

Senate Bill 472

In The Senate

February 13, 1981

Introduced and referred
to Committee on Highways
and Transportation.

February 21, 1981

Committee recommend bill
do not pass.

1 *Senate* BILL NO. *472*
 2 INTRODUCED BY *Van Valkenburg McCallum*
 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR
 5 VOLUNTARY ALTERNATIVE RESIDENTIAL PLACEMENT OF CHILDREN;
 6 PROVIDING FOR THE MAKEUP AND REVISING THE DUTIES OF THE
 7 YOUTH COURT COMMITTEE; AND AMENDING SECTIONS 41-3-101,
 8 41-3-102, AND 41-5-105, MCA."

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

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

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

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

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

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

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

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

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

8 ~~(3) It is the policy of this state to promote the use~~
 9 ~~of community-based services for treatment and shelter care~~
 10 ~~for youth.~~

11 ~~(4) The state recognizes that some youth who by their~~
 12 ~~own conduct, behavior patterns, chemical dependence, or~~
 13 ~~emotional disturbance seriously threaten their own physical~~
 14 ~~or emotional well-being. The legislature finds that~~
 15 ~~community-based services are the most desirable for~~
 16 ~~treatment and shelter care."~~

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

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

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

22 (2) An "abused or neglected child" means a child whose
 23 normal physical or mental health or welfare is harmed or
 24 threatened with harm by the acts or omissions of his parent
 25 or other person responsible for his welfare.

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

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

7 (b) commits or allows to be committed a sexual assault
8 against the child or exploits the child or allows the child
9 to be exploited for sexual purposes;

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

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

19 (4) "Adequate health care" means any medical or
20 nonmedical remedial health care permitted or authorized
21 under state law.

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

23 (6) "A person responsible for a child's welfare" means
24 the child's parent, guardian, or foster parent; an employee
25 of a public or private residential institution, facility,

1 home, or agency; or any other person legally responsible for
2 the child's welfare in a residential setting.

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

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

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

10 (a) who is abandoned;

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

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

15 (d) who is destitute;

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

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

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

22 ~~(11) "Alternative residential placement" means the~~
23 ~~temporary voluntary placement of a child outside the~~
24 ~~parent's residence."~~

25 NEW SECTION. Section 3. Alternative residential

1 placement -- petition. (1) If a dispute arises between a
2 parent and a child with regard to the child's place of
3 residence, the child or the child's parent may file with the
4 juvenile court a petition to approve an alternative
5 residential placement of the child outside the parent's
6 residence.

7 (2) The department of social and rehabilitation
8 services or the county probation officer shall, when
9 requested, assist either the parent or the child in the
10 filing of the petition.

11 (3) The petition shall ask only that the placement of
12 the child outside the residence of his parent be approved or
13 disapproved.

14 (4) The filing of a petition to approve or disapprove
15 such placement is not dependent upon the court's having
16 obtained any previous jurisdiction over the child or his
17 parent and confers upon the court a special jurisdiction to
18 approve or disapprove alternative residential placement or
19 its continuation.

20 NEW SECTION. Section 4. Temporary alternative
21 residential placement. (1) Upon filing of an alternative
22 residential placement petition, the child may be placed by
23 the county probation officer or the department of social and
24 rehabilitation services in a shelter care facility, a foster
25 family home, a group home facility licensed under 41-3-503,

1 or any other suitable residence approved by the department.

2 (2) If the child is placed in an alternative
3 residence, the child shall remain there pending resolution
4 of the alternative residential placement petition by the
5 court. All temporary placements shall be reviewed by the
6 court within 3 court days.

7 NEW SECTION. Section 5. Court action upon filing of
8 petition for alternative residential placement. When a
9 petition is filed under [section 3] the youth court shall:

10 (1) schedule a date for a factfinding hearing and
11 notify the parent and child of the date;

12 (2) notify the parent of the right to be represented
13 by legal counsel and, if indigent, appoint counsel for him;

14 (3) appoint legal counsel for the child;

15 (4) inform the child and his parents of the legal
16 consequences of the court approving or disapproving an
17 alternative residential placement petition; and

18 (5) notify all parties of their right to present
19 evidence at the factfinding hearing.

20 NEW SECTION. Section 6. Adjudicatory hearing. (1) In
21 an adjudicatory hearing on a petition under [section 3], the
22 court shall approve or disapprove alternative residential
23 placement. The court shall give due weight to the intent of
24 the legislature expressed in the declaration of policy in
25 41-3-101.

1 (2) If it is established by a preponderance of the
2 evidence that a serious conflict exists between the parent
3 and the child and that the conflict cannot be resolved by
4 the delivery of services to the family during continued
5 placement of the child in the parental home, the court may
6 approve an order stating that the child shall be placed in
7 an alternative residence.

8 (3) If the court disapproves a petition for an
9 alternative residential placement, the court shall:

10 (a) instruct that the child remain at or return to the
11 home of his parent; and

12 (b) file a written statement of the reasons for the
13 disapproval of the petition.

14 (4) The court may not enforce these orders by contempt
15 proceedings or otherwise.

16 NEW SECTION. Section 7. Dismissal of petition. (1)
17 The court shall dismiss a petition for alternative
18 residential placement if it finds:

19 (a) the petition is capricious; or

20 (b) that the filing party did not first reasonably
21 attempt to resolve the conflict outside the court.

22 (2) Upon dismissing the petition, the court shall
23 impress upon the party filing the petition of the
24 legislative intent to restrict the proceedings to situations
25 in which a family conflict is so great that it cannot be

1 resolved by the provision of in-home services.

2 NEW SECTION. Section 8. Dispositional plan. (1) The
3 order approving alternative placement shall direct the
4 department of social and rehabilitation services or the
5 county probation officer to submit a disposition plan for a
6 3-month placement of the child that is designed to reunite
7 the family and resolve the family conflict.

8 (2) In making the order, the court shall further
9 direct the department or the county probation officer to
10 make recommendations concerning:

11 (a) the agency or person that should have physical
12 custody of the child;

13 (b) parental powers that should be awarded to such
14 agency or person; and

15 (c) parental visitation rights.

16 (3) The court may direct the department to consider
17 the cultural heritage of the child in making its
18 recommendations.

19 NEW SECTION. Section 9. Dispositional hearing. (1) A
20 hearing to consider the recommendations for a 3-month
21 disposition plan shall be set no later than 14 days after
22 approval by the court of the petition for alternative
23 residential placement. Each party shall be notified of the
24 time and place of the hearing.

25 (2) The court may modify the plan submitted by the

1 department or the county probation officer.

2 (3) The court shall specify in its dispositional order
3 for alternative residential placement the following:

4 (a) the person or agency with whom the child shall be
5 placed; and

6 (b) the parental powers that will be awarded
7 temporarily to such agency or person, including but not
8 limited to the right to authorize medical, dental, and
9 optical treatment, and parental visitation rights.

10 (4) The court may not place a child in an agency or
11 residence that does not comply with minimum standards for
12 licensed family foster homes.

13 (5) No placement may be made in a security facility
14 that is constructed to be physically restricting.

15 NEW SECTION. Section 10. Review of three-month
16 placement dispositional order. (1) Upon making a
17 dispositional order under [section 9], the court shall:

18 (a) schedule a review of the order within 3 months;

19 (b) advise the parties of the date thereof;

20 (c) appoint legal counsel to represent the child and
21 the parent, if indigent, at the review hearing;

22 (d) advise nonindigent parents of their right to be
23 represented by legal counsel at the review hearing; and

24 (e) notify the parties of their rights to present
25 evidence at the hearing.

1 (2) At the review hearing, the court shall:

2 (a) approve a continuation of the alternative
3 residential placement under the original disposition order
4 if the court determines that appropriate services have been
5 offered to the parent and child;

6 (b) approve a continuation of the alternative
7 residential placement under a modified disposition plan
8 approved by the court; or

9 (c) order the child returned to his parent.

10 (3) If the alternative residential placement is
11 continued, subsequent review hearings shall be held at
12 6-month intervals until the child is returned to the parent.

13 (4) When the child is returned to the parent, the
14 court may schedule a review hearing of that placement within
15 6 months of the placement.

16 Section 11. Section 41-5-105, MCA, is amended to read:

17 "41-5-105. Youth court committee. ~~(1) In every county~~
18 ~~of the state the judge having jurisdiction may appoint there~~
19 ~~shall be~~ a committee, willing to act without compensation,
20 ~~composed of not less than three or more than seven reputable~~
21 ~~citizens, including youth representatives~~ which committee
22 shall be designated as a youth court committee.

23 (2) ~~The committee shall include but not be limited to:~~

24 ~~(a) the chief probation officer or his designee;~~

25 ~~(b) the county welfare director;~~

1 (c) the chairman of a child abuse team, appointed by
2 the county commissioners;

3 (d) a public health nurse assigned school duties;
4 appointed by the county commissioners;

5 (e) a county commissioner or other elected county
6 official with budget determination authority;

7 (f) a person from the major high school district
8 holding an administrative position, appointed by the county
9 commissioners; and

10 (g) a private sector representative, appointed by the
11 county commissioners.

12 (3) The committee shall insure the coordination of
13 social services to youth voluntarily receiving such
14 services.

15 (4) The committee shall advise county officials on the
16 budgets for locally funded programs for youth voluntarily
17 receiving social services or for youth in need of
18 supervision. This committee shall be subject to the call of
19 the judge to meet and confer with him on all matters
20 pertaining to the youth department of the county including
21 the appointment of probation officers, and shall act as a
22 supervisory committee of youth detention homes.

23 Section 12. Coordination. If Bill No. [LC 1408]
24 is passed and approved, any reference in this act to "youth
25 in need of supervision" is changed to "youth in need of

I services".

-End-