

1 HOUSE BILL NO. 734
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7 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CHILD ABUSE AND NEGLECT LAWS INVOLVING
 8 ADJUDICATION; REQUIRING THAT A COURT HEAR ADDITIONAL EVIDENCE FROM INDIVIDUALS
 9 CARING FOR A CHILD; AMENDING SECTION 41-3-437, MCA; AND PROVIDING AN IMMEDIATE
 10 EFFECTIVE DATE."
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12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
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14 **Section 1.** Section 41-3-437, MCA, is amended to read:

15 **"41-3-437. Adjudication -- temporary disposition -- findings -- order.** (1) Upon the filing of an
 16 appropriate petition, an adjudicatory hearing must be held within 90 days of a show cause hearing under 41-3-
 17 432. Adjudication may take place at the show cause hearing if the requirements of subsection (2) are met or
 18 may be made by prior stipulation of the parties pursuant to 41-3-434 and order of the court. Exceptions to the
 19 time limit may be allowed only in cases involving newly discovered evidence, unavoidable delays, stipulation by
 20 the parties pursuant to 41-3-434, and unforeseen personal emergencies.

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

27 (3) The court shall hear evidence regarding the residence of the child, paternity, if in question, the
 28 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~~ The court shall hear offered evidence, including evidence offered by a
5 person 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."

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22 NEW SECTION. Section 2. Effective date. [This act] is effective on passage and approval.

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