

## 1 HOUSE BILL NO. 224

2 INTRODUCED BY J. HURDLE, BIXBY, BUZZAS, CHRISTIAENS, CLANCY, EGGERS, FACEY, GUTSCHE,  
3 HARRIS, JUNEAU, KAUFMANN, MASOLO

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS RELATING TO INCARCERATION OF  
6 PARENTS OF MINOR CHILDREN; REQUIRING THAT TREATMENT PLANS UNDER THE CHILD ABUSE AND  
7 NEGLECT LAWS TAKE INTO CONSIDERATION AND MAKE ACCOMMODATIONS FOR THE  
8 INCARCERATION OF A PARENT OF A YOUNG CHILD; REQUIRING A PRESENTENCE INVESTIGATION AND  
9 REPORT IN ALL FELONY CASES; REQUIRING THAT A PRESENTENCE INVESTIGATION AND REPORT  
10 INCLUDE INFORMATION ON THE DEFENDANT'S MINOR CHILDREN; ~~REQUIRING A COURT TO CONSIDER~~  
11 ~~THE EFFECT OF INCARCERATION OF A PARENT ON A MINOR CHILD; REQUIRING~~ ALLOWING THE  
12 DEPARTMENT OF CORRECTIONS TO CONDUCT A PRISON FAMILIES INTEGRATION PROGRAM AT EACH  
13 STATE PRISON; AMENDING SECTIONS 41-3-420, 46-18-111, AND 46-18-112, MCA; AND PROVIDING  
14 AN EFFECTIVE DATE."

15  
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

17  
18 **Section 1.** Section 41-3-420, MCA, is amended to read:

19 **"41-3-420. Treatment plan -- contents -- changes.** (1) Upon the stipulation of the parties or upon  
20 a judicial finding that a child is a youth in need of care, the court may order a treatment plan.

21 (2) Every treatment plan must contain the following information:

22 (a) the identification of the problems or conditions that resulted in the abuse or neglect of a child;

23 (b) the treatment goals and objectives for each condition or requirement established in the plan.

24 If the child has been removed from the home, the treatment plan must include but is not limited to the  
25 conditions or requirements that must be established for the safe return of the child to the family.

26 (c) the projected time necessary to complete each of the treatment objectives;

27 (d) the specific treatment objectives that clearly identify the separate roles and responsibilities of  
28 all parties addressed in the treatment plan; and

29 (e) the signature of the parent or parents or guardian, unless the plan is ordered by the court.

30 (3) A treatment plan may include but is not limited to any of the following remedies, requirements,

1 or conditions:

2 (a) the right of entry into the child's home for the purpose of assessing compliance with the terms  
3 and conditions of a treatment plan;

4 (b) the requirement of either the child or the child's parent or guardian to obtain medical or  
5 psychiatric diagnosis and treatment through a physician or psychiatrist licensed in the state of Montana;

6 (c) the requirement of either the child or the child's parent or guardian to obtain psychological  
7 treatment or counseling;

8 (d) the requirement of either the child or the child's parent or guardian to obtain and follow  
9 through with alcohol or substance abuse evaluation and counseling, if necessary;

10 (e) the requirement that either the child or the child's parent or guardian be restricted from  
11 associating with or contacting any individual who may be the subject of a department investigation;

12 (f) the requirement that the child be placed in a temporary medical facility or a facility for  
13 protection of the youth;

14 (g) the requirement that the parent, guardian, or other person having physical or legal custody  
15 furnish services that the court may designate.

16 (4) A treatment plan may not be altered, amended, continued, or terminated without the approval  
17 of the parent or parents or guardian pursuant to a stipulation and order or order of the court.

18 (5) A treatment plan under this section must take into consideration the term of sentence of a  
19 parent who is incarcerated and must include reasonable accommodations for the time that the parent is  
20 unable to care for a young child because of the incarceration. The treatment plan may require participation  
21 in a prison families integration program, as provided in [section 4], while a parent of a young child is in  
22 prison. The fact of incarceration alone may not be considered failure by a parent to comply with the  
23 requirements of a treatment plan."

24

25 **Section 2.** Section 46-18-111, MCA, is amended to read:

26 **"46-18-111. Presentence investigation ~~is~~ when required.** (1) Upon the acceptance of a plea or  
27 upon a verdict or finding of guilty to one or more felony offenses, the district court shall direct the  
28 probation officer to make a presentence investigation and report. The district court shall consider the  
29 presentence investigation report prior to sentencing ~~and take into account the effect of incarceration of~~  
30 ~~a parent on a minor child.~~

1           (2) If the defendant was convicted of an offense under 45-5-502, 45-5-503, 45-5-504, 45-5-505,  
 2 45-5-507, 45-5-625, or 45-5-627, the investigation must include a psychosexual evaluation of the  
 3 defendant and a recommendation as to treatment of the offender in the least restrictive environment,  
 4 considering the risk the offender presents to the community and offender needs, unless the defendant was  
 5 sentenced under 46-18-219. The evaluation must be completed by a sex offender therapist who is a  
 6 member of the Montana sex offender treatment association or who has comparable credentials acceptable  
 7 to the professional and occupational licensing bureau of the department of commerce. The psychosexual  
 8 evaluation must be made available to the county attorney's office, the defense attorney, the probation and  
 9 parole officer, and the sentencing judge. All costs related to the evaluation must be paid by the defendant.  
 10 If the defendant is determined by the district court to be indigent, all costs related to the evaluation are  
 11 the responsibility of the district court and must be paid by the county or the state, or both, under Title 3,  
 12 chapter 5, part 9.

13           ~~(2)(3) The court shall order a presentence report unless the court makes a finding that a report~~  
 14 ~~is unnecessary. Unless the court makes such a finding, a~~ A defendant convicted of any offense ~~not~~  
 15 ~~enumerated in subsection (1)~~ that may result in incarceration for 1 year or more may not be sentenced  
 16 before a written presentence investigation report by a probation officer is presented to and considered by  
 17 the district court. The district court may, in its discretion, order a presentence investigation for a defendant  
 18 convicted of a misdemeanor."

19

20           **Section 3.** Section 46-18-112, MCA, is amended to read:

21           **"46-18-112. Content of presentence investigation report.** (1) Whenever an investigation is  
 22 required, the probation officer shall promptly inquire into and report upon:

23           (a) the defendant's characteristics, circumstances, needs, and potentialities;

24           (b) the defendant's criminal record and social history;

25           (c) the defendant's immediate family situation, including specific information on whether or not  
 26 the defendant is the custodial caregiving parent of a child under 13 years of age and, if so, the age of the  
 27 child and the defendant's plans for care of the child during possible incarceration;

28           ~~(e)~~(d) the circumstances of the offense;

29           ~~(d)~~(e) the time of the defendant's detention for the offenses charged;

30           ~~(e)~~(f) the harm caused, as a result of the offense, to the victim, the victim's immediate family, and

1 the community; and

2 ~~(f)~~(g) the victim's pecuniary loss, if any. The officer shall make a reasonable effort to confer with  
3 the victim to ascertain whether the victim has sustained a pecuniary loss. If the victim is not available or  
4 declines to confer, the officer shall record that information in the report.

5 (2) All local and state mental and correctional institutions, courts, and law enforcement agencies  
6 shall furnish, upon request of the officer preparing a presentence investigation, the defendant's criminal  
7 record and other relevant information.

8 (3) The court may, in its discretion, require that the presentence investigation report include a  
9 physical and mental examination of the defendant."

10

11 NEW SECTION. Section 4. Prison families integration program. (1) In addition to any other inmate  
12 program operated at a state prison, the department of corrections ~~shall~~ MAY conduct a prison families  
13 integration program.

14 (2) The purpose of ~~the~~ A prison families integration program is to:

15 (a) provide an opportunity for any inmate who is the parent of a young child and was the custodial  
16 caregiving parent of the young child before incarceration to maintain a parental relationship with the young  
17 child and to develop improved parenting skills through parenting training;

18 (b) promote family reunification after the incarceration of a parent of a young child; and

19 (c) attempt to prevent future crimes by reducing the detrimental effects of incarceration of a  
20 parent on a young child.

21 (3) ~~The~~ A prison families integration program ~~consists~~ MUST CONSIST of:

22 (a) ~~frequent, regular in-prison visits by young children to their incarcerated parent in homelike~~  
23 ~~surroundings;~~

24 ~~— (b) overnight stays by young children with their parent in an area separated from other inmates~~

25 STRUCTURED PROGRAMMING BETWEEN INCARCERATED PARENTS AND THEIR CHILDREN, WITH A FOCUS ON PARENTING

26 SKILLS; and

27 ~~(c)~~(B) training in parenting skills.

28 (4) The department may contract with public and private entities to provide the training required  
29 by this section.

30 (5) A parent who has been convicted of a violent or sexual offense, as defined in 46-23-502,

1 involving a minor or who has been ruled ineligible for participation by a sentencing judge may not  
2 participate in ~~the~~ a prison families integration program.

3 (6) For purposes of 41-3-420 and this section, "young child" means a child under 13 years of age.  
4

5 NEW SECTION. **Section 5. Codification instruction.** [Section 4] is intended to be codified as an  
6 integral part of Title 53, chapter 30, part 1, and the provisions of Title 53, chapter 30, part 1, apply to  
7 [section 4].  
8

9 NEW SECTION. **Section 6. Effective date.** [This act] is effective July 1, 2001.  
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