

SENATE BILL NO. 289

INTRODUCED BY D. SANDS

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4 A BILL FOR AN ACT ENTITLED: "AN ACT ~~CREATING A TEMPORARY GRANT PROGRAM TO PROVIDE~~
5 PROVIDING PREGNANT WOMEN SEEKING ASSISTANCE WITH A SUBSTANCE USE DISORDER WITH THE
6 OPPORTUNITY TO ENTER INTO CHEMICAL DEPENDENCY AND PRENATAL SUPPORT PLANS TO OBTAIN
7 TREATMENT AND AVOID SAFE HARBOR FROM PROSECUTION AND MANDATORY ABUSE AND NEGLECT
8 REPORTING; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTION SECTIONS 41-3-201 AND
9 50-32-609, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE."

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11 WHEREAS, the number of Montana children in foster care is increasing sharply; and
12 ~~WHEREAS, over half of Montana children in foster care are removed from the home for reasons related~~
13 ~~to parental substance abuse; and~~
14 ~~WHEREAS, the percentage of infants having experienced prenatal drug exposure is increasing; and~~
15 ~~WHEREAS, pregnancy provides a unique intervention opportunity for treatment of substance use~~
16 ~~disorders and prevention of family separation.~~

17
18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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20 ~~NEW SECTION. Section 1. Purpose.~~ The purpose of [sections 1 through 5] is to promote the
21 development of chemical dependency and prenatal support plans to provide a pregnant woman who is dealing
22 with a substance use disorder with evaluation, treatment, and support services without fear of being criminalized
23 or separated from her child or children.

24
25 ~~NEW SECTION. Section 2. Definitions.~~ As used in [sections 1 through 5], the following definitions
26 apply:

- 27 ~~(1) "Department" means the department of public health and human services provided for in 2-15-2201.~~
28 ~~(2) "Local public health unit" means a county health department, tribal health department, or prenatal~~
29 ~~health care provider.~~

30



1 ~~NEW SECTION. Section 3. Rulemaking authority.~~ The department shall adopt rules necessary to
 2 administer [sections 1 through 5]. The rules may include but are not limited to:

3 ~~(1) eligibility requirements for local public health units applying for grants;~~

4 ~~(2) criteria for determining the amount of funding granted; and~~

5 ~~(3) reporting procedures for local public health units receiving grants, including how funding was spent
 6 and the outcomes generated by the program.~~

7
 8 ~~NEW SECTION. Section 4. Grant program -- reporting requirements.~~ (1) Subject to appropriation
 9 by the legislature or through grant or other funding obtained by the department, the department shall allocate the
 10 money received to a division of the department responsible for prevention and treatment of addictive and mental
 11 disorders. The money must be used to provide grants to local public health units that submit a proposal in
 12 accordance with [section 5].

13 ~~(2) The department shall issue a report to the 2021 joint appropriations subcommittee on health and
 14 human services by the end of the biennium beginning July 1, 2019, regarding the outcomes of the grants and
 15 opportunities for federal and private funding partnerships in the area of prevention and treatment of substance
 16 use disorders during pregnancy.~~

17
 18 ~~NEW SECTION. Section 5. Grant application process -- chemical dependency and prenatal
 19 support plans.~~ (1) In order to receive a grant under [section 4], a local public health unit shall submit to the
 20 department a proposal for a voluntary program to enter into chemical dependency and prenatal support plans
 21 with pregnant women experiencing a substance use disorder.

22 ~~(2) A woman participating in a chemical dependency and prenatal support plan is entitled to:~~

23 ~~(a) evaluation of the pregnant woman by a licensed addiction counselor, an advanced practice registered
 24 nurse with training in chemical dependency, or another appropriate professional;~~

25 ~~(b) development of an individualized treatment plan, including referrals to other service providers; and~~

26 ~~(c) in-home services aimed at supporting the woman throughout her pregnancy and treatment for her
 27 substance use disorder.~~

28 ~~(3) Local public health units may elect whether to provide the services listed in subsection (2) in-house,
 29 to contract with outside entities, or to provide a combination of in-house and contract services.~~

30 ~~(4) Unsuccessful completion of a chemical dependency and prenatal support plan does not result in a~~

1 ~~mandatory reporting obligation not otherwise existing under the laws of this state:~~

2 ~~——— (5) A pregnant woman participating in a chemical dependency and prenatal support plan retains all~~
 3 ~~privacy rights afforded under state law or the federal Health Insurance Portability and Accountability Act of 1996,~~
 4 ~~45 CFR, parts 160 and 164.~~

5

6 **SECTION 1. SECTION 41-3-201, MCA, IS AMENDED TO READ:**

7 **"41-3-201. Reports.** (1) When the professionals and officials listed in subsection (2) know or have
 8 reasonable cause to suspect, as a result of information they receive in their professional or official capacity, that
 9 a child is abused or neglected by anyone regardless of whether the person suspected of causing the abuse or
 10 neglect is a parent or other person responsible for the child's welfare, they shall report the matter promptly to the
 11 department of public health and human services.

12 (2) Professionals and officials required to report are:

13 (a) a physician, resident, intern, or member of a hospital's staff engaged in the admission, examination,
 14 care, or treatment of persons;

15 (b) a nurse, osteopath, chiropractor, podiatrist, medical examiner, coroner, dentist, optometrist, or any
 16 other health or mental health professional;

17 (c) religious healers;

18 (d) school teachers, other school officials, and employees who work during regular school hours;

19 (e) a social worker, operator or employee of any registered or licensed day-care or substitute care
 20 facility, staff of a resource and referral grant program organized under 52-2-711 or of a child and adult food care
 21 program, or an operator or employee of a child-care facility;

22 (f) a foster care, residential, or institutional worker;

23 (g) a peace officer or other law enforcement official;

24 (h) a member of the clergy, as defined in 15-6-201(2)(b);

25 (i) a guardian ad litem or a court-appointed advocate who is authorized to investigate a report of alleged
 26 abuse or neglect; or

27 (j) an employee of an entity that contracts with the department to provide direct services to children.

28 (3) A professional listed in subsection (2)(a) or (2)(b) involved in the delivery or care of an infant shall
 29 report to the department any infant known to the professional to be affected by a dangerous drug, as defined in
 30 50-32-101, unless the infant's mother is seeking or receiving evaluation, treatment, or support services for a

1 substance use disorder.

2 (4) Any person may make a report under this section if the person knows or has reasonable cause to
3 suspect that a child is abused or neglected.

4 (5) (a) When a professional or official required to report under subsection (2) makes a report, the
5 department may share information with:

6 (i) that professional or official;

7 (ii) other individuals with whom the professional or official works in an official capacity if the individuals
8 are part of a team that responds to matters involving the child or the person about whom the report was made
9 and the professional or official has asked that the information be shared with the individuals; or

10 (iii) the child abuse and neglect review commission established in 2-15-2019.

11 (b) The department may provide information in accordance with 41-3-202(8) and also share information
12 about the investigation, limited to its outcome and any subsequent action that will be taken on behalf of the child
13 who is the subject of the report.

14 (c) Individuals who receive information pursuant to this subsection (5) shall maintain the confidentiality
15 of the information as required by 41-3-205.

16 (6) (a) Except as provided in subsection (6)(b) or (6)(c), a person listed in subsection (2) may not refuse
17 to make a report as required in this section on the grounds of a physician-patient or similar privilege.

18 (b) A member of the clergy or a priest is not required to make a report under this section if:

19 (i) the knowledge or suspicion of the abuse or neglect came from a statement or confession made to the
20 member of the clergy or the priest in that person's capacity as a member of the clergy or as a priest;

21 (ii) the statement was intended to be a part of a confidential communication between the member of the
22 clergy or the priest and a member of the church or congregation; and

23 (iii) the person who made the statement or confession does not consent to the disclosure by the member
24 of the clergy or the priest.

25 (c) A member of the clergy or a priest is not required to make a report under this section if the
26 communication is required to be confidential by canon law, church doctrine, or established church practice.

27 (7) The reports referred to under this section must contain:

28 (a) the names and addresses of the child and the child's parents or other persons responsible for the
29 child's care;

30 (b) to the extent known, the child's age and the nature and extent of the child's injuries, including any

1 evidence of previous injuries;

2 (c) any other information that the maker of the report believes might be helpful in establishing the cause
3 of the injuries or showing the willful neglect and the identity of the person or persons responsible for the injury
4 or neglect; and

5 (d) the facts that led the person reporting to believe that the child has suffered injury or injuries or willful
6 neglect, within the meaning of this chapter. (Subsection (5)(a)(iii) terminates September 30, 2021--sec. 12, Ch.
7 235, L. 2017.)"

8

9 **Section 2.** Section 50-32-609, MCA, is amended to read:

10 **"50-32-609. Good Samaritan protections.** (1) The provisions of 45-5-626, 45-9-102, 45-9-107, and
11 45-10-103 do not apply to:

12 (a) a person who, acting in good faith, seeks medical assistance for another person who is experiencing
13 an actual or reasonably perceived drug-related overdose if the evidence supporting an arrest, charge, or
14 prosecution was obtained as a result of the person's seeking medical assistance for another person; ~~and~~ OR

15 (b) a person who experiences a drug-related overdose and is in need of medical assistance if the
16 evidence supporting an arrest, charge, or prosecution was obtained as a result of the drug-related overdose and
17 the need for medical assistance; ~~and~~.

18 ~~(c)(2) THE PROVISIONS OF 45-9-102, 45-9-107, AND 45-10-103 DO NOT APPLY TO a pregnant woman~~
19 ~~participating or considering participating in a chemical dependency and prenatal support plan pursuant to~~
20 ~~[sections 1 through 5] SEEKING OR RECEIVING EVALUATION, TREATMENT, OR SUPPORT SERVICES FOR A SUBSTANCE USE~~
21 ~~DISORDER.~~

22 ~~(2)(3)~~ (3) A person's pretrial release, probation, furlough, supervised release, or parole may not be revoked
23 based on an incident for which the person would be immune from arrest, charge, or prosecution under this
24 section.

25 ~~(3)(4)~~ (4) A person's act of providing first aid or other medical assistance to a person who is experiencing
26 an actual or reasonably perceived drug-related overdose may be used as a mitigating factor in a criminal
27 prosecution for which immunity is not provided under this section.

28 ~~(4)(5)~~ (5) This section may not be construed to:

29 (a) bar the admissibility of evidence obtained in connection with the investigation and prosecution of
30 other crimes or violations committed by a person who otherwise qualified for limited immunity under this section;

1 or

2 (b) limit, modify, or remove immunity from liability currently available to public entities, public employees,
3 or prosecutors or by law; or

4 (c) create a new cause of action or other source of criminal liability for a pregnant woman with a
5 substance use disorder who does not participate in or does not successfully complete a chemical dependency
6 and prenatal support plan SEEK OR RECEIVE EVALUATION, TREATMENT, OR SUPPORT SERVICES FOR A SUBSTANCE USE
7 DISORDER."

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9 NEW SECTION. Section 3. Notification to tribal governments. The secretary of state shall send a
10 copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell
11 Chippewa tribe.

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13 NEW SECTION. Section 4. Effective date. [This act] is effective July 1, 2019.

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15 ~~NEW SECTION. Section 9. Termination. [This act] terminates June 30, 2021.~~

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