

HOUSE BILL NO. 208
INTRODUCED BY J. SHOCKLEY
BY REQUEST OF THE LAW AND JUSTICE INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT PARENTAL RIGHTS MAY BE TERMINATED WITHOUT REQUIRING A TREATMENT PLAN IF TWO MEDICAL DOCTORS OR CLINICAL PSYCHOLOGISTS SUBMIT TESTIMONY THAT THE PARENT CANNOT ASSUME THE ROLE OF PARENT WITHIN A REASONABLE TIME; AMENDING SECTION 41-3-609, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, in *In re C.R.O.*, 2002 MT 50, 309 Mont. 48, 43 P.3d 913 (2002), the concurring opinions urged the Legislature to revisit section 41-3-609(4)(b), MCA, concerning termination of parental rights without requiring a treatment plan.

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

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

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

- (a) the parents have relinquished the child pursuant to 42-2-402 and 42-2-412;
- (b) the child has been abandoned by the parents;
- (c) the parent is convicted of a felony in which sexual intercourse occurred or is a minor adjudicated a delinquent youth because of an act that, if committed by an adult, would be a felony in which sexual intercourse occurred and, as a result of the sexual intercourse, the child is born;
- (d) the parent has subjected the child to any of the circumstances listed in 41-3-423(2)(a) through (2)(e);
- (e) the putative father meets any of the criteria listed in 41-3-423(3)(a) through (3)(c); or
- (f) the child is an adjudicated youth in need of care and both of the following exist:
 - (i) an appropriate treatment plan that has been approved by the court has not been complied with by the parents or has not been successful; and
 - (ii) the conduct or condition of the parents rendering them unfit is unlikely to change within a reasonable time.

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

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

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

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

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

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

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

(a) the parent meets the criteria of subsections (1)(a) through (1)(e);

(b) two medical doctors or clinical psychologists submit testimony that the parent cannot assume the role of parent within a reasonable time;

(c) the parent is or will be incarcerated for more than 1 year and reunification of the child with the parent is not in the best interests of the child because of the child's circumstances, including placement options, age, and developmental, cognitive, and psychological needs; or

(d) the death or serious bodily injury, as defined in 45-2-101, of a child caused by abuse or neglect by the parent has occurred."

NEW SECTION. Section 2. Effective date. [This act] is effective on passage and approval.

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