

SENATE BILL 41

Introduced by Burnett

12/23	Introduced
12/23	Referred to Judiciary
1/04	First Reading
1/04	Fiscal Note Requested
1/11	Fiscal Note Received
1/18	Fiscal Note Printed
1/29	Hearing
2/16	Tabled in Committee
2/18	Motion Failed to Take From Committee and Place on 2nd Reading
2/19	Committee Report--Bill Not Passed
2/19	Adverse Committee Report Adopted
2/20	Motion Failed to Reconsider Adoption of Adverse Committee Report

SENATE BILL NO. 41
INTRODUCED BY BURNETT

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS RELATING TO THE INVESTIGATION AND REMOVAL OF A CHILD FROM THE HOME IN A CASE OF SUSPECTED SEXUAL ABUSE OR ENDANGERMENT OF THE CHILD'S WELFARE; PROHIBITING ANONYMOUS REPORTING OF SUSPECTED SEXUAL ABUSE OR ENDANGERMENT; REQUIRING CRIMINAL CHARGES TO BE FILED AGAINST A PERSON SUSPECTED OF SEXUAL ABUSE OR ENDANGERMENT PRIOR TO FILING A PETITION FOR REMOVAL OF THE CHILD FROM THE HOME; REQUIRING EVIDENCE OF SUSPECTED SEXUAL ABUSE OR ENDANGERMENT TO BE GIVEN TO THE FAMILY; GUARANTEEING A FAMILY'S COMMUNICATION WITH A CHILD REMOVED FROM THE HOME; REQUIRING INFORMATION ON FOSTER HOME PLACEMENT TO BE GIVEN TO THE FAMILY OF A CHILD REMOVED FROM THE HOME; AND AMENDING SECTIONS 40-8-111, 41-3-101, 41-3-102, 41-3-201, 41-3-202, 41-3-204, 41-3-205, 41-3-206, 41-3-301, 41-3-303, 41-3-401, 41-3-402, 41-3-403, 41-3-404, 41-3-406, 41-3-409, 41-3-609, AND 41-3-1103, MCA."

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

Section 1. Section 40-8-111, MCA, is amended to read:

"40-8-111. Consent required for adoption. (1) An adoption of a child may be decreed when there have been filed written consents to adoption executed by:

(a) both parents, if living, or the surviving parent of a child, provided that consent is not required from a father or mother:

(i) adjudged guilty by a court of competent jurisdiction of assault on the child, as provided in 45-5-201; endangering the welfare of children, concerning the child, as provided in 45-5-622; or sexual abuse of children, toward the child, as provided in 45-5-625;

(ii) who has been permanently judicially deprived of the custody of the child on account of cruelty or neglect toward the child;

(iii) who has, in the state of Montana or in any other state of the United States, willfully abandoned the child, as defined set forth in 41-3-102(f)+(d)+(9)(e);

(iv) who has caused the child to be maintained by any public or private children's institution, any charitable agency, or any licensed adoption agency or the department of family services of the state of Montana for a period of 1 year without contributing to the support of the child during said the period, if able;

(v) if it is proven to the satisfaction of the court that the father or mother, if able, has not contributed to the support of the child during a period of 1 year before the filing of a petition for adoption; or

(vi) whose parental rights have been judicially

1 terminated;

2 (b) the legal guardian of the child if both parents are
3 dead or if the rights of the parents have been terminated by
4 judicial proceedings and ~~such~~ the guardian has authority by
5 order of the court appointing ~~him~~ the guardian to consent to
6 the adoption;

7 (c) the executive head of an agency if the child has
8 been relinquished for adoption to ~~such~~ the agency or if the
9 rights of the parents have been judicially terminated or if
10 both parents are dead and custody of the child has been
11 legally vested in ~~such~~ the agency with authority to consent
12 to adoption of the child; or

13 (d) any person having legal custody of a child by court
14 order if the parental rights of the parents have been
15 judicially terminated, but ~~in--such-case~~ the court having
16 jurisdiction of the custody of the child ~~must~~ shall consent
17 to adoption and a certified copy of its order ~~shall~~ must be
18 attached to the petition.

19 (2) The consents required by subsections (1)(a) and
20 (1)(b) ~~shall~~ must be acknowledged before an officer
21 authorized to take acknowledgments or witnessed by a
22 representative of the department, ~~of-family-services-or~~ of
23 an agency, ~~or witnessed-by-a-representative~~ of the court."

24 **Section 2.** Section 41-3-101, MCA, is amended to read:

25 "41-3-101. Declaration of policy. (1) It is hereby

1 ~~declared-to-be~~ the policy of the state of Montana to:

2 (a) ~~insure~~ ensure that all youth are afforded an
3 adequate physical and emotional environment to promote
4 normal development;

5 (b) compel in proper cases the parent or guardian of a
6 youth to perform the moral and legal duty owed to the youth;

7 (c) achieve these purposes in a family environment
8 whenever possible; and

9 (d) preserve the unity and welfare of the family
10 whenever possible and provide legal redress for the unlawful
11 interference with the family's right to remain intact; and

12 (e) ensure that there is no forced removal of a child
13 from the family because of suspected sexual abuse or
14 endangerment of the child's welfare by an immediate family
15 member or family associate without the filing of a criminal
16 complaint charging sexual abuse or endangerment against that
17 immediate family member or family associate.

18 (2) It is the policy of this state to:

19 (a) protect, whenever possible, family unity;

20 (b) provide for the protection of children whose health
21 and welfare are or may be adversely affected and further
22 threatened by the conduct of those responsible for their
23 care and protection; and

24 (c) ensure that whenever removal of a child from the
25 home is necessary, the child is entitled to maintain ethnic,

1 cultural, and religious heritage free from proselytism.

2 (3) It is intended that the mandatory reporting of such
3 sexual abuse or endangerment cases by professional people
4 and other community members to the appropriate authority
5 will cause the protective services of the state to seek to
6 prevent further abuses, protect and enhance the welfare of
7 these children, and preserve family life wherever
8 appropriate, and provide legal redress for interference with
9 the family."

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

11 "41-3-102. Definitions. As used in this chapter, the
12 following definitions apply:

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

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

24 (3) "Adequate health care" means any medical or
25 nonmedical remedial health care, including the prevention of

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

4 (4) "Child" or "youth" means any person under 18 years
5 of age.

6 (5) "Department" means the department of family
7 services provided for in 2-15-2401.

8 (6) "Dependent youth" means a youth:

9 (a) who is abandoned;

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

12 (c) who has no proper guidance to provide for his the
13 youth's necessary physical, moral, and emotional well-being;

14 (d) who is destitute;

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

16 (f) whose parent or parents have voluntarily
17 relinquished custody of the child youth and whose legal
18 custody has been transferred to a licensed agency.

19 (7) "Family" means at least one natural or adoptive
20 parent or legal guardian with at least one minor child.

21 (8) "Family associate" means a person who may or may
22 not live within the household of a child but who is or has
23 been granted unencumbered access to the child by a natural
24 or adoptive parent, step-parent, or legal guardian of the
25 child.

1 ~~f7~~(9) "Harm to a child's health or welfare" means the
2 harm that occurs whenever the parent or other person
3 responsible for the child's welfare:

4 (a) knowingly inflicts or knowingly allows to be
5 inflicted upon the child physical or mental injury;

6 (b) knowingly commits or knowingly allows to be
7 committed sexual abuse or exploitation of the child;

8 (c) induces or attempts to induce a child into giving
9 untrue testimony that the child or another child was abused
10 or neglected by a parent or person responsible for the
11 child's welfare;

12 ~~f7~~(d) causes failure to thrive or otherwise fails to
13 supply the child with adequate food or fails to supply
14 clothing, shelter, education, or health care, though
15 financially able to do so or though offered financial or
16 other reasonable means to do so;

17 ~~f7~~(e) abandons the child by leaving him the child
18 under circumstances that make reasonable the belief that the
19 parent or other person does not intend to resume care of the
20 child in the future or by willfully surrendering surrenders
21 physical custody for a period of 6 months and during that
22 period does not manifest to the child and the person having
23 physical custody of the child a firm intention to resume
24 physical custody or to make permanent legal arrangements for
25 the care of the child; or

1 ~~f7~~(f) is unknown and has been unknown for a period of
2 90 days and reasonable efforts to identify and locate the
3 parents have failed.

4 (10) "Immediate family member" means a parent, guardian,
5 or natural relative of a child and includes the natural
6 grandparent of the child.

7 (11) "Infant or toddler" means a child who has yet to be
8 trained in personal hygiene skills required to care for the
9 child's own sanitary requirements and who is not beyond the
10 age when a reasonable person would expect hygiene skills and
11 training to be complete.

12 (12) "Knowingly" has the meaning provided in 45-2-101.

13 ~~f8~~(13) "Limited emancipation" means a status conferred
14 on a dependent youth by a court after a dispositional
15 hearing in accordance with 41-3-406 under which the youth is
16 entitled to exercise some but not all of the rights and
17 responsibilities of a person who is 18 years of age or
18 older.

19 ~~f9~~(14) "Mental injury" means an identifiable and
20 substantial impairment of the child's intellectual or
21 psychological functioning.

22 ~~f10~~(15) "Physical injury" means death, permanent or
23 temporary disfigurement, or impairment of any bodily organ
24 or function and includes death, permanent or temporary
25 disfigurement, and impairment of a bodily organ or function

sustained as a result of excessive corporal punishment.

(16) "Proselytism" means the change or attempted change through undue influence of the religious beliefs or affiliation of a child that has been removed from the family to a religion other than that affiliated with the child's race, culture, or heritage by an adult, other than a family member, in a position of power over the child or by constant exposure of the child to dogma, tradition, or religious teachings and practices preferred by the adult.

(17) (a) "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.

(b) Sexual abuse does not include any necessary touching of an infant's or toddler's genital area while attending to the sanitary needs of that infant by a parent or any acts that would otherwise be considered by a reasonable person to be a comforting of the infant by a concerned or loving parent.

(18) "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.

(19) "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.

~~(14)~~(20) "Threatened harm to a child's health or welfare" means substantial risk of harm to the child's health or welfare.

~~(15)~~(21) (a) "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 the conditions. ~~However,~~ the

(b) 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)~~(i) the infant is chronically and irreversibly comatose;

~~(b)~~(ii) the provision of such treatment would:

~~(1)~~(A) merely prolong dying;

~~(2)~~(B) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or

~~(3)~~(C) otherwise be futile in terms of the survival

1 of the infant; or

2 ~~(c)~~(iii) the provision of such treatment would be
3 virtually futile in terms of the survival of the infant and
4 the treatment itself under such the circumstances would be
5 inhumane. For purposes of this subsection (21), "infant"
6 means an infant less than 1 year of age or an infant 1 year
7 of age or older who has been continuously hospitalized since
8 birth, who was born extremely prematurely, or who has a
9 long-term disability. The reference to less than 1 year of
10 age may not be construed to imply that treatment should be
11 changed or discontinued when an infant reaches 1 year of age
12 or to affect or limit any existing protections available
13 under state laws regarding medical neglect of children over
14 1 year of age.

15 ~~(16)~~(22) "Youth in need of care" means a youth who is
16 dependent, abused, or neglected as defined in this section."

17 **Section 4.** Section 41-3-201, MCA, is amended to read:

18 "41-3-201. Reports. (1) When the professionals and
19 officials listed in subsection (2) know or have reasonable
20 cause to suspect, as a result of information they receive in
21 their professional or official capacity, that a child is
22 abused or neglected, they shall report the matter promptly
23 to the department of ~~family-services~~ or its local affiliate,
24 which then shall notify the county attorney of the county
25 where the child resides.

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

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

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

8 (c) Christian Science ~~practitioner~~ practitioners and
9 religious healers;

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

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

15 (f) a foster care, residential, or institutional
16 worker;

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

19 (h) a member of the clergy.

20 (3) Any person may make a report under this section if
21 he the person knows or has reasonable cause to suspect that
22 a child is abused or neglected.

23 (4) (a) Except as provided in subsection (4)(b) or
24 (4)(c), a person listed in subsection (2) may not refuse to
25 make a report as required in this section on the grounds of

1 a physician-patient or similar privilege.

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

4 (i) the knowledge or suspicion of the abuse or neglect
5 came from a statement or confession made to the clergyperson
6 member of the clergy or the priest in his the capacity as of
7 a clergyperson member of the clergy or a priest;

8 (ii) the statement was intended to be a part of a
9 confidential communication between the clergyperson member
10 of the clergy or the priest and a member of his the church
11 or congregation; and

12 (iii) the person who made the statement or confession
13 does not consent to the disclosure by the clergyperson
14 member of the clergy or the priest.

15 (c) A clergyperson member of the clergy or a priest is
16 not required to make a report under this section if the
17 communication is required to be confidential by canon law,
18 church doctrine, or established church practice.

19 (5) The reports referred to under this section ~~shall~~
20 must be made under oath and must contain:

21 (a) the names and addresses of the child and ~~his-or-her~~
22 the child's parents or other persons responsible for ~~his--or~~
23 her the child's care;

24 (b) to the extent known, the child's age, the nature
25 and extent of the child's injuries, including any evidence

1 of previous injuries;

2 (c) any other information that the maker of the report
3 believes might be helpful in establishing the cause of the
4 injuries or showing the willful neglect and the identity of
5 the person or persons responsible therefor for the injuries
6 or neglect; and

7 (d) the facts which that led the person reporting to
8 believe testify under oath that the child has suffered
9 injury or injuries or willful neglect, within the meaning of
10 this chapter."

11 **Section 5.** Section 41-3-202, MCA, is amended to read:

12 **"41-3-202. Action on reporting.** (1) Upon receipt of a
13 report as required by 41-3-201 that a child is or has been
14 abused or neglected, a social worker or the county attorney
15 or a peace officer shall promptly conduct ~~a--thorough~~ an
16 initial investigation into the home of the child involved or
17 any other place where the child is present, into the
18 circumstances surrounding the injury of the child, and into
19 all other nonfinancial matters which that in the discretion
20 of the investigator are relevant to the investigation. In
21 conducting an investigation under this section, a social
22 worker may not inquire into the financial status of the
23 child's family or of any other person responsible for the
24 child's care.

25 (2) An initial investigation into the home of the child

1 may be conducted when an anonymous report is received.
 2 However, the investigation must within 48 hours develop
 3 independent, corroborative, and attributable information in
 4 order for the investigation to continue. Without the
 5 development of corroborative and attributable information, a
 6 child may not be removed from the home.

7 †2†(3) The social worker is responsible for assessing
 8 the family and planning for the child. If the child is
 9 treated at a medical facility, the social worker, county
 10 attorney, or peace officer shall, consistent with reasonable
 11 medical practice, have the right of access to the child for
 12 interviews, photographs, and securing physical evidence and
 13 have the right of access to relevant hospital and medical
 14 records pertaining to the child. If considered appropriate
 15 by the social worker, county attorney, or peace officer
 16 conducting an interview of the child, an employee of the
 17 public school attended by the child involved may participate
 18 in any interview of the child if the child is enrolled in
 19 kindergarten through 8th grade.

20 (4) All examinations of the child must be attended by
 21 the independent examining psychologist or physician
 22 representing the family and by the social worker. If the
 23 child is interviewed by the social worker, an unedited
 24 videotape with audio track must be made available for
 25 unencumbered review by the family.

1 †3†(5) If from the investigation it appears that the
 2 child suffered abuse or neglect, the department shall
 3 provide protective services to the child pursuant to
 4 41-3-301 and may provide protective services to any other
 5 child under the same care. The department ~~will~~ shall advise
 6 the county attorney and the child's family of its
 7 investigation.

8 †4†(6) The investigating social worker, within 60 days
 9 of commencing an investigation, shall also furnish a written
 10 report to the department and the family. The department
 11 shall maintain a record system containing child abuse and
 12 neglect cases.

13 †5†(7) Any person reporting abuse or neglect ~~which that~~
 14 involves acts or omissions on the part of a public or
 15 private residential institution, home, facility, or agency
 16 ~~shall-be~~ is responsible for ensuring that the report is made
 17 to the department ~~of-family-services~~, its local affiliate,
 18 and the county attorney of the county in which the facility
 19 is located, and the family of the child who is the subject
 20 of the report."

21 **Section 6.** Section 41-3-204, MCA, is amended to read:

22 **"41-3-204. Admissibility and preservation of evidence.**
 23 (1) In any a proceeding resulting from a report made
 24 pursuant to the provisions of this chapter or in any a
 25 proceeding where the report or its contents are sought to be

introduced into evidence, the report or its contents or any other fact related to the report or to the condition of the child who is the subject of the report ~~shall~~ may not be excluded on the ground that the matter is or may be the subject of a privilege related to the examination or treatment of the child and granted in Title 26, chapter 1, part 8, except the attorney-client privilege granted by 26-1-803.

(2) Any A person or official required to report under 41-3-201 may take or cause to be taken photographs of the area of trauma visible on a child who is the subject of a report. The cost of photographs taken under this section ~~shall~~ must be paid by the department.

(3) When any a person required to report under 41-3-201 finds visible evidence that a child has suffered abuse or neglect, he the person must shall include in his the report either a written description or photographs of the evidence.

(4) A physician, either in the course of his providing medical care to a minor or after consultation with child protective services, the county attorney, or a law enforcement officer may require x-rays to be taken when in his the physician's professional opinion there is a need for radiological evidence of suspected abuse or neglect. X-rays may be taken under this section without the permission of the parent or guardian. The cost of the x-rays ordered and

taken under this section ~~shall~~ must be paid by the county child protective service agency.

(5) Evidence collected in the questioning of a child by an investigator without the presence of a videotape with audio track is inadmissible in a court to support a motion to temporarily remove the child from the family, grant temporary custody, or terminate parental rights.

(5)(6) At the time the written confirmation report is sent or as soon thereafter as possible, all written, photographic, or radiological evidence gathered under this section shall must be sent to the local affiliate of the department and copies must be sent to the child's family at the--time-the-written-confirmation-report-is-sent-or-as-soon thereafter-as-is-possible."

Section 7. Section 41-3-205, MCA, is amended to read:

"41-3-205. Confidentiality -- disclosure exceptions.

(1) The case records of the department of social and rehabilitation services, the department ~~of-family-services~~ and its local affiliate, the county welfare department, the county attorney, and the court concerning actions taken under this chapter and all records concerning reports of child abuse and neglect ~~shall~~ must be kept confidential except as provided by this section. Any Except as provided in subsections (4) and (5), a person who permits or encourages the unauthorized dissemination of their the

1 contents of case records is guilty of a misdemeanor.

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

6 (3) Records may also be disclosed to the following
7 persons or entities in this state or any other state:

8 (a) a department, agency, or organization, including
9 federal agencies, legally authorized to receive, inspect, or
10 investigate reports of child abuse or neglect;

11 (b) a licensed youth care facility or a licensed
12 child-placing agency that is providing services to the
13 family or child who is the subject of a report in the
14 records;

15 (c) a licensed health or mental health professional who
16 is treating the family or child who is the subject of a
17 report in the records;

18 (d) a parent, or guardian, or person designated by a
19 parent or guardian of the child who is the subject of a
20 report in the records or other person responsible for the
21 child's welfare, without with disclosure of the identity of
22 any person who reported or provided information on the
23 alleged child abuse or neglect incident contained in the
24 records;

25 (e) a child named in the records who was allegedly

1 abused or neglected or ~~his~~ the child's guardian ad litem;

2 (f) the members of an interdisciplinary child
3 protective team authorized under 41-3-108 for the purposes
4 of assessing the needs of the child and family, formulating
5 a treatment plan, and monitoring the plan;

6 (g) a department or agency investigating an applicant
7 for a license to operate a youth care facility, day-care
8 facility, or child-placing agency if the investigation is
9 based on a substantiated report and the applicant is
10 notified of the investigation;

11 (h) an employee of the department if disclosure of the
12 records is necessary for administration of programs designed
13 to benefit the child;

14 (i) an agency of an Indian tribe or the relatives of an
15 Indian child if disclosure of the records is necessary to
16 meet requirements of the federal Indian Child Welfare Act;

17 (j) a youth probation officer who is working in an
18 official capacity with the child who is the subject of a
19 report in the records;

20 (k) a county attorney or peace officer if disclosure is
21 necessary for the investigation or prosecution of a case
22 involving child abuse or neglect;

23 (l) a foster care review committee established under
24 41-3-1115;

25 (m) a school employee participating in an interview of

1 a child by a social worker, county attorney, or peace
2 officer as provided in 41-3-202;

3 (n) a member of a county interdisciplinary child
4 information team formed under 52-2-211 who is not listed in
5 subsection (3); or

6 (o) members of a local interagency staffing group
7 provided for in 52-2-203.

8 (4) A person who is authorized to receive records under
9 this section shall maintain the confidentiality of the
10 records and may not disclose information in the records to
11 anyone other than the persons described in subsection
12 (3)(a), except that nothing in this subsection may be
13 construed to compel a family member who believes the family
14 is being victimized by an unfair or unwarranted process to
15 keep the proceedings secret.

16 (5) A news organization or its employee, including a
17 freelance writer or reporter, is not liable for reporting
18 facts or statements made by an immediate family member under
19 subsection (4) if the news organization, employee, writer,
20 or reporter has made every effort to avoid publicly
21 identifying the child who is the subject of the proceeding.

22 (5)(6) Nothing in this section is intended to affect
23 the confidentiality of criminal court records or records of
24 law enforcement agencies."

25 **Section 8.** Section 41-3-206, MCA, is amended to read:

1 "41-3-206. Procedure in case of child's death. (1) Any
2 A person or official required to report by law who has
3 reasonable cause to suspect that a child has died as a
4 result of child abuse or neglect shall report under oath his
5 the person's suspicion to the appropriate medical examiner
6 or law enforcement officer. Any other person who has
7 reasonable cause to suspect that a child has died as a
8 result of child abuse or neglect may report under oath his
9 the person's suspicion to the appropriate medical examiner
10 or law enforcement officer.

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

17 **Section 9.** Section 41-3-301, MCA, is amended to read:

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

1 person or agency placing the child shall notify the parents,
 2 parent, guardian, or other person having legal custody of
 3 the youth at the time the placement is made or as soon
 4 thereafter as possible.

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

8 (3) A petition ~~shall~~ must be filed within 48 hours of
 9 emergency placement of a child unless arrangements
 10 acceptable to the agency for the care of the child have been
 11 made by the parents. Criminal charges must be filed against
 12 a family member or family associate believed by a county
 13 attorney, the attorney general, or an attorney hired by the
 14 department to have sexually abused or endangered a child. A
 15 family member or family associate charged with sexual abuse
 16 or endangerment is entitled to a jury trial.

17 (4) If criminal charges are not filed within 20 days of
 18 emergency placement, the child must be returned to the home
 19 unless clear and convincing evidence exists to support an
 20 allegation that the child, if returned to the home, is in
 21 imminent danger of being sexually abused or endangered by a
 22 family member or family associate. If evidence of imminent
 23 danger exists, the child may be removed from the home only
 24 for a period of time sufficient to allow the development of
 25 the required criminal complaint. In all cases, an emergency

1 placement of a child may not continue beyond 60 days without
 2 criminal charges being filed against the person believed to
 3 have sexually abused or endangered the child.

4 ~~(4)(5)~~ The department ~~of--family--services~~ shall make
 5 such necessary arrangements for the youth's well-being as
 6 are required prior to the court hearing."

7 **Section 10.** Section 41-3-303, MCA, is amended to read:

8 "41-3-303. Guardian ad litem. (1) In When a child is
 9 temporarily removed from the home and in every judicial
 10 proceeding the court shall appoint for any a child alleged
 11 to be abused or neglected a guardian ad litem. When
 12 necessary---the The guardian ad litem may must be a
 13 nonprofessional person chosen from a roll of volunteers who
 14 have undergone a background check and who have parental
 15 experience. They may serve either at their own expense or at
 16 public expense.

17 (2) The guardian ad litem is charged with the
 18 representation of the child's interests. The guardian ad
 19 litem has the following general duties:

20 (a) to conduct such an investigation ~~as he~~ the guardian
 21 ad litem considers necessary to ascertain the facts
 22 constituting the alleged abuse or neglect;

23 (b) to interview or and observe the child who is the
 24 subject of the proceeding;

25 (c) to have access to court, medical, psychological,

1 law enforcement, social services, and school records
 2 pertaining to the child, ~~his~~ and the child's siblings, and
 3 parents or ~~custodians~~ legal guardian;

4 (d) to make written reports to the court concerning the
 5 child's welfare;

6 (e) to appear and participate in all proceedings to the
 7 degree necessary to adequately represent the child, testify
 8 regarding the guardian ad litem's observation of the child's
 9 needs and emotional state during any period of separation
 10 from the family, and make recommendations to the court
 11 concerning the child's welfare; and

12 (f) to be a friend and to provide for the daily
 13 nurturing needs of the child while separated from the
 14 family;

15 (g) to act as a medium for communication with the
 16 immediate family members, other family members, and friends
 17 of the child during the separation period;

18 (h) to retrieve from the family any personal property
 19 the child desires to have during the separation period;

20 (i) to report directly to the judge on a regular basis
 21 the guardian ad litem's observations regarding the needs and
 22 emotional state of the child during the separation period
 23 and the impact of the separation on the child; and

24 ~~(f)~~ (j) to perform such other duties as directed by the
 25 court."

1 **Section 11.** Section 41-3-401, MCA, is amended to read:

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

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

17 (2) Upon receipt of a petition, the court shall set a
 18 date for an adjudicatory hearing on the petition. ~~Such~~
 19 ~~petitions--shall~~ Petitions must be given preference by the
 20 court in setting hearing dates.

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 in this part~~. Proceedings under a petition
 25 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~~ must be served personally with a copy of the petition and summons at least 5 days prior to the date set for hearing. If ~~such~~ a 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~~ when in the opinion of the court the interests of justice require.

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

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

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

(9) The petition ~~shall~~ must:

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

dependency;

(b) state the full name, age, and address of the youth and the name and address of ~~his~~ the youth's parents or guardian or the person having legal custody of the youth;

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

(d) state the name of the person filing a report of suspected sexual abuse or endangerment pursuant to 41-3-201.

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

(a) temporary investigative authority and protective services;

(b) temporary legal custody;

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

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

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

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

Section 12. Section 41-3-402, MCA, is amended to read:

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

appears that a youth is abused or neglected or is in danger of being abused or neglected, the county attorney, the attorney general, or an attorney hired by the county welfare department or office of human services, after filing criminal charges alleging sexual abuse or endangerment, may file a petition for temporary investigative authority and protective services.

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

(3) The petition for temporary investigative authority and protective services shall must be supported by an affidavit signed by the county attorney, the attorney general, or an attorney hired by the county welfare department or office of human services or a department of family services report stating in detail the facts upon which the request is based, including the name of the person who reported the suspected sexual abuse or endangerment pursuant to 41-3-201."

Section 13. Section 41-3-403, MCA, is amended to read:

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

(1) (a) Upon the filing of criminal charges and a petition for temporary investigative authority and protective

services, the court may issue an order granting ~~such~~ relief as may be required for the immediate protection of the youth.

(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 is placed in a medical facility or protective facility, the department shall 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~~ after placement as possible.

(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 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

1 custody of the youth with the department of ~~family-services~~
2 until further order.

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

4 (a) right of entry by a peace officer or department of
5 ~~family-services~~ worker;

6 (b) medical and psychological evaluation of the youth
7 or parents, guardians, or person having legal custody;

8 (c) require requirement that the youth, parents,
9 guardians, or person having legal custody to receive
10 counseling services;

11 (d) place placement of the youth in a temporary medical
12 facility or a facility for protection of the youth;

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

16 (f) inquire inquiry into the financial ability of the
17 parents, guardian, or other person having custody of the
18 youth to contribute to the costs for the care, custody, and
19 treatment of the youth and order requirement of a
20 contribution for those costs pursuant to the requirements of
21 41-3-406(3) through (6);

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

24 **Section 14.** Section 41-3-404, MCA, is amended to read:

25 "41-3-404. Adjudicatory hearing -- temporary

1 disposition. (1) In the adjudicatory hearing on a petition
2 under 41-3-401, the court shall determine whether the youth
3 is a youth in need of care and ascertain, as far as
4 possible, the cause.

5 (2) The court shall hear evidence regarding the
6 residence of the youth, the whereabouts of the parents,
7 guardian, or nearest adult relative, and any other matters
8 the court considers relevant in determining the status of
9 the youth.

10 (3) In all civil and criminal proceedings relating to
11 abuse, neglect, or dependency, none of the privileges
12 related to the examination or treatment of the child and
13 granted in Title 26, chapter 1, part 8, except the
14 attorney-client privilege granted by 26-1-803, apply.

15 (4) If a child is temporarily removed from the home,
16 the department shall notify the family or a family member of
17 the location of the child. The department shall also notify
18 the family or a family member of any change in the child's
19 residence within 4 hours of the change.

20 (5) If a child is temporarily removed from the home,
21 the family or a family member is entitled to an unencumbered
22 telephone call to the child at least 3 days each week for a
23 minimum of 1 hour each call. The family or family member is
24 also entitled to at least one personal visit each week for a
25 minimum of 3 hours.

1 †4†(6) (a) If the court determines that the youth is
2 not an abused, neglected, or dependent child, the petition
3 ~~shall~~ must be dismissed and any order made pursuant to
4 41-3-403 ~~shall~~ must be vacated.

5 (b) If the court determines that the youth is an
6 abused, neglected, or dependent child, the court shall set a
7 date for a dispositional hearing to be conducted within 30
8 days and order any necessary or required investigations. The
9 court may issue a temporary dispositional order pending the
10 dispositional hearing. The temporary dispositional order may
11 provide for any of the forms of relief listed in
12 41-3-403(2)."

13 **Section 15.** Section 41-3-406, MCA, is amended to read:

14 **"41-3-406. Dispositional hearing -- contributions by**
15 **parents or guardians for youth's care.** (1) If a youth is
16 found to be a youth in need of care under 41-3-404, the
17 court may enter its judgment making any of the following
18 dispositions to protect the welfare of the youth:

19 (a) permit the youth to remain with ~~his~~ the youth's
20 parents or guardian subject to those conditions and
21 limitations the court may prescribe;

22 (b) grant an order of limited emancipation to a youth
23 who is 16 years of age or older as provided in 41-3-408;

24 (c) transfer legal custody to any of the following:

25 (i) the department ~~of-family-services~~;

1 (ii) a child-placing agency that is willing and able to
2 assume responsibility for the education, care, and
3 maintenance of the youth and that is licensed or otherwise
4 authorized by law to receive and provide care of the youth;
5 or

6 (iii) a relative family member or other individual who,
7 after study by a social service agency designated by the
8 court, is found by the court to be qualified to receive and
9 care for the youth;

10 (d) order any party to the action to do what is
11 necessary to give effect to the final disposition, including
12 undertaking medical and psychological evaluations,
13 treatment, and counseling;

14 (e) order ~~such~~ further care and treatment ~~as~~ the court
15 considers in the best interest of the youth.

16 (2) If the youth is transferred to the custody of the
17 department, the court shall examine the financial ability of
18 the youth's parents or guardians to pay a contribution
19 covering all or part of the costs for the care, custody, and
20 treatment of the youth, including the costs of necessary
21 medical, dental, and other health care.

22 (3) If the court determines that the youth's parents or
23 guardians are financially able to pay a contribution as
24 provided in subsection (2), the court shall order the
25 youth's parents or guardians to pay an amount based on the

1 uniform child support guidelines adopted by the department
2 of social and rehabilitation services pursuant to 40-5-209.

3 (4) (a) Except as provided in subsection (4)(b),
4 contributions ordered under this section and each
5 modification of an existing order are enforceable by
6 immediate or delinquency income withholding, or both, under
7 Title 40, chapter 5, part 4. An order for contribution that
8 is inconsistent with this section is nevertheless subject to
9 withholding for the payment of the contribution without need
10 for an amendment of the support order or for any further
11 action by the court.

12 (b) A court-ordered exception from contributions under
13 this section must be in writing and must be included in the
14 order. An exception from the immediate income withholding
15 requirement may be granted if the court finds that there is:

16 (i) good cause not to require immediate income
17 withholding; or

18 (ii) an alternative arrangement between the department
19 and the person who is ordered to pay contributions.

20 (c) A finding of good cause not to require immediate
21 income withholding must, at a minimum, be based upon:

22 (i) a written determination and explanation by the
23 court of the reasons why the implementation of immediate
24 income withholding is not in the best interests of the
25 child; and

1 (ii) proof of timely payment of previously ordered
2 support in cases involving modification of contributions
3 ordered under this section.

4 (d) An alternative arrangement must:

5 (i) provide sufficient security to ensure compliance
6 with the arrangement;

7 (ii) be in writing and be signed by a representative of
8 the department and the person required to make
9 contributions; and

10 (iii) if approved by the court, be entered into the
11 record of the proceeding.

12 (5) Upon a showing of a change in the financial ability
13 of the youth's parents or guardians to pay, the court may
14 modify its order for the payment of contributions required
15 under subsection (3).

16 (6) (a) If the court orders the payment of
17 contributions under this section, the department shall apply
18 to the department of social and rehabilitation services for
19 support enforcement services pursuant to Title IV-D of the
20 Social Security Act.

21 (b) The department of social and rehabilitation
22 services may collect and enforce a contribution order under
23 this section by any means available under law, including the
24 remedies provided for in Title 40, chapter 5, parts 2 and
25 4."

Section 16. Section 41-3-409, MCA, is amended to read:

"41-3-409. Appeals. (1) If requested by the attorney for the family, the supreme court must, within 60 days of a hearing provided in 41-3-406, empanel a tribunal of three district court judges residing outside the jurisdiction of the original court to review the case. Appeals of court orders or decrees made under this part ~~shall~~ must be given precedence on the calendar of the supreme court over all other matters, unless otherwise provided by law. An appeal does not stay the order or decree appealed from; however, the supreme court may order a stay upon application and hearing if suitable provision is made for the care and custody of the child.

(2) By a majority decision, the tribunal may:

(a) affirm the decision;

(b) modify the decision;

(c) substitute its judgment for that of the court of original jurisdiction; or

(d) order a new hearing."

Section 17. Section 41-3-609, MCA, is amended to read:

"41-3-609. Criteria for termination. (1) The court may order a termination of the parent-child legal relationship upon a finding that any of the following circumstances exist:

(a) the parents have relinquished the child pursuant to

40-6-135;

(b) the child has been abandoned by his parents as set forth in 41-3-102~~(7)~~~~(d)~~(9)(e);

(c) the child is an adjudicated youth in need of care and both of the following exist:

(i) an appropriate treatment plan that has been approved by the court has not been complied with by the parents or has not been successful; and

(ii) the conduct or condition of the parents rendering them unfit is unlikely to change within a reasonable time; or

(d) the parent has failed to successfully complete a treatment plan approved by the court within the time periods allowed for the child to be in foster care under 41-3-410 unless it orders other permanent legal custody under 41-3-410.

(2) In determining whether the conduct or condition of the parents is unlikely to change within a reasonable time, the court ~~must~~ shall enter a finding that continuation of the parent-child legal relationship will likely result in continued abuse or neglect or that the conduct or the condition of the parents renders the parents unfit, unable, or unwilling to give the child adequate parental care. In making such determinations, the court shall consider but is not limited to the following:

1 (a) emotional illness, mental illness, or mental
 2 deficiency of the parent of such duration or nature as to
 3 render the parent unlikely to care for the ongoing physical,
 4 mental, and emotional needs of the child within a reasonable
 5 time;

6 (b) a history of violent behavior by the parent;

7 (c) a single incident of life-threatening or gravely
 8 disabling injury to or disfigurement of the child caused by
 9 the parent;

10 (d) excessive use of intoxicating liquor or of a
 11 narcotic or dangerous drug that affects the parent's ability
 12 to care and provide for the child;

13 (e) present judicially ordered long-term confinement of
 14 the parent;

15 (f) the injury or death of a sibling due to proven
 16 parental abuse or neglect; and

17 (g) any reasonable efforts by protective service
 18 agencies that have been unable to rehabilitate the parent.

19 (3) In considering any of the factors in subsection (2)
 20 in terminating the parent-child relationship, the court
 21 shall give primary consideration to the physical, mental,
 22 and emotional conditions and needs of the child. The court
 23 shall review and, if necessary, order an evaluation of the
 24 child's or the parent's physical, mental, and emotional
 25 conditions.

1 (4) A treatment plan is not required under this part
 2 upon a finding by the court following hearing if:

3 (a) two medical doctors submit testimony that the
 4 parent is so severely mentally ill that such the person
 5 cannot assume the role of parent;

6 (b) the parent is incarcerated for more than 1 year and
 7 such a treatment plan is not practical considering the
 8 incarceration; or

9 (c) the death of a sibling caused by abuse or neglect
 10 by the parent has occurred."

11 **Section 18.** Section 41-3-1103, MCA, is amended to read:

12 **"41-3-1103. Powers and duties of department.** (1) The
 13 department shall:

14 (a) administer all state and federal funds allocated to
 15 the department for youth foster homes, youth group homes,
 16 and child-care agencies for youth in need of care, youth in
 17 need of supervision, and delinquent youth, as defined in
 18 41-5-103;

19 (b) exercise licensing authority over all youth foster
 20 homes, youth group homes, and child-care agencies;

21 (c) collect and disseminate information relating to
 22 youth in need of care, youth in need of supervision, and
 23 delinquent youth;

24 (d) provide for training of program personnel
 25 delivering services;

1 (e) in cooperation with youth care facility providers,
2 develop and implement standards for youth care facilities;

3 (f) maintain adequate data on placements it funds in
4 order to keep the legislature properly informed of the
5 following:

6 (i) the breakdown of youth in need of care, youth in
7 need of supervision, and delinquent youth by category in
8 out-of-home care facilities;

9 (ii) the cost per facility for services rendered;

10 (iii) the type and level of care of services provided by
11 each facility;

12 (iv) a profile of out-of-home care placements by level
13 of care; and

14 (v) a profile of public institutional placements; and

15 (g) administer all funds allocated to the department
16 for residential alcohol and drug abuse treatment for
17 indigent youths in need of care, indigent youths in need of
18 supervision, and indigent delinquent youths who require such
19 treatment.

20 (2) The department may:

21 (a) enter into contracts with nonprofit corporations or
22 associations or private organizations to provide substitute
23 care for youth in need of care, youth in need of
24 supervision, and delinquent youth in youth care facilities;

25 (b) accept gifts, grants, and donations of money and

1 property from public and private sources to initiate and
2 maintain community-based services to youth;

3 (c) adopt rules to carry out the administration and
4 purposes of this part.

5 (3) The department shall pay for room, board, clothing,
6 personal needs, transportation, and treatment in youth
7 foster care homes and youth group homes for youths committed
8 to the department who need to be placed in such facilities.
9 Payments for the clothing of a child placed in a youth
10 foster home must be provided to the extent the child needs a
11 basic wardrobe or has a special clothing need. However,
12 payments for clothing may not exceed \$300 a year per child.

13 (4) If a child temporarily removed from the home is
14 placed in foster care, the department shall provide the
15 child's family or a family member with information on the
16 background of the home, any complaints filed against the
17 home, and the record of disposition of children from the
18 home. The family or a family member is entitled to petition
19 the court for placement in another foster home if
20 dissatisfied with the original placement."

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0041, as introduced.DESCRIPTION OF PROPOSED LEGISLATION:

A bill to revise laws relating to a case of suspected sexual abuse or child welfare endangerment, to prohibit anonymous reporting of suspected sexual abuse or endangerment, to require criminal charges to be filed prior to petition for removal of the child from the home, to require evidence of suspected sexual abuse or endangerment to be given to the child's family, and to guarantee the family's right to communicate with a child removed from the home and receipt of information regarding foster home placement of the child.

ASSUMPTIONS:

1. Under proposed legislation, each client interview will require an individual video cassette with audio track.
2. Based on current work load, there are currently 14,000 client interviews during each year of the biennium.
3. Each contact would need one individual video cassette with audio track. Estimated cost of \$3.00 each. Total cost of video cassettes would be \$42,000 (14,000 X \$3.00 each.)
4. There are 180 social workers and 56 county offices, each of which would require at least one video camera. It is assumed some cameras would be shared and that a total of 100 cameras would be required..
5. Video cameras will cost approximately \$1,300 each and would be a one-time \$130,000 purchase during FY94. (100 X \$1,300).
6. Video cassettes would need to be stored. One file cabinet will hold 100 cassettes. This means that 140 locking file cabinets will be needed each year of the biennium (14,000/100).
7. Each file cabinet costs \$524. Total cost for file cabinets would be \$73,360 (140 X \$524) each year of the biennium.
8. No additional revenue would be generated from this bill.

FISCAL IMPACT:

Department of Justice: There will be no direct impact during this biennium. However, this bill in addition with other bills introduced will increase the workload of the appeals review function of the Attorney General's office. This additional increase in overall workload will justify an additional attorney FTE.

Department of Family Services:Expenditures:

	FY 94			FY 95		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
Operating Costs	0	42,000	42,000	0	42,000	42,000
Equipment	0	203,360	203,360	0	73,360	73,360
Total	0	245,360	245,360	0	115,360	115,360

(Continued)

David Lewis 1-9-93
 DAVID LEWIS, BUDGET DIRECTOR DATE
 Office of Budget and Program Planning

JAMES H. "JIM" BURNETT, PRIMARY SPONSOR

DATE

Fiscal Note for SB0041, as introduced1/18/93
SB 41

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

County attorneys and local law enforcement would also be required to have the capability to video tape contacts with clients

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

It would be necessary after several years and the building of the video library, to hire part time FTEs for each region to manage the filing and distribution of videos.

TECHNICAL NOTES:

There appears to be an additional fiscal impact in section 5 which amends 41-3-202, MCA. The new section 41-3-202(4) requires attendance of a psychologist or physician at all examinations, but it does not define an examination or say who is responsible for the cost of the psychologist or physician.