

## HOUSE BILL NO. 223

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS RELATING TO SERVICE OF PROCESS  
5 IN CHILD ABUSE AND NEGLECT PROCEEDINGS; CLARIFYING PROVISIONS RELATING TO SERVICE OF  
6 PROCESS BY PUBLICATION IN CHILD ABUSE AND NEGLECT PROCEEDINGS; AMENDING SECTIONS  
7 41-3-401, 41-3-403, AND 41-3-608, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

8

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

10

11 NEW SECTION. **Section 1. Service of process -- service by publication -- effect.** (1) Except as  
12 provided in subsection (2), service of process under this chapter must be made as provided in the Montana  
13 Rules of Civil Procedure.

14 (2) If a person cannot be served personally, the person may be served by publication as provided  
15 in [section 2]. Publication constitutes conclusive evidence of service, and a hearing must then proceed at  
16 the time and date set, with or without the appearance of the person served by publication. At or after the  
17 hearing, the court may issue an order that will adjudicate the interests of the person served by publication.

18 (3) If a parent cannot be identified or found ~~and if an affidavit required by [section 2] is filed~~ PRIOR  
19 TO THE INITIAL HEARINGS ALLOWED BY PART 4, adjudication may be completed and disposition may proceed THE  
20 COURT MAY GRANT THE FOLLOWING RELIEF, PENDING SERVICE BY PUBLICATION ON THE PARENT WHO CANNOT BE IDENTIFIED  
21 OR FOUND AND based upon service of process on only the parent, guardian, or other person having legal  
22 custody of the child:

23 (A) IMMEDIATE PROTECTION AND EMERGENCY PROTECTIVE SERVICES;

24 (B) TEMPORARY INVESTIGATIVE AUTHORITY; AND

25 (C) TEMPORARY LEGAL CUSTODY.

26

27 NEW SECTION. **Section 2. Service by publication -- summons -- form.** (1) Before service by  
28 publication is authorized in a proceeding under this chapter, the department shall file with the court an  
29 affidavit stating that, after due diligence, the person cannot be identified or found and stating ~~what~~ THE  
30 DILIGENT efforts ~~have been~~ made to identify, locate, and serve the person. The affidavit is sufficient

1 evidence of the diligence of any inquiry made by the department. The affidavit may be combined with any  
2 other affidavit filed by the department. Upon complying with this subsection, the department may obtain  
3 an order for the service to be made upon the party by publication. The order may be issued by either the  
4 judge or the clerk of the court.

5 (2) Service by publication must be made by publishing notice three times, once each week for 3  
6 successive weeks:

7 (a) in a newspaper in a community in which the publication can reasonably be calculated to be  
8 seen by the person, based upon the last-known address ~~AND BELIEVED- OR WHEREABOUTS, IF KNOWN,~~ of the  
9 person, whether inside or outside this state; or

10 (b) if the identity or location of the person is unknown, in a newspaper in the county in which the  
11 action is pending, if a newspaper is published in the county, and, if a newspaper is not published in the  
12 county, in a newspaper published in an adjoining county and having a general circulation in the county.

13 (3) Service by publication is complete on the date of the last publication required by subsection  
14 (2).

15 (4) A summons required under this chapter must:

16 (a) be directed to the parent, legal guardian, other person having legal custody of the child, or any  
17 other person who is required to be served; and

18 (b) be signed by the clerk of court, be under the seal of the court, and contain:

19 (i) the name of the court and the cause number;

20 (ii) the initials of the child who is the subject of the proceedings;

21 (iii) the name of the child's parents, if known;

22 (iv) the time within which an interested person shall appear;

23 (v) the department's address;

24 (vi) a statement in general terms of the nature of the proceedings, including the date and place of  
25 birth of the child, the date and place of the hearing, and the phone number of the clerk of the court in  
26 which the hearing is scheduled; and

27 (vii) notification apprising the person served by publication that failure to appear at the hearing will  
28 constitute a denial of interest in the child, which denial may result, without further notice of this  
29 proceeding or any subsequent proceeding, in judgment by default being entered for the relief requested  
30 in the petition.

1

2 NEW SECTION. **Section 3. Putative fathers -- service by publication -- continuation of**  
 3 **proceedings.** (1) Reasonable efforts must be made to resolve issues of paternity, if any, as early as  
 4 possible in proceedings under this chapter. The department shall make every reasonable effort to obtain  
 5 service of process of a petition on a putative father, as defined in 42-2-201.

6 (2) If a putative father cannot be served personally, the putative father may be served by  
 7 publication as provided in [sections 1 and 2].

8 (3) Regardless of the provisions of subsections (1) and (2) ~~and if an affidavit required by [section~~  
 9 ~~2] is filed, adjudication may be completed and disposition may proceed~~ IF A PUTATIVE FATHER CANNOT BE  
 10 IDENTIFIED OR FOUND PRIOR TO THE INITIAL HEARINGS ALLOWED BY PART 4, THE COURT MAY GRANT THE FOLLOWING  
 11 RELIEF, PENDING SERVICE BY PUBLICATION ON THE PUTATIVE FATHER AND based upon service of process on only the  
 12 parent, guardian, or other person having legal custody of the child:

13 (A) IMMEDIATE PROTECTION AND EMERGENCY PROTECTIVE SERVICES;

14 (B) TEMPORARY INVESTIGATIVE AUTHORITY; AND

15 (C) TEMPORARY LEGAL CUSTODY.

16 (4) Throughout the proceedings, the court, in its discretion, may order the department to continue  
 17 to attempt to identify, locate, and serve a putative father.

18 ~~(4)(5)~~ A court may order termination of the parental rights of a putative father under this chapter  
 19 based on service by publication if the provisions of [sections 1 and 2] have been met.

20

21 **Section 4.** Section 41-3-401, MCA, is amended to read:

22 **"41-3-401. Abuse and neglect petitions.** (1) The county attorney, attorney general, or an attorney  
 23 hired by the county is responsible for filing all petitions under this chapter. The petition must be  
 24 accompanied by an affidavit by the department alleging that the child appears to have been abused,  
 25 neglected, or abandoned and stating the basis for the allegation.

26 (2) Upon receipt of a petition, except a petition for temporary investigative authority, the court  
 27 shall set a date for an adjudicatory hearing on the petition. The petitions must be given preference by the  
 28 court in setting hearing dates.

29 (3) A petition alleging abuse or neglect is a civil action brought in the name of the state of  
 30 Montana. The Montana Rules of Civil Procedure apply except as modified in this part. Proceedings under

1 a petition are not a bar to criminal prosecution.

2 (4) The parents or parent, guardian, or other person or agency having legal custody of the youth  
3 named in the petition, if residing in the state, must be served personally with a copy of the petition and  
4 summons at least 5 working days before the date set for hearing. If the person or agency cannot be served  
5 personally, the person or agency may be served by publication ~~in the manner provided by the Montana~~  
6 ~~Rules of Civil Procedure for other types of proceedings as provided in [sections 1 and 2].~~

7 (5) If personal service cannot be made upon the parents or parent, guardian, or other person or  
8 agency having legal custody, the court shall appoint an attorney to represent the unavailable party when  
9 in the opinion of the court the interests of justice require.

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

12 (7) Any person interested in any cause under this chapter has the right to appear. Any foster  
13 parent, preadoptive parent, or relative caring for the child must be given legal notice by the attorney filing  
14 the petition of all judicial hearings for the child and must be given an opportunity to be heard. The right  
15 to appear or to be heard does not make that person a party to the action. Any foster parent, preadoptive  
16 parent, or relative caring for the child must be given notice of all reviews by the reviewing body.

17 (8) Except when the proceeding is instituted or commenced at the request of the department, a  
18 citation must be issued and served upon a representative of the department before the court hearing.

19 (9) The petition must:

20 (a) state the nature of the alleged abuse or neglect;

21 (b) state the full name, age, and address of the youth and the name and address of the youth's  
22 parents or guardian or person having legal custody of the youth;

23 (c) state the names, addresses, and relationship to the youth of all persons who are necessary  
24 parties to the action.

25 (10) The petition may ask for the following relief:

26 (a) temporary investigative authority and protective services, as provided in 41-3-402;

27 (b) temporary legal custody, as provided in 41-3-406;

28 (c) appointment of a guardian pursuant to 41-3-421;

29 (d) termination of the parent-child legal relationship and either:

30 (i) permanent legal custody with the right to consent to adoption, as provided in 41-3-607; or

1 (ii) appointment of a guardian; or

2 (e) any combination of the provisions of subsections (10)(a) through (10)(d) or any other relief that  
3 may be required for the best interests of the child.

4 (11) A request for a determination that reunification services need not be provided pursuant to  
5 41-3-403 may be made in conjunction with the filing of a petition requesting relief, as provided for in  
6 subsection (10) of this section.

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

8 (13) The court may at any time on its own motion or the motion of any party appoint counsel for  
9 any indigent party."

10

11 **Section 5.** Section 41-3-403, MCA, is amended to read:

12 **"41-3-403. Order for immediate protection of youth.** (1) (a) Upon the filing of a petition for  
13 temporary investigative authority and protective services, the court, after consideration of the parents'  
14 statements, if any, included with the petition and any accompanying affidavit or report to the court, may  
15 issue an order granting relief that may be required for the immediate protection of the youth.

16 (b) The order, along with the petition and supporting documents, must be served ~~pursuant to the~~  
17 ~~Montana Rules of Civil Procedure~~ on the person or persons named in the order as provided in [sections 1  
18 and 2]. When the youth is placed in a medical facility or protective facility, the department shall notify the  
19 parents or parent, guardian, or other person having legal custody of the youth, at the time the placement  
20 is made or as soon after placement as possible.

21 (c) The order must require the person served to comply immediately with the terms of the order  
22 and to appear before the court issuing the order on the date specified for a show cause hearing. The show  
23 cause hearing must be conducted within 20 days of the issuance of the order by the judge or a master  
24 appointed by the judge. The person filing the petition has the burden of presenting evidence establishing  
25 probable cause for the issuance of the order. At the show cause hearing, the court shall provide an  
26 opportunity for a parent or guardian, if present, and any other person having relevant knowledge to provide  
27 relevant testimony. The court may consider all relevant evidence in accordance with the rules of civil  
28 procedure as modified by this part, but may in its discretion limit testimony and evidence to only that  
29 which is relevant to the issues of removal from the home and the child's need for continued protection.  
30 The court may amend the order. Except as otherwise provided in this part, the rules of civil procedure

1 apply. Hearsay evidence of statements made by the affected youth is admissible at the hearing or at a  
2 contested case proceeding held pursuant to Title 2, chapter 4, part 6, that results from adverse licensing  
3 action taken by the department.

4 (d) If the child is not returned home after the show cause hearing, the person served may request  
5 that a local citizen review board, if available pursuant to part 10, review the case within 30 days of the  
6 show cause hearing and make a recommendation to the district court, as provided in 41-3-1010.

7 (e) Upon a failure to comply or show cause, the court may hold the person in contempt or place  
8 temporary physical custody of the youth with the department until further order.

9 (2) At the conclusion of a show cause hearing, in an order granting or denying relief, the court  
10 shall make a finding regarding the reasonableness of agency efforts to prevent the child's removal from  
11 the home or to make it possible to safely return the child to the child's home. In determining preservation  
12 or reunification services to be provided and in making reasonable efforts at providing preservation or  
13 reunification services, the child's health and safety are of paramount concern. Reasonable efforts to  
14 provide preservation or reunification services are not required if the court finds that the parent has:

15 (a) subjected a child to aggravated circumstances, including but not limited to abandonment,  
16 torture, chronic abuse, or sexual abuse or chronic, severe neglect of a child;

17 (b) committed, aided, abetted, attempted, conspired, or solicited deliberate or mitigated deliberate  
18 homicide of a child;

19 (c) committed aggravated assault against a child;

20 (d) committed neglect of a child that resulted in serious bodily injury or death; or

21 (e) had parental rights to the child's sibling or other child of the parent involuntarily terminated and  
22 the circumstances related to the termination of parental rights are relevant to the parent's ability to  
23 adequately care for the child at issue.

24 (3) Preservation or reunification services are not required for a putative father, as defined in  
25 42-2-201, if the court makes a finding that the putative father has failed to do any of the following:

26 (a) contribute to the support of the child for an aggregate period of 1 year, although able to do  
27 so;

28 (b) establish a substantial relationship with the child. A substantial relationship is demonstrated  
29 by:

30 (i) visiting the child at least monthly when physically and financially able to do so; or

1 (ii) having regular contact with the child or with the person or agency having the care and custody  
2 of the child when physically and financially able to do so; and

3 (iii) manifesting an ability and willingness to assume legal and physical custody of the child if the  
4 child was not in the physical custody of the other parent.

5 (c) register with the putative father registry pursuant to Title 42, chapter 2, part 2, and the person  
6 has not been:

7 (i) adjudicated in Montana to be the father of the child for the purposes of child support; and

8 (ii) recorded on the child's birth certificate as the child's father.

9 (4) If the court finds that preservation or reunification services are not necessary pursuant to  
10 subsection (2), a permanency hearing must be held within 30 days of that determination and reasonable  
11 efforts must be made to place the child in a timely manner in accordance with the permanency plan and  
12 to complete whatever steps are necessary to finalize the permanent placement of the child.

13 (5) If reasonable efforts have been made to prevent removal of a child from the home or to return  
14 a child to the child's home but continuation of the efforts is determined by the court to be inconsistent  
15 with the permanency plan for the child, the department shall make reasonable efforts to place the child  
16 in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary  
17 to finalize the permanent placement of the child. Reasonable efforts to place a child permanently for  
18 adoption or to make an alternative out-of-home permanent placement may be made concurrently with  
19 reasonable efforts to return a child to the child's home.

20 (6) The court may grant the following kinds of relief:

21 (a) right of entry by a peace officer or department worker;

22 (b) medical and psychological evaluation of the youth or parents, guardians, or person having  
23 physical or legal custody;

24 (c) requirement that the youth, parents, guardians, or person having physical or legal custody  
25 receive counseling services;

26 (d) placement of the youth in a temporary medical facility or a facility for protection of the youth;

27 (e) requirement that the parents, guardian, or other person having physical or legal custody furnish  
28 information that the court may designate, including the name and address of a putative father, as defined  
29 in 42-2-201, for the purpose of obtaining service of process in the proceeding;

30 (f) inquiry into the financial ability of the parents, guardian, or other person having custody of the

1 youth to contribute to the costs for the care, custody, and treatment of the youth and requirement of a  
 2 contribution for those costs pursuant to the requirements of 41-3-411; or

3 (g) other temporary disposition that may be required in the best interests of the youth that does  
 4 not require an expenditure of money by the department unless the department is notified and a court  
 5 hearing is set in a timely manner on the proposed expenditure. The department is the payor of last resort  
 6 after all family, insurance, and other resources have been examined.

7 (7) An order for temporary investigative authority and protective services may not be issued for  
 8 a period longer than 90 days following the show cause hearing and must be limited to one extension of  
 9 90 days. Before the expiration of the time provided for in an order for temporary investigative authority  
 10 and protective services, the county attorney, the attorney general, or an attorney hired by the county shall  
 11 file a petition for one of the following:

12 (a) limited emancipation;

13 (b) temporary legal custody;

14 (c) termination of the parent-child legal relationship and permanent legal custody with the right  
 15 to consent to adoption; or

16 (d) dismissal.

17 (8) Notwithstanding the above time limits, the court may continue an order for temporary  
 18 investigative authority pending a hearing on a petition provided for in subsection (7).

19 (9) If the time limitations of this section are not met, the court shall review the reasons for the  
 20 failure and order an appropriate remedy that considers the best interests of the child."

21

22 **Section 6.** Section 41-3-608, MCA, is amended to read:

23 "**41-3-608. Notice.** Before a termination of the parent-child legal relationship ~~based on~~  
 24 ~~abandonment~~ may be ordered, the court shall determine whether the ~~rules of civil procedure~~ provisions  
 25 of [sections 1 and 2] relating to service of process ~~on the parents~~ have been followed. ~~If the parents were~~  
 26 ~~not served personally, the petitioner must file an affidavit stating what efforts have been made to locate~~  
 27 ~~the parent or parents of the child. The affidavit must be filed at least 10 days prior to the hearing."~~

28

29 NEW SECTION. **Section 7. Codification instruction.** [Sections 1 through 3] are intended to be  
 30 codified as an integral part of Title 41, chapter 3, part ~~4-1-4~~, and the provisions of Title 41, chapter 3, part

1 ~~4~~, apply to [sections 1 through 3].

2

3 NEW SECTION. **Section 8. Saving clause.** [This act] does not affect rights and duties that  
4 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this  
5 act].

6

7 NEW SECTION. **Section 9. Effective date.** [This act] is effective on passage and approval.

8

- END -