

CHAPTER NO. 543

SENATE BILL NO. 301

INTRODUCED BY LENSINK, REGAN, ANDERSON, JERGESON, S. BROWN

BY REQUEST OF
THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

IN THE SENATE

January 31, 1979	Introduced and referred to Committee on Judiciary.
February 19, 1979	Committee recommend bill do pass as amended. Report adopted.
February 21, 1979	Printed and placed on members' desks.
February 22, 1979	Second reading, do pass.
February 23, 1979	Considered correctly engrossed. On motion rules suspended. Bill placed on calendar for third reading this day. Third reading, passed. Transmitted to second house.

IN THE HOUSE

February 27, 1979	Introduced and referred to Committee on Judiciary.
March 19, 1979	Committee recommend bill be concurred in as amended. Report adopted.
March 20, 1979	Second reading, concurred in.
March 21, 1979	On motion bill returned to second reading.
March 22, 1979	Second reading, concurred in as amended.

March 26, 1979

Third reading, concurred in
as amended.

IN THE SENATE

March 27, 1979

Returned from second house.
Concurred in as amended.

March 29, 1979

Second reading, amendments
adopted.

March 30, 1979

Third reading, amendments
adopted. Sent to enrolling.

Reported correctly enrolled.

1 *Senate* BILL NO. *301*
 2 INTRODUCED BY *Sen. Mark T. Anderson Ferguson*
 3 BY REQUEST OF *J. Brown*
 4 THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

5
 6 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
 7 STATE LAWS RELATING TO CHILD ABUSE, NEGLECT, AND DEPENDENCY;
 8 AMENDING SECTIONS 41-3-101, 41-3-102, 41-3-104, 41-3-105,
 9 41-3-201 THROUGH 41-3-205, 41-3-301, AND 41-3-302, MCA."

10
 11 WHEREAS, Governor Judge appointed a task force to
 12 recommend ways in which services to families in which abuse
 13 and neglect are occurring could be improved; and

14 WHEREAS, the task force recognizes that the most
 15 crucial actions toward improving services to families must
 16 be taken by the local community; and

17 WHEREAS, the task force recognizes that child abuse and
 18 neglect is a multifaceted problem and that no one agency or
 19 discipline, by itself, has the resources or perspective to
 20 resolve or contain the problem; and

21 WHEREAS, the task force has heard testimony from
 22 numerous individuals, legislative staff, and other persons
 23 who deal with abused and neglected children and their
 24 families; and

25 WHEREAS, existing child abuse and neglect laws do not

1 meet requirements allowing Montana to qualify for federal
 2 grants under Public Law 93-247.

3
 4 THEREFORE, it is the intent of this bill to address the
 5 problems facing the children, families, and communities of
 6 this state regarding child abuse and neglect.

7
 8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9 Section 1. Section 41-3-101, MCA, is amended to read:
 10 "41-3-101. Declaration of policy. (1) It is hereby
 11 declared to be the policy of the state of Montana to:

12 (a) insure that all youth are afforded an adequate
 13 physical and emotional environment to promote normal
 14 development;

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

17 (c) achieve these purposes in a family environment
 18 whenever possible; and

19 (d) preserve the unity and welfare of the family
 20 whenever possible.

21 (2) It is the policy of this state to provide for the
 22 protection of children whose health and welfare are ~~or may~~
 23 ~~be~~ adversely affected and further threatened by the conduct
 24 of those responsible for their care and protection. It is
 25 intended that the mandatory reporting of such cases by

1 professional people and other community members to the
 2 appropriate authority will cause the protective services of
 3 the state to seek to prevent further abuses, protect and
 4 enhance the welfare of these children, and preserve family
 5 life wherever possible appropriate."

6 Section 2. Section 41-3-102, MCA, is amended to read:

7 "41-3-102. Definitions. As used in this chapter, the
 8 following definitions apply:

9 (1) "Child" or "youth" ~~for purposes of this chapter~~
 10 means any person under 18 years of age.

11 (2) "Abuse" ~~or "neglect"~~ means: An "abused or
 12 neglected child" means a child whose normal physical or
 13 mental health or welfare is harmed or threatened with harm
 14 by the acts or omissions of his parent or other person
 15 responsible for his welfare.

16 ~~(a) the commission or omission of any act or acts~~
 17 ~~which materially affect the normal physical or emotional~~
 18 ~~development of a youth. Any excessive physical injury,~~
 19 ~~sexual assault, or failure to thrive, taking into account~~
 20 ~~the age and medical history of the youth, shall be presumed~~
 21 ~~to be nonaccidental and to materially affect the normal~~
 22 ~~development of the youth.~~

23 ~~(b) the commission or omission of any act or acts by~~
 24 ~~any person in the status of parent, guardian, or custodian~~
 25 ~~who thereby and by reason of physical or mental incapacity~~

1 ~~or other cause refuses or, with state and private aid and~~
 2 ~~assistance, is unable to discharge the duties and~~
 3 ~~responsibilities for proper and necessary subsistence,~~
 4 ~~education, medical, or any other care necessary for the~~
 5 ~~youth's physical, moral, and emotional well-being.~~

6 (3) ~~"Dependent youth" means a youth who is abandoned,~~
 7 ~~dependent upon the public for support, destitute, without~~
 8 ~~parents or guardian or under the care and supervision of a~~
 9 ~~suitable adult, or who has no proper guidance to provide for~~
 10 ~~his necessary physical, moral, and emotional well-being. A~~
 11 ~~child may be considered dependent and legal custody~~
 12 ~~transferred to a licensed agency if the parent or parents~~
 13 ~~voluntarily relinquish custody of the child. "Harm to a~~
 14 ~~child's health or welfare" means the harm that occurs~~
 15 ~~whenever the parent or other person responsible for the~~
 16 ~~child's welfare:~~

17 (a) inflicts or allows to be inflicted upon the child
 18 physical or mental injury, including injuries sustained as a
 19 result of excessive corporal punishment;

20 (b) commits or allows to be committed a sexual assault
 21 against the child, or exploits the child or allows the child
 22 to be exploited for sexual purposes;

23 (c) fails to supply the child with adequate food,
 24 clothing, shelter, education, or health care, though
 25 financially able to do so or offered financial or other

~~reasonable means to do so:~~

(d) ~~abandons the child by leaving him under circumstances that make reasonable the belief that the parent or other person does not intend to resume care of the child in the future; or~~

(e) ~~fails to provide the child with adequate care, supervision, or guardianship by specific acts or omissions of a similarly serious nature requiring the intervention of the child protective service or a court.~~

(4) ~~"Youth-in-need-of-care" means a youth who is dependent or is suffering from abuse or neglect within the meaning of ~~various chapters~~. "Adequate health care" means any medical or nonmedical remedial health care permitted or authorized under state law.~~

(5) ~~"Imminent harm" means imminent risk of harm.~~

(6) ~~"A person responsible for a child's welfare" means the child's parent, guardian or foster parent; an employee of a public or private residential institution, facility, home, or agency; or any other person legally responsible for the child's welfare in a residential setting.~~

(7) ~~"Physical injury" means death, permanent or temporary disfigurement, or impairment of any bodily organ or function.~~

(8) ~~"Mental injury" means an injury to the intellectual or psychological capacity of a child as~~

~~evidenced by an identifiable and substantial impairment of his ability to function within his normal range of performance and behavior, with due regard to his culture.~~

(9) ~~"Dependent youth" means a youth:~~

(a) ~~who is abandoned;~~

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

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

(d) ~~who is destitute;~~

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

(f) ~~whose parent or parents have voluntarily relinquished custody of the child and whose legal custody has been transferred to a licensed agency.~~

(10) ~~"Youth in need of care" means a youth who is dependent, abused, or neglected as defined in this section."~~

Section 3. Section 41-3-104, MCA, is amended to read:

"41-3-104. Payment for support of dependent--and neglected--children youth in need of care -- reimbursement by county. (1) Whenever agreements are entered into by the department of social and rehabilitation services for placing dependent--and-neglected--children a youth in need of care in approved a licensed family foster homes home, or--licensed private--institutions child care agency, group home, or private treatment facility, the department shall pay by its

1 check or draft each month from any funds appropriated for
2 that purpose the entire amount agreed upon for board,
3 clothing, personal needs, and room of such children.

4 (2) On or before the 20th of each month the department
5 shall present a claim to the county of residence of such
6 children for one-half the payments so made during the month.
7 The county must make reimbursement to the department within
8 20 days after such claim is presented."

9 Section 4. Section 41-3-105, MCA, is amended to read:

10 "41-3-105. Recovery from parents -- division between
11 state and county. (1) In the event any recovery is made from
12 the a parent or--parents of children for whom board,
13 clothing, personal needs, and room have been paid by the
14 state and county, any amount so recovered shall be divided
15 equally between the department and the county of residence
16 of such child or children.

17 (2) Any amount collected from a parent or--parents
18 ~~when a child is placed in a foster home~~ shall be
19 transmitted to the department of social and rehabilitation
20 services. The department shall then pay to the county
21 one-half of the amount so collected."

22 NEW SECTION. Section 5. Interagency cooperation. To
23 effectuate the purposes of this chapter, the county welfare
24 department shall cooperate with and shall seek the
25 cooperation and involvement of all appropriate public and

1 private agencies, including health, education, social
2 services, and law enforcement agencies; juvenile courts; and
3 any other agency, organization, or program providing or
4 concerned with human services related to the prevention,
5 identification, or treatment of child abuse or neglect.
6 Such cooperation and involvement may not include joint case
7 management but may include joint policy planning, public
8 education, information services, staff development, and
9 other training.

10 NEW SECTION. Section 6. Child protection teams. The
11 county attorney or the county welfare department may convene
12 one or more temporary or permanent interdisciplinary child
13 protective teams. These teams may assist in assessing the
14 needs of, formulating and monitoring a treatment plan for,
15 and coordinating services to the child and his family. The
16 supervisor of child protective services of the county
17 welfare department or his designee shall serve as the team's
18 coordinator. Members shall serve at the invitation of the
19 coordinator and shall include representatives of appropriate
20 health, mental health, social service, and law enforcement
21 agencies.

22 Section 7. Section 41-3-201, MCA, is amended to read:

23 "41-3-201. Reports. (1) Any ~~physician who examines~~
24 ~~attends or treats a person under the age of majority or any~~
25 ~~nurse, teacher, social worker, attorney, law enforcement~~

1 ~~officers or any other person who has reason to believe that~~
 2 ~~a child has had serious injury or injuries inflicted upon~~
 3 ~~him or her as a result of abuse or neglect or has been~~
 4 ~~willfully neglected shall report the matter promptly to the~~
 5 ~~department of social and rehabilitation services, its local~~
 6 ~~affiliate, and the county attorney of the county where the~~
 7 ~~child resides. When the professionals and officials listed~~
 8 ~~in subsection (2) know or have reasonable cause to suspect~~
 9 ~~that a child known to them in their professional or official~~
 10 ~~capacity is an abused or neglected child, they shall report~~
 11 ~~the matter promptly to the department of social and~~
 12 ~~rehabilitation services or its local affiliate, who then~~
 13 ~~shall notify the county attorney of the county where the~~
 14 ~~child resides.~~

15 (2) Professionals and officials required to report
 16 are:

17 (a) physicians, residents, interns, or member of a
 18 hospital's staff engaged in the admission, examination,
 19 care, or treatment of persons;

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

23 (c) Christian Science practitioner, and religious
 24 healers;

25 (d) school teachers, other school officials, and

1 employees who work during regular school hours;

2 (e) a social worker, licensed day-care center, or any
 3 other licensed child-care facility;

4 (f) foster care, residential, or institutional worker;

5 or

6 (g) a peace officer or other law enforcement official.

7 (3) Any person may make a report under this section if
 8 he knows or has reasonable cause to suspect that a child is
 9 abused or neglected.

10 (2)(4) This report. The reports referred to under this
 11 section shall contain:

12 (a) the names and addresses of the child and his or
 13 her parents or other persons responsible for his or her
 14 care;

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

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

22 (d) the facts which led the person reporting to
 23 believe that the child has suffered injury or injuries or
 24 willful neglect, within the meaning of this chapter."

25 NEW SECTION. Section 8. Procedure in case of child's

1 death. (1) Any person or official required to report by law
 2 who has reasonable cause to suspect that a child has died as
 3 a result of child abuse or neglect shall report his
 4 suspicion to the appropriate medical examiner or law
 5 enforcement officer. Any other person who has reasonable
 6 cause to suspect that a child has died as a result of child
 7 abuse and neglect may report his suspicion to the
 8 appropriate medical examiner or law enforcement officer.

9 (2) The medical examiner or coroner shall investigate
 10 the report and submit his findings, in writing, to the local
 11 law enforcement agency, the appropriate county attorney, the
 12 local child protective service, and, if the person making
 13 the report is a physician, the physician.

14 Section 9. Section 41-3-202, MCA, is amended to read:

15 "41-3-202. Action on reporting ~~---maintenance--of~~
 16 ~~control-registry-on-child-abuse.~~ (1) ~~if-from-said-report--it~~
 17 ~~shall-appear--that-the~~ Upon receipt of a report as required
 18 by 41-3-201 that a child suffered such injury or injuries or
 19 willful neglect is or has been abused or neglected, a the
 20 social worker or the county attorney or a peace officer
 21 shall promptly conduct a thorough investigation into the
 22 home of the child involved or any other place where the
 23 child is present and into the circumstances surrounding the
 24 injury of the child and into all other matters which in the
 25 discretion of the ~~social worker shall be~~ investigator are

1 relevant ~~and material~~ to the investigation. ~~if from the~~
 2 ~~investigation--it shall appear that the child suffered such~~
 3 ~~injury or injuries or willful neglect, the department shall~~
 4 ~~provide protective services to protect the child and~~
 5 ~~preserve the family. The department will advise the county~~
 6 ~~attorney of its investigation.~~

7 (2) ~~The investigating social worker shall also furnish~~
 8 ~~a written report to the department of social and~~
 9 ~~rehabilitation services which shall have the responsibility~~
 10 ~~of maintaining a control registry on child abuse or willful~~
 11 ~~neglect cases. The social worker is responsible for~~
 12 ~~assessing the family and planning for the child. If the~~
 13 ~~child is treated at a medical facility, the social worker,~~
 14 ~~county attorney, or peace officer shall, consistent with~~
 15 ~~reasonable medical practice, have the right of access to the~~
 16 ~~child for interviews, photographs, and securing physical~~
 17 ~~evidence and have the right of access to relevant hospital~~
 18 ~~and medical records pertaining to the child.~~

19 (3) If from the investigation it appears that the
 20 child suffered abuse or neglect, the department shall
 21 provide protective services to the child and any other child
 22 under the same care. The department will advise the county
 23 attorney of its investigation.

24 (4) The investigating social worker, within 60 days of
 25 commencing an investigation, shall also furnish a written

1 report to the department. The department shall maintain a
 2 record system containing child abuse and neglect cases.

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

10 Section 10. Section 41-3-203, MCA, is amended to read:

11 "41-3-203. Immunity from liability. Anyone
 12 ~~participating in the making of a report pursuant to the~~
 13 ~~provisions of this chapter or investigating or reporting any~~
 14 ~~incident of child abuse or neglect, participating in~~
 15 ~~resulting judicial proceedings, resulting therefrom or~~
 16 ~~furnishing hospital or medical records as required by~~
 17 ~~41-3-202 shall be presumed to be acting in good faith and in~~
 18 ~~good faith shall be~~ is immune from any liability, civil or
 19 criminal, that might otherwise be incurred or imposed,
 20 unless the person acted in bad faith or with malicious
 21 purpose."

22 Section 11. Section 41-3-204, MCA, is amended to read:

23 "41-3-204. Admissibility and preservation of evidence.
 24 (1) In any proceeding resulting from a report made pursuant
 25 to the provisions of this chapter or in any proceeding where

1 ~~such--e the~~ report or any contents thereof are sought to be
 2 introduced into evidence, ~~such the~~ report or ~~its~~ contents
 3 thereof or any other fact or facts related thereto ~~to the~~
 4 ~~report~~ or to the condition of the child who is the subject
 5 of the report shall not be excluded on the ground that the
 6 matter is or may be the subject of a physician-patient
 7 privilege or ~~attorney-client privilege or rule against disclosure of~~
 8 ~~confidentiality granted in Title 26, chapter 1, part 8,~~
 9 ~~except the attorney-client privilege granted by 26-1-803.~~

10 (2) Any person or official required to report under
 11 41-3-201 may take or cause to be taken photographs of the
 12 area of trauma visible on a child who is the subject of a
 13 report. The cost of photographs taken under this section
 14 shall be paid by the county child protective service agency.

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

19 (4) A physician, either in the course of his providing
 20 medical care to a minor or after consultation with child
 21 protective services, the county attorney, or a law
 22 enforcement officer may require x-rays to be taken when in
 23 his professional opinion there is a need for radiological
 24 evidence of suspected abuse or neglect. X-rays may be taken
 25 under this section without the permission of the parent or

1 guardian. The cost of the x-rays ordered and taken under
 2 this section shall be paid by the county child protective
 3 service agency.

4 (5) All written, photographic, or radiological
 5 evidence gathered under this section shall be sent to the
 6 local child protective services agency at the time the
 7 written confirmation report is sent or as soon thereafter as
 8 is possible."

9 Section 12. Section 41-3-205, MCA, is amended to read:

10 "41-3-205. Confidentiality. (1) The case records of
 11 the department of social and rehabilitation services and
 12 its local affiliate, the county welfare department, the
 13 county attorney, and the court concerning actions taken
 14 under this chapter and all records concerning reports of
 15 child abuse and neglect shall be kept confidential unless
 16 the court determines that they should be released except as
 17 provided by this section. Any person who permits or
 18 encourages the unauthorized dissemination of their contents
 19 is guilty of a misdemeanor.

20 (2) Records may be used by interagency
 21 interdisciplinary child protection teams as authorized under
 22 [section 6] for the purposes of assessing the needs of the
 23 child and family, formulating a treatment plan, and
 24 monitoring the plan. Members of the team are required to
 25 keep information about the subject individuals confidential.

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

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

8 Section 13. Section 41-3-301, MCA, is amended to read:

9 "41-3-301. Emergency protective service. (1) Any child
 10 protective social worker of the department of social and
 11 rehabilitation services, the county welfare department, a
 12 peace officer, or the county attorney who has reason to
 13 believe any youth is in immediate or apparent danger of
 14 violence or serious injury harm may immediately remove the
 15 youth and place him in a protective facility. The department
 16 may make a request for further assistance from the law
 17 enforcement agency or take such legal action as may be
 18 appropriate legal action. The department may also leave the
 19 child in his home and place a child protective attendant in
 20 the home for a period of 48 hours.

21 (2) A petition shall be filed within 48 hours of
 22 emergency placement of a child unless arrangements
 23 acceptable to the agency for the care of the child have been
 24 made by the parents. No child who has been removed from his
 25 home or any other place for his protection or care shall be

1 ~~placed in a jail.~~

2 ~~(3) The department of social and rehabilitation~~
 3 ~~services and the county welfare department shall comply with~~
 4 ~~the procedure set forth in 41-3-202. A petition shall be~~
 5 ~~filed within 48 hours of emergency placement of a child~~
 6 ~~unless arrangements acceptable to the agency for the care of~~
 7 ~~the child have been made by the parents.~~

8 (4) The department of social and rehabilitation
 9 services and the county welfare department shall make such
 10 necessary arrangements for the youth's well-being as are
 11 required prior to the court hearing."

12 Section 14. Section 41-3-302, MCA, is amended to read:

13 "41-3-302. Responsibility of providing protective
 14 services. (1) The department of social and rehabilitation
 15 services and the county welfare department shall have the
 16 primary responsibility to provide the protective services
 17 authorized by this chapter and shall have the authority
 18 pursuant to this chapter to take temporary, limited, or
 19 permanent custody of a child when ordered to do so by the
 20 court, including the right to give consent to adoption.

21 ~~(2) The county welfare department shall respond to~~
 22 ~~emergency reports of known or suspected child abuse or~~
 23 ~~neglect 24 hours a day, 7 days a week."~~

24 NEW SECTION. Section 15. Guardian ad litem. In every
 25 judicial proceeding the court shall appoint for any child

1 alleged to be abused or neglected a guardian ad litem who,
 2 whenever possible, shall be an attorney. When necessary the
 3 guardian ad litem may serve at public expense.

4 NEW SECTION. Section 16. Penalty for failure to
 5 report. (1) Any person, official, or institution required by
 6 law to report known or suspected child abuse or neglect or
 7 required to perform any other act who fails to do so or who
 8 prevents another person from reasonably doing so is
 9 punishable by a fine not to exceed \$500, by imprisonment in
 10 the county jail not to exceed 30 days, or by both such fine
 11 and imprisonment and shall be civilly liable for the damages
 12 proximately caused by such failure or prevention.

13 (2) A parent or other person responsible for a child's
 14 care who as a result of the legitimate practice of his
 15 religious beliefs does not provide specified medical
 16 treatment for a child is not considered negligent for that
 17 reason alone. However, when the child's health requires it,
 18 the court may order that medical services be provided to the
 19 child pursuant to 41-3-403.

20 Section 17. Saving clause. This act does not affect
 21 rights and duties that matured, penalties that were
 22 incurred, or proceedings that were begun before the
 23 effective date of this act.

24 Section 18. Codification. (1) It is intended that
 25 sections 4 and 5 of this act be codified as an integral part

1 of Title 41, chapter 3, part 1, and the provisions of Title
2 41, chapter 3, apply to sections 4 and 5 of this act.

3 (2) It is intended that section 8 of this act be
4 codified as an integral part of Title 41, chapter 3, part 2,
5 and the provisions of Title 41, chapter 3, apply to section
6 8 of this act.

7 (3) It is intended that sections 15 and 16 of this act
8 be codified as an integral part of Title 41, chapter 3, part
9 3, and the provisions of Title 41, chapter 3, apply to
10 sections 15 and 16 of this act.

-End-

SENATE BILL NO. 301

INTRODUCED BY LENSINK, REGAN, ANDERSON, JERGESON, S. BROWN

BY REQUEST OF

THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE STATE LAWS RELATING TO CHILD ABUSE, NEGLECT, AND DEPENDENCY; AMENDING SECTIONS 41-3-101, 41-3-102, 41-3-104, 41-3-105, 41-3-201 THROUGH 41-3-205, 41-3-301, AND 41-3-302, AND ~~41-4-102~~, MCA."

WHEREAS, Governor Judge appointed a task force to recommend ways in which services to families in which abuse and neglect are occurring could be improved; and

WHEREAS, the task force recognizes that the most crucial actions toward improving services to families must be taken by the local community; and

WHEREAS, the task force recognizes that child abuse and neglect is a multifaceted problem and that no one agency or discipline, by itself, has the resources or perspective to resolve or contain the problem; and

WHEREAS, the task force has heard testimony from numerous individuals, legislative staff, and other persons who deal with abused and neglected children and their families; and

WHEREAS, existing child abuse and neglect laws do not meet requirements allowing Montana to qualify for federal grants under Public Law 93-247.

THEREFORE, it is the intent of this bill to address the problems facing the children, families, and communities of this state regarding child abuse and neglect.

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

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

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

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

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

(d) preserve the unity and welfare of the family whenever possible.

(2) It is the policy of this state to provide for the protection of children whose health and welfare are or may ~~be~~ adversely affected and further threatened by the conduct of those responsible for their care and protection. It is

1 intended that the mandatory reporting of such cases by
 2 professional people and other community members to the
 3 appropriate authority will cause the protective services of
 4 the state to seek to prevent further abuses, protect and
 5 enhance the welfare of these children, and preserve family
 6 life wherever possible appropriate."

7 Section 2. Section 41-3-102, MCA, is amended to read:

8 "41-3-102. Definitions. As used in this chapter, the
 9 following definitions apply:

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 11 means any person under 18 years of age.

12 (2) "Abuse" or "neglect" means: An "abused or
 13 neglected child" means a child whose normal physical or
 14 mental health or welfare is harmed or threatened with harm
 15 by the acts or omissions of his parent or other person
 16 responsible for his welfare. A PARENT OR OTHER PERSON
 17 RESPONSIBLE FOR A CHILD'S CARE WHO AS A RESULT OF THE
 18 LEGITIMATE PRACTICE OF HIS RELIGIOUS BELIEFS DOES NOT
 19 PROVIDE SPECIFIED MEDICAL TREATMENT FOR A CHILD IS NOT
 20 CONSIDERED NEGLIGENT FOR THAT REASON ALONE. HOWEVER, WHEN
 21 THE CHILD'S HEALTH REQUIRES IT, THE COURT MAY ORDER THAT
 22 MEDICAL SERVICES BE PROVIDED TO THE CHILD PURSUANT TO
 23 41-3-403.

24 (a) the commission or omission of any act or acts
 25 which materially effect the normal physical or emotional

1 development of a youth. Any excessive physical injury,
 2 sexual assault or failure to thrive, taking into account
 3 the age and medical history of the youth, shall be presumed
 4 to be nonaccidental and to materially effect the normal
 5 development of the youth.

6 (b) the commission or omission of any act or acts by
 7 any person in the status of parent, guardian, or custodian
 8 who thereby and by reason of physical or mental incapacity
 9 or other cause refuses or, with state and private aid and
 10 assistance, is unable to discharge the duties and
 11 responsibilities for proper and necessary subsistence,
 12 education, medical, or any other care necessary for the
 13 youth's physical, moral, and emotional well-being.

14 (3) "Dependent youth" means a youth who is abandoned,
 15 dependent upon the public for support, destitute, without
 16 parents or guardian or under the care and supervision of a
 17 suitable adult, or who has no proper guidance to provide for
 18 his necessary physical, moral, and emotional well-being. A
 19 child may be considered dependent and legal custody
 20 transferred to a licensed agency if the parent or parents
 21 voluntarily relinquish custody of the child. "Harm to a
 22 child's health or welfare" means the harm that occurs
 23 whenever the parent or other person responsible for the
 24 child's welfare:

25 (a) inflicts or allows to be inflicted upon the child

1 ~~physical or mental injury, including injuries sustained as a~~
2 ~~result of excessive corporal punishment;~~

3 ~~(b) commits or allows to be committed a sexual assault~~
4 ~~against the child, or exploits the child or allows the child~~
5 ~~to be exploited for sexual purposes;~~

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

10 ~~(d) abandons the child by leaving him 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~~

14 ~~(e) fails to provide the child with adequate care,~~
15 ~~supervision, or guardianship by specific acts or omissions~~
16 ~~of a similarly serious nature requiring the intervention of~~
17 ~~the child protective service or a court.~~

18 ~~(4) "Youth in need of care" means a youth who is~~
19 ~~dependent or is suffering from abuse or neglect within the~~
20 ~~meaning of this chapter. "Adequate health care" means any~~
21 ~~medical or nonmedical remedial health care permitted or~~
22 ~~authorized under state law.~~

23 ~~(5) "Threatened harm" means imminent risk or DE harm.~~

24 ~~(6) "A person responsible for a child's welfare" means~~
25 ~~the child's parent, guardians or foster parent; an employee~~

1 ~~of a public or private residential institution, facility,~~
2 ~~home, or agency; or any other person legally responsible for~~
3 ~~the child's welfare in a residential setting.~~

4 ~~(7) "Physical injury" means death, permanent or~~
5 ~~temporary disfigurement, or impairment of any bodily organ~~
6 ~~or function.~~

7 ~~(8) "Mental injury" means an injury to the~~
8 ~~intellectual or psychological capacity of a child as~~
9 ~~evidenced by an identifiable and substantial impairment of~~
10 ~~his ability to function within his normal range of~~
11 ~~performance and behavior with due regard to his culture~~
12 ~~IDENTIFIABLE AND SUBSTANTIAL IMPAIRMENT OF THE CHILD'S~~
13 ~~INTELLECTUAL OR PSYCHOLOGICAL FUNCTIONING.~~

14 ~~(9) "Dependent youth" means a youth:~~

15 ~~(a) who is abandoned;~~

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

18 ~~(c) who has no proper guidance to provide for his~~
19 ~~necessary physical, moral, and emotional well-being;~~

20 ~~(d) who is destitute;~~

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

22 ~~(f) whose parent or parents have voluntarily~~
23 ~~relinquished custody of the child and whose legal custody~~
24 ~~has been transferred to a licensed agency.~~

25 ~~(10) "Youth in need of care" means a youth who is~~

1 ~~dependant, abused, or neglected as defined in this section."~~

2 Section 3. Section 41-3-104, MCA, is amended to read:

3 "41-3-104. Payment for support of ~~dependent--and~~
4 ~~neglected-children~~ youth in need of care -- reimbursement by
5 county. (1) Whenever agreements are entered into by the
6 department of social and rehabilitation services for placing
7 ~~dependent-and-neglected-children~~ a youth in need of care in
8 ~~approved a licensed family foster homes homes, or--licensed~~
9 ~~private-institutions~~ child care agency, group home, or
10 private treatment facility, the department shall pay by its
11 check or draft each month from any funds appropriated for
12 that purpose the entire amount agreed upon for board,
13 clothing, personal needs, and room of such children.

14 (2) On or before the 20th of each month the department
15 shall present a claim to the county of residence of such
16 children for one-half the payments so made during the month.
17 The county must make reimbursement to the department within
18 20 days after such claim is presented."

19 Section 4. Section 41-3-105, MCA, is amended to read:

20 "41-3-105. Recovery from parents -- division between
21 state and county. (1) In the event any recovery is made from
22 the a parent or--parents of children for whom board,
23 clothing, personal needs, and room have been paid by the
24 state and county, any amount so recovered shall be divided
25 equally between the department and the county of residence

1 of such child or children.

2 (2) ~~Any amount collected from a parent or parents~~
3 ~~when a child is placed in a foster home, shall be~~
4 ~~transmitted to the department of social and rehabilitation~~
5 ~~services. The department shall then pay to the county~~
6 ~~one-half of the amount so collected."~~

7 NEW SECTION. Section 5. Interagency cooperation. To
8 effectuate the purposes of this chapter, the county welfare
9 department shall cooperate with and shall seek the
10 cooperation and involvement of all appropriate public and
11 private agencies, including health, education, social
12 services, and law enforcement agencies; juvenile courts; and
13 any other agency, organization, or program providing or
14 concerned with human services related to the prevention,
15 identification, or treatment of child abuse or neglect.
16 Such cooperation and involvement may not include joint case
17 management but may include joint policy planning, public
18 education, information services, staff development, and
19 other training.

20 NEW SECTION. Section 6. Child protection teams. The
21 county attorney or the county welfare department may convene
22 one or more temporary or permanent interdisciplinary child
23 protective teams. These teams may assist in assessing the
24 needs of, formulating and monitoring a treatment plan for,
25 and coordinating services to the child and his family. The

1 supervisor of child protective services of the county
 2 welfare department or his designee shall serve as the team's
 3 coordinator. Members shall serve at the invitation of the
 4 coordinator and shall include representatives of appropriate
 5 health, mental health, social services, and law enforcement
 6 agencies. INCLUDE A SOCIAL WORKER, A MEMBER OF A LOCAL LAW
 7 ENFORCEMENT AGENCY, A REPRESENTATIVE OF THE MEDICAL
 8 PROFESSION, AND A COUNTY ATTORNEY.

9 Section 7. Section 41-3-201, MCA, is amended to read:

10 "41-3-201. Reports. (1) ~~Any physician who examines~~
 11 ~~attends or treats a person under the age of majority or any~~
 12 ~~nurse, teacher, social worker, attorney, law enforcement~~
 13 ~~officer or any other person who has reason to believe that~~
 14 ~~a child has had serious injury or injuries inflicted upon~~
 15 ~~him or her as a result of abuse or neglect or has been~~
 16 ~~willfully neglected shall report the matter promptly to the~~
 17 ~~department of social and rehabilitation services, its local~~
 18 ~~affiliate, and the county attorney of the county where the~~
 19 ~~child resides.~~ When the professionals and officials listed
 20 in subsection (2) know or have reasonable cause to suspect
 21 that a child known to them in their professional or official
 22 capacity is an abused or neglected child, they shall report
 23 the matter promptly to the department of social and
 24 rehabilitation services or its local affiliate, who WHICH
 25 then shall notify the county attorney of the county where

1 the child resides.

2 (2) Professionals and officials required to report
 3 are:

4 (a) physician, resident, intern, or member of a
 5 hospital's staff engaged in the admission, examination,
 6 care, or treatment of persons;

7 (b) a nurse, osteopath, chiropractor, podiatrist,
 8 medical examiner, coroner, dentist, optometrist, or any
 9 other health or mental health professional;

10 (c) Christian Science practitioner and religious
 11 healers;

12 (d) school teachers, other school officials, and
 13 employees who work during regular school hours;

14 (e) a social worker, licensed day-care center, or any
 15 other licensed child-care facility;

16 (f) foster care, residential, or institutional worker;

17 or

18 (g) a peace officer or other law enforcement official.

19 (3) Any person may make a report under this section if
 20 he knows or has reasonable cause to suspect that a child is
 21 abused or neglected.

22 (4) This report. The reports referred to under this
 23 section shall contain:

24 (a) the names and addresses of the child and his or
 25 her parents or other persons responsible for his or her

1 care;

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

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

9 (d) the facts which led the person reporting to
10 believe that the child has suffered injury or injuries or
11 willful neglect, within the meaning of this chapter."

12 NEW SECTION. Section 8. Procedure in case of child's
13 death. (1) Any person or official required to report by law
14 who has reasonable cause to suspect that a child has died as
15 a result of child abuse or neglect shall report his
16 suspicion to the appropriate medical examiner or law
17 enforcement officer. Any other person who has reasonable
18 cause to suspect that a child has died as a result of child
19 abuse and ~~OR~~ neglect may report his suspicion to the
20 appropriate medical examiner or law enforcement officer.

21 (2) The medical examiner or coroner shall investigate
22 the report and submit his findings, in writing, to the local
23 law enforcement agency, the appropriate county attorney, the
24 local child protective service, and, if the person making
25 the report is a physician, the physician.

1 Section 9. Section 41-3-202, MCA, is amended to read:

2 "41-3-202. Action on reporting ~~----maintenance---~~of
3 ~~central--registry-on-child-abuse.~~ (1) ~~if--from--said--report--it~~
4 ~~shall--appear--that--the~~ Upon receipt of a report as required
5 by 41-3-201 that a child suffered such injury or injuries or
6 willful--neglect, is or has been abused or neglected, a the
7 social worker or the county attorney or a peace officer
8 shall promptly conduct a thorough investigation into the
9 home of the child involved or any other place where the
10 child is present and into the circumstances surrounding the
11 injury of the child and into all other matters which in the
12 discretion of the ~~social worker shall be investigator~~ are
13 relevant and material to the investigation. ~~if--from--the~~
14 ~~investigation--it--shall--appear--that--the--child--suffered--such~~
15 ~~injury--or--injuries--or--willful--neglect,~~ the department ~~--shall~~
16 ~~provide--protective--services--to--protect--the--child--and~~
17 ~~preserve--the--family.~~ The department ~~will~~ advise the county
18 attorney of its investigation.

19 (2) ~~The investigating social worker shall also furnish~~
20 ~~a--written--report--to--the--department--of--social--and~~
21 ~~rehabilitation services which shall have the responsibility~~
22 ~~of--maintaining--a--central--registry--on--child--abuse--or--willful~~
23 ~~neglect--cases.~~ The social worker is responsible for
24 assessing the family and planning for the child. If the
25 child is treated at a medical facility, the social worker:

1 county attorney, or peace officer shall, consistent with
2 reasonable medical practice, have the right of access to the
3 child for interviews, photographs, and securing physical
4 evidence and have the right of access to relevant hospital
5 and medical records pertaining to the child.

6 (3) If from the investigation it appears that the
7 child suffered abuse or neglect, the department shall
8 provide protective services to the child and MAY PROVIDE
9 PROTECTIVE SERVICES TO any other child under the same care.
10 The department will advise the county attorney of its
11 investigation.

12 (4) The investigating social worker, within 60 days of
13 commencing an investigation, shall also furnish a written
14 report to the department. The department shall maintain a
15 record system containing child abuse and neglect cases.

16 (5) Any person reporting abuse or neglect which
17 involves acts or omissions on the part of a public or
18 private residential institution, home, facility, or agency
19 shall be responsible for ensuring that the report is made to
20 the department of social and rehabilitation services, its
21 local affiliate, and the county attorney of the county in
22 which the facility is located."

23 Section 10. Section 41-3-203, MCA, is amended to read:
24 "41-3-203. Immunity from liability. Anyone
25 participating in the making of a report pursuant to the

1 ~~provisions of this chapter or investigating or reporting any~~
2 ~~incident of child abuse or neglect, participating in~~
3 ~~resulting judicial proceedings, resulting therefrom or~~
4 ~~furnishing hospital or medical records as required by~~
5 ~~41-3-202 shall be presumed to be acting in good faith and in~~
6 ~~so doing shall be~~ is immune from any liability, civil or
7 criminal, that might otherwise be incurred or imposed,
8 unless the person acted in bad faith or with malicious
9 purpose."

10 Section 11. Section 41-3-204, MCA, is amended to read:

11 "41-3-204. Admissibility and preservation of evidence.
12 (1) In any proceeding resulting from a report made pursuant
13 to the provisions of this chapter or in any proceeding where
14 such--a the report or any IIS contents thereof are sought to
15 be introduced into evidence, such the report or its contents
16 thereof or any other fact or facts related thereto to the
17 report or to the condition of the child who is the subject
18 of the report shall not be excluded on the ground that the
19 matter is or may be the subject of a physician-patient
20 privilege or similar privilege or rule against disclosure of
21 confidentiality granted in Title 26, chapter 17, part 9x
22 except--the--attorney-client--privilege--granted--by--26-1-803
23 RELATED TO THE EXAMINATION OR TREATMENT OF THE CHILD.

24 (2) Any person or official required to report under
25 41-3-201 may take or cause to be taken photographs of the

1 area of trauma visible on a child who is the subject of a
 2 report. The cost of photographs taken under this section
 3 shall be paid by the county child protective service agency.

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

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

18 (5) All written, photographic, or radiological
 19 evidence gathered under this section shall be sent to the
 20 local child protective services agency at the time the
 21 written confirmation report is sent or as soon thereafter as
 22 is possible."

23 Section 12. Section 41-3-205, MCA, is amended to read:

24 "41-3-205. Confidentiality. (1) The case records of
 25 the department of social and rehabilitation services, and

1 its local affiliate, the county welfare department, the
 2 county attorney, and the court concerning actions taken
 3 under this chapter and all records concerning reports of
 4 child abuse and neglect shall be kept confidential unless
 5 the court determines that they should be released except as
 6 provided by this section. Any person who permits or
 7 encourages the unauthorized dissemination of their contents
 8 is guilty of a misdemeanor.

9 (2) Records may be used by interagency
 10 interdisciplinary child protection teams as authorized under
 11 [section 6] for the purposes of assessing the needs of the
 12 child and family, formulating a treatment plan, and
 13 monitoring the plan. Members of the team are required to
 14 keep information about the subject individuals confidential.

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

19 (4) Nothing in this section is intended to affect the
 20 confidentiality of criminal court records or records of law
 21 enforcement agencies."

22 Section 13. Section 41-3-301, MCA, is amended to read:

23 "41-3-301. Emergency protective service. (1) Any child
 24 protective social worker of the department of social and
 25 rehabilitation services, the county welfare department, a

1 peace officer, or ~~the~~ county attorney who has reason to
 2 believe any youth is in immediate or apparent danger of
 3 violence--or--serious-injury ~~harm~~ may immediately remove the
 4 youth and place him in a protective facility. The department
 5 may make a request for further assistance from the law
 6 enforcement agency or take such--legal--action-as-may-be
 7 appropriate legal action. ~~The department may also leave the~~
 8 ~~child in his home and place a child protective attendant in~~
 9 ~~the home for a period of 48 hours~~

10 (2) ~~A petition shall be filed within 48 hours of~~
 11 ~~emergency placement of a child unless arrangements~~
 12 ~~acceptable to the agency for the care of the child have been~~
 13 ~~made by the parents. No child who has been removed from his~~
 14 ~~home or any other place for his protection or care may be~~
 15 ~~placed in a jail.~~

16 (3) ~~The department of social and rehabilitation~~
 17 ~~services and the county welfare department shall comply with~~
 18 ~~the procedure set forth in 41-3-202. A petition shall be~~
 19 ~~filed within 48 hours of emergency placement of a child~~
 20 ~~unless arrangements acceptable to the agency for the care of~~
 21 ~~the child have been made by the parents.~~

22 (4) The department of social and rehabilitation
 23 services and the county welfare department shall make such
 24 necessary arrangements for the youth's well-being as are
 25 required prior to the court hearing."

1 Section 14. Section 41-3-302, MCA, is amended to read:
 2 "41-3-302. Responsibility of providing protective
 3 services. (1) The department of social and rehabilitation
 4 services and the county welfare department shall have the
 5 primary responsibility to provide the protective services
 6 authorized by this chapter and shall have the authority
 7 pursuant to this chapter to take temporary, limited, or
 8 permanent custody of a child when ordered to do so by the
 9 court, including the right to give consent to adoption.

10 ~~(2) The county welfare department shall respond to~~
 11 ~~emergency reports of known or suspected child abuse or~~
 12 ~~neglect 24 hours a day, 7 days a week."~~

13 NEW SECTION. Section 15. Guardian ad litem. In every
 14 judicial proceeding the court shall appoint for any child
 15 alleged to be abused or neglected a guardian ad litem who,
 16 whenever possible, shall be an attorney. When necessary the
 17 guardian ad litem may serve at public expense.

18 NEW SECTION. Section 16. Penalty for failure to
 19 report. (1) Any person, official, or institution required by
 20 law to report known or suspected child abuse or neglect or
 21 required to perform any other act who fails to do so or who
 22 prevents another person from reasonably doing so is
 23 punishable by a fine not to exceed \$500, by imprisonment in
 24 the county jail not to exceed 30 days, or by both such fine
 25 and imprisonment and shall be civilly liable for the damages

1 proximately caused by such failure or prevention.
 2 (2) ~~A parent or other person responsible for a child's~~
 3 ~~care who as a result of the legitimate practice of his~~
 4 ~~religious beliefs does not provide specified medical~~
 5 ~~treatment for a child is not considered negligent for that~~
 6 ~~reason alone. However, when the child's health requires it,~~
 7 ~~the court may order that medical services be provided to the~~
 8 ~~child pursuant to 41-3-403.~~

9 Section 17. Saving clause. This act does not affect
 10 rights and duties that matured, penalties that were
 11 incurred, or proceedings that were begun before the
 12 effective date of this act.

13 Section 18. Codification. (1) It is intended that
 14 sections ~~4 and 5~~ AND 6 of this act be codified as an
 15 integral part of Title 41, chapter 3, part 1, and the
 16 provisions of Title 41, chapter 3, apply to sections ~~4 and 5~~
 17 AND 6 of this act.

18 (2) It is intended that section 8 of this act be
 19 codified as an integral part of Title 41, chapter 3, part 2,
 20 and the provisions of Title 41, chapter 3, apply to section
 21 8 of this act.

22 (3) It is intended that sections 15 and 16 of this act
 23 be codified as an integral part of Title 41, chapter 3, part
 24 3, and the provisions of Title 41, chapter 3, apply to
 25 sections 15 and 16 of this act.

1 SECTION 19. SECTION 41-4-102, MCA, IS AMENDED TO READ:
 2 "41-4-102. Financial responsibility. Financial
 3 responsibility for any child placed pursuant to the
 4 provisions of the Interstate Compact on the Placement of
 5 Children shall be determined in accordance with the
 6 provisions of Article V thereof in the first instance.
 7 However, in the event of partial or complete default of
 8 performance thereunder, the provisions of Title 40, chapter
 9 5 (Revised Uniform Reciprocal Enforcement of Support Act)
 10 and 41-3-104, ~~41-3-185(2),~~ 41-3-404, and 41-3-405 also may
 11 be invoked."

-End-

Judiciary Committee amendments to Senate Bill 301, third reading
copy, as follows:

1. Title, line 8.
strike: "41-3-105,"

2. Title, line 9
Following: "41-3-302,"
Insert: "41-3-404,"

3. Page 3, lines 16 through 23.
Following: "welfare."
Strike: remainder of line 16 through line 23 in their entirety.

4. Page 5, line 6.
Following: "(c)"
Insert: "causes failure to thrive or otherwise"
Following: "food"
Strike: " , "
Insert: "or fails to supply"

5. Page 7, line 19 through line 6, page 8.
Strike: section 4 in its entirety
Renumber: subsequent sections.

6. Page 14, line 23.
Following: line 22
Strike: line 23 in its entirety
Insert: "granted in Title 26, chapter 1, part 8, except the attorney-
client privilege granted by 26-1-803."

7. Page 20, line 12.
Following: line 11
Insert: "Section 19. Section 41-3-404, MCA, is amended to read:
"41-3-404. Hearing. (1) In a hearing on a petition under 41-3-401
or 41-3-402, the court shall determine whether said youth is ~~an-abused,~~
~~neglected, or dependent child~~ a youth in need of care and ascertain,
as far as possible, the cause ~~thereof~~.
(2) The court shall hear evidence regarding the residence of the
child, whereabouts of the parents, guardian, or nearest adult relative,
the financial ability of ~~any-such~~ the parents or parent to pay the cost
of care of the child, whether or how long the child has been maintained
in whole or in part by public or private charity, and may take into
consideration the report of the county welfare department filed with
the clerk of the court, pursuant to 41-3-405.
(3) In all civil and criminal proceedings relating to abuse, neglect,
or dependency, ~~the doctor-patient-privilege-and-husband-wife-privilege~~
~~shall not~~ none of the privileges granted in Title 26, chapter 1, part 8,
except the attorney-client privilege granted by 26-1-803, apply to the
extent-any-testimony-relates-to-such-matters."

AND AS AMENDED BE CONCURRED IN

HOUSE OF REPRESENTATIVES
March 22, 1979

Committee of the Whole Amendments to Senate Bill No. 301, third reading copy, as follows:

1. Page 10.

Following: line 21

Insert: "(4) No person listed in subsection (2) may refuse to make a report as required in this section on the grounds of a physician-patient or similar privilege if the person came into possession of such information as a result of his treatment of the child."

Renumber: subsequent subsection

Further Committee of the Whole Amendments to Judiciary Committee Amendments to Senate Bill 301, third reading copy, as follows:

1. Amendment No. 6.

Following: "Insert:"

Insert: "related to the examination or treatment of the child and"

2. Amendment No. 7, line 15 of the insertion paragraph.

Following: "privileges"

Insert: "related to the examination or treatment of the child and"

AND AS AMENDED
BE CONCURRED IN

1 SENATE BILL NO. 301
 2 INTRODUCED BY LENSINK, REGAN, ANDERSON, JERGESON, S. BROWN
 3 BY REQUEST OF
 4 THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
 5
 6 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
 7 STATE LAWS RELATING TO CHILD ABUSE, NEGLECT, AND DEPENDENCY;
 8 AMENDING SECTIONS 41-3-101, 41-3-102, 41-3-104, ~~41-3-105,~~
 9 41-3-201 THROUGH 41-3-205, 41-3-301, AND 41-3-302, ~~41-3-404,~~
 10 ~~AND 41-4-102, MCA."~~

11
 12 WHEREAS, Governor Judge appointed a task force to
 13 recommend ways in which services to families in which abuse
 14 and neglect are occurring could be improved; and

15 WHEREAS, the task force recognizes that the most
 16 crucial actions toward improving services to families must
 17 be taken by the local community; and

18 WHEREAS, the task force recognizes that child abuse and
 19 neglect is a multifaceted problem and that no one agency or
 20 discipline, by itself, has the resources or perspective to
 21 resolve or contain the problem; and

22 WHEREAS, the task force has heard testimony from
 23 numerous individuals, legislative staff, and other persons
 24 who deal with abused and neglected children and their
 25 families; and

1 WHEREAS, existing child abuse and neglect laws do not
 2 meet requirements allowing Montana to qualify for federal
 3 grants under Public Law 93-247.

4
 5 THEREFORE, it is the intent of this bill to address the
 6 problems facing the children, families, and communities of
 7 this state regarding child abuse and neglect.

8
 9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Section 41-3-101, MCA, is amended to read:

11 "41-3-101. Declaration of policy. (1) It is hereby
 12 declared to be the policy of the state of Montana to:

13 (a) insure that all youth are afforded an adequate
 14 physical and emotional environment to promote normal
 15 development;

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

18 (c) achieve these purposes in a family environment
 19 whenever possible; and

20 (d) preserve the unity and welfare of the family
 21 whenever possible.

22 (2) It is the policy of this state to provide for the
 23 protection of children whose health and welfare are or may
 24 be adversely affected and further threatened by the conduct
 25 of those responsible for their care and protection. It is

1 Intended that the mandatory reporting of such cases by
 2 professional people and other community members to the
 3 appropriate authority will cause the protective services of
 4 the state to seek to prevent further abuses, protect and
 5 enhance the welfare of these children, and preserve family
 6 life wherever possible appropriate."

7 Section 2. Section 41-3-102, MCA, is amended to read:

8 "41-3-102. Definitions. As used in this chapter, the
 9 following definitions apply:

10 (1) "Child" or "youth" ~~for purposes of this chapter~~
 11 means any person under 18 years of age.

12 (2) "Abuse" ~~or "neglect" means~~ An "abused or
 13 neglected child" means a child whose normal physical or
 14 mental health or welfare is harmed or threatened with harm
 15 by the acts or omissions of his parent or other person
 16 responsible for his welfare. A PARENT OR OTHER PERSON
 17 RESPONSIBLE FOR A CHILD'S CARE WHO AS A RESULT OF THE
 18 LEGITIMATE PRACTICE OF HIS RELIGIOUS BELIEFS DOES NOT
 19 PROVIDE SPECIFIED MEDICAL TREATMENT FOR A CHILD IS NOT
 20 CONSIDERED NEGLIGENT FOR THAT REASON ALONE, HOWEVER, WHEN
 21 THE CHILD'S HEALTH REQUIRES IT, THE COURT MAY ORDER THAT
 22 MEDICAL SERVICES BE PROVIDED TO THE CHILD PURSUANT TO
 23 41-3-402.

24 ~~(a) the commission or omission of any act or acts~~
 25 ~~which materially affect the normal physical or emotional~~

1 ~~development of a youth. Any excessive physical injury~~
 2 ~~sexual assault, or failure to thrive, taking into account~~
 3 ~~the age and medical history of the youth, shall be presumed~~
 4 ~~to be nonaccidental and to materially affect the normal~~
 5 ~~development of the youth.~~

6 ~~(b) the commission or omission of any act or acts by~~
 7 ~~any person in the status of parent, guardian, or custodian~~
 8 ~~who thereby and by reason of physical or mental incapacity~~
 9 ~~or other cause, refuses or, with state and private aid and~~
 10 ~~assistance, is unable to discharge the duties and~~
 11 ~~responsibilities for proper and necessary subsistence,~~
 12 ~~education, medical, or any other care necessary for the~~
 13 ~~youth's physical, moral, and emotional well-being.~~

14 (3) "Dependent youth" ~~means a youth who is abandoned,~~
 15 ~~dependent upon the public for support, destitute, without~~
 16 ~~parents or guardian or under the care and supervision of a~~
 17 ~~suitable adult, or who has no proper guidance to provide for~~
 18 ~~his necessary physical, moral, and emotional well-being. A~~
 19 ~~child may be considered dependent and legal custody~~
 20 ~~transferred to a licensed agency if the parent or parents~~
 21 ~~voluntarily relinquish custody of the child. "Harm to a~~
 22 ~~child's health or welfare" means the harm that occurs~~
 23 ~~whenever the parent or other person responsible for the~~
 24 ~~child's welfare:~~

25 (a) inflicts or allows to be inflicted upon the child

1 physical or mental injury, including injuries sustained as a
 2 result of excessive corporal punishment;

3 (b) commits or allows to be committed a sexual assault
 4 against the child, or exploits the child or allows the child
 5 to be exploited for sexual purposes;

6 (c) CAUSES FAILURE TO THRIVE OR OTHERWISE fails to
 7 supply the child with adequate food, OR FAILS TO SUPPLY
 8 clothing, shelter, education, or health care, though
 9 financially able to do so or offered financial or other
 10 reasonable means to do so; OR

11 (d) abandons the child by leaving him under
 12 circumstances that make reasonable the belief that the
 13 parent or other person does not intend to resume care of the
 14 child in the future; or

15 ~~(e) fails to provide the child with adequate care,~~
 16 ~~supervision, or guardianship by specific acts or omissions~~
 17 ~~of a similarly serious nature requiring the intervention of~~
 18 ~~the child protective service or a court.~~

19 (4) "Youth-in-need-of-care" means a youth who is
 20 dependent or is suffering from abuse or neglect within the
 21 meaning of this chapter. "Adequate health care" means any
 22 medical or nonmedical remedial health care permitted or
 23 authorized under state law.

24 (5) "Threatened harm" means imminent risk or DE harm.

25 (6) "A person responsible for a child's welfare" means

1 the child's parent, guardian, or foster parent; an employee
 2 of a public or private residential institution, facility,
 3 home, or agency; or any other person legally responsible for
 4 the child's welfare in a residential setting.

5 (7) "Physical injury" means death, permanent or
 6 temporary disfigurement, or impairment of any bodily organ
 7 or function.

8 (8) "Mental injury" means an injury to the
 9 intellectual or psychological capacity of a child as
 10 evidenced by an identifiable and substantial impairment of
 11 his ability to function within his normal range of
 12 performance and behavior with due regard to his culture
 13 IDENTIFIABLE AND SUBSTANTIAL IMPAIRMENT OF THE CHILD'S
 14 INTELLECTUAL OR PSYCHOLOGICAL FUNCTIONING.

15 (9) "Dependent youth" means a youth:

16 (a) who is abandoned;

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

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

21 (d) who is destitute;

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

23 (f) whose parent or parents have voluntarily
 24 relinquished custody of the child and whose legal custody
 25 has been transferred to a licensed agency.

1 (10) "Youth in need of care" means a youth who is
 2 dependent, abused, or neglected as defined in this section."

3 Section 3. Section 41-3-104, MCA, is amended to read:

4 "41-3-104. Payment for support of dependent---and
 5 neglected-children youth in need of care -- reimbursement by
 6 county. (1) Whenever agreements are entered into by the
 7 department of social and rehabilitation services for placing
 8 dependent-and-neglected-children a youth in need of care in
 9 approved a licensed family foster homes ~~homes~~, or-licensed
 10 private-institutions child care agency, group home, or
 11 private treatment facility, the department shall pay by its
 12 check or draft each month from any funds appropriated for
 13 that purpose the entire amount agreed upon for board,
 14 clothing, personal needs, and room of such children.

15 (2) On or before the 20th of each month the department
 16 shall present a claim to the county of residence of such
 17 children for one-half the payments so made during the month.
 18 The county must make reimbursement to the department within
 19 20 days after such claim is presented."

20 ~~Section 4. Section 41-3-105, MCA, is amended to read:~~

21 ~~"41-3-105. Recovery from parents---division between~~
 22 ~~state and county. (1) In the event any recovery is made~~
 23 ~~from the parent or parents of children for whom board,~~
 24 ~~clothing, personal needs, and room have been paid by the~~
 25 ~~state and county, any amount so recovered shall be divided~~

1 ~~equally between the department and the county of residence~~
 2 ~~of such child or children.~~

3 ~~(2) Any amount collected from a parent or parents,~~
 4 ~~when a child is placed in a foster home, shall be~~
 5 ~~transmitted to the department of social and rehabilitation~~
 6 ~~services. The department shall then pay to the county~~
 7 ~~one-half of the amount so collected."~~

8 NEW SECTION. Section 4. Interagency cooperation. To
 9 effectuate the purposes of this chapter, the county welfare
 10 department shall cooperate with and shall seek the
 11 cooperation and involvement of all appropriate public and
 12 private agencies, including health, education, social
 13 services, and law enforcement agencies; juvenile courts; and
 14 any other agency, organization, or program providing or
 15 concerned with human services related to the prevention,
 16 identification, or treatment of child abuse or neglect.
 17 Such cooperation and involvement may not include joint case
 18 management but may include joint policy planning, public
 19 education, information services, staff development, and
 20 other training.

21 NEW SECTION. Section 5. Child protection teams. The
 22 county attorney or the county welfare department may convene
 23 one or more temporary or permanent interdisciplinary child
 24 protective teams. These teams may assist in assessing the
 25 needs of, formulating and monitoring a treatment plan for,

1 and coordinating services to the child and his family. The
 2 supervisor of child protective services of the county
 3 welfare department or his designee shall serve as the team's
 4 coordinator. Members shall ~~serve at the invitation of the~~
 5 ~~coordinator and shall include representatives of appropriate~~
 6 ~~health, mental health, social services and law enforcement~~
 7 ~~agencies~~ INCLUDE A SOCIAL WORKER, A MEMBER OF A LOCAL LAW
 8 ENFORCEMENT AGENCY, A REPRESENTATIVE OF THE MEDICAL
 9 PROFESSION, AND A COUNTY ATTORNEY.

10 Section 6. Section 41-3-201, MCA, is amended to read:
 11 "41-3-201. Reports. (1) ~~Any physician who examines~~
 12 ~~attends or treats a person under the age of majority or any~~
 13 ~~nurse, teacher, social worker, attorney, law enforcement~~
 14 ~~officer or any other person who has reason to believe that~~
 15 ~~a child has had serious injury or injuries inflicted upon~~
 16 ~~him or her as a result of abuse or neglect or has been~~
 17 ~~willfully neglected shall report the matter promptly to the~~
 18 ~~department of social and rehabilitation services, its local~~
 19 ~~affiliate, and the county attorney of the county where the~~
 20 ~~child resides.~~ When the professionals and officials listed
 21 in subsection (2) know or have reasonable cause to suspect
 22 that a child known to them in their professional or official
 23 capacity is an abused or neglected child, they shall report
 24 the matter promptly to the department of social and
 25 rehabilitation services or its local affiliate, who SHALL

1 then shall notify the county attorney of the county where
 2 the child resides.

3 (2) Professionals and officials required to report
 4 are:

5 (a) physician, resident, intern, or member of a
 6 hospital's staff engaged in the admission, examination,
 7 care, or treatment of persons;

8 (b) a nurse, osteopath, chiropractor, podiatrist,
 9 medical examiner, coroner, dentist, optometrist, or any
 10 other health or mental health professional;

11 (c) Christian Science practitioner and religious
 12 healers;

13 (d) school teachers, other school officials, and
 14 employees who work during regular school hours;

15 (e) a social worker, licensed day-care center, or any
 16 other licensed child-care facility;

17 (f) foster care, residential, or institutional workers;
 18 or

19 (g) a peace officer or other law enforcement official.

20 (3) Any person may make a report under this section if
 21 he knows or has reasonable cause to suspect that a child is
 22 abused or neglected.

23 (4) NO PERSON LISTED IN SUBSECTION (2) MAY REFUSE TO
 24 MAKE A REPORT AS REQUIRED IN THIS SECTION ON THE GROUNDS OF
 25 A PHYSICIAN-PATIENT OR SIMILAR PRIVILEGE IF THE PERSON CAME

1 INTO POSSESSION OF SUCH INFORMATION AS A RESULT OF HIS
2 TREATMENT OF THE CHILD.

3 ~~(2)(4)(5)~~ This report ~~The reports referred to under~~
4 this section shall contain:

5 (a) the names and addresses of the child and his or
6 her parents or other persons responsible for his or her
7 care;

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

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

15 (d) the facts which led the person reporting to
16 believe that the child has suffered injury or injuries or
17 willful neglect, within the meaning of this chapter."

18 NEW SECTION. Section 7. Procedure in case of child's
19 death. (1) Any person or official required to report by law
20 who has reasonable cause to suspect that a child has died as
21 a result of child abuse or neglect shall report his
22 suspicion to the appropriate medical examiner or law
23 enforcement officer. Any other person who has reasonable
24 cause to suspect that a child has died as a result of child
25 abuse and OR neglect may report his suspicion to the

1 appropriate medical examiner or law enforcement officer.

2 (2) The medical examiner or coroner shall investigate
3 the report and submit his findings, in writing, to the local
4 law enforcement agency, the appropriate county attorney, the
5 local child protective service, and, if the person making
6 the report is a physician, the physician.

7 Section 8. Section 41-3-202, MCA, is amended to read:

8 "41-3-202. Action on reporting ~~---maintenance--of~~
9 ~~central-registry-on-child-abuse.~~ (1) ~~If from said report--it~~
10 ~~shall--appear--that--the~~ Upon receipt of a report as required
11 by 41-3-201 that a child suffered such injury or injuries or
12 willful neglect, is or has been abused or neglected, a the
13 social worker or the county attorney or a peace officer
14 shall promptly conduct a thorough investigation into the
15 home of the child involved or any other place where the
16 child is present and into the circumstances surrounding the
17 injury of the child and into all other matters which in the
18 discretion of the ~~social-worker-shall--be~~ investigator are
19 relevant and ~~material~~ to the investigation. ~~If from the~~
20 ~~investigation-it-shall-appear-that-the-child--suffered--such~~
21 ~~injury--or--injuries--or--willful--neglect,~~ the department shall
22 provide ~~protective--services--to--protect--the--child--and~~
23 ~~preserve--the--family.~~ The department will advise the county
24 attorney of its investigation.

25 (2) ~~The investigating social worker shall also furnish~~

1 ~~a written report to the department of social and~~
 2 ~~rehabilitation services which shall have the responsibility~~
 3 ~~of maintaining a central registry on child abuse or willful~~
 4 ~~neglect cases. The social worker is responsible for~~
 5 ~~assessing the family and planning for the child. If the~~
 6 ~~child is treated at a medical facility, the social worker,~~
 7 ~~county attorney, or peace officer shall, consistent with~~
 8 ~~reasonable medical practice, have the right of access to the~~
 9 ~~child for interviews, photographs, and securing physical~~
 10 ~~evidence and have the right of access to relevant hospital~~
 11 ~~and medical records pertaining to the child.~~

12 (3) If from the investigation it appears that the
 13 child suffered abuse or neglect, the department shall
 14 provide protective services to the child and MAY PROVIDE
 15 PROTECTIVE SERVICES TO any other child under the same care.
 16 The department will advise the county attorney of its
 17 investigation.

18 (4) The investigating social worker, within 60 days of
 19 commencing an investigation, shall also furnish a written
 20 report to the department. The department shall maintain a
 21 record system containing child abuse and neglect cases.

22 (5) Any person reporting abuse or neglect which
 23 involves acts or omissions on the part of a public or
 24 private residential institution, home, facility, or agency
 25 shall be responsible for ensuring that the report is made to

1 the department of social and rehabilitation services, its
 2 local affiliate, and the county attorney of the county in
 3 which the facility is located."

4 Section 9. Section 41-3-203, MCA, is amended to read:
 5 "41-3-203. Immunity from liability. Anyone
 6 participating in the making of a report pursuant to the
 7 provisions of this chapter or investigating or reporting any
 8 incident of child abuse or neglect, participating in
 9 resulting judicial proceedings, resulting therefrom or
 10 furnishing hospital or medical records as required by
 11 41-3-202 shall be presumed to be acting in good faith and in
 12 so doing shall be immune from any liability, civil or
 13 criminal, that might otherwise be incurred or imposed,
 14 unless the person acted in bad faith or with malicious
 15 purpose."

16 Section 10. Section 41-3-204, MCA, is amended to read:
 17 "41-3-204. Admissibility and preservation of evidence.
 18 (1) In any proceeding resulting from a report made pursuant
 19 to the provisions of this chapter or in any proceeding where
 20 such a the report or any IIS contents thereof are sought to
 21 be introduced into evidence, such the report or its contents
 22 thereof or any other fact or facts related thereto to the
 23 report or to the condition of the child who is the subject
 24 of the report shall not be excluded on the ground that the
 25 matter is or may be the subject of a physician-patient

1 ~~privilege or similar privilege or rule against disclosure of~~
 2 ~~confidentiality granted in Title 26, Chapter 1, Part 8,~~
 3 ~~except the attorney-client privilege granted by 26-1-803~~
 4 ~~RELATED TO THE EXAMINATION OR TREATMENT OF THE CHILD RELATED~~
 5 ~~TO THE EXAMINATION OR TREATMENT OF THE CHILD AND GRANTED IN~~
 6 ~~TITLE 26, CHAPTER 1, PART 8, EXCEPT THE ATTORNEY-CLIENT~~
 7 ~~PRIVILEGE GRANTED BY 26-1-803.~~

8 (2) Any person or official required to report under
 9 41-3-201 may take or cause to be taken photographs of the
 10 area of trauma visible on a child who is the subject of a
 11 report. The cost of photographs taken under this section
 12 shall be paid by the county child protective service agency.

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

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

1 ~~service agency.~~

2 (5) All written, photographic, or radiological
 3 evidence gathered under this section shall be sent to the
 4 local child protective services agency at the time the
 5 written confirmation report is sent or as soon thereafter as
 6 is possible."

7 Section 11. Section 41-3-205, MCA, is amended to read:

8 "41-3-205. Confidentiality. (1) The case records of
 9 the department of social and rehabilitation services and
 10 its local affiliate, the county welfare department, the
 11 county attorney, and the court concerning actions taken
 12 under this chapter and all records concerning reports of
 13 child abuse and neglect shall be kept confidential unless
 14 the court determines that they should be released except as
 15 provided by this section. Any person who permits or
 16 encourages the unauthorized dissemination of their contents
 17 is guilty of a misdemeanor.

18 (2) Records may be used by interagency
 19 interdisciplinary child protection teams as authorized under
 20 [section 6] for the purposes of assessing the needs of the
 21 child and family, formulating a treatment plan, and
 22 monitoring the plan. Members of the team are required to
 23 keep information about the subject individuals confidential.

24 (3) Records may be disclosed to a court for in camera
 25 inspection if relevant to an issue before it. The court may

1 ~~permit public disclosure if it finds such disclosure to be~~
 2 ~~necessary for the fair resolution of an issue before it.~~

3 ~~(4) Nothing in this section is intended to affect the~~
 4 ~~confidentiality of criminal court records or records of law~~
 5 ~~enforcement agencies."~~

6 Section 12. Section 41-3-301, MCA, is amended to read:

7 "41-3-301. Emergency protective service. (1) Any child
 8 protective social worker of the department of social and
 9 rehabilitation services, the county welfare department, a
 10 peace officer, or the county attorney who has reason to
 11 believe any youth is in immediate or apparent danger of
 12 ~~violence--or--serious-injury harm~~ may immediately remove the
 13 youth and place him in a protective facility. The department
 14 may make a request for further assistance from the law
 15 enforcement agency or take ~~such--legal--action--as--may--be~~
 16 appropriate legal action. ~~The department may also leave the~~
 17 ~~child in his home and place a child protective attendant in~~
 18 ~~the home for a period of 48 hours.~~

19 (2) ~~A petition shall be filed within 48 hours of~~
 20 ~~emergency placement of a child unless arrangements~~
 21 ~~acceptable to the agency for the care of the child have been~~
 22 ~~made by the parents. No child who has been removed from his~~
 23 ~~home or any other place for his protection or care may be~~
 24 ~~placed in a jail.~~

25 (3) ~~The department of social and rehabilitation~~

1 ~~services and the county welfare department shall comply with~~
 2 ~~the procedure set forth in 41-3-202. A petition shall be~~
 3 ~~filed within 48 hours of emergency placement of a child~~
 4 ~~unless arrangements acceptable to the agency for the care of~~
 5 ~~the child have been made by the parents.~~

6 (4) The department of social and rehabilitation
 7 services and the county welfare department shall make such
 8 necessary arrangements for the youth's well-being as are
 9 required prior to the court hearing."

10 Section 13. Section 41-3-302, MCA, is amended to read:

11 "41-3-302. Responsibility of providing protective
 12 services. (1) The department of social and rehabilitation
 13 services and the county welfare department shall have the
 14 primary responsibility to provide the protective services
 15 authorized by this chapter and shall have the authority
 16 pursuant to this chapter to take temporary, limited, or
 17 permanent custody of a child when ordered to do so by the
 18 court, including the right to give consent to adoption.

19 (2) ~~The county welfare department shall respond to~~
 20 ~~emergency reports of known or suspected child abuse or~~
 21 ~~neglect 24 hours a day, 7 days a week."~~

22 NEW SECTION. Section 14. Guardian ad litem. In every
 23 judicial proceeding the court shall appoint for any child
 24 alleged to be abused or neglected a guardian ad litem who,
 25 whenever possible, shall be an attorney. When necessary the

1 guardian ad litem may serve at public expense.

2 NEW SECTION. Section 15. Penalty for failure to
3 report. (1) Any person, official, or institution required by
4 law to report known or suspected child abuse or neglect or
5 required to perform any other act who fails to do so or who
6 prevents another person from reasonably doing so is
7 ~~punishable by a fine not to exceed \$500, by imprisonment in~~
8 ~~the county jail not to exceed 30 days, or by both such fine~~
9 ~~and imprisonment and shall be~~ civilly liable for the damages
10 proximately caused by such failure or prevention.

11 ~~(2) A parent or other person responsible for a child's~~
12 ~~care who as a result of the legitimate practice of his~~
13 ~~religious beliefs does not provide specified medical~~
14 ~~treatment for a child is not considered negligent for that~~
15 ~~reason alone. However, when the child's health requires it,~~
16 ~~the court may order that medical services be provided to the~~
17 ~~child pursuant to 41-3-403.~~

18 Section 16. Saving clause. This act does not affect
19 rights and duties that matured, penalties that were
20 incurred, or proceedings that were begun before the
21 effective date of this act.

22 Section 17. Codification. (1) It is intended that
23 sections 4 and 5 AND 6 of this act be codified as an
24 integral part of Title 41, chapter 3, part 1, and the
25 provisions of Title 41, chapter 3, apply to sections 4 and 5

1 AND 6 of this act.

2 (2) It is intended that section 8 of this act be
3 codified as an integral part of Title 41, chapter 3, part 2,
4 and the provisions of Title 41, chapter 3, apply to section
5 8 of this act.

6 (3) It is intended that sections 15 and 16 of this act
7 be codified as an integral part of Title 41, chapter 3, part
8 3, and the provisions of Title 41, chapter 3, apply to
9 sections 15 and 16 of this act.

10 SECTION 18. SECTION 41-4-102, MCA, IS AMENDED TO READ:

11 "41-4-102. Financial responsibility. Financial
12 responsibility for any child placed pursuant to the
13 provisions of the Interstate Compact on the Placement of
14 Children shall be determined in accordance with the
15 provisions of Article V thereof in the first instance.
16 However, in the event of partial or complete default of
17 performance thereunder, the provisions of Title 40, chapter
18 5 (Revised Uniform Reciprocal Enforcement of Support Act)
19 and 41-3-104, ~~41-3-105(2)~~, 41-3-404, and 41-3-405 also may
20 be invoked."

21 SECTION 19. SECTION 41-3-404, MCA, IS AMENDED TO READ:

22 "41-3-404. Hearing. (1) In a hearing on a petition
23 under 41-3-401 ~~or 41-3-402~~, the court shall determine
24 whether said youth is an ~~abused, neglected, or dependent~~
25 child a youth in need of care and ascertain, as far as

1 possible, the cause thereof.

2 (2) The court shall hear evidence regarding the
3 residence of the child, whereabouts of the parents,
4 guardian, or nearest adult relative, the financial ability
5 of any-such ~~the~~ parents or parent to pay the cost of care of
6 the child, whether or how long the child has been maintained
7 in whole or in part by public or private charity, and may
8 take into consideration the report of the county welfare
9 department filed with the clerk of the court, pursuant to
10 41-3-405.

11 (3) In all civil and criminal proceedings relating to
12 abuse, neglect, or dependency, ~~the doctor-patient-privilege~~
13 ~~and husband-wife-privilege shall not none of the privileges~~
14 ~~RELATED TO THE EXAMINATION OR TREATMENT OF THE CHILD AND~~
15 ~~granted in Title 26, chapter 1, part 8, except the~~
16 ~~attorney-client privilege granted by 26-1-803, apply to the~~
17 ~~extent any testimony relates to such matters."~~

-End-