

1 SENATE BILL NO. 259

2 INTRODUCED BY T. MANZELLA, J. ELLSWORTH, C. SMITH, M. BINKLEY, J. HINKLE, R. MARSHALL, J.

3 TREBAS

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5 A BILL FOR AN ACT ENTITLED: "AN ACT RESTRICTING A GOVERNMENTAL ENTITY'S ABILITY TO
6 INTERFERE WITH PARENTAL RIGHTS; ESTABLISHING A CAUSE OF ACTION FOR INTERFERENCE
7 WITH PARENTAL RIGHTS; AND PROVIDING AN APPLICABILITY DATE."

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9 WHEREAS, the interests and role of parents in the care, custody, and control of their children are both
10 implicit in the concept of ordered liberty and deeply rooted in our nation's history and tradition; and

11 WHEREAS, the right to parent is among the unalienable rights retained by the people under the United
12 States Constitution; and

13 WHEREAS, the right to parent includes the high duty and right to nurture and to direct their children's
14 destiny, including their upbringing, moral or religious training, health care, and education; and

15 WHEREAS, the State of Montana has independent authority to protect parents' fundamental right to
16 nurture and direct their children's destiny, including their upbringing, moral or religious training, health care, and
17 education; and

18 WHEREAS, parental rights are as fundamental to the human condition as to be deemed inalienable.
19 Termination of parental rights equals or exceeds the detriment of criminal sanctions. Therefore, parents whose
20 parental rights are subject to termination must have the right to fundamental due process in all cases.

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

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24 **NEW SECTION. Section 1. Interference with fundamental parental rights restricted -- cause of**
25 **action.** (1) A governmental entity may not interfere with the fundamental right of parents to direct the
26 upbringing, education, health care, and mental health of their children.

27 (2) This section may not be construed as invalidating the provisions of Title 41, chapter 3, or
28 modifying the burden of proof at any stage of the proceedings under Title 41, chapter 3.

1 (3) If a parent's fundamental rights protected by this section are violated, a parent may assert that
2 violation as a claim or defense in a judicial proceeding and may obtain appropriate relief against the
3 governmental entity. If the parent prevails in an action against the governmental entity as provided in this
4 subsection, the parent is entitled to reasonable attorney fees and costs.

5 (4) As used in this section, "governmental entity" has the meaning provided in 2-9-101.
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7 NEW SECTION. Section 2. Codification instruction. [Section 1] is intended to be codified as a new
8 part in Title 40, chapter 6, and the provisions of Title 40, chapter 6, apply to [section 1].
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10 NEW SECTION. Section 3. Applicability. [This act] applies to an interference with parental rights
11 existing on or after [the effective date of this act].
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