

MINUTES

MONTANA SENATE 53rd LEGISLATURE - SPECIAL SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Senator Yellowtail, on December 16, 1993, at
7:30 a.m.

ROLL CALL

Members Present:

Sen. Bill Yellowtail, Chair (D)
Sen. Steve Doherty, Vice Chair (D)
Sen. Sue Bartlett (D)
Sen. Chet Blaylock (D)
Sen. Bob Brown (R)
Sen. Bruce Crippen (R)
Sen. Eve Franklin (D)
Sen. Lorents Grosfield (R)
Sen. Mike Halligan (D)
Sen. David Rye (R)
Sen. Tom Towe (D)

Members Excused: Senator Harp

Members Absent: None

Staff Present: Valencia Lane, Legislative Council
Shari Briggeman, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: None
Executive Action: SB 33

EXECUTIVE ACTION ON SENATE BILL 33

Discussion: Senator Halligan said in working on the amendments he had tried to concentrate on the real "nut" of the problems that people expressed in the hearing. The confidentiality, the accountability and the due process parts of the bill. He said personally he believed that in every case he was aware of, there is the ability to ask for court appointed counsel when the petition is filed. He believed the due process parts of this have already been dealt with and he was not trying to do that in this bill. He said he removed, in terms of major substantive provisions, the requirement of the filing of criminal charges before a child could be removed, the mandatory video taping parts, and the tribunal established by the Supreme Court. He had

tried to tighten up provisions he felt the proponents were concerned about in terms of the removal of their child and what they felt was the continued intransigence of the department to corroborate their petition, their evidence, and give them an adequate hearing. He handed out a copy of SB 33 which showed the stricken parts. (exhibit 1) He said he had tried to summarize the substantive parts he had tried to change on page 17. He said they did leave in the examination of the child, page 17, lines 13-18. On page 25, there was a concern that the department would go "willy-nilly" without making sure there was legal basis for their claims that had not been looked at by a counsel, and explained those procedures for protection of the family and child. This change is typed in at the top of page 25. He referred to changes on page 27, and on page 32 and explained the language inserted at the top of the page. He read the language on the bottom of page 34 in regard to access to the children. He said perhaps an interim committee should be added to this to have them take a look at this specific issue and come back with more recommendations. He said he believed it would be appropriate to have a balanced committee of Legislators look at this. He did not include this in the bill, but thought perhaps it should be.

Motion: Senator Halligan moved to amend SB 33. (exhibit 2)

Discussion: Senator Towe asked if there was some specific reason why the definition of proselytism was removed because it seemed it was still left in the body of the bill. Senator Halligan said it was taken out on page 10 starting on line 20.

Senator Towe asked if there was a particular reason why proselytizing was taken out and Senator Halligan said if the substantive concerns mean the child stays in the cultural, ethnic, religious heritage of another family unit, then proselytization would not make a difference. There would be the same kind of setting, so it was irrelevant in that setting and he was not aware of any violations of it.

Senator Towe referred to page 17, line 18 where the word "unencumbered" was taken out and the word "private" inserted. He asked what the reason was and Senator Halligan said "unencumbered" could also mean at any time.

Senator Towe referred to page 23, lines 6-9 where the lines are stricken, and asked if the family should not have a right to choose and Senator said currently, under existing law, they do have that right.

Senator Burnett referred to page 17, line 18 and told of being asked to go to a court hearing where the Judge directed the family and anyone who had heard the testimony not disclose what was being said or they would be in contempt of court. This does not hurt the department and many times he had asked the department for information and was told it was confidential, yet he had all the information from the family. He believed the

family had a right to divulge anything they desire when they feel they have been victimized.

Senator Halligan said this was not a big point with him and he would be willing to concede the point unless it is a big point with Ms. Gilkey.

Ann Gilkey, Attorney, DFS (Department of Family Services), said she had no problem leaving it in, and agreed with Senator Halligan that it is not necessary but parents do it now and there has never been a problem that she was aware of. Apparently Senator Burnett ran into the problem of the Judge making this rule. It is happening all over the state now where parents go to the press.

Chair Yellowtail said leaving the language in the bill would limit the Judge's discretion and Ms. Gilkey agreed.

Senator Burnett said he agreed getting this bill through the Legislature without a lot of emasculation being necessary would be difficult, but there were some particular areas he disagreed with because of discussing it with persons who have been dealing with the department. He believed the most important is the requirement that the initial investigation of the children or the family needs to be video taped. The reason this bill is before us this session is that in talking with Greg Petesch, Legislative Council, he felt that tightening up the law would cause the department more apprehension before removing children and would be savings for reduction in cases in the department. He said he could not go along with all the amendments, but did agree with most of it because the special session was not the place to solve the problems. He was certain that the real concerns of the many people who did show up was the need for change and believed he had put forth a method of doing so in this bill.

Chair Yellowtail said he still did not see a fiscal note for this bill. Senator Burnett said he had gone to the budget director and they determined that if the Supreme Court was put in the bill, they would have to accept whatever the Supreme Court said. Their determination would require 8,000 pages of hard copy to each judge to make that assessment. He had no problem with removing the Supreme Court requirement from the bill, it was put in because some of the victims wished it to be there for their protection. The requirement that came from the department that they have 180 case workers and everyone would have to have a video camera is ridiculous. In talking to some of the intermediate people in the department, they felt there are five regional districts and one per district would more than take care of it. That cost would be about \$50,000 and if they were able to eliminate 10% of those children they remove from their families and put into foster care to validate claims, it would save more than the cost of the video cameras.

Senator Brown said he did not believe this is a good way to make

legislation. While he could not pretend to completely understand the issue or what has been done to the bill, he was satisfied that Senator Halligan has the background in this area of the law and thanked him for looking so closely at this bill in the time constraints we have here. It will be difficult to put the time and effort into it during this special legislative session, but he would be willing to support the amendment and the bill as amended. He said in this special session it would be difficult to accomplish more than the amended bill and trusting to the knowledge of Senator Halligan in this area is what we will have to go on. He did not know what would happen to the bill when the House received it at this late stage but his position was that he believed the amendment should be accepted and proceed with the bill as amended.

Senator Blaylock said in listening to an attorney with a good background in this, Senator Halligan had made a point the other night that the department is so busy in this area that the attorneys cannot do their job because there are so many cases. He asked Senator Halligan if the amendments would hinder the department from doing their job as well and Senator Halligan said he had tried to add the provision of requiring the county attorney to help them make probable cause determination so that even though it is done regularly anyway, if they can not corroborate all their evidence and don't think they have much of a case, they have to take it to the county attorney who has to verify it. The county attorney says go back and do more investigation etc., or give the child back to the parents. The attorney's reputation is on the line more with this bill than before because of the need for verification. He believed this would ease the case load on the case worker who had too many cases.

Senator Towe said he done some work in this area and believed Senator Halligan had improved the bill very much. The 20 day rule is an excellent provision. Referring to page 23, lines 6 through 9, asked if there was any objection if all the language was stricken except "who believes the family is being victimized by an unfair or unwarranted process". He said it would read "except that nothing in this subsection may be construed to compel a family member to keep proceedings secret". Senator Halligan said he had no problem with that where you have a separate court determination where they want to steal the records and seal the proceedings.

Senator Towe said if there are two families involved, you have more than one child involved and you want to protect privacy. He believed the constitutional right of privacy is clear enough so the courts would pay heed to that. He believed Senator Burnett had a point that someone may construe this unless there is some sort of qualification in.

Motion: Senator Towe moved an amendment to the amendment that the language "except that nothing in this subsection may be

construed to compel a family member to keep proceedings secret" be left in the bill.

Discussion: Chair Yellowtail said he would object to the amendment. To restrict the courts to order secrecy was a problem to him. He understood that the family already has the prerogative under law, to discuss this issue unless it is prohibited by the court. He said he found this addition to the statute unnecessary.

Senator Towe said in his opinion he did not believe the court has that prerogative. The privacy of the individual is the one we are trying to protect and if he/she decides to waive it, notwithstanding what the court decides, he/she has that right.

Senator Halligan said he could see where this is coming from, but the records of the department are still confidential so the case note to the case worker, psychologist's report and other confidential reports are still secret in that sense. A court would still have the opportunity to make specific documents and records secret and sealed.

Vote: The motion to amend the amendment passed with Senators Doherty and Yellowtail voting no.

Vote: Senator Halligan's motion to adopt the amendments (exhibit 2) including the Towe amendment passed with Senator Yellowtail voting no.

Senator Towe said he supported the amendment, thought it was good, but did want to call to the department's attention, the language that is added on the bottom of page 33 and 34. (the additional language typed in on exhibit 1) He said that language gives enormous authority to the department, has ran into it himself, and has some real problems with it. He said he would like the department to be careful about determining that child's best interests.

Motion: Senator Brown moved SB 33 do pass as amended.

Discussion: Chair Yellowtail said he was concerned that this bill, which has statutory substance, comes before this committee in this special session. He was astonished that it found it's way into the call and his criticism is substantiated by the fact that we have not yet today, received a fiscal note attached to this bill. This special session has a call that is generally ranged toward solving some fiscal issue and asked if there was a petition to expand the call for this bill. Senator Burnett said no, but it is within the call of the special session. Chair Yellowtail said he believed this bill was not within the call of the special session and apologized to the committee for it. He said he appreciated the committee's hard work on it, especially that of Senator Halligan, but did not believe it was an appropriate bill before the committee or before the Legislature.

He said he would vote against the bill and believed it should stop here. He said he did not disagree with the substance and believed this bill is in good shape now, but did not believe we should be spending time on this bill when it is not properly before the Legislature.

Vote: The motion that SB 33 do pass as amended passed with Senators Yellowtail and Doherty voting no.

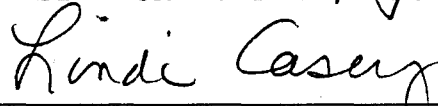
Senator Burnett handed in a statement on the fiscal funding for SB 33. (exhibit 3) A copy of the amendments, as revised, was given the secretary. (exhibit 4)

ADJOURNMENT

Adjournment: 8:25 a.m.



SENATOR DOHERTY, Vice Chair



LINDA CASEY, WPC Supervisor

SD/llc

ROLL CALL

SENATE COMMITTEE JUDICIARY DATE

12-16-93

NAME	PRESENT	ABSENT	EXCUSED
SENATOR YELLOWTAIL, Chair	X		
SENATOR DOHERTY, V. C.	X		
SENATOR BARTLETT	X		
SENATOR BLAYLOCK	X		
SENATOR BROWN	X		
SENATOR CRIPPEN	X		
SENATOR FRANKLIN	X		
SENATOR GROSFIELD	X		
SENATOR HALLIGAN	X		
SENATOR HARP			X
SENATOR RYE	X		
SENATOR TOWE	X		

Attach to each day's minutes

SENATE BILL NO. 33

INTRODUCED BY *SEN. JEFF*
ARLESTAD Carol Ben-Dix Simpkins Hays

EXHIBIT NO. 1
DATE *12-16-93*
BILL NO. *SB33*

1
2 INTRODUCED BY *SEN. JEFF*
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS
5 RELATING TO THE INVESTIGATION AND REMOVAL OF A CHILD FROM
6 THE HOME, IN A CHARGE OF SUSPECTED SEXUAL ABUSE OR ENDANGERMENT
7 OF THE CHILD'S WELFARE, PROVIDING ANONYMOUS REPORTING OF
8 SUSPECTED SEXUAL ABUSE OR ENDANGERMENT, REQUIRING CRIMINAL
9 CHARGES TO BE FILED AGAINST A PERSON SUSPECTED OF SEXUAL
10 ABUSE OR ENDANGERMENT PRIOR TO FILING A PETITION FOR REMOVAL
11 OF THE CHILD FROM THE HOME, REQUIRING EVIDENCE OF SUSPECTED
12 SEXUAL ABUSE OR ENDANGERMENT TO BE GIVEN TO THE FAMILY;
13 AUTHORIZING CERTAIN FAMILY
14 FROM THE HOME; REQUIRING INFORMATION ON REPORTING HOME
15 PETITION TO BE GIVEN TO THE FAMILY OF A CHILD REMOVED FROM
16 THE HOME; AMENDING SECTIONS 40-8-111, 41-3-101, 41-3-102,
17 41-3-103, 41-3-204, 41-3-205, 41-3-206, 41-3-301,
18 41-3-303, 41-3-401, 41-3-402, 41-3-403, 41-3-404, 41-3-406
19 41-3-407, 41-3-600, AND 41-3-1102, MCA; AND PROVIDING AN
20 EFFECTIVE DATE."
21
22 WHEREAS the Legislature finds it necessary to
23 public confidence in the system and provide protection of
24 individual and family civil rights as guaranteed by the
25 state and federal constitutions; and

~~WHEREAS, present Montana law arguably allows the Department of Family Services to circumvent the constitutional rights of individuals and families; and~~
~~WHEREAS, Montana law should require that the burden of proving allegations of child abuse or neglect be on the Department and that those allegations be proved beyond a reasonable doubt, which would reduce the incidence of false charges of alleged abuse, resulting in a corresponding savings to the general fund; and~~
~~WHEREAS, there is no room for error in the removal of children from the home, and extreme care must be taken to avoid ruining a family, parent, or individual through government intrusion or mistake; and~~
~~WHEREAS, it is necessary to restore the sacred principle of "innocent until proven guilty" to the process of removal of a child from the home in cases of alleged abuse or neglect; and~~
~~WHEREAS, child abuse and neglect is a crime and should be addressed as a crime; and~~
~~WHEREAS, delaying the effective date of this legislation until July 1, 1994, will allow the Department of Family Services time to establish criteria to implement the changes necessary to apply this legislation to cases of alleged child abuse or neglect and to ensure that those cases are addressed by this legislation;~~

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

Section 1. Section 40-8-111, MCA, is amended to read:

"40-8-111. Consent required for adoption. (1) An adoption of a child may be decreed when there have been filed written consents to adoption executed by:

(a) both parents, if living, or the surviving parent of a child, provided that consent is not required from a father or mother:

(i) adjudged guilty by a court of competent jurisdiction of assault on the child, as provided in 45-5-201; endangering the welfare of children, concerning the child, as provided in 45-5-622; or sexual abuse of children, toward the child, as provided in 45-5-625;

(ii) who has been permanently judicially deprived of the custody of the child on account of cruelty or neglect toward the child;

(iii) who has, in the state of Montana or in any other state of the United States, willfully abandoned the child, as defined set forth in 41-3-102~~40~~~~41~~~~10~~(10)(e);

(iv) who has caused the child to be maintained by any public or private children's institution, any charitable agency, or any licensed adoption agency or the department of family services of the state of Montana for a period of 1 year without contributing to the support of the child during

said the period, if able;

(v) if it is proven to the satisfaction of the court that the father or mother, if able, has not contributed to the support of the child during a period of 1 year before the filing of a petition for adoption; or

(vi) whose parental rights have been judicially terminated;

(b) the legal guardian of the child if both parents are dead or if the rights of the parents have been terminated by judicial proceedings and such the guardian has authority by order of the court appointing him the guardian to consent to the adoption;

(c) the executive head of an agency if the child has been relinquished for adoption to such the agency or if the rights of the parents have been judicially terminated or if both parents are dead and custody of the child has been legally vested in such the agency with authority to consent to adoption of the child; or

(d) any person having legal custody of a child by court order if the parental rights of the parents have been judicially terminated, but in such--case the court having jurisdiction of the custody of the child must shall consent to adoption and a certified copy of its order shall must be attached to the petition.

(2) The consents required by subsections (1)(a) and

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1 (1)(b) shall must be acknowledged before an officer
2 authorized to take acknowledgments or witnessed by a
3 representative of the department, of-family-services--or of
4 an agency, or witnessed-by-a-representative of the court."

5 **Section 2.** Section 41-3-101, MCA, is amended to read:

6 **"41-3-101. Declaration of policy.** (1) It is hereby
7 declared-to-be the policy of the state of Montana to:

8 (a) insure ensure that all youth are afforded an
9 adequate physical and emotional environment to promote
10 normal development;

11 (b) compel in proper cases the parent or guardian of a
12 youth to perform the moral and legal duty owed to the youth;

13 (c) achieve these purposes in a family environment
14 whenever possible; and

15 (d) preserve the unity and welfare of the family
16 whenever possible ~~and provide legal redress for the unlawful~~

17 ~~interference with the family's right to remain intact; and~~
18 ~~(e) ensure that there is no forced removal of a child~~

19 ~~from the family because of suspected sexual abuse or~~
20 ~~endangerment of the child's welfare by an immediate family~~

21 ~~member or family associate without the filing of a criminal~~
22 ~~complaint charging sexual abuse or endangerment against that~~
23 ~~immediate family member or family associate.~~

24 (2) It is the policy of this state to:

25 (a) protect, whenever possible, family unity;

1 (b) provide for the protection of children whose health
2 and welfare are or may be adversely affected and further
3 threatened by the conduct of those responsible for their
4 care and protection; and

5 (c) ensure that whenever removal of a child from the
6 home is necessary, the child is entitled to maintain ethnic,
7 cultural, and religious heritage ~~from the family.~~

8 (3) It is intended that the mandatory reporting of such
9 ~~cases of child abuse or endangerment~~ ^{cases} by professional people
10 and other community members to the appropriate authority
11 will cause the protective services of the state to seek to
12 prevent further abuses, protect and enhance the welfare of
13 these children, and ^{and} preserve family life wherever
14 appropriate, ~~and provide legal redress for interference with~~
15 ~~the family."~~

16 **Section 3.** Section 41-3-102, MCA, is amended to read:

17 "41-3-102. Definitions. As used in this chapter, the
18 following definitions apply:

19 (1) "A person responsible for a child's welfare" means
20 the child's parent, guardian, or foster parent; a staff
21 person providing care in a day-care facility; an employee of
22 a public or private residential institution, facility, home,
23 or agency; or any other person legally responsible for the
24 child's welfare in a residential setting.

25 (2) "Abused or neglected" means the state or condition

1 of a child who has suffered child abuse or neglect.

2 (3) (a) "Adequate health care" means any medical care,
3 including the prevention of the withholding of medically
4 indicated treatment or medically indicated psychological
5 care permitted or authorized under state law.

6 (b) Nothing in this chapter may be construed to require
7 or justify a finding of child abuse or neglect for the sole
8 reason that a parent, due to religious beliefs, does not
9 provide medical care for a child. However, nothing in this
10 chapter may be construed to limit the administrative or
11 judicial authority of the state to ensure that medical care
12 is provided to the child when there is imminent or
13 substantial risk of harm to the child.

14 (4) "Child" or "youth" means any person under 18 years
15 of age.

16 (5) (a) "Child abuse or neglect" means:

17 (i) harm to a child's health or welfare, as defined in
18 subsection (8); or

19 (ii) threatened harm to a child's health or welfare, as
20 defined in subsection (15).

21 (b) The term includes harm or threatened harm to a
22 child's health or welfare by the acts or omissions of a
23 person responsible for the child's welfare.

24 (6) "Department" means the department of family
25 services provided for in 2-15-2401.

1 (7) "Dependent youth" means a youth:

2 (a) who is abandoned;

3 (b) who is without parents or guardian or not under the
4 care and supervision of a suitable adult;

5 (c) who has no proper guidance to provide for necessary
6 physical, moral, and emotional well-being;

7 (d) who is destitute;

8 (e) who is dependent upon the public for support; or

9 (f) whose parent or parents have voluntarily
10 relinquished custody and whose legal custody has been
11 transferred to a licensed agency.

12 ~~(8) "Family" means at least one natural or adoptive~~
13 ~~parent or legal guardian with at least one minor child.~~

14 (9) "Family associate" means a person who may or may
15 not live within the household of a child but who is or has
16 been granted unobstructed access to the child by a natural
17 or adoptive parent, step-parent, or legal guardian of the
18 ~~child.~~

19 (10) "Harm to a child's health or welfare" means the
20 harm that occurs whenever the parent or other person
21 responsible for the child's welfare:

22 (a) ~~knowingly~~ inflicts or ~~knowingly~~ allows to be
23 inflicted upon the child physical or mental injury;

24 (b) ~~knowingly~~ commits or ~~knowingly~~ allows to be
25 committed sexual abuse or exploitation of the child;

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1 ~~(c) induces or attempts to induce a child into a~~
2 untrue testimony that the child or another child was abused
3 or neglected by a parent or person responsible for the
4 ~~child's welfare.~~

5 (c)(d) causes failure to thrive or otherwise fails to
6 supply the child with adequate food or fails to supply
7 clothing, shelter, education, or adequate health care,
8 though financially able to do so or ~~through~~ offered
9 financial or other reasonable means to do so;

10 (d)(e) abandons the child by leaving the child under
11 circumstances that make reasonable the belief that the
12 parent or other person does not intend to resume care of the
13 child in the future or by willfully surrendering surrenders
14 physical custody for a period of 6 months and during that
15 period does not manifest to the child and the person having
16 physical custody of the child a firm intention to resume
17 physical custody or to make permanent legal arrangements for
18 the care of the child; or

19 (e)(f) is unknown and has been unknown for a period of
20 90 days and reasonable efforts to identify and locate the
21 parents have failed.

22 ~~(f)(g) immediate family member means a parent, grandparent,~~
23 or natural relative of a child and includes the natural
24 grandparent of the child.

25 ~~(g)(h) infant or toddler means a child who has not yet to be~~

1 ~~trained in personal hygiene skills required to care for the~~
2 child's own sanitary requirements and who is not beyond the
3 age when a reasonable person would expect hygiene skills and
4 training to be complete.

5 ~~(i)(j) "knowingly" has the meaning provided in 45-2-101.~~

6 (j)(14) "Limited emancipation" means a status conferred
7 on a dependent youth by a court after a dispositional
8 hearing in accordance with 41-3-406 under which the youth is
9 entitled to exercise some but not all of the rights and
10 responsibilities of a person who is 18 years of age or
11 older.

12 (k)(15) "Mental injury" means an identifiable and
13 substantial impairment of the child's intellectual or
14 psychological functioning.

15 (k)(16) "Physical injury" means death, permanent or
16 temporary disfigurement, or impairment of any bodily organ
17 or function and includes death, permanent or temporary
18 disfigurement, and impairment of a bodily organ or function
19 sustained as a result of excessive corporal punishment.

20 ~~(l)(17) "Disaffiliation" means the change or attempted change~~
21 through undue influence of the religious beliefs or
22 affiliation of a child that has been removed from the family
23 to a religion other than that affiliated with the child's
24 race, culture, or heritage by an adult, other than a family
25 ~~member in a position of power over the child or by consent~~

1 exposure of the child to dogma, tradition, or religious
 2 teachings and practices professed by the child.

3 ‡12‡(18) (a) "Sexual abuse" means the commission of
 4 sexual assault, sexual intercourse without consent, indecent
 5 exposure, deviate sexual conduct, or incest, as described in
 6 Title 45, chapter 5, part 5.

7 (b) Sexual abuse does not include any necessary
 8 touching of an infant's or toddler's genital area while
 9 attending to the sanitary needs of that infant by a parent

10 or any acts that would otherwise be considered by a
 11 reasonable person to be a confining of the infant by a
 12 concerned or loving parent. *or toddler*

13 ‡13‡(19) "Sexual exploitation" means allowing,
 14 permitting, or encouraging a child to engage in a
 15 prostitution offense, as described in 45-5-601 through
 16 45-5-603, or allowing, permitting, or encouraging sexual
 17 abuse of children as described in 45-5-625.

18 ‡14‡(20) "Social worker" means an employee of the
 19 department whose duties generally involve the provision of
 20 either child or adult protective services, or both.

21 ‡15‡(21) "Threatened harm to a child's health or
 22 welfare" means substantial risk of harm to the child's
 23 health or welfare.

24 ‡16‡(22) (a) "Withholding of medically indicated
 25 treatment" means the failure to respond to an infant's

1 life-threatening conditions by providing treatment
 2 (including appropriate nutrition, hydration, and medication)
 3 that, in the treating physician's or physicians' reasonable
 4 medical judgment, will be most likely to be effective in
 5 ameliorating or correcting the conditions. However, the
 6 (b) The term does not include the failure to provide
 7 treatment (other than appropriate nutrition, hydration, or
 8 medication) to an infant when, in the treating physician's
 9 or physicians' reasonable medical judgment:

10 ‡17‡(i) the infant is chronically and irreversibly
 11 comatose;

12 ‡17‡(ii) the provision of treatment would:

13 ‡17‡(A) merely prolong dying;

14 ‡17‡(B) not be effective in ameliorating or correcting
 15 all of the infant's life-threatening conditions; or

16 ‡17‡(C) otherwise be futile in terms of the survival
 17 of the infant; or

18 ‡17‡(iii) the provision of treatment would be virtually
 19 futile in terms of the survival of the infant and the
 20 treatment itself under the circumstances would be inhumane.
 21 For purposes of this subsection, "infant" means an infant
 22 less than 1 year of age or an infant 1 year of age or older
 23 who has been continuously hospitalized since birth, who was
 24 born extremely prematurely, or who has a long-term
 25 disability. The reference to less than 1 year of age may not

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1 be construed to imply that treatment should be changed or
2 discontinued when an infant reaches 1 year of age or to
3 affect or limit any existing protections available under
4 state laws regarding medical neglect of children over 1 year
5 of age.
6 {17}(23) "Youth in need of care" means a youth who is
7 dependent, abused, or neglected as defined in this section."

8 ~~Section 4. Section 41-3-201, 404, is amended to read:~~
9 "41-3-201. Reports. (1) When the professionals and
10 officials listed in subsection (2) know or have reasonable
11 cause to suspect, as a result of information they receive in
12 their professional or official capacity, that a child is
13 abused or neglected, they shall report the matter promptly
14 to the department of family services or its local affiliate,
15 which then shall notify the county attorney of the county
16 where the child resides.

17 (2) Professionals and officials required to report are:
18 (a) a physician, resident, intern, or member of a
19 hospital's staff engaged in the admission, examination,
20 care, or treatment of persons;

21 (b) a nurse, osteopath, chiropractor, podiatrist,
22 medical examiner, coroner, dentist, optometrist, or any
23 other health or mental health professional;

24 (c) Christian Science practitioner practitioners and
25 religious leaders;

1 ~~(1) school teacher, school official, and~~
2 employees who work during regular school hours;
3 (e) a social worker, operator, or employee of any
4 registered or licensed day-care or substitute care facility;
5 or any other operator or employee of a child-care facility;
6 (f) a foster care, residential, or institutional
7 worker;
8 (g) a peace officer or other law enforcement official;
9 or
10 (h) a member of the clergy.

11 (3) Any person may make a report under this section if
12 he the person knows or has reasonable cause to suspect that
13 a child is abused or neglected.

14 (4) (a) Except as provided in subsection (4)(b) or
15 (4)(c), a person listed in subsection (2) may not refuse to
16 make a report as required in this section on the grounds of
17 a physician-patient or similar privilege.

18 (b) A clergyman member of the clergy or a priest is
19 not required to make a report under this section if:

20 (i) the knowledge or suspicion of the abuse or neglect
21 came from a statement or confession made to the clergyman
22 member of the clergy or the priest in his the capacity as of
23 a clergyman member of the clergy or a priest;

24 (ii) the statement was intended to be a part of a
25 confidential communication between the clergyman member

~~of the clergy or the priest and a member of his or her church or congregation; and~~

(iii) the person who made the statement or confession does not consent to the disclosure by the clergy person member of the clergy or the priest.

(c) A clergy person member of the clergy or a priest is not required to make a report under this section if the communication is required to be confidential by canon law, church doctrine, or established church practice.

(5) The reports referred to under this section shall must be made under oath and must contain:

(a) the names and addresses of the child and his or her the child's parents or other persons responsible for his or her the child's care;

(b) to the extent known, the child's age, the nature and extent of the child's injuries, including any evidence of previous injuries;

(c) any other information that the maker of the report believes might be helpful in establishing the cause of the injuries or showing the willful neglect and the identity of the person or persons responsible therefor for the injuries or neglect; and

(d) the facts which that led the person reporting to believe testify under oath that the child has suffered injury or injuries or willful neglect, within the meaning of

~~this chapter.~~

Section 5. Section 41-3-202, MCA, is amended to read:

"41-3-202. Action on reporting. (1) Upon receipt of a report as required by 41-3-201 that a child is or has been abused or neglected, a social worker or the county attorney or a peace officer shall promptly conduct a thorough ~~investigation~~ ^{a thorough} investigation into the home of the child involved or any other place where the child is present, into the circumstances surrounding the injury of the child, and into all other nonfinancial matters which that in the discretion of the investigator are relevant to the investigation. In conducting an investigation under this section, a social worker may not inquire into the financial status of the child's family or of any other person responsible for the child's care except as necessary to ascertain eligibility for federal assistance programs or to comply with the provisions of 41-3-406.

~~(2) An investigation into the home of the child may be conducted when an anonymous report is received. However, the investigation must within 48 hours develop independent, corroborative, and attributable information in order for the investigation to continue. Without the development of corroborative and attributable information, a child may not be removed from the home.~~

(2)(3) The social worker is responsible for assessing

1 the family and planning for the child. If the child is
 2 treated at a medical facility, the social worker, county
 3 attorney, or peace officer shall, consistent with reasonable
 4 medical practice, have the right of access to the child for
 5 interviews, photographs, and securing physical evidence and
 6 have the right of access to relevant hospital and medical
 7 records pertaining to the child. If considered appropriate
 8 by the social worker, county attorney, or peace officer
 9 conducting an interview of the child, an employee of the
 10 public school attended by the child involved may participate
 11 in any interview of the child if the child is enrolled in
 12 kindergarten through 8th grade.

13 (4) ^{AN} ~~the~~ examination of ^a ~~the~~ child ^{MAY} ~~must~~ be attended by
 14 an independent examining psychologist or physician, ^{who is}
 15 ~~obtained by the family and by the social worker.~~ If the
 16 child is ^{interviewed} ~~interviewed~~ by the social worker, an unedited
 17 videotape with audio track must be made available for
 18 ^{private} ~~unnumbered~~ review by the family.

19 (5) If from the investigation it appears that the
 20 child suffered abuse or neglect, the department shall
 21 provide protective services to the child pursuant to
 22 ^{this part} ~~the department~~ and may provide protective services to any other
 23 child under the same care. The department ^{shall} ~~will~~ advise
 24 the county attorney and the child's family of its
 25 investigation.

1 (4)(6) The investigating social worker, within 60 days
 2 of commencing an investigation, shall also furnish a written
 3 report to the department ~~and the family.~~ The department
 4 shall maintain a record system containing child abuse and
 5 neglect cases.

6 (5)(7) Any person reporting abuse or neglect which that
 7 involves acts or omissions on the part of a public or
 8 private residential institution, home, facility, or agency
 9 shall be is responsible for ensuring that the report is made
 10 to the department of family services, its local affiliate,
 11 and the county attorney of the county in which the facility
 12 is located, ~~and the family of the child who is the subject~~
 13 ~~of the report."~~

14 ~~Section 6 Section 41-3-204, WCA, is amended to read:~~
 15 "41-3-204. Admissibility and preservation of evidence.
 16 (1) In any a proceeding resulting from a report made
 17 pursuant to the provisions of this chapter or in any a
 18 proceeding where the report or its contents are sought to be
 19 introduced into evidence, the report or its contents or any
 20 other fact related to the report or to the condition of the
 21 child who is the subject of the report shall may not be
 22 excluded on the ground that the matter is or may be the
 23 subject of a privilege related to the examination or
 24 treatment of the child and granted in Title 26, chapter 1,
 25 ~~part 6, except the attorney-client privilege granted by~~

~~20-1-009,~~

(2) Any A person or official required to report under 41-3-201 may take or cause to be taken photographs of the area of trauma visible on a child who is the subject of a report. The cost of photographs taken under this section shall must be paid by the department.

(3) When any a person required to report under 41-3-201 finds visible evidence that a child has suffered abuse or neglect, he the person must shall include in his the report either a written description or photographs of the evidence.

(4) A physician, either in the course of his providing medical care to a minor or after consultation with child protective services, the county attorney, or a law enforcement officer may require x-rays to be taken when in his the physician's professional opinion there is a need for radiological evidence of suspected abuse or neglect. X-rays may be taken under this section without the permission of the parent or guardian. The cost of the x-rays ordered and taken under this section shall must be paid by the county child protective service agency.

(5) Evidence collected in the questioning of a child by an investigator without the presence of a videotape with audio track is inadmissible in a court to support a motion to temporarily remove the child from the family, grant temporary custody, or terminate parental rights.

~~(5)(6) At the time the written confirmation report is sent or as soon thereafter as possible, if written, photographic, or radiological evidence gathered under this section shall must be sent to the local affiliate of the department and copies must be sent to the child's family at the time the written confirmation report is sent or as soon~~

Section 7. Section 41-3-205, MCA, is amended to read:

"41-3-205. Confidentiality -- disclosure exceptions.

(1) The case records of the department of social and rehabilitation services, the department of family-services and its local affiliate, the county welfare department, the county attorney, and the court concerning actions taken under this chapter and all records concerning reports of child abuse and neglect must be kept confidential except as provided by this section. Any ~~person who permits or encourages the unauthorized dissemination of their the contents of case records is guilty of a misdemeanor.~~ ^{Any}

(2) Records may be disclosed to a court for in camera inspection if relevant to an issue before it. The court may permit public disclosure if it finds disclosure to be necessary for the fair resolution of an issue before it.

(3) Records may also be disclosed to the following persons or entities in this state or any other state:

1 (a) a department, agency, or organization, including
 2 federal agencies, legally authorized to receive, inspect, or
 3 investigate reports of child abuse or neglect;

4 (b) a licensed youth care facility or a licensed
 5 child-placing agency that is providing services to the
 6 family or child who is the subject of a report in the
 7 records;

8 (c) a licensed health or mental health professional who
 9 is treating the family or child who is the subject of a
 10 report in the records;

11 (d) a parent, or guardian, or person designated by a
 12 parent or guardian of the child who is the subject of a
 13 report in the records or other person responsible for the
 14 child's welfare, without ^{without} disclosure of the identity of
 15 any person who reported or provided information on the
 16 alleged child abuse or neglect incident contained in the
 17 records;

18 (e) a child named in the records who was allegedly
 19 abused or neglected or the child's guardian ad litem;

20 (f) the members of an interdisciplinary child
 21 protective team authorized under 41-3-108 for the purposes
 22 of assessing the needs of the child and family, formulating
 23 a treatment plan, and monitoring the plan;

24 (g) a department or agency investigating an applicant
 25 for a license to operate a youth care facility, day-care

1 facility, or child-placing agency if the investigation is
 2 based on a substantiated report and the applicant is
 3 notified of the investigation;

4 (h) an employee of the department if disclosure of the
 5 records is necessary for administration of programs designed
 6 to benefit the child;

7 (i) an agency of an Indian tribe or the relatives of an
 8 Indian child if disclosure of the records is necessary to
 9 meet requirements of the federal Indian Child Welfare Act;

10 (j) a youth probation officer who is working in an
 11 official capacity with the child who is the subject of a
 12 report in the records;

13 (k) a county attorney or peace officer if disclosure is
 14 necessary for the investigation or prosecution of a case
 15 involving child abuse or neglect;

16 (l) a foster care review committee established under
 17 41-3-1115 or, when applicable, a local citizen review board
 18 established under Title 41, chapter 3, part 10;

19 (m) a school employee participating in an interview of
 20 a child by a social worker, county attorney, or peace
 21 officer as provided in 41-3-202;

22 (n) a member of a county interdisciplinary child
 23 information team formed under 52-2-211 who is not listed in
 24 subsection (3); or

25 (o) members of a local interagency staffing group

1 provided for in 52-2-203.

2 (4) A person who is authorized to receive records under
3 this section shall maintain the confidentiality of the
4 records and may not disclose information in the records to
5 anyone other than the persons described in subsection
6 (3)(a) ~~except that nothing in this subsection may be~~
7 ~~construed to compel a family member who believes the family~~
8 ~~is being victimized by an unfair or unwarranted process to~~
9 ~~keep the proceedings secret.~~

10 (5) A news organization or its employee, including a
11 freelance writer or reporter, is not liable for reporting
12 facts or statements made by an immediate family member under
13 subsection (4) if the news organization, employee, writer,
14 or reporter has made every effort to avoid publicly
15 ~~identifying the child who is the subject of the proceeding.~~

16 (5)(6) Nothing in this section is intended to affect
17 the confidentiality of criminal court records or records of
18 law enforcement agencies."

19 **Section 8.** Section 41-3-206, MCA, is amended to read:

20 "41-3-206. Procedure in case of child's death. (1) Any
21 A person or official required to report by law who has
22 reasonable cause to suspect that a child has died as a
23 result of child abuse or neglect shall report ~~under oath~~ his
24 the person's suspicion to the appropriate medical examiner
25 or law enforcement officer. Any other person who has

1 reasonable cause to suspect that a child has died as a
2 result of child abuse or neglect may report ~~under oath~~ his
3 the person's suspicion to the appropriate medical examiner
4 or law enforcement officer.

5 (2) The medical examiner or coroner shall investigate
6 the report and submit his findings, in writing, to the local
7 law enforcement agency, the appropriate county attorney, the
8 local child protective service, the family of the deceased
9 child, and, if the person making the report is a physician,
10 the physician."

11 **Section 9.** Section 41-3-301, MCA, is amended to read:

12 "41-3-301. Emergency protective service. (1) Any A
13 child protective social worker of the department of--family
14 services, a peace officer, or the county attorney who has
15 reason to believe that any a youth is in immediate or
16 apparent danger of harm may immediately remove the youth and
17 place him the youth in a protective facility. The department
18 may make a request for further assistance from the law
19 enforcement agency or take appropriate legal action. The
20 person or agency placing the child shall notify the parents,
21 parent, guardian, or other person having legal custody of
22 the youth at the time the placement is made or as soon
23 thereafter as possible.

24 (2) No A child who has been removed from his the home
25 or any other place for his the child's protection or care

"Prior to filing of the petition, the county attorney or the attorney representing the department shall verify that probable cause exists to file the petition."

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1 may not be placed in a jail.
2 (3) A petition shall must be filed within 48 hours of
3 emergency placement of a child unless arrangements
4 acceptable to the agency for the care of the child have been
5 made by the parents. ~~Criminal charges must be filed against~~
6 ~~a family member or family associate believed by a county~~
7 ~~attorney, the attorney general, or an attorney hired by the~~
8 ~~department to have sexually abused or endangered a child. A~~
9 ~~family member or family associate charged with sexual abuse~~
10 ~~or endangerment is entitled to a jury trial.~~

11 (4) If criminal charges are not filed within 20 days of
12 emergency placement, the child must be returned to the home
13 unless clear and convincing evidence exists to support an
14 allegation that the child, if returned to the home, is in
15 imminent danger of being sexually abused or endangered by a
16 family member or family associate. If evidence of imminent
17 danger exists, the child may be removed from the home only
18 for a period of time sufficient to allow the development of
19 the required criminal complaint. In all cases, an emergency
20 placement of a child may not continue beyond 60 days without
21 criminal charges being filed against the person believed to
22 ~~have sexually abused or endangered the child.~~

23 {4}[5] The department of--family--services shall make
24 such necessary arrangements for the youth's well-being as
25 are required prior to the court hearing."

Section 10. Section 41-3-303, MCA, is amended to read:

"41-3-303. Guardian ad litem. (1) ~~in when the child is~~
~~temporarily removed from the home and in every judicial~~
^{IN} proceeding, the court shall appoint for any a child alleged
to be abused or neglected a guardian ad litem. The
department or any of its staff may not be appointed as the
guardian ad litem in a judicial proceeding under this title.
When necessary-the The guardian ad litem may ~~not be~~
~~appointed from a pool of volunteers~~
~~background check must be performed~~
~~they~~ may serve either at their own expense or at
public expense.

(2) The guardian ad litem is charged with the
representation of the child's interests. The guardian ad
litem has the following general duties:

(a) to conduct investigations that the guardian ad
litem considers necessary to ascertain the facts
constituting the alleged abuse or neglect;

(b) to interview or and observe the child who is the
subject of the proceeding;

(c) to have access to court, medical, psychological,
law enforcement, social services, and school records
pertaining to the child and the child's siblings and parents
or custodians legal guardian;

(d) to make written reports to the court concerning the

1 child's welfare;

(e) to appear and participate in all proceedings to the degree necessary to adequately represent the child, testify regarding the guardian ad litem's observation of the child's needs and emotional state during any period of separation from the family, and make recommendations to the court concerning the child's welfare; and

(f) when appropriate, to be a friend and to provide for the daily nurturing needs of the child while separated from the family;

(g) when appropriate, to act as a medium for communication with the immediate family members, other family members, and friends of the child during the separation period;

(h) when appropriate, to retrieve from the family any personal property the child desires to have during the separation period;

(i) when appropriate, to report directly to the judge on a regular basis the guardian ad litem's observations regarding the needs and emotional state of the child during the separation period and the impact of the separation on the child; and

(j) to perform other duties as directed by the court."

Section 11 Section 41-3-401, MCA, is amended to read:

"41-3-401. Abuse, neglect, and dependency petitions.

(1) The After filing criminal charges alleging sexual abuse

management against a family member or family associate;

~~the county attorney, attorney general, or an attorney hired by the county welfare department or office of human services shall be is responsible for filing all petitions alleging abuse, neglect, or dependency. The county attorney or attorney general, or an attorney hired by the county welfare department or office of human services with the written consent of the county attorney or attorney general, may require all state, county, and municipal agencies, including law enforcement agencies, to conduct such investigations and furnish such reports as may be necessary.~~

(2) Upon receipt of a petition, the court shall set a date for an adjudicatory hearing on the petition. Such petitions shall Petitions must be given preference by the court in setting hearing dates.

(3) A petition alleging abuse, neglect, or dependency is a civil action brought in the name of the state of Montana. The rules of civil procedure shall apply except as herein modified in this part. Proceedings under a petition are not a bar to criminal prosecution.

(4) The parents or parent, guardian, or other person or agency having legal custody of the youth named in the petition, if residing in the state, shall must be served personally with a copy of the petition and summons at least 5 days prior to the date set for hearing. If such a person

~~an agency cannot be served personally, the person or agency~~

1 ~~may be served by publication in the manner provided by the~~
2 Montana Rules of Civil Procedure for other types of
3 proceedings.
4 (5) In the event personal service cannot be made upon
5 the parents or parent, guardian, or other person or agency
6 having legal custody, the court shall appoint an attorney to
7 represent the unavailable party where when in the opinion of
8 the court the interests of justice require.
9 (6) If a parent of the child is a minor, notice shall
10 must be given to the minor parent's parents or guardian, and
11 if there is no guardian the court shall appoint one.
12 (7) Any person interested in any cause under this
13 chapter has the right to appear.
14 (8) Except where when the proceeding is instituted or
15 commenced at the request of the department of--family
16 services, a citation shall must be issued and served upon a
17 representative of the department prior to the court hearing.
18 (9) The petition shall must:
19 (a) state the nature of the alleged abuse, neglect, or
20 dependency;
21 (b) state the full name, age, and address of the youth
22 and the name and address of his the youth's parents or
23 guardian of the person having legal custody of the youth;
24 and
25 (c) state the names, addresses, and relationship to the

1 youth of all persons who are necessary parties to
2 action.
3 (10) The petition may ask for the following relief:
4 (a) temporary investigative authority and protective
5 services;
6 (b) temporary legal custody;
7 (c) termination of the parent-child legal relationship
8 and permanent legal custody with the right to consent to
9 adoption; or
10 (d) any combination of the above or such other relief
11 as may be required for the best interest of the youth.
12 (11) The petition may be modified for different relief
13 at any time within the discretion of the court.
14 (12) The court may at any time on its own motion or the
15 motion of any party appoint counsel for any indigent party."
16 Section 12. Section 41-3-402, MCA, is amended to read:
17 "41-3-402. Petition for temporary investigative
18 authority and protective services. (1) In cases where it
19 appears that a youth is abused or neglected or is in danger
20 of being abused or neglected, the county attorney, the
21 attorney general, or an attorney hired by the county welfare
22 department or office of human services, after filing
23 criminal charges alleging sexual abuse or endangerment, may
24 file a petition for temporary investigative authority and
25 protective services."

"Failure to conduct a show cause hearing within 20 days results in dismissal of the underlying petition unless the hearing date is continued by the court or is waived by the parent or guardian of the child named in the petition." 6/1/01

1 ~~(b) A petition for temporary investigative authority~~
2 and protective services shall must state the specific
3 authority requested and the facts establishing probable
4 cause that a youth is abused or neglected or is in danger of
5 being abused or neglected.

6 (3) The petition for temporary investigative authority
7 and protective services ~~shall~~ must be supported by an
8 affidavit signed by the county attorney, the attorney
9 general, or an attorney hired by the county welfare
10 department or office of human services or a department of
11 family services report stating in detail the facts upon
12 ~~which the request is based.~~

13 **Section 13.** Section 41-3-403, MCA, is amended to read:

14 "41-3-403. Order for immediate protection of youth.

15 (1) (a) Upon the filing of ~~a petition~~ a petition
16 for temporary investigative authority and protective
17 services, the court may issue an order granting relief that
18 may be required for the immediate protection of the youth.

19 (b) The order, along with the petition and supporting
20 documents, must be served by a peace officer or a
21 representative of the department on the person or persons
22 named in the order. When the youth is placed in a medical
23 facility or protective facility, the department shall notify
24 the parents or parent, guardian, or other person having
25 legal custody of the youth, at the time the placement is

1 made or as soon after placement as possible.

2 (c) The order must require the person served to comply
3 immediately with the terms of the order or to appear before
4 the court issuing the order on the date specified and show
5 cause why the person has not complied with the order. The
6 show cause hearing must be conducted within 20 days of the
7 issuance of the order by the judge or a master appointed by
8 the judge. The person filing the petition has the burden of
9 presenting evidence establishing probable cause for the
10 issuance of the order. Except as otherwise provided in this
11 part, the rules of civil procedure apply. Hearsay evidence
12 of statements made by the affected youth is admissible at
13 the hearing.

14 (d) Upon a failure to comply or show cause, the court
15 may hold the person in contempt or place temporary legal
16 custody of the youth with the department until further
17 order.

18 (2) The court may grant the following kinds of relief:

19 (a) right of entry by a peace officer or department
20 worker;

21 (b) medical and psychological evaluation of the youth
22 or parents, guardians, or person having legal custody;

23 (c) requirement that the youth, parents, guardians, or
24 person having legal custody receive counseling services;

25 (d) placement of the youth in a temporary medical

1 facility or a facility for protection of the youth;

2 (e) requirement that the parents, guardian, or other
3 person having custody furnish services that the court may
4 designate;

5 (f) inquiry into the financial ability of the parents,
6 guardian, or other person having custody of the youth to
7 contribute to the costs for the care, custody, and treatment
8 of the youth and requirement of a contribution for those
9 costs pursuant to the requirements of 41-3-406(3) through
10 (6);

11 (g) other temporary disposition that may be required in
12 the best interest of the youth that does not require an
13 expenditure of money by the department unless the department
14 is notified and a court hearing is set in a timely manner on
15 the proposed expenditure. The department is the payor of
16 last resort after all family, insurance, and other resources
17 have been examined."

18 Section 14. Section 41-3-404, MCA, is amended to read:

19 "41-3-404. Adjudicatory hearing -- temporary
20 disposition. (1) In the adjudicatory hearing on a petition
21 under 41-3-401, the court shall determine whether the youth
22 is a youth in need of care and ascertain, as far as
23 possible, the cause.

24 (2) The court shall hear evidence regarding the
25 residence of the youth, the whereabouts of the parents,

1 guardian, or nearest adult relative, and any other matters
2 the court considers relevant in determining the status of
3 the youth.

4 (3) In all civil and criminal proceedings relating to
5 abuse, neglect, or dependency, none of the privileges
6 related to the examination or treatment of the child and
7 granted in Title 26, chapter 1, part 8, except the
8 attorney-client privilege granted by 26-1-803, apply.

9 (4) If a child is temporarily removed from the home,
10 the department shall notify the family or a family member of
11 any change in the child's residence within 4 hours of the
12 change. -- or as soon thereafter as possible

13 (5) If a child is temporarily removed from the home,
14 the family or a family member is entitled to at least one
15 telephone call to the child at least one personal visit by
each weekend one personal visit by each week ~~one~~

16 ~~minimum of 1 hour each call. The family or family member~~
17 ~~also entitled to at least one personal visit each week for~~
18 ~~minimum of 2 hours~~

19 (4)(6) (a) If the court determines that the youth is
20 not an abused, neglected, or dependent child, the petition
21 shall must be dismissed and any order made pursuant to
22 41-3-403 shall must be vacated.

23 (b) If the court determines that the youth is an
24 abused, neglected, or dependent child, the court shall set a
25 date for a dispositional hearing to be conducted within 30

" , unless the department determines that the contact
would be detrimental, not in the child's best interests, or
against the child's wishes"

1 days and order any necessary or required investigations. The
 2 court may issue a temporary dispositional order pending the
 3 dispositional hearing. The temporary dispositional order may
 4 provide for any of the forms of relief listed in
 5 41-3-403(2)."

~~Section 41-3-406, which is amended to read:~~

7 "41-3-406. Dispositional hearing -- contributions by
 8 parents or guardians for youth's care. (1) If a youth is
 9 found to be a youth in need of care under 41-3-404, the
 10 court may enter its judgment, making any of the following
 11 dispositions to protect the welfare of the youth:

12 (a) permit the youth to remain with the youth's parents
 13 or guardian, subject to those conditions and limitations the
 14 court may prescribe;

15 (b) grant an order of limited emancipation to a youth
 16 who is 16 years of age or older as provided in 41-3-408;

17 (c) transfer legal custody to any of the following:

18 (i) the department;

19 (ii) a child-placing agency that is willing and able to
 20 assume responsibility for the education, care, and
 21 maintenance of the youth and that is licensed or otherwise
 22 authorized by law to receive and provide care of the youth;
 23 or

24 (iii) a relative family member or other individual who,
 25 after study by a social service agency designated by the

~~court, is found by the court to be qualified to receive and
 2 care for the youth;~~

3 (d) order any party to the action to do what is
 4 necessary to give effect to the final disposition, including
 5 undertaking medical and psychological evaluations,
 6 treatment, and counseling that does not require an
 7 expenditure of money by the department unless the department
 8 is notified and a court hearing is set in a timely manner on
 9 the proposed expenditure. The department is the payor of
 10 last resort after all family, insurance, and other resources
 11 have been examined.

12 (e) order further care and treatment as the court
 13 considers in the best interest of the youth that does not
 14 require an expenditure of money by the department unless the
 15 department is notified and a court hearing is set in a
 16 timely manner on the proposed expenditure. The department is
 17 the payor of last resort after all family, insurance, and
 18 other resources have been examined.

19 (2) If the youth is transferred to the custody of the
 20 department, the court shall examine the financial ability of
 21 the youth's parents or guardians to pay a contribution
 22 covering all or part of the costs for the care, custody, and
 23 treatment of the youth, including the costs of necessary
 24 medical, dental, and other health care.

~~(3) If the court determines that the youth is~~

1 ~~person is financially able to pay a contribution as~~
2 provided in subsection (2), the court shall order the
3 youth's parents or guardians to pay an amount based on the
4 uniform child support guidelines adopted by the department
5 of social and rehabilitation services pursuant to 40-5-209.
6 (4) (a) Except as provided in subsection (4)(b),
7 contributions ordered under this section and each
8 modification of an existing order are enforceable by
9 immediate or delinquency income withholding, or both, under
10 Title 40, chapter 5, part 4. An order for a contribution
11 that is inconsistent with this section is nevertheless
12 subject to withholding for the payment of the contribution
13 without need for an amendment of the support order or for
14 any further action by the court.

15 (b) A court-ordered exception from contributions under
16 this section must be in writing and must be included in the
17 order. An exception from the immediate income withholding
18 requirement may be granted if the court finds that there is:
19 (i) good cause not to require immediate income
20 withholding; or
21 (ii) an alternative arrangement between the department
22 and the person who is ordered to pay contributions.
23 (c) A finding of good cause not to require immediate
24 income withholding must, at a minimum, be based upon:
25 (i) a written determination and explanation by the

2 income withholding is not in the best interests of the
3 child; and
4 (ii) proof of timely payment of previously ordered
5 support in cases involving modification of contributions
6 ordered under this section.
7 (d) An alternative arrangement must:
8 (i) provide sufficient security to ensure compliance
9 with the arrangement;
10 (ii) be in writing and be signed by a representative of
11 the department and the person required to make
12 contributions; and
13 (iii) if approved by the court, be entered into the
14 record of the proceeding.
15 (5) Upon a showing of a change in the financial ability
16 of the youth's parents or guardians to pay, the court may
17 modify its order for the payment of contributions required
18 under subsection (3).
19 (6) (a) If the court orders the payment of
20 contributions under this section, the department shall apply
21 to the department of social and rehabilitation services for
22 support enforcement services pursuant to Title IV-D of the
23 Social Security Act.
24 (b) The department of social and rehabilitation
25 services may collect and enforce a contribution order under

1 ~~this section by any means available under law, including the~~
 2 remedies provided for in Title 40, Chapter 5, parts 2 and
 3 4."

4 **Section 16.** Section 41-3-409, MCA, is amended to read:

5 "41-3-409. Appeals. (1) If requested by the attorney
 6 for the family, the supreme court may, within 60 days of a
 7 hearing provided in 41-3-406, empanel a tribunal of three
 8 district court judges residing outside the jurisdiction of
 9 the original court to review the case. Appeals of court
 10 orders or decrees made under this part shall must be given
 11 precedence on the calendar of the supreme court over all
 12 other matters, unless otherwise provided by law. An appeal
 13 does not stay the order or decree appealed from; however,
 14 the supreme court may order a stay upon application and
 15 hearing if suitable provision is made for the care and
 16 custody of the child.

17 (2) By a majority decision, the tribunal may:

- 18 (a) affirm the decision;
- 19 (b) modify the decision;
- 20 (c) substitute its judgment for that of the court of
 21 original jurisdiction; or
- 22 (d) order a new hearing."

23 **Section 17.** Section 41-3-609, MCA, is amended to read:

24 "41-3-609. Criteria for termination. (1) The court may

2 exist:

3 (a) the parents have relinquished the child pursuant to
 4 40-6-135;

5 (b) the child has been abandoned by his parents as set
 6 forth in 41-3-102(e);

7 (c) the child is an adjudicated youth in need of care
 8 and both of the following exist:

9 (i) an appropriate treatment plan that has been
 10 approved by the court has not been complied with by the
 11 parents or has not been successful; and

12 (ii) the conduct or condition of the parents rendering
 13 them unfit is unlikely to change within a reasonable time;
 14 or

15 (d) the parent has failed to successfully complete a
 16 treatment plan approved by the court within the time periods
 17 allowed for the child to be in foster care under 41-3-410
 18 unless it orders other permanent legal custody under
 19 41-3-410.

20 (2) In determining whether the conduct or condition of
 21 the parents is unlikely to change within a reasonable time,
 22 the court must shall enter a finding that continuation of
 23 the parent-child legal relationship will likely result in
 24 continued abuse or neglect or that the conduct or the
 25 condition of the parents renders the parent-child relationship

1 ~~in determining to give the child adequate parental care. In~~
 2 making such determinations, the court shall consider but is
 3 not limited to the following:
 4 (a) emotional illness, mental illness, or mental
 5 deficiency of the parent of such duration or nature as to
 6 render the parent unlikely to care for the ongoing physical,
 7 mental, and emotional needs of the child within a reasonable
 8 time;
 9 (b) a history of violent behavior by the parent;
 10 (c) a single incident of life-threatening or gravely
 11 disabling injury to or disfigurement of the child caused by
 12 the parent;
 13 (d) excessive use of intoxicating liquor or of a
 14 narcotic or dangerous drug that affects the parent's ability
 15 to care and provide for the child;
 16 (e) present judicially ordered long-term confinement of
 17 the parent;
 18 (f) the injury or death of a sibling due to proven
 19 parental abuse or neglect; and
 20 (g) any reasonable efforts by protective service
 21 agencies that have been unable to rehabilitate the parent.
 22 (3) In considering any of the factors in subsection (2)
 23 in terminating the parent-child relationship, the court
 24 shall give primary consideration to the physical, mental,
 25 and emotional condition and needs of the child. The court

2 child's or the parent's physical, mental, and emotional
 3 conditions.
 4 (4) A treatment plan is not required under this part
 5 upon a finding by the court following hearing if:
 6 (a) two medical doctors submit testimony that the
 7 parent is so severely mentally ill that such the person
 8 cannot assume the role of parent;
 9 (b) the parent is incarcerated for more than 1 year and
 10 such a treatment plan is not practical considering the
 11 incarceration; or
 12 (c) the death of a sibling caused by abuse or neglect
 13 by the parent has occurred."
 14 **Section 18.** Section 41-3-1103, MCA, is amended to read:
 15 "41-3-1103. Powers and duties of department. (1) The
 16 department shall:
 17 (a) administer all state and federal funds allocated to
 18 the department for youth foster homes, youth group homes,
 19 and child-care agencies for youth in need of care, youth in
 20 need of supervision, and delinquent youth, as defined in
 21 41-5-103;
 22 (b) exercise licensing authority over all youth foster
 23 homes, youth group homes, and child-care agencies;
 24 (c) collect and disseminate information relating to
 25 youth in need of care, youth in need of supervision, and

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~~delinquent youth~~

(d) provide for training of program personnel delivering services;

(e) in cooperation with youth care facility providers, develop and implement standards for youth care facilities;

(f) maintain adequate data, on placements, it funds in order to keep the legislature properly informed of the following:

(i) the breakdown of youth in need of care, youth in need of supervision, and delinquent youth by category in out-of-home care facilities;

(ii) the cost per facility for services rendered;

(iii) the type and level of care of services provided by each facility;

(iv) a profile of out-of-home care placements by level of care; and

(v) a profile of public institutional placements; and

(g) administer all funds allocated to the department for residential alcohol and drug abuse treatment for indigent youths in need of care, indigent youths in need of supervision, and indigent delinquent youths who require such treatment.

(2) The department may:

(a) enter into contracts with nonprofit corporations or

~~associations, private organizations to provide substitute~~

~~care for youth in need of care, youth in need of~~

supervision, and delinquent youth in youth care facilities.

(b) accept gifts, grants, and donations of money and property from public and private sources to initiate and maintain community-based services to youth;

(c) adopt rules to carry out the administration and purposes of this part.

(3) The department shall pay for room, board, clothing, personal needs, transportation, and treatment in youth foster care homes and youth group homes for youths committed to the department who need to be placed in such facilities.

Payments for the clothing of a child placed in a youth foster home must be provided to the extent the child needs a basic wardrobe or has a special clothing need. However, payments for clothing may not exceed \$300 a year per child.

(4) If a child temporarily removed from the home is placed in foster care, the department shall provide the child's family or a family member with information on the background of the home, any complaints filed against the home, and the record of disposition of children from the home. The family or a family member is entitled to petition the court for placement in another foster home if

~~disappointed with the placement.~~

NEW SECTION. Section 19. Effective date. [This act] is effective July 1, 1994.

SENATE JUDICIARY
AMEND NO. 2

Amendments to Senate Bill No. 33
First Reading Copy (white)

Requested by Senator Halligan
For the Committee on Judiciary

Prepared by Valencia Lane
December 16, 1993

1. Title, lines 6 through 12.

Following: "HOME" on line 6

Insert: ";

Strike: remainder of line 6 through "ENDANGERMENT" on line 12

Insert: "AUTHORIZING CERTAIN INFORMATION".

2. Title, line 13.

Strike: "GUARANTEEING A FAMILY'S"

Insert: "AUTHORIZING CERTAIN FAMILY"

3. Title, lines 14 through 16.

Following: "HOME;" on line 14

Strike: remainder of line 14 through "HOME;" on line 16

4. Title, line 17.

Strike: "41-3-201," and "41-3-204,"

5. Title, line 18.

Strike: "41-3-401, 41-3-402,"

Following: "41-3-403,"

Insert: "AND"

Strike: "41-3-406,"

6. Title, line 19.

Strike: "41-3-409, 41-3-609, AND 41-3-1103,"

7. Page 1, line 22 through page 2, line 25.

Strike: page 1, line 22 through page 2, line 25 in their entirety

8. Page 3, line 20.

Strike: "(10)(e)"

Insert: "(8)(d)"

9. Page 5, lines 16 through 23.

Following: "possible" on line 16

Strike: remainder of line 16 through "associate" on line 23

10. Page 6, line 7.

Following: "heritage"

Strike: "free from proselytism"

11. Page 6, line 9.

Strike: "sexual abuse or endangerment"

Insert: "such"

12. Page 6, line 13.

Following: "and"
Insert: "and"

13. Page 6, lines 14 and 15.
Following: "appropriate" on line 14
Strike: remainder of line 14 through "family" on line 15

14. Page 8, lines 12 through 18.
Strike: subsections (8) and (9) in their entirety
Re-number: subsequent subsections

15. Page 8, line 22.
Strike: "knowingly" in 2 places

16. Page 8, line 24.
Strike: "knowingly" in 2 places

17. Page 9, lines 1 through 4.
Strike: subsection (c) in its entirety
Re-number: subsequent subsections

18. Page 9, line 8.
Strike: "through"
Insert: "though"

19. Page 9, line 22 through page 10, line 5.
Strike: subsections (11) through (13) in their entirety
Re-number: subsequent subsections

20. Page 10, line 20 through page 11, line 2.
Strike: subsection (17) in its entirety
Re-number: subsequent subsections

21. Page 11, lines 9 through 12.
Following: "infant" on line 9
Strike: remainder of line 9 through "parent" on line 12
Insert: "or toddler"

22. Page 13, line 8 through page 16, line 1.
Strike: section 4 in its entirety
Re-number: subsequent sections

23. Page 16, lines 6 and 7.
Following: "~~thorough~~" on line 6
Strike: remainder of line 6 through "initial" on line 7
Insert: "a thorough"

24. Page 16, lines 18 through 24.
Strike: subsection (2) in its entirety
Re-number: subsequent subsections

25. Page 17, line 13.
Strike: "All examinations"
Insert: "An examination"
Strike: "the"

Insert: "a"
Strike: "must"
Insert: "may"

26. Page 17, line 14.
Strike: "the"
Insert: "an"

27. Page 17, line 15.
Strike: "representing"
Insert: "who is retained by"
Following: "family"
Strike: "and by the social worker"

28. Page 17, line 16.
Strike: "interviewed"
Insert: "videotaped"

29. Page 17, line 18.
Strike: "unencumbered"
Insert: "private"

30. Page 17, line 22.
Strike: "41-3-301"
Insert: "this part"

31. Page 18, line 3.
Following: "department"
Strike: "and the family"

32. Page 18, lines 12 and 13.
Following: "located" on line 12
Strike: remainder of line 12 through "report" on line 13

33. Page 18, line 14 through page 20, line 7.
Strike: section 6 in its entirety
Renumber: subsequent sections

34. Page 20, lines 16 and 17.
Following: "Any" on line 16
Strike: remainder of line 16 through "a" on line 17
Insert: "Any"

35. Page 21, line 14.
Following: "without"
Strike: "with"
Insert: "without"

36. Page 23, lines 7 and 8.
Following: "member" on line 7
Strike: remainder of line 7 through "process" on line 8

37. Page 23, lines 10 through 15.
Strike: subsection (5) in its entirety
Renumber: subsequent subsection

38. Page 23, line 23.

Following: "report"

Strike: "under oath"

39. Page 24, line 2.

Following: "report"

Strike: "under oath"

40. Page 25, lines 5 through 22.

Following: "parents." on line 5

Strike: remainder of line 5 through "child." on line 22

Insert: "Prior to filing of the petition, the county attorney or
the attorney representing the department shall verify that
probable cause exists to file the petition."

Renumber: subsequent subsection

41. Page 26, lines 2 and 3.

Following: "~~In~~" on line 2

Strike: remainder of line 2 through "in" on line 3

Insert: "In"

42. Page 26, lines 8 through 11.

Following: "~~may~~" on line 8

Strike: remainder of line 8 through "They" on line 11

43. Page 27, line 8.

Following: "(f)"

Insert: "when appropriate,"

44. Page 27, line 11.

Following: "(g)"

Insert: "when appropriate,"

45. Page 27, line 14.

Following: "(h)"

Insert: "when appropriate,"

46. Page 27, line 16.

Following: "(i)"

Insert: "when appropriate,"

47. Page 27, line 22 through page 31, line 12.

Strike: sections 11 and 12 in their entirety

Renumber: subsequent sections

48. Page 31, line 15.

Strike: "criminal charges and"

49. Page 32, line 8.

Following: "judge."

Insert: "Failure to conduct a show cause hearing within 20 days
results in dismissal of the underlying petition unless the
hearing date is continued by the court or is waived by the
parent or guardian of the child named in the petition."

50. Page 34, line 12.

Following: "change"

Insert: "or as soon thereafter as possible"

51. Page 34, line 14.

Following: "to"

Strike: "an unencumbered"

Insert: "at least one"

52. Page 34, line 15.

Following: "child"

Insert: "each week and"

Following: "least"

Strike: "3 days"

Insert: "one personal visit with the child"

53. Page 34, lines 15 through 18.

Following: "week" on line 15

Strike: remainder of line 15 through "hours" on line 18

Insert: ", unless the department determines that the contact
would be detrimental, not in the child's best interests, or
against the child's wishes"

54. Page 35, line 6 through page 44, line 23.

Strike: sections 15 through 18 in their entirety

Renumber: subsequent section



MONTANA STATE SENATE

SENATOR JAMES H. "JIM" BURNETT
SENATE DISTRICT 42
HOME ADDRESS:
P.O. BOX 4460
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HELENA, MONTANA 59620
PHONE: (406) 444-4800

SENATE JUDICIARY
EXHIBIT NO. 3
DATE 12-16-93
BILL NO. SB 33

December 13, 1993

The fiscal funding for Senate Bill 33 by the requirement of video equipment for initial interviews and storage of that tape for the five regional areas: 5 units per area at \$2000 per unit totals \$50,000. Administratively this would be a maximum.

To offset this cost, Senate Bill 33 would tighten up the law resulting in a substantial reductions in child removals.

Section 16 - This does not require funding by this bill. The Supreme Court under it's own rules has this authority. They may at their own discretion -- it is not mandated.

Jim Burnett

DATE 12-16-93Amendments to Senate Bill NO. SB 33
First Reading Copy (white)Requested by Senator Halligan
For the Committee on JudiciaryPrepared by Valencia Lane
December 15, 1993*Revised
by
Comm.*

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Insert: " ; "
Strike: remainder of line 6 through "ENDANGERMENT" on line 12
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Insert: "AND"
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Renumber: subsequent subsections

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Renumber: subsequent subsections

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Strike: "with"
Insert: "without"

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Following: "(3)(a)" on line 6
Strike: remainder of line 6 through "proceeding" on line 15
Renumber: subsequent subsection

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Following: "report"

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Insert: ", unless the department determines that the contact
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