

## SENATE BILL NO. 132

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

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR A SAFE HAVEN FOR ABANDONED CHILDREN NEWBORNS; PROVIDING FOR DELIVERY OF A CHILD WHO IS OR APPEARS TO BE NO MORE THAN 30 DAYS OLD SURRENDER OF A NEWBORN TO A LAW ENFORCEMENT AGENCY, AN EMERGENCY MEDICAL SERVICE, OR A MEDICAL FACILITY AN EMERGENCY SERVICES PROVIDER; 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 SURRENDERED NEWBORN; PROVIDING IMMUNITY TO THOSE TO WHOM A CHILD NEWBORN IS DELIVERED SURRENDERED; PROVIDING CIVIL AND CRIMINAL IMMUNITY FOR VOLUNTARILY DELIVERING A CHILD AN AFFIRMATIVE DEFENSE TO CRIMINAL CHARGES OF ABANDONMENT IF A NEWBORN IS SURRENDERED IN ACCORDANCE WITH THIS ACT; PROVIDING FOR RIGHTS OF THE NONRELINQUISHING PARENT; PROVIDING A REPORTING REQUIREMENT A CUSTODY ACTION BY A BIOLOGICAL PARENT WITHIN 30 DAYS OF SURRENDER; REQUIRING THE DEPARTMENT TO ESTABLISH A SAFE DELIVERY PROGRAM; AMENDING SECTION ~~SECTION~~ SECTIONS 40-4-211, 40-4-212, AND 41-3-102, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION 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:

(Refer to Introduced Bill)

Strike everything after the enacting clause and insert:

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

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

- (1) "Child-placing agency" means an agency licensed under Title 42, chapter 8, part 1.
- (2) "Court" means a court of record in a competent jurisdiction and, in Montana, means a district court or a tribal court.
- (3) "Department" means the department of public health and human services provided for in 2-15-2201.
- (4) "Emergency services provider" means:
  - (a) a uniformed or otherwise identifiable employee of a fire department, hospital, or law enforcement agency when the individual is on duty inside the premises of the fire department, hospital, or law enforcement agency; or
  - (b) any law enforcement officer, as defined in 7-32-201, who is in uniform or is otherwise identifiable.
- (5) "Fire department" means a fire department organized by a city, town, or city-county consolidated local government under Title 7, chapter 33.
- (6) "Gross negligence" means conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results.
- (7) "Guardian ad litem" means a person appointed to represent a newborn under Title 41, chapter 3.
- (8) "Hospital" has the meaning provided in 50-5-101.
- (9) "Law enforcement agency" means 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.
- (10) "Newborn" means an infant who a physician reasonably believes to be no more than 30 days old.
- (11) "Surrender" means to leave a newborn with an emergency services provider without expressing an intent to return for the newborn.

NEW SECTION. **Section 3. Court jurisdiction -- hospital immunity.** (1) The court has jurisdiction over

a newborn who is surrendered to an emergency services provider as provided in [section 5]. The court may appoint a guardian ad litem to represent a newborn in proceedings under [sections 1 through 14].

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

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

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

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

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

(a) if possible, inform the parent that by surrendering the newborn, the parent is releasing the newborn to the department to be placed for adoption according to law;

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

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

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

(i) by surrendering the newborn, the parent is releasing the newborn to the department to be placed for adoption and the department shall initiate court proceedings according to law to place the newborn for adoption,

including proceedings to terminate parental rights;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) A hospital that takes a newborn into temporary protective custody under [sections 1 through 14] shall have the newborn examined by a physician. If a physician who examines the newborn either determines that

there is reason to suspect the newborn has experienced abuse or neglect, other than being surrendered to an emergency services provider under [section 5], or comes to a reasonable belief that the infant is not a newborn, the physician shall immediately report to the department as required under 41-3-201. If the actual date of birth of the infant is not known, the physician shall determine a birth date based on the physician's examination of the infant.

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

**NEW SECTION. Section 7. Assumption of care, custody, and control by department -- placement of child -- presumptions -- Montana birth certificate.** (1) Upon receipt of notice under [section 6], the department shall:

- (a) immediately assume the care, control, and temporary protective custody of the newborn;
- (b) if a parent is known and willing, immediately meet with the parent;
- (c) make a temporary placement of the newborn;
- (d) immediately request assistance from law enforcement officials to investigate and determine, through the national center for missing and exploited children and any other national and state missing children information programs, whether the newborn is a missing child;
- (e) not later than 48 hours after assuming the care, control, and temporary protective custody of the newborn, file a petition with the court under the provisions of Title 41, chapter 3, part 4, requesting appropriate relief with the goal of achieving permanent placement for the newborn at the earliest possible date; and
- (f) within 30 days, make reasonable efforts to identify and locate a parent who did not surrender the newborn. If the identity and address of that parent are unknown, the department shall provide notice by publication in a newspaper of general circulation in the county where the newborn was surrendered.

(2) The department, after assuming the care, custody, and control of a newborn under subsection (1), is not required to attempt to reunify the newborn with the newborn's parents. The department is not required to search for relatives of the newborn 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 newborn or either of the newborn's parents. The department shall place the newborn with prospective adoptive parents as soon as possible. The adoptive parents must be allowed access to information regarding the newborn's medical history, date of birth, or age if the department has that information.

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

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

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

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

(3) The putative father registry provisions under Title 42, chapter 2, part 2, apply to any court proceeding under [sections 1 through 14].

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

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

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

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

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

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

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

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

(1) may include but is not limited to a toll-free, 24-hour telephone line. The information provided with this telephone line must include but is not limited to the following:

- (a) information on prenatal care and the delivery of a newborn;
- (b) names of health agencies that can assist in obtaining services and support that provide for the pregnancy-related health of the mother and the health of the newborn;
- (c) information on adoption options and the name and telephone number of a child-placing agency that can assist a parent or expecting parent in obtaining adoption services;
- (d) information that, in order to safely provide for the health of the mother and the newborn, the best place for the delivery of an infant is in a hospital;
- (e) an explanation that, to the extent of the law, prenatal care and delivery services are routinely confidential within the health care system if requested by the mother;
- (f) information that a hospital will take into protective custody a newborn that is surrendered as provided for in [sections 1 through 14] and, if needed, provide emergency medical assistance to the mother, the newborn, or both;
- (g) information regarding legal and procedural requirements related to the voluntary surrender of a newborn as provided for in [sections 1 through 14];
- (h) information regarding the Indian Child Welfare Act, 25 U.S.C. 1901, et seq., if the newborn has any Indian heritage;
- (i) information regarding the legal consequences for endangering a child, including child protective services investigations and potential criminal penalties;
- (j) information that surrendering a newborn for adoption as provided in [sections 1 through 14] is an affirmative defense to charges of abandonment; and
- (k) information about resources for counseling and assistance with crisis management; and

(2) must include but is not limited to a pamphlet that provides information to the public concerning the safe delivery program. The department shall publish and distribute the pamphlet. The pamphlet must prominently display the toll-free telephone number provided for in subsection (1), if available, and must include the information prescribed in subsections (1)(a) through (1)(k).

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

**NEW SECTION. Section 14. Immunity from criminal prosecution.** (1) Except for actual abuse or neglect, it is an affirmative defense to a criminal prosecution involving the abandonment of an infant that the infant was not more than 30 days old and was surrendered to an emergency services provider under [section 5].

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

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

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

(a) this state:

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

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

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

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

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

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



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

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

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

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

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

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

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

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

(i) for dissolution or legal separation; or

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

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

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

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

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

(7) A custody proceeding under [section 8] is commenced in the district court by a parent by filing in one

of the following counties:

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

(b) the county where the emergency services provider to whom the newborn was surrendered is located

if subsection (7)(a) does not apply; or

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

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

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

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

(b) the wishes of the child;

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

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

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

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

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

(h) continuity and stability of care;

(i) developmental needs of the child;

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

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

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

(m) adverse effects on the child resulting from continuous and vexatious parenting plan amendment

actions.

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

- (a) the love, affection, and other emotional ties existing between the newborn and the parent;
- (b) the parent's capacity to give the newborn love, affection, guidance, shelter, and permanent care;
- (c) the parent's capacity and disposition to provide the newborn with food, clothing, medical care or other remedial care recognized and permitted under the laws of this state in place of medical care, and other material needs;
- (d) the permanence, as a family unit, of the existing or proposed custodial home;
- (e) the parent's moral fitness;
- (f) the parent's mental and physical health;
- (g) whether the parent has a history of domestic violence;
- (h) if the parent is not the parent who surrendered the newborn, the opportunity the parent had to provide appropriate care of the newborn before the newborn's birth or surrender;
- (i) any other factor considered by the court to be relevant to the determination of the newborn's best interest.

~~(2)~~(3) A de facto parenting arrangement, in the absence of a prior parenting decree, does not require the child's parent or parents to prove the factors set forth in 40-4-219.

~~(3)~~(4) The following are rebuttable presumptions and apply unless contrary to the best interest of the child:

(a) A parenting plan action brought by a parent within 6 months after a child support action against that parent is vexatious.

(b) A motion to amend a final parenting plan pursuant to 40-4-219 is vexatious if a parent seeks to amend a final parenting plan without making a good faith effort to comply with the provisions of the parenting plan or with dispute resolution provisions of the final parenting plan."

**Section 17.** 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) the voluntary surrender, as defined in [section 2], by a parent of a newborn who is no more than 30 days old to an emergency services provider, as defined in [section 2].

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

**NEW SECTION. Section 20. Two-thirds vote required -- contingent voidness.** (1) Because [section 4] 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.

(2) If [this act] does not receive a vote of two-thirds of the members of each house of the legislature, [section 4] is void.

**NEW SECTION. Section 21. Effective date.** [This act] is effective July 1, 2001.

**NEW SECTION. Section 22. Termination.** [Section 12] terminates June 30, 2004.

- END -

