

HOUSE BILL NO. 549

INTRODUCED BY K. DUDIK

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CHILD SEX TRAFFICKING LAWS; REVISING THE DEFINITION OF "CHILD ABUSE AND NEGLECT" TO INCLUDE CHILD SEX TRAFFICKING; ENSURING THAT VICTIMS OF CHILD SEX TRAFFICKING RECEIVE ACCESS TO SPECIALIZED SERVICES; AND AMENDING SECTIONS 41-3-102 AND 45-5-709, MCA."

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

**Section 1.** Section 41-3-102, MCA, is amended to read:

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

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

(i) 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;

(ii) 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;

(iii) 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

(iv) the voluntary surrender, as defined in 40-6-402, by a parent of a newborn who is no more than 30 days old to an emergency services provider, as defined in 40-6-402.

(b) The terms do not include the voluntary surrender of a child to the department solely because of parental inability to access publicly funded services.

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

(a) the child's parent, guardian, or 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.

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

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

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

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

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

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

16 (i) actual physical or psychological harm to a child;

17 (ii) substantial risk of physical or psychological harm to a child; or

18 (iii) abandonment.

19 (b) (i) The term includes:

20 (A) actual physical or psychological harm to a child or substantial risk of physical or psychological harm  
21 to a child by the acts or omissions of a person responsible for the child's welfare; ~~or~~

22 (B) exposing a child to the criminal distribution of dangerous drugs, as prohibited by 45-9-101, the  
23 criminal production or manufacture of dangerous drugs, as prohibited by 45-9-110, or the operation of an unlawful  
24 clandestine laboratory, as prohibited by 45-9-132; or

25 (C) any form of child sex trafficking or human trafficking, regardless of the child's relationship to the  
26 perpetrator of the abuse.

27 (ii) For the purposes of this subsection (7), "dangerous drugs" means the compounds and substances  
28 described as dangerous drugs in Schedules I through IV in Title 50, chapter 32, part 2.

29 (c) In proceedings under this chapter in which the federal Indian Child Welfare Act is applicable, this term  
30 has the same meaning as "serious emotional or physical damage to the child" as used in 25 U.S.C. 1912(f).

1 (d) The term does not include self-defense, defense of others, or action taken to prevent the child from  
2 self-harm that does not constitute physical or psychological harm to a child.

3 (8) "Concurrent planning" means to work toward reunification of the child with the family while at the  
4 same time developing and implementing an alternative permanent plan.

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

6 (10) "Family group decisionmaking meeting" means a meeting that involves family members in either  
7 developing treatment plans or making placement decisions, or both.

8 (11) "Indian child" means any unmarried person who is under 18 years of age and who is either:

9 (a) a member of an Indian tribe; or

10 (b) eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

11 (12) "Indian child's tribe" means:

12 (a) the Indian tribe in which an Indian child is a member or eligible for membership; or

13 (b) in the case of an Indian child who is a member of or eligible for membership in more than one Indian  
14 tribe, the Indian tribe with which the Indian child has the more significant contacts.

15 (13) "Indian custodian" means any Indian person who has legal custody of an Indian child under tribal  
16 law or custom or under state law or to whom temporary physical care, custody, and control have been transferred  
17 by the child's parent.

18 (14) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians  
19 recognized by:

20 (a) the state of Montana; or

21 (b) the United States secretary of the interior as being eligible for the services provided to Indians or  
22 because of the group's status as Indians, including any Alaskan native village as defined in federal law.

23 (15) "Limited emancipation" means a status conferred on a youth by a court in accordance with 41-1-503  
24 under which the youth is entitled to exercise some but not all of the rights and responsibilities of a person who  
25 is 18 years of age or older.

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

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

30 (18) "Permanent placement" means reunification of the child with the child's parent, adoption, placement

1 with a legal guardian, placement with a fit and willing relative, or placement in another planned permanent living  
2 arrangement until the child reaches 18 years of age.

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

7 (20) "Physical neglect" means either failure to provide basic necessities, including but not limited to  
8 appropriate and adequate nutrition, protective shelter from the elements, and appropriate clothing related to  
9 weather conditions, or failure to provide cleanliness and general supervision, or both, or exposing or allowing the  
10 child to be exposed to an unreasonable physical or psychological risk to the child.

11 (21) (a) "Physical or psychological harm to a child" means the harm that occurs whenever the parent or  
12 other person responsible for the child's welfare:

13 (i) inflicts or allows to be inflicted upon the child physical abuse, physical neglect, or psychological abuse  
14 or neglect;

15 (ii) commits or allows sexual abuse or exploitation of the child;

16 (iii) induces or attempts to induce a child to give untrue testimony that the child or another child was  
17 abused or neglected by a parent or other person responsible for the child's welfare;

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

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

23 (vi) abandons the child.

24 (b) The term does not include a youth not receiving supervision solely because of parental inability to  
25 control the youth's behavior.

26 (22) (a) "Protective services" means services provided by the department:

27 (i) to enable a child alleged to have been abused or neglected to remain safely in the home;

28 (ii) to enable a child alleged to have been abused or neglected who has been removed from the home  
29 to safely return to the home; or

30 (iii) to achieve permanency for a child adjudicated as a youth in need of care when circumstances and

1 the best interests of the child prevent reunification with parents or a return to the home.

2 (b) The term includes emergency protective services provided pursuant to 41-3-301, voluntary protective  
3 services provided pursuant to 41-3-302, and court-ordered protective services provided pursuant to parts 4 and  
4 6 of this chapter.

5 (23) (a) "Psychological abuse or neglect" means severe maltreatment through acts or omissions that are  
6 injurious to the child's emotional, intellectual, or psychological capacity to function, including the commission of  
7 acts of violence against another person residing in the child's home.

8 (b) The term may not be construed to hold a victim responsible for failing to prevent the crime against  
9 the victim.

10 (24) "Qualified expert witness" as used in cases involving an Indian child in proceedings subject to the  
11 federal Indian Child Welfare Act means:

12 (a) a member of the Indian child's tribe who is recognized by the tribal community as knowledgeable in  
13 tribal customs as they pertain to family organization and child-rearing practices;

14 (b) a lay expert witness who has substantial experience in the delivery of child and family services to  
15 Indians and extensive knowledge of prevailing social and cultural standards and child-rearing practices within the  
16 Indian child's tribe; or

17 (c) a professional person who has substantial education and experience in providing services to children  
18 and families and who possesses significant knowledge of and experience with Indian culture, family structure,  
19 and child-rearing practices in general.

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

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

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

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

30 (28) "Sexual exploitation" means allowing, permitting, or encouraging a child to engage in a prostitution

1 offense, as described in 45-5-601 through 45-5-603, or allowing, permitting, or encouraging sexual abuse of  
2 children as described in 45-5-625.

3 (29) (a) "Social worker" means an employee of the department who, before the employee's field  
4 assignment, has been educated or trained in a program of social work or a related field that includes cognitive  
5 and family systems treatment or who has equivalent verified experience or verified training in the investigation  
6 of child abuse, neglect, and endangerment.

7 (b) This definition does not apply to any provision of this code that is not in this chapter.

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

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

14 (32) "Unsubstantiated" means that after an investigation, the investigator was unable to determine by a  
15 preponderance of the evidence that the reported abuse, neglect, or exploitation has occurred.

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

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

22 (i) the infant is chronically and irreversibly comatose;

23 (ii) the provision of treatment would:

24 (A) merely prolong dying;

25 (B) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or

26 (C) otherwise be futile in terms of the survival of the infant; or

27 (iii) the provision of treatment would be virtually futile in terms of the survival of the infant and the  
28 treatment itself under the circumstances would be inhumane. For purposes of this subsection (33), "infant" means  
29 an infant less than 1 year of age or an infant 1 year of age or older who has been continuously hospitalized since  
30 birth, who was born extremely prematurely, or who has a long-term disability. The reference to less than 1 year

1 of age may not be construed to imply that treatment should be changed or discontinued when an infant reaches  
2 1 year of age or to affect or limit any existing protections available under state laws regarding medical neglect  
3 of children 1 year of age or older.

4 (34) "Youth in need of care" means a youth who has been adjudicated or determined, after a hearing,  
5 to be or to have been abused, neglected, or abandoned."  
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7 **Section 2.** Section 45-5-709, MCA, is amended to read:

8 **"45-5-709. Immunity of child.** (1) A person is not criminally liable or subject to proceedings under Title  
9 41, chapter 5, for prostitution, promoting prostitution, or other nonviolent offenses if the person was a child at the  
10 time of the offense and committed the offense as a direct result of being a victim of human trafficking.

11 (2) A person who has engaged in commercial sexual activity is not criminally liable or subject to  
12 proceedings under Title 41, chapter 5, for prostitution or promoting prostitution if the person was a child at the  
13 time of the offense.

14 (3) A child who under subsection (1) or (2) is not subject to criminal liability or proceedings under Title  
15 41, chapter 5, is presumed to be a youth in need of care under Title 41, chapter 3, and is entitled to specialized  
16 services and care, which may include access to protective shelter, food, clothing, medical care, counseling, and  
17 crisis intervention services, if appropriate.

18 (4) This section does not apply in a prosecution under 45-5-601 or a proceeding under Title 41, chapter  
19 5, for patronizing a prostitute."  
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