

## SENATE BILL NO. 23

INTRODUCED BY AKLESTAD

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS RELATING TO THE INVESTIGATION AND REMOVAL OF CHILDREN FROM THE HOME IN CASES OF SUSPECTED CHILD ABUSE OR NEGLECT; REQUIRING REASONABLE GROUNDS TO BELIEVE THAT A CHILD IS ABUSED OR NEGLECTED IN ALL REPORTS AND INVESTIGATIONS OF SUSPECTED CHILD ABUSE OR NEGLECT; REQUIRING A PROMPT, INITIAL INVESTIGATION OF ALL REPORTS OF SUSPECTED CHILD ABUSE OR NEGLECT; REQUIRING REASONABLE GROUNDS TO BELIEVE THAT A CHILD IS IN IMMEDIATE OR APPARENT DANGER OF HARM PRIOR TO REMOVING THE CHILD AND PLACING THE CHILD IN A PROTECTIVE FACILITY; REQUIRING THAT A PETITION ALLEGING THAT A CHILD IS ABUSED OR NEGLECTED MUST BE FILED WITHIN 48 HOURS AFTER THE CHILD IS REMOVED FROM THE HOME OR FROM ANY OTHER PLACE FOR THE CHILD'S PROTECTION OR CARE; REQUIRING THAT A THIRD PARTY BE PRESENT AT ANY TAPED INTERVIEW DURING AN INITIAL INVESTIGATION; REQUIRING THE DEPARTMENT OF FAMILY SERVICES, PEACE OFFICER, OR COUNTY ATTORNEY TO NOTIFY THE PARENTS OR GUARDIANS OF A CHILD OF THE REMOVAL OR PLACEMENT OF THE CHILD WITHIN 4 HOURS; AMENDING SECTIONS 41-3-201, 41-3-202, 41-3-206, 41-3-301, AND 41-3-403, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

**Section 1.** Section 41-3-201, MCA, is amended to read:

"41-3-201. Reports. (1) When the professionals and officials listed in subsection (2) know or have reasonable cause grounds to suspect believe, as a result of information they receive in their professional or official capacity, that a child is abused or neglected, they shall report the matter promptly to the department ~~of-family-services~~ or its local affiliate, which then shall notify the county attorney of the county where the child resides.

(2) Professionals and officials required to report are:

(a) a physician, resident, intern, or member of a hospital's staff engaged in the admission, examination, care, or treatment of persons;

(b) a nurse, osteopath, chiropractor, podiatrist, medical examiner, coroner, dentist, optometrist, or any other health or mental health professional;

(c) a Christian Science practitioner ~~and~~ or religious ~~healers~~ healer;

(d) school teachers, other school officials, and employees who work during regular school hours;

(e) a social worker, operator, or employee of any registered or licensed day-care or substitute care facility, or any other operator or employee of a child-care facility;

(f) a foster care, residential, or institutional

1 worker;

2 (g) a peace officer or other law enforcement official;

3 or

4 (h) a member of the clergy.

5 (3) Any person may make a report under this section if  
6 he the person knows or has reasonable cause grounds to  
7 suspect believe that a child is abused or neglected.

8 (4) (a) Except as provided in subsection (4)(b) or  
9 (4)(c), a person listed in subsection (2) may not refuse to  
10 make a report as required in this section on the grounds of  
11 a physician-patient or similar privilege.

12 (b) A clergyperson member of the clergy or a priest is  
13 not required to make a report under this section if:

14 (i) the knowledge or suspicion of the abuse or neglect  
15 came from a statement or confession made to the clergyperson  
16 member of the clergy or the priest in his that person's  
17 capacity as a clergyperson member of the clergy or a priest;

18 (ii) the statement was intended to be a part of a  
19 confidential communication between the clergyperson member  
20 of the clergy or the priest and a member of his the church  
21 or congregation; and

22 (iii) the person who made the statement or confession  
23 does not consent to the disclosure by the clergyperson  
24 member of the clergy or the priest.

25 (c) A clergyperson member of the clergy or a priest is

1 not required to make a report under this section if the  
2 communication is required to be confidential by canon law,  
3 church doctrine, or established church practice.

4 (5) The reports referred to under this section ~~shall~~  
5 must contain:

6 (a) the names and addresses of the child and ~~his-or-her~~  
7 the child's parents or other persons responsible for ~~his-or~~  
8 her the child's care;

9 (b) to the extent known, the child's age; and the  
10 nature and extent of the child's injuries, including any  
11 evidence of previous injuries;

12 (c) any other information that the maker of the report  
13 believes might be helpful in establishing the cause of the  
14 injuries or showing the willful neglect and the identity of  
15 person or persons responsible therefor for the injuries or  
16 neglect; and

17 (d) the facts which---led---the---person---reporting  
18 establishing reasonable grounds to believe that the child  
19 has suffered injury or injuries or willful neglect, within  
20 the meaning of this chapter."

21 **Section 2.** Section 41-3-202, MCA, is amended to read:

22 "41-3-202. Action on reporting. (1) Upon receipt of a  
23 report as required by 41-3-201 that a child is or has been  
24 abused or neglected, a social worker, or the county  
25 attorney, or a peace officer shall promptly conduct a

1 thorough an initial investigation into the home of the child  
 2 involved or any other place where the child is present, into  
 3 the circumstances surrounding the injury of the child, and  
 4 into all other nonfinancial matters which that in the  
 5 discretion of the investigator are relevant to the  
 6 investigation. In conducting an investigation under this  
 7 section, a social worker may not inquire into the financial  
 8 status of the child's family or of any other person  
 9 responsible for the child's care.

10 (2) (a) The social worker is responsible for assessing  
 11 the family and planning for the child.

12 (b) If the child is treated at a medical facility, the  
 13 social worker, county attorney, or peace officer shall,  
 14 consistent with reasonable medical practice, have the right  
 15 of access to the child for interviews, photographs, and  
 16 securing physical evidence and have the right of access to  
 17 relevant hospital and medical records pertaining to the  
 18 child.

19 (c) If an interview with the child is recorded, either  
 20 by means of videotape or audiotape, a third party, in  
 21 addition to the social worker, county attorney, or peace  
 22 officer conducting the interview, must be present during the  
 23 interview. The third party may be the child's guardian ad  
 24 litem if one has been appointed.

25 (d) If considered appropriate by the social worker,

1 county attorney, or peace officer conducting an interview of  
 2 the child, an employee of the public school attended by the  
 3 child involved may participate in any interview of the child  
 4 if the child is enrolled in kindergarten through 8th grade.

5 (3) If from the investigation it appears that there are  
 6 reasonable grounds to believe that the child suffered abuse  
 7 or neglect or is in immediate or apparent danger of harm,  
 8 the department shall provide protective services to the  
 9 child and may provide protective services to any other child  
 10 under the same care. The department ~~will~~ shall advise the  
 11 county attorney of its investigation.

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

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

23 **Section 3.** Section 41-3-206, MCA, is amended to read:

24 **"41-3-206.** Procedure in case of child's death. (1) Any  
 25 person or official required to report by law who has

reasonable cause grounds to suspect believe that a child has died as a result of child abuse or neglect shall report his suspicion the matter to the appropriate medical examiner or law enforcement officer. Any other person who has reasonable cause grounds to suspect believe that a child has died as a result of child abuse or neglect may report his--suspicion the matter to the appropriate medical examiner or law enforcement officer.

(2) The medical examiner or coroner shall investigate the report and submit his findings, in writing, to the local law enforcement agency, the appropriate county attorney, the local child protective service, and, if the person making the report is a physician, the physician."

**Section 4.** Section 41-3-301, MCA, is amended to read:

"41-3-301. ~~Emergency~~ protective service. (1) Any child protective social worker of the department of--family services, a peace officer, or the county attorney who has reason reasonable grounds to believe any that a youth child is in immediate or apparent danger of harm may immediately remove the youth child and place him the child in a protective facility. The department may make a request for further assistance from the a law enforcement agency or take appropriate legal action. The person or agency placing removing the child shall, within 4 hours after removal or as soon thereafter as possible, notify the parents, or parent,

guardian, or other person having legal custody of the youth child ~~at--the--time--the--placement--is--made--or--as--soon thereafter--as--possible.~~

(2) No A child who has been removed from his the child's home or any other place for his the child's protection or care may not be placed in a jail.

(3) A petition ~~shall~~ alleging that a child is abused or neglected must be filed within 48 hours of--emergency placement-of-a after the child's removal child from the home or any other place for the child's protection or care unless arrangements acceptable to the agency for the care of the child have been made by the parents.

(4) The department of-family-services shall make such any necessary arrangements for the youth's child's well-being ~~as-are~~ that may be required prior to the court hearing."

**Section 5.** Section 41-3-403, MCA, is amended to read:

"41-3-403. Order for immediate protection of youth child. (1) (a) Upon the filing of a petition for temporary investigative authority and protective services, the court may issue an order granting such relief as that may be required for the immediate protection of the youth child.

(b) The order, along with the petition and supporting documents, ~~shall~~ must be served by a peace officer or a representative of the department of-family-services on the

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

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

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

24 (a) granting the right of entry by a peace officer or  
 25 department ~~of--family--services~~ worker;

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

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

7 (d) place placing the youth child in a temporary  
 8 medical facility or facility for protection of the youth  
 9 child;

10 (e) require requiring the parents, guardian, or other  
 11 person having custody to furnish such services as that the  
 12 court may designate;

13 (f) ~~inquire~~ inquiring into the financial ability of the  
 14 parents, guardian, or other person having custody of the  
 15 youth child to contribute to the costs for the care,  
 16 custody, and treatment of the youth child and order  
 17 contribution for those costs pursuant to the requirements of  
 18 41-3-406(3) through (6); and

19 (g) providing such other temporary disposition as may  
 20 be required in the best interest of the youth child."

21 NEW SECTION. Section 6. Effective date. [This act] is  
 22 effective July 1, 1993.

-End-

APPROVED BY COMMITTEE  
ON JUDICIARY

SENATE BILL NO. 23

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS RELATING TO THE INVESTIGATION AND REMOVAL OF CHILDREN FROM THE HOME IN CASES OF SUSPECTED CHILD ABUSE OR NEGLECT; REQUIRING REASONABLE GROUNDS TO BELIEVE THAT A CHILD IS ABUSED OR NEGLECTED IN ALL REPORTS AND INVESTIGATIONS OF SUSPECTED CHILD ABUSE OR NEGLECT; REQUIRING A PROMPT, INITIAL INVESTIGATION OF ALL REPORTS OF SUSPECTED CHILD ABUSE OR NEGLECT; REQUIRING REASONABLE GROUNDS TO BELIEVE THAT A CHILD IS IN IMMEDIATE OR APPARENT DANGER OF HARM PRIOR TO REMOVING THE CHILD AND PLACING THE CHILD IN A PROTECTIVE FACILITY; REQUIRING THAT A PETITION ALLEGING THAT A CHILD IS ABUSED OR NEGLECTED MUST BE FILED WITHIN 48 HOURS AFTER THE CHILD IS REMOVED FROM THE HOME OR FROM ANY OTHER PLACE FOR THE CHILD'S PROTECTION OR CARE; REQUIRING THAT A THIRD PARTY BE PRESENT AT ANY TAPED INTERVIEW DURING AN INITIAL INVESTIGATION; REQUIRING THE DEPARTMENT OF FAMILY SERVICES, PEACE OFFICER, OR COUNTY ATTORNEY TO NOTIFY THE PARENTS OR GUARDIANS OF A CHILD OF THE REMOVAL OR PLACEMENT OF THE CHILD WITHIN 4 HOURS; AMENDING SECTIONS 41-3-201, 41-3-202, 41-3-206, 41-3-301, AND 41-3-403, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

**Section 1.** Section 41-3-201, MCA, is amended to read:

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(2) Professionals and officials required to report are:

(a) a physician, resident, intern, or member of a hospital's staff engaged in the admission, examination, care, or treatment of persons;

(b) a nurse, osteopath, chiropractor, podiatrist, medical examiner, coroner, dentist, optometrist, or any other health or mental health professional;

(c) a Christian Science practitioner and or religious healers healer;

(d) school teachers, other school officials, and employees who work during regular school hours;

(e) a social worker, operator, or employee of any registered or licensed day-care or substitute care facility, or any other operator or employee of a child-care facility;

(f) a foster care, residential, or institutional

1 worker;

2 (g) a peace officer or other law enforcement official;

3 or

4 (h) a member of the clergy.

5 (3) Any person may make a report under this section if

6 he the person knows or has reasonable cause grounds to

7 suspect believe that a child is abused or neglected.

8 (4) (a) Except as provided in subsection (4)(b) or

9 (4)(c), a person listed in subsection (2) may not refuse to

10 make a report as required in this section on the grounds of

11 a physician-patient or similar privilege.

12 (b) A clergyperson member of the clergy or a priest is

13 not required to make a report under this section if:

14 (i) the knowledge or suspicion of the abuse or neglect

15 came from a statement or confession made to the clergyperson

16 member of the clergy or the priest in his that person's

17 capacity as a clergyperson member of the clergy or a priest;

18 (ii) the statement was intended to be a part of a

19 confidential communication between the clergyperson member

20 of the clergy or the priest and a member of his the church

21 or congregation; and

22 (iii) the person who made the statement or confession

23 does not consent to the disclosure by the clergyperson

24 member of the clergy or the priest.

25 (c) A clergyperson member of the clergy or a priest is

1 not required to make a report under this section if the

2 communication is required to be confidential by canon law,

3 church doctrine, or established church practice.

4 (5) The reports referred to under this section ~~shall~~

5 must contain:

6 (a) the names and addresses of the child and his-or-her

7 the child's parents or other persons responsible for his-or

8 her the child's care;

9 (b) to the extent known, the child's age, and the

10 nature and extent of the child's injuries, including any

11 evidence of previous injuries;

12 (c) any other information that the maker of the report

13 believes might be helpful in establishing the cause of the

14 injuries or showing the willful neglect and the identity of

15 person or persons responsible therefor for the injuries or

16 neglect; and

17 (d) the facts ~~which---led---the---person---reporting~~

18 establishing reasonable grounds to believe that the child

19 has suffered injury or injuries or willful neglect, within

20 the meaning of this chapter."

21 **Section 2.** Section 41-3-202, MCA, is amended to read:

22 "41-3-202. Action on reporting. (1) Upon receipt of a

23 report as required by 41-3-201 that a child is or has been

24 abused or neglected, a social worker, or the county

25 attorney, or a peace officer shall promptly conduct a

1 thorough an initial investigation into the home of the child  
 2 involved or any other place where the child is present, into  
 3 the circumstances surrounding the injury of the child, and  
 4 into all other nonfinancial matters which that in the  
 5 discretion of the investigator are relevant to the  
 6 investigation. In conducting an investigation under this  
 7 section, a social worker may not inquire into the financial  
 8 status of the child's family or of any other person  
 9 responsible for the child's care.

10 (2) (a) The social worker is responsible for assessing  
 11 the family and planning for the child.

12 (b) If the child is treated at a medical facility, the  
 13 social worker, county attorney, or peace officer shall,  
 14 consistent with reasonable medical practice, have the right  
 15 of access to the child for interviews, photographs, and  
 16 securing physical evidence and have the right of access to  
 17 relevant hospital and medical records pertaining to the  
 18 child.

19 (c) If an interview with the child is recorded, either  
 20 by means of videotape or audiotape, a third party, in  
 21 addition to the social worker, county attorney, or peace  
 22 officer conducting the interview, must be present during the  
 23 interview. The third party may be the child's guardian ad  
 24 litem if one has been appointed.

25 (d) If considered appropriate by the social worker,

1 county attorney, or peace officer conducting an interview of  
 2 the child, an employee of the public school attended by the  
 3 child involved may participate in any interview of the child  
 4 if the child is enrolled in kindergarten through 8th grade.

5 (3) If from the investigation it appears that there are  
 6 reasonable grounds to believe that the child suffered abuse  
 7 or neglect or is in immediate or apparent danger of harm,  
 8 the department shall provide protective services to the  
 9 child and may provide protective services to any other child  
 10 under the same care. The department ~~will~~ shall advise the  
 11 county attorney of its investigation.

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

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

23 **Section 3.** Section 41-3-206, MCA, is amended to read:

24 "41-3-206. Procedure in case of child's death. (1) Any  
 25 person or official required to report by law who has



reasonable cause grounds to suspect believe that a child has died as a result of child abuse or neglect shall report his suspicion the matter to the appropriate medical examiner or law enforcement officer. Any other person who has reasonable cause grounds to suspect believe that a child has died as a result of child abuse or neglect may report his--suspicion the matter to the appropriate medical examiner or law enforcement officer.

(2) The medical examiner or coroner shall investigate the report and submit his findings, in writing, to the local law enforcement agency, the appropriate county attorney, the local child protective service, and, if the person making the report is a physician, the physician."

**Section 4.** Section 41-3-301, MCA, is amended to read:

"41-3-301. **Emergency protective service.** (1) Any child protective social worker of the department of--family services, a peace officer, or the county attorney who has reason reasonable grounds to believe any that a youth child is in immediate or apparent danger of harm may immediately remove the youth child and place him the child in a protective facility. The department may make a request for further assistance from the a law enforcement agency or take appropriate legal action. The person or agency placing removing the child shall, within 4 hours after removal or as soon thereafter as possible, notify the parents, or parent,

guardian, or other person having legal custody of the youth child at--the--time--the--placement--is--made--or--as--soon thereafter--as--possible.

(2) No A child who has been removed from his the child's home or any other place for his the child's protection or care may not be placed in a jail.

(3) A petition shall alleging that a child is abused or neglected must be filed within 48 hours of--emergency placement-of-a after the child's removal child from the home or any other place for the child's protection or care unless arrangements acceptable to the agency for the care of the child have been made by the parents.

(4) The department of--family-services shall make such any necessary arrangements for the youth's child's well-being as-are that may be required prior to the court hearing."

**Section 5.** Section 41-3-403, MCA, is amended to read:

"41-3-403. **Order for immediate protection of youth child.** (1) (a) Upon the filing of a petition for temporary investigative authority and protective services, the court may issue an order granting such relief as that may be required for the immediate protection of the youth child.

(b) The order, along with the petition and supporting documents, shall must be served by a peace officer or a representative of the department of--family-services on the

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

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

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

24 (a) granting the right of entry by a peace officer or  
 25 department ~~of-family-services~~ worker;

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

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

7 (d) place placing the youth child in a temporary  
 8 medical facility or facility for protection of the youth  
 9 child;

10 (e) require requiring the parents, guardian, or other  
 11 person having custody to furnish such services as that the  
 12 court may designate;

13 (f) inquire inquiring into the financial ability of the  
 14 parents, guardian, or other person having custody of the  
 15 youth child to contribute to the costs for the care,  
 16 custody, and treatment of the youth child and order  
 17 contribution for those costs pursuant to the requirements of  
 18 41-3-406(3) through (6); and

19 (g) providing such other temporary disposition as may  
 20 be required in the best interest of the youth child."

21 NEW SECTION. Section 6. Effective date. [This act] is  
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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS  
5 RELATING TO THE INVESTIGATION AND REMOVAL OF CHILDREN FROM  
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7 REQUIRING REASONABLE GROUNDS TO BELIEVE THAT A CHILD IS  
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9 SUSPECTED CHILD ABUSE OR NEGLECT; REQUIRING A PROMPT,  
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11 ABUSE OR NEGLECT; REQUIRING REASONABLE GROUNDS TO BELIEVE  
12 THAT A CHILD IS IN IMMEDIATE OR APPARENT DANGER OF HARM  
13 PRIOR TO REMOVING THE CHILD AND PLACING THE CHILD IN A  
14 PROTECTIVE FACILITY; REQUIRING THAT A PETITION ALLEGING THAT  
15 A CHILD IS ABUSED OR NEGLECTED MUST BE FILED WITHIN 48 HOURS  
16 AFTER THE CHILD IS REMOVED FROM THE HOME OR FROM ANY OTHER  
17 PLACE FOR THE CHILD'S PROTECTION OR CARE; REQUIRING THAT A  
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8 matter promptly to the department of-family-services or its  
9 local affiliate, which then shall notify the county attorney  
10 of the county where the child resides.

11 (2) Professionals and officials required to report are:

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15 (b) a nurse, osteopath, chiropractor, podiatrist,  
16 medical examiner, coroner, dentist, optometrist, or any  
17 other health or mental health professional;

18 (c) a Christian Science practitioner and or religious  
19 healers healer;

20 (d) school teachers, other school officials, and  
21 employees who work during regular school hours;

22 (e) a social worker, operator, or employee of any  
23 registered or licensed day-care or substitute care facility,  
24 or any other operator or employee of a child-care facility;

25 (f) a foster care, residential, or institutional

1 worker;

2 (g) a peace officer or other law enforcement official;  
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5 (3) Any person may make a report under this section if  
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13 not required to make a report under this section if:

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16 member of the clergy or the priest in his that person's  
17 capacity as a clergyperson member of the clergy or a priest;

18 (ii) the statement was intended to be a part of a  
19 confidential communication between the clergyperson member  
20 of the clergy or the priest and a member of his the church  
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24 member of the clergy or the priest.

25 (c) A clergyperson member of the clergy or a priest is

1 not required to make a report under this section if the  
2 communication is required to be confidential by canon law,  
3 church doctrine, or established church practice.

4 (5) The reports referred to under this section shall  
5 must contain:

6 (a) the names and addresses of the child and his-or-her  
7 the child's parents or other persons responsible for his-or  
8 her the child's care;

9 (b) to the extent known, the child's age, and the  
10 nature and extent of the child's injuries, including any  
11 evidence of previous injuries;

12 (c) any other information that the maker of the report  
13 believes might be helpful in establishing the cause of the  
14 injuries or showing the willful neglect and the identity of  
15 person or persons responsible therefor for the injuries or  
16 neglect; and

17 (d) the facts which---led---the---person---reporting  
18 establishing reasonable grounds to believe that the child  
19 has suffered injury or injuries or willful neglect, within  
20 the meaning of this chapter."

21 **Section 2.** Section 41-3-202, MCA, is amended to read:

22 "41-3-202. Action on reporting. (1) Upon receipt of a  
23 report as required by 41-3-201 that a child is or has been  
24 abused or neglected, a social worker, or the county  
25 attorney, or a peace officer shall promptly conduct a

thorough an initial investigation into the home of the child involved or any other place where the child is present, into the circumstances surrounding the injury of the child, and into all other nonfinancial matters which that in the discretion of the investigator are relevant to the investigation. In conducting an investigation under this section, a social worker may not inquire into the financial status of the child's family or of any other person responsible for the child's care.

(2) (a) The social worker is responsible for assessing the family and planning for the child.

(b) If the child is treated at a medical facility, the social worker, county attorney, or peace officer shall, consistent with reasonable medical practice, have the right of access to the child for interviews, photographs, and securing physical evidence and have the right of access to relevant hospital and medical records pertaining to the child.

(c) If an interview with the child is recorded, either by means of videotape or audiotape, a third party, in addition to the social worker, county attorney, or peace officer conducting the interview, must be present during the interview. The third party may be the child's guardian ad litem if one has been appointed.

(d) If considered appropriate by the social worker,

county attorney, or peace officer conducting an interview of the child, an employee of the public school attended by the child involved may participate in any interview of the child if the child is enrolled in kindergarten through 8th grade.

(3) If from the investigation it appears that there are reasonable grounds to believe that the child suffered abuse or neglect or is in immediate or apparent danger of harm, the department shall provide protective services to the child and may provide protective services to any other child under the same care. The department ~~will~~ shall advise the county attorney of its 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 that involves acts or omissions on the part of a public or private residential institution, home, facility, or agency ~~shall be~~ is 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 3.** Section 41-3-206, MCA, is amended to read:

"41-3-206. Procedure in case of child's death. (1) Any person or official required to report by law who has

reasonable cause grounds to suspect believe that a child has died as a result of child abuse or neglect shall report his suspicion the matter to the appropriate medical examiner or law enforcement officer. Any other person who has reasonable cause grounds to suspect believe that a child has died as a result of child abuse or neglect may report his--suspicion the matter to the appropriate medical examiner or law enforcement officer.

(2) The medical examiner or coroner shall investigate the report and submit his findings, in writing, to the local law enforcement agency, the appropriate county attorney, the local child protective service, and, if the person making the report is a physician, the physician."

**Section 4.** Section 41-3-301, MCA, is amended to read:

"41-3-301. **Emergency protective service.** (1) Any child protective social worker of the department of--family services, a peace officer, or the county attorney who has reason reasonable grounds to believe any that a youth child is in immediate or apparent danger of harm may immediately remove the youth child and place him the child in a protective facility. The department may make a request for further assistance from the a law enforcement agency or take appropriate legal action. The person or agency placing removing the child shall, within 4 hours after removal or as soon thereafter as possible, notify the parents, or parent,

guardian, or other person having legal custody of the youth child at--the--time--the--placement--is--made--or--as--soon thereafter--as--possible.

(2) No A child who has been removed from his the child's home or any other place for his the child's protection or care may not be placed in a jail.

(3) A petition shall alleging that a child is abused or neglected must be filed within 48 hours of--emergency placement-of-a after the child's removal child from the home or any other place for the child's protection or care unless arrangements acceptable to the agency for the care of the child have been made by the parents.

(4) The department of-family-services shall make such any necessary arrangements for the youth's child's well-being as-are that may be required prior to the court hearing."

**Section 5.** Section 41-3-403, MCA, is amended to read:

"41-3-403. **Order for immediate protection of youth child.** (1) (a) Upon the filing of a petition for temporary investigative authority and protective services, the court may issue an order granting such relief as that may be required for the immediate protection of the youth child.

(b) The order, along with the petition and supporting documents, shall must be served by a peace officer or a representative of the department of-family-services on the

1 person or persons named therein in the order. When the youth  
 2 child is placed in a medical facility or protective  
 3 facility, the department shall, within 4 hours after the  
 4 placement is made or as soon thereafter as possible, notify  
 5 the parents or parent, guardian, or other person having  
 6 legal custody of the ~~youth-at-the-time-the-placement-is~~  
 7 ~~made-or-as-soon-thereafter-as-possible~~ child.

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

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

24 (a) granting the right of entry by a peace officer or  
 25 department of-family-services worker;

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

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

7 (d) place placing the youth child in a temporary  
 8 medical facility or facility for protection of the youth  
 9 child;

10 (e) require requiring the parents, guardian, or other  
 11 person having custody to furnish such services as that the  
 12 court may designate;

13 (f) inquire inquiring into the financial ability of the  
 14 parents, guardian, or other person having custody of the  
 15 youth child to contribute to the costs for the care,  
 16 custody, and treatment of the youth child and order  
 17 contribution for those costs pursuant to the requirements of  
 18 41-3-406(3) through (6); and

19 (g) providing such other temporary disposition as may  
 20 be required in the best interest of the youth child."

21 NEW SECTION. Section 6. Effective date. [This act] is  
 22 effective July 1, 1993.

-End-

HOUSE STANDING COMMITTEE REPORT

March 27, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 23 (third reading copy -- blue) be concurred in as amended .

Signed: Russell C. Fagg  
Russ Fagg, Chair

And, that such amendments read:

Carried by: Rep. Grimes

1. Title, lines 17 through 19.

Strike: "REQUIRING" on line 17 through "INVESTIGATION;" on line 19

2. Page 5, lines 19 through 24.

Strike: subsection (c) in its entirety

Renumber: subsequent subsection

3. Page 10, line 21.

Following: line 20

Insert: "NEW SECTION. Section 6. Coordination instruction. If House Bill No. 127 is passed and approved and if it amends 41-3-403 by inserting a reference or references to a "youth", then each reference to the word "youth" in those amendments is changed to the word "child"."

Renumber: subsequent section

-END-

Committee Vote:  
Yes 12, No 6.

HOUSE

SB 23

690951SC.Hdd



SENATE BILL NO. 23  
INTRODUCED BY AKLESTAD

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS RELATING TO THE INVESTIGATION AND REMOVAL OF CHILDREN FROM THE HOME IN CASES OF SUSPECTED CHILD ABUSE OR NEGLECT; REQUIRING REASONABLE GROUNDS TO BELIEVE THAT A CHILD IS ABUSED OR NEGLECTED IN ALL REPORTS AND INVESTIGATIONS OF SUSPECTED CHILD ABUSE OR NEGLECT; REQUIRING A PROMPT, INITIAL INVESTIGATION OF ALL REPORTS OF SUSPECTED CHILD ABUSE OR NEGLECT; REQUIRING REASONABLE GROUNDS TO BELIEVE THAT A CHILD IS IN IMMEDIATE OR APPARENT DANGER OF HARM PRIOR TO REMOVING THE CHILD AND PLACING THE CHILD IN A PROTECTIVE FACILITY; REQUIRING THAT A PETITION ALLEGING THAT A CHILD IS ABUSED OR NEGLECTED MUST BE FILED WITHIN 48 HOURS AFTER THE CHILD IS REMOVED FROM THE HOME OR FROM ANY OTHER PLACE FOR THE CHILD'S PROTECTION OR CARE; ~~REQUIRING--THAT--A THIRD--PARTY--BE--PRESENT--AT--ANY--TAPED--INTERVIEW--DURING--AN INITIAL--INVESTIGATION,~~ REQUIRING THE DEPARTMENT OF FAMILY SERVICES, PEACE OFFICER, OR COUNTY ATTORNEY TO NOTIFY THE PARENTS OR GUARDIANS OF A CHILD OF THE REMOVAL OR PLACEMENT OF THE CHILD WITHIN 4 HOURS; AMENDING SECTIONS 41-3-201, 41-3-202, 41-3-206, 41-3-301, AND 41-3-403, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

**Section 1.** Section 41-3-201, MCA, is amended to read:

"41-3-201. Reports. (1) When the professionals and officials listed in subsection (2) know or have reasonable cause grounds to suspect believe, as a result of information they receive in their professional or official capacity, that a child is abused or neglected, they shall report the matter promptly to the department of-family-services or its local affiliate, which then shall notify the county attorney of the county where the child resides.

(2) Professionals and officials required to report are:

(a) a physician, resident, intern, or member of a hospital's staff engaged in the admission, examination, care, or treatment of persons;

(b) a nurse, osteopath, chiropractor, podiatrist, medical examiner, coroner, dentist, optometrist, or any other health or mental health professional;

(c) a Christian Science practitioner and or religious ~~healers~~ healer;

(d) school teachers, other school officials, and employees who work during regular school hours;

(e) a social worker, operator, or employee of any registered or licensed day-care or substitute care facility, or any other operator or employee of a child-care facility;

(f) a foster care, residential, or institutional

1 worker;

2 (g) a peace officer or other law enforcement official;  
3 or

4 (h) a member of the clergy.

5 (3) Any person may make a report under this section if  
6 he the person knows or has reasonable cause grounds to  
7 suspect believe that a child is abused or neglected.

8 (4) (a) Except as provided in subsection (4)(b) or  
9 (4)(c), a person listed in subsection (2) may not refuse to  
10 make a report as required in this section on the grounds of  
11 a physician-patient or similar privilege.

12 (b) A clergyperson member of the clergy or a priest is  
13 not required to make a report under this section if:

14 (i) the knowledge or suspicion of the abuse or neglect  
15 came from a statement or confession made to the clergyperson  
16 member of the clergy or the priest in his that person's  
17 capacity as a clergyperson member of the clergy or a priest;

18 (ii) the statement was intended to be a part of a  
19 confidential communication between the clergyperson member  
20 of the clergy or the priest and a member of his the church  
21 or congregation; and

22 (iii) the person who made the statement or confession  
23 does not consent to the disclosure by the clergyperson  
24 member of the clergy or the priest.

25 (c) A clergyperson member of the clergy or a priest is

1 not required to make a report under this section if the  
2 communication is required to be confidential by canon law,  
3 church doctrine, or established church practice.

4 (5) The reports referred to under this section ~~shall~~  
5 must contain:

6 (a) the names and addresses of the child and ~~his-or-her~~  
7 the child's parents or other persons responsible for ~~his-or~~  
8 her the child's care;

9 (b) to the extent known, the child's age, and the  
10 nature and extent of the child's injuries, including any  
11 evidence of previous injuries;

12 (c) any other information that the maker of the report  
13 believes might be helpful in establishing the cause of the  
14 injuries or showing the willful neglect and the identity of  
15 person or persons responsible ~~therefor~~ for the injuries or  
16 neglect; and

17 (d) the facts ~~which---led---the---person---reporting~~  
18 establishing reasonable grounds to believe that the child  
19 has suffered injury or injuries or willful neglect, within  
20 the meaning of this chapter."

21 **Section 2.** Section 41-3-202, MCA, is amended to read:

22 "41-3-202. Action on reporting. (1) Upon receipt of a  
23 report as required by 41-3-201 that a child is or has been  
24 abused or neglected, a social worker, or the county  
25 attorney, or a peace officer shall promptly conduct a

thorough an initial investigation into the home of the child involved or any other place where the child is present, into the circumstances surrounding the injury of the child, and into all other nonfinancial matters which that in the discretion of the investigator are relevant to the investigation. In conducting an investigation under this section, a social worker may not inquire into the financial status of the child's family or of any other person responsible for the child's care.

(2) (a) The social worker is responsible for assessing the family and planning for the child.

(b) If the child is treated at a medical facility, the social worker, county attorney, or peace officer shall, consistent with reasonable medical practice, have the right of access to the child for interviews, photographs, and securing physical evidence and have the right of access to relevant hospital and medical records pertaining to the child.

~~(c) --if--an-interview-with-the-child-is-recorded, either by means of--videotape--or--audiotape,--a--third--party,--in addition--to--the--social--worker, county attorney, or peace officer conducting the interview, must be present during the interview. The third party may be the--child's--guardian--ad litem if one has been appointed.~~

(d)(C) If considered appropriate by the social worker,

county attorney, or peace officer conducting an interview of the child, an employee of the public school attended by the child involved may participate in any interview of the child if the child is enrolled in kindergarten through 8th grade.

(3) If from the investigation it appears that there are reasonable grounds to believe that the child suffered abuse or neglect or is in immediate or apparent danger of harm, the department shall provide protective services to the child and may provide protective services to any other child under the same care. The department ~~will~~ shall advise the county attorney of its 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 that~~ involves acts or omissions on the part of a public or private residential institution, home, facility, or agency ~~shall be~~ is 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 3.** Section 41-3-206, MCA, is amended to read:

"41-3-206. Procedure in case of child's death. (1) Any person or official required to report by law who has

reasonable cause grounds to suspect believe that a child has died as a result of child abuse or neglect shall report his suspicion the matter to the appropriate medical examiner or law enforcement officer. Any other person who has reasonable cause grounds to suspect believe that a child has died as a result of child abuse or neglect may report his--suspicion the matter to the appropriate medical examiner or law enforcement officer.

(2) The medical examiner or coroner shall investigate the report and submit his findings, in writing, to the local law enforcement agency, the appropriate county attorney, the local child protective service, and, if the person making the report is a physician, the physician."

**Section 4.** Section 41-3-301, MCA, is amended to read:

"41-3-301. **Emergency protective service.** (1) Any child protective social worker of the department of--family services, a peace officer, or the county attorney who has reason reasonable grounds to believe any that a youth child is in immediate or apparent danger of harm may immediately remove the youth child and place him the child in a protective facility. The department may make a request for further assistance from the a law enforcement agency or take appropriate legal action. The person or agency placing removing the child shall, within 4 hours after removal or as soon thereafter as possible, notify the parents, or parent,

guardian, or other person having legal custody of the youth child at--the--time--the--placement--is--made--or--as--soon thereafter--as--possible.

(2) No A child who has been removed from his the child's home or any other place for his the child's protection or care may not be placed in a jail.

(3) A petition shall alleging that a child is abused or neglected must be filed within 48 hours of--emergency placement--of--a after the child's removal child from the home or any other place for the child's protection or care unless arrangements acceptable to the agency for the care of the child have been made by the parents.

(4) The department of-family-services shall make such any necessary arrangements for the youth's child's well-being as-are that may be required prior to the court hearing."

**Section 5.** Section 41-3-403, MCA, is amended to read:

"41-3-403. **Order for immediate protection of youth child.** (1) (a) Upon the filing of a petition for temporary investigative authority and protective services, the court may issue an order granting such relief as that may be required for the immediate protection of the youth child.

(b) The order, along with the petition and supporting documents, shall must be served by a peace officer or a representative of the department of-family-services on the

person or persons named therein in the order. When the youth child is placed in a medical facility or protective facility, the department shall, within 4 hours after the placement is made or as soon thereafter as possible, notify the parents or parent, guardian, or other person having legal custody of the youth, ~~at the time the placement is made or as soon thereafter as possible~~ child.

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

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

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

(a) granting the right of entry by a peace officer or department of ~~family services~~ worker;

(b) providing for medical and psychological evaluation of the youth child or the parents, guardians, or person having legal custody;

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

(d) place placing the youth child in a temporary medical facility or facility for protection of the youth child;

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

(f) inquire inquiring into the financial ability of the parents, guardian, or other person having custody of the youth child to contribute to the costs for the care, custody, and treatment of the youth child and order contribution for those costs pursuant to the requirements of 41-3-406(3) through (6); and

(g) providing such other temporary disposition as may be required in the best interest of the youth child."

NEW SECTION. SECTION 6. COORDINATION INSTRUCTION. IF HOUSE BILL NO. 127 IS PASSED AND APPROVED AND IF IT AMENDS 41-3-403 BY INSERTING A REFERENCE OR REFERENCES TO A "YOUTH", THEN EACH REFERENCE TO THE WORD "YOUTH" IN THOSE AMENDMENTS IS CHANGED TO THE WORD "CHILD".

SB 0023/02

- 1        NEW SECTION.   **Section 7.**   **Effective date.** [This act] is
- 2        effective July 1, 1993.

-End-

Conference Committee  
on Senate Bill No. 23  
Report No. 1, April 20, 1993

Page 1 of 1

Mr. President and Mr. Speaker:

We, your Conference Committee on Senate Bill No. 23, met and considered: House amendments to Senate Bill No. 23. We recommend that Senate Bill No. 23 (reference copy - salmon) be amended as follows:

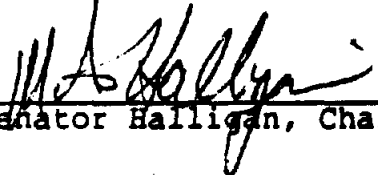
1. Page 5, line .  
Following: line 24

Insert: "(c) If an interview with the child is recorded, either by means of videotape or audiotape, unless there are extenuating circumstances that prevent the presence of a third party, a third party, in addition to the social worker, county attorney, or peace officer conducting the interview, must be present during the interview. The third party may be the child's guardian ad litem if one has been appointed."

Renumber: subsequent subsection



And that this Conference Committee report be adopted.

For the Senate:

  
Senator Halligan, Chair

  
Senator Aklestad

  
Senator Bartlett

  
M. -  
Amd. Coord.  
  
Sec. of Senate

For the House:

  
Representative Fagg, Chair

  
Representative S. Rice

  
Representative Smith

ADOPT

REJECT

C.C.R.#1  
SB 23  
870853CC.Sma