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HOUSE BILL NO. 603

INTRODUCED BY S. GALLOWAY, J. READ, J. WINDY BOY, M. CAFERRO, L. JONES, E. BUTCHER, S. GUNDERSON, D. LOGE, F. ANDERSON, L. SHELDON-GALLOWAY, S. VINTON, N. DURAM, D. HARVEY, B. MERCER, B. LER, B. PHALEN, L. BREWSTER, B. MITCHELL, S. GIST, K. SEEKINS-CROWE, G. FRAZER, M. BINKLEY, R. MARSHALL, S. ESSMANN, T. SMITH, G. OBLANDER, G. NIKOLAKAKOS, J. BERGSTROM, G. KMETZ, P. GREEN, J. ETCHART, L. HELLEGAARD, Z. WIRTH

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE REINSTATEMENT OF PARENTAL RIGHTS IN CHILD ABUSE AND NEGLECT PROCEEDINGS; PROVIDING THAT A CHILD PETITIONING FOR REINSTATEMENT OF PARENTAL RIGHTS HAS THE RIGHT TO COUNSEL; AMENDING SECTIONS 41-3-425 AND 41-3-602, MCA; REPEALING SECTION 41-3-601, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

NEW SECTION. Section 1. Reinstatement of parental rights. (1) A child whose parent's rights were terminated under this chapter or a party whose parental rights were terminated under this chapter may petition the court to reinstate parental rights if:

- (a) the child was adjudicated a youth in need of care under this chapter;
- (b) the child's parent's rights were terminated in a proceeding under this chapter;
- (c) the child has not achieved the child's permanency plan or the permanency plan has not been sustained; and
- (d) two years have passed since the final order terminating parental rights was entered.

(2) If a parent of a child eligible to petition for reinstatement of parental rights under subsection (1) contacts the department or the child's guardian ad litem regarding reinstatement of parental rights, the department or the guardian ad litem shall notify the child about the child's right to petition for reinstatement of parental rights under this section.

(3) A child filing a petition under this section:

1 (a) is entitled to representation by counsel; and

2 (b) shall sign the petition unless good cause exists for not doing so.

3 (4) (a) If, after considering the parent's fitness and interest in reinstatement of parental rights, the
4 court finds that the best interests of the child may be served by reinstatement of parental rights, the court shall
5 order that a hearing on the merits of the petition be held.

6 (b) The court shall provide prior notice of a hearing under subsection (4)(a) to:

7 (i) the department;

8 (ii) the child's attorney and the child;

9 (iii) the child's parent whose parental rights are the subject of the petition;

10 (iv) any parent whose rights have not been terminated;

11 (v) the child's current foster parent, relative caregiver, guardian, or custodian; and

12 (vi) if applicable, the child's tribe.

13 (5) After a hearing, the court shall conditionally grant the petition, reinstating the rights of one or
14 both parents, if the court finds by clear and convincing evidence that:

15 (a) both the parent and the child consent to the reinstatement of parental rights;

16 (b) in accordance with subsection (6):

17 (i) the child has not achieved the child's permanency plan and is not likely to imminently achieve
18 the child's permanency plan; or

19 (ii) the child has not sustained the child's permanency plan; and

20 (c) in accordance with subsection (7), reinstatement of parental rights is in the child's best interest.

21 (6) In determining whether the child has achieved the child's permanency plan or is likely to
22 achieve the child's permanency plan, the court shall review information provided by the department related to
23 any efforts to achieve the permanency plan, including efforts to achieve adoption or a permanent guardianship.

24 (7) In determining whether reinstatement of parental rights is in the child's best interests, the court
25 shall consider but is not limited to the following:

26 (a) whether the parent whose rights are to be reinstated is a fit parent and has remedied the
27 parent's deficiencies documented in the record of the termination proceedings and in the termination order;

28 (b) whether the child is able to express the child's preference;

1 (c) whether the reinstatement of parental rights will present a risk to the child's health, welfare, or
2 safety;

3 (d) whether the benefit to the child of reinstatement of parental rights outweighs the potential lack
4 of permanency for the child; and

5 (e) whether other material changes in circumstances exist that would warrant reinstating parental
6 rights.

7 (8) (a) If the court conditionally grants the petition under subsection (7), the proceedings must be
8 continued for 6 months and a temporary order of reinstatement must be entered.

9 (b) Except as provided in subsection (8)(c), during this time:

10 (i) the child must be placed in the parent's custody; and

11 (ii) the department shall develop a reunification plan for the child and shall provide transition
12 services to the family, as appropriate.

13 (c) If at any time the department alleges that the child has been abused or neglected by the
14 parent, the department shall petition the court for an order dismissing the temporary reinstatement of parental
15 rights. The court shall grant the petition based on a preponderance of the evidence that the child has been
16 abused or neglected.

17 (9) (a) After the child has successfully been placed with the parent for 6 months, the court shall
18 enter a final order reinstating parental rights that restores all rights, powers, privileges, immunities, duties, and
19 obligations of the parent to the child, including those relating to custody, control, and, subject to subsection
20 (9)(c), support of the child. The court shall direct the clerk of court to provide a certified copy of the final order of
21 reinstatement of parental rights to the parent at no cost.

22 (b) The reinstatement of parental rights pursuant to subsection (9)(a) does not vacate or otherwise
23 affect the validity of the original termination order.

24 (c) A parent whose rights are reinstated under subsection (9)(a) may not be held liable for any
25 child support owed to the department or costs of other services provided to the child for the period beginning on
26 the date parental rights were terminated and ending on the date parental rights were reinstated.

27 (10) This section may not be construed to create a cause of action against the state or its
28 employees concerning the original termination.

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Section 2. Section 41-3-425, MCA, is amended to read:

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

(2)____—Except as provided in subsections (3) through (5), the court shall immediately appoint the office of state public defender to assign counsel for:

(a)____—any indigent parent, guardian, or other person having legal custody of a child or youth in a removal, placement, or termination proceeding pursuant to 41-3-422, pending a determination of eligibility pursuant to 47-1-111;

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

(c)____—any party entitled to counsel at public expense under the federal Indian Child Welfare Act; and

(d) any child petitioning for reinstatement of parental rights pursuant to [section 1].

(3)____—When appropriate, the court may appoint the office of state public defender to assign counsel for any child or youth involved in a proceeding under a petition filed pursuant to 41-3-422 when a guardian ad litem is appointed for the child or youth.

(4)____—When appropriate and in accordance with judicial branch policy, the court may assign counsel at the court's expense for a guardian ad litem or a court-appointed special advocate involved in a proceeding under a petition filed pursuant to 41-3-422.

(5)____—Except as provided in the federal Indian Child Welfare Act, a court may not appoint a public defender to a putative father, as defined in 42-2-201, of a child or youth in a removal, placement, or termination proceeding pursuant to 41-3-422 until:

(a)____—the putative father is successfully served notice of a petition filed pursuant to 41-3-422; and

(b)____—the putative father makes a request to the court in writing to appoint the office of state public defender to assign counsel."

Section 3. Section 41-3-602, MCA, is amended to read:

1 "41-3-602. Purpose. (1) This part provides procedures and criteria by which the parent-child legal
2 relationship;

3 (a) _____ may be terminated by a court if the relationship is not in the best interest of the child; or

4 (b) _____ may be reinstated by a court when permanency has not been achieved for a child, the child
5 and parent desire reinstatement, and reinstatement is in the best interest of the child.

6 (2) _____ The termination of the parent-child legal relationship provided for in this part is to be used in
7 those situations when there is a determination that a child is abused or neglected, as defined in 41-3-102."

8

9 NEW SECTION. Section 4. Repealer. The following section of the Montana Code Annotated is
10 repealed:

11 41-3-601. Short title.

12

13 NEW SECTION. Section 5. Codification instruction. [Section 1] is intended to be codified as an
14 integral part of Title 41, chapter 3, part 6, and the provisions of Title 41, chapter 3, part 6, apply to [section 1].

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16 NEW SECTION. Section 6. Effective date. [This act] is effective on passage and approval.

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