HOUSE BILL NO. 49

INTRODUCED BY J. REAVIS

BY REQUEST OF THE OFFICE OF PUBLIC DEFENDER

A BILL FOR AN ACT ENTITLED: “AN ACT GENERALLY REVISING LAWS RELATED TO THE APPOINTMENT OF THE OFFICE OF STATE PUBLIC DEFENDER; REVISING THE APPOINTMENT PROCESS OF THE OFFICE OF STATE PUBLIC DEFENDER; REVISING WHEN THE RIGHT FOR COUNSEL AT PUBLIC EXPENSE IS AFFORDED TO INDIVIDUALS WITH PHYSICAL CUSTODY OF A CHILD; STANDARDIZING TERMS; ESTABLISHING WHEN APPOINTMENT OF THE OFFICE OF STATE PUBLIC DEFENDER IS TERMINATED; REVISING NOTIFICATION REQUIREMENTS FOR WHEN MOTION TO WITHDRAW FROM FRIVOLOUS APPEAL IS FILED; PROVIDING COURT DISCRETION ON THE APPOINTMENT OF COUNSEL FOR A PERSON FOR WHICH A CONSERVATORSHIP OR OTHER PROTECTIVE ORDER PETITION IS BEING SOUGHT; AND AMENDING SECTIONS 41-3-216, 41-3-306, 41-3-307, 41-3-422, 41-3-423, 41-3-425, 41-3-432, 41-3-1316, 46-8-101, 46-8-103, 47-1-104, AND 72-5-408, MCA.”

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

Section 1. Section 41-3-216, MCA, is amended to read:

"**41-3-216. Provision of information about investigation procedure and rights to parents.** (1) On removal of a child, the department shall verbally advise the parent, guardian, or other person having physical or legal custody of a child:

(a) of the specific complaint or allegation made against the parent, guardian, or other person having physical or legal custody of a child;

(b) of the fundamental rights of parents under 40-6-701 and 40-4-227 to direct the upbringing, education, health care, and mental health of their children without government interference, but this right should yield to the best interests of the child when the parent's conduct is contrary to the child-parent relationship;

(c) of the right to seek counsel at any time and to consult with counsel before signing any

documents; and

(d) that the parent, guardian, or other person having physical or legal custody of a child:

(i) is not required to permit an investigator from the department to enter the home or submit to a drug or alcohol test, unless ordered to do so by the court;

(ii) is not required to speak with the investigator and any statements may be used in an administrative or court proceeding; and

(iii) may record any interactions with a department employee if the parent, guardian, or other person having physical or legal custody of a child informs the department employee that the interaction is being recorded.

(2) During initial interactions with the parent, guardian, or other person having physical or legal custody of a child who is the subject of an investigation under 41-3-202, the department shall provide the parent, guardian, or other person having physical or legal custody of a child with a clear written description:

(a) of the right to seek counsel at any time and to consult with counsel before signing any documents;

(b) that the parent, guardian, or other person having physical or legal custody of a child is not required to permit an investigator from the department to enter the home or submit to a drug or alcohol test, unless ordered to do so by the court;

(c) that the parent, guardian, or other person having physical or legal custody of a child is not required to speak with the investigator and any statements may be used in an administrative or court proceeding;

(d) of the right of the parent, guardian, or other person having physical or legal custody of a child to:

(i) be treated with dignity and respect without any form of discrimination; and

(ii) have the parent's, guardian's, or other person's culture, language, and religion respected; and

(e) of the department's procedures for conducting an investigation of alleged child abuse or neglect.

(3) If applicable after initial contact, the department shall provide the parent, guardian, or other person having physical or legal custody of a child with a concise written description of:

(a) the circumstances under which the department would seek to enter into a written prevention plan or services agreement with the parent or guardian under 41-3-302;

(b) the circumstances under which the department would remove the child from the home and seek a court order for immediate protection and emergency protective services under 41-3-427;

(c) an explanation of when the law requires the department to refer a report of alleged child abuse or neglect to a law enforcement agency for a separate determination of whether a criminal violation occurred;

(d) the right to withhold consent to release the parent's, guardian's, or other person's medical or mental health records unless ordered to do so by a court; and

(e) the right to accommodations under the Americans with Disabilities Act of 1990, 42 U.S.C. 12101, et seq.

(4) When the parent, guardian, or other person having physical or legal custody of a child requests to file a complaint, the department shall provide the parent, guardian, or person having physical or legal custody:

(a) the procedures to file a complaint with the department and the child and family ombudsman;

(b) the procedure for the department to disclose records to a member of the United States congress or a member of the Montana legislature under 41-3-205(4); and

(c) the process for reviewing the department's records of the investigation.

(5) When the court approves emergency protective services, the office of state public defender shall provide the parent, guardian, or other person having ~~physical or~~ legal custody of a child:

(a) timelines for hearings and determinations under this chapter; and

(b) an explanation that a parent, guardian, or other person having ~~physical or~~ legal custody of a child has the right to:

(i) receive a copy of the affidavit of the child protection investigator regarding the circumstances of the emergency removal as provided under 41-3-301;

(ii) attend and participate in hearings, which includes providing a statement to the judge;

(iii) contest the allegations in a petition filed under 41-3-422;

(iv) call witnesses and cross-examine witnesses;

(v) have a support person or persons present during any meeting with a child protection

investigator or other department staff;

(vi) request that the child be placed in a kinship foster home as defined in 52-2-602; and

(vii) be provided with services, including visitation with the child, unless otherwise ordered by the court.

(6) Except for the information provided in subsection (1)(a), the department shall post the information required to be given to a parent, guardian, or other person having physical or legal custody of a child on a publicly available website and in a conspicuous place in the publicly accessible area of the office of a child protection investigator and a child reunification specialist."

Section 2. Section 41-3-306, MCA, is amended to read:

"**41-3-306. Emergency protective services hearing -- exception.** (1) (a) A district court shall hold a hearing within 5 business days of a child's removal from the home pursuant to 41-3-301 to determine whether there is probable cause to continue the removal beyond 5 business days.

(b) The department shall provide notification of the hearing as required under 41-3-301.

(c) A hearing is not required if the child is released prior to the time of the required hearing.

(2) The hearing may be held in person, by videoconference, or, if no other means are available, by telephone.

(3) The child and the child's parents, parent, guardian, or other person having ~~physical or~~ legal custody of the child must be represented by counsel at the hearing.

(4) If the court determines that continued out-of-home placement is needed, the court shall:

(a) establish guidelines for visitation by the parents, parent, guardian, or other person having physical or legal custody of the child pending the show cause hearing; and

(b) review the availability of options for a kinship placement and make recommendations if appropriate.

(5) The court may direct the department to develop and implement a treatment plan before the show cause hearing if the parents, parent, guardian or other person having physical or legal custody of the child stipulates to a condition subject to a treatment plan and agrees to immediately comply with the treatment plan if a plan is developed.

(6) If the court determines continued removal is not appropriate, the child must be immediately returned to the parents, parent, guardian, or other person having physical or legal custody of the child.

(7) The emergency protective services hearing is an emergency proceeding for the purposes of the federal Indian Child Welfare Act and is not subject to the notice requirements of that act.

(8) The emergency protective services hearing is an emergency proceeding for the purposes of the Montana Indian Child Welfare Act provided for in Title 41, chapter 3, part 13, and is not subject to the notice requirements of the Montana Indian Child Welfare Act."

Section 3. Section 41-3-307, MCA, is amended to read:

"**41-3-307. Availability of prehearing conferences.** (1) A prehearing conference must be held within 5 working days of a child's removal and before an emergency protective services hearing held by the court pursuant to 41-3-306.

(2) A prehearing conference must include the following parties:

(a) the parents, parent, guardian, or other person having physical or legal custody of the child, if the parents, parent, guardian, or other person chooses to participate;

(b) the legal counsel of the ~~participant~~ participants provided for in 41-3-425 ~~provided for in subsection (2)(a)~~;

(c) the child's legal counsel;

(d) the county attorney's office;

(e) the child protection investigator; and

(f) the child reunification specialist.

(3) To the greatest degree possible using available funding, the meetings must be conducted by an independent and trained facilitator.

(4) At a minimum, the meetings must involve discussion of:

(a) the child's current placement and options for continued placement if the child remains out of the home;

(b) whether other options exist for an in-home safety plan or resource that may allow the child to remain in the home;

(c) parenting time schedules; and

(d) treatment services for the family."

Section 4. Section 41-3-422, MCA, is amended to read:

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

(i) immediate protection and emergency protective services, as provided in 41-3-427;

(ii) temporary legal custody, as provided in 41-3-442;

(iii) long-term custody, as provided in 41-3-445;

(iv) termination of the parent-child legal relationship, as provided in 41-3-607;

(v) appointment of a guardian pursuant to 41-3-444;

(vi) a determination that preservation or reunification services need not be provided; or

(vii) any combination of the provisions of subsections (1)(a)(i) through (1)(a)(vi) or any other relief that may be required for the best interests of the child.

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

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

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

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

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

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

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

(4) An abuse and neglect petition is a civil action brought in the name of the state of Montana. The

Montana Rules of Civil Procedure and the Montana Rules of Evidence apply except as modified in this chapter. Proceedings under a petition are not a bar to criminal prosecution.

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

(i) probable cause for the issuance of an order for immediate protection and emergency protective services;

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

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

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

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

(6) (a) Except as provided in the federal Indian Child Welfare Act and the Montana Indian Child Welfare Act, if applicable, the parents or parent, guardian, or other person or agency having legal custody of the child named in the petition, if residing in the state, must be served personally with a copy of the initial petition and a petition to terminate the parent-child legal relationship at least 5 days before the date set for hearing. If the person or agency cannot be served personally, the person or agency may be served by publication as provided in 41-3-428 and 41-3-429.

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

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

for the appointment or assignment of counsel as provided for in 41-3-425 to represent the father unless, in the opinion of the court, the interests of justice require counsel to be appointed or assigned.

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

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

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

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

(10) An abuse and neglect petition must state:

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

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

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

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

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

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

(a) right~~, pursuant to 41-3-425,~~ of a parent, guardian, or other person having legal custody of the child to appointment ~~or assignment~~ of counsel as provided in 41-3-425 ~~if the person is indigent or if appointment or assignment of counsel is required under the federal Indian Child Welfare Act or the Montana Indian Child Welfare Act, if applicable~~;

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

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

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

(a) the court is required by federal and state laws to hold a permanency hearing to determine the permanent placement of a child no later than 12 months after a judge determines that the child has been abused or neglected or 12 months after the first 60 days that the child has been removed from the child's home;

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

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

(15) A court may appoint a standing master to conduct hearings and propose decisions and orders to the court for court consideration and action. A standing master may not conduct a proceeding to terminate parental rights. A standing master must be a member of the state bar of Montana and must be knowledgeable in the area of child abuse and neglect laws."

Section 5. Section 41-3-423, MCA, is amended to read:

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

(b) For the purposes of this subsection (1), the term "reasonable efforts" means the department shall in good faith:

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

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

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

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

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

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

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

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

(ix) monitor progress and participation in services; and

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

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

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

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

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

(c) committed aggravated assault against a child;

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

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

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

(a) contribute to the support of the child for an aggregate period of 1 year, although able to do so;

(b) establish a substantial relationship with the child. A substantial relationship is demonstrated by:

(i) visiting the child at least monthly when physically and financially able to do so; or

(ii) having regular contact with the child or with the person or agency having the care and custody of the child when physically and financially able to do so; and

(iii) manifesting an ability and willingness to assume legal and physical custody of the child if the child was not in the physical custody of the other parent.

(c) register with the putative father registry pursuant to Title 42, chapter 2, part 2, and the person has not been:

(i) adjudicated in Montana to be the father of the child for the purposes of child support; or

(ii) recorded on the child's birth certificate as the child's father.

(4) A judicial finding that preservation or reunification services are not necessary under this section must be supported by clear and convincing evidence.

(5) If the court finds that preservation or reunification services are not necessary pursuant to subsection (2) or (3), a permanency hearing must be held within 30 days of that determination and reasonable efforts, including consideration of both in-state and out-of-state permanent placement options for the child, must be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

(6) If reasonable efforts have been made to prevent removal of a child from the home or to return a child to the child's home but continuation of the efforts is determined by the court to be inconsistent with the permanency plan for the child, the department shall make reasonable efforts to place the child in a timely manner in accordance with the permanency plan, including, if appropriate, placement in another state, and to complete whatever steps are necessary to finalize the permanent placement of the child. Reasonable efforts to place a child permanently for adoption or to make an alternative out-of-home permanent placement may be made concurrently with reasonable efforts to return a child to the child's home. Concurrent planning, including identifying in-state and out-of-state placements, may be used.

(7) When determining whether the department has made reasonable efforts to prevent the necessity of removal of a child from the child's home or to reunify families that have been separated by the state, the court shall review the services provided by the agency including, if applicable, protective services provided pursuant to 41-3-302."

Section 6. Section 41-3-425, MCA, is amended to read:

"**41-3-425. Right to counsel.** (1) Any party involved in a petition filed pursuant to 41-3-422 has the

right to counsel in all proceedings held pursuant to the petition.

(2) Except as provided in subsection (3), the court shall immediately appoint the office of state public defender ~~to assign counsel~~ for:

(a) any ~~indigent~~ parent, guardian, or other person having legal custody of a child or youth in a ~~removal, placement, or termination~~ proceeding on a petition filed pursuant to 41-3-422 or upon filing of a petition pursuant to 41-3-444(5) or (6)~~, pending a determination of eligibility pursuant to 47-1-111~~;

(b) any child or youth involved in a proceeding under a petition filed pursuant to 41-3-422 or upon filing of a petition pursuant to 41-3-444(5) or (6);

(c) any party entitled to counsel at public expense under the federal Indian Child Welfare Act or the Montana Indian Child Welfare Act provided for in Title 41, chapter 3, part 13; and

(d) any child petitioning for reinstatement of parental rights pursuant to 41-3-615.

(3) Except as provided in the federal Indian Child Welfare Act or the Montana Indian Child Welfare Act, a court may not appoint a public defender to a putative father, as defined in 42-2-201, of a child or youth in a removal, placement, or termination proceeding pursuant to 41-3-422 until:

(a) the putative father is successfully served notice of a petition filed pursuant to 41-3-422; and

(b) the putative father makes a request to the court ~~in writing~~ to appoint the office of state public defender to assign counsel."

Section 7. Section 41-3-432, MCA, is amended to read:

"**41-3-432. Show cause hearing -- order.** (1) (a) Except as provided in the federal Indian Child Welfare Act or the Montana Indian Child Welfare Act provided for in Title 41, chapter 3, part 13, a show cause hearing must be conducted within 21 days of the filing of an initial child abuse and neglect petition unless otherwise stipulated by the parties pursuant to 41-3-434 or unless an extension of time is granted by the court. A separate notice to the court stating the statutory time deadline for a hearing must accompany any petition to which the time deadline applies.

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

or physical damage to the Indian child.

(c) The court may grant an extension of time for a show cause hearing only upon a showing of substantial injustice and shall order an appropriate remedy that considers the best interests of the child.

(2) If a contested show cause hearing is requested pursuant to 41-3-427 based upon a disputed issue of material fact or a dispute regarding the veracity of the affidavit of the department, the court may consider all evidence and shall provide an opportunity for a parent, guardian, or other person having physical or legal custody of the child to provide testimony regarding the disputed issues. Hearsay evidence of statements made by the affected child is admissible at the hearing. The parent, guardian, or other person having legal custody of the child ~~may be represented by legal counsel and~~ may be appointed ~~or assigned~~ counsel as provided for in 41-3-425.

(3) At the show cause hearing, the court shall explain the procedures to be followed in the case and explain the parties' rights, including the right to ~~request~~ appointment ~~or assignment~~ of counsel as provided in 41-3-425 ~~if indigent or if appointment or assignment of counsel is required under the federal Indian Child Welfare Act or the Montana Indian Child Welfare Act, if applicable~~, and the right to challenge the allegations contained in the petition. The parent, guardian, or other person having physical or legal custody of the child must be given the opportunity to admit or deny the allegations contained in the petition at the show cause hearing. Inquiry must be made to determine whether the notice requirements of the federal Indian Child Welfare Act or 41-3-1311, if applicable, have been met.

(4) Except as provided in the federal Indian Child Welfare Act or the Montana Indian Child Welfare Act, if applicable, the court shall make written findings on issues including but not limited to the following:

(a) whether the child should be returned home immediately if there has been an emergency removal or remain in temporary out-of-home care or be removed from the home;

(b) if removal is ordered or continuation of removal is ordered, why continuation of the child in the home would be contrary to the child's best interests and welfare;

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

(d) financial support of the child, including inquiry into the financial ability of the parents, guardian, or other person having physical or legal custody of the child to contribute to the costs for the care, custody, and

treatment of the child and requirements of a contribution for those costs pursuant to 41-3-446; and

(e) whether another hearing is needed and, if so, the date and time of the next hearing.

(5) The court may consider:

(a) terms and conditions for parental visitation; and

(b) whether orders for examinations, evaluations, counseling, immediate services, or protection are needed.

(6) Following the show cause hearing, the court may enter an order for the relief requested or amend a previous order for immediate protection of the child if one has been entered. The order must be in writing.

(7) If a child who has been removed from the child's home is not returned home after the show cause hearing or if removal is ordered, the parents or parent, guardian, or other person or agency having physical or legal custody of the child named in the petition may request that a citizen review board, if available pursuant to part 10 of this chapter, review the case within 30 days of the show cause hearing and make a recommendation to the district court, as provided in 41-3-1010.

(8) Adjudication of a child as a youth in need of care may be made at the show cause hearing if the requirements of 41-3-437(2) are met. If not made at the show cause hearing, adjudication under 41-3-437 must be made within the time limits required by 41-3-437 unless adjudication occurs earlier by stipulation of the parties pursuant to 41-3-434 and order of the court."

Section 8. Section 41-3-1316, MCA, is amended to read:

"**41-3-1316. Right to counsel.** In a child custody proceeding under this part, ~~in which the court determines that the Indian child's parent or Indian custodian is indigent, the parent or Indian custodian has the right to court-appointed counsel. The~~ the court may~~, in its discretion,~~ appoint counsel ~~for the Indian child pursuant to~~ as provided in 41-3-425."

Section 9. Section 46-8-101, MCA, is amended to read:

"**46-8-101. Right to counsel.** (1) During the initial appearance before the court, every defendant must be informed of the right to have counsel and must be asked if the aid of counsel is desired.

(2) Except as provided in subsection (3), if the defendant desires ~~assigned~~ counsel at public expense because of financial inability to retain private counsel and the offense charged is a felony or the offense is a misdemeanor and incarceration is a sentencing option if the defendant is convicted, the court shall ~~order~~ appoint the office of state public defender, provided for in 2-15-1029, ~~to assign counsel~~ to represent the defendant ~~without unnecessary delay pending a determination of eligibility under the provisions of 47-1-111~~.

(3) If the defendant desires ~~assigned~~ counsel at public expense because of financial inability to retain private counsel and the offense charged is a misdemeanor and incarceration is a sentencing option if the defendant is convicted, during the initial appearance the court may order that incarceration not be exercised as a sentencing option if the defendant is convicted. If the court so orders, the court shall inform the defendant that the assistance of counsel at public expense through the office of state public defender is not available and that time will be given to consult with an attorney before a plea is entered. If incarceration is waived as a sentencing option, ~~a~~ the office of state public defender may not be ~~assigned~~ appointed."

Section 10. Section 46-8-103, MCA, is amended to read:

"**46-8-103. ~~Duration of assignment~~ Motion to withdraw from frivolous appeal.** ~~(1) When counsel has been assigned, the assignment is effective until final judgment, including any proceeding upon direct appeal to the Montana supreme court, unless relieved by order of the court that assigned counsel or that has jurisdiction over the case.~~

~~(2)~~ If counsel determines that an appeal would be frivolous or wholly without merit, counsel shall file a motion with the court requesting permission to withdraw. The motion must attest that counsel has concluded that an appeal would be frivolous or wholly without merit after reviewing the entire record and researching applicable statutes, case law, and rules and that the defendant has been advised of counsel's decision and of the defendant's right to file a response. The motion to withdraw must be accompanied by a memorandum discussing any issues that arguably support an appeal. The memorandum must include a summary of the procedural history of the case and any jurisdictional problems with the appeal, together with appropriate citations to the record and to the pertinent statutes, case law, and procedural rules bearing upon each issue discussed in the memorandum. Upon filing the motion and memorandum with the court, counsel's certificate of ~~mailing~~ service must certify that copies of each filing were mailed to ~~the local county attorney, the~~

~~attorney general's office, and~~ the defendant. The defendant is entitled to file a response with the court."

Section 11. Section 47-1-104, MCA, is amended to read:

"**47-1-104. Statewide system -- structure and scope of services -- ~~assignment of counsel at public expense~~ appointment of office of state public defender.** (1) There is a statewide public defender system, which is required to deliver public defender services in all courts in this state. The system is supervised by the director. The director must be an attorney licensed to practice law in the state.

(2) The director shall approve a strategic plan for service delivery and establish not more than 11 public defender regions. The director may establish a regional office to provide public defender services in each region as provided in 47-1-215 for nonconflict regions and as provided in 47-1-403 for conflict regions, establish a contracted services program to provide services in the region, or utilize other service delivery methods as appropriate and consistent with the purposes described in 47-1-102.

(3) When ~~a court orders the assignment of a~~ the office of state public defender is appointed, the ~~appropriate~~ office shall ~~immediately assign a public defender qualified to~~ provide the required services. The director shall establish protocols to ~~ensure that the offices~~ make appropriate assignments in a timely manner.

(4) A court may ~~order assignment of a~~ appoint the office of state public defender under this chapter in the following ~~cases~~:

(a) in cases in which a person is entitled to assistance of counsel at public expense because of financial inability to retain private counsel, subject to a determination of indigence pursuant to 47-1-111, as follows:

(i) for a person charged with a felony or charged with a misdemeanor for which there is a possibility of incarceration, as provided in 46-8-101;

(ii) for a party in a proceeding to determine parentage under the Uniform Parentage Act, as provided in 40-6-119;

(iii) for an applicant for sentence review pursuant to Title 46, chapter 18, part 9;

(iv) for a petitioner in a proceeding for postconviction relief, as provided in 46-21-201;

(v) for a petitioner in a habeas corpus proceeding pursuant to Title 46, chapter 22;

(vi) for a parent or guardian in a proceeding for the involuntary commitment of a developmentally

disabled person to a residential facility, as provided in 53-20-112;

(vii) for a witness in a criminal grand jury proceeding, as provided in 46-4-304; and

(viii) for a parent in a proceeding to involuntarily terminate the parent's parental rights pursuant to 42-2-607;

(b) in cases in which a person is entitled by law to the assistance of counsel at public expense regardless of the person's financial ability to retain private counsel, as follows:

(i) as provided for in 41-3-425;

(ii) for a youth in a proceeding under the Montana Youth Court Act alleging a youth is delinquent or in need of intervention, as provided in 41-5-1413, and in a prosecution under the Extended Jurisdiction Prosecution Act, as provided in 41-5-1607;

(iii) for a juvenile entitled to ~~assigned~~ counsel at public expense in a proceeding under the Interstate Compact on Juveniles, as provided in 41-6-101;

(iv) for a minor who petitions for a waiver of parental consent requirements under the Parental Consent for Abortion Act of 2013, as provided in 50-20-509;

(v) for a respondent in a proceeding for the involuntary commitment of a developmentally disabled person to a residential facility, as provided in 53-20-112;

(vi) for a minor voluntarily committed to a mental health facility, as provided in 53-21-112;

(vii) for a person who is the subject of a petition for the appointment of a guardian or conservator in a proceeding under the provisions of the Uniform Probate Code in Title 72, chapter 5;

(viii) for a ward when the ward's guardian has filed a petition to require medical treatment for a mental disorder of the ward, as provided in 72-5-322;

(ix) for a parent, guardian, or other person with ~~physical or~~ legal custody of a child or youth in ~~any removal, placement, or termination~~ a proceeding on a petition filed pursuant to 41-3-422 and as required under the federal Indian Child Welfare Act and 41-3-1316, as provided in 41-3-425;

(x) for a respondent in a proceeding for involuntary commitment for a mental disorder, as provided in 53-21-116; and

(xi) for a respondent in a proceeding for the involuntary commitment of a person for alcoholism, as provided in 53-24-302; ~~and~~

(c) for an ~~eligible appellant in an appeal of a proceeding listed in this subsection (4)~~ individual listed in subsection (5) or this subsection (4) whenever any party to a proceeding listed in subsection (5) or this subsection (4) files a direct appeal of the proceeding to an appellate court; and~~.~~

~~(5)~~ (d) ~~A court may also order assignment of a public defender~~ to serve as a member of a treatment court team established pursuant to 46-1-1104 or 46-1-1204.

(5) The office of state public defender is appointed without a separate court order in the following:

(a) except as provided in 41-3-425(3), for any child, parent, guardian, party entitled to counsel at public expense under the federal Indian Child Welfare Act or the Montana Indian Child Welfare Act, or person having legal custody of a child involved in a petition filed pursuant to 41-3-422 upon notice to the office of a child's removal from the home pursuant to 41-3-301;

(b) for a youth in a proceeding under the Montana Youth Court Act upon notice to the office of a youth subject to a probable cause hearing pursuant to 41-5-332;

(c) for a youth in a proceeding under the Montana Youth Court Act upon filing of a petition pursuant to 41-5-1402; and

(d) for an individual listed in subsection (4) or this subsection (5) whenever any party to a proceeding listed in subsection (4) or this subsection (5) files a direct appeal of the proceeding to an appellate court and the office has already been appointed to represent the individual in the underlying proceeding.

(6) Except as provided in subsection (7) or (8), appointment of the office of state public defender:

(a) to represent an individual in trial court terminates upon expiration of the individual's right to file notice of appeal from the court's judgment or other final order;

(b) to represent an individual on appeal to a district court terminates upon expiration of the individual's right to file a notice of appeal to the Montana Supreme Court; or

(c) to represent an individual on appeal to the Montana Supreme Court terminates upon remittitur or other final order of the Montana Supreme Court.

(7) (a) Appointment under subsection (4)(a)(i) continues for the limited purpose of making a timely request to conform the written judgment to the oral pronouncement of sentence pursuant to 46-18-116(2).

(b) Appointment under subsection (4)(a)(iii) terminates upon decision of the sentence review division.

(c) Appointment under subsection (4)(a)(v) terminates upon the court's grant or denial of the petition.

(d) Appointment under subsection (4)(a)(vii) terminates upon the represented witness being released from subpoena.

(e) For an appointment under subsection (4)(b)(i) or (5)(a), an order granting a guardianship is a final order and the appointment terminates upon expiration of the individual's right to file a notice of appeal from that guardianship order.

(f) Appointment to represent a youth convicted under the Criminally Convicted Youth Act continues until the youth reaches the age of 21 for the limited purposes of assisting the youth in sentence review pursuant to 41-5-2503 and 41-5-2510.

(g) Appointment under subsection (4)(b)(vii) to represent the subject of a petition for the appointment of a guardian or conservator terminates when the time to appeal from the court's grant or denial of the petition has expired. The appointment does not extend past that point to ongoing representation of a ward or review of a guardian's or conservator's annual reports.

(h) Appointment under subsection (5)(c) terminates if the youth is released from custody pursuant to 41-5-334 and no petition has been filed pursuant to 41-5-1402.

(i) An appointment previously terminated under subsection (6)(a) or (6)(b) is reinstated without a separate court order if an appellate court subsequently remands the matter for further proceedings.

(8) An appointment terminates immediately when:

(a) a court rescinds the appointment;

(b) the individual obtains representation by private counsel; or

(c) a court relieves the office of the duty to provide representation following a motion requesting permission to withdraw pursuant to 46-8-103 or an order pursuant to 41-3-1310(8).

~~(6)~~ (9) (a) ~~Except as provided in subsection (6)(b), a~~ The office of state public defender may not be ~~assigned~~ appointed to act as a court-appointed special advocate or guardian ad litem in a proceeding under the Montana Youth Court Act, Title 41, chapter 5, or in an abuse and neglect proceeding under Title 41, chapter 3.

(b) A private attorney who is contracted with under the provisions of this title to provide public defender services under this chapter may be appointed as a court-appointed special advocate or guardian ad

litem in a proceeding described in subsection ~~(6)(a)~~ (9)(a) if the appointment is separate from the attorney's service for the statewide public defender system and does not result in a conflict of interest."

Section 12. Section 72-5-408, MCA, is amended to read:

"**72-5-408. Procedure concerning hearing and order on original petition.** (1) Upon receipt of a petition for appointment of a conservator or other protective order because of minority, the court shall set a date for hearing on the matters alleged in the petition. If at any time in the proceeding the court determines that the interests of the minor are or may be inadequately represented, the court may order the office of state public defender, provided for in 2-15-1029, to assign counsel pursuant to the Montana Public Defender Act, Title 47, chapter 1, to represent the minor.

(2) Upon receipt of a petition for appointment of a conservator or other protective order for reasons other than minority, the court shall set a date for hearing. Unless the person to be protected has counsel of the person's own choice, the court ~~shall~~ may, in the interest of justice, appoint an appropriate official or order the office of state public defender to assign counsel to represent the person pursuant to the Montana Public Defender Act, Title 47, chapter 1. If the alleged disability is mental illness or mental deficiency, the court may direct that the person to be protected be examined by a physician or professional person as defined in 53-21-102 designated by the court. If the alleged disability is physical illness or disability, advanced age, chronic use of drugs, or chronic intoxication, the court may direct that the person to be protected be examined by a physician designated by the court. It is preferable that a physician designated by the court not be connected with any institution in which the person is a patient or is detained. The court may send a visitor to interview the person to be protected. The visitor may be a guardian ad litem or an officer or employee of the court.

(3) In the case of an appointment pursuant to 72-5-410(1)(h), the court shall direct that the person to be protected be examined by a physician as set forth in subsection (2).

(4) After hearing, upon finding that a basis for the appointment of a conservator or other protective order has been established, the court shall make an appointment or other appropriate protective order."

- END -