

SENATE BILL NO. 70

INTRODUCED BY B. BROWN  
BY REQUEST OF THE DEPARTMENT OF FAMILY SERVICES

IN THE SENATE

JANUARY 2, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
JANUARY 4, 1993	FIRST READING.
JANUARY 28, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
JANUARY 29, 1993	PRINTING REPORT.  SECOND READING, DO PASS.
JANUARY 30, 1993	ENGROSSING REPORT.  THIRD READING, PASSED. AYES, 41; NOES, 1.  TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 1, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.  FIRST READING.
MARCH 17, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 29, 1993	SECOND READING, CONCURRED IN.
MARCH 31, 1993	THIRD READING, CONCURRED IN. AYES, 94; NOES, 5.
APRIL 1, 1993	RETURNED TO SENATE.

IN THE SENATE

APRIL 2, 1993	RECEIVED FROM HOUSE.  SENT TO ENROLLING.  REPORTED CORRECTLY ENROLLED.
---------------	--

## 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;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) An alternative arrangement must:

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

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

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

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

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

(b) The department of social and rehabilitation

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* 1/11/93  
ROBERT (BOB) BROWN, PRIMARY SPONSOR DATE

Fiscal Note for SB0070, as introduced

5B 70

APPROVED BY COMMITTEE  
ON JUDICIARY

SENATE BILL NO. 70

INTRODUCED BY B. BROWN

BY REQUEST OF THE DEPARTMENT OF FAMILY SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A COURT MAY NOT MAKE A DISPOSITION IN A CHILD ABUSE, NEGLECT, OR DEPENDENCY PROCEEDING THAT REQUIRES AN EXPENDITURE OF MONEY BY THE DEPARTMENT OF FAMILY SERVICES UNLESS THE DEPARTMENT ~~APPROVES-OF-THE-EXPENDITURE~~ IS NOTIFIED AND A TIMELY COURT HEARING IS SET; PROVIDING THAT THE DEPARTMENT IS THE PAYOR OF LAST RESORT; AMENDING SECTIONS 41-3-403 AND 41-3-406, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 41-3-403, MCA, is amended to read:

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

(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 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 custody of the youth with the department of-family-services until further order.

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

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

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

(c) require requirement that the youth, parents,

guardians, or person having legal custody to receive counseling services;

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

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

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

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

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

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

dispositions to protect the welfare of the youth:

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

(d) An alternative arrangement must:

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

(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-

## SENATE BILL NO. 70

INTRODUCED BY B. BROWN

BY REQUEST OF THE DEPARTMENT OF FAMILY SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A COURT MAY NOT MAKE A DISPOSITION IN A CHILD ABUSE, NEGLECT, OR DEPENDENCY PROCEEDING THAT REQUIRES AN EXPENDITURE OF MONEY BY THE DEPARTMENT OF FAMILY SERVICES UNLESS THE DEPARTMENT ~~APPROVES-OF-THE-EXPENDITURE~~ IS NOTIFIED AND A TIMELY COURT HEARING IS SET; PROVIDING THAT THE DEPARTMENT IS THE PAYOR OF LAST RESORT; AMENDING SECTIONS 41-3-403 AND 41-3-406, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

**Section 1.** Section 41-3-403, MCA, is amended to read:**"41-3-403. Order for immediate protection of youth.**

(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 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 custody of the youth with the department of-family-services until further order.

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

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

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

(c) require requirement that the youth, parents,

guardians, or person having legal custody to receive counseling services;

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

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

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

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

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

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

dispositions to protect the welfare of the youth:

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

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

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

(i) the department of-family-services;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) An alternative arrangement must:

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

(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-

## 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~~ IS NOTIFIED AND A TIMELY COURT  
10 HEARING IS SET; PROVIDING THAT THE DEPARTMENT IS THE PAYOR  
11 OF LAST RESORT; AMENDING SECTIONS 41-3-403 AND 41-3-406,  
12 MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

15 Section 1. Section 41-3-403, MCA, is amended to read:

16 "41-3-403. Order for immediate protection of youth.

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

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

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

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

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

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

21 (a) right of entry by a peace officer or department of  
22 family-services worker;

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

25 (c) require requirement that the youth, parents,

guardians, or person having legal custody to receive counseling services;

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

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

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

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

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

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

dispositions to protect the welfare of the youth:

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

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

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

(i) the department of-family-services;

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

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

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



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

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

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

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

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

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

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

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

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

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

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

(d) An alternative arrangement must:

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

(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-