

1 SENATE BILL NO. 183

2 INTRODUCED BY D. LENZ

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR JURY TRIALS IN CASES INVOLVING THE
5 TERMINATION OF PARENTAL RIGHTS; AND AMENDING SECTIONS 41-3-602, 41-3-604, 41-3-607, 41-3-
6 608, 41-3-609, 41-3-611, AND 41-3-612, MCA."

7

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

9

10 **Section 1.** Section 41-3-602, MCA, is amended to read:

11 **"41-3-602. Purpose.** This part provides procedures and criteria by which the parent-child legal
12 relationship may be terminated ~~by a court~~ if the relationship is not in the best interest of the child. The
13 termination of the parent-child legal relationship provided for in this part is to be used in those situations when
14 there is a determination that a child is abused or neglected, as defined in 41-3-102."

15

16 **Section 2.** Section 41-3-604, MCA, is amended to read:

17 **"41-3-604. When petition to terminate parental rights required.** (1) If a child has been in foster
18 care under the physical custody of the state for 15 months of the most recent 22 months, the best interests of
19 the child must be presumed to be served by termination of parental rights. If a child has been in foster care for
20 15 months of the most recent 22 months or if the court has found that reasonable efforts to preserve or reunify
21 a child with the child's parent or guardian are not required pursuant to 41-3-423, a petition to terminate parental
22 rights must be filed unless:

23 (a) the child is being cared for by a relative;

24 (b) the department has not provided the services considered necessary for the safe return of the
25 child to the child's home; or26 (c) the department has documented a compelling reason, available for court review, for
27 determining that filing a petition to terminate parental rights would not be in the best interests of the child.

28 (2) Compelling reasons for not filing a petition to terminate parental rights include but are not

1 limited to the following:

2 (a) There are insufficient grounds for filing a petition.

3 (b) There is adequate documentation that termination of parental rights is not the appropriate plan
4 and not in the best interests of the child.

5 (3) If a child has been in foster care for 15 months of the most recent 22 months and a petition to
6 terminate parental rights regarding that child has not been filed with the court, the department shall file a report
7 to the court or review panel at least 3 days prior to the next hearing or review detailing the reasons that the
8 petition was not filed.

9 (4) If a hearing results in a finding of abandonment or that the parent has subjected the child to
10 any of the circumstances listed in 41-3-423(2)(a) through (2)(e) and that reasonable efforts to provide
11 preservation or reunification are not necessary, unless there is an exception made pursuant to subsections
12 (1)(a) through (1)(c) of this section, a petition to terminate parental rights must be filed within 60 days of the
13 finding.

14 (5) If an exception in subsections (1)(a) through (1)(c) of this section applies, a petition for an
15 extension of temporary legal custody pursuant to 41-3-438, a petition for long-term custody pursuant to 41-3-
16 445, or a petition to dismiss must be filed.

17 (6) A hearing or trial on a petition for termination of parental rights must be held no later than 45
18 days from the date the petition was served on the parent or parents, except for good cause shown."
19

20 **Section 3.** Section 41-3-607, MCA, is amended to read:

21 **"41-3-607. Petition for termination -- separate hearing -- ~~no~~ jury trial.** (1) Except as provided in
22 Title 40, chapter 6, part 10, the termination of a parent-child legal relationship may be considered only after the
23 filing of a petition pursuant to 41-3-422 alleging the factual grounds for termination pursuant to 41-3-609.

24 (2) If ~~termination of a~~ the parent-child legal relationship is ~~ordered~~ terminated, the court may:

25 (a) transfer permanent legal custody of the child, with the right to consent to the child's adoption,
26 to:

27 (i) the department;

28 (ii) a licensed child-placing agency; or

1 (iii) another individual who has been approved by the department and has received consent for the
2 transfer of custody from the department or agency that has custody of the child; or

3 (b) transfer permanent legal custody of the child to the department with the right to petition for
4 appointment of a guardian pursuant to 41-3-444.

5 (3) ~~If the court does not order termination of the parent-child legal relationship~~ is not terminated,
6 the child's prior legal status remains in effect until further order of the court.

7 (4) A guardian ad litem must be appointed to represent the child's best interests in any ~~hearing~~
8 proceeding determining the involuntary termination of the parent-child legal relationship. The guardian ad litem
9 shall continue to represent the child until the child is returned home or placed in an appropriate permanent
10 placement. If a respondent parent is a minor, a guardian ad litem must be appointed to serve the minor parent
11 in addition to any appointed or assigned counsel requested by the minor parent.

12 (5) ~~There is no~~ A parent has a right to a jury trial at proceedings held to consider to determine the
13 termination of a parent-child legal relationship."
14

15 **Section 4.** Section 41-3-608, MCA, is amended to read:

16 "**41-3-608. Notice.** Before a termination of the parent-child legal relationship ~~may be ordered~~ occur,
17 the court shall determine whether the provisions of 41-3-428 and 41-3-429 relating to service of process have
18 been followed."
19

20 **Section 5.** Section 41-3-609, MCA, is amended to read:

21 "**41-3-609. Criteria for termination.** (1) ~~The court may order a termination~~ Termination of the parent-
22 child legal relationship may occur upon a finding established by clear and convincing evidence, except as
23 provided in the federal Indian Child Welfare Act, if applicable, that any of the following circumstances exist:

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (3) In considering any of the factors in subsection (2) in terminating the parent-child relationship,
22 ~~the court shall give primary consideration~~ must be given to the physical, mental, and emotional conditions and
23 needs of the child.

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

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

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

28 (c) the parent is or will be incarcerated for more than 1 year and reunification of the child with the

1 parent is not in the best interests of the child because of the child's circumstances, including placement options,
2 age, and developmental, cognitive, and psychological needs; or

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

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

9 **Section 6.** Section 41-3-611, MCA, is amended to read:

10 **"41-3-611. Effect of ~~decree~~ termination.** (1) ~~An order for the~~ A termination of the parent-child legal
11 relationship divests the child and the parents of all legal rights, powers, immunities, duties, and obligations with
12 respect to each other as provided in Title 40, chapter 6, part 2, and Title 41, chapter 3, part 2, except the right
13 of the child to inherit from the parent.

14 (2) ~~An order or decree entered~~ A termination made pursuant to this part may not disentitle a child
15 to any benefit due the child from any third person, including but not limited to any Indian tribe, agency, state, or
16 the United States.

17 (3) After the termination of a parent-child legal relationship, the former parent is neither entitled to
18 any notice of proceedings for the adoption of the child nor has any right to object to the adoption or to
19 participate in any permanent placement proceedings held pursuant to 41-3-445."
20

21 **Section 7.** Section 41-3-612, MCA, is amended to read:

22 **"41-3-612. Appeals.** Appeals of ~~court orders or decrees~~ terminations of the parent-child relationship
23 made under this part ~~shall~~ must be given precedence on the calendar of the supreme court over all other
24 matters, unless otherwise provided by law."
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26 **NEW SECTION. Section 8. Notification to tribal governments.** The secretary of state shall send a
27 copy of [this act] to each federally recognized tribal government in Montana.
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