

SENATE BILL NO. 132
INTRODUCED BY M. HALLIGAN

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR A SAFE HAVEN FOR ABANDONED CHILDREN; PROVIDING FOR DELIVERY OF A CHILD WHO IS OR APPEARS TO BE NO MORE THAN 30 DAYS OLD TO A LAW ENFORCEMENT AGENCY, AN EMERGENCY MEDICAL SERVICE, OR A MEDICAL FACILITY; DEFINING TERMS; PROVIDING FOR NOTIFICATION OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; PROVIDING THAT THE DEPARTMENT ASSUME CARE, CUSTODY, AND CONTROL OF A CHILD DELIVERED TO A MEDICAL FACILITY; PROVIDING IMMUNITY TO THOSE TO WHOM A CHILD IS DELIVERED; PROVIDING CIVIL AND CRIMINAL IMMUNITY FOR VOLUNTARILY DELIVERING A CHILD; PROVIDING FOR RIGHTS OF THE NONRELINQUISHING PARENT; PROVIDING A REPORTING REQUIREMENT; AMENDING SECTION 41-3-102, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

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

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

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

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

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

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

NEW SECTION. Section 2. Definitions. As used in [sections 1 through 8] the following definitions apply:

- (1) "Emergency medical service" has the meaning provided in Title 50, chapter 6.
- (2) "Hospital" has the meaning provided in 50-5-101.
- (3) "Law enforcement agency" includes a law enforcement officer as defined in 7-32-201, a police or sheriff's department, a detention center as defined in 7-32-2241, or a correctional institution as defined in 45-2-101.
- (4) "Medical facility" means a licensed hospital, a medical assistance facility as provided in 50-5-101, a federally qualified health center as defined in 42 U.S.C. 1396d(l)(2)(B), a rural health clinic as defined in 42 U.S.C. 1395x(aa)(2), or a tribal or Indian health service facility.

NEW SECTION. Section 3. Designated sites for voluntary relinquishment of child -- assumption of care, custody, and control by department. (1) If a person voluntarily delivers a child who is or appears to be no more than 30 days old to a law enforcement agency or an emergency medical service and does not express an intent to return for the child, the law enforcement agency or emergency medical service shall take the child to a medical facility.

(2) If a person voluntarily delivers a child who is or appears to be no more than 30 days old to a medical facility and does not express an intent to return for the child or if a law enforcement agency or an emergency medical service delivers a child to a medical facility pursuant to subsection (1), the medical facility shall:

- (a) take possession of the child without a court order;
 - (b) take any action or provide any treatment necessary to protect the child's physical health and safety;
- and

(c) no later than the first business day after taking possession of the child, notify the department that the medical facility has taken possession of the child.

(3) The department shall assume the care, custody, and control of the child immediately upon receipt of notice pursuant to subsection (2)(c) from a medical facility. The department shall conduct a thorough search of all listings of missing children to ensure that the relinquished child has not been reported missing.

(4) A child for whom the department assumes care, custody, and control must be treated as a child under an order for immediate protection as provided in 41-3-403.

(5) It is an affirmative defense to prosecution for abandonment of a child that the parent voluntarily delivered the child to and left the child with or voluntarily arranged for another person to deliver the child to and

leave the child with a law enforcement agency, an emergency medical service, or a medical facility, and the parent is immune from liability for civil damages. This subsection may not be construed to create a defense to any prosecution arising from any conduct other than the act of delivering a child as provided for in subsections (1) and (2). This subsection specifically may not constitute a defense to any prosecution arising from an act of abuse or neglect committed prior to the delivery of a child to a law enforcement agency, an emergency medical service, or a medical facility as provided for in subsections (1) and (2).

(6) A law enforcement agency, an emergency medical service, or a medical facility or an employee of a law enforcement agency, an emergency medical service, or a medical facility may not incur civil or criminal liability for any good faith acts or omissions performed pursuant to [sections 1 through 8].

(7) A person who voluntarily delivers a child who is or appears to be no more than 30 days old to a law enforcement agency, an emergency medical service, or a medical facility in accordance with this section is not required to disclose that person's name or other identifying information or to provide information about the child or the child's parent, but the person may voluntarily provide that information.

NEW SECTION. Section 4. Responsibilities of department -- placement of child. The department, after assuming the care, custody, and control of a child as provided in [section 3], is not required to attempt to reunify the child with the child's parents. The department is not required to search for relatives of the child as a placement or permanency option or to implement other placement requirements that give preference to relatives if the department does not have information as to the identity of the child or either of the child's parents. The department shall place the child with potential adoptive parents as soon as possible. The adoptive parents must be allowed access to information regarding a child's medical history, date of birth, or age if the department has that information.

NEW SECTION. Section 5. Reimbursement of medical expenses. If a medical facility accepts custody of an infant pursuant to [section 3], the department shall reimburse the medical facility for the actual expenses in accepting and caring for the infant.

NEW SECTION. Section 6. Rights of nonrelinquishing parent. (1) If one parent of a child delivers a child as provided in [section 3], the other parent may file an action for custody of the child. The nonrelinquishing parent shall file an action for custody within 30 days after the law enforcement agency, emergency medical service, or medical facility accepts the child from the other parent or person delivering the child. In an action for

custody, the nonrelinquishing parent must prove by a preponderance of the evidence that the person:

(a) is the parent of the child; and

(b) did not consent to the delivery of the child to the law enforcement agency, emergency medical service, or medical facility.

(2) If a parent fails to file an action within the 30-day period specified in subsection (1), the parent is forever barred from filing an action for custody of the child and, by operation of law and without any court proceeding, all of the parent's rights with respect to the child are terminated.

(3) When a nonrelinquishing parent inquires of a law enforcement agency, emergency medical service, or medical facility concerning a child who was delivered to its custody as provided in [section 3], the law enforcement agency, emergency medical service, or medical facility shall provide the parent a written statement of the parent's rights under [sections 1 through 8].

NEW SECTION. Section 7. Educational and public information program -- toll-free hotline -- rulemaking. (1) The department shall establish an educational and public information program to promote safe placement alternatives for newborn infants, to explain the confidentiality offered to birth parents, and to provide information regarding adoption procedures. The campaign must include the establishment of a 24-hour, toll-free hotline to assist in making information about the safe haven procedures established in [sections 1 through 8] as widely available as possible.

(2) The department shall provide to law enforcement agencies, emergency medical services, and medical facilities information about relevant social service agencies that may be available to a person voluntarily delivering a child as provided in [section 3].

(3) The department may adopt rules to govern the procedures used by the department in assuming the care, custody, and control of a child as provided in [sections 1 through 8].

NEW SECTION. Section 8. Reporting requirement. The department must report the effects of the safe haven procedures established in [sections 1 through 8] and any recommendations to the governor and to the appropriate legislative interim committee no later than July 1, 2002, and every 2 years thereafter.

Section 9. Section 41-3-102, MCA, is amended to read:

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

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

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

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

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

(d) a parent has voluntarily delivered a child who is or appears to be no more than 30 days old to a law enforcement agency, an emergency medical service, or a medical facility without expressing an intent to return for the child as provided in [sections 1 through 8].

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) abandons the child.

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

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

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

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

(14) "Psychological abuse or neglect" means severe maltreatment through acts or omissions that are injurious to the child's emotional, intellectual, or psychological capacity to function, including acts of violence

against another person residing in the child's home.

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

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

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

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

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

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

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

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

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

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

- (i) the infant is chronically and irreversibly comatose;
- (ii) the provision of treatment would:
 - (A) merely prolong dying;
 - (B) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or
 - (C) otherwise be futile in terms of the survival of the infant; or

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

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

NEW SECTION. Section 10. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

NEW SECTION. Section 11. Codification instruction. [Sections 1 through 8] are intended to be codified as an integral part of Title 41, chapter 3, and the provisions of Title 41, chapter 3, apply to [sections 1 through 8].

NEW SECTION. Section 12. Two-thirds vote required. Because [section 3] limits governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage.

NEW SECTION. Section 13. Effective date. [This act] is effective July 1, 2001.

- END -