

1 HOUSE BILL NO. 129

2 INTRODUCED BY SOFT

3 BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAW RELATING TO CHILD
6 PROTECTIVE SERVICES; CLARIFYING DEFINITIONS; PROVIDING THAT THE DEPARTMENT OF PUBLIC
7 HEALTH AND HUMAN SERVICES MAY NOT BE ORDERED TO SUPERVISE VISITATION; LIMITING THE
8 REQUIREMENT FOR FOSTER CARE LICENSING; AMENDING SECTIONS 40-4-218, 40-8-111, 41-3-102,
9 41-3-201, 41-3-202, 41-3-204, 41-3-205, 41-3-609, 41-3-1102, 41-3-1141, AND 41-3-1142, MCA; AND
10 PROVIDING AN IMMEDIATE EFFECTIVE DATE."
11

12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
1314 **Section 1.** Section 40-4-218, MCA, is amended to read:

15 **"40-4-218. Judicial supervision.** (1) Except as otherwise agreed by the parties in writing at the
16 time of the custody decree, the custodian may determine the child's upbringing, including the child's
17 education, health care, and religious training, unless the court after hearing finds, upon motion by the
18 noncustodial parent, that in the absence of a specific limitation of the custodian's authority, the child's
19 physical health would be endangered or the child's emotional development significantly impaired.

20 (2) If both parents or all contestants agree to the order or if the court finds that in the absence of
21 the order the child's physical health would be endangered or the child's emotional development significantly
22 impaired, the court may order the supervised visitation by the noncustodial parent. The court may not order
23 the department of public health and human services to exercise continuing supervision over the case to
24 assure that the custodial or visitation terms of the decree are carried out to supervise the visitation."
25

26 **Section 2.** Section 40-8-111, MCA, is amended to read:

27 **"40-8-111. Consent required for adoption.** (1) An adoption of a child may be decreed when there
28 have been filed written consents to adoption executed by:

29 (a) both parents, if living, or the surviving parent of a child, provided that consent is not required
30 from a father or mother:

1 (i) adjudged guilty by a court of competent jurisdiction of assault on a child, as provided in
2 45-5-201; sexual assault on a child, as provided in 45-5-502; sexual intercourse without consent, as
3 provided in 45-5-503, if the victim was a child; incest, as provided in 45-5-507, if the victim was a child;
4 endangering the welfare of children, concerning a child, as provided in 45-5-622; sexual abuse of children,
5 toward a child, as provided in 45-5-625; or ritual abuse of a minor, as provided in 45-5-627;

6 (ii) who has been judicially deprived of the custody of the child on account of cruelty or neglect
7 toward the child;

8 (iii) who has, in the state of Montana or in any other state of the United States, willfully abandoned
9 the child, as defined in ~~41-3-102(7)(e)~~ 41-3-102;

10 (iv) who has caused the child to be maintained by any public or private children's institution, any
11 charitable agency, or any licensed adoption agency or the department of public health and human services
12 of the state of Montana for a period of 1 year without contributing to the support of the child during that
13 period, if able;

14 (v) if it is proved to the satisfaction of the court that the father or mother, if able, has not
15 contributed to the support of the child during a period of 1 year before the filing of a petition for adoption;
16 or

17 (vi) whose parental rights have been judicially terminated;

18 (b) the legal guardian of the child if both parents are dead or if the rights of the parents have been
19 terminated by judicial proceedings and the guardian has authority by order of the court appointing the
20 guardian to consent to the adoption;

21 (c) the executive head of an agency if the child has been relinquished for adoption to the agency
22 or if the rights of the parents have been judicially terminated or if both parents are dead and custody of the
23 child has been legally vested in the agency with authority to consent to adoption of the child; or

24 (d) any person having legal custody of a child by court order if the parental rights of the parents
25 have been judicially terminated. In that case, the court having jurisdiction of the custody of the child shall
26 consent to adoption and a certified copy of its order must be attached to the petition.

27 (2) The consents required by subsections (1)(a) and (1)(b) must be acknowledged before an officer
28 authorized to take acknowledgments or witnessed by a representative of the department of public health
29 and human services or of an agency or witnessed by a representative of the court."

30

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

2 **"41-3-102. Definitions.** As used in this chapter, the following definitions apply:

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

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

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

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

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

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

11 (3) (a) "Adequate health care" means any medical care, including the prevention of the withholding
12 of medically indicated treatment or medically indicated psychological care permitted or authorized under
13 state law.

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

18 (c) The term does not include self-defense, defense of others, or action taken to prevent the child
19 from self-harm that does not constitute harm to a child's health or welfare.

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

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

22 (i) harm to a child's health or welfare; or

23 (ii) threatened harm to a child's health or welfare.

24 (b) The term includes harm or threatened harm to a child's health or welfare by the acts or
25 omissions of a person responsible for the child's welfare.

26 (6) "Department" means the department of public health and human services provided for in
27 2-15-2201.

28 (7) "Emotional abuse" means injury to the emotional well-being or intellectual or psychological
29 capacity of a child, as evidenced by an identifiable and substantial impairment of or adverse effect upon
30 a child's physical, mental, or emotional ability to function.

1 ~~(7)~~(8) "Harm to a child's health or welfare" means the harm that occurs whenever the parent or
2 other person responsible for the child's welfare:

3 (a) inflicts or allows to be inflicted upon the child physical or ~~mental injury~~ emotional abuse;

4 (b) commits or allows to be committed sexual abuse or exploitation of the child;

5 (c) induces or attempts to induce a child into giving untrue testimony that the child or another child
6 was abused or neglected by a parent or person responsible for the child's welfare;

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

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

12 ~~(e)~~(f) abandons the child by leaving the child under circumstances that make reasonable the belief
13 that the parent or other person does not intend to resume care of the child in the future or willfully
14 surrenders physical custody for a period of 6 months and during that period does not manifest to the child
15 and the person having physical custody of the child a firm intention to resume physical custody or to make
16 permanent legal arrangements for the care of the child; or

17 ~~(f)~~(g) is unknown and has been unknown for a period of 90 days and reasonable efforts to identify
18 and locate the parents have failed.

19 ~~(8)~~(9) "Limited emancipation" means a status conferred on a youth by a court after a dispositional
20 hearing in accordance with 41-3-406 under which the youth is entitled to exercise some but not all of the
21 rights and responsibilities of a person who is 18 years of age or older.

22 ~~(9) "Mental injury" means an identifiable and substantial impairment of the child's intellectual or~~
23 ~~psychological functioning.~~

24 (10) "Parent" means a biological or adoptive parent ~~or stepparent~~.

25 (11) "Physical ~~injury~~ abuse" means death, substantial or multiple skin bruising or any other internal
26 bleeding, any injury to skin that causes bleeding or soft tissue swelling, subdural hematoma, burns, bone
27 fractures, extreme pain, permanent or temporary disfigurement, or impairment of any bodily organ or
28 function, or death if the injury or death is not accidental or is not justifiably explained. ~~The term includes~~
29 ~~death, permanent or temporary disfigurement, and impairment of a bodily organ or function sustained as~~
30 ~~a result of excessive corporal punishment.~~

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

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

7 ~~(14)~~(14) (a) "Sexual abuse" means the commission of sexual assault, sexual intercourse without
8 consent, indecent exposure, deviate sexual conduct, or incest, as described in Title 45, chapter 5, part 5.

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

11 ~~(15)~~(15) "Sexual exploitation" means allowing, permitting, or encouraging a child to engage in a
12 prostitution offense, as described in 45-5-601 through 45-5-603, or allowing, permitting, or encouraging
13 sexual abuse of children as described in 45-5-625.

14 ~~(16)~~(16) "Social worker" means an employee of the department who, prior to the employee's field
15 assignment, has been educated or trained or is receiving education or training in a program of social work
16 or a related field that includes cognitive and family systems treatment or who has equivalent verified
17 experience or verified training in the investigation of child abuse, neglect, and endangerment. This definition
18 does not apply to any provision of this code that is not in this chapter.

19 ~~(17)~~(17) "Threatened harm to a child's health or welfare" means substantial risk of harm to the
20 child's health or welfare.

21 ~~(18)~~(18) (a) "Withholding of medically indicated treatment" means the failure to respond to an
22 infant's life-threatening conditions by providing treatment, including appropriate nutrition, hydration, and
23 medication, that, in the treating physician's or physicians' reasonable medical judgment, will be most likely
24 to be effective in ameliorating or correcting the conditions.

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

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

29 (ii) the provision of treatment would:

30 (A) merely prolong dying;

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

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

3 (iii) the provision of treatment would be virtually futile in terms of the survival of the infant and the
4 treatment itself under the circumstances would be inhumane. For purposes of this subsection ~~(16)~~ (18),
5 "infant" means an infant less than 1 year of age or an infant 1 year of age or older who has been
6 continuously hospitalized since birth, who was born extremely prematurely, or who has a long-term
7 disability. The reference to less than 1 year of age may not be construed to imply that treatment should
8 be changed or discontinued when an infant reaches 1 year of age or to affect or limit any existing
9 protections available under state laws regarding medical neglect of children over 1 year of age.

10 ~~(17)~~(19) "Youth in need of care" means a youth who is abused or neglected."
11

12 **Section 4.** Section 41-3-201, MCA, is amended to read:

13 **"41-3-201. Reports.** (1) When the professionals and officials listed in subsection (2) know or have
14 reasonable cause to suspect, as a result of information they receive in their professional or official capacity,
15 that a child is abused or neglected, they shall report the matter promptly to the department of public health
16 and human services or its local affiliate, ~~which then shall notify the county attorney of the county where~~
17 ~~the child resides.~~

18 (2) Professionals and officials required to report are:

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

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

23 (c) Christian Science practitioner and religious healers;

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

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

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

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

30 (h) clergy; or

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

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

5 (4) (a) Except as provided in subsection (4)(b) or (4)(c), a person listed in subsection (2) may not
6 refuse to make a report as required in this section on the grounds of a physician-patient or similar privilege.

7 (b) A clergyperson or priest is not required to make a report under this section if:

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

10 (ii) the statement was intended to be a part of a confidential communication between the
11 clergyperson or priest and a member of the clergyperson's or priest's church or congregation; and

12 (iii) the person who made the statement or confession does not consent to the disclosure by the
13 clergyperson or priest.

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

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

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

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

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

24 (d) the facts that led the person reporting to believe that the child has suffered injury or injuries
25 or willful neglect, within the meaning of this chapter."
26

27 **Section 5.** Section 41-3-202, MCA, is amended to read:

28 **"41-3-202. Action on reporting.** (1) Upon receipt of a report, as required by 41-3-201, that a child
29 is or has been abused or neglected, a social worker, the county attorney, or a peace officer shall promptly
30 conduct a thorough investigation into the circumstances surrounding the allegations of abuse or neglect

1 of the child, which may include an investigation at the home of the child involved, the child's school or
 2 day-care facility, or any other place where the child is present, into the circumstances surrounding the injury
 3 of the child, and into all other nonfinancial matters that in the discretion of the investigator are relevant to
 4 the investigation. In conducting an investigation under this section, a social worker may not inquire into
 5 the financial status of the child's family or of any other person responsible for the child's care, except as
 6 necessary to ascertain eligibility for state or federal assistance programs or to comply with the provisions
 7 of 41-3-406.

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

13 (3) The social worker is responsible for assessing the family and planning for the child. If the child
 14 is treated at a medical facility, the social worker, county attorney, or peace officer, consistent with
 15 reasonable medical practice, has the right of access to the child for interviews, photographs, and securing
 16 physical evidence and has the right of access to relevant hospital and medical records pertaining to the
 17 child. If considered appropriate by the social worker, county attorney, or peace officer conducting an
 18 interview of the child, an employee of the ~~public~~ school attended by the child involved may participate in
 19 any interview of the child ~~if the child is enrolled in kindergarten through 8th grade.~~

20 (4) If the child's interview is videotaped, an unedited videotape with audio track must be made
 21 available, upon request, for unencumbered review by the family.

22 (5) (a) If from the investigation ~~it appears~~ the department has reasonable cause to suspect that the
 23 child suffered abuse or neglect, the department ~~shall~~ may provide protective services to the child pursuant
 24 to 41-3-301 and may provide protective services to any other child under the same care. The department
 25 shall ~~advise the county attorney and:~~

26 (i) document its determination regarding abuse or neglect of a child; and

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

29 (b) If from the investigation ~~it appears~~ is determined that the child has not suffered abuse or neglect
 30 and the initial report is determined to be unfounded, the department shall destroy all of its records

1 concerning the report and the investigation. The destruction must be completed within ~~20~~ 30 days of the
2 determination that the child has not suffered abuse or neglect.

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

7 (7) Any person reporting abuse or neglect that involves acts or omissions on the part of a public
8 or private residential institution, home, facility, or agency is responsible for ensuring that the report is made
9 to the department, through its local ~~affiliate, and the county attorney of the county in which the facility is~~
10 ~~located~~ office."

11
12 **Section 6.** Section 41-3-204, MCA, is amended to read:

13 **"41-3-204. Admissibility and preservation of evidence.** (1) In any proceeding resulting from a
14 report made pursuant to the provisions of this chapter or in any proceeding for which the report or its
15 contents are sought to be introduced into evidence, the report or its contents or any other fact related to
16 the report or to the condition of the child who is the subject of the report may not be excluded on the
17 ground that the matter is or may be the subject of a privilege related to the examination or treatment of the
18 child and granted in Title 26, chapter 1, part 8, except the attorney-client privilege granted by 26-1-803.

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

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

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

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

5
6 **Section 7.** Section 41-3-205, MCA, is amended to read:

7 **"41-3-205. Confidentiality -- disclosure exceptions.** (1) The case records of the department of
8 public health and human services and its local affiliate, the county welfare department, the county attorney,
9 and the court concerning actions taken under this chapter and all records concerning reports of child abuse
10 and neglect must be kept confidential except as provided by this section. Except as provided in subsections
11 (4) and (5), a person who permits or encourages the unauthorized dissemination of the contents of case
12 records is guilty of a misdemeanor.

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

16 (3) Records may also be disclosed to the following persons or entities in this state and any other
17 state or country:

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

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

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

27 (d) a parent, guardian, or person designated by a parent or guardian of the child who is the subject
28 of a report in the records or other person responsible for the child's welfare, without disclosure of the
29 identity of any person who reported or provided information on the alleged child abuse or neglect incident
30 contained in the records;

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

4 (f) the state protection and advocacy program as authorized by 42 U.S.C. 6042(a)(2)(B);

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

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

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

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

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

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

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

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

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

26 (p) the news media if disclosure is limited to confirmation of factual information regarding how the
27 case was handled and if disclosure does not violate the privacy rights of the child or the child's parent or
28 guardian as determined by the department;

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

1 (r) an agency of an Indian tribe or the relatives of an Indian child if disclosure of the records is
2 necessary to meet requirements of the federal Indian Child Welfare Act;

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

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

8 (u) a foster care review committee established under 41-3-1115 or, when applicable, a local citizen
9 review board established under Title 41, chapter 3, part 10;

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

12 (w) a member of a county interdisciplinary child information team formed under the provisions of
13 52-2-211;

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

15 (y) a member of a youth placement committee formed under the provisions of 41-5-525.

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

20 (5) A news organization or its employee, including a freelance writer or reporter, is not liable for
21 reporting facts or statements made by an immediate family member under subsection (4) if the news
22 organization, employee, writer, or reporter maintains the confidentiality of the child who is the subject of
23 the proceeding.

24 (6) This section is not intended to affect the confidentiality of criminal court records or records of
25 law enforcement agencies."

26

27 **Section 8.** Section 41-3-609, MCA, is amended to read:

28 **"41-3-609. Criteria for termination.** (1) The court may order a termination of the parent-child legal
29 relationship upon a finding that any of the following circumstances exist:

30 (a) the parents have relinquished the child pursuant to 40-6-135;

1 (b) the child has been abandoned by the parents as set forth in ~~41-3-102(7)(e)~~ 41-3-102;

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

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

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

7 (d) the parent has failed to successfully complete a treatment plan approved by the court within
8 the time periods allowed for the child to be in foster care under 41-3-410 unless it orders other permanent
9 legal custody under 41-3-410.

10 (2) In determining whether the conduct or condition of the parents is unlikely to change within a
11 reasonable time, the court must enter a finding that continuation of the parent-child legal relationship will
12 likely result in continued abuse or neglect or that the conduct or the condition of the parents renders the
13 parents unfit, unable, or unwilling to give the child adequate parental care. In making the determinations,
14 the court shall consider but is not limited to the following:

15 (a) emotional illness, mental illness, or mental deficiency of the parent of such duration or nature
16 as to render the parent unlikely to care for the ongoing physical, mental, and emotional needs of the child
17 within a reasonable time;

18 (b) a history of violent behavior by the parent;

19 (c) a single incident of life-threatening or gravely disabling injury to or disfigurement of ~~the~~ a child
20 caused by the parent;

21 (d) excessive use of intoxicating liquor or of a narcotic or dangerous drug that affects the parent's
22 ability to care and provide for the child;

23 (e) present judicially ordered long-term confinement of the parent;

24 (f) the injury or death of a ~~sibling child due to~~ sibling child due to proven parental abuse or neglect; and

25 (g) any reasonable efforts by protective service agencies that have been unable to rehabilitate the
26 parent.

27 (3) In considering any of the factors in subsection (2) in terminating the parent-child relationship,
28 the court shall give primary consideration to the physical, mental, and emotional conditions and needs of
29 the child. The court shall review and, if necessary, order an evaluation of the child's or the parent's
30 physical, mental, and emotional conditions.

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

3 (a) two medical doctors or clinical psychologists submit testimony that the parent ~~is so severely~~
4 ~~mentally ill that the parent~~ cannot assume the role of parent;

5 (b) the parent is incarcerated for more than 1 year and a treatment plan is not practical considering
6 the incarceration; or

7 (c) the death of a sibling child caused by abuse or neglect by the parent has occurred.

8 (5) If a person is convicted of a felony in which sexual intercourse occurred or if a minor is
9 adjudicated a delinquent youth because of an act that, if committed by an adult, would be a felony in which
10 sexual intercourse occurred and, as a result of the sexual intercourse, a child is born, the court may
11 terminate the offender's parental rights to the child at any time after the conviction or adjudication."
12

13 **Section 9.** Section 41-3-1102, MCA, is amended to read:

14 **"41-3-1102. Definitions.** For the purposes of this part, the following definitions apply:

15 (1) "Child-care agency" means a youth care facility in which substitute care is provided to 13 or
16 more children or youth.

17 (2) "Department" means the department of public health and human services provided for in
18 2-15-2201.

19 (3) "Foster child" means a person under 18 years of age who has been placed by the department
20 in a ~~licensed youth foster home~~ care facility.

21 ~~(4) "Operator of a youth care facility" means a person owning or operating a youth care facility~~
22 ~~into which the operator takes any child or children for the purpose of caring for them and maintaining them~~
23 ~~and for which care and maintenance the operator receives money or other consideration of value and which~~
24 ~~child is neither the operator's son, daughter, nor ward, except that this part does not apply when any~~
25 ~~person accepts the care and custody of a child on a temporary basis and simply as a temporary~~
26 ~~accommodation for the parent or parents, guardian, or relative of the child.~~

27 ~~(5)~~(4) "Person" means any individual, partnership, voluntary association, or corporation.

28 ~~(6)~~(5) "Respite care" means the provision of temporary, short-term supervision or care of a foster
29 child, in an emergency or on an intermittent basis, to provide foster parents relief from the daily care
30 requirements of a foster child whose mental or physical condition requires special or intensive supervision

1 or care. Respite care includes but is not limited to homemaker services, child care, and emergency care
2 either in the home or out of the home.

3 ~~(7)~~(6) "Respite care provider" means a person who meets the qualifications and requirements
4 established by the department to provide respite care under 41-3-1151.

5 ~~(8)~~(7) "Substitute care" means full-time care of a youth in a residential setting for the purpose of
6 providing food, shelter, security and safety, guidance, direction, and if necessary, treatment to youth who
7 are removed from or without the care and supervision of their parents or guardian who is placed by the
8 department, another state agency, or a licensed child-placing agency and who has been determined by a
9 court to be a youth in need of care, youth in need of supervision, or delinquent youth. Individuals who
10 provide care to youth who are recipients of services provided through the department's developmental
11 disabilities, mental health, or medicaid community services program are also considered to be providing
12 substitute care. This part does not apply when a person accepts the care and custody of a child on a
13 temporary basis as an accommodation for the parent or parents, guardian, or relative of the child.

14 ~~(9)~~(8) "Youth care facility" means a facility licensed by the department or by the appropriate
15 licensing authority in another state and in which facility substitute care is provided to youth. The term
16 includes youth foster homes, youth group homes, and child-care agencies.

17 ~~(10)~~(9) "Youth foster home" means a youth care facility in which substitute care is provided to one
18 to six children or youth other than the foster parents' own children, stepchildren, or wards.

19 ~~(11)~~(10) "Youth group home" means a youth care facility in which substitute care is provided to
20 7 to 12 children or youth."

21

22 **Section 10.** Section 41-3-1141, MCA, is amended to read:

23 "**41-3-1141. License required.** ~~No~~ (1) A person shall may not maintain or operate a youth care
24 facility for any child or children within the meaning of this part without first securing a license ~~in writing~~
25 from the department.

26 (2) An extended family member or a kinship care provider, as defined by the department, who
27 provides unlicensed care for a child placed by the department must receive approval in writing from the
28 department.

29 (3) ~~No~~ The department may not charge a fee shall be charged for such a license or approval
30 granted under this section."

1 **Section 11.** Section 41-3-1142, MCA, is amended to read:

2 **"41-3-1142. Issuance of license -- authority of issuing agency -- rules.** ~~(1)~~ The department is
3 ~~hereby authorized to~~ may issue licenses to persons operating youth care facilities or grant approval to
4 persons providing kinship care and ~~to~~ prescribe the conditions upon which ~~such~~ licenses ~~shall~~ and approvals
5 may be issued, ~~and to~~ The department may make ~~such~~ rules ~~as it may deem advisable~~ necessary for the
6 licensure or approval, operation, and regulation of ~~such~~ those facilities ~~for minor children~~ consistent with
7 the welfare of ~~such children~~ the residents.

8 ~~(2) Such licensing agency shall have the power and authority to~~ The department may inspect all
9 ~~such~~ licensed facilities ~~through its duly authorized representatives and to~~ cancel or approved homes and,
10 as appropriate, undertake action, including but not limited to the revocation of licenses theretofore issued
11 ~~for the failure to observe such rules and approvals.~~

12 ~~(3) The person operating such homes providing care in the facilities or homes shall give to such~~
13 ~~representative such~~ the department any information ~~as~~ that may be required and afford ~~him~~ the department
14 every reasonable opportunity for observing the operation of ~~such~~ the facilities or homes."

15

16 NEW SECTION. Section 12. Effective date. [This act] is effective on passage and approval.

17

-END-

HOUSE BILL NO. 129

INTRODUCED BY SOFT

BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAW RELATING TO CHILD PROTECTIVE SERVICES; CLARIFYING DEFINITIONS; PROVIDING THAT THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES MAY NOT BE ORDERED TO SUPERVISE VISITATION; LIMITING THE REQUIREMENT FOR FOSTER CARE LICENSING; AMENDING SECTIONS 40-4-218, 40-8-111, 41-3-102, 41-3-201, 41-3-202, 41-3-204, 41-3-205, 41-3-609, 41-3-1102, 41-3-1141, AND 41-3-1142, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 40-4-218, MCA, is amended to read:

"40-4-218. Judicial supervision. (1) Except as otherwise agreed by the parties in writing at the time of the custody decree, the custodian may determine the child's upbringing, including the child's education, health care, and religious training, unless the court after hearing finds, upon motion by the noncustodial parent, that in the absence of a specific limitation of the custodian's authority, the child's physical health would be endangered or the child's emotional development significantly impaired.

(2) If both parents or all contestants agree to the order or if the court finds that in the absence of the order the child's physical health would be endangered or the child's emotional development significantly impaired, the court may order the supervised visitation by the noncustodial parent. The court may not order the department of public health and human services to exercise continuing supervision over the case to assure that the custodial or visitation terms of the decree are carried out to supervise the visitation."

Section 2. Section 40-8-111, MCA, is amended to read:

"40-8-111. Consent required for adoption. (1) An adoption of a child may be decreed when there have been filed written consents to adoption executed by:

(a) both parents, if living, or the surviving parent of a child, provided that consent is not required from a father or mother:

1 (i) adjudged guilty by a court of competent jurisdiction of assault on a child, as provided in
2 45-5-201; sexual assault on a child, as provided in 45-5-502; sexual intercourse without consent, as
3 provided in 45-5-503, if the victim was a child; incest, as provided in 45-5-507, if the victim was a child;
4 endangering the welfare of children, concerning a child, as provided in 45-5-622; sexual abuse of children,
5 toward a child, as provided in 45-5-625; or ritual abuse of a minor, as provided in 45-5-627;

6 (ii) who has been judicially deprived of the custody of the child on account of cruelty or neglect
7 toward the child;

8 (iii) who has, in the state of Montana or in any other state of the United States, willfully abandoned
9 the child, as defined in ~~41-3-102(7)(e)~~ 41-3-102;

10 (iv) who has caused the child to be maintained by any public or private children's institution, any
11 charitable agency, or any licensed adoption agency or the department of public health and human services
12 of the state of Montana for a period of 1 year without contributing to the support of the child during that
13 period, if able;

14 (v) if it is proved to the satisfaction of the court that the father or mother, if able, has not
15 contributed to the support of the child during a period of 1 year before the filing of a petition for adoption;
16 or

17 (vi) whose parental rights have been judicially terminated;

18 (b) the legal guardian of the child if both parents are dead or if the rights of the parents have been
19 terminated by judicial proceedings and the guardian has authority by order of the court appointing the
20 guardian to consent to the adoption;

21 (c) the executive head of an agency if the child has been relinquished for adoption to the agency
22 or if the rights of the parents have been judicially terminated or if both parents are dead and custody of the
23 child has been legally vested in the agency with authority to consent to adoption of the child; or

24 (d) any person having legal custody of a child by court order if the parental rights of the parents
25 have been judicially terminated. In that case, the court having jurisdiction of the custody of the child shall
26 consent to adoption and a certified copy of its order must be attached to the petition.

27 (2) The consents required by subsections (1)(a) and (1)(b) must be acknowledged before an officer
28 authorized to take acknowledgments or witnessed by a representative of the department of public health
29 and human services or of an agency or witnessed by a representative of the court."

30

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

2 **"41-3-102. Definitions.** As used in this chapter, the following definitions apply:

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

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

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

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

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

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

11 (3) (a) "Adequate health care" means any medical care, including the prevention of the withholding
12 of medically indicated treatment or medically indicated psychological care permitted or authorized under
13 state law.

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

18 (c) The term does not include self-defense, defense of others, or action taken to prevent the child
19 from self-harm that does not constitute harm to a child's health or welfare.

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

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

22 (i) harm to a child's health or welfare; or

23 (ii) threatened harm to a child's health or welfare.

24 (b) The term includes harm or threatened harm to a child's health or welfare by the acts or
25 omissions of a person responsible for the child's welfare.

26 (6) "Department" means the department of public health and human services provided for in
27 2-15-2201.

28 (7) "Emotional abuse" means injury to the emotional well-being or intellectual or psychological
29 capacity of a child, as evidenced by an identifiable and substantial impairment of or adverse effect upon
30 a child's physical, mental, or emotional ability to function.

1 ~~(7)~~(8) "Harm to a child's health or welfare" means the harm that occurs whenever the parent or
2 other person responsible for the child's welfare:

3 (a) inflicts or allows to be inflicted upon the child physical or ~~mental injury~~ emotional abuse;

4 (b) commits or allows to be committed sexual abuse or exploitation of the child;

5 (c) induces or attempts to induce a child into giving untrue testimony that the child or another child
6 was abused or neglected by a parent or person responsible for the child's welfare;

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

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

12 ~~(f)~~(f) abandons the child by leaving the child under circumstances that make reasonable the belief
13 that the parent or other person does not intend to resume care of the child in the future or willfully
14 surrenders physical custody for a period of 6 months and during that period does not manifest to the child
15 and the person having physical custody of the child a firm intention to resume physical custody or to make
16 permanent legal arrangements for the care of the child; or

17 ~~(f)~~(g) is unknown and has been unknown for a period of 90 days and reasonable efforts to identify
18 and locate the parents have failed.

19 ~~(8)~~(9) "Limited emancipation" means a status conferred on a youth by a court after a dispositional
20 hearing in accordance with 41-3-406 under which the youth is entitled to exercise some but not all of the
21 rights and responsibilities of a person who is 18 years of age or older.

22 ~~(9) "Mental injury" means an identifiable and substantial impairment of the child's intellectual or~~
23 ~~psychological functioning.~~

24 (10) "Parent" means a biological or adoptive parent ~~or stepparent~~.

25 (11) "Physical ~~injury~~ abuse" means ~~death, substantial or multiple skin bruising or any other internal~~
26 bleeding, any injury to skin that causes bleeding or soft tissue swelling, subdural hematoma, burns, bone
27 fractures, extreme pain, permanent or temporary disfigurement, or impairment of any bodily organ or
28 function, or death if the injury or death is not accidental or is not justifiably explained. ~~The term includes~~
29 ~~death, permanent or temporary disfigurement, and impairment of a bodily organ or function sustained as~~
30 ~~a result of excessive corporal punishment.~~

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

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

7 ~~(12)~~(14) (a) "Sexual abuse" means the commission of sexual assault, sexual intercourse without
8 consent, indecent exposure, deviate sexual conduct, or incest, as described in Title 45, chapter 5, part 5.

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

11 ~~(13)~~(15) "Sexual exploitation" means allowing, permitting, or encouraging a child to engage in a
12 prostitution offense, as described in 45-5-601 through 45-5-603, or allowing, permitting, or encouraging
13 sexual abuse of children as described in 45-5-625.

14 ~~(14)~~(16) "Social worker" means an employee of the department who, prior to the employee's field
15 assignment, has been educated or trained or is receiving education or training in a program of social work
16 or a related field that includes cognitive and family systems treatment or who has equivalent verified
17 experience or verified training in the investigation of child abuse, neglect, and endangerment. This definition
18 does not apply to any provision of this code that is not in this chapter.

19 ~~(15)~~(17) "Threatened harm to a child's health or welfare" means substantial risk of harm to the
20 child's health or welfare.

21 ~~(16)~~(18) (a) "Withholding of medically indicated treatment" means the failure to respond to an
22 infant's life-threatening conditions by providing treatment, including appropriate nutrition, hydration, and
23 medication, that, in the treating physician's or physicians' reasonable medical judgment, will be most likely
24 to be effective in ameliorating or correcting the conditions.

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

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

29 (ii) the provision of treatment would:

30 (A) merely prolong dying;

- 1 (B) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or
 2 (C) otherwise be futile in terms of the survival of the infant; or

3 (iii) the provision of treatment would be virtually futile in terms of the survival of the infant and the
 4 treatment itself under the circumstances would be inhumane. For purposes of this subsection ~~(16)~~ (18),
 5 "infant" means an infant less than 1 year of age or an infant 1 year of age or older who has been
 6 continuously hospitalized since birth, who was born extremely prematurely, or who has a long-term
 7 disability. The reference to less than 1 year of age may not be construed to imply that treatment should
 8 be changed or discontinued when an infant reaches 1 year of age or to affect or limit any existing
 9 protections available under state laws regarding medical neglect of children over 1 year of age.

10 ~~(17)~~(19) "Youth in need of care" means a youth who is abused or neglected."
 11

12 **Section 4.** Section 41-3-201, MCA, is amended to read:

13 **"41-3-201. Reports.** (1) When the professionals and officials listed in subsection (2) know or have
 14 reasonable cause to suspect, as a result of information they receive in their professional or official capacity,
 15 that a child is abused or neglected, they shall report the matter promptly to the department of public health
 16 and human services or its local affiliate, ~~which then shall notify the county attorney of the county where~~
 17 ~~the child resides.~~

18 (2) Professionals and officials required to report are:

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

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

23 (c) Christian Science practitioner and religious healers;

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

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

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

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

30 (h) clergy; or

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

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

5 (4) (a) Except as provided in subsection (4)(b) or (4)(c), a person listed in subsection (2) may not
6 refuse to make a report as required in this section on the grounds of a physician-patient or similar privilege.

7 (b) A clergyperson or priest is not required to make a report under this section if:

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

10 (ii) the statement was intended to be a part of a confidential communication between the
11 clergyperson or priest and a member of the clergyperson's or priest's church or congregation; and

12 (iii) the person who made the statement or confession does not consent to the disclosure by the
13 clergyperson or priest.

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

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

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

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

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

24 (d) the facts that led the person reporting to believe that the child has suffered injury or injuries
25 or willful neglect, within the meaning of this chapter."
26

27 **Section 5.** Section 41-3-202, MCA, is amended to read:

28 **"41-3-202. Action on reporting.** (1) Upon receipt of a report, as required by 41-3-201, that a child
29 is or has been abused or neglected, a social worker, the county attorney, or a peace officer shall promptly
30 conduct a thorough investigation into the circumstances surrounding the allegations of abuse or neglect

1 of the child, which may include an investigation at the home of the child involved, the child's school or
 2 day-care facility, or any other place where the child is present, into the circumstances surrounding the injury
 3 of the child, and into all other nonfinancial matters that in the discretion of the investigator are relevant to
 4 the investigation. In conducting an investigation under this section, a social worker may not inquire into
 5 the financial status of the child's family or of any other person responsible for the child's care, except as
 6 necessary to ascertain eligibility for state or federal assistance programs or to comply with the provisions
 7 of 41-3-406.

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

13 (3) The social worker is responsible for assessing the family and planning for the child. If the child
 14 is treated at a medical facility, the social worker, county attorney, or peace officer, consistent with
 15 reasonable medical practice, has the right of access to the child for interviews, photographs, and securing
 16 physical evidence and has the right of access to relevant hospital and medical records pertaining to the
 17 child. If considered appropriate by the social worker, county attorney, or peace officer conducting an
 18 interview of the child, an employee of the public school attended by the child involved may participate in
 19 any interview of the child ~~if the child is enrolled in kindergarten through 8th grade.~~

20 (4) If the child's interview is videotaped, an unedited videotape with audio track must be made
 21 available, upon request, for unencumbered review by the family.

22 (5) (a) If from the investigation ~~it appears~~ the department has reasonable cause to suspect that the
 23 child suffered abuse or neglect, the department ~~shall~~ may provide protective services to the child pursuant
 24 to 41-3-301 and may provide protective services to any other child under the same care. The department
 25 shall ~~advise the county attorney and:~~

26 (i) document its determination regarding abuse or neglect of a child; and

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

29 (b) If from the investigation ~~it appears~~ is determined that the child has not suffered abuse or neglect
 30 and the initial report is determined to be unfounded, the department AND THE SOCIAL WORKER, COUNTY

1 ATTORNEY, OR PEACE OFFICER WHO CONDUCTED THE INVESTIGATION INTO THE CIRCUMSTANCES
 2 SURROUNDING THE ALLEGATIONS OF ABUSE OR NEGLECT shall destroy all of its THEIR records
 3 concerning the report and the investigation. The destruction must be completed within ~~20~~ 30 days of the
 4 determination that the child has not suffered abuse or neglect.

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

9 (7) Any person reporting abuse or neglect that involves acts or omissions on the part of a public
 10 or private residential institution, home, facility, or agency is responsible for ensuring that the report is made
 11 to the department, through its local affiliate, ~~and the county attorney of the county in which the facility is~~
 12 ~~located~~ office."

13

14 **Section 6.** Section 41-3-204, MCA, is amended to read:

15 **"41-3-204. Admissibility and preservation of evidence.** (1) In any proceeding resulting from a
 16 report made pursuant to the provisions of this chapter or in any proceeding for which the report or its
 17 contents are sought to be introduced into evidence, the report or its contents or any other fact related to
 18 the report or to the condition of the child who is the subject of the report may not be excluded on the
 19 ground that the matter is or may be the subject of a privilege related to the examination or treatment of the
 20 child and granted in Title 26, chapter 1, part 8, except the attorney-client privilege granted by 26-1-803.

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

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

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

1 cost of the x-rays ordered and taken under this section must be paid by the county child protective service
2 agency.

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

7
8 **Section 7.** Section 41-3-205, MCA, is amended to read:

9 **"41-3-205. Confidentiality -- disclosure exceptions.** (1) The case records of the department of
10 public health and human services and its local affiliate, the county welfare department, the county attorney,
11 and the court concerning actions taken under this chapter and all records concerning reports of child abuse
12 and neglect must be kept confidential except as provided by this section. Except as provided in subsections
13 (4) and (5), a person who permits or encourages the unauthorized dissemination of the contents of case
14 records is guilty of a misdemeanor.

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

18 (3) Records may also be disclosed to the following persons or entities in this state and any other
19 state or country:

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

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

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

29 (d) a parent, guardian, or person designated by a parent or guardian of the child who is the subject
30 of a report in the records or other person responsible for the child's welfare, without disclosure of the

1 identity of any person who reported or provided information on the alleged child abuse or neglect incident
2 contained in the records;

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

6 (f) the state protection and advocacy program as authorized by 42 U.S.C. 6042(a)(2)(B);

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

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

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

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

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

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

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

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

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

28 (p) the news media if disclosure is limited to confirmation of factual information regarding how the
29 case was handled and if disclosure does not violate the privacy rights of the child or the child's parent or
30 guardian as determined by the department;

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

3 (r) an agency of an Indian tribe or the relatives of an Indian child if disclosure of the records is
4 necessary to meet requirements of the federal Indian Child Welfare Act;

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

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

10 (u) a foster care review committee established under 41-3-1115 or, when applicable, a local citizen
11 review board established under Title 41, chapter 3, part 10;

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

14 (w) a member of a county interdisciplinary child information team formed under the provisions of
15 52-2-211;

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

17 (y) a member of a youth placement committee formed under the provisions of 41-5-525.

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

22 (5) A news organization or its employee, including a freelance writer or reporter, is not liable for
23 reporting facts or statements made by an immediate family member under subsection (4) if the news
24 organization, employee, writer, or reporter maintains the confidentiality of the child who is the subject of
25 the proceeding.

26 (6) This section is not intended to affect the confidentiality of criminal court records or records of
27 law enforcement agencies."

28
29 **Section 8.** Section 41-3-609, MCA, is amended to read:

30 **"41-3-609. Criteria for termination.** (1) The court may order a termination of the parent-child legal

1 relationship upon a finding that any of the following circumstances exist:

2 (a) the parents have relinquished the child pursuant to 40-6-135;

3 (b) the child has been abandoned by the parents as set forth in ~~41-3-102(7)(e)~~ 41-3-102;

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

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

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

9 (d) the parent has failed to successfully complete a treatment plan approved by the court within
10 the time periods allowed for the child to be in foster care under 41-3-410 unless it orders other permanent
11 legal custody under 41-3-410.

12 (2) In determining whether the conduct or condition of the parents is unlikely to change within a
13 reasonable time, the court must enter a finding that continuation of the parent-child legal relationship will
14 likely result in continued abuse or neglect or that the conduct or the condition of the parents renders the
15 parents unfit, unable, or unwilling to give the child adequate parental care. In making the determinations,
16 the court shall consider but is not limited to the following:

17 (a) emotional illness, mental illness, or mental deficiency of the parent of such duration or nature
18 as to render the parent unlikely to care for the ongoing physical, mental, and emotional needs of the child
19 within a reasonable time;

20 (b) a history of violent behavior by the parent;

21 (c) a single incident of life-threatening or gravely disabling injury to or disfigurement of ~~the~~ a child
22 caused by the parent;

23 (d) excessive use of intoxicating liquor or of a narcotic or dangerous drug that affects the parent's
24 ability to care and provide for the child;

25 (e) present judicially ordered long-term confinement of the parent;

26 (f) the injury or death of a ~~sibling child due to~~ because of proven parental abuse or neglect; and

27 (g) any reasonable efforts by protective service agencies that have been unable to rehabilitate the
28 parent.

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

1 the child. The court shall review and, if necessary, order an evaluation of the child's or the parent's
2 physical, mental, and emotional conditions.

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

5 (a) two medical doctors or clinical psychologists submit testimony that the parent ~~is so severely~~
6 ~~mentally ill that the parent~~ cannot assume the role of parent;

7 (b) the parent is incarcerated for more than 1 year and a treatment plan is not practical considering
8 the incarceration; or

9 (c) the death of a ~~sibling~~ child caused by abuse or neglect by the parent has occurred.

10 (5) If a person is convicted of a felony in which sexual intercourse occurred or if a minor is
11 adjudicated a delinquent youth because of an act that, if committed by an adult, would be a felony in which
12 sexual intercourse occurred and, as a result of the sexual intercourse, a child is born, the court may
13 terminate the offender's parental rights to the child at any time after the conviction or adjudication."
14

15 **Section 9.** Section 41-3-1102, MCA, is amended to read:

16 **"41-3-1102. Definitions.** For the purposes of this part, the following definitions apply:

17 (1) "Child-care agency" means a youth care facility in which substitute care is provided to 13 or
18 more children or youth.

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

21 (3) "Foster child" means a person under 18 years of age who has been placed by the department
22 in a licensed youth ~~foster home~~ care facility.

23 ~~(4) "Operator of a youth care facility" means a person owning or operating a youth care facility~~
24 ~~into which the operator takes any child or children for the purpose of caring for them and maintaining them~~
25 ~~and for which care and maintenance the operator receives money or other consideration of value and which~~
26 ~~child is neither the operator's son, daughter, nor ward, except that this part does not apply when any~~
27 ~~person accepts the care and custody of a child on a temporary basis and simply as a temporary~~
28 ~~accommodation for the parent or parents, guardian, or relative of the child.~~

29 ~~(5)~~(4) "Person" means any individual, partnership, voluntary association, or corporation.

30 ~~(6)~~(5) "Respite care" means the provision of temporary, short-term supervision or care of a foster

1 child, in an emergency or on an intermittent basis, to provide foster parents relief from the daily care
 2 requirements of a foster child whose mental or physical condition requires special or intensive supervision
 3 or care. Respite care includes but is not limited to homemaker services, child care, and emergency care
 4 either in the home or out of the home.

5 ~~(7)~~(6) "Respite care provider" means a person who meets the qualifications and requirements
 6 established by the department to provide respite care under 41-3-1151.

7 ~~(8)~~(7) "Substitute care" means full-time care of a youth in a residential setting ~~for the purpose of~~
 8 ~~providing food, shelter, security and safety, guidance, direction, and if necessary, treatment to youth who~~
 9 ~~are removed from or without the care and supervision of their parents or guardian who is placed by the~~
 10 ~~department, another state agency, or a licensed child-placing agency and who has been determined by a~~
 11 ~~court to be a youth in need of care, youth in need of supervision, or delinquent youth.~~ Individuals who
 12 provide care to youth who are recipients of services provided through the department's developmental
 13 disabilities, mental health, or medicaid HOME- AND ~~community~~ COMMUNITY-BASED services WAIVER
 14 program are also considered to be providing substitute care. This part does not apply when a person
 15 accepts the care and custody of a child on a temporary basis as an accommodation for the parent or
 16 parents, guardian, or relative of the child.

17 ~~(9)~~(8) "Youth care facility" means a facility licensed by the department or by the appropriate
 18 licensing authority in another state and in which facility substitute care is provided to youth. The term
 19 includes youth foster homes, youth group homes, and child-care agencies.

20 ~~(10)~~(9) "Youth foster home" means a youth care facility in which substitute care is provided to one
 21 to six children or youth other than the foster parents' own children, stepchildren, or wards.

22 ~~(11)~~(10) "Youth group home" means a youth care facility in which substitute care is provided to
 23 7 to 12 children or youth."
 24

25 **Section 10.** Section 41-3-1141, MCA, is amended to read:

26 **"41-3-1141. License required.** ~~No~~ (1) A person shall ~~may not~~ maintain or operate a youth care
 27 facility for any child or children within the meaning of this part without first securing a license ~~in writing~~
 28 from the department.

29 (2) ~~An extended family member or a~~ A kinship care provider, as defined by the department, who
 30 provides unlicensed care for a child placed by the department must receive approval in writing from the

1 department.

2 (3) AN EXTENDED FAMILY MEMBER, AS DEFINED BY THE DEPARTMENT, WHO PROVIDES
3 UNLICENSED CARE FOR A YOUTH WHO RECEIVES SERVICES PROVIDED THROUGH THE DEPARTMENT'S
4 DEVELOPMENTAL DISABILITIES PROGRAM, MENTAL HEALTH PROGRAM, OR MEDICAID HOME- AND
5 COMMUNITY-BASED SERVICES WAIVER PROGRAM MUST RECEIVE APPROVAL IN WRITING FROM THE
6 DEPARTMENT.

7 (3)(4) No The department may not charge a fee shall be charged for such a license or approval
8 granted under this section."

9

10 **Section 11.** Section 41-3-1142, MCA, is amended to read:

11 **"41-3-1142. Issuance of license -- authority of issuing agency -- rules.** (1) The department is
12 ~~hereby authorized to~~ may issue licenses to persons operating youth care facilities or grant approval to ~~OF~~
13 ~~persons providing kinship care~~ KINSHIP OR EXTENDED FAMILY CARE PROVIDERS and ~~to~~ prescribe the
14 conditions upon which ~~such licenses shall~~ and approvals may be issued, ~~and to~~ The department may make
15 ~~such rules as it may deem advisable~~ necessary for the licensure or approval, operation, and regulation of
16 ~~such those~~ facilities for minor children consistent with the welfare of ~~such children~~ the residents.

17 ~~(2) Such licensing agency shall have the power and authority to~~ The department may inspect all
18 ~~such licensed facilities through its duly authorized representatives and to cancel~~ or approved homes and,
19 as appropriate, undertake action, including but not limited to the revocation of licenses theretofore issued
20 ~~for the failure to observe such rules and approvals.~~

21 ~~(3) The person operating such homes providing care in the facilities or homes shall give to such~~
22 ~~representative such~~ the department any information ~~as that~~ that may be required and afford ~~him~~ the department
23 every reasonable opportunity for observing the operation of ~~such~~ the facilities or homes."

24

25 NEW SECTION. **Section 12. Effective date.** [This act] is effective on passage and approval.

26

-END-

1 HOUSE BILL NO. 129

2 INTRODUCED BY SOFT

3 BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAW RELATING TO CHILD
 6 PROTECTIVE SERVICES; CLARIFYING DEFINITIONS; PROVIDING THAT THE DEPARTMENT OF PUBLIC
 7 HEALTH AND HUMAN SERVICES MAY NOT BE ORDERED TO SUPERVISE VISITATION; LIMITING THE
 8 REQUIREMENT FOR FOSTER CARE LICENSING; AMENDING SECTIONS 40-4-218, 40-8-111, 41-3-102,
 9 41-3-201, 41-3-202, 41-3-204, 41-3-205, 41-3-609, 41-3-1102, 41-3-1141, AND 41-3-1142, MCA; AND
 10 PROVIDING AN IMMEDIATE EFFECTIVE DATE."
 11

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

13
14 **Section 1.** Section 40-4-218, MCA, is amended to read:

15 **"40-4-218. Judicial supervision.** (1) Except as otherwise agreed by the parties in writing at the
 16 time of the custody decree, the custodian may determine the child's upbringing, including the child's
 17 education, health care, and religious training, unless the court after hearing finds, upon motion by the
 18 noncustodial parent, that in the absence of a specific limitation of the custodian's authority, the child's
 19 physical health would be endangered or the child's emotional development significantly impaired.

20 (2) If both parents or all contestants agree to the order or if the court finds that in the absence of
 21 the order the child's physical health would be endangered or the child's emotional development significantly
 22 impaired, the court may order ~~the supervised visitation by the noncustodial parent. The court may not order~~
 23 ~~the department of public health and human services to exercise continuing supervision over the case to~~
 24 ~~assure that the custodial or visitation terms of the decree are carried out~~ to supervise the visitation."
 25

26 **Section 2.** Section 40-8-111, MCA, is amended to read:

27 **"40-8-111. Consent required for adoption.** (1) An adoption of a child may be decreed when there
 28 have been filed written consents to adoption executed by:

29 (a) both parents, if living, or the surviving parent of a child, provided that consent is not required
 30 from a father or mother:

1 (i) adjudged guilty by a court of competent jurisdiction of assault on a child, as provided in
2 45-5-201; sexual assault on a child, as provided in 45-5-502; sexual intercourse without consent, as
3 provided in 45-5-503, if the victim was a child; incest, as provided in 45-5-507, if the victim was a child;
4 endangering the welfare of children, concerning a child, as provided in 45-5-622; sexual abuse of children,
5 toward a child, as provided in 45-5-625; or ritual abuse of a minor, as provided in 45-5-627;

6 (ii) who has been judicially deprived of the custody of the child on account of cruelty or neglect
7 toward the child;

8 (iii) who has, in the state of Montana or in any other state of the United States, willfully abandoned
9 the child, as defined in ~~41-3-102(7)(e)~~ 41-3-102;

10 (iv) who has caused the child to be maintained by any public or private children's institution, any
11 charitable agency, or any licensed adoption agency or the department of public health and human services
12 of the state of Montana for a period of 1 year without contributing to the support of the child during that
13 period, if able;

14 (v) if it is proved to the satisfaction of the court that the father or mother, if able, has not
15 contributed to the support of the child during a period of 1 year before the filing of a petition for adoption;
16 or

17 (vi) whose parental rights have been judicially terminated;

18 (b) the legal guardian of the child if both parents are dead or if the rights of the parents have been
19 terminated by judicial proceedings and the guardian has authority by order of the court appointing the
20 guardian to consent to the adoption;

21 (c) the executive head of an agency if the child has been relinquished for adoption to the agency
22 or if the rights of the parents have been judicially terminated or if both parents are dead and custody of the
23 child has been legally vested in the agency with authority to consent to adoption of the child; or

24 (d) any person having legal custody of a child by court order if the parental rights of the parents
25 have been judicially terminated. In that case, the court having jurisdiction of the custody of the child shall
26 consent to adoption and a certified copy of its order must be attached to the petition.

27 (2) The consents required by subsections (1)(a) and (1)(b) must be acknowledged before an officer
28 authorized to take acknowledgments or witnessed by a representative of the department of public health
29 and human services or of an agency or witnessed by a representative of the court."
30

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

2 **"41-3-102. Definitions.** As used in this chapter, the following definitions apply:

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

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

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

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

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

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

11 (3) (a) "Adequate health care" means any medical care, including the prevention of the withholding
12 of medically indicated treatment or medically indicated psychological care permitted or authorized under
13 state law.

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

18 (c) The term does not include self-defense, defense of others, or action taken to prevent the child
19 from self-harm that does not constitute harm to a child's health or welfare.

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

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

22 (i) harm to a child's health or welfare; or

23 (ii) threatened harm to a child's health or welfare.

24 (b) The term includes harm or threatened harm to a child's health or welfare by the acts or
25 omissions of a person responsible for the child's welfare.

26 (6) "Department" means the department of public health and human services provided for in
27 2-15-2201.

28 (7) "Emotional abuse" means injury to the emotional well-being or intellectual or psychological
29 capacity of a child, as evidenced by an identifiable and substantial impairment of ~~or adverse effect upon~~
30 a child's physical, mental, or emotional ability to function.

1 ~~(7)~~(8) "Harm to a child's health or welfare" means the harm that occurs whenever the parent or
2 other person responsible for the child's welfare:

3 (a) inflicts or allows to be inflicted upon the child physical or ~~mental injury~~ emotional abuse;

4 (b) commits or allows to be committed sexual abuse or exploitation of the child;

5 (c) induces or attempts to induce a child into giving untrue testimony that the child or another child
6 was abused or neglected by a parent or person responsible for the child's welfare;

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

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

12 ~~(e)~~(f) abandons the child by leaving the child under circumstances that make reasonable the belief
13 that the parent or other person does not intend to resume care of the child in the future or willfully
14 surrenders physical custody for a period of 6 months and during that period does not manifest to the child
15 and the person having physical custody of the child a firm intention to resume physical custody or to make
16 permanent legal arrangements for the care of the child; or

17 ~~(f)~~(g) is unknown and has been unknown for a period of 90 days and reasonable efforts to identify
18 and locate the parents have failed.

19 ~~(8)~~(9) "Limited emancipation" means a status conferred on a youth by a court after a dispositional
20 hearing in accordance with 41-3-406 under which the youth is entitled to exercise some but not all of the
21 rights and responsibilities of a person who is 18 years of age or older.

22 ~~(9) "Mental injury" means an identifiable and substantial impairment of the child's intellectual or~~
23 ~~psychological functioning.~~

24 (10) "Parent" means a biological or adoptive parent ~~or stepparent~~.

25 (11) "Physical injury" ~~abuse~~ means death, substantial or multiple skin bruising, or any other internal
26 bleeding, any SUBSTANTIAL injury to skin that causes bleeding or soft tissue swelling, subdural hematoma,
27 INTENTIONAL burns, bone fractures, extreme pain, permanent or temporary disfigurement, ~~or~~ impairment
28 of any bodily organ or function, or death if the injury or death is not accidental or is not justifiably
29 explained. ~~The term includes death, permanent or temporary disfigurement, and impairment of a bodily~~
30 ~~organ or function sustained as a result of excessive corporal punishment.~~

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

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

7 ~~(12)~~(14) (a) "Sexual abuse" means the commission of sexual assault, sexual intercourse without
8 consent, indecent exposure, deviate sexual conduct, or incest, as described in Title 45, chapter 5, part 5.

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

11 ~~(13)~~(15) "Sexual exploitation" means allowing, permitting, or encouraging a child to engage in a
12 prostitution offense, as described in 45-5-601 through 45-5-603, or allowing, permitting, or encouraging
13 sexual abuse of children as described in 45-5-625.

14 ~~(14)~~(16) "Social worker" means an employee of the department who, prior to the employee's field
15 assignment, has been educated or trained or is receiving education or training in a program of social work
16 or a related field that includes cognitive and family systems treatment or who has equivalent verified
17 experience or verified training in the investigation of child abuse, neglect, and endangerment. This definition
18 does not apply to any provision of this code that is not in this chapter.

19 ~~(15)~~(17) "Threatened harm to a child's health or welfare" means substantial risk of harm to the
20 child's health or welfare.

21 ~~(16)~~(18) (a) "Withholding of medically indicated treatment" means the failure to respond to an
22 infant's life-threatening conditions by providing treatment, including appropriate nutrition, hydration, and
23 medication, that, in the treating physician's or physicians' reasonable medical judgment, will be most likely
24 to be effective in ameliorating or correcting the conditions.

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

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

29 (ii) the provision of treatment would:

30 (A) merely prolong dying;

1 (B) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or
 2 (C) otherwise be futile in terms of the survival of the infant; or
 3 (iii) the provision of treatment would be virtually futile in terms of the survival of the infant and the
 4 treatment itself under the circumstances would be inhumane. For purposes of this subsection ~~(16)~~ (18),
 5 "infant" means an infant less than 1 year of age or an infant 1 year of age or older who has been
 6 continuously hospitalized since birth, who was born extremely prematurely, or who has a long-term
 7 disability. The reference to less than 1 year of age may not be construed to imply that treatment should
 8 be changed or discontinued when an infant reaches 1 year of age or to affect or limit any existing
 9 protections available under state laws regarding medical neglect of children over 1 year of age.

10 ~~(17)~~(19) "Youth in need of care" means a youth who is abused or neglected."
 11

12 **Section 4.** Section 41-3-201, MCA, is amended to read:

13 **"41-3-201. Reports.** (1) When the professionals and officials listed in subsection (2) know or have
 14 reasonable cause to suspect, as a result of information they receive in their professional or official capacity,
 15 that a child is abused or neglected, they shall report the matter promptly to the department of public health
 16 and human services or its local affiliate, ~~which then shall notify the county attorney of the county where~~
 17 ~~the child resides.~~

18 (2) Professionals and officials required to report are:

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

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

23 (c) Christian Science practitioner and religious healers;

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

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

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

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

30 (h) clergy; or

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

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

5 (4) (a) Except as provided in subsection (4)(b) or (4)(c), a person listed in subsection (2) may not
6 refuse to make a report as required in this section on the grounds of a physician-patient or similar privilege.

7 (b) A clergyperson or priest is not required to make a report under this section if:

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

10 (ii) the statement was intended to be a part of a confidential communication between the
11 clergyperson or priest and a member of the clergyperson's or priest's church or congregation; and

12 (iii) the person who made the statement or confession does not consent to the disclosure by the
13 clergyperson or priest.

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

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

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

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

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

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

26
27 **Section 5.** Section 41-3-202, MCA, is amended to read:

28 **"41-3-202. Action on reporting.** (1) Upon receipt of a report, as required by 41-3-201, that a child
29 is or has been abused or neglected, a social worker, the county attorney, or a peace officer shall promptly
30 conduct a thorough investigation into the circumstances surrounding the allegations of abuse or neglect

1 of the child, which may include an investigation at the home of the child involved, the child's school or
 2 day-care facility, or any other place where the child is present, ~~into the circumstances surrounding the injury~~
 3 ~~of the child,~~ and into all other nonfinancial matters that in the discretion of the investigator are relevant to
 4 the investigation. In conducting an investigation under this section, a social worker may not inquire into
 5 the financial status of the child's family or of any other person responsible for the child's care, except as
 6 necessary to ascertain eligibility for state or federal assistance programs or to comply with the provisions
 7 of 41-3-406.

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

13 (3) The social worker is responsible for assessing the family and planning for the child. If the child
 14 is treated at a medical facility, the social worker, county attorney, or peace officer, consistent with
 15 reasonable medical practice, has the right of access to the child for interviews, photographs, and securing
 16 physical evidence and has the right of access to relevant hospital and medical records pertaining to the
 17 child. If considered appropriate by the social worker, county attorney, or peace officer conducting an
 18 interview of the child, an employee of the ~~public~~ school attended by the child involved may participate in
 19 any interview of the child ~~if the child is enrolled in kindergarten through 8th grade.~~

20 (4) If the child's interview is videotaped, an unedited videotape with audio track must be made
 21 available, upon request, for unencumbered review by the family.

22 (5) (a) If from the investigation ~~it appears~~ the department has reasonable cause to suspect that the
 23 child suffered abuse or neglect, the department ~~shall~~ may provide protective services to the child pursuant
 24 to 41-3-301 and may provide protective services to any other child under the same care. The department
 25 shall ~~advise the county attorney and:~~

26 (i) AFTER INTERVIEWING THE PARENT OR GUARDIAN, IF REASONABLY AVAILABLE, document
 27 its determination regarding abuse or neglect of a child; and

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

30 (b) If from the investigation ~~it appears~~ is determined that the child has not suffered abuse or neglect

1 and the initial report is determined to be unfounded, the department AND THE SOCIAL WORKER, COUNTY
 2 ATTORNEY, OR PEACE OFFICER WHO CONDUCTED THE INVESTIGATION INTO THE CIRCUMSTANCES
 3 SURROUNDING THE ALLEGATIONS OF ABUSE OR NEGLECT shall destroy all of ~~its~~ THEIR records
 4 concerning the report and the investigation. The destruction must be completed within ~~20~~ 30 days of the
 5 determination that the child has not suffered abuse or neglect.

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

10 (7) Any person reporting abuse or neglect that involves acts or omissions on the part of a public
 11 or private residential institution, home, facility, or agency is responsible for ensuring that the report is made
 12 to the department, through its local affiliate, ~~and the county attorney of the county in which the facility is~~
 13 ~~located~~ office."

14
 15 **Section 6.** Section 41-3-204, MCA, is amended to read:

16 **"41-3-204. Admissibility and preservation of evidence.** (1) In any proceeding resulting from a
 17 report made pursuant to the provisions of this chapter or in any proceeding for which the report or its
 18 contents are sought to be introduced into evidence, the report or its contents or any other fact related to
 19 the report or to the condition of the child who is the subject of the report may not be excluded on the
 20 ground that the matter is or may be the subject of a privilege related to the examination or treatment of the
 21 child and granted in Title 26, chapter 1, part 8, except the attorney-client privilege granted by 26-1-803.

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

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

28 (4) A physician, either in the course of providing medical care to a minor or after consultation with
 29 child protective services, the county attorney, or a law enforcement officer, may require x-rays to be taken
 30 when, in the physician's professional opinion, there is a need for radiological evidence of suspected abuse

1 or neglect. X-rays may be taken under this section without the permission of the parent or guardian. The
2 cost of the x-rays ordered and taken under this section must be paid by the county child protective service
3 agency.

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

8
9 **Section 7.** Section 41-3-205, MCA, is amended to read:

10 **"41-3-205. Confidentiality -- disclosure exceptions.** (1) The case records of the department of
11 public health and human services and its local affiliate, the county welfare department, the county attorney,
12 and the court concerning actions taken under this chapter and all records concerning reports of child abuse
13 and neglect must be kept confidential except as provided by this section. Except as provided in subsections
14 (4) and (5), a person who permits or encourages the unauthorized dissemination of the contents of case
15 records is guilty of a misdemeanor.

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

19 (3) Records may also be disclosed to the following persons or entities in this state and any other
20 state or country:

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

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

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

30 (d) a parent, guardian, or person designated by a parent or guardian of the child who is the subject

1 of a report in the records or other person responsible for the child's welfare, without disclosure of the
2 identity of any person who reported or provided information on the alleged child abuse or neglect incident
3 contained in the records;

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

7 (f) the state protection and advocacy program as authorized by 42 U.S.C. 6042(a)(2)(B);

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

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

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

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

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

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

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

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

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

29 (p) the news media if disclosure is limited to confirmation of factual information regarding how the
30 case was handled and if disclosure does not violate the privacy rights of the child or the child's parent or

1 guardian as determined by the department;

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

4 (r) an agency of an Indian tribe or the relatives of an Indian child if disclosure of the records is
5 necessary to meet requirements of the federal Indian Child Welfare Act;

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

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

11 (u) a foster care review committee established under 41-3-1115 or, when applicable, a local citizen
12 review board established under Title 41, chapter 3, part 10;

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

15 (w) a member of a county interdisciplinary child information team formed under the provisions of
16 52-2-211;

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

18 (y) a member of a youth placement committee formed under the provisions of 41-5-525.

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

23 (5) A news organization or its employee, including a freelance writer or reporter, is not liable for
24 reporting facts or statements made by an immediate family member under subsection (4) if the news
25 organization, employee, writer, or reporter maintains the confidentiality of the child who is the subject of
26 the proceeding.

27 (6) This section is not intended to affect the confidentiality of criminal court records or records of
28 law enforcement agencies."

29

30 **Section 8.** Section 41-3-609, MCA, is amended to read:

1 **"41-3-609. Criteria for termination.** (1) The court may order a termination of the parent-child legal
2 relationship upon a finding that any of the following circumstances exist:

3 (a) the parents have relinquished the child pursuant to 40-6-135;

4 (b) the child has been abandoned by the parents as set forth in ~~41-3-102(7)(e)~~ 41-3-102;

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

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

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

10 (d) the parent has failed to successfully complete a treatment plan approved by the court within
11 the time periods allowed for the child to be in foster care under 41-3-410 unless it orders other permanent
12 legal custody under 41-3-410.

13 (2) In determining whether the conduct or condition of the parents is unlikely to change within a
14 reasonable time, the court must enter a finding that continuation of the parent-child legal relationship will
15 likely result in continued abuse or neglect or that the conduct or the condition of the parents renders the
16 parents unfit, unable, or unwilling to give the child adequate parental care. In making the determinations,
17 the court shall consider but is not limited to the following:

18 (a) emotional illness, mental illness, or mental deficiency of the parent of such duration or nature
19 as to render the parent unlikely to care for the ongoing physical, mental, and emotional needs of the child
20 within a reasonable time;

21 (b) a history of violent behavior by the parent;

22 (c) a single incident of life-threatening or gravely disabling injury to or disfigurement of ~~the a~~ child
23 caused by the parent;

24 (d) excessive use of intoxicating liquor or of a narcotic or dangerous drug that affects the parent's
25 ability to care and provide for the child;

26 (e) present judicially ordered long-term confinement of the parent;

27 (f) the injury or death of a ~~sibling child due to~~ sibling child due to proven parental abuse or neglect; and

28 (g) any reasonable efforts by protective service agencies that have been unable to rehabilitate the
29 parent.

30 (3) In considering any of the factors in subsection (2) in terminating the parent-child relationship,

1 the court shall give primary consideration to the physical, mental, and emotional conditions and needs of
 2 the child. The court shall review and, if necessary, order an evaluation of the child's or the parent's
 3 physical, mental, and emotional conditions.

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

6 (a) two medical doctors or clinical psychologists submit testimony that the parent ~~is so severely~~
 7 ~~mentally ill that the parent~~ cannot assume the role of parent;

8 (b) the parent is incarcerated for more than 1 year and a treatment plan is not practical considering
 9 the incarceration; or

10 (c) the death of a ~~sibling~~ child caused by abuse or neglect by the parent has occurred.

11 (5) If a person is convicted of a felony in which sexual intercourse occurred or if a minor is
 12 adjudicated a delinquent youth because of an act that, if committed by an adult, would be a felony in which
 13 sexual intercourse occurred and, as a result of the sexual intercourse, a child is born, the court may
 14 terminate the offender's parental rights to the child at any time after the conviction or adjudication."
 15

16 **Section 9.** Section 41-3-1102, MCA, is amended to read:

17 **"41-3-1102. Definitions.** For the purposes of this part, the following definitions apply:

18 (1) "Child-care agency" means a youth care facility in which substitute care is provided to 13 or
 19 more children or youth.

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

22 (3) "Foster child" means a person under 18 years of age who has been placed by the department
 23 in a licensed youth ~~foster home~~ care facility.

24 ~~(4) "Operator of a youth care facility" means a person owning or operating a youth care facility~~
 25 ~~into which the operator takes any child or children for the purpose of caring for them and maintaining them~~
 26 ~~and for which care and maintenance the operator receives money or other consideration of value and which~~
 27 ~~child is neither the operator's son, daughter, nor ward, except that this part does not apply when any~~
 28 ~~person accepts the care and custody of a child on a temporary basis and simply as a temporary~~
 29 ~~accommodation for the parent or parents, guardian, or relative of the child.~~

30 ~~(5)~~(4) "Person" means any individual, partnership, voluntary association, or corporation.

1 ~~(6)~~(5) "Respite care" means the provision of temporary, short-term supervision or care of a foster
 2 child, in an emergency or on an intermittent basis, to provide foster parents relief from the daily care
 3 requirements of a foster child whose mental or physical condition requires special or intensive supervision
 4 or care. Respite care includes but is not limited to homemaker services, child care, and emergency care
 5 either in the home or out of the home.

6 ~~(7)~~(6) "Respite care provider" means a person who meets the qualifications and requirements
 7 established by the department to provide respite care under 41-3-1151.

8 ~~(8)~~(7) "Substitute care" means full-time care of a youth in a residential setting ~~for the purpose of~~
 9 ~~providing food, shelter, security and safety, guidance, direction, and if necessary, treatment to youth who~~
 10 ~~are removed from or without the care and supervision of their parents or guardian who is placed by the~~
 11 ~~department, another state agency, or a licensed child-placing agency and who has been determined by a~~
 12 ~~court to be a youth in need of care, youth in need of supervision, or delinquent youth.~~ Individuals who
 13 provide care to youth who are recipients of services provided through the department's developmental
 14 disabilities, mental health, or medicaid HOME- AND community COMMUNITY-BASED services WAIVER
 15 program are also considered to be providing substitute care. This part does not apply when a person
 16 accepts the care and custody of a child on a temporary basis as an accommodation for the parent or
 17 parents, guardian, or relative of the child.

18 ~~(9)~~(8) "Youth care facility" means a facility licensed by the department or by the appropriate
 19 licensing authority in another state and in which facility substitute care is provided to youth. The term
 20 includes youth foster homes, youth group homes, and child-care agencies.

21 ~~(10)~~(9) "Youth foster home" means a youth care facility in which substitute care is provided to one
 22 to six children or youth other than the foster parents' own children, stepchildren, or wards.

23 ~~(11)~~(10) "Youth group home" means a youth care facility in which substitute care is provided to
 24 7 to 12 children or youth."
 25

26 **Section 10.** Section 41-3-1141, MCA, is amended to read:

27 **"41-3-1141. License required.** ~~No~~ (1) A person shall may not maintain or operate a youth care
 28 facility for any child or children within the meaning of this part without first securing a license ~~in writing~~
 29 from the department.

30 ~~(2) An extended family member or a~~ A kinship care provider, as defined by the department, who

1 provides unlicensed care for a child placed by PURSUANT TO THE LEGAL AUTHORITY OF the department
2 must receive approval in writing from the department.

3 (3) AN EXTENDED FAMILY MEMBER, AS DEFINED BY THE DEPARTMENT, WHO PROVIDES
4 UNLICENSED CARE FOR A YOUTH WHO RECEIVES SERVICES PROVIDED THROUGH THE DEPARTMENT'S
5 DEVELOPMENTAL DISABILITIES PROGRAM, MENTAL HEALTH PROGRAM, OR MEDICAID HOME- AND
6 COMMUNITY-BASED SERVICES WAIVER PROGRAM MUST RECEIVE APPROVAL IN WRITING FROM THE
7 DEPARTMENT.

8 ~~(3)(4) No~~ The department may not charge a fee shall be charged for such a license or approval
9 granted under this section."

11 **Section 11.** Section 41-3-1142, MCA, is amended to read:

12 **"41-3-1142. Issuance of license -- authority of issuing agency -- rules.** (1) The department is
13 ~~hereby authorized to~~ may issue licenses to persons operating youth care facilities or grant approval to OF
14 ~~persons providing kinship care~~ KINSHIP OR EXTENDED FAMILY CARE PROVIDERS and ~~to~~ prescribe the
15 conditions upon which ~~such~~ licenses ~~shall~~ and approvals may be issued, ~~and to~~ The department may make
16 ~~such rules as it may deem advisable~~ necessary for the licensure or approval, operation, and regulation of
17 ~~such those~~ facilities ~~for minor children~~ consistent with the welfare of ~~such children~~ the residents.

18 ~~(2) Such licensing agency shall have the power and authority to~~ The department may inspect all
19 ~~such licensed facilities through its duly authorized representatives and to cancel~~ or approved homes and,
20 as appropriate, undertake action, including but not limited to the revocation of licenses theretofore issued
21 ~~for the failure to observe such rules and approvals.~~

22 ~~(3) The person operating such homes~~ providing care in the facilities or homes shall give ~~to such~~
23 ~~representative such~~ the department any information as that may be required and afford ~~him~~ the department
24 every reasonable opportunity for observing the operation of ~~such~~ the facilities or homes."

26 **NEW SECTION. Section 12. Effective date.** [This act] is effective on passage and approval.

27 -END-

1 HOUSE BILL NO. 129
2 INTRODUCED BY SOFT
3 BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES
4
5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAW RELATING TO CHILD
6 PROTECTIVE SERVICES; CLARIFYING DEFINITIONS; PROVIDING THAT THE DEPARTMENT OF PUBLIC
7 HEALTH AND HUMAN SERVICES MAY NOT BE ORDERED TO SUPERVISE VISITATION; LIMITING THE
8 REQUIREMENT FOR FOSTER CARE LICENSING; AMENDING SECTIONS 40-4-218, 40-8-111, 41-3-102,
9 41-3-201, 41-3-202, 41-3-204, 41-3-205, 41-3-609, 41-3-1102, 41-3-1141, AND 41-3-1142, MCA; AND
10 PROVIDING AN IMMEDIATE EFFECTIVE DATE."
11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE
REPRINTED. PLEASE REFER TO THIRD READING COPY
(BLUE) FOR COMPLETE TEXT.**

1 HOUSE BILL NO. 129

2 INTRODUCED BY SOFT

3 BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAW RELATING TO CHILD
 6 PROTECTIVE SERVICES; CLARIFYING DEFINITIONS; PROVIDING THAT THE DEPARTMENT OF PUBLIC
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 8 REQUIREMENT FOR FOSTER CARE LICENSING; AMENDING SECTIONS 40-4-218, 40-8-111, 41-3-102,
 9 41-3-201, 41-3-202, 41-3-204, 41-3-205, 41-3-609, 41-3-1102, 41-3-1141, AND 41-3-1142, MCA; AND
 10 PROVIDING AN IMMEDIATE EFFECTIVE DATE."
 11

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

13
14 **Section 1.** Section 40-4-218, MCA, is amended to read:

15 **"40-4-218. Judicial supervision.** (1) Except as otherwise agreed by the parties in writing at the
 16 time of the custody decree, the custodian may determine the child's upbringing, including the child's
 17 education, health care, and religious training, unless the court after hearing finds, upon motion by the
 18 noncustodial parent, that in the absence of a specific limitation of the custodian's authority, the child's
 19 physical health would be endangered or the child's emotional development significantly impaired.

20 (2) If both parents or all contestants agree to the order or if the court finds that in the absence of
 21 the order the child's physical health would be endangered or the child's emotional development significantly
 22 impaired, the court may order ~~the supervised visitation by the noncustodial parent. The court may not order~~
 23 the department of public health and human services to exercise continuing supervision over the case to
 24 assure that the custodial or visitation terms of the decree are carried out to supervise the visitation."
 25

26 **Section 2.** Section 40-8-111, MCA, is amended to read:

27 **"40-8-111. Consent required for adoption.** (1) An adoption of a child may be decreed when there
 28 have been filed written consents to adoption executed by:

29 (a) both parents, if living, or the surviving parent of a child, provided that consent is not required
 30 from a father or mother:

1 (i) adjudged guilty by a court of competent jurisdiction of assault on a child, as provided in
2 45-5-201; sexual assault on a child, as provided in 45-5-502; sexual intercourse without consent, as
3 provided in 45-5-503, if the victim was a child; incest, as provided in 45-5-507, if the victim was a child;
4 endangering the welfare of children, concerning a child, as provided in 45-5-622; sexual abuse of children,
5 toward a child, as provided in 45-5-625; or ritual abuse of a minor, as provided in 45-5-627;

6 (ii) who has been judicially deprived of the custody of the child on account of cruelty or neglect
7 toward the child;

8 (iii) who has, in the state of Montana or in any other state of the United States, willfully abandoned
9 the child, as defined in ~~41-3-102(7)(e)~~ 41-3-102;

10 (iv) who has caused the child to be maintained by any public or private children's institution, any
11 charitable agency, or any licensed adoption agency or the department of public health and human services
12 of the state of Montana for a period of 1 year without contributing to the support of the child during that
13 period, if able;

14 (v) if it is proved to the satisfaction of the court that the father or mother, if able, has not
15 contributed to the support of the child during a period of 1 year before the filing of a petition for adoption;
16 or

17 (vi) whose parental rights have been judicially terminated;

18 (b) the legal guardian of the child if both parents are dead or if the rights of the parents have been
19 terminated by judicial proceedings and the guardian has authority by order of the court appointing the
20 guardian to consent to the adoption;

21 (c) the executive head of an agency if the child has been relinquished for adoption to the agency
22 or if the rights of the parents have been judicially terminated or if both parents are dead and custody of the
23 child has been legally vested in the agency with authority to consent to adoption of the child; or

24 (d) any person having legal custody of a child by court order if the parental rights of the parents
25 have been judicially terminated. In that case, the court having jurisdiction of the custody of the child shall
26 consent to adoption and a certified copy of its order must be attached to the petition.

27 (2) The consents required by subsections (1)(a) and (1)(b) must be acknowledged before an officer
28 authorized to take acknowledgments or witnessed by a representative of the department of public health
29 and human services or of an agency or witnessed by a representative of the court."

30

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

2 **"41-3-102. Definitions.** As used in this chapter, the following definitions apply:

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

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

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

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

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

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

11 (3) (a) "Adequate health care" means any medical care OR NONMEDICAL REMEDIAL HEALTH
12 CARE RECOGNIZED BY AN INSURER LICENSED TO PROVIDE DISABILITY INSURANCE UNDER TITLE 33,
13 including the prevention of the withholding of medically indicated treatment or medically indicated
14 psychological care permitted or authorized under state law.

15 (b) This chapter may not be construed to require or justify a finding of child abuse or neglect for
16 the sole reason that a parent OR LEGAL GUARDIAN, due to religious beliefs, does not provide ~~medical~~
17 ADEQUATE HEALTH care for a child. However, this chapter may not be construed to limit the
18 administrative or judicial authority of the state to ensure that medical care is provided to the child when
19 there is imminent or substantial risk of harm to the child.

20 (c) The term does not include self-defense, defense of others, or action taken to prevent the child
21 from self-harm that does not constitute harm to a child's health or welfare.

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

23 (5) (a) "Child abuse or neglect" means:

24 (i) harm to a child's health or welfare; or

25 (ii) threatened harm to a child's health or welfare.

26 (b) The term includes harm or threatened harm to a child's health or welfare by the acts or
27 omissions of a person responsible for the child's welfare.

28 (6) "Department" means the department of public health and human services provided for in
29 2-15-2201.

30 (7) "Emotional abuse" means injury to the emotional well-being or intellectual or psychological

1 ~~capacity of a child, as evidenced by an identifiable and substantial impairment of or adverse effect upon~~
 2 ~~a child's physical, mental, or emotional ability to function.~~

3 ~~(7)(8)~~ "Harm to a child's health or welfare" means the harm that occurs whenever the parent or
 4 other person responsible for the child's welfare:

5 (a) inflicts or allows to be inflicted upon the child physical or ~~mental injury~~ emotional abuse;

6 (b) commits or allows to be committed sexual abuse or exploitation of the child;

7 (c) induces or attempts to induce a child into giving untrue testimony that the child or another child
 8 was abused or neglected by a parent or person responsible for the child's welfare;

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

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

14 ~~(f)~~ abandons the child by leaving the child under circumstances that make reasonable the belief
 15 that the parent or other person does not intend to resume care of the child in the future or willfully
 16 surrenders physical custody for a period of 6 months and during that period does not manifest to the child
 17 and the person having physical custody of the child a firm intention to resume physical custody or to make
 18 permanent legal arrangements for the care of the child; or

19 ~~(g)~~ is unknown and has been unknown for a period of 90 days and reasonable efforts to identify
 20 and locate the parents have failed.

21 ~~(8)~~ (9) "Limited emancipation" means a status conferred on a youth by a court after a dispositional
 22 hearing in accordance with 41-3-406 under which the youth is entitled to exercise some but not all of the
 23 rights and responsibilities of a person who is 18 years of age or older.

24 ~~(9)~~ "Mental injury" means ~~an identifiable and substantial impairment of the child's intellectual or~~
 25 ~~psychological functioning.~~

26 (10) "Parent" means a biological or adoptive parent ~~or stepparent.~~

27 (11) "Physical ~~injury~~ abuse" means ~~death, substantial or multiple skin bruising, or any other internal~~
 28 bleeding, any SUBSTANTIAL injury to skin that causes bleeding or soft tissue swelling, subdural hematoma,
 29 INTENTIONAL burns, bone fractures, extreme pain, permanent or temporary disfigurement, or impairment
 30 of any bodily organ or function, or death if the injury or death is not accidental or is not justifiably

1 ~~explained. The term includes death, permanent or temporary disfigurement, and impairment of a bodily~~
2 ~~organ or function sustained as a result of excessive corporal punishment.~~

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

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

9 ~~(12)~~(14) (a) "Sexual abuse" means the commission of sexual assault, sexual intercourse without
10 consent, indecent exposure, deviate sexual conduct, or incest, as described in Title 45, chapter 5, part 5.

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

13 ~~(13)~~(15) "Sexual exploitation" means allowing, permitting, or encouraging a child to engage in a
14 prostitution offense, as described in 45-5-601 through 45-5-603, or allowing, permitting, or encouraging
15 sexual abuse of children as described in 45-5-625.

16 ~~(14)~~(16) "Social worker" means an employee of the department who, prior to the employee's field
17 assignment, has been educated or trained or is receiving education or training in a program of social work
18 or a related field that includes cognitive and family systems treatment or who has equivalent verified
19 experience or verified training in the investigation of child abuse, neglect, and endangerment. This definition
20 does not apply to any provision of this code that is not in this chapter.

21 ~~(15)~~(17) "Threatened harm to a child's health or welfare" means substantial risk of harm to the
22 child's health or welfare.

23 ~~(16)~~(18) (a) "Withholding of medically indicated treatment" means the failure to respond to an
24 infant's life-threatening conditions by providing treatment, including appropriate nutrition, hydration, and
25 medication, that, in the treating physician's or physicians' reasonable medical judgment, will be most likely
26 to be effective in ameliorating or correcting the conditions.

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

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

- 1 (ii) the provision of treatment would:
- 2 (A) merely prolong dying;
- 3 (B) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or
- 4 (C) otherwise be futile in terms of the survival of the infant; or
- 5 (iii) the provision of treatment would be virtually futile in terms of the survival of the infant and the
- 6 treatment itself under the circumstances would be inhumane. For purposes of this subsection ~~(16)~~ (18),
- 7 "infant" means an infant less than 1 year of age or an infant 1 year of age or older who has been
- 8 continuously hospitalized since birth, who was born extremely prematurely, or who has a long-term
- 9 disability. The reference to less than 1 year of age may not be construed to imply that treatment should
- 10 be changed or discontinued when an infant reaches 1 year of age or to affect or limit any existing
- 11 protections available under state laws regarding medical neglect of children over 1 year of age.

12 ~~(17)~~(19) "Youth in need of care" means a youth who is abused or neglected."

13

14 **Section 4.** Section 41-3-201, MCA, is amended to read:

15 **"41-3-201. Reports.** (1) When the professionals and officials listed in subsection (2) know or have

16 reasonable cause to suspect, as a result of information they receive in their professional or official capacity,

17 that a child is abused or neglected, they shall report the matter promptly to the department of public health

18 and human services or its local affiliate, ~~which then shall notify the county attorney of the county where~~

19 ~~the child resides.~~

20 (2) Professionals and officials required to report are:

- 21 (a) physician, resident, intern, or member of a hospital's staff engaged in the admission,
- 22 examination, care, or treatment of persons;
- 23 (b) a nurse, osteopath, chiropractor, podiatrist, medical examiner, coroner, dentist, optometrist,
- 24 or any other health or mental health professional;
- 25 (c) Christian Science practitioner and religious healers;
- 26 (d) school teachers, other school officials, and employees who work during regular school hours;
- 27 (e) a social worker, operator or employee of any registered or licensed day-care or substitute care
- 28 facility, staff of a resource and referral grant program organized under 52-2-711 or of a child and adult food
- 29 care program, ~~or any other~~ an operator or employee of a child-care facility;
- 30 (f) foster care, residential, or institutional worker;

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

2 (h) clergy; or

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

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

7 (4) (a) Except as provided in subsection (4)(b) or (4)(c), a person listed in subsection (2) may not
8 refuse to make a report as required in this section on the grounds of a physician-patient or similar privilege.

9 (b) A clergyperson or priest is not required to make a report under this section if:

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

12 (ii) the statement was intended to be a part of a confidential communication between the
13 clergyperson or priest and a member of the clergyperson's or priest's church or congregation; and

14 (iii) the person who made the statement or confession does not consent to the disclosure by the
15 clergyperson or priest.

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

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

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

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

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

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

28

29 **Section 5.** Section 41-3-202, MCA, is amended to read:

30 **"41-3-202. Action on reporting.** (1) Upon receipt of a report, as required by 41-3-201, that a child

1 is or has been abused or neglected, a social worker, the county attorney, or a peace officer shall promptly
2 conduct a thorough investigation into the circumstances surrounding the allegations of abuse or neglect
3 of the child, which may include an investigation at the home of the child involved, the child's school or
4 day-care facility, or any other place where the child is present, into the circumstances surrounding the injury
5 of the child, and into all other nonfinancial matters that in the discretion of the investigator are relevant to
6 the investigation. In conducting an investigation under this section, a social worker may not inquire into
7 the financial status of the child's family or of any other person responsible for the child's care, except as
8 necessary to ascertain eligibility for state or federal assistance programs or to comply with the provisions
9 of 41-3-406.

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

15 (3) The social worker is responsible for assessing the family and planning for the child. If the child
16 is treated at a medical facility, the social worker, county attorney, or peace officer, consistent with
17 reasonable medical practice, has the right of access to the child for interviews, photographs, and securing
18 physical evidence and has the right of access to relevant hospital and medical records pertaining to the
19 child. If considered appropriate by the social worker, county attorney, or peace officer conducting an
20 interview of the child, an employee of the public school attended by the child involved may participate in
21 any interview of the child ~~if the child is enrolled in kindergarten through 8th grade.~~

22 (4) If the child's interview is videotaped, an unedited videotape with audio track must be made
23 available, upon request, for unencumbered review by the family.

24 (5) (a) ~~If from the investigation it appears~~ the department has reasonable cause to suspect that the
25 child suffered abuse or neglect, the department ~~shall~~ may provide protective services to the child pursuant
26 to 41-3-301 and may provide protective services to any other child under the same care. The department
27 shall ~~advise the county attorney and:~~

28 (i) AFTER INTERVIEWING THE PARENT OR GUARDIAN, IF REASONABLY AVAILABLE, document
29 its determination regarding abuse or neglect of a child; and

30 (ii) notify the child's family of its investigation and determination, unless the notification can

1 reasonably be expected to result in harm to the child or other person.

2 (b) If from the investigation it ~~appears~~ is determined that the child has not suffered abuse or neglect
3 and the initial report is determined to be unfounded, the department AND THE SOCIAL WORKER, COUNTY
4 ATTORNEY, OR PEACE OFFICER WHO CONDUCTED THE INVESTIGATION INTO THE CIRCUMSTANCES
5 SURROUNDING THE ALLEGATIONS OF ABUSE OR NEGLECT shall destroy all ~~of its~~ THEIR records
6 concerning the report and the investigation. The destruction must be completed within ~~20~~ 30 days of the
7 determination that the child has not suffered abuse or neglect.

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

12 (7) Any person reporting abuse or neglect that involves acts or omissions on the part of a public
13 or private residential institution, home, facility, or agency is responsible for ensuring that the report is made
14 to the department, through its local ~~affiliate, and the county attorney of the county in which the facility is~~
15 ~~located~~ office."

16
17 **Section 6.** Section 41-3-204, MCA, is amended to read:

18 **"41-3-204. Admissibility and preservation of evidence.** (1) In any proceeding resulting from a
19 report made pursuant to the provisions of this chapter or in any proceeding for which the report or its
20 contents are sought to be introduced into evidence, the report or its contents or any other fact related to
21 the report or to the condition of the child who is the subject of the report may not be excluded on the
22 ground that the matter is or may be the subject of a privilege related to the examination or treatment of the
23 child and granted in Title 26, chapter 1, part 8, except the attorney-client privilege granted by 26-1-803.

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

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

30 (4) A physician, either in the course of providing medical care to a minor or after consultation with

1 child protective services, the county attorney, or a law enforcement officer, may require x-rays to be taken
2 when, in the physician's professional opinion, there is a need for radiological evidence of suspected abuse
3 or neglect. X-rays may be taken under this section without the permission of the parent or guardian. The
4 cost of the x-rays ordered and taken under this section must be paid by the county child protective service
5 agency.

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

10

11 **Section 7.** Section 41-3-205, MCA, is amended to read:

12 **"41-3-205. Confidentiality -- disclosure exceptions.** (1) The case records of the department of
13 public health and human services and its local affiliate, the county welfare department, the county attorney,
14 and the court concerning actions taken under this chapter and all records concerning reports of child abuse
15 and neglect must be kept confidential except as provided by this section. Except as provided in subsections
16 (4) and (5), a person who permits or encourages the unauthorized dissemination of the contents of case
17 records is guilty of a misdemeanor.

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

21 (3) Records may also be disclosed to the following persons or entities in this state and any other
22 state or country:

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

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

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

1 a report in the records;

2 (d) a parent, guardian, or person designated by a parent or guardian of the child who is the subject
3 of a report in the records or other person responsible for the child's welfare, without disclosure of the
4 identity of any person who reported or provided information on the alleged child abuse or neglect incident
5 contained in the records;

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

9 (f) the state protection and advocacy program as authorized by 42 U.S.C. 6042(a)(2)(B);

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

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

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

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

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

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

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

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

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

1 (p) the news media if disclosure is limited to confirmation of factual information regarding how the
2 case was handled and if disclosure does not violate the privacy rights of the child or the child's parent or
3 guardian as determined by the department;

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

6 (r) an agency of an Indian tribe or the relatives of an Indian child if disclosure of the records is
7 necessary to meet requirements of the federal Indian Child Welfare Act;

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

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

13 (u) a foster care review committee established under 41-3-1115 or, when applicable, a local citizen
14 review board established under Title 41, chapter 3, part 10;

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

17 (w) a member of a county interdisciplinary child information team formed under the provisions of
18 52-2-211;

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

20 (y) a member of a youth placement committee formed under the provisions of 41-5-525.

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

25 (5) A news organization or its employee, including a freelance writer or reporter, is not liable for
26 reporting facts or statements made by an immediate family member under subsection (4) if the news
27 organization, employee, writer, or reporter maintains the confidentiality of the child who is the subject of
28 the proceeding.

29 (6) This section is not intended to affect the confidentiality of criminal court records or records of
30 law enforcement agencies."

1 **Section 8.** Section 41-3-609, MCA, is amended to read:

2 "**41-3-609. Criteria for termination.** (1) The court may order a termination of the parent-child legal
3 relationship upon a finding that any of the following circumstances exist:

4 (a) the parents have relinquished the child pursuant to 40-6-135;

5 (b) the child has been abandoned by the parents as set forth in ~~41-3-102(7)(a)~~ 41-3-102;

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

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

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

11 (d) the parent has failed to successfully complete a treatment plan approved by the court within
12 the time periods allowed for the child to be in foster care under 41-3-410 unless it orders other permanent
13 legal custody under 41-3-410.

14 (2) In determining whether the conduct or condition of the parents is unlikely to change within a
15 reasonable time, the court must enter a finding that continuation of the parent-child legal relationship will
16 likely result in continued abuse or neglect or that the conduct or the condition of the parents renders the
17 parents unfit, unable, or unwilling to give the child adequate parental care. In making the determinations,
18 the court shall consider but is not limited to the following:

19 (a) emotional illness, mental illness, or mental deficiency of the parent of such duration or nature
20 as to render the parent unlikely to care for the ongoing physical, mental, and emotional needs of the child
21 within a reasonable time;

22 (b) a history of violent behavior by the parent;

23 (c) a single incident of life-threatening or gravely disabling injury to or disfigurement of ~~the~~ a child
24 caused by the parent;

25 (d) excessive use of intoxicating liquor or of a narcotic or dangerous drug that affects the parent's
26 ability to care and provide for the child;

27 (e) present judicially ordered long-term confinement of the parent;

28 (f) the injury or death of a ~~sibling child due to~~ because of proven parental abuse or neglect; and

29 (g) any reasonable efforts by protective service agencies that have been unable to rehabilitate the
30 parent.

1 (3) In considering any of the factors in subsection (2) in terminating the parent-child relationship,
 2 the court shall give primary consideration to the physical, mental, and emotional conditions and needs of
 3 the child. The court shall review and, if necessary, order an evaluation of the child's or the parent's
 4 physical, mental, and emotional conditions.

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

7 (a) two medical doctors or clinical psychologists submit testimony that the parent ~~is so severely~~
 8 ~~mentally ill that the parent~~ cannot assume the role of parent;

9 (b) the parent is incarcerated for more than 1 year and a treatment plan is not practical considering
 10 the incarceration; or

11 (c) the death of a ~~sibling~~ child caused by abuse or neglect by the parent has occurred.

12 (5) If a person is convicted of a felony in which sexual intercourse occurred or if a minor is
 13 adjudicated a delinquent youth because of an act that, if committed by an adult, would be a felony in which
 14 sexual intercourse occurred and, as a result of the sexual intercourse, a child is born, the court may
 15 terminate the offender's parental rights to the child at any time after the conviction or adjudication."
 16

17 **Section 9.** Section 41-3-1102, MCA, is amended to read:

18 "**41-3-1102. Definitions.** For the purposes of this part, the following definitions apply:

19 (1) "Child-care agency" means a youth care facility in which substitute care is provided to 13 or
 20 more children or youth.

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

23 (3) "Foster child" means a person under 18 years of age who has been placed by the department
 24 in a ~~licensed youth foster home care facility~~.

25 ~~(4) "Operator of a youth care facility" means a person owning or operating a youth care facility~~
 26 ~~into which the operator takes any child or children for the purpose of caring for them and maintaining them~~
 27 ~~and for which care and maintenance the operator receives money or other consideration of value and which~~
 28 ~~child is neither the operator's son, daughter, nor ward, except that this part does not apply when any~~
 29 ~~person accepts the care and custody of a child on a temporary basis and simply as a temporary~~
 30 ~~accommodation for the parent or parents, guardian, or relative of the child.~~

1 ~~(6)~~(4) "Person" means any individual, partnership, voluntary association, or corporation.

2 ~~(6)~~(5) "Respite care" means the provision of temporary, short-term supervision or care of a foster
3 child, in an emergency or on an intermittent basis, to provide foster parents relief from the daily care
4 requirements of a foster child whose mental or physical condition requires special or intensive supervision
5 or care. Respite care includes but is not limited to homemaker services, child care, and emergency care
6 either in the home or out of the home.

7 ~~(7)~~(6) "Respite care provider" means a person who meets the qualifications and requirements
8 established by the department to provide respite care under 41-3-1151.

9 ~~(9)~~(7) "Substitute care" means full-time care of a youth in a residential setting ~~for the purpose of~~
10 ~~providing food, shelter, security and safety, guidance, direction, and if necessary, treatment to youth who~~
11 ~~are removed from or without the care and supervision of their parents or guardian who is placed by the~~
12 ~~department, another state agency, or a licensed child-placing agency and who has been determined by a~~
13 ~~court to be a youth in need of care, youth in need of supervision, or delinquent youth.~~ Individuals who
14 provide care to youth who are recipients of services provided through the department's developmental
15 disabilities, mental health, or medicaid HOME- AND ~~community~~ COMMUNITY-BASED services WAIVER
16 program are also considered to be providing substitute care. This part does not apply when a person
17 accepts the care and custody of a child on a temporary basis as an accommodation for the parent or
18 parents, guardian, or relative of the child.

19 ~~(9)~~(8) "Youth care facility" means a facility licensed by the department or by the appropriate
20 licensing authority in another state and in which facility substitute care is provided to youth. The term
21 includes youth foster homes, youth group homes, and child-care agencies.

22 ~~(10)~~(9) "Youth foster home" means a youth care facility in which substitute care is provided to one
23 to six children or youth other than the foster parents' own children, stepchildren, or wards.

24 ~~(14)~~(10) "Youth group home" means a youth care facility in which substitute care is provided to
25 7 to 12 children or youth."
26

27 **Section 10.** Section 41-3-1141, MCA, is amended to read:

28 **"41-3-1141. License required.** ~~No~~ (1) A person ~~shall~~ may not maintain or operate a youth care
29 facility for any child or children within the meaning of this part without first securing a license ~~in writing~~
30 from the department.

1 ~~(2) An extended family member or a~~ A kinship care provider, as defined by the department, who
 2 provides unlicensed care for a child placed by PURSUANT TO THE LEGAL AUTHORITY OF the department
 3 must receive approval in writing from the department.

4 ~~(3) AN EXTENDED FAMILY MEMBER, AS DEFINED BY THE DEPARTMENT, WHO PROVIDES~~
 5 UNLICENSED CARE FOR A YOUTH WHO RECEIVES SERVICES PROVIDED THROUGH THE DEPARTMENT'S
 6 DEVELOPMENTAL DISABILITIES PROGRAM, MENTAL HEALTH PROGRAM, OR MEDICAID HOME- AND
 7 COMMUNITY-BASED SERVICES WAIVER PROGRAM MUST RECEIVE APPROVAL IN WRITING FROM THE
 8 DEPARTMENT.

9 ~~(3)(4) No~~ The department may not charge a fee shall be charged for such a license or approval
 10 granted under this section."

11

12 **Section 11.** Section 41-3-1142, MCA, is amended to read:

13 **"41-3-1142. Issuance of license -- authority of issuing agency -- rules.** ~~(1)~~ The department is
 14 hereby authorized to ~~may~~ issue licenses to persons operating youth care facilities or grant approval to ~~OF~~
 15 persons providing kinship care ~~KINSHIP OR EXTENDED FAMILY CARE PROVIDERS~~ and to prescribe the
 16 conditions upon which such licenses shall and approvals may be issued, and to ~~The department may make~~
 17 such rules as it may deem advisable necessary for the licensure or approval, operation, and regulation of
 18 such those facilities for minor children consistent with the welfare of such children the residents.

19 ~~(2) Such licensing agency shall have the power and authority to~~ The department may inspect all
 20 such licensed facilities through its duly authorized representatives and to cancel or approved homes and,
 21 as appropriate, undertake action, including but not limited to the revocation of licenses theretofore issued
 22 for the failure to observe such rules and approvals.

23 ~~(3) The person operating such homes providing care in the facilities or homes shall give to such~~
 24 representative such the department any information as that may be required and afford him the department
 25 every reasonable opportunity for observing the operation of such the facilities or homes."

26

27 **NEW SECTION. Section 12. Effective date.** [This act] is effective on passage and approval.

28

-END-