

HOUSE BILL NO. 168

INTRODUCED BY REHBEIN
BY REQUEST OF THE DEPARTMENT OF FAMILY SERVICES

IN THE HOUSE

JANUARY 13, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON HUMAN SERVICES & AGING.
	FIRST READING.
JANUARY 20, 1993	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
JANUARY 21, 1993	PRINTING REPORT.
JANUARY 22, 1993	SECOND READING, DO PASS.
JANUARY 23, 1993	ENGROSSING REPORT.
JANUARY 25, 1993	THIRD READING, PASSED. AYES, 95; NOES, 2.
	TRANSMITTED TO SENATE.

IN THE SENATE

JANUARY 27, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON PUBLIC HEALTH, WELFARE, & SAFETY.
	FIRST READING.
MARCH 23, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 25, 1993	SECOND READING, CONCURRED IN.
MARCH 26, 1993	THIRD READING, CONCURRED IN. AYES, 46; NOES, 0.
	RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 1, 1993	ON MOTION, CONSIDERATION PASSED FOR THE DAY.
APRIL 2, 1993	ON MOTION, CONSIDERATION PASSED

FOR THE DAY.

APRIL 5, 1993

SECOND READING, AMENDMENTS
CONCURRED IN.

APRIL 7, 1993

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 House BILL NO. 168
2 INTRODUCED BY William J. Schell
3 BY REQUEST OF THE DEPARTMENT OF FAMILY SERVICES
4
5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE DEFINITION
6 OF "ADEQUATE HEALTH CARE" IN ACCORDANCE WITH FEDERAL
7 REQUIREMENTS; AND AMENDING SECTION 41-3-102, MCA."
8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
10 **Section 1.** Section 41-3-102, MCA, is amended to read:
11 "41-3-102. Definitions. As used in this chapter, the
12 following definitions apply:
13 (1) "A person responsible for a child's welfare" means
14 the child's parent, guardian, or foster parent; a staff
15 person providing care in a day-care facility; an employee of
16 a public or private residential institution, facility, home,
17 or agency; or any other person legally responsible for the
18 child's welfare in a residential setting.
19 (2) "Abused or neglected child" means a child whose
20 normal physical or mental health or welfare is harmed or
21 threatened with harm by the acts or omissions of his the
22 child's parent or other person responsible for his the
23 child's welfare.
24 (3) "Adequate health care" means any medical or
25 nonmedical-remedial health care, including the prevention of

1 the withholding of medically indicated treatment or
2 medically indicated psychological care permitted or
3 authorized under state law.
4 (4) "Child" or "youth" means any person under 18 years
5 of age.
6 (5) "Department" means the department of family
7 services provided for in 2-15-2401.
8 (6) "Dependent youth" means a youth:
9 (a) who is abandoned;
10 (b) who is without parents or guardian or not under the
11 care and supervision of a suitable adult;
12 (c) who has no proper guidance to provide for his
13 necessary physical, moral, and emotional well-being;
14 (d) who is destitute;
15 (e) who is dependent upon the public for support; or
16 (f) whose parent or parents have voluntarily
17 relinquished custody ~~of the child~~ and whose legal custody
18 has been transferred to a licensed agency.
19 (7) "Harm to a child's health or welfare" means the
20 harm that occurs whenever the parent or other person
21 responsible for the child's welfare:
22 (a) inflicts or allows to be inflicted upon the child
23 physical or mental injury;
24 (b) commits or allows to be committed sexual abuse or
25 exploitation of the child;

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

(d) abandons the child by leaving him the child under circumstances that make reasonable the belief that the parent or other person does not intend to resume care of the child in the future or by willfully surrendering physical custody for a period of 6 months and during that period does not manifest 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; or

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

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

(9) "Mental injury" means an identifiable and substantial impairment of the child's intellectual or

psychological functioning.

(10) "Physical injury" means death, permanent or temporary disfigurement, or impairment of any bodily organ or function and includes death, permanent or temporary disfigurement, and impairment of a bodily organ or function sustained as a result of excessive corporal punishment.

(11) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent, indecent exposure, deviate sexual conduct, or incest, as described in Title 45, chapter 5, part 5.

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

(13) "Social worker" means an employee of the department ~~of--family--services~~ whose duties generally involve the provision of either child or adult protective services, or both.

(14) "Threatened harm to a child's health or welfare" means substantial risk of harm to the child's health or welfare.

(15) "Withholding of medically indicated treatment" means the failure to respond to an infant's life-threatening conditions by providing treatment (including appropriate

1 nutrition, hydration, and medication) that, in the treating
2 physician's or physicians' reasonable medical judgment, will
3 be most likely to be effective in ameliorating or correcting
4 ~~all--such~~ the conditions. However, the term does not include
5 the failure to provide treatment (other than appropriate
6 nutrition, hydration, or medication) to an infant when, in
7 the treating physician's or physicians' reasonable medical
8 judgment:

9 (a) the infant is chronically and irreversibly
10 comatose;

11 (b) the provision of ~~such~~ treatment would:

12 (i) merely prolong dying;

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

15 (iii) otherwise be futile in terms of the survival of
16 the infant; or

17 (c) the provision of ~~such~~ treatment would be virtually
18 futile in terms of the survival of the infant and the
19 treatment itself under ~~such~~ the circumstances would be
20 inhumane. For purposes of this subsection, "infant" means an
21 infant less than 1 year of age or an infant 1 year of age or
22 older who has been continuously hospitalized since birth,
23 who was born extremely prematurely, or who has a long-term
24 disability. The reference to less than 1 year of age may not
25 be construed to imply that treatment should be changed or

1 discontinued when an infant reaches 1 year of age or to
2 affect or limit any existing protections available under
3 state laws regarding medical neglect of children over 1 year
4 of age.

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

-End-

APPROVED BY COMM. ON
HUMAN SERVICES AND AGING

1 House BILL NO. 168
2 INTRODUCED BY William H. Holloman
3 BY REQUEST OF THE DEPARTMENT OF FAMILY SERVICES

5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE DEFINITION
6 OF "ADEQUATE HEALTH CARE" IN ACCORDANCE WITH FEDERAL
7 REQUIREMENTS; AND AMENDING SECTION 41-3-102, MCA."

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

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

11 "41-3-102. Definitions. As used in this chapter, the
12 following definitions apply:

(1) "A person responsible for a child's welfare" means the child's parent, guardian, or foster parent; a staff person providing care in a day-care facility; an employee of a public or private residential institution, facility, home, or agency; or any other person legally responsible for the child's welfare in a residential setting.

19 (2) "Abused or neglected child" means a child whose
20 normal physical or mental health or welfare is harmed or
21 threatened with harm by the acts or omissions of his the
22 child's parent or other person responsible for his the
23 child's welfare.

24 (3) "Adequate health care" means any medical or
25 ~~nonmedical-remedial~~ health care, including the prevention of

1 the withholding of medically indicated treatment or
2 medically indicated psychological care permitted or
3 authorized under state law.

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

6 (5) "Department" means the department of family
7 services provided for in 2-15-2401.

8 (6) "Dependent youth" means a youth:

9 (a) who is abandoned;

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

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

14 (d) who is destitute;

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

16 (f) whose parent or parents have voluntarily
17 relinquished custody of ~~the child~~ and whose legal custody
18 has been transferred to a licensed agency.

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

22 (a) inflicts or allows to be inflicted upon the child
23 physical or mental injury;

24 (b) commits or allows to be committed sexual abuse or
25 exploitation of the child;

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

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

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

18 (8) "Limited emancipation" means a status conferred on
19 a dependent youth by a court after a dispositional hearing
20 in accordance with 41-3-406 under which the youth is
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 3 state laws regarding medical neglect of children over 1 year
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-End-

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3 BY REQUEST OF THE DEPARTMENT OF FAMILY SERVICES
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 18 futile in terms of the survival of the infant and the
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 20 inhumane. For purposes of this subsection, "infant" means an
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 22 older who has been continuously hospitalized since birth,
 23 who was born extremely prematurely, or who has a long-term
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 3 state laws regarding medical neglect of children over 1 year
 4 of age.

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

-End-

SENATE STANDING COMMITTEE REPORT

Page 1 of 4
March 22, 1993

Page 2 of 4
March 23, 1993

MR. PRESIDENT:

We, your committee on Public Health, Welfare, and Safety having had under consideration House Bill No. 168 (first reading copy -- blue), respectfully report that House Bill No. 168 be amended as follows and as so amended be concurred in.

Signed: *Dorothy Ed*
Senator Dorothy Eck, Chair

That such amendments read:

1. Title, line 6.
Strike: "IN ACCORDANCE"
Insert: "AND OTHER TERMS USED UNDER MONTANA'S CHILD ABUSE AND NEGLECT LAWS IN ORDER TO CONFORM"
2. Title, line 7.
Strike: "SECTION"
Insert: "SECTIONS 40-8-111,"
Following: "41-3-102,"
Insert: "AND 41-3-609,"
3. Page 1, lines 19 through 23.
Following: "neglected" on line 19
Insert: ""
Strike: remainder of line 19 through "welfare" on line 23
Insert: "means the state or condition of a child who has suffered child abuse or neglect"
4. Page 1, line 24.
Following: "(3)"
Insert: "(a)"
5. Page 1, line 25.
Strike: "health"
6. Page 2, line 4.
Following: line 3
Insert: "(b) Nothing in this chapter may be construed to require or justify a finding of child abuse or neglect for the sole reason that a parent, due to religious beliefs, does not provide medical care for a child. However, nothing in this chapter may be construed to limit the administrative or judicial authority of the state to ensure that medical care is provided to the child when there is imminent or substantial risk of harm to the child."

7. Page 2, line 6.

Following: line 5

Insert: "(5)(a) "Child abuse or neglect" means:

(i) harm to a child's health or welfare, as defined in subsection (8); or

(ii) threatened harm to a child's health or welfare, as defined in subsection (15).

(b) The term includes harm or threatened harm to a child's health or welfare by the acts or omissions of a person responsible for the child's welfare."

Renumber: subsequent subsections

8. Page 3, line 3.

Following: "education, or"

Insert: "adequate"

9. Page 6.

Following: line 6

Insert: "Section 2. Section 40-8-111, MCA, is amended to read:

"40-8-111. Consent required for adoption. (1) An adoption of a child may be decreed when there have been filed written consents to adoption executed by:

(a) both parents, if living, or the surviving parent of a child, provided that consent is not required from a father or mother:

(i) adjudged guilty by a court of competent jurisdiction of assault on the child, as provided in 45-5-201; endangering the welfare of children, concerning the child, as provided in 45-5-622; or sexual abuse of children, toward the child, as provided in 45-5-625;

(ii) who has been judicially deprived of the custody of the child on account of cruelty or neglect toward the child;

(iii) who has, in the state of Montana or in any other state of the United States, willfully abandoned the child, as defined in 41-3-102~~(7)~~~~(8)~~(8)(d);

(iv) who has caused the child to be maintained by any public or private children's institution, charitable agency, or any licensed adoption agency or the department of family services of the state of Montana for a period of 1 year without contributing to the support of the child during said period, if able;

(v) if it is proven to the satisfaction of the court that the father or mother, if able, has not contributed to the support of the child during a period of 1 year before the filing of a petition for adoption; or

(vi) whose parental rights have been judicially terminated;

(b) the legal guardian of the child if both parents are dead or if the rights of the parents have been terminated by judicial proceedings and such guardian has authority by order of

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SENATE
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the court appointing him to consent to the adoption;

(c) the executive head of an agency if the child has been relinquished for adoption to such agency or if the rights of the parents have been judicially terminated or if both parents are dead and custody of the child has been legally vested in such agency with authority to consent to adoption of the child; or

(d) any person having legal custody of a child by court order if the parental rights of the parents have been judicially terminated, but in such case the court having jurisdiction of the custody of the child must consent to adoption and a certified copy of its order shall be attached to the petition.

(2) The consents required by subsections (1)(a) and (1)(b) shall be acknowledged before an officer authorized to take acknowledgments or witnessed by a representative of the department of family services or of an agency or witnessed by a representative of the court."

Section 3. Section 41-3-609, MCA, is amended to read:

"41-3-609. Criteria for termination. (1) The court may order a termination of the parent-child legal relationship upon a finding that any of the following circumstances exist:

(a) the parents have relinquished the child pursuant to 40-6-135;

(b) the child has been abandoned by his parents as set forth in 41-3-102(7)(d);

(c) the child is an adjudicated youth in need of care and both of the following exist:

(i) an appropriate treatment plan that has been approved by the court has not been complied with by the parents or has not been successful; and

(ii) the conduct or condition of the parents rendering them unfit is unlikely to change within a reasonable time; or

(d) the parent has failed to successfully complete a treatment plan approved by the court within the time periods allowed for the child to be in foster care under 41-3-410 unless it orders other permanent legal custody under 41-3-410.

(2) In determining whether the conduct or condition of the parents is unlikely to change within a reasonable time, the court must enter a finding that continuation of the parent-child legal relationship will likely result in continued abuse or neglect or that the conduct or the condition of the parents renders the parents unfit, unable, or unwilling to give the child adequate parental care. In making such determinations, the court shall consider but is not limited to the following:

(a) emotional illness, mental illness, or mental deficiency of the parent of such duration or nature as to render the parent unlikely to care for the ongoing physical, mental, and emotional needs of the child within a reasonable time;

(b) a history of violent behavior by the parent;

(c) a single incident of life-threatening or gravely disabling injury to or disfigurement of the child caused by the parent;

(d) excessive use of intoxicating liquor or of a narcotic or dangerous drug that affects the parent's ability to care and provide for the child;

(e) present judicially ordered long-term confinement of the parent;

(f) the injury or death of a sibling due to proven parental abuse or neglect; and

(g) any reasonable efforts by protective service agencies that have been unable to rehabilitate the parent.

(3) In considering any of the factors in subsection (2) in terminating the parent-child relationship, the court shall give primary consideration to the physical, mental, and emotional conditions and needs of the child. The court shall review and, if necessary, order an evaluation of the child's or the parent's physical, mental, and emotional conditions.

(4) A treatment plan is not required under this part upon a finding by the court following hearing if:

(a) two medical doctors submit testimony that the parent is so severely mentally ill that such person cannot assume the role of parent;

(b) the parent is incarcerated for more than 1 year and such treatment plan is not practical considering the incarceration; or

(c) the death of a sibling caused by abuse or neglect by the parent has occurred."

-END-

HOUSE BILL NO. 168

INTRODUCED BY REHBEIN

BY REQUEST OF THE DEPARTMENT OF FAMILY SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE DEFINITION OF "ADEQUATE HEALTH CARE" IN ACCORDANCE AND OTHER TERMS USED UNDER MONTANA'S CHILD ABUSE AND NEGLECT LAWS IN ORDER TO CONFORM WITH FEDERAL REQUIREMENTS; AND AMENDING SECTION SECTIONS 40-8-111, 41-3-102, AND 41-3-609, MCA."

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

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

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

(1) "A person responsible for a child's welfare" means the child's parent, guardian, or foster parent; a staff person providing care in a day-care facility; an employee of a public or private residential institution, facility, home, or agency; or any other person legally responsible for the child's welfare in a residential setting.

(2) "Abused or neglected" child--means--a--child--whose normal--physical--or--mental--health--or--welfare--is--harmed--or threatened--with--harm--by--the--acts--or--omissions--of--his the child's parent--or--other--person--responsible--for--his the child's welfare MEANS THE STATE OR CONDITION OF A CHILD WHO

HAS SUFFERED CHILD ABUSE OR NEGLECT.

(3) (A) "Adequate health care" means any medical or nonmedical-remedial health care, including the prevention of the withholding of medically indicated treatment or medically indicated psychological care permitted or authorized under state law.

(B) NOTHING IN THIS CHAPTER MAY BE CONSTRUED TO REQUIRE OR JUSTIFY A FINDING OF CHILD ABUSE OR NEGLECT FOR THE SOLE REASON THAT A PARENT, DUE TO RELIGIOUS BELIEFS, DOES NOT PROVIDE MEDICAL CARE FOR A CHILD. HOWEVER, NOTHING IN THIS CHAPTER MAY BE CONSTRUED TO LIMIT THE ADMINISTRATIVE OR JUDICIAL AUTHORITY OF THE STATE TO ENSURE THAT MEDICAL CARE IS PROVIDED TO THE CHILD WHEN THERE IS IMMINENT OR SUBSTANTIAL RISK OF HARM TO THE CHILD.

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

(5) (A) "CHILD ABUSE OR NEGLECT" MEANS:

(I) HARM TO A CHILD'S HEALTH OR WELFARE, AS DEFINED IN SUBSECTION (8); OR

(II) THREATENED HARM TO A CHILD'S HEALTH OR WELFARE, AS DEFINED IN SUBSECTION (15).

(B) THE TERM INCLUDES HARM OR THREATENED HARM TO A CHILD'S HEALTH OR WELFARE BY THE ACTS OR OMISSIONS OF A PERSON RESPONSIBLE FOR THE CHILD'S WELFARE.

(5)(6) "Department" means the department of family

1 services provided for in 2-15-2401.

2 ~~(6)~~(7) "Dependent youth" means a youth:

3 (a) who is abandoned;

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

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

8 (d) who is destitute;

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

10 (f) whose parent or parents have voluntarily
11 relinquished custody of--the-child and whose legal custody
12 has been transferred to a licensed agency.

13 ~~(7)~~(8) "Harm to a child's health or welfare" means the
14 harm that occurs whenever the parent or other person
15 responsible for the child's welfare:

16 (a) inflicts or allows to be inflicted upon the child
17 physical or mental injury;

18 (b) commits or allows to be committed sexual abuse or
19 exploitation of the child;

20 (c) causes failure to thrive or otherwise fails to
21 supply the child with adequate food or fails to supply
22 clothing, shelter, education, or ADEQUATE health care,
23 though financially able to do so or offered financial or
24 other reasonable means to do so;

25 (d) abandons the child by leaving him the child under

1 circumstances that make reasonable the belief that the
2 parent or other person does not intend to resume care of the
3 child in the future or by willfully surrendering physical
4 custody for a period of 6 months and during that period does
5 not manifest to the child and the person having physical
6 custody of the child a firm intention to resume physical
7 custody or to make permanent legal arrangements for the care
8 of the child; or

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

12 ~~(8)~~(9) "Limited emancipation" means a status conferred
13 on a dependent youth by a court after a dispositional
14 hearing in accordance with 41-3-406 under which the youth is
15 entitled to exercise some but not all of the rights and
16 responsibilities of a person who is 18 years of age or
17 older.

18 ~~(9)~~(10) "Mental injury" means an identifiable and
19 substantial impairment of the child's intellectual or
20 psychological functioning.

21 ~~(10)~~(11) "Physical injury" means death, permanent or
22 temporary disfigurement, or impairment of any bodily organ
23 or function and includes death, permanent or temporary
24 disfigurement, and impairment of a bodily organ or function
25 sustained as a result of excessive corporal punishment.

1 ~~(11)~~(12) "Sexual abuse" means the commission of sexual
2 assault, sexual intercourse without consent, indecent
3 exposure, deviate sexual conduct, or incest, as described in
4 Title 45, chapter 5, part 5.

5 ~~(12)~~(13) "Sexual exploitation" means allowing,
6 permitting, or encouraging a child to engage in a
7 prostitution offense, as described in 45-5-601 through
8 45-5-603, or allowing, permitting, or encouraging sexual
9 abuse of children as described in 45-5-625.

10 ~~(13)~~(14) "Social worker" means an employee of the
11 department of-family-services whose duties generally involve
12 the provision of either child or adult protective services,
13 or both.

14 ~~(14)~~(15) "Threatened harm to a child's health or
15 welfare" means substantial risk of harm to the child's
16 health or welfare.

17 ~~(15)~~(16) "Withholding of medically indicated treatment"
18 means the failure to respond to an infant's life-threatening
19 conditions by providing treatment (including appropriate
20 nutrition, hydration, and medication) that, in the treating
21 physician's or physicians' reasonable medical judgment, will
22 be most likely to be effective in ameliorating or correcting
23 ~~all--such~~ the conditions. However, the term does not include
24 the failure to provide treatment (other than appropriate
25 nutrition, hydration, or medication) to an infant when, in

1 the treating physician's or physicians' reasonable medical
2 judgment:

3 (a) the infant is chronically and irreversibly
4 comatose;

5 (b) the provision of such treatment would:

6 (i) merely prolong dying;

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

9 (iii) otherwise be futile in terms of the survival of
10 the infant; or

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

24 ~~(16)~~(17) "Youth in need of care" means a youth who is
25 dependent, abused, or neglected as defined in this section."

SECTION 2. SECTION 40-8-111, MCA, IS AMENDED TO READ:

"40-8-111. Consent required for adoption. (1) An adoption of a child may be decreed when there have been filed written consents to adoption executed by:

(a) both parents, if living, or the surviving parent of a child, provided that consent is not required from a father or mother:

(i) adjudged guilty by a court of competent jurisdiction of assault on the child, as provided in 45-5-201; endangering the welfare of children, concerning the child, as provided in 45-5-622; or sexual abuse of children, toward the child, as provided in 45-5-625;

(ii) who has been judicially deprived of the custody of the child on account of cruelty or neglect toward the child;

(iii) who has, in the state of Montana or in any other state of the United States, willfully abandoned the child, as defined in 41-3-102(7)(d)(8)(d);

(iv) who has caused the child to be maintained by any public or private children's institution, charitable agency, or any licensed adoption agency or the department of family services of the state of Montana for a period of 1 year without contributing to the support of the child during said period, if able;

(v) if it is proven to the satisfaction of the court that the father or mother, if able, has not contributed to

the support of the child during a period of 1 year before the filing of a petition for adoption; or

(vi) whose parental rights have been judicially terminated;

(b) the legal guardian of the child if both parents are dead or if the rights of the parents have been terminated by judicial proceedings and such guardian has authority by order of the court appointing him to consent to the adoption;

(c) the executive head of an agency if the child has been relinquished for adoption to such agency or if the rights of the parents have been judicially terminated or if both parents are dead and custody of the child has been legally vested in such agency with authority to consent to adoption of the child; or

(d) any person having legal custody of a child by court order if the parental rights of the parents have been judicially terminated, but in such case the court having jurisdiction of the custody of the child must consent to adoption and a certified copy of its order shall be attached to the petition.

(2) The consents required by subsections (1)(a) and (1)(b) shall be acknowledged before an officer authorized to take acknowledgments or witnessed by a representative of the department of family services or of an agency or witnessed

1 by a representative of the court."

2 **SECTION 3. SECTION 41-3-609, MCA, IS AMENDED TO READ:**

3 "41-3-609. Criteria for termination. (1) The court may
4 order a termination of the parent-child legal relationship
5 upon a finding that any of the following circumstances
6 exist:

7 (a) the parents have relinquished the child pursuant to
8 40-6-135;

9 (b) the child has been abandoned by his parents as set
10 forth in 41-3-102~~(7)(d)~~(8)(d);

11 (c) the child is an adjudicated youth in need of care
12 and both of the following exist:

13 (i) an appropriate treatment plan that has been
14 approved by the court has not been complied with by the
15 parents or has not been successful; and

16 (ii) the conduct or condition of the parents rendering
17 them unfit is unlikely to change within a reasonable time;
18 or

19 (d) the parent has failed to successfully complete a
20 treatment plan approved by the court within the time periods
21 allowed for the child to be in foster care under 41-3-410
22 unless it orders other permanent legal custody under
23 41-3-410.

24 (2) In determining whether the conduct or condition of
25 the parents is unlikely to change within a reasonable time,

1 the court must enter a finding that continuation of the
2 parent-child legal relationship will likely result in
3 continued abuse or neglect or that the conduct or the
4 condition of the parents renders the parents unfit, unable,
5 or unwilling to give the child adequate parental care. In
6 making such determinations, the court shall consider but is
7 not limited to the following:

8 (a) emotional illness, mental illness, or mental
9 deficiency of the parent of such duration or nature as to
10 render the parent unlikely to care for the ongoing physical,
11 mental, and emotional needs of the child within a reasonable
12 time;

13 (b) a history of violent behavior by the parent;

14 (c) a single incident of life-threatening or gravely
15 disabling injury to or disfigurement of the child caused by
16 the parent;

17 (d) excessive use of intoxicating liquor or of a
18 narcotic or dangerous drug that affects the parent's ability
19 to care and provide for the child;

20 (e) present judicially ordered long-term confinement of
21 the parent;

22 (f) the injury or death of a sibling due to proven
23 parental abuse or neglect; and

24 (g) any reasonable efforts by protective service
25 agencies that have been unable to rehabilitate the parent.

1 (3) In considering any of the factors in subsection (2)
2 in terminating the parent-child relationship, the court
3 shall give primary consideration to the physical, mental,
4 and emotional conditions and needs of the child. The court
5 shall review and, if necessary, order an evaluation of the
6 child's or the parent's physical, mental, and emotional
7 conditions.

8 (4) A treatment plan is not required under this part
9 upon a finding by the court following hearing if:

10 (a) two medical doctors submit testimony that the
11 parent is so severely mentally ill that such person cannot
12 assume the role of parent;

13 (b) the parent is incarcerated for more than 1 year and
14 such treatment plan is not practical considering the
15 incarceration; or

16 (c) the death of a sibling caused by abuse or neglect
17 by the parent has occurred."

-End-