

1 HOUSE BILL NO. 432

2 INTRODUCED BY K. DUDIK

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING CHILD ABUSE AND NEGLECT LAWS;
5 PROVIDING THAT COURT-APPOINTED SPECIAL ADVOCATES MAY ACT AS GUARDIAN AD LITEMS IN
6 ABUSE AND NEGLECT PROCEEDINGS; REQUIRING PARENTS TO APPEAR AT HEARINGS UNLESS GOOD
7 CAUSE EXISTS IN ORDER TO CHALLENGE OR APPEAL PROCEEDINGS; ESTABLISHING TIMEFRAMES
8 FOR HEARINGS AND RULINGS UNDER THE REASONABLE EFFORTS AND TERMINATION OF PARENTAL
9 RIGHTS PROVISIONS; PROVIDING ADDITIONAL REQUIREMENTS FOR DISMISSAL OF A CHILD ABUSE
10 AND NEGLECT PETITION; REQUIRING THAT APPOINTED OR ASSIGNED COUNSEL POSSESS TRAINING
11 AND EXPERIENCE RELATING TO CHILD ABUSE AND NEGLECT; CLARIFYING THE "SHOW-CAUSE"
12 PROVISIONS; AMENDING SECTIONS 41-3-112, 41-3-422, 41-3-423, 41-3-424, 41-3-425, 41-3-427, 41-3-604,
13 41-3-607, AND 41-3-609, MCA; AND PROVIDING AN APPLICABILITY DATE."

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16
17 **Section 1.** Section 41-3-112, MCA, is amended to read:

18 **"41-3-112. Guardian ad litem.** (1) In every judicial proceeding, the court shall appoint a guardian ad
19 litem for any child alleged to be abused or neglected. The department or any member of its staff who has a direct
20 conflict of interest may not be appointed as the guardian ad litem in a judicial proceeding under this title. When
21 necessary, the guardian ad litem may serve at public expense.

22 (2) The guardian ad litem must have received appropriate training that is specifically related to serving
23 as a child's court-appointed representative.

24 (3) The guardian ad litem is charged with the representation of the child's best interests and shall perform
25 the following general duties:

26 (a) to conduct investigations to ascertain the facts constituting the alleged abuse or neglect;

27 (b) to interview or observe the child who is the subject of the proceeding;

28 (c) to have access to court, medical, psychological, law enforcement, social services, and school records
29 pertaining to the child and the child's siblings and parents or custodians;

30 (d) to make written reports to the court concerning the child's welfare, including reporting the child's

1 stated wishes and the guardian ad litem's determinations regarding the child's best interests;

2 (e) to appear and participate in all proceedings to the degree necessary to adequately represent the child
3 and make recommendations to the court concerning the child's welfare;

4 (f) to perform other duties as directed by the court; and

5 (g) if an attorney, to file motions, including but not limited to filing to expedite proceedings or otherwise
6 assert the child's rights.

7 (4) Information contained in a report filed by the guardian ad litem or testimony regarding a report filed
8 by the guardian ad litem is not hearsay when it is used to form the basis of the guardian ad litem's opinion as to
9 the best interests of the child.

10 (5) Any party may petition the court for the removal and replacement of the guardian ad litem if the
11 guardian ad litem fails to perform the duties of the appointment.

12 (6) For the purposes of this chapter, a court-appointed special advocate may act as a guardian ad litem."

13

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

15 **"41-3-422. Abuse and neglect petitions -- burden of proof.** (1) (a) Proceedings under this chapter
16 must be initiated by the filing of a petition. A petition may request the following relief:

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

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

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

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

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

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

23 (vii) a determination that preservation or reunification services need not be provided; or

24 (viii) any combination of the provisions of subsections (1)(a)(i) through (1)(a)(vii) or any other relief that
25 may be required for the best interests of the child.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (7) If personal service cannot be made upon the parents or parent, guardian, or other person or agency
2 having legal custody, the court shall immediately provide for the appointment or assignment of an attorney as
3 provided for in 41-3-425 to represent the unavailable party when, in the opinion of the court, the interests of
4 justice require.

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

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

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

19 (10) An abuse and neglect petition must:

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

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

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

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

26 (12) At any stage of the proceedings considered appropriate by the court, the court may order an
27 alternative dispute resolution proceeding or the parties may voluntarily participate in an alternative dispute
28 resolution proceeding. An alternative dispute resolution proceeding under this chapter may include a family group
29 decisionmaking meeting, mediation, or a settlement conference. If a court orders an alternative dispute resolution
30 proceeding, a party who does not wish to participate may file a motion objecting to the order. If the department

1 is a party to the original proceeding, a representative of the department who has complete authority to settle the
2 issue or issues in the original proceeding must be present at any alternative dispute resolution proceeding.

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

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

7 (b) right to contest the allegations in the petition; and

8 (c) timelines for hearings and determinations required under this chapter.

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

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

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

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

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

22 (16) In order to contest the relief requested in a petition or motion brought under this chapter or to
23 preserve an issue for appeal, the parent of a child must be present either in person, by telephone, or by
24 videoconference at the hearing on the relief requested unless good cause exists."

25

26 **Section 3.** Section 41-3-423, MCA, is amended to read:

27 **"41-3-423. Reasonable efforts required to prevent removal of child or to return -- exemption --**
28 **findings -- permanency plan.** (1) The department shall make reasonable efforts to prevent the necessity of
29 removal of a child from the child's home and to reunify families that have been separated by the state.
30 Reasonable efforts include but are not limited to voluntary protective services agreements, development of

1 individual written case plans specifying state efforts to reunify families, placement in the least disruptive setting
 2 possible, provision of services pursuant to a case plan, and periodic review of each case to ensure timely
 3 progress toward reunification or permanent placement. In determining preservation or reunification services to
 4 be provided and in making reasonable efforts at providing preservation or reunification services, the child's health
 5 and safety are of paramount concern.

6 (2) (a) Except in a proceeding subject to the federal Indian Child Welfare Act, the department may, at
 7 any time during an abuse and neglect proceeding, make a request for a determination that preservation or
 8 reunification services need not be provided. If an indigent parent is not already represented by counsel, the court
 9 shall immediately provide for the appointment or assignment of counsel to represent the indigent parent in
 10 accordance with the provisions of 41-3-425. A court may make a finding that the department need not make
 11 reasonable efforts to provide preservation or reunification services if the court finds that the parent has:

12 ~~(a)~~(i) subjected a child to aggravated circumstances, including but not limited to abandonment, torture,
 13 chronic abuse, or sexual abuse or chronic, severe neglect of a child;

14 ~~(b)~~(ii) committed, aided, abetted, attempted, conspired, or solicited deliberate or mitigated deliberate
 15 homicide of a child;

16 ~~(c)~~(iii) committed aggravated assault against a child;

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

18 ~~(e)~~(v) had parental rights to the child's sibling or other child of the parent involuntarily terminated and the
 19 circumstances related to the termination of parental rights are relevant to the parent's ability to adequately care
 20 for the child at issue.

21 (b) A hearing on a request under subsection (2)(a) must be held within 60 days following the filing of the
 22 request and must be concluded within 90 days following the filing of the request unless good cause exists and
 23 all parties stipulate that a hearing on the request may be held outside of this timeframe.

24 (c) A court shall rule on a request under subsection (2)(a) within 30 days following the conclusion of the
 25 hearing provided for in subsection (2)(b) unless good cause exists and all parties stipulate that the ruling may be
 26 made outside of this timeframe.

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

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

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

- 1 (i) visiting the child at least monthly when physically and financially able to do so; or
2 (ii) having regular contact with the child or with the person or agency having the care and custody of the
3 child when physically and financially able to do so; and
4 (iii) manifesting an ability and willingness to assume legal and physical custody of the child if the child
5 was not in the physical custody of the other parent.
- 6 (c) register with the putative father registry pursuant to Title 42, chapter 2, part 2, and the person has
7 not been:
- 8 (i) adjudicated in Montana to be the father of the child for the purposes of child support; or
9 (ii) recorded on the child's birth certificate as the child's father.
- 10 (4) A judicial finding that preservation or reunification services are not necessary under this section must
11 be supported by clear and convincing evidence.
- 12 (5) If the court finds that preservation or reunification services are not necessary pursuant to subsection
13 (2) or (3), a permanency hearing must be held within 30 days of that determination and reasonable efforts,
14 including consideration of both in-state and out-of-state permanent placement options for the child, must be made
15 to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps
16 are necessary to finalize the permanent placement of the child.
- 17 (6) If reasonable efforts have been made to prevent removal of a child from the home or to return a child
18 to the child's home but continuation of the efforts is determined by the court to be inconsistent with the
19 permanency plan for the child, the department shall make reasonable efforts to place the child in a timely manner
20 in accordance with the permanency plan, including, if appropriate, placement in another state, and to complete
21 whatever steps are necessary to finalize the permanent placement of the child. Reasonable efforts to place a
22 child permanently for adoption or to make an alternative out-of-home permanent placement may be made
23 concurrently with reasonable efforts to return a child to the child's home. Concurrent planning, including identifying
24 in-state and out-of-state placements, may be used.
- 25 (7) When determining whether the department has made reasonable efforts to prevent the necessity of
26 removal of a child from the child's home or to reunify families that have been separated by the state, the court
27 shall review the services provided by the agency including, if applicable, protective services provided pursuant
28 to 41-3-302."

29

30 **Section 4.** Section 41-3-424, MCA, is amended to read:

1 **"41-3-424. Dismissal.** (1) Unless the petition has been previously dismissed, the court shall dismiss an
 2 abuse and neglect petition on the motion of a party, or on its own motion, in any case in which all of the following
 3 criteria are met:

4 ~~(1)~~(a) a child who has been placed in foster care is reunited with the child's parents and returned home;

5 ~~(2)~~(b) the child remains in the home for a minimum of 6 months with no additional confirmed reports of
 6 child abuse or neglect; and

7 ~~(3)~~(c) the department determines and informs the court that the issues that led to department intervention
 8 have been resolved and that no reason exists for further department intervention or monitoring.

9 (2) The court may not dismiss an abuse and neglect petition for a party's failure to abide by the
 10 timeframes prescribed by this chapter.

11 (3) The court may dismiss an abuse and neglect petition only if the dismissal is in the child's best
 12 interests. If the court determines that dismissal is in the child's best interests, the court shall, within 30 days after
 13 issuing its decision, provide all parties with a written order describing the court's reasons for its determination."
 14

15 **Section 5.** Section 41-3-425, MCA, is amended to read:

16 **"41-3-425. Right to counsel.** (1) Any party involved in a petition filed pursuant to 41-3-422 has the right
 17 to counsel in all proceedings held pursuant to the petition.

18 (2) Except as provided in subsection (3), the court shall immediately appoint or have counsel assigned
 19 for:

20 (a) any indigent parent, guardian, or other person having legal custody of a child or youth in a removal,
 21 placement, or termination proceeding pursuant to 41-3-422;

22 (b) any child or youth involved in a proceeding under a petition filed pursuant to 41-3-422 when a
 23 guardian ad litem is not appointed for the child or youth pursuant to 41-3-112; and

24 (c) any party entitled to counsel at public expense under the federal Indian Child Welfare Act.

25 (3) When appropriate, the court may appoint or have counsel assigned for:

26 (a) a guardian ad litem or a court-appointed special advocate involved in a proceeding under a petition
 27 filed pursuant to 41-3-422;

28 (b) any child or youth involved in a proceeding under a petition filed pursuant to 41-3-422 when a
 29 guardian ad litem is appointed for the child or youth pursuant to 41-3-112.

30 (4) The court's action pursuant to subsection (2) or (3) must be to order the office of state public

1 defender, provided for in 47-1-201, to immediately assign counsel pursuant to the Montana Public Defender Act,
2 Title 47, chapter 1, pending a determination of eligibility pursuant to 47-1-111.

3 (5) Counsel appointed or assigned pursuant to this section must possess specialized training and
4 experience involving child abuse and neglect, including an understanding of child abuse and neglect statutory
5 and case law and experience in or training regarding representing a parent if appointed or assigned to represent
6 a parent pursuant to subsection (2)(a) or experience in or training regarding representing a child if appointed or
7 assigned to represent a child pursuant to subsection (2)(b) or (3)(b).

8 (6) Counsel appointed or assigned to represent a child shall:

9 (a) consult with the child to the extent reasonably possible;

10 (b) report to the court the child's express wishes to the extent the child's wishes have been verbalized
11 to counsel, including any express wishes of the child that counsel determines are not in the child's best interests
12 and the basis for counsel's determination that the child's express wishes are not in the child's best interests;

13 (c) if a child does not or cannot express a preference about particular issues or if the child is preverbal,
14 determine and advocate the child's best interests through the use of objective criteria, including but not limited
15 to:

16 (i) a determination of the child's circumstances through contact with the child; and

17 (ii) a full and efficient investigation that includes utilization of medical, mental health, education, social
18 work, and other professionals involved with the child's life and well-being;

19 (d) subject to subsection (6)(b), refrain from advocating a position that may be harmful to the child's best
20 interests; and

21 (e) keep confidential communications with or confidential information about the child confidential unless:

22 (i) the child consents to disclosure if the child is able to provide consent;

23 (ii) the child's guardian ad litem consents to disclosure; and

24 (iii) if temporary legal custody of the child has been awarded to the department, the department consents
25 to disclosure."

26

27 **Section 6.** Section 41-3-427, MCA, is amended to read:

28 **"41-3-427. Petition for immediate protection and emergency protective services -- order -- service.**

29 (1) (a) In a case in which it appears that a child is abused or neglected or is in danger of being abused or
30 neglected, the county attorney, the attorney general, or an attorney hired by the county may file a petition for

1 immediate protection and emergency protective services. In implementing the policy of this section, the child's
2 health and safety are of paramount concern.

3 (b) A petition for immediate protection and emergency protective services must state the specific
4 authority requested and must be supported by an affidavit signed by a representative of the department stating
5 in detail the alleged facts upon which the request is based and the facts establishing probable cause or, if the
6 case is subject to the federal Indian Child Welfare Act, clear and convincing evidence that a child is abused or
7 neglected or is in danger of being abused or neglected. The affidavit of the department representative must
8 contain information, if any, regarding statements made by the parents about the facts of the case.

9 (c) If from the alleged facts presented in the affidavit it appears to the court that there is probable cause
10 or, if the case is subject to the federal Indian Child Welfare Act, clear and convincing evidence to believe that the
11 child has been abused or neglected or is in danger of being abused and neglected, the judge shall grant
12 emergency protective services and the relief authorized by subsection (2) until the adjudication hearing or the
13 temporary investigative hearing. If it appears from the alleged facts contained in the affidavit that there is
14 insufficient probable cause or, if the case is subject to the federal Indian Child Welfare Act, clear and convincing
15 evidence to believe that the child has been abused or neglected or is in danger of being abused or neglected,
16 the court shall dismiss the petition.

17 (d) If the parents, parent, guardian, person having physical or legal custody of the child, or attorney for
18 the child disputes the material issues of fact contained in the affidavit or the veracity of the affidavit, the person
19 may request a contested show cause hearing pursuant to 41-3-432 ~~within 10 days following service of the petition~~
20 ~~and affidavit. Within 10 days following the service of the petition and affidavit, a person requesting a contested~~
21 ~~show cause hearing shall file with the court and provide to the parties written notice of the request and a written~~
22 ~~description stating with specificity the person's objection to the affidavit unless good cause exists and all parties~~
23 ~~stipulate that the show cause hearing may be held outside of the timeframe prescribed by 41-3-432.~~

24 (e) The petition for immediate protection and emergency protective services must include a notice
25 advising the parents, parent, guardian, or other person having physical or legal custody of the child that the
26 parents, parent, guardian, or other person having physical or legal custody of the child may have a support
27 person present during any in-person meeting with a social worker concerning emergency protective services.
28 Reasonable accommodation must be made in scheduling an in-person meeting with the social worker.

29 (2) Pursuant to subsection (1), if the court finds probable cause or, if the case is subject to the federal
30 Indian Child Welfare Act, clear and convincing evidence based on the petition and affidavit, the court may issue

1 an order for immediate protection of the child. The court shall consider the parents' statements, if any, included
2 with the petition and any accompanying affidavit or report to the court. If the court finds probable cause or, if the
3 case is subject to the federal Indian Child Welfare Act, clear and convincing evidence, the court may issue an
4 order granting the following forms of relief, which do not constitute a court-ordered treatment plan under 41-3-443:

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

6 (b) the right to place the child in temporary medical or out-of-home care, including but not limited to care
7 provided by a noncustodial parent, kinship or foster family, group home, or institution;

8 (c) the right for the department to locate, contact, and share information with any extended family
9 members who may be considered as placement options for the child;

10 (d) a requirement that the parents, guardian, or other person having physical or legal custody furnish
11 information that the court may designate and obtain evaluations that may be necessary to determine whether a
12 child is a youth in need of care;

13 (e) a requirement that the perpetrator of the alleged child abuse or neglect be removed from the home
14 to allow the child to remain in the home;

15 (f) a requirement that the parent provide the department with the name and address of the other parent,
16 if known, unless parental rights to the child have been terminated;

17 (g) a requirement that the parent provide the department with the names and addresses of extended
18 family members who may be considered as placement options for the child who is the subject of the proceeding;
19 and

20 (h) any other temporary disposition that may be required in the best interests of the child that does not
21 require an expenditure of money by the department unless the court finds after notice and a hearing that the
22 expenditure is reasonable and that resources are available for payment. The department is the payor of last resort
23 after all family, insurance, and other resources have been examined.

24 (3) An order for removal of a child from the home must include a finding that continued residence of the
25 child with the parent is contrary to the welfare of the child or that an out-of-home placement is in the best interests
26 of the child.

27 (4) The order for immediate protection of the child must require the person served to comply immediately
28 with the terms of the order and to appear before the court issuing the order on the date specified for a show cause
29 hearing. Upon a failure to comply or show cause, the court may hold the person in contempt or place temporary
30 physical custody of the child with the department until further order.

1 (5) The petition must be served as provided in 41-3-422."
2

3 **Section 7.** Section 41-3-604, MCA, is amended to read:

4 **"41-3-604. When petition to terminate parental rights required.** (1) If a child has been in foster care
5 under the physical custody of the state for 15 months of the most recent 22 months, the best interests of the child
6 must be presumed to be served by termination of parental rights. If a child has been in foster care for 15 months
7 of the most recent 22 months or if the court has found that reasonable efforts to preserve or reunify a child with
8 the child's parent or guardian are not required pursuant to 41-3-423, a petition to terminate parental rights must
9 be filed unless:

10 (a) the child is being cared for by a relative;

11 (b) the department has not provided the services considered necessary for the safe return of the child
12 to the child's home; or

13 (c) the department has documented a compelling reason, available for court review, for determining that
14 filing a petition to terminate parental rights would not be in the best interests of the child.

15 (2) Compelling reasons for not filing a petition to terminate parental rights include but are not limited to
16 the following:

17 (a) There are insufficient grounds for filing a petition.

18 (b) There is adequate documentation that termination of parental rights is not the appropriate plan and
19 not in the best interests of the child.

20 (3) If a child has been in foster care for 15 months of the most recent 22 months and a petition to
21 terminate parental rights regarding that child has not been filed with the court, the department shall file a report
22 to the court or review panel at least 3 days prior to the next hearing or review detailing the reasons that the
23 petition was not filed.

24 (4) If a hearing results in a finding of abandonment or that the parent has subjected the child to any of
25 the circumstances listed in ~~41-3-423(2)(a) through (2)(e)~~ 41-3-423(2)(a)(i) through (2)(a)(v) and that reasonable
26 efforts to provide preservation or reunification are not necessary, unless there is an exception made pursuant to
27 subsections (1)(a) through (1)(c) of this section, a petition to terminate parental rights must be filed within 60 days
28 of the finding.

29 (5) If an exception in subsections (1)(a) through (1)(c) of this section applies, a petition for an extension
30 of temporary legal custody pursuant to 41-3-438, a petition for long-term custody pursuant to 41-3-445, or a

1 petition to dismiss must be filed."

2

3 **Section 8.** Section 41-3-607, MCA, is amended to read:

4 **"41-3-607. Petition for termination -- separate hearing -- no jury trial.** (1) The termination of a
5 parent-child legal relationship may be considered only after the filing of a petition pursuant to 41-3-422 alleging
6 the factual grounds for termination pursuant to 41-3-609.

7 (2) If termination of a parent-child legal relationship is ordered, the court may:

8 (a) transfer permanent legal custody of the child, with the right to consent to the child's adoption, to:

9 (i) the department;

10 (ii) a licensed child-placing agency; or

11 (iii) another individual who has been approved by the department and has received consent for the
12 transfer of custody from the department or agency that has custody of the child; or

13 (b) transfer permanent legal custody of the child to the department with the right to petition for
14 appointment of a guardian pursuant to 41-3-444.

15 (3) If the court does not order termination of the parent-child legal relationship, the child's prior legal
16 status remains in effect until further order of the court.

17 (4) A guardian ad litem must be appointed to represent the child's best interests in any hearing
18 determining the involuntary termination of the parent-child legal relationship. The guardian ad litem shall continue
19 to represent the child until the child is returned home or placed in an appropriate permanent placement. If a
20 respondent parent is a minor, a guardian ad litem must be appointed to serve the minor parent in addition to any
21 appointed or assigned counsel requested by the minor parent.

22 (5) There is no right to a jury trial at proceedings held to consider the termination of a parent-child legal
23 relationship.

24 (6) Any hearing on a petition for the termination of the parent-child legal relationship must be held within
25 90 days following the filing of the petition and concluded within 120 days following the filing of the petition unless
26 good cause exists and all parties stipulate that the hearing may be held outside of this timeframe. The court shall
27 rule on the petition within 60 days following the conclusion of the hearing."

28

29 **Section 9.** Section 41-3-609, MCA, is amended to read:

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

1 relationship upon a finding established by clear and convincing evidence, except as provided in the federal Indian
2 Child Welfare Act, if applicable, that any of the following circumstances exist:

3 (a) the parents have relinquished the child pursuant to 42-2-402 and 42-2-412;

4 (b) the child has been abandoned by the parents;

5 (c) the parent is convicted of a felony in which sexual intercourse occurred or is a minor adjudicated a
6 delinquent youth because of an act that, if committed by an adult, would be a felony in which sexual intercourse
7 occurred and, as a result of the sexual intercourse, the child is born;

8 (d) the parent has subjected a child to any of the circumstances listed in ~~41-3-423(2)(a) through (2)(e)~~
9 41-3-423(2)(a)(i) through (2)(a)(v);

10 (e) the putative father meets any of the criteria listed in 41-3-423(3)(a) through (3)(c); or

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

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

14 (ii) the conduct or condition of the parents rendering them unfit is unlikely to change within a reasonable
15 time.

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

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

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

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

27 (d) present judicially ordered long-term confinement of the parent.

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

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

- 1 (a) the parent meets the criteria of subsections (1)(a) through (1)(e);
- 2 (b) two medical doctors or clinical psychologists submit testimony that the parent cannot assume the role
3 of parent within a reasonable time;
- 4 (c) the parent is or will be incarcerated for more than 1 year and reunification of the child with the parent
5 is not in the best interests of the child because of the child's circumstances, including placement options, age,
6 and developmental, cognitive, and psychological needs; or
- 7 (d) the death or serious bodily injury, as defined in 45-2-101, of a child caused by abuse or neglect by
8 the parent has occurred.
- 9 (5) If a proceeding under this chapter involves an Indian child and is subject to the federal Indian Child
10 Welfare Act, a qualified expert witness is required to testify that the continued custody of the child by the parent
11 or Indian custodian is likely to result in serious emotional or physical damage to the child."

12

13 **NEW SECTION. Section 10. Applicability.** [This act] applies to proceedings begun on or after October
14 1, 2013.

15 - END -