

SENATE BILL NO. 384

INTRODUCED BY D. EMRICH, J. FULLER, D. LENZ

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR PROTECTIVE PLACEMENT OF A CHILD DUE TO TEMPORARY HARDSHIP; ALLOWING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO REMOVE A CHILD FOR REASONS OF TEMPORARY HARDSHIP; REQUIRING THAT THE CHILD MUST BE RETURNED HOME WITHIN 15 DAYS; REQUIRING NOTIFICATION; PROVIDING AN EXCEPTION TO THE TIMELINE FOR A HEARING ON EMERGENCY PROTECTIVE SERVICES; AND AMENDING SECTIONS 41-3-102, 41-3-202, 41-3-301, AND 41-3-306, MCA."

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

NEW SECTION. Section 1. Temporary hardship -- definition -- protective placement. (1) The department may temporarily remove a child and place the child in a protective placement for a period of not more than 15 days for reasons of temporary hardship. Except as provided in subsection (2), the child must be returned home within 15 days.

(2) If the parents, parent, guardian, or other person having physical or legal custody of the child is unable to resume or make necessary arrangements for the safety and well-being of the child as required within 15 days after removal, the department may file a petition for emergency protective services under 41-3-301.

(3) For the purposes of this section, "temporary hardship" means temporary physical, medical, or legal circumstances that prevent the parents, parent, guardian, or other person having physical or legal custody of the child from providing for the safety and supervision of the child as required by law.

Section 2. Section 41-3-102, MCA, is amended to read:

~~41-3-102. (Temporary) 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.~~

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

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

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

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

5 (iii) — abandonment.

6 (b) — (i) The term includes:

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

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

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

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

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

18 (d) — The term does not include:

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

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

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

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

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

1 insufficient evidence.

2 (11)——"Department" means the department of public health and human services provided for in 2-15-
3 2201.

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

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

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

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

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

10 (17)——"Limited emancipation" means a status conferred on a youth by a court in accordance with 41-
11 1-503 under which the youth is entitled to exercise some but not all of the rights and responsibilities of a person
12 who is 18 years of age or older.

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

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

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

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

24 (22)——"Physical neglect" means:

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

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

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

1 to the child;

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

3 (e) ~~causing malnutrition or a failure to thrive.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (b) ~~_____ the protective capabilities of the parent or guardian;~~

22 (c) ~~_____ any particular vulnerabilities of the child;~~

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

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

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

28 (b) ~~_____ Sexual abuse does not include any necessary touching of an infant's or toddler's genital area~~

1 while attending to the sanitary or health care needs of that infant or toddler by a parent or other person
2 responsible for the child's welfare.

3 (32) ~~—"Sexual exploitation" means:~~

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

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

7 (c) ~~—allowing, permitting, or encouraging sex trafficking as described in 45-5-702, 45-5-705, 45-5-~~
8 ~~706, or 45-5-711.~~

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

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

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

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

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

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

26 (b) ~~The term does not include the failure to provide treatment, other than appropriate nutrition,~~
27 ~~hydration, or medication, to an infant when, in the treating physician's or physicians' reasonable medical~~
28 ~~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.

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (iii) abandonment.

25 (b) (i) The term includes:

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

28 (B) exposing a child to the criminal distribution of dangerous drugs, as prohibited by 45-9-101, the

1 criminal production or manufacture of dangerous drugs, as prohibited by 45-9-110, or the operation of an
2 unlawful clandestine laboratory, as prohibited by 45-9-132; or

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

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

6 (c) In proceedings under this chapter in which the federal Indian Child Welfare Act is applicable,
7 this term has the same meaning as "serious emotional or physical damage to the child" as used in 25 U.S.C.
8 1912(f).

9 (d) The term does not include:

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

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

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

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

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

21 (11) "Department" means the department of public health and human services provided for in 2-15-
22 2201.

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

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

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

20 (20) "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) "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) "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) "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) (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, services provided for reasons of temporary hardship pursuant
18 to [section 1], and court-ordered protective services provided pursuant to parts 4 and 6 of this chapter.

19 (25) (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) "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) "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) "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) "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) "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 (31) (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) "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) "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) "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) (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), "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) "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 3.** Section 41-3-202, MCA, is amended to read:

19 **"41-3-202. Action on reporting.** (1) (a) Upon receipt of a report that a child is or has been abused or
20 neglected, the department shall promptly assess the information contained in the report and make a
21 determination regarding the level of response required and the timeframe within which action must be initiated.

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

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

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

10 (c) If the department determines that an investigation and a safety and risk assessment are
11 required, a child protection specialist shall promptly conduct a thorough investigation into the circumstances
12 surrounding the allegations of abuse or neglect of the child and perform a safety and risk assessment to
13 determine whether the living arrangement presents an unsafe environment for the child. The safety and risk
14 assessment may include an investigation at the home of the child involved, the child's school or day-care
15 facility, or any other place where the child is present and into all other nonfinancial matters that in the discretion
16 of the investigator are relevant to the safety and risk assessment. In conducting a safety and risk assessment
17 under this section, a child protection specialist may not inquire into the financial status of the child's family or of
18 any other person responsible for the child's care, except as necessary to ascertain eligibility for state or federal
19 assistance programs or to comply with the provisions of 41-3-446.

20 (2) An initial investigation of alleged abuse or neglect may be conducted when an anonymous
21 report is received. However, if the initial investigation does not within 48 hours result in the development of
22 independent, corroborative, and attributable information indicating that there exists a current risk of physical or
23 psychological harm to the child, a child may not be removed from the living arrangement. If independent,
24 corroborative, and attributable information indicating an ongoing risk results from the initial investigation, the
25 department shall then conduct a safety and risk assessment.

26 (3) The child protection specialist is responsible for conducting the safety and risk assessment. If
27 the child is treated at a medical facility, the child protection specialist, county attorney, or peace officer,
28 consistent with reasonable medical practice, has the right of access to the child for interviews, photographs,

1 and securing physical evidence and has the right of access to relevant hospital and medical records pertaining
2 to the child. If an interview of the child is considered necessary, the child protection specialist, county attorney,
3 or peace officer may conduct an interview of the child. The interview may be conducted in the presence of the
4 parent or guardian or an employee of the school or day-care facility attended by the child.

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

8 (5) (a) If from the safety and risk assessment the department has reasonable cause to suspect that
9 the child is suffering abuse or neglect, the department may provide emergency protective services to the child,
10 pursuant to 41-3-301, place the child in a protective placement for reasons of temporary hardship pursuant to
11 [section 1], or enter into a written prevention plan, pursuant to 41-3-302, and may provide protective services to
12 any other child under the same care. The department shall:

13 (i) after interviewing the parent or guardian, if reasonably available, document the determinations
14 of the safety and risk assessment; and

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

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

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

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

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

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

27 (6) The investigating child protection specialist, within 60 days of commencing an investigation,
28 shall also furnish a written safety and risk assessment to the department and, upon request, to the family.

1 Subject to time periods set forth in subsections (5)(b) and (5)(c), the department shall maintain a record system
2 documenting investigations and safety and risk assessment determinations. Unless records are required to be
3 destroyed under subsections (5)(b) and (5)(c), the department shall retain records relating to the safety and risk
4 assessment, including case notes, correspondence, evaluations, videotapes, and interviews, for 25 years.

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

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

11
12 **Section 4.** Section 41-3-301, MCA, is amended to read:

13 **"41-3-301. Emergency protective services.** (1) (a) Any child protection specialist of the department,
14 a peace officer, or the county attorney who has reason to believe any child is in immediate or apparent danger
15 of harm may immediately remove the child and place the child in a protective facility. After ensuring that the
16 child is safe, the department may make a request for further assistance from the law enforcement agency or
17 take appropriate legal action.

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

21 (i) include the reason for removal;

22 (ii) in cases of removal for temporary hardship, include information regarding the procedures that
23 must occur within 15 days after removal under [section 1];

24 (iii)(iii) include information regarding the emergency protective services hearing within 5 days under
25 41-3-306, the required show cause hearing within 20 days, and the purpose of the hearings;

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

28 (iv)(v) advise the parents, parent, guardian, or other person having physical or legal custody of the

1 child that the parents, parent, guardian, or other person:

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

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

5 (C) may have a support person present during any meeting with the child protection specialist
6 concerning emergency protective services, including the emergency protective services hearing provided for in
7 41-3-306; and

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

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

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

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

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

25 (c) providing services to help protect the child from being placed with or having unsupervised
26 visitation with the person alleged to have committed partner or family member assault or strangulation of a
27 partner or family member until the department determines that the alleged offender has met conditions
28 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) (a) Except as provided in subsection (6)(b), if 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. Except as provided in subsection (6)(b) An ~~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.

(b) If a child is removed from the child's home for reasons of temporary hardship as provided in [section 1], the requirements of subsection (6)(a) do not apply.

(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.)"

1

2 **Section 5.** Section 41-3-306, MCA, is amended to read:

3 **"41-3-306. Emergency protective services hearing -- exception.** (1) (a) Except as provided in
4 [section 1], a district court shall hold a hearing within 5 business days of a child's removal from the home
5 pursuant to 41-3-301 to determine whether there is probable cause to continue the removal beyond 5 business
6 days.

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

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

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

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

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

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

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

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

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

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

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

1 716, L. 2023.)"

2

3 NEW SECTION. **Section 6. Codification instruction.** [Section 1] is intended to be codified as an
4 integral part of Title 41, chapter 3, part 3, and the provisions of Title 41, chapter 3, part 3, apply to [section 1].

5 - END -