

## 1 SENATE BILL NO. 367

2 INTRODUCED BY D. LENZ

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO CITIZEN REVIEW  
5 BOARDS; REQUIRING NOTIFICATION OF THE RIGHT TO A REVIEW BY A CITIZEN REVIEW BOARD;  
6 REQUIRING A REVIEW BY A BOARD IF A CHILD IS NOT RETURNED HOME FOLLOWING A SHOW  
7 CAUSE HEARING; REQUIRING THE OFFICE OF THE COURT ADMINISTRATOR TO ESTABLISH A  
8 MINIMUM NUMBER OF CITIZEN REVIEW BOARDS AND APPOINT MEMBERS; REVISING BOARD  
9 MEMBERSHIP REQUIREMENTS; REQUIRING THE BOARD TO MEET AT LEAST QUARTERLY;  
10 REQUIRING A HEARING IF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES DOES NOT  
11 IMPLEMENT THE RECOMMENDATIONS OF THE BOARD; AMENDING SECTIONS 41-3-205, 41-3-422, 41-  
12 3-432, 41-3-445, 41-3-1003, 41-3-1004, 41-3-1005, 41-3-1008, 41-3-1010, 41-3-1011, 41-3-1013, AND 52-2-  
13 304, MCA; AND REPEALING SECTION 41-3-115, MCA."  
14

15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
16

17 **Section 1.** Section 41-3-205, MCA, is amended to read:

18 **"41-3-205. Confidentiality -- disclosure exceptions.** (1) The case records of the department and its  
19 local affiliate, the local office of public assistance, the county attorney, and the court concerning actions taken  
20 under this chapter and all records concerning reports of child abuse and neglect must be kept confidential  
21 except as provided by this section. Except as provided in subsections (9) and (10), a person who purposely or  
22 knowingly permits or encourages the unauthorized dissemination of the contents of case records is guilty of a  
23 misdemeanor.

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

27 (3) Records, including case notes, correspondence, evaluations, videotapes, and interviews,  
28 unless otherwise protected by this section or unless disclosure of the records is determined to be detrimental to

1 the child or harmful to another person who is a subject of information contained in the records, must, upon  
2 request, be disclosed to the following persons or entities in this state and any other state or country:

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

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

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

12 (d) a parent, grandparent, aunt, uncle, brother, sister, guardian, mandatory reporter provided for in  
13 41-3-201(2) and (5), or person designated by a parent or guardian of the child who is the subject of a report in  
14 the records or other person responsible for the child's welfare, without disclosure of the identity of any person  
15 who reported or provided information on the alleged child abuse or neglect incident contained in the records;

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

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

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

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

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

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

28 (k) the members of an interdisciplinary child protective team authorized under 41-3-108 or of a

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

1 formed under the provisions of 52-2-211;

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

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

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

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

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

11 (ii) the member submits a written request to the department requesting to review the records  
12 relating to the written inquiry. The member's request must include a copy of the written inquiry, the name of the  
13 child whose records are to be reviewed, and any other information that will assist the department in locating the  
14 records.

15 (iii) before reviewing the records, the member:

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

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

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

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

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

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

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

1 written inquiry.

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

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

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

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

12 (i) the attorney general;

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

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

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

18 (b) The records described in subsection (3) must be promptly disclosed by the department to an  
19 appropriate individual described in subsection (5)(a) or to a county or regional interdisciplinary child information  
20 and school safety team established pursuant to 52-2-211 upon the department's receipt of a report indicating  
21 that any of the following has occurred:

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

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

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

25 or

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

28 (c) (i) The department shall promptly disclose the results of an investigation to an individual

described in subsection (5)(a) or to a county or regional interdisciplinary child information and school safety team established pursuant to 52-2-211 upon the determination that:

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

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

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

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

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

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

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

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

1 consent provisions of the law.

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

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

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

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

15 (12) Copies of records, evaluations, reports, or other evidence obtained or generated pursuant to  
16 this section that are provided to the parent, grandparent, aunt, uncle, brother, sister, guardian, or parent's or  
17 guardian's attorney must be provided without cost. (Bracketed language in subsection (3)(r) terminates June  
18 30, 2025--sec. 55, Ch. 716, L. 2023.)"

19

20 **Section 2.** Section 41-3-422, MCA, is amended to read:

21 **"41-3-422. (Temporary) Abuse and neglect petitions -- burden of proof.** (1) (a) Proceedings under  
22 this chapter must be initiated by the filing of a petition. A petition may request the following relief:

23 (i) immediate protection and emergency protective services, as provided in 41-3-427;

24 (ii) temporary investigative authority, as provided in 41-3-433;

25 (iii) temporary legal custody, as provided in 41-3-442;

26 (iv) long-term custody, as provided in 41-3-445;

27 (v) termination of the parent-child legal relationship, as provided in 41-3-607;

28 (vi) appointment of a guardian pursuant to 41-3-444;

- 1 (vii) a determination that preservation or reunification services need not be provided; or
- 2 (viii) any combination of the provisions of subsections (1)(a)(i) through (1)(a)(vii) or any other relief
- 3 that may be required for the best interests of the child.
- 4 (b) The petition may be modified for different relief at any time within the discretion of the court.
- 5 (c) A petition for temporary legal custody may be the initial petition filed in a case.
- 6 (d) A petition for the termination of the parent-child legal relationship may be the initial petition filed
- 7 in a case if a request for a determination that preservation or reunification services need not be provided is
- 8 made in the petition.
- 9 (2) The county attorney, attorney general, or an attorney hired by the county shall file all petitions
- 10 under this chapter. A petition filed by the county attorney, attorney general, or an attorney hired by the county
- 11 must be accompanied by:
- 12 (a) an affidavit by the department alleging that the child appears to have been abused or neglected
- 13 and stating the basis for the petition; and
- 14 (b) a separate notice to the court stating any statutory time deadline for a hearing.
- 15 (3) Abuse and neglect petitions must be given highest preference by the court in setting hearing
- 16 dates.
- 17 (4) An abuse and neglect petition is a civil action brought in the name of the state of Montana. The
- 18 Montana Rules of Civil Procedure and the Montana Rules of Evidence apply except as modified in this chapter.
- 19 Proceedings under a petition are not a bar to criminal prosecution.
- 20 (5) (a) Except as provided in subsection (5)(b), the person filing the abuse and neglect petition has
- 21 the burden of presenting evidence required to justify the relief requested and establishing:
- 22 (i) probable cause for the issuance of an order for immediate protection and emergency protective
- 23 services or an order for temporary investigative authority;
- 24 (ii) a preponderance of the evidence for an order of adjudication or temporary legal custody;
- 25 (iii) a preponderance of the evidence for an order of long-term custody; or
- 26 (iv) clear and convincing evidence for an order terminating the parent-child legal relationship.
- 27 (b) If a proceeding under this chapter involves an Indian child, as defined in the federal Indian
- 28 Child Welfare Act, 25 U.S.C. 1901, et seq., or 41-3-1303, the standards of proof required for legal relief under



1 the federal Indian Child Welfare Act and the Montana Indian Child Welfare Act provided for in Title 41, chapter  
2 3, part 13, apply.

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

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

14 (7) If personal service cannot be made upon the parents or parent, guardian, or other person or  
15 agency having legal custody, the court shall immediately provide for the appointment or assignment of an  
16 attorney as provided for in 41-3-425 to represent the unavailable party when, in the opinion of the court, the  
17 interests of justice require. If personal service cannot be made upon a putative father, the court may not provide  
18 for the appointment or assignment of counsel as provided for in 41-3-425 to represent the father unless, in the  
19 opinion of the court, the interests of justice require counsel to be appointed or assigned.

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

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

27 (b) A foster parent, preadoptive parent, or relative of the child who is caring for or a relative of the  
28 child who has cared for a child who is the subject of the petition who appears at a hearing set pursuant to this

1 section may be allowed by the court to intervene in the action if the court, after a hearing in which evidence is  
2 presented on those subjects provided for in 41-3-437(4), determines that the intervention of the person is in the  
3 best interests of the child. A person granted intervention pursuant to this subsection is entitled to participate in  
4 the adjudicatory hearing held pursuant to 41-3-437 and to notice and participation in subsequent proceedings  
5 held pursuant to this chapter involving the custody of the child.

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

10 (10) An abuse and neglect petition must state:

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

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

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

16 (11) Any party in a proceeding pursuant to this section is entitled to counsel as provided in 41-3-  
17 425.

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

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

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

- 1 Indian Child Welfare Act, if applicable;
- 2 (b) right to contest the allegations in the petition; and
- 3 (c) timelines for hearings and determinations required under this chapter.
- 4 (14) If appropriate, orders issued under this chapter must contain a notice provision advising a
- 5 child's parent, guardian, or other person having physical or legal custody of the child that:
- 6 (a) the court is required by federal and state laws to hold a permanency hearing to determine the
- 7 permanent placement of a child no later than 12 months after a judge determines that the child has been
- 8 abused or neglected or 12 months after the first 60 days that the child has been removed from the child's home;
- 9 (b) if a child has been in foster care for 15 of the last 22 months, state law presumes that
- 10 termination of parental rights is in the best interests of the child and the state is required to file a petition to
- 11 terminate parental rights; and
- 12 (c) completion of a treatment plan does not guarantee the return of a child.
- 13 (15) A court may appoint a standing master to conduct hearings and propose decisions and orders
- 14 to the court for court consideration and action. A standing master may not conduct a proceeding to terminate
- 15 parental rights. A standing master must be a member of the state bar of Montana and must be knowledgeable
- 16 in the area of child abuse and neglect laws. (Terminates June 30, 2025--sec. 55, Ch. 716, L. 2023.)
- 17 **41-3-422. (Effective July 1, 2025) Abuse and neglect petitions -- burden of proof. (1) (a)**
- 18 Proceedings under this chapter must be initiated by the filing of a petition. A petition may request the following
- 19 relief:
- 20 (i) immediate protection and emergency protective services, as provided in 41-3-427;
- 21 (ii) temporary investigative authority, as provided in 41-3-433;
- 22 (iii) temporary legal custody, as provided in 41-3-442;
- 23 (iv) long-term custody, as provided in 41-3-445;
- 24 (v) termination of the parent-child legal relationship, as provided in 41-3-607;
- 25 (vi) appointment of a guardian pursuant to 41-3-444;
- 26 (vii) a determination that preservation or reunification services need not be provided; or
- 27 (viii) any combination of the provisions of subsections (1)(a)(i) through (1)(a)(vii) or any other relief
- 28 that may be required for the best interests of the child.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (6) (a) Except as provided in the federal Indian Child Welfare Act, if applicable, the parents or  
28 parent, guardian, or other person or agency having legal custody of the child named in the petition, if residing in

1 the state, must be served personally with a copy of the initial petition and a petition to terminate the parent-child  
2 legal relationship at least 5 days before the date set for hearing. If the person or agency cannot be served  
3 personally, the person or agency may be served by publication as provided in 41-3-428 and 41-3-429.

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

9 (7) If personal service cannot be made upon the parents or parent, guardian, or other person or  
10 agency having legal custody, the court shall immediately provide for the appointment or assignment of an  
11 attorney as provided for in 41-3-425 to represent the unavailable party when, in the opinion of the court, the  
12 interests of justice require. If personal service cannot be made upon a putative father, the court may not provide  
13 for the appointment or assignment of counsel as provided for in 41-3-425 to represent the father unless, in the  
14 opinion of the court, the interests of justice require counsel to be appointed or assigned.

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

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

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

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

5 (10) An abuse and neglect petition must state:

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

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

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

11 (11) Any party in a proceeding pursuant to this section is entitled to counsel as provided in 41-3-  
12 425.

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

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

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

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

25 (c) right to have a review by the citizen review board pursuant to 41-3-1010; and

26 (e) (d) timelines for hearings and determinations required under this chapter.

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

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

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

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

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

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

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

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

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

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

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

7           (4)     At the show cause hearing, the court shall explain the procedures to be followed in the case  
8     and explain the parties' rights, including the right to request appointment or assignment of counsel if indigent or  
9     if appointment or assignment of counsel is required under the federal Indian Child Welfare Act or the Montana  
10    Indian Child Welfare Act, if applicable, and the right to challenge the allegations contained in the petition. The  
11    parent, guardian, or other person having physical or legal custody of the child must be given the opportunity to  
12    admit or deny the allegations contained in the petition at the show cause hearing. Inquiry must be made to  
13    determine whether the notice requirements of the federal Indian Child Welfare Act or 41-3-1311, if applicable,  
14    have been met.

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

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

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

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

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

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

27          (6)     The court may consider:

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



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

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

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

(9) Adjudication of a child as a youth in need of care may be made at the show cause hearing if the requirements of 41-3-437(2) are met. If not made at the show cause hearing, adjudication under 41-3-437 must be made within the time limits required by 41-3-437 unless adjudication occurs earlier by stipulation of the parties pursuant to 41-3-434 and order of the court. (Terminates June 30, 2025--sec. 55, Ch. 716, L. 2023.)

**41-3-432. (Effective July 1, 2025) Show cause hearing -- order.** (1) (a) Except as provided in the federal Indian Child Welfare Act, a show cause hearing must be conducted within 20 days of the filing of an initial child abuse and neglect petition unless otherwise stipulated by the parties pursuant to 41-3-434 or unless an extension of time is granted by the court. A separate notice to the court stating the statutory time deadline for a hearing must accompany any petition to which the time deadline applies.

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

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

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

(3) If a contested show cause hearing is requested pursuant to 41-3-427 based upon a disputed

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

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

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

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

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

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

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

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

25 (6) The court may consider:

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

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

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

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

(b) The department shall confirm with the office of the court administrator that the roster naming members appointed to the citizen review board is received by the department and shall provide electronic access to all case notes and records, including any evaluations and ongoing reports, to the identified members of the citizen review board

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

**Section 4.** Section 41-3-445, MCA, is amended to read:

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

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

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

(ii) Within 12 months of a hearing under subsection (1)(a)(i)(B) and every 12 months thereafter

1 until the child is permanently placed in either an adoptive or a guardianship placement, the court or the court-  
2 approved entity holding the permanency hearing shall conduct a hearing and the court shall issue a finding as  
3 to whether the department has made reasonable efforts to finalize the permanency plan for the child.

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

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

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

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

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

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

23 (5) (a) The court's order must be issued within 20 days after the permanency hearing if the hearing  
24 was conducted by the court.

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

28 (c) If an entity other than the court conducts the hearing and the court concurs with the

1 recommendations, the court may adopt the recommendations as findings with no additional hearing required. In  
2 this case, the court shall issue written findings within 10 days of receipt of the written recommendations.

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

4 (a) whether the child has been asked about the desired permanency outcome;

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

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

8 (d) whether the department has made reasonable efforts to finalize the plan;

9 (e) whether there are compelling reasons why it is not in the best interest of the individual child to:

10 (i) return to the child's home; or

11 (ii) be placed for adoption, with a legal guardian, or with a fit and willing relative; and

12 (f) other necessary steps that the department is required to take to effectuate the terms of the  
13 plan.

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

19 (8) Permanency options include:

20 (a) reunification of the child with the child's parent or guardian;

21 (b) permanent placement of the child with the noncustodial parent, superseding any existing  
22 custodial order;

23 (c) adoption;

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

25 (e) long-term custody if the child is in a planned permanent living arrangement and if it is  
26 established by a preponderance of the evidence, which is reflected in specific findings by the court, that:

27 (i) the child is being cared for by a fit and willing relative;

28 (ii) the child has an emotional or mental handicap that is so severe that the child cannot function in

- 1 a family setting and the best interests of the child are served by placement in a residential or group setting;
- 2 (iii) the child is at least 16 years of age and is participating in an independent living program and
- 3 that termination of parental rights is not in the best interests of the child;
- 4 (iv) the child's parent is incarcerated and circumstances, including placement of the child and
- 5 continued, frequent contact with the parent, indicate that it would not be in the best interests of the child to
- 6 terminate parental rights of that parent; or
- 7 (v) the child meets the following criteria:
- 8 (A) the child has been adjudicated a youth in need of care;
- 9 (B) the department has made reasonable efforts to reunite the parent and child, further efforts by
- 10 the department would likely be unproductive, and reunification of the child with the parent or guardian would be
- 11 contrary to the best interests of the child;
- 12 (C) there is a judicial finding that other more permanent placement options for the child have been
- 13 considered and found to be inappropriate or not to be in the best interests of the child; and
- 14 (D) the child has been in a placement in which the foster parent or relative has committed to the
- 15 long-term care and to a relationship with the child, and it is in the best interests of the child to remain in that
- 16 placement.
- 17 (9) For a child 14 years of age or older, the permanency plan must:
- 18 (a) be developed in consultation with the child and in consultation with up to two members of the
- 19 child's case planning team who are chosen by the child and who are not a foster parent or child protection
- 20 specialist for the child;
- 21 (b) identify one person from the case management team, who is selected by the child, to be
- 22 designated as the child's advisor and advocate for the application of the reasonable and prudent parenting
- 23 standard; and
- 24 (c) include services that will be needed to transition the child from foster care to adulthood.
- 25 (10) A permanency hearing must document the intensive, ongoing, and unsuccessful efforts made
- 26 by the department to return the child to the child's home or to secure a permanent placement of the child with a
- 27 relative, legal guardian, or adoptive parent.
- 28 (11) The court may terminate a planned permanent living arrangement upon petition of the birth

1 parents or the department if the court finds that the circumstances of the child or family have substantially  
2 changed and the best interests of the child are no longer being served."

3  
4 **Section 5.** Section 41-3-1003, MCA, is amended to read:

5 **"41-3-1003. Establishment of board -- definition -- membership.** (1) As used in this part, "board"  
6 means a citizen review board appointed as provided in this section.

7 (2) ~~Subject to the availability of funds, a district court judge who has indicated in writing an interest~~  
8 ~~in having a board shall establish at least one board in the judicial district.~~ The office of the court administrator  
9 shall establish a minimum number of boards equaling no less than the number of the department's regional  
10 divisions to review the case of each child in the custody of the department and in foster care. A board may  
11 review a case of a child who remains in or returns to the child's home and for whom the department retains  
12 legal custody.

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

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

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

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

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

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

25 (5) The members of a board must be willing to serve without compensation."  
26

27 **Section 6.** Section 41-3-1004, MCA, is amended to read:

28 **"41-3-1004. Administration -- training -- oversight -- procedures.** (1) The office of the court

1 administrator, as provided for in 3-1-701, shall, in accordance with the direction of the supreme court, oversee  
2 the program established in this part and shall, at the time prescribed by 5-11-210, prepare ~~a~~ an annual report to  
3 the governor, the legislature, and the public regarding:

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

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

8 (2) The office of the court administrator shall:

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

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

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

14 (d) employ staff and provide for support services for boards."  
15

16 **Section 7.** Section 41-3-1005, MCA, is amended to read:

17 **"41-3-1005. Removal of members -- grounds.** Grounds for removal of a member of a board under  
18 41-3-1004 may include but are not limited to the following:

19 (1) nonparticipation by a board member;

20 (2) a member ~~establishing residence in a judicial district other than the judicial district in which the~~  
21 ~~court the person was appointed to serve is located~~ no longer resides in the state;

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

23 (4) other cause or grounds as necessary for the administration of the program."  
24

25 **Section 8.** Section 41-3-1008, MCA, is amended to read:

26 **"41-3-1008. Access to records.** (1) Notwithstanding the provisions of 41-3-205, a board has access  
27 to:

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



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

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

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

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

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

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

**Section 9.** Section 41-3-1010, MCA, is amended to read:

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

(i) the safety of the child;

(ii) whether an involved agency has selected services specifically relevant to the problems and needs of the child and family;

(iii) whether caseworkers have diligently provided services;

(iv) whether appropriate services have been available to the child and family on a timely basis; and

(v) the results of intervention.

(b) The board may review the case of a child who remains in or returns to the child's home and for

1 whom the department retains legal custody.

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

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

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

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

17 (a) whether ~~reasonable~~ active efforts were made prior to the placement to prevent or to eliminate  
18 the need for removal of the child from the home and to make it possible for the child to be returned home;

19 (b) the continuing need for the placement and the appropriateness and safety of the placement;

20 (c) compliance with the case plan;

21 (d) the progress that has been made toward alleviating the need for placement;

22 (e) a likely date by which the child may be returned home or by which a permanent placement will  
23 be finalized; and

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

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

27 (6) Whenever a member of a board has a potential conflict of interest or bias is identified by the  
28 family involved in a case being reviewed, the member shall declare to the board the nature of the potential

1 conflict prior to participating in the case review. The following provisions apply:

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

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

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

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

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

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

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

21 (12) The board shall meet at least quarterly but may meet more frequently as needed to carry out its  
22 duties."

23

24 **Section 10.** Section 41-3-1011, MCA, is amended to read:

25 **"41-3-1011. Board recommendations concerning foster care services and policy**

26 **considerations.** In addition to reviewing individual cases of children in foster care, a board may make  
27 recommendations to the district court and to the department concerning foster care services, policies,  
28 procedures, and laws. Recommendations must be in writing and must be provided to the department and the

1 office of the court administrator."

2

3 **Section 11.** Section 41-3-1013, MCA, is amended to read:

4 **"41-3-1013. Court review of findings and recommendations of board.** (1) Upon receipt of findings  
5 and recommendations from the board, the district court shall:

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

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

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

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

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

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

19 (c) include the findings and recommendations of the board as part of the case file of the  
20 department.

21 (3) The court ~~may~~ shall schedule a hearing on any recommendations that the department objects  
22 to or contends that it is unable to implement. The court shall find by clear and convincing evidence that the  
23 department does not have the resources to implement the recommendations of the board or that the  
24 recommendations of the board are inappropriate.

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

28 (a) ~~investigate all relevant information about the case;~~

(b) — advocate for the child, ensuring that all relevant facts are brought before the court;

(c) — ~~facilitate and negotiate to ensure that the district court, the department, and the child's attorney fulfill their obligations to the child in a timely fashion; and~~

(d) — ~~monitor all district court orders to ensure compliance and to bring to the district court's attention any change in circumstance that may require modification of the district court's order."~~

**Section 12.** Section 52-2-304, MCA, is amended to read:

**"52-2-304. Committee duties.** (1) The committee established in 52-2-303 shall, to the extent possible within existing resources:

(a) develop policies aimed at eliminating or reducing barriers to the implementation of a system of care;

(b) promote the development of an in-state quality array of core services in order to assist in returning high-risk children with multiagency service needs from out-of-state placements, limiting and preventing the placement of high-risk children with multiagency service needs out of state, and maintaining high-risk children with multiagency service needs within the least restrictive and most appropriate setting;

(c) advise local agencies to ensure that the agencies comply with applicable statutes, administrative rules, and department policy in committing funds and resources for the implementation of unified plans of care for high-risk children with multiagency service needs and in making any determination that a high-risk child with multiagency service needs cannot be served by an in-state provider;

(d) encourage the development of local interagency teams with participation from representatives from child serving agencies who are authorized to commit resources and make decisions on behalf of the agency represented;

(e) specify outcome indicators and measures to evaluate the effectiveness of the system of care;

(f) develop mechanisms to elicit meaningful participation from parents, family members, and youth who are currently being served or who have been served in the children's system of care; and

(g) take into consideration the policies, plans, and budget developed by any service area authority provided for in 53-21-1006.

(2) The committee shall coordinate responsibility for the development of a stable system of care for

- 1 high-risk children with multiagency service needs that may include, as appropriate within existing resources:
- 2 (a) pooling funding from federal, state, and local sources to maximize the most cost-effective use
- 3 of funds to provide services in the least restrictive and most appropriate setting to high-risk children with
- 4 multiagency service needs;
- 5 (b) applying for federal waivers and grants to improve the delivery of integrated services to high-
- 6 risk children with multiagency service needs;
- 7 (c) providing for multiagency data collection and for analysis relevant to the creation of an accurate
- 8 profile of the state's high-risk children with multiagency service needs in order to provide for the use of services
- 9 based on client needs and outcomes and use of the analysis in the decisionmaking process;
- 10 (d) developing mechanisms for the pooling of human and fiscal resources; and
- 11 (e) providing training and technical assistance, as funds permit, at the local level regarding
- 12 governance, development of a system of care, and delivery of integrated multiagency children's services.
- 13 (3) (a) In order to maximize integration and minimize duplication, the local interagency team,
- 14 provided for in subsection (1)(d), may be facilitated in conjunction with an existing statutory team for providing
- 15 youth services, including:
- 16 (i) a child protective team as provided for in 41-3-108;
- 17 (ii) a youth placement committee as provided for in 41-5-121 and 41-5-122;
- 18 (iii) a county or regional interdisciplinary child information and school safety team or an auxiliary
- 19 team as provided for in 52-2-211;
- 20 (iv) ~~a foster care review committee as provided for in 41-3-115;~~
- 21 ~~(v)(iv)~~ a local citizen review board as provided for in 41-3-1003; and
- 22 ~~(vi)(v)~~ a local advisory council as provided for in 53-21-702.
- 23 (b) If the local interagency team decides to coordinate and consolidate statutory teams, it shall
- 24 ensure that all state and federal rules, laws, and policies required of the individual statutory teams are fulfilled."
- 25
- 26 **NEW SECTION. Section 13. Repealer.** The following section of the Montana Code Annotated is
- 27 repealed:
- 28 41-3-115 Foster care review committee -- foster care reviews -- permanency hearings.

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