

1 HOUSE BILL NO. 218

2 INTRODUCED BY L. SMITH, C. KNUDSEN, M. CAFERRO, D. LOGE, B. KEENAN, B. USHER

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4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO PRIVATE  
5 ALTERNATIVE ADOLESCENT RESIDENTIAL OR OUTDOOR PROGRAMS; PROVIDING ADDITIONAL  
6 REQUIREMENTS FOR LICENSURE; INCREASING THE FREQUENCY OF ONSITE INSPECTIONS BY THE  
7 DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; PROVIDING RULEMAKING AUTHORITY;  
8 AND AMENDING SECTIONS 52-2-805 AND 52-2-810, MCA."

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

11  
12 **Section 1.** Section 52-2-805, MCA, is amended to read:

13 **"52-2-805. Requirements for licensure -- restrictions -- rulemaking.** (1) The department shall  
14 require applicants and licensees:

15 (a) to submit a set of fingerprints for each person associated with the program who has direct  
16 access to program participants for the purpose of conducting a criminal and child protection background check  
17 by the Montana department of justice and the federal bureau of investigation. This background investigation  
18 must include information pertaining to criminal convictions, reports of domestic violence, and substantiated child  
19 abuse or neglect of children.

20 (b) to maintain and to provide verification of policies of insurance in a form and in an adequate  
21 amount as determined by rule.

22 (2) In developing minimum standards for licensed programs, the department ~~may~~shall adopt rules  
23 that pertain to ensuring the health and safety of program participants, including:

24 (a) a procedure for a licensed program to report the use of a MEDICAL, CHEMICAL, OR PHYSICAL  
25 restraint or seclusion to the department within 1 business day after the day on which the use of the MEDICAL,  
26 CHEMICAL, OR PHYSICAL restraint or seclusion occurs;

27 (b) guidelines for written policies and procedures of the licensed program, including policies and  
28 procedures on suicide prevention and for implementation of the requirements and restrictions in subsections (3)

1 and (4);

2 (c) a procedure for the department to review and approve the licensed program's policies and  
3 procedures; and

4 (d) a procedure for submitting a complaint about a licensed program to the department AND LAW  
5 ENFORCEMENT and a requirement that each licensed program publicly post information that describes how to  
6 submit a complaint about the licensed program to the department AND LAW ENFORCEMENT.

7 (3) A licensed program may not:

8 (a) use PHYSICAL DISCIPLINE OR THE THREAT OF PHYSICAL DISCIPLINE as a punishment, deterrent, or  
9 incentive; ;

10 (i) physical discipline of any means, including but not limited to hitting, dragging, shaking, biting,  
11 pinching, and other forms of corporal punishment ; or

12 (ii)(B) deprivation DEPRIVE A YOUTH of basic necessity OR INHERENT RIGHT, including education;

13 (b) engage in abusive, humiliating, degrading, or traumatizing actions against a youth ; or

14 (c) admit a youth who:

15 (i) is under 12 years of age THE AGE APPROVED IN THE LICENSURE OR HAS A CONDITION NOT ALLOWED  
16 TO BE TREATED UNDER THE LICENSURE; or

17 (ii) has been assessed by a licensed mental health professional as seriously emotionally  
18 disturbed, unless the youth ASSESSMENT does not require care in a licensed health facility INDICATE A NEED FOR  
19 RESIDENTIAL OR INPATIENT BEHAVIORAL HEALTH TREATMENT and the department has certified that the program  
20 meets the standards to provide mental health treatment services for a child having a serious emotional  
21 disturbance pursuant to 52-2-310.; OR

22 (D) SEXUALLY ABUSE, EXPLOIT, OR HARASS AN ENROLLED YOUTH, INCLUDING BUT NOT LIMITED TO:

23 (i) REQUIRING THAT A YOUTH REPORT SEXUAL HISTORY OR SEXUAL ASSAULTS IN GROUP OR PRIVATE  
24 SETTINGS; AND

25 (ii) NONCONSENSUAL PHYSICAL CONTACT THAT HAS NO THERAPEUTIC PURPOSE.

26 (4) A licensed program must:

27 (a) allow a parent or guardian to remove a youth from the licensed program; and

28 (b) unless otherwise prohibited by law or court order, facilitate weekly confidential CONFIDENTIAL

1 VIDEO communication between a youth and the youth's family, including parents, guardians, OR foster parents,  
2 and siblings, as applicable. A LICENSED PROGRAM MAY MONITOR THE COMMUNICATIONS.

3 (5) (A) A LICENSED PROGRAM SHALL PROVIDE A FIXED NUMBER TELEPHONE TO THE CHILD ABUSE HOTLINE  
4 OPERATED BY THE DEPARTMENT THAT IS READILY AVAILABLE TO ENROLLED PARTICIPANTS 24 HOURS A DAY.

5 (B) A LICENSED PROGRAM MAY NOT MONITOR OR RECORD TELEPHONE CALLS BY ANY TECHNOLOGICAL OR  
6 PHYSICAL MEANS, INCLUDING BUT NOT LIMITED TO USING CALL RECORDING SOFTWARE, LISTENING TO A LIVE CALL FROM  
7 ANOTHER DEVICE, AND THE PHYSICAL PRESENCE OF PROGRAM STAFF OR OFFICIALS IN THE AREA WHERE THE PHONE IS  
8 PLACED.

9 (C) THE TELEPHONE MUST HAVE A LEGIBLE SIGN OF AT LEAST 8 1/2 X 11 INCHES POSTED NEXT TO THE  
10 TELEPHONE WITH:

11 (i) THE PHYSICAL ADDRESS OF THE PROGRAM;

12 (ii) THE TELEPHONE NUMBER FOR THE STATE CHILD ABUSE HOTLINE AND TELEPHONE NUMBERS FOR THE  
13 NEAREST HOSPITAL, POLICE DEPARTMENT, FIRE DEPARTMENT, AND AMBULANCE SERVICE; AND

14 (iii) A NOTICE THAT READS: "IT IS A VIOLATION OF STATE LAW FOR PROGRAM STAFF TO MONITOR OR  
15 RECORD CALLS ON THIS TELEPHONE BY ANY MEANS."

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17 **Section 2.** Section 52-2-810, MCA, is amended to read:

18 **"52-2-810. Periodic visits to facilities by department -- investigations -- consultation with**  
19 **licensees and registrants.** (1) The department or its authorized representative shall make periodic visits to all  
20 licensed programs to ensure that minimum standards are maintained.

21 (2) The department ~~may~~ SHALL investigate and inspect the conditions and qualifications of any  
22 program seeking or holding a license under the provisions of this part.

23 (3) (a) The department shall conduct an onsite inspection of:

24 ~~(a)(i)~~ each program applying for a license; and

25 ~~(b)(ii)~~ each licensed program at least ~~once every 3 years~~ each calendar quarter SEMIANNUALLY.

26 ~~(b)~~ At least two of the ~~THE quarterly~~ SEMIANNUAL inspections of a licensed program ~~in each~~  
27 calendar year must be unannounced.

28 ~~(C)~~ ALL AT LEAST 50% OF THE YOUTH ENROLLED IN THE PROGRAM MUST BE INTERVIEWED BY

1 DEPARTMENT STAFF DURING EACH INSPECTION. PROGRAM STAFF MAY NOT BE PRESENT DURING THESE INTERVIEWS.

2 (e)(D) All records of a licensed program must be open to inspection by the department at all  
3 reasonable times.

4 (4) ~~Upon~~On request of the department, the state fire prevention and investigation section of the  
5 department of justice shall inspect any program for which a license is applied for or issued and shall report its  
6 findings to the department.

7 ~~(5) (A) IF THE DEPARTMENT SUSPECTS ABUSE, NEGLECT, OR MISTREATMENT OF AN ENROLLED YOUTH,  
8 ~~THE DEPARTMENT SHALL INTERVIEW THE YOUTH AND WITNESSES WITHOUT PROGRAM STAFF PRESENT.~~~~

9 ~~(B) A YOUTH MAY CHOOSE TO HAVE A SUPPORTIVE ADULT, INCLUDING A PARENT, GUARDIAN, OR~~  
10 ~~ATTORNEY, PRESENT WHEN PARTICIPATING IN AN INTERVIEW PURSUANT TO SUBSECTION (5)(A). BEFORE BEGINNING THE~~  
11 ~~INTERVIEW, THE DEPARTMENT SHALL INFORM THE YOUTH OF THE YOUTH'S RIGHT TO HAVE A SUPPORTIVE ADULT~~  
12 ~~PRESENT DURING THE INTERVIEW."~~

13 - END -