

1 HOUSE BILL NO. 640

2 INTRODUCED BY S. MORIGEAU

3 BY REQUEST OF THE HOUSE JUDICIARY STANDING COMMITTEE

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6 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO CHILDHOOD
7 SEXUAL ABUSE; REVISING THE STATUTE OF LIMITATIONS FOR CIVIL LIABILITY FOR CHILDHOOD
8 SEXUAL ABUSE; REVISING THE TYPES OF CRIMES THAT CAN BE CONSIDERED CHILDHOOD SEXUAL
9 ABUSE FOR THE PURPOSES OF CIVIL LIABILITY; REVISING THE DEFINITIONS OF SEXUAL ABUSE AND
10 SEXUAL EXPLOITATION FOR THE PURPOSES OF CHILD ABUSE AND NEGLECT PROCEEDINGS;
11 REVISING LAWS RELATED TO REPORTING OF SUSPECTED CHILD SEXUAL ABUSE OR SEXUAL
12 EXPLOITATION; INCLUDING DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES EMPLOYEES
13 AS MANDATORY REPORTERS OF CHILD ABUSE AND NEGLECT; REQUIRING COUNTY ATTORNEYS AND
14 THE ATTORNEY GENERAL TO PROVIDE CERTAIN REPORTS; REVISING LAWS RELATED TO RETENTION
15 AND DISCLOSURE OF CONFIDENTIAL RECORDS; PROVIDING A FELONY PENALTY FOR FAILURE TO
16 REPORT CHILD SEXUAL ABUSE OR SEXUAL EXPLOITATION; REVISING THE CRIMINAL STATUTE OF
17 LIMITATIONS FOR SEX OFFENSES INVOLVING VICTIMS WHO WERE CHILDREN AT THE TIME OF THE
18 OFFENSE; AMENDING SECTIONS 27-2-204, 27-2-216, 41-3-102, 41-3-201, 41-3-202, 41-3-205, 41-3-207, AND
19 45-1-205, MCA; REPEALING SECTION 27-2-217, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE
20 AND APPLICABILITY DATES."

21
22 WHEREAS, childhood sexual abuse is an epidemic in Montana, and there are many instances in recent
23 years of victims of childhood sexual abuse being unable to seek criminal or civil justice as the result of short
24 statute of limitations windows in Montana law; and

25 WHEREAS, the sexual abuse of children is despicable conduct that must be reported, investigated, and
26 prosecuted to create specific deterrence; and

27 WHEREAS, the State of Montana must ensure appropriate action when mandatory reporters and others
28 report childhood sexual abuse; and

29 WHEREAS, regardless of the location of the crime, to protect Montana's children, the Department of
30 Public Health and Human Services and the Department of Justice, working closely with local law enforcement

1 and prosecutors, must respond to allegations of sexual abuse with effective investigations and, when viable,
2 effective prosecutions; and

3 WHEREAS, childhood sexual abuse causes lifelong trauma to survivors of the same; and

4 WHEREAS, the average reporting age of victims of childhood sexual abuse is 52 years old, requiring the
5 Legislature to take a meaningful look into the time periods presently allowed in Montana law to pursue criminal
6 and civil court action; and

7 WHEREAS, upon review, the Legislature has determined that the current truncated time periods to bring
8 criminal prosecutions and civil litigation related to allegations of sexual abuse are not in line with mental health
9 science as to reporting of childhood sexual abuse, are too narrow, and should be extended.

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12
13 **NEW SECTION. Section 1. County attorney certification -- retention of records -- quarterly reports**
14 **-- report to legislature.** (1) Upon receipt of a report from the department, as required in 41-3-202, that includes
15 an allegation of sexual abuse of a child or sexual exploitation of a child, the county attorney shall certify to the
16 person who initially reported the information that the county attorney received the report. The certification must
17 include the date the report was received and the age and gender of the alleged victim. If the report was
18 anonymous, the county attorney shall provide the certification to the department.

19 (2) The county attorney shall retain records relating to the report, including the certification, case notes,
20 correspondence, evaluations, videotapes, and interviews, for 25 years.

21 (3) Each county attorney shall report quarterly to the attorney general. The report must include:

22 (a) the status of the investigation into each report from the department received by the county attorney
23 pursuant to subsection (1); and

24 (b) any exercise of prosecutorial discretion, including a decision to prosecute or to decline to prosecute
25 the acts contained in each report.

26 (4) The attorney general shall report to the law and justice interim committee each year by September
27 1 and as provided in 5-11-210. The reports must:

28 (a) include, for each prosecution initiated during the previous year for child sexual abuse or child sexual
29 exploitation offenses, the name of the defendant, information regarding the result of the prosecution, and any
30 sentence imposed by the court; and

(b) provide information for each county regarding the status of the cases reported to the county attorney pursuant to 41-3-202(1)(b), including data on the total number of cases reported, the number of cases declined for prosecution, and the number of cases remaining under investigation.

Section 2. Section 27-2-204, MCA, is amended to read:

"27-2-204. Tort actions -- general and personal injury. (1) Except as provided in 27-2-216 and 27-2-217, the period prescribed for the commencement of an action upon a liability not founded upon an instrument in writing is within 3 years.

(2) The period prescribed for the commencement of an action to recover damages for the death of one caused by the wrongful act or neglect of another is within 3 years, except when the wrongful death is the result of a homicide, in which case the period is within 10 years.

(3) The period prescribed for the commencement of an action for libel, slander, assault, battery, false imprisonment, or seduction is within 2 years."

Section 3. Section 27-2-216, MCA, is amended to read:

"27-2-216. Tort actions -- childhood sexual abuse. (1) ~~An~~ Except as provided in subsection (3) or (4), ~~an~~ action based on intentional conduct brought by a person for recovery of damages for injury suffered as a result of childhood sexual abuse against the individual who committed the acts must be commenced ~~not later than:~~

(a) ~~3 years after~~ before the victim of the act of childhood sexual abuse that is alleged to have caused the injury reaches 27 years of age; or

(b) not later than 3 years after the plaintiff discovers or reasonably should have discovered that the injury was caused by the act of childhood sexual abuse.

~~(2) It is not necessary for a plaintiff to establish which act, in a series of acts of childhood sexual abuse, caused the injury that is the subject of the suit. The plaintiff may compute the period referred to in subsection (1)(a) from the date of the last act by the same perpetrator.~~

~~(3)(2)~~ (2) As used in this section, "childhood sexual abuse" means any act committed against a plaintiff who was less than 18 years of age at the time the act occurred and that would have been a violation of 45-5-502, 45-5-503, 45-5-504, 45-5-507, 45-5-508, 45-5-602, 45-5-603, 45-5-625, 45-5-627, 45-5-704, 45-5-705, or prior similar laws in effect at the time the act occurred.

(3) In an action for recovery of damages for liability against any entity that owed a duty of care to the

1 plaintiff, where a wrongful or negligent act by an employee, officer, director, official, volunteer, representative, or
2 agent of the entity was a legal cause of the childhood sexual abuse that resulted in the injury to the plaintiff, the
3 action must be commenced:

4 (a) before the victim of the act of childhood sexual abuse that is alleged to have caused the injury reaches
5 27 years of age; or

6 (b) not later than 3 years after the plaintiff discovers or reasonably should have discovered that the injury
7 was caused by the act of childhood sexual abuse.

8 (4) (a) A claim for damages described in subsection (3) that would otherwise be barred because the
9 applicable statute of limitations has or had expired must be revived if the court concludes that the entity against
10 whom the action is commenced, based upon documents or admissions by employees, officers, directors, officials,
11 volunteers, representatives, or agents of the entity, knew, had reason to know, or was otherwise on notice of any
12 unlawful sexual conduct by an employee, officer, director, official, volunteer, representative, or agent and failed
13 to take reasonable steps to prevent future acts of unlawful sexual conduct.

14 (b) A cause of action in which allegations described in subsection (4)(a) are made but that would
15 otherwise be barred by the statute of limitations in subsection (3) may be commenced within 2 years of [the
16 effective date of this act].

17 (5) As used in subsection (4), "admissions" include:

18 (a) a criminal conviction of an employee, officer, director, official, volunteer, representative, or agent of
19 the entity for an offense of childhood sexual abuse;

20 (b) a written statement;

21 (c) a documented or recorded oral statement; or

22 (d) statements made in:

23 (i) a plea agreement or change of plea hearing;

24 (ii) a trial; or

25 (iii) a settlement agreement.

26 ~~(4)~~(6) The provisions of 27-2-401 apply to this section."
27

28 **Section 4.** Section 41-3-102, MCA, is amended to read:

29 **"41-3-102. Definitions.** As used in this chapter, the following definitions apply:

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

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

(ii) willfully surrendering physical custody for a period of 6 months and during that period not manifesting to the child and the person having physical custody of the child a firm intention to resume physical custody or to make permanent legal arrangements for the care of the child;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) abandonment.

(b) (i) The term includes:

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

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

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

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

(d) The term does not include self-defense, defense of others, or action taken to prevent the child from self-harm that does not constitute physical or psychological harm to a child.

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

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

(10) "Family group decisionmaking meeting" means a meeting that involves family members in either developing treatment plans or making placement decisions, or both.

(11) "Indian child" means any unmarried person who is under 18 years of age and who is either:

(a) a member of an Indian tribe; or

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

(12) "Indian child's tribe" means:

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

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

(13) "Indian custodian" means any Indian person who has legal custody of an Indian child under tribal

1 law or custom or under state law or to whom temporary physical care, custody, and control have been transferred
2 by the child's parent.

3 (14) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians
4 recognized by:

5 (a) the state of Montana; or

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

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

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

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

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

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

22 (20) "Physical neglect" means either failure to provide basic necessities, including but not limited to
23 appropriate and adequate nutrition, protective shelter from the elements, and appropriate clothing related to
24 weather conditions, or failure to provide cleanliness and general supervision, or both, or exposing or allowing the
25 child to be exposed to an unreasonable physical or psychological risk to the child.

26 (21) (a) "Physical or psychological harm to a child" means the harm that occurs whenever the parent or
27 other person responsible for the child's welfare:

28 (i) inflicts or allows to be inflicted upon the child physical abuse, physical neglect, or psychological abuse
29 or neglect;

30 (ii) commits or allows sexual abuse or exploitation of the child;

1 (iii) induces or attempts to induce a child to give untrue testimony that the child or another child was
2 abused or neglected by a parent or other person responsible for the child's welfare;

3 (iv) causes malnutrition or a failure to thrive or otherwise fails to supply the child with adequate food or
4 fails to supply clothing, shelter, education, or adequate health care, though financially able to do so or offered
5 financial or other reasonable means to do so;

6 (v) exposes or allows the child to be exposed to an unreasonable risk to the child's health or welfare by
7 failing to intervene or eliminate the risk; or

8 (vi) abandons the child.

9 (b) The term does not include a youth not receiving supervision solely because of parental inability to
10 control the youth's behavior.

11 (22) (a) "Protective services" means services provided by the department:

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

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

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

17 (b) The term includes emergency protective services provided pursuant to 41-3-301, voluntary protective
18 services provided pursuant to 41-3-302, and court-ordered protective services provided pursuant to parts 4 and
19 6 of this chapter.

20 (23) (a) "Psychological abuse or neglect" means severe maltreatment through acts or omissions that are
21 injurious to the child's emotional, intellectual, or psychological capacity to function, including the commission of
22 acts of violence against another person residing in the child's home.

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

25 (24) "Qualified expert witness" as used in cases involving an Indian child in proceedings subject to the
26 federal Indian Child Welfare Act means:

27 (a) a member of the Indian child's tribe who is recognized by the tribal community as knowledgeable in
28 tribal customs as they pertain to family organization and child-rearing practices;

29 (b) a lay expert witness who has substantial experience in the delivery of child and family services to
30 Indians and extensive knowledge of prevailing social and cultural standards and child-rearing practices within the

1 Indian child's tribe; or

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

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

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

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

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

16 (28) "Sexual exploitation" means:

17 (a) allowing, permitting, or encouraging a child to engage in a prostitution offense, as described in
18 45-5-601 through 45-5-603, ~~or~~;

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

20 (c) allowing, permitting, or encouraging sexual servitude as described in 45-5-704 or 45-5-705.

21 (29) (a) "Social worker" means an employee of the department who, before the employee's field
22 assignment, has been educated or trained in a program of social work or a related field that includes cognitive
23 and family systems treatment or who has equivalent verified experience or verified training in the investigation
24 of child abuse, neglect, and endangerment.

25 (b) This definition does not apply to any provision of this code that is not in this chapter.

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

30 (31) "Unfounded" means that after an investigation, the investigating person has determined that the

1 reported abuse, neglect, or exploitation has not occurred.

2 (32) "Unsubstantiated" means that after an investigation, the investigator was unable to determine by a
3 preponderance of the evidence that the reported abuse, neglect, or exploitation has occurred.

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

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

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

11 (ii) the provision of treatment would:

12 (A) merely prolong dying;

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

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

15 (iii) the provision of treatment would be virtually futile in terms of the survival of the infant and the
16 treatment itself under the circumstances would be inhumane. For purposes of this subsection (33), "infant" means
17 an infant less than 1 year of age or an infant 1 year of age or older who has been continuously hospitalized since
18 birth, who was born extremely prematurely, or who has a long-term disability. The reference to less than 1 year
19 of age may not be construed to imply that treatment should be changed or discontinued when an infant reaches
20 1 year of age or to affect or limit any existing protections available under state laws regarding medical neglect
21 of children 1 year of age or older.

22 (34) "Youth in need of care" means a youth who has been adjudicated or determined, after a hearing,
23 to be or to have been abused, neglected, or abandoned."

24
25 **Section 5.** Section 41-3-201, MCA, is amended to read:

26 **"41-3-201. Reports.** (1) When the professionals and officials listed in subsection (2) know or have
27 reasonable cause to suspect, as a result of information they receive in their professional or official capacity, that
28 a child is abused or neglected by anyone regardless of whether the person suspected of causing the abuse or
29 neglect is a parent or other person responsible for the child's welfare, they shall report the matter promptly to the
30 department of public health and human services.

(2) Professionals and officials required to report are:

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

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

(c) religious healers;

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

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

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

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

(h) a member of the clergy, as defined in 15-6-201(2)(b);

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

(j) an employee of an entity that contracts with the department to provide direct services to children; and

(k) an employee of the department while in conduct of the employee's duties.

(3) A professional listed in subsection (2)(a) or (2)(b) involved in the delivery or care of an infant shall report to the department any infant known to the professional to be affected by a dangerous drug, as defined in 50-32-101.

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

(5) (a) When a professional or official required to report under subsection (2) makes a report, the department may share information with:

(i) that professional or official;

(ii) other individuals with whom the professional or official works in an official capacity if the individuals are part of a team that responds to matters involving the child or the person about whom the report was made and the professional or official has asked that the information be shared with the individuals; or

(iii) the child abuse and neglect review commission established in 2-15-2019.

(b) The department may provide information in accordance with 41-3-202(8) and also share information

1 about the investigation, limited to its outcome and any subsequent action that will be taken on behalf of the child
2 who is the subject of the report.

3 (c) Individuals who receive information pursuant to this subsection (5) shall maintain the confidentiality
4 of the information as required by 41-3-205.

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

7 (b) A member of the clergy or a 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 to the
9 member of the clergy or the priest in that person's capacity as a member of the clergy or as a priest;

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

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

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

16 (7) 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 the
18 child's care;

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

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

24 (d) the facts that led the person reporting to believe that the child has suffered injury or injuries or willful
25 neglect, within the meaning of this chapter. (Subsection (5)(a)(iii) terminates September 30, 2021--sec. 12, Ch.
26 235, L. 2017.)"

27
28 **Section 6.** Section 41-3-202, MCA, is amended to read:

29 **"41-3-202. Action on reporting.** (1) (a) Upon receipt of a report that a child is or has been abused or
30 neglected, the department shall promptly assess the information contained in the report and make a

1 determination regarding the level of response required and the timeframe within which action must be initiated.

2 (b) Upon receipt of a report that includes an allegation of sexual abuse or sexual exploitation or if the
3 department determines during any investigation that the circumstances surrounding an allegation of child abuse
4 or neglect include an allegation of sexual abuse or sexual exploitation, the department shall immediately report
5 the allegation to the county attorney of the county in which the acts that are the subject of the report occurred.

6 (c) If the department determines that an investigation is required, a social worker, the county attorney,
7 or a peace officer shall promptly conduct a thorough investigation into the circumstances surrounding the
8 allegations of abuse or neglect of the child. The investigation may include an investigation at the home of the child
9 involved, the child's school or day-care facility, or any other place where the child is present and into all other
10 nonfinancial matters that in the discretion of the investigator are relevant to the investigation. In conducting an
11 investigation under this section, a social worker may not inquire into the financial status of the child's family or
12 of any other person responsible for the child's care, except as necessary to ascertain eligibility for state or federal
13 assistance programs or to comply with the provisions of 41-3-446.

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

18 (3) The social worker is responsible for assessing the family and planning for the child. If the child is
19 treated at a medical facility, the social worker, county attorney, or peace officer, consistent with reasonable
20 medical practice, has the right of access to the child for interviews, photographs, and securing physical evidence
21 and has the right of access to relevant hospital and medical records pertaining to the child. If an interview of the
22 child is considered necessary, the social worker, county attorney, or peace officer may conduct an interview of
23 the child. The interview may be conducted in the presence of the parent or guardian or an employee of the school
24 or day-care facility attended by the child.

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

27 (5) (a) If from the investigation the department has reasonable cause to suspect that the child suffered
28 abuse or neglect, the department may provide emergency protective services to the child, pursuant to 41-3-301,
29 or voluntary protective services pursuant to 41-3-302, and may provide protective services to any other child
30 under the same care. The department shall:

(i) after interviewing the parent or guardian, if reasonably available, document its determination regarding abuse or neglect of a child; and

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

(b) If from the investigation it is determined that the child has not suffered abuse or neglect and the initial report is determined to be unfounded, the department, ~~and the social worker, county attorney,~~ or peace officer who conducted the investigation into the circumstances surrounding the allegations of abuse or neglect shall destroy all of their records concerning the report and the investigation. The destruction must be completed within 30 days of the determination that the child has not suffered abuse or neglect.

(c) (i) If the report is unsubstantiated, the department and the social worker who conducted the investigation into the circumstances surrounding the initial allegations of abuse or neglect shall destroy all of the records, except for medical records, concerning the unsubstantiated report and the investigation within 30 days after the end of the 3-year period starting from the date the report was determined to be unsubstantiated, unless:

(A) there had been a previous or there is a subsequent substantiated report concerning the same person; or

(B) an order has been issued under this chapter based on the circumstances surrounding the initial allegations.

(ii) A person who is the subject of an unsubstantiated report that was made prior to October 1, 2003, and after which a period of 3 years has elapsed without there being submitted a subsequent substantiated report or an order issued under this chapter based on the circumstances surrounding the initial allegations may request that the department destroy all of the records concerning the unsubstantiated report as provided in subsection (5)(c)(i).

(6) The investigating social worker, within 60 days of commencing an investigation, shall also furnish a written report to the department and, upon request, to the family. Subject to subsections (5)(b) and (5)(c), the department shall maintain a record system documenting investigations and determinations of child abuse and neglect cases. Unless records are required to be destroyed under subsections (5)(b) and (5)(c), the department shall retain records relating to the report, including case notes, correspondence, evaluations, videotapes, and interviews, for 25 years.

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

1 department.

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

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 and its
8 local affiliate, the local office of public assistance, the county attorney, and the court concerning actions taken
9 under this chapter and all records concerning reports of child abuse and neglect must be kept confidential except
10 as provided by this section. Except as provided in subsections (9) and (10), a person who purposely or knowingly
11 permits or encourages the unauthorized dissemination of the contents of case records is guilty of a misdemeanor.

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

15 (3) Records, including case notes, correspondence, evaluations, videotapes, and interviews, unless
16 otherwise protected by this section or unless disclosure of the records is determined to be detrimental to the child
17 or harmful to another person who is a subject of information contained in the records, may be disclosed to the
18 following persons or entities in this state and any other state or country:

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

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

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

28 (d) a parent, grandparent, aunt, uncle, brother, sister, guardian, mandatory reporter provided for in
29 41-3-201(2) and (5), or person designated by a parent or guardian of the child who is the subject of a report in
30 the records or other person responsible for the child's welfare, without disclosure of the identity of any person who

1 reported or provided information on the alleged child abuse or neglect incident contained in the records;

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

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

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

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

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

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

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

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

18 (m) a child fatality review team recognized by the department[, including the child abuse and neglect
19 review commission established in 2-15-2019];

20 (n) a department or agency investigating an applicant for a license or registration that is required to
21 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 with
24 children through employment or volunteer activities. A request for information under this subsection (3)(o) must
25 be made in writing. Disclosure under this subsection (3)(o) is limited to information that indicates a risk to children,
26 persons with developmental disabilities, or older persons posed by the person about whom the information is
27 sought, as determined by the department.

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

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

(r) an agency of an Indian tribe, a qualified expert witness, or the relatives of an Indian child if disclosure of the records is necessary to meet requirements of the federal Indian Child Welfare Act;

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

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

(u) a foster care review committee established under 41-3-115 or, when applicable, a citizen review board established under Title 41, chapter 3, part 10;

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

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

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

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

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

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

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

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

(iii) before reviewing the records, the member:

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

(B) receives from the department an orientation of the content and structure of the records.

1 (b) Records disclosed pursuant to subsection (4)(a) are confidential, must be made available for the
2 member to view at a location determined by the department but may not be copied, recorded, photographed, or
3 otherwise replicated by the member, and must remain solely in the department's possession.

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

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

8 (i) the attorney general;

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

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

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

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

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

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

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

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

23 (c) (i) The department shall promptly disclose the results of an investigation to an individual described
24 in subsection (5)(a) or to a county interdisciplinary child information and school safety team established pursuant
25 to 52-2-211 upon the determination that:

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

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

30 (ii) For the purposes of this subsection (5)(c), exposure occurs when a child is caused or permitted to

1 inhale, have contact with, or ingest a Schedule I or Schedule II drug that is prohibited by state law or have contact
2 with drug paraphernalia as defined in 45-10-101.

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

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

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

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

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

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

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

26 (12) Copies of records, evaluations, reports, or other evidence obtained or generated pursuant to this
27 section that are provided to the parent, grandparent, aunt, uncle, brother, sister, guardian, or parent's or
28 guardian's attorney must be provided without cost. (Bracketed language in subsection (3)(m) terminates
29 September 30, 2021--sec. 12, Ch. 235, L. 2017.) "

30

1 **Section 8.** Section 41-3-207, MCA, is amended to read:

2 **"41-3-207. Penalty for failure to report.** (1) Any person, official, or institution required by ~~law~~ 41-3-201
3 to report known or suspected child abuse or neglect who fails to do so or who prevents another person from
4 reasonably doing so is civilly liable for the damages proximately caused by ~~such failure or prevention~~ the act or
5 omission.

6 (2) ~~Any~~ Except as provided in subsection (3), any person or official required by ~~law~~ 41-3-201 to report
7 known or suspected child abuse or neglect who purposely or knowingly fails to report known child abuse or
8 neglect or purposely or knowingly prevents another person from ~~doing so~~ making a report is guilty of a
9 misdemeanor.

10 (3) Any person or official required by 41-3-201 to report known or suspected sexual abuse or sexual
11 exploitation who purposely or knowingly fails to report known sexual abuse or sexual exploitation of a child or
12 purposely or knowingly prevents another person from making a report is guilty of a felony and shall be imprisoned
13 in the state prison for a term not to exceed 5 years or fined an amount not to exceed \$10,000, or both."

14
15 **Section 9.** Section 45-1-205, MCA, is amended to read:

16 **"45-1-205. General time limitations.** (1) (a) A prosecution for deliberate, mitigated, or negligent
17 homicide may be commenced at any time.

18 (b) Except as provided in subsection (9), a prosecution for a felony offense under 45-5-502, 45-5-503,
19 45-5-504, ~~45-5-507(4) or (5)~~ 45-5-507, 45-5-508, 45-5-602, 45-5-603, 45-5-625, or 45-5-627, 45-5-704, or
20 45-5-705 may be commenced within 10 years after it is committed, except that it may be commenced ~~within 20~~
21 ~~years after the victim reaches 18 years of age~~ at any time if the victim was less than 18 years of age at the time
22 that the offense occurred. A prosecution for a misdemeanor offense under those provisions may be commenced
23 within 1 year after the offense is committed, except that it may be commenced ~~within 5 years after the victim~~
24 ~~reaches 18 years of age~~ at any time if the victim was less than 18 years of age at the time that the offense
25 occurred.

26 (c) ~~Except as provided in subsection (9), a prosecution under 45-5-507(1), (2), (3), or (6) may be~~
27 ~~commenced within 5 years after the victim reaches 18 years of age if the victim was less than 18 years of age~~
28 ~~at the time that the offense occurred.~~

29 (2) Except as provided in subsection (7)(b) or as otherwise provided by law, prosecutions for other
30 offenses are subject to the following periods of limitation:

1 (a) A prosecution for a felony must be commenced within 5 years after it is committed.

2 (b) A prosecution for a misdemeanor must be commenced within 1 year after it is committed.

3 (3) The periods prescribed in subsection (2) are extended in a prosecution for theft involving a breach
4 of fiduciary obligation to an aggrieved person as follows:

5 (a) if the aggrieved person is a minor or incompetent, during the minority or incompetency or within 1
6 year after the termination of the minority or incompetency;

7 (b) in any other instance, within 1 year after the discovery of the offense by the aggrieved person or by
8 a person who has legal capacity to represent an aggrieved person or has a legal duty to report the offense and
9 is not personally a party to the offense or, in the absence of discovery, within 1 year after the prosecuting officer
10 becomes aware of the offense.

11 (4) The period prescribed in subsection (2) must be extended in a prosecution for unlawful use of a
12 computer, and prosecution must be brought within 1 year after the discovery of the offense by the aggrieved
13 person or by a person who has legal capacity to represent an aggrieved person or has a legal duty to report the
14 offense and is not personally a party to the offense or, in the absence of discovery, within 1 year after the
15 prosecuting officer becomes aware of the offense.

16 (5) The period prescribed in subsection (2) is extended in a prosecution for misdemeanor fish and wildlife
17 violations under Title 87, and prosecution must be brought within 3 years after an offense is committed.

18 (6) The period prescribed in subsection (2)(b) is extended in a prosecution for misdemeanor violations
19 of the laws regulating the activities of outfitters and guides under Title 37, chapter 47, and prosecution must be
20 brought within 3 years after an offense is committed.

21 (7) (a) An offense is committed either when every element occurs or, when the offense is based upon
22 a continuing course of conduct, at the time when the course of conduct is terminated. Time starts to run on the
23 day after the offense is committed.

24 (b) A prosecution for theft under 45-6-301 may be commenced at any time during the 5 years following
25 the date of the theft, whether or not the offender is in possession of or otherwise exerting unauthorized control
26 over the property at the time the prosecution is commenced. After the 5-year period ends, a prosecution may be
27 commenced at any time if the offender is still in possession of or otherwise exerting unauthorized control over
28 the property, except that the prosecution must be commenced within 1 year after the investigating officer
29 discovers that the offender still possesses or is otherwise exerting unauthorized control over the property.

30 (8) A prosecution is commenced either when an indictment is found or an information or complaint is

1 filed.

2 (9) If a suspect is conclusively identified by DNA testing after a time period prescribed in subsection
3 (1)(b) ~~or (1)(e)~~ has expired, a prosecution may be commenced within 1 year after the suspect is conclusively
4 identified by DNA testing.

5 (10) A prosecution for reckless driving resulting in death may be commenced within 3 years after the
6 offense is committed.

7 (11) A prosecution of careless driving resulting in death may be commenced within 3 years after the
8 offense is committed."
9

10 **NEW SECTION. Section 10. Repealer.** The following section of the Montana Code Annotated is
11 repealed:

12 27-2-217. Tort actions -- ritual abuse of minor.
13

14 **NEW SECTION. Section 11. Codification instruction.** [Section 1] is intended to be codified as an
15 integral part of Title 41, chapter 3, part 2, and the provisions of Title 41, chapter 3, part 2, apply to [section 1].
16

17 **NEW SECTION. Section 12. Saving clause.** The repeal of 27-2-217 in [this act] does not affect rights
18 and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date
19 of this act].
20

21 **NEW SECTION. Section 13. 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 applications,
23 the part remains in effect in all valid applications that are severable from the invalid applications.
24

25 **NEW SECTION. Section 14. Effective date.** [This act] is effective on passage and approval.
26

27 **NEW SECTION. Section 15. Retroactive applicability.** (1) Except as provided in subsection (2),
28 [section 3] applies to all causes of action now pending or commenced on or after [the effective date of this act],
29 regardless of when the cause of action arose, as well as to previously filed actions that have been dismissed on
30 the basis of an expired statute of limitations. To this extent, [section 3] applies retroactively, within the meaning

1 of 1-2-109.

2 (2) [Section 3] does not apply to:

3 (a) any claim that has been litigated to finality on the merits in any court of competent jurisdiction prior
4 to [the effective date of this act]; or

5 (b) any settlement agreement reached prior to [the effective date of this act] for all claims alleging
6 childhood sexual abuse.

7
8 **NEW SECTION. Section 16. Applicability.** (1) [Section 8(3)] applies to offenses committed on or after
9 [the effective date of this act].

10 (2) [Section 9] applies:

11 (a) to offenses committed on or after [the effective date of this act]; and

12 (b) to offenses committed before [the effective date of this act] and for which the statute of limitations has
13 not expired on [the effective date of this act].

14 - END -