

**Amendment - 1st Reading/2nd House-blue - Requested by: Brad Molnar - (S) Public Health, Welfare and Safety**

- 2023

68th Legislature 2023

Drafter: Madelyn Krezowski, (406) 444-6857

HB0218.002.003

1 HOUSE BILL NO. 218  
2 INTRODUCED BY L. SMITH, C. KNUDSEN, M. CAFERRO, D. LOGE, B. KEENAN, B. USHER  
3  
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; ESTABLISHING A REPORTING  
8 REQUIREMENT; CREATING AN OMBUDSMAN; PROVIDING RULEMAKING AUTHORITY; AND AMENDING  
9 SECTIONS 52-2-805 AND 52-2-810, MCA."

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

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

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

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

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

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

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

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1 (b) guidelines for written policies and procedures of the licensed program, including policies and  
2 procedures on suicide prevention and for implementation of the requirements and restrictions in subsections (3)  
3 and (4);

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

6 (d) a procedure for submitting a complaint about a licensed program to the department and law  
7 enforcement and a requirement that each licensed program publicly post information that describes how to  
8 submit a complaint about the licensed program to the department and law enforcement.

9 (3) A licensed program may not:

10 (a) ~~use physical discipline or the threat of physical discipline as a punishment, deterrent, or~~  
11 ~~incentive;~~

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

14 ~~(ii)(b) deprivation deprive a youth of basic necessity or inherent right, including education;~~

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

16 (c) admit a youth who:

17 ~~(i) is under 12 years of age the age approved in the licensure or who has a condition that is not~~  
18 ~~allowed to be treated under the licensure; or~~

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

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

25 ~~(i) REQUIRING THAT A YOUTH REPORT SEXUAL HISTORY OR SEXUAL ASSAULTS IN GROUP OR PRIVATE~~  
26 ~~SETTINGS; AND~~

27 ~~(ii) NONCONSENSUAL PHYSICAL CONTACT THAT HAS NO THERAPEUTIC PURPOSE. A licensed program~~

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1 may allow only willful, volunteered, uncoerced, and unrewarded self-reporting of sexual history. Discussion of  
2 sexual history must be unimpeachable.

3 (4) A licensed program must:

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

5 (b) \_\_\_\_\_, unless otherwise prohibited by law or court order, facilitate weekly confidential VIDEO

6 communication between a youth and the youth's family, including parents, guardians, foster parents, and

7 siblings. as applicable, must be allowed as considered appropriate by the facility. Written notice must be

8 posted, stating: "All calls may be monitored and must be recorded". Calling privileges may not be curtailed to

9 interfere with the reporting of abuse. A false report of abuse may be prosecuted as provided under 41-3-203.

10 (5) (A) A LICENSED PROGRAM SHALL PROVIDE A TELEPHONE THAT IS READILY AVAILABLE TO ENROLLED

11 PARTICIPANTS 24 HOURS A DAY.

12 (B) A LICENSED PROGRAM MAY NOT MONITOR OR RECORD TELEPHONE CALLS BY ANY TECHNOLOGICAL OR

13 PHYSICAL MEANS, INCLUDING BUT NOT LIMITED TO USING CALL RECORDING SOFTWARE, LISTENING TO A LIVE CALL FROM

14 ANOTHER DEVICE, AND THE PHYSICAL PRESENCE OF PROGRAM STAFF OR OFFICIALS IN THE AREA WHERE THE PHONE IS

15 PLACED.

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

17 TELEPHONE WITH:

18 (i) THE PHYSICAL ADDRESS OF THE PROGRAM;

19 (ii) THE TELEPHONE NUMBER FOR THE STATE CHILD ABUSE HOTLINE AND TELEPHONE NUMBERS FOR THE

20 NEAREST HOSPITAL, POLICE DEPARTMENT, FIRE DEPARTMENT, AND AMBULANCE SERVICE; AND

21 (iii) A NOTICE THAT READS: "IT IS A VIOLATION OF STATE LAW FOR PROGRAM STAFF TO MONITOR OR

22 RECORD CALLS ON THIS TELEPHONE BY ANY MEANS."

23

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

25 **"52-2-810. Periodic visits to facilities by department -- investigations -- consultation with**

26 **licensees and registrants.** (1) The department or its authorized representative shall make periodic visits to all

27 licensed programs to ensure that minimum standards are maintained.

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

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

4 (a)(i) each program applying for a license; and

5 (b)(ii) each licensed program ~~at least once every 3 years~~ each calendar quarter as considered  
6 necessary.

7 (b) ~~At least two of the~~ THE quarterly inspections of a licensed program in each calendar year must  
8 be unannounced. At least two inspections a year must be made by independent inspectors.

9 (c) ALL YOUTH ENROLLED IN THE PROGRAM MUST BE INTERVIEWED BY DEPARTMENT STAFF DURING EACH  
10 INSPECTION. PROGRAM STAFF MAY NOT BE PRESENT DURING THESE INTERVIEWS. Staff must be interviewed in a  
11 confidential setting.

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

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

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

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

23  
24 **NEW SECTION. Section 3. Evaluation of complaints against licensed programs -- report. (1)**

25 The department shall review and record a list of alleged and substantiated complaints against licensed  
26 programs that accrued over the 2 years before [the effective date of this act]. Complaints that have not been  
27 resolved by the department must be investigated or reopened.

