

Critical Time Lines in State Law: A Brief Review of Montana Statutes

Time lines relating to court procedures, petitions, hearings (exceptions may apply).

- An **abuse or neglect petition** must be filed within 2 working days, excluding weekends and holidays, of emergency placement of a child unless arrangements acceptable to the agency for the care of the child have been made or voluntary protective services provided. 41-3-301, MCA. (This is the "48-hour rule" that is an issue with the new court rules requiring a separate petition for each child - see October 20, 2005 notebook for a copy of the rule. The reference to "48 hours" was amended to "2 working days, excluding weekends and holidays" in 2001.)
- Except as provided in the Indian Child Welfare Act, otherwise stipulated by the parties, or unless an extension is granted by the court, a **show cause hearing** must be held within 20 days of the filing of the initial petition. 41-3-301, 41-3-432, MCA. (This had been changed from 20 days to 10 days in 2001, and subsequently changed back to 20 days in 2003.)
- An **adjudicatory hearing** must be held within 90 days of a show cause hearing. Exceptions to the time limit may be allowed only in cases involving newly discovered evidence, unavoidable delays, stipulation by the parties, and unforeseen personal emergencies. 41-3-437, MCA.
- If a child is adjudicated a youth in need of care, the court shall set a date for a **dispositional hearing** within 20 days. 41-3-437, 41-3-438, MCA.
- A parent or other person having legal custody of a child named in a petition must be served personally with a copy of the initial petition and the petition to terminate at least 5 days before the date set for the hearing. 41-3-422, MCA.
- There is the presumption that the termination of parental rights must be initiated by filing a petition if the child has been in foster care for 15 out of 22 months unless other circumstances exist. 41-3-422, and 41-3-443, MCA and ASFA¹.
- If reasonable efforts to provide preservation or reunification services need not be provided, then a permanency hearing must be held within 30 days. 41-3-423, 41-3-438, and 41-3-445, MCA and ASFA.
- Permanency hearings must also be held: (1) No later than 12 months after the initial court finding that the child has been subjected to abuse or neglect or 12 months after the child's first 60 days of removal from the home, whichever comes first; and (2) within 12 months of a permanency hearing and every 12 months thereafter until the child is permanently placed in either an adoptive or a guardianship placement. 41-3-445, MCA and ASFA
- A finding of "reasonable efforts to prevent removal" or "reasonable efforts to prevent removal or reunify not required" must be in a court order within 60 days of the date of the child's removal from the home to be eligible for IV-E funds or adoption subsidy.
- Courts must comply with ASFA in making specific findings within certain time frames in order to receive IV-E (federal) funding and adoption subsidy.

¹ASFA refers to the Adoption and Safe Families Act of 1997.

- Foster Care Review Committee is to review the foster care status of a child receiving federal funds within the time lines established under the ASFA. 41-3-115, MCA and 45 USC 675(5).

Other CFSD time lines:

- An initial investigation of an anonymous report must result in the development of independent, corroborative, and attributable information within 48 hours for the investigation to continue. 41-3-202, MCA.
- If a report is unfounded, the report must be destroyed within 30 days. 41-3-202, MCA.
- Within 60 days after beginning an investigation, the investigating social worker must report to the department and, upon request, to the family. 41-3-202, MCA.
- If a voluntary protective services agreement is terminated by a party to the agreement, a child who has been placed in temporary out-of-home placement must be returned to the parents within 2 working days unless an abuse and neglect petition is filed by the department. 41-3-302, MCA.
- At least 3 working days before a permanency hearing, the department must and the guardian ad litem, attorney, or advocate may submit a report regarding the child to the entity that will conduct the review. 41-3-445, MCA.

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