

HOUSE BILL NO. 217

INTRODUCED BY M. LANGE, BUTCHER, MCGILLVRAY

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THAT WHEN THE DEPARTMENT OF PUBLIC HEALTH
5 AND HUMAN SERVICES REMOVES A CHILD FROM THE CHILD'S HOME PURSUANT TO TITLE 41,
6 CHAPTER 3, MCA, THE DEPARTMENT SHALL PREPARE ~~AND IMPLEMENT~~ A PARENTAL VALUES PLAN
7 IN ORDER TO ALLOW THE ~~CONTINUED CONTROL BY THE CHILD'S CUSTODIAL PARENT OF~~ TO
8 EXPRESS A PREFERENCE IN THE CHILD'S EDUCATION, RELIGION AND SOCIAL TRAINING, AND
9 GENERAL UPBRINGING UNTIL THE CHILD IS RETURNED TO THE PARENT OR THE PARENTAL RIGHTS
10 OF THE CUSTODIAL PARENT TO THE CUSTODY AND CONTROL OF THE CHILD HAVE BEEN
11 TERMINATED BY A COURT OF LAW; AND PROVIDING AN ~~IMMEDIATE EFFECTIVE DATE AND AN~~
12 ~~APPLICABILITY DATE.~~"

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14 ~~WHEREAS, the United States Supreme Court held in the cases of Myer v. Nebraska, 262 U.S. 390~~
15 ~~(1923), Stanley v. Illinois, 405 U.S. 645 (1972), and Troxel v. Granville, 530 U.S. 57 (2000), that a parent has a~~
16 ~~constitutionally protected right to the custody and control of the parent's minor child; and~~

17 ~~WHEREAS, the Montana Supreme Court held in In re Doney, 174 Mont. 282, 570 P.2d 575 (1977), and~~
18 ~~In re A.C., 2001 MT 126, 305 Mont. 404, 27 P.3d 960 (2001), that a parent's right to the custody and control of~~
19 ~~a child is a fundamental constitutional right; and~~

20 ~~WHEREAS, the meanings of the rulings of the federal and state courts on this issue are that a parent~~
21 ~~continues to hold the right to custody and control of a minor child's education, religious and social training, and~~
22 ~~general upbringing unless the parent has been declared to be unfit and the parental rights of the parent have~~
23 ~~been terminated by a court of law; and~~

24 ~~WHEREAS, the procedures used by the Child and Family Services Division of the Department of Public~~
25 ~~Health and Human Services to remove a child from a home when there is evidence that the child is in danger and~~
26 ~~to keep the child from the control of the child's parent until the child may be safely returned to the home do not~~
27 ~~provide a method whereby the custodial parent may continue to control the child's education, religious and social~~
28 ~~training, and general upbringing unless the child has been returned to the parent.~~

29 ~~THEREFORE, it is the intent of the Legislature to provide a method whereby a custodial parent whose~~
30 ~~child has been removed from the home by the Department of Public Health and Human Services pursuant to Title~~

1 ~~41, chapter 3, MCA, may continue to control the minor child's education, religious and social training, and general~~
 2 ~~upbringing until the child has been returned to the parent or the parent has been declared to be unfit and the~~
 3 ~~parental rights of the parent have been terminated by a court of law.~~

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

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7 NEW SECTION. SECTION 1. LEGISLATIVE INTENT. IT IS THE INTENT OF THE LEGISLATURE IN ENACTING
 8 [SECTION 2] AND THIS SECTION TO PROVIDE A METHOD WHEREBY A CUSTODIAL PARENT WHOSE CHILD HAS BEEN REMOVED
 9 FROM THE HOME BY THE DEPARTMENT PURSUANT TO TITLE 41, CHAPTER 3, MAY HAVE AN OPPORTUNITY TO EXPRESS A
 10 PREFERENCE, WHENEVER APPROPRIATE, FOR THE CHILD'S EDUCATION AND ETHNIC, CULTURAL, AND RELIGIOUS TRAINING
 11 AND GENERAL UPBRINGING UNTIL THE CHILD HAS BEEN RETURNED TO THE PARENT OR THE PARENT HAS BEEN DECLARED
 12 TO BE UNFIT AND THE PARENTAL RIGHTS OF THE PARENT HAVE BEEN TERMINATED BY A COURT OF LAW.

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14 NEW SECTION. Section 2. Parental values determination and plan -- implementation. (1) If a child
 15 has been removed from the home of a custodial parent because of action by the department pursuant to this
 16 chapter and placed in the temporary care of a caregiver, the department shall, as soon as REASONABLY possible
 17 after the removal, MAKE A GOOD FAITH EFFORT TO interview the custodial parent to determine the following matters:

18 (a) ~~the values, wishes, and desires~~ of the parent as to the child's education, ETHNIC, CULTURAL, religious,
 19 and social training, and general upbringing that the custodial parent ~~wishes~~ DESIRES, WHENEVER APPROPRIATE,
 20 ~~to continue or be implemented~~ FOLLOWED, IF REASONABLY POSSIBLE, including the roles that those entities,
 21 organizations, individuals, or groups of individuals referred to in subsections (1)(b) through (1)(d) should play in
 22 ~~the education, religious and social training, and general upbringing of the child~~ CHILD'S LIFE;

23 (b) the religion of the parent and the ~~manner in~~ EXTENT TO which the parent's religion has been taught
 24 or transferred to the child, including the church or synagogue attended by the parent or child and the contact
 25 information, IF ANY, for a minister, rabbi, priest, or other teacher and church or synagogue members, peers, or
 26 others who attend the church or synagogue and with whom the child associates and has a relationship;

27 (c) ~~where the child attends~~ CHILD'S school, FRIENDS AND ASSOCIATES, the name and contact information
 28 for a teacher of the child at that school, and the names of the child's ~~peers~~ FRIENDS AND ASSOCIATES at that school
 29 with whom the child associates and has a relationship;

30 (d) whether the child was at the time of removal engaged in extracurricular activities, including sports

1 teams, clubs, youth associations, or similar organizations, and the names and contact information for the leaders,
 2 coaches, organizers, members, teammates, and other individuals with whom the child associates and has a
 3 relationship ~~with as part of those organizations~~; and

4 (e) other individuals in the child's neighborhood, town, or city with whom the child plays or associates
 5 and contact information for those individuals.

6 (2) When the department has gathered the information provided for in subsections (1)(a) through (1)(e),
 7 the department shall prepare a parental values plan ~~to provide how the custodial parent of the child will continue~~
 8 ~~to control the minor child's education, religious and social training, and general upbringing until the child has been~~
 9 ~~returned to the parent or the parent has been declared by a court of law to be an unfit parent. The plan must set~~
 10 ~~forth in detail how the department intends to work with the child, the child's caregiver, the child's teacher, minister~~
 11 ~~or rabbi, peers, friends, and associates, and the child's custodial parent to implement the plan, including:~~

12 ~~—— (a) the approximate time, date, and place that contact will be made with the child, child's caregiver, the~~
 13 ~~child's custodial parent, and other interested individuals to explain and implement the provisions of the plan; and~~

14 ~~—— (b) how the privacy of the child, the child's caregiver, and the child's custodial parent will be maintained~~
 15 ~~during the implementation of the plan~~ CONTAINING A SUMMARY OF THE INFORMATION COLLECTED PURSUANT TO
 16 SUBSECTION (1), WHICH THE DEPARTMENT SHALL INCORPORATE INTO THE CHILD'S CASE PLAN.

17 (3) Actions required of the department by this section may be combined with other interviews, meetings,
 18 or other actions taken by the department pursuant to this chapter.

19 (4) The department shall adopt rules to implement this section.

20 (5) As used in this section, "caregiver" means a child's relative, foster parent, guardian, or other
 21 individual to whom the child has been temporarily given for care after removal of the child from the home of a
 22 custodial parent pursuant to this chapter.

23
 24 NEW SECTION. Section 3. Codification instruction. ~~[Section 1] is [SECTIONS 1 AND 2] ARE~~ intended
 25 to be codified as an integral part of Title 41, chapter 3, part 1, and the provisions of Title 41, chapter 3, part 1,
 26 apply to ~~[section 1~~ SECTIONS 1 AND 2].

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 28 ~~——~~ NEW SECTION. Section 3. Effective date. ~~[This act] is effective on passage and approval.~~

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 30 NEW SECTION. Section 4. Applicability. ~~[This act] applies to actions taken by the department of public~~

1 health and human services to remove a child from the home of a custodial parent pursuant to Title 41, chapter
2 3, occurring on or after [the effective date of this act].
3 - END -