

1 HOUSE BILL NO. 449

2 INTRODUCED BY J. O'NEIL

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CHILD ABUSE AND NEGLECT LAWS TO REQUIRE THE
5 STATE TO DEMONSTRATE THAT A PARENT IS NOT ENTITLED TO REUNIFICATION WITH THE CHILD
6 UPON THE PARENT'S SUCCESSFUL COMPLETION OF A TREATMENT PLAN; PROVIDING NOTICE TO A
7 PARENT OF THE STATE'S BURDEN OF PROOF; AND AMENDING SECTIONS 41-3-442 AND 41-3-443,
8 MCA."

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

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12 **Section 1.** Section 41-3-442, MCA, is amended to read:

13 **"41-3-442. Temporary legal custody.** (1) If a child is found to be a youth in need of care under
14 41-3-437, the court may grant temporary legal custody under 41-3-438 if the court determines by a
15 preponderance of the evidence that:

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

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

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

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

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

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

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

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

30 (b) continued temporary placement of the child with the noncustodial parent, superseding any existing

- 1 custodial order;
- 2 (c) termination of the parent-child legal relationship and:
- 3 (i) permanent legal custody with the right of adoption;
- 4 (ii) permanent placement of the child with the noncustodial parent, superseding any existing custodial
- 5 order; or
- 6 (iii) appointment of a guardian pursuant to 41-3-607;
- 7 (d) long-term custody when the child is in a planned permanent living arrangement pursuant to 41-3-445;
- 8 (e) appointment of a guardian pursuant to 41-3-444; or
- 9 (f) dismissal.
- 10 (5) The court may continue an order for temporary legal custody pending a hearing on a petition provided
- 11 for in subsection (2).
- 12 (6) If an extension of temporary legal custody is granted to the department, the court shall state the
- 13 reasons why the child was not returned home and the conditions upon which the child may be returned home and
- 14 shall specifically find that an extension is in the child's best interests.
- 15 (7) If the time limitations of this section are not met, the court shall review the reasons for the failure and
- 16 order an appropriate remedy that considers the best interests of the child.
- 17 (8) In implementing the policy of this section, the child's health and safety are of paramount concern.
- 18 (9) A petition requesting temporary legal custody must be served as provided in 41-3-422.
- 19 (10) Before the expiration of the order for temporary legal custody, a parent who has completed a
- 20 treatment plan may petition the court for a determination that the parent has successfully modified the parent's
- 21 behavior and is entitled to reunification with the child. The burden of proof is on the state to demonstrate by clear
- 22 and convincing evidence that reunification would create a substantial risk of harm to the child or would be a
- 23 detriment to the child's physical or psychological well-being."

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25 **Section 2.** Section 41-3-443, MCA, is amended to read:

26 **"41-3-443. Treatment plan -- contents -- changes.** (1) The court may order a treatment plan if:

27 (a) the parent or parents admit the allegations of an abuse and neglect petition;

28 (b) the parent or parents stipulate to the allegations of abuse or neglect pursuant to 41-3-434; or

29 (c) the court has made an adjudication under 41-3-437 that the child is a youth in need of care.

30 (2) Every treatment plan must contain the following information:

- 1 (a) the identification of the problems or conditions that resulted in the abuse or neglect of a child;
- 2 (b) the treatment goals and objectives for each condition or requirement established in the plan. If the
- 3 child has been removed from the home, the treatment plan must include but is not limited to the conditions or
- 4 requirements that must be established for the safe return of the child to the family.
- 5 (c) the projected time necessary to complete each of the treatment objectives;
- 6 (d) the specific treatment objectives that clearly identify the separate roles and responsibilities of all
- 7 parties addressed in the treatment plan; and
- 8 (e) the signature of the parent or parents or guardian, unless the plan is ordered by the court.
- 9 (3) A treatment plan may include but is not limited to any of the following remedies, requirements, or
- 10 conditions:
- 11 (a) the right of entry into the child's home for the purpose of assessing compliance with the terms and
- 12 conditions of a treatment plan;
- 13 (b) the requirement of either the child or the child's parent or guardian to obtain medical or psychiatric
- 14 diagnosis and treatment through a physician or psychiatrist licensed in the state of Montana;
- 15 (c) the requirement of either the child or the child's parent or guardian to obtain psychological treatment
- 16 or counseling;
- 17 (d) the requirement of either the child or the child's parent or guardian to obtain and follow through with
- 18 alcohol or substance abuse evaluation and counseling, if necessary;
- 19 (e) the requirement that either the child or the child's parent or guardian be restricted from associating
- 20 with or contacting any individual who may be the subject of a department investigation;
- 21 (f) the requirement that the child be placed in temporary medical or out-of-home care;
- 22 (g) the requirement that the parent, guardian, or other person having physical or legal custody furnish
- 23 services that the court may designate.
- 24 (4) A treatment plan may not be altered, amended, continued, or terminated without the approval of the
- 25 parent or parents or guardian pursuant to a stipulation and order or order of the court.
- 26 (5) A treatment plan must contain a notice provision advising parents:
- 27 (a) of timelines for hearings and determinations required under this chapter;
- 28 (b) that the state is required by federal and state laws to hold a permanency hearing to determine the
- 29 permanent placement of a child no later than 12 months after a judge determines that the child has been abused
- 30 or neglected or 12 months after the first 60 days that the child has been removed from the child's home;

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

4 (d) that completion of a treatment plan does not guarantee the return of a child and that completion of
5 the plan without a change in behavior that caused removal in the first instance may result in termination of
6 parental rights; and

7 (e) that upon completion of a treatment plan, parents may petition the court for a determination that they
8 have successfully modified their behavior and are entitled to reunification with the child and that the burden of
9 proof is on the state to demonstrate by clear and convincing evidence that reunification would create a substantial
10 risk of harm to the child or would be a detriment to the child's physical or psychological well-being."

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