

## 1 SENATE BILL NO. 132

2 INTRODUCED BY M. HALLIGAN, CHRISTIAENS, COCCHIARELLA, DELL, FRANKLIN, HARRIS, LEWIS,  
3 MCCARTHY, VICK

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR A SAFE HAVEN FOR ABANDONED CHILDREN  
6 NEWBORNS; PROVIDING FOR ~~DELIVERY OF A CHILD WHO IS OR APPEARS TO BE NO MORE THAN 30~~  
7 ~~DAYS OLD~~ SURRENDER OF A NEWBORN TO A LAW ENFORCEMENT AGENCY, AN EMERGENCY  
8 ~~MEDICAL SERVICE, OR A MEDICAL FACILITY~~ AN EMERGENCY SERVICES PROVIDER; DEFINING TERMS;  
9 PROVIDING FOR NOTIFICATION OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES;  
10 PROVIDING THAT THE DEPARTMENT ASSUME CARE, CUSTODY, AND CONTROL OF A ~~CHILD~~  
11 ~~DELIVERED TO A MEDICAL FACILITY~~ SURRENDERED NEWBORN; PROVIDING IMMUNITY TO THOSE TO  
12 WHOM A ~~CHILD~~ NEWBORN IS ~~DELIVERED~~ SURRENDERED; PROVIDING CIVIL AND CRIMINAL IMMUNITY  
13 ~~FOR VOLUNTARILY DELIVERING A CHILD~~ AN AFFIRMATIVE DEFENSE TO PROHIBITING CRIMINAL  
14 CHARGES OF ABANDONMENT IF A NEWBORN IS SURRENDERED WITHOUT INTENTIONALLY INFLICTED  
15 INJURY IN ACCORDANCE WITH THIS ACT; PROVIDING FOR RIGHTS ~~OF THE NONRELINQUISHING~~  
16 ~~PARENT~~; ~~PROVIDING A REPORTING REQUIREMENT~~ A CUSTODY ACTION BY A BIOLOGICAL PARENT  
17 WITHIN 30 60 DAYS OF SURRENDER; REQUIRING THE DEPARTMENT TO ESTABLISH A SAFE DELIVERY  
18 PROGRAM; AMENDING ~~SECTION~~ SECTIONS 40-4-211, 40-4-212, AND 41-3-102, MCA; AND PROVIDING  
19 AN EFFECTIVE DATE AND A TERMINATION DATE."

20  
21 WHEREAS, Montana and the nation have experienced sorrow in the knowledge that newborn  
22 infants are sometimes abandoned in life-threatening situations and that some of these children have been  
23 harmed or have died as a consequence; and

24 WHEREAS, the parents of these newborn infants may be under severe emotional stress and may  
25 need a safe haven available to them and their child; and

26 WHEREAS, anonymity, confidentiality, and freedom from prosecution may encourage the parent  
27 to leave an infant safely and save the life of the infant; and

28 WHEREAS, Texas, Minnesota, Louisiana, Colorado, Connecticut, Florida, Indiana, Michigan, New  
29 Jersey, New York, South Carolina, and West Virginia have enacted similar laws in 1999 and 2000, and  
30 an additional 12 states have legislation under consideration; and

1 WHEREAS, infants at risk may be served by having this legislation in place, and this legislation is  
2 worthwhile if it saves even one infant's life.

3

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

5 (Refer to Introduced Bill)

6 Strike everything after the enacting clause and insert:

7

8 NEW SECTION. **Section 1. Short title.** [Sections 1 through 14] may be cited as the "Montana  
9 Safe Haven Newborn Protection Act".

10

11 NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 14], the following  
12 definitions apply:

13 (1) "Child-placing agency" means an agency licensed under Title 42, chapter 8, part 1.

14 (2) "Court" means a court of record in a competent jurisdiction and, in Montana, means a district  
15 court or a tribal court.

16 (3) "Department" means the department of public health and human services provided for in  
17 2-15-2201.

18 (4) "Emergency services provider" means:

19 (a) a uniformed or otherwise identifiable employee of a fire department, hospital, or law  
20 enforcement agency when the individual is on duty inside the premises of the fire department, hospital,  
21 or law enforcement agency; or

22 (b) any law enforcement officer, as defined in 7-32-201, who is in uniform or is otherwise  
23 identifiable.

24 (5) "Fire department" means a fire department organized by a city, town, or city-county  
25 consolidated local government under Title 7, chapter 33.

26 (6) "Gross negligence" means conduct so reckless as to demonstrate a substantial lack of concern  
27 for whether an injury results.

28 (7) "Guardian ad litem" means a person appointed to represent a newborn under Title 41, chapter  
29 3.

30 (8) "Hospital" has the meaning provided in 50-5-101.

1 (9) "Law enforcement agency" means a police or sheriff's department, a detention center as  
2 defined in 7-32-2241, or a correctional institution as defined in 45-2-101.

3 (10) "Newborn" means an infant who a physician reasonably believes to be no more than 30 days  
4 old.

5 (11) "Surrender" means to leave a newborn with an emergency services provider without  
6 expressing an intent to return for the newborn.

7

8 **NEW SECTION. Section 3. Court jurisdiction -- hospital immunity.** (1) The court has jurisdiction  
9 over a newborn who is surrendered to an emergency services provider as provided in [section 5]. The court  
10 may appoint a guardian ad litem to represent a newborn in proceedings under [sections 1 through 14].

11 (2) Except as provided in [section 6], the reporting requirements of 41-3-201 do not apply  
12 regarding a newborn who is surrendered to an emergency services provider as provided in [section 5].

13 (3) A hospital and the agents and employees of the hospital are immune in a civil action for  
14 damages for an act or omission in accepting or transferring a newborn under [sections 1 through 14],  
15 except for an act or omission constituting gross negligence or willful or wanton misconduct.

16

17 **NEW SECTION. Section 4. Immunity for fire department and law enforcement agency.** A fire  
18 department or law enforcement agency and the agents and employees of a fire department or law  
19 enforcement agency are immune in a civil action for damages for an act or omission in accepting or  
20 transferring a newborn under [sections 1 through 14], except for an act or omission constituting gross  
21 negligence or willful or wanton misconduct.

22

23 **NEW SECTION. Section 5. Surrender of newborn to emergency services provider -- temporary**  
24 **protective custody.** (1) If a parent surrenders an infant who may be a newborn to an emergency services  
25 provider, the emergency services provider shall comply with the requirements of this section under the  
26 assumption that the infant is a newborn. The emergency services provider shall, without a court order,  
27 immediately accept the newborn, taking the newborn into temporary protective custody, and shall take  
28 action necessary to protect the physical health and safety of the newborn.

29 (2) The emergency services provider shall make a reasonable effort to do all of the following:

30 (a) if possible, inform the parent that by surrendering the newborn, the parent is releasing the

1 newborn to the department to be placed for adoption according to law;

2 (b) if possible, inform the parent that the parent has ~~30~~ 60 days to petition the court to regain  
3 custody of the newborn;

4 (c) if possible, ascertain whether the newborn has a tribal affiliation, and if so, ascertain relevant  
5 information pertaining to any Indian heritage of the newborn;

6 (d) provide the parent with written material approved by or produced by the department, which  
7 includes but is not limited to all of the following statements:

8 (i) by surrendering the newborn, the parent is releasing the newborn to the department to be  
9 placed for adoption and the department shall initiate court proceedings according to law to place the  
10 newborn for adoption, including proceedings to terminate parental rights;

11 (ii) the parent has ~~30~~ 60 days after surrendering the newborn to petition the court to regain  
12 custody of the newborn;

13 (iii) the parent may not receive personal notice of the court proceedings begun by the department;

14 (iv) information that the parent provides to an emergency services provider will not be made public;

15 (v) a parent may contact the safe delivery line established under [section 12] for more information  
16 and counseling; and

17 (vi) any Indian heritage of the newborn brings the newborn within the jurisdiction of the Indian  
18 Child Welfare Act, 25 U.S.C. 1901, et seq.

19 (3) After providing a parent with the information described in subsection (1), if possible, an  
20 emergency services provider shall make a reasonable effort to:

21 (a) encourage the parent to provide any relevant family or medical information, including  
22 information regarding any tribal affiliation;

23 (b) provide the parent with the pamphlet produced under [section 12] and inform the parent that  
24 the parent may receive counseling or medical attention;

25 (c) inform the parent that information that the parent provides will not be made public;

26 (d) ask the parent for the parent's name;

27 (e) inform the parent that in order to place the newborn for adoption, the state is required to make  
28 a reasonable attempt to identify the other parent and to obtain relevant medical family history and then  
29 ask the parent to identify the other parent;

30 (f) inform the parent that the department can provide confidential services to the parent; and

1 (g) inform the parent that the parent may sign a relinquishment for the newborn to be used at a  
2 hearing to terminate parental rights.

3

4 **NEW SECTION. Section 6. Medical care -- report of abuse or neglect -- report to department.** (1)

5 An emergency services provider that is not a hospital and that takes a newborn into temporary protective  
6 custody under [section 5] shall transfer the newborn to a hospital. The hospital shall accept a newborn  
7 transferred to the hospital by an emergency services provider in compliance with [sections 1 through 14]  
8 and shall take the newborn into temporary protective custody.

9 (2) A hospital that takes a newborn into temporary protective custody under [sections 1 through  
10 14] shall have the newborn examined by a physician. If a physician who examines the newborn either  
11 determines that there is reason to suspect the newborn has experienced abuse or neglect, other than being  
12 surrendered to an emergency services provider under [section 5], or comes to a reasonable belief that the  
13 infant is not a newborn, the physician shall immediately report to the department as required under  
14 41-3-201. If the actual date of birth of the infant is not known, the physician shall determine a birth date  
15 based on the physician's examination of the infant.

16 (3) If a physician is not required to report to the department under subsection (2), the hospital  
17 shall, no later than the first business day after taking possession of the newborn, notify the department  
18 that the hospital has taken a newborn into temporary protective custody under [sections 1 through 14].

19

20 **NEW SECTION. Section 7. Assumption of care, custody, and control by department -- placement**

21 **of child -- presumptions -- Montana birth certificate.** (1) Upon receipt of notice under [section 6], the  
22 department shall:

- 23 (a) immediately assume the care, control, and temporary protective custody of the newborn;  
24 (b) if a parent is known and willing, immediately meet with the parent;  
25 (c) make a temporary placement of the newborn;  
26 (d) immediately request assistance from law enforcement officials to investigate and determine,  
27 through the national center for missing and exploited children and any other national and state missing  
28 children information programs, whether the newborn is a missing child;  
29 (e) not later than 48 hours after assuming the care, control, and temporary protective custody of  
30 the newborn, file a petition with the court under the provisions of Title 41, chapter 3, part 4, requesting

1 appropriate relief with the goal of achieving permanent placement for the newborn at the earliest possible  
2 date; and

3 (f) within 30 days, make reasonable efforts to identify and locate a parent who did not surrender  
4 the newborn. If the identity and address of that parent are unknown, the department shall provide notice  
5 by publication in a newspaper of general circulation in the county where the newborn was surrendered.

6 (2) The department, after assuming the care, custody, and control of a newborn under subsection  
7 (1), is not required to attempt to reunify the newborn with the newborn's parents. The department is not  
8 required to search for relatives of the newborn as a placement or permanency option or to implement other  
9 placement requirements that give preference to relatives if the department does not have information as  
10 to the identity of the newborn or either of the newborn's parents. The department shall place the newborn  
11 with prospective adoptive parents as soon as possible. The adoptive parents must be allowed access to  
12 information regarding the newborn's medical history, date of birth, or age if the department has that  
13 information.

14 (3) A newborn surrendered under [section 5] is presumed to have been born in Montana unless  
15 the biological parent otherwise informs the department or the emergency services provider to whom the  
16 newborn is surrendered.

17 (4) A Montana birth certificate may be issued based on the presumption of birth in Montana as  
18 provided in subsection (3). A birth certificate issued to a newborn surrendered under [section 5] must  
19 provide a date of birth based on either the actual date of birth, if known, or on the date of birth determined  
20 by the physician who performs the medical examination of the newborn under [section 6].

21

22 NEW SECTION. **Section 8. Rights of parents -- custody action.** (1) Any person alleging to be the  
23 biological parent of a newborn who was surrendered to an emergency services provider under [section 5]  
24 may, within ~~30~~ 60 days of the date of surrender of the newborn, file an action with the court for custody  
25 pursuant to 40-4-211.

26 (2) Before making a custody decision, the court shall determine whether the individual filing the  
27 custody action is the newborn's biological parent under the provisions of part 1 of this chapter. A  
28 determination of the existence or nonexistence of the child-parent relationship is determinative as provided  
29 in 40-6-116.

30 (3) The putative father registry provisions under Title 42, chapter 2, part 2, apply to any court

1 proceeding under [sections 1 through 14].

2

3 NEW SECTION. **Section 9. Custody action -- newborn's best interest.** In a custody action under  
4 [section 8], the court shall determine custody of the newborn based on the newborn's best interest as  
5 provided in 40-4-212. The court shall determine the newborn's best interest with the goal of achieving  
6 permanent placement for the newborn at the earliest possible date.

7

8 NEW SECTION. **Section 10. Custody action -- order.** Based on the court's finding of the  
9 newborn's best interest under [section 9], the court may issue an order:

10 (1) granting legal or physical custody, or both, of the newborn to the parent and either retaining  
11 or relinquishing jurisdiction; or

12 (2) denying custody of the newborn to the parent and referring the matter to the department or  
13 county attorney for proceedings under Title 41, chapter 3.

14

15 NEW SECTION. **Section 11. Presumption of waiver of parental rights -- department to file petition.**

16 (1) A parent who surrenders a newborn under [section 5] and who does not file a custody action under  
17 [section 8] is presumed to have knowingly waived the parent's parental rights to the newborn.

18 (2) If a custody action is not filed under [section 8] or if the parent is denied custody of the  
19 newborn under [section 10], the department shall file a petition under Title 41, chapter 3, part 4,  
20 requesting appropriate relief with the goal of achieving permanent placement for the newborn at the  
21 earliest possible date.

22

23 NEW SECTION. **Section 12. Surrendered newborns -- safe delivery program.** The department shall  
24 establish a safe delivery program. The safe delivery program:

25 (1) ~~may~~ MUST include but is not limited to a toll-free, 24-hour telephone line, WHICH MUST BE A  
26 COMPONENT OF THE DEPARTMENT'S EXISTING CHILD ABUSE TOLL-FREE TELEPHONE LINE. The information provided with  
27 this telephone line must include but is not limited to the following:

28 (a) information on prenatal care and the delivery of a newborn;

29 (b) names of health agencies that can assist in obtaining services and support that provide for the  
30 pregnancy-related health of the mother and the health of the newborn;

1 (c) information on adoption options and the name and telephone number of a child-placing agency  
2 that can assist a parent or expecting parent in obtaining adoption services;

3 (d) information that, in order to safely provide for the health of the mother and the newborn, the  
4 best place for the delivery of an infant is in a hospital;

5 (e) an explanation that, to the extent of the law, prenatal care and delivery services are routinely  
6 confidential within the health care system if requested by the mother;

7 (f) information that a hospital will take into protective custody a newborn that is surrendered as  
8 provided for in [sections 1 through 14] and, if needed, provide emergency medical assistance to the  
9 mother, the newborn, or both;

10 (g) information regarding legal and procedural requirements related to the voluntary surrender of  
11 a newborn as provided for in [sections 1 through 14];

12 (h) information regarding the Indian Child Welfare Act, 25 U.S.C. 1901, et seq., if the newborn  
13 has any Indian heritage;

14 (i) information regarding the legal consequences for endangering a child, including child protective  
15 services investigations and potential criminal penalties;

16 (j) information that surrendering a newborn for adoption as provided in [sections 1 through 14]  
17 is an affirmative defense to charges of abandonment; and

18 (k) information about resources for counseling and assistance with crisis management; and

19 (2) must include but is not limited to a pamphlet that provides information to the public concerning  
20 the safe delivery program. The department shall publish and distribute the pamphlet. THE PAMPHLET MUST  
21 BE DISTRIBUTED AND THE SAFE DELIVERY PROGRAM PUBLICIZED IN A MANNER DESIGNED TO REACH FEMALES OF  
22 CHILDBEARING AGE, INCLUDING DELIVERY OF THE PAMPHLET TO HIGH SCHOOLS FOR USE IN HEALTH COURSES. The  
23 pamphlet must prominently display the toll-free telephone number provided for in subsection (1), if  
24 available, and must include the information prescribed in subsections (1)(a) through (1)(k).

25

26 NEW SECTION. **Section 13. Reimbursement of medical expenses.** The department shall reimburse  
27 a hospital for the actual expenses incurred by the hospital in accepting and caring for a newborn who is  
28 surrendered under [section 5].

29

30 NEW SECTION. **Section 14. Immunity from criminal prosecution.** (1) Except for actual abuse or

1 ~~neglect, it is an affirmative defense to~~ WHEN THERE IS INTENTIONAL INFLICTION OF INJURY TO THE ABANDONED  
 2 INFANT, a criminal prosecution MAY NOT BE INITIATED involving the abandonment of an infant that ~~the infant~~  
 3 was not more than 30 days old and was surrendered to an emergency services provider under [section  
 4 5].

5 (2) A criminal investigation may not be initiated solely on the basis of a newborn being surrendered  
 6 to an emergency services provider under [sections 1 through 14] in the absence of reasonable suspicion  
 7 of actual abuse or neglect.

8

9 **Section 15.** Section 40-4-211, MCA, is amended to read:

10 **"40-4-211. Jurisdiction -- commencement of parenting proceedings.** (1) A court of this state  
 11 competent to decide parenting matters has jurisdiction to make a parenting determination by initial or  
 12 amended decree if:

13 (a) this state:

14 (i) is the home state of the child at the time of commencement of the proceedings; or

15 (ii) had been the child's home state within 6 months before commencement of the proceedings and  
 16 the child is absent from this state because of the child's removal or retention by any person and a parent  
 17 or person acting as parent continues to live in this state; or

18 (b) it is in the best interest of the child that a court of this state assume jurisdiction because:

19 (i) the child and the parents or the child and at least one contestant have a significant connection  
 20 with this state; and

21 (ii) there is available in this state substantial evidence concerning the child's present or future care,  
 22 protection, training, and personal relationships; or

23 (c) the child is physically present in this state and:

24 (i) has been abandoned, including being surrendered to an emergency services provider as provided  
 25 in [section 5]; or

26 (ii) it is necessary in an emergency to protect the child because the child has been subjected to or  
 27 threatened with mistreatment or abuse or is neglected or dependent; or

28 (d) (i) no other state has jurisdiction under prerequisites substantially in accordance with  
 29 subsection (1)(a), (1)(b), or (1)(c) or another state has declined to exercise jurisdiction on the ground that  
 30 this state is the more appropriate forum to determine parenting of the child; and

1 (ii) it is in the child's best interest that the court assume jurisdiction.

2 (2) Except under subsections (1)(c) and (1)(d), physical presence in this state of the child or of  
3 the child and one of the contestants is not alone sufficient to confer jurisdiction on a court of this state  
4 to make a parenting determination.

5 (3) Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine  
6 parenting of the child.

7 (4) A parenting plan proceeding is commenced in the district court:

8 (a) by a parent, by filing a petition:

9 (i) for dissolution or legal separation; ~~or~~

10 (ii) for parenting in the county in which the child is permanently resident or found; or

11 (iii) for custody under [section 8]; or

12 (b) by a person other than a parent if the person has established a child-parent relationship with  
13 the child, by filing a petition for parenting in the county in which the child resides or is found.

14 (5) Notice of a parenting proceeding must be given to the child's parent, guardian, caretaker, those  
15 persons with whom the child is physically residing, and all other contestants, who may appear, be heard,  
16 and file a responsive pleading. The court, upon a showing of good cause, may permit intervention of other  
17 interested parties.

18 (6) For purposes of subsection (4)(b), "child-parent relationship" means a relationship that exists  
19 or did exist, in whole or in part, preceding the filing of an action under this section, in which a person  
20 provides or provided for the physical needs of a child by supplying food, shelter, and clothing and provides  
21 or provided the child with necessary care, education, and discipline and which relationship continues or  
22 existed on a day-to-day basis through interaction, companionship, interplay, and mutuality that fulfill the  
23 child's psychological needs for a parent as well as the child's physical needs.

24 (7) A custody proceeding under [section 8] is commenced in the district court by a parent by filing  
25 in one of the following counties:

26 (a) the county where the newborn is located if the parent knows where the newborn is;

27 (b) the county where the emergency services provider to whom the newborn was surrendered is  
28 located if subsection (7)(a) does not apply; or

29 (c) the county where the biological parent is located if neither subsection (7)(a) or (7)(b) applies."

30

1 ~~Section 16.~~ Section 40-4-212, MCA, is amended to read:

2 ~~"40-4-212. Best interest of child or surrendered newborn.~~ (1) The court shall determine the  
3 parenting plan in accordance with the best interest of the child. The court shall consider all relevant  
4 parenting factors, which may include but are not limited to:

5 ~~(a) the wishes of the child's parent or parents;~~

6 ~~(b) the wishes of the child;~~

7 ~~(c) the interaction and interrelationship of the child with the child's parent or parents and siblings  
8 and with any other person who significantly affects the child's best interest;~~

9 ~~(d) the child's adjustment to home, school, and community;~~

10 ~~(e) the mental and physical health of all individuals involved;~~

11 ~~(f) physical abuse or threat of physical abuse by one parent against the other parent or the child;~~

12 ~~(g) chemical dependency, as defined in 53-24-103, or chemical abuse on the part of either parent;~~

13 ~~(h) continuity and stability of care;~~

14 ~~(i) developmental needs of the child;~~

15 ~~(j) whether a parent has knowingly failed to pay birth-related costs that the parent is able to pay,  
16 which is considered to be not in the child's best interests;~~

17 ~~(k) whether a parent has knowingly failed to financially support a child that the parent is able to  
18 support, which is considered to be not in the child's best interests;~~

19 ~~(l) whether the child has frequent and continuing contact with both parents, which is considered  
20 to be in the child's best interests unless the court determines, after a hearing, that contact with a parent  
21 would be detrimental to the child's best interests. In making that determination, the court shall consider  
22 evidence of physical abuse or threat of physical abuse by one parent against the other parent or the child,  
23 including but not limited to whether a parent or other person residing in that parent's household has been  
24 convicted of any of the crimes enumerated in 40-4-219(8)(b).~~

25 ~~(m) adverse effects on the child resulting from continuous and vexatious parenting plan  
26 amendment actions.~~

27 ~~(2) In addition to the factors to be considered in subsection (1), a newborn's best interest in a  
28 custody action under [section 8] is determined by weighing all of the following factors regarding a parent  
29 claiming parenthood of the newborn:~~

30 ~~(a) the love, affection, and other emotional ties existing between the newborn and the parent;~~

- 1 ~~\_\_\_\_\_ (b) the parent's capacity to give the newborn love, affection, guidance, shelter, and permanent~~  
 2 ~~care;~~
- 3 ~~\_\_\_\_\_ (c) the parent's capacity and disposition to provide the newborn with food, clothing, medical care~~  
 4 ~~or other remedial care recognized and permitted under the laws of this state in place of medical care, and~~  
 5 ~~other material needs;~~
- 6 ~~\_\_\_\_\_ (d) the permanence, as a family unit, of the existing or proposed custodial home;~~
- 7 ~~\_\_\_\_\_ (e) the parent's moral fitness;~~
- 8 ~~\_\_\_\_\_ (f) the parent's mental and physical health;~~
- 9 ~~\_\_\_\_\_ (g) whether the parent has a history of domestic violence;~~
- 10 ~~\_\_\_\_\_ (h) if the parent is not the parent who surrendered the newborn, the opportunity the parent had~~  
 11 ~~to provide appropriate care of the newborn before the newborn's birth or surrender;~~
- 12 ~~\_\_\_\_\_ (i) any other factor considered by the court to be relevant to the determination of the newborn's~~  
 13 ~~best interest.~~
- 14 ~~\_\_\_\_\_ (2)(3) A de facto parenting arrangement, in the absence of a prior parenting decree, does not~~  
 15 ~~require the child's parent or parents to prove the factors set forth in 40-4-219.~~
- 16 ~~\_\_\_\_\_ (3)(4) The following are rebuttable presumptions and apply unless contrary to the best interest~~  
 17 ~~of the child:~~
- 18 ~~\_\_\_\_\_ (a) A parenting plan action brought by a parent within 6 months after a child support action~~  
 19 ~~against that parent is vexatious.~~
- 20 ~~\_\_\_\_\_ (b) A motion to amend a final parenting plan pursuant to 40-4-219 is vexatious if a parent seeks~~  
 21 ~~to amend a final parenting plan without making a good faith effort to comply with the provisions of the~~  
 22 ~~parenting plan or with dispute resolution provisions of the final parenting plan."~~

23

24 **Section 16.** Section 41-3-102, MCA, is amended to read:

25 **"41-3-102. Definitions.** As used in this chapter, the following definitions apply:

26 (1) "Abandon", "abandoned", and "abandonment" mean:

27 (a) leaving a child under circumstances that make reasonable the belief that the parent does not  
 28 intend to resume care of the child in the future;

29 (b) willfully surrendering physical custody for a period of 6 months and during that period not  
 30 manifesting to the child and the person having physical custody of the child a firm intention to resume

1 physical custody or to make permanent legal arrangements for the care of the child; ~~or~~

2 (c) that the parent is unknown and has been unknown for a period of 90 days and that reasonable  
3 efforts to identify and locate the parent have failed; or

4 (d) the voluntary surrender, as defined in [section 2], by a parent of a newborn who is no more  
5 than 30 days old to an emergency services provider, as defined in [section 2].

6 (2) "A person responsible for a child's welfare" means:

7 (a) the child's parent, guardian, foster parent or an adult who resides in the same home in which  
8 the child resides;

9 (b) a person providing care in a day-care facility;

10 (c) an employee of a public or private residential institution, facility, home, or agency; or

11 (d) any other person responsible for the child's welfare in a residential setting.

12 (3) "Abused or neglected" means the state or condition of a child who has suffered child abuse  
13 or neglect.

14 (4) (a) "Adequate health care" means any medical care or nonmedical remedial health care  
15 recognized by an insurer licensed to provide disability insurance under Title 33, including the prevention  
16 of the withholding of medically indicated treatment or medically indicated psychological care permitted or  
17 authorized under state law.

18 (b) This chapter may not be construed to require or justify a finding of child abuse or neglect for  
19 the sole reason that a parent or legal guardian, due to religious beliefs, does not provide adequate health  
20 care for a child. However, this chapter may not be construed to limit the administrative or judicial authority  
21 of the state to ensure that medical care is provided to the child when there is imminent substantial risk  
22 of serious harm to the child.

23 (5) "Best interests of the child" means the physical, mental, and psychological conditions and  
24 needs of the child and any other factor considered by the court to be relevant to the child.

25 (6) "Child" or "youth" means any person under 18 years of age.

26 (7) (a) "Child abuse or neglect" means:

27 (i) actual harm to a child's health or welfare; or

28 (ii) substantial risk of harm to a child's health or welfare.

29 (b) The term includes actual harm or substantial risk of harm by the acts or omissions of a person  
30 responsible for the child's welfare.

1 (c) The term does not include self-defense, defense of others, or action taken to prevent the child  
2 from self-harm that does not constitute harm to a child's health or welfare.

3 (8) "Department" means the department of public health and human services provided for in  
4 2-15-2201.

5 (9) "Harm to a child's health or welfare" means the harm that occurs whenever the parent or other  
6 person responsible for the child's welfare:

7 (a) inflicts or allows to be inflicted upon the child physical or psychological abuse or neglect;

8 (b) commits or allows to be committed sexual abuse or exploitation of the child;

9 (c) induces or attempts to induce a child into giving untrue testimony that the child or another  
10 child was abused or neglected by a parent or person responsible for the child's welfare;

11 (d) causes malnutrition or failure to thrive or otherwise fails to supply the child with adequate food  
12 or fails to supply clothing, shelter, education, or adequate health care, though financially able to do so or  
13 offered financial or other reasonable means to do so;

14 (e) exposes or allows the child to be exposed to an unreasonable risk to the child's health or  
15 welfare by failing to intervene or eliminate the risk; or

16 (f) abandons the child.

17 (10) "Limited emancipation" means a status conferred on a youth by a court in accordance with  
18 41-3-406 under which the youth is entitled to exercise some but not all of the rights and responsibilities  
19 of a person who is 18 years of age or older.

20 (11) "Parent" means a biological or adoptive parent or stepparent.

21 (12) "Parent-child legal relationship" means the legal relationship that exists between a child and  
22 the child's birth or adoptive parents, as provided in Title 40, chapter 6, part 2, unless the relationship has  
23 been terminated by competent judicial decree as provided in 40-6-234, Title 42, or part 6 of this chapter.

24 (13) "Physical abuse" means an intentional act, an intentional omission, or gross negligence  
25 resulting in substantial skin bruising, internal bleeding, substantial injury to skin, subdural hematoma,  
26 burns, bone fractures, extreme pain, permanent or temporary disfigurement, impairment of any bodily  
27 organ or function, or death.

28 (14) "Psychological abuse or neglect" means severe maltreatment through acts or omissions that  
29 are injurious to the child's emotional, intellectual, or psychological capacity to function, including acts of  
30 violence against another person residing in the child's home.

1 (15) "Reasonable cause to suspect" means cause that would lead a reasonable person to believe  
2 that child abuse or neglect may have occurred or is occurring, based on all the facts and circumstances  
3 known to the person.

4 (16) "Residential setting" means an out-of-home placement where the child typically resides for  
5 longer than 30 days for the purpose of receiving food, shelter, security, guidance, and, if necessary,  
6 treatment.

7 (17) (a) "Sexual abuse" means the commission of sexual assault, sexual intercourse without  
8 consent, indecent exposure, deviate sexual conduct, sexual abuse, ritual abuse, or incest, as described  
9 in Title 45, chapter 5.

10 (b) Sexual abuse does not include any necessary touching of an infant's or toddler's genital area  
11 while attending to the sanitary or health care needs of that infant or toddler by a parent or other person  
12 responsible for the child's welfare.

13 (18) "Sexual exploitation" means allowing, permitting, or encouraging a child to engage in a  
14 prostitution offense, as described in 45-5-601 through 45-5-603, or allowing, permitting, or encouraging  
15 sexual abuse of children as described in 45-5-625.

16 (19) "Social worker" means an employee of the department who, before the employee's field  
17 assignment, has been educated or trained in a program of social work or a related field that includes  
18 cognitive and family systems treatment or who has equivalent verified experience or verified training in  
19 the investigation of child abuse, neglect, and endangerment. This definition does not apply to any provision  
20 of this code that is not in this chapter.

21 (20) "Treatment plan" means a written agreement between the department and the parent or  
22 guardian or a court order that includes action that must be taken to resolve the condition or conduct of  
23 the parent or guardian that resulted in the need for protective services for the child. The treatment plan  
24 may involve court services, the department, and other parties, if necessary, for protective services.

25 (21) "Unfounded" means that after an investigation, the investigating person has determined that  
26 the reported abuse, neglect, or exploitation has not occurred.

27 (22) (a) "Withholding of medically indicated treatment" means the failure to respond to an infant's  
28 life-threatening conditions by providing treatment, including appropriate nutrition, hydration, and  
29 medication, that, in the treating physician's or physicians' reasonable medical judgment, will be most likely  
30 to be effective in ameliorating or correcting the conditions.

1 (b) The term does not include the failure to provide treatment, other than appropriate nutrition,  
 2 hydration, or medication, to an infant when, in the treating physician's or physicians' reasonable medical  
 3 judgment:

4 (i) the infant is chronically and irreversibly comatose;

5 (ii) the provision of treatment would:

6 (A) merely prolong dying;

7 (B) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or

8 (C) otherwise be futile in terms of the survival of the infant; or

9 (iii) the provision of treatment would be virtually futile in terms of the survival of the infant and the  
 10 treatment itself under the circumstances would be inhumane. For purposes of this subsection (22), "infant"  
 11 means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously  
 12 hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The  
 13 reference to less than 1 year of age may not be construed to imply that treatment should be changed or  
 14 discontinued when an infant reaches 1 year of age or to affect or limit any existing protections available  
 15 under state laws regarding medical neglect of children 1 year of age or older.

16 (23) "Youth in need of care" means a youth who has been adjudicated or determined, after a  
 17 hearing, to be or to have been abused or neglected."

18

19 NEW SECTION. **Section 17. Notification to tribal governments.** The secretary of state shall send  
 20 a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little  
 21 Shell band of Chippewa.

22

23 NEW SECTION. **Section 18. Codification instruction.** [Sections 1 through 14] are intended to be  
 24 codified as a new part in Title 40, chapter 6, and the provisions of Title 40, chapter 6, apply to [sections  
 25 1 through 14].

26

27 NEW SECTION. **Section 19. Two-thirds vote required -- contingent voidness.** (1) Because  
 28 [section 4] limits governmental liability, Article II, section 18, of the Montana constitution requires a vote  
 29 of two-thirds of the members of each house of the legislature for passage.

30 (2) If [this act] does not receive a vote of two-thirds of the members of each house of the

1 legislature, [section 4] is void.

2

3 NEW SECTION. **Section 20. Effective date.** [This act] is effective July 1, 2001.

4

5 NEW SECTION. **Section 21. Termination.** [Section 12] terminates June 30, 2004.

6

- END -