

MONTANA CODE ANNOTATED
TITLE 41
CHAPTER 3
CHILD ABUSE AND NEGLECT

Part 1 -- General

- 41-3-101. Declaration of policy.
- 41-3-102. Definitions.
- 41-3-103. Jurisdiction and venue.
- 41-3-106. Prosecution of offenders.
- 41-3-107. Interagency cooperation.
- 41-3-108. Child protective teams.
- 41-3-109. Proceedings subject to Indian Child Welfare Act.
- 41-3-110. Audio or video testimony allowed.
- 41-3-112. Guardian ad litem.
- 41-3-113. Appeals.
- 41-3-115. Foster care review committee - foster care reviews - permanency hearings.
- 41-3-118. Purpose.
- 41-3-119. Foster parent counseling services.
- 41-3-120. Liability insurance for foster parents.
- 41-3-131. Rulemaking authority.

Part 2 -- Reports and Investigations

- 41-3-201. Reports.
- 41-3-202. Action on reporting.
- 41-3-203. Immunity from liability.
- 41-3-204. Admissibility and preservation of evidence.
- 41-3-205. Confidentiality - disclosure exceptions.
- 41-3-206. Procedure in case of child's death.
- 41-3-207. Penalty for failure to report.
- 41-3-208. Rulemaking authority.
- 41-3-209. Reports to office of child and family ombudsman.

Part 3 - Protective Care

- 41-3-301. Emergency protective service.
- 41-3-302. Responsibility of providing protective services - voluntary protective services agreement.
- 41-3-304. Criminal background checks of adults residing in potential emergency placements authorized – rulemaking.
- 41-3-305. Child abuse court diversion pilot project.

Part 4 -- Abuse or Neglect Proceedings

- 41-3-422. Abuse and neglect petitions - burden of proof.
- 41-3-423. Reasonable efforts required to prevent removal of child or to return - exemption - findings - permanency plan.
- 41-3-424. Dismissal.
- 41-3-425. Right to counsel.
- 41-3-427. Petition for immediate protection and emergency protective services - order - service.
- 41-3-428. Service of process - service by publication - effect.
- 41-3-429. Service by publication - summons - form.
- 41-3-430. Putative fathers - service by publication - continuation of proceedings.
- 41-3-432. Show cause hearing - order.
- 41-3-433. Temporary investigative authority.
- 41-3-434. Stipulations.
- 41-3-437. Adjudication - temporary disposition - findings - order.
- 41-3-438. Disposition - hearing - order.
- 41-3-439. Department to give placement priority to extended family member of abandoned child.
- 41-3-440. Limitation on placement.
- 41-3-442. Temporary legal custody.
- 41-3-443. Treatment plan - contents - changes.
- 41-3-444. Abuse and neglect proceedings - appointment of guardian - financial subsidies.
- 41-3-445. Permanency hearing.
- 41-3-446. Contributions by parents or guardians for youth's care.

Part 6 -- Parent-Child Legal Relationship Termination

- 41-3-601. Short title.
- 41-3-602. Purpose.
- 41-3-604. When petition to terminate parental rights required.
- 41-3-607. Petition for termination - separate hearing - no jury trial.
- 41-3-608. Notice.
- 41-3-609. Criteria for termination.
- 41-3-611. Effect of decree.
- 41-3-612. Appeals.

Part 10 - Citizen Review Board Program Act

- 41-3-1001. Short title.
- 41-3-1003. Establishment of board - definition - membership.
- 41-3-1004. Administration - training - oversight - procedures.
- 41-3-1005. Removal of members - grounds.
- 41-3-1006. Terms - officers.
- 41-3-1007. Confidentiality of information - penalty.

- 41-3-1008. Access to records.
- 41-3-1010. Review - scope - procedures - immunity.
- 41-3-1011. Board recommendations concerning foster care services and policy considerations.
- 41-3-1012. Presence of employees and participants at reviews and deliberations of board.
- 41-3-1013. Court review of findings and recommendations of board.

Part 12 – Office of Child and Family Ombudsman

- 41-3-1208. Office of child and family ombudsman established.
- 41-3-1209. Purpose and intent.
- 41-3-1210. Definitions.
- 41-3-1211. Powers and duties.
- 41-3-1212. Investigations – discretion – procedure.
- 41-3-1213. Privilege.

Part 1 - General

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

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

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

(c) ensure that there is no forced removal of a child from the family based solely on an allegation of abuse or neglect unless the department has reasonable cause to suspect that the child is at imminent risk of harm;

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

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

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

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

(3) In implementing this chapter, whenever it is necessary to remove a child from the child's home, the department shall, when it is in the best interests of the child, place the child with the child's noncustodial birth parent or with the child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, when placement with the extended family is approved by the department, prior to placing the child in an alternative protective or residential facility. Prior to approving a placement, the department shall investigate whether anyone living in the home has been convicted of a crime involving serious harm to children.

(4) (a) The department shall create a registry for voluntary registration by close relatives

of a child for purposes of notifying those relatives when a child that is related has been removed from the child's home pursuant to this chapter.

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

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

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

(7) In implementing the policy of this section, the child's health and safety are of paramount concern.

History: (1)En. 10-1300 by Sec. 1, Ch. 328, L. 1974; Sec. 10-1300, R.C.M. 1947; (2)En. Sec. 1, Ch. 178, L. 1965; amd. Sec. 1, Ch. 292, L. 1973; Sec. 10-901, R.C.M. 1947; redes. 10-1303 by Sec. 14, Ch. 328, L. 1974; Sec. 10-1303, R.C.M. 1947; R.C.M. 1947, 10-1300, 10-1303; amd. Sec. 1, Ch. 543, L. 1979; amd. Sec. 1, Ch. 494, L. 1995; amd. Sec. 1, Ch. 564, L. 1995; amd. Sec. 1, Ch. 501, L. 1997; amd. Sec. 1, Ch. 566, L. 1999; amd. Sec. 1, Ch. 281, L. 2001; amd. Sec. 1, Ch. 311, L. 2001; amd. Sec. 1, Ch. 504, L. 2003; amd. Sec. 1, Ch. 196, L. 2009.

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) (a) "Adequate health care" means any medical care or nonmedical remedial health care recognized by an insurer licensed to provide disability insurance under Title 33, including

the prevention of the withholding of medically indicated treatment or medically indicated psychological care permitted or authorized under state law.

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

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

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

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

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

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

(iii) abandonment.

(b) (i) The term includes:

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

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

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

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

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

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

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

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

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

(a) a member of an Indian tribe; or

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

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

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

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

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

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

(a) the state of Montana; or

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

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

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

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

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

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

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

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

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

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

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

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

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

(vi) abandons the child.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) the infant is chronically and irreversibly comatose;

(ii) the provision of treatment would:

(A) merely prolong dying;

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

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

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

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

History: En. 10-1301 by Sec. 2, Ch. 328, L. 1974; amd. Sec. 18, Ch. 100, L. 1977; R.C.M. 1947, 10-1301; amd. Sec. 2, Ch. 543, L. 1979; amd. Sec. 2, Ch. 511, L. 1981; amd. Sec. 31, Ch. 465, L. 1983; amd. Sec. 1, Ch. 564, L. 1983; amd. Sec. 1, Ch. 626, L. 1985; amd. Sec. 1, Ch. 463, L. 1987; amd. Sec. 36, Ch. 609, L. 1987; amd. Sec. 1, Ch. 474, L. 1989; amd. Sec. 1, Ch. 439, L. 1993; amd. Sec. 6, Ch. 458, L. 1995; amd. Sec. 2, Ch. 528, L. 1995; amd. Sec. 159, Ch. 546, L. 1995; amd. Sec. 2, Ch. 564, L. 1995; amd. Sec. 3, Ch. 514, L. 1997; amd. Secs. 2, 19(1), Ch. 516, L. 1997; amd. Sec. 2, Ch. 566, L. 1999; amd. Sec. 1, Ch. 194, L. 2001; amd. Sec. 16, Ch. 277, L. 2001; amd. Sec. 2, Ch. 311, L. 2001; amd. Sec. 1, Ch. 398, L. 2003; amd. Sec. 1, Ch. 406, L. 2003; amd. Sec. 1, Ch. 458, L. 2003; amd. Sec. 2, Ch. 504, L. 2003; amd. Sec. 1, Ch. 555, L. 2003; amd. Sec. 1, Ch. 349, L. 2005; amd. Sec. 5, Ch. 179, L. 2009; amd. Sec. 2, Ch. 225, L. 2013.

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

- (a) a youth who is within the state of Montana for any purpose;
- (b) a youth or other person subject to this chapter who under a temporary or permanent order of the court has voluntarily or involuntarily left the state or the jurisdiction of the court;
- (c) a person who is alleged to have abused or neglected a youth who is in the state of Montana for any purpose;
- (d) a youth or youth's parent or guardian who resides in Montana;
- (e) a youth or youth's parent or guardian who resided in Montana within 180 days before the filing of a petition under this chapter if the alleged abuse and neglect is alleged to have occurred in whole or in part in Montana.

(2) Venue is proper in the county where a youth is located or has resided within 180 days before the filing of a petition under this part or a county where the youth's parent or guardian resides or has resided within 180 days before the filing of a petition under this part.

History: En. 10-1302 by Sec. 3, Ch. 328, L. 1974; R.C.M. 1947, 10-1302; amd. Sec. 7, Ch. 458, L. 1995; amd. Sec. 1, Ch. 114, L. 2001; amd. Sec. 3, Ch. 504, L. 2003; amd. Sec. 1, Ch. 223, L. 2011.

41-3-106. Prosecution of offenders. (1) If the evidence indicates violation of the criminal code, it is the responsibility of the county attorney to file appropriate charges against the alleged offender.

- (2) The filing of a criminal charge does not toll a proceeding under this chapter.
- (3) The district court has original jurisdiction under this section.

History: En. 10-1322 by Sec. 12, Ch. 328, L. 1974; R.C.M. 1947, 10-1322; amd. Sec. 3, Ch. 311, L. 2001.

41-3-107. Interagency cooperation. (1) To effectuate the purposes of this chapter, the department of public health and human services shall cooperate with and shall seek the cooperation and involvement of all appropriate public and private agencies, including health, education, social services, and law enforcement agencies; juvenile courts; and any other agency, organization, or program providing or concerned with human services related to the prevention, identification, or treatment of child abuse or neglect. The cooperation and involvement may not include joint case management but may include joint policy planning, public education, information services, staff development, and other training.

(2) The department shall enter into a cooperative agreement with other state agencies, as provided in 52-2-203, for the purpose of implementing this section.

History: En. Sec. 4, Ch. 543, L. 1979; amd. Sec. 12, Ch. 609, L. 1987; amd. Sec. 4, Ch. 655, L. 1991; amd. Sec. 160, Ch. 546, L. 1995.

41-3-108. Child protective teams. The county attorney, county commissioners, guardian ad litem, or department may convene one or more temporary or permanent interdisciplinary child protective teams. These teams may assist in assessing the needs of, formulating and monitoring a treatment plan for, and coordinating services to the child and the child's family. The supervisor of child protective services in a local service area or the supervisor's designee shall serve as the team's coordinator. Members must include:

- (1) a social worker;
- (2) a member of a local law enforcement agency;
- (3) a representative of the medical profession;
- (4) a representative of a public school system;
- (5) a county attorney; and
- (6) if an Indian child or children are involved, someone, preferably an Indian person, knowledgeable about Indian culture and family matters.

History: En. Sec. 5, Ch. 543, L. 1979; amd. Sec. 37, Ch. 609, L. 1987; amd. Sec. 1, Ch. 67, L. 1989; amd. Sec. 161, Ch. 546, L. 1995; amd. Sec. 3, Ch. 566, L. 1999.

41-3-109. Proceedings subject to Indian Child Welfare Act. If a proceeding under this chapter involves an Indian child, as defined in the Indian Child Welfare Act, 25 U.S.C. 1901, et seq., the proceeding is subject to the Indian Child Welfare Act.

History: En. Sec. 16, Ch. 516, L. 1997.

41-3-110. Audio or video testimony allowed. A court may permit testimony by telephone, videoconference, or other audio or audiovisual means at any time in a proceeding pursuant to this chapter.

History: En. Sec. 1, Ch. 166, L. 2007.

41-3-112. Guardian ad litem. (1) In every judicial proceeding, the court shall appoint a guardian ad litem for any child alleged to be abused or neglected. The department or any member of its staff who has a direct conflict of interest may not be appointed as the guardian ad litem in a judicial proceeding under this title. When necessary, the guardian ad litem may serve at public expense.

(2) The guardian ad litem must have received appropriate training that is specifically related to serving as a child's court-appointed representative.

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

(a) to conduct investigations to ascertain the facts constituting the alleged abuse or neglect;

(b) to interview or observe the child who is the subject of the proceeding;

(c) to have access to court, medical, psychological, law enforcement, social services, and school records pertaining to the child and the child's siblings and parents or custodians;

(d) to make written reports to the court concerning the child's welfare;

(e) to appear and participate in all proceedings to the degree necessary to adequately represent the child and make recommendations to the court concerning the child's welfare;

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

(g) if an attorney, to file motions, including but not limited to filing to expedite proceedings or otherwise assert the child's rights.

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

(5) Any party may petition the court for the removal and replacement of the guardian ad litem if the guardian ad litem fails to perform the duties of the appointment.

History: En. Sec. 14, Ch. 543, L. 1979; amd. Sec. 1, Ch. 384, L. 1985; amd. Sec. 4,

Ch. 434, L. 1993; amd. Sec. 5, Ch. 516, L. 1997; amd. Sec. 7, Ch. 566, L. 1999; Sec. 41-3-303, MCA 1999; redes. 41-3-112 by Sec. 17(3)(a), Ch. 281, L. 2001; amd. Sec. 1, Ch. 382, L. 2005.

41-3-113. Appeals. (1) Appeals of court orders or decrees made under this part must be given precedence on the calendar of the supreme court over all other matters, unless otherwise provided by law.

(2) An appeal does not stay the order or decree appealed from and does not divest the presiding district court judge of jurisdiction to take steps that are necessary, in the best interests of the child, and in order to protect the health and safety of the child. The supreme court may order a stay upon application and hearing if suitable provision is made for the care and custody of the child.

(3) If the appeal results in the reversal of the order appealed, the legal status of the child reverts to the child's legal status before the entry of the order that was appealed. The child's prior legal status remains in effect until further order of the district court unless the supreme court orders otherwise.

History: En. Sec. 3, Ch. 463, L. 1987; Sec. 41-3-409, MCA 1999; redes. 41-3-113 by Sec. 17(3)(a), Ch. 281, L. 2001; amd. Sec. 4, Ch. 504, L. 2003.

41-3-115. Foster care review committee -- foster care reviews -- permanency hearings. (1) Except as provided in Title 41, chapter 3, part 10, in every judicial district the district court judge, in consultation with the department, shall appoint a foster care review committee. The foster care review committee shall conduct foster care reviews as provided in this section and may, at the discretion of the court and absent an objection by a party to the proceeding, conduct permanency hearings as provided in 41-3-445.

(2) (a) The members of the committee must be willing to act without compensation. The committee must be composed of not less than three or more than seven members. To the extent practicable, the members of the committee must be representatives of the various socioeconomic, racial, and ethnic groups of the area served.

(b) The members must include:

(i) one representative of the department who may not be responsible for the placement of the child or have any other direct conflict of interest;

(ii) a person who is knowledgeable in the needs of children in foster care placements and who is not employed by the department or the youth court; and

(iii) if the child whose care is under review is an Indian child, a person, preferably an Indian person, who is knowledgeable about Indian cultural and family matters and who is appointed effective only for and during that review.

(c) Members may also include but are not limited to:

(i) a representative of the youth court;

(ii) a representative of a local school district;

(iii) a public health nurse;

(iv) an at-large community member with knowledge of child protective services.

(3) (a) When a child is in foster care under the supervision of the department or if payment for care is made pursuant to 52-2-611, the committee shall conduct a review of the foster care status of the child. The review must be conducted within the time limit established under the Adoption and Safe Families Act of 1997, 42 U.S.C. 675(5).

(b) The committee shall hear the case of each child in foster care to review issues that are germane to the goals of permanency and to accessing appropriate services for parents and children. In evaluating the accessibility, availability, and appropriateness of services, the committee shall consider:

- (i) the safety, history, and specific needs of the child;
- (ii) whether an involved agency has selected services specifically relevant to the problems and needs of the child and family;
- (iii) whether appropriate services have been available to the child and family on a timely basis; and
- (iv) the results of intervention.

(c) If the department has placed a child in foster care in another state, the committee shall consider whether the placement is appropriate and in the best interests of the child. In the case of a child who will not be returned to the parent, the committee shall consider both in-state and out-of-state placement options.

(d) The committee may hear the case of a child who remains in or returns to the child's home and for whom the department retains legal custody.

(4) (a) Prior to the beginning of the review, reasonable notice of each review must be sent to the following:

- (i) the parents of the child or their attorneys;
- (ii) if applicable, the foster parents, a relative caring for the child, the preadoptive parents, or the surrogate parents;
- (iii) the child who is the subject of the review if the child is 12 years of age or older;
- (iv) the child's attorney, if any;
- (v) the guardian ad litem;
- (vi) the court-appointed attorney or special advocate of the child; and
- (vii) the child's Indian tribe if the child is an Indian.

(b) When applicable, notice of each review may be sent to other interested persons who are authorized by the committee to receive notice.

(c) All persons receiving notice are subject to the confidentiality provisions of 41-3-205.

(d) If a foster care review is held in conjunction with a permanency hearing, notice of both proceedings must be provided.

(e) If a foster care review is held in conjunction with a permanency hearing, notice must be provided to the attorney who initiated the child abuse or neglect proceedings.

(5) The committee may elect to hold joint or separate reviews for groups of siblings, but findings and recommendations made by the committee must be specific to each child.

(6) After reviewing each case, the committee shall prepare written findings and recommendations with respect to:

- (a) the continuing need for the placement and the appropriateness and safety of the placement;
- (b) compliance with the case plan;
- (c) the progress that has been made toward alleviating the need for placement;
- (d) a likely date by which the child may be returned home or by which a permanent placement may be finalized.

(7) Following the permanency hearing, the committee shall send copies of its minutes and written findings and recommendations to the court and to the parties. If a party objects to the findings and recommendations, the party may within 10 days serve written objections upon the

other party and file them with the court. A request for a hearing before the court upon the objections may be made by a party by motion. The court, after hearing the objections or upon its own motion and without objection, may adopt the findings and recommendations and shall issue an appropriate order.

(8) Because of the individual privacy involved, meetings of the committee, reports of the committee, and information on individuals' cases shared by committee members are confidential and subject to the confidentiality requirements of the department.

(9) The committee is subject to the call of the district court judge to meet and confer with the judge on all matters pertaining to the foster care of a child before the district court.

History: En. Sec. 2, Ch. 297, L. 1981; amd. Sec. 1, Ch. 201, L. 1983; MCA 1981, 41-5-807; amd. and redes. 41-3-1115 by Sec. 31, Ch. 465, L. 1983; amd. Sec. 1, Ch. 260, L. 1987; amd. Sec. 51, Ch. 609, L. 1987; amd. Sec. 16, Ch. 610, L. 1993; amd. Sec. 19, Ch. 311, L. 2001; amd. Sec. 13, Ch. 570, L. 2001; Sec. 41-3-1115, MCA 1999; redes. 41-3-115 by Sec. 17(3)(a), Ch. 281, L. 2001; amd. Sec. 2, Ch. 382, L. 2005; amd. Sec. 2, Ch. 166, L. 2007.

41-3-118. Purpose. The intent of 41-3-119 is to provide reimbursement for mental health outpatient counseling services to foster parents who experience the death of a foster child placed with them by the department or a licensed child placing agency. Many of the children have disabilities, terminal illnesses, or other special needs, and often these children spend their childhood in the homes of foster parents. The death of a child is a traumatic experience, and the legislature finds that providing reimbursement for counseling is a necessary support to those persons who are willing to open their homes to foster children who need a stable and safe environment.

History: En. Sec. 1, Ch. 127, L. 1999; Sec. 41-3-1160, MCA 1999; redes. 41-3-118 by Sec. 17(3)(a), Ch. 281, L. 2001.

41-3-119. Foster parent counseling services. (1) A person who provides substitute care to a foster child who dies while residing in a youth care facility must be offered reimbursement for mental health outpatient counseling services at the expense of the department.

(2) Upon the death of a foster child in substitute care, the department shall provide information about available reimbursement for mental health outpatient counseling services for the person or persons who were providing care to the foster child.

(3) The reimbursement for mental health outpatient counseling services must be available for up to 1 year in duration by a provider of the person's choice at an amount equivalent to that offered as a benefit to state employees under 2-18-702, subject to the same maximum benefit levels and copayments.

History: En. Sec. 2, Ch. 127, L. 1999; Sec. 41-3-1161, MCA 1999; redes. 41-3-119 by Sec. 17(3)(a), Ch. 281, L. 2001.

41-3-120. Liability insurance for foster parents. (1) The department shall provide for liability and property damage insurance for a foster parent providing foster care services to children placed by the department and for a foster parent providing therapeutic foster care services under the auspices of a licensed child-placing agency.

(2) The state shall pay the cost of the premium for each policy issued under subsection (1). The foster parent may be required, as provided by rule, to pay a reasonable deductible for personal injury or property damage.

(3) The department shall adopt rules for the provision of insurance coverage to foster parents as provided in this section, including rules on premium payment and any deductibles required.

History: En. Sec. 1, Ch. 165, L. 2007.

41-3-131. Rulemaking authority. The department shall adopt rules necessary to carry out the purposes of this chapter.

History: En. Sec. 31, Ch. 311, L. 2001.

Part 2 - Reports and Investigations

41-3-201. Reports. (1) When the professionals and officials listed in subsection (2) know or have reasonable cause to suspect, as a result of information they receive in their professional or official capacity, that a child is abused or neglected by anyone regardless of whether the person suspected of causing the abuse or neglect is a parent or other person responsible for the child's welfare, they shall report the matter promptly to the department of public health and human services.

(2) Professionals and officials required to report are:

(a) a physician, resident, intern, or member of a hospital's staff engaged in the admission, examination, care, or treatment of persons;

(b) a nurse, osteopath, chiropractor, podiatrist, medical examiner, coroner, dentist, optometrist, or any other health or mental health professional;

(c) religious healers;

(d) school teachers, other school officials, and employees who work during regular school hours;

(e) a social worker, operator or employee of any registered or licensed day-care or substitute care facility, staff of a resource and referral grant program organized under 52-2-711 or of a child and adult food care program, or an operator or employee of a child-care facility;

(f) a foster care, residential, or institutional worker;

(g) a peace officer or other law enforcement official;

(h) a member of the clergy, as defined in 15-6-201(2)(b);

(i) a guardian ad litem or a court-appointed advocate who is authorized to investigate a report of alleged abuse or neglect; or

(j) an employee of an entity that contracts with the department to provide direct services to children.

(3) A professional listed in subsection (2)(a) or (2)(b) involved in the delivery or care of an infant shall report to the department any infant known to the professional to be affected by a dangerous drug, as defined in 50-32-101.

(4) Any person may make a report under this section if the person knows or has reasonable cause to suspect that a child is abused or neglected.

(5) (a) When a professional or official required to report under subsection (2) makes a report, the department may share information with:

(i) that professional or official; or

(ii) other individuals with whom the professional or official works in an official capacity if the individuals are part of a team that responds to matters involving the child or the person

about whom the report was made and the professional or official has asked that the information be shared with the individuals.

(b) The department may provide information in accordance with 41-3-202(8) and also share information about the investigation, limited to its outcome and any subsequent action that will be taken on behalf of the child who is the subject of the report.

(c) Individuals who receive information pursuant to this subsection (5) shall maintain the confidentiality of the information as required by 41-3-205.

(6) (a) Except as provided in subsection (6)(b) or (6)(c), a person listed in subsection (2) may not refuse to make a report as required in this section on the grounds of a physician-patient or similar privilege.

(b) A member of the clergy or a priest is not required to make a report under this section if:

(i) the knowledge or suspicion of the abuse or neglect came from a statement or confession made to the member of the clergy or the priest in that person's capacity as a member of the clergy or as a priest;

(ii) the statement was intended to be a part of a confidential communication between the member of the clergy or the priest and a member of the church or congregation; and

(iii) the person who made the statement or confession does not consent to the disclosure by the member of the clergy or the priest.

(c) A member of the clergy or a priest is not required to make a report under this section if the communication is required to be confidential by canon law, church doctrine, or established church practice.

(7) The reports referred to under this section must contain:

(a) the names and addresses of the child and the child's parents or other persons responsible for the child's care;

(b) to the extent known, the child's age and the nature and extent of the child's injuries, including any evidence of previous injuries;

(c) any other information that the maker of the report believes might be helpful in establishing the cause of the injuries or showing the willful neglect and the identity of the person or persons responsible for the injury or neglect; and

(d) the facts that led the person reporting to believe that the child has suffered injury or injuries or willful neglect, within the meaning of this chapter.

History: En. Sec. 2, Ch. 178, L. 1965; amd. Sec. 2, Ch. 292, L. 1973; Sec. 10-902, R.C.M. 1947; redes. 10-1304 by Sec. 14, Ch. 328, L. 1974; R.C.M. 1947, 10-1304; amd. Sec. 6, Ch. 543, L. 1979; amd. Sec. 3, Ch. 511, L. 1981; amd. Sec. 11, Ch. 609, L. 1987; amd. Sec. 1, Ch. 79, L. 1989; amd. Sec. 1, Ch. 785, L. 1991; amd. Sec. 8, Ch. 458, L. 1995; amd. Sec. 162, Ch. 546, L. 1995; amd. Sec. 4, Ch. 514, L. 1997; amd. Sec. 4, Ch. 311, L. 2001; amd. Sec. 3, Ch. 382, L. 2005; amd. Sec. 3, Ch. 166, L. 2007; amd. Sec. 2, Ch. 223, L. 2011; amd. Sec. 2, Ch. 278, L. 2011; amd. Sec. 1, Ch. 337, L. 2013.

41-3-202. Action on reporting. (1) Upon receipt of a report that a child is or has been abused or neglected, the department shall promptly assess the information contained in the report and make a determination regarding the level of response required and the timeframe within which action must be initiated. If the department determines that an investigation is required, a social worker, the county attorney, or a peace officer shall promptly conduct a thorough investigation into the circumstances surrounding the allegations of abuse or neglect of the child.

The investigation may include an investigation at the home of the child involved, the child's school or day-care facility, or any other place where the child is present and into all other nonfinancial matters that in the discretion of the investigator are relevant to the investigation. In conducting an investigation under this section, a social worker may not inquire into the financial status of the child's family or of any other person responsible for the child's care, except as necessary to ascertain eligibility for state or federal assistance programs or to comply with the provisions of 41-3-446.

(2) An initial investigation of alleged abuse or neglect may be conducted when an anonymous report is received. However, the investigation must within 48 hours result in the development of independent, corroborative, and attributable information in order for the investigation to continue. Without the development of independent, corroborative, and attributable information, a child may not be removed from the home.

(3) The social worker is responsible for assessing the family and planning for the child. If the child is treated at a medical facility, the social worker, county attorney, or peace officer, consistent with reasonable medical practice, has the right of access to the child for interviews, photographs, and securing physical evidence and has the right of access to relevant hospital and medical records pertaining to the child. If an interview of the child is considered necessary, the social worker, county attorney, or peace officer may conduct an interview of the child. The interview may be conducted in the presence of the parent or guardian or an employee of the school or day-care facility attended by the child.

(4) Subject to 41-3-205(3), if the child's interview is audiotaped or videotaped, an unedited audiotape or videotape with audio track must be made available, upon request, for unencumbered review by the family.

(5) (a) If from the investigation the department has reasonable cause to suspect that the child suffered abuse or neglect, the department may provide emergency protective services to the child, pursuant to 41-3-301, or voluntary protective services pursuant to 41-3-302, and may provide protective services to any other child under the same care. The department shall:

(i) after interviewing the parent or guardian, if reasonably available, document its determination regarding abuse or neglect of a child; and

(ii) notify the child's family of its investigation and determination, unless the notification can reasonably be expected to result in harm to the child or other person.

(b) If from the investigation it is determined that the child has not suffered abuse or neglect and the initial report is determined to be unfounded, the department and the social worker, county attorney, or peace officer who conducted the investigation into the circumstances surrounding the allegations of abuse or neglect shall destroy all of their records concerning the report and the investigation. The destruction must be completed within 30 days of the determination that the child has not suffered abuse or neglect.

(c) (i) If the report is unsubstantiated, the department and the social worker who conducted the investigation into the circumstances surrounding the initial allegations of abuse or neglect shall destroy all of the records, except for medical records, concerning the unsubstantiated report and the investigation within 30 days after the end of the 3-year period starting from the date the report was determined to be unsubstantiated, unless:

(A) there had been a previous or there is a subsequent substantiated report concerning the same person; or

(B) an order has been issued under this chapter based on the circumstances surrounding the initial allegations.

(ii) A person who is the subject of an unsubstantiated report that was made prior to October 1, 2003, and after which a period of 3 years has elapsed without there being submitted a subsequent substantiated report or an order issued under this chapter based on the circumstances surrounding the initial allegations may request that the department destroy all of the records concerning the unsubstantiated report as provided in subsection (5)(c)(i).

(6) The investigating social worker, within 60 days of commencing an investigation, shall also furnish a written report to the department and, upon request, to the family. Subject to subsections (5)(b) and (5)(c), the department shall maintain a record system documenting investigations and determinations of child abuse and neglect cases.

(7) Any person reporting abuse or neglect that involves acts or omissions on the part of a public or private residential institution, home, facility, or agency is responsible for ensuring that the report is made to the department.

(8) The department shall, upon request from any reporter of alleged child abuse or neglect, verify whether the report has been received, describe the level of response and timeframe for action that the department has assigned to the report, and confirm that it is being acted upon.

History: En. Sec. 3, Ch. 178, L. 1965; amd. Sec. 3, Ch. 292, L. 1973; Sec. 10-903, R.C.M. 1947; redes. 10-1305 by Sec. 14, Ch. 328, L. 1974; R.C.M. 1947, 10-1305; amd. Sec. 8, Ch. 543, L. 1979; amd. Sec. 3, Ch. 567, L. 1979; amd. Sec. 11, Ch. 609, L. 1987; amd. Sec. 1, Ch. 126, L. 1989; amd. Sec. 1, Ch. 329, L. 1993; amd. Sec. 1, Ch. 146, L. 1995; amd. Sec. 163, Ch. 546, L. 1995; amd. Sec. 3, Ch. 564, L. 1995; amd. Sec. 5, Ch. 514, L. 1997; amd. Sec. 3, Ch. 516, L. 1997; amd. Sec. 4, Ch. 566, L. 1999; amd. Sec. 5, Ch. 311, L. 2001; amd. Sec. 2, Ch. 406, L. 2003; amd. Sec. 2, Ch. 555, L. 2003; amd. Sec. 4, Ch. 382, L. 2005; amd. Sec. 1, Ch. 61, L. 2013.

41-3-203. Immunity from liability. (1) Anyone investigating or reporting any incident of child abuse or neglect under 41-3-201 or 41-3-202, participating in resulting judicial proceedings, or furnishing hospital or medical records as required by 41-3-202 is immune from any liability, civil or criminal, that might otherwise be incurred or imposed unless the person was grossly negligent or acted in bad faith or with malicious purpose or provided information knowing the information to be false.

(2) A person who provides information pursuant to 41-3-201 that is substantiated by the department or a person who uses information received pursuant to 41-3-205 that is substantiated by the department to refuse to hire or to discharge a prospective or current employee, volunteer, or other person who through employment or volunteer activities may have unsupervised contact with children is immune from civil liability unless the person acted in bad faith or with malicious purpose.

History: En. Sec. 4, Ch. 178, L. 1965; Sec. 10-904, R.C.M. 1947; redes. 10-1306 by Sec. 14, Ch. 328, L. 1974; R.C.M. 1947, 10-1306; amd. Sec. 9, Ch. 543, L. 1979; amd. Sec. 1, Ch. 181, L. 1993; amd. Sec. 9, Ch. 458, L. 1995; amd. Sec. 5, Ch. 566, L. 1999.

41-3-204. Admissibility and preservation of evidence. (1) In any proceeding resulting from a report made pursuant to the provisions of this chapter or in any proceeding for which the report or its contents are sought to be introduced into evidence, the report or its contents or any other fact related to the report or to the condition of the child who is the subject of the report may not be excluded on the ground that the matter is or may be the subject of a privilege related to the

examination or treatment of the child and granted in Title 26, chapter 1, part 8, except the attorney-client privilege granted by 26-1-803.

(2) A person or official required to report under 41-3-201 may take or cause to be taken photographs of the area of trauma visible on a child who is the subject of a report. The cost of photographs taken under this section must be paid by the department.

(3) When a person required to report under 41-3-201 finds visible evidence that a child has suffered abuse or neglect, the person shall include in the report either a written description or photographs of the evidence.

(4) A physician, either in the course of providing medical care to a minor or after consultation with child protective services, the county attorney, or a law enforcement officer, may require x-rays to be taken when, in the physician's professional opinion, there is a need for radiological evidence of suspected abuse or neglect. X-rays may be taken under this section without the permission of the parent or guardian. The cost of the x-rays ordered and taken under this section must be paid by the county child protective service agency.

(5) All written, photographic, or radiological evidence gathered under this section must be sent to the local affiliate of the department at the time that the written confirmation report is sent or as soon after the report is sent as is possible. If a confirmation report is not made, the evidence and the initial report must be destroyed as provided in 41-3-202.

History: En. Sec. 5, Ch. 178, L. 1965; Sec. 10-905, R.C.M. 1947; redes. 10-1307 by Sec. 14, Ch. 328, L. 1974; R.C.M. 1947, 10-1307; amd. Sec. 10, Ch. 543, L. 1979; amd. Sec. 38, Ch. 609, L. 1987; amd. Sec. 2, Ch. 146, L. 1995; amd. Sec. 189, Ch. 42, L. 1997; amd. Sec. 6, Ch. 514, L. 1997; amd. Sec. 4, Ch. 516, L. 1997.

41-3-205. Confidentiality -- disclosure exceptions. (1) The case records of the department and its local affiliate, the local office of public assistance, the county attorney, and the court concerning actions taken under this chapter and all records concerning reports of child abuse and neglect must be kept confidential except as provided by this section. Except as provided in subsections (8) and (9), a person who purposely or knowingly permits or encourages the unauthorized dissemination of the contents of case records is guilty of a misdemeanor.

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

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

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

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

(c) a health or mental health professional who is treating the family or child who is the subject

of a report in the records;

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

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

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

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

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

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

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

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

(l) the coroner or medical examiner when determining the cause of death of a child;

(m) a child fatality review team recognized by the department;

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

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

(p) the news media, a member of the United States congress, or a state legislator, if disclosure is limited to confirmation of factual information regarding how the case was handled and if disclosure does not violate the privacy rights of the child or the child's parent or guardian, as determined by the department;

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

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

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

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

(u) a foster care review committee established under 41-3-115 or, when applicable, a citizen

review board established under Title 41, chapter 3, part 10;

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

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

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

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

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

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

(i) the attorney general;

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

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

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

(b) The records described in subsection (3) must be promptly disclosed by the department to an appropriate individual described in subsection (4)(a) or to a county interdisciplinary child information and school safety team established pursuant to 52-2-211 upon the department's receipt of a report indicating that any of the following has occurred:

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

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

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

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

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

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

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

(8) A person who is authorized to receive records under this section shall maintain the confidentiality of the records and may not disclose information in the records to anyone other than the persons described in subsections (3)(a) and (4). However, this subsection may not be construed to compel a family member to keep the proceedings confidential.

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

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

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

History: En. 10-1308 by Sec. 4, Ch. 328, L. 1974; R.C.M. 1947, 10-1308; amd. Sec. 11, Ch. 543, L. 1979; amd. Sec. 1, Ch. 287, L. 1987; amd. Sec. 39, Ch. 609, L. 1987; amd. Sec. 1, Ch. 110, L. 1989; amd. Sec. 2, Ch. 126, L. 1989; amd. Sec. 2, Ch. 510, L. 1991; amd. Sec. 5, Ch. 655, L. 1991; amd. Sec. 15, Ch. 610, L. 1993; amd. Sec. 10, Ch. 458, L. 1995; amd. Sec. 164, Ch. 546, L. 1995; amd. Sec. 4, Ch. 564, L. 1995; amd. Sec. 7, Ch. 514, L. 1997; amd. Sec. 5, Ch. 550, L. 1997; amd. Sec. 6, Ch. 566, L. 1999; amd. Sec. 2, Ch. 281, L. 2001; amd. Sec. 6, Ch. 311, L. 2001; amd. Sec. 1, Ch. 570, L. 2001; amd. Sec. 45, Ch. 571, L. 2001; amd. Sec. 5, Ch. 504, L. 2003; amd. Sec. 2, Ch. 349, L. 2005; amd. Sec. 29, Ch. 449, L. 2005; amd. Sec. 4, Ch. 166, L. 2007; amd. Sec. 60, Ch. 2, L. 2009; amd. Sec. 2, Ch. 61, L. 2013; amd. Sec. 1, Ch. 332, L. 2013; amd. Sec. 8, Ch. 333, L. 2013; amd. Sec. 2, Ch. 337, L. 2013; amd. Sec. 5, Ch. 364, L. 2013; amd. Sec. 8, Ch. 354, L. 2015.

41-3-206. Procedure in case of child's death. (1) A person or official required to report by law who has reasonable cause to suspect that a child has died as a result of child abuse or neglect shall report the person's suspicion to the appropriate medical examiner or law enforcement officer. Any other person who has reasonable cause to suspect that a child has died as a result of child abuse or neglect may report the person's suspicion to the appropriate medical examiner or law enforcement officer.

(2) The medical examiner or coroner shall investigate the report and submit findings, in writing, to the local law enforcement agency, the appropriate county attorney, the local child protective service, the family of the deceased child, and, if the person making the report is a physician, the physician.

History: En. Sec. 7, Ch. 543, L. 1979; amd. Sec. 5, Ch. 564, L. 1995.

41-3-207. Penalty for failure to report. (1) Any person, official, or institution required by law to report known or suspected child abuse or neglect who fails to do so or who prevents another person from reasonably doing so is civilly liable for the damages proximately caused by such failure or prevention.

(2) Any person or official required by law to report known or suspected child abuse or neglect who purposely or knowingly fails to report known child abuse or neglect or purposely or knowingly prevents another person from doing so is guilty of a misdemeanor.

History: En. Sec. 15, Ch. 543, L. 1979; amd. Sec. 1, Ch. 367, L. 1985.

41-3-208. Rulemaking authority. (1) The department of public health and human services shall adopt rules to govern the procedures used by department personnel in preparing and processing reports and in making investigations authorized by this chapter.

(2) The department may adopt rules to govern the disclosure of case records containing

reports of child abuse and neglect.

(3) The department shall adopt a rule specifying the procedure to be used for the release and disclosure of records as provided in 41-3-205(4). In adopting the rule, the department shall collaborate with the attorney general, the office of the child and family ombudsman, and appropriate county attorneys, law enforcement agencies, and county interdisciplinary child information and school safety teams established pursuant to 52-2-211.

History: En. Sec. 1, Ch. 567, L. 1979; amd. Sec. 31, Ch. 465, L. 1983; amd. Sec. 2, Ch. 287, L. 1987; amd. Sec. 40, Ch. 609, L. 1987; amd. Sec. 7, Ch. 696, L. 1991; amd. Sec. 165, Ch. 546, L. 1995; amd. Sec. 2, Ch. 332, L. 2013; amd. Sec. 9, Ch. 354, L. 2015.

41-3-209. Reports to office of child and family ombudsman. The department shall report to the office of the child and family ombudsman:

- (1) within 1 business day, a death of a child who, within the last 12 months:
 - (a) had been the subject of a report of abuse or neglect;
 - (b) had been the subject of an investigation of alleged abuse or neglect;
 - (c) was in out-of-home care at the time of the child's death; or
 - (d) had received services from the department under a voluntary protective services agreement;
- (2) within 5 business days:
 - (a) any criminal act concerning the abuse or neglect of a child;
 - (b) any critical incident, including but not limited to elopement, a suicide attempt, rape, nonroutine hospitalizations, and neglect or abuse by a substitute care provider, involving a child who is receiving services from the department pursuant to this chapter; or
 - (c) a third report received within the last 12 months about a child at risk of or who is suspected of being abused or neglected.

History: En. Sec. 7, Ch. 354, L. 2015.

Part 3 - Protective Care

41-3-301. Emergency protective service. (1) Any child protective social worker of the department, a peace officer, or the county attorney who has reason to believe any child is in immediate or apparent danger of harm may immediately remove the child and place the child in a protective facility. After ensuring that the child is safe, the department may make a request for further assistance from the law enforcement agency or take appropriate legal action. The person or agency placing the child shall notify the parents, parent, guardian, or other person having physical or legal custody of the child of the placement at the time the placement is made or as soon after placement as possible. Notification under this subsection must include the reason for removal, information regarding the show cause hearing, and the purpose of the show cause hearing and must advise the parents, parent, guardian, or other person having physical or legal custody of the child that the parents, parent, guardian, or other person may have a support person present during any in-person meeting with the social worker concerning emergency protective services.

(2) If a social worker of the department, a peace officer, or the county attorney determines in an investigation of abuse or neglect of a child that the child is in danger because of

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

- (a) making reasonable efforts to protect the child and prevent the removal of the child from the parent or guardian who is a victim of alleged partner or family member assault;
- (b) making reasonable efforts to remove the person who allegedly committed the partner or family member assault from the child's residence if it is determined that the child or another family or household member is in danger of partner or family member assault; and
- (c) providing services to help protect the child from being placed with or having unsupervised visitation with the person alleged to have committed partner or family member assault until the department determines that the alleged offender has met conditions considered necessary to protect the safety of the child.

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

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

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

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

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

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

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

History: En. 10-1309 by Sec. 5, Ch. 328, L. 1974; amd. Sec. 19, Ch. 100, L. 1977; R.C.M. 1947, 10-1309; amd. Sec. 12, Ch. 543, L. 1979; amd. Sec. 1, Ch. 659, L. 1985; amd. Sec. 41, Ch. 609, L. 1987; amd. Sec. 166, Ch. 546, L. 1995; amd. Sec. 3, Ch. 281, L. 2001; amd. Sec. 2, Ch. 398, L. 2003; amd. Sec. 6, Ch. 504, L. 2003; amd. Sec. 3, Ch. 555, L. 2003; amd. Sec. 1, Ch. 422, L. 2005; amd. Sec. 1, Ch. 212, L. 2007; amd. Sec. 1, Ch. 11, L. 2011; amd. Sec. 3, Ch. 223, L. 2011.

41-3-302. Responsibility of providing protective services -- voluntary protective services agreement. (1) The department of public health and human services has the primary responsibility to provide the protective services authorized by this chapter and has the authority pursuant to this chapter to take temporary or permanent custody of a child when ordered to do so by the court, including the right to give consent to adoption.

(2) The department shall respond to emergency reports of known or suspected child abuse or neglect 24 hours a day, 7 days a week.

(3) (a) The department may provide voluntary protective services by entering into a written voluntary protective services agreement with a parent or other person responsible for a child's welfare for the purpose of keeping the child safely in the home.

(b) The department shall inform a parent or other person responsible for a child's welfare who is considering entering into a voluntary protective services agreement that the parent or other person may have another person of the parent's or responsible person's choice present whenever the terms of the voluntary protective services agreement are under discussion by the parent or other person responsible for the child's welfare and the department. Reasonable accommodations must be made regarding the time and place of meetings at which a voluntary protective services agreement is discussed.

(4) A voluntary protective services agreement may include provisions for:

(a) a family group decision making meeting and implementation of safety plans developed during the meeting;

(b) a professional evaluation and treatment of a parent or child, or both;

(c) a safety plan for the child;

(d) in-home services aimed at permitting the child to remain safely in the home;

(e) temporary relocation of a parent in order to permit the child to remain safely in the home;

(f) a 30-day temporary out-of-home protective placement; or

(g) any other terms or conditions agreed upon by the parties that would allow the child to remain safely in the home or allow the child to safely return to the home within the 30-day period, including referrals to other service providers.

(5) A voluntary protective services agreement is subject to termination by either party at any time. Termination of a voluntary protective services agreement does not preclude the department from filing a petition pursuant to 41-3-422 in any case in which the department determines that there is a risk of harm to a child.

(6) If a voluntary protective services agreement is terminated by a party to the agreement, a child who has been placed in a temporary out-of-home placement pursuant to the agreement must be returned to the parents within 2 working days of termination of the agreement unless an abuse and neglect petition is filed by the department.

History: En. 10-1315 by Sec. 11, Ch. 328, L. 1974; R.C.M. 1947, 10-1315; amd. Sec. 13, Ch. 543, L. 1979; amd. Sec. 4, Ch. 511, L. 1981; amd. Sec. 42, Ch. 609, L. 1987; amd. Sec. 167, Ch. 546, L. 1995; amd. Sec. 4, Ch. 555, L. 2003; amd. Sec. 54, Ch. 130, L. 2005.

41-3-304. Criminal background checks of adults residing in potential emergency placements authorized -- rulemaking. (1) (a) If a child is removed from the child's parental or custodial home for protective care pursuant to this part and an emergency placement is offered, the department or an authorized tribe may request, in accordance with the procedures set forth in 28 CFR 901.1 through 901.4, that each adult 18 years of age or older who is residing in a home

where the potential emergency placement is to be made consent to a preliminary state and federal name-based background check that must be followed within 15 calendar days from the date that the name-based background search was conducted with the submission of fingerprints to the state repository, as defined in 44-5-103, for a fingerprint-based background check conducted in accordance with subsection (2) of this section.

(b) If a name-based background check demonstrates that none of the adults residing in the home where the emergency placement is to be made has been convicted of a disqualifying criminal offense, the department or authorized tribe may place the child in the home pending the outcome of the fingerprint-based background check.

(c) If an adult refuses to consent to the department's or an authorized tribe's request for a name-based and fingerprint-based background check, the department or authorized tribe may not place the child in a home in which the adult resides, or if the child was already placed in the home, the department or authorized tribe shall immediately remove the child from the home.

(2) An adult who consents to a name-based and fingerprint-based background check pursuant to subsection (1) shall submit to the department or an authorized tribe a complete set of fingerprints and written permission authorizing the department or the authorized tribe to submit the fingerprints to the state repository for processing of the state and federal background check. Results of the name-based and fingerprint-based background check must be provided to the quality assurance division of the department of public health and human services or to an authorized tribe.

(3) If the department or an authorized tribe elects to perform an initial name-based background check and a fingerprint-based background check pursuant to this section, the department or the authorized tribe may not make an emergency placement or continue an emergency placement in a home in which an adult resident has been convicted of a disqualifying criminal offense.

(4) The state repository and the federal bureau of investigation may charge a reasonable fee for processing a fingerprint-based criminal background check.

(5) If an emergency placement is denied as a result of a name-based background check of a resident and the resident contests the denial, the resident may within 15 calendar days of the denial submit to the department or authorized tribe a complete set of fingerprints with written permission allowing the department or authorized tribe to submit the fingerprints to the state repository for processing of the state and federal background check.

(6) The department shall by rule designate those criminal offenses that constitute a disqualifying criminal offense under this section, which may include but are not limited to felony convictions for violent crimes, crimes involving children, family members, or the elderly or disabled, and crimes involving drugs in which the conviction occurred within a certain period of time.

(7) For the purposes of this section, the following definitions apply:

(a) "Authorized tribe" means the tribal child services unit and its approved designees responsible for overseeing foster care licensing for an Indian tribe located within the borders of Montana that has in place a valid tribal fingerprint program user agreement with the Montana department of justice.

(b) "Emergency placement" means an instance in which the department or an authorized tribe provides protective services and places a child in the home of private individuals, including but not limited to family, neighbors, or friends of the child.

History: En. Sec. 1, Ch. 267, L. 2013.

41-3-305. (Temporary) Child abuse court diversion pilot project. (1) There is a child abuse court diversion pilot project. The purpose of the pilot project is to use meetings facilitated by a court diversion officer to informally resolve cases, prior to the filing of an abuse and neglect petition under Title 41, chapter 3, part 4, in which the department has exercised emergency protective services pursuant to 41-3-301 and has removed a child from the custody of a parent, guardian, or other person having physical or legal custody of the child.

(2) (a) The office of the court administrator provided for in Title 3, chapter 1, part 7, shall administer the pilot project, including:

- (i) selecting three judicial districts in which to implement the pilot project;
- (ii) hiring court diversion officers to staff a pilot project in each of the selected judicial districts; and
- (iii) establishing and measuring performance benchmarks.

(b) The office of the court administrator shall report to the law and justice interim committee regarding the administration and performance of the pilot project.

(3) (a) (i) Within 2 working days of an emergency removal pursuant to 41-3-301 of a child from a parent, guardian, or other person having physical or legal custody of the child, the department and the parent, guardian, or other person having physical or legal custody of the child from whom the child was removed may, if the requirements of subsection (3)(a)(ii) are met, enter into a written agreement to participate in the pilot project for a period of not more than 6 months from the date of the emergency removal. Execution of the agreement suspends the requirements provided in 41-3-301(6) for a period of not more than 6 months. A party to the agreement may terminate the agreement at any time.

(ii) Before a person may enter into a written agreement to participate in the pilot project, the person must be informed in writing of the person's rights, including advisement on the person's rights if the person voluntarily participates in the pilot project or chooses not to participate in the pilot project, and shall sign and acknowledge that the person fully understands the person's rights and voluntarily agrees to participate in the pilot project.

(b) Within 15 working days of executing the agreement, the parties shall meet with the court diversion officer and the officer shall approve:

(i) an ongoing out-of-home placement of the child for a period of not more than 6 months from the date of the emergency removal; and

(ii) any other terms or conditions agreed to by the parties, including referrals to other service providers, that would allow the child to safely return to the home within the time period covered by the agreement.

(c) If an agreement approved by the court diversion officer under this subsection (3) is not successfully completed or if reunification of the child with the parent, guardian, or other person having physical or legal custody of the child will not occur before the agreement expires, the department shall terminate the agreement and initiate the process for filing a petition for child abuse and neglect under Title 41, chapter 3, part 4. The social worker shall submit an affidavit regarding the circumstances of the emergency removal and a copy of the agreement to the county attorney within 10 working days of the termination of the agreement.

(d) An audio recording must be made of each meeting that a court diversion officer has with the parties.

(4) A party involved in the pilot project does not have a right to counsel prior to the filing of

an abuse and neglect petition.

(5) A court may consider any services that are provided as part of the pilot project when making findings required under Title 41, chapter 3, parts 4 and 6. (*Terminates June 30, 2017-- sec. 7, Ch. 376, L. 2015.*)

History: En. Sec. 1, Ch. 376, L. 2015.

Part 4 - Abuse or Neglect Proceedings

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) a preponderance of the evidence for an order of long-term custody; or
(iv) clear and convincing evidence for an order terminating the parent-child legal relationship.

(b) If a proceeding under this chapter involves an Indian child, as defined in the federal Indian Child Welfare Act, 25 U.S.C. 1901, et seq., the standards of proof required for legal relief under the federal Indian Child Welfare Act apply.

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

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

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

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

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

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

(10) An abuse and neglect petition must:

- (a) state the nature of the alleged abuse or neglect and of the relief requested;
- (b) state the full name, age, and address of the child and the name and address of the child's parents or guardian or person having legal custody of the child;
- (c) state the names, addresses, and relationship to the child of all persons who are necessary parties to the action.

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

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

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

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

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

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

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

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

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

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

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

History: En. 10-1310 by Sec. 6, Ch. 328, L. 1974; amd. Sec. 20, Ch. 100, L. 1977; R.C.M. 1947, 10-1310; amd. Sec. 4, Ch. 567, L. 1979; amd. Sec. 5, Ch. 511, L. 1981; amd. Sec. 2, Ch. 659, L. 1985; amd. Sec. 2, Ch. 463, L. 1987; amd. Sec. 43, Ch. 609, L. 1987; amd. Sec. 2, Ch. 329, L. 1993; amd. Sec. 11, Ch. 458, L. 1995; amd. Sec. 168, Ch. 546, L. 1995; amd. Sec. 6, Ch. 516, L. 1997; amd. Sec. 1, Ch. 428, L. 1999; amd. Sec. 8, Ch. 566, L. 1999; amd. Sec. 4, Ch. 83, L. 2001; amd. Sec. 2, Ch. 194, L. 2001; amd. Secs. 4, 18(2), Ch. 281, L. 2001; amd. Sec. 7, Ch. 311, L. 2001; Sec. 41-3-401, MCA 1999; redes. 41-3-422 by Sec. 17(2), Ch. 281, L. 2001; amd. Sec. 1, Ch. 189, L. 2003; amd. Sec. 7, Ch. 504, L. 2003; amd. Sec. 1, Ch. 118, L. 2005; amd. Sec. 30, Ch. 449, L. 2005; amd. Sec. 5, Ch. 166, L. 2007.

41-3-423. Reasonable efforts required to prevent removal of child or to return -- exemption -- findings -- permanency plan. (1) The department shall make reasonable efforts to prevent the necessity of removal of a child from the child's home and to reunify families that have been separated by the state. Reasonable efforts include but are not limited to voluntary

protective services agreements, development of individual written case plans specifying state efforts to reunify families, placement in the least disruptive setting possible, provision of services pursuant to a case plan, and periodic review of each case to ensure timely progress toward reunification or permanent placement. In determining preservation or reunification services to be provided and in making reasonable efforts at providing preservation or reunification services, the child's health and safety are of paramount concern.

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

- (a) subjected a child to aggravated circumstances, including but not limited to abandonment, torture, chronic abuse, or sexual abuse or chronic, severe neglect of a child;
- (b) committed, aided, abetted, attempted, conspired, or solicited deliberate or mitigated deliberate homicide of a child;
- (c) committed aggravated assault against a child;
- (d) committed neglect of a child that resulted in serious bodily injury or death; or
- (e) had parental rights to the child's sibling or other child of the parent involuntarily terminated and the circumstances related to the termination of parental rights are relevant to the parent's ability to adequately care for the child at issue.

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

- (a) contribute to the support of the child for an aggregate period of 1 year, although able to do so;
- (b) establish a substantial relationship with the child. A substantial relationship is demonstrated by:
 - (i) visiting the child at least monthly when physically and financially able to do so; or
 - (ii) having regular contact with the child or with the person or agency having the care and custody of the child when physically and financially able to do so; and
 - (iii) manifesting an ability and willingness to assume legal and physical custody of the child if the child was not in the physical custody of the other parent.

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

- (i) adjudicated in Montana to be the father of the child for the purposes of child support;
- or
- (ii) recorded on the child's birth certificate as the child's father.

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

(5) If the court finds that preservation or reunification services are not necessary pursuant to subsection (2) or (3), a permanency hearing must be held within 30 days of that determination and reasonable efforts, including consideration of both in-state and out-of-state permanent placement options for the child, must be made to place the child in a timely manner in

accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

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

(7) When determining whether the department has made reasonable efforts to prevent the necessity of removal of a child from the child's home or to reunify families that have been separated by the state, the court shall review the services provided by the agency including, if applicable, protective services provided pursuant to 41-3-302.

History: En. 10-1311 by Sec. 7, Ch. 328, L. 1974; amd. Sec. 21, Ch. 100, L. 1977; R.C.M. 1947, 10-1311(4), (5); amd. Sec. 4, Ch. 659, L. 1985; amd. Sec. 11, Ch. 609, L. 1987; amd. Sec. 1, Ch. 696, L. 1991; amd. Sec. 1, Ch. 112, L. 1993; amd. Sec. 1, Ch. 362, L. 1993; amd. Sec. 13, Ch. 458, L. 1995; amd. Sec. 3, Ch. 501, L. 1997; amd. Sec. 7, Ch. 516, L. 1997; amd. Sec. 9, Ch. 566, L. 1999; amd. Sec. 5, Ch. 83, L. 2001; amd. Secs. 8, 18(3), Ch. 281, L. 2001; amd. Sec. 9, Ch. 311, L. 2001; Sec. 41-3-403, MCA 1999; redes. 41-3-423 by Sec. 17(2), Ch. 281, L. 2001; amd. Sec. 5, Ch. 555, L. 2003; amd. Sec. 31, Ch. 449, L. 2005; amd. Sec. 6, Ch. 166, L. 2007.

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

(1) a child who has been placed in foster care is reunited with the child's parents and returned home;

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

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

History: En. Sec. 6, Ch. 555, L. 2003.

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

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

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

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

(c) any party entitled to counsel at public expense under the federal Indian Child Welfare Act.

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

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

History: En. Sec. 15, Ch. 449, L. 2005; amd. Sec. 1, Ch. 511, L. 2007; amd. Sec. 1, Ch. 343, L. 2011; amd. Sec. 1, Ch. 29, L. 2013.

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

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

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

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

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

(2) Pursuant to subsection (1), if the court finds probable cause or, if the case is subject to the federal Indian Child Welfare Act, clear and convincing evidence based on the petition and affidavit, the court may issue an order for immediate protection of the child. The court shall

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

- (a) the right of entry by a peace officer or department worker;
- (b) the right to place the child in temporary medical or out-of-home care, including but not limited to care provided by a noncustodial parent, kinship or foster family, group home, or institution;
- (c) the right for the department to locate, contact, and share information with any extended family members who may be considered as placement options for the child;
- (d) a requirement that the parents, guardian, or other person having physical or legal custody furnish information that the court may designate and obtain evaluations that may be necessary to determine whether a child is a youth in need of care;
- (e) a requirement that the perpetrator of the alleged child abuse or neglect be removed from the home to allow the child to remain in the home;
- (f) a requirement that the parent provide the department with the name and address of the other parent, if known, unless parental rights to the child have been terminated;
- (g) a requirement that the parent provide the department with the names and addresses of extended family members who may be considered as placement options for the child who is the subject of the proceeding; and
- (h) any other temporary disposition that may be required in the best interests of the child that does not require an expenditure of money by the department unless the court finds after notice and a hearing that the expenditure is reasonable and that resources are available for payment. The department is the payor of last resort after all family, insurance, and other resources have been examined.

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

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

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

History: En. 10-1311 by Sec. 7, Ch. 328, L. 1974; amd. Sec. 21, Ch. 100, L. 1977; R.C.M. 1947, 10-1311(1) thru (3); amd. Sec. 3, Ch. 659, L. 1985; amd. Sec. 44, Ch. 609, L. 1987; amd. Sec. 12, Ch. 458, L. 1995; amd. Sec. 169, Ch. 546, L. 1995; amd. Sec. 2, Ch. 501, L. 1997; amd. Sec. 5, Ch. 281, L. 2001; amd. Sec. 8, Ch. 311, L. 2001; Sec. 41-3-402, MCA 1999; redes. 41-3-427 by Sec. 17(2), Ch. 281, L. 2001; amd. Sec. 8, Ch. 504, L. 2003; amd. Sec. 2, Ch. 422, L. 2005; amd. Sec. 2, Ch. 11, L. 2011; amd. Sec. 4, Ch. 223, L. 2011.

41-3-428. Service of process -- service by publication -- effect. (1) Except as otherwise provided in this chapter, service of process must be made as provided in the Montana Rules of Civil Procedure.

(2) If a person cannot be served personally or by certified mail, the person may be served

by publication as provided in 41-3-429. Publication constitutes conclusive evidence of service, and a hearing must then proceed at the time and date set, with or without the appearance of the person served by publication. At or after the hearing, the court may issue an order that will adjudicate the interests of the person served by publication.

(3) If a parent cannot be identified or found prior to the initial hearings allowed by part 4, the court may grant the following relief, pending service by publication on the parent who cannot be identified or found and based upon service of process on only the parent, guardian, or other person having legal custody of the child:

- (a) immediate protection;
- (b) temporary investigative authority; and
- (c) temporary legal custody.

History: En. Sec. 1, Ch. 83, L. 2001; amd. Sec. 2, Ch. 118, L. 2005.

41-3-429. Service by publication -- summons -- form. (1) Before service by publication is authorized in a proceeding under this chapter, the department shall file with the court an affidavit stating that, after due diligence, the person cannot be identified or found and stating the diligent efforts made to identify, locate, and serve the person. The affidavit is sufficient evidence of the diligence of any inquiry made by the department. The affidavit may be combined with any other affidavit filed by the department. Upon complying with this subsection, the department may obtain an order for the service to be made upon the party by publication. The order may be issued by either the judge or the clerk of the court.

(2) Service by publication must be made by publishing notice three times, once each week for 3 successive weeks:

(a) in a newspaper in a community in which the publication can reasonably be calculated to be seen by the person, based upon the last-known address or whereabouts, if known, of the person if in the state of Montana; or

(b) if no last-known address exists, if the last-known address is outside Montana, or if the identity of the person is unknown, in a newspaper in the county in which the action is pending, if a newspaper is published in the county, and, if a newspaper is not published in the county, in a newspaper published in an adjoining county and having a general circulation in the county.

(3) Service by publication is complete on the date of the last publication required by subsection (2).

(4) A summons required under this chapter must:

(a) be directed to the parent, legal guardian, other person having legal custody of the child, or any other person who is required to be served; and

(b) be signed by the clerk of court, be under the seal of the court, and contain:

(i) the name of the court and the cause number;

(ii) the initials of the child who is the subject of the proceedings;

(iii) the name of the child's parents, if known;

(iv) the time within which an interested person shall appear;

(v) the department's address;

(vi) a statement in general terms of the nature of the proceedings, including the date and place of birth of the child, the date and place of the hearing, and the phone number of the clerk of the court in which the hearing is scheduled; and

(vii) notification apprising the person served by publication that failure to appear at the

hearing will constitute a denial of interest in the child, which denial may result, without further notice of this proceeding or any subsequent proceeding, in judgment by default being entered for the relief requested in the petition.

History: En. Sec. 2, Ch. 83, L. 2001; amd. Sec. 3, Ch. 118, L. 2005.

41-3-430. Putative fathers -- service by publication -- continuation of proceedings.

(1) Reasonable efforts must be made to resolve issues of paternity, if any, as early as possible in proceedings under this chapter. The department shall make every reasonable effort to obtain service of process of a petition on a putative father, as defined in 42-2-201.

(2) If a putative father cannot be served personally, the putative father may be served by publication as provided in 41-3-428 and 41-3-429.

(3) Regardless of the provisions of subsections (1) and (2), if a putative father cannot be identified or found prior to the initial hearings allowed by part 4, the court may grant the following relief, pending service by publication on the putative father and based upon service of process on only the parent, guardian, or other person having legal custody of the child:

- (a) immediate protection;
- (b) temporary investigative authority; and
- (c) temporary legal custody.

(4) Throughout the proceedings, the court, in its discretion, may order the department to continue to attempt to identify, locate, and serve a putative father.

(5) A court may order termination of the parental rights of a putative father under this chapter based on service by publication if the provisions of 41-3-428 and 41-3-429 have been met.

History: En. Sec. 3, Ch. 83, L. 2001.

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

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

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

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

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

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

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

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

- (a) whether the child should be returned home immediately if there has been an emergency removal or remain in temporary out-of-home care or be removed from the home;
- (b) if removal is ordered or continuation of removal is ordered, why continuation of the child in the home would be contrary to the child's best interests and welfare;
- (c) whether the department has made reasonable efforts to avoid protective placement of the child or to make it possible to safely return the child to the child's home;

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

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

(6) The court may consider:

- (a) terms and conditions for parental visitation; and
- (b) whether orders for examinations, evaluations, counseling, immediate services, or protection are needed.

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

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

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

History: En. Sec. 6, Ch. 281, L. 2001; amd. Sec. 2, Ch. 189, L. 2003; amd. Sec. 9, Ch. 504, L. 2003; amd. Sec. 3, Ch. 349, L. 2005; amd. Sec. 32, Ch. 449, L. 2005; amd. Sec. 7, Ch. 166, L. 2007; amd. Sec. 5, Ch. 223, L. 2011.

41-3-433. Temporary investigative authority. The department may petition the court for authorization to conduct an investigation into allegations of child abuse, neglect, or abandonment when necessary. An order for temporary investigative authority may not be issued for a period longer than 90 days. The petition must be served as provided in 41-3-422.

History: En. Sec. 7, Ch. 281, L. 2001.

41-3-434. Stipulations. Subject to approval by the court, the parties may stipulate to any of the following:

- (1) the child meets the definition of a youth in need of care by the preponderance of the evidence;
- (2) a treatment plan, if the child has been adjudicated a youth in need of care;
- (3) the disposition; or
- (4) extension of the timeframes contained in this chapter, except for the timeframe contained in 41-3-445.

History: En. Sec. 14, Ch. 281, L. 2001; en. Sec. 32, Ch. 311, L. 2001; amd. Sec. 10, Ch. 504, L. 2003.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) The court may order:

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

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

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

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

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

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

History: En. 10-1312 by Sec. 8, Ch. 328, L. 1974; R.C.M. 1947, 10-1312; amd. Sec. 19, Ch. 543, L. 1979; amd. Sec. 5, Ch. 567, L. 1979; amd. Sec. 5, Ch. 659, L. 1985; amd. Sec. 14, Ch. 458, L. 1995; amd. Sec. 8, Ch. 516, L. 1997; amd. Sec. 3, Ch. 481, L. 1999; amd. Sec. 10, Ch. 566, L. 1999; amd. Sec. 3, Ch. 194, L. 2001; amd. Sec. 9, Ch. 281, L. 2001; amd. Sec. 10, Ch. 311, L. 2001; Sec. 41-3-404, MCA 1999; redes. 41-3-437 by Sec. 17(2), Ch. 281, L. 2001; amd. Sec. 11, Ch. 504, L. 2003; amd. Sec. 55, Ch. 130, L. 2005; amd. Sec. 4, Ch. 349, L. 2005; amd. Sec. 4, Ch. 210, L. 2009.

41-3-438. Disposition -- hearing -- order. (1) Unless a petition is dismissed or unless otherwise stipulated by the parties pursuant to 41-3-434 or ordered by the court, a dispositional hearing must be held on every petition filed under this chapter within 20 days after an adjudicatory order has been entered under 41-3-437. Exceptions to the time limit may be allowed only in cases involving newly discovered evidence, unavoidable delays, stipulation by the parties pursuant to 41-3-434, and unforeseen personal emergencies.

(2) (a) A dispositional order must be made after a dispositional hearing that is separate from the adjudicatory hearing under 41-3-437. The hearing process must be scheduled and structured so that dispositional issues are specifically addressed apart from adjudicatory issues. Hearsay evidence is admissible at the dispositional hearing.

(b) A dispositional hearing may follow an adjudicatory hearing in a bifurcated manner immediately after the adjudicatory phase of the proceedings if:

(i) all required reports are available and have been received by all parties or their attorneys at least 5 working days in advance of the hearing; and

(ii) the judge has an opportunity to review the reports after the adjudication.

(c) The dispositional hearing may be held prior to the entry of written findings required by 41-3-437.

(3) If a child is found to be a youth in need of care under 41-3-437, the court may enter its judgment, making any of the following dispositions to protect the welfare of the child:

(a) permit the child to remain with the child's custodial parent or guardian, subject to those conditions and limitations the court may prescribe;

(b) order the department to evaluate the noncustodial parent as a possible caretaker;

(c) order the temporary placement of the child with the noncustodial parent, superseding any existing custodial order, and keep the proceeding open pending completion by the custodial parent of any treatment plan ordered pursuant to 41-3-443;

(d) order the placement of the child with the noncustodial parent, superseding any existing custodial order, and dismiss the proceeding with no further obligation on the part of the department to provide services to the parent with whom the child is placed or to work toward reunification of the child with the parent or guardian from whom the child was removed in the initial proceeding;

(e) grant an order of limited emancipation to a child who is 16 years of age or older, as provided in 41-1-503;

(f) transfer temporary legal custody to any of the following:

(i) the department;

(ii) a licensed child-placing agency that is willing and able to assume responsibility for the education, care, and maintenance of the child and that is licensed or otherwise authorized by law to receive and provide care of the child; or

(iii) a nonparent relative or other individual who has been evaluated and recommended by the department or a licensed child-placing agency designated by the court and who is found by the court to be qualified to receive and care for the child;

(g) order a party to the action to do what is necessary to give effect to the final disposition, including undertaking medical and psychological evaluations, treatment, and counseling that does not require an expenditure of money by the department unless the department consents and informs the court that resources are available for payment. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(h) order further care and treatment as the court considers in the best interests of the child that does not require an expenditure of money by the department unless the department consents and informs the court that resources are available for the proposed care and treatment. The department is the payor of last resort after all family, insurance, and other resources have been examined pursuant to 41-3-446.

(4) (a) If the court awards temporary legal custody of an abandoned child other than to the department or to a noncustodial parent, the court shall award temporary legal custody of the child to a member of the child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, if:

(i) placement of the abandoned child with the extended family member is in the best interests of the child;

(ii) the extended family member requests that the child be placed with the family member;

(iii) the extended family member is able to offer continuity of care for the child by providing permanency or stability in residence, schooling, and activities outside of the home; and

(iv) the extended family member is found by the court to be qualified to receive and care for the child.

(b) If more than one extended family member satisfies the requirements of subsection (4)(a), the court may award custody to the extended family member who can best meet the child's needs.

(c) If a member of the child's extended family, including an adult sibling, grandparent, great-grandparent, aunt, or uncle, has requested that custody be awarded to that family member, the department shall investigate and determine if awarding custody to the family member is in the best interests of the child. The department shall provide the reasons for any denial to the court. If the court accepts the department's custody recommendation, the court shall inform any denied family member of the reasons for the denial to the extent that confidentiality laws allow. The court shall include the reasons for denial in the court order if the family member who is denied temporary legal custody requests it to be included.

(5) If reasonable efforts have been made to prevent removal of a child from the home or to return a child to the child's home but continuation of the efforts is determined by the court to be inconsistent with permanency for the child, the department shall make reasonable efforts to place the child in a timely manner in accordance with a permanent plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

(6) If the court finds that reasonable efforts are not necessary pursuant to 41-3-442(1) or

subsection (5) of this section, a permanency hearing must be held within 30 days of that determination and reasonable efforts must be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

(7) If the time limitations of this section are not met, the court shall review the reasons for the failure and order an appropriate remedy that considers the best interests of the child.

History: En. 10-1314 by Sec. 10, Ch. 328, L. 1974; R.C.M. 1947, 10-1314; amd. Sec. 7, Ch. 567, L. 1979; amd. Sec. 170, Ch. 575, L. 1981; amd. Sec. 3, Ch. 564, L. 1983; amd. Sec. 6, Ch. 659, L. 1985; amd. Sec. 11, Ch. 609, L. 1987; amd. Sec. 2, Ch. 696, L. 1991; amd. Sec. 2, Ch. 362, L. 1993; amd. Sec. 15, Ch. 458, L. 1995; amd. Sec. 170, Ch. 546, L. 1995; amd. Sec. 9, Ch. 516, L. 1997; amd. Sec. 2, Ch. 428, L. 1999; amd. Sec. 11, Ch. 566, L. 1999; amd. Sec. 4, Ch. 194, L. 2001; amd. Secs. 10, 18(3), Ch. 281, L. 2001; amd. Sec. 11, Ch. 311, L. 2001; Sec. 41-3-406, MCA 1999; redes. 41-3-438 by Sec. 17(2), Ch. 281, L. 2001; amd. Sec. 12, Ch. 504, L. 2003; amd. Sec. 1, Ch. 178, L. 2005; amd. Sec. 5, Ch. 382, L. 2005; amd. Sec. 1, Ch. 73, L. 2007; amd. Sec. 6, Ch. 179, L. 2009; amd. Sec. 5, Ch. 210, L. 2009.

41-3-439. Department to give placement priority to extended family member of abandoned child. (1) If the department has received temporary legal custody of an abandoned child pursuant to 41-3-438 or permanent legal custody pursuant to 41-3-607, the department shall give priority to a member of the child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, in determining the person or persons with whom the abandoned child should be placed if:

(a) placement with the extended family member is in the best interests of the abandoned child;

(b) the extended family member has requested that the abandoned child be placed with the family member;

(c) the extended family member is able to offer the child continuity of care by providing permanency or stability in residence, schooling, and activities outside of the home; and

(d) the department has determined that the extended family member is qualified to receive and care for the abandoned child.

(2) If more than one extended family member of the abandoned child has requested that the child be placed with the family member and all are qualified to receive and care for the child, the department may determine which extended family member to place the abandoned child with in the same manner as provided for in 41-3-438(4).

(3) This part does not affect the department's ability to assess the appropriateness of placement of the child with a noncustodial parent when abandonment has been found against only one parent.

(4) If a member of the child's extended family, including an adult sibling, grandparent, great-grandparent, aunt, or uncle, has requested that the child be placed with that family member and the department denies the request, the department shall give that family member a written statement of the reasons for the denial to the extent that confidentiality laws allow.

History: En. Sec. 6, Ch. 194, L. 2001; amd. Sec. 80, Ch. 114, L. 2003; amd. Sec. 2, Ch. 178, L. 2005; amd. Sec. 6, Ch. 210, L. 2009.

41-3-440. Limitation on placement. Except as provided in 41-3-301(1) and in the absence of a dispute between the parties to the action regarding the appropriate placement, the

department shall determine the appropriate placement for a child alleged to be or adjudicated as a youth in need of care. The court shall settle any dispute between the parties to an action regarding the appropriate placement. The child may not be placed in a youth assessment center, youth detention facility, detention center, or other facility intended or used for the confinement of adults or youth accused or convicted of criminal offenses.

History: En. Sec. 30, Ch. 311, L. 2001.

41-3-442. Temporary legal custody. (1) If a child is found to be a youth in need of care under 41-3-437, the court may grant temporary legal custody under 41-3-438 if the court determines by a preponderance of the evidence that:

(a) dismissing the petition would create a substantial risk of harm to the child or would be a detriment to the child's physical or psychological well-being; and

(b) unless there is a finding that reasonable efforts are not required pursuant to 41-3-423, reasonable services have been provided to the parent or guardian to prevent the removal of the child from the home or to make it possible for the child to safely return home.

(2) An order for temporary legal custody may be in effect for no longer than 6 months.

(3) The granting of temporary legal custody to the department allows the department to place a child in care provided by a custodial or noncustodial parent, kinship foster home, youth foster home, youth group home, youth shelter care facility, or institution.

(4) Before the expiration of the order for temporary legal custody, the county attorney, the attorney general, or an attorney hired by the county shall petition for one of the following:

(a) an extension of temporary legal custody, not to exceed 6 months, upon a showing that:

(i) additional time is necessary for the parent or guardian to successfully complete a treatment plan; or

(ii) continuation of temporary legal custody is necessary because of the child's individual circumstances;

(b) continued temporary placement of the child with the noncustodial parent, superseding any existing custodial order;

(c) termination of the parent-child legal relationship and:

(i) permanent legal custody with the right of adoption;

(ii) permanent placement of the child with the noncustodial parent, superseding any existing custodial order; or

(iii) appointment of a guardian pursuant to 41-3-607;

(d) long-term custody when the child is in a planned permanent living arrangement pursuant to 41-3-445;

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

(f) dismissal.

(5) The court may continue an order for temporary legal custody pending a hearing on a petition provided for in subsection (2).

(6) If an extension of temporary legal custody is granted to the department, the court shall state the reasons why the child was not returned home and the conditions upon which the child may be returned home and shall specifically find that an extension is in the child's best interests.

(7) If the time limitations of this section are not met, the court shall review the reasons for the failure and order an appropriate remedy that considers the best interests of the child.

(8) In implementing the policy of this section, the child's health and safety are of paramount concern.

(9) A petition requesting temporary legal custody must be served as provided in 41-3-422.

History: En. Sec. 11, Ch. 281, L. 2001; amd. Sec. 13, Ch. 504, L. 2003; amd. Sec. 2, Ch. 73, L. 2007.

41-3-443. Treatment plan -- contents -- changes. (1) The court may order a treatment plan if:

- (a) the parent or parents admit the allegations of an abuse and neglect petition;
- (b) the parent or parents stipulate to the allegations of abuse or neglect pursuant to 41-3-434; or
- (c) the court has made an adjudication under 41-3-437 that the child is a youth in need of care.

(2) Every treatment plan must contain the following information:

(a) the identification of the problems or conditions that resulted in the abuse or neglect of a child;

(b) the treatment goals and objectives for each condition or requirement established in the plan. If the child has been removed from the home, the treatment plan must include but is not limited to the conditions or requirements that must be established for the safe return of the child to the family.

(c) the projected time necessary to complete each of the treatment objectives;

(d) the specific treatment objectives that clearly identify the separate roles and responsibilities of all parties addressed in the treatment plan; and

(e) the signature of the parent or parents or guardian, unless the plan is ordered by the court.

(3) A treatment plan may include but is not limited to any of the following remedies, requirements, or conditions:

(a) the right of entry into the child's home for the purpose of assessing compliance with the terms and conditions of a treatment plan;

(b) the requirement of either the child or the child's parent or guardian to obtain medical or psychiatric diagnosis and treatment through a physician or psychiatrist licensed in the state of Montana;

(c) the requirement of either the child or the child's parent or guardian to obtain psychological treatment or counseling;

(d) the requirement of either the child or the child's parent or guardian to obtain and follow through with alcohol or substance abuse evaluation and counseling, if necessary;

(e) the requirement that either the child or the child's parent or guardian be restricted from associating with or contacting any individual who may be the subject of a department investigation;

(f) the requirement that the child be placed in temporary medical or out-of-home care;

(g) the requirement that the parent, guardian, or other person having physical or legal custody furnish services that the court may designate.

(4) A treatment plan may not be altered, amended, continued, or terminated without the approval of the parent or parents or guardian pursuant to a stipulation and order or order of the court.

- (5) A treatment plan must contain a notice provision advising parents:
- (a) of timelines for hearings and determinations required under this chapter;
 - (b) that the state is required by federal and state laws to hold a permanency hearing to determine the permanent placement of a child no later than 12 months after a judge determines that the child has been abused or neglected or 12 months after the first 60 days that the child has been removed from the child's home;
 - (c) that if a child has been in foster care for 15 of the last 22 months, state law presumes that termination of parental rights is in the best interests of the child and the state is required to file a petition to terminate parental rights; and
 - (d) that completion of a treatment plan does not guarantee the return of a child and that completion of the plan without a change in behavior that caused removal in the first instance may result in termination of parental rights.

History: En. Sec. 15, Ch. 566, L. 1999; amd. Sec. 13, Ch. 281, L. 2001; amd. Sec. 15, Ch. 311, L. 2001; Sec. 41-3-420, MCA 1999; redes. 41-3-443 by Sec. 17(2), Ch. 281, L. 2001; amd. Sec. 6, Ch. 382, L. 2005.

41-3-444. Abuse and neglect proceedings -- appointment of guardian -- financial subsidies. (1) The court may, upon the petition of the department or guardian ad litem, enter an order appointing a guardian for a child who has been placed in the temporary or permanent custody of the department pursuant to 41-3-438, 41-3-445, or 41-3-607. The guardianship may be subsidized by the department under subsection (9) if the guardianship meets the department's criteria, or the guardianship may be nonsubsidized.

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

- (a) the department has given its written consent to the appointment of the guardian, whether the guardianship is to be subsidized or not;
- (b) if the guardianship is to be subsidized, the department has given its written consent after the department has considered initiating or continuing financial subsidies pursuant to subsection (9);
- (c) the child has been adjudicated a youth in need of care;
- (d) the department has made reasonable efforts to reunite the parent and child, further efforts to reunite the parent and child by the department would likely be unproductive, and reunification of the parent and child would be contrary to the best interests of the child;
- (e) the child has lived with the potential guardian in a family setting and the potential guardian is committed to providing a long-term relationship with the child;
- (f) it is in the best interests of the child to remain or be placed with the potential guardian;
- (g) either termination of parental rights to the child is not in the child's best interests or parental rights to the child have been terminated, but adoption is not in the child's best interests; and
- (h) if the child concerning whom the petition for guardianship has been filed is an Indian child, as defined in the Indian Child Welfare Act, 25 U.S.C. 1901, et seq., the child's tribe has received notification from the state of the initiation of the proceedings.

(3) In the case of an abandoned child, the court may give priority to a member of the abandoned child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, if placement with the extended family member is in the best interests of the

child. If more than one extended family member has requested to be appointed as guardian, the court may determine which extended family member to appoint in the same manner provided for in 41-3-438(4).

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

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

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

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

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

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

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

History: En. Sec. 4, Ch. 428, L. 1999; amd. Sec. 5, Ch. 194, L. 2001; amd. Sec. 15, Ch. 281, L. 2001; Sec. 41-3-421, MCA 1999; redes. 41-3-444 by Sec. 17(2), Ch. 281, L. 2001.

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

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

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

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

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

(c) The permanency hearing may be combined with a hearing that is required in other sections of this part or with a review held pursuant to 41-3-115 or 41-3-1010 if held within the

applicable time limits. If a permanency hearing is combined with another hearing or a review, the requirements of the court related to the disposition of the other hearing or review must be met in addition to the requirements of this section.

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

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

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

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

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

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

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

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

(a) whether the permanency plan is in the best interests of the child;
(b) whether the department has made reasonable efforts to finalize the plan; and
(c) other necessary steps that the department is required to take to effectuate the terms of the plan.

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

resources have been examined.

(8) Permanency options include:

(a) reunification of the child with the child's parent or guardian;
(b) permanent placement of the child with the noncustodial parent, superseding any existing custodial order;
(c) adoption;
(d) appointment of a guardian pursuant to 41-3-444; or
(e) long-term custody if the child is in a planned permanent living arrangement and if it is established by a preponderance of the evidence, which is reflected in specific findings by the court, that:

(i) the child is being cared for by a fit and willing relative;
(ii) the child has an emotional or mental handicap that is so severe that the child cannot function in a family setting and the best interests of the child are served by placement in a residential or group setting;
(iii) the child is at least 16 years of age and is participating in an independent living program and that termination of parental rights is not in the best interests of the child;
(iv) the child's parent is incarcerated and circumstances, including placement of the child and continued, frequent contact with the parent, indicate that it would not be in the best interests of the child to terminate parental rights of that parent; or
(v) the child meets the following criteria:
(A) the child has been adjudicated a youth in need of care;
(B) the department has made reasonable efforts to reunite the parent and child, further efforts by the department would likely be unproductive, and reunification of the child with the parent or guardian would be contrary to the best interests of the child;
(C) there is a judicial finding that other more permanent placement options for the child have been considered and found to be inappropriate or not to be in the best interests of the child; and
(D) the child has been in a placement in which the foster parent or relative has committed to the long-term care and to a relationship with the child, and it is in the best interests of the child to remain in that placement.

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

History: En. Sec. 11, Ch. 516, L. 1997; amd. Sec. 3, Ch. 428, L. 1999; amd. Sec. 12, Ch. 566, L. 1999; amd. Sec. 12, Ch. 281, L. 2001; amd. Sec. 13, Ch. 311, L. 2001; Sec. 41-3-412, MCA 1999; redes. 41-3-445 by Sec. 17(2), Ch. 281, L. 2001; amd. Sec. 14, Ch. 504, L. 2003; amd. Sec. 56, Ch. 130, L. 2005; amd. Sec. 3, Ch. 178, L. 2005; amd. Sec. 7, Ch. 382, L. 2005; amd. Sec. 3, Ch. 73, L. 2007; amd. Sec. 8, Ch. 166, L. 2007.

41-3-446. Contributions by parents or guardians for youth's care. (1) If physical or legal custody of the youth is transferred to the department, the court shall examine the financial ability of the youth's parents or guardians to pay a contribution covering all or part of the costs for the care, custody, and treatment of the youth, including the costs of necessary medical, dental, and other health care.

(2) If the court determines that the youth's parents or guardians are financially able to pay a contribution as provided in subsection (1), the court shall order the youth's parent or

guardian to pay an amount based on the uniform child support guidelines adopted by the department of public health and human services pursuant to 40-5-209.

(3) (a) Except as provided in subsection (3)(b), contributions ordered under this section and each modification of an existing order are enforceable by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 4. An order for a contribution that is inconsistent with this section is nevertheless subject to withholding for the payment of the contribution without need for an amendment of the support order or for any further action by the court.

(b) A court-ordered exception from contributions under this section must be in writing and must be included in the order. An exception from the immediate income-withholding requirement may be granted if the court finds that there is:

(i) good cause not to require immediate income withholding; or

(ii) an alternative arrangement between the department and the person who is ordered to pay contributions.

(c) A finding of good cause not to require immediate income withholding must, at a minimum, be based upon:

(i) a written determination and explanation by the court of the reasons why the implementation of immediate income withholding is not in the best interests of the child; and

(ii) proof of timely payment of previously ordered support in cases involving modification of contributions ordered under this section.

(d) An alternative arrangement must:

(i) provide sufficient security to ensure compliance with the arrangement;

(ii) be in writing and be signed by a representative of the department and the person required to make contributions; and

(iii) if approved by the court, be entered into the record of the proceeding.

(4) Upon a showing of a change in the financial ability of the youth's parent or guardian to pay, the court may modify its order for the payment of contributions required under subsection (2).

(5) (a) If the court orders the payment of contributions under this section, the department shall apply to the department of public health and human services for support enforcement services pursuant to Title IV-D of the Social Security Act.

(b) The department of public health and human services may collect and enforce a contribution order under this section by any means available under law, including the remedies provided for in Title 40, chapter 5, parts 2 and 4.

History: En. Sec. 10, Ch. 516, L. 1997; amd. Sec. 12, Ch. 311, L. 2001; Sec. 41-3-411, MCA 1999; redes. 41-3-446 by Sec. 17(2), Ch. 281, L. 2001.

Part 6 -Parent-Child Legal Relationship Termination

41-3-601. Short title. This part may be cited as the "Parent-Child Legal Relationship Termination Act of 1981".

History: En. Sec. 1, Ch. 420, L. 1981.

41-3-602. Purpose. This part provides procedures and criteria by which the parent-child legal relationship may be terminated by a court if the relationship is not in the best interest of the child. The termination of the parent-child legal relationship provided for in this part is to be used

in those situations when there is a determination that a child is abused or neglected, as defined in 41-3-102.

History: En. Sec. 2, Ch. 420, L. 1981; amd. Sec. 17, Ch. 458, L. 1995.

41-3-604. When petition to terminate parental rights required. (1) If a child has been in foster care under the physical custody of the state for 15 months of the most recent 22 months, the best interests of the child must be presumed to be served by termination of parental rights. If a child has been in foster care for 15 months of the most recent 22 months or if the court has found that reasonable efforts to preserve or reunify a child with the child's parent or guardian are not required pursuant to 41-3-423, a petition to terminate parental rights must be filed unless:

- (a) the child is being cared for by a relative;
- (b) the department has not provided the services considered necessary for the safe return of the child to the child's home; or
- (c) the department has documented a compelling reason, available for court review, for determining that filing a petition to terminate parental rights would not be in the best interests of the child.

(2) Compelling reasons for not filing a petition to terminate parental rights include but are not limited to the following:

- (a) There are insufficient grounds for filing a petition.
- (b) There is adequate documentation that termination of parental rights is not the appropriate plan and not in the best interests of the child.

(3) If a child has been in foster care for 15 months of the most recent 22 months and a petition to terminate parental rights regarding that child has not been filed with the court, the department shall file a report to the court or review panel at least 3 days prior to the next hearing or review detailing the reasons that the petition was not filed.

(4) If a hearing results in a finding of abandonment or that the parent has subjected the child to any of the circumstances listed in 41-3-423(2)(a) through (2)(e) and that reasonable efforts to provide preservation or reunification are not necessary, unless there is an exception made pursuant to subsections (1)(a) through (1)(c) of this section, a petition to terminate parental rights must be filed within 60 days of the finding.

(5) If an exception in subsections (1)(a) through (1)(c) of this section applies, a petition for an extension of temporary legal custody pursuant to 41-3-438, a petition for long-term custody pursuant to 41-3-445, or a petition to dismiss must be filed.

History: En. Sec. 14, Ch. 566, L. 1999; amd. Sec. 16, Ch. 311, L. 2001; amd. Sec. 15, Ch. 504, L. 2003.

41-3-607. Petition for termination -- separate hearing -- no jury trial. (1) The termination of a parent-child legal relationship may be considered only after the filing of a petition pursuant to 41-3-422 alleging the factual grounds for termination pursuant to 41-3-609.

- (2) If termination of a parent-child legal relationship is ordered, the court may:
 - (a) transfer permanent legal custody of the child, with the right to consent to the child's adoption, to:
 - (i) the department;
 - (ii) a licensed child-placing agency; or

(iii) another individual who has been approved by the department and has received consent for the transfer of custody from the department or agency that has custody of the child; or

(b) transfer permanent legal custody of the child to the department with the right to petition for appointment of a guardian pursuant to 41-3-444.

(3) If the court does not order termination of the parent-child legal relationship, the child's prior legal status remains in effect until further order of the court.

(4) A guardian ad litem must be appointed to represent the child's best interests in any hearing determining the involuntary termination of the parent-child legal relationship. The guardian ad litem shall continue to represent the child until the child is returned home or placed in an appropriate permanent placement. If a respondent parent is a minor, a guardian ad litem must be appointed to serve the minor parent in addition to any appointed or assigned counsel requested by the minor parent.

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

History: En. Sec. 4, Ch. 420, L. 1981; amd. Sec. 2, Ch. 388, L. 1985; amd. Sec. 19, Ch. 458, L. 1995; amd. Sec. 12, Ch. 516, L. 1997; amd. Sec. 5, Ch. 428, L. 1999; amd. Sec. 16, Ch. 566, L. 1999; amd. Sec. 16, Ch. 504, L. 2003; amd. Sec. 33, Ch. 449, L. 2005.

41-3-608. Notice. Before a termination of the parent-child legal relationship may be ordered, the court shall determine whether the provisions of 41-3-428 and 41-3-429 relating to service of process have been followed.

History: En. Sec. 5, Ch. 420, L. 1981; amd. Sec. 6, Ch. 83, L. 2001.

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

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

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

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

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

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

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

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

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

(2) In determining whether the conduct or condition of the parents is unlikely to change within a reasonable time, the court shall enter a finding that continuation of the parent-child legal relationship will likely result in continued abuse or neglect or that the conduct or the condition of the parents renders the parents unfit, unable, or unwilling to give the child adequate parental

care. In making the determinations, the court shall consider but is not limited to the following:

- (a) emotional illness, mental illness, or mental deficiency of the parent of a duration or nature as to render the parent unlikely to care for the ongoing physical, mental, and emotional needs of the child within a reasonable time;
- (b) a history of violent behavior by the parent;
- (c) excessive use of intoxicating liquor or of a narcotic or dangerous drug that affects the parent's ability to care and provide for the child; and
- (d) present judicially ordered long-term confinement of the parent.

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

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

- (a) the parent meets the criteria of subsections (1)(a) through (1)(e);
- (b) two medical doctors or clinical psychologists submit testimony that the parent cannot assume the role of parent within a reasonable time;
- (c) the parent is or will be incarcerated for more than 1 year and reunification of the child with the parent is not in the best interests of the child because of the child's circumstances, including placement options, age, and developmental, cognitive, and psychological needs; or
- (d) the death or serious bodily injury, as defined in 45-2-101, of a child caused by abuse or neglect by the parent has occurred.

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

History: En. Sec. 6, Ch. 420, L. 1981; amd. Sec. 7, Ch. 15, L. 1985; amd. Sec. 3, Ch. 388, L. 1985; amd. Sec. 2, Ch. 599, L. 1991; amd. Sec. 3, Ch. 439, L. 1993; (5)En. Sec. 2, Ch. 369, L. 1995; amd. Sec. 20, Ch. 458, L. 1995; amd. Sec. 166, Ch. 480, L. 1997; amd. Sec. 8, Ch. 514, L. 1997; amd. Sec. 13, Ch. 516, L. 1997; amd. Sec. 1, Ch. 395, L. 1999; amd. Sec. 17, Ch. 566, L. 1999; amd. Sec. 1, Ch. 44, L. 2003; amd. Sec. 17, Ch. 504, L. 2003; amd. Sec. 5, Ch. 349, L. 2005.

41-3-611. Effect of decree. (1) An order for the termination of the parent-child legal relationship divests the child and the parents of all legal rights, powers, immunities, duties, and obligations with respect to each other as provided in Title 40, chapter 6, part 2, and Title 41, chapter 3, part 2, except the right of the child to inherit from the parent.

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

(3) After the termination of a parent-child legal relationship, the former parent is neither entitled to any notice of proceedings for the adoption of the child nor has any right to object to the adoption or to participate in any permanent placement proceedings held pursuant to 41-3-445.

History: En. Sec. 8, Ch. 420, L. 1981; amd. Sec. 99, Ch. 370, L. 1987; amd. Sec. 21, Ch. 458, L. 1995; amd. Sec. 18, Ch. 504, L. 2003.

41-3-612. Appeals. Appeals of court orders or decrees made under this part shall be given precedence on the calendar of the supreme court over all other matters, unless otherwise provided by law.

History: En. Sec. 9, Ch. 420, L. 1981.

Part 10 - Citizen Review Board Program Act

41-3-1001. Short title. This part may be cited as the "Citizen Review Board Program Act".

History: En. Sec. 1, Ch. 610, L. 1993; amd. Sec. 2, Ch. 570, L. 2001.

41-3-1003. Establishment of board -- definition -- membership. (1) As used in this part, "board" means a citizen review board appointed as provided in this section.

(2) Subject to the availability of funds, a district court judge who has indicated in writing an interest in having a board shall establish at least one board in the judicial district to review the case of each child in the custody of the department and in foster care. A board may review a case of a child who remains in or returns to the child's home and for whom the department retains legal custody.

(3) A board is composed of at least three and not more than five members appointed by the district court judges. Each member appointed must be sworn in by a judge of the judicial district to which the member is appointed to serve.

(4) The board must be appointed according to the following guidelines:

(a) Members of a board must be recruited from groups with special knowledge of or interest in foster care and child welfare.

(b) As far as practicable, members of a board shall represent the various socioeconomic and ethnic groups of the area served. Boards should include tribal representatives whenever possible.

(c) A person employed by the department who has a direct conflict of interest may not serve on a board.

(d) A member of a board must be a resident of one of the counties of the judicial district that the member is appointed to serve.

(5) The members of a board must be willing to serve without compensation.

History: En. Sec. 3, Ch. 610, L. 1993; amd. Sec. 2, Ch. 386, L. 1995; amd. Sec. 173, Ch. 546, L. 1995; amd. Sec. 3, Ch. 570, L. 2001.

41-3-1004. Administration -- training -- oversight -- procedures. (1) The office of the court administrator, as provided for in 3-1-701, shall, in accordance with the direction of the supreme court, oversee the program established in this part and shall, at the time prescribed by 5-11-210, prepare a report to the governor, the legislature, and the public regarding:

(a) state laws, policies, and practices affecting permanence and appropriate care for children in the custody of the department and other agencies; and

(b) the effectiveness of the boards in bringing about permanence and appropriate care for children in the custody of the department and other agencies.

(2) The office of the court administrator shall:

(a) establish policies and procedures for adoption by the Montana supreme court for the operation of a board, including procedures for removing members;

(b) provide training programs for board members consisting of orientation training of at least 16 hours and a minimum of 8 hours of continuing education training annually;

(c) provide consultation services on request to a board; and

(d) employ staff and provide for support services for boards.

History: En. Sec. 4, Ch. 610, L. 1993; amd. Sec. 1, Ch. 21, Sp. L. November 1993; amd. Sec. 3, Ch. 386, L. 1995; amd. Sec. 174, Ch. 546, L. 1995; amd. Sec. 4, Ch. 570, L. 2001.

41-3-1005. Removal of members -- grounds. Grounds for removal of a member of a board under 41-3-1004 may include but are not limited to the following:

(1) nonparticipation by a board member;

(2) a member establishing residence in a judicial district other than the judicial district in which the court the person was appointed to serve is located;

(3) violation of the confidentiality of information established under 41-3-1007; or

(4) other cause or grounds as necessary for the administration of the program.

History: En. Sec. 5, Ch. 610, L. 1993; amd. Sec. 5, Ch. 570, L. 2001.

41-3-1006. Terms -- officers. (1) A board member shall serve at the pleasure of the appointing authority. However, if not otherwise released from service on a board, the following provisions apply:

(a) A member shall serve a term of 2 years, except that if a vacancy occurs, a successor must be appointed to serve the unexpired term.

(b) A member may be reappointed and continue to serve until a successor is appointed.

(2) A board shall elect annually from its membership a presiding officer and vice presiding officer to serve in the absence of the presiding officer.

History: En. Sec. 6, Ch. 610, L. 1993; amd. Sec. 175, Ch. 546, L. 1995; amd. Sec. 6, Ch. 570, L. 2001.

41-3-1007. Confidentiality of information -- penalty. (1) Before beginning to serve on a board, each member shall swear or affirm to the court that the member will keep confidential the information reviewed by the board and its actions and recommendations in individual cases.

(2) A member of a board who violates the duty imposed by subsection (1) is guilty of a misdemeanor punishable by a fine not to exceed \$1,000.

History: En. Sec. 7, Ch. 610, L. 1993; amd. Sec. 7, Ch. 570, L. 2001.

41-3-1008. Access to records. (1) Notwithstanding the provisions of 41-3-205, a board has access to:

(a) any records of the district court that are pertinent to the case; and

(b) pertinent electronic and paper records of the department or other agencies that would be admissible in a dispositional hearing conducted pursuant to 41-3-438, including school records and reports of private service providers contained in the records of the department or other agencies.

(2) All requested records not already before the board must be submitted by the department within 10 working days after receipt of a request.

(3) A board may retain a reference copy of case material used by the board to make its recommendation if:

(a) the material is necessary for the ongoing work of the board with regard to the particular case or to work of the board; and

(b) the confidentiality of the material is continued and protected in the same manner as other material received from the department. Material retained by the boards is not subject to disclosure under the public records law.

(4) If a board is denied access to requested records, it may request a hearing. The court may require the organization in possession of the records to show cause why the records should not be made available as provided by this section.

History: En. Sec. 8, Ch. 610, L. 1993; amd. Sec. 4, Ch. 386, L. 1995; amd. Sec. 176, Ch. 546, L. 1995; amd. Sec. 8, Ch. 570, L. 2001; amd. Sec. 19, Ch. 504, L. 2003.

41-3-1010. Review -- scope -- procedures -- immunity. (1) (a) The board shall review the case of each child in foster care focusing on issues that are germane to the goals of permanency and to accessing appropriate services for parents and children. In evaluating the accessibility, availability, and appropriateness of services, the board may consider:

- (i) the safety of the child;
- (ii) whether an involved agency has selected services specifically relevant to the problems and needs of the child and family;
- (iii) whether caseworkers have diligently provided services;
- (iv) whether appropriate services have been available to the child and family on a timely basis; and
- (v) the results of intervention.

(b) The board may review the case of a child who remains in or returns to the child's home and for whom the department retains legal custody.

(2) The review must be conducted within the time limit established under the Adoption and Safe Families Act of 1997, 42 U.S.C. 675(5).

(3) The district court, by rule of the court or on an individual case basis, may relieve the board of its responsibility to review a case if a complete judicial review has taken place within 60 days prior to the next scheduled board review.

(4) Notice of each review must be sent to the department, any agency directly responsible for the care or placement of the child, the parents and their attorneys, the foster parents, a relative caring for the child, the preadoptive parents, the surrogate parents, the child who is the subject of the review if 12 years of age or older, the child's attorney or the child's assigned attorney, the guardian ad litem, the court-appointed special advocate of the child, the county attorney or deputy attorney general actively involved in the case, the Indian child's tribe if the child is an Indian, and other interested persons who are authorized by the board to receive notice and who are subject to 41-3-205. The notice must include a statement that persons receiving a notice may participate in the hearing and be accompanied by a representative.

(5) After reviewing each case, the board shall prepare written findings and recommendations with respect to:

- (a) whether reasonable efforts were made prior to the placement to prevent or to eliminate the need for removal of the child from the home and to make it possible for the child to be returned home;
- (b) the continuing need for the placement and the appropriateness and safety of the placement;
- (c) compliance with the case plan;

(d) the progress that has been made toward alleviating the need for placement;
(e) a likely date by which the child may be returned home or by which a permanent placement will be finalized;

(f) other problems, solutions, or alternatives that the board determines should be explored; and

(g) whether the district court should appoint an attorney or other person as special advocate to represent or appear on behalf of the child pursuant to 41-3-112.

(6) Whenever a member of a board has a potential conflict of interest in a case being reviewed, the member shall declare to the board the nature of the potential conflict prior to participating in the case review. The following provisions apply:

(a) The declaration of the member must be recorded in the official records of the board.

(b) If, in the judgment of the majority of the board, the potential conflict of interest may prevent the member from fairly and objectively reviewing the case, the board may remove the member from participation in the review.

(7) The board shall keep accurate records and retain the records on file. The board shall send copies of its written findings and recommendations to the district court, the department, and other participants in the review unless prohibited by the confidentiality provisions of 41-3-205.

(8) The board may hold joint or separate reviews for groups of siblings, but the court shall issue specific findings for each child.

(9) The board may disclose to parents and their attorneys, foster parents, children who are 12 years of age or older, children's attorneys, and other persons authorized by the board to participate in the case review the records disclosed to the board pursuant to 41-3-1008. Before participating in a board case review, each participant, other than parents and children, shall swear or affirm to the board that the participant will keep confidential the information disclosed by the board in the case review and will disclose it only as authorized by law.

(10) A person who serves on a board in a volunteer capacity, as provided in this part, is considered an agent of the judiciary and is entitled to immunity from suit as provided in 2-9-112.

(11) The board may, at the discretion of the court and absent an objection by a party to the proceeding, conduct permanency hearings as provided in 41-3-445.

History: En. Sec. 10, Ch. 610, L. 1993; amd. Sec. 6, Ch. 386, L. 1995; amd. Sec. 177, Ch. 546, L. 1995; amd. Sec. 9, Ch. 570, L. 2001; amd. Sec. 8, Ch. 382, L. 2005; amd. Sec. 34, Ch. 449, L. 2005.

41-3-1011. Board recommendations concerning foster care services and policy considerations. In addition to reviewing individual cases of children in foster care, a board may make recommendations to the district court and to the department concerning foster care services, policies, procedures, and laws. Recommendations must be in writing and must be provided to the department.

History: En. Sec. 11, Ch. 610, L. 1993; amd. Sec. 7, Ch. 386, L. 1995; amd. Sec. 178, Ch. 546, L. 1995; amd. Sec. 10, Ch. 570, L. 2001.

41-3-1012. Presence of employees and participants at reviews and deliberations of board. (1) Unless excused from doing so by the board, the department and any other agency directly responsible for the care and placement of the child shall require the presence of employees having knowledge of the case at board reviews.

(2) The board may require the presence of specific employees of the department or any

other agency or other persons at board reviews. If an employee fails to be present at the review, the board may request a court order. The court may require the employee to be present and show cause why the employee should not be compelled to appear before the board.

(3) The persons who are allowed to be present at a review include representatives of the department or any agency directly responsible for the care or placement of the child, the parents and their attorneys, the foster parents, a relative caring for the child, the preadoptive parents, the surrogate parents, the child who is the subject of the review if 12 years of age or older, the child's attorney or the child's assigned attorney, the guardian ad litem, the court-appointed special advocate of the child, the county attorney or deputy attorney general actively involved in the case, a representative of the child's tribe if the child is an Indian, and other interested persons subject to 41-3-205 and authorized to be present by the board.

(4) Deliberations concerning the recommendations that will be made by the board must be open to all present at the review, except that the presiding officer may close all or part of a deliberation if there has been a threat of a reprisal made by someone who will attend the review or if confidentiality laws preclude open deliberations.

(5) For the purposes of bringing criminal charges against a person who threatens a board member or staff, the board members and board staff must be considered public servants as defined in 45-2-101.

(6) As used in this section, the following definitions apply:

(a) "Close", with regard to deliberations, means that only the board members and board staff may remain in attendance.

(b) "Open" means that review participants may remain in attendance during the deliberations to observe and be available for questions from the board.

(c) "Presence" includes telephone participation, except that a representative of the department knowledgeable about the case at the time of the review must be physically present if required.

History: En. Sec. 12, Ch. 610, L. 1993; amd. Sec. 179, Ch. 546, L. 1995; amd. Sec. 11, Ch. 570, L. 2001; amd. Sec. 35, Ch. 449, L. 2005.

41-3-1013. Court review of findings and recommendations of board. (1) Upon receipt of findings and recommendations from the board, the district court shall:

(a) review the findings and recommendations of the board within 20 days. If the district court finds it appropriate, the district court may on its own motion schedule a review hearing.

(b) cause the findings and recommendations of the board to become part of the district court file; and

(c) give the board written notice if the district court modifies, alters, or takes action on a case as a result of the board's recommendations or refuses to take action on the board's recommendations in any case.

(2) Upon receipt of findings and recommendations from the board, the department shall:

(a) review the findings and recommendations of the board within 10 days. The recommendations must be implemented and the case plan must be modified as the department considers appropriate and as resources permit.

(b) give the board written notice as soon as practicable, but in no case later than 17 days after receipt of the findings and recommendations, of any reasons why the department objects to or is not able to implement the recommendations; and

(c) include the findings and recommendations of the board as part of the case file of the

department.

(3) The court may schedule a hearing on any recommendations that the department objects to or contends that it is unable to implement.

(4) Upon its own motion or upon the request of the department, the board, or any interested party, the district court may appoint an attorney or other person as special advocate to represent or appear on behalf of the child. Subject to the direction of the district court, the court-appointed special advocate shall:

- (a) investigate all relevant information about the case;
- (b) advocate for the child, ensuring that all relevant facts are brought before the court;
- (c) facilitate and negotiate to ensure that the district court, the department, and the child's attorney fulfill their obligations to the child in a timely fashion; and
- (d) monitor all district court orders to ensure compliance and to bring to the district court's attention any change in circumstance that may require modification of the district court's order.

History: En. Sec. 13, Ch. 610, L. 1993; amd. Sec. 8, Ch. 386, L. 1995; amd. Sec. 180, Ch. 546, L. 1995; amd. Sec. 12, Ch. 570, L. 2001.

Part 12 – Office of Child and Family Ombudsman

41-3-1208. Office of child and family ombudsman established. (1) There is an office of the child and family ombudsman within the department of justice provided for in 2-15-2001.

(2) The attorney general shall appoint a person who is a resident of this state and is qualified by training and experience to perform the duties of the ombudsman.

History: En. Sec. 1, Ch. 354, L. 2015

41-3-1209. Purpose and intent. The legislature finds that an independent, impartial, and confidential ombudsman serves:

- (1) to protect the interests and rights of Montana's children and families; and
- (2) to strengthen child and family services by working in collaboration with the department and with appropriate county attorneys in cases under review.

History: En. Sec. 2, Ch. 354, L. 2015.

41-3-1210. Definitions. For the purposes of this part, the following definitions apply:

- (1) "Administrative act" means a department action, omission, decision, rule, interpretation, recommendation, policy, practice, or procedure relating to child and family services.
- (2) "Child and family services" means services provided by the department under this chapter.
- (3) "Ombudsman" means the person holding the position of the child and family ombudsman.
- (4) "Request for assistance" means a request by a person asking the ombudsman for assistance in protecting the rights or interests of a child or family in this state.

History: En. Sec. 3, Ch. 354, L. 2015.

41-3-1211. Powers and duties. The powers and duties of the ombudsman are:

- (1) to respond to requests for assistance regarding administrative acts and to investigate administrative acts;
- (2) to investigate circumstances surrounding reports that are provided to the ombudsman pursuant to 41-3-209;
- (3) to inspect, copy, or subpoena records as needed to perform the ombudsman's duties under this part;
- (4) to take appropriate steps to ensure that persons are made aware of the purpose, services, and procedures of the ombudsman and how to contact the ombudsman;
- (5) to share relevant findings related to an investigation, subject to disclosure restrictions and confidentiality requirements, with individuals or entities legally authorized to receive, inspect, or investigate reports of child abuse or neglect;
- (6) to periodically review department procedures and promote best practices and effective programs by working collaboratively with the department to improve procedures, practices, and programs;
- (7) to undertake, participate in, and cooperate with persons and the department in activities, including but not limited to conferences, inquiries, panels, meetings, or studies, that serve to improve the manner in which the department functions;
- (8) to provide education on the legal rights of children;
- (9) to apply for and accept grants, gifts, contributions, and bequests of funds for the purpose of carrying out the ombudsman's responsibilities; and
- (10) to report annually to the attorney general and the children, families, health, and human services interim committee. The report must be public and may contain recommendations from the ombudsman regarding systematic improvements for the department.

History: En. Sec. 4, Ch. 354, L. 2015.

41-3-1212. Investigations -- discretion -- procedure. (1) The ombudsman shall investigate a request for assistance unless:

- (a) the request for assistance could reasonably be addressed by another remedy or channel;
 - (b) the request for assistance is trivial, frivolous, vexatious, or not made in good faith;
 - (c) the request for assistance is too delayed to justify an investigation;
 - (d) the person requesting assistance is not personally aggrieved by the subject matter of the request; or
 - (e) the request for assistance has been previously investigated by the ombudsman.
- (2) (a) After an investigation is completed, the ombudsman shall provide to the department any findings, conclusions, and recommendations.
- (b) At the ombudsman's request, the department shall inform the ombudsman in a timely manner about any action taken to address or any reasons for not addressing the ombudsman's findings, conclusions, and recommendations.

History: En. Sec. 5, Ch. 354, L. 2015.

41-3-1213. Privilege. The ombudsman may not be compelled to testify or produce evidence in any judicial or administrative proceeding with respect to any matter involving the exercise of the ombudsman's official duties, except as necessary to enforce the provisions of this part.

History: En. Sec. 6, Ch. 354, L. 2015.