

MONTANA LAW

40-6-402. Definitions. As used in this part, the following definitions apply:

- (1) "Child-placing agency" means an agency licensed under Title 52, chapter 8, part 1.
- (2) "Court" means a court of record in a competent jurisdiction and, in Montana, means a district court or a tribal court.
- (3) "Department" means the department of public health and human services provided for in 2-15-2201.
- (4) "Emergency services provider" means:
 - (a) a uniformed or otherwise identifiable employee of a fire department, hospital, or law enforcement agency when the individual is on duty inside the premises of the fire department, hospital, or law enforcement agency; or
 - (b) any law enforcement officer, as defined in 7-32-201, who is in uniform or is otherwise identifiable.
- (5) "Fire department" means a fire department organized by a city, town, or city-county consolidated local government under Title 7, chapter 33.
- (6) "Gross negligence" means conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results.
- (7) "Guardian ad litem" means a person appointed to represent a newborn under Title 41, chapter 3.
- (8) "Hospital" has the meaning provided in 50-5-101.
- (9) "Law enforcement agency" means a police department, a sheriff's office, a detention center as defined in 7-32-2241, or a correctional institution as defined in 45-2-101.
- (10) "Newborn" means an infant who a physician reasonably believes to be no more than 30 days old.
- (11) "Surrender" means to leave a newborn with an emergency services provider without expressing an intent to return for the newborn.

40-6-403. Court jurisdiction -- hospital immunity. (1) The court has jurisdiction over a newborn who is surrendered to an emergency services provider as provided in 40-6-405. The court may appoint a guardian ad litem to represent a newborn in proceedings under this part.

(2) Except as provided in 40-6-406, the reporting requirements of 41-3-201 do not apply regarding a newborn who is surrendered to an emergency services provider as provided in 40-6-405.

(3) A hospital and the agents and employees of the hospital are immune in a civil action for damages for an act or omission in accepting or transferring a newborn under this part, except for an act or omission constituting gross negligence or willful or wanton misconduct.

40-6-404. Immunity for fire department and law enforcement agency. A fire department or law enforcement agency and the agents and employees of a fire department or law enforcement agency are immune in a civil action for damages for an act or omission in accepting or transferring a newborn under this part, except for an act or omission constituting gross negligence or willful or wanton misconduct.

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 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 information that the parent may receive counseling or medical attention;

(c) inform the parent that information that the parent provides will not be made public;

(d) ask the parent for the parent's name;

(e) 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) inform the parent that the department can provide confidential services to the parent; and

(g) inform the parent that the parent may sign a relinquishment for the newborn to be used at a hearing to terminate parental rights.

40-6-406. Medical care -- report of abuse or neglect -- report to department. (1) An emergency services provider that is not a hospital and that takes a newborn into temporary protective custody under 40-6-405 shall transfer the newborn to a hospital. The hospital shall accept a newborn transferred to the hospital by an emergency services provider in compliance with this part and shall take the newborn into temporary protective custody.

(2) A hospital that takes a newborn into temporary protective custody under this part must have the newborn examined by a physician. If a physician who examines the newborn either determines that

there is reason to suspect the newborn has experienced abuse or neglect, other than being surrendered to an emergency services provider under 40-6-405, or comes to a reasonable belief that the infant is not a newborn, the physician shall immediately report to the department as required under 41-3-201. If the actual date of birth of the infant is not known, the physician shall determine a birth date based on the physician's examination of the infant.

(3) If a physician is not required to report to the department under subsection (2), the hospital shall, no later than the first business day after taking possession of the newborn, notify the department that the hospital has taken a newborn into temporary protective custody under this part.

40-6-407. Assumption of care, custody, and control by department -- placement of child -- presumptions -- Montana birth certificate. (1) Upon receipt of notice under 40-6-406, the department shall:

- (a) immediately assume the care, control, and temporary protective custody of the newborn;
- (b) if a parent is known and willing, immediately meet with the parent;
- (c) make a temporary placement of the newborn;
- (d) immediately request assistance from law enforcement officials to investigate and determine, through the national center for missing and exploited children and any other national and state missing children information programs, whether the newborn is a missing child;
- (e) not later than 48 hours after assuming the care, control, and temporary protective custody of the newborn, file a petition with the court under the provisions of Title 41, chapter 3, part 4, requesting appropriate relief with the goal of achieving permanent placement for the newborn at the earliest possible date; and

(f) within 30 days, make reasonable efforts to identify and locate a parent who did not surrender the newborn. If the identity and address of that parent are unknown, the department shall provide notice by publication in a newspaper of general circulation in the county where the newborn was surrendered.

(2) The department, after assuming the care, custody, and control of a newborn under subsection (1), is not required to attempt to reunify the newborn with the newborn's parents. The department is not required to search for relatives of the newborn as a placement or permanency option or to implement other placement requirements that give preference to relatives if the department does not have information as to the identity of the newborn or either of the newborn's parents. The department shall place the newborn with prospective adoptive parents as soon as possible. The adoptive parents must be allowed access to information regarding the newborn's medical history, date of birth, or age if the department has that information.

(3) A newborn surrendered under 40-6-405 is presumed to have been born in Montana unless the biological parent otherwise informs the department or the emergency services provider to whom the newborn is surrendered.

(4) A Montana birth certificate may be issued based on the presumption of birth in Montana as provided in subsection (3). A birth certificate issued to a newborn surrendered under 40-6-405 must provide a date of birth based on either the actual date of birth, if known, or on the date of birth determined by the physician who performs the medical examination of the newborn under 40-6-406.

40-6-411. Rights of parents -- custody action. (1) Any person alleging to be the biological parent of a newborn who was surrendered to an emergency services provider under 40-6-405 may, within 60 days of the date of surrender of the newborn, file an action with the court for custody pursuant to 40-4-211.

(2) Before making a custody decision, the court shall determine whether the individual filing the custody action is the newborn's biological parent under the provisions of part 1 of this chapter. A determination of the existence or nonexistence of the child-parent relationship is determinative as provided in 40-6-116.

(3) The putative father registry provisions under Title 42, chapter 2, part 2, apply to any court proceeding under this part.

40-6-412. Custody action -- newborn's best interest. In a custody action under 40-6-411, the court shall determine custody of the newborn based on the newborn's best interest as provided in 40-4-212. The court shall determine the newborn's best interest with the goal of achieving permanent placement for the newborn at the earliest possible date.

40-6-417. Surrender to emergency services provider as bar to criminal prosecution. (1) A criminal investigation may not be initiated solely on the basis of a newborn being surrendered to an emergency services provider under this part in the absence of reasonable suspicion of actual abuse or neglect.

(2) Except when there is intentional infliction of injury to the abandoned infant, a criminal prosecution may not be initiated involving the abandonment of an infant that was not more than 30 days old and was surrendered to an emergency services provider under 40-6-405.