

OFFICE OF THE GOVERNOR
STATE OF MONTANA

GREG GIANFORTE
GOVERNOR



KRISTEN JURAS
LT. GOVERNOR

May 1, 2023

The Honorable Jason Ellsworth
President of the Senate
State Capitol
Helena, MT 59601

The Honorable Matt Regier
Speaker of the House
State Capitol
Helena, MT 59601

Dear President Ellsworth and Speaker Regier:

Like you and members of the Legislature, I understand the need to provide stable and predictable procedures in dependent and neglect ("DN") cases that do not result in unnecessary or inordinate delays in the placement of children or reunification of families.

While I appreciate the intent of Senate Bill 184 to expedite DN cases by limiting a court's ability to transfer venue and grant continuances, these provisions unduly limit a court's ability to appropriately manage DN cases in the best interests of the children and parents involved.

Therefore, in accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby return with amendments Senate Bill 184: "AN ACT REVISING PROCEDURAL REQUIREMENTS IN CHILD ABUSE AND NEGLECT PROCEEDINGS; PROHIBITING TRANSFER OF VENUE OUTSIDE OF THE COUNTY IN WHICH AN ABUSE AND NEGLECT PETITION WAS FILED; PROVIDING EXCEPTIONS TO THE PROHIBITION ON TRANSFERS OF VENUE; PROHIBITING CONTINUANCES OF HEARINGS UNLESS EXIGENT CIRCUMSTANCES EXIST; DEFINING 'EXIGENT CIRCUMSTANCES'; AND AMENDING SECTIONS 41-3-103 AND 41-3-434, MCA."

First, Senate Bill 184 prohibits a court from transferring venue outside of the county in which the petition is filed unless venue is being transferred to a tribal court or treatment court. It is not uncommon for a party involved in a DN case to move to another county for any number of legitimate reasons, including employment, housing, or treatment opportunities. Prohibiting venue transfer in these circumstances could not only limit the ability of a parent, child, or other necessary party to meaningfully participate in the proceedings, but it may also hinder reunification efforts or a child's permanent placement. The better course is to allow the original court to weigh and consider

all of the circumstances – including the stage of the proceedings, the location of witnesses, the child's needs, a parent's treatment progress, and the ability of parties to participate – to determine if a change in venue will best serve the interests of the child and the implementation of any reunification or permanent placement plans.

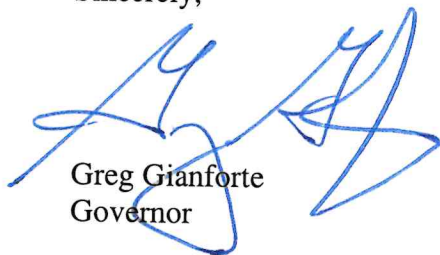
Therefore, I offer an amendment that authorizes a court to deny a motion to change venue if good cause exists or if transferring venue will result in delaying a child's permanency.

Second, Senate Bill 184 prohibits a court from continuing a hearing unless a narrow set of exigent circumstances exists. DN cases are complex and involve many people. If a parent cannot be located, constitutional due process rights may require a continuance outside of the narrow exigent circumstances prescribed by the bill. Critical witnesses may not be available at the time of an originally-scheduled hearing. A parent may need additional time to complete a treatment component due to circumstances beyond their control. Senate Bill 184 even takes away the right of the parties themselves to agree to a continuance.

Recognizing the unique complexity of DN cases and the importance of parental rights, the amendment I offer appropriately allows a court to grant a continuance if good cause exists, as defined in the amendment, including consideration of a parent's constitutional rights.

To ensure courts in DN cases can take into account relevant facts when presented with a request for transfer of venue or a continuance, and to ensure courts can make a reasoned decision that protects the constitutional rights of parents while promoting the best interests of the child, I respectfully ask for your support of these amendments.

Sincerely,



Greg Gianforte
Governor

Enclosure

cc: Legislative Services Division
Christi Jacobsen, Secretary of State

SENATE BILL NO. 184

INTRODUCED BY D. LENZ

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING PROCEDURAL REQUIREMENTS IN CHILD ABUSE AND NEGLECT PROCEEDINGS; PROHIBITING TRANSFERS OF VENUE OUTSIDE OF THE COUNTY IN WHICH AN ABUSE AND NEGLECT PETITION WAS FILED; PROVIDING EXCEPTIONS TO THE PROHIBITION ON TRANSFERS OF VENUE; PROHIBITING CONTINUANCES OF HEARINGS UNLESS GOOD CAUSE OR EXIGENT CIRCUMSTANCES EXIST; DEFINING "GOOD CAUSE" AND "EXIGENT CIRCUMSTANCES"; AND AMENDING SECTIONS 41-3-103 AND 41-3-434, MCA."

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

Section 1. Section 41-3-103, MCA, is amended to read:

"41-3-103. Jurisdiction and venue. (1) Except as provided in the federal Indian Child Welfare Act, in all matters arising under this chapter, a person is subject to a proceeding under this chapter and the district court has jurisdiction over:

- (a) a youth who is within the state of Montana for any purpose;
- (b) a youth or other person subject to this chapter who under a temporary or permanent order of the court has voluntarily or involuntarily left the state or the jurisdiction of the court;
- (c) a person who is alleged to have abused or neglected a youth who is in the state of Montana for any purpose;
- (d) a youth or youth's parent or guardian who resides in Montana;
- (e) a youth or youth's parent or guardian who resided in Montana within 180 days before the filing of a petition under this chapter if the alleged abuse and neglect is alleged to have occurred in whole or in part in Montana.

(2) (a) Venue is proper in the county where a youth is located or has resided within 180 days before the filing of a petition under this part or a county where the youth's parent or guardian resides or has resided within 180 days before the filing of a petition under this part.

(b) A transfer of venue may not be made outside of the county in which the petition is filed unless venue is being transferred to a tribal court or to a treatment court.

(b) Unless a case is approved for transfer to a tribal court or treatment court, a court may deny a motion to change venue either for good cause or if transferring venue will result in delaying a child's permanency."

Section 2. Section 41-3-434, MCA, is amended to read:

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

- (4)(a) the child meets the definition of a youth in need of care by the preponderance of the evidence;
- (2)(b) a treatment plan, if the child has been adjudicated a youth in need of care;
- (3)(c) the disposition; or
- (4)(d) extension of the timeframes contained in this chapter, except for the timeframe contained in 41-3-445.

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

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

- (i) newly discovered evidence;
- (ii) unforeseen personal emergencies; or
- (iii) other unforeseen emergencies or disasters.

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

- (i) a parent is progressing with recommended treatment or other services included in a court-approved treatment plan and would benefit from a reasonable amount of additional time to complete the identified tasks to achieve reunification with the child;
- (ii) additional time is necessary to meet the individual needs of a child, provide for the child's physical or emotional health, or to facilitate the child's permanency;

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Drafter: Todd Everts, 406-444-4023

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

3 (iv) the parties agree to a continuance."

4 - END -