

HOUSE BILL NO. 807

INTRODUCED BY HANNAH, KEATING

IN THE HOUSE

February 12, 1985	Introduced and referred to Committee on Judiciary.
February 21, 1985	Committee recommend bill do pass as amended. Report adopted.
	Bill printed and placed on members' desks.
February 23, 1985	Second reading, do pass.
	Considered correctly engrossed.
February 26, 1985	Third reading, passed.
	Transmitted to Senate.

IN THE SENATE

March 4, 1985	Introduced and referred to Committee on Public Health, Welfare and Safety.
April 3, 1985	On motion, taken from Committee on Public Health, Welfare and Safety and placed on second reading the 76th Legislative Day. Motion adopted.
April 9, 1985	Second reading, concurred in.
April 11, 1985	Third reading, concurred in. Ayes, 50; Noes, 0.
	Returned to House.

IN THE HOUSE

April 12, 1985

Received from Senate.

Sent to enrolling.

Reported correctly enrolled.

1 HOUSE BILL NO. 807
2 INTRODUCED BY Hanner Futing

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE
5 PROTECTION OF CERTAIN HANDICAPPED, INJURED, OR OTHERWISE
6 SERIOUSLY ILL CHILDREN BY REQUIRING THAT THEY BE GIVEN
7 MEDICAL TREATMENT; AMENDING SECTIONS 41-3-102, 41-3-202,
8 41-3-401 THROUGH 41-3-403, 41-3-406, AND 41-3-609, MCA."

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

11 NEW SECTION. Section 1. Medical care of children --
12 when required. (1) No infant born alive may be denied or
13 deprived of food, nutrients, water, or oxygen by any person
14 with the intent to cause or allow the death of the child for
15 any reason, including but not limited to the following:

16 (a) the child was born with a physically or mentally
17 handicapping condition which, in the opinion of the child's
18 parent, a physician, or other person diminishes the quality
19 of the child's life;

20 (b) the child is not wanted by the parent; or

21 (c) the child is born alive in the course of an
22 attempted abortion.

23 (2) No child, from the moment of live birth, may be
24 intentionally denied or deprived of any medical or surgical
25 care by his parent, physician, or any other person when such

1 medical or surgical care is necessary to attempt to save the
2 life of the child, in the opinion of a physician exercising
3 competent medical judgment, despite the opinion of the
4 child's parent, physician, or others that the quality of the
5 child's life would be deficient should the child live.

6 (3) Nothing in this section may be interpreted to
7 prevent a child's parent and physician from discontinuing
8 the use of life support systems or other medical treatment
9 for a child in a continual profound comatose state if, in
10 the opinion of the child's physician, exercising competent
11 medical judgment, the child has no reasonable chance of
12 recovery from the comatose state despite every appropriate
13 medical treatment to correct the condition; nor may this
14 section be interpreted to require the provision of
15 potentially lifesaving medical or surgical care to a child
16 if, in the opinion of the child's parent and physician,
17 exercising competent medical judgment, the potential risks
18 to the child's life or health inherent in the treatment or
19 surgery itself outweigh the potential benefits for survival
20 from the treatment or surgery.

21 NEW SECTION. Section 2. Parental consent to care and
22 treatment -- refusal -- liability for medical expenses.
23 (1) If a child's parent refuses to consent to treatment
24 required under [section 1], the parent may execute a
25 relinquishment of child custody pursuant to 40-6-135. The



1 department or other responsible agency shall immediately
2 arrange for the provision of treatment for the child and
3 shall make every effort to find an adoptive home for the
4 child. If the parent does not execute a relinquishment, the
5 physician shall report the matter pursuant to 41-3-201.

6 (2) The relinquishment does not affect the parent's
7 liability for medical expenses incurred by the child prior
8 to the child's placement for adoption. No medical insurer
9 of the parent or child who otherwise would have been liable
10 for such medical expenses may deny liability to an insured
11 solely because of the parent's desire to withhold medical or
12 surgical treatment for the child.

13 (3) No physician, hospital, or other person authorized
14 by law to provide medical or surgical care may be held
15 liable for providing care or treatment for a child protected
16 by [section 1] without the consent of the child's parent or
17 the agency having custody of the child, when in the opinion
18 of the physician, hospital, or other person authorized by
19 law to provide medical or surgical care, exercising
20 competent medical judgment, the child's life would be
21 threatened by delaying the provision of the care or
22 treatment.

23 Section 3. Section 41-3-102, MCA, is amended to read:
24 "41-3-102. Definitions. As used in this chapter, the
25 following definitions apply:

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

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

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

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

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

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

23 (d) abandons the child by leaving him under
24 circumstances that make reasonable the belief that the
25 parent or other person does not intend to resume care of the

1 child in the future or by willfully surrendering physical
 2 custody for a period of 6 months and during that period does
 3 not manifest to the child and the person having physical
 4 custody of the child a firm intention to resume physical
 5 custody or to make permanent legal arrangements for the care
 6 of the child; or

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

10 (4) "Adequate health care" means any medical or
 11 nonmedical remedial health care required under [section 1]
 12 or otherwise permitted or authorized under state law.

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

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

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

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

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

1 (a) who is abandoned;

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

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

6 (d) who is destitute;

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

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

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

13 (11) "Supervision" means the authority granted by a
 14 youth court or by a voluntary agreement of a parent to
 15 determine the foster care placement of a child and the
 16 length of stay of a child in foster care and provide for the
 17 needs of a child under subsection (1) of 41-3-1122.

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

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

1 Section 4. Section 41-3-202, MCA, is amended to read:

2 "41-3-202. Action on reporting. (1) Upon receipt of a
3 report as required by 41-3-201 that a child is or has been
4 abused or neglected, a social worker or the county attorney
5 or a peace officer shall promptly conduct a thorough
6 investigation into the home of the child involved or any
7 other place where the child is present, into the
8 circumstances surrounding the injury of the child, and into
9 all other nonfinancial matters which in the discretion of
10 the investigator are relevant to the investigation. In
11 conducting an investigation under this section, a social
12 worker may not inquire into the financial status of the
13 child's family or of any other person responsible for the
14 child's care.

15 (2) The social worker is responsible for assessing the
16 family and planning for the child. If the child is treated
17 at a medical facility, the social worker, county attorney,
18 or peace officer shall, consistent with reasonable medical
19 practice, have the right of access to the child for
20 interviews, photographs, and securing physical evidence and
21 have the right of access to relevant hospital and medical
22 records pertaining to the child.

23 (3) If from the investigation it appears that the
24 child suffered abuse or neglect, the department shall
25 provide protective services to the child and may provide

1 protective services to any other child under the same care.
2 The department will advise the county attorney of its
3 investigation.

4 (4) The investigating social worker, within 60 days of
5 commencing an investigation, shall also furnish a written
6 report to the department. The department shall maintain a
7 record system containing child abuse and neglect cases.

8 (5) Any person reporting abuse or neglect which
9 involves acts or omissions on the part of a public or
10 private residential institution, home, facility, or agency
11 shall be responsible for ensuring that the report is made to
12 the department of social and rehabilitation services, its
13 local affiliate, and the county attorney of the county in
14 which the facility is located.

15 (6) Upon receipt of a report pursuant to [section 2],
16 a social worker or the county attorney shall immediately
17 conduct an investigation and take any action necessary to
18 ensure that any treatment required by [section 1] is
19 provided."

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

21 "41-3-401. Abuse, neglect, and dependency petitions.

22 (1) The Except as provided in subsection (14), the county
23 attorney shall be responsible for filing all petitions
24 alleging abuse, neglect, or dependency. He may require all
25 state, county, and municipal agencies, including law

1 enforcement agencies, to conduct such investigations and
2 furnish such reports as may be necessary. Investigations as
3 to financial status may not be made prior to the
4 adjudicatory hearing provided for in 41-3-404.

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

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

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

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

1 court the interests of justice require.

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

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

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

12 (9) The petition shall:

13 (a) state the nature of the alleged abuse, neglect, or
14 dependency;

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

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

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

22 (a) temporary investigative authority and protective
23 services;

24 (b) temporary legal custody;

25 (c) termination of the parent-child legal

1 relationship;

2 (d) permanent legal custody, including the right to
3 consent to adoption;

4 (e) appointment of guardian ad litem;

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

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

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

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

14 (14) A petition alleging abuse or neglect of a child
15 protected by [section 1] may be filed by any person."

16 Section 6. Section 41-3-402, MCA, is amended to read:

17 "41-3-402. Petition for temporary investigative
18 authority and protective services. (1) In cases where it
19 appears that a youth is abused or neglected or is in danger
20 of being abused or neglected, the county attorney may file a
21 petition for temporary investigative authority and
22 protective services. A petition on behalf of a child
23 protected by [section 1] may be filed by any person.

24 (2) A petition for temporary investigative authority
25 and protective services shall state the specific authority

1 requested and the facts establishing probable cause that a
2 youth is abused or neglected or is in danger of being abused
3 or neglected.

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

9 Section 7. 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 shall be served by a peace officer or a
16 representative of the department of social and
17 rehabilitation services on the person or persons named
18 therein.

19 (c) The order shall require the person served to
20 comply immediately with the terms thereof or, upon failure
21 to so comply, to appear before the court issuing the order
22 on the date specified and show cause why he has not complied
23 with the order. Except as otherwise provided herein, the
24 rules of civil procedure shall apply.

25 (d) Upon a failure to comply or show cause the court

1 may hold the person in contempt or place temporary legal
2 custody of the youth with the department of social and
3 rehabilitation services until further order.

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

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

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

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

11 (d) place the youth in temporary medical facility or
12 facility for protection of the youth;

13 (e) require the parents, guardian, or other person
14 having custody to furnish such services, including care or
15 treatment required by [section 1], as the court may
16 designate;

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

19 Section 8. Section 41-3-406, MCA, is amended to read:
20 "41-3-406. Dispositional hearing. (1) If a youth is
21 found to be abused, neglected, or dependent under 41-3-404,
22 the court after the dispositional hearing may enter its
23 judgment making any of the following dispositions to protect
24 the welfare of the youth:

25 (a) permit the youth to remain with his parents or

1 guardian subject to those conditions and limitations the
2 court may prescribe;

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

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

7 (i) department of social and rehabilitation services;

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

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

16 (d) order any party to the action to do what is
17 necessary to give effect to the final disposition, including
18 undertaking medical and psychological evaluations,
19 treatment, and counseling;

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

22 (2) If a youth is found to be abused, neglected, or
23 dependent under 41-3-404 solely because care or treatment of
24 the youth is required by [section 1], the court shall order
25 that the child remain in the legal custody of his parents or

1 guardian.

2 {2}{3} Whenever the court vests legal custody in any
3 agency, institution, or department, it shall transmit with
4 the dispositional judgment copies of any medical report and
5 such other clinical, predisposition, or other reports and
6 information as may be pertinent to the care and treatment of
7 the youth.

8 {3}{4} Any youth found to be abused, neglected, or
9 dependent may be committed or the court may make such other
10 disposition of the child as the court deems best for his
11 social and physical welfare. The form of commitment shall
12 be as follows:

13 ORDER OF COMMITMENT

14 State of Montana)

15) ss.

16 County of)

17 In the district court for the Judicial District.

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

25 The names, addresses, and occupations of the parents

1 are:

2 Name Address Occupation
3
4

5 The child's guardian is

6 The child is in the custody of

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

9 Witness my hand this day of, A.D. 19...
10

11 Judge

12 {4}{5} Transfer of legal custody of a child shall
13 include guardianship of any assets or estate of the child,
14 unless otherwise specified by the court.

15 {5}{6} Except in cases in which the court permanently
16 terminates all parental rights or rights of the guardian of
17 the youth, the court shall retain jurisdiction over the case
18 and may subsequently modify any disposition ordered pursuant
19 to this section."

20 Section 9. Section 41-3-609, MCA, is amended to read:

21 "41-3-609. Criteria for termination. (1) The court may
22 order a termination of the parent-child legal relationship
23 upon a finding that the circumstances contained in
24 subsection (1)(a), (1)(b), or (1)(c), as follows, exist:

25 (a) the parents have relinquished the child pursuant

1 to 40-6-132 through 40-6-134;

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

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

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

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

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

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

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

1 (c) a single incident of life-threatening or gravely
2 disabling injury to or disfigurement of the child caused by
3 the parent;

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

7 (e) present judicially-ordered long-term confinement
8 of the parent;

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

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

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

20 (4) The parent-child relationship of a child protected
21 by [section 1] may not be terminated solely because the
22 parent has refused to consent to care or treatment required
23 by [section 1]."

24 NEW SECTION. Section 10. Codification instruction.
25 Sections 1 and 2 are intended to be codified as an integral

1 part of Title 41, chapter 3, part 1, and the provisions of
2 Title 41, chapter 3, part 1, apply to sections 1 and 2.

3 NEW SECTION. Section 11. Severability. If a part of
4 this act is invalid, all valid parts that are severable from
5 the invalid part remain in effect. If a part of this act is
6 invalid in one or more of its applications, the part remains
7 in effect in all valid applications that are severable from
8 the invalid applications.

-End-

APPROVED BY COMMITTEE
ON JUDICIARY

HOUSE BILL NO. 807

INTRODUCED BY HANNAH, KEATING

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE PROTECTION OF CERTAIN HANDICAPPED, INJURED, OR OTHERWISE SERIOUSLY ILL CHILDREN BY REQUIRING THAT THEY BE GIVEN MEDICAL TREATMENT; AMENDING SECTIONS SECTION 41-3-102, 41-3-202, 41-3-401 THROUGH 41-3-403, 41-3-406, AND 41-3-609, MCA."

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

NEW SECTION: Section 1. Medical care of children when required; (1) No infant born alive may be denied or deprived of food, nutrients, water, or oxygen by any person with the intent to cause or allow the death of the child for any reason, including but not limited to the following:

(a) the child was born with a physically or mentally handicapping condition which, in the opinion of the child's parent, a physician, or other person diminishes the quality of the child's life;

(b) the child is not wanted by the parent; or

(c) the child is born alive in the course of an attempted abortion;

(2) No child, from the moment of live birth, may be intentionally denied or deprived of any medical or surgical

care by his parent, physician, or any other person when such medical or surgical care is necessary to attempt to save the life of the child, in the opinion of a physician exercising competent medical judgment, despite the opinion of the child's parent, physician, or others that the quality of the child's life would be deficient should the child live.

(3) Nothing in this section may be interpreted to prevent a child's parent and physician from discontinuing the use of life support systems or other medical treatment for a child in a continual profound comatose state if, in the opinion of the child's physician, exercising competent medical judgment, the child has no reasonable chance of recovery from the comatose state despite every appropriate medical treatment to correct the condition; nor may this section be interpreted to require the provision of potentially lifesaving medical or surgical care to a child if, in the opinion of the child's parent and physician, exercising competent medical judgment, the potential risks to the child's life or health inherent in the treatment or surgery itself outweigh the potential benefits for survival from the treatment or surgery.

NEW SECTION: Section 2. Parental consent to care and treatment; refusal; liability for medical expenses; (1) If a child's parent refuses to consent to treatment required under {section 1}, the parent may execute a



1 ~~relinquishment--of--child--custody--pursuant--to--40-6-135,--the~~
 2 ~~department--or--other--responsible--agency--shall--immediately~~
 3 ~~arrange--for--the--provision--of--treatment--for--the--child--and~~
 4 ~~shall--make--every--effort--to--find--an--adoptive--home--for--the~~
 5 ~~child,--If--the--parent--does--not--execute--a--relinquishment,--the~~
 6 ~~physician--shall--report--the--matter--pursuant--to--41-3-201.~~

7 ~~(2)--The--relinquishment--does--not--affect--the--parent's~~
 8 ~~liability--for--medical--expenses--incurred--by--the--child--prior~~
 9 ~~to--the--child's--placement--for--adoption,--No--medical--insurer~~
 10 ~~of--the--parent--or--child--who--otherwise--would--have--been--liable~~
 11 ~~for--such--medical--expenses--may--deny--liability--to--an--insured~~
 12 ~~solely--because--of--the--parent's--desire--to--withhold--medical--or~~
 13 ~~surgical--treatment--for--the--child.~~

14 ~~(3)--No--physician,--hospital,--or--other--person--authorized~~
 15 ~~by--law--to--provide--medical--or--surgical--care--may--be--held~~
 16 ~~liable--for--providing--care--or--treatment--for--a--child--protected~~
 17 ~~by--{section--i}--without--the--consent--of--the--child's--parent--or~~
 18 ~~the--agency--having--custody--of--the--child,--when--in--the--opinion~~
 19 ~~of--the--physician,--hospital,--or--other--person--authorized--by~~
 20 ~~law--to--provide--medical--or--surgical--care,--exercising~~
 21 ~~competent--medical--judgment,--the--child's--life--would--be~~
 22 ~~threatened--by--delaying--the--provision--of--the--care--or~~
 23 ~~treatment.~~

24 Section 1. Section 41-3-102, MCA, is amended to read:
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4 (2) An "abused or neglected child" means a child whose
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 6 threatened with harm by the acts or omissions of his parent
 7 or other person responsible for his welfare.

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

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

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

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

24 (d) abandons the child by leaving him under
 25 circumstances that make reasonable the belief that the

1 parent or other person does not intend to resume care of the
 2 child in the future or by willfully surrendering physical
 3 custody for a period of 6 months and during that period does
 4 not manifest to the child and the person having physical
 5 custody of the child a firm intention to resume physical
 6 custody or to make permanent legal arrangements for the care
 7 of the child; or

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

11 (4) "Adequate health care" means any medical or
 12 nonmedical remedial health care ~~required under {section 1}~~
 13 ~~or otherwise~~, INCLUDING THE PREVENTION OF THE WITHHOLDING OF
 14 MEDICALLY INDICATED TREATMENT, permitted or authorized under
 15 state law.

16 (5) "WITHHOLDING OF MEDICALLY INDICATED TREATMENT"
 17 MEANS THE FAILURE TO RESPOND TO AN INFANT'S LIFE-THREATENING
 18 CONDITIONS BY PROVIDING TREATMENT (INCLUDING APPROPRIATE
 19 NUTRITION, HYDRATION, AND MEDICATION) THAT, IN THE TREATING
 20 PHYSICIAN'S OR PHYSICIANS' REASONABLE MEDICAL JUDGMENT, WILL
 21 BE MOST LIKELY TO BE EFFECTIVE IN AMELIORATING OR CORRECTING
 22 ALL SUCH CONDITIONS. HOWEVER, THE TERM DOES NOT INCLUDE THE
 23 FAILURE TO PROVIDE TREATMENT (OTHER THAN APPROPRIATE
 24 NUTRITION, HYDRATION, OR MEDICATION) TO AN INFANT WHEN, IN
 25 THE TREATING PHYSICIAN'S OR PHYSICIANS' REASONABLE MEDICAL

1 JUDGMENT:

2 (A) THE INFANT IS CHRONICALLY AND IRREVERSIBLY
 3 COMATOSE;

4 (B) THE PROVISION OF SUCH TREATMENT WOULD:

5 (I) MERELY PROLONG DYING;

6 (II) NOT BE EFFECTIVE IN AMELIORATING OR CORRECTING ALL
 7 OF THE INFANT'S LIFE-THREATENING CONDITIONS; OR

8 (III) OTHERWISE BE FUTILE IN TERMS OF THE SURVIVAL OF
 9 THE INFANT; OR

10 (C) THE PROVISION OF SUCH TREATMENT WOULD BE VIRTUALLY
 11 FUTILE IN TERMS OF THE SURVIVAL OF THE INFANT AND THE
 12 TREATMENT ITSELF UNDER SUCH CIRCUMSTANCES WOULD BE INHUMANE.
 13 FOR PURPOSES OF THIS SUBSECTION, "INFANT" MEANS AN INFANT
 14 LESS THAN 1 YEAR OF AGE OR AN INFANT 1 YEAR OF AGE OR OLDER
 15 WHO HAS BEEN CONTINUOUSLY HOSPITALIZED SINCE BIRTH, WHO WAS
 16 BORN EXTREMELY PREMATURELY, OR WHO HAS A LONG-TERM
 17 DISABILITY. THE REFERENCE TO LESS THAN 1 YEAR OF AGE MAY NOT
 18 BE CONSTRUED TO IMPLY THAT TREATMENT SHOULD BE CHANGED OR
 19 DISCONTINUED WHEN AN INFANT REACHES 1 YEAR OF AGE OR TO
 20 AFFECT OR LIMIT ANY EXISTING PROTECTIONS AVAILABLE UNDER
 21 STATE LAWS REGARDING MEDICAL NEGLIGENCE OF CHILDREN OVER 1 YEAR
 22 OF AGE.

23 {5}{6} "Threatened harm" means imminent risk of harm.

24 {6}{7} "A person responsible for a child's welfare"
 25 means the child's parent, guardian, or foster parent; an

1 employee of a public or private residential institution,
2 facility, home, or agency; or any other person legally
3 responsible for the child's welfare in a residential
4 setting.

5 {7}{8} "Physical injury" means death, permanent or
6 temporary disfigurement, or impairment of any bodily organ
7 or function.

8 {8}{9} "Mental injury" means an identifiable and
9 substantial impairment of the child's intellectual or
10 psychological functioning.

11 {9}{10} "Dependent youth" means a youth:
12 (a) who is abandoned;
13 (b) who is without parents or guardian or not under
14 the care and supervision of a suitable adult;
15 (c) who has no proper guidance to provide for his
16 necessary physical, moral, and emotional well-being;
17 (d) who is destitute;
18 (e) who is dependent upon the public for support; or
19 (f) whose parent or parents have voluntarily
20 relinquished custody of the child and whose legal custody
21 has been transferred to a licensed agency.

22 {10}{11} "Youth in need of care" means a youth who is
23 dependent, abused, or neglected as defined in this section.

24 {11}{12} "Supervision" means the authority granted by a
25 youth court or by a voluntary agreement of a parent to

1 determine the foster care placement of a child and the
2 length of stay of a child in foster care and provide for the
3 needs of a child under subsection (1) of 41-3-1122.

4 {12}{13} "Department" means the department of social
5 and rehabilitation services provided for in 2-15-2201.

6 {13}{14} "Limited emancipation" means a status
7 conferred on a dependent youth by a court after a
8 dispositional hearing in accordance with 41-3-406 under
9 which the youth is entitled to exercise some but not all of
10 the rights and responsibilities of a person who is 18 years
11 of age or older."

12 ~~Section 4. -- Section 41-3-202, MCA, is amended to read:~~
13 ~~"41-3-202. -- Action on reporting. -- (1) Upon receipt of a~~
14 ~~report -- as -- required by 41-3-201 that a child is or has been~~
15 ~~abused or neglected, a social worker or the county -- attorney~~
16 ~~or -- a -- peace -- officer -- shall -- promptly -- conduct -- a -- thorough~~
17 ~~investigation into the home of the -- child -- involved -- or -- any~~
18 ~~other -- place -- where -- the -- child -- is -- present, -- into -- the~~
19 ~~circumstances surrounding the injury of the child, and -- into~~
20 ~~all -- other -- nonfinancial -- matters which in the discretion of~~
21 ~~the investigator -- are -- relevant -- to -- the -- investigation; -- In~~
22 ~~conducting -- an -- investigation -- under -- this section, a social~~
23 ~~worker may not inquire into -- the -- financial -- status -- of -- the~~
24 ~~child's -- family -- or -- of -- any -- other -- person -- responsible -- for -- the~~
25 ~~child's care.~~

1 (2) ~~The social worker is responsible for assessing the~~
2 ~~family and planning for the child. If the child is treated~~
3 ~~at a medical facility, the social worker, county attorney,~~
4 ~~or peace officer shall, consistent with reasonable medical~~
5 ~~practice, have the right of access to the child for~~
6 ~~interviews, photographs, and securing physical evidence and~~
7 ~~have the right of access to relevant hospital and medical~~
8 ~~records pertaining to the child.~~

9 (3) ~~If from the investigation it appears that the~~
10 ~~child suffered abuse or neglect, the department shall~~
11 ~~provide protective services to the child and may provide~~
12 ~~protective services to any other child under the same care.~~
13 ~~The department will advise the county attorney of its~~
14 ~~investigation.~~

15 (4) ~~The investigating social worker, within 60 days of~~
16 ~~commencing an investigation, shall also furnish a written~~
17 ~~report to the department. The department shall maintain a~~
18 ~~record system containing child abuse and neglect cases.~~

19 (5) ~~Any person reporting abuse or neglect which~~
20 ~~involves acts or omissions on the part of a public or~~
21 ~~private residential institution, home, facility, or agency~~
22 ~~shall be responsible for ensuring that the report is made to~~
23 ~~the department of social and rehabilitation services, its~~
24 ~~local affiliate, and the county attorney of the county in~~
25 ~~which the facility is located.~~

1 ~~(6) Upon receipt of a report pursuant to section 2,~~
2 ~~a social worker or the county attorney shall immediately~~
3 ~~conduct an investigation and take any action necessary to~~
4 ~~ensure that any treatment required by section 1 is~~
5 ~~provided."~~

6 Section 5. Section 41-3-401, MCA, is amended to read:
7 "41-3-401. Abuse, neglect, and dependency petitions.
8 (1) ~~The~~ Except as provided in subsection (14), the county
9 attorney shall be responsible for filing all petitions
10 alleging abuse, neglect, or dependency. He may require all
11 state, county, and municipal agencies, including law
12 enforcement agencies, to conduct such investigations and
13 furnish such reports as may be necessary. Investigations as
14 to financial status may not be made prior to the
15 adjudicatory hearing provided for in 41-3-404.

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

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

25 (4) ~~The parents or parent, guardian, or other person~~

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

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

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

16 (7)--Any-person-interested--in--any--cause--under--this
 17 chapter-has-the-right-to-appear:

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

23 (9)--The-petition-shall:

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

1 (b)--state-the-full-name,--age,--and-address-of-the-youth
 2 and--the--name--and--address--of--his-parents-or-guardian-or
 3 person-having-legal-custody-of-the-youth;

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

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

8 (a)--temporary-investigative-authority--and--protective
 9 services;

10 (b)--temporary-legal-custody;

11 (c)--termination--of--the--parent-child--legal
 12 relationship;

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

15 (e)--appointment-of-guardian-ad-litem;

16 (f)--any--combination-of-the-above-or-such-other-relief
 17 as-may-be-required-for-the-best-interest-of-the-youth:

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

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

23 (13)--This-section-does-not-apply--to--a--petition--for
 24 temporary--investigative--authority-and-protective-services:

25 (14)--A-petition-alleging-abuse-or-neglect--of--a--child

1 ~~protected by {section 1} may be filed by any person;~~
2 Section 6, Section 41-3-402, MCA, is amended to read:
3 "41-3-402. Petition for temporary investigative
4 authority and protective services. (1) In cases where it
5 appears that a youth is abused or neglected or is in danger
6 of being abused or neglected, the county attorney may file a
7 petition for temporary investigative authority and
8 protective services. A petition on behalf of a child
9 protected by {section 1} may be filed by any person.
10 (2) A petition for temporary investigative authority
11 and protective services shall state the specific authority
12 requested and the facts establishing probable cause that a
13 youth is abused or neglected or is in danger of being abused
14 or neglected.
15 (3) The petition for temporary investigative authority
16 and protective services shall be supported by an affidavit
17 signed by the county attorney or a department of social and
18 rehabilitation services report stating in detail the facts
19 upon which the request is based."
20 Section 7, Section 41-3-403, MCA, is amended to read:
21 "41-3-403. Order for immediate protection of youth.
22 (1) (a) Upon the filing of a petition for temporary
23 investigative authority and protective services, the court
24 may issue an order granting such relief as may be required
25 for the immediate protection of the youth.

1 (b) The order shall be served by a peace officer or a
2 representative of the department of social and
3 rehabilitation services on the person or persons named
4 therein.
5 (c) The order shall require the person served to
6 comply immediately with the terms thereof or, upon failure
7 to so comply, to appear before the court issuing the order
8 on the date specified and show cause why he has not complied
9 with the order. Except as otherwise provided herein, the
10 rules of civil procedure shall apply.
11 (d) Upon a failure to comply or show cause the court
12 may hold the person in contempt or place temporary legal
13 custody of the youth with the department of social and
14 rehabilitation services until further order.
15 (2) The court may grant the following kinds of relief:
16 (a) right of entry by a peace officer or department of
17 social and rehabilitation services worker;
18 (b) medical and psychological evaluation of youth or
19 parents, guardians, or person having legal custody;
20 (c) require the youth, parents, guardians, or person
21 having legal custody to receive counseling services;
22 (d) place the youth in temporary medical facility or
23 facility for protection of the youth;
24 (e) require the parents, guardian, or other person
25 having custody to furnish such services, including care or

1 ~~treatment--required--by--{section-1}}, as the court may~~
2 ~~designate;~~
3 ~~{f)--such--other--temporary--disposition--as--may--be~~
4 ~~required--in--the--best--interest--of--the--youth;⁴~~
5 ~~Section-8--Section--41-3-406, MCA, is amended to read:~~
6 ~~"41-3-406--Dispositional-hearing--(1)--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)--permit--the--youth--to--remain--with--his--parents--or~~
12 ~~guardian subject to those conditions and limitations the~~
13 ~~court may prescribe;~~
14 ~~{b)--grant--an--order--of--limited--emancipation--to--a--youth~~
15 ~~who is 16 years of age or older as provided in {section--5}~~
16 ~~41-3-408;~~
17 ~~{c)--transfer--legal--custody--to--any--of--the--following:~~
18 ~~{i)--department--of--social--and--rehabilitation--services;~~
19 ~~{ii)--a--child--placing--agency--willing--and--able--to--assume~~
20 ~~responsibility--for--the--education, care, and maintenance of~~
21 ~~the youth and which is licensed or otherwise authorized by~~
22 ~~law to receive and provide care of the youth; or~~
23 ~~{iii)--a--relative--or--other--individual--who, after study~~
24 ~~by a social service agency designated by the court, is found~~
25 ~~by the court to be qualified to receive and care for the~~

1 youth;

2 {d)--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)--order--such--further--care--and--treatment--as--the--court

7 may deem in the best interest of the youth;

8 {2)--If--a--youth--is--found--to--be--abused, neglected, or

9 dependent under 41-3-404 solely because care or treatment of

10 the youth is required by {section-1}, the court shall order

11 that the child remain in the legal custody of his parents or

12 guardian;

13 {2){3)--Whenever the court vests legal custody in any

14 agency, institution, or department, it shall transmit with

15 the dispositional judgment copies of any medical report and

16 such other clinical, predisposition, or other reports and

17 information as may be pertinent to the care and treatment of

18 the youth;

19 {3){4)--Any youth found to be abused, neglected, or

20 dependent may be committed or the court may make such other

21 disposition of the child as the court deems best for his

22 social and physical welfare. The form of commitment shall

23 be as follows:

24 ORDER OF COMMITMENT

25 State of Montana }

1 continued--abuse--or--neglect--or--that--the--conduct--or--the
2 condition--of--the--parents--renders--the--parents--unfit,--unable,
3 or--unwilling--to--give--the--child--adequate--parental--care,--in
4 making--such--determinations,--the--court--shall--consider--but--is
5 not--limited--to--the--following:

6 (a)--emotional--illness,--mental--illness,--or--mental
7 deficiency--of--the--parent--of--such--duration--or--nature--as--to
8 render--the--parent--unlikely--to--care--for--the--ongoing--physical,
9 mental,--and--emotional--needs--of--the--child--within--a--reasonable
10 time;

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

12 (c)--a--single--incident--of--life--threatening--or--gravely
13 disabling--injury--to--or--disfigurement--of--the--child--caused--by
14 the--parent;

15 (d)--excessive--use--of--intoxicating--liquor--or--of--a
16 narcotic--or--dangerous--drug--that--affects--the--parent's--ability
17 to--care--and--provide--for--the--child;

18 (e)--present--judicially--ordered--long--term--confinement
19 of--the--parent;

20 (f)--the--injury--or--death--of--a--sibling--due--to--proven
21 parental--abuse--or--neglect;--and

22 (g)--any--reasonable--efforts--by--protective--service
23 agencies--that--have--been--unable--to--rehabilitate--the--parent;

24 (3)--in--considering--any--of--the--factors--in--subsection

25 (2)--in--terminating--the--parent--child--relationship,--the--court

1 shall--give--primary--consideration--to--the--physical,--mental,
2 and--emotional--conditions--and--needs--of--the--child;--The--court
3 shall--review--and,--if--necessary,--order--an--evaluation--of--the
4 child's--or--the--parent's--physical,--mental,--and--emotional
5 conditions;

6 (4)--The parent-child relationship of a child protected
7 by [section 1] may not be terminated solely because the
8 parent has refused to consent to care or treatment required
9 by [section 1]."

10 NEW SECTION.--Section 10.--Codification--instruction;
11 Sections--1--and--2--are--intended--to--be--codified--as--an--integral
12 part--of--Title--41,--chapter--3,--part--1,--and--the--provisions--of
13 Title--41,--chapter--3,--part--1,--apply--to--sections--1--and--2.

14 NEW SECTION. Section 2. Severability. If a part of
15 this act is invalid, all valid parts that are severable from
16 the invalid part remain in effect. If a part of this act is
17 invalid in one or more of its applications, the part remains
18 in effect in all valid applications that are severable from
19 the invalid applications.

-End-

HOUSE BILL NO. 807

INTRODUCED BY HANNAH, KEATING

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE PROTECTION OF CERTAIN HANDICAPPED, INJURED, OR OTHERWISE SERIOUSLY ILL CHILDREN BY REQUIRING THAT THEY BE GIVEN MEDICAL TREATMENT; AMENDING SECTIONS SECTION 41-3-102, 41-3-202, 41-3-401 THROUGH 41-3-403, 41-3-406, AND 41-3-609, MCA."

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

NEW SECTION: Section 1. Medical care of children. When required, (1) No infant born alive may be denied or deprived of food, nutrients, water, or oxygen by any person with the intent to cause or allow the death of the child for any reason, including but not limited to the following:

(a) the child was born with a physically or mentally handicapping condition which, in the opinion of the child's parent, a physician, or other person diminishes the quality of the child's life;

(b) the child is not wanted by the parent, or

(c) the child is born alive in the course of an attempted abortion;

(2) No child, from the moment of live birth, may be intentionally denied or deprived of any medical or surgical

care by his parent, physician, or any other person when such medical or surgical care is necessary to attempt to save the life of the child, in the opinion of a physician exercising competent medical judgment, despite the opinion of the child's parent, physician, or others that the quality of the child's life would be deficient should the child live.

(3) Nothing in this section may be interpreted to prevent a child's parent and physician from discontinuing the use of life support systems or other medical treatment for a child in a continual profound comatose state if, in the opinion of the child's physician, exercising competent medical judgment, the child has no reasonable chance of recovery from the comatose state despite every appropriate medical treatment to correct the condition, nor may this section be interpreted to require the provision of potentially lifesaving medical or surgical care to a child if, in the opinion of the child's parent and physician, exercising competent medical judgment, the potential risks to the child's life or health inherent in the treatment or surgery itself outweigh the potential benefits for survival from the treatment or surgery.

NEW SECTION: Section 2. Parental consent to care and treatment. Refusal of liability for medical expenses. (1) If a child's parent refuses to consent to treatment required under (section 1), the parent may execute a

1 ~~relinquishment--of--child--custody--pursuant--to--40-6-135--The~~
 2 ~~department--or--other--responsible--agency--shall--immediately~~
 3 ~~arrange--for--the--provision--of--treatment--for--the--child--and~~
 4 ~~shall--make--every--effort--to--find--an--adoptive--home--for--the~~
 5 ~~child--if--the--parent--does--not--execute--a--relinquishment--the~~
 6 ~~physician--shall--report--the--matter--pursuant--to--41-3-201--~~

7 ~~(2)--The--relinquishment--does--not--affect--the--parent's~~
 8 ~~liability--for--medical--expenses--incurred--by--the--child--prior~~
 9 ~~to--the--child's--placement--for--adoption--No--medical--insurer~~
 10 ~~of--the--parent--or--child--who--otherwise--would--have--been--liable~~
 11 ~~for--such--medical--expenses--may--deny--liability--to--an--insured~~
 12 ~~solely--because--of--the--parent's--desire--to--withhold--medical--or~~
 13 ~~surgical--treatment--for--the--child--~~

14 ~~(3)--No--physician--hospital--or--other--person--authorized~~
 15 ~~by--law--to--provide--medical--or--surgical--care--may--be--held~~
 16 ~~liable--for--providing--care--or--treatment--for--a--child--protected~~
 17 ~~by--{section--i}--without--the--consent--of--the--child's--parent--or~~
 18 ~~the--agency--having--custody--of--the--child--when--in--the--opinion~~
 19 ~~of--the--physician--hospital--or--other--person--authorized--by~~
 20 ~~law--to--provide--medical--or--surgical--care--exercising~~
 21 ~~competent--medical--judgment--the--child's--life--would--be~~
 22 ~~threatened--by--delaying--the--provision--of--the--care--or~~
 23 ~~treatment--~~

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

25 "41-3-102. Definitions. As used in this chapter, the

1 following definitions apply:

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

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

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

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

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

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

24 (d) abandons the child by leaving him under
 25 circumstances that make reasonable the belief that the

1 parent or other person does not intend to resume care of the
 2 child in the future or by willfully surrendering physical
 3 custody for a period of 6 months and during that period does
 4 not manifest to the child and the person having physical
 5 custody of the child a firm intention to resume physical
 6 custody or to make permanent legal arrangements for the care
 7 of the child; or

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

11 (4) "Adequate health care" means any medical or
 12 nonmedical remedial health care ~~required under [section-1]~~
 13 or otherwise, INCLUDING THE PREVENTION OF THE WITHHOLDING OF
 14 MEDICALLY INDICATED TREATMENT, permitted or authorized under
 15 state law.

16 (5) "WITHHOLDING OF MEDICALLY INDICATED TREATMENT"
 17 MEANS THE FAILURE TO RESPOND TO AN INFANT'S LIFE-THREATENING
 18 CONDITIONS BY PROVIDING TREATMENT (INCLUDING APPROPRIATE
 19 NUTRITION, HYDRATION, AND MEDICATION) THAT, IN THE TREATING
 20 PHYSICIAN'S OR PHYSICIANS' REASONABLE MEDICAL JUDGMENT, WILL
 21 BE MOST LIKELY TO BE EFFECTIVE IN AMELIORATING OR CORRECTING
 22 ALL SUCH CONDITIONS. HOWEVER, THE TERM DOES NOT INCLUDE THE
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 3 COMATOSE;
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 6 (II) NOT BE EFFECTIVE IN AMELIORATING OR CORRECTING ALL
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 8 (III) OTHERWISE BE FUTILE IN TERMS OF THE SURVIVAL OF
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 11 FUTILE IN TERMS OF THE SURVIVAL OF THE INFANT AND THE
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 2 facility, home, or agency; or any other person legally
 3 responsible for the child's welfare in a residential
 4 setting.

5 ~~(7)~~(8) "Physical injury" means death, permanent or
 6 temporary disfigurement, or impairment of any bodily organ
 7 or function.

8 ~~(8)~~(9) "Mental injury" means an identifiable and
 9 substantial impairment of the child's intellectual or
 10 psychological functioning.

11 ~~(9)~~(10) "Dependent youth" means a youth:

12 (a) who is abandoned;

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

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

17 (d) who is destitute;

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

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

22 ~~(10)~~(11) "Youth in need of care" means a youth who is
 23 dependent, abused, or neglected as defined in this section.

24 ~~(11)~~(12) "Supervision" means the authority granted by a
 25 youth court or by a voluntary agreement of a parent to

1 determine the foster care placement of a child and the
 2 length of stay of a child in foster care and provide for the
 3 needs of a child under subsection (1) of 41-3-1122.

4 ~~(12)~~(13) "Department" means the department of social
 5 and rehabilitation services provided for in 2-15-2201.

6 ~~(13)~~(14) "Limited emancipation" means a status
 7 conferred on a dependent youth by a court after a
 8 dispositional hearing in accordance with 41-3-406 under
 9 which the youth is entitled to exercise some but not all of
 10 the rights and responsibilities of a person who is 18 years
 11 of age or older."

12 ~~Section 4---Section 41-3-202, MCA, is amended to read:~~

13 ~~"41-3-202---Action on reporting.---(1) Upon receipt of a~~
 14 ~~report---as---required by 41-3-201 that a child is or has been~~
 15 ~~abused or neglected, a social worker or the county attorney~~
 16 ~~or a peace officer shall promptly conduct a thorough~~
 17 ~~investigation into the home of the child involved or any~~
 18 ~~other place where the child is present, into the~~
 19 ~~circumstances surrounding the injury of the child, and into~~
 20 ~~all other nonfinancial matters which in the discretion of~~
 21 ~~the investigator are relevant to the investigation. In~~
 22 ~~conducting an investigation under this section, a social~~
 23 ~~worker may not inquire into the financial status of the~~
 24 ~~child's family or of any other person responsible for the~~
 25 ~~child's care.~~

1 ~~(2) The social worker is responsible for assessing the~~
2 ~~family and planning for the child. If the child is treated~~
3 ~~at a medical facility, the social worker, county attorney,~~
4 ~~or peace officer shall, consistent with reasonable medical~~
5 ~~practice, have the right of access to the child for~~
6 ~~interviews, photographs, and securing physical evidence and~~
7 ~~have the right of access to relevant hospital and medical~~
8 ~~records pertaining to the child.~~

9 ~~(3) If from the investigation it appears that the~~
10 ~~child suffered abuse or neglect, the department shall~~
11 ~~provide protective services to the child and may provide~~
12 ~~protective services to any other child under the same care.~~
13 ~~The department will advise the county attorney of its~~
14 ~~investigation.~~

15 ~~(4) The investigating social worker, within 60 days of~~
16 ~~commencing an investigation, shall also furnish a written~~
17 ~~report to the department. The department shall maintain a~~
18 ~~record system containing child abuse and neglect cases.~~

19 ~~(5) Any person reporting abuse or neglect which~~
20 ~~involves acts or omissions on the part of a public or~~
21 ~~private residential institution, home, facility, or agency~~
22 ~~shall be responsible for ensuring that the report is made to~~
23 ~~the department of social and rehabilitation services, its~~
24 ~~local affiliate, and the county attorney of the county in~~
25 ~~which the facility is located.~~

1 ~~(6) Upon receipt of a report pursuant to (section 2) a~~
2 ~~social worker or the county attorney shall immediately~~
3 ~~conduct an investigation and take any action necessary to~~
4 ~~ensure that any treatment required by (section 1) is~~
5 ~~provided."~~

6 ~~Section 5. Section 41-3-401, MCA, is amended to read:~~
7 ~~"41-3-401. Abuse, neglect, and dependency petitions.~~
8 ~~(1) The Except as provided in subsection (14), the county~~
9 ~~attorney shall be responsible for filing all petitions~~
10 ~~alleging abuse, neglect, or dependency. He may require all~~
11 ~~state, county, and municipal agencies, including law~~
12 ~~enforcement agencies, to conduct such investigations and~~
13 ~~furnish such reports as may be necessary. Investigations as~~
14 ~~to financial status may not be made prior to the~~
15 ~~adjudicatory hearing provided for in 41-3-404.~~

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

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

25 ~~(4) The parents or parent, guardian, or other person~~

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

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

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

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

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

23 (9)--The-petition-shall:

24 (a)--state-the-nature-of-the-alleged-abuser,--neglect,--or
 25 dependency;

1 (b)--state-the-full-name,--age,--and-address-of-the-youth
 2 and--the--name--and--address--of--his-parents-or-guardian-or
 3 person-having-legal-custody-of-the-youth;

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

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

8 (a)--temporary-investigative-authority--and--protective
 9 services;

10 (b)--temporary-legal-custody;

11 (c)--termination----of----the----parent-child----legal
 12 relationship;

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

15 (e)--appointment-of-guardian-ad-item;

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

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

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

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

25 (14)--A-petition-alleging-abuse-or-neglect-of--a--child

1 ~~protected by {section 1} may be filed by any person."~~
 2 Section 6. Section 41-3-402, MCA, is amended to read:
 3 "41-3-402. Petition for temporary investigative
 4 authority and protective services. (1) In cases where it
 5 appears that a youth is abused or neglected or is in danger
 6 of being abused or neglected, the county attorney may file a
 7 petition for temporary investigative authority and
 8 protective services. A petition on behalf of a child
 9 protected by {section 1} may be filed by any person.
 10 (2) A petition for temporary investigative authority
 11 and protective services shall state the specific authority
 12 requested and the facts establishing probable cause that a
 13 youth is abused or neglected or is in danger of being abused
 14 or neglected.
 15 (3) The petition for temporary investigative authority
 16 and protective services shall be supported by an affidavit
 17 signed by the county attorney or a department of social and
 18 rehabilitation services report stating in detail the facts
 19 upon which the request is based."
 20 Section 7. Section 41-3-403, MCA, is amended to read:
 21 "41-3-403. Order for immediate protection of youth.
 22 (1) (a) Upon the filing of a petition for temporary
 23 investigative authority and protective services, the court
 24 may issue an order granting such relief as may be required
 25 for the immediate protection of the youth.

1 (b) The order shall be served by a peace officer or a
 2 representative of the department of social and
 3 rehabilitation services on the person or persons named
 4 therein.
 5 (c) The order shall require the person served to
 6 comply immediately with the terms thereof or upon failure
 7 to so comply, to appear before the court issuing the order
 8 on the date specified and show cause why he has not complied
 9 with the order. Except as otherwise provided herein, the
 10 rules of civil procedure shall apply.
 11 (d) Upon a failure to comply or show cause the court
 12 may hold the person in contempt or place temporary legal
 13 custody of the youth with the department of social and
 14 rehabilitation services until further order.
 15 (2) The court may grant the following kinds of relief:
 16 (a) right of entry by a peace officer or department of
 17 social and rehabilitation services worker;
 18 (b) medical and psychological evaluation of youth or
 19 parents, guardians, or person having legal custody;
 20 (c) require the youth, parents, guardians, or person
 21 having legal custody to receive counseling services;
 22 (d) place the youth in temporary medical facility or
 23 facility for protection of the youth;
 24 (e) require the parents, guardian, or other person
 25 having custody to furnish such services, including care or

1 ~~treatment---required---by---{section---i},~~ as the court may
2 designate;

3 ~~{f}---such---other---temporary---disposition---as---may---be~~
4 ~~required---in---the---best---interest---of---the---youth;#~~

5 Section 8---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)---permit---the---youth---to---remain---with---his---parents---or
12 guardian---subject---to---those---conditions---and---limitations---the
13 court---may---prescribe;

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

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

18 (i)---department---of---social---and---rehabilitation---services;

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

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

1 youth;

2 (d)---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)---order---such---further---care---and---treatment---as---the---court
7 may---deem---in---the---best---interest---of---the---youth;

8 (2)---if---a---youth---is---found---to---be---abused;---neglected;---or
9 dependent---under---41-3-404---solely---because---care---or---treatment---of
10 the---youth---is---required---by---{section---i};---the---court---shall---order
11 that---the---child---remain---in---the---legal---custody---of---his---parents---or
12 guardian;

13 (2)(3)---Whenever---the---court---vests---legal---custody---in---any
14 agency;---institution;---or---department;---it---shall---transmit---with
15 the---dispositional---judgment---copies---of---any---medical---report---and
16 such---other---clinical;---predisposition;---or---other---reports---and
17 information---as---may---be---pertinent---to---the---care---and---treatment---of
18 the---youth;

19 (3)(4)---Any---youth---found---to---be---abused;---neglected;---or
20 dependent---may---be---committed---or---the---court---may---make---such---other
21 disposition---of---the---child---as---the---court---deems---best---for---his
22 social---and---physical---welfare.---The---form---of---commitment---shall
23 be---as---follows:

24 ORDER OF COMMITMENT
25 State of Montana }

1 continued--abuse--or--neglect--or--that--the--conduct--or--the
2 condition--of--the--parents--renders--the--parents--unfit,--unable,
3 or--unwilling--to--give--the--child--adequate--parental--care,--in
4 making--such--determinations,--the--court--shall--consider--but--is
5 not--limited--to--the--following:

6 (a)--emotional--illness,--mental--illness,--or--mental
7 deficiency--of--the--parent--of--such--duration--or--nature--as--to
8 render--the--parent--unlikely--to--care--for--the--ongoing--physical,
9 mental,--and--emotional--needs--of--the--child--within--a--reasonable
10 time;

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

12 (c)--a--single--incident--of--life--threatening--or--gravely
13 disabling--injury--to--or--disfigurement--of--the--child--caused--by
14 the--parent;

15 (d)--excessive--use--of--intoxicating--liquor--or--of--a
16 narcotic--or--dangerous--drug--that--affects--the--parent's--ability
17 to--care--and--provide--for--the--child;

18 (e)--present--judicially--ordered--long--term--confinement
19 of--the--parent;

20 (f)--the--injury--or--death--of--a--sibling--due--to--proven
21 parental--abuse--or--neglect;--and

22 (g)--any--reasonable--efforts--by--protective--service
23 agencies--that--have--been--unable--to--rehabilitate--the--parent--

24 (3)--in--considering--any--of--the--factors--in--subsection
25 (2)--in--terminating--the--parent--child--relationship,--the--court

1 shall--give--primary--consideration--to--the--physical,--mental,
2 and--emotional--conditions--and--needs--of--the--child.--The--court
3 shall--review--and,--if--necessary,--order--an--evaluation--of--the
4 child's--or--the--parent's--physical,--mental,--and--emotional
5 conditions;

6 (4)--The parent-child relationship of a child protected
7 by {section 1} may not be terminated solely because the
8 parent has refused to consent to care or treatment required
9 by {section 1}."

10 NEW SECTION.--Section 10.--Codification--instruction.
11 Sections--1--and--2--are--intended--to--be--codified--as--an--integral
12 part--of--Title--41,--chapter--37,--part--1,--and--the--provisions--of
13 Title--41,--chapter--37,--part--1,--apply--to--sections--1--and--2.

14 NEW SECTION. Section 2. Severability. If a part of
15 this act is invalid, all valid parts that are severable from
16 the invalid part remain in effect. If a part of this act is
17 invalid in one or more of its applications, the part remains
18 in effect in all valid applications that are severable from
19 the invalid applications.

-End-

HOUSE BILL NO. 807

INTRODUCED BY HANNAH, KEATING

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE PROTECTION OF CERTAIN HANDICAPPED, INJURED, OR OTHERWISE SERIOUSLY ILL CHILDREN BY REQUIRING THAT THEY BE GIVEN MEDICAL TREATMENT; AMENDING SECTIONS SECTION 41-3-102, 41-3-202, 41-3-401 THROUGH 41-3-403, 41-3-406, AND 41-3-609, MCA."

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

NEW SECTION - Section 1 - Medical care of children - when required - (1) - No infant born alive may be denied or deprived of food, nutrients, water, or oxygen by any person with the intent to cause or allow the death of the child for any reason, including but not limited to the following:

(a) - the child was born with a physically or mentally handicapping condition which, in the opinion of the child's parent, a physician, or other person diminishes the quality of the child's life;

(b) - the child is not wanted by the parent, or

(c) - the child is born alive in the course of an attempted abortion;

(2) - No child, from the moment of live birth, may be intentionally denied or deprived of any medical or surgical

care by his parent, physician, or any other person when such medical or surgical care is necessary to attempt to save the life of the child, in the opinion of a physician exercising competent medical judgment, despite the opinion of the child's parent, physician, or others that the quality of the child's life would be deficient should the child live.

(3) - Nothing in this section may be interpreted to prevent a child's parent and physician from discontinuing the use of life support systems or other medical treatment for a child in a continual profound comatose state if, in the opinion of the child's physician, exercising competent medical judgment, the child has no reasonable chance of recovery from the comatose state despite every appropriate medical treatment to correct the condition, nor may this section be interpreted to require the provision of potentially lifesaving medical or surgical care to a child if, in the opinion of the child's parent and physician, exercising competent medical judgment, the potential risks to the child's life or health inherent in the treatment or surgery itself outweigh the potential benefits for survival from the treatment or surgery.

NEW SECTION - Section 2 - Parental consent to care and treatment - refusal - liability for medical expenses - (1) - If a child's parent refuses to consent to treatment required under {section 1}, the parent may execute a

1 ~~relinquishment of child custody pursuant to 40-6-135. The~~
 2 ~~department or other responsible agency shall immediately~~
 3 ~~arrange for the provision of treatment for the child and~~
 4 ~~shall make every effort to find an adoptive home for the~~
 5 ~~child. If the parent does not execute a relinquishment, the~~
 6 ~~physician shall report the matter pursuant to 41-3-201.~~

7 ~~(2) The relinquishment does not affect the parent's~~
 8 ~~liability for medical expenses incurred by the child prior~~
 9 ~~to the child's placement for adoption. No medical insurer~~
 10 ~~of the parent or child who otherwise would have been liable~~
 11 ~~for such medical expenses may deny liability to an insured~~
 12 ~~society because of the parent's desire to withhold medical or~~
 13 ~~surgical treatment for the child.~~

14 ~~(3) No physician, hospital, or other person authorized~~
 15 ~~by law to provide medical or surgical care may be held~~
 16 ~~liable for providing care or treatment for a child protected~~
 17 ~~by {section 1} without the consent of the child's parent or~~
 18 ~~the agency having custody of the child, when in the opinion~~
 19 ~~of the physician, hospital, or other person authorized by~~
 20 ~~law to provide medical or surgical care, exercising~~
 21 ~~competent medical judgment, the child's life would be~~
 22 ~~threatened by delaying the provision of the care or~~
 23 ~~treatment.~~

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

25 "41-3-102. Definitions. As used in this chapter, the

1 following definitions apply:

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

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

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

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

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

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

24 (d) abandons the child by leaving him under
 25 circumstances that make reasonable the belief that the

1 parent or other person does not intend to resume care of the
 2 child in the future or by willfully surrendering physical
 3 custody for a period of 6 months and during that period does
 4 not manifest to the child and the person having physical
 5 custody of the child a firm intention to resume physical
 6 custody or to make permanent legal arrangements for the care
 7 of the child; or

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

11 (4) "Adequate health care" means any medical or
 12 nonmedical remedial health care ~~required under section 11~~
 13 ~~or otherwise~~, INCLUDING THE PREVENTION OF THE WITHHOLDING OF
 14 MEDICALLY INDICATED TREATMENT, permitted or authorized under
 15 state law.

16 (5) "WITHHOLDING OF MEDICALLY INDICATED TREATMENT"
 17 MEANS THE FAILURE TO RESPOND TO AN INFANT'S LIFE-THREATENING
 18 CONDITIONS BY PROVIDING TREATMENT (INCLUDING APPROPRIATE
 19 NUTRITION, HYDRATION, AND MEDICATION) THAT, IN THE TREATING
 20 PHYSICIAN'S OR PHYSICIANS' REASONABLE MEDICAL JUDGMENT, WILL
 21 BE MOST LIKELY TO BE EFFECTIVE IN AMELIORATING OR CORRECTING
 22 ALL SUCH CONDITIONS. HOWEVER, THE TERM DOES NOT INCLUDE THE
 23 FAILURE TO PROVIDE TREATMENT (OTHER THAN APPROPRIATE
 24 NUTRITION, HYDRATION, OR MEDICATION) TO AN INFANT WHEN, IN
 25 THE TREATING PHYSICIAN'S OR PHYSICIANS' REASONABLE MEDICAL

1 JUDGMENT:

2 (A) THE INFANT IS CHRONICALLY AND IRREVERSIBLY
 3 COMATOSE;

4 (B) THE PROVISION OF SUCH TREATMENT WOULD:

5 (I) MERELY PROLONG DYING;

6 (II) NOT BE EFFECTIVE IN AMELIORATING OR CORRECTING ALL
 7 OF THE INFANT'S LIFE-THREATENING CONDITIONS; OR

8 (III) OTHERWISE BE FUTILE IN TERMS OF THE SURVIVAL OF
 9 THE INFANT; OR

10 (C) THE PROVISION OF SUCH TREATMENT WOULD BE VIRTUALLY
 11 FUTILE IN TERMS OF THE SURVIVAL OF THE INFANT AND THE
 12 TREATMENT ITSELF UNDER SUCH CIRCUMSTANCES WOULD BE INHUMANE.
 13 FOR PURPOSES OF THIS SUBSECTION, "INFANT" MEANS AN INFANT
 14 LESS THAN 1 YEAR OF AGE OR AN INFANT 1 YEAR OF AGE OR OLDER
 15 WHO HAS BEEN CONTINUOUSLY HOSPITALIZED SINCE BIRTH, WHO WAS
 16 BORN EXTREMELY PREMATURELY, OR WHO HAS A LONG-TERM
 17 DISABILITY. THE REFERENCE TO LESS THAN 1 YEAR OF AGE MAY NOT
 18 BE CONSTRUED TO IMPLY THAT TREATMENT SHOULD BE CHANGED OR
 19 DISCONTINUED WHEN AN INFANT REACHES 1 YEAR OF AGE OR TO
 20 AFFECT OR LIMIT ANY EXISTING PROTECTIONS AVAILABLE UNDER
 21 STATE LAWS REGARDING MEDICAL NEGLIGENCE OF CHILDREN OVER 1 YEAR
 22 OF AGE.

23 †5†(6) "Threatened harm" means imminent risk of harm.

24 †6†(7) "A person responsible for a child's welfare"
 25 means the child's parent, guardian, or foster parent; an

1 employee of a public or private residential institution,
 2 facility, home, or agency; or any other person legally
 3 responsible for the child's welfare in a residential
 4 setting.

5 ~~(7)~~(8) "Physical injury" means death, permanent or
 6 temporary disfigurement, or impairment of any bodily organ
 7 or function.

8 ~~(8)~~(9) "Mental injury" means an identifiable and
 9 substantial impairment of the child's intellectual or
 10 psychological functioning.

11 ~~(9)~~(10) "Dependent youth" means a youth:

12 (a) who is abandoned;

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

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

17 (d) who is destitute;

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

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

22 ~~(10)~~(11) "Youth in need of care" means a youth who is
 23 dependent, abused, or neglected as defined in this section.

24 ~~(11)~~(12) "Supervision" means the authority granted by a
 25 youth court or by a voluntary agreement of a parent to

1 determine the foster care placement of a child and the
 2 length of stay of a child in foster care and provide for the
 3 needs of a child under subsection (1) of 41-3-1122.

4 ~~(12)~~(13) "Department" means the department of social
 5 and rehabilitation services provided for in 2-15-2201.

6 ~~(13)~~(14) "Limited emancipation" means a status
 7 conferred on a dependent youth by a court after a
 8 dispositional hearing in accordance with 41-3-406 under
 9 which the youth is entitled to exercise some but not all of
 10 the rights and responsibilities of a person who is 18 years
 11 of age or older."

12 ~~Section 4. Section 41-3-202, MCA, is amended to read:~~

13 ~~"41-3-202. Action on reporting. (1) Upon receipt of a~~
 14 ~~report as required by 41-3-201 that a child is or has been~~
 15 ~~abused or neglected, a social worker or the county attorney~~
 16 ~~or a peace officer shall promptly conduct a thorough~~
 17 ~~investigation into the home of the child involved or any~~
 18 ~~other place where the child is present, into the~~
 19 ~~circumstances surrounding the injury of the child, and into~~
 20 ~~all other nonfinancial matters which in the discretion of~~
 21 ~~the investigator are relevant to the investigation. In~~
 22 ~~conducting an investigation under this section, a social~~
 23 ~~worker may not inquire into the financial status of the~~
 24 ~~child's family or of any other person responsible for the~~
 25 ~~child's care.~~

1 (2) ~~The social worker is responsible for assessing the~~
 2 ~~family and planning for the child, if the child is treated~~
 3 ~~at a medical facility, the social worker, county attorney,~~
 4 ~~or peace officer shall, consistent with reasonable medical~~
 5 ~~practice, have the right of access to the child for~~
 6 ~~interviews, photographs, and securing physical evidence and~~
 7 ~~have the right of access to relevant hospital and medical~~
 8 ~~records pertaining to the child.~~

9 (3) ~~If from the investigation it appears that the~~
 10 ~~child suffered abuse or neglect, the department shall~~
 11 ~~provide protective services to the child and may provide~~
 12 ~~protective services to any other child under the same care.~~
 13 ~~The department will advise the county attorney of its~~
 14 ~~investigation.~~

15 (4) ~~The investigating social worker, within 60 days of~~
 16 ~~commencing an investigation, shall also furnish a written~~
 17 ~~report to the department. The department shall maintain a~~
 18 ~~record system containing child abuse and neglect cases.~~

19 (5) ~~Any person reporting abuse or neglect which~~
 20 ~~involves acts or omissions on the part of a public or~~
 21 ~~private residential institution, home, facility, or agency~~
 22 ~~shall be responsible for ensuring that the report is made to~~
 23 ~~the department of social and rehabilitation services, its~~
 24 ~~local affiliate, and the county attorney of the county in~~
 25 ~~which the facility is located.~~

1 (6) ~~Upon receipt of a report pursuant to section 2,~~
 2 ~~a social worker or the county attorney shall immediately~~
 3 ~~conduct an investigation and take any action necessary to~~
 4 ~~ensure that any treatment required by section 1 is~~
 5 ~~provided."~~

6 Section 5, Section 41-3-401, MCA, is amended to read:
 7 "41-3-401. Abuse, neglect, and dependency petitions:
 8 (1) ~~The Except as provided in subsection (14), the county~~
 9 ~~attorney shall be responsible for filing all petitions~~
 10 ~~alleging abuse, neglect, or dependency. He may require all~~
 11 ~~state, county, and municipal agencies, including law~~
 12 ~~enforcement agencies, to conduct such investigations and~~
 13 ~~furnish such reports as may be necessary. Investigations as~~
 14 ~~to financial status may not be made prior to the~~
 15 ~~adjudicatory hearing provided for in 41-3-404.~~

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

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

25 (4) ~~The parents or parent, guardian, or other person~~

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

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

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

16 {7}--Any--person--interested--in--any--cause--under--this
17 chapter--has--the--right--to--appear.

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

23 {9}--The--petition--shall:

24 {a}--state--the--nature--of--the--alleged--abuse,--neglect,--or
25 dependency;

1 {b}--state--the--full--name,--age,--and--address--of--the--youth
2 and--the--name--and--address--of--his--parents--or--guardian--or
3 person--having--legal--custody--of--the--youth;

4 {c}--state--the--names,--addresses,--and--relationship--to
5 the--youth--of--all--persons--who--are--necessary--parties--to--the
6 action;

7 {10}--The--petition--may--ask--for--the--following--relief:

8 {a}--temporary--investigative--authority--and--protective
9 services;

10 {b}--temporary--legal--custody;

11 {c}--termination--of--the--parent--child--legal
12 relationship;

13 {d}--permanent--legal--custody,--including--the--right--to
14 consent--to--adoption;

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

16 {f}--any--combination--of--the--above--or--such--other--relief
17 as--may--be--required--for--the--best--interest--of--the--youth;

18 {11}--The--petition--may--be--modified--for--different--relief
19 at--any--time--within--the--discretion--of--the--court;

20 {12}--The--court--may--at--any--time--on--its--own--motion--or--the
21 motion--of--any--party--appoint--a--guardian--ad--litem--for--the
22 youth--or--counsel--for--any--indigent--party;

23 {13}--This--section--does--not--apply--to--a--petition--for
24 temporary--investigative--authority--and--protective--services;

25 {14}--A--petition--alleging--abuse--or--neglect--of--a--child

~~protected by (section 1) may be filed by any person.~~"

~~Section 6, Section 41-3-402, MCA, is amended to read:~~

~~"41-3-402. Petition for temporary investigative authority and protective services. (1) In cases where it appears that a youth is abused or neglected or is in danger of being abused or neglected, the county attorney may file a petition for temporary investigative authority and protective services. A petition on behalf of a child protected by (section 1) may be filed by any person.~~

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

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

~~Section 7, Section 41-3-403, MCA, is amended to read:~~

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

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

~~(b) The order shall be served by a peace officer or a representative of the department of social and rehabilitation services on the person or persons named therein.~~

~~(c) The order shall require the person served to comply immediately with the terms thereof or, upon failure to so comply, to appear before the court issuing the order on the date specified and show cause why he has not complied with the order. Except as otherwise provided herein, the rules of civil procedure shall apply.~~

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

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

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

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

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

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

~~(e) require the parents, guardian, or other person having custody to furnish such services, including care or~~

1 ~~treatment---required---by---[section---i]---~~as---the---court---may
2 designate;
3 ~~{f}---such---other---temporary---disposition---as---may---be~~
4 ~~required---in---the---best---interest---of---the---youth.:"~~
5 Section-8; 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) permit the youth to remain with his parents or
12 guardian subject to those conditions and limitations the
13 court may prescribe;
14 (b) grant an order of limited emancipation to a youth
15 who is 16 years of age or older as provided in ~~{section-5}~~
16 41-3-408;
17 (c) transfer legal custody to any of the following:
18 (i) department of social and rehabilitation services;
19 (ii) a child placing agency willing and able to assume
20 responsibility for the education, care, and maintenance of
21 the youth and which is licensed or otherwise authorized by
22 law to receive and provide care of the youth; or
23 (iii) a relative or other individual who, after study
24 by a social service agency designated by the court, is found
25 by the court to be qualified to receive and care for the

1 youth;
2 (d) 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) order such further care and treatment as the court
7 may deem in the best interest of the youth;
8 ~~{2}---If---a---youth---is---found---to---be---abused, neglected, or~~
9 ~~dependent under 41-3-404 solely because care or treatment of~~
10 ~~the youth is required by {section-i}, the court shall order~~
11 ~~that the child remain in the legal custody of his parents or~~
12 ~~guardian;~~
13 ~~{2}{3}---Whenever---the---court---vests---legal---custody---in---any~~
14 ~~agency, institution, or department, it shall transmit with~~
15 ~~the dispositional judgment copies of any medical report and~~
16 ~~such other clinical, predisposition, or other reports and~~
17 ~~information as may be pertinent to the care and treatment of~~
18 ~~the youth;~~
19 ~~{3}{4}---Any---youth---found---to---be---abused, neglected, or~~
20 ~~dependent may be committed or the court may make such other~~
21 ~~disposition of the child as the court deems best for his~~
22 ~~social and physical welfare. The form of commitment shall~~
23 ~~be as follows:~~
24 ORDER OF COMMITMENT
25 State of Montana }

1 continued--abuse--or--neglect--or--that--the--conduct--or--the
 2 condition--of--the--parents--renders--the--parents--unfit;--unable;
 3 or--unwilling--to--give--the--child--adequate--parental--care;--in
 4 making--such--determinations;--the--court--shall--consider--but--is
 5 not--limited--to--the--following:

6 (a)--emotional---illness;--mental---illness;--or--mental
 7 deficiency--of--the--parent--of--such--duration--or--nature--as--to
 8 render--the--parent--unlikely--to--care--for--the--ongoing--physical;
 9 mental;--and--emotional--needs--of--the--child--within--a--reasonable
 10 time;

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

12 (c)--a--single--incident--of--life--threatening--or--gravely
 13 disabling--injury--to--or--disfigurement--of--the--child--caused--by
 14 the--parent;

15 (d)--excessive--use--of--intoxicating--liquor--or--of--a
 16 narcotic--or--dangerous--drug--that--affects--the--parent's--ability
 17 to--care--and--provide--for--the--child;

18 (e)--present--judicially--ordered--long--term--confinement
 19 of--the--parent;

20 (f)--the--injury--or--death--of--a--sibling--due--to--proven
 21 parental--abuse--or--neglect;--and

22 (g)--any--reasonable--efforts--by--protective--service
 23 agencies--that--have--been--unable--to--rehabilitate--the--parent;

24 (3)--in--considering--any--of--the--factors--in--subsection
 25 (2)--in--terminating--the--parent--child--relationship;--the--court

1 shall--give--primary--consideration--to--the--physical;--mental;
 2 and--emotional--conditions--and--needs--of--the--child;--The--court
 3 shall--review--and;--if--necessary;--order--an--evaluation--of--the
 4 child's--or--the--parent's--physical;--mental;--and--emotional
 5 conditions;

6 (4)--The parent-child relationship of a child protected
 7 by {section 1} may not be terminated solely because the
 8 parent has refused to consent to care or treatment required
 9 by {section 1};"

10 NEW SECTION. Section 10. Codification instruction.
 11 Sections--1--and--2--are--intended--to--be--codified--as--an--integral
 12 part--of--Title--41;--chapter--3;--part--1;--and--the--provisions--of
 13 Title--41;--chapter--3;--part--1;--apply--to--sections--1--and--2.

14 NEW SECTION. Section 2. Severability. If a part of
 15 this act is invalid, all valid parts that are severable from
 16 the invalid part remain in effect. If a part of this act is
 17 invalid in one or more of its applications, the part remains
 18 in effect in all valid applications that are severable from
 19 the invalid applications.

-End-