

Unofficial Draft Copy

As of: August 9, 2016 (12:33pm)

LC1j06

**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act revising laws related to termination of the parent-child legal relationship when a child is born as the result of sexual intercourse without consent or sexual assault; providing a process to terminate the legal relationship; and amending section 41-3-607, MCA."

Be it enacted by the Legislature of the State of Montana:

NEW SECTION. **Section 1. Petition for termination -- criteria -- process.** (1) A district court may order a termination of the parent-child legal relationship after the filing of a petition pursuant to this section alleging the factual grounds for termination pursuant to subsection (2) of this section.

(2) Grounds for termination pursuant to this section exist when the parent of a child:

(a) is convicted of a felony in which sexual intercourse occurred or is a minor adjudicated a delinquent youth because of an act that, if committed by an adult, would be a felony in which sexual intercourse occurred and, as a result of the sexual intercourse, the child is born; or

(b) at a fact-finding hearing is found by clear and convincing evidence, except as provided in the federal Indian

Child Welfare Act, if applicable, to have committed an act of sexual intercourse without consent, sexual assault, or incest, as those terms are defined in Title 45, Chapter 5, part 5, that caused the child to be conceived.

(3) The court's order must state the reasons for its decision.

(4) The victim of the crime or act may file a petition pursuant to this section. If the victim is the minor, the victim's parent or guardian may file a petition on the victim's behalf.

(5) The respondent to the petition has the right to counsel in all proceedings held pursuant to the petition.

(6) Before termination of the parent-child legal relationship may be ordered, the court shall determine whether the provisions of [section 2] and [section 3] have been followed.

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

(8) (a) An order for the termination of the parent-child legal relationship divests the child and the parent of all legal rights, powers, immunities, duties, and obligations with respect to each other as provided in Title 40, chapter 6, part 2, and Title 41, chapter 3, part 2, except the right of the child to inherit from the parent.

(b) An order or decree entered pursuant to this part may not disentitle a child to any benefit due to the child from any third person, including but not limited to any Indian tribe, agency, state, or the United States.

NEW SECTION. **Section 2. Service of process -- service by publication -- effect.** (1) Except as otherwise provided in this chapter, service of process must be made as provided in the Montana Rules of Civil Procedure.

(2) If a person cannot be served personally or by certified mail, the person may be served by publication as provided in [section 3]. Publication constitutes conclusive evidence of service, and a hearing must then proceed at the time and date set, with or without the appearance of the person served by publication. At or after the hearing, the court may issue an order that will adjudicate the interests of the person served by publication.

(3) If the parent cannot be found prior to the hearings allowed by [section 1], the court may grant the petition filed or may order the person filing the petition to continue to attempt to locate the person whose parental rights are subject to termination through service by publication.

NEW SECTION. **Section 3. Service by publication -- summons -- form.** (1) Before service by publication is authorized in a proceeding under [sections 1 through 3], the person filing the petition pursuant to [section 1(4)] shall file with the court an affidavit stating that, after due diligence, the parent whose rights are subject to termination cannot be identified or found and stating the diligent efforts made to identify, locate, and serve the person. The affidavit is sufficient evidence of the

diligence of any inquiry made by the person filing the petition. The affidavit may be combined with any other affidavit filed by the person filing the petition. Upon complying with this subsection, the person filing the petition may obtain an order for the service to be made upon the party by publication. The order may be issued by either the judge or the clerk of the court.

(2) Service by publication must be made by publishing notice three times, once each week for 3 successive weeks:

(a) in a newspaper in a community in which the publication can reasonably be calculated to be seen by the person whose parental rights are subject to termination, based upon the last-known address or whereabouts, if known, of the person if in the state of Montana; or

(b) if no last-known address exists, if the last-known address is outside Montana, or if the identity of the person whose parental rights are subject to termination is unknown, in a newspaper in the county in which the action is pending, if a newspaper is published in the county, and, if a newspaper is not published in the county, in a newspaper published in an adjoining county and having a general circulation in the county.

(3) Service by publication is complete on the date of the last publication required by subsection (2).

(4) A summons required under this chapter must:

(a) be directed to the parent whose parental rights are subject to termination; and

(b) be signed by the clerk of court, be under the seal of

the court, and contain:

- (i) the name of the court and the cause number;
- (ii) the initials of the child who is the subject of the proceedings;
- (iii) the name of the person filing the petition pursuant to [section 1(4);
- (iv) the time within which an interested person shall appear;
- (v) a statement in general terms of the nature of the proceedings, including the date and place of birth of the child, the date and place of the hearing, and the phone number of the clerk of the court in which the hearing is scheduled; and
- (vii) notification apprising the person served by publication that failure to appear at the hearing will constitute a denial of interest in the child, which denial may result, without further notice of this proceeding or any subsequent proceeding, in judgment by default being entered for the relief requested in the petition.

Section 4. Section 41-3-607, MCA, is amended to read:

"41-3-607. Petition for termination -- separate hearing -- no jury trial. (1) ~~The~~ Except as provided in [sections 1 through 3], 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.

(2) 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.

(3) If the court does not order termination of the parent-child legal relationship, the child's prior legal status remains in effect until further order of the court.

(4) 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 appointed or assigned counsel requested by the minor parent.

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

{*Internal References to 41-3-607:*

41-3-422 41-3-439 41-3-442 41-3-444 }

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