

1 HOUSE BILL NO. 467

2 INTRODUCED BY J. TREBAS

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE STANDARDS OF EVIDENCE FOR MAKING
5 DETERMINATIONS INVOLVING CHILD ABUSE AND NEGLECT CASES; AMENDING SECTIONS 41-3-102,
6 41-3-422, 41-3-427, 41-3-432, 41-3-434, 41-3-437, 41-3-442, 41-3-445, AND 41-3-609, MCA; AND PROVIDING
7 AN APPLICABILITY DATE."

8

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10

11 **Section 1.** Section 41-3-102, MCA, is amended to read:12 **"41-3-102. Definitions.** As used in this chapter, the following definitions apply:

13 (1) (a) "Abandon", "abandoned", and "abandonment" mean:

14 (i) leaving a child under circumstances that make reasonable the belief that the parent does not intend
15 to resume care of the child in the future;16 (ii) willfully surrendering physical custody for a period of 6 months and during that period not manifesting
17 to the child and the person having physical custody of the child a firm intention to resume physical custody or to
18 make permanent legal arrangements for the care of the child;19 (iii) that the parent is unknown and has been unknown for a period of 90 days and that reasonable efforts
20 to identify and locate the parent have failed; or21 (iv) the voluntary surrender, as defined in 40-6-402, by a parent of a newborn who is no more than 30
22 days old to an emergency services provider, as defined in 40-6-402.23 (b) The terms do not include the voluntary surrender of a child to the department solely because of
24 parental inability to access publicly funded services.

25 (2) "A person responsible for a child's welfare" means:

26 (a) the child's parent, guardian, or foster parent or an adult who resides in the same home in which the
27 child resides;

28 (b) a person providing care in a day-care facility;

29 (c) an employee of a public or private residential institution, facility, home, or agency; or

30 (d) any other person responsible for the child's welfare in a residential setting.

1 (3) "Abused or neglected" means the state or condition of a child who has suffered child abuse or
2 neglect.

3 (4) (a) "Adequate health care" means any medical care or nonmedical remedial health care recognized
4 by an insurer licensed to provide disability insurance under Title 33, including the prevention of the withholding
5 of medically indicated treatment or medically indicated psychological care permitted or authorized under state
6 law.

7 (b) This chapter may not be construed to require or justify a finding of child abuse or neglect for the sole
8 reason that a parent or legal guardian, because of religious beliefs, does not provide adequate health care for
9 a child. However, this chapter may not be construed to limit the administrative or judicial authority of the state to
10 ensure that medical care is provided to the child when there is imminent substantial risk of serious harm to the
11 child.

12 (5) "Best interests of the child" means the physical, mental, and psychological conditions and needs of
13 the child and any other factor considered by the court to be relevant to the child.

14 (6) "Child" or "youth" means any person under 18 years of age.

15 (7) (a) "Child abuse or neglect" means:

16 (i) actual physical or psychological harm to a child;

17 (ii) substantial risk of physical or psychological harm to a child; or

18 (iii) abandonment.

19 (b) (i) The term includes:

20 (A) actual physical or psychological harm to a child or substantial risk of physical or psychological harm
21 to a child by the acts or omissions of a person responsible for the child's welfare; or

22 (B) exposing a child to the criminal distribution of dangerous drugs, as prohibited by 45-9-101, the
23 criminal production or manufacture of dangerous drugs, as prohibited by 45-9-110, or the operation of an unlawful
24 clandestine laboratory, as prohibited by 45-9-132.

25 (ii) For the purposes of this subsection (7), "dangerous drugs" means the compounds and substances
26 described as dangerous drugs in Schedules I through IV in Title 50, chapter 32, part 2.

27 (c) In proceedings under this chapter in which the federal Indian Child Welfare Act is applicable, this term
28 has the same meaning as "serious emotional or physical damage to the child" as used in 25 U.S.C. 1912(f).

29 (d) The term does not include self-defense, defense of others, or action taken to prevent the child from
30 self-harm that does not constitute physical or psychological harm to a child.

- 1 (8) "Concurrent planning" means to work toward reunification of the child with the family while at the
2 same time developing and implementing an alternative permanent plan.
- 3 (9) "Department" means the department of public health and human services provided for in 2-15-2201.
- 4 (10) "Family group decisionmaking meeting" means a meeting that involves family members in either
5 developing treatment plans or making placement decisions, or both.
- 6 (11) "Indian child" means any unmarried person who is under 18 years of age and who is either:
7 (a) a member of an Indian tribe; or
8 (b) eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.
- 9 (12) "Indian child's tribe" means:
10 (a) the Indian tribe in which an Indian child is a member or eligible for membership; or
11 (b) in the case of an Indian child who is a member of or eligible for membership in more than one Indian
12 tribe, the Indian tribe with which the Indian child has the more significant contacts.
- 13 (13) "Indian custodian" means any Indian person who has legal custody of an Indian child under tribal
14 law or custom or under state law or to whom temporary physical care, custody, and control have been transferred
15 by the child's parent.
- 16 (14) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians
17 recognized by:
18 (a) the state of Montana; or
19 (b) the United States secretary of the interior as being eligible for the services provided to Indians or
20 because of the group's status as Indians, including any Alaskan native village as defined in federal law.
- 21 (15) "Limited emancipation" means a status conferred on a youth by a court in accordance with 41-1-503
22 under which the youth is entitled to exercise some but not all of the rights and responsibilities of a person who
23 is 18 years of age or older.
- 24 (16) "Parent" means a biological or adoptive parent or stepparent.
- 25 (17) "Parent-child legal relationship" means the legal relationship that exists between a child and the
26 child's birth or adoptive parents, as provided in Title 40, chapter 6, part 2, unless the relationship has been
27 terminated by competent judicial decree as provided in 40-6-234, Title 42, or part 6 of this chapter.
- 28 (18) "Permanent placement" means reunification of the child with the child's parent, adoption, placement
29 with a legal guardian, placement with a fit and willing relative, or placement in another planned permanent living
30 arrangement until the child reaches 18 years of age.

1 (19) "Physical abuse" means an intentional act, an intentional omission, or gross negligence resulting
2 in substantial skin bruising, internal bleeding, substantial injury to skin, subdural hematoma, burns, bone
3 fractures, extreme pain, permanent or temporary disfigurement, impairment of any bodily organ or function, or
4 death.

5 (20) "Physical neglect" means either failure to provide basic necessities, including but not limited to
6 appropriate and adequate nutrition, protective shelter from the elements, and appropriate clothing related to
7 weather conditions, or failure to provide cleanliness and general supervision, or both, or exposing or allowing the
8 child to be exposed to an unreasonable physical or psychological risk to the child.

9 (21) (a) "Physical or psychological harm to a child" means the harm that occurs whenever the parent or
10 other person responsible for the child's welfare:

11 (i) inflicts or allows to be inflicted upon the child physical abuse, physical neglect, or psychological abuse
12 or neglect;

13 (ii) commits or allows sexual abuse or exploitation of the child;

14 (iii) induces or attempts to induce a child to give untrue testimony that the child or another child was
15 abused or neglected by a parent or other person responsible for the child's welfare;

16 (iv) causes malnutrition or a failure to thrive or otherwise fails to supply the child with adequate food or
17 fails to supply clothing, shelter, education, or adequate health care, though financially able to do so or offered
18 financial or other reasonable means to do so;

19 (v) exposes or allows the child to be exposed to an unreasonable risk to the child's health or welfare by
20 failing to intervene or eliminate the risk; or

21 (vi) abandons the child.

22 (b) The term does not include a youth not receiving supervision solely because of parental inability to
23 control the youth's behavior.

24 (22) (a) "Protective services" means services provided by the department:

25 (i) to enable a child alleged to have been abused or neglected to remain safely in the home;

26 (ii) to enable a child alleged to have been abused or neglected who has been removed from the home
27 to safely return to the home; or

28 (iii) to achieve permanency for a child adjudicated as a youth in need of care when circumstances and
29 the best interests of the child prevent reunification with parents or a return to the home.

30 (b) The term includes emergency protective services provided pursuant to 41-3-301, voluntary protective

1 services provided pursuant to 41-3-302, and court-ordered protective services provided pursuant to parts 4 and
2 6 of this chapter.

3 (23) (a) "Psychological abuse or neglect" means severe maltreatment through acts or omissions that are
4 injurious to the child's emotional, intellectual, or psychological capacity to function, including the commission of
5 acts of violence against another person residing in the child's home.

6 (b) The term may not be construed to hold a victim responsible for failing to prevent the crime against
7 the victim.

8 (24) "Qualified expert witness" as used in cases involving an Indian child in proceedings subject to the
9 federal Indian Child Welfare Act means:

10 (a) a member of the Indian child's tribe who is recognized by the tribal community as knowledgeable in
11 tribal customs as they pertain to family organization and child-rearing practices;

12 (b) a lay expert witness who has substantial experience in the delivery of child and family services to
13 Indians and extensive knowledge of prevailing social and cultural standards and child-rearing practices within the
14 Indian child's tribe; or

15 (c) a professional person who has substantial education and experience in providing services to children
16 and families and who possesses significant knowledge of and experience with Indian culture, family structure,
17 and child-rearing practices in general.

18 (25) "Reasonable cause to suspect" means cause that would lead a reasonable person to believe that
19 child abuse or neglect may have occurred or is occurring, based on all the facts and circumstances known to the
20 person.

21 (26) "Residential setting" means an out-of-home placement where the child typically resides for longer
22 than 30 days for the purpose of receiving food, shelter, security, guidance, and, if necessary, treatment.

23 (27) (a) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent,
24 indecent exposure, sexual abuse, ritual abuse of a minor, or incest, as described in Title 45, chapter 5.

25 (b) Sexual abuse does not include any necessary touching of an infant's or toddler's genital area while
26 attending to the sanitary or health care needs of that infant or toddler by a parent or other person responsible for
27 the child's welfare.

28 (28) "Sexual exploitation" means allowing, permitting, or encouraging a child to engage in a prostitution
29 offense, as described in 45-5-601 through 45-5-603, or allowing, permitting, or encouraging sexual abuse of
30 children as described in 45-5-625.

1 (29) (a) "Social worker" means an employee of the department who, before the employee's field
2 assignment, has been educated or trained in a program of social work or a related field that includes cognitive
3 and family systems treatment or who has equivalent verified experience or verified training in the investigation
4 of child abuse, neglect, and endangerment.

5 (b) This definition does not apply to any provision of this code that is not in this chapter.

6 (30) "Treatment plan" means a written agreement between the department and the parent or guardian
7 or a court order that includes action that must be taken to resolve the condition or conduct of the parent or
8 guardian that resulted in the need for protective services for the child. The treatment plan may involve court
9 services, the department, and other parties, if necessary, for protective services.

10 (31) "Unfounded" means that after an investigation, the investigating person has determined that the
11 reported abuse, neglect, or exploitation has not occurred.

12 (32) "Unsubstantiated" means that after an investigation, the investigator was unable to determine by a
13 ~~preponderance of the~~ clear and convincing evidence that the reported abuse, neglect, or exploitation has
14 occurred.

15 (33) (a) "Withholding of medically indicated treatment" means the failure to respond to an infant's
16 life-threatening conditions by providing treatment, including appropriate nutrition, hydration, and medication, that,
17 in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in
18 ameliorating or correcting the conditions.

19 (b) The term does not include the failure to provide treatment, other than appropriate nutrition, hydration,
20 or medication, to an infant when, in the treating physician's or physicians' reasonable medical judgment:

21 (i) the infant is chronically and irreversibly comatose;

22 (ii) the provision of treatment would:

23 (A) merely prolong dying;

24 (B) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or

25 (C) otherwise be futile in terms of the survival of the infant; or

26 (iii) the provision of treatment would be virtually futile in terms of the survival of the infant and the
27 treatment itself under the circumstances would be inhumane. For purposes of this subsection (33), "infant" means
28 an infant less than 1 year of age or an infant 1 year of age or older who has been continuously hospitalized since
29 birth, who was born extremely prematurely, or who has a long-term disability. The reference to less than 1 year
30 of age may not be construed to imply that treatment should be changed or discontinued when an infant reaches

1 1 year of age or to affect or limit any existing protections available under state laws regarding medical neglect
2 of children 1 year of age or older.

3 (34) "Youth in need of care" means a youth who has been adjudicated or determined, after a hearing,
4 to be or to have been abused, neglected, or abandoned."
5

6 **Section 2.** Section 41-3-422, MCA, is amended to read:

7 **"41-3-422. Abuse and neglect petitions -- burden of proof.** (1) (a) Proceedings under this chapter
8 must be initiated by the filing of a petition. A petition may request the following relief:

9 (i) immediate protection and emergency protective services, as provided in 41-3-427;

10 (ii) temporary investigative authority, as provided in 41-3-433;

11 (iii) temporary legal custody, as provided in 41-3-442;

12 (iv) long-term custody, as provided in 41-3-445;

13 (v) termination of the parent-child legal relationship, as provided in 41-3-607;

14 (vi) appointment of a guardian pursuant to 41-3-444;

15 (vii) a determination that preservation or reunification services need not be provided; or

16 (viii) any combination of the provisions of subsections (1)(a)(i) through (1)(a)(vii) or any other relief that
17 may be required for the best interests of the child.

18 (b) The petition may be modified for different relief at any time within the discretion of the court.

19 (c) A petition for temporary legal custody may be the initial petition filed in a case.

20 (d) A petition for the termination of the parent-child legal relationship may be the initial petition filed in
21 a case if a request for a determination that preservation or reunification services need not be provided is made
22 in the petition.

23 (2) The county attorney, attorney general, or an attorney hired by the county shall file all petitions under
24 this chapter. A petition filed by the county attorney, attorney general, or an attorney hired by the county must be
25 accompanied by:

26 (a) an affidavit by the department alleging that the child appears to have been abused or neglected and
27 stating the basis for the petition; and

28 (b) a separate notice to the court stating any statutory time deadline for a hearing.

29 (3) Abuse and neglect petitions must be given highest preference by the court in setting hearing dates.

30 (4) An abuse and neglect petition is a civil action brought in the name of the state of Montana. The

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

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

3 (5) (a) Except as provided in ~~subsection~~ subsections (5)(b) and (5)(c), the person filing the abuse and
4 neglect petition has the burden of presenting clear and convincing evidence required to justify ~~the relief requested~~
5 ~~and establishing~~:

6 (i) ~~probable cause~~ for the issuance of an order for immediate protection and emergency protective
7 services ~~or~~;

8 (ii) an order for temporary investigative authority;

9 ~~(ii)~~(iii) a preponderance of the evidence for an order of adjudication or temporary legal custody; or

10 ~~(iii)~~(iv) a preponderance of the evidence for an order of long-term custody; ~~or~~.

11 (iv)~~(b)~~ A person filing an abuse and neglect petition has the burden of presenting evidence beyond a
12 reasonable doubt ~~clear and convincing evidence~~ for an order terminating the parent-child legal relationship.

13 ~~(b)~~(c) If a proceeding under this chapter involves an Indian child, as defined in the federal Indian Child
14 Welfare Act, 25 U.S.C. 1901, et seq., the standards of proof required for legal relief under the federal Indian Child
15 Welfare Act apply.

16 (6) (a) Except as provided in the federal Indian Child Welfare Act, if applicable, the parents or parent,
17 guardian, or other person or agency having legal custody of the child named in the petition, if residing in the state,
18 must be served personally with a copy of the initial petition and a petition to terminate the parent-child legal
19 relationship at least 5 days before the date set for hearing. If the person or agency cannot be served personally,
20 the person or agency may be served by publication as provided in 41-3-428 and 41-3-429.

21 (b) Copies of all other petitions must be served upon the person or the person's attorney of record by
22 certified mail, by personal service, or by publication as provided in 41-3-428 and 41-3-429. If service is by certified
23 mail, the department must receive a return receipt signed by the person to whom the notice was mailed for the
24 service to be effective. Service of the notice is considered to be effective if, in the absence of a return receipt, the
25 person to whom the notice was mailed appears at the hearing.

26 (7) If personal service cannot be made upon the parents or parent, guardian, or other person or agency
27 having legal custody, the court shall immediately provide for the appointment or assignment of an attorney as
28 provided for in 41-3-425 to represent the unavailable party when, in the opinion of the court, the interests of
29 justice require.

30 (8) If a parent of the child is a minor, notice must be given to the minor parent's parents or guardian, and

1 if there is no guardian, the court shall appoint one.

2 (9) (a) Any person interested in any cause under this chapter has the right to appear. Any foster parent,
3 preadoptive parent, or relative caring for the child must be given legal notice by the attorney filing the petition of
4 all judicial hearings for the child and has the right to be heard. The right to appear or to be heard does not make
5 that person a party to the action. Any foster parent, preadoptive parent, or relative caring for the child must be
6 given notice of all reviews by the reviewing body.

7 (b) A foster parent, preadoptive parent, or relative of the child who is caring for or a relative of the child
8 who has cared for a child who is the subject of the petition who appears at a hearing set pursuant to this section
9 may be allowed by the court to intervene in the action if the court, after a hearing in which evidence is presented
10 on those subjects provided for in 41-3-437(4), determines that the intervention of the person is in the best
11 interests of the child. A person granted intervention pursuant to this subsection is entitled to participate in the
12 adjudicatory hearing held pursuant to 41-3-437 and to notice and participation in subsequent proceedings held
13 pursuant to this chapter involving the custody of the child.

14 (10) An abuse and neglect petition must:

15 (a) state the nature of the alleged abuse or neglect and of the relief requested;

16 (b) state the full name, age, and address of the child and the name and address of the child's parents
17 or guardian or person having legal custody of the child;

18 (c) state the names, addresses, and relationship to the child of all persons who are necessary parties
19 to the action.

20 (11) Any party in a proceeding pursuant to this section is entitled to counsel as provided in 41-3-425.

21 (12) At any stage of the proceedings considered appropriate by the court, the court may order an
22 alternative dispute resolution proceeding or the parties may voluntarily participate in an alternative dispute
23 resolution proceeding. An alternative dispute resolution proceeding under this chapter may include a family group
24 decisionmaking meeting, mediation, or a settlement conference. If a court orders an alternative dispute resolution
25 proceeding, a party who does not wish to participate may file a motion objecting to the order. If the department
26 is a party to the original proceeding, a representative of the department who has complete authority to settle the
27 issue or issues in the original proceeding must be present at any alternative dispute resolution proceeding.

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

30 (a) right, pursuant to 41-3-425, to appointment or assignment of counsel if the person is indigent or if

1 appointment or assignment of counsel is required under the federal Indian Child Welfare Act, if applicable;

2 (b) right to contest the allegations in the petition; and

3 (c) timelines for hearings and determinations required under this chapter.

4 (14) If appropriate, orders issued under this chapter must contain a notice provision advising a child's
5 parent, guardian, or other person having physical or legal custody of the child that:

6 (a) the court is required by federal and state laws to hold a permanency hearing to determine the
7 permanent placement of a child no later than 12 months after a judge determines that the child has been abused
8 or neglected or 12 months after the first 60 days that the child has been removed from the child's home;

9 (b) if a child has been in foster care for 15 of the last 22 months, state law presumes that termination of
10 parental rights is in the best interests of the child and the state is required to file a petition to terminate parental
11 rights; and

12 (c) completion of a treatment plan does not guarantee the return of a child.

13 (15) A court may appoint a standing master to conduct hearings and propose decisions and orders to
14 the court for court consideration and action. A standing master may not conduct a proceeding to terminate
15 parental rights. A standing master must be a member of the state bar of Montana and must be knowledgeable
16 in the area of child abuse and neglect laws."

17

18 **Section 3.** Section 41-3-427, MCA, is amended to read:

19 **"41-3-427. Petition for immediate protection and emergency protective services -- order -- service.**

20 (1) (a) In a case in which it appears that a child is abused or neglected or is in danger of being abused or
21 neglected, the county attorney, the attorney general, or an attorney hired by the county may file a petition for
22 immediate protection and emergency protective services. In implementing the policy of this section, the child's
23 health and safety are of paramount concern.

24 (b) A petition for immediate protection and emergency protective services must state the specific
25 authority requested and must be supported by an affidavit signed by a representative of the department stating
26 in detail the alleged facts upon which the request is based and the facts establishing ~~probable cause~~ or, if the
27 ~~case is subject to the federal Indian Child Welfare Act,~~ clear and convincing evidence that a child is abused or
28 neglected or is in danger of being abused or neglected. The affidavit of the department representative must
29 contain information, if any, regarding statements made by the parents about the facts of the case.

30 (c) If from the alleged facts presented in the affidavit it appears to the court that there is ~~probable cause~~

1 ~~or, if the case is subject to the federal Indian Child Welfare Act,~~ clear and convincing evidence to believe that the
2 child has been abused or neglected or is in danger of being abused and neglected, the judge shall grant
3 emergency protective services and the relief authorized by subsection (2) until the adjudication hearing or the
4 temporary investigative hearing. If it appears from the alleged facts contained in the affidavit that there is
5 insufficient ~~probable cause or, if the case is subject to the federal Indian Child Welfare Act,~~ clear and convincing
6 evidence to believe that the child has been abused or neglected or is in danger of being abused or neglected,
7 the court shall dismiss the petition.

8 (d) If the parents, parent, guardian, person having physical or legal custody of the child, or attorney for
9 the child disputes the material issues of fact contained in the affidavit or the veracity of the affidavit, the person
10 may request a contested show cause hearing pursuant to 41-3-432 within 10 days following service of the petition
11 and affidavit.

12 (e) The petition for immediate protection and emergency protective services must include a notice
13 advising the parents, parent, guardian, or other person having physical or legal custody of the child that the
14 parents, parent, guardian, or other person having physical or legal custody of the child may have a support
15 person present during any in-person meeting with a social worker concerning emergency protective services.
16 Reasonable accommodation must be made in scheduling an in-person meeting with the social worker.

17 (2) Pursuant to subsection (1), if the court finds ~~probable cause or, if the case is subject to the federal~~
18 ~~Indian Child Welfare Act,~~ clear and convincing evidence based on the petition and affidavit, the court may issue
19 an order for immediate protection of the child. The court shall consider the parents' statements, if any, included
20 with the petition and any accompanying affidavit or report to the court. If the court finds ~~probable cause or, if the~~
21 ~~case is subject to the federal Indian Child Welfare Act,~~ clear and convincing evidence, the court may issue an
22 order granting the following forms of relief, which do not constitute a court-ordered treatment plan under 41-3-443:

23 (a) the right of entry by a peace officer or department worker;

24 (b) the right to place the child in temporary medical or out-of-home care, including but not limited to care
25 provided by a noncustodial parent, kinship or foster family, group home, or institution;

26 (c) the right for the department to locate, contact, and share information with any extended family
27 members who may be considered as placement options for the child;

28 (d) a requirement that the parents, guardian, or other person having physical or legal custody furnish
29 information that the court may designate and obtain evaluations that may be necessary to determine whether a
30 child is a youth in need of care;

1 (e) a requirement that the perpetrator of the alleged child abuse or neglect be removed from the home
2 to allow the child to remain in the home;

3 (f) a requirement that the parent provide the department with the name and address of the other parent,
4 if known, unless parental rights to the child have been terminated;

5 (g) a requirement that the parent provide the department with the names and addresses of extended
6 family members who may be considered as placement options for the child who is the subject of the proceeding;
7 and

8 (h) any other temporary disposition that may be required in the best interests of the child that does not
9 require an expenditure of money by the department unless the court finds after notice and a hearing that the
10 expenditure is reasonable and that resources are available for payment. The department is the payor of last resort
11 after all family, insurance, and other resources have been examined.

12 (3) An order for removal of a child from the home must include a finding that continued residence of the
13 child with the parent is contrary to the welfare of the child or that an out-of-home placement is in the best interests
14 of the child.

15 (4) The order for immediate protection of the child must require the person served to comply immediately
16 with the terms of the order and to appear before the court issuing the order on the date specified for a show cause
17 hearing. Upon a failure to comply or show cause, the court may hold the person in contempt or place temporary
18 physical custody of the child with the department until further order.

19 (5) The petition must be served as provided in 41-3-422."
20

21 **Section 4.** Section 41-3-432, MCA, is amended to read:

22 **"41-3-432. Show cause hearing -- order.** (1) (a) Except as provided in the federal Indian Child Welfare
23 Act, a show cause hearing must be conducted within 20 days of the filing of an initial child abuse and neglect
24 petition unless otherwise stipulated by the parties pursuant to 41-3-434 or unless an extension of time is granted
25 by the court. A separate notice to the court stating the statutory time deadline for a hearing must accompany any
26 petition to which the time deadline applies.

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

30 (c) The court may grant an extension of time for a show cause hearing only upon a showing of

1 substantial injustice and shall order an appropriate remedy that considers the best interests of the child.

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

5 (3) If a contested show cause hearing is requested pursuant to 41-3-427 based upon a disputed issue
6 of material fact or a dispute regarding the veracity of the affidavit of the department, the court may consider all
7 evidence and shall provide an opportunity for a parent, guardian, or other person having physical or legal custody
8 of the child to provide testimony regarding the disputed issues. Hearsay evidence of statements made by the
9 affected child is admissible at the hearing. The parent, guardian, or other person may be represented by legal
10 counsel and may be appointed or assigned counsel as provided for in 41-3-425.

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

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

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

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

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

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

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

30 (6) The court may consider:

1 (a) terms and conditions for parental visitation; and
2 (b) whether orders for examinations, evaluations, counseling, immediate services, or protection are
3 needed.

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

6 (8) If a child who has been removed from the child's home is not returned home after the show cause
7 hearing or if removal is ordered, the parents or parent, guardian, or other person or agency having physical or
8 legal custody of the child named in the petition may request that a citizen review board, if available pursuant to
9 part 10 of this chapter, review the case within 30 days of the show cause hearing and make a recommendation
10 to the district court, as provided in 41-3-1010.

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

15

16 **Section 5.** Section 41-3-434, MCA, is amended to read:

17 **"41-3-434. Stipulations.** Subject to approval by the court, the parties may stipulate to any of the
18 following:

19 (1) the child meets the definition of a youth in need of care by ~~the preponderance of the~~ clear and
20 convincing evidence;

21 (2) a treatment plan, if the child has been adjudicated a youth in need of care;

22 (3) the disposition; or

23 (4) extension of the timeframes contained in this chapter, except for the timeframe contained in
24 41-3-445."

25

26 **Section 6.** Section 41-3-437, MCA, is amended to read:

27 **"41-3-437. Adjudication -- temporary disposition -- findings -- order.** (1) Upon the filing of an
28 appropriate petition, an adjudicatory hearing must be held within 90 days of a show cause hearing under
29 41-3-432. Adjudication may take place at the show cause hearing if the requirements of subsection (2) are met
30 or may be made by prior stipulation of the parties pursuant to 41-3-434 and order of the court. Exceptions to the

1 time limit may be allowed only in cases involving newly discovered evidence, unavoidable delays, stipulation by
2 the parties pursuant to 41-3-434, and unforeseen personal emergencies.

3 (2) The court may make an adjudication on a petition under 41-3-422 if the court determines by a
4 ~~preponderance of the~~ clear and convincing evidence, except as provided in the federal Indian Child Welfare Act,
5 if applicable, that the child is a youth in need of care. Except as otherwise provided in this part, the Montana Rules
6 of Civil Procedure and the Montana Rules of Evidence apply to adjudication and to an adjudicatory hearing.
7 Adjudication must determine the nature of the abuse and neglect and establish facts that resulted in state
8 intervention and upon which disposition, case work, court review, and possible termination are based.

9 (3) The court shall hear evidence regarding the residence of the child, paternity, if in question, the
10 whereabouts of the parents, guardian, or nearest adult relative, and any other matters the court considers
11 relevant in determining the status of the child. Hearsay evidence of statements made by the affected youth is
12 admissible according to the Montana Rules of Evidence.

13 (4) In a case in which abandonment has been alleged by the county attorney, the attorney general, or
14 an attorney hired by the county, the court shall hear offered evidence, including evidence offered by a person
15 appearing pursuant to 41-3-422(9)(a) or (9)(b), regarding any of the following subjects:

16 (a) the extent to which the child has been cared for, nurtured, or supported by a person other than the
17 child's parents; and

18 (b) whether the child was placed or allowed to remain by the parents with another person for the care
19 of the child, and, if so, then the court shall accept evidence regarding:

20 (i) the intent of the parents in placing the child or allowing the child to remain with that person;

21 (ii) the continuity of care the person has offered the child by providing permanency or stability in
22 residence, schooling, and activities outside of the home; and

23 (iii) the circumstances under which the child was placed or allowed to remain with that other person,
24 including:

25 (A) whether a parent requesting return of the child was previously prevented from doing so as a result
26 of an order issued pursuant to Title 40, chapter 15, part 2, or of a conviction pursuant to 45-5-206; and

27 (B) whether the child was originally placed with the other person to allow the parent to seek employment
28 or attend school.

29 (5) In all civil and criminal proceedings relating to abuse or neglect, the privileges related to the
30 examination or treatment of the child do not apply, except the attorney-client privilege granted by 26-1-803 and

1 the mediation privilege granted by 26-1-813.

2 (6) (a) If the court determines that the child is not an abused or neglected child, the petition must be
3 dismissed and any order made pursuant to 41-3-427 or 41-3-432 must be vacated.

4 (b) If the child is adjudicated a youth in need of care, the court shall set a date for a dispositional hearing
5 to be conducted within 20 days, as provided in 41-3-438(1), and order any necessary or required investigations.
6 The court may issue a temporary dispositional order pending the dispositional hearing. The temporary
7 dispositional order may provide for any of the forms of relief listed in 41-3-427(2).

8 (7) (a) Before making an adjudication, the court may make oral findings, and following the adjudicatory
9 hearing, the court shall make written findings on issues, including but not limited to the following:

10 (i) which allegations of the petition have been proved or admitted, if any;

11 (ii) whether there is a legal basis for continued court and department intervention; and

12 (iii) whether the department has made reasonable efforts to avoid protective placement of the child or
13 to make it possible to safely return the child to the child's home.

14 (b) The court may order:

15 (i) terms for visitation, support, and other intrafamily communication pending disposition if the child is
16 to be placed or to remain in temporary out-of-home care prior to disposition;

17 (ii) examinations, evaluations, or counseling of the child or parents in preparation for the disposition
18 hearing that does not require an expenditure of money by the department unless the court finds after notice and
19 a hearing that the expenditure is reasonable and that resources are available for payment. The department is the
20 payor of last resort after all family, insurance, and other resources have been examined.

21 (iii) the department to evaluate the noncustodial parent or relatives as possible caretakers, if not already
22 done;

23 (iv) the perpetrator of the alleged child abuse or neglect to be removed from the home to allow the child
24 to remain in the home; and

25 (v) the department to continue efforts to notify noncustodial parents.

26 (8) If a proceeding under this chapter involves an Indian child and is subject to the federal Indian Child
27 Welfare Act, a qualified expert witness is required to testify that the continued custody of the child by the parent
28 or Indian custodian is likely to result in serious emotional or physical damage to the child."
29

30 **Section 7.** Section 41-3-442, MCA, is amended to read:

1 **"41-3-442. Temporary legal custody.** (1) If a child is found to be a youth in need of care under
2 41-3-437, the court may grant temporary legal custody under 41-3-438 if the court determines by a
3 ~~preponderance of the~~ clear and convincing evidence that:

4 (a) dismissing the petition would create a substantial risk of harm to the child or would be a detriment
5 to the child's physical or psychological well-being; and

6 (b) unless there is a finding that reasonable efforts are not required pursuant to 41-3-423, reasonable
7 services have been provided to the parent or guardian to prevent the removal of the child from the home or to
8 make it possible for the child to safely return home.

9 (2) An order for temporary legal custody may be in effect for no longer than 6 months.

10 (3) The granting of temporary legal custody to the department allows the department to place a child in
11 care provided by a custodial or noncustodial parent, kinship foster home, youth foster home, youth group home,
12 youth shelter care facility, or institution.

13 (4) Before the expiration of the order for temporary legal custody, the county attorney, the attorney
14 general, or an attorney hired by the county shall petition for one of the following:

15 (a) an extension of temporary legal custody, not to exceed 6 months, upon a showing that:

16 (i) additional time is necessary for the parent or guardian to successfully complete a treatment plan; or

17 (ii) continuation of temporary legal custody is necessary because of the child's individual circumstances;

18 (b) continued temporary placement of the child with the noncustodial parent, superseding any existing
19 custodial order;

20 (c) termination of the parent-child legal relationship and:

21 (i) permanent legal custody with the right of adoption;

22 (ii) permanent placement of the child with the noncustodial parent, superseding any existing custodial

23 order; or

24 (iii) appointment of a guardian pursuant to 41-3-607;

25 (d) long-term custody when the child is in a planned permanent living arrangement pursuant to 41-3-445;

26 (e) appointment of a guardian pursuant to 41-3-444; or

27 (f) dismissal.

28 (5) The court may continue an order for temporary legal custody pending a hearing on a petition provided
29 for in subsection (2).

30 (6) If an extension of temporary legal custody is granted to the department, the court shall state the

1 reasons why the child was not returned home and the conditions upon which the child may be returned home and
2 shall specifically find that an extension is in the child's best interests.

3 (7) If the time limitations of this section are not met, the court shall review the reasons for the failure and
4 order an appropriate remedy that considers the best interests of the child.

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

6 (9) A petition requesting temporary legal custody must be served as provided in 41-3-422."
7

8 **Section 8.** Section 41-3-445, MCA, is amended to read:

9 **"41-3-445. Permanency hearing.** (1) (a) (i) Subject to subsection (1)(b), a permanency hearing must
10 be held by the court or, subject to the approval of the court and absent an objection by a party to the proceeding,
11 by the foster care review committee, as provided in 41-3-115, or the citizen review board, as provided in
12 41-3-1010:

13 (A) within 30 days of a determination that reasonable efforts to provide preservation or reunification
14 services are not necessary under 41-3-423, 41-3-438(6), or 41-3-442(1); or

15 (B) no later than 12 months after the initial court finding that the child has been subjected to abuse or
16 neglect or 12 months after the child's first 60 days of removal from the home, whichever comes first.

17 (ii) Within 12 months of a hearing under subsection (1)(a)(i)(B) and every 12 months thereafter until the
18 child is permanently placed in either an adoptive or a guardianship placement, the court or the court-approved
19 entity holding the permanency hearing shall conduct a hearing and the court shall issue a finding as to whether
20 the department has made reasonable efforts to finalize the permanency plan for the child.

21 (b) A permanency hearing is not required if the proceeding has been dismissed, the child was not
22 removed from the home, the child has been returned to the child's parent or guardian, or the child has been
23 legally adopted or appointed a legal guardian.

24 (c) The permanency hearing may be combined with a hearing that is required in other sections of this
25 part or with a review held pursuant to 41-3-115 or 41-3-1010 if held within the applicable time limits. If a
26 permanency hearing is combined with another hearing or a review, the requirements of the court related to the
27 disposition of the other hearing or review must be met in addition to the requirements of this section.

28 (d) The court-approved entity conducting the permanency hearing may elect to hold joint or separate
29 reviews for groups of siblings, but the court shall issue specific findings for each child.

30 (2) At least 3 working days prior to the permanency hearing, the department shall submit a report

1 regarding the child to the entity that will be conducting the hearing for review. The report must address the
2 department's efforts to effectuate the permanency plan for the child, address the options for the child's permanent
3 placement, examine the reasons for excluding higher priority options, and set forth the proposed plan to carry
4 out the placement decision, including specific times for achieving the plan.

5 (3) At least 3 working days prior to the permanency hearing, the guardian ad litem or an attorney or
6 advocate for a parent or guardian may submit an informational report to the entity that will be conducting the
7 hearing for review.

8 (4) In a permanency hearing, the court or other entity conducting the hearing shall consult, in an
9 age-appropriate manner, with the child regarding the proposed permanency or transition plan for the child.

10 (5) (a) The court's order must be issued within 20 days after the permanency hearing if the hearing was
11 conducted by the court. If a member of the child's extended family, including an adult sibling, grandparent,
12 great-grandparent, aunt, or uncle, has requested that custody be awarded to that family member or that a prior
13 grant of temporary custody with that family member be made permanent, the department shall investigate and
14 determine if awarding custody to that family member is in the best interests of the child. The department shall
15 provide the reasons for any denial to the court. If the court accepts the department's custody recommendation,
16 the court shall inform any denied family member of the reasons for the denial to the extent that confidentiality laws
17 allow. The court shall include the reasons for denial in the court order if the family member who is denied custody
18 requests it to be included.

19 (b) If an entity other than the court conducts the hearing, the entity shall keep minutes of the hearing and
20 the minutes and written recommendations must be provided to the court within 20 days of the hearing.

21 (c) If an entity other than the court conducts the hearing and the court concurs with the
22 recommendations, the court may adopt the recommendations as findings with no additional hearing required. In
23 this case, the court shall issue written findings within 10 days of receipt of the written recommendations.

24 (6) The court shall approve a specific permanency plan for the child and make written findings on:

25 (a) whether the permanency plan is in the best interests of the child;

26 (b) whether the department has made reasonable efforts to finalize the plan; and

27 (c) other necessary steps that the department is required to take to effectuate the terms of the plan.

28 (7) In its discretion, the court may enter any other order that it determines to be in the best interests of
29 the child that does not conflict with the options provided in subsection (8) and that does not require an
30 expenditure of money by the department unless the court finds after notice and a hearing that the expenditures

1 are reasonable and that resources are available for payment. The department is the payor of last resort after all
2 family, insurance, and other resources have been examined.

3 (8) Permanency options include:

4 (a) reunification of the child with the child's parent or guardian;

5 (b) permanent placement of the child with the noncustodial parent, superseding any existing custodial
6 order;

7 (c) adoption;

8 (d) appointment of a guardian pursuant to 41-3-444; or

9 (e) long-term custody if the child is in a planned permanent living arrangement and if it is established by
10 ~~a preponderance of the~~ clear and convincing evidence, which is reflected in specific findings by the court, that:

11 (i) the child is being cared for by a fit and willing relative;

12 (ii) the child has an emotional or mental handicap that is so severe that the child cannot function in a
13 family setting and the best interests of the child are served by placement in a residential or group setting;

14 (iii) the child is at least 16 years of age and is participating in an independent living program and that
15 termination of parental rights is not in the best interests of the child;

16 (iv) the child's parent is incarcerated and circumstances, including placement of the child and continued,
17 frequent contact with the parent, indicate that it would not be in the best interests of the child to terminate parental
18 rights of that parent; or

19 (v) the child meets the following criteria:

20 (A) the child has been adjudicated a youth in need of care;

21 (B) the department has made reasonable efforts to reunite the parent and child, further efforts by the
22 department would likely be unproductive, and reunification of the child with the parent or guardian would be
23 contrary to the best interests of the child;

24 (C) there is a judicial finding that other more permanent placement options for the child have been
25 considered and found to be inappropriate or not to be in the best interests of the child; and

26 (D) the child has been in a placement in which the foster parent or relative has committed to the
27 long-term care and to a relationship with the child, and it is in the best interests of the child to remain in that
28 placement.

29 (9) The court may terminate a planned permanent living arrangement upon petition of the birth parents
30 or the department if the court finds that the circumstances of the child or family have substantially changed and

1 the best interests of the child are no longer being served."

2

3 **Section 9.** Section 41-3-609, MCA, is amended to read:

4 **"41-3-609. Criteria for termination.** (1) The court may order a termination of the parent-child legal
5 relationship upon a finding established by ~~clear and convincing~~ evidence beyond a reasonable doubt, except as
6 provided in the federal Indian Child Welfare Act, if applicable, that any of the following circumstances exist:

7 (a) the parents have relinquished the child pursuant to 42-2-402 and 42-2-412;

8 (b) the child has been abandoned by the parents;

9 (c) the parent is convicted of a felony in which sexual intercourse occurred or is a minor adjudicated a
10 delinquent youth because of an act that, if committed by an adult, would be a felony in which sexual intercourse
11 occurred and, as a result of the sexual intercourse, the child is born;

12 (d) the parent has subjected a child to any of the circumstances listed in 41-3-423(2)(a) through (2)(e);

13 (e) the putative father meets any of the criteria listed in 41-3-423(3)(a) through (3)(c); or

14 (f) the child is an adjudicated youth in need of care and both of the following exist:

15 (i) an appropriate treatment plan that has been approved by the court has not been complied with by the
16 parents or has not been successful; and

17 (ii) the conduct or condition of the parents rendering them unfit is unlikely to change within a reasonable
18 time.

19 (2) In determining whether the conduct or condition of the parents is unlikely to change within a
20 reasonable time, the court shall enter a finding that continuation of the parent-child legal relationship will likely
21 result in continued abuse or neglect or that the conduct or the condition of the parents renders the parents unfit,
22 unable, or unwilling to give the child adequate parental care. In making the determinations, the court shall
23 consider but is not limited to the following:

24 (a) emotional illness, mental illness, or mental deficiency of the parent of a duration or nature as to
25 render the parent unlikely to care for the ongoing physical, mental, and emotional needs of the child within a
26 reasonable time;

27 (b) a history of violent behavior by the parent;

28 (c) excessive use of intoxicating liquor or of a narcotic or dangerous drug that affects the parent's ability
29 to care and provide for the child; and

30 (d) present judicially ordered long-term confinement of the parent.

1 (3) In considering any of the factors in subsection (2) in terminating the parent-child relationship, the
2 court shall give primary consideration to the physical, mental, and emotional conditions and needs of the child.

3 (4) A treatment plan is not required under this part upon a finding by the court following hearing if:

4 (a) the parent meets the criteria of subsections (1)(a) through (1)(e);

5 (b) two medical doctors or clinical psychologists submit testimony that the parent cannot assume the role
6 of parent within a reasonable time;

7 (c) the parent is or will be incarcerated for more than 1 year and reunification of the child with the parent
8 is not in the best interests of the child because of the child's circumstances, including placement options, age,
9 and developmental, cognitive, and psychological needs; or

10 (d) the death or serious bodily injury, as defined in 45-2-101, of a child caused by abuse or neglect by
11 the parent has occurred.

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

15

16 NEW SECTION. **Section 10. Applicability.** [This act] applies to cases initiated on or after October 1,
17 2017.

18

- END -