

HJR 48/49: CHILD PROTECTIVE SERVICES KEY STEPS IN THE LEGAL PROCESS

INTRODUCTION

When a child is removed from the home because of concerns related to child abuse or neglect, the removal sets in motion a legal process in which the Department of Public Health and Human Services must provide a court with evidence that the child needs to remain in the out-of-home placement or the family needs services to allow for the child's safe return to the home, or both.

State law generally sets the standards the department must meet for each step in the legal process and spells out what happens next if a judge grants the state's requests. If the case involves an Indian child, then the state must meet the standards set in the federal Indian Child Welfare Act.

Importantly, state law requires judges to schedule abuse and neglect cases ahead of other items on their dockets. Under 41-3-422, MCA, abuse and neglect petitions "must be given highest preference by the court in setting hearing dates." Other statutes set the timelines by which certain activities must be completed.

The table on the following pages summarizes the key steps in the judicial process as outlined in state law and presented in the *2013 Montana Dependency and Neglect Best Practice Manual*, prepared by the Montana Uniform Dependency and Neglect Workgroup that was formed and funded through the Montana Supreme Court's Court Improvement Program.

By law, abuse and neglect cases take priority over other types of cases in district court.

Procedural Step	Question to Be Answered	Standard for Approval	Result/Next Steps
Initial Petition for Emergency Services	Do sufficient facts exist to grant emergency protective services until a show cause hearing is held?	Probable cause that the child has been abused or neglected or is in danger of abuse or neglect.	<p>The court may immediately issue an order of protection and emergency services.</p> <p>Court must schedule a show cause hearing within 20 days of the date the petition was filed and appoint a public defender for an indigent parent and for the child if a guardian ad litem is not appointed.</p>
Show Cause Hearing	Was the child in imminent danger of harm? Was the DPHHS action reasonably necessary?	<p>Consideration of the child's safety. Child is not considered safe when:</p> <ul style="list-style-type: none"> → threats of danger exist within the family; → child is vulnerable to those dangers; and → parents are unable to manage or control the threats. 	<p>The court:</p> <ul style="list-style-type: none"> → will determine whether the child should be removed from the home or, if already removed, remain in an out-of-home placement; → will establish visitation and support requirements; and → may adjudicate the child as a youth in need of care, if certain circumstances are met. <p>If no adjudication is made, an adjudication hearing must be held within 90 days.</p>
Petition for Temporary Investigative Authority	Are the allegations of abuse, neglect, or abandonment true?	The court may grant this petition at the show cause hearing if it is filed at the same time as the initial petition.	If granted, DPHHS has 90 days to investigate.

Procedural Step	Question to Be Answered	Standard for Approval	Result/Next Steps
Adjudication Hearing	Is the child a youth in need of care because of abuse, neglect, or abandonment?	Preponderance of evidence that the child has been abandoned or faces a substantial risk of physical or psychological abuse or neglect.	<p>The court must dismiss the case if the evidence does not show the child is a youth in need of care.</p> <p>If the child is found to be a youth in need of care:</p> <ul style="list-style-type: none"> → the report of abuse is considered substantiated, leading to additional consequences for parents;* → the court must hold a dispositional hearing within 20 days of entering the adjudication order; and → DPHHS must complete and distribute a treatment plan 10 days before the hearing. <p>If the court addresses disposition immediately after the adjudication hearing, a review hearing should be held within 30 to 60 days.</p>
Disposition Hearing	<p>What is the best option for protecting the child's welfare?</p> <p>Options range from parental custody, with conditions imposed by the court, to temporary legal custody by the state, for up to 6 months at a time</p>	<p>For the state to receive temporary custody, preponderance of evidence must show:</p> <ul style="list-style-type: none"> → dismissing the petition would create a substantial risk of harm to the child; and → reasonable services have been provided to the family to prevent removal or facilitate reunification 	<p>Court schedules review hearings within 30 to 60 days of the disposition.</p> <p>DPHHS must complete and distribute a treatment plan within 10 days if one was not completed before the hearing.</p>

* When a report of child abuse or neglect is determined to be substantiated, the person responsible for the abuse or neglect will be disqualified from working or volunteering in some positions that involve children and some employers or organizations may obtain information related to the abuse or neglect charge.

Procedural Step	Question to Be Answered	Standard for Approval	Result/Next Steps
Approval of Treatment Plan	What is the plan for addressing the situation and creating a safe home environment?	Court may order a treatment plan if the judge has found the child to be a youth in need of care or if the parties have: → admitted to the allegations; or → stipulated the child is a youth in need of care.	This step often occurs at the same time as the disposition hearing.
Review Hearing	How are the child and parents doing? Is out-of-home placement still needed?		If little progress has been made, court considers: → whether changes are needed to the treatment plan; and → how long it's reasonable to continue working toward reunification.
Extension of Temporary Legal Custody	What's next for the child when the state's custody is about to expire? Options range from extension of state custody to dismissal of the case.	Based on evidence presented, the court may grant the state's request or ask the state to amend its petition to allow for a different outcome.	If no final disposition is made, review hearings continue every 30 to 60 days.
Petition to Terminate Parental Rights	Should the parent-child relationship be terminated?	Clear and convincing evidence showing a number of factors outlined in law. State must seek termination when: → child has been in foster care 15 of the most recent 22 months; or → court has found that reasonable efforts at reunification aren't necessary.	If parental rights are terminated, court may transfer custody to the state to consent for adoption or guardianship. If parental rights aren't terminated, review hearings continue every 30 to 60 days.

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Permanency Hearing	Is DPHHS making a reasonable effort to find a permanent placement?	Hearing must be held: <ul style="list-style-type: none"> → within 30 days of finding that reasonable efforts for family preservation or reunification services aren't needed; or → within 12 months of finding that a child is a youth in need of care or within 12 months after the child's first 60 days of removal from the home, whichever occurs first. 	Subsequent hearings must be held every 12 months after the initial permanency hearing, if necessary.

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