

**Potential Legislative Bill Draft Requests for Committee Consideration**  
Prepared for the Children, families, Health, and Human Services Interim Committee  
June 2004

1. **Clean-up for "Safe Haven Newborn Protection Act"**. An error within 40-6-405, MCA, has been identified. Within the "Surrender of newborn to emergency services provider -- temporary protective custody" section, there is an internal reference to 40-6-415, MCA. Section 40-6-415, MCA, was a temporary section, which terminates on June 30, 2004, that required the development of a safe delivery program, which included requirements for a hotline and a pamphlet. I have spoken with Shirley Brown, Child and Family Services Division of the Department of Public Health and Human Services who assisted in developing a recommendation for changing the reference.

**Committee Action Item:** Does the committee wish to pursue this? If not, the Code Commissioner can put it in the clean-up bill which is presented to the Legislative Council.

**40-6-405. Surrender of newborn to emergency services provider -- temporary protective custody.** (1) If a parent surrenders an infant who may be a newborn to an emergency services provider, the emergency services provider shall comply with the requirements of this section under the assumption that the infant is a newborn. The emergency services provider shall, without a court order, immediately accept the newborn, taking the newborn into temporary protective custody, and shall take action necessary to protect the physical health and safety of the newborn.

(2) The emergency services provider shall make a reasonable effort to do all of the following:

(a) if possible, inform the parent that by surrendering the newborn, the parent is releasing the newborn to the department to be placed for adoption according to law;

(b) if possible, inform the parent that the parent has 60 days to petition the court to regain custody of the newborn;

(c) if possible, ascertain whether the newborn has a tribal affiliation, and if so, ascertain relevant information pertaining to any Indian heritage of the newborn;

(d) provide the parent with written material approved by or produced by the department, which includes but is not limited to all of the following statements:

(i) by surrendering the newborn, the parent is releasing the newborn to the department to be placed for adoption and the department shall initiate court proceedings according to law to place the newborn for adoption, including proceedings to terminate parental rights;

(ii) the parent has 60 days after surrendering the newborn to petition the court to regain custody of the newborn;

(iii) the parent may not receive personal notice of the court proceedings begun by the department;

(iv) information that the parent provides to an emergency services provider will not be made public;

(v) a parent may contact the ~~safe delivery line established under 40-6-415~~ department for more information and counseling; and

(vi) any Indian heritage of the newborn brings the newborn within the jurisdiction of the Indian Child Welfare Act, 25 U.S.C. 1901, et seq.

(3) After providing a parent with the information described in subsection (1), if possible, an emergency services provider shall make a reasonable effort to:

(a) encourage the parent to provide any relevant family or medical information, including information regarding any tribal affiliation;

(b) ~~provide the parent with the pamphlet produced under 40-6-415 and inform the parent that the parent may receive counseling or medical attention;~~

—(c) (b) inform the parent that information that the parent provides will not be made public;  
(d) (c) ask the parent for the parent's name;  
(e) (d) inform the parent that in order to place the newborn for adoption, the state is required to make a reasonable attempt to identify the other parent and to obtain relevant medical family history and then ask the parent to identify the other parent;  
(f) (e) inform the parent that the department can provide confidential services to the parent; and  
(g) (f) inform the parent that the parent may sign a relinquishment for the newborn to be used at a hearing to terminate parental rights.

**2. Developmental disability commitment costs: SB 35 revisited.** The 2001-2002 Children and Families Interim Committee requested SB 35 that provided due process for a person criminally convicted and with a developmental disability to be sentenced to an appropriate developmental disabilities facility, in a process similar to those found guilty but mentally ill. The question of commitment costs was not addressed. The intention was to have a similar process for those who were being criminally convicted and sentenced to a developmental disabilities facility. In the statutes for the mentally ill there is a specific section on costs of examination and commitment, that clarifies that precommitment costs are the county's responsibility, but that treatment and custody costs are the responsibility of the state once a person is committed. Staff has had only informal contact with the Department of Public Health and Human Services and the State Court Administrator's Office about the issue and would need to consult further.

**Committee Action Item:** Does the Committee want to revisit the issue and designate these costs the same as for those who are criminally convicted and mentally ill? The following statutes are applicable.

46-14-202, MCA. Should also apply if alleging unfitness to proceed and requested by prosecution, implied in 46-14-206, MCA, in report of examination. May need amending to clarify subsection (3) apply to the developmentally disabled.

46-14-221, MCA. Applicable to determination of fitness to proceed for both mental disorder and developmental disability.

53-21-132, MCA. Statute for costs for mentally ill commitments that could be used as a model.

**3. Unregulated youth residential care programs in Montana.** Please review the report that Gail Gray distributed at the last meeting. She is working on this issue over the summer and will have more information by our next meeting. The report listed numerous options and other alternatives include an interim study bill or a small, but not insignificant change, to the statute making the current policy applicable to all outdoor behavioral programs. Currently there is a definition in code and a requirement for licensure for those facilities that accept public funding.

**50-5-101, MCA.** (34) (a) "Outdoor behavioral program" means a program that provides treatment, rehabilitation, and prevention for behavioral problems that endanger the health, interpersonal relationships, or educational functions of a youth and that:

- (i) serves either adjudicated or nonadjudicated youth;
- (ii) charges a fee for its services; and
- (iii) provides all or part of its services in the outdoors.

(b) "Outdoor behavioral program" does not include recreational programs such as boy scouts, girl scouts, 4-H clubs, or other similar organizations.

**50-5-220. Licensure of outdoor behavioral programs -- exemption.** (1) The department shall provide for licensure of a qualified outdoor behavioral program that accepts public funding. An outdoor behavioral program that does not accept public funds or governmental contracts is exempt from licensure.

(2) The department shall develop administrative rules for licensure that must include program requirements, staff requirements, staff-to-youth ratios, staff training and health requirements, youth admission requirements, water and nutritional requirements, health care and safety, environmental requirements, infectious disease control, transportation, and evacuation. The department may accept accreditation by a nationally recognized accrediting or certifying body but may not require the accreditation.

**Committee Action Item:** Does the committee wish to pursue a bill draft at this time, either directed toward a specific solution or as a placeholder depending on the results of the Director's efforts?

**4. Prescription Drug Program.** The 2003 Legislature passed SB 473 providing for a prescription drug expansion program under Medicaid. Because of the Medicare Prescription Drug Improvement and Modernization Act of 2003, the department decided not to implement this program (March 12, 2004, news release). In the interest of not having something on the books that is not in operation, the Committee may want to consider repeal of this act. There is no indication that the department is pursuing repeal or amendment of the act to date. In addition, Lois Steinbeck, Legislative Fiscal Analyst, will be preparing an analysis of the federal legislation for the Legislative Finance Committee and could be presented at the August 27 meeting with additional information from the department.

**Committee Action Item:** Does the Committee wish to have a presentation at the final meeting? Does the Committee wish to request a bill draft to repeal SB 473?

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