

SENATE BILL NO. 303
INTRODUCED BY HALLIGAN

IN THE SENATE

FEBRUARY 6, 1987 INTRODUCED AND REFERRED TO COMMITTEE
ON JUDICIARY.

FEBRUARY 17, 1987 COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 18, 1987 PRINTING REPORT.

FEBRUARY 19, 1987 SECOND READING, DO PASS.

FEBRUARY 20, 1987 ENGROSSING REPORT.

FEBRUARY 21, 1987 THIRD READING, PASSED.
AYES, 49; NOES, 0.

TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 23, 1987 INTRODUCED AND REFERRED TO COMMITTEE
ON JUDICIARY.

MARCH 25, 1987 COMMITTEE RECOMMEND BILL BE
CONCURRED IN AS AMENDED. REPORT
ADOPTED.

MARCH 28, 1987 SECOND READING, CONCURRED IN.

MARCH 30, 1987 THIRD READING, CONCURRED IN.
AYES, 96; NOES, 2.

RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 3, 1987 RECEIVED FROM HOUSE.

SECOND READING, AMENDMENTS
CONCURRED IN.

APRIL 4, 1987

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

1 ~~Senate~~ BILL NO. 303
2 INTRODUCED BY Hallyan
3

4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE PROCEDURES
5 TO BE FOLLOWED IN PROSECUTING CHILD ABUSE CASES; ADDING
6 FAILURE TO PROVIDE ADEQUATE PSYCHOLOGICAL CARE TO THE
7 DEFINITION OF "HARM TO A CHILD'S HEALTH OR WELFARE";
8 AUTHORIZING PETITIONS FOR PERMANENT LEGAL CUSTODY WITH THE
9 RIGHT TO CONSENT TO ADOPTION; PROVIDING FOR SERVICE BY
10 PUBLICATION; AMENDING SECTIONS 41-3-102, 41-3-401 THROUGH
11 41-3-403, AND 41-3-612, MCA; AND PROVIDING AN IMMEDIATE
12 EFFECTIVE DATE."
13

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

15 Section 1. Section 41-3-102, MCA, is amended to read:
16 "41-3-102. Definitions. As used in this chapter, the
17 following definitions apply:

- 18 (1) "Child" or "youth" means any person under 18 years
19 of age.
- 20 (2) An "abused or neglected child" means a child whose
21 normal physical or mental health or welfare is harmed or
22 threatened with harm by the acts or omissions of his parent
23 or other person responsible for his welfare.
- 24 (3) "Harm to a child's health or welfare" means the
25 harm that occurs whenever the parent or other person

1 responsible for the child's welfare:

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

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

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

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

24 (e) is unknown and has been unknown for a period of 90
25 days and reasonable efforts to identify and locate the



1 parents have failed.

2 (4) "Adequate health care" means any medical or
3 nonmedical remedial health care, including the prevention of
4 the withholding of medically indicated treatment, permitted
5 or authorized under state law.

6 (5) "Withholding of medically indicated treatment"
7 means the failure to respond to an infant's life-threatening
8 conditions by providing treatment (including appropriate
9 nutrition, hydration, and medication) that, in the treating
10 physician's or physicians' reasonable medical judgment, will
11 be most likely to be effective in ameliorating or correcting
12 all such conditions. However, the term does not include the
13 failure to provide treatment (other than appropriate
14 nutrition, hydration, or medication) to an infant when, in
15 the treating physician's or physicians' reasonable medical
16 judgment:

17 (a) the infant is chronically and irreversibly
18 comatose;

19 (b) the provision of such treatment would:

20 (i) merely prolong dying;

21 (ii) not be effective in ameliorating or correcting all
22 of the infant's life-threatening conditions; or

23 (iii) otherwise be futile in terms of the survival of
24 the infant; or

25 (c) the provision of such treatment would be virtually

1 futile in terms of the survival of the infant and the
2 treatment itself under such circumstances would be inhumane.
3 For purposes of this subsection, "infant" means an infant
4 less than 1 year of age or an infant 1 year of age or older
5 who has been continuously hospitalized since birth, who was
6 born extremely prematurely, or who has a long-term
7 disability. The reference to less than 1 year of age may not
8 be construed to imply that treatment should be changed or
9 discontinued when an infant reaches 1 year of age or to
10 affect or limit any existing protections available under
11 state laws regarding medical neglect of children over 1 year
12 of age.

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

14 (7) "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 (8) "Physical injury" means death, permanent or
20 temporary disfigurement, or impairment of any bodily organ
21 or function.

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

25 (10) "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 (11) "Youth in need of care" means a youth who is
12 dependent, abused, or neglected as defined in this section.

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

20 (14) "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 2. Section 41-3-401, MCA, is amended to read:

2 "41-3-401. Abuse, neglect, and dependency petitions.

3 (1) The county attorney, attorney general, or an attorney
4 hired by the county welfare department or office of human
5 services shall be responsible for filing all petitions
6 alleging abuse, neglect, or dependency. The county attorney
7 or attorney general, or an attorney hired by the county
8 welfare department or office of human services with the
9 written consent of the county attorney or attorney general,
10 may require all state, county, and municipal agencies,
11 including law enforcement agencies, to conduct such
12 investigations and furnish such reports as may be necessary.
13 Investigations as to financial status may not be made prior
14 to the adjudicatory hearing provided for in 41-3-404.

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

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-state~~
 6 cannot be served personally, the rules of civil procedure
 7 relating to ~~service-of-process-in-such-cases~~ by publication
 8 shall apply.

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

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

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

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

24 (9) The petition shall:

25 (a) state the nature of the alleged abuse, neglect, or

1 dependency;

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

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

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

9 (a) temporary investigative authority and protective
 10 services;

11 (b) temporary legal custody;

12 (c) termination of the parent-child legal relationship
 13 and permanent legal custody with the right to consent to
 14 adoption;

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

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

19 (12) The court may at any time on its own motion or the
 20 motion of any party appoint counsel for any indigent party."

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

22 "41-3-402. Petition for temporary investigative
 23 authority and protective services. (1) In cases where it
 24 appears that a youth is abused or neglected or is in danger
 25 of being abused or neglected, the county attorney, attorney

1 general, or an attorney hired by the county welfare
2 department or office of human services may file a petition
3 for temporary investigative authority and protective
4 services.

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

10 (3) The petition for temporary investigative authority
11 and protective services shall be supported by an affidavit
12 signed by the county attorney, attorney general, county
13 welfare department attorney, or office of human services
14 attorney or a department of social and rehabilitation
15 services report stating in detail the facts upon which the
16 request is based."

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

18 "41-3-403. Order for immediate protection of youth.

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

23 (b) The order, along with the petition and supporting
24 documents, shall be served by a peace officer or a
25 representative of the department of social and

1 rehabilitation services on the person or persons named
2 therein. When the youth is placed in a medical facility or
3 protective facility, the department shall notify the parents
4 or parent, guardian, or other person having legal custody of
5 the youth, at the time the placement is made or as soon
6 thereafter as possible.

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

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

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

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

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

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

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

5 (e) require the parents, guardian, or other person
6 having custody to furnish such services as the court may
7 designate;

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

10 Section 5. Section 41-3-612, MCA, is amended to read:

11 "41-3-612. Appeals. Appeals of court orders or decrees
12 made under this part shall be given precedence on the
13 calendar of the supreme court over all other matters, unless
14 otherwise provided by law. An appeal does not stay the order
15 or decree appealed from; however, the supreme court may
16 order a stay upon application and hearing if suitable
17 provision is made for the care and custody of the child."

18 NEW SECTION. Section 6. Appeals. Appeals of court
19 orders or decrees made under this part shall be given
20 precedence on the calendar of the supreme court over all
21 other matters, unless otherwise provided by law. An appeal
22 does not stay the order or decree appealed from; however,
23 the supreme court may order a stay upon application and
24 hearing if suitable provision is made for the care and
25 custody of the child.

1 NEW SECTION. Section 7. Codification instruction.
2 Section 6 is intended to be codified as an integral part of
3 Title 41, chapter 3, part 4, and the provisions of Title 41,
4 chapter 3, part 4, apply to section 6.

5 NEW SECTION. Section 8. Effective date. This act is
6 effective on passage and approval.

-End-

APPROVED BY COMMITTEE
ON JUDICIARY

SENATE BILL NO. 303

INTRODUCED BY HALLIGAN

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE PROCEDURES TO BE FOLLOWED IN PROSECUTING CHILD ABUSE CASES; ADDING FAILURE--TO--PROVIDE--ADEQUATE PSYCHOLOGICAL CARE TO THE DEFINITION OF "HARM--TO--A--CHILD'S--HEALTH--OR--WELFARE" "ADEQUATE HEALTH CARE"; AUTHORIZING PETITIONS FOR PERMANENT LEGAL CUSTODY WITH THE RIGHT TO CONSENT TO ADOPTION; PROVIDING FOR SERVICE BY PUBLICATION; AMENDING SECTIONS 41-3-102, 41-3-401 THROUGH 41-3-403, AND 41-3-612, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

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

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

responsible for the child's welfare:

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

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

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

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

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

1 parents have failed.

2 (4) "Adequate health care" means any medical or
3 nonmedical remedial health care, including the prevention of
4 the withholding of medically indicated treatment, OR
5 PSYCHOLOGICAL CARE permitted or authorized under state law.

6 (5) "Withholding of medically indicated treatment"
7 means the failure to respond to an infant's life-threatening
8 conditions by providing treatment (including appropriate
9 nutrition, hydration, and medication) that, in the treating
10 physician's or physicians' reasonable medical judgment, will
11 be most likely to be effective in ameliorating or correcting
12 all such conditions. However, the term does not include the
13 failure to provide treatment (other than appropriate
14 nutrition, hydration, or medication) to an infant when, in
15 the treating physician's or physicians' reasonable medical
16 judgment:

17 (a) the infant is chronically and irreversibly
18 comatose;

19 (b) the provision of such treatment would:

20 (i) merely prolong dying;

21 (ii) not be effective in ameliorating or correcting all
22 of the infant's life-threatening conditions; or

23 (iii) otherwise be futile in terms of the survival of
24 the infant; or

25 (c) the provision of such treatment would be virtually

1 futile in terms of the survival of the infant and the
2 treatment itself under such circumstances would be inhumane.
3 For purposes of this subsection, "infant" means an infant
4 less than 1 year of age or an infant 1 year of age or older
5 who has been continuously hospitalized since birth, who was
6 born extremely prematurely, or who has a long-term
7 disability. The reference to less than 1 year of age may not
8 be construed to imply that treatment should be changed or
9 discontinued when an infant reaches 1 year of age or to
10 affect or limit any existing protections available under
11 state laws regarding medical neglect of children over 1 year
12 of age.

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

14 (7) "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 (8) "Physical injury" means death, permanent or
20 temporary disfigurement, or impairment of any bodily organ
21 or function.

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

25 (10) "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 (11) "Youth in need of care" means a youth who is
 12 dependent, abused, or neglected as defined in this section.

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

20 (14) "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 2. Section 41-3-401, MCA, is amended to read:
 2 "41-3-401. Abuse, neglect, and dependency petitions.
 3 (1) The county attorney, attorney general, or an attorney
 4 hired by the county welfare department or office of human
 5 services shall be responsible for filing all petitions
 6 alleging abuse, neglect, or dependency. The county attorney
 7 or attorney general, or an attorney hired by the county
 8 welfare department or office of human services with the
 9 written consent of the county attorney or attorney general,
 10 may require all state, county, and municipal agencies,
 11 including law enforcement agencies, to conduct such
 12 investigations and furnish such reports as may be necessary.
 13 Investigations as to financial status may not be made prior
 14 to the adjudicatory hearing provided for in 41-3-404.

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

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 state~~
 6 ~~cannot be served personally, the rules of civil procedure~~
 7 ~~relating to service~~ THE PERSON OR AGENCY MAY BE SERVED of
 8 process in such cases by publication shall apply IN THE
 9 MANNER PROVIDED BY THE MONTANA RULES OF CIVIL PROCEDURE FOR
 10 OTHER TYPES OF PROCEEDINGS.

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

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

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

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

1 (9) The petition shall:

2 (a) state the nature of the alleged abuse, neglect, or
 3 dependency;

4 (b) state the full name, age, and address of the youth
 5 and the name and address of his parents or guardian or
 6 person having legal custody of the youth;

7 (c) state the names, addresses, and relationship to
 8 the youth of all persons who are necessary parties to the
 9 action.

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

11 (a) temporary investigative authority and protective
 12 services;

13 (b) temporary legal custody;

14 (c) termination of the parent-child legal relationship
 15 and permanent legal custody with the right to consent to
 16 adoption;

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

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

21 (12) The court may at any time on its own motion or the
 22 motion of any party appoint counsel for any indigent party."

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

24 "41-3-402. Petition for temporary investigative
 25 authority and protective services. (1) In cases where it

1 appears that a youth is abused or neglected or is in danger
 2 of being abused or neglected, the county attorney, attorney
 3 general, or an attorney hired by the county welfare
 4 department or office of human services may file a petition
 5 for temporary investigative authority and protective
 6 services.

7 (2) A petition for temporary investigative authority
 8 and protective services shall state the specific authority
 9 requested and the facts establishing probable cause to
 10 believe that a youth is abused or neglected or is in danger
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12 (3) The petition for temporary investigative authority
 13 and protective services shall be supported by an affidavit
 14 signed by the county attorney, attorney general, county
 15 welfare department attorney, or office of human services
 16 attorney or a department of social and rehabilitation
 17 services report stating in detail the facts upon which the
 18 request is based."

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

20 "41-3-403. Order for immediate protection of youth.

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

25 (b) The order, along with the petition and supporting

1 documents, 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. When the youth is placed in a medical facility or
 5 protective facility, the department shall notify the parents
 6 or parent, guardian, or other person having legal custody of
 7 the youth, at the time the placement is made or as soon
 8 thereafter as possible.

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

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

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

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

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

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

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

7 (e) require the parents, guardian, or other person
8 having custody to furnish such services as the court may
9 designate;

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

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15 calendar of the supreme court over all other matters, unless
16 otherwise provided by law. An appeal does not stay the order
17 or decree appealed from; however, the supreme court may
18 order a stay upon application and hearing if suitable
19 provision is made for the care and custody of the child."

20 NEW SECTION. Section 6. Appeals. Appeals of court
21 orders or decrees made under this part shall be given
22 precedence on the calendar of the supreme court over all
23 other matters, unless otherwise provided by law. An appeal
24 does not stay the order or decree appealed from; however,
25 the supreme court may order a stay upon application and

1 hearing if suitable provision is made for the care and
2 custody of the child.

3 NEW SECTION. Section 7. Codification instruction.
4 Section 6 is intended to be codified as an integral part of
5 Title 41, chapter 3, part 4, and the provisions of Title 41,
6 chapter 3, part 4, apply to section 6.

7 NEW SECTION. Section 8. Effective date. This act is
8 effective on passage and approval.

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1 SENATE BILL NO. 303
2 INTRODUCED BY HALLIGAN

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE PROCEDURES
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7 DEFINITION OF ~~"HARM--TO--A--CHILD'S--HEALTH--OR--WELFARE"~~
8 "ADEQUATE HEALTH CARE"; AUTHORIZING PETITIONS FOR PERMANENT
9 LEGAL CUSTODY WITH THE RIGHT TO CONSENT TO ADOPTION;
10 PROVIDING FOR SERVICE BY PUBLICATION; AMENDING SECTIONS
11 41-3-102, 41-3-401 THROUGH 41-3-403, AND 41-3-612, MCA; AND
12 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

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

16 "41-3-102. Definitions. As used in this chapter, the
17 following definitions apply:

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

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

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

1 responsible for the child's welfare:

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

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

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

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

24 (e) is unknown and has been unknown for a period of 90
25 days and reasonable efforts to identify and locate the

1 parents have failed.

2 (4) "Adequate health care" means any medical or
3 nonmedical remedial health care, including the prevention of
4 the withholding of medically indicated treatment, OR
5 PSYCHOLOGICAL CARE permitted or authorized under state law.

6 (5) "Withholding of medically indicated treatment"
7 means the failure to respond to an infant's life-threatening
8 conditions by providing treatment (including appropriate
9 nutrition, hydration, and medication) that, in the treating
10 physician's or physicians' reasonable medical judgment, will
11 be most likely to be effective in ameliorating or correcting
12 all such conditions. However, the term does not include the
13 failure to provide treatment (other than appropriate
14 nutrition, hydration, or medication) to an infant when, in
15 the treating physician's or physicians' reasonable medical
16 judgment:

17 (a) the infant is chronically and irreversibly
18 comatose;

19 (b) the provision of such treatment would:

20 (i) merely prolong dying;

21 (ii) not be effective in ameliorating or correcting all
22 of the infant's life-threatening conditions; or

23 (iii) otherwise be futile in terms of the survival of
24 the infant; or

25 (c) the provision of such treatment would be virtually

1 futile in terms of the survival of the infant and the
2 treatment itself under such circumstances would be inhumane.
3 For purposes of this subsection, "infant" means an infant
4 less than 1 year of age or an infant 1 year of age or older
5 who has been continuously hospitalized since birth, who was
6 born extremely prematurely, or who has a long-term
7 disability. The reference to less than 1 year of age may not
8 be construed to imply that treatment should be changed or
9 discontinued when an infant reaches 1 year of age or to
10 affect or limit any existing protections available under
11 state laws regarding medical neglect of children over 1 year
12 of age.

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

14 (7) "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, or
17 home, or agency; or any other person legally responsible for
18 the child's welfare in a residential setting.

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

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

25 (10) "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 (11) "Youth in need of care" means a youth who is
 12 dependent, abused, or neglected as defined in this section.
 13 (12) "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 (13) "Department" means the department of social and
 19 rehabilitation services provided for in 2-15-2201.
 20 (14) "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 2. Section 41-3-401, MCA, is amended to read:
 2 "41-3-401. Abuse, neglect, and dependency petitions.
 3 (1) The county attorney, attorney general, or an attorney
 4 hired by the county welfare department or office of human
 5 services shall be responsible for filing all petitions
 6 alleging abuse, neglect, or dependency. The county attorney
 7 or attorney general, or an attorney hired by the county
 8 welfare department or office of human services with the
 9 written consent of the county attorney or attorney general,
 10 may require all state, county, and municipal agencies,
 11 including law enforcement agencies, to conduct such
 12 investigations and furnish such reports as may be necessary.
 13 Investigations as to financial status may not be made prior
 14 to the adjudicatory hearing provided for in 41-3-404.
 15 (2) Upon receipt of a petition, the court shall set a
 16 date for an adjudicatory hearing on the petition. Such
 17 petitions shall be given preference by the court in setting
 18 hearing dates ~~and must be heard within 20 days of the filing~~
 19 ~~of the petition.~~
 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-state~~
 6 cannot be served personally, the rules--of--civil--procedure
 7 relating--to--service THE PERSON OR AGENCY MAY BE SERVED of
 8 process-in-such-cases by publication shall--apply IN THE
 9 MANNER PROVIDED BY THE MONTANA RULES OF CIVIL PROCEDURE FOR
 10 OTHER TYPES OF PROCEEDINGS.

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

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

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

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

1 (9) The petition shall:

2 (a) state the nature of the alleged abuse, neglect, or
 3 dependency;

4 (b) state the full name, age, and address of the youth
 5 and the name and address of his parents or guardian or
 6 person having legal custody of the youth;

7 (c) state the names, addresses, and relationship to
 8 the youth of all persons who are necessary parties to the
 9 action.

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

11 (a) temporary investigative authority and protective
 12 services;

13 (b) temporary legal custody;

14 (c) termination of the parent-child legal relationship
 15 and permanent legal custody with the right to consent to
 16 adoption;

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

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

21 (12) The court may at any time on its own motion or the
 22 motion of any party appoint counsel for any indigent party."

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

24 "41-3-402. Petition for temporary investigative
 25 authority and protective services. (1) In cases where it

1 appears that a youth is abused or neglected or is in danger
 2 of being abused or neglected, the county attorney, attorney
 3 general, or an attorney hired by the county welfare
 4 department or office of human services may file a petition
 5 for temporary investigative authority and protective
 6 services.

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

12 (3) The petition for temporary investigative authority
 13 and protective services shall be supported by an affidavit
 14 signed by the county attorney, attorney general, county
 15 welfare department attorney, or office of human services
 16 attorney or a department of social and rehabilitation
 17 services report stating in detail the facts upon which the
 18 request is based."

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

20 "41-3-403. Order for immediate protection of youth.

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

25 (b) The order, along with the petition and supporting

1 documents, 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. When the youth is placed in a medical facility or
 5 protective facility, the department shall notify the parents
 6 or parent, guardian, or other person having legal custody of
 7 the youth, at the time the placement is made or as soon
 8 thereafter as possible.

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

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

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

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

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

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

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

7 (e) require the parents, guardian, or other person
8 having custody to furnish such services as the court may
9 designate;

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

12 Section 5. Section 41-3-612, MCA, is amended to read:

13 "41-3-612. Appeals. Appeals of court orders or decrees
14 made under this part shall be given precedence on the
15 calendar of the supreme court over all other matters, unless
16 otherwise provided by law. An appeal does not stay the order
17 or decree appealed from; however, the supreme court may
18 order a stay upon application and hearing if suitable
19 provision is made for the care and custody of the child."

20 NEW SECTION. Section 6. Appeals. Appeals of court
21 orders or decrees made under this part shall be given
22 precedence on the calendar of the supreme court over all
23 other matters, unless otherwise provided by law. An appeal
24 does not stay the order or decree appealed from; however,
25 the supreme court may order a stay upon application and

1 hearing if suitable provision is made for the care and
2 custody of the child.

3 NEW SECTION. Section 7. Codification instruction.
4 Section 6 is intended to be codified as an integral part of
5 Title 41, chapter 3, part 4, and the provisions of Title 41,
6 chapter 3, part 4, apply to section 6.

7 NEW SECTION. Section 8. Effective date. This act is
8 effective on passage and approval.

-End-

1 SENATE BILL NO. 303

2 INTRODUCED BY HALLIGAN

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE PROCEDURES
5 TO BE FOLLOWED IN PROSECUTING CHILD ABUSE CASES; ADDING
6 ~~FAILURE--TO--PROVIDE--ADEQUATE~~ PSYCHOLOGICAL CARE TO THE
7 DEFINITION OF "HARM--TO--A--CHILD'S--HEALTH--OR--WELFARE"
8 "ADEQUATE HEALTH CARE"; AUTHORIZING PETITIONS FOR PERMANENT
9 LEGAL CUSTODY WITH THE RIGHT TO CONSENT TO ADOPTION;
10 PROVIDING FOR SERVICE BY PUBLICATION; AMENDING SECTIONS
11 41-3-102, AND 41-3-401 THROUGH ~~41-3-403~~, AND ~~41-3-612~~, MCA;
12 AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."
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15 Section 1. Section 41-3-102, MCA, is amended to read:

16 "41-3-102. Definitions. As used in this chapter, the
17 following definitions apply:18 (1) "Child" or "youth" means any person under 18 years
19 of age.20 (2) An "abused or neglected child" means a child whose
21 normal physical or mental health or welfare is harmed or
22 threatened with harm by the acts or omissions of his parent
23 or other person responsible for his welfare.24 (3) "Harm to a child's health or welfare" means the
25 harm that occurs whenever the parent or other person

1 responsible for the child's welfare:

2 (a) inflicts or allows to be inflicted upon the child
3 physical or mental injury, including injuries sustained as a
4 result of excessive corporal punishment;5 (b) commits or allows to be committed a sexual assault
6 against the child or exploits the child or allows the child
7 to be exploited for sexual purposes or commits or allows to
8 be committed the act of sexual abuse of children as defined
9 in subsection (1) of 45-5-625;10 (c) causes failure to thrive or otherwise fails to
11 supply the child with adequate food or fails to supply
12 clothing, shelter, education, or health ~~or psychological~~
13 care, though financially able to do so or offered financial
14 or other reasonable means to do so;15 (d) abandons the child by leaving him under
16 circumstances that make reasonable the belief that the
17 parent or other person does not intend to resume care of the
18 child in the future or by willfully surrendering physical
19 custody for a period of 6 months and during that period does
20 not manifest to the child and the person having physical
21 custody of the child a firm intention to resume physical
22 custody or to make permanent legal arrangements for the care
23 of the child; or24 (e) is unknown and has been unknown for a period of 90
25 days and reasonable efforts to identify and locate the

1 parents have failed.

2 (4) "Adequate health care" means any medical or
3 nonmedical remedial health care, including the prevention of
4 the withholding of medically indicated treatment; OR
5 MEDICALLY INDICATED PSYCHOLOGICAL CARE permitted or
6 authorized under state law.

7 (5) "Withholding of medically indicated treatment"
8 means the failure to respond to an infant's life-threatening
9 conditions by providing treatment (including appropriate
10 nutrition, hydration, and medication) that, in the treating
11 physician's or physicians' reasonable medical judgment, will
12 be most likely to be effective in ameliorating or correcting
13 all such conditions. However, the term does not include the
14 failure to provide treatment (other than appropriate
15 nutrition, hydration, or medication) to an infant when, in
16 the treating physician's or physicians' reasonable medical
17 judgment:

18 (a) the infant is chronically and irreversibly
19 comatose;

20 (b) the provision of such treatment would:

21 (i) merely prolong dying;

22 (ii) not be effective in ameliorating or correcting all
23 of the infant's life-threatening conditions; or

24 (iii) otherwise be futile in terms of the survival of
25 the infant; or

1 (c) the provision of such treatment would be virtually
2 futile in terms of the survival of the infant and the
3 treatment itself under such circumstances would be inhumane.
4 For purposes of this subsection, "infant" means an infant
5 less than 1 year of age or an infant 1 year of age or older
6 who has been continuously hospitalized since birth, who was
7 born extremely prematurely, or who has a long-term
8 disability. The reference to less than 1 year of age may not
9 be construed to imply that treatment should be changed or
10 discontinued when an infant reaches 1 year of age or to
11 affect or limit any existing protections available under
12 state laws regarding medical neglect of children over 1 year
13 of age.

14 (6) "Threatened harm" means imminent risk of harm.

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

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

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

1 (10) "Dependent youth" means a youth:
 2 (a) who is abandoned;
 3 (b) who is without parents or guardian or not under
 4 the care and supervision of a suitable adult;
 5 (c) who has no proper guidance to provide for his
 6 necessary physical, moral, and emotional well-being;
 7 (d) who is destitute;
 8 (e) who is dependent upon the public for support; or
 9 (f) whose parent or parents have voluntarily
 10 relinquished custody of the child and whose legal custody
 11 has been transferred to a licensed agency.
 12 (11) "Youth in need of care" means a youth who is
 13 dependent, abused, or neglected as defined in this section.
 14 (12) "Supervision" means the authority granted by a
 15 youth court or by a voluntary agreement of a parent to
 16 determine the foster care placement of a child and the
 17 length of stay of a child in foster care and provide for the
 18 needs of a child under subsection (1) of 41-3-1122.
 19 (13) "Department" means the department of social and
 20 rehabilitation services provided for in 2-15-2201.
 21 (14) "Limited emancipation" means a status conferred on
 22 a dependent youth by a court after a dispositional hearing
 23 in accordance with 41-3-406 under which the youth is
 24 entitled to exercise some but not all of the rights and
 25 responsibilities of a person who is 18 years of age or

1 older."
 2 Section 2. Section 41-3-401, MCA, is amended to read:
 3 "41-3-401. Abuse, neglect, and dependency petitions.
 4 (1) The county attorney, attorney general, or an attorney
 5 hired by the county welfare department or office of human
 6 services shall be responsible for filing all petitions
 7 alleging abuse, neglect, or dependency. The county attorney
 8 or attorney general, or an attorney hired by the county
 9 welfare department or office of human services with the
 10 written consent of the county attorney or attorney general,
 11 may require all state, county, and municipal agencies,
 12 including law enforcement agencies, to conduct such
 13 investigations and furnish such reports as may be necessary.
 14 Investigations as to financial status may not be made prior
 15 to the 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 and ~~must be heard within 20 days of the filing~~
 20 ~~of the petition.~~
 21 (3) A petition alleging abuse, neglect, or dependency
 22 is a civil action brought in the name of the state of
 23 Montana. The rules of civil procedure shall apply except as
 24 herein modified. Proceedings under a petition are not a bar
 25 to criminal prosecution.

1 (4) The parents or parent, guardian, or other person
 2 or agency having legal custody of the youth named in the
 3 petition, if residing in the state, shall be served
 4 personally with a copy of the petition and summons at least
 5 5 days prior to the date set for hearing. If such person or
 6 agency ~~resides out of state or is not found within the state~~
 7 ~~cannot be served personally, the rules of civil procedure~~
 8 ~~relating to service~~ THE PERSON OR AGENCY MAY BE SERVED ~~of~~
 9 ~~process in such cases by publication shall apply~~ IN THE
 10 MANNER PROVIDED BY THE MONTANA RULES OF CIVIL PROCEDURE FOR
 11 OTHER TYPES OF PROCEEDINGS.

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

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

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

22 (8) Except where the proceeding is instituted or
 23 commenced by a representative of the department of social
 24 and rehabilitation services, a citation shall be issued and
 25 served upon a representative of the department prior to the

1 court hearing.

2 (9) The petition shall:

3 (a) state the nature of the alleged abuse, neglect, or
 4 dependency;

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

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

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

12 (a) temporary investigative authority and protective
 13 services;

14 (b) temporary legal custody;

15 (c) termination of the parent-child legal relationship
 16 and permanent legal custody with the right to consent to
 17 adoption;

18 (d) any combination of the above or such other relief
 19 as may be required for the best interest of the youth.

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

22 (12) The court may at any time on its own motion or the
 23 motion of any party appoint counsel for any indigent party."

24 ~~Section 3--Section 41-3-402, MCA, is amended to read:~~
 25 ~~"41-3-402--Petition for--temporary--investigative~~

1 authority--and--protective--services;--(1)--in--cases--where--it
2 appears--that--a--youth--is--abused--or--neglected--or--is--in--danger
3 of--being--abused--or--neglected;--the--county--attorney;--attorney
4 general;--or--an--attorney--hired--by--the--county--welfare
5 department--or--office--of--human--services--may--file--a--petition
6 for--temporary--investigative--authority--and--protective
7 services;

8 (2)--A--petition--for--temporary--investigative--authority
9 and--protective--services--shall--state--the--specific--authority
10 requested--and--the--facts--establishing--probable--cause--to
11 believe that--a--youth--is--abused--or--neglected--or--is--in--danger
12 of--being--abused--or--neglected;

13 (3)--The--petition--for--temporary--investigative--authority
14 and--protective--services--shall--be--supported--by--an--affidavit
15 signed--by--the--county--attorney;--attorney--general;--county
16 welfare--department--attorney;--or--office--of--human--services
17 attorney--or--a--department--of--social--and--rehabilitation
18 services--report--stating--in--detail--the--facts--upon--which--the
19 request--is--based;"

20 Section--4;--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;--along--with--the--petition--and--supporting
2 documents;--shall--be--served--by--a--peace--officer--or--a
3 representative--of--the--department--of--social--and
4 rehabilitation--services--on--the--person--or--persons--named
5 therein;--When--the--youth--is--placed--in--a--medical--facility--or
6 protective--facility;--the--department--shall--notify--the--parents
7 or--parent;--guardian;--or--other--person--having--legal--custody--of
8 the--youth;--at--the--time--the--placement--is--made--or--as--soon
9 thereafter--as--possible;

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

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

24 (2)--The--court--may--grant--the--following--kinds--of--relief;

25 (a)--right--of--entry--by--a--peace--officer--or--department--of

1 social-and-rehabilitation-services-worker;
 2 (b)--medical--and--psychological-evaluation-of-youth-or
 3 parents;-guardians;--or--person-having-legal-custody;
 4 (c)--require-the-youth;parents;guardians;--or--person
 5 having-legal-custody-to-receive-counseling-services;
 6 (d)--place--the--youth-in-temporary-medical-facility-or
 7 facility-for-protection-of-the-youth;
 8 (e)--require-the-parents;--guardian;--or--other--person
 9 having--custody--to--furnish--such-services-as-the-court-may
 10 designate;
 11 (f)--such--other--temporary--disposition--as---may---be
 12 required-in-the-best-interest-of-the-youth;"

13 Section-5;--Section--41-3-612;--MEA;--is-amended-to-read:
 14 "41-3-612;--Appeals;--Appeals--of--court--orders---or
 15 decrees--made--under--this-part-shall-be-given-precedence-on
 16 the-calendar-of-the-supreme-court-over--all--other--matters;
 17 unless--otherwise--provided--by-law. An-appeal-does-not-stay
 18 the-order-or-decree--appealed--from;--however;--the--supreme
 19 court--may--order--a--stay--upon--application-and-hearing-if
 20 suitable-provision-is-made-for-the-care-and-custody--of--the
 21 child."

22 NEW SECTION. Section 3. Appeals. Appeals of court
 23 orders or decrees made under this part shall be given
 24 precedence on the calendar of the supreme court over all
 25 other matters, unless otherwise provided by law. An appeal

1 does not stay the order or decree appealed from; however,
 2 the supreme court may order a stay upon application and
 3 hearing if suitable provision is made for the care and
 4 custody of the child.

5 NEW SECTION. Section 4. Codification instruction.
 6 Section 6 is intended to be codified as an integral part of
 7 Title 41, chapter 3, part 4, and the provisions of Title 41,
 8 chapter 3, part 4, apply to section 6.

9 NEW SECTION. Section 5. Effective date. This act is
 10 effective on passage and approval.

-End-

HOUSE

STANDING COMMITTEE REPORT

MARCH 25,

19 87

Mr. Speaker: We, the committee on JUDICIARY

report SENATE BILL NO. 303

do pass
 do not pass

be concurred in
 be not concurred in

as amended
 statement of intent attached



Chairman

1. Page 3, line 4.
Following: "treatment"
Strike: ", "
Following: "OR"
Insert: "medically indicated"

2. Page 9, line 9.
Following: "~~prebable~~"
Insert: "probable"
Strike: "to"

3. Page 9, line 10.
Strike: "believe"

4. Page 10, line 16.
Following: "~~prebable~~"
Insert: "probable"

5. Page 11, lines 16 through 19.
Strike: "An appeal" on line 16 through end of line 19

9MS.

THIRD reading copy (BLUE)
color

REP. BULGER WILL CARRY THE BILL!