

HOUSE BILL NO. 815

INTRODUCED BY KEMMIS

BY REQUEST OF
THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

IN THE HOUSE

February 19, 1981	Introduced and referred to Committee on Judiciary.
February 23, 1981	Committee recommend bill do pass as amended. Report adopted.
February 24, 1981	Bill printed and placed on members' desks.
February 25, 1981	Second reading, do pass. On motion rules suspended and bill placed on third reading this day. Third reading, passed. Ayes, 84; Noes, 14. Transmitted to Senate.

IN THE SENATE

March 3, 1981	Introduced and referred to Committee on Judiciary.
March 26, 1981	Committee recommend bill be not concurred in as amended. Report adopted. On motion Senate reconsider its action taken on adverse committee report and order placed on second reading. Motion adopted.
March 30, 1981	Motion pass consideration.

March 31, 1981

Second reading, concurred in
as amended.

On motion rules suspended.
Bill placed on calendar for
third reading this day and
allowed to be transmitted
on 71st legislative day.
Motion adopted.

Third reading, concurred in
as amended. Ayes, 40; Noes, 9.

IN THE HOUSE

April 1, 1981

Returned from Senate with
amendments.

April 8, 1981

Second reading, amendments
concurred in.

April 9, 1981

Third reading, amendments
concurred in. Ayes, 95;
Noes, 0. Sent to enrolling.

Reported correctly enrolled.

1 HOUSE BILL NO. 815

2 INTRODUCED BY Kemmis

3 BY REQUEST OF

4 THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE PROCEDURES
7 AND GUIDELINES FOR TERMINATING THE LEGAL RELATIONSHIP
8 BETWEEN PARENT AND CHILD."

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

11 Section 1. Short title. This [act] may be cited as the
12 "Parent-Child Legal Relationship Termination Act of 1981."

13 Section 2. Definitions. As used in this [act], unless
14 the context otherwise requires, the following definitions
15 apply:

16 (1) "Guardian ad litem" means a person appointed to
17 represent a child who is the subject of a written motion for
18 the termination of the parent-child legal relationship.

19 (2) "Youth in need of care" means a youth who is
20 dependent, abused, or neglected as defined in 41-3-102.

21 (3) "Parent-child legal relationship" means the legal
22 relationship that exists between a child and his birth or
23 adoptive parents as provided in Title 40, chapter 6, part 2,
24 unless that relationship has been terminated by competent
25 judicial decree as provided in this [act] or in 40-6-124 or

1 in 40-6-234.

2 (4) "Treatment plan" means a written agreement between
3 the department or court and the parents that includes action
4 that must be taken to resolve the condition or conduct of
5 the parents that resulted in the need for protective
6 services for the child. The treatment plan may involve other
7 parties, if necessary, for protective services.

8 Section 3. Motion for termination -- separate hearing
9 -- right to counsel -- no jury trial. (1) The termination
10 of a parent-child legal relationship shall be considered
11 only after the filing of a petition pursuant to 41-3-3401
12 alleging the factual grounds for termination. Termination of
13 a parent-child legal relationship shall be considered at a
14 dispositional hearing held pursuant to 41-3-406, following
15 or together with an adjudicatory hearing held pursuant to
16 41-3-404.

17 (2) After the county attorney files a motion for
18 termination of a parent-child relationship pursuant to this
19 [act], parents shall be advised of the right to counsel, and
20 counsel shall be appointed in accordance with 41-3-401(12).

21 (3) An attorney, who whenever possible shall be the
22 child's previously appointed guardian ad litem, shall be
23 appointed to represent the child's best interests in any
24 hearing determining the involuntary termination of the
25 parent-child legal relationship. The attorney shall continue

HB 815

1 to represent the child until the child is returned home or
 2 placed in an appropriate permanent placement. If a
 3 respondent parent is a minor, a guardian ad litem must be
 4 appointed to serve the minor parent in addition to any
 5 counsel requested by the parent.

6 (4) There is no right to a jury trial at proceedings
 7 held to consider the termination of a parent-child legal
 8 relationship.

9 Section 4. Notice. Before a termination of the
 10 parent-child legal relationship based on abandonment may be
 11 ordered, the court shall determine whether the rules of
 12 civil procedure relating to service of process on the
 13 parents have been followed. If the parents were not served
 14 personally, the petitioner must file an affidavit stating
 15 what efforts have been made to locate the parent or parents
 16 of the child. The affidavit must be filed at least 10 days
 17 prior to the hearing.

18 Section 5. Criteria for termination. (1) The court may
 19 order a termination of the parent-child legal relationship
 20 upon a finding that the circumstances contained in
 21 subsection (1)(a), (1)(b), or (1)(c), as follows, exist:

22 (a) the parents have relinquished the child pursuant
 23 to 40-6-124;

24 (b) the child has been abandoned by his parents as set
 25 forth in 41-3-102(3)(d); or

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

3 (i) an appropriate treatment plan that has been
 4 approved by the court has not been complied with by the
 5 parents or has not been successful; and

6 (ii) the conduct or condition of the parents rendering
 7 them unfit is unlikely to change within a reasonable time.

8 (2) In determining whether the conduct or condition of
 9 the parents is unlikely to change within a reasonable time,
 10 the court must enter a finding that continuation of the
 11 parent-child legal relationship will likely result in
 12 continued abuse or neglect or that the conduct or the
 13 condition of the parents renders the parents unfit, unable,
 14 or unwilling to give the child adequate parental care. In
 15 making such determinations, the court shall consider but is
 16 not limited to the following:

17 (a) emotional illness, mental illness, or mental
 18 deficiency of the parent of such duration or nature as to
 19 render the parent unlikely to care for the ongoing physical,
 20 mental, and emotional needs of the child within a reasonable
 21 time;

22 (b) a history of violent behavior by the parent;

23 (c) a single incident of life-threatening or gravely
 24 disabling injury to or disfigurement of the child caused by
 25 the parent;

1 (d) excessive use of intoxicating liquor or of a
2 narcotic or dangerous drug that affects the parent's ability
3 to care and provide for the child;

4 (e) present judicially-ordered long-term confinement of
5 the parent;

6 (f) the injury or death of a sibling due to proven
7 parental abuse or neglect; and

8 (g) any reasonable efforts by protective service
9 agencies that have been unable to rehabilitate the parent.

10 (3) In considering any of the factors in subsection
11 (2) in terminating the parent-child relationship, the court
12 shall give primary consideration to the physical, mental,
13 and emotional conditions and needs of the child. The court
14 shall review and, if necessary, order an evaluation of the
15 child's or the parent's physical, mental, and emotional
16 conditions.

17 Section 6. Review following termination. (1) At the
18 conclusion of a hearing in which the court orders
19 termination of the parent-child legal relationship, the
20 court shall order that a review hearing be held within 180
21 days following the date of the termination.

22 (2) At the review hearing, the agency or individual
23 vested with the custody of the child shall report to the
24 court whether the plan for permanent placement of the child
25 has been accomplished. The guardian ad litem shall submit a

1 written report to the court with recommendations to the
2 court, based upon an independent investigation, for
3 disposition meeting the best interests of the child.

4 (3) The court may order the agency or individual
5 vested with custody of the child to report, at appropriate
6 intervals, on the status of the child until the plan for
7 permanent placement of the child has been accomplished.

8 Section 7. Effect of decree. (1) An order for the
9 termination of the parent-child legal relationship divests
10 the child and the parents of all legal rights, powers,
11 immunities, duties, and obligations with respect to each
12 other as provided in Title 40, chapter 6, part 2, except the
13 right of the child to inherit from the parent.

14 (2) An order or decree entered pursuant to this [act]
15 may not disentitle a child to any benefit due him from any
16 third person, including but not limited to any Indian tribe,
17 agency, state, or the United States.

18 (3) After the termination of a parent-child legal
19 relationship, the former parent is neither entitled to any
20 notice of proceedings for the adoption of the child nor has
21 any right to object to the adoption or to participate in any
22 other placement proceedings held pursuant to [section 6].

23 Section 8. Appeals. Appeals of court orders or decrees
24 made under this [act] shall be given precedence on the
25 calendar of the supreme court over all other matters, unless

HB 815

LC 0404/01

1 otherwise provided by law.

-End-

Approved by Committee
on Judiciary

1 HOUSE BILL NO. 815
2 INTRODUCED BY KEMMIS
3 BY REQUEST OF
4 THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
5
6 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE PROCEDURES
7 AND GUIDELINES FOR TERMINATING THE LEGAL RELATIONSHIP
8 BETWEEN PARENT AND CHILD."
9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
11 Section 1. Short title. This [act] may be cited as the
12 "Parent-Child Legal Relationship Termination Act of 1981."
13 Section 2. Definitions. As used in this [act], unless
14 the context otherwise requires, the following definitions
15 apply:
16 (1) "Guardian ad litem" means a person appointed to
17 represent a child who is the subject of a written motion for
18 the termination of the parent-child legal relationship.
19 (2) "Youth in need of care" means a youth who is
20 dependent, abused, or neglected as defined in 41-3-102.
21 (3) "Parent-child legal relationship" means the legal
22 relationship that exists between a child and his birth or
23 adoptive parents as provided in Title 40, chapter 6, part 2,
24 unless that relationship has been terminated by competent
25 judicial decree as provided in this [act] or in 40-6-124 or

1 in 40-6-234.
2 (4) "Treatment plan" means a written agreement between
3 the department or court and the parents that includes action
4 that must be taken to resolve the condition or conduct of
5 the parents that resulted in the need for protective
6 services for the child. The treatment plan may involve other
7 parties, if necessary, for protective services.
8 Section 3. ~~Motion~~ PETITION for termination -- separate
9 hearing -- right to counsel -- no jury trial. (1) The
10 termination of a parent-child legal relationship shall be
11 considered only after the filing of a petition pursuant to
12 ~~41-3-3401~~ 41-3-401 alleging the factual grounds for
13 termination. Termination of a parent-child legal
14 relationship shall be considered at a dispositional hearing
15 held pursuant to 41-3-406, following or together with an
16 adjudicatory hearing held pursuant to 41-3-404.
17 (2) After the county attorney files a ~~motion~~ PETITION
18 for termination of a parent-child relationship pursuant to
19 this [act], parents shall be advised of the right to
20 counsel, and counsel shall be appointed in accordance with
21 41-3-401(12).
22 (3) An attorney, who whenever possible shall be the
23 child's previously appointed guardian ad litem, shall be
24 appointed to represent the child's best interests in any
25 hearing determining the involuntary termination of the

1 parent-child legal relationship. The attorney shall continue
 2 to represent the child until the child is returned home or
 3 placed in an appropriate permanent placement. If a
 4 respondent parent is a minor, a guardian ad litem must be
 5 appointed to serve the minor parent in addition to any
 6 counsel requested by the parent.

7 (4) There is no right to a jury trial at proceedings
 8 held to consider the termination of a parent-child legal
 9 relationship.

10 Section 4. Notice. Before a termination of the
 11 parent-child legal relationship based on abandonment may be
 12 ordered, the court shall determine whether the rules of
 13 civil procedure relating to service of process on the
 14 parents have been followed. If the parents were not served
 15 personally, the petitioner must file an affidavit stating
 16 what efforts have been made to locate the parent or parents
 17 of the child. The affidavit must be filed at least 10 days
 18 prior to the hearing.

19 Section 5. Criteria for termination. (1) The court may
 20 order a termination of the parent-child legal relationship
 21 upon a finding that the circumstances contained in
 22 subsection (1)(a), (1)(b), or (1)(c), as follows, exist:

23 (a) the parents have relinquished the child pursuant
 24 to 40-6-124;

25 (b) the child has been abandoned by his parents as set

1 forth in 41-3-102(3)(d); or

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

4 (i) an appropriate treatment plan that has been
 5 approved by the court has not been complied with by the
 6 parents or has not been successful; and

7 (ii) the conduct or condition of the parents rendering
 8 them unfit is unlikely to change within a reasonable time.

9 (2) In determining whether the conduct or condition of
 10 the parents is unlikely to change within a reasonable time,
 11 the court must enter a finding that continuation of the
 12 parent-child legal relationship will likely result in
 13 continued abuse or neglect or that the conduct or the
 14 condition of the parents renders the parents unfit, unable,
 15 or unwilling to give the child adequate parental care. In
 16 making such determinations, the court shall consider but is
 17 not limited to the following:

18 (a) emotional illness, mental illness, or mental
 19 deficiency of the parent of such duration or nature as to
 20 render the parent unlikely to care for the ongoing physical,
 21 mental, and emotional needs of the child within a reasonable
 22 time;

23 (b) a history of violent behavior by the parent;

24 (c) a single incident of life-threatening or gravely
 25 disabling injury to or disfigurement of the child caused by

1 the parent;

2 (d) excessive use of intoxicating liquor or of a
 3 narcotic or dangerous drug that affects the parent's ability
 4 to care and provide for the child;

5 (e) present judicially-ordered long-term confinement of
 6 the parent;

7 (f) the injury or death of a sibling due to proven
 8 parental abuse or neglect; and

9 (g) any reasonable efforts by protective service
 10 agencies that have been unable to rehabilitate the parent.

11 (3) In considering any of the factors in subsection
 12 (2) in terminating the parent-child relationship, the court
 13 shall give primary consideration to the physical, mental,
 14 and emotional conditions and needs of the child. The court
 15 shall review and, if necessary, order an evaluation of the
 16 child's or the parent's physical, mental, and emotional
 17 conditions.

18 Section 6. Review following termination. (1) At the
 19 conclusion of a hearing in which the court orders
 20 termination of the parent-child legal relationship, the
 21 court shall order that a review hearing be held within 180
 22 days following the date of the termination.

23 (2) At the review hearing, the agency or individual
 24 vested with the custody of the child shall report to the
 25 court whether the plan for permanent placement of the child

1 has been accomplished. The guardian ad litem shall submit a
 2 written report to the court with recommendations to the
 3 court, based upon an independent investigation, for
 4 disposition meeting the best interests of the child.

5 (3) The court may order the agency or individual
 6 vested with custody of the child to report, at appropriate
 7 intervals, on the status of the child until the plan for
 8 permanent placement of the child has been accomplished.

9 Section 7. Effect of decree. (1) An order for the
 10 termination of the parent-child legal relationship divests
 11 the child and the parents of all legal rights, powers,
 12 immunities, duties, and obligations with respect to each
 13 other as provided in Title 40, chapter 6, part 2, except the
 14 right of the child to inherit from the parent.

15 (2) An order or decree entered pursuant to this [act]
 16 may not disentitle a child to any benefit due him from any
 17 third person, including but not limited to any Indian tribe,
 18 agency, state, or the United States.

19 (3) After the termination of a parent-child legal
 20 relationship, the former parent is neither entitled to any
 21 notice of proceedings for the adoption of the child nor has
 22 any right to object to the adoption or to participate in any
 23 other placement proceedings held pursuant to [section 6].

24 Section 8. Appeals. Appeals of court orders or decrees
 25 made under this [act] shall be given precedence on the

HB 0815/02

- 1 calendar of the supreme court over all other matters, unless
- 2 otherwise provided by law.

-End-

1 HOUSE BILL NO. 815
 2 INTRODUCED BY KEMMIS
 3 BY REQUEST OF
 4 THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
 5
 6 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE PROCEDURES
 7 AND GUIDELINES FOR TERMINATING THE LEGAL RELATIONSHIP
 8 BETWEEN PARENT AND CHILD."
 9
 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 11 Section 1. Short title. This [act] may be cited as the
 12 "Parent-Child Legal Relationship Termination Act of 1981."
 13 Section 2. Definitions. As used in this [act], unless
 14 the context otherwise requires, the following definitions
 15 apply:
 16 (1) "Guardian ad litem" means a person appointed to
 17 represent a child who is the subject of a written motion for
 18 the termination of the parent-child legal relationship.
 19 (2) "Youth in need of care" means a youth who is
 20 dependent, abused, or neglected as defined in 41-3-102.
 21 (3) "Parent-child legal relationship" means the legal
 22 relationship that exists between a child and his birth or
 23 adoptive parents as provided in Title 40, chapter 6, part 2,
 24 unless that relationship has been terminated by competent
 25 judicial decree as provided in this [act] or in 40-6-124 or

1 in 40-6-234.
 2 (4) "Treatment plan" means a written agreement between
 3 the department or court and the parents that includes action
 4 that must be taken to resolve the condition or conduct of
 5 the parents that resulted in the need for protective
 6 services for the child. The treatment plan may involve other
 7 parties, if necessary, for protective services.
 8 Section 3. Motion PETITION for termination -- separate
 9 hearing -- right to counsel -- no jury trial. (1) The
 10 termination of a parent-child legal relationship shall be
 11 considered only after the filing of a petition pursuant to
 12 ~~41-3-340~~ 41-3-401 alleging the factual grounds for
 13 termination. Termination of a parent-child legal
 14 relationship shall be considered at a dispositional hearing
 15 held pursuant to 41-3-406, following or together with an
 16 adjudicatory hearing held pursuant to 41-3-404.
 17 (2) After the county attorney files a motion PETITION
 18 for termination of a parent-child relationship pursuant to
 19 this [act], parents shall be advised of the right to
 20 counsel, and counsel shall be appointed in accordance with
 21 41-3-401(12).
 22 (3) An attorney, who whenever possible shall be the
 23 child's previously appointed guardian ad litem, shall be
 24 appointed to represent the child's best interests in any
 25 hearing determining the involuntary termination of the

1 parent-child legal relationship. The attorney shall continue
 2 to represent the child until the child is returned home or
 3 placed in an appropriate permanent placement. If a
 4 respondent parent is a minor, a guardian ad litem must be
 5 appointed to serve the minor parent in addition to any
 6 counsel requested by the parent.

7 (4) There is no right to a jury trial at proceedings
 8 held to consider the termination of a parent-child legal
 9 relationship.

10 Section 4. Notice. Before a termination of the
 11 parent-child legal relationship based on abandonment may be
 12 ordered, the court shall determine whether the rules of
 13 civil procedure relating to service of process on the
 14 parents have been followed. If the parents were not served
 15 personally, the petitioner must file an affidavit stating
 16 what efforts have been made to locate the parent or parents
 17 of the child. The affidavit must be filed at least 10 days
 18 prior to the hearing.

19 Section 5. Criteria for termination. (1) The court may
 20 order a termination of the parent-child legal relationship
 21 upon a finding that the circumstances contained in
 22 subsection (1)(a), (1)(b), or (1)(c), as follows, exist:

23 (a) the parents have relinquished the child pursuant
 24 to 40-6-124;

25 (b) the child has been abandoned by his parents as set

1 forth in 41-3-102(3)(d); or

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

4 (i) an appropriate treatment plan that has been
 5 approved by the court has not been complied with by the
 6 parents or has not been successful; and

7 (ii) the conduct or condition of the parents rendering
 8 them unfit is unlikely to change within a reasonable time.

9 (2) In determining whether the conduct or condition of
 10 the parents is unlikely to change within a reasonable time,
 11 the court must enter a finding that continuation of the
 12 parent-child legal relationship will likely result in
 13 continued abuse or neglect or that the conduct or the
 14 condition of the parents renders the parents unfit, unable,
 15 or unwilling to give the child adequate parental care. In
 16 making such determinations, the court shall consider but is
 17 not limited to the following:

18 (a) emotional illness, mental illness, or mental
 19 deficiency of the parent of such duration or nature as to
 20 render the parent unlikely to care for the ongoing physical,
 21 mental, and emotional needs of the child within a reasonable
 22 time;

23 (b) a history of violent behavior by the parent;

24 (c) a single incident of life-threatening or gravely
 25 disabling injury to or disfigurement of the child caused by

1 the parent;

2 (d) excessive use of intoxicating liquor or of a
3 narcotic or dangerous drug that affects the parent's ability
4 to care and provide for the child;

5 (e) present judicially-ordered long-term confinement of
6 the parent;

7 (f) the injury or death of a sibling due to proven
8 parental abuse or neglect; and

9 (g) any reasonable efforts by protective service
10 agencies that have been unable to rehabilitate the parent.

11 (3) In considering any of the factors in subsection
12 (2) in terminating the parent-child relationship, the court
13 shall give primary consideration to the physical, mental,
14 and emotional conditions and needs of the child. The court
15 shall review and, if necessary, order an evaluation of the
16 child's or the parent's physical, mental, and emotional
17 conditions.

18 Section 6. Review following termination. (1) At the
19 conclusion of a hearing in which the court orders
20 termination of the parent-child legal relationship, the
21 court shall order that a review hearing be held within 180
22 days following the date of the termination.

23 (2) At the review hearing, the agency or individual
24 vested with the custody of the child shall report to the
25 court whether the plan for permanent placement of the child

1 has been accomplished. The guardian ad litem shall submit a
2 written report to the court with recommendations to the
3 court, based upon an independent investigation, for
4 disposition meeting the best interests of the child.

5 (3) The court may order the agency or individual
6 vested with custody of the child to report, at appropriate
7 intervals, on the status of the child until the plan for
8 permanent placement of the child has been accomplished.

9 Section 7. Effect of decree. (1) An order for the
10 termination of the parent-child legal relationship divests
11 the child and the parents of all legal rights, powers,
12 immunities, duties, and obligations with respect to each
13 other as provided in Title 40, chapter 6, part 2, except the
14 right of the child to inherit from the parent.

15 (2) An order or decree entered pursuant to this [act]
16 may not disentitle a child to any benefit due him from any
17 third person, including but not limited to any Indian tribe,
18 agency, state, or the United States.

19 (3) After the termination of a parent-child legal
20 relationship, the former parent is neither entitled to any
21 notice of proceedings for the adoption of the child nor has
22 any right to object to the adoption or to participate in any
23 other placement proceedings held pursuant to [section 6].

24 Section 8. Appeals. Appeals of court orders or decrees
25 made under this [act] shall be given precedence on the

HB 0815/02

- 1 calendar of the supreme court over all other matters, unless
- 2 otherwise provided by law.

-End-

HOUSE BILL NO. 815
INTRODUCED BY KEMMIS
BY REQUEST OF

THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE PROCEDURES
AND GUIDELINES FOR TERMINATING THE LEGAL RELATIONSHIP
BETWEEN PARENT AND CHILD."

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

Section 1. Short title. This [act] may be cited as the
"Parent-Child Legal Relationship Termination Act of 1981."

SECTION 2. PURPOSE. THIS ACT PROVIDES PROCEDURES AND
CRITERIA BY WHICH THE PARENT-CHILD LEGAL RELATIONSHIP MAY BE
TERMINATED BY A COURT IF THE RELATIONSHIP IS NOT IN THE BEST
INTEREST OF THE CHILD. THE TERMINATION OF THE PARENT-CHILD
LEGAL RELATIONSHIP PROVIDED FOR IN THIS ACT IS TO BE USED IN
THOSE SITUATIONS WHERE THERE IS A DETERMINATION THAT A CHILD
IS ABUSED, NEGLECTED, OR DEPENDENT, AS DEFINED IN 41-3-102,
MCA.

Section 3. Definitions. As used in this [act], unless
the context otherwise requires, the following definitions
apply:

(1) "Guardian ad litem" means a person appointed to
represent a child who is the subject of a written motion for

the termination of the parent-child legal relationship.

(2) "Youth in need of care" means a youth who is
dependent, abused, or neglected as defined in 41-3-102.

(3) "Parent-child legal relationship" means the legal
relationship that exists between a child and his birth or
adoptive parents as provided in Title 40, chapter 6, part 2,
unless that relationship has been terminated by competent
judicial decree as provided in this [act] or in 40-6-124 or
in 40-6-234.

(4) "Treatment plan" means a written agreement between
the department or court and the parents that includes action
that must be taken to resolve the condition or conduct of
the parents that resulted in the need for protective
services for the child. The treatment plan may involve other
parties, if necessary, for protective services.

Section 4. Motion PETITION for termination -- separate
hearing -- right to counsel -- no jury trial. (1) The
termination of a parent-child legal relationship shall be
considered only after the filing of a petition pursuant to
~~41-3-340~~ 41-3-401 alleging the factual grounds for
termination. Termination of a parent-child legal
relationship shall be considered at a dispositional hearing
held pursuant to 41-3-406, following or together with an
adjudicatory hearing held pursuant to 41-3-404.

(2) After the county attorney files a motion PETITION

1 for termination of a parent-child relationship pursuant to
 2 this [act], parents shall be advised of the right to
 3 counsel, and counsel shall be appointed in accordance with
 4 41-3-401(12).

5 (3) An attorney, who whenever possible shall be the
 6 child's previously appointed guardian ad litem, shall be
 7 appointed to represent the child's best interests in any
 8 hearing determining the involuntary termination of the
 9 parent-child legal relationship. The attorney shall continue
 10 to represent the child until the child is returned home or
 11 placed in an appropriate permanent placement. If a
 12 respondent parent is a minor, a guardian ad litem must be
 13 appointed to serve the minor parent in addition to any
 14 counsel requested by the parent.

15 (4) There is no right to a jury trial at proceedings
 16 held to consider the termination of a parent-child legal
 17 relationship.

18 Section 5. Notice. Before a termination of the
 19 parent-child legal relationship based on abandonment may be
 20 ordered, the court shall determine whether the rules of
 21 civil procedure relating to service of process on the
 22 parents have been followed. If the parents were not served
 23 personally, the petitioner must file an affidavit stating
 24 what efforts have been made to locate the parent or parents
 25 of the child. The affidavit must be filed at least 10 days

1 prior to the hearing.

2 Section 6. Criteria for termination. (1) The court may
 3 order a termination of the parent-child legal relationship
 4 upon a finding that the circumstances contained in
 5 subsection (1)(a), (1)(b), or (1)(c), as follows, exist:

6 (a) the parents have relinquished the child pursuant
 7 to 40-6-124;

8 (b) the child has been abandoned by his parents as set
 9 forth in 41-3-102(3)(d); or

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

12 (i) an appropriate treatment plan that has been
 13 approved by the court has not been complied with by the
 14 parents or has not been successful; and

15 (ii) the conduct or condition of the parents rendering
 16 them unfit is unlikely to change within a reasonable time.

17 (2) In determining whether the conduct or condition of
 18 the parents is unlikely to change within a reasonable time,
 19 the court must enter a finding that continuation of the
 20 parent-child legal relationship will likely result in
 21 continued abuse or neglect or that the conduct or the
 22 condition of the parents renders the parents unfit, unable,
 23 or unwilling to give the child adequate parental care. In
 24 making such determinations, the court shall consider but is
 25 not limited to the following:

1 (a) emotional illness, mental illness, or mental
2 deficiency of the parent of such duration or nature as to
3 render the parent unlikely to care for the ongoing physical,
4 mental, and emotional needs of the child within a reasonable
5 time;

6 (b) a history of violent behavior by the parent;

7 (c) a single incident of life-threatening or gravely
8 disabling injury to or disfigurement of the child caused by
9 the parent;

10 (d) excessive use of intoxicating liquor or of a
11 narcotic or dangerous drug that affects the parent's ability
12 to care and provide for the child;

13 (e) present judicially-ordered long-term confinement of
14 the parent;

15 (f) the injury or death of a sibling due to proven
16 parental abuse or neglect; and

17 (g) any reasonable efforts by protective service
18 agencies that have been unable to rehabilitate the parent.

19 (3) In considering any of the factors in subsection
20 (2) in terminating the parent-child relationship, the court
21 shall give primary consideration to the physical, mental,
22 and emotional conditions and needs of the child. The court
23 shall review and, if necessary, order an evaluation of the
24 child's or the parent's physical, mental, and emotional
25 conditions.

1 Section 7. Review following termination. (1) At the
2 conclusion of a hearing in which the court orders
3 termination of the parent-child legal relationship, the
4 court shall order that a review hearing be held within 180
5 days following the date of the termination.

6 (2) At the review hearing, the agency or individual
7 vested with the custody of the child shall report to the
8 court whether the plan for permanent placement of the child
9 has been accomplished. The guardian ad litem shall submit a
10 written report to the court with recommendations to the
11 court, based upon an independent investigation, for
12 disposition meeting the best interests of the child.

13 (3) The court may order the agency or individual
14 vested with custody of the child to report, at appropriate
15 intervals, on the status of the child until the plan for
16 permanent placement of the child has been accomplished.

17 Section 8. Effect of decree. (1) An order for the
18 termination of the parent-child legal relationship divests
19 the child and the parents of all legal rights, powers,
20 immunities, duties, and obligations with respect to each
21 other as provided in Title 40, chapter 6, part 2, except the
22 right of the child to inherit from the parent.

23 (2) An order or decree entered pursuant to this [act]
24 may not disentitle a child to any benefit due him from any
25 third person, including but not limited to any Indian tribe,

1 agency, state, or the United States.

2 (3) After the termination of a parent-child legal
3 relationship, the former parent is neither entitled to any
4 notice of proceedings for the adoption of the child nor has
5 any right to object to the adoption or to participate in any
6 other placement proceedings held pursuant to [section 6].

7 Section 9. Appeals. Appeals of court orders or decrees
8 made under this [act] shall be given precedence on the
9 calendar of the supreme court over all other matters, unless
10 otherwise provided by law.

11 ~~SECTION 9. CODIFICATION INSTRUCTION. SECTIONS 1~~
12 ~~THROUGH 8 ARE INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF~~
13 ~~TITLE 40, CHAPTER 3.~~

14 SECTION 10. CODIFICATION INSTRUCTION. SECTIONS 1
15 THROUGH 8 ARE INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF
16 TITLE 41, CHAPTER 3.

-End-

March 26, 1981

SENATE STANDING COMMITTEE REPORT
(Judiciary)

That House Bill No. 815 be amended as follows:

1. Page 1.

Following: line 12

Insert: "Section 2. Purpose. This act provides procedures and criteria by which the parent-child legal relationship may be terminated by a court if the relationship is not in the best interest of the child. The termination of the parent-child legal relationship provided for in this act is to be used in those situations where there is a determination that a child is abused, neglected, or dependent, as defined in 41-3-102, MCA. "

Renumber: subsequent sections

2. Page 7,

Following: line 2

Insert: "Section 9. Codification instruction. Sections 1 through 8 are intended to be codified as an integral part of Title 40, chapter 3."

March 31, 1981

SENATE COMMITTEE OF THE WHOLE

Proposed amendment to House Bill 815, third reading copy, as follows:

That the following amendment of the Senate Standing Committee on Judiciary of March 26, 1981, be amended to read as follows:

2. Page 7.

Following: line 2.

Insert: "Section 9. Codification instruction. Sections 1 through 8 are intended to be codified as an integral part of Title 41, chapter 3."