

1 SENATE BILL NO. 231

2 INTRODUCED BY D. EMRICH

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO THE AFFIDAVIT
5 PROVIDED BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES IN CHILD ABUSE AND
6 NEGLECT PROCEEDINGS; REQUIRING THE DEPARTMENT TO APPEND CERTAIN ATTACHMENTS TO
7 ITS AFFIDAVIT INCLUDE DISPOSITION INFORMATION, IF AVAILABLE, FOR ANY CRIMINAL CASE
8 REFERENCED IN ITS AFFIDAVIT; ESTABLISHING A DUTY ON THE DEPARTMENT TO OBTAIN LAW
9 ENFORCEMENT REPORTS INVOLVING ADULT PARTIES NAMED IN THE PETITION; AND AMENDING
10 SECTIONS 41-3-422 AND 41-3-437, MCA."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13
14 **Section 1.** Section 41-3-422, MCA, is amended to read:

15 **"41-3-422. (Temporary) Abuse and neglect petitions -- burden of proof.** (1) (a) Proceedings under
16 this chapter must be initiated by the filing of a petition. A petition may request the following relief:

- 17 (i) — immediate protection and emergency protective services, as provided in 41-3-427;
18 (ii) — temporary investigative authority, as provided in 41-3-433;
19 (iii) — temporary legal custody, as provided in 41-3-442;
20 (iv) — long-term custody, as provided in 41-3-445;
21 (v) — termination of the parent-child legal relationship, as provided in 41-3-607;
22 (vi) — appointment of a guardian pursuant to 41-3-444;
23 (vii) — a determination that preservation or reunification services need not be provided; or
24 (viii) — any combination of the provisions of subsections (1)(a)(i) through (1)(a)(vii) or any other relief
25 that may be required for the best interests of the child.

26 (b) — The petition may be modified for different relief at any time within the discretion of the court.

27 (c) — A petition for temporary legal custody may be the initial petition filed in a case.

28 (d) — A petition for the termination of the parent-child legal relationship may be the initial petition filed

1 in a case if a request for a determination that preservation or reunification services need not be provided is
2 made in the petition.

3 (2) — The county attorney, attorney general, or an attorney hired by the county shall file all petitions
4 under this chapter. A petition filed by the county attorney, attorney general, or an attorney hired by the county
5 must be accompanied by:

6 (a) — an affidavit by the department alleging that the child appears to have been abused or neglected
7 and stating the basis for the petition; and

8 (b) — a separate notice to the court stating any statutory time deadline for a hearing.

9 (3) — Abuse and neglect petitions must be given highest preference by the court in setting hearing
10 dates.

11 (4) — An abuse and neglect petition is a civil action brought in the name of the state of Montana. The
12 Montana Rules of Civil Procedure and the Montana Rules of Evidence apply except as modified in this chapter.
13 Proceedings under a petition are not a bar to criminal prosecution.

14 (5) — (a) Except as provided in subsection (5)(b), the person filing the abuse and neglect petition has
15 the burden of presenting evidence required to justify the relief requested and establishing:

16 (i) — probable cause for the issuance of an order for immediate protection and emergency protective
17 services or an order for temporary investigative authority;

18 (ii) — a preponderance of the evidence for an order of adjudication or temporary legal custody;

19 (iii) — a preponderance of the evidence for an order of long-term custody; or

20 (iv) — clear and convincing evidence for an order terminating the parent-child legal relationship.

21 (b) — If a proceeding under this chapter involves an Indian child, as defined in the federal Indian
22 Child Welfare Act, 25 U.S.C. 1901, et seq., or 41-3-1303, the standards of proof required for legal relief under
23 the federal Indian Child Welfare Act and the Montana Indian Child Welfare Act provided for in Title 41, chapter
24 3, part 13, apply.

25 (6) — (a) Except as provided in the federal Indian Child Welfare Act and the Montana Indian Child
26 Welfare Act, if applicable, the parents or parent, guardian, or other person or agency having legal custody of
27 the child named in the petition, if residing in the state, must be served personally with a copy of the initial
28 petition and a petition to terminate the parent-child legal relationship at least 5 days before the date set for

1 hearing. If the person or agency cannot be served personally, the person or agency may be served by
2 publication as provided in 41-3-428 and 41-3-429.

3 (b) — Copies of all other petitions must be served upon the person or the person's attorney of record
4 by certified mail, by personal service, or by publication as provided in 41-3-428 and 41-3-429. If service is by
5 certified mail, the department must receive a return receipt signed by the person to whom the notice was mailed
6 for the service to be effective. Service of the notice is considered to be effective if, in the absence of a return
7 receipt, the person to whom the notice was mailed appears at the hearing.

8 (7) — If personal service cannot be made upon the parents or parent, guardian, or other person or
9 agency having legal custody, the court shall immediately provide for the appointment or assignment of an
10 attorney as provided for in 41-3-425 to represent the unavailable party when, in the opinion of the court, the
11 interests of justice require. If personal service cannot be made upon a putative father, the court may not provide
12 for the appointment or assignment of counsel as provided for in 41-3-425 to represent the father unless, in the
13 opinion of the court, the interests of justice require counsel to be appointed or assigned.

14 (8) — If a parent of the child is a minor, notice must be given to the minor parent's parents or
15 guardian, and if there is no guardian, the court shall appoint one.

16 (9) — (a) Any person interested in any cause under this chapter has the right to appear. Any foster
17 parent, preadoptive parent, or relative caring for the child must be given legal notice by the attorney filing the
18 petition of all judicial hearings for the child and has the right to be heard. The right to appear or to be heard
19 does not make that person a party to the action. Any foster parent, preadoptive parent, or relative caring for the
20 child must be given notice of all reviews by the reviewing body.

21 (b) — A foster parent, preadoptive parent, or relative of the child who is caring for or a relative of the
22 child who has cared for a child who is the subject of the petition who appears at a hearing set pursuant to this
23 section may be allowed by the court to intervene in the action if the court, after a hearing in which evidence is
24 presented on those subjects provided for in 41-3-437(4), determines that the intervention of the person is in the
25 best interests of the child. A person granted intervention pursuant to this subsection is entitled to participate in
26 the adjudicatory hearing held pursuant to 41-3-437 and to notice and participation in subsequent proceedings
27 held pursuant to this chapter involving the custody of the child.

28 (c) — Whenever a child is placed with a foster parent, preadoptive parent, or relative, the department

1 shall provide written notice to the foster parent, preadoptive parent, or relative explaining the foster parent's,
2 preadoptive parent's, or relative's rights under this subsection (9) to receive notice, to appear and be heard, and
3 to attempt to intervene in proceedings under this chapter.

4 (10) — An abuse and neglect petition must state:

5 (a) — the nature of the alleged abuse or neglect and of the relief requested;

6 (b) — the full name, age, and address of the child and the name and address of the child's parents or
7 the guardian or person having legal custody of the child; and

8 (c) — the names, addresses, and relationship to the child of all persons who are necessary parties to
9 the action.

10 (11) — Any party in a proceeding pursuant to this section is entitled to counsel as provided in 41-3-
11 425.

12 (12) — At any stage of the proceedings considered appropriate by the court, the court may order an
13 alternative dispute resolution proceeding or the parties may voluntarily participate in an alternative dispute
14 resolution proceeding. An alternative dispute resolution proceeding under this chapter may include a family
15 engagement meeting, mediation, or a settlement conference. If a court orders an alternative dispute resolution
16 proceeding, a party who does not wish to participate may file a motion objecting to the order. If the department
17 is a party to the original proceeding, a representative of the department who has complete authority to settle the
18 issue or issues in the original proceeding must be present at any alternative dispute resolution proceeding.

19 (13) — Service of a petition under this section must be accompanied by a written notice advising the
20 child's parent, guardian, or other person having physical or legal custody of the child of the:

21 (a) — right, pursuant to 41-3-425, to appointment or assignment of counsel if the person is indigent or
22 if appointment or assignment of counsel is required under the federal Indian Child Welfare Act or the Montana
23 Indian Child Welfare Act, if applicable;

24 (b) — right to contest the allegations in the petition; and

25 (c) — timelines for hearings and determinations required under this chapter.

26 (14) — If appropriate, orders issued under this chapter must contain a notice provision advising a
27 child's parent, guardian, or other person having physical or legal custody of the child that:

28 (a) — the court is required by federal and state laws to hold a permanency hearing to determine the

1 permanent placement of a child no later than 12 months after a judge determines that the child has been
2 abused or neglected or 12 months after the first 60 days that the child has been removed from the child's home;

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

6 (c) — completion of a treatment plan does not guarantee the return of a child.

7 (15) — A court may appoint a standing master to conduct hearings and propose decisions and orders
8 to the court for court consideration and action. A standing master may not conduct a proceeding to terminate
9 parental rights. A standing master must be a member of the state bar of Montana and must be knowledgeable
10 in the area of child abuse and neglect laws. (Terminates June 30, 2025—sec. 55, Ch. 716, L. 2023.)

11 **41-3-422. (Effective July 1, 2025) Abuse and neglect petitions -- burden of proof.** (1) (a)

12 Proceedings under this chapter must be initiated by the filing of a petition. A petition may request the following
13 relief:

- 14 (i) immediate protection and emergency protective services, as provided in 41-3-427;
- 15 (ii) temporary investigative authority, as provided in 41-3-433;
- 16 (iii) temporary legal custody, as provided in 41-3-442;
- 17 (iv) long-term custody, as provided in 41-3-445;
- 18 (v) termination of the parent-child legal relationship, as provided in 41-3-607;
- 19 (vi) appointment of a guardian pursuant to 41-3-444;
- 20 (vii) a determination that preservation or reunification services need not be provided; or
- 21 (viii) any combination of the provisions of subsections (1)(a)(i) through (1)(a)(vii) or any other relief
22 that may be required for the best interests of the child.

23 (b) The petition may be modified for different relief at any time within the discretion of the court.

24 (c) A petition for temporary legal custody may be the initial petition filed in a case.

25 (d) A petition for the termination of the parent-child legal relationship may be the initial petition filed
26 in a case if a request for a determination that preservation or reunification services need not be provided is
27 made in the petition.

28 (2) The county attorney, attorney general, or an attorney hired by the county shall file all petitions

1 under this chapter. A petition filed by the county attorney, attorney general, or an attorney hired by the county
2 must be accompanied by:

3 (a) an affidavit by the department alleging that the child appears to have been abused or neglected
4 and stating the basis for the petition; and

5 (b) a separate notice to the court stating any statutory time deadline for a hearing.

6 (3) The affidavit by the department must include INFORMATION THAT IS VERIFIED TO BE UP TO DATE AT
7 THE TIME THE AFFIDAVIT IS FILED, INCLUDING, if available, ~~as attachments:~~ INFORMATION ON THE DISPOSITION OF ANY
8 CRIMINAL CASE REFERENCED IN THE AFFIDAVIT.

9 (a) ~~law enforcement reports and other investigative materials related to the allegation of abuse or~~
10 ~~neglect, including conclusions reached by law enforcement or other investigators; and~~

11 (b) ~~court records indicating the final disposition of any criminal case filed as a result of the~~
12 ~~allegation of abuse or neglect.~~

13 (4) ~~The affidavit by the department and its attachments must include all information or evidence~~
14 ~~that tends to contradict, disprove, or otherwise not support the allegation of abuse or neglect or the relief sought~~
15 ~~by the petition and must include only information or evidence that is verified to be accurate at the time the~~
16 ~~affidavit is filed.~~

17 (5) ~~Prior to the filing of the affidavit, the department shall obtain reports produced by law~~
18 ~~enforcement that involve any adult party named in the petition.~~

19 ~~(3)(6)(4)~~ Abuse and neglect petitions must be given highest preference by the court in setting
20 hearing dates.

21 ~~(4)(7)(5)~~ An abuse and neglect petition is a civil action brought in the name of the state of
22 Montana. The Montana Rules of Civil Procedure and the Montana Rules of Evidence apply except as modified
23 in this chapter. Proceedings under a petition are not a bar to criminal prosecution.

24 ~~(5)(8)(6)~~ (a) Except as provided in subsection ~~(5)(b)~~ ~~(8)(b)~~ ~~(6)(B)~~, the person filing the abuse and
25 neglect petition has the burden of presenting evidence required to justify the relief requested and establishing:

26 (i) probable cause for the issuance of an order for immediate protection and emergency protective
27 services or an order for temporary investigative authority;

28 (ii) a preponderance of the evidence for an order of adjudication or temporary legal custody;

- 1 (iii) a preponderance of the evidence for an order of long-term custody; or
- 2 (iv) clear and convincing evidence for an order terminating the parent-child legal relationship.
- 3 (b) If a proceeding under this chapter involves an Indian child, as defined in the federal Indian
- 4 Child Welfare Act, 25 U.S.C. 1901, et seq., the standards of proof required for legal relief under the federal
- 5 Indian Child Welfare Act apply.

6 ~~(6)(9)~~ (7) (a) Except as provided in the federal Indian Child Welfare Act, if applicable, the parents

7 or parent, guardian, or other person or agency having legal custody of the child named in the petition, if residing

8 in the state, must be served personally with a copy of the initial petition and a petition to terminate the parent-

9 child legal relationship at least 5 days before the date set for hearing. If the person or agency cannot be served

10 personally, the person or agency may be served by publication as provided in 41-3-428 and 41-3-429.

11 (b) Copies of all other petitions must be served upon the person or the person's attorney of record

12 by certified mail, by personal service, or by publication as provided in 41-3-428 and 41-3-429. If service is by

13 certified mail, the department must receive a return receipt signed by the person to whom the notice was mailed

14 for the service to be effective. Service of the notice is considered to be effective if, in the absence of a return

15 receipt, the person to whom the notice was mailed appears at the hearing.

16 ~~(7)(10)~~ (8) If personal service cannot be made upon the parents or parent, guardian, or other

17 person or agency having legal custody, the court shall immediately provide for the appointment or assignment

18 of an attorney as provided for in 41-3-425 to represent the unavailable party when, in the opinion of the court,

19 the interests of justice require. If personal service cannot be made upon a putative father, the court may not

20 provide for the appointment or assignment of counsel as provided for in 41-3-425 to represent the father unless,

21 in the opinion of the court, the interests of justice require counsel to be appointed or assigned.

22 ~~(8)(11)~~ (9) If a parent of the child is a minor, notice must be given to the minor parent's parents or

23 guardian, and if there is no guardian, the court shall appoint one.

24 ~~(9)(12)~~ (10) (a) Any person interested in any cause under this chapter has the right to appear. Any

25 foster parent, preadoptive parent, or relative caring for the child must be given legal notice by the attorney filing

26 the petition of all judicial hearings for the child and has the right to be heard. The right to appear or to be heard

27 does not make that person a party to the action. Any foster parent, preadoptive parent, or relative caring for the

28 child must be given notice of all reviews by the reviewing body.

1 (b) A foster parent, preadoptive parent, or relative of the child who is caring for or a relative of the
2 child who has cared for a child who is the subject of the petition who appears at a hearing set pursuant to this
3 section may be allowed by the court to intervene in the action if the court, after a hearing in which evidence is
4 presented on those subjects provided for in 41-3-437(4), determines that the intervention of the person is in the
5 best interests of the child. A person granted intervention pursuant to this subsection ~~(12)(b)~~ (10)(B) is entitled to
6 participate in the adjudicatory hearing held pursuant to 41-3-437 and to notice and participation in subsequent
7 proceedings held pursuant to this chapter involving the custody of the child.

8 (c) Whenever a child is placed with a foster parent, preadoptive parent, or relative, the department
9 shall provide written notice to the foster parent, preadoptive parent, or relative explaining the foster parent's,
10 preadoptive parent's, or relative's rights under this subsection ~~(9)-(12)~~ (10) to receive notice, to appear and be
11 heard, and to attempt to intervene in proceedings under this chapter.

12 ~~(10)(13)~~ (11) An abuse and neglect petition must state:

13 (a) the nature of the alleged abuse or neglect and of the relief requested;

14 (b) the full name, age, and address of the child and the name and address of the child's parents or
15 the guardian or person having legal custody of the child; and

16 (c) the names, addresses, and relationship to the child of all persons who are necessary parties to
17 the action.

18 ~~(11)(14)~~ (12) Any party in a proceeding pursuant to this section is entitled to counsel as provided in
19 41-3-425.

20 ~~(12)(15)~~ (13) At any stage of the proceedings considered appropriate by the court, the court may
21 order an alternative dispute resolution proceeding or the parties may voluntarily participate in an alternative
22 dispute resolution proceeding. An alternative dispute resolution proceeding under this chapter may include a
23 family engagement meeting, mediation, or a settlement conference. If a court orders an alternative dispute
24 resolution proceeding, a party who does not wish to participate may file a motion objecting to the order. If the
25 department is a party to the original proceeding, a representative of the department who has complete authority
26 to settle the issue or issues in the original proceeding must be present at any alternative dispute resolution
27 proceeding.

28 ~~(13)(16)~~ (14) Service of a petition under this section must be accompanied by a written notice

1 advising the child's parent, guardian, or other person having physical or legal custody of the child of the:
2 (a) right, pursuant to 41-3-425, to appointment or assignment of counsel if the person is indigent or
3 if appointment or assignment of counsel is required under the federal Indian Child Welfare Act, if applicable;
4 (b) right to contest the allegations in the petition; and
5 (c) timelines for hearings and determinations required under this chapter.
6 ~~(14)(17)~~ (15) If appropriate, orders issued under this chapter must contain a notice provision
7 advising a child's parent, guardian, or other person having physical or legal custody of the child that:
8 (a) the court is required by federal and state laws to hold a permanency hearing to determine the
9 permanent placement of a child no later than 12 months after a judge determines that the child has been
10 abused or neglected or 12 months after the first 60 days that the child has been removed from the child's home;
11 (b) if a child has been in foster care for 15 of the last 22 months, state law presumes that
12 termination of parental rights is in the best interests of the child and the state is required to file a petition to
13 terminate parental rights; and
14 (c) completion of a treatment plan does not guarantee the return of a child.
15 ~~(15)(18)~~ (16) A court may appoint a standing master to conduct hearings and propose decisions and
16 orders to the court for court consideration and action. A standing master may not conduct a proceeding to
17 terminate parental rights. A standing master must be a member of the state bar of Montana and must be
18 knowledgeable in the area of child abuse and neglect laws."
19

20 **Section 2.** Section 41-3-437, MCA, is amended to read:

21 ~~"41-3-437. (Temporary) Adjudication -- temporary disposition -- findings -- order. (1) Upon the~~
22 ~~filing of an appropriate petition, an adjudicatory hearing must be held within 90 days of a show cause hearing~~
23 ~~under 41-3-432. Adjudication may take place at the show cause hearing if the requirements of subsection (2)~~
24 ~~are met or may be made by prior stipulation of the parties pursuant to 41-3-434 and order of the court.~~
25 ~~Exceptions to the time limit may be allowed only in cases involving newly discovered evidence, unavoidable~~
26 ~~delays, stipulation by the parties pursuant to 41-3-434, and unforeseen personal emergencies.~~
27 ~~(2) — The court may make an adjudication on a petition under 41-3-422 if the court determines by a~~
28 ~~preponderance of the evidence, except as provided in the federal Indian Child Welfare Act or the Montana~~

1 Indian Child Welfare Act provided for in Title 41, chapter 3, part 13, if applicable, that the child is a youth in
2 need of care. Except as otherwise provided in this part, the Montana Rules of Civil Procedure and the Montana
3 Rules of Evidence apply to adjudication and to an adjudicatory hearing. Adjudication must determine the nature
4 of the abuse and neglect and establish facts that resulted in state intervention and upon which disposition, case
5 work, court review, and possible termination are based.

6 (3) — The court shall hear evidence regarding the residence of the child, paternity, if in question, the
7 whereabouts of the parents, guardian, or nearest adult relative, and any other matters the court considers
8 relevant in determining the status of the child. Hearsay evidence of statements made by the affected youth is
9 admissible according to the Montana Rules of Evidence.

10 (4) — In a case in which abandonment has been alleged by the county attorney, the attorney general,
11 or an attorney hired by the county, the court shall hear offered evidence, including evidence offered by a person
12 appearing pursuant to 41-3-422(9)(a) or (9)(b), regarding any of the following subjects:

13 (a) — the extent to which the child has been cared for, nurtured, or supported by a person other than
14 the child's parents; and

15 (b) — whether the child was placed or allowed to remain by the parents with another person for the
16 care of the child, and, if so, then the court shall accept evidence regarding:

17 (i) — the intent of the parents in placing the child or allowing the child to remain with that person;

18 (ii) — the continuity of care the person has offered the child by providing permanency or stability in
19 residence, schooling, and activities outside of the home; and

20 (iii) — the circumstances under which the child was placed or allowed to remain with that other
21 person, including:

22 (A) — whether a parent requesting return of the child was previously prevented from doing so as a
23 result of an order issued pursuant to Title 40, chapter 15, part 2, or of a conviction pursuant to 45-5-206; and

24 (B) — whether the child was originally placed with the other person to allow the parent to seek
25 employment or attend school.

26 (5) — In all civil and criminal proceedings relating to abuse or neglect, the privileges related to the
27 examination or treatment of the child do not apply, except the attorney-client privilege granted by 26-1-803 and
28 the mediation privilege granted by 26-1-813.

1 (6) — ~~(a) If the court determines that the child is not an abused or neglected child, the petition must~~
2 ~~be dismissed and any order made pursuant to 41-3-427 or 41-3-432 must be vacated.~~

3 (b) — ~~If the child is adjudicated a youth in need of care, the court shall set a date for a dispositional~~
4 ~~hearing to be conducted within 20 days, as provided in 41-3-438(1), and order any necessary or required~~
5 ~~investigations. The court may issue a temporary dispositional order pending the dispositional hearing. The~~
6 ~~temporary dispositional order may provide for any of the forms of relief listed in 41-3-427(2).~~

7 (7) — ~~(a) Before making an adjudication, the court may make oral findings, and following the~~
8 ~~adjudicatory hearing, the court shall make written findings on issues, including but not limited to the following:~~

9 (i) — ~~which allegations of the petition have been proved or admitted, if any;~~

10 (ii) — ~~whether there is a legal basis for continued court and department intervention; and~~

11 (iii) — ~~whether the department has made reasonable efforts to avoid protective placement of the child~~
12 ~~or to make it possible to safely return the child to the child's home.~~

13 (b) — ~~The court may order:~~

14 (i) — ~~terms for visitation, support, and other intrafamily communication pending disposition if the~~
15 ~~child is to be placed or to remain in temporary out-of-home care prior to disposition;~~

16 (ii) — ~~examinations, evaluations, or counseling of the child or parents in preparation for the~~
17 ~~disposition hearing that does not require an expenditure of money by the department unless the court finds~~
18 ~~after notice and a hearing that the expenditure is reasonable and that resources are available for payment. The~~
19 ~~department is the payor of last resort after all family, insurance, and other resources have been examined.~~

20 (iii) — ~~the department to evaluate the noncustodial parent or relatives as possible caretakers, if not~~
21 ~~already done;~~

22 (iv) — ~~the perpetrator of the alleged child abuse or neglect to be removed from the home to allow the~~
23 ~~child to remain in the home; and~~

24 (v) — ~~the department to continue efforts to notify noncustodial parents.~~

25 (8) — ~~If a proceeding under this chapter involves an Indian child and is subject to the federal Indian~~
26 ~~Child Welfare Act or the Montana Indian Child Welfare Act, a qualified expert witness is required to testify that~~
27 ~~the continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional~~
28 ~~or physical damage to the Indian child. (Terminates June 30, 2025—sec. 55, Ch. 716, L. 2023.)~~

1 **41-3-437. (Effective July 1, 2025) Adjudication -- temporary disposition -- findings -- order. (1)**

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

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

13 (3) The court shall hear evidence regarding the residence of the child, paternity, if in question, the
14 whereabouts of the parents, guardian, or nearest adult relative, and any other matters the court considers
15 relevant in determining the status of the child. Hearsay evidence of statements made by the affected youth is
16 admissible according to the Montana Rules of Evidence.

17 (4) In a case in which abandonment has been alleged by the county attorney, the attorney general,
18 or an attorney hired by the county, the court shall hear offered evidence, including evidence offered by a person
19 appearing pursuant to ~~41-3-422(9)(a)~~ ~~41-3-422(12)(a)~~ ~~41-3-422(10)(A)~~ or ~~(9)(b)~~ ~~(12)(b)~~ ~~(10)(B)~~, regarding any of
20 the following subjects:

21 (a) the extent to which the child has been cared for, nurtured, or supported by a person other than
22 the child's parents; and

23 (b) whether the child was placed or allowed to remain by the parents with another person for the
24 care of the child, and, if so, then the court shall accept evidence regarding:

25 (i) the intent of the parents in placing the child or allowing the child to remain with that person;

26 (ii) the continuity of care the person has offered the child by providing permanency or stability in
27 residence, schooling, and activities outside of the home; and

28 (iii) the circumstances under which the child was placed or allowed to remain with that other

1 person, including:

2 (A) whether a parent requesting return of the child was previously prevented from doing so as a
3 result of an order issued pursuant to Title 40, chapter 15, part 2, or of a conviction pursuant to 45-5-206; and

4 (B) whether the child was originally placed with the other person to allow the parent to seek
5 employment or attend school.

6 (5) In all civil and criminal proceedings relating to abuse or neglect, the privileges related to the
7 examination or treatment of the child do not apply, except the attorney-client privilege granted by 26-1-803 and
8 the mediation privilege granted by 26-1-813.

9 (6) (a) If the court determines that the child is not an abused or neglected child, the petition must
10 be dismissed and any order made pursuant to 41-3-427 or 41-3-432 must be vacated.

11 (b) If the child is adjudicated a youth in need of care, the court shall set a date for a dispositional
12 hearing to be conducted within 20 days, as provided in 41-3-438(1), and order any necessary or required
13 investigations. The court may issue a temporary dispositional order pending the dispositional hearing. The
14 temporary dispositional order may provide for any of the forms of relief listed in 41-3-427(2).

15 (7) (a) Before making an adjudication, the court may make oral findings, and following the
16 adjudicatory hearing, the court shall make written findings on issues, including but not limited to the following:

17 (i) which allegations of the petition have been proved or admitted, if any;

18 (ii) whether there is a legal basis for continued court and department intervention; and

19 (iii) whether the department has made reasonable efforts to avoid protective placement of the child
20 or to make it possible to safely return the child to the child's home.

21 (b) The court may order:

22 (i) terms for visitation, support, and other intrafamily communication pending disposition if the
23 child is to be placed or to remain in temporary out-of-home care prior to disposition;

24 (ii) examinations, evaluations, or counseling of the child or parents in preparation for the
25 disposition hearing that does not require an expenditure of money by the department unless the court finds
26 after notice and a hearing that the expenditure is reasonable and that resources are available for payment. The
27 department is the payor of last resort after all family, insurance, and other resources have been examined.

28 (iii) the department to evaluate the noncustodial parent or relatives as possible caretakers, if not

1 already done;

2 (iv) the perpetrator of the alleged child abuse or neglect to be removed from the home to allow the
3 child to remain in the home; and

4 (v) the department to continue efforts to notify noncustodial parents.

5 (8) 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 - END -