

## 1 HOUSE BILL NO. 288

2 INTRODUCED BY D. SANDS, ARNTZEN, PEASE-LOPEZ, SESSO, HINER, REINHART, HOLLENBAUGH,  
3 B. BENNETT, HUNTER, COURT, MCCLAFFERTY, BELCOURT, MACDONALD, HANDS, O'HARA, FUREY,  
4 HILL, SWANSON, DRISCOLL, KAUFMANN, SQUIRES, BOLAND, SCHMIDT, OLSON, C. WILLIAMS

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6 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT THE RESIDENCY OF A CHILD ENROLLED IN  
7 SCHOOL WHO IS RESIDING WITH A LEGAL GUARDIAN, CUSTODIAN, OR CARETAKER RELATIVE IS THE  
8 RESIDENCE OF THE LEGAL GUARDIAN, CUSTODIAN, OR CARETAKER RELATIVE; CLARIFYING THE  
9 LANGUAGE OF THE CARETAKER RELATIVE AFFIDAVIT; MAKING FINANCIAL RESPONSIBILITY FOR  
10 SPECIAL EDUCATION CONSISTENT WITH OTHER PROVISIONS REGARDING RESIDENCY; AMENDING  
11 SECTIONS 1-1-215, 20-5-321, 20-5-502, 20-5-503, AND 20-7-420, MCA; AND PROVIDING AN EFFECTIVE  
12 DATE."

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

15  
16 **Section 1.** Section 1-1-215, MCA, is amended to read:

17 **"1-1-215. Residence -- rules for determining.** Every person has, in law, a residence. In determining  
18 the place of residence, the following rules are to be observed:

19 (1) It is the place where a person remains when not called elsewhere for labor or other special or  
20 temporary purpose and to which the person returns in seasons of repose.

21 (2) There may be only one residence. If a person claims a residence within Montana for any purpose,  
22 then that location is the person's residence for all purposes unless there is a specific statutory exception.

23 (3) A residence cannot be lost until another is gained.

24 (4) The residence of an unmarried minor is:

25 (a) the residence of the minor's parents;

26 (b) if one of the parents is deceased or the parents do not share the same residence, the residence of  
27 the parent having legal custody;

28 (c) if neither parent has legal custody, the residence of the ~~parent with whom the minor customarily~~  
29 resides legal guardian or custodian appointed by a court of competent jurisdiction; or

30 (d) if the conditions in 20-5-502 are met, ~~the last-known residence of the parent with whom the minor~~

1 normally resided immediately prior to residing with the residence of the caretaker relative.

2 (5) In the case of a controversy, the district court ~~may declare~~ HAS JURISDICTION OVER which parental  
3 residence is the residence of an unmarried minor.

4 ~~(6) In the case of a controversy over the residence of an unmarried minor, the trustees of the school~~  
5 ~~district in which the minor is to be enrolled shall determine the residence of the minor in accordance with~~  
6 ~~subsections (4)(c) and (4)(d), subject to the right to appeal the decision pursuant to 20-3-210.~~

7 ~~(6) Except as provided in Title 20, chapter 5, part 5, the residence of an unmarried minor who has a~~  
8 ~~parent living cannot be changed by either the minor's own act or that of the minor's guardian.~~

9 ~~(6) EXCEPT AS PROVIDED IN TITLE 20, CHAPTER 5, PART 5, AND THIS SECTION, THE RESIDENCE OF AN~~  
10 ~~UNMARRIED MINOR WHO HAS A PARENT LIVING CANNOT BE CHANGED BY EITHER THE MINOR'S OWN ACT OR AN ACT OF THE~~  
11 ~~MINOR'S GUARDIAN.~~

12 (7) The residence can be changed only by the union of act and intent."  
13

14 **SECTION 2. SECTION 20-5-321, MCA, IS AMENDED TO READ:**

15 **"20-5-321. Attendance with mandatory approval -- tuition and transportation.** (1) An out-of-district  
16 attendance agreement that allows a child to enroll in and attend a school in a Montana school district that is  
17 outside of the child's district of residence or in a public school district of a state or province that is adjacent to the  
18 county of the child's residence is mandatory whenever:

19 (a) the child resides closer to the school that the child wishes to attend and more than 3 miles from the  
20 school the child would attend in the resident district and the resident district does not provide transportation;

21 (b) (i) the child resides in a location where, because of geographic conditions between the child's home  
22 and the school that the child would attend within the district of residence, it is impractical to attend school in the  
23 district of residence, as determined by the county transportation committee based on the following criteria:

24 (A) the length of time that is in excess of the 1-hour limit for each bus trip for an elementary child as  
25 authorized under 20-10-121;

26 (B) whether distance traveled is greater than 40 miles one way from the child's home to school on a dirt  
27 road or greater than a total of 60 miles one way from the child's home to school in the district of residence over  
28 the shortest passable route; or

29 (C) whether the condition of the road or existence of a geographic barrier, such as a river or mountain  
30 pass, causes a hazard that prohibits safe travel between the home and school.

1 (ii) The decision of the county transportation committee is subject to appeal to the superintendent of  
 2 public instruction, as provided in 20-3-107, but the decision must be considered as final for the purpose of the  
 3 payment of tuition under 20-5-324(5)(a)(ii) until a decision is issued by the superintendent of public instruction.  
 4 The superintendent of public instruction may review and rule upon a decision of the county transportation  
 5 committee without an appeal being filed.

6 (c) the child is a member of a family that is required to send another child outside of the elementary  
 7 district to attend high school and the child of elementary age may more conveniently attend an elementary school  
 8 where the high school is located, provided that the child resides more than 3 miles from an elementary school  
 9 in the resident district or that the parent is required to move to the elementary district where the high school is  
 10 located to enroll another child in high school. A child enrolled in an elementary school pursuant to this subsection  
 11 (1)(c) may continue to attend the elementary school after the other child has left the high school.

12 (d) the child is under the protective care of a state agency or has been adjudicated to be a youth in need  
 13 of intervention or a delinquent youth, as defined in 41-5-103; or

14 (e) the child is required to attend school outside of the district of residence as the result of a placement  
 15 in foster care or a group home licensed by the state; ~~or~~

16 ~~(f) the child is residing with a caretaker relative who wants to enroll the child pursuant to 20-5-502.~~

17 (2) (a) Whenever a parent or guardian of a child, an agency of the state, or a court wishes to have a child  
 18 attend a school under the provisions of this section, the parent or guardian, agency, or court shall complete an  
 19 out-of-district attendance agreement in consultation with an appropriate official of the district that the child will  
 20 attend.

21 (b) The attendance agreement must set forth the financial obligations, if any, for costs incurred for tuition  
 22 and transportation as provided in 20-5-323 and Title 20, chapter 10.

23 (c) (i) The trustees of the district of choice may waive any or all of the tuition rate. The trustees of the  
 24 district of choice may waive the tuition for all students whose tuition is required to be paid by one type of entity  
 25 and may charge tuition for all students whose tuition is required to be paid by another type of entity. However,  
 26 any waiver of tuition must be applied equally to all students whose tuition is paid by the same type of entity.

27 (ii) As used in this subsection (2)(c), "entity" means a parent, a guardian, the trustees of the district of  
 28 residence, or a state agency.

29 (3) Except as provided in subsection (4), the trustees of the resident district and the trustees of the  
 30 district of attendance shall approve the out-of-district attendance agreement. The trustees of the district of

1 attendance shall:

2 (a) notify the county superintendent of schools of the county of the child's residence of the approval of  
3 the agreement within 10 days; and

4 (b) submit the agreement for a student attending under the provisions of subsection (1)(d) or (1)(e) to  
5 the superintendent of public instruction for approval for payment under 20-5-324.

6 (4) Unless the child is a child with a disability who resides in the district, the trustees of the district where  
7 the school to be attended is located may disapprove an out-of-district attendance agreement whenever they find  
8 that, because of insufficient room and overcrowding, the accreditation of the school would be adversely affected  
9 by the acceptance of the child."

10

11 **Section 3.** Section 20-5-502, MCA, is amended to read:

12 **"20-5-502. Enrollment by caretaker relative -- residency -- affidavit.** (1) A caretaker relative of a child  
13 who has voluntarily been given custody of the child by a parent of the child may, in accordance with this section,  
14 enroll the child in school using the rules of residence provided in 1-1-215 if:

15 (a) in leaving the child with the caretaker relative, the parent expressed no definite time period in which  
16 the parent would return for the child;

17 (b) the child is residing with the caretaker relative on a full-time basis;

18 (c) the caretaker relative is unable to contact either of the parents ~~following the~~ after THE PARENTS  
19 voluntarily voluntarily leaving LEAVE of the child with the caretaker relative or ~~the a parent or parents~~ whom the  
20 caretaker relative is able to contact ~~refuse~~ is unable OR UNWILLING to regain custody of the child ~~after a written~~  
21 ~~or oral request by the relative to do so;~~

22 (d) no adequate provision, such as the appointment of a guardian ad litem or execution of a power of  
23 attorney, has otherwise been made for the educational needs of the child; and

24 (e) a caretaker relative educational authorization affidavit is completed in compliance with 20-5-503.

25 (2) A caretaker relative of a child who has voluntarily been given custody of the child by a parent of the  
26 child may enroll the child in school unless the child's residency with the caretaker relative is primarily for the  
27 purpose of:

28 (a) attending a particular school; or

29 (b) participating in athletics at a particular school.

30 (3) ~~If Except for a child with an individualized education program, if~~ IF the child was subject to formal

1 disciplinary action, including suspension or expulsion, at the child's previous school, the school in which the child  
2 is to be enrolled may require the child to comply with a behavior contract as a condition of enrollment. DECISIONS  
3 INVOLVING ENROLLMENT OF A CHILD WITH AN INDIVIDUALIZED EDUCATION PROGRAM PLAN MUST BE MADE IN COMPLIANCE  
4 WITH THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT, 20 U.S.C. 1411 THROUGH 1420, AND ITS IMPLEMENTING  
5 REGULATIONS AT 34 CFR, PART 300, AND THE APPLICABLE PROVISIONS OF TITLE 20, CHAPTER 7, PART 4.

6 (4) The school district may require additional reasonable evidence that the caretaker relative lives at the  
7 address provided in the affidavit."  
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8

9 **Section 4.** Section 20-5-503, MCA, is amended to read:

10 **"20-5-503. Caretaker relative educational authorization affidavit -- use -- immunity -- format. (1)**

11 A caretaker relative of a child who has voluntarily been given custody of the child by a parent of the child has the  
12 same authority as a custodial parent of the child to discuss with an educator the educational progress of the child,  
13 consent to an educational service, and consent to medical care related to an educational service for the child for  
14 which parental consent is usually required if a caretaker relative educational authorization affidavit is completed  
15 in compliance with this section.

16 (2) An affidavit is effective only if it is signed by the caretaker relative, under oath, before a notary  
17 public. A clear photographic copy of an affidavit completed in compliance with this section is sufficient in any  
18 instance in which an original is required by a school official or health care provider.

19 (3) Unless parental rights have been judicially terminated or unless the ability to give legal consent for  
20 the child to receive an educational service and any medical care related to the educational service for which  
21 parental consent is usually required has been granted to the caretaker relative pursuant to 40-4-211 and  
22 40-4-228, a decision by a parent of the child communicated to a school official, a health care provider, or both,  
23 regarding the child supersedes a conflicting decision by a caretaker relative made pursuant to an affidavit  
24 completed in compliance with this section. However, a decision by a parent does not supersede a decision by  
25 a caretaker relative pursuant to an affidavit completed in compliance with this section if the decision by the parent  
26 endangers the life of the child. A school official or health care provider may require reasonable proof of  
27 authenticity of a decision by a parent intended to supersede a decision by a caretaker relative.

28 (4) (a) A public or private entity or individual who acts in good faith reliance on a caretaker relative  
29 educational authorization affidavit completed in compliance with this section and who has no actual knowledge  
30 of facts contrary to those indicated in the affidavit is not subject to civil liability or criminal prosecution or to a

1 professional disciplinary procedure for an action that would have been proper if the facts had been as the entity  
2 or individual believed them to be.

3 (b) This subsection (4) applies even if an educational service or educationally related medical care, or  
4 both, are provided to a child against the wishes of a parent of that child if the person rendering the service does  
5 not have actual knowledge of the parent's wishes.

6 (5) A person who relies on an affidavit completed in compliance with this section has no obligation to  
7 make further inquiry or investigation.

8 (6) An affidavit completed in compliance with this section is effective for the earlier of:

9 (a) the end of the first school year after delivery of the affidavit to a school district;

10 (b) until it has been revoked by the caretaker relative; or

11 (c) until the child no longer resides with the caretaker relative.

12 (7) If the child ceases to live with the caretaker relative or the caretaker relative revokes the affidavit, the  
13 caretaker relative shall provide written notice of that fact to all persons to whom the caretaker relative has given  
14 the affidavit or to whom the caretaker relative has caused the affidavit to be given.

15 (8) This section does not relieve a person from a violation of other law, and this section does not affect  
16 the rights of a child's parent except as provided in this section.

17 (9) A caretaker relative educational authorization affidavit is invalid unless it is written in substantially the  
18 following form and contains the warning provided for in paragraph 5 of the format below:

19 CARETAKER RELATIVE'S

20 EDUCATIONAL AUTHORIZATION AFFIDAVIT

21 Use of this affidavit is authorized by 20-5-503, MCA.

22 1. INSTRUCTIONS: The completion and signing of the affidavit before a notary public are sufficient to  
23 authorize educational enrollment and services and school-related medical care for the named child. Please print  
24 clearly.

25 The child named below lives in my home, and I am 18 years of age or older.

26 a. Name of child:

27 b. Child's date of birth:

28 c. My name (caretaker relative):

29 d. My home address:

30 e. My relationship to the child (the caretaker relative must be an individual related by blood, marriage,

1 or adoption by another individual to the child whose care is undertaken by the caretaker relative, but who is not  
2 a parent, foster parent, stepparent, or legal guardian of the child):

3 2. I hereby certify that this affidavit is not being used for the purpose of circumventing school residency  
4 laws, to take advantage of a particular academic program or athletic activity, to circumvent a disciplinary action  
5 of a previous school, or for an otherwise unlawful purpose.

6 3. My date and year of birth:

7 4. Check the following if true (all must be checked for this affidavit to apply):

8  A parent of the child identified in paragraph 1a of this affidavit has left the child with me and has  
9 expressed no definite time period when the parent will return for the child.

10  The child is now residing with me on a full-time basis.

11  I am unable to locate or contact the parents of the child at this time to notify the parents of my intended  
12 authorization, or the parents refuse to regain custody of the child even though I have asked in writing that the  
13 parents do so.

14  No adequate provision, such as appointment of a legal custodian or guardian ~~ad litem~~ or execution  
15 of a notarized power of attorney, has been made for enrollment of the child in school, other educational services,  
16 or educationally related medical services.

17 5. WARNING: DO NOT SIGN THIS FORM IF ANY OF THE STATEMENTS ABOVE ARE INCORRECT  
18 OR YOU WILL BE COMMITTING A CRIME PUNISHABLE BY A FINE, IMPRISONMENT, OR BOTH.

19 6. I declare under penalty of false swearing under the laws of Montana that the foregoing is true and  
20 correct. Signed this .... day of ....., 20.... (Signature of caretaker  
21 relative) ..... (Signature, county, state, and seal of notary public)

22 7. NOTICES TO CARETAKER RELATIVE:

23 a. Completion of this affidavit does not affect the rights of the child's parents or legal guardian regarding  
24 the care, custody, and control of the child and does not mean that the caretaker relative has legal custody of the  
25 child.

26 b. A person who relies on this affidavit has no obligation to make any further inquiry or investigation.

27 c. This affidavit is effective until the earlier of:

28 i. the end of the first school year after delivery of the affidavit to a school district;

29 ii. revocation by the caretaker relative; or

30 iii. the child no longer resides with the caretaker relative.



1           ~~8. ADDITIONAL INFORMATION:~~

2           ~~a.d. TO CARETAKER RELATIVES: If the child stops living with you, you shall notify anyone to whom~~  
 3 ~~you have given this affidavit, as well as anyone who received the affidavit from someone else.~~

4           ~~b. TO PUBLIC AND PRIVATE SCHOOL OFFICIALS AND PUBLIC AND PRIVATE HEALTH CARE~~  
 5 ~~PROVIDERS:~~

6           ~~——— (1) A public or private school official or a public school district official may require additional reasonable~~  
 7 ~~evidence that the caretaker relative lives at the address provided in item 1d of the affidavit form.~~

8           ~~——— (2) A public or private entity or individual who acts in good faith reliance upon a caretaker relative~~  
 9 ~~educational authorization affidavit to enroll a child in school or to provide educational services or educationally~~  
 10 ~~related medical care, or both, without actual knowledge of facts contrary to those indicated in the affidavit, is not~~  
 11 ~~subject to criminal prosecution or civil liability to any person, or subject to any professional disciplinary action, for~~  
 12 ~~reliance on an affidavit completed in compliance with 20-5-503, MCA."~~

13

14           **Section 5.** Section 20-7-420, MCA, is amended to read:

15           **"20-7-420. Residency requirements -- financial responsibility for special education.** (1) Except for  
 16 a pupil attending the Montana youth challenge program or a job corps program pursuant to 20-9-707, a child's  
 17 district of residence for special education purposes must be determined in accordance with the provisions of  
 18 1-1-215, ~~unless otherwise determined by the court. This applies to a child living at home, in an institution, or~~  
 19 ~~under foster care. If the parent has left the state, the parent's last-known district of residence is the child's district~~  
 20 ~~of residence.~~

21           (2) The superintendent of public instruction is financially responsible for tuition and transportation as  
 22 established under 20-5-323 and 20-5-324 for a child with a disability, as defined in 20-7-401, who attends school  
 23 outside the district and county of residence because the student has been placed in a foster care or group home  
 24 licensed by the state. The superintendent of public instruction is not financially responsible for tuition and  
 25 transportation for a child who is placed by a state agency in an out-of-state public school or an out-of-state private  
 26 residential facility.

27           (3) If an eligible child, as defined in 20-7-436, is receiving inpatient treatment in an in-state residential  
 28 treatment facility or children's psychiatric hospital, as defined in 20-7-436, and the educational services are  
 29 provided by a public school district under the provisions of 20-7-411 or 20-7-435, the superintendent of public  
 30 instruction shall reimburse the district providing the services for the negotiated amount, as established pursuant



1 to 20-7-435(5), that represents the district's costs of providing education and related services. Payments must  
2 be made from funds appropriated for this purpose. If the negotiated amount exceeds the daily membership rate  
3 under 20-7-435(3) and any per-ANB amount of direct state aid, the superintendent of public instruction shall pay  
4 the remaining balance from available funds. However, the amount spent from available funds for this purpose  
5 may not exceed \$500,000 during a biennium.

6 (4) A state agency that makes a placement of a child with a disability is responsible for the financial costs  
7 of room and board and the treatment of the child. The state agency that makes an out-of-state placement of a  
8 child with a disability is responsible for the education fees required to provide a free appropriate public education  
9 that complies with the requirements of Title 20, chapter 7, part 4."

10

11 NEW SECTION. **Section 6. Effective date.** [This act] is effective July 1, 2011.

12

- END -