

SENATE BILL NO. 253

INTRODUCED BY REGAN, TURNAGE

BY REQUEST OF THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

IN THE SENATE

January 23, 1981	Introduced and referred to Committee on Judiciary.
February 20, 1981	Committee recommend bill do pass as amended. Report adopted.
February 21, 1981	Bill printed and placed on members' desks.
February 23, 1981	Second reading, do pass as amended.
February 24, 1981	Correctly engrossed.
February 25, 1981	Third reading, passed. Ayes, 49; Noes, 0. Transmitted to House.

IN THE HOUSE

March 2, 1981	Introduced and referred to Committee on Judiciary.
March 28, 1981	Committee recommend bill be concurred in as amended. Report adopted.
March 30, 1981	On motion rules suspended and bill allowed to be transmitted on 71st legislative day. Motion adopted.
March 31, 1981	Second reading, concurred in. On motion rules suspended and bill placed on third reading this day. Third reading, concurred in as amended. Ayes, 88; Noes, 6.

IN THE SENATE

April 1, 1981 Returned from House with amendments.

April 3, 1981 Second reading, amendments not concurred in.

April 7, 1981 On motion Free Conference Committee requested.

 Free Conference Committee appointed.

April 13, 1981 Free Conference Committee reported and dissolved.

April 15, 1981 Second reading, Free Conference Committee report adopted.

April 16, 1981 Third reading, Free Conference Committee report adopted. Ayes, 44; Noes, 0. Transmitted to House.

IN THE HOUSE

April 20, 1981 Free Conference Committee report adopted.

IN THE SENATE

April 20, 1981 Returned from Senate. Sent to enrolling.

 Reported correctly enrolled.

Amended BILL NO. *253*
Don Turvey

INTRODUCED BY _____

BY REQUEST OF _____

THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE LAWS RELATING TO CHILD ABUSE AND NEGLECT AND PROTECTIVE SERVICES BY PROVIDING EXPANDED DEFINITIONS AND ADDING DIRECTIVES REGARDING THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES' RESPONSIBILITY FOR CHILD WELFARE SERVICES; AMENDING SECTIONS 41-3-102, 41-3-201, 41-3-401, AND 53-2-201, MCA."

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

Section 1. Section 53-2-201, MCA, is amended to read:

"53-2-201. Powers and duties of department. (1) The department shall:

(a) administer or supervise all forms of public assistance, child protection, and child welfare, including the provision of medical care payments in behalf of recipients of public assistance;

(b) administer or supervise all child welfare activities, including:

(i) importation and exportation of children;

(ii) ~~licensing and supervising of private and local~~

~~child-caring-agencies of all children's foster family homes, group homes, child-care agencies and child-placing agencies;~~

~~(iii) the care of dependent and neglected--and delinquent children in foster--family--homes--especially substitute care placement and children placed who are free for adoption or those of illegitimate birth; and~~

~~(iv) the maintenance of supplemental day care for children;~~

(c) give consultant service to private institutions providing care for the needy, indigent, handicapped, or dependent adults;

(d) cooperate with other state agencies and develop provisions for services to the blind, including the prevention of blindness, the location of blind persons, medical services for eye conditions, and vocational guidance and training of the blind;

(e) provide services in respect to organization and supervise county departments of public welfare and county boards of public welfare in the administration of public assistance functions and for efficiency and economy;

(f) assist and cooperate with other state and federal departments, bureaus, agencies, and institutions, when so requested, by performing services in conformity with public assistance purposes;

(g) administer all state and federal funds allocated

1 to the department for public assistance and do all things
2 necessary, in conformity with federal and state law, for the
3 proper fulfillment of public assistance purposes; and

4 (h) make rules governing payment for services and
5 supplies provided to recipients of public assistance.

6 (2) The department may:

7 (a) purchase, exchange, condemn, or receive by gift
8 either real or personal property which is necessary to carry
9 out its public assistance functions. Title to property
10 obtained under this subsection shall be taken in the name of
11 the state of Montana for the use and benefit of the
12 department.

13 (b) contract with the federal government to carry out
14 its public assistance functions. The department may do all
15 things necessary in order to avail itself of federal aid and
16 assistance.

17 (c) make rules, consistent with state and federal law,
18 establishing the amount, scope, and duration of services to
19 be provided to recipients of public assistance."

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

21 "41-3-102. Definitions. As used in this chapter, the
22 following definitions apply:

23 (1) "Child" or "youth" means any person under 18 years
24 of age.

25 (2) An "abused or neglected child" means a child whose

1 normal physical or mental health or welfare is harmed or
2 threatened with harm by the acts or omissions of his parent
3 or other person responsible for his welfare.

4 (3) "Harm to a child's health or welfare" means the
5 harm that occurs whenever the parent or other person
6 responsible for the child's welfare:

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

10 (b) commits or allows to be committed a sexual assault
11 against the child or exploits the child or allows the child
12 to be exploited for sexual purposes, as provided in
13 subsection (1) of 42-5-625;

14 (c) causes failure to thrive or otherwise fails to
15 supply the child with adequate food or fails to supply
16 clothing, shelter, education, or health care, though
17 financially able to do so or offered financial or other
18 reasonable means to do so; or

19 (d) abandons the child by ~~leaving---him---under~~
20 ~~circumstances--that--make--reasonable--the--belief--that--the~~
21 ~~parent-or-other-person-does-not-intend-to-resume-care-of-the~~
22 child-in-the-future, willfully surrendering physical custody
23 for a period of 6 months and during that period does not
24 manifest to the child and the person having physical custody
25 of the child a firm intention to resume physical custody or

1 ~~to make permanent legal arrangements for the care of the~~
2 ~~child; or~~

3 ~~(e) is unknown and has been unknown for a period of 30~~
4 ~~days and reasonable efforts to identify and locate the~~
5 ~~parents have failed.~~

6 (4) "Adequate health care" means any medical or
7 nonmedical remedial health care permitted or authorized
8 under state law.

9 (5) "Threatened harm" means imminent risk of harm.

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

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

18 (8) "Mental injury" means an identifiable and
19 substantial impairment of the child's intellectual or
20 psychological functioning.

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

22 (a) who is abandoned;

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

25 (c) who has no proper guidance to provide for his

1 necessary physical, moral, and emotional well-being;

2 (d) who is destitute;

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

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

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

9 ~~(11) "Supervision" means the authority granted by a~~
10 ~~youth court or by a voluntary agreement of a parent to~~
11 ~~determine the foster care placement of a child and the~~
12 ~~length of stay of a child in foster care and provide for the~~
13 ~~needs of a child under subsection (1) of 41-3-104.~~

14 ~~(12) "Department" means the department of social and~~
15 ~~rehabilitation services provided for in 2-15-2201a."~~

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

17 "41-3-201. Reports. (1) When the professionals and
18 officials listed in subsection (2) know or have reasonable
19 cause to suspect that a child known to them in their
20 professional or official capacity is an abused or neglected
21 child, they shall report the matter promptly to the
22 department of social and rehabilitation services or its
23 local affiliate, which then shall notify the county attorney
24 of the county where the child resides.

25 (2) Professionals and officials required to report

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1 are:

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

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

8 (c) Christian Science practitioner and religious
9 healers;

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

12 (e) a social worker, operator or employee of any
13 registered or licensed day-care center or substitute care
14 facility, or any other licensed operator or employee of a
15 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) No person listed in subsection (2) may refuse to
23 make a report as required in this section on the grounds of
24 a physician-patient or similar privilege if the person came
25 into possession of such information as a result of his

1 treatment of the child.

2 (5) The reports referred to under this section shall
3 contain:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 (9) The petition shall:

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

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

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

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

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

20 (b) temporary legal custody;

21 ~~(c) limited legal custody;~~

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

24 ~~(e)~~(d) appointment of guardian ad litem;

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

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

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

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

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

-End-

Approved by Committee
on Judiciary

SENATE BILL NO. 253

INTRODUCED BY REGAN, TURNAGE

BY REQUEST OF

THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE LAWS
RELATING TO CHILD ABUSE AND NEGLECT AND PROTECTIVE SERVICES
BY PROVIDING EXPANDED DEFINITIONS AND ADDING DIRECTIVES
REGARDING THE DEPARTMENT OF SOCIAL AND REHABILITATION
SERVICES' RESPONSIBILITY FOR CHILD WELFARE SERVICES;
AMENDING SECTIONS 41-3-102, 41-3-201, 41-3-401, AND
53-2-201, MCA."

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

Section 1. Section 53-2-201, MCA, is amended to read:

"53-2-201. Powers and duties of department. (1) The
department shall:

(a) administer or supervise all forms of public
assistance, child protection, and child welfare, including
the provision of medical care payments in behalf of
recipients of public assistance;

(b) administer or supervise all child welfare
activities, including:

(i) importation and exportation of children;

(ii) licensing ~~and supervising of private and local~~

~~child-caring agencies of all children's foster family homes,
group homes, child-care agencies and child-placing agencies;~~

(iii) the care of dependent, and neglected, ~~and~~
~~delinquent children in foster-family-homes, especially~~
substitute care placement and children placed who are free
~~for adoption or those of illegitimate birth; and~~

(iv) the maintenance of supplemental day care for
children;

(c) give consultant service to private institutions
providing care for the needy, indigent, handicapped, or
dependent adults;

(d) cooperate with other state agencies and develop
provisions for services to the blind, including the
prevention of blindness, the location of blind persons,
medical services for eye conditions, and vocational guidance
and training of the blind;

(e) provide services in respect to organization and
supervise county departments of public welfare and county
boards of public welfare in the administration of public
assistance functions and for efficiency and economy;

(f) assist and cooperate with other state and federal
departments, bureaus, agencies, and institutions, when so
requested, by performing services in conformity with public
assistance purposes;

(g) administer all state and federal funds allocated

1 to the department for public assistance and do all things
2 necessary, in conformity with federal and state law, for the
3 proper fulfillment of public assistance purposes; and

4 (h) make rules governing payment for services and
5 supplies provided to recipients of public assistance.

6 (2) The department may:

7 (a) purchase, exchange, condemn, or receive by gift
8 either real or personal property which is necessary to carry
9 out its public assistance functions. Title to property
10 obtained under this subsection shall be taken in the name of
11 the state of Montana for the use and benefit of the
12 department.

13 (b) contract with the federal government to carry out
14 its public assistance functions. The department may do all
15 things necessary in order to avail itself of federal aid and
16 assistance.

17 (c) make rules, consistent with state and federal law,
18 establishing the amount, scope, and duration of services to
19 be provided to recipients of public assistance."

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

21 "41-3-102. Definitions. As used in this chapter, the
22 following definitions apply:

23 (1) "Child" or "youth" means any person under 18 years
24 of age.

25 (2) An "abused or neglected child" means a child whose

1 normal physical or mental health or welfare is harmed or
2 threatened with harm by the acts or omissions of his parent
3 or other person responsible for his welfare.

4 (3) "Harm to a child's health or welfare" means the
5 harm that occurs whenever the parent or other person
6 responsible for the child's welfare:

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

10 (b) commits or allows to be committed a sexual assault
11 against the child or exploits the child or allows the child
12 to be exploited for sexual purposes as provided in
13 subsection (1) of 45-5-625;

14 (c) causes failure to thrive or otherwise fails to
15 supply the child with adequate food or fails to supply
16 clothing, shelter, education, or health care, though
17 financially able to do so or offered financial or other
18 reasonable means to do so; or

19 (d) abandons the child by ~~leaving--him--under~~
20 ~~circumstances--that--make--reasonable--the--belief--that--the~~
21 ~~parent--or--other--person--does--not--intend--to--resume--care--of--the~~
22 ~~child--in--the--future,~~ willfully surrendering physical custody
23 for a period of 6 months and during that period does not
24 manifest to the child and the person having physical custody
25 of the child a firm intention to resume physical custody or

1 to make permanent legal arrangements for the care of the
2 child; or

3 (e) is unknown and has been unknown for a period of 90
4 days and reasonable efforts to identify and locate the
5 parents have failed.

6 (4) "Adequate health care" means any medical or
7 nonmedical remedial health care permitted or authorized
8 under state law.

9 (5) "Threatened harm" means imminent risk of harm.

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

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

18 (8) "Mental injury" means an identifiable and
19 substantial impairment of the child's intellectual or
20 psychological functioning.

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

22 (a) who is abandoned;

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

25 (c) who has no proper guidance to provide for his

1 necessary physical, moral, and emotional well-being;

2 (d) who is destitute;

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

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

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

9 (11) "Supervision" means the authority granted by a
10 youth court or by a voluntary agreement of a parent to
11 determine the foster care placement of a child and the
12 length of stay of a child in foster care and provide for the
13 needs of a child under subsection (1) of 41-3-104.

14 (12) "Department" means the department of social and
15 rehabilitation services provided for in 2-15-2201."

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

17 "41-3-201. Reports. (1) When the professionals and
18 officials listed in subsection (2) know or have reasonable
19 cause to suspect that a child known to them in their
20 professional or official capacity is an abused or neglected
21 child, they shall report the matter promptly to the
22 department of social and rehabilitation services or its
23 local affiliate, which then shall notify the county attorney
24 of the county where the child resides.

25 (2) Professionals and officials required to report

1 are:

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

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

8 (c) Christian Science practitioner and religious
9 healers;

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

12 (e) a social worker, operator or employee of any
13 registered or licensed day-care center or substitute care
14 facility, or any other licensed operator or employee of a
15 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) No person listed in subsection (2) may refuse to
23 make a report as required in this section on the grounds of
24 a physician-patient or similar privilege if the person came
25 into possession of such information as a result of his

1 treatment of the child.

2 (5) The reports referred to under this section shall
3 contain:

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

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

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

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

17 SECTION 4. SECTION 41-3-302, MCA, IS AMENDED TO READ:

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

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

4 Section 5. Section 41-3-401, MCA, is amended to read:

5 "41-3-401. Abuse, neglect, and dependency petitions.
6 (1) The county attorney shall be responsible for filing all
7 petitions alleging abuse, neglect, or dependency. He may
8 require all state, county, and municipal agencies, including
9 law enforcement agencies, to conduct such investigations and
10 furnish such reports as may be necessary. Investigations as
11 to financial status may not be made prior to the
12 adjudicatory hearing provided for in 41-3-404.

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

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

22 (4) The parents or parent, guardian, or other person
23 or agency having legal custody of the youth named in the
24 petition, if residing in the state, shall be served
25 personally with a copy of the petition and summons at least

1 5 days prior to the date set for hearing. If such person or
2 agency resides out of state or is not found within the
3 state, the rules of civil procedure relating to service of
4 process in such cases shall apply.

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

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

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

15 (8) Except where the proceeding is instituted or
16 commenced by a representative of the department of social
17 and rehabilitation services, a citation shall be issued and
18 served upon a representative of the department prior to the
19 court hearing.

20 (9) The petition shall:

21 (a) state the nature of the alleged abuse, neglect, or
22 dependency;

23 (b) state the full name, age, and address of the youth
24 and the name and address of his parents or guardian or
25 person having legal custody of the youth;

1 (c) state the names, addresses, and relationship to
2 the youth of all persons who are necessary parties to the
3 action.

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

5 (a) temporary investigative authority and protective
6 services;

7 (b) temporary legal custody;

8 ~~(c) limited legal custody;~~

9 (C) TERMINATION OF THE PARENT-CHILD LEGAL
10 RELATIONSHIP;

11 ~~(d) (D)~~ permanent legal custody, including the right
12 to consent to adoption;

13 ~~(e) (E)~~ appointment of guardian ad litem;

14 ~~(f) (F)~~ any combination of the above or such other
15 relief as may be required for the best interest of the
16 youth.

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

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

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

-End-

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INTRODUCED BY REGAN, TURMAGE

BY REQUEST OF

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A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE LAWS RELATING TO CHILD ABUSE AND NEGLECT AND PROTECTIVE SERVICES BY PROVIDING EXPANDED DEFINITIONS AND ADDING DIRECTIVES REGARDING THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES' RESPONSIBILITY FOR CHILD WELFARE SERVICES; AMENDING SECTIONS 41-3-102, 41-3-201, ~~41-3-302~~, 41-3-401, AND 53-2-201, MCA."

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~~child-caring-agencies of all children's foster family homes, group homes, child-care agencies and child-placing agencies;~~

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(iv) the maintenance of supplemental day care for children;

(c) give consultant service to private institutions providing care for the needy, indigent, handicapped, or dependent adults;

(d) cooperate with other state agencies and develop provisions for services to the blind, including the prevention of blindness, the location of blind persons, medical services for eye conditions, and vocational guidance and training of the blind;

(e) provide services in respect to organization and supervise county departments of public welfare and county boards of public welfare in the administration of public assistance functions and for efficiency and economy;

(f) assist and cooperate with other state and federal departments, bureaus, agencies, and institutions, when so requested, by performing services in conformity with public assistance purposes;

(g) administer all state and federal funds allocated

1 to the department for public assistance and do all things
2 necessary, in conformity with federal and state law, for the
3 proper fulfillment of public assistance purposes; and

4 (h) make rules governing payment for services and
5 supplies provided to recipients of public assistance.

6 (2) The department may:

7 (a) purchase, exchange, condemn, or receive by gift
8 either real or personal property which is necessary to carry
9 out its public assistance functions. Title to property
10 obtained under this subsection shall be taken in the name of
11 the state of Montana for the use and benefit of the
12 department.

13 (b) contract with the federal government to carry out
14 its public assistance functions. The department may do all
15 things necessary in order to avail itself of federal aid and
16 assistance.

17 (c) make rules, consistent with state and federal law,
18 establishing the amount, scope, and duration of services to
19 be provided to recipients of public assistance."

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

21 "41-3-102. Definitions. As used in this chapter, the
22 following definitions apply:

23 (1) "Child" or "youth" means any person under 18 years
24 of age.

25 (2) An "abused or neglected child" means a child whose

1 normal physical or mental health or welfare is harmed or
2 threatened with harm by the acts or omissions of his parent
3 or other person responsible for his welfare.

4 (3) "Harm to a child's health or welfare" means the
5 harm that occurs whenever the parent or other person
6 responsible for the child's welfare:

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

10 (b) commits or allows to be committed a sexual assault
11 against the child or exploits the child or allows the child
12 to be exploited for sexual purposes as provided in
13 subsection (1) of 45-5-625;

14 (c) causes failure to thrive or otherwise fails to
15 supply the child with adequate food or fails to supply
16 clothing, shelter, education, or health care, though
17 financially able to do so or offered financial or other
18 reasonable means to do so; or

19 (d) abandons the child by ~~leaving him~~ under
20 ~~circumstances that make reasonable the belief that the~~
21 ~~parent or other person does not intend to resume care of the~~
22 ~~child in the future,~~ willfully surrendering physical custody
23 for a period of 6 months and during that period does not
24 manifest to the child and the person having physical custody
25 of the child a firm intention to resume physical custody or

1 to make permanent legal arrangements for the care of the
2 child; or

3 (e) is unknown and has been unknown for a period of 90
4 days and reasonable efforts to identify and locate the
5 parents have failed.

6 (4) "Adequate health care" means any medical or
7 nonmedical remedial health care permitted or authorized
8 under state law.

9 (5) "Threatened harm" means imminent risk of harm.

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

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

18 (8) "Mental injury" means an identifiable and
19 substantial impairment of the child's intellectual or
20 psychological functioning.

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

22 (a) who is abandoned;

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

25 (c) who has no proper guidance to provide for his

1 necessary physical, moral, and emotional well-being;

2 (d) who is destitute;

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

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

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

9 (11) "Supervision" means the authority granted by a
10 youth court or by a voluntary agreement of a parent to
11 determine the foster care placement of a child and the
12 length of stay of a child in foster care and provide for the
13 needs of a child under subsection (1) of 41-3-104.

14 (12) "Department" means the department of social and
15 rehabilitation services provided for in 2-15-2201."

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

17 "41-3-201. Reports. (1) When the professionals and
18 officials listed in subsection (2) know or have reasonable
19 cause to suspect that a child known to them in their
20 professional or official capacity is an abused or neglected
21 child, they shall report the matter promptly to the
22 department of social and rehabilitation services or its
23 local affiliate, which then shall notify the county attorney
24 of the county where the child resides.

25 (2) Professionals and officials required to report

1 are:

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

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

8 (c) Christian Science practitioner and religious
9 healers;

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

12 (e) a social worker, operator or employee of any
13 registered or licensed day-care center or substitute care
14 facility, or any other ~~licensed~~ operator or employee of a
15 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) No person listed in subsection (2) may refuse to
23 make a report as required in this section on the grounds of
24 a physician-patient or similar privilege if the person came
25 into possession of such information as a result of his

1 treatment of the child.

2 (5) The reports referred to under this section shall
3 contain:

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

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

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

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

17 SECTION 4. SECTION 41-3-302, MCA, IS AMENDED TO READ:

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

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

4 Section 5. Section 41-3-401, MCA, is amended to read:

5 "41-3-401. Abuse, neglect, and dependency petitions.

6 (1) The county attorney shall be responsible for filing all
7 petitions alleging abuse, neglect, or dependency. He may
8 require all state, county, and municipal agencies, including
9 law enforcement agencies, to conduct such investigations and
10 furnish such reports as may be necessary. Investigations as
11 to financial status may not be made prior to the
12 adjudicatory hearing provided for in 41-3-404.

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

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

22 (4) The parents or parent, guardian, or other person
23 or agency having legal custody of the youth named in the
24 petition, if residing in the state, shall be served
25 personally with a copy of the petition and summons at least

5 days prior to the date set for hearing. If such person or
2 agency resides out of state or is not found within the
3 state, the rules of civil procedure relating to service of
4 process in such cases shall apply.

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

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

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

15 (8) Except where the proceeding is instituted or
16 commenced by a representative of the department of social
17 and rehabilitation services, a citation shall be issued and
18 served upon a representative of the department prior to the
19 court hearing.

20 (9) The petition shall:

21 (a) state the nature of the alleged abuse, neglect, or
22 dependency;

23 (b) state the full name, age, and address of the youth
24 and the name and address of his parents or guardian or
25 person having legal custody of the youth;

1 (c) state the names, addresses, and relationship to
2 the youth of all persons who are necessary parties to the
3 action.

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

5 (a) temporary investigative authority and protective
6 services;

7 (b) temporary legal custody;

8 ~~(c) limited legal custody~~

9 (C) TERMINATION OF THE PARENT-CHILD LEGAL
10 RELATIONSHIP;

11 ~~(d) (D)~~ permanent legal custody, including the right
12 to consent to adoption;

13 ~~(e) (E)~~ appointment of guardian ad litem;

14 ~~(f) (F)~~ any combination of the above or such other
15 relief as may be required for the best interest of the
16 youth.

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

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

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

-End-

SENATE BILL NO. 253

INTRODUCED BY REGAN, TURNAGE

BY REQUEST OF

THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE LAWS RELATING TO CHILD ABUSE AND NEGLECT AND PROTECTIVE SERVICES BY PROVIDING EXPANDED DEFINITIONS AND ADDING DIRECTIVES REGARDING THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES' RESPONSIBILITY FOR CHILD WELFARE SERVICES; AMENDING SECTIONS 41-3-102, 41-3-201, ~~41-3-302~~, 41-3-401, AND 53-2-201, MCA."

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

Section 1. Section 53-2-201, MCA, is amended to read:

"53-2-201. Powers and duties of department. (1) The department shall:

(a) administer or supervise all forms of public assistance, child protection, and child welfare, including the provision of medical care payments in behalf of recipients of public assistance;

(b) administer or supervise all child welfare activities, including:

(i) importation and exportation of children;

(ii) ~~licensing and supervising--of--private--and--local~~

~~child-caring-agencies of all children's foster family homes, group homes, child-care agencies and child-placing agencies;~~

~~(iii) the care of dependent, and neglected--and delinquent children in foster--family--homes--especially substitute care placement and children placed who are free for adoption or--those-of--illegitimate-birth; and~~

~~(iv) the maintenance of supplemental day care for children;~~

(c) give consultant service to private institutions providing care for the needy, indigent, handicapped, or dependent adults;

(d) cooperate with other state agencies and develop provisions for services to the blind, including the prevention of blindness, the location of blind persons, medical services for eye conditions, and vocational guidance and training of the blind;

(e) provide services in respect to organization and supervise county departments of public welfare and county boards of public welfare in the administration of public assistance functions and for efficiency and economy;

(f) assist and cooperate with other state and federal departments, bureaus, agencies, and institutions, when so requested, by performing services in conformity with public assistance purposes;

(g) administer all state and federal funds allocated

1 to the department for public assistance and do all things
2 necessary, in conformity with federal and state law, for the
3 proper fulfillment of public assistance purposes; and

4 (h) make rules governing payment for services and
5 supplies provided to recipients of public assistance.

6 (2) The department may:

7 (a) purchase, exchange, condemn, or receive by gift
8 either real or personal property which is necessary to carry
9 out its public assistance functions. Title to property
10 obtained under this subsection shall be taken in the name of
11 the state of Montana for the use and benefit of the
12 department.

13 (b) contract with the federal government to carry out
14 its public assistance functions. The department may do all
15 things necessary in order to avail itself of federal aid and
16 assistance.

17 (c) make rules, consistent with state and federal law,
18 establishing the amount, scope, and duration of services to
19 be provided to recipients of public assistance."

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

21 "41-3-102. Definitions. As used in this chapter, the
22 following definitions apply:

23 (1) "Child" or "youth" means any person under 18 years
24 of age.

25 (2) An "abused or neglected child" means a child whose

1 normal physical or mental health or welfare is harmed or
2 threatened with harm by the acts or omissions of his parent
3 or other person responsible for his welfare.

4 (3) "Harm to a child's health or welfare" means the
5 harm that occurs whenever the parent or other person
6 responsible for the child's welfare:

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

10 (b) commits or allows to be committed a sexual assault
11 against the child or exploits the child or allows the child
12 to be exploited for sexual purposes; ~~as provided in~~
13 ~~subsection (1) of 45-5-625;~~

14 (c) causes failure to thrive or otherwise fails to
15 supply the child with adequate food or fails to supply
16 clothing, shelter, education, or health care, though
17 financially able to do so or offered financial or other
18 reasonable means to do so; or

19 (d) abandons the child by ~~leaving--him--under~~
20 ~~circumstances--that--make--reasonable--the--belief--that--the~~
21 ~~parent-or-other-person-does-not-intend-to-resume-care-of-the~~
22 ~~child-in-the-future.~~ LEAVING HIM UNDER CIRCUMSTANCES THAT
23 MAKE REASONABLE THE BELIEF THAT THE PARENT OR OTHER PERSON
24 DOES NOT INTEND TO RESUME CARE OF THE CHILD IN THE FUTURE OR
25 BY willfully surrendering physical custody for a period of 6

1 months and during that period does not manifest to the child
 2 and the person having physical custody of the child a firm
 3 intention to resume physical custody or to make permanent
 4 legal arrangements for the care of the child; or

5 (e) is unknown and has been unknown for a period of 90
 6 days and reasonable efforts to identify and locate the
 7 parents have failed.

8 (4) "Adequate health care" means any medical or
 9 nonmedical remedial health care permitted or authorized
 10 under state law.

11 (5) "Threatened harm" means imminent risk of harm.

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

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

20 (8) "Mental injury" means an identifiable and
 21 substantial impairment of the child's intellectual or
 22 psychological functioning.

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

24 (a) who is abandoned;

25 (b) who is without parents or guardian or not under

1 the care and supervision of a suitable adult;

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

4 (d) who is destitute;

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

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

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

11 (11) "Supervision" means the authority granted by a
 12 youth court or by a voluntary agreement of a parent to
 13 determine the foster care placement of a child and the
 14 length of stay of a child in foster care and provide for the
 15 needs of a child under subsection (1) of 41-3-104.

16 (12) "Department" means the department of social and
 17 rehabilitation services provided for in 2-15-2201."

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

19 "41-3-201. Reports. (1) When the professionals and
 20 officials listed in subsection (2) know or have reasonable
 21 cause to suspect that a child known to them in their
 22 professional or official capacity is an abused or neglected
 23 child, they shall report the matter promptly to the
 24 department of social and rehabilitation services or its
 25 local affiliate, which then shall notify the county attorney

1 of the county where 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, operator or employee of any
15 registered or licensed day-care center or substitute care
16 facility, or any other licensed operator or employee of a
17 child-care facility;

18 (f) foster care, residential, or institutional worker;
19 or

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

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

24 (4) No person listed in subsection (2) may refuse to
25 make a report as required in this section on the grounds of

1 a physician-patient or similar privilege if the person came
2 into possession of such information as a result of his
3 treatment of the child.

4 (5) The reports referred to under this section shall
5 contain:

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

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

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

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

19 SECTION 4. SECTION 41-3-302, MCA, IS AMENDED TO READ:

20 *41-3-302. Responsibility of providing protective
21 services. (1) The department of social and rehabilitation
22 services and the county welfare department shall have the
23 primary responsibility to provide the protective services
24 authorized by this chapter and shall have the authority
25 pursuant to this chapter to take temporary, ~~limited~~ or

1 permanent custody of a child when ordered to do so by the
2 court, including the right to give consent to adoption.

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

6 Section 5. Section 41-3-401, MCA, is amended to read:

7 "41-3-401. Abuse, neglect, and dependency petitions.

8 (1) The county attorney shall be responsible for filing all
9 petitions alleging abuse, neglect, or dependency. He may
10 require all state, county, and municipal agencies, including
11 law enforcement agencies, to conduct such investigations and
12 furnish such reports as may be necessary. Investigations as
13 to financial status may not be made prior to the
14 adjudicatory hearing provided for in 41-3-404.

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

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

24 (4) The parents or parent, guardian, or other person
25 or agency having legal custody of the youth named in the

1 petition, if residing in the state, shall be served
2 personally with a copy of the petition and summons at least
3 5 days prior to the date set for hearing. If such person or
4 agency resides out of state or is not found within the
5 state, the rules of civil procedure relating to service of
6 process in such cases shall apply.

7 (5) In the event service cannot be made upon the
8 parents or parent, guardian, or other person or agency
9 having legal custody, the court shall appoint an attorney to
10 represent the unavailable party where in the opinion of the
11 court the interests of justice require.

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

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

17 (8) Except where the proceeding is instituted or
18 commenced by a representative of the department of social
19 and rehabilitation services, a citation shall be issued and
20 served upon a representative of the department prior to the
21 court hearing.

22 (9) The petition shall:

23 (a) state the nature of the alleged abuse, neglect, or
24 dependency;

25 (b) state the full name, age, and address of the youth

1 and the name and address of his parents or guardian or
2 person having legal custody of the youth;

3 (c) state the names, addresses, and relationship to
4 the youth of all persons who are necessary parties to the
5 action.

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

7 (a) temporary investigative authority and protective
8 services;

9 (b) temporary legal custody;

10 ~~(c) limited legal custody;~~

11 (C) TERMINATION OF THE PARENT-CHILD LEGAL
12 RELATIONSHIP;

13 ~~(d)(e)(D)~~ permanent legal custody, including the right
14 to consent to adoption;

15 ~~(e)(e)(E)~~ appointment of guardian ad litem;

16 ~~(f)(e)(F)~~ any combination of the above or such other
17 relief as may be required for the best interest of the
18 youth.

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

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

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

-End-

1 SENATE BILL NO. 253
 2 INTRODUCED BY REGAN, TURNAGE
 3 BY REQUEST OF
 4 THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
 5
 6 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE LAWS
 7 RELATING TO CHILD ABUSE AND NEGLECT AND PROTECTIVE SERVICES
 8 BY PROVIDING EXPANDED DEFINITIONS AND ADDING DIRECTIVES
 9 REGARDING THE DEPARTMENT OF SOCIAL AND REHABILITATION
 10 SERVICES' RESPONSIBILITY FOR CHILD WELFARE SERVICES;
 11 AMENDING SECTIONS 41-3-102, 41-3-201, ~~41-3-302~~, 41-3-401,
 12 AND 53-2-201, MCA."

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15 Section 1. Section 53-2-201, MCA, is amended to read:
16 "53-2-201. Powers and duties of department. (1) The
17 department shall:

18 (a) administer or supervise all forms of public
19 assistance, child protection, and child welfare, including
20 the provision of medical care payments in behalf of
21 recipients of public assistance;

22 (b) administer or supervise all child welfare
23 activities, including:

24 (i) importation and exportation of children;

25 (ii) ~~licensing and supervising of private and local~~

1 ~~child-caring-agencies of all children's foster family homes,~~
 2 ~~group homes, child-care agencies and child-placing agencies;~~
 3 (iii) the care of dependent, and neglected, ~~and~~
 4 ~~delinquent children in foster-family-homes, especially~~
 5 ~~substitute care placement and children placed who are free~~
 6 ~~for adoption or those of illegitimate birth; and~~
 7 (iv) the maintenance of supplemental day care for
 8 children;

9 (c) give consultant service to private institutions
10 providing care for the needy, indigent, handicapped, or
11 dependent adults;

12 (d) cooperate with other state agencies and develop
13 provisions for services to the blind, including the
14 prevention of blindness, the location of blind persons,
15 medical services for eye conditions, and vocational guidance
16 and training of the blind;

17 (e) provide services in respect to organization and
18 supervise county departments of public welfare and county
19 boards of public welfare in the administration of public
20 assistance functions and for efficiency and economy;

21 (f) assist and cooperate with other state and federal
22 departments, bureaus, agencies, and institutions, when so
23 requested, by performing services in conformity with public
24 assistance purposes;

25 (g) administer all state and federal funds allocated

1 to the department for public assistance and do all things
2 necessary, in conformity with federal and state law, for the
3 proper fulfillment of public assistance purposes; and

4 (h) make rules governing payment for services and
5 supplies provided to recipients of public assistance.

6 (2) The department may:

7 (a) purchase, exchange, condemn, or receive by gift
8 either real or personal property which is necessary to carry
9 out its public assistance functions. Title to property
10 obtained under this subsection shall be taken in the name of
11 the state of Montana for the use and benefit of the
12 department.

13 (b) contract with the federal government to carry out
14 its public assistance functions. The department may do all
15 things necessary in order to avail itself of federal aid and
16 assistance.

17 (c) make rules, consistent with state and federal law,
18 establishing the amount, scope, and duration of services to
19 be provided to recipients of public assistance."

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

21 "41-3-102. Definitions. As used in this chapter, the
22 following definitions apply:

23 (1) "Child" or "youth" means any person under 18 years
24 of age.

25 (2) An "abused or neglected child" means a child whose

1 normal physical or mental health or welfare is harmed or
2 threatened with harm by the acts or omissions of his parent
3 or other person responsible for his welfare.

4 (3) "Harm to a child's health or welfare" means the
5 harm that occurs whenever the parent or other person
6 responsible for the child's welfare:

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

10 (b) commits or allows to be committed a sexual assault
11 against the child or exploits the child or allows the child
12 to be exploited for sexual purposes; ~~as provided in~~
13 subsection (1) of 45-5-625 OR COMMITS OR ALLOWS TO BE
14 COMMITTED THE ACT OF SEXUAL ABUSE OF CHILDREN AS DEFINED IN
15 SUBSECTION (1) OF 45-5-625;

16 (c) causes failure to thrive or otherwise fails to
17 supply the child with adequate food or fails to supply
18 clothing, shelter, education, or health care, though
19 financially able to do so or offered financial or other
20 reasonable means to do so; or

21 (d) abandons the child by ~~leaving him under~~
22 ~~circumstances that make reasonable the belief that the~~
23 ~~parent or other person does not intend to resume care of the~~
24 ~~child in the future~~ LEAVING HIM UNDER CIRCUMSTANCES THAT
25 MAKE REASONABLE THE BELIEF THAT THE PARENT OR OTHER PERSON

1 DOES NOT INTEND TO RESUME CARE OF THE CHILD IN THE FUTURE OR
 2 BY willfully surrendering physical custody for a period of 6
 3 months and during that period does not manifest to the child
 4 and the person having physical custody of the child a firm
 5 intention to resume physical custody or to make permanent
 6 legal arrangements for the care of the child; or

7 (e) is unknown and has been unknown for a period of 90
 8 days and reasonable efforts to identify and locate the
 9 parents have failed.

10 (4) "Adequate health care" means any medical or
 11 nonmedical remedial health care permitted or authorized
 12 under state law.

13 (5) "Threatened harm" means imminent risk of harm.

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

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

22 (8) "Mental injury" means an identifiable and
 23 substantial impairment of the child's intellectual or
 24 psychological functioning.

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

1 (a) who is abandoned;

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

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

6 (d) who is destitute;

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

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

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

13 (11) "Supervision" means the authority granted by a
 14 youth court or by a voluntary agreement of a parent to
 15 determine the foster care placement of a child and the
 16 length of stay of a child in foster care and provide for the
 17 needs of a child under subsection (1) of 41-3-104.

18 (12) "Department" means the department of social and
 19 rehabilitation services provided for in 2-15-2201."

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

21 "41-3-201. Reports. (1) When the professionals and
 22 officials listed in subsection (2) know or have reasonable
 23 cause to suspect that a child known to them in their
 24 professional or official capacity is an abused or neglected
 25 child, they shall report the matter promptly to the

1 department of social and rehabilitation services or its
2 local affiliate, which then shall notify the county attorney
3 of the county where the child resides.

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

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

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

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

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

16 (e) a social worker, operator or employee of any
17 registered or licensed day-care center or substitute care
18 facility, or any other licensed operator or employee of a
19 child-care facility;

20 (f) foster care, residential, or institutional worker;
21 or

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

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

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

6 (5) The reports referred to under this section shall
7 contain:

8 (a) the names and addresses of the child and his or
9 her parents or other persons responsible for his or her
10 care;

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

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

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

21 SECTION 4. SECTION 41-3-302, MCA, IS AMENDED TO READ:

22 "41-3-302. Responsibility of providing protective
23 services. (1) The department of social and rehabilitation
24 services and the county welfare department shall have the
25 primary responsibility to provide the protective services

1 authorized by this chapter and shall have the authority
2 pursuant to this chapter to take temporary ~~or limited~~ or
3 permanent custody of a child when ordered to do so by the
4 court, including the right to give consent to adoption.

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

8 Section 5. Section 41-3-401, MCA, is amended to read:

9 "41-3-401. Abuse, neglect, and dependency petitions.

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

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

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

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

9 (5) In the event service cannot be made upon the
10 parents or parent, guardian, or other person or agency
11 having legal custody, the court shall appoint an attorney to
12 represent the unavailable party where in the opinion of the
13 court the interests of justice require.

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

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

19 (8) Except where the proceeding is instituted or
20 commenced by a representative of the department of social
21 and rehabilitation services, a citation shall be issued and
22 served upon a representative of the department prior to the
23 court hearing.

24 (9) The petition shall:

25 (a) state the nature of the alleged abuse, neglect, or

1 dependency;

2 (b) state the full name, age, and address of the youth

3 and the name and address of his parents or guardian or

4 person having legal custody of the youth;

5 (c) state the names, addresses, and relationship to

6 the youth of all persons who are necessary parties to the

7 action.

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

9 (a) temporary investigative authority and protective

10 services;

11 (b) temporary legal custody;

12 ~~(c) limited legal custody;~~

13 (C) TERMINATION OF THE PARENT-CHILD LEGAL

14 RELATIONSHIP;

15 ~~(d) permanent legal custody, including the right~~

16 ~~to consent to adoption;~~

17 ~~(e) appointment of guardian ad litem;~~

18 ~~(f) any combination of the above or such other~~

19 ~~relief as may be required for the best interest of the~~

20 ~~youth.~~

21 (11) The petition may be modified for different relief

22 at any time within the discretion of the court.

23 (12) The court may at any time on its own motion or the

24 motion of any party appoint a guardian ad litem for the

25 youth or counsel for any indigent party.

1 (13) This section does not apply to a petition for

2 temporary investigative authority and protective services."

-End-

April 13, 19 81

FREE CONFERENCE COMMITTEE
ON SENATE BILL NO. 253

(Report No. 1, April 13, 1981)

MR. PRESIDENT AND SPEAKER OF THE HOUSE:

We, your Free Conference Committee on Senate Bill No. 253,
met April 13, 1981, and considered:

House Committee on Judiciary Amendments to the third reading
copy, dated March 27, 1981, and recommend as follows:

That the Senate accede to Committee amendment nos. 1 and 2;

That Senate Bill No. 253 be further amended as specified in
CLERICAL INSTRUCTION no. 1;

That the reference copy of Senate Bill No. 253 read as
specified in the CLERICAL INSTRUCTIONS;

And, that the Conference Report to Senate Bill No. 253 be
adopted.

CLERICAL INSTRUCTIONS:

1. Page 4, line 12.

Following: "purposes"

Insert: "or commits or allows to be committed the act
of sexual abuse of children as defined in subsection (1)
of 45-5-625"

FOR THE SENATE:

Bob Brown
B. Brown, Chairman

Tom Hager
Hager

Pat Regan
Regan

FOR THE HOUSE:

R.L. Anderson
Anderson, Chairman

William R. Conn
Conn

Yardley
Yardley

Chairman.

Respectfully report as follows: That.....SENATE..... Bill No. 253

BE AMENDED AS FOLLOWS:

1. Page 4, lines 12 and 13.

Following: "purposes†" on line 12

Strike: remainder of line 12 through "45-5-625" on line 13

2. Page 4, line 22.

Following: "~~future-~~"

Insert: "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 by"