

SENATE BILL NO. 30
INTRODUCED BY O'NEIL

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING A JURY TRIAL IN A PROCEEDING FOR THE TERMINATION OF PARENTAL RIGHTS; AND AMENDING SECTION 41-3-607, MCA."

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

Section 1. Section 41-3-607, MCA, is amended to read:

"41-3-607. Petition for termination -- separate hearing -- right to counsel -- ~~no~~ jury trial. (1) The termination of a parent-child legal relationship may be considered only after the filing of a petition pursuant to 41-3-422 alleging the factual grounds for termination pursuant to 41-3-609. If termination of a parent-child legal relationship is ordered, the court may:

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

(i) the department;

(ii) a licensed child-placing agency; or

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

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

(2) At the time that a petition for termination of a parent-child relationship is filed, parents must be advised of the right to counsel, and counsel must be appointed for an indigent party.

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

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

(5) IF A JURY TRIAL IS REQUESTED, THE COURT SHALL TAKE NECESSARY STEPS TO PROTECT THE CONFIDENTIALITY AND BEST INTERESTS OF THE CHILD, INCLUDING:

(A) SCHEDULING THE MATTER FOR TRIAL AT THE EARLIEST DATE POSSIBLE, WITH THE MATTER TAKING PRECEDENCE OVER ALL OTHER MATTERS;

(B) DETERMINING WHETHER THE TESTIMONY OF THE CHILD IS RELEVANT AND NECESSARY;

(C) IF THE CHILD'S TESTIMONY IS RELEVANT, DECIDING WHETHER THE CHILD WILL TESTIFY BY DEPOSITION OR BY OTHER ALTERNATIVE MEANS; AND

(D) ANY OTHER PROTECTIVE MEASURES."

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