

## 1 HOUSE BILL NO. 351

2 INTRODUCED BY K. DUDIK

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATING TO THE PERMANENCY OF YOUTH  
5 IN FOSTER CARE; REVISING DUTIES OF FOSTER CARE REVIEW COMMITTEES; REVISING  
6 PERMANENCY PLAN AND HEARING REQUIREMENTS; AND AMENDING SECTIONS 41-3-115 AND  
7 41-3-445, MCA."

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

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11 **Section 1.** Section 41-3-115, MCA, is amended to read:

12 **"41-3-115. Foster care review committee -- foster care reviews -- permanency hearings.** (1) Except  
13 as provided in Title 41, chapter 3, part 10, in every judicial district the district court judge, in consultation with the  
14 department, shall appoint a foster care review committee. The foster care review committee shall conduct foster  
15 care reviews as provided in this section and may, at the discretion of the court and absent an objection by a party  
16 to the proceeding, conduct permanency hearings as provided in 41-3-445.

17 (2) (a) The members of the committee must be willing to act without compensation. The committee must  
18 be composed of not less than three or more than seven members. To the extent practicable, the members of the  
19 committee must be representatives of the various socioeconomic, racial, and ethnic groups of the area served.

20 (b) The members must include:

21 (i) one representative of the department who may not be responsible for the placement of the child or  
22 have any other direct conflict of interest;

23 (ii) a person who is knowledgeable in the needs of children in foster care placements and who is not  
24 employed by the department or the youth court; and

25 (iii) if the child whose care is under review is an Indian child, a person, preferably an Indian person, who  
26 is knowledgeable about Indian cultural and family matters and who is appointed effective only for and during that  
27 review.

28 (c) Members may also include but are not limited to:

29 (i) a representative of the youth court;

30 (ii) a representative of a local school district;

- 1 (iii) a public health nurse;
- 2 (iv) an at-large community member with knowledge of child protective services.
- 3 (3) (a) When a child is in foster care under the supervision of the department or if payment for care is  
4 made pursuant to 52-2-611, the committee shall conduct a review of the foster care status of the child. The review  
5 must be conducted within the time limit established under the Adoption and Safe Families Act of 1997, 42 U.S.C.  
6 675(5).
- 7 (b) The committee shall hear the case of each child in foster care to review and document issues that  
8 are germane to the goals of permanency and to accessing appropriate services for parents and children. In  
9 evaluating and documenting the accessibility, availability, and appropriateness of services, the committee shall  
10 consult with the child in an age-appropriate and developmentally appropriate manner and consider:
- 11 (i) the safety, history, and specific needs of the child;
- 12 (ii) whether an involved agency has selected services specifically relevant to the problems and needs  
13 of the child and family;
- 14 (iii) whether appropriate services have been available to the child and family on a timely basis; ~~and~~
- 15 (iv) the results of intervention;
- 16 (v) what steps the department has taken to ensure that the child's foster home is following the  
17 reasonable and prudent parenting standard; and
- 18 (vi) whether the child has regular, ongoing opportunities to engage in age-appropriate and  
19 developmentally appropriate activities.
- 20 (c) If the department has placed a child in foster care in another state, the committee shall consider  
21 whether the placement is appropriate and in the best interests of the child. In the case of a child who will not be  
22 returned to the parent, the committee shall consider both in-state and out-of-state placement options.
- 23 (d) The committee may hear the case of a child who remains in or returns to the child's home and for  
24 whom the department retains legal custody.
- 25 (4) (a) Prior to the beginning of the review, reasonable notice of each review must be sent to the  
26 following:
- 27 (i) the parents of the child or their attorneys;
- 28 (ii) if applicable, the foster parents, a relative caring for the child, the preadoptive parents, or the surrogate  
29 parents;
- 30 (iii) the child who is the subject of the review if the child is 12 years of age or older;

- 1 (iv) the child's attorney, if any;
- 2 (v) the guardian ad litem;
- 3 (vi) the court-appointed attorney or special advocate of the child; and
- 4 (vii) the child's Indian tribe if the child is an Indian.
- 5 (b) When applicable, notice of each review may be sent to other interested persons who are authorized
- 6 by the committee to receive notice.
- 7 (c) All persons receiving notice are subject to the confidentiality provisions of 41-3-205.
- 8 (d) If a foster care review is held in conjunction with a permanency hearing, notice of both proceedings
- 9 must be provided.
- 10 (e) If a foster care review is held in conjunction with a permanency hearing, notice must be provided to
- 11 the attorney who initiated the child abuse or neglect proceedings.
- 12 (5) The committee may elect to hold joint or separate reviews for groups of siblings, but findings and
- 13 recommendations made by the committee must be specific to each child.
- 14 (6) After reviewing each case, the committee shall prepare written findings and recommendations with
- 15 respect to:
- 16 (a) whether the department has made reasonable efforts to effectuate the permanency plan for the
- 17 individual child;
- 18 ~~(a)~~(b) the continuing need for the placement and the appropriateness and safety of the placement;
- 19 ~~(b)~~(c) compliance with the case plan;
- 20 ~~(c)~~(d) the progress that has been made toward alleviating the need for placement;
- 21 ~~(d)~~(e) a likely date by which the child may be returned home or by which a permanent placement may
- 22 be finalized; and
- 23 (f) whether the permanency plan is in the best interests of the child.
- 24 (7) Following the permanency hearing, the committee shall send copies of its minutes and written
- 25 findings and recommendations to the court and to the parties. If a party objects to the findings and
- 26 recommendations, the party may within 10 days serve written objections upon the other party and file them with
- 27 the court. A request for a hearing before the court upon the objections may be made by a party by motion. The
- 28 court, after hearing the objections or upon its own motion and without objection, may adopt the findings and
- 29 recommendations and shall issue an appropriate order.
- 30 (8) Because of the individual privacy involved, meetings of the committee, reports of the committee, and

1 information on individuals' cases shared by committee members are confidential and subject to the confidentiality  
2 requirements of the department.

3 (9) The committee is subject to the call of the district court judge to meet and confer with the judge on  
4 all matters pertaining to the foster care of a child before the district court."  
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6 **Section 2.** Section 41-3-445, MCA, is amended to read:

7 **"41-3-445. Permanency hearing.** (1) (a) (i) Subject to subsection (1)(b), a permanency hearing must  
8 be held by the court or, subject to the approval of the court and absent an objection by a party to the proceeding,  
9 by the foster care review committee, as provided in 41-3-115, or the citizen review board, as provided in  
10 41-3-1010:

11 (A) within 30 days of a determination that reasonable efforts to provide preservation or reunification  
12 services are not necessary under 41-3-423, 41-3-438(6), or 41-3-442(1); or

13 (B) no later than 12 months after the initial court finding that the child has been subjected to abuse or  
14 neglect or 12 months after the child's first 60 days of removal from the home, whichever comes first.

15 (ii) Within 12 months of a hearing under subsection (1)(a)(i)(B) and every 12 months thereafter until the  
16 child is permanently placed in either an adoptive or a guardianship placement, the court or the court-approved  
17 entity holding the permanency hearing shall conduct a hearing and the court shall issue a finding as to whether  
18 the department has made reasonable efforts to finalize the permanency plan for the child.

19 (b) A permanency hearing is not required if the proceeding has been dismissed, the child was not  
20 removed from the home, the child has been returned to the child's parent or guardian, or the child has been  
21 legally adopted or appointed a legal guardian.

22 (c) The permanency hearing may be combined with a hearing that is required in other sections of this  
23 part or with a review held pursuant to 41-3-115 or 41-3-1010 if held within the applicable time limits. If a  
24 permanency hearing is combined with another hearing or a review, the requirements of the court related to the  
25 disposition of the other hearing or review must be met in addition to the requirements of this section.

26 (d) The court-approved entity conducting the permanency hearing may elect to hold joint or separate  
27 reviews for groups of siblings, but the court shall issue specific findings for each child.

28 (2) At least 3 working days prior to the permanency hearing, the department shall submit a report  
29 regarding the child to the entity that will be conducting the hearing for review. The report must address the  
30 department's efforts to effectuate the permanency plan for the child, address the options for the child's permanent

1 placement, examine the reasons for excluding higher priority options, and set forth the proposed plan to carry  
2 out the placement decision, including specific times for achieving the plan.

3 (3) At least 3 working days prior to the permanency hearing, the guardian ad litem or an attorney or  
4 advocate for a parent or guardian may submit an informational report to the entity that will be conducting the  
5 hearing for review.

6 (4) In a permanency hearing, the court or other entity conducting the hearing shall consult, in an  
7 age-appropriate and developmentally appropriate manner, with the child regarding the proposed permanency  
8 or transition plan for the child.

9 (5) (a) The court's order must be issued within 20 days after the permanency hearing if the hearing was  
10 conducted by the court. If a member of the child's extended family, including an adult sibling, grandparent,  
11 great-grandparent, aunt, or uncle, has requested that custody be awarded to that family member or that a prior  
12 grant of temporary custody with that family member be made permanent, the department shall investigate and  
13 determine if awarding custody to that family member is in the best interests of the child. The department shall  
14 provide the reasons for any denial to the court. If the court accepts the department's custody recommendation,  
15 the court shall inform any denied family member of the reasons for the denial to the extent that confidentiality laws  
16 allow. The court shall include the reasons for denial in the court order if the family member who is denied custody  
17 requests it to be included.

18 (b) If an entity other than the court conducts the hearing, the entity shall keep minutes of the hearing and  
19 the minutes and written recommendations must be provided to the court within 20 days of the hearing.

20 (c) If an entity other than the court conducts the hearing and the court concurs with the  
21 recommendations, the court may adopt the recommendations as findings with no additional hearing required. In  
22 this case, the court shall issue written findings within 10 days of receipt of the written recommendations.

23 (6) The court shall approve a specific permanency plan for the child and make written findings on:

24 (a) whether the permanency plan is in the best interests of the child;

25 (b) whether the department has made reasonable efforts to effectuate the permanency plan for the  
26 individual child;

27 ~~(b)(c)~~ whether the department has made reasonable efforts to finalize the plan; ~~and~~

28 (d) whether there are compelling reasons why it is not in the best interests of the child to:

29 (i) return to the child's home; or

30 (ii) be placed for adoption, with a legal guardian, or with a fit and willing relative; and

- 1           ~~(c)~~(e) other necessary steps that the department is required to take to effectuate the terms of the plan.
- 2           (7) In its discretion, the court may enter any other order that it determines to be in the best interests of
- 3 the child that does not conflict with the options provided in subsection (8) and that does not require an
- 4 expenditure of money by the department unless the court finds after notice and a hearing that the expenditures
- 5 are reasonable and that resources are available for payment. The department is the payor of last resort after all
- 6 family, insurance, and other resources have been examined.
- 7           (8) Permanency options include:
- 8           (a) reunification of the child with the child's parent or guardian;
- 9           (b) permanent placement of the child with the noncustodial parent, superseding any existing custodial
- 10 order;
- 11           (c) adoption;
- 12           (d) appointment of a guardian pursuant to 41-3-444; or
- 13           (e) long-term custody if the child is in a planned permanent living arrangement and if it is established by
- 14 a preponderance of the evidence, which is reflected in specific findings by the court, that:
- 15           (i) the child is being cared for by a fit and willing relative;
- 16           (ii) the child has an emotional or mental handicap that is so severe that the child cannot function in a
- 17 family setting and the best interests of the child are served by placement in a residential or group setting;
- 18           (iii) the child is at least 16 years of age and is participating in an independent living program and that
- 19 termination of parental rights is not in the best interests of the child;
- 20           (iv) the child's parent is incarcerated and circumstances, including placement of the child and continued,
- 21 frequent contact with the parent, indicate that it would not be in the best interests of the child to terminate parental
- 22 rights of that parent; or
- 23           (v) the child meets the following criteria:
- 24           (A) the child has been adjudicated a youth in need of care;
- 25           (B) the department has made reasonable efforts to reunite the parent and child, further efforts by the
- 26 department would likely be unproductive, and reunification of the child with the parent or guardian would be
- 27 contrary to the best interests of the child;
- 28           (C) there is a judicial finding that other more permanent placement options for the child have been
- 29 considered and found to be inappropriate or not to be in the best interests of the child; and
- 30           (D) the child has been in a placement in which the foster parent or relative has committed to the

1 long-term care and to a relationship with the child, and it is in the best interests of the child to remain in that  
2 placement.

3 (9) For a child 14 years of age or older, the permanency plan must:

4 (a) be developed in consultation with the child and, with the consent of the child, in consultation with up  
5 to two members of the child's case planning team who are chosen by the child and who are not a foster parent  
6 or social worker for the child;

7 (b) identify one person from the case management team, who is selected by the child, to be designated  
8 as the child's advisor and advocate for the application of the reasonable and prudent parenting standard; and

9 (c) include services that will be needed to transition the child from foster care to adulthood.

10 (10) A permanency hearing must document the intensive, ongoing, and unsuccessful efforts made by  
11 the department to return the child to the child's home or to secure a permanent placement of the child with a  
12 relative, legal guardian, or adoptive parent.

13 ~~(9)(11)~~ The court may terminate a planned permanent living arrangement upon petition of the birth  
14 parents or the department if the court finds that the circumstances of the child or family have substantially  
15 changed and the best interests of the child are no longer being served."

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