

1 SENATE BILL NO. 162  
2 INTRODUCED BY D. LENZ

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4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT FOSTER PARENTS, PREADOPTIVE  
5 PARENTS, OR RELATIVES CARING FOR CHILDREN IN CHILD ABUSE AND NEGLECT PROCEEDINGS  
6 BE INFORMED BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES OF THE ABILITY TO  
7 APPEAR, TO BE HEARD, AND TO INTERVENE IN COURT PROCEEDINGS; AND AMENDING SECTION 41-  
8 3-422, MCA."

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

11  
12 **Section 1.** Section 41-3-422, MCA, is amended to read:

13 **"41-3-422. Abuse and neglect petitions -- burden of proof.** (1) (a) Proceedings under this chapter  
14 must be initiated by the filing of a petition. A petition may request the following relief:

- 15 (i) immediate protection and emergency protective services, as provided in 41-3-427;
- 16 (ii) temporary investigative authority, as provided in 41-3-433;
- 17 (iii) temporary legal custody, as provided in 41-3-442;
- 18 (iv) long-term custody, as provided in 41-3-445;
- 19 (v) termination of the parent-child legal relationship, as provided in 41-3-607;
- 20 (vi) appointment of a guardian pursuant to 41-3-444;
- 21 (vii) a determination that preservation or reunification services need not be provided; or
- 22 (viii) any combination of the provisions of subsections (1)(a)(i) through (1)(a)(vii) or any other relief

23 that may be required for the best interests of the child.

- 24 (b) The petition may be modified for different relief at any time within the discretion of the court.
- 25 (c) A petition for temporary legal custody may be the initial petition filed in a case.
- 26 (d) A petition for the termination of the parent-child legal relationship may be the initial petition filed
- 27 in a case if a request for a determination that preservation or reunification services need not be provided is
- 28 made in the petition.



1           (2)     The county attorney, attorney general, or an attorney hired by the county shall file all petitions  
2 under this chapter. A petition filed by the county attorney, attorney general, or an attorney hired by the county  
3 must be accompanied by:

4           (a)     an affidavit by the department alleging that the child appears to have been abused or neglected  
5 and stating the basis for the petition; and

6           (b)     a separate notice to the court stating any statutory time deadline for a hearing.

7           (3)     Abuse and neglect petitions must be given highest preference by the court in setting hearing  
8 dates.

9           (4)     An abuse and neglect petition is a civil action brought in the name of the state of Montana. The  
10 Montana Rules of Civil Procedure and the Montana Rules of Evidence apply except as modified in this chapter.  
11 Proceedings under a petition are not a bar to criminal prosecution.

12           (5)     (a) Except as provided in subsection (5)(b), the person filing the abuse and neglect petition has  
13 the burden of presenting evidence required to justify the relief requested and establishing:

14           (i)     probable cause for the issuance of an order for immediate protection and emergency protective  
15 services or an order for temporary investigative authority;

16           (ii)    a preponderance of the evidence for an order of adjudication or temporary legal custody;

17           (iii)   a preponderance of the evidence for an order of long-term custody; or

18           (iv)    clear and convincing evidence for an order terminating the parent-child legal relationship.

19           (b)     If a proceeding under this chapter involves an Indian child, as defined in the federal Indian  
20 Child Welfare Act, 25 U.S.C. 1901, et seq., the standards of proof required for legal relief under the federal  
21 Indian Child Welfare Act apply.

22           (6)     (a) Except as provided in the federal Indian Child Welfare Act, if applicable, the parents or  
23 parent, guardian, or other person or agency having legal custody of the child named in the petition, if residing in  
24 the state, must be served personally with a copy of the initial petition and a petition to terminate the parent-child  
25 legal relationship at least 5 days before the date set for hearing. If the person or agency cannot be served  
26 personally, the person or agency may be served by publication as provided in 41-3-428 and 41-3-429.

27           (b)     Copies of all other petitions must be served upon the person or the person's attorney of record  
28 by certified mail, by personal service, or by publication as provided in 41-3-428 and 41-3-429. If service is by

1 certified mail, the department must receive a return receipt signed by the person to whom the notice was mailed  
2 for the service to be effective. Service of the notice is considered to be effective if, in the absence of a return  
3 receipt, the person to whom the notice was mailed appears at the hearing.

4 (7) If personal service cannot be made upon the parents or parent, guardian, or other person or  
5 agency having legal custody, the court shall immediately provide for the appointment or assignment of an  
6 attorney as provided for in 41-3-425 to represent the unavailable party when, in the opinion of the court, the  
7 interests of justice require. If personal service cannot be made upon a putative father, the court may not provide  
8 for the appointment or assignment of counsel as provided for in 41-3-425 to represent the father unless, in the  
9 opinion of the court, the interests of justice require counsel to be appointed or assigned.

10 (8) If a parent of the child is a minor, notice must be given to the minor parent's parents or  
11 guardian, and if there is no guardian, the court shall appoint one.

12 (9) (a) Any person interested in any cause under this chapter has the right to appear. Any foster  
13 parent, preadoptive parent, or relative caring for the child must be given legal notice by the attorney filing the  
14 petition of all judicial hearings for the child and has the right to be heard. The right to appear or to be heard  
15 does not make that person a party to the action. Any foster parent, preadoptive parent, or relative caring for the  
16 child must be given notice of all reviews by the reviewing body.

17 (b) A foster parent, preadoptive parent, or relative of the child who is caring for or a relative of the  
18 child who has cared for a child who is the subject of the petition who appears at a hearing set pursuant to this  
19 section may be allowed by the court to intervene in the action if the court, after a hearing in which evidence is  
20 presented on those subjects provided for in 41-3-437(4), determines that the intervention of the person is in the  
21 best interests of the child. A person granted intervention pursuant to this subsection is entitled to participate in  
22 the adjudicatory hearing held pursuant to 41-3-437 and to notice and participation in subsequent proceedings  
23 held pursuant to this chapter involving the custody of the child.

24 (c) Whenever a child is placed with a foster parent, preadoptive parent, or relative, the department  
25 shall provide written notice to the foster parent, preadoptive parent, or relative explaining the foster parent's,  
26 preadoptive parent's, or relative's rights under this subsection (9) to receive notice, to appear and be heard, and  
27 to attempt to intervene in proceedings under this chapter.

28 (10) An abuse and neglect petition must state:

1 (a) the nature of the alleged abuse or neglect and of the relief requested;

2 (b) the full name, age, and address of the child and the name and address of the child's parents or  
3 the guardian or person having legal custody of the child; and

4 (c) the names, addresses, and relationship to the child of all persons who are necessary parties to  
5 the action.

6 (11) Any party in a proceeding pursuant to this section is entitled to counsel as provided in 41-3-  
7 425.

8 (12) At any stage of the proceedings considered appropriate by the court, the court may order an  
9 alternative dispute resolution proceeding or the parties may voluntarily participate in an alternative dispute  
10 resolution proceeding. An alternative dispute resolution proceeding under this chapter may include a family  
11 engagement meeting, mediation, or a settlement conference. If a court orders an alternative dispute resolution  
12 proceeding, a party who does not wish to participate may file a motion objecting to the order. If the department  
13 is a party to the original proceeding, a representative of the department who has complete authority to settle the  
14 issue or issues in the original proceeding must be present at any alternative dispute resolution proceeding.

15 (13) Service of a petition under this section must be accompanied by a written notice advising the  
16 child's parent, guardian, or other person having physical or legal custody of the child of the:

17 (a) right, pursuant to 41-3-425, to appointment or assignment of counsel if the person is indigent or  
18 if appointment or assignment of counsel is required under the federal Indian Child Welfare Act, if applicable;

19 (b) right to contest the allegations in the petition; and

20 (c) timelines for hearings and determinations required under this chapter.

21 (14) If appropriate, orders issued under this chapter must contain a notice provision advising a  
22 child's parent, guardian, or other person having physical or legal custody of the child that:

23 (a) the court is required by federal and state laws to hold a permanency hearing to determine the  
24 permanent placement of a child no later than 12 months after a judge determines that the child has been  
25 abused or neglected or 12 months after the first 60 days that the child has been removed from the child's home;

26 (b) if a child has been in foster care for 15 of the last 22 months, state law presumes that  
27 termination of parental rights is in the best interests of the child and the state is required to file a petition to  
28 terminate parental rights; and

