

1 SENATE BILL NO. 70

2 INTRODUCED BY B. BROWN

3 BY REQUEST OF THE DEPARTMENT OF FAMILY SERVICES

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A COURT
6 MAY NOT MAKE A DISPOSITION IN A CHILD ABUSE, NEGLECT, OR
7 DEPENDENCY PROCEEDING THAT REQUIRES AN EXPENDITURE OF MONEY
8 BY THE DEPARTMENT OF FAMILY SERVICES UNLESS THE DEPARTMENT
9 APPROVES OF THE EXPENDITURE; AMENDING SECTIONS 41-3-403 AND
10 41-3-406, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:13 **Section 1.** Section 41-3-403, MCA, is amended to read:

14 "41-3-403. Order for immediate protection of youth.

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

19 (b) The order, along with the petition and supporting
20 documents, shall must be served by a peace officer or a
21 representative of the department ~~of-family-services~~ on the
22 person or persons named therein in the order. When the youth
23 is placed in a medical facility or protective facility, the
24 department shall notify the parents or parent, guardian, or
25 other person having legal custody of the youth, at the time

1 the placement is made or as soon thereafter after placement
2 as possible.

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

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

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

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

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

23 (c) require requirement that the youth, parents,
24 guardians, or person having legal custody ~~to~~ receive
25 counseling services;

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

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

6 (f) inquire inquiry into the financial ability of the
7 parents, guardian, or other person having custody of the
8 youth to contribute to the costs for the care, custody, and
9 treatment of the youth and order requirement of a
10 contribution for those costs pursuant to the requirements of
11 41-3-406(3) through (6);

12 (g) such other temporary disposition as may be required
13 in the best interest of the youth that does not require an
14 expenditure of money by the department unless the department
15 approves the expenditure."

16 **Section 2.** Section 41-3-406, MCA, is amended to read:

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

22 (a) permit the youth to remain with his the youth's
23 parents or guardian, subject to those conditions and
24 limitations the court may prescribe;

25 (b) grant an order of limited emancipation to a youth

1 who is 16 years of age or older as provided in 41-3-408;

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

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

4 (ii) a child-placing agency that is willing and able to
5 assume responsibility for the education, care, and
6 maintenance of the youth and that is licensed or otherwise
7 authorized by law to receive and provide care of the youth;
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9 (iii) a relative or other individual who, after study by
10 a social service agency designated by the court, is found by
11 the court to be qualified to receive and care for the youth;

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

16 (e) order ~~such~~ further care and treatment as the court
17 considers in the best interest of the youth that does not
18 require an expenditure of money by the department unless the
19 department approves the expenditure.

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

1 (3) If the court determines that the youth's parents or
 2 guardians are financially able to pay a contribution as
 3 provided in subsection (2), the court shall order the
 4 youth's parents or guardians to pay an amount based on the
 5 uniform child support guidelines adopted by the department
 6 of social and rehabilitation services pursuant to 40-5-209.

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

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

20 (i) good cause not to require immediate income
 21 withholding; or

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

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

1 (i) a written determination and explanation by the
 2 court of the reasons why the implementation of immediate
 3 income withholding is not in the best interests of the
 4 child; and

5 (ii) proof of timely payment of previously ordered
 6 support in cases involving modification of contributions
 7 ordered under this section.

8 (d) An alternative arrangement must:

9 (i) provide sufficient security to ensure compliance
 10 with the arrangement;

11 (ii) be in writing and be signed by a representative of
 12 the department and the person required to make
 13 contributions; and

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

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

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

25 (b) The department of social and rehabilitation

SB 0070/01

1 services may collect and enforce a contribution order under
2 this section by any means available under law, including the
3 remedies provided for in Title 40, chapter 5, parts 2 and
4 4."

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

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0070, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

A bill providing that a court may not make a disposition requiring expenditure of money by the Department of Family Services (DFS), unless DFS approves the expenditure. This regards actions taken for child abuse, child neglect and dependency proceedings.

ASSUMPTIONS:

1. There would be no impact on the current budget request for the 94/95 Biennium.
2. There would be no increase or decrease in revenues or expenditures.
3. Services placements would remain stable.

FISCAL IMPACT:

No impact.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

This bill would allow the department to more aggressively implement the budget and maintain the guidelines as established by the legislature.

David Lewis 1-8-93
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Bob Brown 1/15/93
ROBERT (BOB) BROWN, PRIMARY SPONSOR DATE

Fiscal Note for SB0070, as introduced

SB 70

APPROVED BY COMMITTEE
ON JUDICIARY

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22 documents, ~~shall~~ must be served by a peace officer or a
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24 person or persons named therein in the order. When the youth
25 is placed in a medical facility or protective facility, the

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22 family-services worker;

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 22 contributions ordered under this section and each
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10 youth to contribute to the costs for the care, custody, and
11 treatment of the youth and order requirement of a
12 contribution for those costs pursuant to the requirements of
13 41-3-406(3) through (6);

14 (g) such other temporary disposition as may be required
15 in the best interest of the youth that does not require an
16 expenditure of money by the department unless the department
17 approves--the-expenditure IS NOTIFIED AND A COURT HEARING IS
18 SET IN A TIMELY MANNER ON THE PROPOSED EXPENDITURE. THE
19 DEPARTMENT IS THE PAYOR OF LAST RESORT AFTER ALL FAMILY,
20 INSURANCE, AND OTHER RESOURCES HAVE BEEN EXAMINED."

21 **Section 2.** Section 41-3-406, MCA, is amended to read:

22 "41-3-406. Dispositional hearing -- contributions by
23 parents or guardians for youth's care. (1) If a youth is
24 found to be a youth in need of care under 41-3-404, the
25 court may enter its judgment, making any of the following

1 dispositions to protect the welfare of the youth:

2 (a) permit the youth to remain with his the youth's
3 parents or guardian, subject to those conditions and
4 limitations the court may prescribe;

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

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

8 (i) ~~the department of family services;~~

9 (ii) a child-placing agency that is willing and able to
10 assume responsibility for the education, care, and
11 maintenance of the youth and that is licensed or otherwise
12 authorized by law to receive and provide care of the youth;
13 or

14 (iii) a relative or other individual who, after study by
15 a social service agency designated by the court, is found by
16 the court to be qualified to receive and care for the youth;

17 (d) order any party to the action to do what is
18 necessary to give effect to the final disposition, including
19 undertaking medical and psychological evaluations,
20 treatment, and counseling; THAT DOES NOT REQUIRE AN
21 EXPENDITURE OF MONEY BY THE DEPARTMENT UNLESS THE DEPARTMENT
22 IS NOTIFIED AND A COURT HEARING IS SET IN A TIMELY MANNER ON
23 THE PROPOSED EXPENDITURE. THE DEPARTMENT IS THE PAYOR OF
24 LAST RESORT AFTER ALL FAMILY, INSURANCE, AND OTHER RESOURCES
25 HAVE BEEN EXAMINED.

1 (e) order such further care and treatment as the court
 2 considers in the best interest of the youth that does not
 3 require an expenditure of money by the department unless the
 4 department ~~approves the expenditure~~ IS NOTIFIED AND A COURT
 5 HEARING IS SET IN A TIMELY MANNER ON THE PROPOSED
 6 EXPENDITURE. THE DEPARTMENT IS THE PAYOR OF LAST RESORT
 7 AFTER ALL FAMILY, INSURANCE, AND OTHER RESOURCES HAVE BEEN
 8 EXAMINED.

9 (2) If the youth is transferred to the custody of the
 10 department, the court shall examine the financial ability of
 11 the youth's parents or guardians to pay a contribution
 12 covering all or part of the costs for the care, custody, and
 13 treatment of the youth, including the costs of necessary
 14 medical, dental, and other health care.

15 (3) If the court determines that the youth's parents or
 16 guardians are financially able to pay a contribution as
 17 provided in subsection (2), the court shall order the
 18 youth's parents or guardians to pay an amount based on the
 19 uniform child support guidelines adopted by the department
 20 of social and rehabilitation services pursuant to 40-5-209.

21 (4) (a) Except as provided in subsection (4)(b),
 22 contributions ordered under this section and each
 23 modification of an existing order are enforceable by
 24 immediate or delinquency income withholding, or both, under
 25 Title 40, chapter 5, part 4. An order for a contribution

1 that is inconsistent with this section is nevertheless
 2 subject to withholding for the payment of the contribution
 3 without need for an amendment of the support order or for
 4 any further action by the court.

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

9 (i) good cause not to require immediate income
 10 withholding; or

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

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

15 (i) a written determination and explanation by the
 16 court of the reasons why the implementation of immediate
 17 income withholding is not in the best interests of the
 18 child; and

19 (ii) proof of timely payment of previously ordered
 20 support in cases involving modification of contributions
 21 ordered under this section.

22 (d) An alternative arrangement must:

23 (i) provide sufficient security to ensure compliance
 24 with the arrangement;

25 (ii) be in writing and be signed by a representative of

1 the department and the person required to make
2 contributions; and

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

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

9 (6) (a) If the court orders the payment of
10 contributions under this section, the department shall apply
11 to the department of social and rehabilitation services for
12 support enforcement services pursuant to Title IV-D of the
13 Social Security Act.

14 (b) The department of social and rehabilitation
15 services may collect and enforce a contribution order under
16 this section by any means available under law, including the
17 remedies provided for in Title 40, chapter 5, parts 2 and
18 4."

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

-End-