

HB 90 INTRODUCED BY WHALEN
 REVISING LAW ON ABUSED, NEGLECTED, AND DEPENDENT
 CHILDREN

1/06 INTRODUCED
1/06 REFERRED TO HUMAN SERVICES & AGING
1/20 HEARING
1/22 COMMITTEE REPORT--BILL NOT PASSED
1/23 ADVERSE COMMITTEE REPORT ADOPTED

86 9

1 HB BILL NO. 90
 2 INTRODUCED BY Juanita Whalen
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 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
 5 LAW CONCERNING ABUSED, NEGLECTED, AND DEPENDENT CHILDREN;
 6 PROVIDING FOR DISCLOSURE OF RECORDS TO PARENTS AND THEIR
 7 ATTORNEYS; REVISING NOTICE REQUIREMENTS; REQUIRING
 8 CONSIDERATION OF PARENTAL REQUESTS IN APPOINTING A GUARDIAN
 9 AD LITEM; ALLOWING A JURY TRIAL IN A PROCEEDING TO TERMINATE
 10 THE PARENT-CHILD RELATIONSHIP; AND AMENDING SECTIONS
 11 41-3-205, 41-3-301, 41-3-303, AND 41-3-607, MCA."

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

14 Section 1. Section 41-3-205, MCA, is amended to read:

15 "41-3-205. Confidentiality. (1) The case records of
 16 the department of social and rehabilitation services and its
 17 local affiliate, the county welfare department, the county
 18 attorney, and the court concerning actions taken under this
 19 chapter and all records concerning reports of child abuse
 20 and neglect shall be kept confidential except as provided by
 21 this section. Any person who permits or encourages the
 22 unauthorized dissemination of their contents is guilty of a
 23 misdemeanor.

24 (2) Records may be used by interagency
 25 interdisciplinary child protective teams as authorized under

1 41-3-108 for the purposes of assessing the needs of the
 2 child and family, formulating a treatment plan, and
 3 monitoring the plan. Members of the team are required to
 4 keep information about the subject individuals confidential.

5 (3) Records may be disclosed to a court for in camera
 6 inspection if relevant to an issue before it. The court may
 7 permit public disclosure if it finds such disclosure to be
 8 necessary for the fair resolution of an issue before it.

9 (4) Records must be disclosed to a parent of a child
 10 who is the subject of the record or to an attorney
 11 representing the parent.

12 ~~(4)~~(5) Nothing in this section is intended to affect
 13 the confidentiality of criminal court records or records of
 14 law enforcement agencies."

15 Section 2. Section 41-3-301, MCA, is amended to read:

16 "41-3-301. Emergency protective service. (1) Any child
 17 protective social worker of the department of social and
 18 rehabilitation services, the county welfare department, a
 19 peace officer, or the county attorney who has reason to
 20 believe any youth is in immediate or apparent danger of
 21 physical harm based on evidence corroborating the reason to
 22 believe may immediately remove the youth and place him in a
 23 protective facility. The department may make a request for
 24 further assistance from the law enforcement agency or take
 25 appropriate legal action. The person or agency placing the



1 child shall notify the parents, parent, guardian, or other
 2 person having legal custody of the youth ~~at--the--time--the~~
 3 ~~placement-is-made-or-as-soon-thereafter-as-possible~~ within 8
 4 hours of removing the youth.

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

8 (3) A petition shall be filed within 48 hours of
 9 emergency placement of a child, notwithstanding intervening
 10 holidays or nonworking days, unless arrangements acceptable
 11 to the agency for the care of the child have been made by
 12 the parents.

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

17 Section 3. Section 41-3-303, MCA, is amended to read:

18 "41-3-303. Guardian ad litem. (1) In every judicial
 19 proceeding the court shall appoint for any child alleged to
 20 be abused or neglected a guardian ad litem, taking into
 21 account any request by a parent or the parents. When
 22 necessary the guardian ad litem may serve at public
 23 expense.

24 (2) The guardian ad litem is charged with the
 25 representation of the child's interests. The guardian ad

1 litem has the following general duties:

2 (a) to conduct such investigation as he considers
 3 necessary to ascertain the facts constituting the alleged
 4 abuse or neglect;

5 (b) to interview or observe the child who is the
 6 subject of the proceeding;

7 (c) to have access to court, medical, psychological,
 8 law enforcement, social services, and school records
 9 pertaining to the child, his siblings, and parents or
 10 custodians;

11 (d) to make written reports to the court concerning
 12 the child's welfare;

13 (e) to appear and participate in all proceedings to
 14 the degree necessary to adequately represent the child and
 15 make recommendations to the court concerning the child's
 16 welfare; and

17 (f) to perform such other duties as directed by the
 18 court."

19 Section 4. Section 41-3-607, MCA, is amended to read:

20 "41-3-607. Petition for termination -- separate
 21 hearing -- right to counsel -- no jury trial. (1) The
 22 termination of a parent-child legal relationship shall be
 23 considered only after the filing of a petition pursuant to
 24 41-3-401 alleging the factual grounds for termination.
 25 Termination of a parent-child legal relationship shall be

1 considered at a dispositional hearing held pursuant to
 2 41-3-406, following or together with an adjudicatory hearing
 3 held pursuant to 41-3-404, within 180 days after the filing
 4 of the petition.

5 (2) After the county attorney, attorney general, or an
 6 attorney hired by the county welfare department or office of
 7 human services files a petition for termination of a
 8 parent-child relationship pursuant to this part, parents
 9 shall be advised of the right to counsel, and counsel shall
 10 be appointed in accordance with 41-3-401(12).

11 (3) A guardian ad litem shall be appointed to
 12 represent the child's best interests in any hearing
 13 determining the involuntary termination of the parent-child
 14 legal relationship. The guardian ad litem shall continue to
 15 represent the child until the child is returned home or
 16 placed in an appropriate permanent placement. If a
 17 respondent parent is a minor, a guardian ad litem must be
 18 appointed to serve the minor parent in addition to any
 19 counsel requested by the parent.

20 ~~(4) --There is no right to a jury trial at proceedings~~
 21 ~~held to consider the termination of a parent-child legal~~
 22 ~~relationship."~~

23 NEW SECTION. Section 5. Extension of authority. Any
 24 existing authority of the department of social and
 25 rehabilitation services to make rules on the subject of the

1 provisions of this act is extended to the provisions of this
 2 act.

-End-