

HOUSE BILL NO. 238

INTRODUCED BY SMITH, FRANKLIN, STRIZICH, COCCHIARELLA
BY REQUEST OF THE DEPARTMENT OF FAMILY SERVICES

IN THE HOUSE

JANUARY 19, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON HUMAN SERVICES & AGING.
	FIRST READING.
JANUARY 28, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
JANUARY 29, 1993	PRINTING REPORT.
JANUARY 30, 1993	SECOND READING, DO PASS.
FEBRUARY 1, 1993	ENGROSSING REPORT.
FEBRUARY 3, 1993	THIRD READING, PASSED. AYES, 97; NOES, 0.
FEBRUARY 4, 1993	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 4, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
MARCH 24, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 27, 1993	SECOND READING, CONCURRED IN.
MARCH 29, 1993	THIRD READING, CONCURRED IN. AYES, 47; NOES, 0.
	RETURNED TO HOUSE.

IN THE HOUSE

MARCH 30, 1993	RECEIVED FROM SENATE.
	SENT TO ENROLLING.
	REPORTED CORRECTLY ENROLLED.

1 House BILL NO. 238
2 INTRODUCED BY Liz Smith Tracy
3 BY REQUEST OF THE DEPARTMENT OF FAMILY SERVICES
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING INQUIRY INTO
6 THE FINANCIAL RESOURCES OF A PARENT OR GUARDIAN DURING AN
7 INVESTIGATION OF AN ALLEGATION OF ABUSE OR NEGLECT OF A
8 CHILD FOR THE PURPOSE OF DETERMINING ELIGIBILITY FOR FEDERAL
9 PROGRAM FUNDING OR PARENTAL CONTRIBUTION FOR THE COST OF
10 OUT-OF-HOME CARE FOR THE CHILD; AMENDING SECTION 41-3-202,
11 MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."
12

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

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

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

1 child's family or of any other person responsible for the
2 child's care except as necessary to ascertain eligibility
3 for federal assistance programs or to comply with the
4 provisions of 41-3-406.

5 (2) The social worker is responsible for assessing the
6 family and planning for the child. If the child is treated
7 at a medical facility, the social worker, county attorney,
8 or peace officer shall, consistent with reasonable medical
9 practice, have the right of access to the child for
10 interviews, photographs, and securing physical evidence and
11 have the right of access to relevant hospital and medical
12 records pertaining to the child. If considered appropriate
13 by the social worker, county attorney, or peace officer
14 conducting an interview of the child, an employee of the
15 public school attended by the child involved may participate
16 in any interview of the child if the child is enrolled in
17 kindergarten through 8th grade.

18 (3) If from the investigation it appears that the child
19 suffered abuse or neglect, the department shall provide
20 protective services to the child and may provide protective
21 services to any other child under the same care. The
22 department will advise the county attorney of its
23 investigation.

24 (4) The investigating social worker, within 60 days of
25 commencing an investigation, shall also furnish a written

1 report to the department. The department shall maintain a
2 record system containing child abuse and neglect cases.

3 (5) Any person reporting abuse or neglect which
4 involves acts or omissions on the part of a public or
5 private residential institution, home, facility, or agency
6 shall be responsible for ensuring that the report is made to
7 the department of family services, its local affiliate, and
8 the county attorney of the county in which the facility is
9 located."

10 NEW SECTION. Section 2. Effective date. [This act] is
11 effective on passage and approval.

-End-

APPROVED BY COMM. ON
HUMAN SERVICES AND AGING

HOUSE BILL NO. 238

INTRODUCED BY SMITH, FRANKLIN, STRIZICH, COCCHIARELLA
BY REQUEST OF THE DEPARTMENT OF FAMILY SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING INQUIRY INTO
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PROGRAM FUNDING OR PARENTAL CONTRIBUTION FOR THE COST OF
OUT-OF-HOME CARE FOR THE CHILD; AMENDING ~~SECTION~~ SECTIONS
41-3-202 AND 41-3-401, MCA; AND PROVIDING AN IMMEDIATE
EFFECTIVE DATE."

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

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investigation.

(4) The investigating social worker, within 60 days of

commencing an investigation, shall also furnish a written report to the department. The department shall maintain a record system containing child abuse and neglect cases.

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

SECTION 2. SECTION 41-3-401, MCA, IS AMENDED TO READ:

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

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

(2) Upon receipt of a petition, the court shall set a

date for an adjudicatory hearing on the petition. Such petitions shall be given preference by the court in setting hearing dates.

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

(4) The parents or parent, guardian, or other person or agency having legal custody of the youth named in the petition, if residing in the state, shall be served personally with a copy of the petition and summons at least 5 days prior to the date set for hearing. If such person or agency cannot be served personally, the person or agency may be served by publication in the manner provided by the Montana Rules of Civil Procedure for other types of proceedings.

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

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

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

3 (8) Except where the proceeding is instituted or
4 commenced at the request of the department of family
5 services, a citation shall be issued and served upon a
6 representative of the department prior to the court hearing.

7 (9) The petition shall:

8 (a) state the nature of the alleged abuse, neglect, or
9 dependency;

10 (b) state the full name, age, and address of the youth
11 and the name and address of his parents or guardian or
12 person having legal custody of the youth;

13 (c) state the names, addresses, and relationship to the
14 youth of all persons who are necessary parties to the
15 action.

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

17 (a) temporary investigative authority and protective
18 services;

19 (b) temporary legal custody;

20 (c) termination of the parent-child legal relationship
21 and permanent legal custody with the right to consent to
22 adoption;

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

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

1 at any time within the discretion of the court.

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

4 NEW SECTION. **Section 3. Effective date.** [This act] is
5 effective on passage and approval.

-End-

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25 (4) The investigating social worker, within 60 days of

1 commencing an investigation, shall also furnish a written
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17 or attorney general, or an attorney hired by the county
18 welfare department or office of human services with the
19 written consent of the county attorney or attorney general,
20 may require all state, county, and municipal agencies,
21 including law enforcement agencies, to conduct such
22 investigations and furnish such reports as may be necessary.
23 ~~Investigations--as-to-financial-status-may-not-be-made-prior~~
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25 (2) Upon receipt of a petition, the court shall set a

1 date for an adjudicatory hearing on the petition. Such
2 petitions shall be given preference by the court in setting
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5 is a civil action brought in the name of the state of
6 Montana. The rules of civil procedure shall apply except as
7 herein modified. Proceedings under a petition are not a bar
8 to criminal prosecution.

9 (4) The parents or parent, guardian, or other person or
10 agency having legal custody of the youth named in the
11 petition, if residing in the state, shall be served
12 personally with a copy of the petition and summons at least
13 5 days prior to the date set for hearing. If such person or
14 agency cannot be served personally, the person or agency may
15 be served by publication in the manner provided by the
16 Montana Rules of Civil Procedure for other types of
17 proceedings.

18 (5) In the event personal service cannot be made upon
19 the parents or parent, guardian, or other person or agency
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21 represent the unavailable party where in the opinion of the
22 court the interests of justice require.

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