

SB 215 INTRODUCED BY JACOBSON, KEENAN
REDEFINE CONCEPT OF AN ABANDONED CHILD

1/24 INTRODUCED
1/24 REFERRED TO PUBLIC HEALTH, WELFARE & SAFETY
2/20 HEARING
2/20 COMMITTEE REPORT--BILL PASSED
2/23 REREFERRED TO PUBLIC HEALTH, WELFARE & SAFETY
DIED IN COMMITTEE

1 *Senate* BILL NO. *215*
 2 INTRODUCED BY *Jacobson Keenan*
 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REDEFINE HOW ONE MAY
 5 CAUSE HARM TO A CHILD'S HEALTH OR WELFARE BY ABANDONING THE
 6 CHILD; AND AMENDING SECTION 41-3-102, MCA."
 7

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

9 Section 1. Section 41-3-102, MCA, is amended to read:
 10 "41-3-102. Definitions. As used in this chapter, the
 11 following definitions apply:

12 (1) "Child" or "youth" means any person under 18 years
 13 of age.

14 (2) An "abused or neglected child" means a child whose
 15 normal physical or mental health or welfare is harmed or
 16 threatened with harm by the acts or omissions of his parent
 17 or other person responsible for his welfare.

18 (3) "Harm to a child's health or welfare" means the
 19 harm that occurs whenever the parent or other person
 20 responsible for the child's welfare:

21 (a) inflicts or allows to be inflicted upon the child
 22 physical or mental injury, including injuries sustained as a
 23 result of excessive corporal punishment;

24 (b) commits or allows to be committed a sexual assault
 25 against the child or exploits the child or allows the child

1 to be exploited for sexual purposes or commits or allows to
 2 be committed the act of sexual abuse of children as defined
 3 in subsection (1) of 45-5-625;

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

9 (d) abandons the child by leaving him under
 10 ~~circumstances that make reasonable the belief that the~~
 11 ~~parent or other person does not intend to resume care of the~~
 12 ~~child in the future or by willfully surrendering physical~~
 13 ~~custody for a period of 6 months and during that period does~~
 14 ~~not manifest to the child and the person having physical~~
 15 ~~custody of the child a firm intention to resume physical~~
 16 ~~custody or to make permanent legal arrangements for the care~~
 17 ~~of the child or longer under circumstances that cause~~
 18 physical, mental, or emotional harm to the child; or

19 (e) is unknown and has been unknown for a period of 90
 20 days and reasonable efforts to identify and locate the
 21 parents have failed.

22 (4) "Adequate health care" means any medical or
 23 nonmedical remedial health care, including the prevention of
 24 the withholding of medically indicated treatment, permitted
 25 or authorized under state law.

1 (5) "Withholding of medically indicated treatment"
 2 means the failure to respond to an infant's life-threatening
 3 conditions by providing treatment (including appropriate
 4 nutrition, hydration, and medication) that, in the treating
 5 physician's or physicians' reasonable medical judgment, will
 6 be most likely to be effective in ameliorating or correcting
 7 all such conditions. However, the term does not include the
 8 failure to provide treatment (other than appropriate
 9 nutrition, hydration, or medication) to an infant when, in
 10 the treating physician's or physicians' reasonable medical
 11 judgment:

12 (a) the infant is chronically and irreversibly
 13 comatose;

14 (b) the provision of such treatment would:

15 (i) merely prolong dying;

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

18 (iii) otherwise be futile in terms of the survival of
 19 the infant; or

20 (c) the provision of such treatment would be virtually
 21 futile in terms of the survival of the infant and the
 22 treatment itself under such circumstances would be inhumane.
 23 For purposes of this subsection, "infant" means an infant
 24 less than 1 year of age or an infant 1 year of age or older
 25 who has been continuously hospitalized since birth, who was

1 born extremely prematurely, or who has a long-term
 2 disability. The reference to less than 1 year of age may not
 3 be construed to imply that treatment should be changed or
 4 discontinued when an infant reaches 1 year of age or to
 5 affect or limit any existing protections available under
 6 state laws regarding medical neglect of children over 1 year
 7 of age.

8 (6) "Threatened harm" means imminent risk of harm.

9 (7) "A person responsible for a child's welfare" means
 10 the child's parent, guardian, or foster parent; an employee
 11 of a public or private residential institution, facility,
 12 home, or agency; or any other person legally responsible for
 13 the child's welfare in a residential setting.

14 (8) "Physical injury" means death, permanent or
 15 temporary disfigurement, or impairment of any bodily organ
 16 or function.

17 (9) "Mental injury" means an identifiable and
 18 substantial impairment of the child's intellectual or
 19 psychological functioning.

20 (10) "Dependent youth" means a youth:

21 (a) who is abandoned;

22 (b) who is without parents or guardian or not under
 23 the care and supervision of a suitable adult;

24 (c) who has no proper guidance to provide for his
 25 necessary physical, moral, and emotional well-being;

1 (d) who is destitute;

2 (e) who is dependent upon the public for support; or

3 (f) whose parent or parents have voluntarily
4 relinquished custody of the child and whose legal custody
5 has been transferred to a licensed agency.

6 (11) "Youth in need of care" means a youth who is
7 dependent, abused, or neglected as defined in this section.

8 (12) "Supervision" means the authority granted by a
9 youth court or by a voluntary agreement of a parent to
10 determine the foster care placement of a child and the
11 length of stay of a child in foster care and provide for the
12 needs of a child under subsection (1) of 41-3-1122.

13 (13) "Department" means the department of social and
14 rehabilitation services provided for in 2-15-2201.

15 (14) "Limited emancipation" means a status conferred on
16 a dependent youth by a court after a dispositional hearing
17 in accordance with 41-3-406 under which the youth is
18 entitled to exercise some but not all of the rights and
19 responsibilities of a person who is 18 years of age or
20 older."

21 NEW SECTION. Section 2. Extension of authority. Any
22 existing authority of the department of social and
23 rehabilitation services to make rules on the subject of the
24 provisions of this act is extended to the provisions of this
25 act.

-End-

APPROVED BY COMMITTEE
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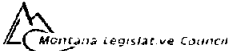
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