

**Summary Information**  
**MCA 41-3-424 – “Dismissal Statute”**  
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**ISSUE:**

**Proposed amendment to MCA 41-3-424 (“dismissal statute”)**

**CURRENT STATUTE:**

**41-3-424. Dismissal.** Unless the petition has been previously dismissed, the court shall dismiss an abuse and neglect petition on the motion of a party, or on its own motion, in any case in which all of the following criteria are met:

(1) a child who has been placed in foster care is reunited with the child's parents and returned home;

(2) the child remains in the home for a minimum of 6 months with no additional confirmed reports of child abuse or neglect; and

(3) the department determines and informs the court that the issues that led to department intervention have been resolved and that no reason exists for further department intervention or monitoring.

**History:** En. Sec. 6, Ch. 555, L. 2003.

**PROPOSED AMENDMENT:**

*“shall, upon notice to the parties and in the absence of any objection timely filed within \_\_\_\_\_ days of said notice . . . ”*

**DISCUSSION POINTS:**

- **Definitions:**

- “motion” – a written request for a court order

- “shall” - (in laws, directives, etc.) must; is or are obliged to:

- **The current statutory language does not give the Court any discretion to hear objections, comments or information regarding the dismissal of a pending dependent-neglect case by the Department. No requirement exists to give notice to the child’s attorney, the GAL, the CASA advocate or the birth parent attorneys. The written motion is accompanied by a sworn affidavit by a CPS worker stating facts that support the three criteria of the statute. A proposed order is submitted. The Court must take the affidavit as true and sign the order dismissing the case.**
- **Montana is the only state in the country which does not have some type of “notice and opportunity to be heard” these matters. Notice and opportunity to be heard is a fundamental right and notion of due process and fairness, especially when there is action by the state against an individual.**
- **Because of the current wording of the law, attorneys for children, GALs and CASA advocates are prevented from carrying out their ethical and statutory duties to represent their clients and provide the court with information about the children the court may never hear.**
- **Because of the current wording of the law, Courts are deprived of information other than from CPS. “Shall” dismiss assumes that the court and the department have all done their part, done it well, and that the State no longer has a basis to act. Unfortunately that is not always the case. Judicial discretion ought to remain so that the judge is able to do the “right” thing as opposed to the “required” thing.**
- **Montana courts do not uniformly adhere to the statute. Many judicial districts have informal, local practices which provide notice and opportunity to be heard. Other judicial districts strictly adhere to the statute.**