

HOUSE BILL NO. 217
INTRODUCED BY M. LANGE

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

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

WHEREAS, the Montana Supreme Court held in *In re Doney*, 174 Mont. 282, 570 P.2d 575 (1977), and *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 a child is a fundamental constitutional right; and

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

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

THEREFORE, it is the intent of the Legislature to provide a method whereby a custodial parent whose child has been removed from the home by the Department of Public Health and Human Services pursuant to Title 41, chapter 3, MCA, may continue to control the minor child's education, religious and social training, and general upbringing until the child has been returned to the parent or the parent has been declared to be unfit and the

parental rights of the parent have been terminated by a court of law.

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

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

(a) the values, wishes, and desires of the parent as to the child's education, religious and social training, and general upbringing that the custodial parent wishes to continue or be implemented, including the roles that those entities, organizations, individuals, or groups of individuals referred to in subsections (1)(b) through (1)(d) should play in the education, religious and social training, and general upbringing of the child;

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

(c) where the child attends school, the name and contact information for a teacher of the child at that school, and the names of the child's peers at that school with whom the child associates and has a relationship;

(d) whether the child was at the time of removal engaged in extracurricular activities, including sports teams, clubs, youth associations, or similar organizations, and the names and contact information for the leaders, coaches, organizers, members, teammates, and other individuals with whom the child associates and has a relationship with as part of those organizations; and

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

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

(a) the approximate time, date, and place that contact will be made with the child, child's caregiver, the

child's custodial parent, and other interested individuals to explain and implement the provisions of the plan; and

(b) how the privacy of the child, the child's caregiver, and the child's custodial parent will be maintained during the implementation of the plan.

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

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

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

NEW SECTION. **Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 41, chapter 3, part 1, and the provisions of Title 41, chapter 3, part 1, apply to [section 1].

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

NEW SECTION. **Section 4. Applicability.** [This act] applies to actions taken by the department of public health and human services to remove a child from the home of a custodial parent pursuant to Title 41, chapter 3, occurring on or after [the effective date of this act].

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