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INTRODUCED BY

Molnar House BILL NO. 386

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A FAMILY ADVOCACY PROGRAM TO PROVIDE ASSISTANCE TO FAMILIES THAT ARE INVOLVED IN SITUATIONS OF STATE INTERVENTION IN FAMILY AFFAIRS; SETTING OUT THE DUTIES AND PRIVILEGES OF A FAMILY ADVOCATE, INCLUDING IMMUNITY FROM LIABILITY; ALLOWING A FAMILY ADVOCATE ACCESS TO ALL RELEVANT RECORDS; PROVIDING A SYSTEM OF REGISTRATION OF FAMILY ADVOCATES; AND AMENDING SECTIONS 41-3-205 AND 41-5-603, MCA."

WHEREAS, because the state is considered to be a parent pursuant to the *parens patriae* doctrine, it is the duty of the state to protect children and the family by establishing a watchdog program of family advocacy that would not only guard and protect the vital interests of a child but also guard and protect the interests of the family as a whole by helping to prevent the development of erroneous case histories.

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

NEW SECTION. **Section 1. Short title.** [Sections 1 through 10] may be cited as the "Family Protection Act".

NEW SECTION. **Section 2. Purpose.** The purpose of [sections 1 through 10] is to provide for procedures, practices, and criteria by which an advocate for the rights and integrity of the family functions in times of intervention by the state following allegations of child abuse or neglect pursuant to Title 41, chapter 3, or allegations that a youth is in need of care or supervision pursuant to Title 41, chapter 5.

NEW SECTION. **Section 3. Definitions.** Unless the context requires otherwise, as used in [sections 1 through 10], the following definitions apply:

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

(2) "Family advocate" means a person 18 years of age or older, chosen by a family, who is not an

1 employee of the state and who, from the initial stages of an allegation of child abuse or neglect made
 2 pursuant to Title 41, chapter 3, or an allegation that a youth is in need of care or supervision made
 3 pursuant to Title 41, chapter 5, acts to guard and protect the rights and integrity of the child’s family. The
 4 term includes a family advocacy group that is registered with the state as a nonprofit corporation.

5
 6 **NEW SECTION. Section 4. Immunity from liability.** A family advocate is immune from liability,
 7 within the meaning of 41-3-203, for actions conducted by the family advocate that are authorized by
 8 [sections 1 through 10] while acting strictly within the scope of the duties set out in [sections 1 through
 9 10].

10
 11 **NEW SECTION. Section 5. Confidentiality.** (1) Except as provided in subsection (2), a family
 12 advocate shall maintain strict confidentiality regarding a family for whom advocacy is undertaken.

13 (2) A family advocate shall cooperate fully with any legal counsel representing a family without
 14 regard to confidentiality.

15
 16 **NEW SECTION. Section 6. Disclosure.** The state, state agency personnel, a foster care review
 17 committee, any information source relative to the family, and any court shall, without regard to
 18 confidentiality and without requiring in camera inspection, disclose, upon request, all documentation,
 19 reports, and information regarding a family that is subject to an action brought pursuant to Title 41, chapter
 20 3 or 5, to a family advocate serving that family.

21
 22 **NEW SECTION. Section 7. Duties of family advocate.** Duties of a person acting on behalf of a
 23 family as a family advocate may include:

- 24 (1) rendering assistance and comfort to and acting as liaison for a family whose child is alleged to
- 25 be abused, neglected, or in need of care or supervision from the initial stages of a case to its conclusion;
- 26 (2) attending court hearings regarding the allegations;
- 27 (3) acting as a friend of the court when appropriate, which may include the filing of briefs pursuant
- 28 to Rule 24 of the Montana Rules of Appellate Procedure;
- 29 (4) notwithstanding the provisions of 41-3-1115(5), attending all meetings of a foster care review
- 30 committee considering the case and providing information as required;

- 1 (5) acting as a liaison between the family and the court and between the family and the department;
- 2 (6) acting as a liaison between the parent and child;
- 3 (7) following the progress of an assigned case from its beginning until the child is either adopted
- 4 or returned to the family;
- 5 (8) investigating delays in the progress of the case and acting as liaison with the family's attorney
- 6 or department personnel, if necessary, to encourage the reduction of delays caused by problems of any
- 7 kind;
- 8 (9) acting as personal representative of the family until the family obtains legal counsel;
- 9 (10) informing state authorities and the court of relatives, friends, neighbors, godparents, or
- 10 members of a child's extended family who are willing to accept a child for temporary foster care and
- 11 informing the family of any reason given by the department as to why a particular person is not acceptable
- 12 to provide temporary foster care;
- 13 (11) if the court awards temporary care and custody of a child to a person referred to in subsection
- 14 (10) while a case is pending, ensuring that foster care money is paid to that person in a timely manner; and
- 15 (12) if in the family advocate's opinion the case is not proceeding in a timely manner, acting as
- 16 liaison or petitioner to the court to encourage timely resolution of the case, which may include seeking legal
- 17 counsel from the public defender's office or a legal aid society.

18

19 **NEW SECTION. Section 8. Registration of family advocate.** (1) Before an individual person may

20 act as a family advocate, that person shall register with the department on a form provided by the

21 department. The department shall provide documentation of the person's acceptance as a family advocate

22 to the person seeking registration. The person shall provide copies of the department's acceptance

23 documentation to the county public defender's office, the county attorney's office, and the county sheriff's

24 office in the county where registration is sought.

25 (2) (a) Before a nonprofit corporation may act as a family advocate, the corporation shall register

26 with the department on a form provided by the department and shall present to the department a copy of

27 its articles of incorporation and bylaws, a list of its officers, and a list of its members who are certified by

28 the corporation to act as family advocates.

29 (b) The department shall provide documentation of the corporation's acceptance as a family

30 advocate to the corporation seeking registration. The corporation shall provide copies of the department's

1 acceptance documentation and all accompanying documentation to the county public defender's office, the
2 county attorney's office, and the county sheriff's office in the county where registration is sought.

3
4 **NEW SECTION. Section 9. Family advocate -- practice and procedures.** (1) Whenever a case is
5 instituted pursuant to Title 41, chapter 3 or 5, the department shall provide a list of potential family
6 advocates to the family and the family may choose an advocate.

7 (2) Immediately upon being contacted by a family that wishes to use the services of a particular
8 family advocate, that family advocate shall inform the department of the choice. The department shall then
9 brief the family advocate on the particulars of the case, including a copy of charges filed and other relevant
10 documents, and provide an indication of whether additional charges are contemplated and what action the
11 department contemplates will be taken. The family advocate may comment on the charges and actions and
12 the department shall consider the family advocate's comments in formulating its actions.

13 (3) A family advocate shall submit to the family a document, to be signed by a family member,
14 attesting to the fact that the advocate has been chosen by the family. The family advocate shall retain a
15 copy of the document and give the original to a family member as part of the standard package required
16 in subsection (4).

17 (4) A family advocate shall present to the family a standard package that contains, at a minimum:

18 (a) the original signed attestation that the family advocate has been chosen by the family, as
19 provided in subsection (3);

20 (b) a copy of the statutes, rules, and policies under which the case is proceeding, including a plain
21 language explanation of those statutes, rules, and policies;

22 (c) a copy of any formal charges or allegations filed in the case and a copy of any other documents
23 filed by the state relating to the case;

24 (d) a list of parental and family rights, privileges, and duties and any pertinent general information
25 regarding family law;

26 (e) a list of attorneys recognized by the state bar association as family law practitioners; and

27 (f) a document describing the family advocacy program, including duties of a family advocate and
28 services available to the family through the family advocate.

29 (5) The department shall allow visits between the family advocate and the affected child. Following
30 any visit, the family advocate shall meet with all concerned parties separately or collectively to assess the

1 case. The family advocate shall act as liaison with the family to apprise the family of developments as the
2 case proceeds.

3 (6) A family advocate shall maintain a journal record of all actions taken on the case. If the family
4 advocate is removed from the case or no longer functions as a family advocate, the journal must be made
5 available to any family advocate who acts as a replacement. The journal is considered privileged and is to
6 be available for viewing only by immediate family members and their legal counsel.

7 (7) A family advocate must be informed of and is entitled to be present at any interview of the child
8 by the court or the department.

9

10 **NEW SECTION. Section 10. Compensation for family advocate services.** A family advocate may
11 accept compensation for services rendered in the form of unconditional grants from the public or private
12 sector.

13

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

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

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

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

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

29 (b) a licensed youth care facility or a licensed child-placing agency that is providing services to the
30 family or child who is the subject of a report in the records;

- 1 (c) a health or mental health professional who is treating the family or child who is the subject of
2 a report in the records;
- 3 (d) a parent, guardian, or person designated by a parent or guardian of the child who is the subject
4 of a report in the records or other person responsible for the child's welfare, without disclosure of the
5 identity of any person who reported or provided information on the alleged child abuse or neglect incident
6 contained in the records;
- 7 (e) a child named in the records who was allegedly abused or neglected or the child's legal guardian
8 or legal representative, including the child's guardian ad litem or attorney or a special advocate appointed
9 by the court to represent a child in a pending case;
- 10 (f) the state protection and advocacy program as authorized by 42 U.S.C. 6042(a)(2)(B);
- 11 (g) approved foster and adoptive parents who are or will be providing care for a child;
- 12 (h) a person about whom a report has been made and that person's attorney, with respect to the
13 relevant records pertaining to that person only and without disclosing the identity of the reporter or any
14 other person whose safety may be endangered;
- 15 (i) an agency, including a probation or parole agency, that is legally responsible for the supervision
16 of an alleged perpetrator of child abuse or neglect;
- 17 (j) a person, agency, or organization that is engaged in a bona fide research or evaluation project
18 and that is authorized by the department to conduct the research or evaluation;
- 19 (k) the members of an interdisciplinary child protective team authorized under 41-3-108 for the
20 purposes of assessing the needs of the child and family, formulating a treatment plan, and monitoring the
21 plan;
- 22 (l) the coroner or medical examiner when determining the cause of death of a child;
- 23 (m) a child fatality review team recognized by the department;
- 24 (n) a department or agency investigating an applicant for a license or registration that is required
25 to operate a youth care facility, day-care facility, or child-placing agency;
- 26 (o) a person or entity who is carrying out background, employment-related, or volunteer-related
27 screening of current or prospective employees or volunteers who have or may have unsupervised contact
28 with children through employment or volunteer activities. A request for information under this subsection
29 (3)(o) must be made in writing. Disclosure under this subsection (3)(o) is limited to information that
30 indicates a risk to children posed by the person about whom the information is sought, as determined by

1 the department.

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

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

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

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

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

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

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

18 (w) a member of a county interdisciplinary child information team formed under the provisions of
19 52-2-211;

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

21 (y) a member of a youth placement committee formed under the provisions of 41-5-525; or

22 (z) a family advocate acting pursuant to [sections 1 through 10].

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

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

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

3

4 **Section 12.** Section 41-5-603, MCA, is amended to read:

5 **"41-5-603. Youth court and department records.** (1) Except as provided in subsection (2), all
6 youth court records on file with the clerk of court, including reports of preliminary inquiries, petitions,
7 motions, other filed pleadings, court findings, verdicts, orders, and decrees, are open to public inspection
8 until the records are sealed under 41-5-604.

9 (2) Social, medical, and psychological records, predispositional studies, supervision records of
10 probationers, and any report, charge, or allegation that is not adjudicated pursuant to this chapter are open
11 only to the following:

12 (a) the youth court and its professional staff;

13 (b) representatives of any agency providing supervision and having legal custody of a youth;

14 (c) any other person, by order of the court, having a legitimate interest in the case or in the work
15 of the court;

16 (d) any court and its probation and other professional staff or the attorney for a convicted party
17 who had been a party to proceedings in the youth court when considering the sentence to be imposed upon
18 the party;

19 (e) the county attorney;

20 (f) the youth who is the subject of the report or record, after emancipation or reaching the age of
21 majority;

22 (g) a member of a county interdisciplinary child information team formed under 52-2-211 who is
23 not listed in this subsection (2);

24 (h) members of a local interagency staffing group provided for in 52-2-203; ~~and~~

25 (i) a family advocate acting pursuant to [sections 1 through 10]; and

26 (j) persons allowed access to the records under 45-5-624(7).

27 (3) Any part of records information secured from records listed in subsection (2), when presented
28 to and used by the court in a proceeding under this chapter, must also be made available to the counsel
29 for the parties to the proceedings.

30 (4) After youth court and department records, reports of preliminary inquiries, predispositional

1 studies, and supervision records of probationers are sealed, they are not open to inspection except, upon
2 order of the youth court, for good cause to:

3 (a) those persons and agencies listed in subsection (2); and

4 (b) adult probation professional staff preparing a presentence report on a youth who has reached
5 the age of majority."

6

7 **NEW SECTION. Section 13. Codification instruction.** [Sections 1 through 10] are intended to be
8 codified as an integral part of Title 41, and the provisions of Title 41 apply to [sections 1 through 10].

9

10 **NEW SECTION. Section 14. Severability.** If a part of [this act] is invalid, all valid parts that are
11 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
12 applications, the part remains in effect in all valid applications that are severable from the invalid
13 applications.

14

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0386, as introduced


DESCRIPTION OF PROPOSED LEGISLATION:

An act creating a family advocacy program to provide assistance to families that are involved in situations of state intervention in family affairs; setting out the duties and privileges of a family advocate, including immunity from liability; allowing a family advocate access to all relevant records; providing a system of registration of family advocates.

ASSUMPTIONS:

1. This proposal requires the Department of Public Health and Human Services (DPHHS) to accept registration from persons or nonprofit organizations requesting to be family advocates and to notify persons or organizations that their registration has been accepted.
2. DPHHS must administer this function for the youth court system as well as the child protective services function within DPHHS. The Department of Corrections would share information as required with family advocates for youth in need of supervision, youth who are generally under supervision of the Youth Court.
3. DPHHS will not undertake either a criminal background check or a child protective services background check or other activities to screen persons requesting registration as a family advocate.
4. A 1.00 FTE program officer with extensive background and experience in all aspects, including legal and operational, of foster care programs, child protective services, juvenile probation and parole functions, and Youth Court regulations will be necessary. The person in this positions will act as the single technical and point of contact for the family advocates. In addition, this individual will: develop the family advocacy program; accept family advocate registrations; notify persons that their registration has been received and that they are therefore accepted as a family advocate; prepare and distribute a standard package of information to family advocates and persons wishing to select a family advocate.
5. DPHHS will develop and distribute the initial compilation of information for the family advocacy packet. Subsequently, DPHHS will prepare and distribute annual updates to the standard packet of information. DPHHS will incur printing and mailing costs as well as personnel services and operating costs to develop and maintain up-to-date the family advocate information package. Each copy of the standard packet of information is estimated to cost \$17.50 to print and distribute.
6. The standard information packet will include applicable statutes, rules, and policies, department and Youth Court procedures, parental and family rights, general family law information, a list of attorneys who practice in family law, information about the family advocacy program, information about the role and duties of the family advocate and family advocacy program, answer family advocate questions about state intervention processes, provide child protective service workers, juvenile probation and parole officers, and youth courts with a list of persons accepted as a family advocate in their geographic area and statewide. In the first year of the program, about 625 copies will be needed for social workers, juvenile probation, and parole officers, and youth courts and another 875 copies would be needed for persons registering to be family advocates and for persons wanting to chose a family advocate. In the second year, 500 copies of the standard information packet would be mailed to new family advocate registrants and families wishing to choose a family advocate.
7. The DPHHS will not provide reimbursement to individuals acting as family advocates or to persons who retain a family advocate. A family advocate may accept compensation through grants from the public or private sector.
8. Federal funds support 13.2% of the cost of this function, with the balance of funds supported by the general fund.

(Continued)


DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

BRAD MOLNAR, PRIMARY SPONSOR DATE

Fiscal Note for HB0386, as introduced

HB 386

FISCAL IMPACT:

	<u>FY98</u>	<u>FY99</u>
<u>Expenditures:</u>	<u>Difference</u>	<u>Difference</u>
FTE	1.00	1.00
Personal Services	\$34,440	\$34,440
Operating and Equipment	14,000	5,500
Printing and Mailing	<u>26,250</u>	<u>20,000</u>
Total	\$74,690	\$59,940
<u>Funding:</u>		
General Fund (01)	\$64,831	\$52,028
Federal Funds (03)	<u>9,859</u>	<u>7,912</u>
Total	\$74,690	\$59,940

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Youth Courts supervise youth in need of supervision. They may see increased costs as a result of this bill.

TECHNICAL NOTES:

The number of persons or organizations that will become family advocates or the number of situations that will use an advocate cannot be determined.

1 HOUSE BILL NO. 386

2 INTRODUCED BY MOLNAR

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A FAMILY ADVOCACY PROGRAM TO PROVIDE
5 ASSISTANCE TO FAMILIES THAT ARE INVOLVED IN SITUATIONS OF STATE INTERVENTION IN FAMILY
6 AFFAIRS; SETTING OUT THE DUTIES AND PRIVILEGES OF A FAMILY ADVOCATE, INCLUDING IMMUNITY
7 FROM LIABILITY; ALLOWING A FAMILY ADVOCATE ACCESS TO ALL RELEVANT RECORDS; PROVIDING
8 A SYSTEM OF REGISTRATION OF FAMILY ADVOCATES; AND AMENDING SECTIONS 41-3-205 AND
9 41-5-603, MCA."

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11 WHEREAS, because the state is considered to be a parent pursuant to the *parens patriae* doctrine,
12 it is the duty of the state to protect children and the family by establishing a watchdog program of family
13 advocacy that would not only guard and protect the vital interests of a child but also guard and protect the
14 interests of the family as a whole by helping to prevent the development of erroneous case histories.

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

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23 in times of intervention by the state following allegations of child abuse or neglect pursuant to Title 41,
24 chapter 3, or allegations that a youth is in need of care or supervision pursuant to Title 41, chapter 5.

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27 1 through 10], the following definitions apply:

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29 2-15-2201.

30 (2) "Family advocate" means a person 18 years of age or older, chosen by a family, who is not an

1 employee of the state and who, from the initial stages of an allegation of child abuse or neglect made
2 pursuant to Title 41, chapter 3, or an allegation that a youth is in need of care or supervision made
3 pursuant to Title 41, chapter 5, acts to guard and protect the rights and integrity of the child's family. The
4 term includes a family advocacy group that is registered with the state as a nonprofit corporation.

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7 within the meaning of 41-3-203, for actions conducted by the family advocate that are authorized by
8 [sections 1 through 10] while acting strictly within the scope of the duties set out in [sections 1 through
9 10].

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12 advocate shall maintain strict confidentiality regarding a family for whom advocacy is undertaken.

13 (2) A family advocate shall cooperate fully with any legal counsel representing a family without
14 regard to confidentiality.

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16 **NEW SECTION. Section 6. Disclosure.** The state, state agency personnel, a foster care review
17 committee, any information source relative to the family, and any court shall, without regard to
18 confidentiality and without requiring in camera inspection, disclose, upon request, all documentation,
19 reports, and information regarding a family that is subject to an action brought pursuant to Title 41, chapter
20 3 or 5, to a family advocate serving that family.

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23 family as a family advocate may include:

24 (1) rendering assistance and comfort to and acting as liaison for a family whose child is alleged to
25 be abused, neglected, or in need of care or supervision from the initial stages of a case to its conclusion;

26 (2) attending court hearings regarding the allegations;

27 (3) acting as a friend of the court when appropriate, which may include the filing of briefs pursuant
28 to Rule 24 of the Montana Rules of Appellate Procedure;

29 (4) notwithstanding the provisions of 41-3-1115(5), attending all meetings of a foster care review
30 committee considering the case and providing information as required;

1 (5) acting as a liaison between the family and the court and between the family and the department;

2 (6) acting as a liaison between the parent and child;

3 (7) following the progress of an assigned case from its beginning until the child is either adopted
4 or returned to the family;

5 (8) investigating delays in the progress of the case and acting as liaison with the family's attorney
6 or department personnel, if necessary, to encourage the reduction of delays caused by problems of any
7 kind;

8 (9) acting as personal representative of the family until the family obtains legal counsel;

9 (10) informing state authorities and the court of relatives, friends, neighbors, godparents, or
10 members of a child's extended family who are willing to accept a child for temporary foster care and
11 informing the family of any reason given by the department as to why a particular person is not acceptable
12 to provide temporary foster care;

13 (11) if the court awards temporary care and custody of a child to a person referred to in subsection
14 (10) while a case is pending, ensuring that foster care money is paid to that person in a timely manner; and

15 (12) if in the family advocate's opinion the case is not proceeding in a timely manner, acting as
16 liaison or petitioner to the court to encourage timely resolution of the case, which may include seeking legal
17 counsel from the public defender's office or a legal aid society.

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19 NEW SECTION. Section 8. Registration of family advocate. (1) ~~Before an AN~~ individual person
20 may act as a family advocate, ~~that person shall register with the department on a form provided by the~~
21 ~~department. The department shall provide documentation~~ MAY REQUIRE AN AFFIDAVIT of the person's
22 ~~acceptance as a family advocate to the person seeking registration~~ STATUS. The person shall provide
23 copies of the ~~department's acceptance documentation to the county public defender's office, the county~~
24 ~~attorney's office, and the county sheriff's office in the county where registration is sought~~ AFFIDAVIT TO
25 THOSE PERSONS WHO HAVE A NEED TO KNOW, AS ESTABLISHED BY LAW.

26 (2) (a) ~~Before a A~~ nonprofit corporation may act as a family advocate, ~~the~~ THE corporation shall
27 MAY register with the department on a form provided by the department and ~~shall present to the~~
28 ~~department a copy of its articles of incorporation and bylaws, a list of its officers, and a list of its members~~
29 ~~who are certified by the corporation to act as family advocates.~~

30 (b) The department shall provide documentation of ~~the corporation's acceptance as~~ ITS RECEIPT

1 ~~OF A PROPERLY COMPLETED REGISTRATION FORM FOR~~ a family advocate to the corporation seeking
 2 registration. The corporation shall provide copies of the department's ~~acceptance~~ documentation ~~and all~~
 3 ~~accompanying documentation~~ to the county public defender's office, the county attorney's office, and the
 4 county sheriff's office in the county where registration is sought.

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 7 instituted pursuant to Title 41, chapter 3 or 5, the department shall provide a ~~list of potential family~~
 8 ~~advocates~~ COPY OF [SECTIONS 1 THROUGH 10], 41-3-205, AND 41-5-603 to the family and a family
 9 may choose an advocate.

10 (2) ~~Immediately~~ PROMPTLY upon being contacted by a family that wishes to use the services of
 11 a particular family advocate, that family advocate shall inform the department of the choice. The
 12 department shall then brief the family advocate on the particulars of the case, including a copy of charges
 13 filed, ALLEGATIONS MADE, and other relevant documents, and provide an indication of whether additional
 14 charges are contemplated and what action the department contemplates will be taken. The family advocate
 15 may comment on the charges and actions and the department shall consider AND RECORD the family
 16 advocate's comments in formulating its actions.

17 (3) A family advocate shall submit to the family a document, to be signed by a family member,
 18 attesting to the fact that the advocate has been chosen by the family. The family advocate shall retain a
 19 copy of the document and give the original to a family member as part of the standard package required
 20 in subsection (4).

21 (4) A family advocate ~~shall present to~~ MAY PREPARE FOR the family a standard package that
 22 ~~contains, at a minimum~~ MAY CONTAIN:

23 (a) the original signed attestation that the family advocate has been chosen by the family, as
 24 provided in subsection (3);

25 (b) a copy of the statutes, rules, and policies under which the case is proceeding, including a plain
 26 language explanation of those statutes, rules, and policies;

27 (c) a copy of any formal charges or allegations filed in the case and a copy of any other documents
 28 filed by the state relating to the case;

29 (d) a list of parental and family rights, privileges, and duties and any pertinent general information
 30 regarding family law;

1 (e) a list of attorneys recognized by the state bar association as family law practitioners; and

2 (f) a document describing the family advocacy program, including duties of a family advocate and
3 services available to the family through the family advocate.

4 (5) The department ~~shall~~ MAY allow visits between the family advocate and the affected child.

5 BEFORE ALLOWING A VISIT, THE FAMILY ADVOCATE SHALL MEET WITH APPROPRIATE PERSONNEL
6 OF THE DEPARTMENT. THE DEPARTMENT PERSONNEL SHALL ASSESS THE PURPOSE OF THE VISIT
7 AND MAY DETERMINE AND REVIEW QUESTIONS TO BE ASKED OR STATEMENTS TO BE MADE BY THE
8 FAMILY ADVOCATE. IF THE DEPARTMENT PERSONNEL BELIEVE THAT THE PRESENCE OF THE FAMILY
9 ADVOCATE WOULD ADVERSELY IMPACT THE CHILD, THE FAMILY ADVOCATE MAY BE PREVENTED
10 BY THE DEPARTMENT FROM MEETING WITH THE CHILD AND THE FAMILY MAY CHOOSE AN
11 ADVOCATE ACCEPTABLE TO THE DEPARTMENT. Following any visit, the family advocate shall meet with
12 all concerned parties separately or collectively to assess the case. The family advocate shall act as liaison
13 with the family to apprise the family of developments as the case proceeds.

14 (6) A family advocate shall maintain a journal record of all actions taken on the case. If the family
15 advocate is removed from the case or no longer functions as a family advocate, the journal must be made
16 available to any family advocate who acts as a replacement. The journal is considered privileged and is to
17 be available for viewing only by immediate family members and their legal counsel.

18 (7) A family advocate must be informed of and is entitled to be present at any interview of the child
19 by the court or the department.

20
21 NEW SECTION. Section 10. Compensation for family advocate services. A family advocate may
22 accept compensation for services rendered in the form of unconditional grants from the public or private
23 sector.

24
25 **Section 11.** Section 41-3-205, MCA, is amended to read:

26 **"41-3-205. Confidentiality -- disclosure exceptions.** (1) The case records of the department of
27 public health and human services and its local affiliate, the county welfare department, the county attorney,
28 and the court concerning actions taken under this chapter and all records concerning reports of child abuse
29 and neglect must be kept confidential except as provided by this section. Except as provided in subsections
30 (4) and (5), a person who permits or encourages the unauthorized dissemination of the contents of case

1 records is guilty of a misdemeanor.

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

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

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

10 (b) a licensed youth care facility or a licensed child-placing agency that is providing services to the
11 family or child who is the subject of a report in the records;

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

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

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

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

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

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

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

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

30 (k) the members of an interdisciplinary child protective team authorized under 41-3-108 for the

1 purposes of assessing the needs of the child and family, formulating a treatment plan, and monitoring the
2 plan;

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

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

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

7 (o) a person or entity who is carrying out background, employment-related, or volunteer-related
8 screening of current or prospective employees or volunteers who have or may have unsupervised contact
9 with children through employment or volunteer activities. A request for information under this subsection
10 (3)(o) must be made in writing. Disclosure under this subsection (3)(o) is limited to information that
11 indicates a risk to children posed by the person about whom the information is sought, as determined by
12 the department.

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

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

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

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

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

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

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

29 (w) a member of a county interdisciplinary child information team formed under the provisions of
30 52-2-211;

- 1 (x) members of a local interagency staffing group provided for in 52-2-203; ~~or~~
 2 (y) a member of a youth placement committee formed under the provisions of 41-5-525; or
 3 (z) a family advocate acting pursuant to [sections 1 through 10].

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

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

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

14

15 **Section 12.** Section 41-5-603, MCA, is amended to read:

16 **"41-5-603. Youth court and department records.** (1) Except as provided in subsection (2), all
 17 youth court records on file with the clerk of court, including reports of preliminary inquiries, petitions,
 18 motions, other filed pleadings, court findings, verdicts, orders, and decrees, are open to public inspection
 19 until the records are sealed under 41-5-604.

20 (2) Social, medical, and psychological records, predispositional studies, supervision records of
 21 probationers, and any report, charge, or allegation that is not adjudicated pursuant to this chapter are open
 22 only to the following:

- 23 (a) the youth court and its professional staff;
 24 (b) representatives of any agency providing supervision and having legal custody of a youth;
 25 (c) any other person, by order of the court, having a legitimate interest in the case or in the work
 26 of the court;
 27 (d) any court and its probation and other professional staff or the attorney for a convicted party
 28 who had been a party to proceedings in the youth court when considering the sentence to be imposed upon
 29 the party;
 30 (e) the county attorney;

1 (f) the youth who is the subject of the report or record, after emancipation or reaching the age of
2 majority;

3 (g) a member of a county interdisciplinary child information team formed under 52-2-211 who is
4 not listed in this subsection (2);

5 (h) members of a local interagency staffing group provided for in 52-2-203; ~~and~~

6 (i) a family advocate acting pursuant to [sections 1 through 10]; and

7 (j) persons allowed access to the records under 45-5-624(7).

8 (3) Any part of records information secured from records listed in subsection (2), when presented
9 to and used by the court in a proceeding under this chapter, must also be made available to the counsel
10 for the parties to the proceedings.

11 (4) After youth court and department records, reports of preliminary inquiries, predispositional
12 studies, and supervision records of probationers are sealed, they are not open to inspection except, upon
13 order of the youth court, for good cause to:

14 (a) those persons and agencies listed in subsection (2); and

15 (b) adult probation professional staff preparing a presentence report on a youth who has reached
16 the age of majority."

17

18 **NEW SECTION. Section 13. Codification instruction.** [Sections 1 through 10] are intended to be
19 codified as an integral part of Title 41, and the provisions of Title 41 apply to [sections 1 through 10].

20

21 **NEW SECTION. Section 14. Severability.** If a part of [this act] is invalid, all valid parts that are
22 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
23 applications, the part remains in effect in all valid applications that are severable from the invalid
24 applications.

25

-END-

1 HOUSE BILL NO. 386

2 INTRODUCED BY MOLNAR

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A FAMILY ADVOCACY PROGRAM TO PROVIDE
5 ASSISTANCE TO FAMILIES THAT ARE INVOLVED IN SITUATIONS OF STATE INTERVENTION IN FAMILY
6 AFFAIRS; SETTING OUT THE DUTIES AND PRIVILEGES OF A FAMILY ADVOCATE, INCLUDING IMMUNITY
7 FROM LIABILITY; ALLOWING A FAMILY ADVOCATE ACCESS TO ALL RELEVANT RECORDS; PROVIDING
8 A SYSTEM OF REGISTRATION OF FAMILY ADVOCATES; AND AMENDING SECTIONS 41-3-205 AND
9 41-5-603, MCA."

10
11 WHEREAS, because the state is considered to be a parent pursuant to the parens patriae doctrine,
12 it is the duty of the state to protect children and the family by establishing a watchdog program of family
13 advocacy that would not only guard and protect the vital interests of a child but also guard and protect the
14 interests of the family as a whole by helping to prevent the development of erroneous case histories.

15
16 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 SECOND READING COPY
(YELLOW) FOR COMPLETE TEXT.**

APPROVED BY COM ON PUBLIC HEALTH, WELFARE & SAFETY

HOUSE BILL NO. 386

INTRODUCED BY MOLNAR

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A FAMILY ADVOCACY PROGRAM TO PROVIDE ASSISTANCE TO FAMILIES THAT ARE INVOLVED IN SITUATIONS OF STATE INTERVENTION IN FAMILY AFFAIRS; SETTING OUT THE DUTIES AND PRIVILEGES OF A FAMILY ADVOCATE, INCLUDING IMMUNITY FROM LIABILITY; ALLOWING A FAMILY ADVOCATE ACCESS TO ALL RELEVANT RECORDS; PROVIDING A SYSTEM OF REGISTRATION OF FAMILY ADVOCATES; AND AMENDING SECTIONS SECTION 41-3-205 AND 41-5-603, MCA."

WHEREAS, because the state is considered to be a parent pursuant to the parens patriae doctrine, it is the duty of the state to protect children and the family by establishing a watchdog program of family advocacy that would not only guard and protect the vital interests of a child but also guard and protect the interests of the family as a whole by helping to prevent the development of erroneous case histories.

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

NEW SECTION. Section 1. Short title. [Sections 1 through 10] may be cited as the "Family Protection Act".

NEW SECTION. Section 2. Purpose. The purpose of [sections 1 through 10] is to provide for procedures, practices, and criteria by which an advocate for the rights and integrity of the family functions in times of intervention by the state following allegations of child abuse or neglect pursuant to Title 41, chapter 3, or allegations that a youth is in need of care or supervision pursuant to Title 41, chapter 5.

NEW SECTION. Section 3. Definitions. Unless the context requires otherwise, as used in [sections 1 through 10], the following definitions apply:

- (1) "Department" means the department of public health and human services provided for in 2-15-2201.
(2) "Family advocate" means a person 18 years of age or older, chosen by a family, who is not an

1 employee of the state and who, from the initial stages of an allegation of child abuse or neglect made
 2 pursuant to Title 41, chapter 3, or an allegation that a youth is in need of care or supervision made
 3 pursuant to Title 41, chapter 5, acts to guard and protect the rights and integrity of the child's family. The
 4 term includes a family advocacy group that is registered with the state as a nonprofit corporation.

5
 6 **NEW SECTION. Section 4. Immunity from liability.** A family advocate is immune from liability,
 7 within the meaning of 41-3-203, for actions conducted by the family advocate that are authorized by
 8 [sections 1 through 10] while acting strictly within the scope of the duties set out in [sections 1 through
 9 10].

10
 11 **NEW SECTION. Section 5. Confidentiality.** (1) Except as provided in subsection (2), a family
 12 advocate shall maintain strict confidentiality regarding a family for whom advocacy is undertaken.

13 (2) A family advocate shall cooperate fully with any legal counsel representing a family without
 14 regard to confidentiality.

15
 16 **NEW SECTION. Section 6. Disclosure.** The state, state agency personnel, a foster care review
 17 committee, any information source relative to the family, and any court ~~shall, without~~ MAY, WITH regard
 18 to confidentiality and ~~without requiring~~ AFTER AN in camera inspection, disclose, upon request, all
 19 documentation, reports, and information regarding a family that is subject to an action brought pursuant
 20 to Title 41, chapter 3 ~~or 5~~, to a family advocate serving that family.

21
 22 **NEW SECTION. Section 7. Duties of family advocate.** Duties of a person acting on behalf of a
 23 family as a family advocate may include:

24 (1) rendering assistance and comfort to and acting as liaison for a family whose child is alleged to
 25 be abused, neglected, or in need of care or supervision from the initial stages of a case to its conclusion;

26 (2) attending court hearings regarding the allegations;

27 (3) acting as a friend of the court when appropriate, ~~which may include the filing of briefs pursuant~~
 28 ~~to Rule 24 of the Montana Rules of Appellate Procedure;~~

29 (4) notwithstanding the provisions of 41-3-1115(5), attending all meetings of a foster care review
 30 committee OR CITIZEN REVIEW BOARD considering the case and providing information as required;

- 1 (5) acting as a liaison between the family and the court and between the family and the department;
- 2 (6) acting as a liaison between the parent and child;
- 3 (7) following the progress of an assigned case from its beginning until the ~~child is either adopted~~
- 4 PARENTAL RIGHTS TO THE CHILD ARE TERMINATED or THE CHILD IS returned to the family;
- 5 (8) investigating delays in the progress of the case and acting as liaison with the family's attorney
- 6 or department personnel, if necessary, to encourage the reduction of delays caused by problems of any
- 7 kind;
- 8 (9) acting as personal representative of the family until the family obtains legal counsel;
- 9 (10) informing state authorities and the court of relatives, friends, neighbors, godparents, or
- 10 members of a child's extended family who are willing to accept a child for temporary foster care and, WITH
- 11 A SIGNED RELEASE OF INFORMATION FROM THE PROPOSED TEMPORARY FOSTER CARE PROVIDER,
- 12 informing the family of any reason given by the department as to why a particular person REQUESTED BY
- 13 THE FAMILY is not acceptable to provide temporary foster care;
- 14 (11) if the court awards temporary care and custody of a child to a person referred to in subsection
- 15 (10) while a case is pending, ~~ensuring~~ HELP TO ENSURE that foster care money is paid to that person in
- 16 a timely manner; and
- 17 (12) if in the family advocate's opinion the case is not proceeding in a timely manner, acting as
- 18 liaison or petitioner to the court to encourage timely resolution of the case, which may include seeking legal
- 19 counsel from the public defender's office or a legal aid society.
- 20

21 NEW SECTION. Section 8. Registration of family advocate. (1) ~~Before an~~ AN individual person

22 may act as a family advocate, ~~that person shall register with the department on a form provided by the~~

23 ~~department.~~ The department shall provide documentation MAY REQUIRE AN AFFIDAVIT of the person's

24 ~~acceptance as a family advocate to the person seeking registration~~ STATUS. The person shall provide

25 copies of the ~~department's acceptance documentation to the county public defender's office, the county~~

26 ~~attorney's office, and the county sheriff's office in the county where registration is sought~~ AFFIDAVIT TO

27 THOSE PERSONS WHO HAVE A NEED TO KNOW, AS ESTABLISHED BY LAW.

28 (2) ~~(a) Before a~~ A nonprofit corporation may act as a family advocate, ~~the,~~ THE corporation shall

29 MAY register with the department on a form provided by the department and shall present to the

30 ~~department a copy of its articles of incorporation and bylaws, a list of its officers, and a list of its members~~

1 ~~who are certified by the corporation to act as family advocates.~~

2 ~~(b) The department shall provide documentation of the corporation's acceptance as ITS RECEIPT~~
 3 ~~OF A PROPERLY COMPLETED REGISTRATION FORM FOR a family advocate to the corporation seeking~~
 4 ~~registration. The corporation shall provide copies of the department's acceptance documentation and all~~
 5 ~~accompanying documentation to the county public defender's office, the county attorney's office, and the~~
 6 ~~county sheriff's office in the county where registration is sought.~~

7
 8 **NEW SECTION. Section 9. Family advocate -- practice and procedures.** (1) Whenever a case is
 9 instituted pursuant to Title 41, chapter 3 ~~or 5~~, the ~~department shall~~ FAMILY ADVOCATE, IF ANY, MAY
 10 provide a list of potential family advocates COPY OF [SECTIONS 1 THROUGH 10], AND 41-3-205, AND
 11 41-5-603 to the family and the family may choose an advocate.

12 (2) ~~Immediately~~ PROMPTLY upon being contacted by a family that wishes to use the services of
 13 a particular family advocate, that family advocate shall inform the department of the choice. The
 14 department shall then brief the family advocate on the particulars of the case, including a copy of charges
 15 filed, ALLEGATIONS MADE, and other relevant documents, and provide an indication of whether additional
 16 charges are contemplated and what action the department contemplates will be taken. The family advocate
 17 may comment on the charges and actions and the department shall consider AND RECORD the family
 18 advocate's comments in formulating its actions.

19 (3) A family advocate shall submit to the family a document, to be signed by a family member,
 20 attesting to the fact that the advocate has been chosen by the family. The family advocate shall retain a
 21 copy of the document and give the original to a family member as part of the standard package required
 22 in subsection (4).

23 (4) A family advocate ~~shall present to~~ MAY PREPARE FOR the family a standard package that
 24 ~~contains, at a minimum~~ MAY CONTAIN:

25 (a) the original signed attestation that the family advocate has been chosen by the family, as
 26 provided in subsection (3);

27 (b) a copy of the statutes, rules, and policies under which the case is proceeding, including a plain
 28 language explanation of those statutes, rules, and policies;

29 (c) a copy of any formal charges or allegations filed in the case and a copy of any other documents
 30 filed by the state relating to the case;

1 (d) a list of parental and family rights, privileges, and duties and any pertinent general information
2 regarding family law;

3 (e) a list of attorneys recognized by the state bar association as family law practitioners; and

4 (f) a document describing the family advocacy program, including duties of a family advocate and
5 services available to the family through the family advocate.

6 (5) The department ~~shall~~ MAY allow visits between the family advocate and the affected child.
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9 AND MAY DETERMINE AND REVIEW QUESTIONS TO BE ASKED OR STATEMENTS TO BE MADE BY THE
10 FAMILY ADVOCATE. IF THE DEPARTMENT PERSONNEL BELIEVE THAT THE PRESENCE OF THE FAMILY
11 ADVOCATE WOULD ADVERSELY IMPACT THE CHILD, THE FAMILY ADVOCATE MAY BE PREVENTED
12 BY THE DEPARTMENT FROM MEETING WITH THE CHILD AND. IF THE REASON FOR NOT ALLOWING A
13 FAMILY ADVOCATE TO VISIT WITH A CHILD IS BECAUSE THE FAMILY ADVOCATE IS UNACCEPTABLE
14 TO THE DEPARTMENT, THE FAMILY MAY CHOOSE AN ADVOCATE ACCEPTABLE TO THE DEPARTMENT.

15 Following any visit AT WHICH THE FAMILY ADVOCATE IS PRESENT, the family advocate ~~shall~~ MAY meet
16 with all concerned parties separately or collectively to assess the case. The family advocate shall act as
17 liaison with the family to apprise the family of developments as the case proceeds.

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19 advocate is removed from the case or no longer functions as a family advocate, the journal must be made
20 available to any family advocate who acts as a replacement. The journal is considered privileged and is to
21 be available for viewing only by immediate family members and their legal counsel.

22 (7) A family advocate must be informed of and ~~is entitled to~~ MAY, IF APPROPRIATE, be present
23 at any SCHEDULED interview of the child by the court or the department.

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26 accept compensation for services rendered in the form of unconditional grants from the public or private
27 sector.

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3 and neglect must be kept confidential except as provided by this section. Except as provided in subsections
4 (4) and (5), a person who permits or encourages the unauthorized dissemination of the contents of case
5 records is guilty of a misdemeanor.

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

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

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

14 (b) a licensed youth care facility or a licensed child-placing agency that is providing services to the
15 family or child who is the subject of a report in the records;

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

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

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

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28 relevant records pertaining to that person only and without disclosing the identity of the reporter or any
29 other person whose safety may be endangered;

30 (i) an agency, including a probation or parole agency, that is legally responsible for the supervision

1 of an alleged perpetrator of child abuse or neglect;

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

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5 purposes of assessing the needs of the child and family, formulating a treatment plan, and monitoring the
6 plan;

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13 with children through employment or volunteer activities. A request for information under this subsection
14 ~~(3)~~(o) must be made in writing. Disclosure under this subsection ~~(3)~~(o) is limited to information that
15 indicates a risk to children posed by the person about whom the information is sought, as determined by
16 the department.

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

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

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

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

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

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

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

3 (w) a member of a county interdisciplinary child information team formed under the provisions of
4 52-2-211;

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

6 (y) a member of a youth placement committee formed under the provisions of 41-5-525; or

7 (z) a family advocate acting pursuant to [sections 1 through 10] WITHOUT DISCLOSURE OF THE
8 IDENTITY OF ANY PERSON WHO REPORTED OR PROVIDED INFORMATION ON THE ALLEGED CHILD
9 ABUSE OR NEGLECT INCIDENT CONTAINED IN THE REPORT.

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

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27 ~~probationers, and any report, charge, or allegation that is not adjudicated pursuant to this chapter are open~~
28 ~~only to the following:~~

29 ~~(a) the youth court and its professional staff;~~

30 ~~(b) representatives of any agency providing supervision and having legal custody of a youth;~~

1 ~~(c) any other person, by order of the court, having a legitimate interest in the case or in the work~~
2 ~~of the court;~~

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10 ~~not listed in this subsection (2);~~

11 ~~(h) members of a local interagency staffing group provided for in 52-2-203; and~~

12 ~~(i) a family advocate acting pursuant to [sections 1 through 10]; and~~

13 ~~(j) persons allowed access to the records under 45-5-624(7).~~

14 ~~(3) Any part of records information secured from records listed in subsection (2), when presented~~
15 ~~to and used by the court in a proceeding under this chapter, must also be made available to the counsel~~
16 ~~for the parties to the proceedings.~~

17 ~~(4) After youth court and department records, reports of preliminary inquiries, predispositional~~
18 ~~studies, and supervision records of probationers are sealed, they are not open to inspection except, upon~~
19 ~~order of the youth court, for good cause to:~~

20 ~~(a) those persons and agencies listed in subsection (2); and~~

21 ~~(b) adult probation professional staff preparing a presentence report on a youth who has reached~~
22 ~~the age of majority."~~

23
24 **NEW SECTION. Section 12. Codification instruction.** [Sections 1 through 10] are intended to be
25 codified as an integral part of Title 41, and the provisions of Title 41 apply to [sections 1 through 10].

26
27 **NEW SECTION. Section 13. Severability.** If a part of [this act] is invalid, all valid parts that are
28 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
29 applications, the part remains in effect in all valid applications that are severable from the invalid
30 applications.

-END-