

CHAPTER NO. 567.

HOUSE BILL NO. 813

INTRODUCED BY HOUSE JUDICIARY COMMITTEE, SCULLY, CHAIRMAN

IN THE HOUSE

February 14, 1979	Introduced and referred to Committee on Judiciary.
February 16, 1979	Committee recommend bill do pass. Report adopted.
February 17, 1979	Second reading, do pass.
February 19, 1979	Considered correctly engrossed. On motion, taken from third reading and referred to engrossing for Statement of Intent.
February 20, 1979	Correctly engrossed.
February 21, 1979	Third reading, passed. Transmitted to second house.

IN THE SENATE

February 22, 1979	Introduced and referred to Committee on Judiciary.
March 21, 1979	Committee recommend bill be concurred in as amended. Report adopted.
March 23, 1979	Second reading, concurred in.
March 27, 1979	Third reading, concurred in as amended.

IN THE HOUSE

March 28, 1979	Returned from second house. Concurred in as amended.
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March 31, 1979

Second reading, amendments
adopted.

April 2, 1979

Third reading, amendments
adopted. Sent to enrolling.

Reported correctly enrolled.

1 ~~House~~ BILL NO. 813
 2 INTRODUCED BY House Judiciary Com *[Signature]*
 3 *[Signature]*
 4 *[Signature]*

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE AND CLARIFY
 5 THE ROLES OF THE DEPARTMENT OF SOCIAL AND REHABILITATION
 6 SERVICES AND THE COUNTY WELFARE DEPARTMENT IN CONDUCTING
 7 INVESTIGATIONS, INCLUDING FINANCIAL INVESTIGATIONS, AND
 8 PREPARING REPORTS WHEN A MINOR IS PLACED IN A FOSTER HOME,
 9 CHILD CARE AGENCY, GROUP HOME, OR PRIVATE TREATMENT FACILITY
 10 PURSUANT TO THE LAWS RELATING TO ABUSED, NEGLECTED, OR
 11 DEPENDENT CHILDREN OR THE MONTANA YOUTH COURT ACT; PROVIDING
 12 FOR AN ADJUDICATORY AND A DISPOSITIONAL HEARING ON PETITIONS
 13 FOR ABUSED, NEGLECTED, OR DEPENDENT YOUTH AND PROVIDING FOR
 14 A COURT DETERMINATION OF THE FINANCIAL ABILITY OF PARENTS OR
 15 GUARDIAN TO PAY THE COST OF SUPPORTING A MINOR; AMENDING
 16 SECTIONS 41-3-105, 41-3-202, 41-3-401, 41-3-404 THROUGH
 17 41-3-406, 41-5-522, AND 41-5-803, MCA."

18
 19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 20 NEW SECTION. Section 1. Rulemaking authority. The
 21 department of social and rehabilitation services shall adopt
 22 rules to govern the procedures used by department personnel
 23 and by employees of county welfare departments in preparing
 24 and processing reports and in making investigations
 25 authorized by [Title 41, chapter 3] or [section 12].

1 Section 2. Section 41-3-105, MCA, is amended to read:
 2 "41-3-105. Recovery from parents or guardian --
 3 division between state and county. (1) In the event any
 4 recovery is made from the ~~parent~~ parent or guardian of
 5 children for whom board, clothing, personal needs, and room
 6 have been paid by the state and county, any amount so
 7 recovered shall be divided equally between the department
 8 and the county of residence of such child or children.

9 (2) Any amount collected from ~~a parent or the parents~~
 10 or guardian when a child is placed in a foster home, child
 11 care agency, group home, or private treatment facility shall
 12 be transmitted to the department of social and
 13 rehabilitation services. The department shall then pay to
 14 the county one-half of the amount so collected."

15 Section 3. Section 41-3-202, MCA, is amended to read:
 16 "41-3-202. Action on reporting -- maintenance of
 17 central registry on child abuse. (1) If from ~~said report~~
 18 ~~shall appear a report filed under 41-3-201, it appears that~~
 19 the child suffered such injury or injuries or willful
 20 neglect, the a social worker shall conduct a thorough
 21 investigation into the home of the child involved, and into
 22 the circumstances surrounding the injury of the child, and
 23 into all other nonfinancial matters which in the discretion
 24 of the social worker ~~shall be~~ are relevant and material to
 25 the investigation. In conducting an investigation under this

-2- **HB 813**
 INTRODUCED BILL

1 ~~sections, a social worker may not inquire into the financial~~
 2 ~~status of the child's family or of any other person~~
 3 ~~responsible for the child's care.~~ If from the investigation
 4 it ~~shall appear~~ appears that the child suffered such injury
 5 or injuries or willful neglect, the department shall provide
 6 protective services to protect the child and preserve the
 7 family. The department will advise the county attorney of
 8 its investigation.

9 (2) The investigating social worker shall also furnish
 10 a written report to the department of social and
 11 rehabilitation services which shall have the responsibility
 12 of maintaining a central registry on child abuse or willful
 13 neglect cases."

14 Section 4. Section 41-3-401, MCA, is amended to read:

15 "41-3-401. Abuse, neglect, and dependency petitions.

16 (1) The county attorney shall be responsible for filing all
 17 petitions alleging abuse, neglect, or dependency. He may
 18 require all state, county, and municipal agencies, including
 19 law enforcement agencies, to conduct such investigations and
 20 furnish such reports as may be necessary. ~~Investigations as~~
 21 ~~to financial status may not be made prior to the~~
 22 ~~adjudicatory hearing provided for in 41-3-404.~~

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

1 hearing dates.

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

7 (4) The parents or parent, guardian, or other person
 8 or agency having legal custody of the youth named in the
 9 petition, if residing in the state, shall be served
 10 personally with a copy of the petition and summons at least
 11 5 days prior to the date set for hearing. If such person or
 12 agency resides out of state or is not found within the
 13 state, the rules of civil procedure relating to service of
 14 process in such cases shall apply.

15 (5) In the event service cannot be made upon the
 16 parents or parent, guardian, or other person or agency
 17 having legal custody, the court shall appoint an attorney to
 18 represent the unavailable party where in the opinion of the
 19 court the interests of justice require.

20 (6) If a parent of the child is a minor, notice shall
 21 be given to the minor parent's parents or guardian, and if
 22 there is no guardian the court shall appoint one.

23 (7) Any person interested in any cause under this
 24 chapter has the right to appear.

25 (8) Except where the proceeding is instituted or

1 commenced by a representative of the department of social
2 and rehabilitation services, a citation shall be issued and
3 served upon a representative of the department prior to the
4 court hearing.

5 (9) The petition shall:

6 (a) state the nature of the alleged abuse, neglect, or
7 dependency;

8 (b) state the full name, age, and address of the youth
9 and the name and address of his parents or guardian or
10 person having legal custody of the youth;

11 (c) state the names, addresses, and relationship to
12 the youth of all persons who are necessary parties to the
13 action.

14 (10) The petition may ask for the following relief:

15 (a) temporary investigative authority and protective
16 services;

17 (b) temporary legal custody;

18 (c) limited legal custody;

19 (d) permanent legal custody, including the right to
20 consent to adoption;

21 (e) appointment of guardian ad litem;

22 (f) any combination of the above or such other relief
23 as may be required for the best interest of the youth.

24 (11) The petition may be modified for different relief
25 at any time within the discretion of the court.

1 (12) The court may at any time on its own motion or the
2 motion of any party appoint a guardian ad litem for the
3 youth or counsel for any indigent party.

4 (13) This section does not apply to a petition for
5 temporary investigative authority and protective services."

6 Section 5. Section 41-3-404, MCA, is amended to read:

7 "41-3-404. Hearing ~~Adjudicatory hearing -- temporary~~
8 ~~disposition.~~ (1) In a ~~the adjudicatory~~ hearing on a petition
9 under 41-3-401, the court shall determine whether ~~and the~~
10 youth is an abused, neglected, or dependent child and
11 ascertain, as far as possible, the cause thereof.

12 (2) The court shall hear evidence regarding the
13 residence of the child youth, ~~the~~ whereabouts of the
14 parents, guardian, or nearest adult relative, ~~the financial~~
15 ~~ability of any such parents or parent to pay the cost of~~
16 ~~care of the child, whether or how long the child has been~~
17 ~~maintained in whole or in part by public or private charity,~~
18 ~~and may take into consideration the report of the county~~
19 ~~welfare department filed with the clerk of the court~~
20 ~~pursuant to 41-3-485 and any other matters the court~~
21 ~~considers relevant in determining the status of the youth.~~

22 (3) In all civil and criminal proceedings relating to
23 abuse, neglect, or dependency, the doctor-patient privilege
24 and husband-wife privilege ~~shall~~ do not apply to the extent
25 any testimony relates to such matters.

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

5 (b) If the court determines that the youth is an
6 abused, neglected, or dependent child, the court shall set a
7 date for a dispositional hearing, and order any necessary or
8 required investigations. The dispositional hearing shall be
9 scheduled as soon as practicable. The court may issue a
10 temporary dispositional order, pending the dispositional
11 hearing. The temporary dispositional order may provide for
12 any of the forms of relief listed in 41-3-403(2)."

13 Section 6. Section 41-3-405, MCA, is amended to read:

14 "41-3-405. Investigation of parents' or guardian's
15 financial ability. Whenever any petition is filed with the
16 clerk of the district court alleging abuse, neglect, or
17 dependency, the clerk of such court shall immediately
18 deliver to the county welfare department of the county in
19 which the petition is filed a copy of the petition with a
20 notation thereon giving the day and time fixed by the court
21 for hearing the petition. (1) Whenever a court determines a
22 youth to be an abused, neglected, or dependent child
23 pursuant to 41-3-404, the court shall issue an order
24 directing the county welfare department of the county in
25 which the petition was filed to conduct an investigation of

1 the financial status of the child's parents or guardian.

2 (2) Upon receipt of such copy of petition the order,
3 the county welfare department shall make an investigation
4 for the purpose of ascertaining whether the residence of the
5 parent or parents, if any, or guardian of the child live
6 within the county and the financial ability of such parent
7 or the parents, if any, or guardian to pay the cost of
8 supporting the child in a foster home, child care agency,
9 group home, or private treatment facility, and a written
10 report of the investigation shall file be filed with the
11 clerk of such court before the time fixed for the
12 dispositional hearing. A written report of such
13 investigation, if upon hearing the court finds and
14 determines that the child has parents or a parent who is
15 financially able to pay a part or the whole of such cost and
16 the child is ordered placed in a foster home, the court
17 shall make an order requiring such parents or parent to pay
18 such amount as the court may deem proper.

19 (3) A copy of the written report shall be provided to
20 all parties to the proceeding before the time fixed set for
21 the dispositional hearing."

22 Section 7. Section 41-3-406, MCA, is amended to read:

23 "41-3-406. Judgment Dispositional hearing. (1) If a
24 youth is found to be abused, neglected, or dependent under
25 41-3-404, the court after the dispositional hearing may

1 enter its judgment making any of the following dispositions
2 to protect the welfare of the youth:

3 (a) permit the youth to remain with his parents or
4 guardian subject to those conditions and limitations the
5 court may prescribe;

6 (b) transfer legal custody to any of the following:

7 (i) department of social and rehabilitation services;

8 (ii) a child-placing agency willing and able to assume
9 responsibility for the education, care, and maintenance of
10 the youth and which is licensed or otherwise authorized by
11 law to receive and provide care of the youth; or

12 (iii) a relative or other individual who, after study
13 by a social service agency designated by the court, is found
14 by the court to be qualified to receive and care for the
15 youth;

16 (c) order any party to the action to do what is
17 necessary to give effect to the final disposition, including
18 undertaking medical and psychological evaluations,
19 treatment, and counseling;

20 (d) order such further care and treatment as the court
21 may deem in the best interest of the youth.

22 (2) Whenever the court vests legal custody in any
23 agency, institution, or department, it shall transmit with
24 the dispositional judgment copies of any medical report and
25 such other clinical, predisposition, or other reports and

1 information as may be pertinent to the care and treatment of
2 the youth.

3 (3) Any youth found to be abused, neglected, or
4 dependent may be committed to the Montana children's center,
5 and if the center is unable to receive the child or if for
6 any other reason it appears to be in the best interest of
7 the child, the court may make such other disposition of the
8 child as the court deems best for his social and physical
9 welfare. The form of commitment shall be as follows:

10 ORDER OF COMMITMENT

11 State of Montana, County of, ss:

12 In the district court for the Judicial District.

13 On the day of, 19..,, minor of this
14 county, was charged on the petition of, county attorney
15 of County, with being an abused or neglected or
16 dependent child. Upon due proof I find that it is for the
17 best interests of the child that he be taken from the
18 custody of his parents, guardian, or other person having
19 custody of him.

20 The names, addresses, and occupations of the parents
21 are:

22 Name	Address	Occupation
23
24
25 The child's guardian is

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1 The child is in the custody of
2 It is ordered that be committed to until
3 discharged as provided by law.

4 Witness my hand this day of, A.D. 19...
5

6 Judge

7 (4) Transfer of legal custody of a child shall include
8 guardianship of any assets or estate of the child, unless
9 otherwise specified by the court.

10 (5) Except in cases in which the court permanently
11 terminates all parental rights or rights of the guardian of
12 the youth, the court shall retain jurisdiction over the case
13 and may subsequently modify any disposition ordered pursuant
14 to this section."

15 **NEW SECTION.** Section 8. Order for financial support.

16 (1) Whenever a youth is placed in a foster home, child care
17 agency, group home, or private treatment facility under
18 41-3-406, the court shall determine the ability of the
19 youth's parents or guardian to contribute to the support of
20 the youth. This question of financial ability shall be
21 considered at the dispositional hearing, and evidence
22 concerning financial status may be introduced. In
23 determining financial ability the court shall consider the
24 report prepared pursuant to 41-3-405 and any other evidence
25 introduced at the dispositional hearing.

1 (2) If the court determines that the parents or
2 guardian is able to contribute to the support of the youth,
3 the court shall issue an order directing the parents or
4 guardian to make specified payments to the department of
5 social and rehabilitation services. Upon a showing of change
6 in financial ability, the court may modify the order.

7 Section 9. Section 41-5-522, MCA, is amended to read:

8 "41-5-522. Dispositional hearing. (1) As soon as
9 practicable after a youth is found to be a delinquent youth
10 or a youth in need of supervision, the court shall conduct a
11 dispositional hearing. The dispositional hearing may involve
12 a determination of financial liability as provided in
13 [sections 11 and 12].

14 (2) Before conducting the dispositional hearing, the
15 court shall direct that a social summary or predisposition
16 report be made in writing by a probation officer concerning
17 the youth, his family, his environment, and other matters
18 relevant to the need for care or rehabilitation .
19 disposition of the case. The youth court may have the youth
20 examined, and the results of the examination shall be made
21 available to the court as part of the social summary or
22 predisposition report. The court may order the examination
23 of a parent or guardian who gives his consent and whose
24 ability to care for or supervise a youth is at issue before
25 the court. The results of such examination shall be included

1 in the social summary or predisposition report. The youth,
2 his parents, guardian, or counsel shall have the right to
3 subpoena all persons who have prepared any portion of the
4 social summary or predisposition report and shall have the
5 right to cross-examine said parties at the dispositional
6 hearing.

7 (3) Defense counsel shall be furnished with a copy of
8 the social summary or predisposition report and
9 psychological report prior to the dispositional hearing.

10 (4) The dispositional hearing shall be conducted in
11 the manner set forth in subsections (3), (4), and (5) of
12 41-5-521. The court shall hear all evidence relevant to a
13 proper disposition of the case best serving the interests of
14 the youth and the public. Such evidence shall include, but
15 not be limited to, the social summary and predisposition
16 report provided for in subsection (2) of this section.

17 (5) If the court finds that it is in the best interest
18 of the youth, the youth, his parents, or guardian may be
19 temporarily excluded from the hearing during the taking of
20 evidence on the issues of need for treatment and
21 rehabilitation."

22 Section 10. Section 41-5-803, MCA, is amended to read:

23 "41-5-803. Support of youth committed to a custodial
24 agency. (1) When a youth under this chapter is committed by
25 the court to custody other than that of his parents and no

1 provision is otherwise made by law for the support of such
2 youth, compensation for the care of such youth, when
3 approved by order of the court, shall be a charge upon the
4 county or the appropriate division thereof.

5 (2) ~~The whenever the provisions of [sections 11 and~~
6 ~~12] do not apply, the court may, after giving the parent a~~
7 reasonable opportunity to be heard, adjudge and order that
8 such parent shall pay in such manner as the court may direct
9 such sum as will cover, in whole or in part, the support of
10 such youth. In determining the amount the parents must pay,
11 the court shall use the standards set out in Title 53,
12 chapter 1, part 4, and the department of institutions' rules
13 governing payment for care of residents of institutions as
14 those provisions and rules apply to the youth and parents
15 before the court. If such parent shall willfully fail or
16 refuse to pay such sum, he may be proceeded against as
17 provided by law for cases of desertion or failure to provide
18 subsistence or said cost may be collected in a civil action
19 against the parent or parents."

20 NEW SECTION. Section 11. Financial investigation by
21 county welfare department. (1) Whenever a disposition under
22 41-5-403, 41-5-523, or 41-5-524 involves placement in a
23 foster home, child care agency, group home, or private
24 treatment facility and the department of social and
25 rehabilitation services is responsible for all or part of

1 the cost of such placement, the probation officer or the
 2 court shall notify the department of social and
 3 rehabilitation services and order the county welfare
 4 department in the youth's county of residence to conduct an
 5 investigation of the financial status of the youth's parents
 6 or guardian. Following an adjudicatory hearing in which a
 7 youth is determined to be a delinquent youth or a youth in
 8 need of supervision, the court may order the county welfare
 9 department to conduct a financial status investigation.

10 (2) Upon receipt of the order, the county welfare
 11 department shall make an investigation for the purpose of
 12 ascertaining the residence of the parents or guardian of the
 13 youth and the financial ability of the parents or guardian
 14 to pay the cost of supporting the youth in the foster home,
 15 child care agency, group home, or private treatment
 16 facility. A written report of the investigation shall be
 17 filed with the court having jurisdiction, the department of
 18 social and rehabilitation services, and the department of
 19 institutions, and a copy shall be sent to the parents or
 20 guardian of the youth or to any other party to the
 21 proceeding.

22 NEW SECTION. Section 12. Order for financial support.

23 (1) Upon receipt of a financial status report pursuant to
 24 [section 11], a court providing for disposition of a youth
 25 under 41-5-523 or 41-5-524 shall hold a hearing to determine

1 the ability of the youth's parents or guardian to contribute
 2 to the support of the youth. If feasible, this hearing may
 3 be held in conjunction with a dispositional hearing under
 4 41-5-522. In cases involving informal adjustment under
 5 41-5-403, the department may petition the district court
 6 having jurisdiction for a hearing to determine the financial
 7 ability of the parents or guardian to contribute to the
 8 support of the youth.

9 (2) In addition to the report prepared under [section
 10 11], any evidence concerning financial status may be
 11 introduced. In determining financial ability, the court
 12 shall consider the report and other evidence introduced at
 13 the hearing.

14 (3) If the court determines that the parents or
 15 guardian is able to contribute to the support of the youth,
 16 the court shall issue an order directing the parents or
 17 guardian to make specified payments to the department of
 18 social and rehabilitation services. Upon a showing of change
 19 in financial ability, the order may be modified.

-End-

1 STATEMENT OF INTENT RE: HB 813

2
3
4 The provision of law dealing with abused, neglected, or
5 dependent children; delinquent youths; and youths in need of
6 supervision recognize the principle that the parents or
7 guardian of the minor is responsible for a fair share of the
8 costs of supporting the minor when the minor is placed in a
9 foster home, group home, or other form of custodial care.
10 This bill is intended to provide a mechanism for determining
11 the parents' or guardians' share of financial support in
12 those situations involving the department of social and
13 rehabilitation services. Three guiding principles interact
14 to provide the thrust of the legislation. First, the welfare
15 of the minor is of utmost concern. The focus is on the
16 youth, and the law is designed to provide an opportunity for
17 the youth to realize his potential. Secondly, the
18 traditional privacy and security of the family are to be
19 preserved. Thirdly and referred to above, the parents or
20 guardian of a minor is responsible for the financial support
21 of the minor. These three principles can and often do
22 conflict with one another. This bill addresses
23 investigations as to the ability of the parents or guardian
24 to bear all or part of the cost of supporting a youth taken
25 from their custody and attempts to strike a balance between

1 these three principles by requiring that an investigation by
2 the county welfare department into matters of financial
3 status may not be made until a court, or, in the case of an
4 informal adjustment under the Youth Court Act, a probation
5 officer places the child in a foster home, child care
6 agency, group home, or private treatment facility.

7 Rules developed pursuant to authority granted under
8 this bill should provide procedures that insure the parents
9 or guardian have access to the reports and data developed by
10 both the department of social and rehabilitation services
11 and the county welfare department and that guarantee
12 investigations into financial and other matters will not
13 intrude into private lives beyond the level necessary to
14 protect the welfare of the child.

15 First adopted by the HOUSE COMMITTEE ON JUDICIARY on
16 February 16, 1979.

Please insert in Blue Copy of H.B. 813

HB 813

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 2 INTRODUCED BY HOUSE MEMBERS COM. Chavira

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 10 PURSUANT TO THE LAWS RELATING TO ABUSED, NEGLECTED, OR
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19 (d) permanent legal custody, including the right to
20 consent to adoption;

21 (e) appointment of guardian ad litem;

22 (f) any combination of the above or such other relief
23 as may be required for the best interest of the youth.

24 (11) The petition may be modified for different relief
25 at any time within the discretion of the court.

1 (12) The court may at any time on its own motion or the
2 motion of any party appoint a guardian ad litem for the
3 youth or counsel for any indigent party.

4 (13) This section does not apply to a petition for
5 temporary investigative authority and protective services."

6 Section 5. Section 41-3-404, MCA, is amended to read:

7 "41-3-404. ~~Hearing~~ Adjudicatory hearing -- temporary
8 disposition. (1) In a ~~the adjudicatory~~ hearing on a petition
9 under 41-3-401, the court shall determine whether ~~said the~~
10 youth is an abused, neglected, or dependent child and
11 ascertain, as far as possible, the cause thereof.

12 (2) The court shall hear evidence regarding the
13 residence of the ~~child youth,~~ the whereabouts of the
14 parents, guardian, or nearest adult relative, ~~the financial~~
15 ~~ability of any such parents or parent to pay the cost of~~
16 ~~care of the child, whether or how long the child has been~~
17 ~~maintained in whole or in part by public or private charity~~
18 ~~and may take into consideration the report of the county~~
19 ~~welfare department filed with the clerk of the court~~
20 ~~pursuant to 41-3-405 and any other matters the court~~
21 ~~considers relevant in determining the status of the youth.~~

22 (3) In all civil and criminal proceedings relating to
23 abuse, neglect, or dependency, the doctor-patient privilege
24 and husband-wife privilege ~~shall~~ do not apply to the extent
25 any testimony relates to such matters.

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

5 (b) If the court determines that the youth is an
 6 abused, neglected, or dependent child, the court shall set a
 7 date for a dispositional hearing, and order any necessary or
 8 required investigations. The dispositional hearing shall be
 9 scheduled as soon as practicable. The court may issue a
 10 temporary dispositional order, pending the dispositional
 11 hearing. The temporary dispositional order may provide for
 12 any of the forms of relief listed in 41-3-403(2)."

13 Section 6. Section 41-3-405, MCA, is amended to read:

14 "41-3-405. Investigation of parents' or guardian's
 15 financial ability. Whenever any petition is filed with the
 16 clerk of the district court alleging abuse, neglect, or
 17 dependency, the clerk of such court shall immediately
 18 deliver to the county welfare department of the county in
 19 which the petition is filed a copy of the petition with a
 20 notation thereon giving the day and time fixed by the court
 21 for hearing the petition. (1) Whenever a court determines a
 22 youth to be an abused, neglected, or dependent child
 23 pursuant to 41-3-404, the court shall issue an order
 24 directing the county welfare department of the county in
 25 which the petition was filed to conduct an investigation of

1 the financial status of the child's parents or guardian.

2 (2) Upon receipt of such copy of petition the order,
 3 the county welfare department shall make an investigation
 4 for the purpose of ascertaining whether the residence of the
 5 parent or parents, if any, or guardian of the child live
 6 within the county and the financial ability of such parent
 7 or the parents, if any, or guardian to pay the cost of
 8 supporting the child in a foster home, child care agency,
 9 group home, or private treatment facility, and a written
 10 report of the investigation shall file be filed with the
 11 clerk of such court, before the time fixed for the
 12 dispositional hearing, a written report of such
 13 investigation. If upon hearing the court finds and
 14 determines that the child has parents or a parent who is
 15 financially able to pay a part or the whole of such cost and
 16 the child is ordered placed in a foster home, the court
 17 shall make an order requiring such parents or parent to pay
 18 such amount as the court may deem proper.

19 (3) A copy of the written report shall be provided to
 20 all parties to the proceeding before the time fixed set for
 21 the dispositional hearing."

22 Section 7. Section 41-3-406, MCA, is amended to read:

23 "41-3-406. Judgment Dispositional hearing. (1) If a
 24 youth is found to be abused, neglected, or dependent under
 25 41-3-404, the court after the dispositional hearing may

1 enter its judgment making any of the following dispositions
2 to protect the welfare of the youth:

3 (a) permit the youth to remain with his parents or
4 guardian subject to those conditions and limitations the
5 court may prescribe;

6 (b) transfer legal custody to any of the following:

7 (i) department of social and rehabilitation services;

8 (ii) a child-placing agency willing and able to assume
9 responsibility for the education, care, and maintenance of
10 the youth and which is licensed or otherwise authorized by
11 law to receive and provide care of the youth; or

12 (iii) a relative or other individual who, after study
13 by a social service agency designated by the court, is found
14 by the court to be qualified to receive and care for the
15 youth;

16 (c) order any party to the action to do what is
17 necessary to give effect to the final disposition, including
18 undertaking medical and psychological evaluations,
19 treatment, and counseling;

20 (d) order such further care and treatment as the court
21 may deem in the best interest of the youth.

22 (2) Whenever the court vests legal custody in any
23 agency, institution, or department, it shall transmit with
24 the dispositional judgment copies of any medical report and
25 such other clinical, predisposition, or other reports and

1 information as may be pertinent to the care and treatment of
2 the youth.

3 (3) Any youth found to be abused, neglected, or
4 dependent may be committed to the Montana children's center,
5 and if the center is unable to receive the child or if for
6 any other reason it appears to be in the best interest of
7 the child, the court may make such other disposition of the
8 child as the court deems best for his social and physical
9 welfare. The form of commitment shall be as follows:

10 ORDER OF COMMITMENT

11 State of Montana, County of, ss:

12 In the district court for the Judicial District.

13 On the day of, 19... .., minor of this
14 county, was charged on the petition of, county attorney
15 of County, with being an abused or neglected or
16 dependent child. Upon due proof I find that it is for the
17 best interests of the child that he be taken from the
18 custody of his parents, guardian, or other person having
19 custody of him.

20 The names, addresses, and occupations of the parents
21 are:

22 Name	Address	Occupation
23
24
25 The child's guardian is

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1 The child is in the custody of
2 It is ordered that be committed to until
3 discharged as provided by law.

4 Witness my hand this day of, A.D. 19...
5
6 Judge

7 (4) Transfer of legal custody of a child shall include
8 guardianship of any assets or estate of the child, unless
9 otherwise specified by the court.

10 (5) Except in cases in which the court permanently
11 terminates all parental rights or rights of the guardian of
12 the youth, the court shall retain jurisdiction over the case
13 and may subsequently modify any disposition ordered pursuant
14 to this section."

15 NEW SECTION. Section 8. Order for financial support.

16 (1) Whenever a youth is placed in a foster home, child care
17 agency, group home, or private treatment facility under
18 41-3-406, the court shall determine the ability of the
19 youth's parents or guardian to contribute to the support of
20 the youth. This question of financial ability shall be
21 considered at the dispositional hearing, and evidence
22 concerning financial status may be introduced. In
23 determining financial ability the court shall consider the
24 report prepared pursuant to 41-3-405 and any other evidence
25 introduced at the dispositional hearing.

1 (2) If the court determines that the parents or
2 guardian is able to contribute to the support of the youth,
3 the court shall issue an order directing the parents or
4 guardian to make specified payments to the department of
5 social and rehabilitation services. Upon a showing of change
6 in financial ability, the court may modify the order.

7 Section 9. Section 41-5-522, MCA, is amended to read:

8 "41-5-522. Dispositional hearing. (1) As soon as
9 practicable after a youth is found to be a delinquent youth
10 or a youth in need of supervision, the court shall conduct a
11 dispositional hearing. The dispositional hearing may involve
12 a determination of financial liability as provided in
13 [sections 11 and 12].

14 (2) Before conducting the dispositional hearing, the
15 court shall direct that a social summary or predisposition
16 report be made in writing by a probation officer concerning
17 the youth, his family, his environment, and other matters
18 relevant to the need for care or rehabilitation or
19 disposition of the case. The youth court may have the youth
20 examined, and the results of the examination shall be made
21 available to the court as part of the social summary or
22 predisposition report. The court may order the examination
23 of a parent or guardian who gives his consent and whose
24 ability to care for or supervise a youth is at issue before
25 the court. The results of such examination shall be included

1 in the social summary or predisposition report. The youth,
2 his parents, guardian, or counsel shall have the right to
3 subpoena all persons who have prepared any portion of the
4 social summary or predisposition report and shall have the
5 right to cross-examine said parties at the dispositional
6 hearing.

7 (3) Defense counsel shall be furnished with a copy of
8 the social summary or predisposition report and
9 psychological report prior to the dispositional hearing.

10 (4) The dispositional hearing shall be conducted in
11 the manner set forth in subsections (3), (4), and (5) of
12 41-5-521. The court shall hear all evidence relevant to a
13 proper disposition of the case best serving the interests of
14 the youth and the public. Such evidence shall include, but
15 not be limited to, the social summary and predisposition
16 report provided for in subsection (2) of this section.

17 (5) If the court finds that it is in the best interest
18 of the youth, the youth, his parents, or guardian may be
19 temporarily excluded from the hearing during the taking of
20 evidence on the issues of need for treatment and
21 rehabilitation."

22 Section 10. Section 41-5-803, MCA, is amended to read:
23 "41-5-803. Support of youth committed to a custodial
24 agency. (1) When a youth under this chapter is committed by
25 the court to custody other than that of his parents and no

1 provision is otherwise made by law for the support of such
2 youth, compensation for the care of such youth, when
3 approved by order of the court, shall be a charge upon the
4 county or the appropriate division thereof.

5 (2) ~~The whenever the provisions of [sections 11 and~~
6 ~~12] do not apply, the court may, after giving the parent a~~
7 ~~reasonable opportunity to be heard, adjudge and order that~~
8 ~~such parent shall pay in such manner as the court may direct~~
9 ~~such sum as will cover, in whole or in part, the support of~~
10 ~~such youth. In determining the amount the parents must pay,~~
11 ~~the court shall use the standards set out in Title 53,~~
12 ~~chapter 1, part 4, and the department of institutions' rules~~
13 ~~governing payment for care of residents of institutions as~~
14 ~~those provisions and rules apply to the youth and parents~~
15 ~~before the court. If such parent shall willfully fail or~~
16 ~~refuse to pay such sum, he may be proceeded against as~~
17 ~~provided by law for cases of desertion or failure to provide~~
18 ~~subsistence or said cost may be collected in a civil action~~
19 ~~against the parent or parents."~~

20 NEW SECTION. Section 11. Financial investigation by
21 county welfare department. (1) Whenever a disposition under
22 41-5-403, 41-5-523, or 41-5-524 involves placement in a
23 foster home, child care agency, group home, or private
24 treatment facility and the department of social and
25 rehabilitation services is responsible for all or part of

1 the cost of such placement, the probation officer or the
 2 court shall notify the department of social and
 3 rehabilitation services and order the county welfare
 4 department in the youth's county of residence to conduct an
 5 investigation of the financial status of the youth's parents
 6 or guardian. Following an adjudicatory hearing in which a
 7 youth is determined to be a delinquent youth or a youth in
 8 need of supervision, the court may order the county welfare
 9 department to conduct a financial status investigation.

10 (2) Upon receipt of the order, the county welfare
 11 department shall make an investigation for the purpose of
 12 ascertaining the residence of the parents or guardian of the
 13 youth and the financial ability of the parents or guardian
 14 to pay the cost of supporting the youth in the foster home,
 15 child care agency, group home, or private treatment
 16 facility. A written report of the investigation shall be
 17 filed with the court having jurisdiction, the department of
 18 social and rehabilitation services, and the department of
 19 institutions, and a copy shall be sent to the parents or
 20 guardian of the youth or to any other party to the
 21 proceeding.

22 NEW SECTION. Section 12. Order for financial support.
 23 (1) Upon receipt of a financial status report pursuant to
 24 [section 11], a court providing for disposition of a youth
 25 under 41-5-523 or 41-5-524 shall hold a hearing to determine

1 the ability of the youth's parents or guardian to contribute
 2 to the support of the youth. If feasible, this hearing may
 3 be held in conjunction with a dispositional hearing under
 4 41-5-522. In cases involving informal adjustment under
 5 41-5-403, the department may petition the district court
 6 having jurisdiction for a hearing to determine the financial
 7 ability of the parents or guardian to contribute to the
 8 support of the youth.

9 (2) In addition to the report prepared under [section
 10 11], any evidence concerning financial status may be
 11 introduced. In determining financial ability, the court
 12 shall consider the report and other evidence introduced at
 13 the hearing.

14 (3) If the court determines that the parents or
 15 guardian is able to contribute to the support of the youth,
 16 the court shall issue an order directing the parents or
 17 guardian to make specified payments to the department of
 18 social and rehabilitation services. Upon a showing of change
 19 in financial ability, the order may be modified.

-End-

1 STATEMENT OF INTENT RE: HB 813

2
3
4 The provision of law dealing with abused, neglected, or
5 dependent children; delinquent youths; and youths in need of
6 supervision recognize the principle that the parents or
7 guardian of the minor is responsible for a fair share of the
8 costs of supporting the minor when the minor is placed in a
9 foster home, group home, or other form of custodial care.
10 This bill is intended to provide a mechanism for determining
11 the parents' or guardians' share of financial support in
12 those situations involving the department of social and
13 rehabilitation services. Three guiding principles interact
14 to provide the thrust of the legislation. First, the welfare
15 of the minor is of utmost concern. The focus is on the
16 youth, and the law is designed to provide an opportunity for
17 the youth to realize his potential. Secondly, the
18 traditional privacy and security of the family are to be
19 preserved. Thirdly and referred to above, the parents or
20 guardian of a minor is responsible for the financial support
21 of the minor. These three principles can and often do
22 conflict with one another. This bill addresses
23 investigations as to the ability of the parents or guardian
24 to bear all or part of the cost of supporting a youth taken
25 from their custody and attempts to strike a balance between

1 these three principles by requiring that an investigation by
2 the county welfare department into matters of financial
3 status may not be made until a court, or, in the case of an
4 informal adjustment under the Youth Court Act, a probation
5 officer places the child in a foster home, child care
6 agency, group home, or private treatment facility.

7 Rules developed pursuant to authority granted under
8 this bill should provide procedures that insure the parents
9 or guardian have access to the reports and data developed by
10 both the department of social and rehabilitation services
11 and the county welfare department and that guarantee
12 investigations into financial and other matters will not
13 intrude into private lives beyond the level necessary to
14 protect the welfare of the child.

15 First adopted by the HOUSE COMMITTEE ON JUDICIARY on
16 February 16, 1979.

HOUSE BILL NO. 813

INTRODUCED BY HOUSE JUDICIARY COMMITTEE, SCULLY, CHAIRMAN

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE AND CLARIFY THE ROLES OF THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES AND THE COUNTY WELFARE DEPARTMENT IN CONDUCTING INVESTIGATIONS, INCLUDING FINANCIAL INVESTIGATIONS, AND PREPARING REPORTS WHEN A MINOR IS PLACED IN A FOSTER HOME, CHILD CARE AGENCY, GROUP HOME, OR PRIVATE TREATMENT FACILITY PURSUANT TO THE LAWS RELATING TO ABUSED, NEGLECTED, OR DEPENDENT CHILDREN OR THE MONTANA YOUTH COURT ACT; PROVIDING FOR AN ADJUDICATORY AND A DISPOSITIONAL HEARING ON PETITIONS FOR ABUSED, NEGLECTED, OR DEPENDENT YOUTH AND PROVIDING FOR A COURT DETERMINATION OF THE FINANCIAL ABILITY OF PARENTS OR GUARDIAN THE ADEQUACY OF GUARDIANSHIP ASSETS TO PAY THE COST OF SUPPORTING A MINOR; AMENDING SECTIONS 41-3-105, 41-3-202, 41-3-401, 41-3-404 THROUGH 41-3-406, 41-5-522, AND 41-5-803, MCA."

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

NEW SECTION. Section 1. Rulemaking authority. The department of social and rehabilitation services shall adopt rules to govern the procedures used by department personnel and by employees of county welfare departments in preparing and processing reports and in making investigations

authorized by [Title 41, chapter 3] or [section #2 11].

Section 2. Section 41-3-105, MCA, is amended to read:

"41-3-105. Recovery from parents ~~OR~~ GUARDIANSHIP ASSETS -- division between state and county.

(1) In the event any recovery is made from the PARENT OR parent--or parents or guardian GUARDIANSHIP ASSETS of children for whom board, clothing, personal needs, and room have been paid by the state and county, any amount so recovered shall be divided equally between the department and the county of residence of such child or children.

(2) Any amount collected from ~~a parent or the parents~~ or guardian GUARDIANSHIP ASSETS when a child is placed in a foster home, child care agency, group home, or private treatment facility shall be transmitted to the department of social and rehabilitation services. The department shall then pay to the county one-half of the amount so collected."

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

"41-3-202. Action on reporting -- maintenance of central registry on child abuse. (1) ~~if from said report--it shall appear a report filed under 41-3-201--it appears that~~ UPON RECEIPT OF A REPORT AS REQUIRED BY 41-3-201 THAT A child suffered such injury or injuries or willful neglect, the a social worker shall conduct a thorough investigation into the home of the child involved, and into the circumstances surrounding the injury of the child, and into

1 all other nonfinancial matters which in the discretion of
 2 the social worker shall be ~~are~~ relevant and material to the
 3 investigation. ~~In conducting an investigation under this~~
 4 ~~section, a social worker may not inquire into the financial~~
 5 ~~status of the child's family or of any other person~~
 6 ~~responsible for the child's care.~~ If from the investigation
 7 it shall appear ~~appears~~ that the child suffered such injury
 8 or injuries or willful neglect, the department shall provide
 9 protective services to protect the child and preserve the
 10 family. The department will advise the county attorney of
 11 its investigation.

12 (2) The investigating social worker shall also furnish
 13 a written report to the department of social and
 14 rehabilitation services which shall have the responsibility
 15 of maintaining a central registry on child abuse or willful
 16 neglect cases."

17 Section 4. Section 41-3-401, MCA, is amended to read:

18 "41-3-401. Abuse, neglect, and dependency petitions.

19 (1) The county attorney shall be responsible for filing all
 20 petitions alleging abuse, neglect, or dependency. He may
 21 require all state, county, and municipal agencies, including
 22 law enforcement agencies, to conduct such investigations and
 23 furnish such reports as may be necessary. ~~Investigations as~~
 24 ~~to financial status may not be made prior to the~~
 25 ~~adjudicatory hearing provided for in 41-3-401.~~

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

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

10 (4) The parents or parent, guardian, or other person
 11 or agency having legal custody of the youth named in the
 12 petition, if residing in the state, shall be served
 13 personally with a copy of the petition and summons at least
 14 5 days prior to the date set for hearing. If such person or
 15 agency resides out of state or is not found within the
 16 state, the rules of civil procedure relating to service of
 17 process in such cases shall apply.

18 (5) In the event service cannot be made upon the
 19 parents or parent, guardian, or other person or agency
 20 having legal custody, the court shall appoint an attorney to
 21 represent the unavailable party where in the opinion of the
 22 court the interests of justice require.

23 (6) If a parent of the child is a minor, notice shall
 24 be given to the minor parent's parents or guardian, and if
 25 there is no guardian the court shall appoint one.

1 (7) Any person interested in any cause under this
2 chapter has the right to appear.

3 (8) Except where the proceeding is instituted or
4 commenced by a representative of the department of social
5 and rehabilitation services, a citation shall be issued and
6 served upon a representative of the department prior to the
7 court hearing.

8 (9) The petition shall:

9 (a) state the nature of the alleged abuse, neglect, or
10 dependency;

11 (b) state the full name, age, and address of the youth
12 and the name and address of his parents or guardian or
13 person having legal custody of the youth;

14 (c) state the names, addresses, and relationship to
15 the youth of all persons who are necessary parties to the
16 action.

17 (10) The petition may ask for the following relief:

18 (a) temporary investigative authority and protective
19 services;

20 (b) temporary legal custody;

21 (c) limited legal custody;

22 (d) permanent legal custody, including the right to
23 consent to adoption;

24 (e) appointment of guardian ad litem;

25 (f) any combination of the above or such other relief

1 as may be required for the best interest of the youth.

2 (11) The petition may be modified for different relief
3 at any time within the discretion of the court.

4 (12) The court may at any time on its own motion or the
5 motion of any party appoint a guardian ad litem for the
6 youth or counsel for any indigent party.

7 (13) This section does not apply to a petition for
8 temporary investigative authority and protective services.*

9 Section 5. Section 41-3-404, MCA, is amended to read:

10 *41-3-404. Hearing Adjudicatory hearing -- temporary
11 disposition. (1) In a the adjudicatory hearing on a petition
12 under 41-3-401, the court shall determine whether ~~said~~ the
13 youth is an abused, neglected, or dependent child and
14 ascertain, as far as possible, the cause thereof.

15 (2) The court shall hear evidence regarding the
16 residence of the child youth, ~~the~~ whereabouts of the
17 parents, guardian, or nearest adult relative, ~~the financial~~
18 ~~ability of any such parents or parent to pay the cost of~~
19 ~~care of the child, whether or how long the child has been~~
20 ~~maintained in whole or in part by public or private charity~~
21 ~~and may take into consideration the report of the county~~
22 ~~welfare department filed with the clerk of the court~~
23 ~~pursuant to 41-3-405 and any other matters the court~~
24 considers relevant in determining the status of the youth.

25 (3) In all civil and criminal proceedings relating to

1 abuse, neglect, or dependency, the doctor-patient privilege
2 and husband-wife privilege shall do not apply to the extent
3 any testimony relates to such matters.

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

8 (b) If the court determines that the youth is an
9 abused, neglected, or dependent child, the court shall set a
10 date for a dispositional hearing, and order any necessary or
11 required investigations. The dispositional hearing shall be
12 scheduled as soon as practicable. The court may issue a
13 temporary dispositional order, pending the dispositional
14 hearing. The temporary dispositional order may provide for
15 any of the forms of relief listed in 41-3-403(2)."

16 Section 6. Section 41-3-405, MCA, is amended to read:

17 "41-3-405. Investigation of parents' or guardian's
18 financial ability. Whenever any petition is filed with the
19 clerk of the district court alleging abuse, neglect, or
20 dependency, the clerk of such court shall immediately
21 deliver to the county welfare department of the county in
22 which the petition is filed a copy of the petition with a
23 notation thereon giving the day and time fixed by the court
24 for hearing the petition. (1) Whenever a court determines a
25 youth to be an abused, neglected, or dependent child

1 pursuant to 41-3-404, the court shall issue an order
2 directing the county welfare department of the county in
3 which the petition was filed to conduct an investigation of
4 the financial status of the child's parents or guardian ~~THE~~
5 ~~EXTENT OF GUARDIANSHIP ASSETS.~~

6 (2) Upon receipt of such copy of petition the order,
7 the county welfare department shall make an investigation
8 for the purpose of ascertaining whether the residence of the
9 parent or parents, if any, or guardian of the child is
10 within the county and the financial ability of such parent
11 or the parents, if any, or guardian ~~THE ADEQUACY OF THE~~
12 ~~GUARDIANSHIP ASSETS~~ to pay the cost of supporting the child
13 in a foster home, child care agency, group home, or private
14 treatment facility, and a written report of the
15 investigation shall be filed with the clerk of such
16 court before the time fixed for the dispositional hearing
17 a written report of such investigation. If upon hearing
18 the court finds and determines that the child has parents or
19 a parent who is financially able to pay a part or the whole
20 of such cost and the child is ordered placed in a foster
21 home, the court shall make an order requiring such parents
22 or parent to pay such amount as the court may deem proper

23 (3) A copy of the written report shall be provided to
24 all parties to the proceeding before the time fixed set for
25 the dispositional hearing."

1 Section 7. Section 41-3-406, MCA, is amended to read:
 2 "41-3-406. Judgment Dispositional hearing. (1) If a
 3 youth is found to be abused, neglected, or dependent under
 4 41-3-404, the court after the dispositional hearing may
 5 enter its judgment making any of the following dispositions
 6 to protect the welfare of the youth:

7 (a) permit the youth to remain with his parents or
 8 guardian subject to those conditions and limitations the
 9 court may prescribe;

10 (b) transfer legal custody to any of the following:

11 (i) department of social and rehabilitation services;

12 (ii) a child-placing agency willing and able to assume
 13 responsibility for the education, care, and maintenance of
 14 the youth and which is licensed or otherwise authorized by
 15 law to receive and provide care of the youth; or

16 (iii) a relative or other individual who, after study
 17 by a social service agency designated by the court, is found
 18 by the court to be qualified to receive and care for the
 19 youth;

20 (c) order any party to the action to do what is
 21 necessary to give effect to the final disposition, including
 22 undertaking medical and psychological evaluations,
 23 treatment, and counseling;

24 (d) order such further care and treatment as the court
 25 may deem in the best interest of the youth.

1 (2) Whenever the court vests legal custody in any
 2 agency, institution, or department, it shall transmit with
 3 the dispositional judgment copies of any medical report and
 4 such other clinical, predisposition, or other reports and
 5 information as may be pertinent to the care and treatment of
 6 the youth.

7 (3) Any youth found to be abused, neglected, or
 8 dependent may be committed to the Montana children's center,
 9 and if the center is unable to receive the child or if for
 10 any other reason it appears to be in the best interest of
 11 the child, the court may make such other disposition of the
 12 child as the court deems best for his social and physical
 13 welfare. The form of commitment shall be as follows:

14 ORDER OF COMMITMENT

15 State of Montana, County of, ss:

16 In the district court for the Judicial District.

17 On the day of, 19... .., minor of this
 18 county, was charged on the petition of, county attorney
 19 of County, with being an abused or neglected or
 20 dependent child. Upon due proof I find that it is for the
 21 best interests of the child that he be taken from the
 22 custody of his parents, guardian, or other person having
 23 custody of him.

24 The names, addresses, and occupations of the parents
 25 are:

1 Name Address Occupation
 2
 3
 4 The child's guardian is
 5 The child is in the custody of
 6 It is ordered that be committed to until
 7 discharged as provided by law.
 8 Witness my hand this day of, A.D. 19...
 9
 10 Judge

11 (4) Transfer of legal custody of a child shall include
 12 guardianship of any assets or estate of the child, unless
 13 otherwise specified by the court.

14 (5) Except in cases in which the court permanently
 15 terminates all parental rights or rights of the guardian of
 16 the youth, the court shall retain jurisdiction over the case
 17 and may subsequently modify any disposition ordered pursuant
 18 to this section."

19 NEW SECTION. Section 8. Order for financial support.
 20 (1) Whenever a youth is placed in a foster home, child care
 21 agency, group home, or private treatment facility under
 22 41-3-406, the court shall determine the ability of the
 23 youth's parents or guardian to contribute to the support of
 24 the youth OR THE ADEQUACY OF THE GUARDIANSHIP ASSETS TO
 25 PROVIDE A CONTRIBUTION. This question of financial ability

1 shall be considered at the dispositional hearing, and
 2 evidence concerning financial status may be introduced. In
 3 determining financial ability the court shall consider the
 4 report prepared pursuant to 41-3-405 and any other evidence
 5 introduced at the dispositional hearing.

6 (2) If the court determines that the parents or
 7 guardian ~~is~~ ARE able to contribute to the support of the
 8 youth OR THAT THE GUARDIANSHIP ASSETS ARE ADEQUATE TO
 9 PROVIDE A CONTRIBUTION, the court shall issue an order
 10 directing the parents or guardian to make specified payments
 11 to the department of social and rehabilitation services IF
 12 THE EXTENT CONSIDERED APPROPRIATE UNDER THE CIRCUMSTANCES.
 13 PAYMENTS REQUIRED OF A GUARDIAN MAY NOT EXCEED THE FUNDS
 14 AVAILABLE FROM GUARDIANSHIP ASSETS. Upon a showing of change
 15 in financial ability, the court may modify the order.

16 Section 9. Section 41-5-522, MCA, is amended to read:
 17 "41-5-522. Dispositional hearing. (1) As soon as
 18 practicable after a youth is found to be a delinquent youth
 19 or a youth in need of supervision, the court shall conduct a
 20 dispositional hearing. The dispositional hearing may involve
 21 a determination of financial liability as provided in
 22 [sections 11 and 12].

23 (2) Before conducting the dispositional hearing, the
 24 court shall direct that a social summary or predisposition
 25 report be made in writing by a probation officer concerning

1 the youth, his family, his environment, and other matters
 2 relevant to the need for care or rehabilitation or
 3 disposition of the case. The youth court may have the youth
 4 examined, and the results of the examination shall be made
 5 available to the court as part of the social summary or
 6 predisposition report. The court may order the examination
 7 of a parent or guardian who gives his consent and whose
 8 ability to care for or supervise a youth is at issue before
 9 the court. The results of such examination shall be included
 10 in the social summary or predisposition report. The youth,
 11 his parents, guardian, or counsel shall have the right to
 12 subpoena all persons who have prepared any portion of the
 13 social summary or predisposition report and shall have the
 14 right to cross-examine said parties at the dispositional
 15 hearing.

16 (3) Defense counsel shall be furnished with a copy of
 17 the social summary or predisposition report and
 18 psychological report prior to the dispositional hearing.

19 (4) The dispositional hearing shall be conducted in
 20 the manner set forth in subsections (3), (4), and (5) of
 21 41-5-521. The court shall hear all evidence relevant to a
 22 proper disposition of the case best serving the interests of
 23 the youth and the public. Such evidence shall include, but
 24 not be limited to, the social summary and predisposition
 25 report provided for in subsection (2) of this section.

1 (5) If the court finds that it is in the best interest
 2 of the youth, the youth, his parents, or guardian may be
 3 temporarily excluded from the hearing during the taking of
 4 evidence on the issues of need for treatment and
 5 rehabilitation."

6 Section 10. Section 41-5-803, MCA, is amended to read:
 7 "41-5-803. Support of youth committed to a custodial
 8 agency. (1) When a youth under this chapter is committed by
 9 the court to custody other than that of his parents and no
 10 provision is otherwise made by law for the support of such
 11 youth, compensation for the care of such youth, when
 12 approved by order of the court, shall be a charge upon the
 13 county or the appropriate division thereof.

14 (2) ~~The whenever the provisions of [sections 11 and~~
 15 ~~12] do not apply, the court may, after giving the parent a~~
 16 reasonable opportunity to be heard, adjudge and order that
 17 such parent shall pay in such manner as the court may direct
 18 such sum as will cover, in whole or in part, the support of
 19 such youth. In determining the amount the parents must pay,
 20 the court shall use the standards set out in Title 53,
 21 chapter 1, part 4, and the department of institutions' rules
 22 governing payment for care of residents of institutions as
 23 those provisions and rules apply to the youth and parents
 24 before the court. If such parent shall willfully fail or
 25 refuse to pay such sum, he may be proceeded against as

1 provided by law for cases of desertion or failure to provide
2 subsistence or said cost may be collected in a civil action
3 against the parent or parents."

4 NEW SECTION. Section 11. Financial investigation by
5 county welfare department. (1) Whenever a disposition under
6 41-5-403, 41-5-523, or 41-5-524 involves placement in a
7 foster home, child care agency, group home, or private
8 treatment facility and the department of social and
9 rehabilitation services is responsible for all or part of
10 the cost of such placement, the probation officer or the
11 court shall notify the department of social and
12 rehabilitation services and order the county welfare
13 department in the youth's county of residence to conduct an
14 investigation of the financial status of the youth's parents
15 or guardian GUARDIANSHIP ASSETS. Following an adjudicatory
16 hearing in which a youth is determined to be a delinquent
17 youth or a youth in need of supervision, the court may order
18 the county welfare department to conduct a financial status
19 investigation.

20 (2) Upon receipt of the order, the county welfare
21 department shall make an investigation for the purpose of
22 ascertaining the residence of the parents or guardian of the
23 youth and the financial ability of the parents or guardian
24 THE ADEQUACY OF THE GUARDIANSHIP ASSETS to pay the cost of
25 supporting the youth in the foster home, child care agency,

1 group home, or private treatment facility. A written report
2 of the investigation shall be filed with the court having
3 jurisdiction, the department of social and rehabilitation
4 services, and the department of institutions, and a copy
5 shall be sent to the parents or guardian of the youth or to
6 any other party to the proceeding.

7 NEW SECTION. Section 12. Order for financial support.
8 (1) Upon receipt of a financial status report pursuant to
9 [section 11], a court providing for disposition of a youth
10 under 41-5-523 or 41-5-524 shall hold a hearing to determine
11 the ability of the youth's parents or guardian to contribute
12 to the support of the youth OR THE ADEQUACY OF THE
13 GUARDIANSHIP ASSETS TO PROVIDE A CONTRIBUTION. If feasible,
14 this hearing may be held in conjunction with a dispositional
15 hearing under 41-5-522. In cases involving informal
16 adjustment under 41-5-403, the department may petition the
17 district court having jurisdiction for a hearing to
18 determine the financial ability of the parents or guardian
19 to contribute to the support of the youth OR THE ADEQUACY OF
20 THE GUARDIANSHIP ASSETS TO PROVIDE A CONTRIBUTION.

21 (2) In addition to the report prepared under [section
22 11], any evidence concerning financial status may be
23 introduced. In determining financial ability, the court
24 shall consider the report and other evidence introduced at
25 the hearing.

1 (3) If the court determines that the parents or
2 guardian--is ARE able to contribute to the support of the
3 youth ~~OR THAT THE GUARDIANSHIP ASSETS ARE ADEQUATE TO~~
4 ~~PROVIDE A CONTRIBUTION~~, the court shall issue an order
5 directing the parents or guardian to make specified payments
6 to the department of social and rehabilitation services ~~IN~~
7 ~~THE EXTENT CONSIDERED APPROPRIATE UNDER THE CIRCUMSTANCES.~~
8 ~~PAYMENTS REQUIRED OF A GUARDIAN MAY NOT EXCEED THE FUNDS~~
9 ~~AVAILABLE FROM GUARDIANSHIP ASSETS.~~ Upon a showing of change
10 in financial ability, the order may be modified.

-End-

HOUSE BILL NO. 813

INTRODUCED BY HOUSE JUDICIARY COMMITTEE, SCULLY, CHAIRMAN

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE AND CLARIFY THE ROLES OF THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES AND THE COUNTY WELFARE DEPARTMENT IN CONDUCTING INVESTIGATIONS, INCLUDING FINANCIAL INVESTIGATIONS, AND PREPARING REPORTS WHEN A MINOR IS PLACED IN A FOSTER HOME, CHILD CARE AGENCY, GROUP HOME, OR PRIVATE TREATMENT FACILITY PURSUANT TO THE LAWS RELATING TO ABUSED, NEGLECTED, OR DEPENDENT CHILDREN OR THE MONTANA YOUTH COURT ACT; PROVIDING FOR AN ADJUDICATORY AND A DISPOSITIONAL HEARING ON PETITIONS FOR ABUSED, NEGLECTED, OR DEPENDENT YOUTH AND PROVIDING FOR A COURT DETERMINATION OF THE FINANCIAL ABILITY OF PARENTS OR ~~GUARDIAN~~ THE ADEQUACY OF GUARDIANSHIP ASSETS TO PAY THE COST OF SUPPORTING A MINOR; AMENDING SECTIONS 41-3-105, 41-3-202, 41-3-401, 41-3-404 THROUGH 41-3-406, 41-5-522, AND 41-5-803, HCA."

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

NEW SECTION. Section 1. Rulemaking authority. The department of social and rehabilitation services shall adopt rules to govern the procedures used by department personnel and by employees of county welfare departments in preparing and processing reports and in making investigations

authorized by [Title 41, chapter 3] or [section ~~42~~ 11].

Section 2. Section 41-3-105, MCA, is amended to read:

"41-3-105. Recovery from parents or guardian

GUARDIANSHIP ASSETS -- division between state and county.

(1) In the event any recovery is made from the PARENT OR parent---or parents or guardian GUARDIANSHIP ASSETS of children for whom board, clothing, personal needs, and room have been paid by the state and county, any amount so recovered shall be divided equally between the department and the county of residence of such child or children.

(2) Any amount collected from ~~a parent or the parents~~ or guardian GUARDIANSHIP ASSETS when a child is placed in a foster home, child care agency, group home, or private treatment facility shall be transmitted to the department of social and rehabilitation services. The department shall then pay to the county one-half of the amount so collected."

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

"41-3-202. Action on reporting -- maintenance of central registry on child abuse. (1) ~~If from said report--it shall appear a report filed under 41-3-201--it appears that~~ UPON RECEIPT OF A REPORT AS REQUIRED BY 41-3-201 THAT a child suffered such injury or injuries or willful neglect, ~~the~~ a social worker shall conduct a thorough investigation into the home of the child involved, and into the circumstances surrounding the injury of the child, and into

1 all other nonfinancial matters which in the discretion of
 2 the social worker shall be relevant and material to the
 3 investigation. ~~In conducting an investigation under this~~
 4 ~~section, a social worker may not inquire into the financial~~
 5 ~~status of the child's family or of any other person~~
 6 ~~responsible for the child's care.~~ If from the investigation
 7 it ~~shall appear~~ appears that the child suffered such injury
 8 or injuries or willful neglect, the department shall provide
 9 protective services to protect the child and preserve the
 10 family. The department will advise the county attorney of
 11 its investigation.

12 (2) The investigating social worker shall also furnish
 13 a written report to the department of social and
 14 rehabilitation services which shall have the responsibility
 15 of maintaining a central registry on child abuse or willful
 16 neglect cases."

17 Section 4. Section 41-3-401, MCA, is amended to read:

18 "41-3-401. Abuse, neglect, and dependency petitions.

19 (1) The county attorney shall be responsible for filing all
 20 petitions alleging abuse, neglect, or dependency. He may
 21 require all state, county, and municipal agencies, including
 22 law enforcement agencies, to conduct such investigations and
 23 furnish such reports as may be necessary. ~~Investigations as~~
 24 ~~to financial status may not be made prior to the~~
 25 ~~adjudicatory hearing provided for in 41-3-404.~~

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

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

10 (4) The parents or parent, guardian, or other person
 11 or agency having legal custody of the youth named in the
 12 petition, if residing in the state, shall be served
 13 personally with a copy of the petition and summons at least
 14 5 days prior to the date set for hearing. If such person or
 15 agency resides out of state or is not found within the
 16 state, the rules of civil procedure relating to service of
 17 process in such cases shall apply.

18 (5) In the event service cannot be made upon the
 19 parents or parent, guardian, or other person or agency
 20 having legal custody, the court shall appoint an attorney to
 21 represent the unavailable party where in the opinion of the
 22 court the interests of justice require.

23 (6) If a parent of the child is a minor, notice shall
 24 be given to the minor parent's parents or guardian, and if
 25 there is no guardian the court shall appoint one.

1 (7) Any person interested in any cause under this
2 chapter has the right to appear.

3 (8) Except where the proceeding is instituted or
4 commenced by a representative of the department of social
5 and rehabilitation services, a citation shall be issued and
6 served upon a representative of the department prior to the
7 court hearing.

8 (9) The petition shall:

9 (a) state the nature of the alleged abuse, neglect, or
10 dependency;

11 (b) state the full name, age, and address of the youth
12 and the name and address of his parents or guardian or
13 person having legal custody of the youth;

14 (c) state the names, addresses, and relationship to
15 the youth of all persons who are necessary parties to the
16 action.

17 (10) The petition may ask for the following relief:

18 (a) temporary investigative authority and protective
19 services;

20 (b) temporary legal custody;

21 (c) limited legal custody;

22 (d) permanent legal custody, including the right to
23 consent to adoption;

24 (e) appointment of guardian ad litem;

25 (f) any combination of the above or such other relief

1 as may be required for the best interest of the youth.

2 (11) The petition may be modified for different relief
3 at any time within the discretion of the court.

4 (12) The court may at any time on its own motion or the
5 motion of any party appoint a guardian ad litem for the
6 youth or counsel for any indigent party.

7 (13) This section does not apply to a petition for
8 temporary investigative authority and protective services."

9 Section 5. Section 41-3-404, MCA, is amended to read:

10 "41-3-404. Hearing Adjudicatory hearing -- temporary

11 disposition. (1) In a the adjudicatory hearing on a petition
12 under 41-3-401, the court shall determine whether setd the
13 youth is an abused, neglected, or dependent child and
14 ascertain, as far as possible, the cause thereof.

15 (2) The court shall hear evidence regarding the
16 residence of the child youth, the whereabouts of the
17 parents, guardian, or nearest adult relative, the financial
18 ability of any such parents or parent to pay the cost of
19 care of the child, whether or how long the child has been
20 maintained in whole or in part by public or private charity,
21 and may take into consideration the report of the county
22 welfare department filed with the clerk of the court
23 pursuant to 41-3-405 and any other matters the court
24 considers relevant in determining the status of the youth.

25 (3) In all civil and criminal proceedings relating to

1 abuse, neglect, or dependency, the doctor-patient privilege
 2 and husband-wife privilege shall do not apply to the extent
 3 any testimony relates to such matters.

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

8 (b) If the court determines that the youth is an
 9 abused, neglected, or dependent child, the court shall set a
 10 date for a dispositional hearing, and order any necessary or
 11 required investigations. The dispositional hearing shall be
 12 scheduled as soon as practicable. The court may issue a
 13 temporary dispositional order, pending the dispositional
 14 hearing. The temporary dispositional order may provide for
 15 any of the forms of relief listed in 41-3-403(2)."

16 Section 6. Section 41-3-405, MCA, is amended to read:

17 "41-3-405. Investigation of parents' or guardian's
 18 financial ability. Whenever any petition is filed with the
 19 clerk of the district court alleging abuse, neglect, or
 20 dependency, the clerk of such court shall immediately
 21 deliver to the county welfare department of the county in
 22 which the petition is filed a copy of the petition with a
 23 notation thereon giving the day and time fixed by the court
 24 for hearing the petition. 11) Whenever a court determines a
 25 youth to be an abused, neglected, or dependent child

1 pursuant to 41-3-405, the court shall issue an order
 2 directing the county welfare department DEPARTMENT of the
 3 county in which the petition was filed to conduct an
 4 investigation of the financial status of the child's parents
 5 or guardian ~~THE EXTENT OF GUARDIANSHIP ASSETS.~~

6 (2) Upon receipt of such copy of petition the order,
 7 the county welfare department shall make an investigation
 8 for the purpose of ascertaining whether the residence of the
 9 parent or parents or guardian of the child live
 10 within the county and the financial ability of such parent
 11 or the parents or guardian ~~THE ADEQUACY OF THE~~
 12 GUARDIANSHIP ASSETS to pay the cost of supporting the child
 13 in a foster home, child care agency, group home, or private
 14 treatment facility, and a written report of the
 15 investigation shall file be filed with the clerk of such
 16 court before the time fixed for the dispositional hearing
 17 a written report of such investigation. If upon hearing
 18 the court finds and determines that the child has parents or
 19 a parent who is financially able to pay a part or the whole
 20 of such cost and the child is ordered placed in a foster
 21 home, the court shall make an order requiring such parents
 22 or parent to pay such amount as the court may deem proper

23 (3) A copy of the written report shall be provided to
 24 all parties to the proceeding before the time fixed for
 25 the dispositional hearing."

March 21, 1979

SENATE STANDING COMMITTEE REPORT
(Judiciary)

That House Bill No. 813, third reading bill, be amended as follows:

1. Title, line 15.
Following: line 14
Strike: "GUARDIAN"
Insert: "THE ADEQUACY OF GUARDIANSHIP ASSETS"
2. Page 1, line 25.
Following: "section"
Strike: "12"
Insert: "11"
3. Page 2, line 2.
Following: "or"
Strike: "guardian"
Insert: "guardianship assets"
4. Page 2, line 4.
Following: "the"
Insert: "parent or"
Following: "or"
Strike: "guardian"
Insert: "guardianship assets"
5. Page 2, line 10.
Following: "or"
Strike: "guardian"
Insert: "guardianship assets"
6. Page 2, lines 17 through 19.
Following: "(1)" on line 17
Strike: remainder of line 17 through "the" on line 19
Insert: "Upon receipt of a report as required by 41-3-201
that a"
7. Page 8, line 1.
Following: "or"
Strike: "guardian"
Insert: "the extent of guardianship assets"
8. Page 8, line 7.
Following: "or"
Strike: "guardian"
Insert: "the adequacy of the guardianship assets"
9. Page 11, line 19.
Strike: "or guardian"
10. Page 11, line 20.
Following: "youth"
Insert: "or the adequacy of the guardianship assets to
provide a contribution:"

11. Page 12, lines 1 and 2.
Following: "parents" on line 1
Strike: "or guardian is"
Insert: "are"

12. Page 12, line 2.
Following: "youth"
Insert: "or that the guardianship assets are adequate to
provide a contribution"

13. Page 12, line 5.
Following: "services"
Insert: "to the extent considered appropriate under the
circumstances"
Following: "."
Insert: "Payments required of a guardian may not exceed the
funds available from guardianship assets."

14. Page 15, line 6.
Following: "or"
Strike: "guardian"
Insert: "guardianship assets"

15. Page 15, line 13.
Following: "or"
Strike: "guardian"
Insert: "the adequacy of the guardianship assets"

16. Page 16, line 1.
Strike: "or guardian"

17. Page 16, line 2.
Following: "youth"
Insert: "or the adequacy of the guardianship assets to
provide a contribution"

18. Page 16, line 7.
Strike: "or guardian"

19. Page 16, line 8.
Following: "youth"
Insert: "or the adequacy of the guardianship assets to
provide a contribution"

20. Page 16, lines 14 and 15.
Following: "parents" on line 14
Strike: "or guardian is"
Insert: "are"

21. Page 16, line 15.
Following: "youth"
Insert: "or that the guardianship assets are adequate
to provide a contribution"

22. Page 16, line 18.
Following: "services"
Insert: "to the extent considered appropriate under
the circumstances"
Following: "."
Insert: "Payments required of a guardian may not exceed
the funds available from guardianship assets."