

HOUSE BILL NO. 700

INTRODUCED BY D. LENZ

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A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A MANDATORY CONTINUING EDUCATION PROGRAM FOR CHILD PROTECTIVE SOCIAL WORKERS; PROVIDING RULEMAKING AUTHORITY; PROVIDING AN APPROPRIATION; AMENDING SECTION 41-3-102, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

NEW SECTION. **Section 1. Mandatory continuing education for child protective social workers.**

(1) The department shall develop and administer a program of continuing education for child protective social workers. Each child protective social worker shall complete 20 hours of continuing education per year, which:

- (a) must include education or training in:
 - (i) ethics;
 - (ii) recent developments in law or rule;
 - (iii) best practices and professional conduct; and
 - (iv) law enforcement; and
- (b) may include education or training in:
 - (i) child welfare;
 - (ii) trauma;
 - (iii) sexual trauma;
 - (iv) secondary trauma;
 - (v) crisis intervention training; and
 - (vi) evidence-based practices for family preservation and strengthening.

(2) Any child protective social worker who fails to complete 20 hours of continuing education per year must be suspended from field duties until the child protective social worker has completed the required 20 hours.

(3) During a child protective social worker's first year of employment, hours spent in initial training and orientation may be counted toward the 20-hour continuing education requirement regardless of whether the training and orientation covers the same subjects as those listed in subsection (1).

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Section 2. 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.

(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, because of 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

1 ensure that medical care is provided to the child when there is imminent substantial risk of serious harm to the
2 child.

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

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

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

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

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

9 (iii) abandonment.

10 (b) (i) The term includes:

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

13 (B) exposing a child to the criminal distribution of dangerous drugs, as prohibited by 45-9-101, the
14 criminal production or manufacture of dangerous drugs, as prohibited by 45-9-110, or the operation of an unlawful
15 clandestine laboratory, as prohibited by 45-9-132.

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

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

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

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

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

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

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

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

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

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

- 1 (a) the Indian tribe in which an Indian child is a member or eligible for membership; or
- 2 (b) in the case of an Indian child who is a member of or eligible for membership in more than one Indian
- 3 tribe, the Indian tribe with which the Indian child has the more significant contacts.
- 4 (13) "Indian custodian" means any Indian person who has legal custody of an Indian child under tribal
- 5 law or custom or under state law or to whom temporary physical care, custody, and control have been transferred
- 6 by the child's parent.
- 7 (14) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians
- 8 recognized by:
- 9 (a) the state of Montana; or
- 10 (b) the United States secretary of the interior as being eligible for the services provided to Indians or
- 11 because of the group's status as Indians, including any Alaskan native village as defined in federal law.
- 12 (15) "Limited emancipation" means a status conferred on a youth by a court in accordance with 41-1-503
- 13 under which the youth is entitled to exercise some but not all of the rights and responsibilities of a person who
- 14 is 18 years of age or older.
- 15 (16) "Parent" means a biological or adoptive parent or stepparent.
- 16 (17) "Parent-child legal relationship" means the legal relationship that exists between a child and the
- 17 child's birth or adoptive parents, as provided in Title 40, chapter 6, part 2, unless the relationship has been
- 18 terminated by competent judicial decree as provided in 40-6-234, Title 42, or part 6 of this chapter.
- 19 (18) "Permanent placement" means reunification of the child with the child's parent, adoption, placement
- 20 with a legal guardian, placement with a fit and willing relative, or placement in another planned permanent living
- 21 arrangement until the child reaches 18 years of age.
- 22 (19) "Physical abuse" means an intentional act, an intentional omission, or gross negligence resulting
- 23 in substantial skin bruising, internal bleeding, substantial injury to skin, subdural hematoma, burns, bone
- 24 fractures, extreme pain, permanent or temporary disfigurement, impairment of any bodily organ or function, or
- 25 death.
- 26 (20) "Physical neglect" means either failure to provide basic necessities, including but not limited to
- 27 appropriate and adequate nutrition, protective shelter from the elements, and appropriate clothing related to
- 28 weather conditions, or failure to provide cleanliness and general supervision, or both, or exposing or allowing the
- 29 child to be exposed to an unreasonable physical or psychological risk to the child.
- 30 (21) (a) "Physical or psychological harm to a child" means the harm that occurs whenever the parent or

1 other person responsible for the child's welfare:

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

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

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

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

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

12 (vi) abandons the child.

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

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

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

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

19 (iii) to achieve permanency for a child adjudicated as a youth in need of care when circumstances and
20 the best interests of the child prevent reunification with parents or a return to the home.

21 (b) The term includes emergency protective services provided pursuant to 41-3-301, voluntary protective
22 services provided pursuant to 41-3-302, and court-ordered protective services provided pursuant to parts 4 and
23 6 of this chapter.

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

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

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

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

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

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

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

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

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

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

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

22 (29) (a) "Social worker" means an employee of the department who;

23 (i) before the employee's field assignment, has been educated or trained in a program of social work or
24 a related field that includes cognitive and family systems treatment or who has equivalent verified experience or
25 verified training in the investigation of child abuse, neglect, and endangerment; and

26 (ii) during the course of the employee's employment, completes continuing education training as required
27 by the department.

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

29 (30) "Treatment plan" means a written agreement between the department and the parent or guardian
30 or a court order that includes action that must be taken to resolve the condition or conduct of the parent or

1 guardian that resulted in the need for protective services for the child. The treatment plan may involve court
2 services, the department, and other parties, if necessary, for protective services.

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

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

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

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

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

14 (ii) the provision of treatment would:

15 (A) merely prolong dying;

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

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

18 (iii) the provision of treatment would be virtually futile in terms of the survival of the infant and the
19 treatment itself under the circumstances would be inhumane. For purposes of this subsection (33), "infant" means
20 an infant less than 1 year of age or an infant 1 year of age or older who has been continuously hospitalized since
21 birth, who was born extremely prematurely, or who has a long-term disability. The reference to less than 1 year
22 of age may not be construed to imply that treatment should be changed or discontinued when an infant reaches
23 1 year of age or to affect or limit any existing protections available under state laws regarding medical neglect
24 of children 1 year of age or older.

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

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28 **NEW SECTION. Section 3. Appropriation.** (1) There is appropriated \$500,000 from the general fund
29 to the department of public health and human services for the biennium beginning July 1, 2019, for the purpose
30 of developing and administering the continuing education program for social workers established in [section 1].

1 The appropriation is to be considered as part of the ongoing base for the next legislative session. Any
2 unexpended portion of this appropriation reverts to the general fund.

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4 NEW SECTION. **Section 4. Codification instruction.** [Section 1] is intended to be codified as an
5 integral part of Title 41, chapter 3, part 1, and the provisions of Title 41, chapter 3, part 1, apply to [section 1].

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7 NEW SECTION. **Section 5. Effective date.** [This act] is effective July 1, 2019.

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