

Child and Family Services Policy Manual: Legal Procedure Long-Term Custody

Long-Term Custody

The Child Protection Specialist may request the county attorney file a petition for long-term custody when the child is in a planned permanent living arrangement. A planned permanent living arrangement may be a permanency option for the child if the other, more permanent options, are not appropriate for the child or not in the child's best interests. For the court to grant long-term custody of the child to the Department, the court must find, by a preponderance of evidence, that specific statutory requirements have been met.

The Child Protection Specialist must file the affidavit supporting long-term custody in a timely manner to assure the petition is filed and the hearing scheduled within the timeframes applicable to each individual case.

The Child Protection Specialist is strongly encouraged to attach a current picture of the child to all affidavits or reports submitted to the court. The exception to this "strongly encouraged" is if the county attorney, deputy county attorney, CPU attorney representing the Division or the judge recommends against it.

At a permanency hearing (See 301-2), if the court finds that reunification of the child with the child's parent or guardian is not in the best interests of the child, a petition for long-term custody may be filed if the child is in a planned permanent living arrangement. If the Department petitions for long-term custody, the court must find by a preponderance of the evidence, which is reflected in specific findings by the court, that the child meets one of the following criteria:

1. the child is being cared for by a fit and willing relative;
2. the child has an emotional or mental handicap that is so severe that the child cannot function in a family setting and the best interests of the child are served by placement in a residential or group setting;
3. the child is at least 16 years of age and is participating in an independent living program and that termination of parental rights is not in the best interests of the child;
4. the child's parent is incarcerated and circumstances, including placement of the child and continued frequent contact with the parent, indicate that it would not be in

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the best interests of the child to terminate parental rights of that parent; or

5. the child meets the following criteria:
 - a. the child has been adjudicated a youth in need of care;
 - b. the Department has made reasonable efforts to reunite the parent and child, further efforts by the Department would likely be unproductive, and reunification of the child with the parent or guardian would be contrary to the best interests of the child;
 - c. there is a judicial finding that other more permanent placement options for the child have been considered and found to be inappropriate and not to be in the child's best interests; and
 - d. the child has been in a placement in which the foster parent or relative has committed to the long-term care and to a relationship with the child and it is in the best interests of the child to remain in that placement.

Termination of the
Planned Permanent
Living Arrangement

The court may terminate the long-term custody upon petition of the birth parents or the Department if the court finds that the circumstances of the child or family have been substantially changed and the best interests of the child are no longer being served by placement with that family.

References

Mont. Code Ann. § 41-3-422.
Mont. Code Ann. § 41-3-445.