

SENATE BILL NO. 117

INTRODUCED BY R. WEBB

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS REGARDING THE DELEGATION OF POWERS  
5 OVER A CHILD BY A PARENT OR LEGAL GUARDIAN BY EXECUTING A POWER OF ATTORNEY;  
6 PROVIDING THAT AN EXECUTION OF A POWER OF ATTORNEY DOES NOT CONSTITUTE  
7 ABANDONMENT FOR CHILD ABUSE AND NEGLECT PURPOSES; PROVIDING THAT A PERSON OR  
8 ENTITY INVOLVED IN AN EXECUTION OF A POWER OF ATTORNEY IS NOT SUBJECT TO CHILD  
9 PLACEMENT AND YOUTH CARE FACILITY LICENSURE LAWS; AND AMENDING SECTIONS 41-3-102,  
10 52-2-602, 52-8-101, 52-8-103, AND 72-5-103, MCA."

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

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

15 **"41-3-102. Definitions.** As used in this chapter, the following definitions apply:

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

17 (i) leaving a child under circumstances that make reasonable the belief that the parent does not intend  
18 to resume care of the child in the future;

19 (ii) willfully surrendering physical custody for a period of 6 months and during that period not manifesting  
20 to the child and the person having physical custody of the child a firm intention to resume physical custody or to  
21 make permanent legal arrangements for the care of the child;

22 (iii) that the parent is unknown and has been unknown for a period of 90 days and that reasonable efforts  
23 to identify and locate the parent have failed; or

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

26 (b) The terms do not include:

27 (i) the execution of a power of attorney pursuant to 72-5-103 unless the parent or guardian fails to  
28 resume physical custody of the child or execute a new power of attorney after the power of attorney has expired;

29 or

30 (ii) the voluntary surrender of a child to the department solely because of parental inability to access

1 publicly funded services.

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

3 (a) the child's parent, guardian, or foster parent or an adult who resides in the same home in which the  
4 child resides;

5 (b) a person providing care in a day-care facility;

6 (c) an employee of a public or private residential institution, facility, home, or agency; or

7 (d) any other person responsible for the child's welfare in a residential setting.

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

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

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

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

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

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

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

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

25 (iii) abandonment.

26 (b) (i) The term includes:

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

29 (B) exposing a child to the criminal distribution of dangerous drugs, as prohibited by 45-9-101, the  
30 criminal production or manufacture of dangerous drugs, as prohibited by 45-9-110, or the operation of an unlawful

1 clandestine laboratory, as prohibited by 45-9-132.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (a) the state of Montana; or

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

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

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

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

5 (18) "Permanent placement" means reunification of the child with the child's parent, adoption, placement  
6 with a legal guardian, placement with a fit and willing relative, or placement in another planned permanent living  
7 arrangement until the child reaches 18 years of age.

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

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

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

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

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

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

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

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

28 (vi) abandons the child.

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

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

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

3 (ii) to enable a child alleged to have been abused or neglected who has been removed from the home

4 to safely return to the home; or

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

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

7 (b) The term includes emergency protective services provided pursuant to 41-3-301, voluntary protective

8 services provided pursuant to 41-3-302, and court-ordered protective services provided pursuant to parts 4 and

9 6 of this chapter.

10 (23) (a) "Psychological abuse or neglect" means severe maltreatment through acts or omissions that are

11 injurious to the child's emotional, intellectual, or psychological capacity to function, including the commission of

12 acts of violence against another person residing in the child's home.

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

14 the victim.

15 (24) "Qualified expert witness" as used in cases involving an Indian child in proceedings subject to the

16 federal Indian Child Welfare Act means:

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

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

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

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

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

30 (27) (a) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent,

1 indecent exposure, sexual abuse, ritual abuse of a minor, or incest, as described in Title 45, chapter 5.

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

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

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

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

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

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

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

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

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

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

28 (ii) the provision of treatment would:

29 (A) merely prolong dying;

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

1 (C) otherwise be futile in terms of the survival of the infant; or  
 2 (iii) the provision of treatment would be virtually futile in terms of the survival of the infant and the  
 3 treatment itself under the circumstances would be inhumane. For purposes of this subsection (33), "infant" means  
 4 an infant less than 1 year of age or an infant 1 year of age or older who has been continuously hospitalized since  
 5 birth, who was born extremely prematurely, or who has a long-term disability. The reference to less than 1 year  
 6 of age may not be construed to imply that treatment should be changed or discontinued when an infant reaches  
 7 1 year of age or to affect or limit any existing protections available under state laws regarding medical neglect  
 8 of children 1 year of age or older.

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

11

12 **Section 2.** Section 52-2-602, MCA, is amended to read:

13 **"52-2-602. Definitions.** For the purposes of this part, the following definitions apply:

14 (1) "Child-care agency" means a youth care facility in which substitute care is provided to 13 or more  
 15 children or youth.

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

17 (3) "Foster child" means a person under 18 years of age who has been placed by the department in a  
 18 youth care facility.

19 (4) "Kinship foster home" means a youth care facility in which substitute care is provided to one to six  
 20 children or youth other than the kinship parent's own children, stepchildren, or wards. The substitute care may  
 21 be provided by any of the following:

22 (a) a member of the child's extended family;

23 (b) a member of the child's or family's tribe;

24 (c) the child's godparents;

25 (d) the child's stepparents; or

26 (e) a person to whom the child, child's parents, or family ascribe a family relationship and with whom the  
 27 child has had a significant emotional tie that existed prior to the department's involvement with the child or family.

28 (5) "Person" means any individual, partnership, voluntary association, or corporation.

29 (6) "Respite care" means the provision of temporary, short-term supervision or care of a foster child, in  
 30 an emergency or on an intermittent basis, to provide foster parents relief from the daily care requirements of a

1 foster child whose mental or physical condition requires special or intensive supervision or care. Respite care  
2 includes but is not limited to homemaker services, child care, and emergency care either in the home or out of  
3 the home.

4 (7) "Respite care provider" means a person who meets the qualifications and requirements established  
5 by the department to provide respite care under 52-2-627.

6 (8) "Substitute care" means full-time care of a youth in a residential setting who is placed by the  
7 department, another state agency, or a licensed child-placing agency. Individuals who provide care to youth who  
8 are recipients of services provided through the department's developmental disabilities, mental health, or  
9 medicaid home and community-based services waiver program are also considered to be providing substitute  
10 care. This part does not apply when a person accepts the care and custody of a child on a temporary basis,  
11 including temporary placements made under a power of attorney executed pursuant to 72-5-103, as an  
12 accommodation for the parent or parents, guardian, or relative of the child.

13 (9) "Transitional living program" means a program with the goal of self-sufficiency in which supervision  
14 of the living arrangement is provided for a youth who is 16 years of age or older and under 21 years of age.

15 (10) "Youth assessment center" has the meaning provided in 41-5-103.

16 (11) (a) "Youth care facility" means a facility that is licensed by the department or by the appropriate  
17 licensing authority in another state and in which facility substitute care is provided to youth. The term includes  
18 youth foster homes, kinship foster homes, youth group homes, youth shelter care facilities, child-care agencies,  
19 transitional living programs, and youth assessment centers.

20 (b) The term does not include a home or facility that provides temporary care for a child who is the  
21 subject of a power of attorney executed pursuant to 72-5-103.

22 (12) "Youth foster home" means a youth care facility in which substitute care is provided to one to six  
23 children or youth other than the foster parents' own children, stepchildren, or wards.

24 (13) "Youth group home" means a youth care facility in which substitute care is provided to 7 to 12  
25 children or youth.

26 (14) "Youth shelter care facility" means a youth care facility that regularly receives children under  
27 temporary conditions until the court, probation office, department, or other appropriate social services agency has  
28 made other provisions for the children's care."  
29

30 **Section 3.** Section 52-8-101, MCA, is amended to read:



1           **"52-8-101. Definitions.** As used in this part, the following definitions apply:

2           (1) "Person" includes any individual, partnership, voluntary association, or corporation.

3           (2) (a) "Placement activities" means any of the following:

4           ~~(a)~~(i) placement of a child for adoption or foster care;

5           ~~(b)~~(ii) arranging or providing short-term foster care for a child pending an adoptive placement; or

6           ~~(c)~~(iii) facilitating placement of a child by maintaining a list in any form of birth parents or prospective  
7 adoptive or foster parents.

8           (b) The term does not include assisting a parent or guardian in delegating parental or legal authority  
9 pursuant to a power of attorney authorized under 72-5-103, including providing assistance in identifying an  
10 appropriate placement for a child or providing services or resources to support a child, a parent or guardian, or  
11 a person to whom parental or legal authority has been delegated.

12           (3) "Soliciting" means to request, offer, promote, or refer, either directly or indirectly through  
13 correspondence, advertising, or other method, a potential adoptive or foster parent or couple, birth parent or  
14 parents, or placement of a child by a birth parent."

15

16           **Section 4.** Section 52-8-103, MCA, is amended to read:

17           **"52-8-103. License required -- term of license -- no fee charged.** (1) Only an entity holding a current  
18 child-placing agency license issued by the department may act as an agency for the purpose of:

19           (a) procuring or selecting proposed adoptive or foster homes;

20           (b) placing children in proposed adoptive or foster homes;

21           (c) soliciting persons to adopt or foster children or arranging for persons to adopt or foster children;

22           (d) soliciting persons to relinquish children or place children in potential adoptive or foster homes; or

23           (e) engaging in placement activities.

24           (2) Licenses are valid for 1 year after issuance. A fee may not be charged for a license.

25           (3) This section does not apply to an entity that provides services described in 52-8-101(2)(b)."

26

27           **Section 5.** Section 72-5-103, MCA, is amended to read:

28           **"72-5-103. Delegation of powers by parent or guardian.** (1) A parent or a guardian of a minor or  
29 incapacitated person, by a properly executed power of attorney, may delegate to another person, for a period not  
30 exceeding 6 months, any powers regarding care, custody, or property of the minor ~~child or ward~~ or incapacitated

1 person, except the power to consent to marriage or adoption of a minor ~~ward~~.

2 (2) The 6-month limitation provided in subsection (1) does not apply to:

3 (a) a member of the Montana national guard who serves for more than 180 continuous days on duty  
4 pursuant to Title 10 or Title 32 of the United States Code or on state military duty as defined in 10-1-1003;

5 (b) a member of the active duty military forces of the United States; or

6 (c) a member of the federal reserves who serves for more than 180 continuous days on duty pursuant  
7 to Title 10 of the United States Code.

8 (3) As used in this section, "federal reserves" means the United States air force reserve, army reserve,  
9 navy reserve, marine corps reserve, or coast guard reserve."

10 - END -