

SENATE BILL NO. 261

INTRODUCED BY G. HERTZ

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE OFFENSE OF ENDANGERING THE WELFARE OF CHILDREN; ESTABLISHING THAT A PERSON COMMITS THE OFFENSE OF ENDANGERING THE WELFARE OF CHILDREN BY EXPOSING A CHILD TO MARIJUANA OR DANGEROUS DRUGS OR ASSISTING A CHILD IN ENTERING AN ADULT-USE DISPENSARY OR A PLACE WHERE HUMAN TRAFFICKING OR THE PRODUCTION OF DANGEROUS DRUGS IS TAKING PLACE; AND AMENDING SECTION 45-5-622, MCA."

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

Section 1. Section 45-5-622, MCA, is amended to read:

"45-5-622. Endangering welfare of children. (1) (a) A parent, guardian, or other person supervising the welfare of a child less than 18 years old commits the offense of endangering the welfare of children if the parent, guardian, or other person knowingly endangers the child's welfare by violating a duty of care, protection, or support.

(b) A parent or guardian of a child does not violate a duty of care, protection, or support by permitting the child to engage in independent activities consistent with the child's intellectual, emotional, and physical maturity, including:

- (i) traveling to and from school by walking, running, bicycling, public transit, or other means;
- (ii) traveling to and from nearby commercial or recreational facilities;
- (iii) engaging in outdoor play;
- (iv) remaining for less than 15 minutes in a vehicle if the temperature inside the vehicle is not or will not become dangerously hot or cold;
- (v) remaining at home if the parent or guardian:
 - (A) returns home the same day on which the parent or guardian gives the child permission to remain at home;

(B) makes provisions for the child to contact the parent or guardian; and

(C) makes provisions for any reasonably foreseeable emergency.

(2) Except as provided in 16-6-305, a parent or guardian or any person who is 18 years of age or older, whether or not the parent, guardian, or other person is supervising the welfare of the child, commits the offense of endangering the welfare of children if the parent, guardian, or other person knowingly contributes to the delinquency of a child less than:

(a) 18 years old by:

(i) supplying or encouraging the use of an intoxicating substance by the child;

(ii) causing or permitting the child to inhale, be exposed to, or ingest marijuana as defined in 50-32-101, including products containing tetrahydrocannabinol (THC), such as ingestible foods or drinks; or

~~(ii)~~(iii) assisting, promoting, or encouraging the child to enter a place of prostitution or human trafficking as defined in 45-5-701;

(iv) assisting, promoting, or encouraging the child to enter an adult-use dispensary as defined in 16-12-102; or

(v) assisting, promoting, or encouraging the child to enter a place where the criminal production or manufacture of dangerous drugs is taking place as described in 45-9-110; or

(b) 16 years old by assisting, promoting, or encouraging the child to:

(i) abandon the child's place of residence without the consent of the child's parents or guardian; or

(ii) engage in sexual conduct.

(3) A person, whether or not the person is supervising the welfare of a child less than 18 years of age, commits the offense of endangering the welfare of children if the person, in the residence of a child, in a building, structure, conveyance, or outdoor location where a child might reasonably be expected to be present, in a room offered to the public for overnight accommodation, or in any multiple-unit residential building, knowingly:

(a) produces or manufactures methamphetamine a dangerous drug listed in Schedules I through V as provided in Title 50, chapter 32, part 2, or attempts to produce or manufacture methamphetamine a dangerous drug listed in Schedules I through V as provided in Title 50, chapter 32, part 2;

(b) possesses any material, compound, mixture, or preparation that contains any combination of

1 the items listed in 45-9-107 with intent to manufacture ~~methamphetamine a dangerous drug listed in Schedules~~
2 ~~I through V as provided in Title 50, chapter 32, part 2~~; or

3 (c) causes or permits a child to inhale, be exposed to, have contact with, or ingest
4 ~~methamphetamine or be exposed to or have contact with methamphetamine paraphernalia a dangerous drug~~
5 ~~listed in Schedules I through V as provided in Title 50, chapter 32, part 2, unless under the direction of a~~
6 ~~physician or licensed medical provider.~~

7 (4) A parent, guardian, or other person supervising the welfare of a child less than 16 years of age
8 may verbally or in writing request a person who is 18 years of age or older and who has no legal right of
9 supervision or control over the child to stop contacting the child if the requester believes that the contact is not
10 in the child's best interests. If the person continues to contact the child, the parent, guardian, or other person
11 supervising the welfare of the child may petition or the county attorney may upon the person's request petition
12 for an order of protection under Title 40, chapter 15. To the extent that they are consistent with this subsection,
13 the provisions of Title 40, chapter 15, apply. A person who purposely or knowingly violates an order of
14 protection commits the offense of endangering the welfare of children and upon conviction shall be sentenced
15 as provided in subsection (5)(a).

16 (5) (a) Except as provided in subsection (5)(b), a person convicted of endangering the welfare of
17 children shall be fined an amount not to exceed \$500 or be imprisoned in the county jail for any term not to
18 exceed 6 months, or both. A person convicted of a second offense of endangering the welfare of children shall
19 be fined an amount not to exceed \$1,000 or be imprisoned in the county jail for any term not to exceed 6
20 months, or both.

21 (b) A person convicted under subsection (3) is guilty of a felony and shall be imprisoned in the
22 state prison for a term not to exceed 5 years and may be fined an amount not to exceed \$10,000, or both. If a
23 child suffers serious bodily injury, the offender shall be fined an amount not to exceed \$25,000 or be imprisoned
24 for a term not to exceed 10 years, or both. Prosecution or conviction of a violation of subsection (3) does not
25 bar prosecution or conviction for any other crime committed by the offender as part of the same conduct.

26 (6) On the issue of whether there has been a violation of the duty of care, protection, and support,
27 the following, in addition to all other admissible evidence, is admissible: cruel treatment; abuse; infliction of
28 unnecessary and cruel punishment; abandonment; neglect; lack of proper medical care, clothing, shelter, and

Amendment - 1st Reading-white - Requested by: Barry Usher - (S) Judiciary

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Drafter: Julianne Burkhardt,

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1 food; and evidence of past bodily injury.

2 (7) The court may order, in its discretion, any fine levied or any bond forfeited upon a charge of
3 endangering the welfare of children paid to or for the benefit of the person or persons whose welfare the
4 defendant has endangered.

5 (8) As used in this section, "causing or permitting the child to inhale, be exposed to, or ingest
6 marijuana" does not include the inhalation of secondhand smoke incidental to an adult's lawful use as provided
7 in Title 16, chapter 12."

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