

HOUSE BILL NO. 87

INTRODUCED BY KILPATRICK, RUSSELL

BY REQUEST OF THE DEPARTMENT OF FAMILY SERVICES

IN THE HOUSE

JANUARY 6, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON HUMAN SERVICES & AGING.
	FIRST READING.
JANUARY 19, 1989	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
JANUARY 20, 1989	PRINTING REPORT.
JANUARY 21, 1989	ON MOTION, CONSIDERATION PASSED FOR THE DAY.
JANUARY 23, 1989	SECOND READING, DO PASS.
JANUARY 24, 1989	ENGROSSING REPORT.
JANUARY 25, 1989	THIRD READING, PASSED. AYES, 96; NOES, 0.
	TRANSMITTED TO SENATE.

IN THE SENATE

JANUARY 26, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
MARCH 2, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 3, 1989	SECOND READING, CONCURRED IN.
MARCH 6, 1989	THIRD READING, CONCURRED IN. AYES, 50; NOES, 0.
	RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

MARCH 8, 1989

RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS NOT  
CONCURRED IN.

ON MOTION, CONFERENCE COMMITTEE  
REQUESTED AND APPOINTED.

IN THE SENATE

MARCH 9, 1989

ON MOTION, CONFERENCE COMMITTEE  
REQUESTED AND APPOINTED.

IN THE HOUSE

MARCH 16, 1989

CONFERENCE COMMITTEE REPORTED.

IN THE SENATE

MARCH 21, 1989

CONFERENCE COMMITTEE REPORT ADOPTED.

IN THE HOUSE

MARCH 30, 1989

SECOND READING, CONFERENCE COMMITTEE  
REPORT ADOPTED.

MARCH 31, 1989

THIRD READING, CONFERENCE COMMITTEE  
REPORT ADOPTED.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 HOUSE BILL NO. 87  
2 INTRODUCED BY Monte Russell  
3 BY REQUEST OF THE DEPARTMENT OF FAMILY SERVICES  
4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND CERTAIN  
6 DEFINITIONS WITHIN THE CHILD ABUSE, NEGLECT, AND DEPENDENCY  
7 LAW; AMENDING SECTION 41-3-102, MCA; AND PROVIDING AN  
8 IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."  
9  
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
11 **Section 1.** Section 41-3-102, MCA, is amended to read:  
12 "41-3-102. Definitions. As used in this chapter, the  
13 following definitions apply:  
14 (1) "Child" or "youth" means any person under 18 years  
15 of age.  
16 (2) An "~~abused~~ Abused or neglected child" means a  
17 child ~~whose-normal-physical-or-mental-health-or-welfare~~ who  
18 is harmed or threatened with harm by the acts or omissions  
19 of his parent or other person responsible for his welfare.  
20 (3) "Harm to a child's health or welfare" means the  
21 harm that occurs whenever the parent or other person  
22 responsible for the child's welfare:  
23 (a) inflicts or allows to be inflicted upon the child  
24 physical or mental injury, ~~including-injuries-sustained-as-a~~  
25 ~~result-of-excessive-corporal-punishment;~~

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

the withholding of medically indicated treatment or medically indicated psychological care permitted or authorized under state law.

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

(a) the infant is chronically and irreversibly comatose;

(b) the provision of such treatment would:

(i) merely prolong dying;

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

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

(c) the provision of such treatment would be virtually futile in terms of the survival of the infant and the treatment itself under such circumstances would be inhumane.

For purposes of this subsection, "infant" means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The reference to less than 1 year of age may not be construed to imply that treatment should be changed or discontinued when an infant reaches 1 year of age or to affect or limit any existing protections available under state laws regarding medical neglect of children over 1 year of age.

(6) "Threatened harm to a child's health or welfare" means imminent substantial risk of harm to the child's health or welfare.

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

(8) "Physical injury" means death, permanent or temporary disfigurement, or impairment of any bodily organ or function and includes death, permanent or temporary disfigurement, and impairment of a bodily organ or function sustained as a result of excessive corporal punishment.

(9) "Mental injury" means an identifiable and

1 substantial impairment of the child's intellectual or  
2 psychological functioning.

3 (10) "Dependent youth" means a youth:

4 (a) who is abandoned;

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

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

9 (d) who is destitute;

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

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

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

16 (12) "Department" means the department of family  
17 services provided for in 2-15-2401.

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

24 (14) "Social worker" means an employee of the  
25 department of family services whose duties generally involve

1 the provision of either child or adult protective services,  
2 or both.

3 (15) "Sexual abuse" means the commission of sexual  
4 assault, sexual intercourse without consent, indecent  
5 exposure, deviate sexual conduct, or incest, as described in  
6 Title 45, chapter 5, part 5.

7 (16) "Sexual exploitation" means allowing, permitting,  
8 or encouraging a child to engage in a prostitution offense,  
9 as described in 45-5-601 through 45-5-603, or allowing,  
10 permitting, or encouraging sexual abuse of children as  
11 described in 45-5-625."

12 **Section 2. Extension of authority.** Any existing  
13 authority to make rules on the subject of the provisions of  
14 [this act] is extended to the provisions of [this act].

15 **Section 3. Effective date -- applicability.** [This act]  
16 is effective on passage and approval and applies to  
17 proceedings begun on or after that date.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB087, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act to amend certain definitions within the child abuse, neglect, and dependency law; amending section 41-3-102, MCA; and providing an immediate effective date and an applicability date.

ASSUMPTIONS:

1. If HB 87 passes there is no fiscal impact as the bill only clarifies the definition in the child abuse, neglect and dependency law and will not increase or decrease the role of the department of Family Service in providing protective services.
2. If HB 87 does not pass, the state will not be in compliance with federal definitions of child abuse and neglect and will lose the federal Child Abuse and Neglect Grant of \$65,000.

FISCAL IMPACT:

If HB 87 does not pass the state will lose \$65,000 in federal grant revenue.

Ray Shackelford 1/12/89  
RAY SHACKLEFORD, BUDGET DIRECTOR DATE  
OFFICE OF BUDGET AND PROGRAM PLANNING

Thomas E. Kilpatrick 1-12-89  
THOMAS E. KILPATRICK, PRIMARY SPONSOR DATE

Fiscal Note for HB087, as introduced

**HB 87**

APPROVED BY COMM. ON  
HUMAN SERVICES AND AGING

## HOUSE BILL NO. 87

INTRODUCED BY KILPATRICK, RUSSELL

BY REQUEST OF THE DEPARTMENT OF FAMILY SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND CERTAIN  
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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  
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~~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~~  
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~~be-committed-the-act-of-sexual-abuse-of-children-as--defined~~  
~~in--subsection--(1)-of-45-5-625~~ sexual abuse or exploitation  
of the child;

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

(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  
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days and reasonable efforts to identify and locate the  
parents have failed.

(4) "Adequate health care" means any medical or

1 nonmedical remedial health care, including the prevention of  
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 4 authorized under state law.

5 (5) "Withholding of medically indicated treatment"  
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(12) "Department" means the department of family services provided for in 2-15-2401.

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

(14) "Social worker" means an employee of the

department of family services whose duties generally involve the provision of either child or adult protective services, or both.

(15) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent, indecent exposure, deviate sexual conduct, or incest, as described in Title 45, chapter 5, part 5.

(16) "Sexual exploitation" means allowing, permitting, or encouraging a child to engage in a prostitution offense, as described in 45-5-601 through 45-5-603, or allowing, permitting, or encouraging sexual abuse of children as described in 45-5-625."

NEW SECTION. Section 2. Extension of authority. Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

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-End-

SENATE STANDING COMMITTEE REPORT

March 1, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration HB 87 (third reading copy -- blue), respectfully report that HB 87 be amended and as so amended be concurred in:

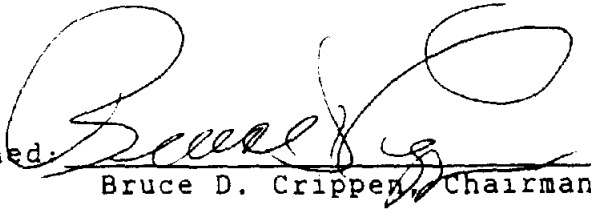
Sponsor: Kilpatrick (Halligan)

1. Page 4, line 13.

Following: "~~imminent~~"

Strike: "IMMINENT AND"

AND AS AMENDED BE CONCURRED IN

Signed: 

Bruce D. Crippen, Chairman

SENATE

scrhb087.301

CONFERENCE COMMITTEE REPORT  
HOUSE BILL 87

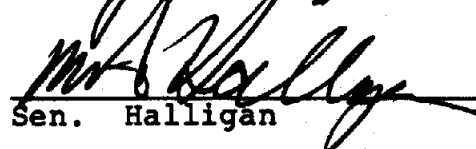
Report No. 1  
March 16, 1989  
Page 1 of 1

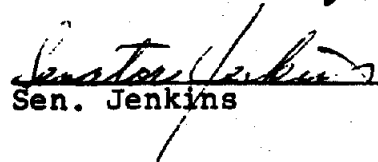
MR. PRESIDENT AND MR. SPEAKER

We, your Joint Conference Committee on HOUSE BILL 87 met and recommend that this Conference Committee report be adopted and that HOUSE BILL 87 (reference copy -- salmon) be amended as indicated in the INSTRUCTIONS.

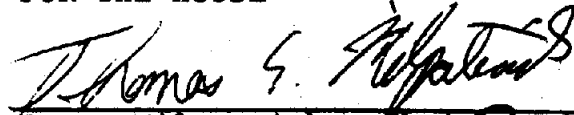
FOR THE SENATE

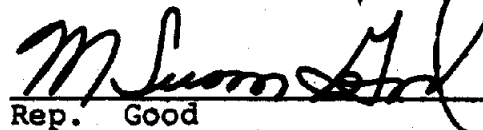
  
Sen. Harp, Chairman


  
Sen. Halligan

  
Sen. Jenkins

FOR THE HOUSE

  
Rep. Kilpatrick, Chairman

  
Rep. Good

  
Rep. Russell

We Considered: The Senate Committee on Judiciary amendments to the third reading copy dated March 1, 1989.

INSTRUCTIONS: The House accept the Senate amendments and that the reference copy of the bill be accepted.

-END-

ADOPT

REJECT

HB 87

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25 physical or mental injury, ~~including injuries sustained as a~~1 ~~result-of-excessive-corporal-punishment;~~

2 (b) commits or allows to be committed ~~a-sexual-assault~~  
3 ~~against-the-child-or-exploits-the-child-or-allows-the--child~~  
4 ~~to--be-exploited-for-sexual-purposes-or-commits-or-allows-to~~  
5 ~~be-committed-the-act-of-sexual-abuse-of-children-as--defined~~  
6 ~~in--subsection--(i)-of-45-5-625~~ sexual abuse or exploitation  
7 of the child;

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

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

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

25 (4) "Adequate health care" means any medical or

1 nonmedical remedial health care, including the prevention of  
2 the withholding of medically indicated treatment or  
3 medically indicated psychological care permitted or  
4 authorized under state law.

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

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

18 (b) the provision of such treatment would:

19 (i) merely prolong dying;

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

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

24 (c) the provision of such treatment would be virtually  
25 futile in terms of the survival of the infant and the

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

12 (6) "Threatened harm to a child's health or welfare"  
13 means ~~imminent~~ IMMINENT-AND substantial risk of harm to the  
14 child's health or welfare.

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

21 (8) "Physical injury" means death, permanent or  
22 temporary disfigurement, or impairment of any bodily organ  
23 or function and includes death, permanent or temporary  
24 disfigurement, and impairment of a bodily organ or function  
25 sustained as a result of excessive corporal punishment.



1 (9) "Mental injury" means an identifiable and  
2 substantial impairment of the child's intellectual or  
3 psychological functioning.

4 (10) "Dependent youth" means a youth:

5 (a) who is abandoned;

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

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

10 (d) who is destitute;

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

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

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

17 (12) "Department" means the department of family  
18 services provided for in 2-15-2401.

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

25 (14) "Social worker" means an employee of the

1 department of family services whose duties generally involve  
2 the provision of either child or adult protective services,  
3 or both.

4 (15) "Sexual abuse" means the commission of sexual  
5 assault, sexual intercourse without consent, indecent  
6 exposure, deviate sexual conduct, or incest, as described in  
7 Title 45, chapter 5, part 5.

8 (16) "Sexual exploitation" means allowing, permitting,  
9 or encouraging a child to engage in a prostitution offense,  
10 as described in 45-5-601 through 45-5-603, or allowing,  
11 permitting, or encouraging sexual abuse of children as  
12 described in 45-5-625."

13 NEW SECTION. Section 2. Extension of authority. Any  
14 existing authority to make rules on the subject of the  
15 provisions of [this act] is extended to the provisions of  
16 [this act].

17 NEW SECTION. Section 3. Effective date --  
18 applicability. [This act] is effective on passage and  
19 approval and applies to proceedings begun on or after that  
20 date.

-End-