

SENATE BILL NO. 156

INTRODUCED BY D. EMRICH

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING EVIDENTIARY BURDENS RELATED TO CHILD ABUSE AND NEGLECT PROCEEDINGS; PROVIDING THAT ORDERS OF ADJUDICATION, TEMPORARY LEGAL CUSTODY, AND LONG-TERM CUSTODY MAY ONLY BE ISSUED ON CLEAR AND CONVINCING EVIDENCE; PROVIDING THAT AN ORDER OF TERMINATION MAY ONLY BE ISSUED ON PROOF BEYOND A REASONABLE DOUBT; AND AMENDING SECTIONS 41-3-422, 41-3-423, 41-3-434, 41-3-437, 41-3-442, 41-3-445, 41-3-609, AND 41-3-615, MCA."

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

Section 1. Section 41-3-422, MCA, is amended to read:

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

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

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

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

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

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

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

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

~~(viii) — any combination of the provisions of subsections (1)(a)(i) through (1)(a)(vii) or any other relief~~

~~that may be required for the best interests of the child.~~

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

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

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

1 made in the petition.

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

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

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

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

10 (4) — An abuse and neglect petition is a civil action brought in the name of the state of Montana. The
11 Montana Rules of Civil Procedure and the Montana Rules of Evidence apply except as modified in this chapter.
12 Proceedings under a petition are not a bar to criminal prosecution.

13 (5) — (a) Except as provided in subsection (5)(b), the person filing the abuse and neglect petition has
14 the burden of presenting evidence required to justify the relief requested and establishing:

15 (i) — probable cause for the issuance of an order for immediate protection and emergency protective
16 services or an order for temporary investigative authority;

17 (ii) — a preponderance of the evidence for an order of adjudication or temporary legal custody;

18 (iii) — a preponderance of the evidence for an order of long-term custody; or

19 (iv) — clear and convincing evidence for an order terminating the parent-child legal relationship.

20 (b) — If a proceeding under this chapter involves an Indian child, as defined in the federal Indian
21 Child Welfare Act, 25 U.S.C. 1901, et seq., or 41-3-1303, the standards of proof required for legal relief under
22 the federal Indian Child Welfare Act and the Montana Indian Child Welfare Act provided for in Title 41, chapter
23 3, part 13, apply.

24 (6) — (a) Except as provided in the federal Indian Child Welfare Act and the Montana Indian Child
25 Welfare Act, if applicable, the parents or parent, guardian, or other person or agency having legal custody of
26 the child named in the petition, if residing in the state, must be served personally with a copy of the initial
27 petition and a petition to terminate the parent-child legal relationship at least 5 days before the date set for
28 hearing. If the person or agency cannot be served personally, the person or agency may be served by

1 publication as provided in 41-3-428 and 41-3-429.

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

7 (7) — If personal service cannot be made upon the parents or parent, guardian, or other person or
8 agency having legal custody, the court shall immediately provide for the appointment or assignment of an
9 attorney as provided for in 41-3-425 to represent the unavailable party when, in the opinion of the court, the
10 interests of justice require. If personal service cannot be made upon a putative father, the court may not provide
11 for the appointment or assignment of counsel as provided for in 41-3-425 to represent the father unless, in the
12 opinion of the court, the interests of justice require counsel to be appointed or assigned.

13 (8) — If a parent of the child is a minor, notice must be given to the minor parent's parents or
14 guardian, and if there is no guardian, the court shall appoint one.

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

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

27 (c) — Whenever a child is placed with a foster parent, preadoptive parent, or relative, the department
28 shall provide written notice to the foster parent, preadoptive parent, or relative explaining the foster parent's,

preadoptive parent's, or relative's rights under this subsection (9) to receive notice, to appear and be heard, and to attempt to intervene in proceedings under this chapter.

(10) — An abuse and neglect petition must state:

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

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

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

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

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

(13) — 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.

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

(a) — the court is required by federal and state laws to hold a permanency hearing to determine the permanent placement of a child no later than 12 months after a judge determines that the child has been

1 abused or neglected or 12 months after the first 60 days that the child has been removed from the child's home;

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

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

6 (15) ~~A court may appoint a standing master to conduct hearings and propose decisions and orders~~
 7 ~~to the court for court consideration and action. A standing master may not conduct a proceeding to terminate~~
 8 ~~parental rights. A standing master must be a member of the state bar of Montana and must be knowledgeable~~
 9 ~~in the area of child abuse and neglect laws. (Terminates June 30, 2025--sec. 55, Ch. 716, L. 2023.)~~

10 **41-3-422. (Effective July 1, 2025) Abuse and neglect petitions -- burden of proof. (1) (a)**

11 Proceedings under this chapter must be initiated by the filing of a petition. A petition may request the following
 12 relief:

- 13 (i) immediate protection and emergency protective services, as provided in 41-3-427;
- 14 (ii) temporary investigative authority, as provided in 41-3-433;
- 15 (iii) temporary legal custody, as provided in 41-3-442;
- 16 (iv) long-term custody, as provided in 41-3-445;
- 17 (v) termination of the parent-child legal relationship, as provided in 41-3-607;
- 18 (vi) appointment of a guardian pursuant to 41-3-444;
- 19 (vii) a determination that preservation or reunification services need not be provided; or
- 20 (viii) any combination of the provisions of subsections (1)(a)(i) through (1)(a)(vii) or any other relief
- 21 that may be required for the best interests of the child.

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

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

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

27 (2) The county attorney, attorney general, or an attorney hired by the county shall file all petitions
 28 under this chapter. A petition filed by the county attorney, attorney general, or an attorney hired by the county

1 must be accompanied by:

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

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

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

7 (4) An abuse and neglect petition is a civil action brought in the name of the state of Montana. The
8 Montana Rules of Civil Procedure and the Montana Rules of Evidence apply except as modified in this chapter.
9 Proceedings under a petition are not a bar to criminal prosecution.

10 (5) (a) Except as provided in subsection (5)(b), the person filing the abuse and neglect petition has
11 the burden of presenting evidence required to justify the relief requested and establishing:

12 (i) probable cause for the issuance of an order for immediate protection and emergency protective
13 services or an order for temporary investigative authority;

14 (ii) ~~a preponderance of the evidence~~ clear and convincing evidence for an order of adjudication or
15 temporary legal custody;

16 (iii) ~~a preponderance of the evidence~~ clear and convincing evidence for an order of long-term
17 custody; or

18 (iv) ~~clear and convincing evidence~~ proof beyond a reasonable doubt for an order terminating the
19 parent-child legal relationship.

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

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

28 (b) Copies of all other petitions must be served upon the person or the person's attorney of record

1 by certified mail, by personal service, or by publication as provided in 41-3-428 and 41-3-429. If service is by
2 certified mail, the department must receive a return receipt signed by the person to whom the notice was mailed
3 for the service to be effective. Service of the notice is considered to be effective if, in the absence of a return
4 receipt, the person to whom the notice was mailed appears at the hearing.

5 (7) If personal service cannot be made upon the parents or parent, guardian, or other person or
6 agency having legal custody, the court shall immediately provide for the appointment or assignment of an
7 attorney as provided for in 41-3-425 to represent the unavailable party when, in the opinion of the court, the
8 interests of justice require. If personal service cannot be made upon a putative father, the court may not provide
9 for the appointment or assignment of counsel as provided for in 41-3-425 to represent the father unless, in the
10 opinion of the court, the interests of justice require counsel to be appointed or assigned.

11 (8) If a parent of the child is a minor, notice must be given to the minor parent's parents or
12 guardian, and if there is no guardian, the court shall appoint one.

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

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

25 (c) Whenever a child is placed with a foster parent, preadoptive parent, or relative, the department
26 shall provide written notice to the foster parent, preadoptive parent, or relative explaining the foster parent's,
27 preadoptive parent's, or relative's rights under this subsection (9) to receive notice, to appear and be heard, and
28 to attempt to intervene in proceedings under this chapter.

1 (10) An abuse and neglect petition must state:

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

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

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

7 (11) Any party in a proceeding pursuant to this section is entitled to counsel as provided in 41-3-
8 425.

9 (12) At any stage of the proceedings considered appropriate by the court, the court may order an
10 alternative dispute resolution proceeding or the parties may voluntarily participate in an alternative dispute
11 resolution proceeding. An alternative dispute resolution proceeding under this chapter may include a family
12 engagement meeting, mediation, or a settlement conference. If a court orders an alternative dispute resolution
13 proceeding, a party who does not wish to participate may file a motion objecting to the order. If the department
14 is a party to the original proceeding, a representative of the department who has complete authority to settle the
15 issue or issues in the original proceeding must be present at any alternative dispute resolution proceeding.

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

18 (a) right, pursuant to 41-3-425, to appointment or assignment of counsel if the person is indigent or
19 if appointment or assignment of counsel is required under the federal Indian Child Welfare Act, if applicable;

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

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

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

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

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

1 terminate parental rights; and

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

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

7

8 **Section 2.** Section 41-3-423, MCA, is amended to read:

9 **"41-3-423. Reasonable efforts required to prevent removal of child or to return -- exemption --**

10 **findings -- permanency plan.** (1) (a) The department shall make reasonable efforts to prevent the necessity of
11 removal of a child from the child's home and to reunify families that have been separated by the state.

12 (b) For the purposes of this subsection (1), the term "reasonable efforts" means the department
13 shall in good faith:

14 (i) conduct a comprehensive assessment of the circumstances of the family, with a focus on safe
15 reunification as the most desirable goal. The assessment must be provided to the parents and to counsel for
16 the parents.

17 (ii) identify appropriate services and help the parents overcome barriers, including actively
18 assisting the parents in obtaining appropriate services;

19 (iii) with parental consent, identify and invite the extended family to participate in providing support
20 and services to the family and to participate in family team meetings, permanency planning, and resolution of
21 placement issues;

22 (iv) conduct or cause to be conducted a diligent search for the child's extended family members
23 and contact and consult with extended family members to provide family structure and support for the child and
24 the parents;

25 (v) offer and employ all available and culturally appropriate family preservation strategies and
26 facilitate the use of remedial and rehabilitative services;

27 (vi) take steps to keep siblings together whenever possible;

28 (vii) support regular visits with parents in the most natural setting possible, as well as trial home

visits with the child during any period of removal, consistent with the need to ensure the health, safety, and welfare of the child;

(viii) identify community resources, including housing, financial, transportation, mental health, substance abuse, and peer support services, and actively assist the parents or, when appropriate, the child's family in utilizing and accessing the resources;

(ix) monitor progress and participation in services; and

(x) consider alternative ways to address the needs of the parents and, when appropriate, the family if the optimum services do not exist or are not available.

(c) In determining preservation or reunification services to be provided and in making reasonable efforts at providing preservation or reunification services, the child's health and safety are of paramount concern.

(2) Except in a proceeding subject to the federal Indian Child Welfare Act [or the Montana Indian Child Welfare Act provided for in Title 41, chapter 3, part 13], the department may, at any time during an abuse and neglect proceeding, make a request for a determination that preservation or reunification services need not be provided. If an indigent parent is not already represented by counsel, the court shall immediately provide for the appointment or assignment of counsel to represent the indigent parent in accordance with the provisions of 41-3-425. A court may make a finding that the department need not make reasonable efforts to provide preservation or reunification services if the court finds that the parent has:

(a) subjected a child to aggravated circumstances, including but not limited to abandonment, torture, chronic abuse, or sexual abuse or chronic, severe neglect of a child;

(b) committed, aided, abetted, attempted, conspired, or solicited deliberate or mitigated deliberate homicide of a child;

(c) committed aggravated assault against a child;

(d) committed neglect of a child that resulted in serious bodily injury or death; or

(e) had parental rights to the child's sibling or other child of the parent involuntarily terminated and the circumstances related to the termination of parental rights are relevant to the parent's ability to adequately care for the child at issue.

(3) Preservation or reunification services are not required for a putative father, as defined in 42-2-

201, if the court makes a finding that the putative father has failed to do any of the following:

(a) contribute to the support of the child for an aggregate period of 1 year, although able to do so;

(b) establish a substantial relationship with the child. A substantial relationship is demonstrated by:

(i) visiting the child at least monthly when physically and financially able to do so; or

(ii) having regular contact with the child or with the person or agency having the care and custody of the child when physically and financially able to do so; and

(iii) manifesting an ability and willingness to assume legal and physical custody of the child if the child was not in the physical custody of the other parent.

(c) register with the putative father registry pursuant to Title 42, chapter 2, part 2, and the person has not been:

(i) adjudicated in Montana to be the father of the child for the purposes of child support; or

(ii) recorded on the child's birth certificate as the child's father.

(4) A judicial finding that preservation or reunification services are not necessary under this section must be supported by ~~clear and convincing evidence~~ proof beyond a reasonable doubt.

(5) If the court finds that preservation or reunification services are not necessary pursuant to subsection (2) or (3), a permanency hearing must be held within 30 days of that determination and reasonable efforts, including consideration of both in-state and out-of-state permanent placement options for the child, must be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

(6) If reasonable efforts have been made to prevent removal of a child from the home or to return a child to the child's home but continuation of the efforts is determined by the court to be inconsistent with the permanency plan for the child, the department shall make reasonable efforts to place the child in a timely manner in accordance with the permanency plan, including, if appropriate, placement in another state, and to complete whatever steps are necessary to finalize the permanent placement of the child. Reasonable efforts to place a child permanently for adoption or to make an alternative out-of-home permanent placement may be made concurrently with reasonable efforts to return a child to the child's home. Concurrent planning, including identifying in-state and out-of-state placements, may be used.

(7) When determining whether the department has made reasonable efforts to prevent the

1 necessity of removal of a child from the child's home or to reunify families that have been separated by the
2 state, the court shall review the services provided by the agency including, if applicable, protective services
3 provided pursuant to 41-3-302. (Bracketed language in subsection (2) terminates June 30, 2025--sec. 55, Ch.
4 716, L. 2023.)"

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

7 **"41-3-434. Stipulations -- prohibition on continuances of hearings.** (1) Subject to approval by the
8 court, the parties may stipulate to any of the following:

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

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

12 (c) the disposition; or

13 (d) extension of the timeframes contained in this chapter, except for the timeframe contained in 41-
14 3-445.

15 (2) (a) Unless the court determines that good cause or exigent circumstances exist, a hearing
16 scheduled pursuant to this chapter may not be continued. If the court determines that good cause or exigent
17 circumstances necessitate the continuance of a scheduled hearing, the court shall review the reasons for good
18 cause or the exigency and order an appropriate remedy that considers the best interests of the child.

19 (b) For the purposes of this subsection (2), "exigent circumstances" means:

20 (i) newly discovered evidence;

21 (ii) unforeseen personal emergencies; or

22 (iii) other unforeseen emergencies or disasters.

23 (c) For purposes of this subsection (2), "good cause" exists when:

24 (i) a parent is progressing with recommended treatment or other services included in a court-
25 approved treatment plan and would benefit from a reasonable amount of additional time to complete the
26 identified tasks to achieve reunification with the child;

27 (ii) additional time is necessary to meet the individual needs of a child, provide for the child's
28 physical or emotional health, or to facilitate the child's permanency;

(iii) continuation of a hearing is necessary to satisfy the procedural requirements of due process or effective representation; or

(iv) the parties agree to a continuance."

Section 4. Section 41-3-437, MCA, is amended to read:

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

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

(2) — The court may make an adjudication on a petition under 41-3-422 if the court determines by a preponderance of the evidence, except as provided in the federal Indian Child Welfare Act or the Montana Indian Child Welfare Act provided for in Title 41, chapter 3, part 13, if applicable, that the child is a youth in need of care. Except as otherwise provided in this part, the Montana Rules of Civil Procedure and the Montana Rules of Evidence apply to adjudication and to an adjudicatory hearing. Adjudication must determine the 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.

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

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

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

(b) — whether the child was placed or allowed to remain by the parents with another person for the

1 care of the child, and, if so, then the court shall accept evidence regarding:

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

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

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

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

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

11 (5) ~~In all civil and criminal proceedings relating to abuse or neglect, the privileges related to the~~
12 ~~examination or treatment of the child do not apply, except the attorney-client privilege granted by 26-1-803 and~~
13 ~~the mediation privilege granted by 26-1-813.~~

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

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

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

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

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

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

26 (b) ~~The court may order:~~

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

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

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

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

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

(8) ~~If a proceeding under this chapter involves an Indian child and is subject to the federal Indian Child Welfare Act or the Montana Indian Child Welfare Act, a qualified expert witness is required to testify that the continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child. (Terminates June 30, 2025--sec. 55, Ch. 716, L. 2023.)~~

41-3-437. ~~(Effective July 1, 2025) Adjudication -- temporary disposition -- findings -- order.~~ (1)

Upon the filing of an appropriate petition, an adjudicatory hearing must be held within 90 days of a show cause hearing under 41-3-432. Adjudication may take place at the show cause hearing if the requirements of subsection (2) are met or may be made by prior stipulation of the parties pursuant to 41-3-434 and order of the court. Exceptions to the time limit may be allowed only in cases involving newly discovered evidence, unavoidable delays, stipulation by the parties pursuant to 41-3-434, and unforeseen personal emergencies.

(2) The court may make an adjudication on a petition under 41-3-422 if the court determines by a ~~preponderance of the evidence~~ clear and convincing evidence, except as provided in the federal Indian Child Welfare Act, if applicable, that the child is a youth in need of care. Except as otherwise provided in this part, the Montana Rules of Civil Procedure and the Montana Rules of Evidence apply to adjudication and to an adjudicatory hearing. Adjudication must determine the 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.

(3) The court shall hear evidence regarding the residence of the child, paternity, if in question, the whereabouts of the parents, guardian, or nearest adult relative, and any other matters the court considers

1 relevant in determining the status of the child. Hearsay evidence of statements made by the affected youth is
2 admissible according to the Montana Rules of Evidence.

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

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

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

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

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

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

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

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

19 (5) In all civil and criminal proceedings relating to abuse or neglect, the privileges related to the
20 examination or treatment of the child do not apply, except the attorney-client privilege granted by 26-1-803 and
21 the mediation privilege granted by 26-1-813.

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

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

28 (7) (a) Before making an adjudication, the court may make oral findings, and following the

1 adjudicatory hearing, the court shall make written findings on issues, including but not limited to the following:

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

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

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

6 (b) The court may order:

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

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

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

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

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

18 (8) If a proceeding under this chapter involves an Indian child and is subject to the federal Indian
19 Child Welfare Act, a qualified expert witness is required to testify that the continued custody of the child by the
20 parent or Indian custodian is likely to result in serious emotional or physical damage to the child."
21

22 **Section 5.** Section 41-3-442, MCA, is amended to read:

23 **"41-3-442. Temporary legal custody.** (1) If a child is found to be a youth in need of care under 41-3-
24 437, the court may grant temporary legal custody under 41-3-438 if the court determines by ~~a preponderance of~~
25 ~~the evidence~~ clear and convincing evidence that:

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

28 (b) unless there is a finding that reasonable efforts are not required pursuant to 41-3-423,

1 reasonable services have been provided to the parent or guardian to prevent the removal of the child from the
2 home or to make it possible for the child to safely return home.

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

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

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

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

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

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

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

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

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

18 (ii) permanent placement of the child with the noncustodial parent, superseding any existing
19 custodial order; or

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

21 (d) long-term custody when the child is in a planned permanent living arrangement pursuant to 41-
22 3-445;

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

24 (f) dismissal.

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

27 (6) If an extension of temporary legal custody is granted to the department, the court shall state
28 the reasons why the child was not returned home and the conditions upon which the child may be returned

1 home and shall specifically find that an extension is in the child's best interests.

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

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

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

8 **Section 6.** 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
11 proceeding, by the foster care review committee, as provided in 41-3-115, or the citizen review board, as
12 provided in 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
16 or 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
18 until the child is permanently placed in either an adoptive or a guardianship placement, the court or the court-
19 approved entity holding the permanency hearing shall conduct a hearing and the court shall issue a finding as
20 to whether 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
25 this 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

1 separate reviews for groups of siblings, but the court shall issue specific findings for each child.

2 (2) At least 3 working days prior to the permanency hearing, the department shall submit a report
3 regarding the child to the entity that will be conducting the hearing for review. The report must address the
4 department's efforts to effectuate the permanency plan for the child, address the options for the child's
5 permanent placement, examine the reasons for excluding higher priority options, and set forth the proposed
6 plan to carry out the placement decision, including specific times for achieving the plan.

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

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

12 (5) (a) The court's order must be issued within 20 days after the permanency hearing if the hearing
13 was conducted by the court.

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

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

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

21 (a) whether the child has been asked about the desired permanency outcome;

22 (b) whether the permanency plan is in the best interests of the child;

23 (c) whether the department has made reasonable efforts to effectuate the permanency plan for the
24 individual child;

25 (d) whether the department has made reasonable efforts to finalize the plan;

26 (e) whether there are compelling reasons why it is not in the best interest of the individual child to:

27 (i) return to the child's home; or

28 (ii) be placed for adoption, with a legal guardian, or with a fit and willing relative; and

1 (f) other necessary steps that the department is required to take to effectuate the terms of the
2 plan.

3 (7) In its discretion, the court may enter any other order that it determines to be in the best
4 interests of the child that does not conflict with the options provided in subsection (8) and that does not require
5 an expenditure of money by the department unless the court finds after notice and a hearing that the
6 expenditures are reasonable and that resources are available for payment. The department is the payor of last
7 resort after all family, insurance, and other resources have been examined.

8 (8) Permanency options include:

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

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

12 (c) adoption;

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

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

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

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

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

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

25 (v) the child meets the following criteria:

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

27 (B) the department has made reasonable efforts to reunite the parent and child, further efforts by
28 the department would likely be unproductive, and reunification of the child with the parent or guardian would be

1 contrary to the best interests of the child;

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

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

7 (9) For a child 14 years of age or older, the permanency plan must:

8 (a) be developed in consultation with the child and in consultation with up to two members of the
9 child's case planning team who are chosen by the child and who are not a foster parent or child protection
10 specialist for the child;

11 (b) identify one person from the case management team, who is selected by the child, to be
12 designated as the child's advisor and advocate for the application of the reasonable and prudent parenting
13 standard; and

14 (c) include services that will be needed to transition the child from foster care to adulthood.

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

18 (11) The court may terminate a planned permanent living arrangement upon petition of the birth
19 parents or the department if the court finds that the circumstances of the child or family have substantially
20 changed and the best interests of the child are no longer being served."

21

22 **Section 7.** Section 41-3-609, MCA, is amended to read:

23 ~~"41-3-609. (Temporary) Criteria for termination. (1) The court may order a termination of the~~
24 ~~parent-child legal relationship upon a finding established by clear and convincing evidence, except as provided~~
25 ~~in the federal Indian Child Welfare Act or the Montana Indian Child Welfare Act provided for in Title 41, chapter~~
26 ~~3, part 13, if applicable, that any of the following circumstances exist:~~

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

28 ~~(b) the child has been abandoned by the parents;~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) — If a proceeding under this chapter involves an Indian child and is subject to the federal Indian Child Welfare Act or the Montana Indian Child Welfare Act, a qualified expert witness is required to testify that the continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child. (Terminates June 30, 2025—sec. 55, Ch. 716, L. 2023.)

41-3-609. (Effective July 1, 2025) Criteria for termination. (1) The court may order a termination of the parent-child legal relationship upon a finding established by clear and convincing evidence proof beyond a reasonable doubt, except as provided in the federal Indian Child Welfare Act, if applicable, that any of the following circumstances exist:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 **Section 8.** Section 41-3-615, MCA, is amended to read:

2 **"41-3-615. Reinstatement of parental rights.** (1) A child whose parent's rights were terminated
3 under this chapter or a party whose parental rights were terminated under this chapter may petition the court to
4 reinstate parental rights if:

- 5 (a) the child was adjudicated a youth in need of care under this chapter;
6 (b) the child's parent's rights were terminated in a proceeding under this chapter;
7 (c) the child has not achieved the child's permanency plan or the permanency plan has not been
8 sustained; and
9 (d) two years have passed since the final order terminating parental rights was entered.

10 (2) If a parent of a child eligible to petition for reinstatement of parental rights under subsection (1)
11 contacts the department or the child's guardian ad litem regarding reinstatement of parental rights, the
12 department or the guardian ad litem shall notify the child about the child's right to petition for reinstatement of
13 parental rights under this section.

14 (3) A child filing a petition under this section:

- 15 (a) is entitled to representation by counsel; and
16 (b) shall sign the petition unless good cause exists for not doing so.

17 (4) (a) If, after considering the parent's fitness and interest in reinstatement of parental rights, the
18 court finds that the best interests of the child may be served by reinstatement of parental rights, the court shall
19 order that a hearing on the merits of the petition be held.

20 (b) The court shall provide prior notice of a hearing under subsection (4)(a) to:

- 21 (i) the department;
22 (ii) the child's attorney and the child;
23 (iii) the child's parent whose parental rights are the subject of the petition;
24 (iv) any parent whose rights have not been terminated;
25 (v) the child's current foster parent, relative caregiver, guardian, or custodian; and
26 (vi) if applicable, the child's tribe.

27 (5) After a hearing, the court shall conditionally grant the petition, reinstating the rights of one or
28 both parents, if the court finds by clear and convincing evidence that:

- 1 (a) both the parent and the child consent to the reinstatement of parental rights;
- 2 (b) in accordance with subsection (6):
- 3 (i) the child has not achieved the child's permanency plan and is not likely to imminently achieve
- 4 the child's permanency plan; or
- 5 (ii) the child has not sustained the child's permanency plan; and
- 6 (c) in accordance with subsection (7), reinstatement of parental rights is in the child's best interest.
- 7 (6) In determining whether the child has achieved the child's permanency plan or is likely to
- 8 achieve the child's permanency plan, the court shall review information provided by the department related to
- 9 any efforts to achieve the permanency plan, including efforts to achieve adoption or a permanent guardianship.
- 10 (7) In determining whether reinstatement of parental rights is in the child's best interests, the court
- 11 shall consider but is not limited to the following:
- 12 (a) whether the parent whose rights are to be reinstated is a fit parent and has remedied the
- 13 parent's deficiencies documented in the record of the termination proceedings and in the termination order;
- 14 (b) whether the child is able to express the child's preference;
- 15 (c) whether the reinstatement of parental rights will present a risk to the child's health, welfare, or
- 16 safety;
- 17 (d) whether the benefit to the child of reinstatement of parental rights outweighs the potential lack
- 18 of permanency for the child; and
- 19 (e) whether other material changes in circumstances exist that would warrant reinstating parental
- 20 rights.
- 21 (8) (a) If the court conditionally grants the petition under subsection (7), the proceedings must be
- 22 continued for 6 months and a temporary order of reinstatement must be entered.
- 23 (b) Except as provided in subsection (8)(c), during this time:
- 24 (i) the child must be placed in the parent's custody; and
- 25 (ii) the department shall develop a reunification plan for the child and shall provide transition
- 26 services to the family, as appropriate.
- 27 (c) If at any time the department alleges that the child has been abused or neglected by the
- 28 parent, the department shall petition the court for an order dismissing the temporary reinstatement of parental

1 rights. The court shall grant the petition based on ~~a preponderance of the evidence~~clear and convincing
2 evidence that the child has been abused or neglected.

3 (9) (a) After the child has successfully been placed with the parent for 6 months, the court shall
4 enter a final order reinstating parental rights that restores all rights, powers, privileges, immunities, duties, and
5 obligations of the parent to the child, including those relating to custody, control, and, subject to subsection
6 (9)(c), support of the child. The court shall direct the clerk of court to provide a certified copy of the final order of
7 reinstatement of parental rights to the parent at no cost.

8 (b) The reinstatement of parental rights pursuant to subsection (9)(a) does not vacate or otherwise
9 affect the validity of the original termination order.

10 (c) A parent whose rights are reinstated under subsection (9)(a) may not be held liable for any
11 child support owed to the department or costs of other services provided to the child for the period beginning on
12 the date parental rights were terminated and ending on the date parental rights were reinstated.

13 (10) This section may not be construed to create a cause of action against the state or its
14 employees concerning the original termination."

15 - END -