

HOUSE BILL NO. 686

INTRODUCED BY KEENAN, MILES, KRUEGER, ADDY,
DARKO, JACK MOORE, MERCER, BERGENE, NATHE,
MILLER, COBB, JANET MOORE

IN THE HOUSE

February 6, 1985	Introduced and referred to Committee on Judiciary. Fiscal Note requested.
February 12, 1985	Fiscal Note returned.
February 23, 1985	Committee recommend bill do pass as amended. Report adopted.
February 25, 1985	Bill printed and placed on members' desks.
February 26, 1985	Second reading, do pass. Considered correctly engrossed.
February 27, 1985	Third reading, passed. Transmitted to Senate.

IN THE SENATE

March 5, 1985	Introduced and referred to Committee on Public Health, Welfare and Safety.
March 28, 1985	Committee recommend bill be concurrred in as amended. Report adopted.
March 30, 1985	Second reading, concurrred in.
April 1, 1985	Third reading, concurrred in. Ayes, 48; Noes, 0. Returned to House with amendments.

IN THE HOUSE

April 2, 1985	Received from Senate.
April 8, 1985	Second reading, amendments not concurred in. On motion, Conference Committee requested.
April 9, 1985	Conference Committee appointed.
April 19, 1985	Conference Committee dissolved. On motion, Free Conference Committee requested and appointed.
April 20, 1985	Free Conference Committee reported.
April 22, 1985	Second reading, pass consideration.
April 23, 1985	Second reading, Free Conference Committee report adopted. Third reading, Free Conference Committee report adopted. Free Conference Committee report adopted by Senate.
April 24, 1985	Sent to enrolling. Reported correctly enrolled.

Thorne HOUSE BILL NO. *686* *Janet Moore*
 INTRODUCED BY *Kerman Miles* *KRUEGER* *Ally*
Barke Mace *Bergene* *NATH* *Miller* *Cobb*

1 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
 2 PROCEDURES RELATING TO THE FILING AND CONDUCT OF CHILD
 3 ABUSE, NEGLECT, OR DEPENDENCY PROCEEDINGS; AMENDING SECTIONS
 4 41-3-401 THROUGH 41-3-404 AND 41-3-406, MCA."
 5

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

7 Section 1. Section 41-3-401, MCA, is amended to read:

8 "41-3-401. Abuse, neglect, and dependency petitions.

9 (1) The county attorney, attorney general, or an attorney
 10 hired by the county welfare department shall be responsible
 11 for filing all petitions alleging abuse, neglect, or
 12 dependency. He may require all state, county, and municipal
 13 agencies, including law enforcement agencies, to conduct
 14 such investigations and furnish such reports as may be
 15 necessary. Investigations as to financial status may not be
 16 made prior to the adjudicatory hearing provided for in
 17 41-3-404.
 18

19 (2) Upon receipt of a petition, the court shall set a
 20 date for an adjudicatory hearing on the petition. Such
 21 petitions shall be given preference by the court in setting
 22 hearing dates and must be heard within 20 days of the filing
 23 of the petition.
 24
 25

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

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

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

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

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

24 (8) Except where the proceeding is instituted or
 25 commenced by a representative of the department of social



-2- INTRODUCED BILL
HB 686

1 and rehabilitation services, a citation shall be issued and
2 served upon a representative of the department prior to the
3 court hearing.

4 (9) The petition shall:

5 (a) state the nature of the alleged abuse, neglect, or
6 dependency;

7 (b) state the full name, age, and address of the youth
8 and the name and address of his parents or guardian or
9 person having legal custody of the youth;

10 (c) state the names, addresses, and relationship to
11 the youth of all persons who are necessary parties to the
12 action.

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

14 (a) temporary investigative authority and protective
15 services;

16 (b) temporary legal custody;

17 (c) termination of the parent-child legal
18 relationship;

19 ~~(d) permanent legal custody, including the right to~~
20 ~~consent to adoption;~~

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

22 ~~(f)~~(d) any combination of the above or such other
23 relief as may be required for the best interest of the
24 youth.

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

1 at any time within the discretion of the court.

2 (12) The court may at any time on its own motion or the
3 motion of any party appoint ~~a guardian ad litem for the~~
4 ~~youth or~~ counsel for any indigent party.

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

7 Section 2. Section 41-3-402, MCA, is amended to read:

8 "41-3-402. Petition for temporary investigative
9 authority and protective services. (1) In cases where it
10 appears that a youth is abused or neglected or is in danger
11 of being abused or neglected, the county attorney, attorney
12 general, or an attorney hired by the county welfare
13 department may file a petition for temporary investigative
14 authority and protective services.

15 (2) A petition for temporary investigative authority
16 and protective services shall state the specific authority
17 requested and the facts establishing probable cause that a
18 youth is abused or neglected or is in danger of being abused
19 or neglected.

20 (3) The petition for temporary investigative authority
21 and protective services shall be supported by an affidavit
22 signed by the county attorney, attorney general, or county
23 welfare department attorney or a department of social and
24 rehabilitation services report stating in detail the facts
25 upon which the request is based."

1 Section 3. Section 41-3-403, MCA, is amended to read:

2 "41-3-403. Order for immediate protection of youth.

3 (1) (a) Upon the filing of a petition for temporary
4 investigative authority and protective services, the court
5 may issue an order granting such relief as may be required
6 for the immediate protection of the youth.

7 (b) The order, along with the petition and supporting
8 documents, shall be served by a peace officer or a
9 representative of the department of social and
10 rehabilitation services on the person or persons named
11 therein.

12 (c) The order shall require the person served to
13 comply immediately with the terms thereof ~~or~~ ~~upon failure~~
14 ~~to so comply,~~ to appear before the court issuing the order
15 on the date specified and show cause why he has not complied
16 with the order. The show cause hearing must be conducted
17 within 20 days of the issuance of the order by the judge or
18 a master appointed by the judge. The person filing the
19 petition has the burden of presenting evidence establishing
20 probable cause for the issuance of the order. Except as
21 otherwise provided herein, the rules of civil procedure
22 shall apply.

23 (d) Upon a failure to comply or show cause the court
24 may hold the person in contempt or place temporary legal
25 custody of the youth with the department of social and

1 rehabilitation services until further order.

2 (2) The court may grant the following kinds of relief:

3 (a) right of entry by a peace officer or department of
4 social and rehabilitation services worker;

5 (b) medical and psychological evaluation of youth or
6 parents, guardians, or person having legal custody;

7 (c) require the youth, parents, guardians, or person
8 having legal custody to receive counseling services;

9 (d) place the youth in temporary medical facility or
10 facility for protection of the youth;

11 (e) require the parents, guardian, or other person
12 having custody to furnish such services as the court may
13 designate;

14 (f) such other temporary disposition as may be
15 required in the best interest of the youth."

16 Section 4. Section 41-3-404, MCA, is amended to read:

17 "41-3-404. Adjudicatory hearing -- temporary
18 disposition. (1) In the adjudicatory hearing on a petition
19 under 41-3-401 ~~or~~ ~~41-3-402~~, the court shall determine
20 whether the youth is a youth in need of care and ascertain,
21 as far as possible, the cause.

22 (2) The court shall hear evidence regarding the
23 residence of the youth, the whereabouts of the parents,
24 guardian, or nearest adult relative, and any other matters
25 the court considers relevant in determining the status of

1 the youth.

2 (3) In all civil and criminal proceedings relating to
3 abuse, neglect, or dependency, none of the privileges
4 related to the examination or treatment of the child and
5 granted in Title 26, chapter 1, part 8, except the
6 attorney-client privilege granted by 26-1-803, apply.

7 (4) (a) If the court determines that the youth is not
8 an abused, neglected, or dependent child, the petition shall
9 be dismissed and any order made pursuant to 41-3-403 shall
10 be vacated.

11 (b) If the court determines that the youth is an
12 abused, neglected, or dependent child, the court shall set a
13 date for a dispositional hearing to be conducted within 30
14 days and order any necessary or required investigations. ~~The~~
15 ~~dispositional---hearing---shall---be---scheduled---as---soon---as~~
16 ~~practicable.~~ The court may issue a temporary dispositional
17 order pending the dispositional hearing. The temporary
18 dispositional order may provide for any of the forms of
19 relief listed in 41-3-403(2)."

20 Section 5. Section 41-3-406, MCA, is amended to read:

21 "41-3-406. Dispositional hearing. ~~(1)~~ If a youth is
22 found to be abused, neglected, or dependent under 41-3-404,
23 the court after the dispositional hearing may enter its
24 judgment making any of the following dispositions to protect
25 the welfare of the youth:

1 ~~(a)~~(1) permit the youth to remain with his parents or
2 guardian subject to those conditions and limitations the
3 court may prescribe;

4 ~~(b)~~(2) grant an order of limited emancipation to a
5 youth who is 16 years of age or older as provided in
6 ~~(section-5)~~ 41-3-408;

7 ~~(c)~~(3) transfer legal custody to any of the following:
8 ~~(i)~~(a) department of social and rehabilitation
9 services;

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

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

19 ~~(d)~~(4) order any party to the action to do what is
20 necessary to give effect to the final disposition, including
21 undertaking medical and psychological evaluations,
22 treatment, and counseling;

23 ~~(e)~~(5) order such further care and treatment as the
24 court may deem in the best interest of the youth.

25 ~~(2)---Whenever---the---court---vests---legal---custody---in---any~~

1 agency, institution, or department, it shall transmit with
2 the dispositional judgment copies of any medical report and
3 such other clinical, predisposition, or other reports and
4 information as may be pertinent to the care and treatment of
5 the youth.

6 (3) Any youth found to be abused, neglected, or
7 dependent may be committed or the court may make such other
8 disposition of the child as the court deems best for his
9 social and physical welfare. The form of commitment shall
10 be as follows:

ORDER OF COMMITMENT

11 State of Montana }
12 } ss.
13 }
14 County of _____ }

15 In the district court for the _____ Judicial District,
16 On the _____ day of _____, 19____, _____ minor of this
17 county, was charged on the petition of _____ county attorney
18 of _____ County, with being an abused or neglected or
19 dependent child. Upon due proof I find that it is for the
20 best interests of the child that he be taken from the
21 custody of his parents, guardian, or other person having
22 custody of him.

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

25 Name Address Occupation

1
2

3 The child's guardian is

4 The child is in the custody of

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

7 Witness my hand this _____ day of _____ A.D. 19____

8
9 Judge

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

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

18 NEW SECTION. Section 6. Extension of authority. Any
19 existing authority of the department of social and
20 rehabilitation services to make rules on the subject of the
21 provisions of this act is extended to the provisions of this
22 act.

-End-

STATE OF MONTANA

FISCAL NOTE

REQUEST NO. FNN 348-85

Form BD-15

In compliance with a written request received February 6, 19 85, there is hereby submitted a Fiscal Note for H.B. 686 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA). 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:

H.B. 686 is an act to generally revise procedures relating to the filing and conduct of child abuse, neglect, or dependency proceedings.

FISCAL IMPACT:

No fiscal impact.

David L Hunter

BUDGET DIRECTOR
Office of Budget and Program Planning

Date: Feb 12, 1985

APPROVED BY COMMITTEE
ON JUDICIARY

HOUSE BILL NO. 686

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DARKO, JACK MOORE, MERCER, BERGENE, NATHE,
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A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
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ABUSE, NEGLECT, OR DEPENDENCY PROCEEDINGS; AMENDING SECTIONS
41-3-401 THROUGH 41-3-404 AND 41-3-406, MCA."

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

Section 1. Section 41-3-401, MCA, is amended to read:

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

(1) The county attorney, attorney general, or an attorney
hired by the county welfare department OR OFFICE OF HUMAN
SERVICES shall be responsible for filing all petitions
alleging abuse, neglect, or dependency. He THE COUNTY
ATTORNEY OR ATTORNEY GENERAL, OR AN ATTORNEY HIRED BY THE
COUNTY WELFARE DEPARTMENT OR OFFICE OF HUMAN SERVICES WITH
THE WRITTEN CONSENT OF THE COUNTY ATTORNEY OR ATTORNEY
GENERAL, may require all state, county, and municipal
agencies, including law enforcement agencies, to conduct
such investigations and furnish such reports as may be
necessary. Investigations as to financial status may not be
made prior to the adjudicatory hearing provided for in

41-3-404.

(2) Upon receipt of a petition, the court shall set a
date for an adjudicatory hearing on the petition. Such
petitions shall be given preference by the court in setting
hearing dates and must be heard within 20 days of the filing
of the petition.

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

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

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

(6) If a parent of the child is a minor, notice shall

1 be given to the minor parent's parents or guardian, and if
 2 there is no guardian the court shall appoint one.

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

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

10 (9) The petition shall:

11 (a) state the nature of the alleged abuse, neglect, or
 12 dependency;

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

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

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

20 (a) temporary investigative authority and protective
 21 services;

22 (b) temporary legal custody;

23 (c) termination of the parent-child legal
 24 relationship;

25 ~~fd) permanent legal custody, including the right to~~

1 ~~consent-to-adoption;~~

2 ~~fe) appointment of guardian ad item;~~

3 ~~ff)(d)~~ any combination of the above or such other
 4 relief as may be required for the best interest of the
 5 youth.

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

8 (12) The court may at any time on its own motion or the
 9 motion of any party appoint ~~a guardian ad item for the~~
 10 ~~youth or~~ counsel for any indigent party.

11 ~~13) This section does not apply to a petition for~~
 12 ~~temporary investigative authority and protective services."~~

13 Section 2. Section 41-3-402, MCA, is amended to read:

14 "41-3-402. Petition for temporary investigative
 15 authority and protective services. (1) In cases where it
 16 appears that a youth is abused or neglected or is in danger
 17 of being abused or neglected, the county attorney, attorney
 18 general, or an attorney hired by the county welfare
 19 department OR OFFICE OF HUMAN SERVICES may file a petition
 20 for temporary investigative authority and protective
 21 services.

22 (2) A petition for temporary investigative authority
 23 and protective services shall state the specific authority
 24 requested and the facts establishing probable cause that a
 25 youth is abused or neglected or is in danger of being abused

1 or neglected.

2 (3) The petition for temporary investigative authority
 3 and protective services shall be supported by an affidavit
 4 signed by the county attorney, attorney general, or county
 5 welfare department attorney, OR OFFICE OF HUMAN SERVICES
 6 ATTORNEY or a department of social and rehabilitation
 7 services report stating in detail the facts upon which the
 8 request is based."

9 Section 3. Section 41-3-403, MCA, is amended to read:

10 "41-3-403. Order for immediate protection of youth.

11 (1) (a) Upon the filing of a petition for temporary
 12 investigative authority and protective services, the court
 13 may issue an order granting such relief as may be required
 14 for the immediate protection of the youth.

15 (b) The order, along with the petition and supporting
 16 documents, shall be served by a peace officer or a
 17 representative of the department of social and
 18 rehabilitation services on the person or persons named
 19 therein.

20 (c) The order shall require the person served to
 21 comply immediately with the terms thereof ~~or, upon failure~~
 22 ~~to so comply,~~ to appear before the court issuing the order
 23 on the date specified and show cause why he has not complied
 24 with the order. The show cause hearing must be conducted
 25 within 20 days of the issuance of the order by the judge or

1 a master appointed by the judge. The person filing the
 2 petition has the burden of presenting evidence establishing
 3 probable cause for the issuance of the order. Except as
 4 otherwise provided herein, the rules of civil procedure
 5 shall apply.

6 (d) Upon a failure to comply or show cause the court
 7 may hold the person in contempt or place temporary legal
 8 custody of the youth with the department of social and
 9 rehabilitation services until further order.

10 (2) The court may grant the following kinds of relief:

11 (a) right of entry by a peace officer or department of
 12 social and rehabilitation services worker;

13 (b) medical and psychological evaluation of youth or
 14 parents, guardians, or person having legal custody;

15 (c) require the youth, parents, guardians, or person
 16 having legal custody to receive counseling services;

17 (d) place the youth in temporary medical facility or
 18 facility for protection of the youth;

19 (e) require the parents, guardian, or other person
 20 having custody to furnish such services as the court may
 21 designate;

22 (f) such other temporary disposition as may be
 23 required in the best interest of the youth."

24 Section 4. Section 41-3-404, MCA, is amended to read:

25 "41-3-404. Adjudicatory hearing -- temporary

1 disposition. (1) In the adjudicatory hearing on a petition
 2 under 41-3-401 ~~or 41-3-402~~, the court shall determine
 3 whether the youth is a youth in need of care and ascertain,
 4 as far as possible, the cause.

5 (2) The court shall hear evidence regarding the
 6 residence of the youth, the whereabouts of the parents,
 7 guardian, or nearest adult relative, and any other matters
 8 the court considers relevant in determining the status of
 9 the youth.

10 (3) In all civil and criminal proceedings relating to
 11 abuse, neglect, or dependency, none of the privileges
 12 related to the examination or treatment of the child and
 13 granted in Title 26, chapter 1, part 8, except the
 14 attorney-client privilege granted by 26-1-803, apply.

15 (4) (a) If the court determines that the youth is not
 16 an abused, neglected, or dependent child, the petition shall
 17 be dismissed and any order made pursuant to 41-3-403 shall
 18 be vacated.

19 (b) If the court determines that the youth is an
 20 abused, neglected, or dependent child, the court shall set a
 21 date for a dispositional hearing to be conducted within 30
 22 days and order any necessary or required investigations. The
 23 ~~dispositional hearing shall be scheduled as soon as~~
 24 ~~practicable.~~ The court may issue a temporary dispositional
 25 order pending the dispositional hearing. The temporary

1 dispositional order may provide for any of the forms of
 2 relief listed in 41-3-403(2)."

3 Section 5. Section 41-3-406, MCA, is amended to read:
 4 "41-3-406. Dispositional hearing. ~~(1)~~ If a youth is
 5 found to be abused, neglected, or dependent under 41-3-404,
 6 the court after the dispositional hearing may enter its
 7 judgment making any of the following dispositions to protect
 8 the welfare of the youth:

9 ~~(a)(1)~~ permit the youth to remain with his parents or
 10 guardian subject to those conditions and limitations the
 11 court may prescribe;

12 ~~(b)(2)~~ grant an order of limited emancipation to a
 13 youth who is 16 years of age or older as provided in
 14 ~~section 5~~ 41-3-408;

15 ~~(c)(3)~~ transfer legal custody to any of the following:
 16 ~~(i)(a)~~ department of social and rehabilitation
 17 services;

18 ~~(ii)(b)~~ a child-placing agency willing and able to
 19 assume responsibility for the education, care, and
 20 maintenance of the youth and which is licensed or otherwise
 21 authorized by law to receive and provide care of the youth;
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23 ~~(iii)(c)~~ a relative or other individual who, after
 24 study by a social service agency designated by the court, is
 25 found by the court to be qualified to receive and care for

1 the youth;
2 {d}(4) order any party to the action to do what is
3 necessary to give effect to the final disposition, including
4 undertaking medical and psychological evaluations,
5 treatment, and counseling;

6 {e}(5) order such further care and treatment as the
7 court may deem in the best interest of the youth.

8 {2}--Whenever--the--court--vests--legal--custody--in--any
9 agency, institution, or department, it shall transmit with
10 the--dispositional--judgment--copies--of--any--medical--report--and
11 such--other--clinical, predisposition, or other reports--and
12 information--as--may--be--pertinent--to--the--care--and--treatment--of
13 the--youth;

14 {3}--Any--youth--found--to--be--abused, neglected, or
15 dependent--may--be--committed--or--the--court--may--make--such--other
16 disposition--of--the--child--as--the--court--deems--best--for--his
17 social--and--physical--welfare.--The--form--of--commitment--shall
18 be--as--follows:

19 ORDER OF COMMITMENT

20 State of Montana }

21 } ss:

22 County of _____ }

23 In--the--district--court--for--the--____-Judicial--District;

24 On--the--____-day--of--____,--19____,--____,--minor--of--this
25 county, was charged on the petition of _____ county attorney

1 of-----County, with being an abused or neglected or
2 dependent child. Upon due proof I find that it is for the
3 best interests of the child that he be taken from the
4 custody of his parents, guardian, or other person having
5 custody of him.

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

8 Name Address Occupation

9 _____

10 _____

11 The child's guardian is _____

12 The child is in the custody of _____

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

15 Witness my hand this _____ day of _____ A.D. 19____

16 _____

17 Judge

18 {4}--Transfer of legal custody of a child shall include
19 guardianship of any assets or estate of the child, unless
20 otherwise specified by the court.

21 {5}--Except in cases in which the court permanently
22 terminates all parental rights or rights of the guardian of
23 the youth, the court shall retain jurisdiction over the case
24 and may subsequently modify any disposition ordered pursuant
25 to this section."

1 NEW SECTION. Section 6. Extension of authority. Any
2 existing authority of the department of social and
3 rehabilitation services to make rules on the subject of the
4 provisions of this act is extended to the provisions of this
5 act.

-End-

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parents or parent, guardian, or other person or agency
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(6) If a parent of the child is a minor, notice shall



1 be given to the minor parent's parents or guardian, and if
2 there is no guardian the court shall appoint one.

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

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

10 (9) The petition shall:

11 (a) state the nature of the alleged abuse, neglect, or
12 dependency;

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

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

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

20 (a) temporary investigative authority and protective
21 services;

22 (b) temporary legal custody;

23 (c) termination of the parent-child legal
24 relationship;

25 ~~(d) permanent legal custody, including the right to~~

1 ~~consent-to-adoption;~~

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

3 ~~(f)(d)~~ any combination of the above or such other
4 relief as may be required for the best interest of the
5 youth.

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

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

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

13 Section 2. Section 41-3-402, MCA, is amended to read:

14 "41-3-402. Petition for temporary investigative
15 authority and protective services. (1) In cases where it
16 appears that a youth is abused or neglected or is in danger
17 of being abused or neglected, the county attorney, attorney
18 general, or an attorney hired by the county welfare
19 department OR OFFICE OF HUMAN SERVICES may file a petition
20 for temporary investigative authority and protective
21 services.

22 (2) A petition for temporary investigative authority
23 and protective services shall state the specific authority
24 requested and the facts establishing probable cause that a
25 youth is abused or neglected or is in danger of being abused

1 or neglected.

2 (3) The petition for temporary investigative authority
 3 and protective services shall be supported by an affidavit
 4 signed by the county attorney, attorney general, or county
 5 welfare department attorney, OR OFFICE OF HUMAN SERVICES
 6 ATTORNEY or a department of social and rehabilitation
 7 services report stating in detail the facts upon which the
 8 request is based."

9 Section 3. Section 41-3-403, MCA, is amended to read:

10 "41-3-403. Order for immediate protection of youth.

11 (1) (a) Upon the filing of a petition for temporary
 12 investigative authority and protective services, the court
 13 may issue an order granting such relief as may be required
 14 for the immediate protection of the youth.

15 (b) The order, along with the petition and supporting
 16 documents, shall be served by a peace officer or a
 17 representative of the department of social and
 18 rehabilitation services on the person or persons named
 19 therein.

20 (c) The order shall require the person served to
 21 comply immediately with the terms thereof or, ~~upon failure~~
 22 ~~to so comply,~~ to appear before the court issuing the order
 23 on the date specified and show cause why he has not complied
 24 with the order. The show cause hearing must be conducted
 25 within 20 days of the issuance of the order by the judge or

1 a master appointed by the judge. The person filing the
 2 petition has the burden of presenting evidence establishing
 3 probable cause for the issuance of the order. Except as
 4 otherwise provided herein, the rules of civil procedure
 5 shall apply.

6 (d) Upon a failure to comply or show cause the court
 7 may hold the person in contempt or place temporary legal
 8 custody of the youth with the department of social and
 9 rehabilitation services until further order.

10 (2) The court may grant the following kinds of relief:

11 (a) right of entry by a peace officer or department of
 12 social and rehabilitation services worker;

13 (b) medical and psychological evaluation of youth or
 14 parents, guardians, or person having legal custody;

15 (c) require the youth, parents, guardians, or person
 16 having legal custody to receive counseling services;

17 (d) place the youth in temporary medical facility or
 18 facility for protection of the youth;

19 (e) require the parents, guardian, or other person
 20 having custody to furnish such services as the court may
 21 designate;

22 (E) such other temporary disposition as may be
 23 required in the best interest of the youth."

24 Section 4. Section 41-3-404, MCA, is amended to read:

25 "41-3-404. Adjudicatory hearing -- temporary

1 disposition. (1) In the adjudicatory hearing on a petition
 2 under 41-3-401 or ~~41-3-402~~, the court shall determine
 3 whether the youth is a youth in need of care and ascertain,
 4 as far as possible, the cause.

5 (2) The court shall hear evidence regarding the
 6 residence of the youth, the whereabouts of the parents,
 7 guardian, or nearest adult relative, and any other matters
 8 the court considers relevant in determining the status of
 9 the youth.

10 (3) In all civil and criminal proceedings relating to
 11 abuse, neglect, or dependency, none of the privileges
 12 related to the examination or treatment of the child and
 13 granted in Title 26, chapter 1, part 8, except the
 14 attorney-client privilege granted by 26-1-803, apply.

15 (4) (a) If the court determines that the youth is not
 16 an abused, neglected, or dependent child, the petition shall
 17 be dismissed and any order made pursuant to 41-3-403 shall
 18 be vacated.

19 (b) If the court determines that the youth is an
 20 abused, neglected, or dependent child, the court shall set a
 21 date for a dispositional hearing to be conducted within 30
 22 days and order any necessary or required investigations. ~~The~~
 23 ~~dispositional---hearing---shall---be---scheduled---as---soon---as~~
 24 ~~practicable.~~ The court may issue a temporary dispositional
 25 order pending the dispositional hearing. The temporary

1 dispositional order may provide for any of the forms of
 2 relief listed in 41-3-403(2)."

3 Section 5. Section 41-3-406, MCA, is amended to read:

4 "41-3-406. Dispositional hearing. ~~(i)~~ If a youth is
 5 found to be abused, neglected, or dependent under 41-3-404,
 6 the court after the dispositional hearing may enter its
 7 judgment making any of the following dispositions to protect
 8 the welfare of the youth:

9 ~~(i)~~(1) permit the youth to remain with his parents or
 10 guardian subject to those conditions and limitations the
 11 court may prescribe;

12 ~~(ii)~~(2) grant an order of limited emancipation to a
 13 youth who is 16 years of age or older as provided in
 14 ~~{section-5}~~ 41-3-408;

15 ~~(iii)~~(3) transfer legal custody to any of the following:

16 ~~(i)~~(a) department of social and rehabilitation
 17 services;

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

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

1 the youth;

2 {d}(4) order any party to the action to do what is
3 necessary to give effect to the final disposition, including
4 undertaking medical and psychological evaluations,
5 treatment, and counseling;

6 {e}(5) order such further care and treatment as the
7 court may deem in the best interest of the youth.

8 {2}--Whenever--the--court--vests--legal--custody--in--any
9 agency, institution, or department, it shall transmit with
10 the--dispositional--judgment--copies--of--any--medical--report--and
11 such--other--clinical,--predisposition,--or--other--reports--and
12 information--as--may--be--pertinent--to--the--care--and--treatment--of
13 the--youth.

14 {3}--Any--youth--found--to--be--abused,--neglected,--or
15 dependent--may--be--committed--or--the--court--may--make--such--other
16 disposition--of--the--child--as--the--court--deems--best--for--his
17 social--and--physical--wellfare.--The--form--of--commitment--shall
18 be--as--follows:

19 ORDER-OF-COMMITMENT

20 State-of-Montana }

21 } ss.

22 County-of- }
23 }

23 In--the--district--court--for--the--Judicial--District.

24 On--the--day--of--19--minor--of--this
25 county, was charged on the petition of county attorney

1 of--County,--with--being--an--abused--or--neglected--or
2 dependent--child.--Upon--due--proof--I--find--that--it--is--for--the
3 best--interests--of--the--child--that--he--be--taken--from--the
4 custody--of--his--parents,--guardian,--or--other--person--having
5 custody--of--him.

6 The--names,--addresses,--and--occupations--of--the--parents
7 are:

8 Name Address Occupation

9

10

11 The--child's--guardian--is

12 The--child--is--in--the--custody--of

13 It--is--ordered--that--be--committed--to--until

14 discharged--as--provided--by--law.

15 Witness--my--hand--this--day--of--A.D. 19

16

17 Judge

18 {4}--Transfer--of--legal--custody--of--a--child--shall--include

19 guardianship--of--any--assets--or--estate--of--the--child,--unless

20 otherwise--specified--by--the--court.

21 {5}--Except--in--cases--in--which--the--court--permanently

22 terminates--all--parental--rights--or--rights--of--the--guardian--of

23 the--youth,--the--court--shall--retain--jurisdiction--over--the--case

24 and--may--subsequently--modify--any--disposition--ordered--pursuant

25 to--this--section."

1 NEW SECTION. Section 6. Extension of authority. Any
2 existing authority of the department of social and
3 rehabilitation services to make rules on the subject of the
4 provisions of this act is extended to the provisions of this
5 act.

-End-

SENATE STANDING COMMITTEE REPORT

March 27 1985

MR. PRESIDENT

We, your committee on Public Health, Welfare and Safety having had under consideration House Bill No. 686 third reading copy (blue color)

REVISE PROCEDURE CONCERNING ABUSE, NEGLECT, OR DEPENDENCY PROCEEDINGS

KEENAN (JACOBSON)

Respectfully report as follows: That House Bill No. 686

be amended as follows:

- 1. Page 1, lines 14 through 16. Following: "county attorney" on line 14 Strike: "/" Insert: "or" Following: "general" on line 14 Strike: remainder of line 14 through "SERVICES" on line 16.
2. Page 4, line 17. Following: "county attorney" on line 17 Strike: "/" Insert: "or"
3. Page 4, lines 18 and 19. Following: "general" on line 18 Strike: remainder of line 18 through "SERVICES" on line 19
4. Page 5, line 19. Following: "therein." Insert: "An attempt must be made to notify the parents or guardian at the same time as the terms of the order are carried out, or as soon thereafter as possible."

XXXXXX

AND AS AMENDED BE CONCURRED IN

XXXXXXXXXX

Judy Jacobson SENATOR JUDY JACOBSON Chairman.

HOUSE BILL NO. 686

INTRODUCED BY KEENAN, MILES, KRUEGER, ADDY,
DARKO, JACK MOORE, MERCER, BERGENE, NATHE,
MILLER, COBB, JANET MOORE

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
PROCEDURES RELATING TO THE FILING AND CONDUCT OF CHILD
ABUSE, NEGLECT, OR DEPENDENCY PROCEEDINGS; AMENDING SECTIONS
41-3-401 THROUGH 41-3-404 AND 41-3-406, MCA."

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

Section 1. Section 41-3-401, MCA, is amended to read:

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

(1) The county attorney, ~~OR attorney general, or an attorney
hired--by--the--county-welfare-department OR OFFICE OF HUMAN
SERVICES~~ shall be responsible for filing all petitions
alleging abuse, neglect, or dependency. He THE COUNTY
ATTORNEY OR ATTORNEY GENERAL, OR AN ATTORNEY HIRED BY THE
COUNTY WELFARE DEPARTMENT OR OFFICE OF HUMAN SERVICES WITH
THE WRITTEN CONSENT OF THE COUNTY ATTORNEY OR ATTORNEY
GENERAL, may require all state, county, and municipal
agencies, including law enforcement agencies, to conduct
such investigations and furnish such reports as may be
necessary. Investigations as to financial status may not be
made prior to the adjudicatory hearing provided for in

41-3-404.

(2) Upon receipt of a petition, the court shall set a
date for an adjudicatory hearing on the petition. Such
petitions shall be given preference by the court in setting
hearing dates and must be heard within 20 days of the filing
of the petition.

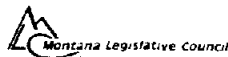
(3) A petition alleging abuse, neglect, or dependency
is a civil action brought in the name of the state of
Montana. The rules of civil procedure shall apply except as
herein modified. Proceedings under a petition are not a bar
to criminal prosecution.

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

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

(6) If a parent of the child is a minor, notice shall

REFERENCE BILL



1 be given to the minor parent's parents or guardian, and if
2 there is no guardian the court shall appoint one.

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

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

10 (9) The petition shall:

11 (a) state the nature of the alleged abuse, neglect, or
12 dependency;

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

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

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

20 (a) temporary investigative authority and protective
21 services;

22 (b) temporary legal custody;

23 (c) termination of the parent-child legal
24 relationship;

25 ~~(d) permanent legal custody, including the right to~~

1 ~~consent-to-adoption;~~

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

3 ~~(f)(d)~~ any combination of the above or such other
4 relief as may be required for the best interest of the
5 youth.

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

8 (12) The court may at any time on its own motion or the
9 motion of any party appoint ~~a guardian ad litem for the~~
10 ~~youth or~~ counsel for any indigent party.

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

13 Section 2. Section 41-3-402, MCA, is amended to read:

14 "41-3-402. Petition for temporary investigative
15 authority and protective services. (1) In cases where it
16 appears that a youth is abused or neglected or is in danger
17 of being abused or neglected, the county attorney OR
18 attorney general, or an attorney hired by the county welfare
19 department OR OFFICE OF HUMAN SERVICES may file a petition
20 for temporary investigative authority and protective
21 services.

22 (2) A petition for temporary investigative authority
23 and protective services shall state the specific authority
24 requested and the facts establishing probable cause that a
25 youth is abused or neglected or is in danger of being abused

1 or neglected.

2 (3) The petition for temporary investigative authority
3 and protective services shall be supported by an affidavit
4 signed by the county attorney, attorney general, or county
5 welfare department attorney, OR OFFICE OF HUMAN SERVICES
6 ATTORNEY or a department of social and rehabilitation
7 services report stating in detail the facts upon which the
8 request is based."

9 Section 3. Section 41-3-403, MCA, is amended to read:

10 "41-3-403. Order for immediate protection of youth.

11 (1) (a) Upon the filing of a petition for temporary
12 investigative authority and protective services, the court
13 may issue an order granting such relief as may be required
14 for the immediate protection of the youth.

15 (b) The order, along with the petition and supporting
16 documents, shall be served by a peace officer or a
17 representative of the department of social and
18 rehabilitation services on the person or persons named
19 therein. AN ATTEMPT MUST BE MADE TO NOTIFY THE PARENTS OR
20 GUARDIAN AT THE SAME TIME AS THE TERMS OF THE ORDER ARE
21 CARRIED OUT, OR AS SOON THEREAFTER AS POSSIBLE.

22 (c) The order shall require the person served to
23 comply immediately with the terms thereof ~~or~~ upon failure
24 ~~to so comply~~ to appear before the court issuing the order
25 on the date specified and show cause why he has not complied

1 with the order. The show cause hearing must be conducted
2 within 20 days of the issuance of the order by the judge or
3 a master appointed by the judge. The person filing the
4 petition has the burden of presenting evidence establishing
5 probable cause for the issuance of the order. Except as
6 otherwise provided herein, the rules of civil procedure
7 shall apply.

8 (d) Upon a failure to comply or show cause the court
9 may hold the person in contempt or place temporary legal
10 custody of the youth with the department of social and
11 rehabilitation services until further order.

12 (2) The court may grant the following kinds of relief:

13 (a) right of entry by a peace officer or department of
14 social and rehabilitation services worker;

15 (b) medical and psychological evaluation of youth or
16 parents, guardians, or person having legal custody;

17 (c) require the youth, parents, guardians, or person
18 having legal custody to receive counseling services;

19 (d) place the youth in temporary medical facility or
20 facility for protection of the youth;

21 (e) require the parents, guardian, or other person
22 having custody to furnish such services as the court may
23 designate;

24 (f) such other temporary disposition as may be
25 required in the best interest of the youth."

1 Section 4. Section 41-3-404, MCA, is amended to read:

2 "41-3-404. Adjudicatory hearing -- temporary
3 disposition. (1) In the adjudicatory hearing on a petition
4 under 41-3-401 or--41-3-402, the court shall determine
5 whether the youth is a youth in need of care and ascertain,
6 as far as possible, the cause.

7 (2) The court shall hear evidence regarding the
8 residence of the youth, the whereabouts of the parents,
9 guardian, or nearest adult relative, and any other matters
10 the court considers relevant in determining the status of
11 the youth.

12 (3) In all civil and criminal proceedings relating to
13 abuse, neglect, or dependency, none of the privileges
14 related to the examination or treatment of the child and
15 granted in Title 26, chapter 1, part 8, except the
16 attorney-client privilege granted by 26-1-803, apply.

17 (4) (a) If the court determines that the youth is not
18 an abused, neglected, or dependent child, the petition shall
19 be dismissed and any order made pursuant to 41-3-403 shall
20 be vacated.

21 (b) If the court determines that the youth is an
22 abused, neglected, or dependent child, the court shall set a
23 date for a dispositional hearing to be conducted within 30
24 days and order any necessary or required investigations. The
25 ~~dispositional hearing shall be scheduled as soon as~~

1 ~~practicable.~~ The court may issue a temporary dispositional
2 order pending the dispositional hearing. The temporary
3 dispositional order may provide for any of the forms of
4 relief listed in 41-3-403(2)."

5 Section 5. Section 41-3-406, MCA, is amended to read:

6 "41-3-406. Dispositional hearing. ~~(i)~~ If a youth is
7 found to be abused, neglected, or dependent under 41-3-404,
8 the court after the dispositional hearing may enter its
9 judgment making any of the following dispositions to protect
10 the welfare of the youth:

11 ~~(a)~~(1) permit the youth to remain with his parents or
12 guardian subject to those conditions and limitations the
13 court may prescribe;

14 ~~(b)~~(2) grant an order of limited emancipation to a
15 youth who is 16 years of age or older as provided in
16 ~~(section-5)~~ 41-3-408;

17 ~~(c)~~(3) transfer legal custody to any of the following:

18 ~~(i)~~(a) department of social and rehabilitation
19 services;

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

25 ~~(iii)~~(c) a relative or other individual who, after

1 study by a social service agency designated by the court, is
2 found by the court to be qualified to receive and care for
3 the youth;

4 (d)(4) order any party to the action to do what is
5 necessary to give effect to the final disposition, including
6 undertaking medical and psychological evaluations,
7 treatment, and counseling;

8 (e)(5) order such further care and treatment as the
9 court may deem in the best interest of the youth.

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

16 (3) Any youth found to be abused, neglected, or
17 dependent may be committed or the court may make such other
18 disposition of the child as the court deems best for his
19 social and physical welfare. The form of commitment shall
20 be as follows:

ORDER OF COMMITMENT

21 State of Montana }

22 } ss:

23 County of _____ }

24 In the district court for the _____ Judicial District,
25

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

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

10 Name	11 Address	12 Occupation
13	14	15
16	17	18

13 The child's guardian is _____

14 The child is in the custody of _____

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

17 Witness my hand this _____ day of _____ A.D. 19____

18 _____
19 Judge

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

23 (5) Except in cases in which the court permanently
24 terminates all parental rights or rights of the guardian of
25 the youth, the court shall retain jurisdiction over the case

1 and-may-subsequently-modify-any-disposition-ordered-pursuant
2 to-this-section:"

3 NEW SECTION. Section 6. Extension of authority. Any
4 existing authority of the department of social and
5 rehabilitation services to make rules on the subject of the
6 provisions of this act is extended to the provisions of this
7 act.

-End-

CONFERENCE COMMITTEE REPORT

Report No.1.....

...April 19... 19..85...

MR. SPEAKER

We, your _____ FREE _____ Conference Committee on

HOUSE BILL 686, reference copy - salmon

met and considered _____

Public Health, Welfare and Safety Report of 3-27-85

We recommend as follows:

1. Title, following line 8.
 Insert: "41-3-301,"
 Following: "41-3-404"
 Insert: ",,"

2. Page 1, following line 11.
 Insert: "Section 1. Section 41-3-301, MCA, is amended to read:
 "41-3-301. Emergency protective service. (1) Any child protective social worker of the department of social and rehabilitation services, the county welfare department, a peace officer, or the county attorney who has reason to believe any youth is in immediate or apparent danger of

PAGE 1 OF 2.
CONTINUED ON PAGE 2.

And that this Conference Committee report be adopted.

FOR THE SENATE

FOR THE HOUSE

AS

Jacobson
 Jacobson, Chairman
Lynch
 Lynch
Stephens
 Stephens

Hannah
 Hannah
Gould
 Gould
Keenan
 Keenan

ADOPT REJECT

Krueger
Krueger

FREE CONFERENCE COMMITTEE REPORT
HB 686
PAGE 2 OF 2

harm may immediately remove the youth and place him in a protective facility. The department may make a request for further assistance from the law enforcement agency or take appropriate legal action. The person or agency placing the child shall notify the parents, parent, guardian, or other person having legal custody of the youth at the time the placement is made or as soon thereafter as possible.

(2) No child who has been removed from his home or any other place for his protection or care may be placed in a jail.

(3) A petition shall be filed within 48 hours of emergency placement of a child unless arrangements acceptable to the agency for the care of the child have been made by the parents.

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

Renumber: subsequent sections

3. Page 5, lines 19 through 21.

Strike: "AN" through "POSSIBLE" on line 21.

Insert: "When the youth is placed in a medical facility or protective facility, the department shall notify the parents or parent, guardian, or other person having legal custody of the youth at the time the placement is made, or as soon thereafter as possible"

1 HOUSE BILL NO. 686

2 INTRODUCED BY KEENAN, MILES, KRUEGER, ADDY,

3 DARKO, JACK MOORE, MERCER, BERGENE, NATHE,

4 MILLER, COBB, JANET MOORE

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
7 PROCEDURES RELATING TO THE FILING AND CONDUCT OF CHILD
8 ABUSE, NEGLECT, OR DEPENDENCY PROCEEDINGS; AMENDING SECTIONS
9 41-3-301, 41-3-401 THROUGH 41-3-404, AND 41-3-406, MCA."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:12 SECTION 1. SECTION 41-3-301, MCA, IS AMENDED TO READ:

13 "41-3-301. Emergency protective service. (1) Any child
14 protective social worker of the department of social and
15 rehabilitation services, the county welfare department, a
16 peace officer, or the county attorney who has reason to
17 believe any youth is in immediate or apparent danger of harm
18 may immediately remove the youth and place him in a
19 protective facility. The department may make a request for
20 further assistance from the law enforcement agency or take
21 appropriate legal action. The person or agency placing the
22 child shall notify the parents, parent, guardian, or other
23 person having legal custody of the youth at the time the
24 placement is made or as soon thereafter as possible.

25 (2) No child who has been removed from his home or any

1 other place for his protection or care may be placed in a
2 jail.

3 (3) A petition shall be filed within 48 hours of
4 emergency placement of a child unless arrangements
5 acceptable to the agency for the care of the child have been
6 made by the parents.

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

11 Section 2. Section 41-3-401, MCA, is amended to read:

12 "41-3-401. Abuse, neglect, and dependency petitions.

13 (1) The county attorney, OR attorney general, or an
14 attorney hired by the county welfare department OR OFFICE OF
15 HUMAN SERVICES OR AN ATTORNEY HIRED BY THE COUNTY WELFARE
16 DEPARTMENT OR OFFICE OF HUMAN SERVICES shall be responsible
17 for filing all petitions alleging abuse, neglect, or
18 dependency. He THE COUNTY ATTORNEY OR ATTORNEY GENERAL, OR
19 AN ATTORNEY HIRED BY THE COUNTY WELFARE DEPARTMENT OR OFFICE
20 OF HUMAN SERVICES WITH THE WRITTEN CONSENT OF THE COUNTY
21 ATTORNEY OR ATTORNEY GENERAL, may require all state, county,
22 and municipal agencies, including law enforcement agencies,
23 to conduct such investigations and furnish such reports as
24 may be necessary. Investigations as to financial status may
25 not be made prior to the adjudicatory hearing provided for

1 in 41-3-404.

2 (2) Upon receipt of a petition, the court shall set a
 3 date for an adjudicatory hearing on the petition. Such
 4 petitions shall be given preference by the court in setting
 5 hearing dates and must be heard within 20 days of the filing
 6 of the petition.

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

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

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

25 (6) If a parent of the child is a minor, notice shall

1 be given to the minor parent's parents or guardian, and if
 2 there is no guardian the court shall appoint one.

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

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

10 (9) The petition shall:

11 (a) state the nature of the alleged abuse, neglect, or
 12 dependency;

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

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

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

20 (a) temporary investigative authority and protective
 21 services;

22 (b) temporary legal custody;

23 (c) termination of the parent-child legal
 24 relationship;

25 ~~(d) permanent legal custody, including the right to~~

1 consent-to-adoption;

2 {e}--appointment-of-guardian-ad-litem;

3 {f}{d} any combination of the above or such other
4 relief as may be required for the best interest of the
5 youth.

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

8 (12) The court may at any time on its own motion or the
9 motion of any party appoint a--guardian--ad--litem--for--the
10 youth-or counsel for any indigent party.

11 {13}--This--section--does--not--apply--to--a--petition--for
12 temporary-investigative-authority-and-protective--services--"

13 Section 3. Section 41-3-402, MCA, is amended to read:

14 "41-3-402. Petition for temporary investigative
15 authority and protective services. (1) In cases where it
16 appears that a youth is abused or neglected or is in danger
17 of being abused or neglected, the county attorney, OR
18 attorney general, or an attorney hired by the county
19 welfare department OR OFFICE OF HUMAN SERVICES OR AN
20 ATTORNEY HIRED BY THE COUNTY WELFARE DEPARTMENT OR OFFICE OF
21 HUMAN SERVICES may file a petition for temporary
22 investigative authority and protective services.

23 (2) A petition for temporary investigative authority
24 and protective services shall state the specific authority
25 requested and the facts establishing probable cause that a

1 youth is abused or neglected or is in danger of being abused
2 or neglected.

3 (3) The petition for temporary investigative authority
4 and protective services shall be supported by an affidavit
5 signed by the county attorney, attorney general, or county
6 welfare department attorney, OR OFFICE OF HUMAN SERVICES
7 ATTORNEY or a department of social and rehabilitation
8 services report stating in detail the facts upon which the
9 request is based."

10 Section 4. Section 41-3-403, MCA, is amended to read:

11 "41-3-403. Order for immediate protection of youth.

12 (1) (a) Upon the filing of a petition for temporary
13 investigative authority and protective services, the court
14 may issue an order granting such relief as may be required
15 for the immediate protection of the youth.

16 (b) The order, along with the petition and supporting
17 documents, shall be served by a peace officer or a
18 representative of the department of social and
19 rehabilitation services on the person or persons named
20 therein. AN-ATTEMPT-MUST-BE-MADE-TO-NOTIFY--THE--PARENTS--OR
21 GUARDIAN--AT--THE--SAME--TIME--AS--THE-TERMS-OF--THE-ORDER--ARE
22 CARRIED-OUT--OR-AS-SOON--THEREAFTER--AS--POSSIBLE WHEN THE
23 YOUTH IS PLACED IN A MEDICAL FACILITY OR PROTECTIVE
24 FACILITY, THE DEPARTMENT SHALL NOTIFY THE PARENTS OR PARENT,
25 GUARDIAN, OR OTHER PERSON HAVING LEGAL CUSTODY OF THE YOUTH

1 AT THE TIME THE PLACEMENT IS MADE, OR AS SOON THEREAFTER AS
 2 POSSIBLE.

3 (c) The order shall require the person served to
 4 comply immediately with the terms thereof ~~or, upon failure~~
 5 ~~to so comply,~~ to appear before the court issuing the order
 6 on the date specified and show cause why he has not complied
 7 with the order. The show cause hearing must be conducted
 8 within 20 days of the issuance of the order by the judge or
 9 a master appointed by the judge. The person filing the
 10 petition has the burden of presenting evidence establishing
 11 probable cause for the issuance of the order. Except as
 12 otherwise provided herein, the rules of civil procedure
 13 shall apply.

14 (d) Upon a failure to comply or show cause the court
 15 may hold the person in contempt or place temporary legal
 16 custody of the youth with the department of social and
 17 rehabilitation services until further order.

18 (2) The court may grant the following kinds of relief:

19 (a) right of entry by a peace officer or department of
 20 social and rehabilitation services worker

21 (b) medical and psychological evaluation of youth or
 22 parents, guardians, or person having legal custody;

23 (c) require the youth, parents, guardians, or person
 24 having legal custody to receive counseling services;

25 (d) place the youth in temporary medical facility or

1 facility for protection of the youth;

2 (e) require the parents, guardian, or other person
 3 having custody to furnish such services as the court may
 4 designate;

5 (f) such other temporary disposition as may be
 6 required in the best interest of the youth."

7 Section 5. Section 41-3-404, MCA, is amended to read:

8 "41-3-404. Adjudicatory hearing -- temporary
 9 disposition. (1) In the adjudicatory hearing on a petition
 10 under 41-3-401 ~~or--41-3-402,~~ the court shall determine
 11 whether the youth is a youth in need of care and ascertain,
 12 as far as possible, the cause.

13 (2) The court shall hear evidence regarding the
 14 residence of the youth, the whereabouts of the parents,
 15 guardian, or nearest adult relative, and any other matters
 16 the court considers relevant in determining the status of
 17 the youth.

18 (3) In all civil and criminal proceedings relating to
 19 abuse, neglect, or dependency, none of the privileges
 20 related to the examination or treatment of the child and
 21 granted in Title 26, chapter 1, part 8, except the
 22 attorney-client privilege granted by 26-1-803, apply.

23 (4) (a) If the court determines that the youth is not
 24 an abused, neglected, or dependent child, the petition shall
 25 be dismissed and any order made pursuant to 41-3-403 shall

1 be vacated.

2 (b) If the court determines that the youth is an
 3 abused, neglected, or dependent child, the court shall set a
 4 date for a dispositional hearing to be conducted within 30
 5 days and order any necessary or required investigations. ~~The~~
 6 ~~dispositional hearing shall be scheduled as soon as~~
 7 ~~practicable.~~ The court may issue a temporary dispositional
 8 order pending the dispositional hearing. The temporary
 9 dispositional order may provide for any of the forms of
 10 relief listed in 41-3-403(2)."

11 Section 6. Section 41-3-406, MCA, is amended to read:

12 "41-3-406. Dispositional hearing. ~~(b)~~ If a youth is
 13 found to be abused, neglected, or dependent under 41-3-404,
 14 the court after the dispositional hearing may enter its
 15 judgment making any of the following dispositions to protect
 16 the welfare of the youth:

17 ~~(a)~~(1) permit the youth to remain with his parents or
 18 guardian subject to those conditions and limitations the
 19 court may prescribe;

20 ~~(b)~~(2) grant an order of limited emancipation to a
 21 youth who is 16 years of age or older as provided in
 22 ~~(section 5)~~ 41-3-408;

23 ~~(c)~~(3) transfer legal custody to any of the following:

24 ~~(i)~~(a) department of social and rehabilitation
 25 services;

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

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

10 ~~(d)~~(4) order any party to the action to do what is
 11 necessary to give effect to the final disposition, including
 12 undertaking medical and psychological evaluations,
 13 treatment, and counseling;

14 ~~(e)~~(5) order such further care and treatment as the
 15 court may deem in the best interest of the youth.

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

22 ~~(3) Any youth found to be abused, neglected, or~~
 23 ~~dependent may be committed or the court may make such other~~
 24 ~~disposition of the child as the court deems best for his~~
 25 ~~social and physical welfare. The form of commitment shall~~

1 be-as-follows:

2 ORDER-OF-COMMITMENT

3 State-of-Montana }

4 } ss:

5 County-of-..... }

6 In--the--district-court-for-the-----Judicial-District,

7 On-the-----day-of-----,19-----minor--of--this

8 county,was-charged-on-the-petition-of-----county-attorney

9 of-----County,--with--being--an--abused--or--neglected-or

10 dependent-child,Upon-due-proof-I-find-that-it--is--for--the

11 best--interests--of--the--child--that--he--be-taken-from-the

12 custody-of-his-parents,guardian,--or--other--person--having

13 custody-of-him.

14 The--names,--addresses,--and-occupations-of-the-parents

15 are:

16 Name Address Occupation

17

18

19 The-child's-guardian-is-----

20 The-child-is-in-the-custody-of-----

21 It-is-ordered-that-----be-committed--to-----until

22 discharged-as-provided-by-law.

23 Witness-my-hand-this-----day-of-----A:D--19-----

24

25 Judge

1 {4}--Transfer-of-legal-custody-of-a-child-shall-include

2 guardianship--of--any--assets-or-estate-of-the-child,unless

3 otherwise-specified-by-the-court.

4 {5}--Except-in-cases-in-which--the--court--permanently

5 terminates--all-parental-rights-or-rights-of-the-guardian-of

6 the-youth,--the-court-shall-retain-jurisdiction-over-the-case

7 and-may-subsequently-modify-any-disposition-ordered-pursuant

8 to-this-section."

9 NEW SECTION. Section 7. Extension of authority. Any

10 existing authority of the department of social and

11 rehabilitation services to make rules on the subject of the

12 provisions of this act is extended to the provisions of this

13 act.

-End-