

HOUSE BILL NO. 351

INTRODUCED BY K. DUDIK

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

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

(Refer to Introduced Bill)

Strike everything after the enacting clause and insert:

**Section 1.** Section 41-3-445, MCA, is amended to read:

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

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

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

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

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

(c) The permanency hearing may be combined with a hearing that is required in other sections of this part or with a review held pursuant to 41-3-115 or 41-3-1010 if held within the applicable time limits. If a

1 permanency hearing is combined with another hearing or a review, the requirements of the court related to the  
2 disposition of the other hearing or review must be met in addition to the requirements of this section.

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

5 (2) At least 3 working days prior to the permanency hearing, the department shall submit a report  
6 regarding the child to the entity that will be conducting the hearing for review. The report must address the  
7 department's efforts to effectuate the permanency plan for the child, address the options for the child's permanent  
8 placement, examine the reasons for excluding higher priority options, and set forth the proposed plan to carry  
9 out the placement decision, including specific times for achieving the plan.

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

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

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

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

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

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

30 (a) whether the child has been asked about the desired permanency outcome;

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

1 (A) the child has been adjudicated a youth in need of care;

2 (B) the department has made reasonable efforts to reunite the parent and child, further efforts by the  
3 department would likely be unproductive, and reunification of the child with the parent or guardian would be  
4 contrary to the best interests of the child;

5 (C) there is a judicial finding that other more permanent placement options for the child have been  
6 considered and found to be inappropriate or not to be in the best interests of the child; and

7 (D) the child has been in a placement in which the foster parent or relative has committed to the  
8 long-term care and to a relationship with the child, and it is in the best interests of the child to remain in that  
9 placement.

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

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

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

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

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

19 ~~(9)~~(11) The court may terminate a planned permanent living arrangement upon petition of the birth  
20 parents or the department if the court finds that the circumstances of the child or family have substantially  
21 changed and the best interests of the child are no longer being served."

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