

SENATE BILL NO. 50

INTRODUCED BY D. EMRICH

BY REQUEST OF THE CHILDREN, FAMILIES, HEALTH AND HUMAN SERVICES INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO THE REMOVAL OF A CHILD FROM THE CHILD'S HOME; REQUIRING A WARRANT TO REMOVE A CHILD FROM THE CHILD'S HOME EXCEPT IN EXIGENT CIRCUMSTANCES; REQUIRING AN ABUSE AND NEGLECT PETITION TO BE FILED WITHIN 72 HOURS, 5 WORKING DAYS OF THE EMERGENCY REMOVAL OF A CHILD; ~~AND AMENDING~~ SECTIONS 41-3-101, 41-3-102, 41-3-301, AND 41-3-423, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

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

NEW SECTION. **Section 1. Warrant to remove child.** (1) A child protection specialist of the department, a peace officer, or a county attorney may apply, in writing, by telephone, or electronically, on oath or affirmation, to a district court within the state for the issuance of a warrant to remove a child from the child's home and place the child in a protective facility if necessary to prevent the child from being abused or neglected.

(2) A warrant may be issued in writing, by telephone, or electronically.

(3) If the court finds from the application that there is probable cause that removal is necessary to prevent the child from being abused or neglected, the court shall issue a warrant to remove the child. The warrant must:

(a) identify the child to be removed and the person responsible for removing the child;

(b) recite the facts on which the conclusion that the child is being abused or neglected or is in danger of being abused or neglected is based; and

(c) provide for the placement of the child, pending an emergency protective services hearing.

(4) The provisions of 46-5-222 apply when an application for a warrant is made by telephone or electronically or when a warrant is issued by telephone or electronically.

1

2 NEW SECTION. **Section 2. Procedures for executing warrant to remove child.** (1) A warrant

3 issued pursuant to [section 1] may be served at any time of the day or night. The warrant must be served within  
4 10 days from the time of issuance. A warrant not served within 10 days is void and must be returned to the  
5 issuing court and identified as not served.

6 (2) A warrant issued pursuant to [section 1] must be served by the person specifically named in the  
7 warrant and by no other person unless the other person is acting in aid of and in the presence of the person  
8 specifically named in the warrant.

9

10 **Section 3.** Section 41-3-101, MCA, is amended to read:

11 **"41-3-101. Declaration of policy.** (1) It is the policy of the state of Montana to:

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

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

16 (c) support the efforts of parents whose children have been removed to reunify the family,  
17 including by taking into account whether those efforts may be impeded by court-ordered support payments;

18 (d) ensure that there is no forced removal of a child from the family ~~based solely on an allegation~~  
19 ~~of abuse or neglect unless the department has reasonable cause to suspect that the child is at imminent risk of~~  
20 ~~harm without first obtaining a warrant from a court unless the child is likely to experience sexual abuse or~~  
21 ~~physical abuse~~ IMMINENT AND APPARENT DANGER in the time that is required to obtain a warrant;

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

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

24 and

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

27 (2) It is intended that the mandatory reporting of abuse or endangerment cases by professional  
28 people and other community members to the appropriate authority will cause the protective services of the state

1 to seek to prevent further abuses, protect and enhance the welfare of these children, and preserve family life  
2 whenever appropriate.

3 (3) In implementing this chapter, whenever it is necessary to remove a child from the child's home,  
4 the department shall, when it is in the best interests of the child, place the child in accordance with 41-3-450  
5 and 41-3-451. Prior to approving a placement, the department shall investigate whether anyone living in the  
6 home has been convicted of a crime involving serious harm to children.

7 (4) (a) The department shall create a registry for voluntary registration by close relatives of a child  
8 for purposes of notifying those relatives when a child that is related has been removed from the child's home  
9 pursuant to this chapter.

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

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

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

17 (7) The department shall ensure that department training and policies comply with constitutional  
18 requirements.

19 (7)(8) In implementing the policy of this section, the child's health and safety are of paramount  
20 concern."

21  
22 **SECTION 4. SECTION 41-3-102, MCA, IS AMENDED TO READ:**

23 **"41-3-102. (Temporary) Definitions. As used in this chapter, the following definitions apply:**

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

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

27 (ii) willfully surrendering physical custody for a period of 6 months and during that period not  
28 manifesting to the child and the person having physical custody of the child a firm intention to resume physical

1 custody or to make permanent legal arrangements for the care of the child;

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

4 (iv) — the voluntary surrender, as defined in 40-6-402, by a parent of a newborn who is no more than  
5 30 days old to an emergency services provider, as defined in 40-6-402.

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

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

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

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

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

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

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

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

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

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

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

28 (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-

1 2201.

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

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

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

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

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

8 (17) — "Limited emancipation" means a status conferred on a youth by a court in accordance with 41-  
9 1-503 under which the youth is entitled to exercise some but not all of the rights and responsibilities of a person  
10 who is 18 years of age or older.

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

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

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

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

22 (22) — "Physical neglect" means:

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

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

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

28 (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

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

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

6 (27) ~~\_\_\_\_\_ "Qualified individual" means a trained professional or licensed clinician who:~~

7 (a) ~~\_\_\_\_\_ has expertise in the therapeutic needs assessment used for placement of youth in a~~  
8 ~~therapeutic group home;~~

9 (b) ~~\_\_\_\_\_ is not an employee of the department; and~~

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

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

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

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

18 (a) ~~\_\_\_\_\_ the existing threat or threats to the child's safety;~~

19 (b) ~~\_\_\_\_\_ the protective capabilities of the parent or guardian;~~

20 (c) ~~\_\_\_\_\_ any particular vulnerabilities of the child;~~

21 (d) ~~\_\_\_\_\_ any interventions required to protect the child; and~~

22 (e) ~~\_\_\_\_\_ the likelihood of future physical or psychological harm to the child.~~

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

26 (b) ~~\_\_\_\_\_ Sexual abuse does not include any necessary touching of an infant's or toddler's genital area~~  
27 ~~while attending to the sanitary or health care needs of that infant or toddler by a parent or other person~~  
28 ~~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

1 unlawful clandestine laboratory, as prohibited by 45-9-132; or

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

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

5 (c) In proceedings under this chapter in which the federal Indian Child Welfare Act is applicable,  
6 this term has the same meaning as "serious emotional or physical damage to the child" as used in 25 U.S.C.  
7 1912(f).

8 (d) The term does not include:

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

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

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

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

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

20 (11) "Department" means the department of public health and human services provided for in 2-15-  
21 2201.

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

24 (13) "IMMINENT AND APPARENT DANGER" MEANS IMMEDIATELY OBSERVABLE AND ABOUT TO HAPPEN.

25 ~~(13)~~(14) "Indian child" means any unmarried person who is under 18 years of age and who is either:

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

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

1           ~~(14)~~(15)"Indian child's tribe" means:

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

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

5           ~~(15)~~(16)"Indian custodian" means any Indian person who has legal custody of an Indian child under  
6 tribal law or custom or under state law or to whom temporary physical care, custody, and control have been  
7 transferred by the child's parent.

8           ~~(16)~~(17)"Indian tribe" means any Indian tribe, band, nation, or other organized group or community of  
9 Indians recognized by:

10          (a)     the state of Montana; or

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

13          ~~(17)~~(18)"Limited emancipation" means a status conferred on a youth by a court in accordance with 41-  
14 1-503 under which the youth is entitled to exercise some but not all of the rights and responsibilities of a person  
15 who is 18 years of age or older.

16          ~~(18)~~(19)"Parent" means a biological or adoptive parent or stepparent.

17          ~~(19)~~ (20)       "Parent-child legal relationship" means the legal relationship that exists between a child  
18 and the child's birth or adoptive parents, as provided in Title 40, chapter 6, part 2, unless the relationship has  
19 been terminated by competent judicial decree as provided in 40-6-234, Title 42, or part 6 of this chapter.

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

23          ~~(21)~~(22)"Physical abuse" means an intentional act, an intentional omission, or gross negligence  
24 resulting in substantial skin bruising, internal bleeding, substantial injury to skin, subdural hematoma, burns,  
25 bone fractures, extreme pain, permanent or temporary disfigurement, impairment of any bodily organ or  
26 function, or death.

27          ~~(22)~~(23)"Physical neglect" means:

28          (a)     failure to provide basic necessities, including but not limited to appropriate and adequate

1 nutrition, protective shelter from the elements, and appropriate clothing related to weather conditions;

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

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

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

6 (e) causing malnutrition or a failure to thrive.

7 ~~(23)~~(24)"Physical or psychological harm to a child" means the harm that occurs whenever the parent or  
8 other person responsible for the child's welfare inflicts or allows to be inflicted on the child physical abuse,  
9 physical neglect, or psychological abuse or neglect.

10 ~~(24)~~(25)(a) "Protective services" means services provided by the department:

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

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

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

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

19 ~~(25)~~(26)(a) "Psychological abuse or neglect" means severe maltreatment, through acts or omissions,  
20 that is injurious to the child's intellectual or psychological capacity to function and that is identified as  
21 psychological abuse or neglect by a licensed psychologist, a licensed professional counselor, a licensed clinical  
22 social worker, a licensed psychiatrist, a licensed pediatrician, or a licensed advanced practice registered nurse  
23 with a focused practice in psychiatry.

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

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

28 ~~(26)~~(27)"Qualified expert witness" as used in cases involving an Indian child in proceedings subject to

1 the federal Indian Child Welfare Act means:

2 (a) a member of the Indian child's tribe who is recognized by the tribal community as

3 knowledgeable in tribal customs as they pertain to family organization and child-rearing practices;

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

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

10 ~~(27)~~(28)"Qualified individual" means a trained professional or licensed clinician who:

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

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

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

15 ~~(28)~~(29)"Reasonable cause to suspect" means cause that would lead a reasonable person to believe  
16 that child abuse or neglect may have occurred or is occurring, based on all the facts and circumstances known  
17 to the person.

18 ~~(29)~~(30)"Residential setting" means an out-of-home placement where the child typically resides for  
19 longer than 30 days for the purpose of receiving food, shelter, security, guidance, and, if necessary, treatment.

20 ~~(30)~~(31)"Safety and risk assessment" means an evaluation by a child protection specialist following an  
21 initial report of child abuse or neglect to assess the following:

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

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

24 (c) any particular vulnerabilities of the child;

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

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

27 ~~(34)~~(32)(a) "Sexual abuse" means the commission of sexual assault, sexual intercourse without

28 consent, aggravated sexual intercourse without consent, indecent exposure, sexual abuse, ritual abuse of a

1 minor, or incest, as described in Title 45, chapter 5.

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

5 ~~(32)~~(33)"Sexual exploitation" means:

6 (a) allowing, permitting, or encouraging a child to engage in a prostitution offense, as described in  
7 45-5-601;

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

9 (c) allowing, permitting, or encouraging sex trafficking as described in 45-5-702, 45-5-705, 45-5-  
10 706, or 45-5-711.

11 ~~(33)~~(34)"Therapeutic needs assessment" means an assessment performed by a qualified individual  
12 within 30 days of placement of a child in a therapeutic group home that:

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

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

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

20 ~~(34)~~(35)"Treatment plan" means a written agreement between the department and the parent or  
21 guardian or a court order that includes action that must be taken to resolve the condition or conduct of the  
22 parent or guardian that resulted in the need for protective services for the child. The treatment plan may involve  
23 court services, the department, and other parties, if necessary, for protective services.

24 ~~(35)~~(36)(a) "Withholding of medically indicated treatment" means the failure to respond to an infant's  
25 life-threatening conditions by providing treatment, including appropriate nutrition, hydration, and medication,  
26 that, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in  
27 ameliorating or correcting the conditions.

28 (b) The term does not include the failure to provide treatment, other than appropriate nutrition,



1 hydration, or medication, to an infant when, in the treating physician's or physicians' reasonable medical  
2 judgment:

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

4 (ii) the provision of treatment would:

5 (A) merely prolong dying;

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

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

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

15 ~~(36)~~(37)"Youth in need of care" means a youth who has been adjudicated or determined, after a  
16 hearing, to be or to have been abused, neglected, or abandoned."  
17

18 **Section 5.** Section 41-3-301, MCA, is amended to read:

19 **"41-3-301. Emergency protective services.** (1) (a) Any Except as provided in subsection (1)(b), a  
20 child protection specialist of the department, a peace officer, or the a county attorney who has reason to believe  
21 any child is in immediate or apparent danger of harm may immediately remove the may not remove a child and  
22 place the child in a protective facility without first obtaining a warrant pursuant to [section 1]. After ensuring that  
23 the child is safe, the department may make a request for further assistance from the law enforcement agency or  
24 take appropriate legal action.

25 (b) A child protection specialist of the department, a peace officer, or a county attorney may  
26 remove a child without a warrant only when the person has probable cause to believe that the child is likely to  
27 experience sexual abuse or physical abuse IMMINENT AND APPARENT DANGER in the time that is required to obtain  
28 a warrant under [section 1].

1           (c)       After ensuring that the child is safe, the department may make a request for further assistance  
2   from the law enforcement agency or take appropriate legal action.

3           (b)——The person or agency placing the child shall notify the parents, parent, guardian, or other  
4   person having physical or legal custody of the child of the placement at the time the placement is made or as  
5   soon after placement as possible. Notification under this subsection ~~(1)(b)~~ (1)(c) must:

6           (i)       include the reason for removal or, if the child was removed pursuant to subsection (1)(b), the  
7   factual basis for the conclusion that the child is likely to experience ~~sexual abuse or physical abuse imminent~~  
8   and apparent danger in the time that is required to obtain a warrant;

9           (ii)       include information regarding the emergency protective services hearing within 5 days under  
10  41-3-306, the required show cause hearing within 20 days, and the purpose of the hearings;

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

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

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

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

18           (C)       may have a support person present during any meeting with the child protection specialist  
19   concerning emergency protective services, including the emergency protective services hearing provided for in  
20   41-3-306; and

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

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

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

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

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

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

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

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

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

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

22 (6) If a child is removed from the child's home by the department, a child protection specialist shall  
23 submit an affidavit regarding the circumstances of the emergency removal to the county attorney and provide a  
24 copy of the affidavit to the office of state public defender and, if possible, the parents, parent, or guardian within  
25 2 working days of the emergency removal. An abuse and neglect petition must be filed in accordance with 41-3-  
26 422 within ~~5 working days, excluding weekends and holidays,~~ 72 hours 5 working days of the emergency  
27 removal of a child unless arrangements acceptable to the agency for the care of the child have been made by  
28 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.)"

**Section 6.** Section 41-3-423, MCA, is amended to read:

**"41-3-423. Reasonable efforts required to prevent removal of child or to return -- exemption -- findings -- permanency plan.** (1) (a) The department shall make reasonable efforts to prevent the necessity of removal of a child from the child's home and to reunify families that have been separated by the state. The application for a warrant to remove a child from the child's home pursuant to [section 1] does not absolve the department from the duty to make reasonable efforts to prevent the necessity of removal.

(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

1 and contact and consult with extended family members to provide family structure and support for the child and  
2 the parents;

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

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

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

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

12 (ix) monitor progress and participation in services; and

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

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

18 (2) Except in a proceeding subject to the federal Indian Child Welfare Act [or the Montana Indian  
19 Child Welfare Act provided for in Title 41, chapter 3, part 13], the department may, at any time during an abuse  
20 and neglect proceeding, make a request for a determination that preservation or reunification services need not  
21 be provided. If an indigent parent is not already represented by counsel, the court shall immediately provide for  
22 the appointment or assignment of counsel to represent the indigent parent in accordance with the provisions of  
23 41-3-425. A court may make a finding that the department need not make reasonable efforts to provide  
24 preservation or reunification services if the court finds that the parent has:

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

27 (b) committed, aided, abetted, attempted, conspired, or solicited deliberate or mitigated deliberate  
28 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.)"

NEW SECTION. Section 7. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 41, chapter 3, part 3, and the provisions of Title 41, chapter 3, part 3, apply to [sections 1 and 2].

NEW SECTION. SECTION 8. EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE JULY 1, 2026.

- END -