

# DEPENDENCY and NEGLECT PROSECUTION CONSIDERATIONS



# 5/8/24 Presentation to DN Court System Task Force by:

Karen Kane

Assistant Attorney General / Supervisor - Child Protection Unit

(406) 329-1564

[kkane2@mt.gov](mailto:kkane2@mt.gov)

# 41-3-101 - POLICY IN MONTANA

- (1) (a) provide for the protection of children whose health and welfare are or may be adversely affected and further threatened by the conduct of those responsible for the children's care and protection;
- (b) achieve these purposes in a family environment and preserve the unity and welfare of the family whenever possible;
- (c) support the efforts of parents whose children have been removed to reunify the family, including by taking into account whether those efforts may be impeded by court-ordered support payments;
- (d) ensure that there is no forced removal of a child from the family based solely on an allegation of abuse or neglect unless the department has reasonable cause to suspect that the child is at imminent risk of harm;
- (e) recognize that a child is entitled to assert the child's constitutional rights;
- (f) ensure that all children have a right to a healthy and safe childhood in a permanent placement; and
- (g) ensure that whenever removal of a child from the home is necessary, the child is entitled to maintain ethnic, cultural, and religious heritage whenever appropriate.

\*\*\*

**(7) In implementing the policy of this section, the child's health and safety are of paramount concern.**

# DN cases are CIVIL CASES

## 41-3-422(4)

An abuse and neglect petition is a civil action brought in the name of the state of Montana.

The Montana Rules of Civil Procedure and the Montana Rules of Evidence apply except as modified in this chapter.

Proceedings under a petition are not a bar to criminal prosecution.

# GENERAL PROSECUTION DUTIES

1. Receive Notice of Removal from CFS
2. Obtain CFS CPS Affidavit; verify information, esp. re: threshold issues of ICWA & Paternity, notice to OPD
3. File Initial Petition seeking appropriate available relief, *e.g.*, EPS, Adjudication, Disposition (TLC), etc.
4. File Proposed Orders [granting EPS, appointing Counsel & CASA, setting EPS Hearing (if child is removed from home); notifying parties of PHC; order setting SCH
5. Serve Initial Petition and Orders upon identified parent/s and any putative father/s
6. Obtain & produce any initial discovery
7. Attend Show Cause Hearing – potentially adjudicate child; submit proposed order
8. Attend Dispositional Hearing - submit proposed order
9. Move for Court approval and order regarding Treatment Plans – submit proposed order
10. Ensure timely referrals for services for parents per treatment plan tasks and goals and ensure appropriate efforts are made per [41-3-423](#)
11. Obtain and produce discovery (typically involves records and documents related to case service providers (mental health/ SUD/visitation professionals, etc.) for parents; service providers, school records re: child; and Probation/Law Enforcement records re parent (sometimes child)
12. Timely file further appropriate petitions as required – submit proposed orders
13. Attend status/review hearings; any additional hearings (placement, etc.); if evidentiary hearing, then subpoena witnesses – submit proposed orders
14. Ensure a timely Permanency Hearing is held – submit proposed order
15. File final petition – hopefully dismissal upon reunification, potentially TPR

# A DN Case is initiated by PETITION

41-3-422(1)(a) - Petitions that may be filed include:

- Petition for EPS – Emergency Protective Services
- Petition for TIA – Temporary Investigative Authority
- Petition for TLC – Temporary Legal Custody
- Petition for LTC – Long Term Custody
- Petition for TPR – Termination of Parental Rights
- Petition to Appoint Guardian/s
- Petition that Preservation/Reunification Services Need Not be Provided
- Any combination of petitions; or any other relief in the BIOC
- Petition for TPR may be 1<sup>st</sup> petition if a request for a determination that preservation or reunification services need not be provided is made

# PETITION REQUIREMENTS

All petitions must:

- have a Department **affidavit** attached that:
  - alleges that the child appears to have been abused or neglected; and
  - states the basis for the petition
- be filed with a separate **notice to the court** stating any statutory time deadline for a hearing;
- be given highest preference by the court in setting hearing dates

# SERVICE OF PETITION

## **INITIAL PETITIONS and TPR PETITION**

Must be served at least 5 days prior to hearing on PARENTS residing in state: by personal service or service by publication.

## **ALL OTHER PETITIONS**

Must be served upon the person or the person's attorney by certified mail, personal service, or publication. If by certified mail, receive and file return receipt for the service to be effective. Service is effective if the person to whom the notice was mailed appears at the hearing.

## **MINOR PARENTS**

Notice must be given to the minor parent's parents or guardian, and if there is no guardian, the court shall appoint one.

## **NOTICE**

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

- (a) right, pursuant to 41-3-425, to appointment or assignment of counsel if the person is indigent or if appointment or assignment of counsel is required under the federal Indian Child Welfare Act or the Montana Indian Child Welfare Act, if applicable;
- (b) right to contest the allegations in the petition; and
- (c) timelines for hearings and determinations required under this chapter.

[SERVICE IS DIFFERENT FOR ICWA CASES]



# STATE'S ATTORNEY HAS BURDEN OF PROOF [NON-ICWA]

- order for immediate protection and emergency protective services or for temporary investigative authority: **probable cause**
- order of adjudication or temporary legal custody, and long-term custody: **preponderance of the evidence**
- order terminating the parent-child legal relationship; order with determination that preservation or reunification services are not necessary: **clear and convincing evidence**

# STATE'S ATTORNEY HAS BURDEN OF PROOF [ICWA]

Placement of Indian child in foster care, appoint a guardian: **clear and convincing evidence**, including testimony of a qualified expert witness establishing that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

Termination of Parental Rights: evidence **beyond a reasonable doubt**, including the testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

# ICWA EVIDENTIARY RQMTS

- **41-3-1320. (Temporary) Evidentiary requirements.** (1) A court may not order a foster care placement of an Indian child unless:
  - (a) the petitioning party has provided clear and convincing evidence that active efforts were made to provide remedial services and rehabilitative programs to prevent the breakup of an Indian family and that the efforts were unsuccessful; and
  - (b) clear and convincing evidence is presented, including the testimony of one or more qualified expert witnesses, to demonstrate that continued custody by the child's parent or Indian custodian is likely to result in serious emotional or physical damage to the child.
- (2) The court may not terminate parental rights of the parents of an Indian child unless evidence beyond a reasonable doubt is presented that:
  - (a) active efforts were made to prevent the breakup of the Indian family and the efforts were unsuccessful; and
  - (b) continued custody of the child by the child's parent or Indian custodian is likely to result in serious emotional or physical damage to the child. The evidence must include testimony of one or more qualified expert witnesses.
- (3) (a) Evidence required under this section must show a causal relationship between the specific conditions in the home and the likelihood that continued custody of the child will result in serious emotional or physical damage to the child who is the subject of the child custody proceeding.
- (b) Evidence showing only the existence of community or family poverty, isolation, single parenthood, custodian age, crowded or inadequate housing, substance abuse, or nonconforming social behavior does not by itself constitute clear and convincing evidence or evidence beyond a reasonable doubt that continued custody is likely to result in serious emotional or physical damage to the child.

# ICWA IS A THRESHOLD ISSUE

Because:

- heightened standards apply if a case involves an Indian child; and requirements regarding providing notice to BIA and Tribe(s) must be met; QEW testimony required.
- case must be treated as an ICWA case if “reason to know” child is an Indian child – until all potential tribes have responded in writing to verify child’s membership status.

# AFFIDAVIT IN SUPPORT OF INITIAL PETITION

1. Must allege “that the child appears to have been abused or neglected [See 41-3-422(2)(a)];”
2. Must state the basis for the petition [See 41-3-422(2)(a)] ;
3. Must be signed by a CFS representative;
4. Must state in detail the alleged facts upon which the EPS request is based;
5. Must state the facts establishing probable cause [or, if the case is ICWA, clear and convincing evidence] that a child is abused or neglected or is in danger of being abused or neglected;
6. Must contain information, if any, regarding statements made by parents about the facts of the case;
7. Must state full name and address of the child;
8. Must state full name and address of the parents/guardians/legal custodian(s);
9. Must state whether ICWA applies or may apply;
10. Must state the nature of the child’s maltreatment;
11. Must state facts supporting CFS’ intervention;
12. Should state the date and allegations of the CI Report / referral and any prior assessments and history that support your belief that the child was in immediate or apparent danger of harm;
13. Must state date of removal;
14. Must list all efforts made to prevent the child’s removal. “Reasonable efforts include . . . VPSAs, development of individual written case plans specifying state efforts to reunify families, placement in the least disruptive setting possible, provision of services pursuant to a case plan, and periodic review of each case to ensure timely progress toward reunification or permanent placement.” [41-3-423(1)]

# IDENTIFYING CHILD'S FATHER

## STEPS PROSECUTORS CAN TAKE :

1. Obtain birth certificate and determine if a father is identified.
2. Request CPS obtain a statement from mother, child, and any other sources regarding potential father/s if paternity is not conclusively established
3. Request Putative Father Registry search and obtain PFR affidavit



# PATERNITY IS A THRESHOLD ISSUE

Because not conclusively establishing the identity of a child's father can cause delays in the case and the child's permanency

- Father must receive notice / be served;
- Father's extended family should be contacted to identify potential kinship placements

# ESTABLISHING WHO THE FATHER IS

A man identified as the child's father may be Presumed Natural or Adoptive Father or Putative Father

## **How parent and child relationship established:**

1. The natural father may be established under **40-6-104;**
2. An adoptive father may be established by proof of adoption.



# PUTATIVE FATHERS

## **42-2-201(2) (a)**

means an individual who may be a child's birth father but who is not married to the child's mother on or before the date that the child was born; or has not established paternity of the child prior to the filing of a petition for termination of parental rights to the child for purposes of adoption.

# RIGHT TO COUNSEL 41-3-425

The court shall immediately appoint the office of state public defender to assign counsel for:

- any indigent parent, guardian, or other person having legal custody of a child or youth in a removal, placement, or termination proceeding pending a determination of eligibility pursuant to 47-1-111;
- any child or youth involved in a proceeding under a petition filed OR petitioning for reinstatement of parental rights pursuant to 41-3-615
- any party entitled to counsel at public expense under ICWA or the Montana ICWA
- any child.

## PUTATIVE FATHERS

Except as provided in ICWA or Montana ICWA, a court may not appoint a public defender to a **putative father**, in a removal, placement, or termination proceeding until:

- (a) the putative father is successfully served notice of a petition filed pursuant to 41-3-422; and
- (b) the putative father makes a request to the court in writing to appoint the office of state public defender to assign counsel.

# Petition for EPS – typical initial petition

41-3-427- Petition for EPS can be filed in a "case in which it appears that a child is abused or neglected or is in danger of being abused or neglected..."

Affidavit must contain:

- Information regarding statements made by the parents about the facts of the case; and
- specific, written documentation as to why the risk of allowing the child to remain at home substantially outweighs the harm of removing the child, including consideration of:
  - (A) the emotional trauma the child is likely to experience if separated from the family;
  - (B) the child's relationships with other members of the household, including siblings;
  - (C) the child's schooling and social relationships that could be disrupted with a placement out of the neighborhood;
  - (D) the impact the removal would have on services the child is receiving and on extracurricular activities that benefit the child; and
  - (E) documentation of reasonable efforts made to keep the family intact.

# HEARINGS

Hearings must be held on any Petition that is filed unless the parties agree (stipulate) to the relief requested.

If a stipulation is reached, attorney can file a written stipulation and proposed Order and a hearing can be vacated; OR the parties' stipulation can occur on the record at the hearing itself.

Termination hearings are bench trials.

# DN HEARINGS

1. EPS **within 5 business days of removal** [PHCs also offered] - 41-3-306
2. SCH **within 20 days of initial petition** filing date - 41-3-432
3. Adjudication (if child not ADJ at SCH) **within 90 days of SCH** - 41-3-437 (90-days = max time TIA can be ordered - 41-3-433)
4. Disposition (if DISP not ordered at SCH or ADJ (after bifurcation) **within 20 days after ADJ order entered** - 41-3-438
5. Treatment Plan Hearing (Plans ordered **within 30 days of DISP hrg**) - 41-3-443
6. Extension of TLC (TLC order in effect for up to 6 months) or other further petition must be filed **prior to TLC order expiration** - 41-3-442
7. Permanency Hearing within **14 months of removal or 12 months after ADJ** (whichever is earlier) - 41-3-445
8. Termination Hearing **within 45 days of service of petition** – 41-3-604
9. Status / Review Hearings can/should happen at **regular intervals** throughout the case (varies by court: 1-3 months intervals typical)

# “EPS” Hearing – 41-3-306

- Held within 5 business days of a child’s removal from home if child is not “released” prior to the hearing
- Child and parents have counsel
- Court must determine if there is probable cause to “continue the removal” beyond 5 business days
  - If not, then child must be returned home
  - If yes court must establish visitation guidelines pending SCH and review kinship placement options.
- Court may direct CFS to develop and implement a treatment plan before the SCH if parent stipulates to a condition subject to a treatment plan and agrees to immediately comply with the treatment plan if it is developed.
- Silent as to hearsay

# SHOW CAUSE HEARING 41-3-432

- within 20 days of initial petition - parties can stipulate to, or court can grant, extension upon showing of substantial injustice and shall order an appropriate remedy that considers BIOC
- SCH = opportunity for parents to contest facts and challenge allegations
- If parents intend to dispute the initial petition, statute requires a request for contested SCH **within 10 days of service of the petition** (-427).
- If contested, evidentiary hearing required. Hearsay evidence of statements made by child are admissible.
- Child may be adjudicated at the SCH. If not, ADJ hearing within 90 days of SCH (unless stipulation of parties and Court order)
- At SCH, Court must: explain procedures followed and explain parties' rights, including right to counsel if indigent and right to challenge the petition allegations; provide parent the opportunity to admit or deny the petition allegations and provide testimony

# SCH Evidence

State attorney must provide Court evidence to make written findings:

- Whether child should be returned home immediately or remain in temporary out of home care
- If continued removal is ordered, why continuation of the child in the home is contrary to the child's best interests
- Whether CFS made reasonable/active efforts to avoid protective placement or make it possible to safely return the child home
- Financial support of the child; terms of visitation; orders for exams, evals, counseling, immediate services, or protection
- Whether another hearing is needed (usually always is) and when the next hearing is set [*Should be ADJ hearing if child is not ADJ at SCH; if child is ADJ at SCH, then next hearing is DISP or possibly Tx Plan hearing if ADJ and DISP occur at SCH*]



## TEMPORARY INVESTIGATIVE AUTHORITY 41-3-433

CFS may petition the court for authorization to conduct an investigation into allegations of child abuse, neglect, or abandonment when necessary. **TIA order may not be issued for longer than 90 days.**

- typically requested if parents refuse to cooperate with CFS investigation
- Adjudication hearing prior to TIA expiration (within 90-days of SCH)
- TIA Statute does not provide any specific authority the Court can grant to CFS

# ADJUDICATION AS YINC 41-3-437

- **ADJ Hearing must be held within 90 days of SCH**
- To Adjudicate, Court must determine, by a preponderance of evidence, that child is a youth in need of care.
- Court must determine nature of the abuse and neglect and establish facts that resulted in state intervention and upon which disposition, case work, court review, and possible termination are based.
- Court shall hear evidence re child's residence, paternity (if in question), whereabouts of parents, and any other matters relevant to determining status of the child.
- Hearsay evidence of statements made by the affected youth is admissible according to the Montana Rules of Evidence.
- If child is NOT adjudicated, petition must be dismissed
- If child is adjudicated, DISP hearing must be held within 20 days of adjudication
- Court may make oral findings re:
  - Which allegations were proven or admitted
  - Whether there is a legal basis for continued intervention
  - Whether reasonable/active efforts were made

# SCH - prosecution considerations

Attorney should consider evidence regarding this relief (Court may order):

- Terms for visitation / family communication
- Examinations, evaluations or counseling of child or parents
- Evaluation of noncustodial parent (or relatives) for placement
- perpetrator of abuse/neglect to leave home to allow child to remain
- Continued efforts to notify noncustodial parent

# DISPOSITION 41-3-438

- After ADJ, a dispositional hearing must be held separately from ADJ hearing within 20 days of the ADJ order.
- Can be held immediately after ADJ hearing following bifurcation if: all required reports are available and have been received by all parties or their attorneys at least 5 working days in advance of the hearing; and the judge has an opportunity to review the reports after the adjudication.
- Hearsay is admissible at the dispositional hearing.

# POSSIBLE DISPOSITIONS 41-3-438

- permit child to remain with custodial parent subject to any court-ordered conditions / limitations
- order CFS to evaluate noncustodial parent as a possible caretaker
- order child's temporary placement with noncustodial parent, superseding any existing custodial order, and keep the proceeding open pending completion by the custodial parent of any treatment plan ordered;
- order child's placement with noncustodial parent, superseding any existing custodial order, and dismiss the proceeding with no further obligation to provide services to the parent with whom the child is placed or to work toward reunification of child with the parent from whom the child was removed
- grant an order of limited emancipation to a child who is 16 years or older
- transfer temporary legal custody to the department – *most common*
- transfer temporary legal custody to a licensed child-placing agency that is willing and able to assume responsibility for the education, care, and maintenance of the child and that is licensed or otherwise authorized by law to receive and provide care of the child
- transfer temporary legal custody to a nonparent relative or other individual who has been evaluated and recommended by CFS or a licensed child-placing agency designated by the court and who is found by the court to be qualified to receive and care for the child
- order a party to the action to do what is necessary to give effect to the final disposition, including undertaking medical and psychological evaluations, treatment, and counseling
- order further care and treatment in the best interests of the child

# DISPOSITION 41-3-438(4)

Prosecutor should know if child's extended family requested custody of child and what CFS did to investigate and make determination re: whether “awarding custody” family member is in BIOC

Prosecutor must provide the reasons for any denial to the court because if court accepts CFS’ custody recommendation, court shall inform any denied family member of denial basis (to the extent confidentiality laws allow)

# TEMPORARY LEGAL CUSTODY IS THE MOST COMMON DISPOSITION

The Court may grant TLC for up to 6 months if it determines that:

1. Dismissing the Petition would create substantial risk of harm to the child or would be detrimental to a child's physical or psychological well being; and
2. Services to prevent removal and reunify family were provided (unless the Court finds reasonable efforts are not required).

# TREATMENT PLANS 41-3-443

must be ordered within 30 days of Dispositional Hrg

must include:

- Identification of problems/conditions that resulted in abuse/neglect
- Treatment goals and objectives for each condition or requirement (including what has to occur before a removed child can go home)
- Projected time necessary to complete each treatment objective
- Specific treatment objectives that clearly identify the separate roles and responsibilities of all parties addressed in the plan
- Signature of parent or guardian [*unless plan is ordered by the court*]



# TX PLAN REMEDIES, RQMTS, CONDITIONS

## TREATMENT PLANS MAY INLCUDE

- right of entry into child's home to assess parental compliance with treatment plan terms;
- requirement of child or parent to
  - obtain medical or psychiatric diagnosis and treatment through a physician or psychiatrist licensed in the state of Montana;
  - obtain psychological treatment or counseling;
  - obtain and follow through with alcohol or substance abuse evaluation and counseling, if necessary;
  - be restricted from associating with or contacting any individual who may be the subject of a CFS investigation;
- requirement that child be placed in temporary medical or out-of-home care;
- requirement that parent:
  - “furnish services that the court may designate;”
  - engage in substance testing if the court finds parent’s substance use contributed to the child’s removal or contributes to the child remaining out of the home

# DISCOVERY

## **41-3-431. Discovery procedure.**

- (a) the names, addresses, and statements of all persons who the department may call to provide testimony;
- (b) all written or oral statements, reports, case notes, correspondence, evaluations, interviews, and documentation produced by the department or in the department's possession that addresses the parent or child;
- (c) all written reports or statements of experts who have personally examined the child or any evidence, together with the results of any physical or psychological examinations;
- (d) all papers, documents, photographs, videotapes, or tangible objects that the department may use at trial or that were obtained from or purportedly belong to the parent; and
- (e) all material or information that tends to support, mitigate, or negate the department's case concerning the custody of and parental rights to the child.

## **41-3-205. Confidentiality -- disclosure exceptions.**

**CFS records**  
**SUD records**

**PHI records**  
**School records**

**CCJI**

**Federal and State laws apply**

# EXTENSION OF TLC 41-3-442

Before TLC expires - State's attorney must petition for :

- extension of TLC [court must find an extension is in the child's best interests and state reasons why child was not returned home and conditions upon which child may be returned home]
- continued temporary placement of the child with the noncustodial parent, superseding existing custodial order
- termination of the parent-child legal relationship
- long-term custody [child is at least 16 years old and in a planned permanent living arrangement];
- appointment of a guardian; or
- dismissal

*In implementing the policy of this section, the child's health and safety are of paramount concern*

# PERMANENCY OPTIONS 41-3-445

- **Reunification**
- **Permanent placement with noncustodial parent superseding prior custodial order**
- **Adoption**
- **Guardianship**
- **Long term custody (if child is over 16 and other statutory requirements are met)**

# PERMANENCY PLANS 41-3-445

- Perm Hearings must be held annually
- Perm Affidavit sets forth child's perm plan, efforts to effectuate it, options for permanency, reasons for excluding any higher priority options, proposed plan to carry out the placement decision, and specific times for achieving the plan.
- Court must consult with child "in an age-appropriate manner"
- Court's Permanency Order **within 20 days after perm hearing**
- If child's extended family member requested custody, prosecutor must present evidence regarding CFS investigation and determination whether it is in BIOC and provide denial reasons to court.
- If court accepts CFS' custody recommendation, court shall inform any denied family member of the denial reasons to the extent confidentiality laws allow and shall include the reasons for denial in the court order if the family member who is denied custody requests it to be included.

# PERMANENCY PLANS (cont.)

For a child 14 years of age or older, permanency plan must:

- (a) be developed in consultation with the child and in consultation with up to two members of the child's case planning team who are chosen by the child and who are not a foster parent or social worker for the child;
- (b) identify one person from the case management team, who is selected by the child, to be designated as the child's advisor and advocate for the application of the reasonable and prudent parenting standard; and
- (c) include services that will be needed to transition the child from foster care to adulthood.

A permanency hearing must document the intensive, ongoing, and unsuccessful efforts made by CFS to return the child to the child's home or to secure a permanent placement of the child with a relative, legal guardian, or adoptive parent.

# PERMANENCY ORDER

Court must approve a specific permanency plan for the child and make written findings on:

- whether the child has been asked about the desired permanency outcome;
- whether the permanency plan is in the best interests of the child;
- whether the department has made reasonable efforts to effectuate the permanency plan for the individual child;
- whether the department has made reasonable efforts to finalize the plan;
- whether there are compelling reasons why it is not in BIOC to: (i) return to the child's home; or be placed for adoption, with a legal guardian, or with a fit and willing relative; and
- other necessary steps that the department is required to take to effectuate the terms of the plan.

# LONG TERM CUSTODY

LTC requires findings that:

- **Child is at least 16 years old\*** and
- Living in a PPLA and either
  - Child is being cared for by fit and willing relative
  - Child is participating in an independent living program
  - Child has handicap so severe that child cannot function in family setting
  - Child's parent is incarcerated and TPR is not in child's best interests

Child meets following criteria:

- Has been ADJ
- CFSD made reasonable efforts and further efforts are unproductive
- Reunification not in the child's best interest
- Child in placement committed to long term care of the child

**\*requirement is found in federal law – 2015 Preventing Sex Trafficking and Strengthening Families Act**



# GUARDIANSHIP

# 41-3-444

- State can petition for guardian if CFS has TLC or PLC
- Court must find specific facts based on “findings supported by substantial evidence” [*In re S.S. 2022 MT 75*]
  - CFS gave written consent to guardian’s appointment
  - if subsidized, CFS has given its written consent after considering initiating or continuing financial subsidies
  - the child is adjudicated a youth in need of care;
  - CFS made reasonable efforts to reunite parent and child, further efforts to reunite the parent and child would likely be unproductive, and reunification would be contrary to child’s best interests;
  - child has lived with the potential guardian in a family setting
  - potential guardian is committed to providing a long-term relationship with the child;
  - it is in child’s best interests to remain or be placed with the potential guardian;
  - either TPR is not in child's best interests or parental rights to child have been terminated but adoption is not in child's best interests; and
  - if child is an Indian child, the child's tribe has received notification from the state of the initiation of the proceedings

# Guardianship - Revocation

- Court may revoke a guardianship if court finds, after hearing on a petition for removal of the guardian, that continuation of the guardianship is not in the best interests of the child.
- Notice of hearing must be provided by the moving party to child's lawful guardian, CFS, any court-appointed guardian ad litem, child's parent (if the rights are intact), and “other persons directly interested in the welfare of the child.”
- Guardian may petition to resign the guardianship; and may include a request for appointment of a successor guardian.
- After notice and hearing, court may appoint a successor guardian or may terminate the guardianship and restore temporary legal custody to CFS

# TERMINATION OF PARENTAL RIGHTS

- Petition TPR required if child in out of home foster care for 15 of most recent 22 months and presumption that TPR is in child's BIOC exists (41-3-604) unless certain criteria are met. (41-3-604)
- Hearing held **within 45 days of service of petition** on parent, unless good cause. (41-3-604)
- GAL must be present at the hearing to represent BIOC (41-3-607)
- If TPR ordered, Ct may transfer PLC of child to CFS with right to consent to child's adoption (41-3-607)

# TPR criteria (41-3-609)

## Criteria for TPR:

- Child has been determined to be abused or neglected and Parent-child relationship is not in BIOC and:
- Parent Voluntary Relinquishment
- Abandonment
- Parent convicted of felony involving sexual intercourse resulting in birth of the child
- Parent has subjected a child to aggravated circumstances
- Putative father has failed to: support of child for 1 year; establish relationship; visit child monthly; or register with the putative father registry
- Failed Tx Plan and parent unlikely to change in reasonable time

# TPR - Failed Tx Plan

- Child ADJ and TX plan has not been complied with or successful; and parent's conduct or condition rendering unfit is unlikely to change within reasonable time
  - In determining whether parent's conduct or condition is unlikely to change within a reasonable time, court shall enter a finding that continuation of the parent-child legal relationship will likely result in continued abuse or neglect or that the parent's conduct or the condition renders the parent unfit, unable, or unwilling to give the child adequate parental care.
  - Court shall consider but is not limited to the following:
    - Parent's emotional illness, mental illness, or mental deficiency of a duration or nature as to render the parent unlikely to care for the ongoing physical, mental, and emotional needs of the child within a reasonable time;
    - Parent's history of violent behavior;
    - Parent's excessive use of intoxicating liquor or narcotic or dangerous drug that affects parent's ability to care and provide for the child; and
    - Parent's present judicially ordered long-term confinement.
- In considering any of the factors terminating the parent-child relationship, the court shall give primary consideration to the physical, mental, and emotional conditions and needs of the child.

# TPR without a Tx Plan

- parent voluntarily relinquished parental rights, abandoned child, felony sexual intercourse resulting in child's birth; aggravated circumstances exist; putative father TPR criteria met;
- 2 medical doctors or clinical psychologists testify that parent cannot assume the role of parent within a reasonable time;
- parent is or will be incarcerated for more than 1 year and reunification of the child with the parent is not in BIOC because of the child's circumstances, including placement options, age, and developmental, cognitive, and psychological needs;
- parent abuse or neglect of a child caused death or serious bodily injury.

# REINSTATEMENT OF PARENTAL RIGHTS

## 41-3-615

- State attorney/CFS does not file this petition, only child and terminated parent may file it;
- Specific requirements and criteria must be met
- Court must hold a hearing if it determines reinstatement is in BIOC and either conditionally grant or deny the petition if clear and convincing evidence shows required factors
- Conditional grant lasts for 6 months prior to any final order reinstating parental rights