

# Montana Code Annotated 2023

## Title 41 Minors

### 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

*41-3-104 Renumbered 41-3-1122*

*41-3-105 Renumbered 41-3-1125*

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 Acts

41-3-110 Audio or Video Testimony Allowed

*41-3-111 Reserved*

41-3-112 Appointment of Court-Appointed Special Advocate -- Guardian Ad Litem

41-3-113 Appeals

41-3-114 Reserved

41-3-115 Foster Care Review Committee -- Foster Care Reviews -- Permanency Hearings

*41-3-116 And 41-3-117 Reserved*

41-3-118 Purpose

41-3-119 Foster Parent Counseling Services

41-3-120 Liability Insurance for Foster Parents

41-3-121 Reserved

41-3-122 Repealed

*41-3-123 Terminated*

*41-3-124 Through 41-3-126 Reserved*

41-3-127 Certification Required for Use of Title -- Exceptions

41-3-128 Certificate Requirements -- Supervision -- Fees

41-3-129 Certificate Renewal -- Continuing Education

41-3-130 Implementation of Certification Requirement for Child Protection Specialists

41-3-131 Rulemaking Authority -- Management of Court-Ordered Child Support

41-3-132 Volunteer Program -- Rulemaking -- Report

*41-3-133 And 41-3-134 Reserved*

41-3-135 Vaccination Status Prohibited as Grounds For Action

## **Part 2 Reports and Investigations**

41-3-201 Reports

41-3-202 Action on Reporting

41-3-203 Liability -- Immunity from Liability -- Damages

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 Penalties -- Failure to Report -- False Reporting

41-3-208 Rulemaking Authority

41-3-209 Reports to Office of Child and Family Ombudsman

41-3-210 County Attorney Duties -- Certification -- Retention of Records -- Reports to Attorney General and Legislature -- Attorney General Report

41-3-211 Department Report to Attorney General

41-3-212 Department Procedures for Reports -- Recording -- Notifications

*41-3-213 And 41-3-214 Reserved*

41-3-215 Right of Aggrieved Party

41-3-216 Provision of Information About Investigation Procedure And Rights To Parents

### **Part 3 Protective Care**

41-3-301 Emergency Protective Services

41-3-302 Responsibility of Providing Protective Services -- Written Prevention Plans

*41-3-303 Renumbered 41-3-112*

41-3-304 Criminal Background Checks of Adults Residing In Potential Emergency Placements Authorized -- Rulemaking

*41-3-305 Terminated*

41-3-306 Emergency Protective Services Hearing -- Exception

41-3-307 Availability of Prehearing Conferences

### **Part 4 Abuse or Neglect Proceedings**

*41-3-401 Renumbered 41-3-422*

*41-3-402 Renumbered 41-3-427*

*41-3-403 Renumbered 41-3-423*

*41-3-404 Renumbered 41-3-437*

*41-3-405 Combined With 41-5-805, Renumbered 41-3-1123*

*41-3-406 Renumbered 41-3-438*

*41-3-407 Combined With 41-5-806, Renumbered 41-3-1124*

*41-3-408 Renumbered 41-1-501*

*41-3-409 Renumbered 41-3-113*

*41-3-410 Repealed*

*41-3-411 Renumbered 41-3-446*

*41-3-412 Renumbered 41-3-445*

*41-3-413 Repealed*

*41-3-414 Through 41-3-419 Reserved*

*41-3-420 Renumbered 41-3-443*

*41-3-421 Renumbered 41-3-444*

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

41-3-426 Reserved

41-3-427 Petition for Immediate Protection and Emergency Protective Services -- Evidence and Consideration of Harm of Removal -- 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

41-3-431 Discovery Procedure

41-3-432 Show Cause Hearing -- Order

41-3-433 Temporary Investigative Authority

41-3-434 Stipulations -- Prohibition on Continuances of Hearings

*41-3-435 And 41-3-436 Reserved*

41-3-437 Adjudication -- Temporary Disposition -- Findings -- Order

41-3-438 Disposition -- Hearing -- Order

*41-3-439 Repealed*

41-3-440 Limitation on Placement

41-3-441 Review of Necessity of Nonyouth Foster Home 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

*41-3-447 Through 41-3-449 Reserved*

41-3-450 Placement Preferences

41-3-451 Exemption from Placement Preferences

## **Part 5 Foster Homes and Other Private Institutions (Renumbered)**

## **Part 6 Parent-Child Legal Relationship Terminations – Reinstatement**

*41-3-601 Repealed*

*41-3-602 Purpose*

*41-3-603 Repealed*

41-3-604 When Petition to Terminate Parental Rights Required

*41-3-605 And 41-3-606 Reserved*

41-3-607 Petition for Termination -- Separate Hearing -- No Jury Trial

41-3-608 Notice

41-3-609 Criteria for Termination

*41-3-610 Repealed*

41-3-611 Effect of Decree

41-3-612 Appeals

41-3-613 Relinquishment of Parental Rights -- Open Adoption

41-3-614 Reserved

41-3-615 Reinstatement of Parental Rights

## **Part 7 Montana Childrens Trust Fund (Renumbered)**

## **Part 8 Termination of Parent-Child Legal Relationship – Sexual Abuse (Renumbered)**

*Part 9 Reserved*

## **Part 10 Citizen Review Board Program Act**

41-3-1001 Short Title

*41-3-1002 Repealed*

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

*41-3-1009 Repealed*

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

*41-3-1014 Repealed*

## ***Part 11 Youth Residential Services (Renumbered and Repealed)***

## ***Part 12 Office of Child and Family Ombudsman***

*41-3-1201 Terminated*

*41-3-1202 Terminated*

*41-3-1203 Terminated*

*41-3-1204 Terminated*

*41-3-1205 Terminated*

*41-3-1206 Terminated*

*41-3-1207 Terminated*

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  
41-3-1214 Legislator Access to Ombudsman Records  
41-3-1215 Systemic Oversight of Child Protective Services Activities

### **Part 13 Montana Indian Child Welfare Act**

41-3-1301 Short title  
41-3-1302 Legislative findings -- purpose  
41-3-1303 Definitions  
*41-3-1304 And 41-3-1305 Reserved*  
41-3-1306 Determination of Indian Status -- Confidentiality of Records  
41-3-1307 Determination of Indian Tribe  
*41-3-1308 And 41-3-1309 Reserved*  
41-3-1310 Jurisdiction -- Transfer of Jurisdiction  
41-3-1311 Notice  
41-3-1312 Full Faith and Credit  
*41-3-1313 Through 41-3-1315 Reserved*  
41-3-1316 Right to Counsel  
41-3-1317 Right of Access to Evidence  
41-3-1318 Qualified Expert Witness -- Requirements -- Prohibitions  
41-3-1319 Active Efforts  
41-3-1320 Evidentiary Requirements  
*41-3-1321 Through 41-3-1324 Reserved*

41-3-1325 Emergency Removal of Indian Child

41-3-1326 Consent

41-3-1327 Improper Removal of Indian Child

41-3-1328 Removal of Indian Child from Adoptive Or Foster Care Placement

41-3-1329 Placement Preferences



## Part 1

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) support the efforts of parents whose children have been removed to reunify the family, including by taking into account whether those efforts may be impeded by court-ordered support payments;
- (d) 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;
- (e) recognize that a child is entitled to assert the child's constitutional rights;
- (f) ensure that all children have a right to a healthy and safe childhood in a permanent placement; and
- (g) 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 in accordance with **41-3-450** and **41-3-451**. 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; amd. Sec. 1, Ch. 174, L. 2023; amd. Sec. 3, Ch. 674, L. 2023.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

medical care is provided to the child when there is imminent substantial risk of serious harm to the child.

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

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

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

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

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

(iii) abandonment.

(b) (i) The term includes:

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

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

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

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

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

(d) The term does not include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(22) "Physical neglect" means:

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

(b) failure to provide cleanliness and general supervision, or both;

(c) exposing or allowing the child to be exposed to an unreasonable physical or psychological risk to the child;

(d) allowing sexual abuse or exploitation of the child; or

(e) causing malnutrition or a failure to thrive.

(23) "Physical or psychological harm to a child" means the harm that occurs whenever the parent or other person responsible for the child's welfare inflicts or allows to be inflicted on the child physical abuse, physical neglect, or psychological abuse or neglect.

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

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

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

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

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

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

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

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

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

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

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

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

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

(28) "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.

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

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

(a) the existing threat or threats to the child's safety;

(b) the protective capabilities of the parent or guardian;

(c) any particular vulnerabilities of the child;

(d) any interventions required to protect the child; and

(e) the likelihood of future physical or psychological harm to the child.

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

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

(32) "Sexual exploitation" means:

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

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

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

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

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

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

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

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

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

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

(i) the infant is chronically and irreversibly comatose;

(ii) the provision of treatment would:

(A) merely prolong dying;

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

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

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

(36) "Youth in need of care" means a youth who has been adjudicated or determined, after a hearing, to be or to have been abused, neglected, or abandoned. (*Terminates June 30, 2025--sec. 55, Ch. 716, L. 2023.*)

**41-3-102.** (*Effective July 1, 2025*) **Definitions.** As used in this chapter, the following definitions apply:

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

(iii) abandonment.

(b) (i) The term includes:

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

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

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

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

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

(d) The term does not include:

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

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

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

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

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

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

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

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

(a) a member of an Indian tribe; or

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

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

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

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

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

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

(a) the state of Montana; or

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

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

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

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

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

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

(22) "Physical neglect" means:

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

(b) failure to provide cleanliness and general supervision, or both;

(c) exposing or allowing the child to be exposed to an unreasonable physical or psychological risk to the child;

(d) allowing sexual abuse or exploitation of the child; or

(e) causing malnutrition or a failure to thrive.

(23) "Physical or psychological harm to a child" means the harm that occurs whenever the parent or other person responsible for the child's welfare inflicts or allows to be inflicted on the child physical abuse, physical neglect, or psychological abuse or neglect.

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

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

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

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

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

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

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

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

(26) "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.

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

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

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

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

(28) "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.

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

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

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

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

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

(32) "Sexual exploitation" means:

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

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

- (a) assesses the strengths and needs of the child using an age-appropriate, evidence-based, validated, functional assessment tool;
- (b) determines whether the needs of the child can be met with family members or through placement in a youth foster home or, if not, which appropriate setting would provide the most effective and appropriate level of care for the child in the least restrictive

environment and be consistent with the short-term and long-term goals for the child as specified in the child's permanency plan; and

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

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

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

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

(i) the infant is chronically and irreversibly comatose;

(ii) the provision of treatment would:

(A) merely prolong dying;

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

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

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

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

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; amd. Sec. 4, Ch. 367, L. 2019; amd. Sec. 1, Ch. 382, L. 2019; amd. Sec. 1, Ch. 468, L. 2019; amd. Sec. 1, Ch. 19, L. 2021; amd. Sec. 2, Ch. 202, L. 2021; amd. Sec. 5, Ch. 520, L. 2021; amd. Sec. 5, Ch. 167, L. 2023; amd. Sec. 2, Ch. 195, L. 2023; amd. Sec. 1, Ch. 324, L. 2023; amd. Sec. 25, Ch. 716, L. 2023.

**41-3-103 Jurisdiction and Venue** (1) Except as provided in the federal Indian Child Welfare Act or the Montana Indian Child Welfare Act provided for in Title 41, chapter 3, part 13, 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) (a) 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.

(b) Unless a case is approved for transfer to a tribal court or treatment court, a court may deny a motion to change venue either for good cause or if transferring venue will result in delaying a child's permanency. (*Terminates June 30, 2025--sec. 55, Ch. 716, L. 2023.*)

**41-3-103.** (*Effective July 1, 2025*) **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) (a) 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.

(b) Unless a case is approved for transfer to a tribal court or treatment court, a court may deny a motion to change venue either for good cause or if transferring venue will result in delaying a child's permanency.

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; amd. Sec. 26, Ch. 716, L. 2023; amd. Sec. 1, Ch. 779, L. 2023.

#### 41-3-104 Renumbered 41-3-1122

#### 41-3-105 Renumbered 41-3-1125

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 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 child protection specialist;
- (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; amd. Sec. 6, Ch. 520, L. 2021.

41-3-109 Proceedings Subject to Indian Child Welfare Acts If a proceeding under this chapter involves an Indian child, as defined in the federal Indian Child Welfare Act, 25 U.S.C. 1901, et seq., or **41-3-1303**, the proceeding is subject to the federal Indian Child Welfare Act and the Montana Indian Child Welfare Act provided for in Title 41, chapter 3, part 13. (*Terminates June 30, 2025--sec. 55, Ch. 716, L. 2023.*)

**41-3-109.** *(Effective July 1, 2025)* **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; amd. Sec. 27, Ch. 716, L. 2023.

**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.

**41-3-111 Reserved**

**41-3-112 Appointment of Court-Appointed Special Advocate -- Guardian Ad Litem** In every judicial proceeding, the court shall appoint a court-appointed special advocate as the guardian ad litem for any child alleged to be abused or neglected. If a court-appointed special advocate is not available for appointment, the court may appoint an attorney or other qualified person to serve as the guardian ad litem. The 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; amd. Sec. 1, Ch. 132, L. 2017.

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.

#### 41-3-114 Reserved

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.

#### 41-3-116 41-3-117 Reserved

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.

41-3-121 Reserved

41-3-122 Repealed

41-3-123 Terminated

41-3-124 through 41-3-126 Reserved

41-3-127 Certification Required for Use of Title -- Exceptions (1) On certification in accordance with **41-3-127** through **41-3-130**, a person may use the title "certified child protection specialist".

(2) Subsection (1) does not prohibit a qualified member of another profession, such as a law enforcement officer, lawyer, psychologist, pastoral counselor, probation officer, court employee, nurse, school counselor, educator, or baccalaureate, master's, or clinical social worker, clinical professional counselor, addiction counselor, or marriage and family therapist licensed pursuant to Title 37, chapter 39, from performing duties and services consistent with the person's licensure or certification and the code of ethics of the person's profession.

(3) Subsection (1) does not prohibit a qualified member of another profession, business, educational program, or volunteer organization who is not licensed or certified or for whom there is no applicable code of ethics, including a guardian ad litem, child advocate, or law enforcement officer, from performing duties and services consistent with the person's training, as long as the person does not represent by title that the person is a certified child protection specialist.

History: En. Sec. 1, Ch. 520, L. 2021; amd. Sec. 22, Ch. 713, L. 2023.

41-3-128 Certificate Requirements -- Supervision -- Fees (1) An applicant for certification as a child protection specialist shall:

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

(i) ethics;

(ii) governing statutory and regulatory framework;

(iii) role of law enforcement;

(iv) crisis intervention techniques;

(v) childhood trauma research, including research on the trauma a child experiences when removed from the home;

(vi) evidence-based practices for family preservation and strengthening; and

(vii) the provisions of the federal Indian Child Welfare Act, 25 U.S.C. 1902, et seq., and the Montana Indian Child Welfare Act provided for in Title 41, chapter 3, part 13; and

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

(2) As a prerequisite to the issuance of a certificate, the department shall require the applicant to submit fingerprints for the purpose of fingerprint background checks by the



Montana department of justice and the federal bureau of investigation as provided in **37-1-307**.

(3) An applicant who has a history of criminal convictions has the opportunity to demonstrate to the department that the applicant is sufficiently rehabilitated to warrant the public trust. The department may deny the certificate if it determines that the applicant is not sufficiently rehabilitated. (*Terminates June 30, 2025--sec. 55, Ch. 716, L. 2023.*)

**41-3-128.** (*Effective July 1, 2025*) **Certificate requirements – supervision – fees.** (1) An applicant for certification as a child protection specialist shall:

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

(i) ethics;

(ii) governing statutory and regulatory framework;

(iii) role of law enforcement;

(iv) crisis intervention techniques;

(v) childhood trauma research, including research on the trauma a child experiences when removed from the home;

(vi) evidence-based practices for family preservation and strengthening; and

(vii) the provisions of the Indian Child Welfare Act, 25 U.S.C. 1902, et seq.; and

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

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

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

History: En. Sec. 2, Ch. 520, L. 2021; amd. Sec. 1, Ch. 384, L. 2023; amd. Sec. 28, Ch. 716, L. 2023.

41-3-129 Certificate Renewal -- Continuing Education (1) A certified child protection specialist shall renew the specialist's certification annually using a process specified by department rule, which must include proof of completion of at least 20 hours of continuing education developed or approved by the department.

(2) The continuing education may include any topic listed in subsection (1) of **41-3-128** and must include at least one unit focused on:

- (a) ethics; and
- (b) recent developments in governing law or rule.

History: En. Sec. 3, Ch. 520, L. 2021.

41-3-130 Implementation of Certification Requirement for Child Protection Specialists (1)

(a) The department shall engage and collaborate with an external organization to develop a child welfare certification and training program, including a competency examination, that must be an ongoing component of the department's child welfare work.

(b) The program and examination must be reevaluated every 2 years to ensure that they:

- (i) reflect current trends, research, and developments in the law; and
- (ii) promote evidence-based or evidence-informed practices.

(2) A person hired by the department for a child-facing position after October 1, 2021, shall become a certified child protection specialist pursuant to **41-3-127** through **41-3-130** within 1 year of the date of hire.

(3) A person already employed by the department in a child-facing position before October 1, 2021, shall obtain child protection specialist certification pursuant to **41-3-127** through **41-3-130** by October 1, 2023.

(4) For the purpose of this section, "child-facing position" means an employee role under this chapter that involves regular interaction with minors, including but not limited to investigating reports of child abuse, neglect, or endangerment.

History: En. Sec. 4, Ch. 520, L. 2021.

41-3-131 Rulemaking Authority -- Management of Court-Ordered Child Support (1) The department shall adopt rules necessary to carry out the purposes of this chapter.

(2) The department shall adopt rules to manage court-ordered child support to the state for children entering foster care as provided for in **41-3-446**. Rules to manage child support:

- (a) may not have any adverse effects on the child; and
- (b) may not impede successful achievement of the child's permanency plan.

History: En. Sec. 31, Ch. 311, L. 2001; (2)En. Sec. 4, Ch. 657, L. 2023.

41-3-132 Volunteer Program -- Rulemaking -- Report (1) There is established within the department a volunteer program to support child protective services activities. Volunteers must be 18 years of age or older. Volunteers are not salaried employees and are not entitled to wages and benefits.

(2) The department shall, by administrative rule:

(a) establish a registration portal for volunteers interested in supporting child protective services activities, including those related to child abuse and neglect prevention, family support, and reunification; and

(b) develop a process for referring potential volunteers to faith-based and community-based organizations offering volunteer opportunities that support child protective services activities, including those related to child abuse and neglect prevention, family support, and reunification.

(3) In accordance with **5-11-210**, the department shall report to the children, families, health, and human services interim committee regarding the department's efforts under this section.

History: En. Sec. 1, Ch. 334, L. 2023.

#### 41-3-133 And 41-3-134 Reserved

41-3-135 Vaccination Status Prohibited as Grounds for Action The vaccination status of a parent or child may not be admitted as evidence or considered as a factor in any administrative or judicial decision regarding a petition filed under part 3, part 4, part 6, or part 10 of this chapter.

History: En. Sec. 2, Ch. 286, L. 2023.

## Part 2

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. The department shall follow the provisions of **41-3-212** in taking the report.

(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 licensed pursuant to Title 37, child protection specialist, 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;

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

(k) an employee of the department while in conduct of the employee's duties.

(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. The department shall follow the provisions of **41-3-212** when taking the report.

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

(i) may share information with:

(A) that professional or official; or

(B) 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; and

(ii) shall share information with the individuals listed in subsections (5)(a)(i)(A) and (5)(a)(i)(B) on specific request. Information shared pursuant to this subsection (5)(a)(ii) may be limited to the outcome of the investigation and any subsequent action that will be taken on behalf of the child who is the subject of the report.

(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; amd. Sec. 3, Ch. 235, L. 2017; amd. Sec. 5, Ch. 367, L. 2019; amd. Sec. 1, Ch. 216, L. 2021; amd. Sec. 7, Ch. 520, L. 2021; amd. Sec. 3, Ch. 382, L. 2023.

41-3-202 Action on Reporting (1) (a) 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.

(b) (i) Except as provided in subsections (1)(b)(ii) and (1)(b)(iii), upon receipt of a report that includes an allegation of sexual abuse or sexual exploitation when the alleged perpetrator of the sexual abuse or sexual exploitation was 12 years of age or older or if the department determines during any investigation that the circumstances surrounding an allegation of child abuse or neglect include an allegation of sexual abuse or sexual exploitation when the alleged perpetrator of the sexual abuse or sexual exploitation was 12 years of age or older, the department shall immediately report the allegation to the county attorney of the county in which the acts that are the subject of the report occurred.

(ii) If a victim of sexual abuse or sexual exploitation has attained the age of 14 and has sought services from a contractor as described in **41-3-201(2)(j)** that provides confidential services to victims of sexual assault, conditioned upon an understanding that the criminal conduct will not be reported by the department to the county attorney in the jurisdiction in which the alleged crime occurred, the department may not report pursuant to **41-3-205(5)(d)** and subsection (1)(b)(i) of this section.

(iii) If the department or law enforcement determines that the allegation involves the county attorney or an employee in the county attorney's office in the county in which the acts that are subject to reporting occurred, the department or law enforcement shall report as required in subsection (1)(b)(i) to the attorney general.

(c) If the department determines that an investigation and a safety and risk assessment are required, a child protection specialist shall promptly conduct a thorough investigation

into the circumstances surrounding the allegations of abuse or neglect of the child and perform a safety and risk assessment to determine whether the living arrangement presents an unsafe environment for the child. The safety and risk assessment 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 safety and risk assessment. In conducting a safety and risk assessment under this section, a child protection specialist 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, if the initial investigation does not within 48 hours result in the development of independent, corroborative, and attributable information indicating that there exists a current risk of physical or psychological harm to the child, a child may not be removed from the living arrangement. If independent, corroborative, and attributable information indicating an ongoing risk results from the initial investigation, the department shall then conduct a safety and risk assessment.

(3) The child protection specialist is responsible for conducting the safety and risk assessment. If the child is treated at a medical facility, the child protection specialist, 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 child protection specialist, 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 safety and risk assessment the department has reasonable cause to suspect that the child is suffering abuse or neglect, the department may provide emergency protective services to the child, pursuant to **41-3-301**, or enter into a written prevention plan, 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 the determinations of the safety and risk assessment; and

(ii) notify the child's family of the determinations of the safety and risk assessment, unless the notification can reasonably be expected to result in harm to the child or other person.

(b) Except as provided in subsection (5)(c), the department shall destroy all safety and risk assessment determinations and associated records, except for medical records, within 30 days after the end of the 3-year period starting from the date of completion of the safety and risk assessment.

(c) Safety and risk assessment determinations and associated records may be maintained for a reasonable time as defined by department rule under the following circumstances:

(i) the safety and risk assessment determines that abuse or neglect occurred;

(ii) there had been a previous or there is a subsequent report and investigation resulting in a safety and risk assessment concerning the same person; or

(iii) an order has been issued by a court of competent jurisdiction adjudicating the child as a youth in need of care based on the circumstances surrounding the initial allegations.

(6) The investigating child protection specialist, within 60 days of commencing an investigation, shall also furnish a written safety and risk assessment to the department and, upon request, to the family. Subject to time periods set forth in subsections (5)(b) and (5)(c), the department shall maintain a record system documenting investigations and safety and risk assessment determinations. Unless records are required to be destroyed under subsections (5)(b) and (5)(c), the department shall retain records relating to the safety and risk assessment, including case notes, correspondence, evaluations, videotapes, and interviews, for 25 years.

(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; amd. Secs. 6, 14, Ch. 367, L. 2019; amd. Sec. 2, Ch. 382, L. 2019; amd. Sec. 2, Ch. 19, L. 2021; amd. Sec. 2, Ch. 364, L. 2021; amd. Sec. 8, Ch. 520, L. 2021; amd. Sec. 3, Ch. 195, L. 2023.



41-3-203 Liability -- Immunity from Liability -- Damages (1) Except as provided in subsection (2), 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) Any person who knowingly makes a false report or allegation of child abuse, abandonment, or neglect or makes a report in bad faith is liable to the party or parties against whom the report was made for the amount of actual damages sustained or for statutory damages of \$2,500, whichever is greater, plus attorney fees and costs. If the person acted with malicious purpose, the court may award treble actual damages or treble statutory damages, whichever is greater.

(3) A person who provides information pursuant to **41-3-201** or a person who uses information received pursuant to **41-3-205** 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 and who may pose a risk to 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; amd. Sec. 3, Ch. 382, L. 2019; amd. Sec. 1, Ch. 656, L. 2023.

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. The initial report and associated evidence must be handled in accordance with **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; amd. Sec. 4, Ch. 382, L. 2019.

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

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

(3) Records, including case notes, correspondence, evaluations, videotapes, and interviews, unless otherwise protected by this section or unless disclosure of the records is determined to be detrimental to the child or harmful to another person who is a subject of information contained in the records, must, upon request, 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 engagement 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 posed by the person about whom the information is sought, as determined by the department.

(p) the news media, 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 [or the Montana Indian Child Welfare Act provided for in Title 41, chapter 3, part 13];

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

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

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

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

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

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

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

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

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

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

(ii) the member submits a written request to the department requesting to review the records relating to the written inquiry. The member's request must include a copy of the

written inquiry, the name of the child whose records are to be reviewed, and any other information that will assist the department in locating the records.

(iii) before reviewing the records, the member:

(A) signs a form that outlines the state and federal laws regarding confidentiality and the penalties for unauthorized release of the information; and

(B) receives from the department an orientation of the content and structure of the records. The orientation must include a checklist of documents that are regularly included in records, including but not limited to the following:

(I) any petition filed pursuant to Title 41, chapter 3, part 4, including any supporting affidavits and evidence;

(II) any court orders issued pursuant to Title 41, chapter 3, parts 4 and 6;

(III) notes from family engagement meetings and foster care review meetings; and

(IV) notes included in electronic case records or in case files maintained in local offices regarding staffing and interactions with parents or legal guardians, providers, or attorneys.

(b) (i) Without disclosing the identity of a person who reported the alleged child abuse or neglect, the department shall make available to the member all records concerning the child who is the subject of the written inquiry.

(ii) Except as provided in subsection (4)(b)(iii), records disclosed pursuant to this subsection (4) are confidential, may not be copied, photographed, or otherwise replicated by the member, and must remain solely in the department's possession. The member must be allowed to view the records in the local office where the case is or was active.

(iii) A member may take notes to discuss the records with a parent or legal guardian about whom a report of alleged child abuse or neglect is made.

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

(5) (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 (5)(a) or to a county or regional 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.

(c) (i) The department shall promptly disclose the results of an investigation to an individual described in subsection (5)(a) or to a county or regional interdisciplinary child information and school safety team established pursuant to **52-2-211** upon the determination that:

(A) there is reasonable cause to suspect that a child has been exposed to a Schedule I or Schedule II drug whose manufacture, sale, or possession is prohibited under state law; or

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

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

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

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

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

(6) 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.

(7) 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.

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

(9) A person who is authorized to receive records under this section shall maintain the confidentiality of the records and may not disclose information in the records to anyone other than the persons described in subsections (3)(a), (4)(b)(iii), and (5). However, this subsection may not be construed to compel a family member to keep the proceedings confidential.

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

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

(12) Copies of records, evaluations, reports, or other evidence obtained or generated pursuant to this section that are provided to the parent, grandparent, aunt, uncle, brother, sister, guardian, or parent's or guardian's attorney must be provided without cost. *(Bracketed language in subsection (3)(r) terminates June 30, 2025--sec. 55, Ch. 716, L. 2023.)*

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; amd. Sec. 1, Ch. 99, L. 2017; amd. Sec. 1, Ch. 180, L. 2017; amd. Sec. 4, Ch. 235, L. 2017; amd. Sec. 2, Ch. 248, L. 2019; amd. Sec. 7, Ch. 367, L. 2019; amd. Sec. 5, Ch. 382, L. 2019; amd. Sec. 3, Ch. 19, L. 2021; amd. Sec. 9, Ch. 520, L. 2021; amd. Sec. 1, Ch. 651, L. 2023; amd. Sec. 29, Ch. 716, L. 2023.

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 Penalties -- Failure to Report -- False Reporting (1) Any person, official, or institution required by **41-3-201** 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 the act or omission.

(2) Except as provided in subsection (3), any person or official required by **41-3-201** 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 making a report is guilty of a misdemeanor.

(3) Any person or official required by **41-3-201** to report known or suspected sexual abuse or sexual exploitation who purposely or knowingly fails to report known sexual abuse or sexual exploitation of a child or purposely or knowingly prevents another person from making a report is guilty of a felony and shall be imprisoned in the state prison for a term not to exceed 5 years or fined an amount not to exceed \$10,000, or both.

(4) Any person who purposely or knowingly makes a written or verbal false report of suspected child abuse or neglect under **41-3-201** in bad faith or with malicious purpose is guilty of unsworn falsification to authorities as provided in **45-7-203**.

History: En. Sec. 15, Ch. 543, L. 1979; amd. Sec. 1, Ch. 367, L. 1985; amd. Sec. 8, Ch. 367, L. 2019; amd. Sec. 2, Ch. 656, L. 2023.



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 conducting investigations and safety and risk assessments authorized by this chapter.

(2) The department shall adopt rules to govern the retention period and disclosure of safety and risk assessments and associated case records containing information related to reports and investigations of child abuse and neglect.

(3) The department shall adopt rules specifying the procedure to be used for the release and disclosure of records as provided in **41-3-205(5)**. 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 or regional 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; amd. Sec. 2, Ch. 180, L. 2017; amd. Sec. 3, Ch. 248, L. 2019; amd. Sec. 6, Ch. 382, L. 2019.

41-3-209 Reports to Office of Child and Family Ombudsman (1) The department shall report to the office of the child and family ombudsman

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 written prevention plan;

(2) The department shall report to the office of the child and family ombudsman 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.

(3) The department shall report to the ombudsman as required under **41-3-1212** on its response to findings, conclusions, and recommendations made in cases investigated by the ombudsman.

History: En. Sec. 7, Ch. 354, L. 2015; amd. Sec. 4, Ch. 19, L. 2021; amd. Sec. 1, Ch. 411, L. 2021.

41-3-210 County Attorney Duties -- Certification -- Retention of Records -- Reports to Attorney General and Legislature -- Attorney General Report (1) (a) The county attorney shall gather all case notes, correspondence, evaluations, interviews, and other investigative materials pertaining to each report from the department or investigation by law enforcement of sexual abuse or sexual exploitation of a child made within the county when the alleged perpetrator of the sexual abuse or sexual exploitation is 12 years of age or older. After a report is made or an investigation is commenced, the following individuals or entities shall provide to the county attorney all case notes, correspondence, evaluations, interviews, and other investigative materials related to the report or investigation:

(i) the department;

(ii) state and local law enforcement; and

(iii) all members of a county or regional interdisciplinary child information and school safety team established under **52-2-211**.

(b) The duty to provide records to the county attorney under subsection (1)(a) remains throughout the course of an investigation, an abuse and neglect proceeding conducted pursuant to this part, or the prosecution of a case involving the sexual abuse of a child or sexual exploitation of a child.

(c) Upon receipt of a report from the department, as required in **41-3-202**, that includes an allegation of sexual abuse of a child or sexual exploitation of a child, the county attorney shall certify in writing to the person who initially reported the information that the county attorney received the report. The certification must include the date the report was received and the age and gender of the alleged victim. If the report was anonymous, the county attorney shall provide the certification to the department. If the report was made to the county attorney by a law enforcement officer, the county attorney is not required to provide the certification.

(2) The county attorney shall retain records relating to the report or investigation, including the certification, case notes, correspondence, evaluations, videotapes, and interviews, for 25 years.

(3) On or before January 1 and June 1 of each year, each county attorney shall report to the attorney general. The report to the attorney general must include, for each report from the department or investigation by law enforcement:

- (a) a unique case identifier;
- (b) the date that the initial report or allegation was received by the county attorney;
- (c) the date any charges were filed;
- (d) the date of any decision to decline to prosecute;
- (e) if charges are filed against a defendant, whether a conviction was obtained and, if a conviction was obtained, the sentence imposed by the court; and
- (f) the number of certifications made as required by subsection (1)(c), including the number of certifications made to the department.

(4) (a) The attorney general shall create a form for county attorneys to use when submitting reports required by subsection (3). The form must allow collection of the information required by subsection (3) on an aggregated, cumulative basis for a 5-year period until charges are filed or a decision is made to decline to prosecute.

(b) The information provided by a county attorney on the forms is confidential criminal justice information as defined in **44-5-103**.

(5) The attorney general shall report to the law and justice interim committee each year by August 15 and as provided in **5-11-210**. The reports must provide:

- (a) aggregated information regarding the status of the cases reported in subsection (3) by the county attorneys, except for those cases pending review of the county attorney or uncharged cases still under investigation, including data on the total number of cases reported;
- (b) the number of cases declined for prosecution;
- (c) the number of cases charged;
- (d) any action in the past fiscal year that the attorney general took under the authority of **2-15-501** based on the reports submitted as required in subsection (3). A report made pursuant to this subsection (5)(d) may not include the name of the county.
- (e) after consideration of the information provided by the department pursuant to **41-3-211**, any county attorney who failed to provide a complete report required by subsection (3).

History: En. Sec. 1, Ch. 367, L. 2019; amd. Sec. 3, Ch. 364, L. 2021; amd. Sec. 4, Ch. 195, L. 2023.

41-3-211 Department Report to Attorney General By July 15 of each year, the department shall report to the attorney general and the law and justice interim committee in accordance with **5-11-210** the number of referrals to county attorneys pursuant to **41-3-202(1)(b)(i)** that the department made for each county in the previous fiscal year.

History: En. Sec. 1, Ch. 195, L. 2023.

41-3-212 Department Procedures for Reports -- Recording -- Notifications (1) A department employee receiving a report of abuse or neglect pursuant to this part shall:

(a) obtain the information and provide the notifications specified in this section; and  
(b) make an audio recording when a report is made by phone. The department shall retain the recording in the same manner as provided for safety and risk assessments in **41-3-202**.

(2) A department employee receiving a report of abuse or neglect shall request the following information:

(a) the specific facts giving rise to the reasonable suspicion of child abuse or neglect and the source or sources of the information; and

(b) (i) if the person making the report is required under **41-3-201** to report suspected abuse or neglect, the person's name and telephone number and the capacity that makes the person a mandatory reporter under **41-3-201**; or

(ii) if the person making the report is not a mandatory reporter under **41-3-201**, the person's name and telephone number. If the person is unwilling to provide the information, the person receiving the report shall notify the caller that if the caller suspects the child is at serious risk of imminent harm, to call 9-1-1 so the call will be prioritized as an emergency.

(3) Reports made under this part are confidential as provided in **41-3-205**. The privacy of the person making the report must be protected as provided in **41-3-205(3)(d)** and **(3)(h)**.

(4) A department employee receiving a report pursuant to **41-3-201** shall:

(a) to the greatest extent possible, attempt to obtain the name and phone number of the person making the report and document any other identifying information available, including but not limited to the caller's phone number when identified by the phone system; and

(b) if the report is being made by phone, notify the caller that the report is being recorded and the person's identity will be kept confidential.

History: En. Sec. 1, Ch. 382, L. 2023

#### 41-3-213 And 41-3-214 Reserved

41-3-215 Right of Aggrieved Party (1) A person who is alleged to be a perpetrator of abuse or neglect in a report made under this part may file a complaint with the county attorney if the person believes the report was false or made with malicious intent. The county attorney shall investigate the complaint, including obtaining any recordings made of the reports.

(2) If the ombudsman suspects that a report was made with false or malicious intent and may be considered an offense under **45-7-203**, the ombudsman shall report the matter to the county attorney having jurisdiction of the matter.

History: En. Sec. 2, Ch. 382, L. 2023.

#### 41-3-216 Provision of Information About Investigation Procedure and Rights to Parents

(1) On removal of a child, the department shall verbally advise the parent, guardian, or other person having physical or legal custody of a child:

(a) of the specific complaint or allegation made against the parent, guardian, or other person having physical or legal custody of a child;

(b) of the fundamental rights of parents under **40-6-701** and **40-4-227** to direct the upbringing, education, health care, and mental health of their children without government interference, but this right should yield to the best interests of the child when the parent's conduct is contrary to the child-parent relationship;

(c) of the right to seek counsel at any time and to consult with counsel before signing any documents; and

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

(i) is not required to permit an investigator from the department to enter the home or submit to a drug or alcohol test, unless ordered to do so by the court;

(ii) is not required to speak with the investigator and any statements may be used in an administrative or court proceeding; and

(iii) may record any interactions with a department employee if the parent, guardian, or other person having physical or legal custody of a child informs the department employee that the interaction is being recorded.

(2) During initial interactions with the parent, guardian, or other person having physical or legal custody of a child who is the subject of an investigation under **41-3-202**, the

department shall provide the parent, guardian, or other person having physical or legal custody of a child with a clear written description:

(a) of the right to seek counsel at any time and to consult with counsel before signing any documents;

(b) that the parent, guardian, or other person having physical or legal custody of a child is not required to permit an investigator from the department to enter the home or submit to a drug or alcohol test, unless ordered to do so by the court;

(c) that the parent, guardian, or other person having physical or legal custody of a child is not required to speak with the investigator and any statements may be used in an administrative or court proceeding;

(d) of the right of the parent, guardian, or other person having physical or legal custody of a child to:

(i) be treated with dignity and respect without any form of discrimination; and

(ii) have the parent's, guardian's, or other person's culture, language, and religion respected; and

(e) of the department's procedures for conducting an investigation of alleged child abuse or neglect.

(3) If applicable after initial contact, the department shall provide the parent, guardian, or other person having physical or legal custody of a child with a concise written description of:

(a) the circumstances under which the department would seek to enter into a written prevention plan or services agreement with the parent or guardian under **41-3-302**;

(b) the circumstances under which the department would remove the child from the home and seek a court order for immediate protection and emergency protective services under **41-3-427**;

(c) an explanation of when the law requires the department to refer a report of alleged child abuse or neglect to a law enforcement agency for a separate determination of whether a criminal violation occurred;

(d) the right to withhold consent to release the parent's, guardian's, or other person's medical or mental health records unless ordered to do so by a court; and

(e) the right to accommodations under the Americans with Disabilities Act of 1990, 42 U.S.C. 12101, et seq.

(4) When the parent, guardian, or other person having physical or legal custody of a child requests to file a complaint, the department shall provide the parent, guardian, or person having physical or legal custody:

(a) the procedures to file a complaint with the department and the child and family ombudsman;

(b) the procedure for the department to disclose records to a member of the United States congress or a member of the Montana legislature under **41-3-205(4)**; and

(c) the process for reviewing the department's records of the investigation.

(5) When the court approves emergency protective services, the office of public defender shall provide the parent, guardian, or other person having physical or legal custody of a child:

(a) timelines for hearings and determinations under this chapter; and

(b) an explanation that a parent, guardian, or other person having physical or legal custody of a child has the right to:

(i) receive a copy of the affidavit of the child protection specialist regarding the circumstances of the emergency removal as provided under **41-3-301**;

(ii) attend and participate in hearings, which includes providing a statement to the judge;

(iii) contest the allegations in a petition filed under **41-3-422**;

(iv) call witnesses and cross-examine witnesses;

(v) have a support person or persons present during any meeting with a child protection specialist or other department staff;

(vi) request that the child be placed in a kinship foster home as defined in **52-2-602**; and

(vii) be provided with services, including visitation with the child, unless otherwise ordered by the court.

(6) Except for the information provided in subsection (1)(a), the department shall post the information required to be given to a parent, guardian, or other person having physical or legal custody of a child on a publicly available website and in a conspicuous place in the publicly accessible area of the office of a child protection specialist.

History: En. Sec. 1, Ch. 783, L. 2023.

### Part 3

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

(b) 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 (1)(b) must:

(i) include the reason for removal;

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

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

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

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

(B) has the right to attend and participate in the emergency protective services hearing and the show cause hearing, including providing statements to the judge;

(C) may have a support person present during any meeting with the child protection specialist concerning emergency protective services, including the emergency protective services hearing provided for in **41-3-306**; and

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

(c) A copy of the notification required under subsection (1)(b) must be provided within 24 hours to the office of state public defender.

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



against an adult member of the household, the department shall take appropriate steps for the protection of the child, which may include:

- (a) making reasonable efforts to protect the child and prevent the removal of the child from the parent or guardian who is a victim of alleged partner or family member assault or strangulation of a partner or family member;
  - (b) making reasonable efforts to remove the person who allegedly committed the partner or family member assault or strangulation of a partner or family member from the child's residence if it is determined that the child or another family or household member is in danger of partner or family member assault or strangulation of a partner or family member; and
  - (c) providing services to help protect the child from being placed with or having unsupervised visitation with the person alleged to have committed partner or family member assault or strangulation of a partner or family member until the department determines that the alleged offender has met conditions considered necessary to protect the safety of the child.
- (3) If the department determines that an adult member of the household is the victim of partner or family member assault or strangulation of a partner or family member, the department shall provide the adult victim with a referral to a domestic violence program.
- (4) A child who has been removed from the child's home or any other place for the child's protection or care may not be placed in a jail.
- (5) The department may locate and contact extended family members upon placement of a child in out-of-home care. The department may share information with extended family members for placement and case planning purposes.
- (6) If a child is removed from the child's home by the department, a child protection specialist shall submit an affidavit regarding the circumstances of the emergency removal to the county attorney and provide a copy of the affidavit to the office of state public defender and, if possible, the parents or guardian within 2 working days of the emergency removal. An abuse and neglect petition must be filed in accordance with **41-3-422** within 5 working days, excluding weekends and holidays, of the emergency removal of a child unless arrangements acceptable to the agency for the care of the child have been made by the parents or a written prevention plan has been entered into pursuant to **41-3-302**.
- (7) Except as provided in the federal Indian Child Welfare Act [or the Montana Indian Child Welfare Act provided for in Title 41, chapter 3, part 13], if applicable, a show cause hearing must be held within 20 days of the filing of the petition unless otherwise stipulated by the parties pursuant to **41-3-434**.

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

(9) The department shall make the necessary arrangements for the child's well-being as are required prior to the court hearing. *(Bracketed language in subsection (7) terminates June 30, 2025--sec. 55, Ch. 716, L. 2023.)*

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; amd. Sec. 3, Ch. 376, L. 2015; amd. Sec. 4, Ch. 394, L. 2017; amd. Sec. 5, Ch. 19, L. 2021; amd. Sec. 2, Ch. 383, L. 2021; amd. Sec. 9, Ch. 520, L. 2021; amd. Sec. 3, Ch. 529, L. 2021; amd. Sec. 1, Ch. 323, L. 2023; amd. Sec. 1, Ch. 711, L. 2023; amd. Sec. 30, Ch. 716, L. 2023.

#### 41-3-302 Responsibility of Providing Protective Services -- Written Prevention Plans (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 prevention plan with a parent, guardian, or other person having physical or legal custody of the child for the purpose of keeping the child safely in the home or for the purpose of returning the child to the home within a 30-day temporary out-of-home protective placement.

(b) The department shall inform a parent, guardian, or other person having physical or legal custody of a child who is considering entering into a written prevention plan that the parent, guardian, or other person may have another person of the parent's, guardian's, or other person's choice present whenever the terms of the written prevention plan are under discussion by the parent, guardian, or other person and the department. Reasonable accommodations must be made regarding the time and place of meetings at which a written prevention plan is discussed.

(4) A written prevention plan may include provisions for:

(a) a family engagement meeting and implementation of safety plans developed during the meeting;

- (b) a professional evaluation and treatment of the parent, guardian, or other person having physical or legal custody of the child or of the 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, guardian, or other person having physical or legal custody of the child 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 written prevention plan is subject to termination by either party at any time. Termination of a written prevention plan 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 written prevention plan is terminated by a party to the agreement, a child who has been placed in a temporary out-of-home protective placement pursuant to the agreement must be returned to the parent, guardian, or other person having physical or legal custody of the child 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; amd. Secs. 2, 3, Ch. 141, L. 2017; amd. Sec. 6, Ch. 19, L. 2021.

#### 41-3-303 Renumbered 41-3-112

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 Terminated

41-3-306 Emergency Protective Services Hearing -- Exception (1) (a) A district court shall hold a hearing within 5 business days of a child's removal from the home pursuant to **41-3-301** to determine whether there is probable cause to continue the removal beyond 5 business days.

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

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

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

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

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

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

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

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

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

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

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

History: En. Sec. 1, Ch. 383, L. 2021, Sec. 1, Ch. 529, L. 2021; amd. Sec. 2, Ch. 711, L. 2023; amd. Sec. 31, Ch. 716, L. 2023.

**41-3-307 Availability of Prehearing Conferences** (1) The parents, parent, guardian, or other person having physical or legal custody of a child who has been removed from the home pursuant to **41-3-301** may participate in a conference within 5 days of the child's removal and before an emergency protective services hearing held by the court pursuant to **41-3-306**.

(2) A prehearing conference must include the following parties:

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

(b) the person's legal counsel;

(c) the county attorney's office; and

(d) a department social worker.

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

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

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

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

(c) parenting time schedules; and

(d) treatment services for the family.

History: En. Sec. 2, Ch. 529, L. 2021; amd. Sec. 3, Ch. 711, L. 2023; amd. Sec. 32, Ch. 716, L. 2023.

#### **Part 4**

41-3-401 Renumbered 41-3-422

41-3-402 Renumbered 41-3-427

41-3-403 Renumbered 41-3-423

41-3-404 Renumbered 41-3-437

41-3-405 Combined With 41-5-805, Renumbered 41-3-1123

41-3-406 Renumbered 41-3-438

41-3-407 Combined With 41-5-806, Renumbered 41-3-1124

41-3-408 Renumbered 41-1-501

41-3-409 Renumbered 41-3-113

41-3-410 Repealed

41-3-411 Renumbered 41-3-446

41-3-412 Renumbered 41-3-445

41-3-413 Repealed

41-3-414 Through 41-3-419 Reserved

41-3-420 Renumbered 41-3-443

41-3-421 Renumbered 41-3-444

41-3-422 Abuse and Neglect Petitions -- Burden of Proof (1) (a) Proceedings under this chapter must be initiated by the filing of a petition. A petition may request the following relief:

- (i) immediate protection and emergency protective services, as provided in **41-3-427**;
- (ii) temporary investigative authority, as provided in **41-3-433**;
- (iii) temporary legal custody, as provided in **41-3-442**;
- (iv) long-term custody, as provided in **41-3-445**;
- (v) termination of the parent-child legal relationship, as provided in **41-3-607**;
- (vi) appointment of a guardian pursuant to **41-3-444**;

(vii) a determination that preservation or reunification services need not be provided; or  
(viii) any combination of the provisions of subsections (1)(a)(i) through (1)(a)(vii) or any other relief that may be required for the best interests of the child.

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) If a proceeding under this chapter involves an Indian child, as defined in the federal Indian Child Welfare Act, 25 U.S.C. 1901, et seq., or **41-3-1303**, the standards of proof



required for legal relief under the federal Indian Child Welfare Act and the Montana Indian Child Welfare Act provided for in Title 41, chapter 3, part 13, apply.

(6) (a) Except as provided in the federal Indian Child Welfare Act and the Montana 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. If personal service cannot be made upon a putative father, the court may not provide for the appointment or assignment of counsel as provided for in **41-3-425** to represent the father unless, in the opinion of the court, the interests of justice require counsel to be appointed or assigned.

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

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

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

participation in subsequent proceedings held pursuant to this chapter involving the custody of the child.

(c) Whenever a child is placed with a foster parent, preadoptive parent, or relative, the department shall provide written notice to the foster parent, preadoptive parent, or relative explaining the foster parent's, preadoptive parent's, or relative's rights under this subsection (9) to receive notice, to appear and be heard, and to attempt to intervene in proceedings under this chapter.

(10) An abuse and neglect petition must state:

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

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

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

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

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

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

(a) right, pursuant to **41-3-425**, to appointment or assignment of counsel if the person is indigent or if appointment or assignment of counsel is required under the federal Indian Child Welfare Act or the Montana 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. (*Terminates June 30, 2025--sec. 55, Ch. 716, L. 2023.*)

**41-3-422.** (*Effective July 1, 2025*) **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. If personal service cannot be made upon a putative father, the court may not provide for the appointment or assignment of counsel as provided for in **41-3-425** to represent the father unless, in the opinion of the court, the interests of justice require counsel to be appointed or assigned.

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

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

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

(c) Whenever a child is placed with a foster parent, preadoptive parent, or relative, the department shall provide written notice to the foster parent, preadoptive parent, or relative explaining the foster parent's, preadoptive parent's, or relative's rights under this subsection (9) to receive notice, to appear and be heard, and to attempt to intervene in proceedings under this chapter.

(10) An abuse and neglect petition must state:

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

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

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

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

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

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

(a) right, pursuant to **41-3-425**, to appointment or assignment of counsel if the person is indigent or if appointment or assignment of counsel is required under the federal Indian Child Welfare Act, 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; amd. Sec. 1, Ch. 52, L. 2017; amd. Sec. 7, Ch. 19, L. 2021; amd. Sec. 1, Ch. 333, L. 2023; amd. Sec. 33, Ch. 716, L. 2023.

41-3-423 Reasonable Efforts Required to Prevent Removal of Child Or To Return --

Exemption -- Findings -- Permanency Plan (1) (a) The department shall make reasonable efforts to prevent the necessity of removal of a child from the child's home and to reunify families that have been separated by the state.

(b) For the purposes of this subsection (1), the term "reasonable efforts" means the department shall in good faith:

(i) conduct a comprehensive assessment of the circumstances of the family, with a focus on safe reunification as the most desirable goal. The assessment must be provided to the parents and to counsel for the parents.

(ii) identify appropriate services and help the parents overcome barriers, including actively assisting the parents in obtaining appropriate services;

(iii) with parental consent, identify and invite the extended family to participate in providing support and services to the family and to participate in family team meetings, permanency planning, and resolution of placement issues;

(iv) conduct or cause to be conducted a diligent search for the child's extended family members and contact and consult with extended family members to provide family structure and support for the child and the parents;

(v) offer and employ all available and culturally appropriate family preservation strategies and facilitate the use of remedial and rehabilitative services;

(vi) take steps to keep siblings together whenever possible;

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

(viii) identify community resources, including housing, financial, transportation, mental health, substance abuse, and peer support services, and actively assist the parents or, when appropriate, the child's family in utilizing and accessing the resources;

(ix) monitor progress and participation in services; and

(x) consider alternative ways to address the needs of the parents and, when appropriate, the family if the optimum services do not exist or are not available.

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

(2) Except in a proceeding subject to the federal Indian Child Welfare Act [or the Montana Indian Child Welfare Act provided for in Title 41, chapter 3, part 13], 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**. (*Bracketed language in subsection (2) terminates June 30, 2025--sec. 55, Ch. 716, L. 2023.*)

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; reds. 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; amd. Sec. 8, Ch. 19, L. 2021; amd. Sec. 1, Ch. 222, L. 2021; amd. Sec. 4, Ch. 674, L. 2023; amd. Sec. 34, Ch. 716, L. 2023.

**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**;
- (c) any party entitled to counsel at public expense under the federal Indian Child Welfare Act [or the Montana Indian Child Welfare Act provided for in Title 41, chapter 3, part 13]; and
- (d) any child petitioning for reinstatement of parental rights pursuant to **41-3-615**.

(3) 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**.

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

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

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

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; amd. Sec. 2, Ch. 52, L. 2017; amd. Sec. 2, Ch. 295, L. 2023; amd. Sec. 1, Ch. 655, L. 2023; amd. Sec. 35, Ch. 716, L. 2023.

#### 41-3-426 Reserved

41-3-427 Petition for Immediate Protection and Emergency Protective Services -- Evidence and Consideration of Harm Of Removal -- 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 or the Montana Indian Child Welfare Act provided for in Title 41, chapter 3, part 13, clear and convincing evidence that a child is abused or neglected or is in danger of being abused or neglected.

(c) The affidavit of the department representative must contain:

(i) information, if any, regarding statements made by the parents about the facts of the case; and

(ii) specific, written documentation as to why the risk of allowing the child to remain at home substantially outweighs the harm of removing the child, including consideration of:

(A) the emotional trauma the child is likely to experience if separated from the family;

(B) the child's relationships with other members of the household, including siblings;

(C) the child's schooling and social relationships that could be disrupted with a placement out of the neighborhood;

(D) the impact the removal would have on services the child is receiving and on extracurricular activities that benefit the child; and

(E) documentation of reasonable efforts made to keep the family intact.

(d) 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 or the Montana 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 or the Montana 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.

(e) 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.

(f) 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 meeting with a child protection specialist concerning emergency protective services. Reasonable accommodation must be made in scheduling an in-person meeting with the child protection specialist.

(2) Pursuant to subsection (1), if the court finds probable cause or, if the case is subject to the federal Indian Child Welfare Act or the Montana 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 or the Montana 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 of 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) When requesting emergency protective services under this section, the department shall provide the court with information on:
- (a) whether a kinship placement is available; or
  - (b) if a family foster home has been identified:
    - (i) where the foster home is located in relation to the child's home;
    - (ii) whether the foster placement can accommodate the proposed visitation schedule;
    - (iii) whether siblings can be placed together;
    - (iv) the proximity of the foster home to the child's home and school;
    - (v) whether the child will be able to observe religious or cultural practices important to the child; and

(vi) whether the foster home is able to accommodate any special needs the child may have.

(4) In making a removal determination, the court shall weigh and evaluate, in the factual setting, the harm to the child that will result from removal and determine if allowing the child to remain in the home substantially outweighs the harm of removal. Factors for consideration of the best interests of the child include but are not limited to:

(a) the factors identified in subsections (1)(c)(ii)(A) through (1)(c)(ii)(D); and

(b) whether the department made reasonable efforts, as described in subsection (1)(c)(ii)(E), to keep the family intact.

(5) (a) An order for removal of a child from the home must include a finding that:

(i) continued residence of the child with the parent is contrary to the welfare of the child;

(ii) an out-of-home placement is in the best interests of the child; and

(iii) the risk of allowing the child to remain in the home substantially outweighs the harm of removal.

(b) The court shall provide written findings to explain why the risk of the child's continued stay in the home outweighs the harm of removing the child.

(6) 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.

(7) The petition must be served as provided in **41-3-422** or, if the case involves an Indian child, as provided in **41-3-1311**. (*Terminates June 30, 2025--sec. 55, Ch. 716, L. 2023.*)

**41-3-427.** (*Effective July 1, 2025*) **Petition for immediate protection and emergency protective services – evidence and consideration of harm of removal – 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.

(c) The affidavit of the department representative must contain:

(i) information, if any, regarding statements made by the parents about the facts of the case; and

(ii) specific, written documentation as to why the risk of allowing the child to remain at home substantially outweighs the harm of removing the child, including consideration of:

(A) the emotional trauma the child is likely to experience if separated from the family;

(B) the child's relationships with other members of the household, including siblings;

(C) the child's schooling and social relationships that could be disrupted with a placement out of the neighborhood;

(D) the impact the removal would have on services the child is receiving and on extracurricular activities that benefit the child; and

(E) documentation of reasonable efforts made to keep the family intact.

(d) 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.

(e) 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.

(f) 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 meeting with a child protection specialist concerning emergency protective services. Reasonable accommodation must be made in scheduling an in-person meeting with the child protection specialist.

(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 of 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) When requesting emergency protective services under this section, the department shall provide the court with information on:

- (a) whether a kinship placement is available; or
- (b) if a family foster home has been identified:
  - (i) where the foster home is located in relation to the child's home;
  - (ii) whether the foster placement can accommodate the proposed visitation schedule;



- (iii) whether siblings can be placed together;
- (iv) the proximity of the foster home to the child's home and school;
- (v) whether the child will be able to observe religious or cultural practices important to the child; and
- (vi) whether the foster home is able to accommodate any special needs the child may have.

(4) In making a removal determination, the court shall weigh and evaluate, in the factual setting, the harm to the child that will result from removal and determine if allowing the child to remain in the home substantially outweighs the harm of removal. Factors for consideration of the best interests of the child include but are not limited to:

- (a) the factors identified in subsections (1)(c)(ii)(A) through (1)(c)(ii)(D); and
- (b) whether the department made reasonable efforts, as described in subsection (1)(c)(ii)(E), to keep the family intact.

(5) (a) An order for removal of a child from the home must include a finding that:

- (i) continued residence of the child with the parent is contrary to the welfare of the child;
- (ii) an out-of-home placement is in the best interests of the child; and
- (iii) the risk of allowing the child to remain in the home substantially outweighs the harm of removal.

(b) The court shall provide written findings to explain why the risk of the child's continued stay in the home outweighs the harm of removing the child.

(6) 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.

(7) 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; amd. Sec. 11, Ch. 520, L. 2021; amd. Sec. 2, Ch. 384, L. 2023; amd. Sec. 4, Ch. 711, L. 2023; amd. Sec. 36, Ch. 716, L. 2023.

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.

41-3-431 Discovery Procedure (1) On request of a parent who is a party to the proceeding, the department shall make available for examination and reproduction the following material and information within the department's possession or control:

(a) the names, addresses, and statements of all persons who the department may call to provide testimony;

(b) all written or oral statements, reports, case notes, correspondence, evaluations, interviews, and documentation produced by the department or in the department's possession that addresses the parent or child;

(c) all written reports or statements of experts who have personally examined the child or any evidence, together with the results of any physical or psychological examinations;

(d) all papers, documents, photographs, videotapes, or tangible objects that the department may use at trial or that were obtained from or purportedly belong to the parent; and

(e) all material or information that tends to support, mitigate, or negate the department's case concerning the custody of and parental rights to the child.

(2) The department may impose reasonable conditions, including an appropriate stipulation concerning the chain of custody, to protect physical evidence produced under subsection (1)(d).

(3) The department's obligation of disclosure extends to material and information in the possession or control of members of the department's staff and of any other persons who have participated in the investigation or evaluation of the case.

(4) On motion showing that the parent has requested discovery relevant to the preparation of the case for additional material or information not otherwise provided for and that the parent is unable to obtain the substantial equivalent by other means, the court shall order the department or any person to make it available to the parent. The

court may, on the request of any person affected by the order, vacate or modify the order if compliance would be unreasonable or oppressive.

(5) If at any time during the course of the proceeding it is brought to the attention of the court that a party has failed to comply with any of the provisions of this section or any order issued pursuant to this section, the court may order any remedy that it finds just under the circumstances, including but not limited to:

- (a) ordering disclosure of the information not previously disclosed;
- (b) granting a continuance;
- (c) holding a witness, party, or counsel in contempt for an intentional violation; or
- (d) precluding a party from calling a witness, offering evidence, or raising a defense not disclosed.

(6) The identity of any person who reported or provided information on an alleged child abuse or neglect incident is protected from disclosure as provided under **41-3-205**.

(7) Any materials furnished to an attorney under this section may not be disclosed to the public but may be disclosed to others only to the extent necessary for the proper conduct of the case.

(8) If at any time after a disclosure has been made the department discovers additional material or information that would be subject to disclosure had it been known at the time of disclosure, the department shall promptly notify the parent of the existence of the additional material or information and make an appropriate disclosure.

History: En. Sec. 1, Ch. 615, L. 2023.

**41-3-432 Show Cause Hearing -- Order** (1) (a) Except as provided in the federal Indian Child Welfare Act or the Montana Indian Child Welfare Act provided for in Title 41, chapter 3, part 13, a show cause hearing must be conducted within 20 days of the filing of an initial child abuse and neglect petition unless otherwise stipulated by the parties pursuant to **41-3-434** or unless an extension of time is granted by the court. A separate notice to the court stating the statutory time deadline for a hearing must accompany any petition to which the time deadline applies.

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

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

(2) The person filing the petition has the burden of presenting evidence establishing probable cause for the issuance of an order for temporary investigative authority after the show cause hearing, except as provided by the federal Indian Child Welfare Act or the Montana 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 or the Montana 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 or **41-3-1311**, if applicable, have been met.

(5) Except as provided in the federal Indian Child Welfare Act or the Montana 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. (*Terminates June 30, 2025--sec. 55, Ch. 716, L. 2023.*)

**41-3-432.** (*Effective July 1, 2025*) **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; amd. Sec. 37, Ch. 716, L. 2023.

**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 -- Prohibition on Continuances of Hearings** (1) Subject to approval by the court, the parties may stipulate to any of the following:

(a) the child meets the definition of a youth in need of care by the preponderance of the evidence;

(b) a treatment plan, if the child has been adjudicated a youth in need of care;

(c) the disposition; or

(d) extension of the timeframes contained in this chapter, except for the timeframe contained in **41-3-445**.

(2) (a) Unless the court determines that good cause or exigent circumstances exist, a hearing scheduled pursuant to this chapter may not be continued. If the court determines that good cause or exigent circumstances necessitate the continuance of a scheduled hearing, the court shall review the reasons for good cause or the exigency and order an appropriate remedy that considers the best interests of the child.

(b) For the purposes of this subsection (2), "exigent circumstances" means:

- (i) newly discovered evidence;
- (ii) unforeseen personal emergencies; or
- (iii) other unforeseen emergencies or disasters.

(c) For purposes of this subsection (2), "good cause" exists when:

- (i) a parent is progressing with recommended treatment or other services included in a court-approved treatment plan and would benefit from a reasonable amount of additional time to complete the identified tasks to achieve reunification with the child;
- (ii) additional time is necessary to meet the individual needs of a child, provide for the child's physical or emotional health, or to facilitate the child's permanency;
- (iii) continuation of a hearing is necessary to satisfy the procedural requirements of due process or effective representation; or
- (iv) the parties agree to a continuance.

History: En. Sec. 14, Ch. 281, L. 2001; en. Sec. 32, Ch. 311, L. 2001; amd. Sec. 10, Ch. 504, L. 2003; amd. Sec. 2, Ch. 779, L. 2023.

#### 41-3-435 And 41-3-436 Reserved

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 or the Montana Indian Child Welfare Act provided for in Title 41, chapter 3, part 13, 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 or the Montana Indian Child Welfare Act, a qualified expert witness is required to testify that the continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child. (*Terminates June 30, 2025--sec. 55, Ch. 716, L. 2023.*)

**41-3-437.** (*Effective July 1, 2025*) **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; amd. Sec. 38, Ch. 716, L. 2023.

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) 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; amd. Sec. 5, Ch. 674, L. 2023.

#### 41-3-439 Repealed

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, in accordance with **41-3-450** and **41-3-451**, 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; amd. Sec. 6, Ch. 674, L. 2023.

41-3-441 Review of Necessity of Nonyouth Foster Home Placement (1) Within 60 days of placement of a child in a therapeutic group home, the court shall:

(a) conduct a hearing to:

(i) review the therapeutic needs assessment of the child;

(ii) consider whether the needs of the child can be met through placement in a youth foster home;

(iii) consider whether placement of the child in a therapeutic group home provides the most effective and appropriate level of care for the child in the least restrictive environment; and

(iv) consider whether placement of the child in a therapeutic group home is consistent with the short-term and long-term goals for the child as specified in the child's permanency plan; and

(b) issue a written order stating the reasons for the court's decision to approve or disapprove the continued placement of the child in a therapeutic group home. The order must be included in and made part of the child's case plan.

(2) If the child remains placed in a therapeutic group home, the following evidence must be submitted at each status review or permanency hearing held concerning the child:

(a) the ongoing assessment of the strengths and needs of the child that continues to support the determination that the needs of the child cannot be met through placement in a youth foster home;

(b) that the child's placement in a therapeutic group home provides the most effective and appropriate level of care for the child in the least restrictive environment;

(c) that the placement is consistent with the short-term and long-term goals for the child as specified in the child's permanency plan;

(d) documentation of the specific treatment or service needs that will be met for the child in the placement and the length of time the child is expected to need the treatment or services; and

(e) documentation of the efforts made by the department to prepare the child to return home, to be placed with a fit and willing relative, legal guardian, or adoptive parent, or to be placed in a youth foster home.

History: En. Sec. 1, Ch. 202, L. 2021.

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 include a drug testing requirement unless the court finds the substance use of the parent or guardian contributed to the removal of the child from the home or contributes to the child remaining out of the home.

(5) 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.

(6) 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.

(7) A treatment plan must be ordered by no later than 30 days after the date of the dispositional hearing held pursuant to **41-3-438**, except for good cause shown.

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; amd. Sec. 1, Ch. 131, L. 2017; amd. Sec. 1, Ch. 429, L. 2023.

#### 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 (8) 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 (8);

(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 [federal] Indian Child Welfare Act, 25 U.S.C. 1901, et seq., [or **41-3-1303**,] the [Indian] child's tribe has received notification from the state of the initiation of the proceedings.

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

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

(5) 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.

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

(7) 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**.

(8) 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.

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

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; amd. Sec. 7, Ch. 674, L. 2023; amd. Sec. 39, Ch. 716, L. 2023.

**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.

(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 child has been asked about the desired permanency outcome;

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

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



- (d) whether the department has made reasonable efforts to finalize the plan;
- (e) whether there are compelling reasons why it is not in the best interest of the individual child to:
  - (i) return to the child's home; or
  - (ii) be placed for adoption, with a legal guardian, or with a fit and willing relative; and
- (f) 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) For a child 14 years of age or older, the permanency plan must:

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

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

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

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

(11) 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; amd. Sec. 1, Ch. 182, L. 2017; amd. Sec. 12, Ch. 520, L. 2021; amd. Sec. 8, Ch. 674, L. 2023.

41-3-446 Contributions by Parents or Guardians for Youth's Care (1) (a) In accordance with subsections (1)(b) and (1)(c), if physical or legal custody of the youth is transferred to the department, the court shall examine the financial ability of the youth's parent or guardian 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.

(b) The court may order contribution only upon a finding that:

- (i) the payment is in the best interests of the child; and
- (ii) the payment will not impede successful achievement of the child's permanency plan or the parent's or guardian's ability to engage in reunification efforts.

(c) In making a determination under this section, the court shall presume that it is not in the best interests of a child to order a contribution from the child's parent or guardian unless the child has been in the physical or legal custody of the state for 18 consecutive months or more.

(2) If the court determines that the youth's parent or guardian is 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**. The court may not order a retroactive contribution from the parent or guardian for costs incurred before the order is issued. An order under this subsection must be in writing.

(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) When assessing whether the implementation of immediate income withholding is in the best interest of the child under subsection (3)(c)(i), the court shall consider whether immediate income withholding would impede successful achievement of the child's permanency plan or the parent's or guardian's ability to engage in reunification efforts.

(e) 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) be approved by the court and 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.

(6) Unless a youth receives benefits under Title 53, chapter 4, part 2, the department may not seek a contribution from a parent or guardian of a youth whose physical or legal custody has been transferred to the department under this chapter except under the provisions of this section or pursuant to a preexisting support order under **40-5-290**.

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; amd. Sec. 2, Ch. 174, L. 2023.

#### 41-3-447 Through 41-3-449 Reserved

41-3-450 Placement Preferences (1) The placement preferences described in this section apply in any foster care, preadoptive, or adoptive placement of a child unless there is a determination under **41-3-451** that good cause exists to not follow the placement preferences or unless the placement is governed by the federal Indian Child Welfare Act or the Montana Indian Child Welfare Act.

(2) (a) In any adoptive placement of a child, preference must be given in descending order to placement of the child with:

- (i) a member of the child's extended family, including fictive kin;
  - (ii) a member of the child's community with ethnic, cultural, and religious heritage similar to the child's family; or
  - (iii) a family with ethnic, cultural, and religious heritage similar to the child's family.
- (b) When appropriate, the placement preference of the child or the child's parent or legal guardian must be considered.
- (3) Except as provided in **41-3-301**(1), in any foster care or preadoptive placement of a child:
- (a) the child must be placed in the least restrictive setting that:
    - (i) most approximates a family, taking into consideration sibling attachment;
    - (ii) allows the child's special needs, if any, to be met; and
    - (iii) is in reasonable proximity to the child's home, extended family, or siblings;
  - (b) preference must be given in descending order to placement of the child with:
    - (i) a member of the child's extended family, including fictive kin;
    - (ii) a licensed foster home located in the child's community with ethnic, cultural, and religious heritage similar to the child's family;
    - (iii) a licensed foster home with ethnic, cultural, and religious heritage similar to the child's family; or
    - (iv) an institution for children approved by the department that has a program suitable to meet the child's needs; and
  - (c) the preference of the child or the child's parent or legal guardian must be considered.
- (4) For the purposes of this section, "fictive kin" means a person to whom the child and the child's parent and family ascribe a family relationship and with whom the child has had a significant emotional tie that existed prior to the department's involvement with the child and the child's family.

History: En. Sec. 1, Ch. 674, L. 2023; amd. sec. 11, Ch. 674, L. 2023.

**41-3-451 Exemption from Placement Preferences** (1) Good cause exists to not follow the placement preferences described in **41-3-450** if one or more of the following circumstances is present:

(a) a child's parent or legal guardian attests that the parent or legal guardian has reviewed the placement preferences and requests a placement that does not follow the order of preference;

(b) a child who is of sufficient age and capacity to understand the decision requests a placement that does not follow the order of preference;

(c) a sibling attachment exists that may be maintained only through a particular placement;

(d) the extraordinary physical, mental, or emotional needs of the child, such as specialized treatment services that may be unavailable in the community where families who meet the placement preferences live, require a particular placement; or

(e) a suitable placement meeting the placement preferences is not available after a diligent search was conducted. The determination that a suitable placement is not available must conform to the prevailing social and cultural standards of the community in which the child's parent or legal guardian or extended family resides or to which the child's parent or legal guardian or extended family members maintain social and cultural ties.

(2) Good cause does not exist to depart from the preferences described in **41-3-450** based on the socioeconomic status of any placement relative to another placement.

History: En. Sec. 2, Ch. 674, L. 2023.

## Part 5 (Renumbered)

## Part 6

### 41-3-601 Repealed

41-3-602 Purpose (1) This part provides procedures and criteria by which the parent-child legal relationship:

(a) may be terminated by a court if the relationship is not in the best interest of the child; or

(b) may be reinstated by a court when permanency has not been achieved for a child, the child and parent desire reinstatement, and reinstatement is in the best interest of the child.

(2) 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; amd. Sec. 3, Ch. 295, L. 2023.

#### 41-3-603 Repealed

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.

(6) A hearing on a petition for termination of parental rights must be held no later than 45 days from the date the petition was served on the parent or parents, except for good cause shown.

History: En. Sec. 14, Ch. 566, L. 1999; amd. Sec. 16, Ch. 311, L. 2001; amd. Sec. 15, Ch. 504, L. 2003; amd. Sec. 2, Ch. 131, L. 2017.

#### 41-3-605 And 41-3-606 Reserved

41-3-607 Petition for Termination -- Separate Hearing -- No Jury Trial (1) Except as provided in Title 40, chapter 6, part 10, 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; amd. Sec. 4, Ch. 388, L. 2017.

**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 or the Montana Indian Child Welfare Act provided for in Title 41, chapter 3, part 13, 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 or the Montana Indian Child Welfare Act, a qualified expert witness is required to testify that the continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child. (*Terminates June 30, 2025--sec. 55, Ch. 716, L. 2023.*)

**41-3-609.** (*Effective July 1, 2025*) **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; amd. Sec. 40, Ch. 716, L. 2023.

#### 41-3-610 Repealed

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.

41-3-613 Relinquishment of Parental Rights -- Open Adoption (1) (a) At any time after a child has been removed from the custody of a parent, the parent may relinquish parental rights. Prior to a parent's relinquishment of parental rights, the parent may enter into an agreement with the preadoptive parent or parents to allow for an open adoption in which the parent may maintain contact with the child.

(b) Following the relinquishment of parental rights pursuant to subsection (1)(a), the parent-child legal relationship is terminated.

(2) The agreement may be suspended or terminated if:

(a) in the case of a child who has been subsequently adopted, the adoptive parent or parents determine that continued contact with the parent is no longer in the child's best interest; or

(b) the child is 12 years of age or older and the child no longer consents to have continued contact with the parent.

History: En. Sec. 1, Ch. 208, L. 2023.

#### 41-3-614 Reserved

41-3-615 Reinstatement of Parental Rights (1) A child whose parent's rights were terminated under this chapter or a party whose parental rights were terminated under this chapter may petition the court to reinstate parental rights if:

(a) the child was adjudicated a youth in need of care under this chapter;

(b) the child's parent's rights were terminated in a proceeding under this chapter;

(c) the child has not achieved the child's permanency plan or the permanency plan has not been sustained; and

(d) two years have passed since the final order terminating parental rights was entered.

(2) If a parent of a child eligible to petition for reinstatement of parental rights under subsection (1) contacts the department or the child's guardian ad litem regarding reinstatement of parental rights, the department or the guardian ad litem shall notify the child about the child's right to petition for reinstatement of parental rights under this section.

(3) A child filing a petition under this section:

(a) is entitled to representation by counsel; and

(b) shall sign the petition unless good cause exists for not doing so.

(4) (a) If, after considering the parent's fitness and interest in reinstatement of parental rights, the court finds that the best interests of the child may be served by reinstatement of parental rights, the court shall order that a hearing on the merits of the petition be held.

(b) The court shall provide prior notice of a hearing under subsection (4)(a) to:

(i) the department;

(ii) the child's attorney and the child;

(iii) the child's parent whose parental rights are the subject of the petition;

(iv) any parent whose rights have not been terminated;

(v) the child's current foster parent, relative caregiver, guardian, or custodian; and

(vi) if applicable, the child's tribe.

(5) After a hearing, the court shall conditionally grant the petition, reinstating the rights of one or both parents, if the court finds by clear and convincing evidence that:

(a) both the parent and the child consent to the reinstatement of parental rights;

(b) in accordance with subsection (6):

(i) the child has not achieved the child's permanency plan and is not likely to imminently achieve the child's permanency plan; or

(ii) the child has not sustained the child's permanency plan; and

(c) in accordance with subsection (7), reinstatement of parental rights is in the child's best interest.

(6) In determining whether the child has achieved the child's permanency plan or is likely to achieve the child's permanency plan, the court shall review information provided by the department related to any efforts to achieve the permanency plan, including efforts to achieve adoption or a permanent guardianship.

(7) In determining whether reinstatement of parental rights is in the child's best interests, the court shall consider but is not limited to the following:

(a) whether the parent whose rights are to be reinstated is a fit parent and has remedied the parent's deficiencies documented in the record of the termination proceedings and in the termination order;

(b) whether the child is able to express the child's preference;

(c) whether the reinstatement of parental rights will present a risk to the child's health, welfare, or safety;

(d) whether the benefit to the child of reinstatement of parental rights outweighs the potential lack of permanency for the child; and

(e) whether other material changes in circumstances exist that would warrant reinstating parental rights.

(8) (a) If the court conditionally grants the petition under subsection (7), the proceedings must be continued for 6 months and a temporary order of reinstatement must be entered.

(b) Except as provided in subsection (8)(c), during this time:

(i) the child must be placed in the parent's custody; and

(ii) the department shall develop a reunification plan for the child and shall provide transition services to the family, as appropriate.

(c) If at any time the department alleges that the child has been abused or neglected by the parent, the department shall petition the court for an order dismissing the temporary reinstatement of parental rights. The court shall grant the petition based on a preponderance of the evidence that the child has been abused or neglected.

(9) (a) After the child has successfully been placed with the parent for 6 months, the court shall enter a final order reinstating parental rights that restores all rights, powers, privileges, immunities, duties, and obligations of the parent to the child, including those relating to custody, control, and, subject to subsection (9)(c), support of the child. The court shall direct the clerk of court to provide a certified copy of the final order of reinstatement of parental rights to the parent at no cost.

(b) The reinstatement of parental rights pursuant to subsection (9)(a) does not vacate or otherwise affect the validity of the original termination order.

(c) A parent whose rights are reinstated under subsection (9)(a) may not be held liable for any child support owed to the department or costs of other services provided to the child for the period beginning on the date parental rights were terminated and ending on the date parental rights were reinstated.

(10) This section may not be construed to create a cause of action against the state or its employees concerning the original termination.

History: En. Sec. 1, Ch. 295, L. 2023.

## **Part 7 Renumbered**

## **Part 8 Renumbered**

## Part 9 Reserved

## Part 10

41-3-1001 Short Title **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.

## 41-3-1002 Repealed

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

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.

#### 41-3-1009 Repealed

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, childrens' 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.

41-3-1014 Repealed

## Part 11 Renumbered and Repealed

### Part 12

41-3-1201 Terminated

41-3-1202 Terminated

41-3-1203 Terminated

41-3-1204 Terminated

41-3-1205 Terminated

41-3-1206 Terminated

41-3-1207 Terminated

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 consultation with the department and with appropriate county attorneys in cases under review.

History: En. Sec. 2, Ch. 354, L. 2015; amd. Sec. 2, Ch. 549, L. 2021.

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) based on the investigations conducted, to provide oversight of the department's systems and policies for handling abuse and neglect cases;

(7) to periodically review department procedures and promote best practices and effective programs by working in consultation with the department to improve procedures, practices, and programs;

(8) to undertake, participate in, and consult 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;

(9) to provide education on the legal rights of children;

(10) to apply for and accept grants, gifts, contributions, and bequests of funds for the purpose of carrying out the ombudsman's responsibilities; and

(11) to report annually to the attorney general and the children, families, health, and human services interim committee in accordance with **5-11-210**. The report must be public and may contain recommendations from the ombudsman regarding systemic improvements for the department.

History: En. Sec. 4, Ch. 354, L. 2015; amd. Sec. 73, Ch. 261, L. 2021; amd. Sec. 2, Ch. 411, L. 2021; amd. Sec. 3, Ch. 549, L. 2021.

41-3-1212 Investigations -- Discretion -- Procedure (1) The ombudsman shall investigate a request for assistance unless:

(a) the request for assistance is trivial, frivolous, vexatious, or not made in good faith;

(b) the request for assistance is too delayed to justify an investigation;

(c) the person requesting assistance is not personally aggrieved by the subject matter of the request; or

(d) the request for assistance has been previously investigated by the ombudsman.

(2) The ombudsman may investigate a request for assistance in a matter that is being or may reasonably be addressed by another remedy or channel, including a matter that is before a court.

(3) (a) After an investigation is completed, the ombudsman shall provide to the department any findings, conclusions, and recommendations.

(b) The department shall inform the ombudsman no later than 60 days after receipt of the report on the actions the department is taking to resolve or correct any problems identified by the ombudsman. If the department has not resolved or corrected a problem, the department shall inform the ombudsman of any reasons for not addressing the ombudsman's findings, conclusions, and recommendations.

(c) The ombudsman shall include the following information in the report required under **41-3-1211**:

(i) the number of findings reports made to the department;

(ii) the nature of the problems identified by the ombudsman;

(iii) the actions taken by the department to resolve or correct the problems; and

(iv) the problems that have not been resolved or corrected by the department, as well as the department's reasons for not addressing the ombudsman's findings, conclusions, and recommendations.

History: En. Sec. 5, Ch. 354, L. 2015; amd. Sec. 3, Ch. 411, L. 2021; amd. Sec. 4, Ch. 549, L. 2021.

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.

41-3-1214 Legislator Access to Ombudsman Records (1) Records of ombudsman investigations, including case notes, correspondence, and interviews, must be disclosed to a member of the legislature if:

(a) the legislator receives a written request from a person who has requested assistance from the ombudsman about whether laws protecting children from abuse or neglect are being complied with or whether the laws need to be changed to enhance protections for children;

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

(c) before reviewing the records, the legislator:

(i) signs a form that outlines the state and federal laws regarding confidentiality and the penalties for unauthorized release of the information; and

(ii) receives from the ombudsman an orientation of the content and structure of the records.

(2) (a) Except as provided in subsection (2)(b), records disclosed pursuant to this section are confidential. Records must be made available for the member to view but may not be copied, photographed, or otherwise replicated by the member, and must remain solely in the ombudsman's possession. The records may be viewed at any office maintained by the office of the child and family ombudsman.

(b) A member may take notes in order to discuss the records with the party who submitted the written inquiry to the member.

History: En. Sec. 1, Ch. 388, L. 2021; amd. Sec. 2, Ch. 651, L. 2023.

41-3-1215 Systemic Oversight of Child Protective Services Activities (1) The office of child and family ombudsman shall provide oversight of the child protective services provided by the department to identify and report on trends in the handling of the cases and make recommendations on ways to improve the child protective services system.

(2) The office shall analyze information received, reviewed, and compiled by the ombudsman, including but not limited to:

(a) the reports provided pursuant to **41-3-209**;

(b) the requests for assistance received by the office;

(c) policies and procedures used by the department in responding to and investigating reports of child abuse and neglect;

(d) findings relating to ombudsman investigations; and

(e) best practices for the handling of child abuse and neglect cases and the degree to which the department is using those practices.

(3) Based on the analysis, the ombudsman shall provide systemic and trend recommendations twice each calendar year to the department. The department shall respond to the recommendations within 60 days of receiving the report unless the

department has requested in writing and received an extension of the deadline for response. The response must include a description of how it will implement the recommendations or justification as to why the department is not implementing the recommendations at that time.

(4) If the department fails to respond to the recommendations as required or provides justification as to why it is not implementing the recommendations, the ombudsman shall send the report to the governor, the director of the department, and the children, families, health, and human services interim committee.

(5) The ombudsman may carry out the oversight duties provided for in this section independently or in conjunction with other governmental bodies or nongovernmental research organizations, consistent with the disclosure and confidentiality provisions of **41-3-1211(5)**.

History: En. Sec. 1, Ch. 549, L. 2021.

41-3-1301 Short Title This part may be cited as the "Montana Indian Child Welfare Act". *(Terminates June 30, 2025--sec. 55, Ch. 716, L. 2023.)*

History: En. Sec. 1, Ch. 716, L. 2023.

41-3-1302 Legislative Findings -- Purpose (1) The legislature recognizes that in possibly no other area of concurrent tribal and state law is it more important that tribal sovereignty be respected than in an area as socially and culturally determinative as family relationships. The legislature finds that the state is committed to protecting the essential tribal relations and best interests of Indian children by promoting practices designed to prevent out-of-home placement of Indian children that is inconsistent with the rights of the parents, the health, safety, or welfare of the child, or the interests of the child's tribe.

(2) The legislature further finds that when placement away from the parent or Indian custodian is necessary for the Indian child's safety, the state is committed to a placement that reflects and honors the unique values of the Indian child's tribal culture and is best able to assist the Indian child in establishing, developing, and maintaining a political, cultural, social, and spiritual relationship with the Indian child's tribe and tribal community. *(Terminates June 30, 2025--sec. 55, Ch. 716, L. 2023.)*

History: En. Sec. 2, Ch. 716, L. 2023.

41-3-1303 Definitions As used in this part, the following definitions apply:

(1) "Active efforts" means affirmative, active, thorough, and timely efforts meeting the requirements of **41-3-1319** that are intended primarily to maintain or reunite an Indian child with the child's family and that are tailored to the facts and circumstances of the case.

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

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

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

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

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

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

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

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

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

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

(a) a member of an Indian tribe; or

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

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

(b) If the Indian child's tribe does not identify family members by law or custom, the term means an adult who is the Indian child's grandparent, aunt, uncle, brother, sister, brother-in-law, sister-in-law, niece, nephew, cousin, stepparent, or stepgrandparent. A stepparent

or stepgrandparent may be considered a family member even following termination of the marriage.

(10) "Indian child's tribe" means a tribe or tribes in which an Indian child is a member or is determined eligible for membership as provided in **41-3-1307**.

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

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

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

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

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

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

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

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

(17) "Tribal court" means a court or body vested by an Indian tribe with jurisdiction over child custody proceedings. The term includes but is not limited to a federal court of Indian offenses, a court established and operated under the code or custom of an Indian tribe, and an administrative body of an Indian tribe vested with authority over child custody proceedings. (*Terminates June 30, 2025--sec. 55, Ch. 716, L. 2023.*)

History: En. Sec. 3, Ch. 716, L. 2023.

#### 41-3-1304 And 41-3-1305 Reserved

41-3-1306 Determination of Indian Status -- Confidentiality of Records (1) (a) A party seeking the foster care placement of, termination of parental rights over, or adoption of a

child shall use due diligence to determine whether the child is an Indian child. The inquiry must be made in consultation with:

- (i) the child's parent or parents;
- (ii) an individual who has custody of the child or with whom the child resides;
- (iii) any other individual who reasonably may be expected to have information regarding the child's possible membership or eligibility for membership in an Indian tribe; and
- (iv) any Indian tribe of which the child may be a member or may be eligible for membership. The consultation with a tribe must be made by contacting the tribe in writing.

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

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

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

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

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

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

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

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

- (c) the court is informed that the residence or domicile of the child, the child's parent, or the child's Indian custodian is on a reservation or in an Alaska Native village;
  - (d) the court is informed that the child is or has been a ward of a tribal court;
  - (e) the court is informed that either of the parents or the child possesses an identification card indicating membership in an Indian tribe; or
  - (f) the court determines from additional information provided that the child may be an Indian child.
- (6) (a) When seeking verification of a child's Indian status during a voluntary proceeding, the court shall keep relevant documents pertaining to the inquiry confidential and under seal if a consenting parent expresses either orally or in writing a desire for anonymity. A request for anonymity does not relieve the court, agency, or other party from any duty of compliance with this part, including the obligation to verify whether the child is an Indian child.
- (b) A tribe receiving information related to an inquiry of a child's status as an Indian child must keep documents and information confidential.
- (7) A written determination by an Indian tribe regarding the child's status as an Indian child is conclusive that the child is an Indian child. (*Terminates June 30, 2025--sec. 55, Ch. 716, L. 2023.*)

History: En. Sec. 4, Ch. 716, L. 2023.

41-3-1307 Determination of Indian Tribe (1) If the Indian child is a member of or eligible for membership in only one tribe, that tribe must be designated as the Indian child's tribe.

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

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

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

(c) If the tribes are unable to reach an agreement, for the purposes of this part the court shall designate as the child's tribe the tribe with which the child has the more significant contacts as the Indian child's tribe. In making the designation, the court shall consider:



- (i) the preference of the parents for membership of the child;
  - (ii) the length of the child's past residence or domicile on or near the reservation of each tribe;
  - (iii) the tribal membership of the child's custodial parent or Indian custodian;
  - (iv) the interest asserted by each tribe in the child custody proceeding;
  - (v) whether there has been a previous adjudication with respect to the child by a court of one of the tribes; and
  - (vi) self-identification by the child, if the child is of sufficient age and capacity to meaningfully self-identify with a tribe.
- (4) A determination of the Indian child's tribe for the purposes of this part does not constitute a determination for any other purpose. (*Terminates June 30, 2025--sec. 55, Ch. 716, L. 2023.*)

History: En. Sec. 5, Ch. 716, L. 2023.

#### 41-3-1308 And 41-3-1309 Reserved

41-3-1310 Jurisdiction -- Transfer of Jurisdiction (1) An Indian tribe has exclusive jurisdiction over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of that tribe unless:

- (a) the tribe has consented to the state's concurrent jurisdiction pursuant to Public Law 280 or 25 U.S.C. 1919;
- (b) the tribe has expressly declined to exercise its exclusive jurisdiction; or
- (c) the state is exercising emergency jurisdiction in compliance with **41-3-1325**.

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

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

- (a) either of the Indian child's parents;
- (b) the Indian child's Indian custodian; or

(c) the Indian child's tribe.

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

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

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

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

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

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

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

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

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

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

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

(i) may conduct additional hearings and enter orders that are in the best interests of the child and strictly comply with the requirements of the federal Indian Child Welfare Act and this part; and

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

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

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

(ii) expeditiously provide the tribal court with all records related to the proceeding, including but not limited to the pleadings and any court record. The state court shall work

with the tribal court to ensure the transfer of the custody of the Indian child and the proceeding is accomplished smoothly and in a way that minimizes the disruption of services to the family.

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

(9) If the Indian child's tribe declines jurisdiction, the state court shall enter an order vacating the order transferring jurisdiction and proceed with adjudication of the child custody proceeding in compliance with the federal Indian Child Welfare Act, this part, and any applicable state-tribal agreement. (*Terminates June 30, 2025--sec. 55, Ch. 716, L. 2023.*)

History: En. Sec. 6, Ch. 716, L. 2023.

**41-3-1311 Notice** (1) The petitioning party shall provide notice of the initial petition filed in an involuntary child custody proceeding and a petition seeking termination of parental rights when the petitioning party knows or has reason to know that the child is or may be an Indian child. Notice must be provided as required in subsection (2) to:

- (a) the Indian child's parent or Indian custodian; and
- (b) the child's tribe or tribes.

(2) (a) Notice to the tribe must be made by certified mail, return receipt requested, and must meet the requirements of subsection (4). The notice must be sent to the person designated in the most current Federal Register as the designated tribal agent for service of notice for the purposes of the federal Indian Child Welfare Act. The petitioning party shall file the return receipt with the court as proof of notice.

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

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

(d) Service of all other petitions, other than the initial petition and a petition for termination of parental rights, must be served on the tribe by first-class mail unless otherwise directed by the tribe's designated agent for notice.

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

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

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

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

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

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

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

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

(f) a copy of the petition, complaint, or other document by which the child custody proceeding was initiated and, if a hearing has been scheduled, information on the date, time, and location of the hearing. (*Terminates June 30, 2025--sec. 55, Ch. 716, L. 2023.*)

History: En. Sec. 7, Ch. 716, L. 2023.

**41-3-1312 Full Faith and Credit** The state shall give full faith and credit to the public acts, records, judicial proceedings, and judgments of any Indian tribe that are applicable to Indian child custody proceedings. (*Terminates June 30, 2025--sec. 55, Ch. 716, L. 2023.*)

History: En. Sec. 8, Ch. 716, L. 2023.

**41-3-1313 Through 41-3-1315 Reserved**

41-3-1316 Right to Counsel In a child custody proceeding under this part in which the court determines that the Indian child's parent or Indian custodian is indigent, the parent or Indian custodian has the right to court-appointed counsel. The court may, in its discretion, appoint counsel for the Indian child pursuant to **41-3-425**. (*Terminates June 30, 2025--sec. 55, Ch. 716, L. 2023.*)

History: En. Sec. 9, Ch. 716, L. 2023.

41-3-1317 Right of Access to Evidence Each party to a child custody proceeding involving an Indian child has the right to examine all reports or other documents filed with the court on which any decision with respect to the proceeding may be based. (*Terminates June 30, 2025--sec. 55, Ch. 716, L. 2023.*)

History: En. Sec. 10, Ch. 716, L. 2023.

41-3-1318 Qualified Expert Witness -- Requirements -- Prohibitions (1) A qualified expert witness is an individual who provides testimony in a child custody proceeding under this part. The purpose of the testimony is to assist a court in determining whether the continued custody of the child by or the return of the child to the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. The parties may not waive the requirement for the qualified expert witness testimony.

(2) The petitioning party shall consult with the Indian child's tribe on the selection of the qualified expert witness, including asking whether the tribe has a list of preferred qualified expert witnesses. To the extent possible, the petitioning party shall use an individual preferred by the tribe.

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

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

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

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

(ii) the petitioner or another party in a proceeding under this part from providing additional witnesses or expert testimony, subject to the approval of the court, on any issue before

the court, including the determination of whether the continued custody of the Indian child by or return of the Indian child to the parent, parents, or Indian custodian is likely to result in serious emotional or physical damage to the Indian child. (*Terminates June 30, 2025--sec. 55, Ch. 716, L. 2023.*)

History: En. Sec. 11, Ch. 716, L. 2023.

41-3-1319 Active Efforts (1) Any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under state law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that the efforts have proven unsuccessful.

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

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

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

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

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

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

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

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

- (vi) taking steps to keep siblings together whenever possible;
  - (vii) supporting regular visits with parents or Indian custodians in the most natural setting possible as well as trial home visits of the Indian child during any period of removal, consistent with the need to ensure the health, safety, and welfare of the child;
  - (viii) identifying community resources, including housing, financial, transportation, mental health, substance abuse, and peer support services and actively assisting the child's parents or, when appropriate, the child's family, in accessing and using the resources;
  - (ix) monitoring progress and participation in services;
  - (x) considering alternative ways to address the needs of the Indian child's parents and, when appropriate, the family, if the optimum services do not exist or are not available; and
  - (xi) providing postreunification services and monitoring.
- (b) Referral to a service or program does not constitute an active effort if the referral was the sole action taken. (*Terminates June 30, 2025--sec. 55, Ch. 716, L. 2023.*)

History: En. Sec. 12, Ch. 716, L. 2023.

41-3-1320 Evidentiary Requirements (1) A court may not order a foster care placement of an Indian child unless:

- (a) the petitioning party has provided clear and convincing evidence that active efforts were made to provide remedial services and rehabilitative programs to prevent the breakup of an Indian family and that the efforts were unsuccessful; and
  - (b) clear and convincing evidence is presented, including the testimony of one or more qualified expert witnesses, to demonstrate that continued custody by the child's parent or Indian custodian is likely to result in serious emotional or physical damage to the child.
- (2) The court may not terminate parental rights of the parents of an Indian child unless evidence beyond a reasonable doubt is presented that:
- (a) active efforts were made to prevent the breakup of the Indian family and the efforts were unsuccessful; and
  - (b) continued custody of the child by the child's parent or Indian custodian is likely to result in serious emotional or physical damage to the child. The evidence must include testimony of one or more qualified expert witnesses.
- (3) (a) Evidence required under this section must show a causal relationship between the specific conditions in the home and the likelihood that continued custody of the child will result in serious emotional or physical damage to the child who is the subject of the child custody proceeding.

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

History: En. Sec. 13, Ch. 716, L. 2023.

#### 41-3-1321 Through 41-3-1324 Reserved

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

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

(3) A state court shall:

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

History: En. Sec. 14, Ch. 716, L. 2023.

41-3-1326 Consent (1) At an involuntary foster care placement hearing, a stipulation or consent by the parent or Indian custodian is not valid unless the court certifies on the record that the terms and consequences of the stipulation or consent were fully explained in detail and were fully understood by the parent or Indian custodian. The court shall certify on the record that the parent or Indian custodian fully understood the explanation in English or that the explanation was translated into a language that the parent or Indian custodian understood.

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

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

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

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

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

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

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

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

(6) (a) After the entry of a final decree of adoption of an Indian child, the parent may withdraw consent to the adoption on the grounds that consent was obtained through

fraud or duress. On a finding that consent was obtained through fraud or duress, the court shall vacate the decree and return the Indian child to the parent.

(b) An adoption that has been effective for at least 2 years may not be invalidated under this section unless otherwise allowed by law. (*Terminates June 30, 2025--sec. 55, Ch. 716, L. 2023.*)

History: En. Sec. 15, Ch. 716, L. 2023.

41-3-1327 Improper Removal of Indian Child If a petitioner in a child custody proceeding under this part has improperly removed an Indian child from the custody of the parent or Indian custodian or has improperly retained custody after a visit or other temporary relinquishment of custody, the court shall decline jurisdiction over the petition and shall immediately return the Indian child to the parent or Indian custodian unless returning the Indian child to the parent or Indian custodian would subject the Indian child to substantial and immediate danger or threat of substantial or immediate danger. (*Terminates June 30, 2025--sec. 55, Ch. 716, L. 2023.*)

History: En. Sec. 16, Ch. 716, L. 2023.

41-3-1328 Removal of Indian Child from Adoptive or Foster Care Placement (1) If a final decree of adoption of an Indian child has been vacated or set aside or the adoptive parents voluntarily consent to the termination of their parental rights to the Indian child, the biological parent or prior Indian custodian may petition to have the Indian child returned to the custody of the parent or Indian custodian. The court shall grant the request unless there is a showing by clear and convincing evidence that return of custody to the biological parent or Indian custodian is not in the best interests of the child.

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

History: En. Sec. 17, Ch. 716, L. 2023.

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

(a) most closely approximates a family situation;

(b) is in reasonable proximity to the Indian child's home; and

(c) allows for the Indian child's special needs, if any, to be met.

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

(a) an Indian child's extended family member;

(b) a foster home licensed, approved, or specified by the Indian child's tribe;

(c) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or

(d) an institution for children approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the Indian child's needs.

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

(a) extended family members;

(b) an Indian family of the same tribe as the Indian child;

(c) another Indian family.

(4) Notwithstanding the placement preferences listed in subsections (2) and (3), if a different order of placement preference is established by the Indian child's tribe, the court or agency implementing the placement shall follow the order of preference established by the tribe if the placement is in the least restrictive setting appropriate to the particular needs of the Indian child and within reasonable proximity to the child's home.

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

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

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

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

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

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

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

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

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

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

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

(d) A placement may not depart from the preferences based on the socioeconomic status of any placement relative to another placement. (*Terminates June 30, 2025--sec. 55, Ch. 716, L. 2023.*)

History: En. Sec. 18, Ch. 716, L. 2023.