

1                                   \*\*\*\* BILL NO. \*\*\*\*  
2                                   INTRODUCED BY \*\*\*\*  
3                                   BY REQUEST OF THE \*\*\*\*  
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING A SHOW CAUSE HEARING WITHIN 5 DAYS OF  
6 FILING OF AN ABUSE AND NEGLECT PETITION; AND AMENDING SECTION 41-3-432, MCA."  
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8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
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10           **Section 1.** Section 41-3-432, MCA, is amended to read:

11           **"41-3-432. Show cause hearing -- order.** (1) (a) Except as provided in the federal Indian Child  
12 Welfare Act, a show cause hearing must be conducted within ~~20 days~~ 5 days of the filing of an initial child  
13 abuse and neglect petition unless otherwise stipulated by the parties pursuant to 41-3-434 or unless an  
14 extension of time is granted by the court. A separate notice to the court stating the statutory time deadline for a  
15 hearing must accompany any petition to which the time deadline applies.

16           (b) If a proceeding under this chapter involves an Indian child and is subject to the federal Indian  
17 Child Welfare Act, a qualified expert witness is required to testify that the continued custody of the child by the  
18 parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

19           (c) The court may grant an extension of time for a show cause hearing only upon a showing of  
20 substantial injustice and shall order an appropriate remedy that considers the best interests of the child.

21           (2) The person filing the petition has the burden of presenting evidence establishing probable cause  
22 for the issuance of an order for temporary investigative authority after the show cause hearing, except as  
23 provided by the federal Indian Child Welfare Act, if applicable.

24           (3) If a contested show cause hearing is requested pursuant to 41-3-427 based upon a disputed issue  
25 of material fact or a dispute regarding the veracity of the affidavit of the department, the court may consider all  
26 evidence and shall provide an opportunity for a parent, guardian, or other person having physical or legal  
27 custody of the child to provide testimony regarding the disputed issues. Hearsay evidence of statements made  
28 by the affected child is admissible at the hearing. The parent, guardian, or other person may be represented by

1 legal counsel and may be appointed or assigned counsel as provided for in 41-3-425.

2 (4) At the show cause hearing, the court shall explain the procedures to be followed in the case and  
3 explain the parties' rights, including the right to request appointment or assignment of counsel if indigent or if  
4 appointment or assignment of counsel is required under the federal Indian Child Welfare Act, if applicable, and  
5 the right to challenge the allegations contained in the petition. The parent, guardian, or other person having  
6 physical or legal custody of the child must be given the opportunity to admit or deny the allegations contained in  
7 the petition at the show cause hearing. Inquiry must be made to determine whether the notice requirements of  
8 the federal Indian Child Welfare Act, if applicable, have been met.

9 (5) Except as provided in the federal Indian Child Welfare Act, if applicable, the court shall make  
10 written findings on issues including but not limited to the following:

11 (a) whether the child should be returned home immediately if there has been an emergency removal  
12 or remain in temporary out-of-home care or be removed from the home;

13 (b) if removal is ordered or continuation of removal is ordered, why continuation of the child in the  
14 home would be contrary to the child's best interests and welfare;

15 (c) whether the department has made reasonable efforts to avoid protective placement of the child or  
16 to make it possible to safely return the child to the child's home;

17 (d) financial support of the child, including inquiry into the financial ability of the parents, guardian, or  
18 other person having physical or legal custody of the child to contribute to the costs for the care, custody, and  
19 treatment of the child and requirements of a contribution for those costs pursuant to 41-3-446; and

20 (e) whether another hearing is needed and, if so, the date and time of the next hearing.

21 (6) The court may consider:

22 (a) terms and conditions for parental visitation; and

23 (b) whether orders for examinations, evaluations, counseling, immediate services, or protection are  
24 needed.

25 (7) Following the show cause hearing, the court may enter an order for the relief requested or amend  
26 a previous order for immediate protection of the child if one has been entered. The order must be in writing.

27 (8) If a child who has been removed from the child's home is not returned home after the show cause  
28 hearing or if removal is ordered, the parents or parent, guardian, or other person or agency having physical or

1 legal custody of the child named in the petition may request that a citizen review board, if available pursuant to  
2 part 10 of this chapter, review the case within 30 days of the show cause hearing and make a recommendation  
3 to the district court, as provided in 41-3-1010.

4 (9) Adjudication of a child as a youth in need of care may be made at the show cause hearing if the  
5 requirements of 41-3-437(2) are met. If not made at the show cause hearing, adjudication under 41-3-437 must  
6 be made within the time limits required by 41-3-437 unless adjudication occurs earlier by stipulation of the  
7 parties pursuant to 41-3-434 and order of the court."

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