

1 SENATE BILL NO. 328
2 INTRODUCED BY D. LENZ

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CHILD ABUSE AND NEGLECT LAWS; REVISING THE
5 DEFINITION OF "REASONABLE EFFORTS"; DEFINING "FICTIVE KIN"; ESTABLISHING PLACEMENT
6 PREFERENCES; AMENDING SECTIONS 41-3-101, 41-3-423, 41-3-438, 41-3-440, 41-3-444, AND 41-3-445,
7 MCA; AND REPEALING SECTION 41-3-439, MCA."
8

9 WHEREAS, the federal Indian Child Welfare Act requires active efforts that are affirmative, active, and
10 thorough and timely efforts that are tailored, in a manner consistent with prevailing social and cultural
11 conditions, to each case to maintain or reunite an Indian child with the child's family; and

12 WHEREAS, the federal Indian Child Welfare Act outlines placement preferences for foster care,
13 preadoptive, or adoptive placements of Indian children, prioritizing placement with members of a child's
14 extended family; and

15 WHEREAS, the Legislature desires to incorporate the federal Indian Child Welfare Act's requirements
16 regarding active efforts and placement preferences into Montana's existing child abuse and neglect laws.

17
18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

19
20 NEW SECTION. **Section 1. Placement preferences.** (1) The placement preferences described in
21 this section apply in any foster care, preadoptive, or adoptive placement of a child unless there is a
22 determination under [section 2] that good cause exists to not follow the placement preferences or unless the
23 placement is governed by the federal Indian Child Welfare Act.

24 (2) (a) In any adoptive placement of a child, preference must be given in descending order to
25 placement of the child with:

26 (i) a member of the child's extended family, including fictive kin;

27 (ii) a member of the child's community with ethnic, cultural, and religious heritage similar to the
28 child's family; or

- 1 (iii) a family with ethnic, cultural, and religious heritage similar to the child's family.
- 2 (b) When appropriate, the placement preference of the child or the child's parent or legal guardian
- 3 must be considered.
- 4 (3) Except as provided in 41-3-301(1), in any foster care or preadoptive placement of a child:
- 5 (a) the child must be placed in the least restrictive setting that:
- 6 (i) most approximates a family, taking into consideration sibling attachment;
- 7 (ii) allows the child's special needs, if any, to be met; and
- 8 (iii) is in reasonable proximity to the child's home, extended family, or siblings;
- 9 (b) preference must be given in descending order to placement of the child with:
- 10 (i) a member of the child's extended family, including fictive kin;
- 11 (ii) a licensed foster home located in the child's community with ethnic, cultural, and religious
- 12 heritage similar to the child's family;
- 13 (iii) a licensed foster home with ethnic, cultural, and religious heritage similar to the child's family;
- 14 or
- 15 (iv) an institution for children approved by the department that has a program suitable to meet the
- 16 child's needs; and
- 17 (c) the preference of the child or the child's parent or legal guardian must be considered.
- 18 (4) For the purposes of this section, "fictive kin" means a person to whom the child and the child's
- 19 parent and family ascribe a family relationship and with whom the child has had a significant emotional tie that
- 20 existed prior to the department's involvement with the child and the child's family.

21

22 **NEW SECTION. Section 2. Exemption from placement preferences.** (1) Good cause exists to not

23 follow the placement preferences described in [section 1] if one or more of the following circumstances is

24 present:

- 25 (a) a child's parent or legal guardian attests that the parent or legal guardian has reviewed the
- 26 placement preferences and requests a placement that does not follow the order of preference;
- 27 (b) a child who is of sufficient age and capacity to understand the decision requests a placement
- 28 that does not follow the order of preference;

1 (c) a sibling attachment exists that may be maintained only through a particular placement;

2 (d) the extraordinary physical, mental, or emotional needs of the child, such as specialized
3 treatment services that may be unavailable in the community where families who meet the placement
4 preferences live, require a particular placement; or

5 (e) a suitable placement meeting the placement preferences is not available after a diligent search
6 was conducted. The determination that a suitable placement is not available must conform to the prevailing
7 social and cultural standards of the community in which the child's parent or legal guardian or extended family
8 resides or to which the child's parent or legal guardian or extended family members maintain social and cultural
9 ties.

10 (2) Good cause does not exist to depart from the preferences described in [section 1] based on the
11 socioeconomic status of any placement relative to another placement.

12

13 **Section 3.** Section 41-3-101, MCA, is amended to read:

14 **"41-3-101. Declaration of policy.** (1) It is the policy of the state of Montana to:

15 (a) provide for the protection of children whose health and welfare are or may be adversely
16 affected and further threatened by the conduct of those responsible for the children's care and protection;

17 (b) achieve these purposes in a family environment and preserve the unity and welfare of the
18 family whenever possible;

19 (c) ensure that there is no forced removal of a child from the family based solely on an allegation
20 of abuse or neglect unless the department has reasonable cause to suspect that the child is at imminent risk of
21 harm;

22 (d) recognize that a child is entitled to assert the child's constitutional rights;

23 (e) ensure that all children have a right to a healthy and safe childhood in a permanent placement;

24 and

25 (f) ensure that whenever removal of a child from the home is necessary, the child is entitled to
26 maintain ethnic, cultural, and religious heritage whenever appropriate.

27 (2) It is intended that the mandatory reporting of abuse or endangerment cases by professional
28 people and other community members to the appropriate authority will cause the protective services of the state

1 to seek to prevent further abuses, protect and enhance the welfare of these children, and preserve family life
2 whenever appropriate.

3 (3) In implementing this chapter, whenever it is necessary to remove a child from the child's home,
4 the department shall, when it is in the best interests of the child, place the child ~~with the child's noncustodial~~
5 ~~birth parent or with the child's extended family, including adult siblings, grandparents, great-grandparents,~~
6 ~~aunts, and uncles, when placement with the extended family is approved by the department, prior to placing the~~
7 ~~child in an alternative protective or residential facility in accordance with [sections 1 and 2].~~ Prior to approving a
8 placement, the department shall investigate whether anyone living in the home has been convicted of a crime
9 involving serious harm to children.

10 (4) (a) The department shall create a registry for voluntary registration by close relatives of a child
11 for purposes of notifying those relatives when a child that is related has been removed from the child's home
12 pursuant to this chapter.

13 (b) The registry must contain the names of the child and the child's parents and may contain the
14 names of the child's grandparents, aunts, uncles, adult brothers, and adult sisters and must contain the contact
15 information for the child and parents and any of the relatives whose names appear in the registry.

16 (5) The department shall consult the registry and notify the relatives on the registry on the first
17 working day after placing the child in accordance with 41-3-301.

18 (6) The department may charge a fee commensurate with the cost of operating the registry. The
19 fee may be charged only to those persons whose names are voluntarily entered in the registry.

20 (7) In implementing the policy of this section, the child's health and safety are of paramount
21 concern."

22

23 **Section 4.** Section 41-3-423, MCA, is amended to read:

24 **"41-3-423. Reasonable efforts required to prevent removal of child or to return -- exemption --**
25 **findings -- permanency plan.** (1) (a) The department shall make reasonable efforts to prevent the necessity of
26 removal of a child from the child's home and to reunify families that have been separated by the state.

27 (b) ~~(i)~~ For the purposes of this subsection (1), the term "reasonable efforts" means the department
28 shall in good faith ~~develop and implement voluntary services agreements and treatment plans that are designed~~

1 ~~to preserve the parent-child relationship and the family unit and shall in good faith assist parents in completing~~
2 ~~voluntary services agreements and treatment plans;~~

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

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

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

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

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

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

17 (vii) support regular visits with parents in the most natural setting possible, as well as trial home
18 visits with the child during any period of removal, consistent with the need to ensure the health, safety, and
19 welfare of the child;

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

23 (ix) monitor progress and participation in services; and

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

26 ~~(ii) The term includes but is not limited to:~~

27 ~~(A) written prevention plans;~~

28 ~~(B) development of individual written case plans specifying state efforts to preserve or reunify~~

1 families;

2 ~~(C) placement in the least disruptive setting possible with priority given to family placement as~~
3 ~~provided in 41-3-439;~~

4 ~~(D) provision of services pursuant to a case plan that is designed to address the parent's treatment~~
5 ~~and other needs precluding the parent from safely parenting, including but not limited to individual and family~~
6 ~~therapy, parent education, substance abuse treatment, and trauma-related services; and~~

7 ~~(E) periodic review of each case to ensure timely progress toward reunification or permanent~~
8 ~~placement.~~

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

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

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

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

22 (c) committed aggravated assault against a child;

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

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

27 (3) Preservation or reunification services are not required for a putative father, as defined in 42-2-
28 201, if the court makes a finding that the putative father has failed to do any of the following:

- 1 (a) contribute to the support of the child for an aggregate period of 1 year, although able to do so;
- 2 (b) establish a substantial relationship with the child. A substantial relationship is demonstrated by:
- 3 (i) visiting the child at least monthly when physically and financially able to do so; or
- 4 (ii) having regular contact with the child or with the person or agency having the care and custody
- 5 of the child when physically and financially able to do so; and
- 6 (iii) manifesting an ability and willingness to assume legal and physical custody of the child if the
- 7 child was not in the physical custody of the other parent.
- 8 (c) register with the putative father registry pursuant to Title 42, chapter 2, part 2, and the person
- 9 has not been:
- 10 (i) adjudicated in Montana to be the father of the child for the purposes of child support; or
- 11 (ii) recorded on the child's birth certificate as the child's father.
- 12 (4) A judicial finding that preservation or reunification services are not necessary under this section
- 13 must be supported by clear and convincing evidence.
- 14 (5) If the court finds that preservation or reunification services are not necessary pursuant to
- 15 subsection (2) or (3), a permanency hearing must be held within 30 days of that determination and reasonable
- 16 efforts, including consideration of both in-state and out-of-state permanent placement options for the child, must
- 17 be made to place the child in a timely manner in accordance with the permanency plan and to complete
- 18 whatever steps are necessary to finalize the permanent placement of the child.
- 19 (6) If reasonable efforts have been made to prevent removal of a child from the home or to return a
- 20 child to the child's home but continuation of the efforts is determined by the court to be inconsistent with the
- 21 permanency plan for the child, the department shall make reasonable efforts to place the child in a timely
- 22 manner in accordance with the permanency plan, including, if appropriate, placement in another state, and to
- 23 complete whatever steps are necessary to finalize the permanent placement of the child. Reasonable efforts to
- 24 place a child permanently for adoption or to make an alternative out-of-home permanent placement may be
- 25 made concurrently with reasonable efforts to return a child to the child's home. Concurrent planning, including
- 26 identifying in-state and out-of-state placements, may be used.
- 27 (7) When determining whether the department has made reasonable efforts to prevent the
- 28 necessity of removal of a child from the child's home or to reunify families that have been separated by the

1 state, the court shall review the services provided by the agency including, if applicable, protective services
2 provided pursuant to 41-3-302."

3

4 **Section 5.** Section 41-3-438, MCA, is amended to read:

5 **"41-3-438. Disposition -- hearing -- order.** (1) Unless a petition is dismissed or unless otherwise
6 stipulated by the parties pursuant to 41-3-434 or ordered by the court, a dispositional hearing must be held on
7 every petition filed under this chapter within 20 days after an adjudicatory order has been entered under 41-3-
8 437. Exceptions to the time limit may be allowed only in cases involving newly discovered evidence,
9 unavoidable delays, stipulation by the parties pursuant to 41-3-434, and unforeseen personal emergencies.

10 (2) (a) A dispositional order must be made after a dispositional hearing that is separate from the
11 adjudicatory hearing under 41-3-437. The hearing process must be scheduled and structured so that
12 dispositional issues are specifically addressed apart from adjudicatory issues. Hearsay evidence is admissible
13 at the dispositional hearing.

14 (b) A dispositional hearing may follow an adjudicatory hearing in a bifurcated manner immediately
15 after the adjudicatory phase of the proceedings if:

16 (i) all required reports are available and have been received by all parties or their attorneys at
17 least 5 working days in advance of the hearing; and

18 (ii) the judge has an opportunity to review the reports after the adjudication.

19 (c) The dispositional hearing may be held prior to the entry of written findings required by 41-3-
20 437.

21 (3) If a child is found to be a youth in need of care under 41-3-437, the court may enter its
22 judgment, making any of the following dispositions to protect the welfare of the child:

23 (a) permit the child to remain with the child's custodial parent or guardian, subject to those
24 conditions and limitations the court may prescribe;

25 (b) order the department to evaluate the noncustodial parent as a possible caretaker;

26 (c) order the temporary placement of the child with the noncustodial parent, superseding any
27 existing custodial order, and keep the proceeding open pending completion by the custodial parent of any
28 treatment plan ordered pursuant to 41-3-443;

1 (d) order the placement of the child with the noncustodial parent, superseding any existing
2 custodial order, and dismiss the proceeding with no further obligation on the part of the department to provide
3 services to the parent with whom the child is placed or to work toward reunification of the child with the parent
4 or guardian from whom the child was removed in the initial proceeding;

5 (e) grant an order of limited emancipation to a child who is 16 years of age or older, as provided in
6 41-1-503;

7 (f) transfer temporary legal custody to any of the following:

8 (i) the department;

9 (ii) a licensed child-placing agency that is willing and able to assume responsibility for the
10 education, care, and maintenance of the child and that is licensed or otherwise authorized by law to receive and
11 provide care of the child; or

12 (iii) a nonparent relative or other individual who has been evaluated and recommended by the
13 department or a licensed child-placing agency designated by the court and who is found by the court to be
14 qualified to receive and care for the child;

15 (g) order a party to the action to do what is necessary to give effect to the final disposition,
16 including undertaking medical and psychological evaluations, treatment, and counseling that does not require
17 an expenditure of money by the department unless the department consents and informs the court that
18 resources are available for payment. The department is the payor of last resort after all family, insurance, and
19 other resources have been examined.

20 (h) order further care and treatment as the court considers in the best interests of the child that
21 does not require an expenditure of money by the department unless the department consents and informs the
22 court that resources are available for the proposed care and treatment. The department is the payor of last
23 resort after all family, insurance, and other resources have been examined pursuant to 41-3-446.

24 ~~(4) (a) If the court awards temporary legal custody of an abandoned child other than to the~~
25 ~~department or to a noncustodial parent, the court shall award temporary legal custody of the child to a member~~
26 ~~of the child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, if:~~

27 ~~(i) placement of the abandoned child with the extended family member is in the best interests of the~~
28 ~~child;~~

1 ~~(ii) the extended family member requests that the child be placed with the family member;~~
2 ~~(iii) the extended family member is able to offer continuity of care for the child by providing~~
3 ~~permanency or stability in residence, schooling, and activities outside of the home; and~~
4 ~~(iv) the extended family member is found by the court to be qualified to receive and care for the child.~~
5 ~~(b) If more than one extended family member satisfies the requirements of subsection (4)(a), the court~~
6 ~~may award custody to the extended family member who can best meet the child's needs.~~

7 ~~(c)(4)~~ If a member of the child's extended family, including an adult sibling, grandparent, great-
8 grandparent, aunt, or uncle, has requested that custody be awarded to that family member, the department
9 shall investigate and determine if awarding custody to the family member is in the best interests of the child.
10 The department shall provide the reasons for any denial to the court. If the court accepts the department's
11 custody recommendation, the court shall inform any denied family member of the reasons for the denial to the
12 extent that confidentiality laws allow. The court shall include the reasons for denial in the court order if the
13 family member who is denied temporary legal custody requests it to be included.

14 (5) If reasonable efforts have been made to prevent removal of a child from the home or to return a
15 child to the child's home but continuation of the efforts is determined by the court to be inconsistent with
16 permanency for the child, the department shall make reasonable efforts to place the child in a timely manner in
17 accordance with a permanent plan and to complete whatever steps are necessary to finalize the permanent
18 placement of the child.

19 (6) If the court finds that reasonable efforts are not necessary pursuant to 41-3-442(1) or
20 subsection (5) of this section, a permanency hearing must be held within 30 days of that determination and
21 reasonable efforts must be made to place the child in a timely manner in accordance with the permanency plan
22 and to complete whatever steps are necessary to finalize the permanent placement of the child.

23 (7) If the time limitations of this section are not met, the court shall review the reasons for the
24 failure and order an appropriate remedy that considers the best interests of the child."
25

26 **Section 6.** Section 41-3-440, MCA, is amended to read:
27 **"41-3-440. Limitation on placement.** Except as provided in 41-3-301(1) and in the absence of a
28 dispute between the parties to the action regarding the appropriate placement, the department shall determine,

1 in accordance with [sections 1 and 2], the appropriate placement for a child alleged to be or adjudicated as a
2 youth in need of care. The court shall settle any dispute between the parties to an action regarding the
3 appropriate placement. The child may not be placed in a youth assessment center, youth detention facility,
4 detention center, or other facility intended or used for the confinement of adults or youth accused or convicted
5 of criminal offenses."

6

7 **Section 7.** Section 41-3-444, MCA, is amended to read:

8 **"41-3-444. Abuse and neglect proceedings -- appointment of guardian -- financial subsidies. (1)**

9 The court may, upon the petition of the department or guardian ad litem, enter an order appointing a guardian
10 for a child who has been placed in the temporary or permanent custody of the department pursuant to 41-3-
11 438, 41-3-445, or 41-3-607. The guardianship may be subsidized by the department under subsection ~~(9)~~ (8) if
12 the guardianship meets the department's criteria, or the guardianship may be nonsubsidized.

13 (2) The court may appoint a guardian for a child pursuant to this section if the following facts are
14 found by the court:

15 (a) the department has given its written consent to the appointment of the guardian, whether the
16 guardianship is to be subsidized or not;

17 (b) if the guardianship is to be subsidized, the department has given its written consent after the
18 department has considered initiating or continuing financial subsidies pursuant to subsection ~~(9)~~ (8);

19 (c) the child has been adjudicated a youth in need of care;

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

23 (e) the child has lived with the potential guardian in a family setting and the potential guardian is
24 committed to providing a long-term relationship with the child;

25 (f) it is in the best interests of the child to remain or be placed with the potential guardian;

26 (g) either termination of parental rights to the child is not in the child's best interests or parental
27 rights to the child have been terminated, but adoption is not in the child's best interests; and

28 (h) if the child concerning whom the petition for guardianship has been filed is an Indian child, as

1 defined in the Indian Child Welfare Act, 25 U.S.C. 1901, et seq., the child's tribe has received notification from
2 the state of the initiation of the proceedings.

3 ~~(3)~~ In the case of an abandoned child, the court may give priority to a member of the abandoned
4 child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, if
5 placement with the extended family member is in the best interests of the child. If more than one extended
6 family member has requested to be appointed as guardian, the court may determine which extended family
7 member to appoint in the same manner provided for in 41-3-438(4).

8 ~~(4)~~(3) The entry of a decree of guardianship pursuant to this section terminates the custody of the
9 department and the involvement of the department with the child and the child's parents except for the
10 department's provision of a financial subsidy, if any, pursuant to ~~subsection (9)~~ subsection (8).

11 ~~(5)~~(4) A guardian appointed under this section may exercise the powers and has the duties provided
12 in 72-5-231.

13 ~~(6)~~(5) The court may revoke a guardianship ordered pursuant to this section if the court finds, after
14 hearing on a petition for removal of the child's guardian, that continuation of the guardianship is not in the best
15 interests of the child. Notice of hearing on the petition must be provided by the moving party to the child's lawful
16 guardian, the department, any court-appointed guardian ad litem, the child's parent if the rights of the parent
17 have not been terminated, and other persons directly interested in the welfare of the child.

18 ~~(7)~~(6) A guardian may petition the court for permission to resign the guardianship. A petition may
19 include a request for appointment of a successor guardian.

20 ~~(8)~~(7) After notice and hearing on a petition for removal or permission to resign, the court may appoint
21 a successor guardian or may terminate the guardianship and restore temporary legal custody to the department
22 pursuant to 41-3-438.

23 ~~(9)~~(8) The department may provide a financial subsidy to a guardian appointed pursuant to this
24 section if the guardianship meets the department's criteria and if the department determines that a subsidy is in
25 the best interests of the child. The amount of the subsidy must be determined by the department.

26 ~~(10)~~(9) This section does not apply to guardians appointed pursuant to Title 72, chapter 5."
27

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

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

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

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

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

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

16 (c) The permanency hearing may be combined with a hearing that is required in other sections of
17 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
18 permanency hearing is combined with another hearing or a review, the requirements of the court related to the
19 disposition of the other hearing or review must be met in addition to the requirements of this section.

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

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

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

1 hearing for review.

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

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

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

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

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

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

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

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

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

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

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

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

28 (f) other necessary steps that the department is required to take to effectuate the terms of the

1 plan.

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

7 (8) Permanency options include:

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

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

11 (c) adoption;

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

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

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

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

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

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

23 (v) the child meets the following criteria:

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

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

28 (C) there is a judicial finding that other more permanent placement options for the child have been

1 considered and found to be inappropriate or not to be in the best interests of the child; and

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

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

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

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

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

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

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

19

20 NEW SECTION. Section 9. Repealer. The following section of the Montana Code Annotated is
21 repealed:

22 41-3-439. Department to give placement priority to extended family member of abandoned child.

23

24 NEW SECTION. SECTION 10. DIRECTION TO DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES. THE
25 DIRECTOR OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES SHALL CONSULT WITH INDIAN TRIBES
26 CONCERNING THE FEDERAL INDIAN CHILD WELFARE ACT AND CHILD PROTECTION ISSUES.

27

28 NEW SECTION. Section 11. Codification instruction. [Sections 1 and 2] are intended to be codified

1 as an integral part of Title 41, chapter 3, part 4, and the provisions of Title 41, chapter 3, part 4, apply to
2 [sections 1 and 2].

3

4 COORDINATION SECTION. SECTION 12. COORDINATION INSTRUCTION. IF BOTH HOUSE BILL NO. 317
5 AND [THIS ACT] ARE PASSED AND APPROVED, THEN [SECTION 1(1) OF THIS ACT] MUST BE AMENDED AS FOLLOWS:

6 "(1) The placement preferences described in this section apply in any foster care, preadoptive, or
7 adoptive placement of a child unless there is a determination under [section 2] that good cause exists to not
8 follow the placement preferences or unless the placement is governed by the federal Indian Child Welfare Act
9 or the Montana Indian Child Welfare Act."

10

- END -