

1 _____ BILL NO. _____

2 INTRODUCED BY _____
3 (Primary Sponsor)

4 BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE APPOINTMENT OF A SPECIAL ADVOCATE
7 TO REPRESENT THE BEST INTERESTS OF A CHILD IN CHILD ABUSE AND NEGLECT PROCEEDINGS;
8 PROHIBITING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES OR AN EMPLOYEE OF
9 THE DEPARTMENT FROM BEING A SPECIAL ADVOCATE; PROVIDING THAT A SPECIAL ADVOCATE MAY
10 SHARE THE DUTIES OF A GUARDIAN AD LITEM OR MAY SERVE AS A GUARDIAN AD LITEM; AND
11 AMENDING SECTIONS 41-3-102, 41-3-112, AND 41-3-201, MCA."

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14
15 **Section 1.** Section 41-3-102, MCA, is amended to read:

16 **"41-3-102. Definitions.** As used in this chapter, the following definitions apply:

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

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

20 (b) willfully surrendering physical custody for a period of 6 months and during that period not manifesting
21 to the child and the person having physical custody of the child a firm intention to resume physical custody or
22 to make permanent legal arrangements for the care of the child;

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

25 (d) the voluntary surrender, as defined in 40-6-402, by a parent of a newborn who is no more than 30
26 days old to an emergency services provider, as defined in 40-6-402.

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

28 ~~_____ (a) the child's parent, guardian, foster parent or an adult who resides in the same home in which the~~
29 ~~child resides;~~

30 ~~_____ (b) a person providing care in a day-care facility;~~

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

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

3 ~~(3)~~(2) "Abused or neglected" means the state or condition of a child who has suffered child abuse or
4 neglect.

5 ~~(4)~~(3) (a) "Adequate health care" means any medical care or nonmedical remedial health care
6 recognized by an insurer licensed to provide disability insurance under Title 33, including the prevention of the
7 withholding of medically indicated treatment or medically indicated psychological care permitted or authorized
8 under state law.

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

13 ~~(5)~~(4) "Best interests of the child" means the physical, mental, and psychological conditions and needs
14 of the child and any other factor considered by the court to be relevant to the child.

15 ~~(6)~~(5) "Child" or "youth" means any person under 18 years of age.

16 ~~(7)~~(6) (a) "Child abuse or neglect" means:

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

18 (ii) substantial risk of harm to a child's health or welfare; or

19 (iii) abandonment.

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

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

24 ~~(8)~~(7) "Concurrent planning" means to work toward reunification of the child with the family while at the
25 same time developing and implementing an alternative permanent plan.

26 ~~(9)~~(8) "Department" means the department of public health and human services provided for in
27 2-15-2201.

28 ~~(10)~~(9) "Family group conference" means a meeting that involves family members in either developing
29 treatment plans or making placement decisions, or both.

30 ~~(11)~~(10) "Harm to a child's health or welfare" means the harm that occurs whenever the parent or other

1 person responsible for the child's welfare:

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

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

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

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

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

12 (f) abandons the child.

13 ~~(12)~~(11) "Limited emancipation" means a status conferred on a youth by a court in accordance with
14 41-3-438 under which the youth is entitled to exercise some but not all of the rights and responsibilities of a
15 person who is 18 years of age or older.

16 ~~(13)~~(12) "Parent" means a biological or adoptive parent or stepparent.

17 ~~(14)~~(13) "Parent-child legal relationship" means the legal relationship that exists between a child and
18 the child's birth or adoptive parents, as provided in Title 40, chapter 6, part 2, unless the relationship has been
19 terminated by competent judicial decree as provided in 40-6-234, Title 42, or part 6 of this chapter.

20 ~~(15)~~(14) "Permanent placement" means reunification of the child with the child's parent, adoption,
21 placement with a legal guardian, placement with a fit and willing relative, or placement in another planned
22 permanent living arrangement until the child reaches 18 years of age.

23 (15) "Person responsible for a child's welfare" means:

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

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

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

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

29 (16) "Physical abuse" means an intentional act, an intentional omission, or gross negligence resulting
30 in substantial skin bruising, internal bleeding, substantial injury to skin, subdural hematoma, burns, bone

1 fractures, extreme pain, permanent or temporary disfigurement, impairment of any bodily organ or function, or
2 death.

3 (17) "Physical neglect" means either failure to provide basic necessities, including but not limited to
4 appropriate and adequate nutrition, protective shelter from the elements, and appropriate clothing related to
5 weather conditions, or failure to provide cleanliness and general supervision, or both.

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

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

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

14 (21) (a) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent,
15 indecent exposure, deviate sexual conduct, sexual abuse, ritual abuse, or incest, as described in Title 45,
16 chapter 5.

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

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

23 (23) (a) "Social worker" means an employee of the department who, before the employee's field
24 assignment, has been educated or trained in a program of social work or a related field that includes cognitive
25 and family systems treatment or who has equivalent verified experience or verified training in the investigation
26 of child abuse, neglect, and endangerment.

27 (b) This definition does not apply to any provision of this code that is not in this chapter.

28 (24) "Special advocate" means a volunteer who is appointed by the court pursuant to 41-3-112 to
29 represent the best interests of a child alleged to have been abused or neglected.

30 ~~(24)~~(25) "Treatment plan" means a written agreement between the department and the parent or

1 guardian or a court order that includes action that must be taken to resolve the condition or conduct of the parent
2 or guardian that resulted in the need for protective services for the child. The treatment plan may involve court
3 services, the department, and other parties, if necessary, for protective services.

4 ~~(25)~~(26) "Unfounded" means that after an investigation, the investigating person has determined that
5 the reported abuse, neglect, or exploitation has not occurred.

6 ~~(26)~~(27) (a) "Withholding of medically indicated treatment" means the failure to respond to an infant's
7 life-threatening conditions by providing treatment, including appropriate nutrition, hydration, and medication, that,
8 in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in
9 ameliorating or correcting the conditions.

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

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

13 (ii) the provision of treatment would:

14 (A) merely prolong dying;

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

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

17 (iii) the provision of treatment would be virtually futile in terms of the survival of the infant and the
18 treatment itself under the circumstances would be inhumane. For purposes of this subsection ~~(26)~~ (27), "infant"
19 means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously
20 hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The reference
21 to less than 1 year of age may not be construed to imply that treatment should be changed or discontinued when
22 an infant reaches 1 year of age or to affect or limit any existing protections available under state laws regarding
23 medical neglect of children 1 year of age or older.

24 ~~(27)~~(28) "Youth in need of care" means a youth who has been adjudicated or determined, after a
25 hearing, to be or to have been abused, neglected, or abandoned."

26

27 **Section 2.** Section 41-3-112, MCA, is amended to read:

28 **"41-3-112. Guardian ad litem -- special advocate.** (1) In every judicial proceeding under this title, the
29 court shall appoint for any child alleged to be abused or neglected a guardian ad litem. ~~The department or any~~
30 ~~of its staff may not be appointed as the guardian ad litem in a judicial proceeding under this title.~~ When

1 necessary, the guardian ad litem may serve at public expense.

2 (2) If the guardian ad litem appointed by the court is an attorney, the court may also appoint a special
 3 advocate to represent the best interests of the child. The special advocate shall work together with the guardian
 4 ad litem and share the general duties of the guardian ad litem under this section.

5 (3) The court may appoint a special advocate without appointing an attorney as guardian ad litem, in
 6 which case the special advocate shall serve as guardian ad litem and have the general duties of a guardian ad
 7 litem under this section.

8 (4) The department or any employee or representative of the department may not serve as guardian ad
 9 litem or special advocate in a proceeding under this title.

10 ~~(2)~~(5) The guardian ad litem ~~is~~ and special advocate are charged with the representation of the child's
 11 best interests and shall perform the following general duties:

12 (a) to conduct investigations to ascertain the facts constituting the alleged abuse or neglect;

13 (b) to interview or observe the child who is the subject of the proceeding;

14 (c) to have access to court, medical, psychological, law enforcement, social services, and school
 15 records pertaining to the child and the child's siblings and parents or custodians;

16 (d) to make written reports and recommendations to the court concerning the child's welfare;

17 (e) to appear and participate in all proceedings to the degree necessary to adequately represent the
 18 child and make recommendations to the court concerning the child's welfare;

19 (f) to perform other duties as directed by the court; and

20 (g) if an attorney, to file motions, including but not limited to filing to expedite proceedings or otherwise
 21 assert the child's rights.

22 ~~(3)~~(6) Information contained in a report filed by the guardian ad litem or special advocate or testimony
 23 regarding a report filed by the guardian ad litem or special advocate is not hearsay when it is used ~~to form~~ as
 24 the basis for the opinion of the guardian ad ~~litem's opinion~~ litem or special advocate as to the best interests of
 25 the child.

26 ~~(4)~~(7) Any party may petition the court for the removal and replacement of the guardian ad litem or
 27 special advocate if the guardian ad litem or special advocate fails to perform the duties of the appointment."
 28

29 **Section 3.** Section 41-3-201, MCA, is amended to read:

30 **"41-3-201. Reports.** (1) When the professionals and officials listed in subsection (2) know or have

1 reasonable cause to suspect, as a result of information they receive in their professional or official capacity, that
2 a child is abused or neglected, they shall report the matter promptly to the department of public health and
3 human services or its local affiliate.

4 (2) Professionals and officials required to report are:

5 (a) a physician, resident, intern, or member of a hospital's staff engaged in the admission, examination,
6 care, or treatment of persons;

7 (b) a nurse, osteopath, chiropractor, podiatrist, medical examiner, coroner, dentist, optometrist, or any
8 other health or mental health professional;

9 (c) Christian Science practitioners and religious healers;

10 (d) school teachers, other school officials, and employees who work during regular school hours;

11 (e) a social worker, operator or employee of any registered or licensed day-care or substitute care
12 facility, staff of a resource and referral grant program organized under 52-2-711 or of a child and adult food care
13 program, or an operator or employee of a child-care facility;

14 (f) a foster care, residential, or institutional worker;

15 (g) a peace officer or other law enforcement official;

16 (h) a member of the clergy;

17 (i) a guardian ad litem or a ~~court-appointed~~ special advocate who is authorized to investigate a report
18 of alleged abuse or neglect; or

19 (j) an employee of an entity that contracts with the department to provide direct services to children.

20 (3) Any person may make a report under this section if the person knows or has reasonable cause to
21 suspect that a child is abused or neglected.

22 (4) (a) Except as provided in subsection (4)(b) or (4)(c), a person listed in subsection (2) may not refuse
23 to make a report as required in this section on the grounds of a physician-patient or similar privilege.

24 (b) A member of the clergy or a priest is not required to make a report under this section if:

25 (i) the knowledge or suspicion of the abuse or neglect came from a statement or confession made to
26 the member of the clergy or priest in that person's capacity as a member of the clergy or priest;

27 (ii) the statement was intended to be a part of a confidential communication between the member of the
28 clergy or priest and a member of the church or congregation; and

29 (iii) the person who made the statement or confession does not consent to the disclosure by the member
30 of the clergy or priest.

- 1 (c) A member of the clergy or priest is not required to make a report under this section if the
2 communication is required to be confidential by canon law, church doctrine, or established church practice.
- 3 (5) The reports referred to under this section must contain:
- 4 (a) the names and addresses of the child and the child's parents or other persons responsible for the
5 child's care;
- 6 (b) to the extent known, the child's age and the nature and extent of the child's injuries, including any
7 evidence of previous injuries;
- 8 (c) any other information that the maker of the report believes might be helpful in establishing the cause
9 of the injuries or showing the willful neglect and the identity of person or persons responsible for the injury or
10 neglect; and
- 11 (d) the facts that led the person reporting to believe that the child has suffered injury or injuries or willful
12 neglect, within the meaning of this chapter."

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- END -