

HOUSE BILL NO. 856

INTRODUCED BY BERGENE, VINCENT

IN THE HOUSE

February 15, 1983	Introduced and referred to Committee on Human Services.
February 21, 1983	Committee recommend bill do pass. Report adopted.
February 22, 1983	Bill printed and placed on members' desks. Second reading, do pass as amended.
February 23, 1983	Correctly engrossed. Third reading, passed. Transmitted to Senate.

IN THE SENATE

March 1, 1983	Introduced and referred to Committee on Judiciary.
March 25, 1983	Committee recommend bill be concurred in as amended. Report adopted.
March 26, 1983	Second reading, concurred in.
March 28, 1983	Third reading, concurred in. Ayes, 45; Noes, 0.

IN THE HOUSE

March 28, 1983	Returned to House with amendments.
April 4, 1983	Second reading, amendments concurred in.

April 5, 1983

Third reading, amendments
concurred in.

Sent to enrolling.

Reported correctly enrolled.

1 House BILL NO. 856
2 INTRODUCED BY Bergene Vincent
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW AN ORDER OF
5 LIMITED EMANCIPATION TO BE GRANTED TO A YOUTH WHO IS 16
6 YEARS OF AGE OR OLDER AND WHO IS FOUND TO BE ABUSED,
7 NEGLECTED, OR DEPENDENT; AMENDING SECTIONS 41-1-306,
8 41-3-102, AND 41-3-405 THROUGH 41-3-407, MCA; AND PROVIDING
9 AN EFFECTIVE DATE."
10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
12 Section 1. Section 41-3-102, ACA, is amended to read:
13 "41-3-102. Definitions. As used in this chapter, the
14 following definitions apply:
15 (1) "Child" or "youth" means any person under 18 years
16 of age.
17 (2) An "abused or neglected child" means a child whose
18 normal physical or mental health or welfare is harmed or
19 threatened with harm by the acts or omissions of his parent
20 or other person responsible for his welfare.
21 (3) "Harm to a child's health or welfare" means the
22 harm that occurs whenever the parent or other person
23 responsible for the child's welfare:
24 (a) inflicts or allows to be inflicted upon the child
25 physical or mental injury, including injuries sustained as a

1 result of excessive corporal punishment;
2 (b) commits or allows to be committed a sexual assault
3 against the child or exploits the child or allows the child
4 to be exploited for sexual purposes or commits or allows to
5 be committed the act of sexual abuse of children as defined
6 in subsection (1) of 45-5-625;
7 (c) causes failure to thrive or otherwise fails to
8 supply the child with adequate food or fails to supply
9 clothing, shelter, education, or health care, though
10 financially able to do so or offered financial or other
11 reasonable means to do so; or
12 (d) abandons the child by leaving him under
13 circumstances that make reasonable the belief that the
14 parent or other person does not intend to resume care of the
15 child in the future or by willfully surrendering physical
16 custody for a period of 6 months and during that period does
17 not manifest to the child and the person having physical
18 custody of the child a firm intention to resume physical
19 custody or to make permanent legal arrangements for the care
20 of the child; or
21 (e) is unknown and has been unknown for a period of 90
22 days and reasonable efforts to identify and locate the
23 parents have failed.
24 (4) "Adequate health care" means any medical or
25 nonmedical remedial health care permitted or authorized

INTRODUCED BILL

1 under state law.

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

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

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

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

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

15 (a) who is abandoned;

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

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

20 (d) who is destitute;

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

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

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

1 dependent, abused, or neglected as defined in this section.

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

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

9 ~~(13) "Limited emancipation" means a status conferred on~~
10 ~~a dependent youth by a court after a dispositional hearing~~
11 ~~in accordance with 41-3-406 under which the youth is~~
12 ~~entitled to exercise some but not all of the rights and~~
13 ~~responsibilities of a person who is 18 years of age or~~
14 ~~older."~~

15 Section 2. Section 41-3-405, MCA, is amended to read:

16 "41-3-405. Investigation of parents' or guardian's
17 financial ability. (1) Whenever a court determines a youth
18 to be an abused, neglected, or dependent child pursuant to
19 41-3-404, the court shall issue an order directing the
20 county welfare department of the county in which the
21 petition was filed to conduct an investigation of the
22 financial status of the child's parents or the extent of
23 guardianship assets.

24 (2) ~~(a)~~ Upon receipt of the order, the county welfare
25 department shall make an investigation for the purpose of

ascertaining the residence of the parents or guardian of the child and the financial ability of the parents or the adequacy of the guardianship assets to pay the cost of supporting the child;

(ii) in a foster home, child care agency, group home, or private treatment facility; or

~~(iii) as a child of limited emancipation, as may be ordered under 41-3-406.~~

(b) A written report of the investigation shall be filed with the clerk of court before the time fixed for the dispositional hearing.

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

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

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

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

~~(b) grant an order of limited emancipation to a youth who is 16 years of age or older as provided in [section 5];~~

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

(i) department of social and rehabilitation services;

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

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

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

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

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

(3) Any youth found to be abused, neglected, or dependent may be committed or the court may make such other disposition of the child as the court deems best for his

social and physical welfare. The form of commitment shall be as follows:

ORDER OF COMMITMENT

State of Montana)

) ss.

County of)

In the district court for the Judicial District.

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

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

Name	Address	Occupation
.....
.....

.....

.....

The child's guardian is

The child is in the custody of

It is ordered that be committed to until discharged as provided by law.

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

.....

Judge

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

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

Section 4. Section 41-3-407, MCA, is amended to read:

"41-3-407. Order for financial support. (1) Whenever a youth is placed in a foster home, child care agency, group home, or private treatment facility ~~or has been granted an order of limited emancipation~~ under 41-3-406, the court shall determine the ability of the youth's parents or guardian to contribute to the support of the youth or the adequacy of the guardianship assets to provide a contribution. This question of financial ability shall be considered at the dispositional hearing, and evidence concerning financial status may be introduced. In determining financial ability the court shall consider the report prepared pursuant to 41-3-405 and any other evidence introduced at the dispositional hearing.

(2) If the court determines that the parents are able to contribute to the support of the youth or that the

guardianship assets are adequate to provide a contribution, the court shall issue an order directing the parents or guardian to make specified payments to the department of social and rehabilitation services to the extent considered appropriate under the circumstances. Payments required of a guardian may not exceed the funds available from guardianship assets. Upon a showing of change in financial ability, the court may modify the order."

NEW SECTION. Section 5. Limited emancipation. (1) The court, after the dispositional hearing provided for in 41-3-404, may, upon the request of a youth who is 16 years of age or older, enter an order granting limited emancipation to the youth.

(2) Limited emancipation may be granted only if the court has found:

(a) that limited emancipation is in the youth's best interests;

(b) that the youth desires limited emancipation;

(c) that there exists no public interest compelling denial of limited emancipation;

(d) that the youth has, or will reasonably obtain, money sufficient to pay for financial obligations incurred as a result of limited emancipation;

(e) that the youth, as shown by prior conduct and preparation, understands and may be expected to responsibly

exercise those rights and responsibilities incurred as a result of limited emancipation; and

(f) that the youth has graduated or will continue to diligently pursue graduation from high school, unless circumstances clearly compel deferral of education.

(3) An order of limited emancipation must specifically set forth the rights and responsibilities that are being conferred upon the youth. These may include but are not limited to one or more of the following:

(a) the right to live independently of in-house supervision;

(b) the right to live in housing of the youth's choice;

(c) the right to directly receive and expend money to which the youth is entitled and to conduct his own financial affairs;

(d) the right to enter into contractual agreements and incur debts;

(e) the right to obtain access to medical treatment and records upon the youth's own authorization; and

(f) the right to obtain a license to operate equipment or perform a service.

(4) An order of limited emancipation must include a provision requiring that the youth make periodic reports to the court upon terms prescribed by the court.

(5) If no order for contribution is made under 41-3-407 and the court determines that a youth to whom limited emancipation is granted does not have sufficient funds to finance transition to limited emancipated status, the court may order the department to provide such funds, not to exceed \$500, directly to the youth. The youth shall account to the court for the disposition of such funds and shall repay all such money to the department within 1 year of the order of limited emancipation unless the court for cause orders an extension.

(6) The court, on its own motion or on the motion of any parties to the dispositional hearing, may modify or revoke the order upon a showing that:

(a) the youth has committed a material violation of the law;

(b) the youth is failing to diligently pursue graduation from high school;

(c) the youth has violated a condition of the limited emancipation order; or

(d) the best interests of the youth are no longer served by limited emancipation.

(7) The department shall mail a copy of this part to all high school counseling offices.

Section 6. Section 41-1-306, MCA, is amended to read:

"41-1-306. Minor cannot disaffirm certain obligations.

A minor cannot disaffirm an obligation, otherwise valid, entered into by him under the express authority or direction of a statute or when he has been granted limited emancipation, including a specific right to enter into contracts, under 41-3-406 and [section 5]."

~~NEW SECTION.~~ Section 7. Codification Instruction. Section 5 is intended to be codified as an integral part of Title 41, chapter 3, part 4, and the provisions of Title 41, chapter 3, apply to section 5.

~~NEW SECTION.~~ Section 8. Effective date. This act is effective July 1, 1983.

-End-

STATE OF MONTANA

REQUEST NO. 499-83

FISCAL NOTE

Form BD-15

In compliance with a written request received March 18, 19 83, there is hereby submitted a Fiscal Note for House Bill 856 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly. Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

House Bill 856 would allow an order of limited emancipation to be granted to a youth who is 16 years of age or older and who is found to be abused, neglected or dependent.

ASSUMPTIONS:

- 1) Assume 900 children currently in Foster Care.
- 2) Assume 300 of the 900 children are 16 to 18 years of age.
- 3) Assume 75 of the 300 children are probation cases leaving 225 eligible emancipation cases.
- 4) Assume 67 of the 225 children are in restrictive care settings leaving 158 eligible cases.
- 5) Assume 10% of the 158 cases would want emancipation for a total of 16 cases.
- 6) Assume if emancipated, the 16 would not go into foster care of \$302.50 per month thus creating a savings in foster care of \$58,080 of which \$22,070 is general fund.
- 7) Assume SRS or some agency would need to pay for counseling 1 session per week at \$25 per session in FY 84 and \$27 in FY 85.
- 8) Assume half of the \$500 one-time general fund payments would not be paid back.
- 9) Assume a 6% inflation increase.
- 10) Assume the population of 16 to 18 year olds eligible for emancipation remains constant.

FISCAL IMPACT:

	<u>FY84</u>	<u>FY85</u>
Foster Care Savings:		
General Fund	\$ 23,364	\$ 24,765
Federal	16,259	17,235
County	21,942	23,258
TOTAL	<u>\$ 61,568</u>	<u>\$ 65,258</u>
Expenses:		
Counseling	\$ 19,200	\$ 20,736
Uncollectables	4,000	4,000
Total Expenses (GF)	<u>\$ 23,200</u>	<u>\$ 24,736</u>
Overall Savings	38,365	40,522
General Fund Savings	<u>\$ 164</u>	<u>\$ 29</u>

FISCAL NOTE 17:R/1


 BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 3-21-83

Approved by Comm. on Human Services

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22 days and reasonable efforts to identify and locate the
23 parents have failed.
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9 temporary disfigurement, or impairment of any bodily organ
10 or function.

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12 substantial impairment of the child's intellectual or
13 psychological functioning.

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17 the care and supervision of a suitable adult;

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

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23 relinquished custody of the child and whose legal custody
24 has been transferred to a licensed agency.

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

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3 youth court or by a voluntary agreement of a parent to
4 determine the foster care placement of a child and the
5 length of stay of a child in foster care and provide for the
6 needs of a child under subsection (1) of 41-3-104.

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

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10 ~~a dependent youth by a court after a dispositional hearing~~
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20 county welfare department of the county in which the
21 petition was filed to conduct an investigation of the
22 financial status of the child's parents or the extent of
23 guardianship assets.

24 (2) ~~(a)~~ Upon receipt of the order, the county welfare
25 department shall make an investigation for the purpose of

1 ascertaining the residence of the parents or guardian of the
2 child and the financial ability of the parents or the
3 adequacy of the guardianship assets to pay the cost of
4 supporting the child;

5 (ii) in a foster home, child care agency, group home,
6 or private treatment facility; or

7 ~~(iii) as a child of limited emancipation, as may be~~
8 ~~ordered under 41-3-406.~~

9 (b) A written report of the investigation shall be
10 filed with the clerk of court before the time fixed for the
11 dispositional hearing.

12 (3) A copy of the written report shall be provided to
13 all parties to the proceeding before the time set for the
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19 judgment making any of the following dispositions to protect
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22 guardian subject to those conditions and limitations the
23 court may prescribe;

24 ~~(b) grant an order of limited emancipation to a youth~~
25 ~~who is 16 years of age or older as provided in [section 5]~~

1 ~~(b)(c)~~ transfer legal custody to any of the following:

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12 necessary to give effect to the final disposition, including
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14 treatment, and counseling;

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16 court may deem in the best interest of the youth.

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4 State of Montana)

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7 In the district court for the Judicial District.

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

15 The names, addresses, and occupations of the parents
16 are:

17 Name	Address	Occupation
18		
19		

20 The child's guardian is

21 The child is in the custody of

22 It is ordered that be committed to until
23 discharged as provided by law.

24 Witness my hand this day of, A.D. 19...

25

1 Judge

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

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NEW SECTION. Section 7. Codification instruction. Section 5 is intended to be codified as an integral part of Title 41, chapter 3, part 4, and the provisions of Title 41, chapter 3, apply to section 5.

NEW SECTION. Section 8. Effective date. This act is effective July 1, 1983.

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HOUSE BILL NO. 856

INTRODUCED BY BERGENE, VINCENT

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

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

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

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

(a) inflicts or allows to be inflicted upon the child physical or mental injury, including injuries sustained as a

result of excessive corporal punishment;

(b) commits or allows to be committed a sexual assault against the child or exploits the child or allows the child to be exploited for sexual purposes or commits or allows to be committed the act of sexual abuse of children as defined in subsection (1) of 45-5-625;

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

(d) abandons the child by leaving him under circumstances that make reasonable the belief that the parent or other person does not intend to resume care of the child in the future or by willfully surrendering physical custody for a period of 6 months and during that period does not manifest to the child and the person having physical custody of the child a firm intention to resume physical custody or to make permanent legal arrangements for the care of the child; or

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

(4) "Adequate health care" means any medical or nonmedical remedial health care permitted or authorized

1 under state law.

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

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

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

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

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

15 (a) who is abandoned;

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

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

20 (d) who is destitute;

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

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

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

1 dependent, abused, or neglected as defined in this section.

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

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

9 ~~(13) "Limited emancipation" means a status conferred on~~
10 ~~a dependent youth by a court after a dispositional hearing~~
11 ~~in accordance with 41-3-406 under which the youth is~~
12 ~~entitled to exercise some but not all of the rights and~~
13 ~~responsibilities of a person who is 18 years of age or~~
14 ~~older."~~

15 Section 2. Section 41-3-405, MCA, is amended to read:

16 "41-3-405. Investigation of parents' or guardian's
17 financial ability. (1) Whenever a court determines a youth
18 to be an abused, neglected, or dependent child pursuant to
19 41-3-404, the court shall issue an order directing the
20 county welfare department of the county in which the
21 petition was filed to conduct an investigation of the
22 financial status of the child's parents or the extent of
23 guardianship assets.

24 (2) ~~(a)~~ Upon receipt of the order, the county welfare
25 department shall make an investigation for the purpose of

1 ascertaining the residence of the parents or guardian of the
2 child and the financial ability of the parents or the
3 adequacy of the guardianship assets to pay the cost of
4 supporting the child;

5 (ii) in a foster home, child care agency, group home,
6 or private treatment facility; or

7 ~~(iii) as a child of limited emancipation, as may be~~
8 ~~ordered under 41-3-406.~~

9 (b) A written report of the investigation shall be
10 filed with the clerk of court before the time fixed for the
11 dispositional hearing.

12 (3) A copy of the written report shall be provided to
13 all parties to the proceeding before the time set for the
14 dispositional hearing."

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

16 "41-3-406. Dispositional hearing. (1) If a youth is
17 found to be abused, neglected, or dependent under 41-3-404,
18 the court after the dispositional hearing may enter its
19 judgment making any of the following dispositions to protect
20 the welfare of the youth:

21 (a) permit the youth to remain with his parents or
22 guardian subject to those conditions and limitations the
23 court may prescribe;

24 ~~(b) grant an order of limited emancipation to a youth~~
25 ~~who is 16 years of age or older as provided in [section 2];~~

1 ~~(b)(1)~~ transfer legal custody to any of the following:

2 (i) department of social and rehabilitation services;

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

7 (iii) a relative or other individual who, after study
8 by a social service agency designated by the court, is found
9 by the court to be qualified to receive and care for the
10 youth;

11 ~~(c)(1)~~ order any party to the action to do what is
12 necessary to give effect to the final disposition, including
13 undertaking medical and psychological evaluations,
14 treatment, and counseling;

15 ~~(d)(2)~~ order such further care and treatment as the
16 court may deem in the best interest of the youth.

17 (2) Whenever the court vests legal custody in any
18 agency, institution, or department, it shall transmit with
19 the dispositional judgment copies of any medical report and
20 such other clinical, predisposition, or other reports and
21 information as may be pertinent to the care and treatment of
22 the youth.

23 (3) Any youth found to be abused, neglected, or
24 dependent may be committed or the court may make such other
25 disposition of the child as the court deems best for his

social and physical welfare. The form of commitment shall be as follows:

ORDER OF COMMITMENT

State of Montana)

) ss.

County of)

In the district court for the Judicial District.

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

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

Name	Address	Occupation
.....
.....

The child's guardian is

The child is in the custody of

It is ordered that be committed to until discharged as provided by law.

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

.....

Judge

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

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

Section 4. Section 41-3-407, MCA, is amended to read:

"41-3-407. Order for financial support. (1) Whenever a youth is placed in a foster home, child care agency, group home, or private treatment facility or has been granted an order of limited emancipation under 41-3-406, the court shall determine the ability of the youth's parents or guardian to contribute to the support of the youth or the adequacy of the guardianship assets to provide a contribution. This question of financial ability shall be considered at the dispositional hearing, and evidence concerning financial status may be introduced. In determining financial ability the court shall consider the report prepared pursuant to 41-3-405 and any other evidence introduced at the dispositional hearing.

(2) If the court determines that the parents are able to contribute to the support of the youth or that the

guardianship assets are adequate to provide a contribution, the court shall issue an order directing the parents or guardian to make specified payments to the department of social and rehabilitation services to the extent considered appropriate under the circumstances. Payments required of a guardian may not exceed the funds available from guardianship assets. Upon a showing of change in financial ability, the court may modify the order."

NEW SECTION. Section 5. Limited emancipation. (1) The court, after the dispositional hearing provided for in 41-3-404, may, upon the request of a youth who is 16 years of age or older, enter an order granting limited emancipation to the youth.

(2) Limited emancipation may be granted only if the court has found:

(a) that limited emancipation is in the youth's best interests;

(b) that the youth desires limited emancipation;

(c) that there exists no public interest compelling denial of limited emancipation;

(d) that the youth has, or will reasonably obtain, money sufficient to pay for financial obligations incurred as a result of limited emancipation;

(e) that the youth, as shown by prior conduct and preparation, understands and may be expected to responsibly

exercise those rights and responsibilities incurred as a result of limited emancipation; and

(f) that the youth has graduated or will continue to diligently pursue graduation from high school, unless circumstances clearly compel deferral of education; ~~AND~~

~~(G) THAT THE YOUTH WILL UNDERGO PERIODIC COUNSELING WITH AN APPROPRIATE ADVISOR.~~

(3) An order of limited emancipation must specifically set forth the rights and responsibilities that are being conferred upon the youth. These may include but are not limited to one or more of the following:

(a) the right to live independently of in-house supervision;

(b) the right to live in housing of the youth's choice;

(c) the right to directly receive and expend money to which the youth is entitled and to conduct his own financial affairs;

(d) the right to enter into contractual agreements and incur debts;

(e) the right to obtain access to medical treatment and records upon the youth's own authorization; and

(f) the right to obtain a license to operate equipment or perform a service.

(4) An order of limited emancipation must include a

provision requiring that the youth make periodic reports to the court upon terms prescribed by the court.

(5) If no order for contribution is made under 41-3-407 and the court determines that a youth to whom limited emancipation is granted does not have sufficient funds to finance transition to limited emancipated status, the court may order the department to provide such funds, not to exceed \$500, directly to the youth. The youth shall account to the court for the disposition of such funds and shall repay all such money to the department within 1 year of the order of limited emancipation unless the court for cause orders an extension.

(6) The court, on its own motion or on the motion of any parties to the dispositional hearing, may modify or revoke the order upon a showing that:

(a) the youth has committed a material violation of the law;

(b) the youth is failing to diligently pursue graduation from high school;

(c) the youth has violated a condition of the limited emancipation order; or

(d) the best interests of the youth are no longer served by limited emancipation; OR

~~(E) THE YOUTH HAS DISCONTINUED PERIODIC COUNSELING WITH APPROVED ADVISORS.~~

(7) The department shall mail a copy of this part to all high school counseling offices.

Section 6. Section 41-1-306, MCA, is amended to read:

"41-1-306. Minor cannot disaffirm certain obligations.

A minor cannot disaffirm an obligation, otherwise valid, entered into by him under the express authority or direction of a statute or when he has been granted limited emancipation, including a specific right to enter into contracts, under 41-3-406 and [section 5]."

NEW SECTION. Section 7. Codification instruction. Section 5 is intended to be codified as an integral part of Title 41, chapter 3, part 4, and the provisions of Title 41, chapter 3, apply to section 5.

NEW SECTION. Section 8. Effective date. This act is effective July 1, 1983.

-End-

March 25, 1983

SENATE STANDING COMMITTEE REPORT
(Judiciary)

That House Bill No. 856 be amended as follows:

1. Page 9, line 11.
Strike: "41-3-404"
Insert: "41-3-406"

HOUSE BILL NO. 956

INTRODUCED BY BERGENE, VINCENT

A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW AN ORDER OF LIMITED EMANCIPATION TO BE GRANTED TO A YOUTH WHO IS 16 YEARS OF AGE OR OLDER AND WHO IS FOUND TO BE ABUSED, NEGLECTED, OR DEPENDENT; AMENDING SECTIONS 41-1-306, 41-3-102, AND 41-3-405 THROUGH 41-3-407, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

Section 1. Section 41-3-102, MCA, is amended to read:

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

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

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

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

(a) inflicts or allows to be inflicted upon the child physical or mental injury, including injuries sustained as a

result of excessive corporal punishment;

(b) commits or allows to be committed a sexual assault against the child or exploits the child or allows the child to be exploited for sexual purposes or commits or allows to be committed the act of sexual abuse of children as defined in subsection (1) of 45-5-625;

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

(d) abandons the child by leaving him under circumstances that make reasonable the belief that the parent or other person does not intend to resume care of the child in the future or by willfully surrendering physical custody for a period of 6 months and during that period does not manifest to the child and the person having physical custody of the child a firm intention to resume physical custody or to make permanent legal arrangements for the care of the child; or

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

(4) "Adequate health care" means any medical or nonmedical remedial health care permitted or authorized

1 under state law.

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

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

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

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

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

15 (a) who is abandoned;

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

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

20 (d) who is destitute;

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

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

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

1 dependent, abused, or neglected as defined in this section.

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

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

9 ~~(13) "Limited emancipation" means a status conferred on~~
10 ~~a dependent youth by a court after a dispositional hearing~~
11 ~~in accordance with 41-3-406 under which the youth is~~
12 ~~entitled to exercise some but not all of the rights and~~
13 ~~responsibilities of a person who is 18 years of age or~~
14 ~~older."~~

15 Section 2. Section 41-3-405, MCA, is amended to read:

16 "41-3-405. Investigation of parents' or guardian's
17 financial ability. (1) Whenever a court determines a youth
18 to be an abused, neglected, or dependent child pursuant to
19 41-3-404, the court shall issue an order directing the
20 county welfare department of the county in which the
21 petition was filed to conduct an investigation of the
22 financial status of the child's parents or the extent of
23 guardianship assets.

24 (2) ~~(a)~~ Upon receipt of the order, the county welfare
25 department shall make an investigation for the purpose of

1 ascertaining the residence of the parents or guardian of the
2 child and the financial ability of the parents or the
3 adequacy of the guardianship assets to pay the cost of
4 supporting the child;

5 (ii) in a foster home, child care agency, group home,
6 or private treatment facility; ~~or~~

7 ~~(iii) as a child of limited emancipation, as may be~~
8 ~~ordered under 41-3-406.~~

9 (b) A written report of the investigation shall be
10 filed with the clerk of court before the time fixed for the
11 dispositional hearing.

12 (3) A copy of the written report shall be provided to
13 all parties to the proceeding before the time set for the
14 dispositional hearing."

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

16 "41-3-406. Dispositional hearing. (1) If a youth is
17 found to be abused, neglected, or dependent under 41-3-404,
18 the court after the dispositional hearing may enter its
19 judgment making any of the following dispositions to protect
20 the welfare of the youth:

21 (a) permit the youth to remain with his parents or
22 guardian subject to those conditions and limitations the
23 court may prescribe;

24 ~~(b) grant an order of limited emancipation to a youth~~
25 ~~who is 16 years of age or older as provided in [section 5];~~

1 ~~(b)(1)~~ transfer legal custody to any of the following:

2 (i) department of social and rehabilitation services;

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

7 (iii) a relative or other individual who, after study
8 by a social service agency designated by the court, is found
9 by the court to be qualified to receive and care for the
10 youth;

11 ~~(c)(1)~~ order any party to the action to do what is
12 necessary to give effect to the final disposition, including
13 undertaking medical and psychological evaluations,
14 treatment, and counseling;

15 ~~(d)(1)~~ order such further care and treatment as the
16 court may deem in the best interest of the youth.

17 (2) Whenever the court vests legal custody in any
18 agency, institution, or department, it shall transmit with
19 the dispositional judgment copies of any medical report and
20 such other clinical, predisposition, or other reports and
21 information as may be pertinent to the care and treatment of
22 the youth.

23 (3) Any youth found to be abused, neglected, or
24 dependent may be committed or the court may make such other
25 disposition of the child as the court deems best for his

1 social and physical welfare. The form of commitment shall
2 be as follows:

3 ORDER OF COMMITMENT

4 State of Montana)

5) ss.

6 County of)

7 In the district court for the Judicial District.

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

15 The names, addresses, and occupations of the parents
16 are:

17 Name	18 Address	19 Occupation
.....
.....

20 The child's guardian is

21 The child is in the custody of

22 It is ordered that be committed to until
23 discharged as provided by law.

24 Witness my hand this day of, A.D. 19...

25

1 Judge

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

5 (5) Except in cases in which the court permanently
6 terminates all parental rights or rights of the guardian of
7 the youth, the court shall retain jurisdiction over the case
8 and may subsequently modify any disposition ordered pursuant
9 to this section.*

10 Section 4. Section 41-3-407, MCA, is amended to read:

11 "41-3-407. Order for financial support. (1) Whenever a
12 youth is placed in a foster home, child care agency, group
13 home, or private treatment facility ~~or has been granted an~~
14 ~~order of limited emancipation~~ under 41-3-406, the court
15 shall determine the ability of the youth's parents or
16 guardian to contribute to the support of the youth or the
17 adequacy of the guardianship assets to provide a
18 contribution. This question of financial ability shall be
19 considered at the dispositional hearing, and evidence
20 concerning financial status may be introduced. In
21 determining financial ability the court shall consider the
22 report prepared pursuant to 41-3-405 and any other evidence
23 introduced at the dispositional hearing.

24 (2) If the court determines that the parents are able
25 to contribute to the support of the youth or that the

guardianship assets are adequate to provide a contribution, the court shall issue an order directing the parents or guardian to make specified payments to the department of social and rehabilitation services to the extent considered appropriate under the circumstances. Payments required of a guardian may not exceed the funds available from guardianship assets. Upon a showing of change in financial ability, the court may modify the order."

~~NEW SECTION.~~ Section 5. Limited emancipation. (1) The court, after the dispositional hearing provided for in ~~41-3-404 41-3-406~~, may, upon the request of a youth who is 16 years of age or older, enter an order granting limited emancipation to the youth.

(2) Limited emancipation may be granted only if the court has found:

(a) that limited emancipation is in the youth's best interests;

(b) that the youth desires limited emancipation;

(c) that there exists no public interest compelling denial of limited emancipation;

(d) that the youth has, or will reasonably obtain, money sufficient to pay for financial obligations incurred as a result of limited emancipation;

(e) that the youth, as shown by prior conduct and preparation, understands and may be expected to responsibly

exercise those rights and responsibilities incurred as a result of limited emancipation; and

(f) that the youth has graduated or will continue to diligently pursue graduation from high school, unless circumstances clearly compel deferral of education; ~~AND~~

~~(G) THAT THE YOUTH WILL UNDERGO PERIODIC COUNSELING WITH AN APPROPRIATE ADVISOR.~~

(3) An order of limited emancipation must specifically set forth the rights and responsibilities that are being conferred upon the youth. These may include but are not limited to one or more of the following:

(a) the right to live independently of in-house supervision;

(b) the right to live in housing of the youth's choice;

(c) the right to directly receive and expend money to which the youth is entitled and to conduct his own financial affairs;

(d) the right to enter into contractual agreements and incur debts;

(e) the right to obtain access to medical treatment and records upon the youth's own authorization; and

(f) the right to obtain a license to operate equipment or perform a service.

(4) An order of limited emancipation must include a

1 provision requiring that the youth make periodic reports to
2 the court upon terms prescribed by the court.

3 (5) If no order for contribution is made under
4 41-3-407 and the court determines that a youth to whom
5 limited emancipation is granted does not have sufficient
6 funds to finance transition to limited emancipated status,
7 the court may order the department to provide such funds,
8 not to exceed \$500, directly to the youth. The youth shall
9 account to the court for the disposition of such funds and
10 shall repay all such money to the department within 1 year
11 of the order of limited emancipation unless the court for
12 cause orders an extension.

13 (6) The court, on its own motion or on the motion of
14 any parties to the dispositional hearing, may modify or
15 revoke the order upon a showing that:

16 (a) the youth has committed a material violation of
17 the law;

18 (b) the youth is failing to diligently pursue
19 graduation from high school;

20 (c) the youth has violated a condition of the limited
21 emancipation order; or

22 (d) the best interests of the youth are no longer
23 served by limited emancipation. ~~OR~~

24 ~~(E) THE YOUTH HAS DISCONTINUED PERIODIC COUNSELING~~
25 ~~WITH APPROVED ADVISORS.~~

1 (7) The department shall mail a copy of this part to
2 all high school counseling offices.

3 Section 6. Section 41-1-306, MCA, is amended to read:

4 "41-1-306. Minor cannot disaffirm certain obligations.
5 A minor cannot disaffirm an obligation, otherwise valid,
6 entered into by him under the express authority or direction
7 of a statute or when he has been granted limited
8 emancipation, including a specific right to enter into
9 contracts, under 41-3-406 and [section 5]."

10 NEW SECTION. Section 7. Codification instruction.
11 Section 5 is intended to be codified as an integral part of
12 Title 41, chapter 3, part 4, and the provisions of Title 41,
13 chapter 3, apply to section 5.

14 NEW SECTION. Section 8. Effective date. This act is
15 effective July 1, 1983.

-End-