualified expert witness
29 at least 20 days prior to any evidentiary hearing in which the testimony of the witness will be required.

30 (3) A petitioner shall provide a qualified expert witness if the Indian child's tribe has not intervened in a

1 child custody proceeding, entered into an agreement with the department for the provision of child welfare
 2 services, or responded in a timely manner to a request to identify a qualified expert witness.

3 (4) A qualified expert witness selected pursuant to subsection (3) must meet one or more of the following
 4 descriptions in descending order of preference:

5 (a) a member of the Indian child's tribe or other person of the tribe's choice who is recognized by the tribe
 6 as knowledgeable regarding tribal customs as they pertain to family organization or child-rearing practices;

7 (b) a person with substantial experience in the delivery of child and family services to Indians and
 8 extensive knowledge of prevailing social and cultural standards and child-rearing practices within the Indian
 9 child's tribe;

10 (c) a person with substantial experience in the delivery of child and family services to Indians and
 11 knowledge of prevailing social and cultural standards and child-rearing practices in Indian tribes with cultural
 12 similarities to the Indian child's tribe; or

13 (d) a professional person with substantial education and experience in the area of the person's specialty.

14 (5) (a) If the petitioner is the department, the caseworker assigned to the case and the caseworker's
 15 supervisor may not testify as qualified expert witnesses in the case.

16 (b) Nothing in this subsection (5) may be construed as barring:

17 (i) the caseworker or the caseworker's supervisor from testifying as an expert witness for other purposes
 18 in a proceeding under [sections 1 through 21];

19 (ii) other department employees with appropriate expert qualifications or experience from testifying as
 20 qualified expert witnesses in proceedings under [sections 1 through 21]; or

21 (iii) the petitioner or another party in a proceeding under [sections 1 through 21] from providing additional
 22 witnesses or expert testimony, subject to the approval of the court, on any issue before the court, including the
 23 determination of whether the continued custody of the Indian child by or return of the Indian child to the parent,
 24 parents, or Indian custodian is likely to result in serious emotional or physical damage to the Indian child.

25
 26 **NEW SECTION. Section 14. Criteria for active efforts.** (1) The department shall take the actions
 27 described in this section to be in compliance with the requirement in [section 15] to undertake active efforts to
 28 provide remedial services and rehabilitative programs to prevent the breakup of an Indian family.

29 (2) (a) In a proceeding for foster care placement or termination of parental rights involving an Indian child
 30 under Title 41, chapter 3, and [sections 1 through 21], the department shall make timely and diligent efforts to

1 provide services to or procure services for the Indian child's parent, parents, or Indian custodian if the department
2 or an entity with which the department contracts to provide services:

3 (i) has a statutory or contractual duty to provide services; or

4 (ii) is providing or procuring the services pursuant to Title 41, chapter 3.

5 (b) Timely and diligent efforts include but are not limited to engaging the parent, parents, or Indian
6 custodian in reasonably available and culturally appropriate preventive, remedial, or rehabilitative services that
7 must include services offered by tribes and Indian organizations when available.

8 (3) At a minimum, active efforts must include:

9 (a) in a proceeding under Title 41, chapter 3 or 4, seeking out-of-home placement of an Indian child in
10 which the department provided voluntary services to the parent, parents, or Indian custodian prior to filing a
11 petition for out-of-home placement, a showing to the court that the department or entity under contract actively
12 worked with the parent, parents, or Indian custodian to engage the parent, parents, or Indian custodian in
13 remedial services and rehabilitation programs to prevent the breakup of the family;

14 (b) in a proceeding seeking the continued out-of-home placement of an Indian child, a showing to the
15 court that the department or entity under contract has actively worked with the parent, parents, or Indian
16 custodian in accordance with existing court orders and any individual written case plan to engage the parent,
17 parents, or Indian custodian in remedial services and rehabilitative programs to prevent the breakup of the family;

18 (c) in a proceeding seeking termination of parental rights in which the department provided services to
19 the parent, parents, or Indian custodian, a showing to the court that the department actively worked with the
20 parent, parents, or Indian custodian to engage the parent, parents, or Indian custodian in remedial services and
21 rehabilitation programs ordered by the court or identified in any individual written case plan; and

22 (d) in a foster care placement or termination of parental rights proceeding in which the petitioner does
23 not otherwise have a statutory or contractual duty to directly provide services to or procure services for the parent,
24 parents, or Indian custodian, a documented, concerted, and good faith effort by the petitioner to facilitate:

25 (i) the receipt of services by the parent, parents, or Indian custodian; and

26 (ii) participation by the parent, parents, or Indian custodian in services capable of meeting the
27 requirements of subsection (2).

28 (4) A referral to a service or program does not constitute an active effort if the referral was the sole action
29 taken.

30

1 **NEW SECTION. Section 15. Evidentiary requirements.** (1) A party seeking to effect an involuntary
2 foster care placement for or the involuntary termination of parental rights to an Indian child shall satisfy the court
3 that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent
4 the breakup of the Indian family and that the efforts have been unsuccessful.

5 (2) A court may not order an involuntary foster care placement in the absence of a determination,
6 supported by clear and convincing evidence including testimony of qualified expert witnesses, that the continued
7 custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage
8 to the child. For the purposes of this subsection, any harm that may result from interfering with the bond of
9 attachment between the foster parent and the child may not be the sole basis or primary reason for continuing
10 the foster care placement.

11 (3) A court may not involuntarily terminate parental rights in the absence of a determination, supported
12 by evidence beyond a reasonable doubt including testimony of qualified expert witnesses, that continued custody
13 of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the
14 child. For the purposes of this subsection, any harm that may result from interfering with the bond or attachment
15 that may have formed between the child and a foster care provider may not be the sole basis or primary reason
16 for the termination of parental rights over an Indian child.

17 (4) A petitioner shall notify an Indian child's tribe of the need to provide a qualified expert witness at least
18 20 days before any evidentiary hearing in which the testimony of the witness will be required. If the Indian child's
19 tribe fails to identify a qualified expert witness in a timely manner, the petitioner may identify a qualified expert
20 witness as provided in [section 13].

21
22 **NEW SECTION. Section 16. Emergency removal of Indian child.** (1) Notwithstanding any other
23 provision of federal or state law, nothing in [sections 1 through 21] may be construed to prevent the department
24 or a law enforcement agency from removing an Indian child who is a resident of or is domiciled within an Indian
25 reservation but is temporarily located off the reservation from the Indian child's parent or Indian custodian or the
26 emergency placement of the Indian child in a foster home, under applicable state law, to prevent imminent
27 physical damage or harm to the Indian child.

28 (2) The department or law enforcement agency shall:

29 (a) ensure that the emergency removal or placement terminates immediately when the removal or
30 placement is no longer necessary to prevent imminent physical damage or harm to the Indian child; and

1 (b) expeditiously initiate a child custody proceeding subject to the provisions of the federal Indian Child
2 Welfare Act and [sections 1 through 21] to transfer the Indian child to the jurisdiction of the appropriate Indian
3 tribe or to restore the Indian child to the parent or Indian custodian, if appropriate.

4 (3) (a) If the nature of the emergency allows, the department shall notify the Indian child's tribe before
5 the removal occurs. If prior notification is not possible, the department shall notify the Indian child's tribe by the
6 quickest means possible. The notice must contain the basis for the Indian child's removal, the time, date, and
7 place of the initial hearing, and the tribe's right to intervene and participate in the proceeding.

8 (b) This notice does not constitute the notice required under [section 7] for purposes of subsequent
9 dependency, termination of parental rights, or adoption proceedings.

10

11 NEW SECTION. Section 17. Consent. (1) If an Indian child's parent or Indian custodian voluntarily
12 consents to a foster care placement of the Indian child or to termination of parental rights, the consent is not valid
13 unless it is executed in writing and recorded before a judge of a court of competent jurisdiction and accompanied
14 by the judge's certificate that the terms and consequences of the consent were fully explained in detail and were
15 fully understood by the parent or Indian custodian. The court shall also certify that the parent or Indian custodian
16 fully understood the explanation in English or that it was interpreted into a language that the parent or Indian
17 custodian understood. Consent for release of custody given prior to or within 10 days after the birth of the Indian
18 child may not be considered valid.

19 (2) An Indian child's parent or Indian custodian may withdraw consent to a voluntary foster care
20 placement at any time. Upon withdrawal of consent, the Indian child must be returned to the parent or Indian
21 custodian.

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

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

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

30

1 **NEW SECTION. Section 18. Improper removal of Indian child.** If a petitioner in a child custody
2 proceeding under [sections 1 through 21] has improperly removed an Indian child from the custody of the parent
3 or Indian custodian or has improperly retained custody after a visit or other temporary relinquishment of custody,
4 the court shall decline jurisdiction over the petition and shall immediately return the Indian child to the parent or
5 Indian custodian unless returning the Indian child to the parent or Indian custodian would subject the Indian child
6 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 custodian
11 may petition to have the Indian child returned to the custody of the parent or Indian custodian. The court shall
12 grant the request unless there is a showing by clear and convincing evidence that return of custody to the
13 biological parent or Indian custodian is not in the best interests of the Indian child.

14 (2) If an Indian child is removed from a foster care placement or a preadoptive or adoptive home for the
15 purposes of further foster care or a preadoptive or adoptive placement, the placement must be made in
16 accordance with [sections 1 through 21] unless an Indian child is being returned to the parent or Indian custodian
17 from whose custody the Indian 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, a good faith effort must be made to place
21 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, a preference must be given, in the absence of good cause
26 to the contrary, to the Indian child's placement with one of the following:

- 27 (a) an Indian child's extended family member;
28 (b) a foster home licensed, approved, or specified by the Indian child's tribe;
29 (c) an Indian foster home licensed or approved by an authorized non-Indian licensing authority;
30 (d) a child foster care agency approved by an Indian tribe or operated by an Indian organization that has

- 1 a program suitable to meet the Indian child's needs;
- 2 (e) a non-Indian child foster care agency approved by the Indian child's tribe; or
- 3 (f) a non-Indian family that is committed to:
- 4 (i) promoting and allowing appropriate extended family visitation;
- 5 (ii) establishing, maintaining, and strengthening the Indian child's relationship with the Indian child's tribe
- 6 or tribes; and
- 7 (iii) participating in the cultural and ceremonial events of the Indian child's tribe.
- 8 (3) In the absence of good cause to the contrary, in an adoptive or other permanent placement of an
- 9 Indian child, preference must be given to a placement with one of the following, in descending order of priority:
- 10 (a) extended family members;
- 11 (b) an Indian family of the same tribe as the Indian child;
- 12 (c) an Indian family that is of a similar culture to the Indian child's tribe;
- 13 (d) another Indian family; or
- 14 (e) any other family that can provide a suitable home for an Indian child. Suitability must be determined
- 15 in consultation with:
- 16 (i) the Indian child's tribe; or
- 17 (ii) the foster care review committee provided for in 41-3-115 in proceedings under Title 41, chapter 3,
- 18 if the Indian child is in the custody of the department and the Indian child's tribe has not intervened or participated.
- 19 (4) Notwithstanding the placement preferences listed in subsections (2) and (3), if a different order of
- 20 placement preference is established by the Indian child's tribe, the court or agency effecting the placement shall
- 21 follow the order of preference established by the tribe if the placement is in the least restrictive setting appropriate
- 22 to the particular needs of the Indian child.
- 23 (5) When appropriate, the preference of the Indian child or the child's parent must be considered by the
- 24 court. When a consenting parent indicates a desire for anonymity, the court or agency shall give weight to the
- 25 request in applying the preferences.
- 26 (6) The standards to be applied in meeting the preference requirements of this section must be the
- 27 prevailing social and cultural standards of the Indian community in which the parent or extended family members
- 28 of an Indian child reside or with which the parent or extended family members maintain social and cultural ties.
- 29 (7) Nothing in this section prevents the department or the court from placing an Indian child with a parent
- 30 to effectuate a permanent plan regardless of the parent's relationship to the Indian child's tribe.

1
2 **NEW SECTION. Section 21. Compliance.** (1) The department, in consultation with Indian tribes, shall
3 establish standards and procedures for the department's review of cases subject to [sections 1 through 21] and
4 methods for monitoring the department's compliance with provisions of the federal Indian Child Welfare Act and
5 [sections 1 through 21]. The standards and procedures and the monitoring methods must be integrated into the
6 department's child welfare contracting and contract monitoring process.

7 (2) Nothing in this chapter affects, impairs, or limits rights or remedies provided to any party under 25
8 U.S.C. 1914.

9
10 **Section 22.** Section 2-15-1028, MCA, is amended to read:

11 **"2-15-1028. Public defender commission.** (1) There is a public defender commission.
12 (2) The commission consists of 11 members appointed by the governor as follows:

13 (a) two attorneys from nominees submitted by the supreme court;

14 (b) three attorneys from nominees submitted by the president of the state bar of Montana, as follows:

15 (i) one attorney experienced in the defense of felonies who has served a minimum of 1 year as a full-time
16 public defender;

17 (ii) one attorney experienced in the defense of juvenile delinquency and abuse and neglect cases
18 involving the federal Indian Child Welfare Act or the Montana Indian Child Welfare Act; and

19 (iii) one attorney who represents criminal defense lawyers;

20 (c) two members of the general public who are not attorneys or judges, active or retired, as follows:

21 (i) one member from nominees submitted by the president of the senate; and

22 (ii) one member from nominees submitted by the speaker of the house;

23 (d) one person who is a member of an organization that advocates on behalf of indigent persons;

24 (e) one person who is a member of an organization that advocates on behalf of a racial minority
25 population in Montana;

26 (f) one person who is a member of an organization that advocates on behalf of people with mental illness
27 and developmental disabilities; and

28 (g) one person who is employed by an organization that provides addictive behavior counseling.

29 (3) A person appointed to the commission must have significant experience in the defense of criminal
30 or other cases subject to the provisions of Title 47, chapter 1, or must have demonstrated a strong commitment

1 to quality representation of indigent defendants.

2 (4) A vacancy on the commission must be filled in the same manner as the original appointment and in
3 a timely manner.

4 (5) Members shall serve staggered 3-year terms.

5 (6) (a) The commission is allocated to the department of administration for administrative purposes only,
6 as provided in 2-15-121, except that:

7 (i) the commission shall hire staff for the commission subject to subsection (6)(b) and the chief public
8 defender shall hire separate staff for the office, except for any support staff provided by the department of
9 administration for centralized services, such as payroll, human resources, accounting, information technology,
10 or other services determined by the commission and the department to be more efficiently provided by the
11 department; and

12 (ii) commission and office of state public defender budget requests prepared and presented to the
13 legislature and the governor in accordance with 17-7-111 must be prepared and presented independently of the
14 department of administration. However, nothing in this subsection (6)(a)(ii) prohibits the department from
15 providing administrative support for the budgeting process and including the budget requests in appropriate
16 sections of the department's budget requests for administratively attached agencies.

17 (b) New staff positions for the commission may be added only when the public defender account
18 established pursuant to 47-1-110 has received sufficient revenue pursuant to 46-18-113(1)(a) and (1)(b) to
19 maintain a balance in the account that would sustain any staff position approved by the commission for at least
20 1 year.

21 (7) While serving a term on the commission, a member of the commission may not serve as a judge, a
22 public defender employed by or under contract with the office of state public defender established in 47-1-201,
23 a county attorney or a deputy county attorney, the attorney general or an assistant attorney general, the United
24 States district attorney or an assistant United States district attorney, or a law enforcement official.

25 (8) Members of the commission may not receive a salary for service on the commission but must be
26 reimbursed for expenses, as provided in 2-18-501 through 2-18-503, while actually engaged in the discharge of
27 official duties.

28 (9) The commission shall establish procedures for the conduct of its affairs and elect a presiding officer
29 from among its members."
30

1 **Section 23.** Section 40-6-405, MCA, is amended to read:

2 **"40-6-405. Surrender of newborn to emergency services provider -- temporary protective custody.**

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

8 (2) The emergency services provider shall make a reasonable effort to do all of the following:

9 (a) if possible, inform the parent that by surrendering the newborn, the parent is releasing the newborn
10 to the department to be placed for adoption according to law;

11 (b) if possible, inform the parent that the parent has 60 days to petition the court to regain custody of the
12 newborn;

13 (c) if possible, ascertain whether the newborn has a tribal affiliation and, if so, ascertain relevant
14 information pertaining to any Indian heritage of the newborn;

15 (d) provide the parent with written material approved by or produced by the department, which includes
16 but is not limited to all of the following statements:

17 (i) by surrendering the newborn, the parent is releasing the newborn to the department to be placed for
18 adoption and the department shall initiate court proceedings according to law to place the newborn for adoption,
19 including proceedings to terminate parental rights;

20 (ii) the parent has 60 days after surrendering the newborn to petition the court to regain custody of the
21 newborn;

22 (iii) the parent may not receive personal notice of the court proceedings begun by the department;

23 (iv) information that the parent provides to an emergency services provider will not be made public;

24 (v) a parent may contact the department for more information and counseling; and

25 (vi) any Indian heritage of the newborn brings the newborn within the jurisdiction of the federal Indian
26 Child Welfare Act, 25 U.S.C. 1901, et seq., and the Montana Indian Child Welfare Act.

27 (3) After providing a parent with the information described in subsection (1), if possible, an emergency
28 services provider shall make a reasonable effort to:

29 (a) encourage the parent to provide any relevant family or medical information, including information
30 regarding any tribal affiliation;

- 1 (b) provide the parent with information that the parent may receive counseling or medical attention;
2 (c) inform the parent that information that the parent provides will not be made public;
3 (d) ask the parent for the parent's name;
4 (e) inform the parent that in order to place the newborn for adoption, the state is required to make a
5 reasonable attempt to identify the other parent and to obtain relevant medical family history and then ask the
6 parent to identify the other parent;
7 (f) inform the parent that the department can provide confidential services to the parent; and
8 (g) inform the parent that the parent may sign a relinquishment for the newborn to be used at a hearing
9 to terminate parental rights."
10

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

12 **"40-6-414. Presumption of waiver of parental rights -- department to file petition.** (1) A parent who
13 surrenders a newborn under 40-6-405 and who does not file a custody action under 40-6-411 is presumed to
14 have knowingly waived the parent's parental rights to the newborn.

15 (2) If a custody action is not filed under 40-6-411 or if the parent is denied custody of the newborn under
16 40-6-413, the department shall file a petition under Title 41, chapter 3, part 4, or [sections 1 through 21]
17 requesting appropriate relief with the goal of achieving permanent placement for the newborn at the earliest
18 possible date."
19

20 **Section 25.** Section 40-7-135, MCA, is amended to read:

21 **"40-7-135. Application to Indian tribes.** (1) A child custody proceeding that pertains to an Indian child
22 as defined in the Indian Child Welfare Act, 25 U.S.C. 1901, et seq., is not subject to this chapter to the extent that
23 it is governed by the federal Indian Child Welfare Act or the Montana Indian Child Welfare Act.

24 (2) A court of this state shall treat a tribe as if it were a state of the United States for the purpose of
25 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
26 40-7-140, and part 2 of this chapter.

27 (3) A child custody determination made by a tribe under factual circumstances in substantial conformity
28 with the jurisdictional standards of this chapter must be recognized and enforced under part 3 of this chapter."
29

30 **Section 26.** Section 41-3-102, MCA, is amended to read:

1 **"41-3-102. Definitions.** As used in this chapter, the following definitions apply:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 (iii) abandonment.

8 (b) (i) The term includes:

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

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

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

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

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

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

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

24 (10) "Family group decisionmaking meeting" means a meeting that involves family members in either
25 developing treatment plans or making placement decisions, or both.

26 (11) "Indian child" ~~means any unmarried person who is under 18 years of age and who is either:~~ has the
27 meaning provided in [section 4].

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

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

30 (12) "Indian child's tribe" ~~means:~~ has the meaning provided in [section 4].

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

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

7 ~~(14)(13) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of~~
 8 ~~Indians recognized by: has the meaning provided in [section 4].~~

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

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

12 ~~(15)(14) "Limited emancipation" means a status conferred on a youth by a court in accordance with~~
 13 ~~41-1-503 under which the youth is entitled to exercise some but not all of the rights and responsibilities of a~~
 14 ~~person who is 18 years of age or older.~~

15 ~~(16)(15) "Parent" means a biological or adoptive parent or stepparent.~~

16 ~~(17)(16) "Parent-child legal relationship" means the legal relationship that exists between a child and the~~
 17 ~~child's birth or adoptive parents, as provided in Title 40, chapter 6, part 2, unless the relationship has been~~
 18 ~~terminated by competent judicial decree as provided in 40-6-234, Title 42, or part 6 of this chapter.~~

19 ~~(18)(17) "Permanent placement" means reunification of the child with the child's parent, adoption,~~
 20 ~~placement with a legal guardian, placement with a fit and willing relative, or placement in another planned~~
 21 ~~permanent living arrangement until the child reaches 18 years of age.~~

22 ~~(19)(18) "Physical abuse" means an intentional act, an intentional omission, or gross negligence resulting~~
 23 ~~in substantial skin bruising, internal bleeding, substantial injury to skin, subdural hematoma, burns, bone~~
 24 ~~fractures, extreme pain, permanent or temporary disfigurement, impairment of any bodily organ or function, or~~
 25 ~~death.~~

26 ~~(20)(19) "Physical neglect" means either failure to provide basic necessities, including but not limited to~~
 27 ~~appropriate and adequate nutrition, protective shelter from the elements, and appropriate clothing related to~~
 28 ~~weather conditions, or failure to provide cleanliness and general supervision, or both, or exposing or allowing the~~
 29 ~~child to be exposed to an unreasonable physical or psychological risk to the child.~~

30 ~~(24)(20) (a) "Physical or psychological harm to a child" means the harm that occurs whenever the parent~~

1 or other person responsible for the child's welfare:

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

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

5 (iii) induces or attempts to induce a child to give untrue testimony that the child or another child was
6 abused or neglected by a parent or other person responsible for the child's welfare;

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

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

12 (vi) abandons the child.

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

15 ~~(22)~~(21) (a) "Protective services" means services provided by the department:

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

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

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

21 (b) The term includes emergency protective services provided pursuant to 41-3-301, voluntary protective
22 services provided pursuant to 41-3-302, and court-ordered protective services provided pursuant to parts 4 and
23 6 of this chapter.

24 ~~(23)~~(22) (a) "Psychological abuse or neglect" means severe maltreatment through acts or omissions that
25 are injurious to the child's emotional, intellectual, or psychological capacity to function, including the commission
26 of acts of violence against another person residing in the child's home.

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

29 ~~(24)~~ "Qualified expert witness" as used in cases involving an Indian child in proceedings subject to the
30 federal Indian Child Welfare Act means:

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

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

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

9 ~~(25)(23)~~ "Reasonable cause to suspect" means cause that would lead a reasonable person to believe
 10 that child abuse or neglect may have occurred or is occurring, based on all the facts and circumstances known
 11 to the person.

12 ~~(26)(24)~~ "Residential setting" means an out-of-home placement where the child typically resides for longer
 13 than 30 days for the purpose of receiving food, shelter, security, guidance, and, if necessary, treatment.

14 ~~(27)(25)~~ (a) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent,
 15 indecent exposure, deviate sexual conduct, sexual abuse, ritual abuse, or incest, as described in Title 45, chapter
 16 5.

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

20 ~~(28)(26)~~ "Sexual exploitation" means allowing, permitting, or encouraging a child to engage in a
 21 prostitution offense, as described in 45-5-601 through 45-5-603, or allowing, permitting, or encouraging sexual
 22 abuse of children as described in 45-5-625.

23 ~~(29)(27)~~ (a) "Social worker" means an employee of the department who, before the employee's field
 24 assignment, has been educated or trained in a program of social work or a related field that includes cognitive
 25 and family systems treatment or who has equivalent verified experience or verified training in the investigation
 26 of child abuse, neglect, and endangerment.

27 (b) This definition does not apply to any provision of this code that is not in this chapter.

28 ~~(30)(28)~~ "Treatment plan" means a written agreement between the department and the parent or guardian
 29 or a court order that includes action that must be taken to resolve the condition or conduct of the parent or
 30 guardian that resulted in the need for protective services for the child. The treatment plan may involve court

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

2 ~~(31)~~(29) "Unfounded" means that after an investigation, the investigating person has determined that the
3 reported abuse, neglect, or exploitation has not occurred.

4 ~~(32)~~(30) "Unsubstantiated" means that after an investigation, the investigator was unable to determine
5 by a preponderance of the evidence that the reported abuse, neglect, or exploitation has occurred.

6 ~~(33)~~(31) (a) "Withholding of medically indicated treatment" means the failure to respond to an infant's
7 life-threatening conditions by providing treatment, including appropriate nutrition, hydration, and medication, that,
8 in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in
9 ameliorating or correcting the conditions.

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

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

13 (ii) the provision of treatment would:

14 (A) merely prolong dying;

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

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

17 (iii) the provision of treatment would be virtually futile in terms of the survival of the infant and the
18 treatment itself under the circumstances would be inhumane. For purposes of this subsection ~~(33)~~(31), "infant"
19 means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously
20 hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The reference
21 to less than 1 year of age may not be construed to imply that treatment should be changed or discontinued when
22 an infant reaches 1 year of age or to affect or limit any existing protections available under state laws regarding
23 medical neglect of children 1 year of age or older.

24 ~~(34)~~(32) "Youth in need of care" means a youth who has been adjudicated or determined, after a hearing,
25 to be or to have been abused, neglected, or abandoned."
26

27 **Section 27.** Section 41-3-103, MCA, is amended to read:

28 **"41-3-103. Jurisdiction and venue.** (1) Except as provided in the federal Indian Child Welfare Act and
29 the Montana Indian Child Welfare Act, in all matters arising under this chapter, a person is subject to a proceeding
30 under this chapter and the district court has jurisdiction over:

- 1 (a) a youth who is within the state of Montana for any purpose;
- 2 (b) a youth or other person subject to this chapter who under a temporary or permanent order of the
3 court has voluntarily or involuntarily left the state or the jurisdiction of the court;
- 4 (c) a person who is alleged to have abused or neglected a youth who is in the state of Montana for any
5 purpose;
- 6 (d) a youth or youth's parent or guardian who resides in Montana;
- 7 (e) a youth or youth's parent or guardian who resided in Montana within 180 days before the filing of a
8 petition under this chapter if the alleged abuse and neglect is alleged to have occurred in whole or in part in
9 Montana.
- 10 (2) Venue is proper in the county where a youth is located or has resided within 180 days before the filing
11 of a petition under this part or a county where the youth's parent or guardian resides or has resided within 180
12 days before the filing of a petition under this part."

13

14 **Section 28.** Section 41-3-109, MCA, is amended to read:

15 **"41-3-109. Proceedings subject to Indian Child Welfare Act.** If a proceeding under this chapter
16 involves an Indian child, as defined in ~~the Indian Child Welfare Act, 25 U.S.C. 1901, et seq.~~ [section 4], the
17 proceeding is subject to the federal Indian Child Welfare Act and the Montana Indian Child Welfare Act. If a
18 conflict exists between the provisions of this chapter and the federal Indian Child Welfare Act or the Montana
19 Indian Child Welfare Act, the federal or Montana act applies."

20

21 **Section 29.** Section 41-3-205, MCA, is amended to read:

22 **"41-3-205. Confidentiality -- disclosure exceptions.** (1) The case records of the department and its
23 local affiliate, the local office of public assistance, the county attorney, and the court concerning actions taken
24 under this chapter and all records concerning reports of child abuse and neglect must be kept confidential except
25 as provided by this section. Except as provided in subsections (7) and (8), a person who purposely or knowingly
26 permits or encourages the unauthorized dissemination of the contents of case records is guilty of a misdemeanor.

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

30 (3) Records, including case notes, correspondence, evaluations, videotapes, and interviews, unless

1 otherwise protected by this section or unless disclosure of the records is determined to be detrimental to the child
2 or harmful to another person who is a subject of information contained in the records, may be disclosed to the
3 following persons or entities in this state and any other state or country:

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

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

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

13 (d) a parent, guardian, or person designated by a parent or guardian of the child who is the subject of
14 a report in the records or other person responsible for the child's welfare, without disclosure of the identity of any
15 person who reported or provided information on the alleged child abuse or neglect incident contained in the
16 records;

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

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

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

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

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

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

29 (k) the members of an interdisciplinary child protective team authorized under 41-3-108 or of a family
30 group decisionmaking meeting for the purposes of assessing the needs of the child and family, formulating a

- 1 treatment plan, and monitoring the plan;
- 2 (l) the coroner or medical examiner when determining the cause of death of a child;
- 3 (m) a child fatality review team recognized by the department;
- 4 (n) a department or agency investigating an applicant for a license or registration that is required to
5 operate a youth care facility, day-care facility, or child-placing agency;
- 6 (o) a person or entity who is carrying out background, employment-related, or volunteer-related
7 screening of current or prospective employees or volunteers who have or may have unsupervised contact with
8 children through employment or volunteer activities. A request for information under this subsection (3)(o) must
9 be made in writing. Disclosure under this subsection (3)(o) is limited to information that indicates a risk to children,
10 persons with developmental disabilities, or older persons posed by the person about whom the information is
11 sought, as determined by the department.
- 12 (p) the news media, a member of the United States congress, or a state legislator, if disclosure is limited
13 to confirmation of factual information regarding how the case was handled and if disclosure does not violate the
14 privacy rights of the child or the child's parent or guardian, as determined by the department;
- 15 (q) an employee of the department or other state agency if disclosure of the records is necessary for
16 administration of programs designed to benefit the child;
- 17 (r) an agency of an Indian tribe, a qualified expert witness as defined in [section 4], or the relatives of
18 an Indian child if disclosure of the records is necessary to meet requirements of the federal Indian Child Welfare
19 Act or the Montana Indian Child Welfare Act;
- 20 (s) a juvenile probation officer who is working in an official capacity with the child who is the subject of
21 a report in the records;
- 22 (t) a county attorney, peace officer, or attorney who is hired by or represents the department if disclosure
23 is necessary for the investigation, defense, or prosecution of a case involving child abuse or neglect;
- 24 (u) a foster care review committee established under 41-3-115 or, when applicable, a citizen review
25 board established under Title 41, chapter 3, part 10;
- 26 (v) a school employee participating in an interview of a child by a social worker, county attorney, or peace
27 officer, as provided in 41-3-202;
- 28 (w) a member of a county interdisciplinary child information team formed under the provisions of
29 52-2-211;
- 30 (x) members of a local interagency staffing group provided for in 52-2-203;

1 (y) a member of a youth placement committee formed under the provisions of 41-5-121; or
2 (z) a principal of a school or other employee of the school district authorized by the trustees of the district
3 to receive the information with respect to a student of the district who is a client of the department.

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

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

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

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

17 (8) A news organization or its employee, including a freelance writer or reporter, is not liable for reporting
18 facts or statements made by an immediate family member under subsection (7) if the news organization,
19 employee, writer, or reporter maintains the confidentiality of the child who is the subject of the proceeding.

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

22 (10) Copies of records, evaluations, reports, or other evidence obtained or generated pursuant to this
23 section that are provided to the parent, the guardian, or the parent or guardian's attorney must be provided
24 without cost."

25

26 **Section 30.** Section 41-3-301, MCA, is amended to read:

27 **"41-3-301. Emergency protective service.** (1) Any child protective social worker of the department,
28 a peace officer, or the county attorney who has reason to believe any child is in immediate or apparent danger
29 of harm may immediately remove the child and place the child in a protective facility. After ensuring that the child
30 is safe, the department may make a request for further assistance from the law enforcement agency or take

1 appropriate legal action. The person or agency placing the child shall notify the parents, parent, guardian, or other
2 person having physical or legal custody of the child of the placement at the time the placement is made or as
3 soon after placement as possible. Notification under this subsection must include the reason for removal,
4 information regarding the show cause hearing, and the purpose of the show cause hearing and must advise the
5 parents, parent, guardian, or other person having physical or legal custody of the child that the parents, parent,
6 guardian, or other person may have a support person present during any in-person meeting with the social worker
7 concerning emergency protective services.

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

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

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

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

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

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

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

28 (6) If a child is removed from the child's home by the department, a child protective social worker shall
29 submit an affidavit regarding the circumstances of the emergency removal to the county attorney and provide a
30 copy of the affidavit to the parents or guardian, if possible, within 2 working days of the emergency removal. An

1 abuse and neglect petition must be filed within 5 working days, excluding weekends and holidays, of the
2 emergency removal of a child unless arrangements acceptable to the agency for the care of the child have been
3 made by the parents or voluntary protective services are provided pursuant to 41-3-302.

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

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

11 (9) The department shall make the necessary arrangements for the child's well-being as are required
12 prior to the court hearing."
13

14 **Section 31.** Section 41-3-422, MCA, is amended to read:

15 **"41-3-422. Abuse and neglect petitions -- burden of proof.** (1) (a) Proceedings under this chapter
16 must be initiated by the filing of a petition. A petition may request the following relief:

- 17 (i) immediate protection and emergency protective services, as provided in 41-3-427;
18 (ii) temporary investigative authority, as provided in 41-3-433;
19 (iii) temporary legal custody, as provided in 41-3-442;
20 (iv) long-term custody, as provided in 41-3-445;
21 (v) termination of the parent-child legal relationship, as provided in 41-3-607;
22 (vi) appointment of a guardian pursuant to 41-3-444;
23 (vii) a determination that preservation or reunification services need not be provided; or
24 (viii) any combination of the provisions of subsections (1)(a)(i) through (1)(a)(vii) or any other relief that
25 may be required for the best interests of the child.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 (10) An abuse and neglect petition must:

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

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

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

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

26 (12) At any stage of the proceedings considered appropriate by the court, the court may order an
27 alternative dispute resolution proceeding or the parties may voluntarily participate in an alternative dispute
28 resolution proceeding. An alternative dispute resolution proceeding under this chapter may include a family group
29 decisionmaking meeting, mediation, or a settlement conference. If a court orders an alternative dispute resolution
30 proceeding, a party who does not wish to participate may file a motion objecting to the order. If the department

1 is a party to the original proceeding, a representative of the department who has complete authority to settle the
 2 issue or issues in the original proceeding must be present at any alternative dispute resolution proceeding.

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

5 (a) right, pursuant to 41-3-425, to appointment or assignment of counsel if the person is indigent or if
 6 appointment or assignment of counsel is required under the federal Indian Child Welfare Act or the Montana
 7 Indian Child Welfare Act, if applicable;

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

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

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

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

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

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

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

23

24 **Section 32.** Section 41-3-423, MCA, is amended to read:

25 **"41-3-423. Reasonable efforts required to prevent removal of child or to return -- exemption --**
 26 **findings -- permanency plan.** (1) The department shall make reasonable efforts to prevent the necessity of
 27 removal of a child from the child's home and to reunify families that have been separated by the state.
 28 Reasonable efforts include but are not limited to voluntary protective services agreements, development of
 29 individual written case plans specifying state efforts to reunify families, placement in the least disruptive setting
 30 possible, provision of services pursuant to a case plan, and periodic review of each case to ensure timely

1 progress toward reunification or permanent placement. In determining preservation or reunification services to
2 be provided and in making reasonable efforts at providing preservation or reunification services, the child's health
3 and safety are of paramount concern.

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

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

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

15 (c) committed aggravated assault against a child;

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

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

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

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

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

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

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

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

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

- 1 (i) adjudicated in Montana to be the father of the child for the purposes of child support; or
2 (ii) recorded on the child's birth certificate as the child's father.
- 3 (4) A judicial finding that preservation or reunification services are not necessary under this section must
4 be supported by clear and convincing evidence.
- 5 (5) If the court finds that preservation or reunification services are not necessary pursuant to subsection
6 (2) or (3), a permanency hearing must be held within 30 days of that determination and reasonable efforts,
7 including consideration of both in-state and out-of-state permanent placement options for the child, must be made
8 to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps
9 are necessary to finalize the permanent placement of the child.
- 10 (6) If reasonable efforts have been made to prevent removal of a child from the home or to return a child
11 to the child's home but continuation of the efforts is determined by the court to be inconsistent with the
12 permanency plan for the child, the department shall make reasonable efforts to place the child in a timely manner
13 in accordance with the permanency plan, including, if appropriate, placement in another state, and to complete
14 whatever steps are necessary to finalize the permanent placement of the child. Reasonable efforts to place a
15 child permanently for adoption or to make an alternative out-of-home permanent placement may be made
16 concurrently with reasonable efforts to return a child to the child's home. Concurrent planning, including identifying
17 in-state and out-of-state placements, may be used.
- 18 (7) When determining whether the department has made reasonable efforts to prevent the necessity of
19 removal of a child from the child's home or to reunify families that have been separated by the state, the court
20 shall review the services provided by the agency including, if applicable, protective services provided pursuant
21 to 41-3-302."

- 22
- 23 **Section 33.** Section 41-3-425, MCA, is amended to read:
- 24 **"41-3-425. Right to counsel.** (1) Any party involved in a petition filed pursuant to 41-3-422 has the right
25 to counsel in all proceedings held pursuant to the petition.
- 26 (2) Except as provided in subsection (3), the court shall immediately appoint or have counsel assigned
27 for:
- 28 (a) any indigent parent, guardian, or other person having legal custody of a child or youth in a removal,
29 placement, or termination proceeding pursuant to 41-3-422; and
- 30 (b) any child or youth involved in a proceeding under a petition filed pursuant to 41-3-422 when a

- 1 guardian ad litem is not appointed for the child or youth; ~~and~~
 2 ~~—— (c) any party entitled to counsel at public expense under the federal Indian Child Welfare Act.~~
 3 (3) When appropriate, the court may appoint or have counsel assigned for:
 4 (a) a guardian ad litem or a court-appointed special advocate involved in a proceeding under a petition
 5 filed pursuant to 41-3-422;
 6 (b) any child or youth involved in a proceeding under a petition filed pursuant to 41-3-422 when a
 7 guardian ad litem is appointed for the child or youth.
 8 (4) The court's action pursuant to subsection (2) or (3) must be to order the office of state public
 9 defender, provided for in 47-1-201, to immediately assign counsel pursuant to the Montana Public Defender Act,
 10 Title 47, chapter 1, pending a determination of eligibility pursuant to 47-1-111."

11
 12 **Section 34.** Section 41-3-427, MCA, is amended to read:

13 **"41-3-427. Petition for immediate protection and emergency protective services -- order -- service.**

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

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

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

1 Act or the Montana Indian Child Welfare Act, clear and convincing evidence to believe that the child has been
2 abused or neglected or is in danger of being abused or neglected, the court shall dismiss the petition.

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

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

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

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

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

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

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

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

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

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

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

8 (3) An order for removal of a child from the home must include a finding that continued residence of the
 9 child with the parent is contrary to the welfare of the child or that an out-of-home placement is in the best interests
 10 of the child.

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

15 (5) The petition must be served as provided in 41-3-422."
 16

17 **Section 35.** Section 41-3-432, MCA, is amended to read:

18 **"41-3-432. Show cause hearing -- order.** (1) (a) Except as provided in the federal Indian Child Welfare
 19 Act or the Montana Indian Child Welfare Act, a show cause hearing must be conducted within 20 days of the filing
 20 of an initial child abuse and neglect petition unless otherwise stipulated by the parties pursuant to 41-3-434 or
 21 unless an extension of time is granted by the court. A separate notice to the court stating the statutory time
 22 deadline for a hearing must accompany any petition to which the time deadline applies.

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

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

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

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

7 (4) At the show cause hearing, the court shall explain the procedures to be followed in the case and
 8 explain the parties' rights, including the right to request appointment or assignment of counsel if indigent ~~or if~~
 9 ~~appointment or assignment of counsel is required under the federal Indian Child Welfare Act, if applicable,~~ and
 10 the right to challenge the allegations contained in the petition. The parent, guardian, or other person having
 11 physical or legal custody of the child must be given the opportunity to admit or deny the allegations contained in
 12 the petition at the show cause hearing. Inquiry must be made to determine whether the notice requirements of
 13 ~~the federal Indian Child Welfare Act~~ [section 7], if applicable, have been met.

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

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

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

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

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

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

26 (6) The court may consider:

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

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

30 (7) Following the show cause hearing, the court may enter an order for the relief requested or amend

1 a previous order for immediate protection of the child if one has been entered. The order must be in writing.

2 (8) If a child who has been removed from the child's home is not returned home after the show cause
3 hearing or if removal is ordered, the parents or parent, guardian, or other person or agency having physical or
4 legal custody of the child named in the petition may request that a citizen review board, if available pursuant to
5 part 10 of this chapter, review the case within 30 days of the show cause hearing and make a recommendation
6 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 the
8 requirements of 41-3-437(2) are met. If not made at the show cause hearing, adjudication under 41-3-437 must
9 be made within the time limits required by 41-3-437 unless adjudication occurs earlier by stipulation of the parties
10 pursuant to 41-3-434 and order of the court."

11

12 **Section 36.** 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
15 41-3-432. Adjudication may take place at the show cause hearing if the requirements of subsection (2) are met
16 or 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 the Montana Indian
21 Child Welfare Act, if applicable, that the child is a youth in need of care. Except as otherwise provided in this part,
22 the 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
29 admissible according to the Montana Rules of Evidence.

30 (4) In a case in which abandonment has been alleged by the county attorney, the attorney general, or

1 an attorney hired by the county, the court shall hear offered evidence, including evidence offered by a person
2 appearing pursuant to 41-3-422(9)(a) or (9)(b), regarding any of the following subjects:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (b) The court may order:

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

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

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

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

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

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

16

17 **Section 37.** Section 41-3-444, MCA, is amended to read:

18 **"41-3-444. Abuse and neglect proceedings -- appointment of guardian -- financial subsidies. (1)**

19 The court may, upon the petition of the department or guardian ad litem, enter an order appointing a guardian
20 for a child who has been placed in the temporary or permanent custody of the department pursuant to 41-3-438,
21 41-3-445, or 41-3-607. The guardianship may be subsidized by the department under subsection (9) if the
22 guardianship meets the department's criteria, or the guardianship may be nonsubsidized.

23 (2) The court may appoint a guardian for a child pursuant to this section if the following facts are found
24 by the court:

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

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

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

30 (d) the department has made reasonable efforts to reunite the parent and child, further efforts to reunite

1 the parent and child by the department would likely be unproductive, and reunification of the parent and child
2 would be contrary to the best interests of the child;

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

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

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

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

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

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

19 (5) A guardian appointed under this section may exercise the powers and has the duties provided in
20 72-5-231.

21 (6) The court may revoke a guardianship ordered pursuant to this section if the court finds, after hearing
22 on a petition for removal of the child's guardian, that continuation of the guardianship is not in the best interests
23 of the child. Notice of hearing on the petition must be provided by the moving party to the child's lawful guardian,
24 the department, any court-appointed guardian ad litem, the child's parent if the rights of the parent have not been
25 terminated, and other persons directly interested in the welfare of the child.

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

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

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

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

6 **Section 38.** Section 41-3-445, MCA, is amended to read:

7 **"41-3-445. Permanency hearing.** (1) (a) (i) Subject to subsection (1)(b), a permanency hearing must
8 be held by the court or, subject to the approval of the court and absent an objection by a party to the proceeding,
9 by the foster care review committee, as provided in 41-3-115, or the citizen review board, as provided in
10 41-3-1010:

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

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

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

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

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

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

28 (2) At least 3 working days prior to the permanency hearing, the department shall submit a report
29 regarding the child to the entity that will be conducting the hearing for review. The report must address the
30 department's efforts to effectuate the permanency plan for the child, address the options for the child's permanent

1 placement, examine the reasons for excluding higher priority options, and set forth the proposed plan to carry
2 out the placement decision, including specific times for achieving the plan.

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

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

8 (5) (a) The court's order must be issued within 20 days after the permanency hearing if the hearing was
9 conducted by the court. If a member of the child's extended family, including an adult sibling, grandparent,
10 great-grandparent, aunt, or uncle, has requested that custody be awarded to that family member or that a prior
11 grant of temporary custody with that family member be made permanent, the department shall investigate and
12 determine if awarding custody to that family member is in the best interests of the child. The department shall
13 provide the reasons for any denial to the court. If the court accepts the department's custody recommendation,
14 the court shall inform any denied family member of the reasons for the denial to the extent that confidentiality laws
15 allow. The court shall include the reasons for denial in the court order if the family member who is denied custody
16 requests it to be included.

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

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

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

23 (a) whether the permanency plan is in the best interests of the child;

24 (b) whether the department has made reasonable efforts to finalize the plan; and

25 (c) other necessary steps that the department is required to take to effectuate the terms of the plan.

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

- 1 (8) Permanency options include:
- 2 (a) reunification of the child with the child's parent or guardian;
- 3 (b) permanent placement of the child with the noncustodial parent, superseding any existing custodial
- 4 order;
- 5 (c) adoption, including a tribal customary adoption as defined in [section 4];
- 6 (d) appointment of a guardian pursuant to 41-3-444; or
- 7 (e) long-term custody if the child is in a planned permanent living arrangement and if it is established by
- 8 a preponderance of the evidence, which is reflected in specific findings by the court, that:
- 9 (i) the child is being cared for by a fit and willing relative;
- 10 (ii) the child has an emotional or mental handicap that is so severe that the child cannot function in a
- 11 family setting and the best interests of the child are served by placement in a residential or group setting;
- 12 (iii) the child is at least 16 years of age and is participating in an independent living program and that
- 13 termination of parental rights is not in the best interests of the child;
- 14 (iv) the child's parent is incarcerated and circumstances, including placement of the child and continued,
- 15 frequent contact with the parent, indicate that it would not be in the best interests of the child to terminate parental
- 16 rights of that parent; or
- 17 (v) the child meets the following criteria:
- 18 (A) the child has been adjudicated a youth in need of care;
- 19 (B) the department has made reasonable efforts to reunite the parent and child, further efforts by the
- 20 department would likely be unproductive, and reunification of the child with the parent or guardian would be
- 21 contrary to the best interests of the child;
- 22 (C) there is a judicial finding that other more permanent placement options for the child have been
- 23 considered and found to be inappropriate or not to be in the best interests of the child; and
- 24 (D) the child has been in a placement in which the foster parent or relative has committed to the
- 25 long-term care and to a relationship with the child, and it is in the best interests of the child to remain in that
- 26 placement.
- 27 (9) The court may terminate a planned permanent living arrangement upon petition of the birth parents
- 28 or the department if the court finds that the circumstances of the child or family have substantially changed and
- 29 the best interests of the child are no longer being served."

30

1 **Section 39.** Section 41-3-609, MCA, is amended to read:

2 **"41-3-609. Criteria for termination.** (1) The court may order a termination of the parent-child legal
3 relationship upon a finding established by clear and convincing evidence, except as provided in the federal Indian
4 Child Welfare Act or the Montana Indian Child Welfare Act, if applicable, that any of the following circumstances
5 exist:

6 (a) the parents have relinquished the child pursuant to 42-2-402 and 42-2-412;

7 (b) the child has been abandoned by the parents;

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

11 (d) the parent has subjected a child to any of the circumstances listed in 41-3-423(2)(a) through (2)(e);

12 (e) the putative father meets any of the criteria listed in 41-3-423(3)(a) through (3)(c); or

13 (f) the child is an adjudicated youth in need of care and both of the following exist:

14 (i) an appropriate treatment plan that has been approved by the court has not been complied with by the
15 parents or has not been successful; and

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

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

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

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

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

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

30 (3) In considering any of the factors in subsection (2) in terminating the parent-child relationship, the

1 court shall give primary consideration to the physical, mental, and emotional conditions and needs of the child.

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

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

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

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

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

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

14

15 **Section 40.** Section 42-2-102, MCA, is amended to read:

16 **"42-2-102. Proceedings subject to Indian Child Welfare Act Acts.** A proceeding under this title that
17 pertains to an Indian child, as defined in the Indian Child Welfare Act of 1978, 25 U.S.C. 1901, et seq. [section
18 4], is subject to that act the Indian Child Welfare Act of 1978, 25 U.S.C. 1901, et seq., and the Montana Indian
19 Child Welfare Act."

20

21 **Section 41.** Section 42-2-604, MCA, is amended to read:

22 **"42-2-604. Contents of petition for termination of parental rights.** (1) The petition for termination of
23 parental rights must state:

24 (a) the identity of the petitioner;

25 (b) the date and location of the birth of the child;

26 (c) the date of the relinquishment by the birth mother or relinquishing parent;

27 (d) the current location of the child;

28 (e) the names and locations, if known, of any putative or presumed father of the child;

29 (f) whether a parent is one from whom consent is not required;

30 (g) whether court orders from any other proceeding have been issued terminating parental rights to the

1 child that is the subject of the petition;

2 (h) any other evidence supporting termination of the legal rights that a person has with regard to the
3 child; and

4 (i) a request for temporary custody of the child prior to the adoption.

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

7 (a) any relinquishments and consents to adoption;

8 (b) any denials of paternity;

9 (c) any acknowledgments of paternity and denial of parental rights;

10 (d) any affidavits from the putative father registry that have been executed by the department;

11 (e) a counseling report required under 42-2-409;

12 (f) proof of prior service of any notice or acknowledgment of service or waiver of service received; and

13 (g) proof of compliance with the Indian Child Welfare Act of 1978, Montana Indian Child Welfare Act, and
14 Interstate Compact on the Placement of Children, if applicable."

15

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

17 **"42-4-102. Duties of placing parent.** (1) A parent who is directly placing a child for adoption shall
18 execute a voluntary relinquishment and consent to adopt, including:

19 (a) receiving the counseling required by 42-2-409; and

20 (b) if the parent is a minor, being advised by legal counsel other than the attorney representing the
21 prospective adoptive parent.

22 (2) A placing parent shall identify and provide information on the location of any other legal parent or
23 guardian of the child and any other person required to receive notice under 42-2-605, including:

24 (a) any current spouse;

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

27 (c) any adoptive parent.

28 (3) A placing parent shall identify and provide information pertaining to any Indian heritage of the child
29 that would bring the child within the jurisdiction of the federal Indian Child Welfare Act, 25 U.S.C. 1901, et seq.,
30 or the Montana Indian Child Welfare Act.

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

2 (a) the disclosures of medical and social history required pursuant to 42-3-101;

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

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

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

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

11 (7) Subject to the limitations set in 42-7-102, counseling expenses, legal fees, and the reasonable costs
12 of preparing reports documenting the required disclosures of medical and social history and the disclosures
13 documenting disbursements are allowable expenses that can be paid for by the prospective adoptive parent."
14

15 **Section 43.** Section 42-4-103, MCA, is amended to read:

16 **"42-4-103. Direct parental placement -- information to be filed.** (1) A parent who proposes to place
17 a child for adoption with a prospective adoptive parent who resides in Montana and who is not the child's
18 stepparent or an extended family member shall file with the court of the county in which the prospective adoptive
19 parent or the parent making the placement resides the following:

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

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

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

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

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

28 (v) all relevant information pertaining to any Indian heritage of the child that would bring the child within
29 the jurisdiction of the federal Indian Child Welfare Act, 25 U.S.C. 1901, et seq., or the Montana Indian Child
30 Welfare Act; and

- 1 (vi) the name and address of counsel, a guardian ad litem, or other representative, if any, of each of the
2 parties mentioned in subsections (1)(a)(i) through (1)(a)(iii);
- 3 (b) a relinquishment and consent to adoption of the child by the adoptive parent;
- 4 (c) the counseling report required by 42-2-409;
- 5 (d) the medical and social history disclosures required by 42-3-101;
- 6 (e) a report of disbursements identifying all payments made to or to the benefit of the placing parent by
7 the prospective adoptive parent or anyone acting on the parent's behalf that contains a statement by each person
8 furnishing information in the report attesting to the truthfulness of the information furnished by that person;
- 9 (f) a certified copy of the child's birth certificate or other document certifying the place and date of the
10 child's birth;
- 11 (g) a certified copy of any existing court orders pertaining to custody or visitation of the child; and
- 12 (h) the preplacement evaluation.
- 13 (2) The notice of parental placement must be signed by the parent making the placement."
14

15 **Section 44.** Section 42-4-203, MCA, is amended to read:

16 **"42-4-203. Duties of placing parent.** (1) A parent who is placing a child for adoption shall comply with
17 the provisions for executing a voluntary relinquishment and consent to adopt.

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

19 (a) any other legal parent or guardian of the child and any other person required to receive notice under
20 42-2-605, including any current spouse; and

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

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

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

27 (a) the disclosures of medical and social history;

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

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

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Section 45. 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 Indian Child Welfare Act, 25 U.S.C. 1901, et seq., and the Montana Indian Child Welfare Act.

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

Section 46. 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;

- 1 (b) the current marital status of petitioners and, if married, the place and date of the marriage;
- 2 (c) the circumstances under which the petitioners obtained physical custody of the child and the name
3 of the individual or agency that placed the child;
- 4 (d) the date and place of birth of the child, if known;
- 5 (e) the name used for the child in the proceeding and, if a change in name is desired, the full name by
6 which the child is to be known;
- 7 (f) that it is the desire of the petitioners that the relationship of parent and child be established between
8 the petitioners and the child and to have all the rights and be subject to all the duties of that relationship;
- 9 (g) a full description and statement of value of all property owned or possessed by the child;
- 10 (h) the facts, if any, that excuse consent on the part of a person whose consent is required for the
11 adoption;
- 12 (i) that any applicable law governing interstate or intercountry placement was complied with;
- 13 (j) that, if applicable, the Indian Child Welfare Act, 25 U.S.C. 1901, et seq., ~~was~~ and the Montana Indian
14 Child Welfare Act were complied with;
- 15 (k) whether a previous petition has been filed by the petitioners to adopt the child at issue or any other
16 child in any court and the disposition of the petitions; and
- 17 (l) the name and address, if known, of any person who is entitled to receive notice of the petition for
18 adoption.
- 19 (2) There must be attached to or accompanying the petition:
- 20 (a) any written consent required by 42-2-301;
- 21 (b) a certified copy of any court order terminating the rights of the child's parents;
- 22 (c) a certified copy of any existing court order in any pending proceeding concerning custody of or
23 visitation with the child;
- 24 (d) a copy of any agreement with a public agency to provide a subsidy for the benefit of the child with
25 a special need;
- 26 (e) the postplacement evaluation prepared pursuant to 42-4-113 or 42-4-209;
- 27 (f) a disclosure of any disbursements made in connection with the adoption proceeding.
- 28 (3) One copy of the petition must be retained by the court. A copy must be sent to:
- 29 (a) the department or to the agency participating in the adoption proceeding;
- 30 (b) the parent placing the child for adoption in a direct parental placement adoption; or

1 (c) the child's guardian ad litem if the child has one.

2 (4) Proceedings initiated under this part are subject to the Montana Rules of Civil Procedure except as
3 modified by this part."

4

5 **Section 47.** Section 42-5-107, MCA, is amended to read:

6 **"42-5-107. Best interests of child.** (1) In determining whether to grant a petition to adopt, the court
7 shall consider all relevant factors in determining the best interests of the child. The court shall consider factors
8 relevant to the determination of a prospective adoptive parent's parenting ability, the future security for a child,
9 and familial stability.

10 (2) In a contested adoption proceeding involving a child, the court shall consider the factors set out in
11 subsection (1) and shall also consider:

12 (a) the nature and length of any relationship already established between a child and any person seeking
13 to adopt the child;

14 (b) the nature of any family relationship between the child and any person seeking to adopt the child and
15 whether that person has established a positive emotional relationship with the child;

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

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

18 (e) which, if any, of the persons seeking to adopt the child were selected by the placing parent or the
19 department or agency whose consent to the adoption is required.

20 (3) In an Indian child placement, the court shall determine if the requirements of the Indian Child Welfare
21 Act, 25 U.S.C. 1901, et seq., and the Montana Indian Child Welfare Act have been met."

22

23 **Section 48.** Section 47-1-104, MCA, is amended to read:

24 **"47-1-104. Statewide system -- structure and scope of services -- assignment of counsel at public
25 expense.** (1) There is a statewide public defender system, which is required to deliver public defender services
26 in all courts in this state. The system is supervised by the commission and administered by the office.

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

1 in 47-1-102.

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

5 (4) A court may order an office to assign counsel under this chapter in the following cases:

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

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

10 (ii) for a party in a proceeding to determine parentage under the Uniform Parentage Act, as provided in
11 40-6-119;

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

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

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

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

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

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

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

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

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

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

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

- 1 (iii) for a juvenile entitled to assigned counsel in a proceeding under the Interstate Compact on Juveniles,
2 as provided in 41-6-101;
- 3 (iv) for a minor who petitions for a waiver of parental notification requirements under the Parental Notice
4 of Abortion Act, as provided in 50-20-232;
- 5 (v) for a respondent in a proceeding for the involuntary commitment of a developmentally disabled
6 person to a residential facility, as provided in 53-20-112;
- 7 (vi) for a minor voluntarily committed to a mental health facility, as provided in 53-21-112;
- 8 (vii) for a person who is the subject of a petition for the appointment of a guardian or conservator in a
9 proceeding under the provisions of the Uniform Probate Code in Title 72, chapter 5;
- 10 (viii) for a ward when the ward's guardian has filed a petition to require medical treatment for a mental
11 disorder of the ward, as provided in 72-5-322; and
- 12 (c) for an eligible appellant in an appeal of a proceeding listed in this subsection (4).
- 13 (5) (a) Except as provided in subsection (5)(b), a public defender may not be assigned to act as a
14 court-appointed special advocate or guardian ad litem in a proceeding under the Montana Youth Court Act, Title
15 41, chapter 5, or in an abuse and neglect proceeding under Title 41, chapter 3.
- 16 (b) A private attorney who is contracted with under the provisions of 47-1-216 to provide public defender
17 services under this chapter may be appointed as a court-appointed special advocate or guardian ad litem in a
18 proceeding described in subsection (5)(a) if the appointment is separate from the attorney's service for the
19 statewide public defender system and does not result in a conflict of interest."

20

21 **Section 49.** Section 52-2-117, MCA, is amended to read:

22 **"52-2-117. Indian child welfare specialist.** (1) The director of the department shall appoint a qualified
23 person to act as an Indian child welfare specialist.

24 (2) The duties of the specialist include:

25 (a) developing Indian foster homes and other Indian placement resources;

26 (b) providing technical advice to tribal, state, and county agencies and district courts on matters
27 pertaining to Indian child welfare;

28 (c) providing assistance in negotiating cooperative agreements to provide foster care services to Indian
29 children;

30 (d) conducting training seminars on implementing the Indian Child Welfare Act of 1978 (25 U.S.C. 1901,

1 et seq.) and the Montana Indian Child Welfare Act;

2 (e) applying for and accepting grants and other funds for Indian child welfare activities;

3 (f) developing and maintaining a list of attorneys to represent indigent parents and Indian custodians in

4 Indian child welfare proceedings;

5 (g) making recommendations to the department on legislation and rules concerning Indian child welfare
6 matters; and

7 (h) performing other duties concerning Indian child welfare matters as determined by the director."
8

9 **NEW SECTION. Section 50. Notification to tribal governments.** The secretary of state shall send
10 a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell
11 Chippewa tribe.
12

13 **NEW SECTION. Section 51. Codification instruction.** [Sections 1 through 21] are intended to be
14 codified as an integral part of Title 41, chapter 3, and the provisions of Title 41, chapter 3, apply to [sections 1
15 through 21].
16

17 **NEW SECTION. Section 52. Severability.** If a part of [this act] is invalid, all valid parts that are
18 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
19 the part remains in effect in all valid applications that are severable from the invalid applications.
20

21 **NEW SECTION. Section 53. Applicability.** [This act] applies to child custody proceedings begun on
22 or after October 1, 2013.
23

- END -