MONTANA STATE PUBLIC DEFENDER

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NOTICE

Montana law, § 41-3-216(5), MCA, requires the OPD to advise you of the following:

1. Timelines for hearings and determinations in your court case; and
2. An explanation of your rights.

As a parent, guardian, or Indian Custodian involved with Child and Family Services, your rights include:

- The right to receive a copy of the affidavit of the Child Protection Specialist (CPS) regarding the circumstances of the emergency removal as provided under 41-3-301, MCA;
- The right to attend and participate in hearings, including an opportunity to provide a statement to the judge;
- The right to contest the allegations in a Petition filed under 41-3-422, MCA;
- The right to call and cross-examine witnesses;
- The right to have a support person or persons present during any meeting with a Child Protection Specialist or other CFS staff;
- The right to request that your child(ren) be placed in a kinship foster home as defined in 52-2-602, MCA; and
- The right to be provided with services, including visitation with the child, unless otherwise ordered by the Court.

If Child and Family Services removes your children or files a legal case regarding your children, you ae entitled to a public defender. Please discuss any questions you have about your rights and your case with your attorney.

Timelines for Required Hearings

Prehearing Conference. A PHC must be made available to you within 5 business days of the child(ren)'s removal and before an emergency protective services hearing. The meeting must discuss your child(ren)'s placement, whether an in-home safety plan may allow for your child to remain in the home, parenting schedules, and treatment services.

Emergency Protective Services Hearing. An EPS Hearing must be held within 5 business days of your child(ren)'s removal. At this hearing the Court determines whether there is probable cause to continue the removal beyond 5 business days.

Show Cause. This hearing must be held within 21 days of the filing of the petition unless otherwise agreed to by the parties or unless an extension of time is granted by the Court. You will be given the opportunity to admit or deny the allegations. The Court must investigate whether the Indian Child Welfare Act (ICWA) notice requirements have been met.

Adjudicatory Hearing. An adjudicatory hearing may be held at the same time as the show cause hearing. If an adjudication does not occur at the show cause hearing, an adjudicatory hearing must be held within 90 days of the show cause hearing. At this hearing, the Court determines whether the child is a youth in need of care, meaning that CFS has shown, by a preponderance of the evidence, that the child has been abused, neglected, or abandoned.

Dispositional Hearing. This hearing is usually held the same day as the adjudicatory hearing, but no more than 20 days after the adjudicatory hearing. The Court can grant a variety of dispositions including granting CFS Temporary Legal Custody (TLC) for 6 months or placing the child with the non-custodial parent (even if there is a parenting plan in place). TLC can be extended multiple times over the course of the case.

Treatment Plan Hearing. Within 30 days of the dispositional hearing, there must be a treatment plan hearing. The treatment plan outlines tasks a parent must complete to address CFS's safety concerns and work toward reunification. Tasks must be related to the reasons for removal. Before the treatment plan hearing, CFS will give your attorney a copy of the proposed treatment plan. You will be able to review it with your attorney and propose changes. At the hearing, the Judge will settle any disputes about the tasks. Once ordered by the Judge, the treatment plan cannot be changed without stipulation or order of the court. The treatment plan will be in place throughout the life of the case. It is critical to successfully complete each treatment plan task or your parental rights can be terminated. However, treatment plan completion does not guarantee the return of your child(ren) to you. CFS will evaluate your completion and expect and evaluate changes in your behavior in accord with the plan.

Permanency Hearing. *Usually 12 months from Adjudication.* A permanency hearing determines the long-term permanency plan for the child(ren).Options include reunification with the child(ren)'s parent or guardian, permanent placement with the noncustodial parent, adoption, appointment of a guardian, or long-term custody by the Department if special circumstances apply and this is in the best interests of the child. You have a right to propose your preferred permanency plan and to object to CFS's plan.

Termination Hearing. A termination hearing determines whether a parent's parental rights and legal relationship to a child will be ended. There is no right to a jury trial at termination hearings. Subject to some exceptions, CFS is required to file a petition for termination if a child has been in foster care for 15 of the last 22 months. Under special circumstances, CFS may request termination in its initial filing if it also asks the Court to order that no reunification services need be provided. You have a right to contest termination. In consultation with your attorney, you may also choose to consent to relinquishment of your parental rights.

Appeals. Parties have the right to appeal a final judgement. A Notice of Appeal must be filed with the Clerk of the Montana Supreme Court within 30 days of the date of entry of judgment or order.

DISCLAIMER:

The way the law applies to individual cases is specific to the facts of each case. The outline above provides only a summary of the relevant hearings and possible determinations that may affect the court case regarding your child(ren). Each case is unique and specific. Additionally, if the Indian Child Welfare Act ("ICWA") applies to your case, specific protections may affect the proceedings and determinations described above. You should discuss how each of these hearings and determinations may be applied and the specific court dates that have been scheduled in your case with your attorney