

Comparison of Montana Statutes That Allow for Termination of a Parent-Child Legal Relationship and LCIj06 Provisions

| Proceeding Type | What is it? | Who May File | Standard of Review | Right to Attorney if Parental Rights Subject to Termination? | Statute |
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| Sentencing enhancement | <p>A penalty enhancement that a district court judge may impose on a person convicted of (or who pled guilty to) sexual intercourse without consent.</p> <p>To impose a penalty enhancement, certain procedures must be followed, including that the enhancing act must be charged in the initial complaint and that the jury or the judge trying the case must find beyond a reasonable doubt that the enhancing act occurred. If the defendant pled guilty, the defendant must have acknowledged the enhancing act. (46-1-401, MCA)</p> | County attorney | Beyond a reasonable doubt | <p>Yes, in criminal proceedings, including sentencing</p> <p>(U.S Constitution, Montana Constitution, Montana Code Annotated)</p> | 45-5-503, MCA |
| Abuse/Neglect proceeding | <p>The termination process occurs as part of child abuse and neglect proceedings.</p> <p>Grounds for termination can include situations when “the parent 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 intercourse, the child is born” (41-3-609(a)(c))</p> | <p>The county attorney, attorney general, or an attorney hired by the county attorney</p> <p>(41-3-422, MCA)</p> | <p>Clear and convincing evidence</p> <p>(41-3-609, MCA)</p> | <p>Yes, in all proceedings held related to the abuse/neglect petition</p> <p>(41-3-425, MCA)</p> | Title 41, chapter 3, parts 4 and 6, MCA |
| Adoption proceeding | <p>An involuntary termination made under this chapter can occur only during an adoption proceeding.</p> <p>Grounds for termination include:</p> <ul style="list-style-type: none"> • Voluntary relinquishment | <p>A pregnant individual who intends to place an expected child for adoption (42-2-502, MCA), the Department of Health and Human</p> | <p>Several, depending on the grounds for termination</p> <p>(42-2-607 and 42-2-608, MCA)</p> | <p>Yes</p> <p>(IN THE MATTER OF THE ADOPTION OF: A.W.S. AND K.R.S., Minor Children, 2014 MT 322 –</p> | Title 42, chapter 2, parts 5 and 6, MCA |

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| | <ul style="list-style-type: none"> • Denial of paternity • Acknowledgement of paternity but denial of interest in custody of child • A determination that the parent is unfit (using criteria in 42-2-608, which include various criminal convictions) • A determination that a parent child relationship does not exist • Father has failed to establish or maintain a substantial relationship with the child • A determination that the parent has irrevocably waived parental rights by failing to timely act to protect rights | Services, a licensed child-placing agency, the prospective adoptive parent to whom a relinquishment is issued, or a guardian with custody of the child (42-2-603, MCA) | | equal protection under the law) | |
| LCIj06 | <p>The termination proceeding would begin on the filing of a petition with a district court.</p> <p>Grounds for termination:</p> <ul style="list-style-type: none"> • A judge finds that the parent of the child has been 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 and, as a result of the sexual intercourse, the child is born. • A judge finds the parent committed an act of sexual intercourse without consent, sexual assault, or incest that caused the child to be conceived. | The victim of a crime or act of sexual intercourse without consent or the victim's parent or guardian, if the victim is a minor. | Clear and convincing evidence | Currently in draft, but with no provisions on how to provide for a respondent who is indigent. | n/a |