

SENATE BILL NO. 32

INTRODUCED BY BROWN, TOWE
BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION AND
THE OFFICE OF BUDGET AND PROGRAM PLANNING

IN THE SENATE

DECEMBER 3, 1993

INTRODUCED AND REFERRED TO COMMITTEE
ON FINANCE & CLAIMS.

FIRST READING.

DECEMBER 11, 1993

COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

DECEMBER 3, 1993

PRINTING REPORT.

SECOND READING, DO PASS.

ENGROSSING REPORT.

THE 10 READING, PASSED.
AYES, 42; NOES, 6.

TRANSMITTED TO HOUSE.

IN THE HOUSE

DECEMBER 14, 1993

INTRODUCED AND REFERRED TO COMMITTEE
ON STATE ADMINISTRATION.

FIRST READING.

DECEMBER 15, 1993

COMMITTEE RECOMMEND BILL LE
CONCURRED IN AS AMENDED. REPORT
ADOPTED.

DECEMBER 16, 1993

SECOND READING, CONCURRED IN.

THIRD READING, CONCURRED IN.
AYES, 95; NOES, 5.

RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

DECEMBER 17, 1993

RECEIVED FROM HOUSE.

SECOND READING, AMENDMENTS

CONCURRED IN.

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 Senate BILL NO. 32
2 INTRODUCED BY Rep Brown
3 BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION AND
4 THE OFFICE OF BUDGET AND PROGRAM PLANNING
5
6 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FINANCIAL
7 INCENTIVES TO STATE AGENCIES AND EMPLOYEES AND TO
8 NONEMPLOYEES WHO SAVE COSTS IN AND IMPROVE THE EFFECTIVENESS
9 OF STATE GOVERNMENT; AMENDING SECTIONS 2-15-112, 2-18-1101,
10 2-18-1102, 2-18-1103, 2-18-1105, 2-18-1106, AND 17-7-304,
11 MCA; REPEALING SECTION 2-18-1104, MCA; AND PROVIDING AN
12 IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."
13

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

15 **Section 1.** Section 2-18-1101, MCA, is amended to read:

16 "2-18-1101. Definitions. As used in this part, the
17 following definitions apply:

18 (1) "Agency head" means a director, commissioner, or
19 constitutional officer in charge of an executive,
20 legislative, or judicial branch agency or an agency of the
21 Montana university system. The term includes the president
22 of a unit of the Montana university system.

23 (2) "Department" means the department of administration
24 provided for in 2-15-1001.

25 (3) "Employee" means an employee of the executive,

1 legislative, or judicial branch or the Montana university
2 system.

3 (4) "Group or team of employees" means a group, team,
4 or work unit of employees working cooperatively."

5 **Section 2.** Section 2-18-1102, MCA, is amended to read:

6 "2-18-1102. Creation of program. The department shall
7 develop and administer a statewide employee incentive award
8 program to appropriately recognize and monetarily reward
9 individual state employees in-a-timely-manner and groups or
10 teams of employees for suggestions-or-inventions documented
11 achievements and outcomes that contribute to the efficiency,
12 economy, or other improvement of state government by
13 reducing the costs or improving the effectiveness of
14 governmental operations."

15 **Section 3.** Section 2-18-1103, MCA, is amended to read:

16 "2-18-1103. Powers and duties of the department. The
17 department shall:

18 (1) adopt rules to equitably administer the employee
19 incentive award program;

20 (2) provide an opportunity for all employees to
21 participate in the program;

22 (3) assist agencies in making incentive awards under
23 the program; and

24 (4) ~~grant-or-deny-incentive-awards-in-consultation-with~~
25 ~~the-incentive-awards--advisory--council--and--determine--the~~

1 amount--of--each--incentive--award--based--on--first--year--monetary
2 savings;

3 {5}--hear--appeals--from--employees--on--the--operation--of--the
4 program;

5 {6} prepare and submit, as-a-part--of--the--information
6 required--by--17-7-111 in the manner provided in 5-11-210, a
7 list of incentive awards and the corresponding savings to
8 the state resulting--from--each--employee's--suggestion--or
9 invention and improvements in the effectiveness of state
10 government and providing shall provide a general review of
11 and recommendations for improving the incentive award
12 program; and

13 {7}--send--a--copy--of--all--suggestions--or--inventions
14 submitted---under---this---program--to--the--office--of--the
15 legislative-fiscal-analyst."

16 **Section 4.** Section 2-18-1105, MCA, is amended to read:

17 "2-18-1105. Eligibility for award. (1) Except as
18 provided in subsection (2), an employee, a group or team of
19 employees, or a nonemployee may--be is eligible for an
20 incentive award if-his-suggestion-or-invention-results-in:

21 (a) for efforts that significantly contribute to
22 documented achievements or outcomes eliminating or reducing
23 an agency's expenditures; or

24 (b) for improving the effectiveness of state government
25 or improving services to the public by permitting more work

1 to be accomplished within an agency without increasing the
2 cost of governmental operations.

3 (2) {a} An employee may or nonemployee is not be
4 eligible for an individual incentive award if-his-suggestion
5 or--invention--directly--relates--to--his--assigned--duties--and
6 responsibilities-unless--the--proposal--is--so--superior--or
7 meritorious--as-to-warrant-special-recognition-as-determined
8 by-the-department.

9 {b}--Suggestions-or-inventions-relating-to-the-following
10 matters-may-not-be-considered-for-awards:

11 {i}--personnel-grievances;

12 {ii}--classification-and-pay-of-positions;

13 {iii}--matters-recommended-for-study-or-review; and

14 {iv}--proposals-resulting--from--assigned--or--contracted
15 audits,--studies,--surveys,--reviews,--or--research unless the
16 employee's or nonemployee's documented achievement or
17 outcome was accomplished without significant contributions
18 from others."

19 **Section 5.** Section 2-18-1106, MCA, is amended to read:

20 "2-18-1106. Agency head to grant award -- amount and
21 source of award. (1) After--an--agency--implements--an
22 employee's-suggestion-or-invention-and-the-monetary--savings
23 to--the--state-is-estimated,--an An agency head, upon-written
24 application-to-and-approval--from--the--department--and--the
25 incentive--awards--advisory--council, may grant an incentive

award to an employee whose proposal meets the requirements, a group or team of employees, or a nonemployee who has made a significant contribution to achievements or outcomes, as enumerated in 2-18-1105.

(2) The incentive award shall be 10% of the savings resulting from implementing for an achievement or outcome that does not result in cost savings that can be specifically determined a year after the achievement or outcome is implemented and the cost savings are actually incurred is the agency head's estimated dollar value of the employee's proposal for 1-year achievement or outcome, up to a maximum of \$3,000 \$500 per employee or nonemployee or, in the discretion of the agency head, not more than 40 hours of paid leave time for an employee. Larger awards may be proposed and submitted to the legislature for consideration.

(3) The amount of an award for an achievement or outcome producing cost savings that can be measured after the savings are actually incurred must be determined by the agency head but may not exceed:

(a) 10% of the first \$100,000 of cost savings actually incurred during the 12 months following implementation of the suggestion; plus

(b) 5% of the next \$100,000 of cost savings actually incurred during that 12-month period; plus

(c) 2% of cost savings in excess of \$200,000 actually

incurred during that 12-month period, but not exceeding \$17,000.

(4) (a) If the award is to be divided between two or more persons, the agency head shall determine the amount each person is to receive.

(b) Each person must be paid in one lump sum no later than 90 days after the end of the 12-month period following implementation of the suggestion. However, an agency head may pay an award at any time that savings can be determined.

(3) The agency head shall pay the employee award from the agency's budget in a single lump-sum award. This award is in addition to the recipient's regular compensation or leave time.

(5) The number of awards granted by an agency in a state government fiscal year may not exceed the number equal to 20% of the average number of full-time equivalent employees in that agency during that fiscal year. The office of budget and program planning may grant an agency with less than 50 full-time equivalent employees an exemption from this limitation, but the exemption may not allow more awards than the number equal to 50% of the average number of full-time equivalent employees in the agency during the fiscal year.

(6) Within 30 days after the end of each fiscal year, each agency shall submit to the department a list of the

number of incentive awards granted, to whom each award was granted, the estimated value of each achievement or outcome, and the amount of each award."

NEW SECTION. Section 6. Salary increase based on elimination of position. An agency head, as defined in 2-18-1101, may, with the approval of the approving authority, as defined in 17-7-102, increase the salary for one or more positions in the agency by the amount of the salary for a position that was permanently eliminated by the agency within the last 30 days. However, an increased salary may not exceed the market salary for that position determined under Title 2, chapter 18, part 3. If an eliminated position's salary is redistributed under this section, the agency may not be given an increased appropriation in regard to the eliminated position under 2-15-112(2)(e). An increase for an employee who is in a collective bargaining unit is a negotiable subject under 39-31-305.

Section 7. Section 2-15-112, MCA, is amended to read:

"2-15-112. Duties and powers of department heads. (1) Except as otherwise provided by law, each department head shall:

(a) supervise, direct, account for, organize, plan, administer, and execute the functions vested in the department by this chapter or other law;

(b) establish the policy to be followed by the department and employees;

(c) compile and submit reports and budgets for the department as required by law or requested by the governor;

(d) provide the governor with any information that the governor requests at any time on the operation of the department;

(e) represent the department in communications with the governor;

(f) prescribe rules, consistent with law and rules established by the governor, for the administration of the department; the conduct of the employees; the distribution and performance of business; and the custody, use, and preservation of the records, documents, and property pertaining to department business. The lieutenant governor, secretary of state, attorney general, auditor, and superintendent of public instruction may prescribe their own rules for their departments or offices, and the governor may not prescribe rules for them. The rules described in this subsection are limited to statements concerning only the internal management of the agency and not affecting private rights or procedures available to the public. This section does not authorize the adoption of any rule as rules are defined in the Montana Administrative Procedure Act.

(g) subject to the approval of the governor, establish

the internal organizational structure of the department and allocate the functions of the department to units to promote the economic and efficient administration and operation of the department. The internal structure of the department must be established in accordance with 2-15-104(2).

(h) subject to law, establish and make appointments to necessary subordinate positions and abolish unnecessary positions;

(i) maintain a central office in Helena for the department and maintain other facilities throughout the state as may be required for the effective and efficient operation of the department.

(2) Except as otherwise provided by law, each department head may:

(a) subject to law, transfer employees between positions, remove persons appointed to positions, and change the duties, titles, and compensation of employees within the department;

(b) delegate any of the functions vested in the department head to subordinate employees;

(c) apply for, accept, administer, and expend funds, grants, gifts, and loans from the federal government or any other source in administering the department's functions;

(d) enter into agreements with federal, state, and local agencies necessary to carry out the department's

functions; and

(e) eliminate positions within the department. The If the salary for an eliminated position is not redistributed as provided for under [section 6], the office of budget and program planning shall increase the department's appropriation in the second year of the biennium by an amount equal to one-half of the savings resulting from the elimination of a position. The increased appropriation in the second year of the biennium may be expended at the discretion of the department head, provided that the expenditure is consistent with the goals and objectives of the department. The remaining one-half must revert to the original funding source. This subsection (e) does not apply to an agency allocated to a department in either year of the 2 years of the biennium for administrative purposes, as provided in 2-15-121. Section 17-7-138 does not apply to this subsection (e)."

Section 8. Section 17-7-304, MCA, is amended to read:

"17-7-304. (Temporary) Disposal of unexpended appropriations. (1) All money appropriated for any specific purpose except that appropriated for the university system units listed in subsection (2) and except as provided in subsection (4) must, after the expiration of the time for which appropriated, revert to the several funds and accounts from which originally appropriated. However, any unexpended

1 balance in any specific appropriation may be used for the
2 years for which the appropriation was made.

3 (2) Except as provided in 17-2-108 and subsection (3)
4 of this section, all money appropriated for the university
5 of Montana at Missoula, Montana state university at Bozeman,
6 Montana college of mineral science and technology at Butte,
7 eastern Montana college at Billings, northern Montana
8 college at Havre, western Montana college of the university
9 of Montana at Dillon, the agricultural experiment station
10 with central offices at Bozeman, the forest and conservation
11 experiment station with central offices at Missoula, the
12 cooperative extension service with central offices at
13 Bozeman, the bureau of mines and geology with central
14 offices in Butte, and the vocational-technical centers at
15 Billings, Butte, Great Falls, Helena, and Missoula must,
16 after the expiration of the time for which appropriated,
17 revert to an account held by the board of regents. The board
18 of regents is authorized to maintain a fund balance. There
19 is a statutory appropriation, as provided in 17-7-502, to
20 use the funds held in this account in accordance with a
21 long-term plan for major and deferred maintenance
22 expenditures and equipment or fixed assets purchases
23 prepared by the affected university system units and
24 approved by the board of regents. The affected university
25 system units may, with the approval of the board of regents,

1 modify the long-term plan at any time to address changing
2 needs and priorities. The board of regents shall communicate
3 the plan to each legislature, to the finance committee when
4 requested by the committee, and to the office of budget and
5 program planning.

6 (3) Subsection (2) does not apply to reversions that
7 are the result of a reduction in spending directed by the
8 governor pursuant to 17-7-140. Any amount that is a result
9 of a reduction in spending directed by the governor must
10 revert to the fund or account from which it was originally
11 appropriated.

12 (4) For the 2 years following the end of a fiscal year,
13 30% of the money appropriated to an agency for that year by
14 the general appropriations act for personal services,
15 operating expenses, and equipment and remaining unexpended
16 and unencumbered at the end of the year may be spent for any
17 purpose that is consistent with the goals and objectives of
18 the agency. The dollar amount of the 30% amount that may be
19 carried forward and spent must be determined by the office
20 of budget and program planning. (Terminates June 30,
21 1996--sec. 23, Ch. 787, L. 1991; sec. 5, Ch. 5, Sp. L. July
22 1992.)

23 17-7-304. (Effective July 1, 1996) Disposal of
24 unexpended appropriations. At (1) Except as provided in
25 subsection (2), all money appropriated for any specific

1 purpose must, after the expiration of the time for which
2 appropriated, revert to the several funds and accounts from
3 which originally appropriated. However, any unexpended
4 balance in any specific appropriation may be used for the
5 years for which the appropriation was made.

6 (2) For the 2 years following the end of a fiscal year,
7 30% of the money appropriated to an agency for that year by
8 the general appropriations act for personal services,
9 operating expenses, and equipment and remaining unexpended
10 and unencumbered at the end of the year may be spent for any
11 purpose that is consistent with the goals and objectives of
12 the agency. The dollar amount of the 30% amount that may be
13 carried forward and spent must be determined by the office
14 of budget and program planning."

15 NEW SECTION. Section 9. Repealer. Section 2-18-1104,
16 MCA, is repealed.

17 NEW SECTION. Section 10. Codification instruction.
18 [Section 6] is intended to be codified as an integral part
19 of Title 2, chapter 18, and the provisions of Title 2,
20 chapter 18, apply to [section 6].

21 NEW SECTION. Section 11. Applicability. [Sections 1
22 through 5] apply to achievements and outcomes occurring
23 after [the effective date of this act].

24 NEW SECTION. Section 12. Effective date. [This act] is
25 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 SB0032, as introduced.


DESCRIPTION OF PROPOSED LEGISLATION: An act providing financial incentives to state agencies and employees and to non-employees who save costs in and improve effectiveness of state government.

ASSUMPTIONS:

1. Participation in the Employee Incentive Program would increase under the provisions of this bill due to: incentives applying to the employee's own work rather than to suggestions outside their normal work duties; awards based on actual results and achieved savings; the program focusing on cooperative efforts by groups or teams of employees; the maximum awards for achievements resulting in measurable cost savings are increased.
2. Participation under the existing Employee Incentive Awards proposal for calendar year 1991 resulted in 47 suggestions being submitted. 14 suggestions resulted in an award. 7 suggestions had specific estimates of cost savings that totaled to \$1,190,275. \$8,884 was paid out in awards to those 7 employees. The effect of SB 32 on the future level of participation and the resulting impact on cost savings may not be comparable.
3. Incentive awards would be paid from current level budgets and would be zero-based in the budget planning process.
4. The increase in base salary and associated increase in benefits for an employee or employees authorized under section 6 would be less, on an ongoing basis, than the salary and benefits for any FTE which is permanently eliminated under section 6. State costs for benefits tend to increase faster than salaries.
5. In determining the amount of carry-forward appropriations authority under section 8, OBPP policy would be to use all available nongeneral fund authority first.
6. In FY92, based on highly preliminary data, the amount of reversions (excluding the University System) in administrative expenditure categories (personal services, operating expenses, and equipment) from all fund sources is roughly \$30 million. Approximately 95% of this amount appeared to have been reverted from three agencies which are primarily funded from nongeneral fund sources. The "average" agency appeared to revert approximately 2% of its budget for administrative expenses.
7. Particularly to the extent that carry-forward budget authority is from nongeneral fund sources, agencies would not expend 100% of carry-forward authority.

(continued on next page)


DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning


BOB BROWN, PRIMARY SPONSOR DATE
Fiscal Note for SB0032, as introduced

SB 32

FISCAL IMPACT:

Incentive Award Program:

Increased participation would result in more incentive awards being paid to state employees and non-employees. Incentive awards would be paid within current level budgets which would not be included in the current level for subsequent biennia. It is anticipated that most of the incentive award payments, in total dollars, would be associated with documented cost savings resulting in a net reduction in expenditures. No data is available to support an estimate of how much participation will increase, how cost savings will be affected, or the number or level of incentive awards that will be granted.

Salary Adjustments Due to Permanent Reduction in FTE:

Since permanent reductions in FTE would result in associated amounts for benefits being reverted (only salary amounts may be used to increase base salaries of other employees), the likely impact would be long term savings for affected accounts. There is no data available to support an estimate of the number of FTE which might be permanently eliminated under this provision.

Carry-Forward of Administrative Budget Authority in the General Appropriations Act:

Since there is generally always some amount of reversion in administrative expenditure categories, allowing 30% of these amounts to be carried forward into subsequent fiscal years would increase expenditures, primarily from nongeneral fund sources, unless agencies have sufficient incentives to increase reversions. The possibility of retaining future budgetary flexibility may counterbalance the incentive inherent in the budget process for agencies to "use it or lose it", particularly at the end of the base fiscal year. If agencies spent 75% of carry-forward budget authority, the "average" agency would have to increase its reversions in administrative expenditures from 2% to 2.6% in order for the ability to carry-forward 30% of reverted budget authority to be budget neutral. There is no data available to support an estimate of the extent to which this provision would increase expenditures or reversions.

APPROVED BY COMM. ON
FINANCE AND CLAIMS

SENATE BILL NO. 32

INTRODUCED BY BROWN, TOWE

BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION AND

THE OFFICE OF BUDGET AND PROGRAM PLANNING

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FINANCIAL
INCENTIVES TO STATE AGENCIES AND EMPLOYEES AND TO
NONEMPLOYEES WHO SAVE COSTS IN AND IMPROVE THE EFFECTIVENESS
OF STATE GOVERNMENT; AMENDING SECTIONS 2-15-112, 2-18-1101,
2-18-1102, 2-18-1103, 2-18-1105, 2-18-1106, AND 17-7-304,
MCA; REPEALING SECTION 2-18-1104, MCA; AND PROVIDING AN
IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

Section 1. Section 2-18-1101, MCA, is amended to read:

"2-18-1101. Definitions. As used in this part, the
following definitions apply:

(1) "Agency head" means a director, commissioner, or
constitutional officer in charge of an executive,
legislative, or judicial branch agency or an agency of the
Montana university system. The term includes the president
OR OTHER PERSON IN CHARGE of a unit of the Montana
university system.

(2) "Department" means the department of administration
provided for in 2-15-1001.

(3) "Employee" means an employee of the executive,
legislative, or judicial branch or the Montana university
system.

(4) "Group or team of employees" means a group, team,
or work unit of employees working cooperatively."

Section 2. Section 2-18-1102, MCA, is amended to read:

"2-18-1102. Creation of program. The department shall
develop and administer a statewide employee incentive award
program to appropriately recognize and monetarily reward
individual state employees in-a-timely-manner and groups or
teams of employees for suggestions-or-inventions documented
achievements and outcomes that contribute to the efficiency,
economy, or other improvement of state government by
reducing the costs or improving the effectiveness of
governmental operations."

Section 3. Section 2-18-1103, MCA, is amended to read:

"2-18-1103. Powers and duties of the department. The
department shall:

(1) adopt rules to equitably-administer-the-employee
incentive-award-program IMPLEMENT THIS PART;

(2) provide an opportunity for all employees to
participate in the program;

(3) assist agencies in making incentive awards under
the-program THIS PART; and

(4) grant-or-deny-incentive-awards-in-consultation-with

the incentive awards advisory council and determine the amount of each incentive award based on first-year monetary savings;

(5) hear appeals from employees on the operation of the program;

(6) prepare and submit, as a part of the information required by 5-11-210, a list of incentive awards and the corresponding savings to the state resulting from each employee's suggestion or invention and improvements in the effectiveness of state government and providing shall provide a general review of and recommendations for improving the incentive award program OPERATION OF THIS PART; and

(7) send a copy of all suggestions or inventions submitted under this program to the office of the legislative fiscal analyst."

Section 4. Section 2-18-1105, MCA, is amended to read:

"2-18-1105. Eligibility for award. (1) Except as provided in subsection (2), an employee, a group or team of employees, or a nonemployee may be eligible for an incentive award if his suggestion or invention results in:

(a) for efforts that significantly contribute to documented achievements or outcomes eliminating or reducing an agency's expenditures; or

(b) for improving the effectiveness of state government

or improving services to the public by permitting more work to be accomplished within an agency without increasing the cost of governmental operations.

(2) (a) An employee may or nonemployee is not be eligible for an individual incentive award if his suggestion or invention directly relates to his assigned duties and responsibilities unless the proposal is so superior or meritorious as to warrant special recognition as determined by the department.

(b) Suggestions or inventions relating to the following matters may not be considered for awards:

(i) personnel grievances;

(ii) classification and pay of positions;

(iii) matters recommended for study or review; and

(iv) proposals resulting from assigned or contracted audits, studies, surveys, reviews, or research unless the employee's or nonemployee's documented achievement or outcome was accomplished without significant contributions from others.

(3) SUGGESTIONS RELATING TO AN AGENCY ARE ELIGIBLE FOR AN AWARD FROM THAT AGENCY'S AGENCY HEAD EVEN IF THE EMPLOYEE OR GROUP OR TEAM OF EMPLOYEES, OR ONE OR MORE MEMBERS OF THE GROUP OR TEAM, DO NOT WORK FOR THAT AGENCY."

Section 5. Section 2-18-1106, MCA, is amended to read:

"2-18-1106. Agency head to grant award -- amount and

1 source of award. (1) ~~After--an--agency---implements---an~~
 2 ~~employee's--suggestion-or-invention-and-the-monetary-savings~~
 3 ~~to-the-state-is-estimated,-an~~ An agency head, ~~upon--written~~
 4 ~~application--to--and--approval--from--the-department-and-the~~
 5 ~~incentive-awards-advisory-council,~~ may grant an incentive
 6 award to an employee whose ~~proposal-meets-the-requirements,~~
 7 a group or team of employees, or a nonemployee who has made
 8 a significant contribution to achievements or outcomes IN
 9 THE AGENCY, as enumerated in 2-18-1105. AN EMPLOYEE OR A
 10 MEMBER OF A GROUP OR TEAM OF EMPLOYEES NEED NOT BE EMPLOYED
 11 BY THE AGENCY THAT BENEFITS FROM THE ACHIEVEMENT OR OUTCOME
 12 AND WHOSE AGENCY HEAD GRANTS THE AWARD IN ORDER TO BE
 13 GRANTED AN AWARD.

14 (2) The incentive award ~~shall-be--10%--of--the--savings~~
 15 ~~resulting--from--implementing~~ for an achievement or outcome
 16 that does not result in cost savings that can be
 17 specifically determined a year after the achievement or
 18 outcome is implemented and the cost savings are actually
 19 incurred is the agency head's estimated dollar value of the
 20 ~~employee's-proposal-for-1-year~~ achievement or outcome, up to
 21 a maximum of \$3,000 \$500 per employee or nonemployee or, in
 22 the discretion of the agency head, not more than 40 hours of
 23 paid leave time for an employee. Larger awards may be
 24 proposed and submitted to the legislature for consideration.

25 (3) The amount of an award for an achievement or

1 outcome producing cost savings that can be measured after
 2 the savings are actually incurred must be determined by the
 3 agency head but may not exceed:

4 (a) 10% of the first \$100,000 of cost savings actually
 5 incurred during the 12 months following implementation of
 6 the suggestion; plus

7 (b) 5% of the next \$100,000 of cost savings actually
 8 incurred during that 12-month period; plus

9 (c) 2% of THE NEXT \$100,000 OF cost savings ~~in--excess~~
 10 ~~of--\$200,000~~ actually incurred during that 12-month period,
 11 but-not-exceeding-\$17,000.

12 (4) (a) If the award is to be divided between two or
 13 more persons, the agency head shall determine the amount
 14 each person is to receive.

15 (b) Each person must be paid in one lump sum no later
 16 than 90 days after the end of the 12-month period following
 17 implementation of the suggestion. However, an agency head
 18 may pay an award at any time that savings can be determined.

19 (3) The agency head shall pay the employee award from
 20 the agency's budget ~~in-a-single,-lump-sum-award~~. This award
 21 is in addition to the recipient's regular compensation or
 22 leave time.

23 (5) The number of awards granted by an agency in a
 24 state government fiscal year may not exceed the number equal
 25 to 20% of the average number of full-time equivalent

employees in that agency during that fiscal year. The office of budget and program planning may grant an agency with less than 50 full-time equivalent employees an exemption from this limitation, but the exemption may not allow more awards than the number equal to 50% of the average number of full-time equivalent employees in the agency during the fiscal year.

(6) Within 30 days after the end of each fiscal year, each agency shall submit to the department a list of the number of incentive awards granted, to whom each award was granted, the estimated value of each achievement or outcome, and the amount of each award."

NEW SECTION. Section 6. Salary increase based on elimination of position. An agency head, as defined in 2-18-1101, may, with the approval of the approving authority, as defined in 17-7-102, increase the salary for one or more positions in the agency by the amount of the salary for a position that was permanently eliminated by the agency within the last 30 days. However, an increased salary may not exceed the market salary for that position determined under Title 2, chapter 18, part 3. If an eliminated position's salary is redistributed under this section, the agency may not be given an increased appropriation in regard to the eliminated position under 2-15-112(2)(e). An increase for an employee who is in a

collective bargaining unit is a negotiable subject under 39-31-305.

Section 7. Section 2-15-112, MCA, is amended to read:

"2-15-112. Duties and powers of department heads. (1) Except as otherwise provided by law, each department head shall:

(a) supervise, direct, account for, organize, plan, administer, and execute the functions vested in the department by this chapter or other law;

(b) establish the policy to be followed by the department and employees;

(c) compile and submit reports and budgets for the department as required by law or requested by the governor;

(d) provide the governor with any information that the governor requests at any time on the operation of the department;

(e) represent the department in communications with the governor;

(f) prescribe rules, consistent with law and rules established by the governor, for the administration of the department; the conduct of the employees; the distribution and performance of business; and the custody, use, and preservation of the records, documents, and property pertaining to department business. The lieutenant governor, secretary of state, attorney general, auditor, and

1 superintendent of public instruction may prescribe their own
 2 rules for their departments or offices, and the governor may
 3 not prescribe rules for them. The rules described in this
 4 subsection are limited to statements concerning only the
 5 internal management of the agency and not affecting private
 6 rights or procedures available to the public. This section
 7 does not authorize the adoption of any rule as rules are
 8 defined in the Montana Administrative Procedure Act.

9 (g) subject to the approval of the governor, establish
 10 the internal organizational structure of the department and
 11 allocate the functions of the department to units to promote
 12 the economic and efficient administration and operation of
 13 the department. The internal structure of the department
 14 must be established in accordance with 2-15-104(2).

15 (h) subject to law, establish and make appointments to
 16 necessary subordinate positions and abolish unnecessary
 17 positions;

18 (i) maintain a central office in Helena for the
 19 department and maintain other facilities throughout the
 20 state as may be required for the effective and efficient
 21 operation of the department.

22 (2) Except as otherwise provided by law, each
 23 department head may:

24 (a) subject to law, transfer employees between
 25 positions, remove persons appointed to positions, and change

1 the duties, titles, and compensation of employees within the
 2 department;

3 (b) delegate any of the functions vested in the
 4 department head to subordinate employees;

5 (c) apply for, accept, administer, and expend funds,
 6 grants, gifts, and loans from the federal government or any
 7 other source in administering the department's functions;

8 (d) enter into agreements with federal, state, and
 9 local agencies necessary to carry out the department's
 10 functions; and

11 (e) eliminate positions within the department. ~~The~~ If
 12 the salary for an eliminated position is not redistributed
 13 as provided for under [section 6], the office of budget and
 14 program planning shall increase the department's
 15 appropriation in the second year of the biennium by an
 16 amount equal to one-half of the savings resulting from the
 17 elimination of a position. The increased appropriation in
 18 the second year of the biennium may be expended at the
 19 discretion of the department head, provided that the
 20 expenditure is consistent with the goals and objectives of
 21 the department. The remaining one-half must revert to the
 22 original funding source. This subsection (e) does not apply
 23 to an agency allocated to a department in either year of the
 24 2 years of the biennium for administrative purposes, as
 25 provided in 2-15-121. Section 17-7-138 does not apply to

1 this subsection (e)."

2 **Section 8.** Section 17-7-304, MCA, is amended to read:

3 "17-7-304. (Temporary) Disposal of unexpended
4 appropriations. (1) All money appropriated for any specific
5 purpose except that appropriated for the university system
6 units listed in subsection (2) and except as provided in
7 subsection (4) must, after the expiration of the time for
8 which appropriated, revert to the several funds and accounts
9 from which originally appropriated. However, any unexpended
10 balance in any specific appropriation may be used for the
11 years for which the appropriation was made.

12 (2) Except as provided in 17-2-108 and subsection (3)
13 of this section, all money appropriated for the university
14 of Montana at Missoula, Montana state university at Bozeman,
15 Montana college of mineral science and technology at Butte,
16 eastern Montana college at Billings, northern Montana
17 college at Havre, western Montana college of the university
18 of Montana at Dillon, the agricultural experiment station
19 with central offices at Bozeman, the forest and conservation
20 experiment station with central offices at Missoula, the
21 cooperative extension service with central offices at
22 Bozeman, the bureau of mines and geology with central
23 offices in Butte, and the vocational-technical centers at
24 Billings, Butte, Great Falls, Helena, and Missoula must,
25 after the expiration of the time for which appropriated,

1 revert to an account held by the board of regents. The board
2 of regents is authorized to maintain a fund balance. There
3 is a statutory appropriation, as provided in 17-7-502, to
4 use the funds held in this account in accordance with a
5 long-term plan for major and deferred maintenance
6 expenditures and equipment or fixed assets purchases
7 prepared by the affected university system units and
8 approved by the board of regents. The affected university
9 system units may, with the approval of the board of regents,
10 modify the long-term plan at any time to address changing
11 needs and priorities. The board of regents shall communicate
12 the plan to each legislature, to the finance committee when
13 requested by the committee, and to the office of budget and
14 program planning.

15 (3) Subsection (2) does not apply to reversions that
16 are the result of a reduction in spending directed by the
17 governor pursuant to 17-7-140. Any amount that is a result
18 of a reduction in spending directed by the governor must
19 revert to the fund or account from which it was originally
20 appropriated.

21 (4) For the 2 years following the end of a fiscal year,
22 30% of the money appropriated to an agency for that year by
23 the general appropriations act for personal services,
24 operating expenses, and equipment and remaining unexpended
25 and unencumbered at the end of the year may be spent for any

purpose that is consistent with the goals and objectives of the agency. The dollar amount of the 30% amount that may be carried forward and spent must be determined by the office of budget and program planning. (Terminates June 30, 1996--sec. 23, Ch. 787, L. 1991; sec. 5, Ch. 5, Sp. L. July 1992.)

17-7-304. (Effective July 1, 1996) Disposal of unexpended appropriations. At (1) Except as provided in subsection (2), all money appropriated for any specific purpose must, after the expiration of the time for which appropriated, revert to the several funds and accounts from which originally appropriated. However, any unexpended balance in any specific appropriation may be used for the years for which the appropriation was made.

(2) For the 2 years following the end of a fiscal year, 30% of the money appropriated to an agency for that year by the general appropriations act for personal services, operating expenses, and equipment and remaining unexpended and unencumbered at the end of the year may be spent for any purpose that is consistent with the goals and objectives of the agency. The dollar amount of the 30% amount that may be carried forward and spent must be determined by the office of budget and program planning."

NEW SECTION. Section 9. Repealer. Section 2-18-1104, MCA, is repealed.

NEW SECTION. Section 10. Codification instruction.

[Section 6] is intended to be codified as an integral part of Title 2, chapter 18, and the provisions of Title 2, chapter 18, apply to [section 6].

NEW SECTION. Section 11. Applicability. [Sections 1 through 5] apply to achievements and outcomes occurring after [the effective date of this act].

NEW SECTION. Section 12. Effective date. [This act] is effective on passage and approval.

-End-

SENATE BILL NO. 32

INTRODUCED BY BROWN, TOWE

BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION AND
THE OFFICE OF BUDGET AND PROGRAM PLANNING

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FINANCIAL
INCENTIVES TO STATE AGENCIES AND EMPLOYEES AND TO
NONEMPLOYEES WHO SAVE COSTS IN AND IMPROVE THE EFFECTIVENESS
OF STATE GOVERNMENT; AMENDING SECTIONS 2-15-112, 2-18-1101,
2-18-1102, 2-18-1103, 2-18-1105, 2-18-1106, AND 17-7-304,
MCA; REPEALING SECTION 2-18-1104, MCA; AND PROVIDING AN
IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

Section 1. Section 2-18-1101, MCA, is amended to read:

"2-18-1101. Definitions. As used in this part, the
following definitions apply:

(1) "Agency head" means a director, commissioner, or
constitutional officer in charge of an executive,
legislative, or judicial branch agency or an agency of the
Montana university system. The term includes the president
OR OTHER PERSON IN CHARGE of a unit of the Montana
university system.

(2) "Department" means the department of administration
provided for in 2-15-1001.

THERE ARE NO CHANGES IN THIS BILL
AND WILL NOT BE REPRINTED. PLEASE
REFER TO YELLOW COPY FOR COMPLETE TEXT.



HOUSE STANDING COMMITTEE REPORT

December 15, 1993

Page 1 of 1

Mr. Speaker: We, the committee on State Administration report that Senate Bill 32 (third reading copy -- blue) be concurred in as amended.

Signed: *Dick Simpkins*
Dick Simpkins, Chair

And, that such amendments read:

Carried by: Rep. Simpkins

1. Title, line 7.

Following: "EMPLOYEES"

Insert: ", EXCEPT DIRECTORS AND LEGISLATORS,"

2. Title, line 12.

Strike: "AND"

Insert: ", "

Following: "DATE"

Insert: ", AND A TERMINATION DATE"

3. Page 4, line 4.

Following: "~~a~~"

Insert: "(a)"

4. Page 2.

Following: line 19

Insert: "(b) A director, as defined in 2-15-102, or a legislator
is not eligible for the incentive award provided for under
this part."

5. Page 14.

Following: line 9

Insert: "NEW SECTION. Section 13. Termination. [This act]
terminates July 1, 1997."

-END-

Committee Vote:
Yes __, No __.

SB 32

HOUSE

JD
12-15-93
2:05

SENATE BILL NO. 32

INTRODUCED BY BROWN, TOWE

BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION AND
THE OFFICE OF BUDGET AND PROGRAM PLANNING

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FINANCIAL
INCENTIVES TO STATE AGENCIES AND EMPLOYEES, EXCEPT DIRECTORS
AND LEGISLATORS, AND TO NONEMPLOYEES WHO SAVE COSTS IN AND
IMPROVE THE EFFECTIVENESS OF STATE GOVERNMENT; AMENDING
SECTIONS 2-15-112, 2-18-1101, 2-18-1102, 2-18-1103,
2-18-1105, 2-18-1106, AND 17-7-304, MCA; REPEALING SECTION
2-18-1104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE
AND, AN APPLICABILITY DATE, AND A TERMINATION DATE."

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

Section 1. Section 2-18-1101, MCA, is amended to read:

"2-18-1101. Definitions. As used in this part, the
following definitions apply:

(1) "Agency head" means a director, commissioner, or
constitutional officer in charge of an executive,
legislative, or judicial branch agency or an agency of the
Montana university system. The term includes the president
OR OTHER PERSON IN CHARGE of a unit of the Montana
university system.

(2) "Department" means the department of administration

provided for in 2-15-1001.

(3) "Employee" means an employee of the executive,
legislative, or judicial branch or the Montana university
system.

(4) "Group or team of employees" means a group, team,
or work unit of employees working cooperatively."

Section 2. Section 2-18-1102, MCA, is amended to read:

"2-18-1102. Creation of program. The department shall
develop and administer a statewide employee incentive award
program to appropriately recognize and monetarily reward
individual state employees in-a-timely-manner and groups or
teams of employees for suggestions-or-inventions documented
achievements and outcomes that contribute to the efficiency,
economy, or other improvement of state government by
reducing the costs or improving the effectiveness of
governmental operations."

Section 3. Section 2-18-1103, MCA, is amended to read:

"2-18-1103. Powers and duties of the department. The
department shall:

(1) adopt rules to equitably--administer--the--employee
incentive-award-program IMPLEMENT THIS PART;

(2) provide an opportunity for all employees to
participate in the program;

(3) assist agencies in making incentive awards under
the-program THIS PART; and

(4) ~~grant or deny incentive awards in consultation with the incentive awards advisory council and determine the amount of each incentive award based on first year monetary savings;~~

~~(5) hear appeals from employees on the operation of the program;~~

(6) prepare and submit, as a part of the information required by ~~17-7-111~~ in the manner provided in 5-11-210, a list of incentive awards and the corresponding savings to the state ~~resulting from each employee's suggestion or invention and improvements in the effectiveness of state government and providing shall provide~~ a general review of and recommendations for improving the ~~incentive award program~~ OPERATION OF THIS PART; and

~~(7) send a copy of all suggestions or inventions submitted under this program to the office of the legislative fiscal analyst.~~

Section 4. Section 2-18-1105, MCA, is amended to read:

"2-18-1105. Eligibility for award. (1) Except as provided in subsection (2), an employee, a group or team of employees, or a nonemployee ~~may be~~ is eligible for an incentive award ~~if his suggestion or invention results in:~~

(a) for efforts that significantly contribute to documented achievements or outcomes eliminating or reducing an agency's expenditures; or

(b) for improving the effectiveness of state government or improving services to the public by permitting more work to be accomplished within an agency without increasing the cost of governmental operations.

(2) ~~(a)~~ (A) An employee ~~may or~~ nonemployee is not be eligible for an individual incentive award ~~if his suggestion or invention directly relates to his assigned duties and responsibilities unless the proposal is so superior or meritorious as to warrant special recognition as determined by the department.~~

~~(b) Suggestions or inventions relating to the following matters may not be considered for awards:~~

~~(i) personnel grievances;~~

~~(ii) classification and pay of positions;~~

~~(iii) matters recommended for study or review; and~~

~~(iv) proposals resulting from assigned or contracted audits, studies, surveys, reviews, or research unless the employee's or nonemployee's documented achievement or outcome was accomplished without significant contributions from others.~~

(B) A DIRECTOR, AS DEFINED IN 2-15-102, OR A LEGISLATOR IS NOT ELIGIBLE FOR THE INCENTIVE AWARD PROVIDED FOR UNDER THIS PART.

(3) SUGGESTIONS RELATING TO AN AGENCY ARE ELIGIBLE FOR AN AWARD FROM THAT AGENCY'S AGENCY HEAD EVEN IF THE EMPLOYEE

OR GROUP OR TEAM OF EMPLOYEES, OR ONE OR MORE MEMBERS OF THE GROUP OR TEAM, DO NOT WORK FOR THAT AGENCY."

Section 5. Section 2-18-1106, MCA, is amended to read:

"2-18-1106. Agency head to grant award -- amount and source of award. (1) After--an--agency--implements--an employee's-suggestion-or-invention-and-the-monetary--savings to--the--state-is-estimated,--an An agency head, upon written application to and approval from the department and the incentive--awards--advisory--council, may grant an incentive award to an employee whose proposal meets the requirements, a group or team of employees, or a nonemployee who has made a significant contribution to achievements or outcomes IN THE AGENCY, as enumerated in 2-18-1105. AN EMPLOYEE OR A MEMBER OF A GROUP OR TEAM OF EMPLOYEES NEED NOT BE EMPLOYED BY THE AGENCY THAT BENEFITS FROM THE ACHIEVEMENT OR OUTCOME AND WHOSE AGENCY HEAD GRANTS THE AWARD IN ORDER TO BE GRANTED AN AWARD.

(2) The incentive award shall--be--10%--of--the--savings resulting from implementing for an achievement or outcome that does not result in cost savings that can be specifically determined a year after the achievement or outcome is implemented and the cost savings are actually incurred is the agency head's estimated dollar value of the employee's proposal for 1-year achievement or outcome, up to a maximum of \$3,000 \$500 per employee or nonemployee or, in

the discretion of the agency head, not more than 40 hours of paid leave time for an employee. Larger awards may be proposed and submitted to the legislature for consideration.

(3) The amount of an award for an achievement or outcome producing cost savings that can be measured after the savings are actually incurred must be determined by the agency head but may not exceed:

(a) 10% of the first \$100,000 of cost savings actually incurred during the 12 months following implementation of the suggestion; plus

(b) 5% of the next \$100,000 of cost savings actually incurred during that 12-month period; plus

(c) 2% of THE NEXT \$100,000 OF cost savings in excess of \$200,000 actually incurred during that 12-month period, but not exceeding \$17,000.

(4) (a) If the award is to be divided between two or more persons, the agency head shall determine the amount each person is to receive.

(b) Each person must be paid in one lump sum no later than 90 days after the end of the 12-month period following implementation of the suggestion. However, an agency head may pay an award at any time that savings can be determined.

(3) The agency head shall pay the employee award from the agency's budget in a single lump-sum award. This award is in addition to the recipient's regular compensation or

1 leave time.

2 (5) The number of awards granted by an agency in a
 3 state government fiscal year may not exceed the number equal
 4 to 20% of the average number of full-time equivalent
 5 employees in that agency during that fiscal year. The office
 6 of budget and program planning may grant an agency with less
 7 than 50 full-time equivalent employees an exemption from
 8 this limitation, but the exemption may not allow more awards
 9 than the number equal to 50% of the average number of
 10 full-time equivalent employees in the agency during the
 11 fiscal year.

12 (6) Within 30 days after the end of each fiscal year,
 13 each agency shall submit to the department a list of the
 14 number of incentive awards granted, to whom each award was
 15 granted, the estimated value of each achievement or outcome,
 16 and the amount of each award."

17 NEW SECTION. Section 6. Salary increase based on
 18 elimination of position. An agency head, as defined in
 19 2-18-1101, may, with the approval of the approving
 20 authority, as defined in 17-7-102, increase the salary for
 21 one or more positions in the agency by the amount of the
 22 salary for a position that was permanently eliminated by the
 23 agency within the last 30 days. However, an increased salary
 24 may not exceed the market salary for that position
 25 determined under Title 2, chapter 18, part 3. If an

1 eliminated position's salary is redistributed under this
 2 section, the agency may not be given an increased
 3 appropriation in regard to the eliminated position under
 4 2-15-112(2)(e). An increase for an employee who is in a
 5 collective bargaining unit is a negotiable subject under
 6 39-31-305.

7 **Section 7.** Section 2-15-112, MCA, is amended to read:

8 **"2-15-112. Duties and powers of department heads. (1)**
 9 **Except as otherwise provided by law, each department head**
 10 **shall:**

11 (a) supervise, direct, account for, organize, plan,
 12 administer, and execute the functions vested in the
 13 department by this chapter or other law;

14 (b) establish the policy to be followed by the
 15 department and employees;

16 (c) compile and submit reports and budgets for the
 17 department as required by law or requested by the governor;

18 (d) provide the governor with any information that the
 19 governor requests at any time on the operation of the
 20 department;

21 (e) represent the department in communications with the
 22 governor;

23 (f) prescribe rules, consistent with law and rules
 24 established by the governor, for the administration of the
 25 department; the conduct of the employees; the distribution

1 and performance of business; and the custody, use, and
 2 preservation of the records, documents, and property
 3 pertaining to department business. The lieutenant governor,
 4 secretary of state, attorney general, auditor, and
 5 superintendent of public instruction may prescribe their own
 6 rules for their departments or offices, and the governor may
 7 not prescribe rules for them. The rules described in this
 8 subsection are limited to statements concerning only the
 9 internal management of the agency and not affecting private
 10 rights or procedures available to the public. This section
 11 does not authorize the adoption of any rule as rules are
 12 defined in the Montana Administrative Procedure Act.

13 (g) subject to the approval of the governor, establish
 14 the internal organizational structure of the department and
 15 allocate the functions of the department to units to promote
 16 the economic and efficient administration and operation of
 17 the department. The internal structure of the department
 18 must be established in accordance with 2-15-104(2).

19 (h) subject to law, establish and make appointments to
 20 necessary subordinate positions and abolish unnecessary
 21 positions;

22 (i) maintain a central office in Helena for the
 23 department and maintain other facilities throughout the
 24 state as may be required for the effective and efficient
 25 operation of the department.

1 (2) Except as otherwise provided by law, each
 2 department head may:

3 (a) subject to law, transfer employees between
 4 positions, remove persons appointed to positions, and change
 5 the duties, titles, and compensation of employees within the
 6 department;

7 (b) delegate any of the functions vested in the
 8 department head to subordinate employees;

9 (c) apply for, accept, administer, and expend funds,
 10 grants, gifts, and loans from the federal government or any
 11 other source in administering the department's functions;

12 (d) enter into agreements with federal, state, and
 13 local agencies necessary to carry out the department's
 14 functions; and

15 (e) eliminate positions within the department. The If
 16 the salary for an eliminated position is not redistributed
 17 as provided for under [section 6], the office of budget and
 18 program planning shall increase the department's
 19 appropriation in the second year of the biennium by an
 20 amount equal to one-half of the savings resulting from the
 21 elimination of a position. The increased appropriation in
 22 the second year of the biennium may be expended at the
 23 discretion of the department head, provided that the
 24 expenditure is consistent with the goals and objectives of
 25 the department. The remaining one-half must revert to the

original funding source. This subsection (e) does not apply to an agency allocated to a department in either year of the 2 years of the biennium for administrative purposes, as provided in 2-15-121. Section 17-7-138 does not apply to this subsection (e)."

Section 8. Section 17-7-304, MCA, is amended to read:

"17-7-304. (Temporary) Disposal of unexpended appropriations. (1) All money appropriated for any specific purpose except that appropriated for the university system units listed in subsection (2) and except as provided in subsection (4) must, after the expiration of the time for which appropriated, revert to the several funds and accounts from which originally appropriated. However, any unexpended balance in any specific appropriation may be used for the years for which the appropriation was made.

(2) Except as provided in 17-2-108 and subsection (3) of this section, all money appropriated for the university of Montana at Missoula, Montana state university at Bozeman, Montana college of mineral science and technology at Butte, eastern Montana college at Billings, northern Montana college at Havre, western Montana college of the university of Montana at Dillon, the agricultural experiment station with central offices at Bozeman, the forest and conservation experiment station with central offices at Missoula, the cooperative extension service with central offices at

Bozeman, the bureau of mines and geology with central offices in Butte, and the vocational-technical centers at Billings, Butte, Great Falls, Helena, and Missoula must, after the expiration of the time for which appropriated, revert to an account held by the board of regents. The board of regents is authorized to maintain a fund balance. There is a statutory appropriation, as provided in 17-7-502, to use the funds held in this account in accordance with a long-term plan for major and deferred maintenance expenditures and equipment or fixed assets purchases prepared by the affected university system units and approved by the board of regents. The affected university system units may, with the approval of the board of regents, modify the long-term plan at any time to address changing needs and priorities. The board of regents shall communicate the plan to each legislature, to the finance committee when requested by the committee, and to the office of budget and program planning.

(3) Subsection (2) does not apply to reversions that are the result of a reduction in spending directed by the governor pursuant to 17-7-140. Any amount that is a result of a reduction in spending directed by the governor must revert to the fund or account from which it was originally appropriated.

(4) For the 2 years following the end of a fiscal year,

30% of the money appropriated to an agency for that year by the general appropriations act for personal services, operating expenses, and equipment and remaining unexpended and unencumbered at the end of the year may be spent for any purpose that is consistent with the goals and objectives of the agency. The dollar amount of the 30% amount that may be carried forward and spent must be determined by the office of budget and program planning. (Terminates June 30, 1996--sec. 23, Ch. 787, L. 1991; sec. 5, Ch. 5, Sp. L. July 1992.)

17-7-304. (Effective July 1, 1996) Disposal of unexpended appropriations. ~~At~~ (1) Except as provided in subsection (2), all money appropriated for any specific purpose must, after the expiration of the time for which appropriated, revert to the several funds and accounts from which originally appropriated. However, any unexpended balance in any specific appropriation may be used for the years for which the appropriation was made.

(2) For the 2 years following the end of a fiscal year, 30% of the money appropriated to an agency for that year by the general appropriations act for personal services, operating expenses, and equipment and remaining unexpended and unencumbered at the end of the year may be spent for any purpose that is consistent with the goals and objectives of the agency. The dollar amount of the 30% amount that may be

carried forward and spent must be determined by the office of budget and program planning."

NEW SECTION. Section 9. Repealer. Section 2-18-1104, MCA, is repealed.

NEW SECTION. Section 10. Codification instruction. [Section 6] is intended to be codified as an integral part of Title 2, chapter 18, and the provisions of Title 2, chapter 18, apply to [section 6].

NEW SECTION. Section 11. Applicability. [Sections 1 through 5] apply to achievements and outcomes occurring after [the effective date of this act].

NEW SECTION. Section 12. Effective date. [This act] is effective on passage and approval.

NEW SECTION. SECTION 13. TERMINATION. [THIS ACT] TERMINATES JULY 1, 1997.

-End-

SENATE BILL NO. 33

INTRODUCED BY BURNETT

AKLESTAD CARDZ BENEDICT SIMPKINS HUGER

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; 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; AND PROVIDING AN EFFECTIVE DATE."

WHEREAS, the Legislature finds it necessary to restore public confidence in the system and provide protection of individual and family civil rights as guaranteed by the state and federal constitutions; and

WHEREAS, present Montana law arguably allows the Department of Family Services to circumvent the constitutional rights of individuals and families; and

WHEREAS, Montana law should require that the burden of proving allegations of child abuse or neglect be on the Department and that those allegations be proved beyond a reasonable doubt, which would reduce the incidence of false charges of alleged abuse, resulting in a corresponding savings to the general fund; and

WHEREAS, there is no room for error in the removal of children from the home, and extreme care must be taken to avoid ruining a family, parent, or individual through government intrusion or mistake; and

WHEREAS, it is necessary to restore the sacred principle of "innocent until proven guilty" to the process of removal of a child from the home in cases of alleged abuse or neglect; and

WHEREAS, child abuse and neglect is a crime and should be addressed as a crime; and

WHEREAS, delaying the effective date of this legislation until July 1, 1994, will allow the Department of Family Services time to establish criteria to implement the changes necessary to apply this legislation to cases of alleged child abuse or neglect and to ensure that those cases are addressed by this legislation.

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(8)(d)(10)(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 terminated;

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

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

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

(2) The consents required by subsections (1)(a) and

(1)(b) ~~shall~~ must be acknowledged before an officer authorized to take acknowledgments or witnessed by a representative of the department, ~~of-family-services--or~~ of an agency, ~~or witnessed-by-a-representative~~ of the court."

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

"41-3-101. Declaration of policy. (1) It is hereby ~~declared-to-be~~ the policy of the state of Montana to:

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

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

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

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

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

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

(a) protect, whenever possible, family unity;

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

(c) ensure that whenever removal of a child from the home is necessary, the child is entitled to maintain ethnic, cultural, and religious heritage free from proselytism.

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

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

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

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

(2) "Abused or neglected" means the state or condition

1 of a child who has suffered child abuse or neglect.

2 (3) (a) "Adequate health care" means any medical care,
3 including the prevention of the withholding of medically
4 indicated treatment or medically indicated psychological
5 care permitted or authorized under state law.

6 (b) Nothing in this chapter may be construed to require
7 or justify a finding of child abuse or neglect for the sole
8 reason that a parent, due to religious beliefs, does not
9 provide medical care for a child. However, nothing in this
10 chapter may be construed to limit the administrative or
11 judicial authority of the state to ensure that medical care
12 is provided to the child when there is imminent or
13 substantial risk of harm to the child.

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

16 (5) (a) "Child abuse or neglect" means:

17 (i) harm to a child's health or welfare, as defined in
18 subsection (8); or

19 (ii) threatened harm to a child's health or welfare, as
20 defined in subsection (15).

21 (b) The term includes harm or threatened harm to a
22 child's health or welfare by the acts or omissions of a
23 person responsible for the child's welfare.

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

1 (7) "Dependent youth" means a youth:

2 (a) who is abandoned;

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

5 (c) who has no proper guidance to provide for necessary
6 physical, moral, and emotional well-being;

7 (d) who is destitute;

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

9 (f) whose parent or parents have voluntarily
10 relinquished custody and whose legal custody has been
11 transferred to a licensed agency.

12 (8) "Family" means at least one natural or adoptive
13 parent or legal guardian with at least one minor child.

14 (9) "Family associate" means a person who may or may
15 not live within the household of a child but who is or has
16 been granted unencumbered access to the child by a natural
17 or adoptive parent, step-parent, or legal guardian of the
18 child.

19 ~~(8)~~ (10) "Harm to a child's health or welfare" means the
20 harm that occurs whenever the parent or other person
21 responsible for the child's welfare:

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

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

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

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

(e) abandons the child by leaving the child under circumstances that make reasonable the belief that the parent or other person does not intend to resume care of the child in the future or by willfully surrendering surrenders physical custody for a period of 6 months and during that period does not manifest to the child and the person having physical custody of the child a firm intention to resume physical custody or to make permanent legal arrangements for the care of the child; or

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

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

(12) "Infant or toddler" means a child who has yet to be

trained in personal hygiene skills required to care for the child's own sanitary requirements and who is not beyond the age when a reasonable person would expect hygiene skills and training to be complete.

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

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

(15) "Mental injury" means an identifiable and substantial impairment of the child's intellectual or psychological functioning.

(16) "Physical injury" means death, permanent or temporary disfigurement, or impairment of any bodily organ or function and includes death, permanent or temporary disfigurement, and impairment of a bodily organ or function sustained as a result of excessive corporal punishment.

(17) "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

1 exposure of the child to dogma, tradition, or religious
2 teachings and practices preferred by the adult.

3 {12}(18) (a) "Sexual abuse" means the commission of
4 sexual assault, sexual intercourse without consent, indecent
5 exposure, deviate sexual conduct, or incest, as described in
6 Title 45, chapter 5, part 5.

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

13 {13}(19) "Sexual exploitation" means allowing,
14 permitting, or encouraging a child to engage in a
15 prostitution offense, as described in 45-5-601 through
16 45-5-603, or allowing, permitting, or encouraging sexual
17 abuse of children as described in 45-5-625.

18 {14}(20) "Social worker" means an employee of the
19 department whose duties generally involve the provision of
20 either child or adult protective services, or both.

21 {15}(21) "Threatened harm to a child's health or
22 welfare" means substantial risk of harm to the child's
23 health or welfare.

24 {16}(22) (a) "Withholding of medically indicated
25 treatment" means the failure to respond to an infant's

1 life-threatening conditions by providing treatment
2 (including appropriate nutrition, hydration, and medication)
3 that, in the treating physician's or physicians' reasonable
4 medical judgment, will be most likely to be effective in
5 ameliorating or correcting the conditions. ~~However, the~~

6 (b) The term does not include the failure to provide
7 treatment (other than appropriate nutrition, hydration, or
8 medication) to an infant when, in the treating physician's
9 or physicians' reasonable medical judgment:

10 {a}(i) the infant is chronically and irreversibly
11 comatose;

12 {b}(ii) the provision of treatment would:

13 {1}(A) merely prolong dying;

14 {11}(B) not be effective in ameliorating or correcting
15 all of the infant's life-threatening conditions; or

16 {111}(C) otherwise be futile in terms of the survival
17 of the infant; or

18 {e}(iii) the provision of treatment would be virtually
19 futile in terms of the survival of the infant and the
20 treatment itself under the circumstances would be inhumane.
21 For purposes of this subsection, "infant" means an infant
22 less than 1 year of age or an infant 1 year of age or older
23 who has been continuously hospitalized since birth, who was
24 born extremely prematurely, or who has a long-term
25 disability. The reference to less than 1 year of age may not

be construed to imply that treatment should be changed or discontinued when an infant reaches 1 year of age or to affect or limit any existing protections available under state laws regarding medical neglect of children over 1 year of age.

~~†77~~(23) "Youth in need of care" means a youth who is dependent, abused, or neglected as defined in this section."

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

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

(2) Professionals and officials required to report are:

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

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

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

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

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

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

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

(h) a member of the clergy.

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

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

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

(i) the knowledge or suspicion of the abuse or neglect came from a statement or confession made to the ~~clergy~~person member of the clergy or the priest in ~~his~~ the capacity as ~~of~~ a clergy person member of the clergy or a priest;

(ii) the statement was intended to be a part of a confidential communication between the ~~clergy~~person member

1 of the clergy or the priest and a member of his the church
2 or congregation; and

3 (iii) the person who made the statement or confession
4 does not consent to the disclosure by the clergyperson
5 member of the clergy or the priest.

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

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

12 (a) the names and addresses of the child and ~~his-or-her~~
13 the child's parents or other persons responsible for ~~his--or~~
14 her the child's care;

15 (b) to the extent known, the child's age, the nature
16 and extent of the child's injuries, including any evidence
17 of previous injuries;

18 (c) any other information that the maker of the report
19 believes might be helpful in establishing the cause of the
20 injuries or showing the willful neglect and the identity of
21 the person or persons responsible therefor for the injuries
22 or neglect; and

23 (d) the facts which that led the person reporting to
24 believe testify under oath that the child has suffered
25 injury or injuries or willful neglect, within the meaning of

1 this chapter."

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

3 "41-3-202. Action on reporting. (1) Upon receipt of a
4 report as required by 41-3-201 that a child is or has been
5 abused or neglected, a social worker or the county attorney
6 or a peace officer shall promptly conduct ~~a--thorough~~ an
7 initial investigation into the home of the child involved or
8 any other place where the child is present, into the
9 circumstances surrounding the injury of the child, and into
10 all other nonfinancial matters ~~which~~ that in the discretion
11 of the investigator are relevant to the investigation. In
12 conducting an investigation under this section, a social
13 worker may not inquire into the financial status of the
14 child's family or of any other person responsible for the
15 child's care except as necessary to ascertain eligibility
16 for federal assistance programs or to comply with the
17 provisions of 41-3-406.

18 (2) An initial investigation into the home of the child
19 may be conducted when an anonymous report is received.
20 However, the investigation must within 48 hours develop
21 independent, corroborative, and attributable information in
22 order for the investigation to continue. Without the
23 development of corroborative and attributable information, a
24 child may not be removed from the home.

25 ~~(2)(3)~~ (3) The social worker is responsible for assessing

the family and planning for the child. If the child is treated at a medical facility, the social worker, county attorney, or peace officer shall, consistent with reasonable medical practice, have the right of access to the child for interviews, photographs, and securing physical evidence and have the right of access to relevant hospital and medical records pertaining to the child. If considered appropriate by the social worker, county attorney, or peace officer conducting an interview of the child, an employee of the public school attended by the child involved may participate in any interview of the child if the child is enrolled in kindergarten through 8th grade.

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

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

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

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

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

"41-3-204. Admissibility and preservation of evidence.

(1) In any a proceeding resulting from a report made pursuant to the provisions of this chapter or in any a 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

1 26-1-803.

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

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

11 (4) A physician, either in the course of his providing
12 medical care to a minor or after consultation with child
13 protective services, the county attorney, or a law
14 enforcement officer may require x-rays to be taken when in
15 his the physician's professional opinion there is a need for
16 radiological evidence of suspected abuse or neglect. X-rays
17 may be taken under this section without the permission of
18 the parent or guardian. The cost of the x-rays ordered and
19 taken under this section ~~shall~~ must be paid by the county
20 child protective service agency.

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

1 ~~(5)(6)~~ At the time the written confirmation report
2 is sent or as soon thereafter as possible, all written,
3 photographic, or radiological evidence gathered under this
4 section ~~shall~~ must be sent to the local affiliate of the
5 department and copies must be sent to the child's family at
6 the--time-the-written-confirmation-report-is-sent-or-as-soon
7 thereafter-as-is-possible."

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

9 "41-3-205. Confidentiality -- disclosure exceptions.

10 (1) The case records of the department of social and
11 rehabilitation services, the department of-family-services
12 and its local affiliate, the county welfare department, the
13 county attorney, and the court concerning actions taken
14 under this chapter and all records concerning reports of
15 child abuse and neglect must be kept confidential except as
16 provided by this section. Any Except as provided in
17 subsections (4) and (5), a person who permits or encourages
18 the unauthorized dissemination of their the contents of case
19 records is guilty of a misdemeanor.

20 (2) Records may be disclosed to a court for in camera
21 inspection if relevant to an issue before it. The court may
22 permit public disclosure if it finds disclosure to be
23 necessary for the fair resolution of an issue before it.

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

1 (a) a department, agency, or organization, including
2 federal agencies, legally authorized to receive, inspect, or
3 investigate reports of child abuse or neglect;

4 (b) a licensed youth care facility or a licensed
5 child-placing agency that is providing services to the
6 family or child who is the subject of a report in the
7 records;

8 (c) a licensed health or mental health professional who
9 is treating the family or child who is the subject of a
10 report in the records;

11 (d) a parent, or guardian, or person designated by a
12 parent or guardian of the child who is the subject of a
13 report in the records or other person responsible for the
14 child's welfare, without with disclosure of the identity of
15 any person who reported or provided information on the
16 alleged child abuse or neglect incident contained in the
17 records;

18 (e) a child named in the records who was allegedly
19 abused or neglected or the child's guardian ad litem;

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

24 (g) a department or agency investigating an applicant
25 for a license to operate a youth care facility, day-care

1 facility, or child-placing agency if the investigation is
2 based on a substantiated report and the applicant is
3 notified of the investigation;

4 (h) an employee of the department if disclosure of the
5 records is necessary for administration of programs designed
6 to benefit the child;

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

10 (j) a youth probation officer who is working in an
11 official capacity with the child who is the subject of a
12 report in the records;

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

16 (l) a foster care review committee established under
17 41-3-1115 or, when applicable, a local citizen review board
18 established under Title 41, chapter 3, part 10;

19 (m) a school employee participating in an interview of
20 a child by a social worker, county attorney, or peace
21 officer as provided in 41-3-202;

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

25 (o) members of a local interagency staffing group

provided for in 52-2-203.

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

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

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

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

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

reasonable cause to suspect that a child has died as a result of child abuse or neglect may report under oath his the person's suspicion to the appropriate medical examiner or law enforcement officer.

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

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

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

(2) No A child who has been removed from ~~his~~ the home or any other place for ~~his~~ the child's protection or care

1 may not be placed in a jail.

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

11 (4) If criminal charges are not filed within 20 days of
12 emergency placement, the child must be returned to the home
13 unless clear and convincing evidence exists to support an
14 allegation that the child, if returned to the home, is in
15 imminent danger of being sexually abused or endangered by a
16 family member or family associate. If evidence of imminent
17 danger exists, the child may be removed from the home only
18 for a period of time sufficient to allow the development of
19 the required criminal complaint. In all cases, an emergency
20 placement of a child may not continue beyond 60 days without
21 criminal charges being filed against the person believed to
22 have sexually abused or endangered the child.

23 ~~†4†~~(5) The department of--family--services shall make
24 such necessary arrangements for the youth's well-being as
25 are required prior to the court hearing."

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

2 "41-3-303. Guardian ad litem. (1) ~~In~~ When a child is
3 temporarily removed from the home and in every judicial
4 proceeding, the court shall appoint for any a child alleged
5 to be abused or neglected a guardian ad litem. The
6 department or any of its staff may not be appointed as the
7 guardian ad litem in a judicial proceeding under this title.
8 ~~When-necessary-the~~ The guardian ad litem may must be a
9 nonprofessional person chosen from a roll of volunteers who
10 have undergone a background check and who have parental
11 experience. They may serve either at their own expense or at
12 public expense.

13 (2) The guardian ad litem is charged with the
14 representation of the child's interests. The guardian ad
15 litem has the following general duties:

16 (a) to conduct investigations that the guardian ad
17 litem considers necessary to ascertain the facts
18 constituting the alleged abuse or neglect;

19 (b) to interview ~~or~~ and observe the child who is the
20 subject of the proceeding;

21 (c) to have access to court, medical, psychological,
22 law enforcement, social services, and school records
23 pertaining to the child and the child's siblings and parents
24 or custodians legal guardian;

25 (d) to make written reports to the court concerning the

1 child's welfare;

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

8 (f) to be a friend and to provide for the daily
9 nurturing needs of the child while separated from the
10 family;

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

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

16 (i) to report directly to the judge on a regular basis
17 the guardian ad litem's observations regarding the needs and
18 emotional state of the child during the separation period
19 and the impact of the separation on the child; and

20 ~~(f)~~(j) to perform other duties as directed by the
21 court."

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

23 "41-3-401. Abuse, neglect, and dependency petitions.

24 (1) The After filing criminal charges alleging sexual abuse
25 or endangerment against a family member or family associate,

1 the county attorney, attorney general, or an attorney hired
2 by the county welfare department or office of human services
3 ~~shall--be~~ is responsible for filing all petitions alleging
4 abuse, neglect, or dependency. The county attorney or
5 attorney general, or an attorney hired by the county welfare
6 department or office of human services with the written
7 consent of the county attorney or attorney general, may
8 require all state, county, and municipal agencies, including
9 law enforcement agencies, to conduct ~~such~~ investigations and
10 furnish such reports as may be necessary.

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

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

20 (4) The parents or parent, guardian, or other person or
21 agency having legal custody of the youth named in the
22 petition, if residing in the state, ~~shall~~ must be served
23 personally with a copy of the petition and summons at least
24 5 days prior to the date set for hearing. If ~~such~~ a person
25 or agency cannot be served personally, the person or agency

1 may be served by publication in the manner provided by the
2 Montana Rules of Civil Procedure for other types of
3 proceedings.

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

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

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

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

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

19 (a) state the nature of the alleged abuse, neglect, or
20 dependency;

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

25 (c) state the names, addresses, and relationship to the

1 youth of all persons who are necessary parties to the
2 action.

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

4 (a) temporary investigative authority and protective
5 services;

6 (b) temporary legal custody;

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

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

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

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

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

17 "41-3-402. Petition for temporary investigative
18 authority and protective services. (1) In cases where it
19 appears that a youth is abused or neglected or is in danger
20 of being abused or neglected, the county attorney, the
21 attorney general, or an attorney hired by the county welfare
22 department or office of human services, after filing
23 criminal charges alleging sexual abuse or endangerment, may
24 file a petition for temporary investigative authority and
25 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."

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 relief that may be required for the immediate protection of the youth.

(b) The order, along with the petition and supporting documents, must be served by a peace officer or a representative of the department on the person or persons named 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 after placement as possible.

(c) The order must require the person served to comply immediately with the terms of the order or to appear before the court issuing the order on the date specified and show cause why 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 in this part, the rules of civil procedure apply. Hearsay evidence of statements made by the affected youth is admissible at the hearing.

(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 until further order.

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

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

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

(c) requirement that the youth, parents, guardians, or person having legal custody receive counseling services;

(d) placement of the youth in a temporary medical

1 facility or a facility for protection of the youth;

2 (e) requirement that the parents, guardian, or other
3 person having custody furnish services that the court may
4 designate;

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

11 (g) other temporary disposition that may be required in
12 the best interest of the youth that does not require an
13 expenditure of money by the department unless the department
14 is notified and a court hearing is set in a timely manner on
15 the proposed expenditure. The department is the payor of
16 last resort after all family, insurance, and other resources
17 have been examined."

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

19 "41-3-404. Adjudicatory hearing -- temporary
20 disposition. (1) In the adjudicatory hearing on a petition
21 under 41-3-401, the court shall determine whether the youth
22 is a youth in need of care and ascertain, as far as
23 possible, the cause.

24 (2) The court shall hear evidence regarding the
25 residence of the youth, the whereabouts of the parents,

1 guardian, or nearest adult relative, and any other matters
2 the court considers relevant in determining the status of
3 the youth.

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

9 (4) If a child is temporarily removed from the home,
10 the department shall notify the family or a family member of
11 any change in the child's residence within 4 hours of the
12 change.

13 (5) If a child is temporarily removed from the home,
14 the family or a family member is entitled to an unencumbered
15 telephone call to the child at least 3 days each week for a
16 minimum of 1 hour each call. The family or family member is
17 also entitled to at least one personal visit each week for a
18 minimum of 3 hours.

19 ~~†4†~~(6) (a) If the court determines that the youth is
20 not an abused, neglected, or dependent child, the petition
21 ~~shall~~ must be dismissed and any order made pursuant to
22 41-3-403 ~~shall~~ must be vacated.

23 (b) If the court determines that the youth is an
24 abused, neglected, or dependent child, the court shall set a
25 date for a dispositional hearing to be conducted within 30

1 days and order any necessary or required investigations. The
 2 court may issue a temporary dispositional order pending the
 3 dispositional hearing. The temporary dispositional order may
 4 provide for any of the forms of relief listed in
 5 41-3-403(2)."

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

7 "41-3-406. Dispositional hearing -- contributions by
 8 parents or guardians for youth's care. (1) If a youth is
 9 found to be a youth in need of care under 41-3-404, the
 10 court may enter its judgment, making any of the following
 11 dispositions to protect the welfare of the youth:

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

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

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

18 (i) the department;

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

24 (iii) a relative family member or other individual who,
 25 after study by a social service agency designated by the

1 court, is found by the court to be qualified to receive and
 2 care for the youth;

3 (d) order any party to the action to do what is
 4 necessary to give effect to the final disposition, including
 5 undertaking medical and psychological evaluations,
 6 treatment, and counseling that does not require an
 7 expenditure of money by the department unless the department
 8 is notified and a court hearing is set in a timely manner on
 9 the proposed expenditure. The department is the payor of
 10 last resort after all family, insurance, and other resources
 11 have been examined.

12 (e) order further care and treatment as the court
 13 considers in the best interest of the youth that does not
 14 require an expenditure of money by the department unless the
 15 department is notified and a court hearing is set in a
 16 timely manner on the proposed expenditure. The department is
 17 the payor of last resort after all family, insurance, and
 18 other resources have been examined.

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

25 (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 must 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 services may collect and enforce a contribution order under

1 this section by any means available under law, including the
2 remedies provided for in Title 40, chapter 5, parts 2 and
3 4."

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

5 **"41-3-409. Appeals.** (1) If requested by the attorney
6 for the family, the supreme court may, within 60 days of a
7 hearing provided in 41-3-406, empanel a tribunal of three
8 district court judges residing outside the jurisdiction of
9 the original court to review the case. Appeals of court
10 orders or decrees made under this part ~~shall~~ must be given
11 precedence on the calendar of the supreme court over all
12 other matters, unless otherwise provided by law. An appeal
13 does not stay the order or decree appealed from; however,
14 the supreme court may order a stay upon application and
15 hearing if suitable provision is made for the care and
16 custody of the child.

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

18 (a) affirm the decision;

19 (b) modify the decision;

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

22 (d) order a new hearing."

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

24 **"41-3-609. Criteria for termination.** (1) The court may
25 order a termination of the parent-child legal relationship

1 upon a finding that any of the following circumstances
2 exist:

3 (a) the parents have relinquished the child pursuant to
4 40-6-135;

5 (b) the child has been abandoned by his parents as set
6 forth in 41-3-102~~(b)(d)~~(10)(e);

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

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

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

15 (d) the parent has failed to successfully complete a
16 treatment plan approved by the court within the time periods
17 allowed for the child to be in foster care under 41-3-410
18 unless it orders other permanent legal custody under
19 41-3-410.

20 (2) In determining whether the conduct or condition of
21 the parents is unlikely to change within a reasonable time,
22 the court ~~must~~ shall enter a finding that continuation of
23 the parent-child legal relationship will likely result in
24 continued abuse or neglect or that the conduct or the
25 condition of the parents renders the parents unfit, unable,

1 or unwilling to give the child adequate parental care. In
2 making such determinations, the court shall consider but is
3 not limited to the following:

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

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

10 (c) a single incident of life-threatening or gravely
11 disabling injury to or disfigurement of the child caused by
12 the parent;

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

16 (e) present judicially ordered long-term confinement of
17 the parent;

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

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

22 (3) In considering any of the factors in subsection (2)
23 in terminating the parent-child relationship, the court
24 shall give primary consideration to the physical, mental,
25 and emotional conditions and needs of the child. The court

1 shall review and, if necessary, order an evaluation of the
2 child's or the parent's physical, mental, and emotional
3 conditions.

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

6 (a) two medical doctors submit testimony that the
7 parent is so severely mentally ill that such the person
8 cannot assume the role of parent;

9 (b) the parent is incarcerated for more than 1 year and
10 such a treatment plan is not practical considering the
11 incarceration; or

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

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

15 "41-3-1103. Powers and duties of department. (1) The
16 department shall:

17 (a) administer all state and federal funds allocated to
18 the department for youth foster homes, youth group homes,
19 and child-care agencies for youth in need of care, youth in
20 need of supervision, and delinquent youth, as defined in
21 41-5-103;

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

24 (c) collect and disseminate information relating to
25 youth in need of care, youth in need of supervision, and

1 delinquent youth;

2 (d) provide for training of program personnel
3 delivering services;

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

6 (f) maintain adequate data on placements it funds in
7 order to keep the legislature properly informed of the
8 following:

9 (i) the breakdown of youth in need of care, youth in
10 need of supervision, and delinquent youth by category in
11 out-of-home care facilities;

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

13 (iii) the type and level of care of services provided by
14 each facility;

15 (iv) a profile of out-of-home care placements by level
16 of care; and

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

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

23 (2) The department may:

24 (a) enter into contracts with nonprofit corporations or
25 associations or private organizations to provide substitute

1 care for youth in need of care, youth in need of
2 supervision, and delinquent youth in youth care facilities;

3 (b) accept gifts, grants, and donations of money and
4 property from public and private sources to initiate and
5 maintain community-based services to youth;

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

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

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

24 **NEW SECTION. Section 19.** Effective date. [This act] is
25 effective July 1, 1994.

-End-

-44-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0033, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION: 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.

ASSUMPTIONS:Department of Family Services (DFS)

1. Based on current work load, there are 14,000 children annually involved in child abuse and neglect investigations. Each contact would need an individual video cassette estimated at \$3.00 (\$42,000).
2. Each social worker (180) would need a video camera and VCR at \$1,585 to complete their duties as required by Section 5 of the bill (\$285,300).
3. Video cassettes would need to be stored for up to twenty (20) years. One (1) file cabinet would hold up to 100 video cassettes. At 14,000 cassettes per year, 140 locking file cabinets at \$524 would be required (\$73,360).
4. Equipment purchased to comply with the requirements of this bill will not need replacement during FY95.

The Montana Supreme Court

5. There may be 700 cases appealed per year.
6. Travel for each of the three district judges for a tribunal hearing required in section 16 is assumed to be 150 miles each way, (3x300=900 miles at .25 cents) for a cost of \$675 per hearing. Of the appeals, 80% will have hearings (560 x \$675) = \$378,000 annual travel costs for judges.
7. Costs for a hard copy of the proceeding for each judge (\$500 x 3 = \$1,500 x 560) = \$840,000.
8. The costs associated with a court reporter for the tribunal hearing is \$500 x 560 = \$280,000.

FISCAL IMPACT: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 Expenses	0	0	0	0	42,000	42,000
Equipment	0	0	0	0	358,660	358,660
Total	0	0	0	0	400,660	400,660

(continued)

David Lewis 12.8
 DAVID LEWIS, BUDGET DIRECTOR DATE
 Office of Budget and Program Planning

JAMES H. BURNETT, PRIMARY SPONSOR DATE
 Fiscal Note for SB0033, as introduced

SB 33

Fiscal Note Request, SB0033, as introduced
Form BD-15 page 2
(continued)

FISCAL IMPACT:

Montana Supreme Court:

Expenditures:

	<u>FY '94</u>			<u>FY '95</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
Operating Expenses	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>1,498,000</u>	<u>1,498,000</u>

Net Impact:

General Fund (01)	0	0	0	0	1,898,660	1,898,660
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EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES: Local law enforcement agencies and county attorneys would also require the capability to video tape contacts with clients, make reproductions of the tapes and store these for up to twenty (20) years.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION: After several years of accumulating the video cassettes, it would require the hiring of part time DFS FTEs for each region to manage the filing and distribution of the videos.

TECHNICAL NOTES: There appears to be a further fiscal impact in section 5 which amends 41-3-202, MCA. The new section 41-3-202(4) requires: "All examinations of the child must be attended by the independent examining psychologist or physician representing the family and by the social worker.", but it does not define an examination or say who is responsible for the cost of the psychologist or physician.

SENATE BILL NO. 33

INTRODUCED BY BURNETT, SWIFT, AKLESTAD,

GRINDE, BENEDICT, SIMPKINS, HAGER

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
AUTHORIZING CERTAIN INFORMATION TO BE GIVEN TO THE FAMILY;
GUARANTEEING--A--FAMILY'S AUTHORIZING CERTAIN FAMILY
COMMUNICATION WITH A CHILD REMOVED FROM THE HOME; REQUIRING
INFORMATION--ON--POSTER--HOME--PLACEMENT--TO--BE--GIVEN--TO--THE
FAMILY--OF--A--CHILD--REMOVED--FROM--THE--HOME; 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, AND 41-3-404, 41-3-406, 41-3-409, 41-3-609, AND
41-3-1103, MCA; AND PROVIDING AN EFFECTIVE DATE."

WHEREAS, the legislature finds it necessary to restore
public confidence in the system and provide protection of

individual and family civil rights as guaranteed by the
state and federal constitutions; and

WHEREAS, present Montana law arguably allows the
Department of Family Services to circumvent the
constitutional rights of individuals and families; and

WHEREAS, Montana law should require that the burden of
proving allegations of child abuse or neglect be on the
Department and that those allegations be proved beyond a
reasonable doubt, which would reduce the incidence of false
charges of alleged abuse, resulting in a corresponding
savings to the general fund; and

WHEREAS, there is no room for error in the removal of
children from the home, and extreme care must be taken to
avoid ruining a family, parent, or individual through
government intrusion or mistake; and

WHEREAS, it is necessary to restore the sacred principle
of "innocent until proven guilty" to the process of removal
of a child from the home in cases of alleged abuse or
neglect; and

WHEREAS, child abuse and neglect is a crime and should
be addressed as a crime; and

WHEREAS, delaying the effective date of this legislation
until July 1, 1994, will allow the Department of Family
Services time to establish criteria to implement the changes
necessary to apply this legislation to cases of alleged



~~child--abuse--or--neglect-and-to-ensure-that-those-cases-are
addressed-by-this-legislation;~~

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~~(a)(4)~~~~(10)(e)~~(8)(D);

(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 terminated;

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

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

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

1 attached to the petition.

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

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

8 "41-3-101. Declaration of policy. (1) It is hereby
9 ~~declared-to-be~~ the policy of the state of Montana to:

10 (a) ~~insure~~ ensure that all youth are afforded an
11 adequate physical and emotional environment to promote
12 normal development;

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

15 (c) achieve these purposes in a family environment
16 whenever possible; and AND

17 (d) preserve the unity and welfare of the family
18 whenever possible ~~and-provide-legal-redress-for-the-unlawful~~
19 ~~interference-with-the-family's-right-to-remain-intact;-and~~

20 ~~(e)--ensure-that-there-is-no-forced-removal-of--a-child~~
21 ~~from--the--family--because--of--suspected--sexual--abuse--or~~
22 ~~endangerment--of--the-child's-welfare-by-an-immediate-family~~
23 ~~member-or-family-associate-without-the-filing-of-a-criminal~~
24 ~~complaint-charging-sexual-abuse-or-endangerment-against-that~~
25 ~~immediate-family-member-or-family-associate.~~

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

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

3 (b) provide for the protection of children whose health
4 and welfare are or may be adversely affected and further
5 threatened by the conduct of those responsible for their
6 care and protection; and

7 (c) ensure that whenever removal of a child from the
8 home is necessary, the child is entitled to maintain ethnic,
9 cultural, and religious heritage free-from-proselytism.

10 (3) It is intended that the mandatory reporting of such
11 sexual-abuse-or--endangerment SUCH cases by professional
12 people and other community members to the appropriate
13 authority will cause the protective services of the state to
14 seek to prevent further abuses, protect and enhance the
15 welfare of these children, and AND preserve family life
16 wherever appropriate;---and---provide--legal--redress--for
17 interference-with-the-family."

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

19 "41-3-102. Definitions. As used in this chapter, the
20 following definitions apply:

21 (1) "A person responsible for a child's welfare" means
22 the child's parent, guardian, or foster parent; a staff
23 person providing care in a day-care facility; an employee of
24 a public or private residential institution, facility, home,
25 or agency; or any other person legally responsible for the

1 child's welfare in a residential setting.

2 (2) "Abused or neglected" means the state or condition
3 of a child who has suffered child abuse or neglect.

4 (3) (a) "Adequate health care" means any medical care,
5 including the prevention of the withholding of medically
6 indicated treatment or medically indicated psychological
7 care permitted or authorized under state law.

8 (b) Nothing in this chapter may be construed to require
9 or justify a finding of child abuse or neglect for the sole
10 reason that a parent, due to religious beliefs, does not
11 provide medical care for a child. However, nothing in this
12 chapter may be construed to limit the administrative or
13 judicial authority of the state to ensure that medical care
14 is provided to the child when there is imminent or
15 substantial risk of harm to the child.

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

18 (5) (a) "Child abuse or neglect" means:

19 (i) harm to a child's health or welfare, as defined in
20 subsection (8); or

21 (ii) threatened harm to a child's health or welfare, as
22 defined in subsection (15).

23 (b) The term includes harm or threatened harm to a
24 child's health or welfare by the acts or omissions of a
25 person responsible for the child's welfare.

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

3 (7) "Dependent youth" means a youth:

4 (a) who is abandoned;

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

7 (c) who has no proper guidance to provide for necessary
8 physical, moral, and emotional well-being;

9 (d) who is destitute;

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

11 (f) whose parent or parents have voluntarily
12 relinquished custody and whose legal custody has been
13 transferred to a licensed agency.

14 ~~(8) "Family" means at least one natural or adoptive~~
15 ~~parent or legal guardian with at least one minor child.~~

16 ~~(9) "Family associate" means a person who may or may~~
17 ~~not live within the household of a child but who is or has~~
18 ~~been granted unencumbered access to the child by a natural~~
19 ~~or adoptive parent, step parent, or legal guardian of the~~
20 ~~child.~~

21 ~~(8)(8)~~ (8) "Harm to a child's health or welfare" means
22 the harm that occurs whenever the parent or other person
23 responsible for the child's welfare:

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

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

3 (c)--induces-or-attempts-to-induce-a-child--into--giving
4 untrue--testimony-that-the-child-or-another-child-was-abused
5 or-neglected-by-a--parent--or--person--responsible--for--the
6 child's-welfare;

7 (e)(d)(C) causes failure to thrive or otherwise fails
8 to supply the child with adequate food or fails to supply
9 clothing, shelter, education, or adequate health care,
10 though financially able to do so or through THOUGH offered
11 financial or other reasonable means to do so;

12 (d)(e)(D) abandons the child by leaving the child under
13 circumstances that make reasonable the belief that the
14 parent or other person does not intend to resume care of the
15 child in the future or by willfully surrendering surrenders
16 physical custody for a period of 6 months and during that
17 period does not manifest to the child and the person having
18 physical custody of the child a firm intention to resume
19 physical custody or to make permanent legal arrangements for
20 the care of the child; or

21 (e)(f)(E) is unknown and has been unknown for a period
22 of 90 days and reasonable efforts to identify and locate the
23 parents have failed.

24 (i)--"immediate-family-member"--means-a-parent-guardian
25 or-natural-relative-of-a--child--and--includes--the--natural

1 grandparent-of-the-child;

2 (i2)--"Infant-or-toddler"--means-a-child-who-has-yet-to-be
3 trained--in-personal-hygiene-skills-required-to-care-for-the
4 child's-own-sanitary-requirements-and-who-is-not-beyond--the
5 age-when-a-reasonable-person-would-expect-hygiene-skills-and
6 training-to-be-complete;

7 (i3)--"Knowingly"--has-the-meaning-provided-in-45-2-101;

8 (9)(i4)(9) "Limited emancipation" means a status
9 conferred on a dependent youth by a court after a
10 dispositional hearing in accordance with 41-3-406 under
11 which the youth is entitled to exercise some but not all of
12 the rights and responsibilities of a person who is 18 years
13 of age or older.

14 (i5)(10) "Mental injury" means an identifiable and
15 substantial impairment of the child's intellectual or
16 psychological functioning.

17 (i6)(11) "Physical injury" means death, permanent or
18 temporary disfigurement, or impairment of any bodily organ
19 or function and includes death, permanent or temporary
20 disfigurement, and impairment of a bodily organ or function
21 sustained as a result of excessive corporal punishment.

22 (i7)--"Proselytism"--means-the-change-or-attempted-change
23 through--undue--influence--of--the--religious--beliefs--or
24 affiliation-of-a-child-that-has-been-removed-from-the-family
25 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.~~

~~(12) (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 OR TODDLER.~~

~~(13) "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.~~

~~(14) "Social worker" means an employee of the department whose duties generally involve the provision of either child or adult protective services, or both.~~

~~(15) "Threatened harm to a child's health or welfare" means substantial risk of harm to the child's health or welfare.~~

~~(16) (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 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:~~

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

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

~~(A) merely prolong dying;~~

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

~~(C) otherwise be futile in terms of the survival of the infant; or~~

~~(iii) the provision of treatment would be virtually futile in terms of the survival of the infant and the treatment itself under the circumstances would be inhumane. For purposes of this subsection, "infant" means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously hospitalized since birth, who was~~

1 born extremely prematurely, or who has a long-term
2 disability. The reference to less than 1 year of age may not
3 be construed to imply that treatment should be changed or
4 discontinued when an infant reaches 1 year of age or to
5 affect or limit any existing protections available under
6 state laws regarding medical neglect of children over 1 year
7 of age.

8 ~~{17}{23}(17)~~ "Youth in need of care" means a youth who
9 is dependent, abused, or neglected as defined in this
10 section."

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

12 ~~"41-3-201.---Reports.---(1)---When---the---professionals---and~~
13 ~~officials-listed-in-subsection-(2)-know-or---have---reasonable~~
14 ~~cause-to-suspect, as a result of information they receive in~~
15 ~~their---professional---or---official---capacity, that a child is~~
16 ~~abused or neglected, they shall report the matter promptly~~
17 ~~to the department of family services or its local affiliate,~~
18 ~~which then shall notify the county attorney of the county~~
19 ~~where the child resides.~~

20 ~~{2}---Professionals and officials required to report are:~~

21 ~~{a}---a physician, resident, intern, or member of a~~
22 ~~hospital's staff engaged in the admission, examination,~~
23 ~~care, or treatment of persons,~~

24 ~~{b}---a nurse, osteopathy, chiropractor, podiatrist,~~
25 ~~medical examiner, coroner, dentist, optometrist, or any~~

1 ~~other health or mental health professional,~~

2 ~~{c}---Christian Science practitioner practitioners and~~
3 ~~religious healers,~~

4 ~~{d}---school teachers, other school officials, and~~
5 ~~employees who work during regular school hours,~~

6 ~~{e}---a social worker, operator, or employee of any~~
7 ~~registered or licensed day care or substitute care facility,~~
8 ~~or any other operator or employee of a child care facility,~~

9 ~~{f}---a foster care, residential, or institutional~~
10 ~~worker,~~

11 ~~{g}---a peace officer or other law enforcement official,~~
12 ~~or~~

13 ~~{h}---a member of the clergy.~~

14 ~~{3}---Any person may make a report under this section if~~
15 ~~he the person knows or has reasonable cause to suspect that~~
16 ~~a child is abused or neglected.~~

17 ~~{4}---{a} Except as provided in subsection {4}{b} or~~
18 ~~{4}{c}, a person listed in subsection {2} may not refuse to~~
19 ~~make a report as required in this section on the grounds of~~
20 ~~a physician-patient or similar privilege.~~

21 ~~{b}---A clergy person member of the clergy or a priest is~~
22 ~~not required to make a report under this section if:~~

23 ~~{i}---the knowledge or suspicion of the abuse or neglect~~
24 ~~came from a statement or confession made to the clergy person~~
25 ~~member of the clergy or the priest in his the capacity as of~~

a clergyperson member-of-the-clergy or a priest;

(iii) the statement was intended to be a part of a confidential communication between the clergyperson member of-the-clergy or the priest and a member of his the church or congregation; and

(iii) the person who made the statement or confession does not consent to the disclosure by the clergyperson member-of-the-clergy or the priest;

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

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

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

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

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

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

Section 4. Section 41-3-202, MCA, is amended to read:

"41-3-202. Action on reporting. (1) Upon receipt of a report as required by 41-3-201 that a child is or has been abused or neglected, a social worker or the county attorney or a peace officer shall promptly conduct a thorough an initial A THOROUGH investigation into the home of the child involved or any other place where the child is present, into the circumstances surrounding the injury of the child, and into all other nonfinancial matters which that in the discretion of the investigator are relevant to the investigation. In conducting an investigation under this section, a social worker may not inquire into the financial status of the child's family or of any other person responsible for the child's care except as necessary to ascertain eligibility for federal assistance programs or to comply with the provisions of 41-3-406.

(2) An initial investigation into the home of the child may be conducted when an anonymous report is received. However, the investigation must within 48 hours develop independent, corroborative, and attributable information in order for the investigation to continue. Without the

~~development-of-corroborative-and-attributable-information,-a
child-may-not-be-removed-from-the-home.~~

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

~~(4)(3) Att--examinations~~ AN EXAMINATION of the A child must MAY be attended by the AN independent examining psychologist or physician representing WHO IS RETAINED BY the family and--by--the--social--worker. If the child is interviewed VIDEOTAPED by the social worker, an unedited videotape with audio track must be made available for unencumbered PRIVATE review by the family.

~~(3)(5)(4)~~ If from the investigation it appears that the child suffered abuse or neglect, the department shall provide protective services to the child pursuant to

~~41-3-301~~ THIS PART and may provide protective services to any other child under the same care. The department ~~will~~ shall advise the county attorney and the child's family of its investigation.

~~(4)(6)(5)~~ The investigating social worker, within 60 days of commencing an investigation, shall also furnish a written report to the department ~~and--the--family~~. The department shall maintain a record system containing child abuse and neglect cases.

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

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

~~"41-3-204.--Admissibility--and-preservation-of-evidence--(1)--In--any a proceeding--resulting--from--a--report--made pursuant--to--the--provisions--of--this--chapter--or--in--any a 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)--All 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 5. 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 must be kept confidential except as
provided by this section. Any Except--as--provided--in
subsections-(4)--and--(5),--a ANY person who permits or
encourages the unauthorized dissemination of their the
contents of case records is guilty of a misdemeanor.

(2) Records may be disclosed to a court for in camera
inspection if relevant to an issue before it. The court may

1 permit public disclosure if it finds disclosure to be
2 necessary for the fair resolution of an issue before it.

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

5 (a) a department, agency, or organization, including
6 federal agencies, legally authorized to receive, inspect, or
7 investigate reports of child abuse or neglect;

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

12 (c) a licensed health or mental health professional who
13 is treating the family or child who is the subject of a
14 report in the records;

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

22 (e) a child named in the records who was allegedly
23 abused or neglected or the child's guardian ad litem;

24 (f) the members of an interdisciplinary child
25 protective team authorized under 41-3-108 for the purposes

1 of assessing the needs of the child and family, formulating
2 a treatment plan, and monitoring the plan;

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

8 (h) an employee of the department if disclosure of the
9 records is necessary for administration of programs designed
10 to benefit the child;

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

14 (j) a youth probation officer who is working in an
15 official capacity with the child who is the subject of a
16 report in the records;

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

20 (l) a foster care review committee established under
21 41-3-1115 or, when applicable, a local citizen review board
22 established under Title 41, chapter 3, part 10;

23 (m) a school employee participating in an interview of
24 a child by a social worker, county attorney, or peace
25 officer as provided in 41-3-202;

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

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

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

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

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

Section 6. Section 41-3-206, MCA, is amended to read:

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

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

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

Section 7. Section 41-3-301, MCA, is amended to read:

"41-3-301. **Emergency protective service.** (1) Any A child protective social worker of the department ~~of--family services,~~ a peace officer, or the county attorney who has reason to believe that any a youth is in immediate or apparent danger of harm may immediately remove the youth and place him the youth in a protective facility. The department may make a request for further assistance from the law enforcement agency or take appropriate legal action. The person or agency placing the child shall notify the parents, parent, guardian, or other person having legal custody of

1 the youth at the time the placement is made or as soon
2 thereafter as possible.

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

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

15 ~~(4) If criminal charges are not filed within 20 days of~~
16 ~~emergency placement, the child must be returned to the home~~
17 ~~unless clear and convincing evidence exists to support an~~
18 ~~allegation that the child, if returned to the home, is in~~
19 ~~imminent danger of being sexually abused or endangered by a~~
20 ~~family member or family associate. If evidence of imminent~~
21 ~~danger exists, the child may be removed from the home only~~
22 ~~for a period of time sufficient to allow the development of~~
23 ~~the required criminal complaint. In all cases, an emergency~~
24 ~~placement of a child may not continue beyond 60 days without~~
25 ~~criminal charges being filed against the person believed to~~

1 ~~have sexually abused or endangered the child.~~ PRIOR TO
2 FILING OF THE PETITION, THE COUNTY ATTORNEY OR THE ATTORNEY
3 REPRESENTING THE DEPARTMENT SHALL VERIFY THAT PROBABLE CAUSE
4 EXISTS TO FILE THE PETITION.

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

8 **Section 8.** Section 41-3-303, MCA, is amended to read:

9 "41-3-303. Guardian ad litem. (1) ~~In When a child is~~
10 ~~temporarily removed from the home and in~~ IN every judicial
11 proceeding, the court shall appoint for any a child alleged
12 to be abused or neglected a guardian ad litem. The
13 department or any of its staff may not be appointed as the
14 guardian ad litem in a judicial proceeding under this title.
15 When necessary the The guardian ad litem may ~~must be a~~
16 ~~nonprofessional person chosen from a roll of volunteers who~~
17 ~~have undergone a background check and who have parental~~
18 ~~experience. They may serve either at their own expense or at~~
19 public expense.

20 (2) The guardian ad litem is charged with the
21 representation of the child's interests. The guardian ad
22 litem has the following general duties:

23 (a) to conduct investigations that the guardian ad
24 litem considers necessary to ascertain the facts
25 constituting the alleged abuse or neglect;

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

(c) to have access to court, medical, psychological, law enforcement, social services, and school records pertaining to the child and the child's siblings and parents or custodians legal guardian;

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

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

(f) WHEN APPROPRIATE, to be a friend and to provide for the daily nurturing needs of the child while separated from the family;

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

(h) WHEN APPROPRIATE, to retrieve from the family any personal property the child desires to have during the separation period;

(i) WHEN APPROPRIATE, to report directly to the judge

on a regular basis the guardian ad litem's observations regarding the needs and emotional state of the child during the separation period and the impact of the separation on the child; and

{f}{j} to perform other duties as directed by the court."

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

~~"41-3-401. Abuse, neglect, and dependency petitions. {1}--The After-filing-criminal-charges-alleging-sexual-abuse or-endangerment-against-a-family-member-or-family-associate, the county-attorney, attorney-general, or-an-attorney--hired by-the-county-welfare-department-or-office-of-human-services shall-be is responsible-for-filing-all-petitions-alleging abuse, neglect, or dependency. The-county--attorney--or attorney-general, or-an-attorney-hired-by-the-county-welfare department-or-office-of--human--services--with--the--written consent--of--the--county--attorney--or-attorney-general, may require-all-state, county, and-municipal-agencies, including law-enforcement-agencies, to-conduct-such-investigations-and furnish-such-reports-as-may-be-necessary.~~

~~{2}--Upon-receipt-of-a-petition, the-court-shall--set--a date--for--an--adjudicatory--hearing--on--the-petition. Such petitions-shall Petitions-must be-given--preference--by--the court-in-setting-hearing-dates.~~

~~{3}--A--petition--alleging-abuse, neglect, or-dependency~~

1 is-a-civil-action-brought--in--the--name--of--the--state--of
2 Montana--The-rules-of-civil-procedure-shall-apply-except-as
3 herein-modified in-this-part--Proceedings-under--a--petition
4 are-not-a-bar-to-criminal-prosecution-

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

14 {5}--In-the-event-personal-service-cannot-be--made--upon
15 the--parents--or-parent,guardian,or-other-person-or-agency
16 having-legal-custody,--the-court-shall-appoint-an-attorney-to
17 represent-the-unavailable-party-where when in-the-opinion-of
18 the-court-the-interests-of-justice-require-

19 {6}--If-a-parent-of-the-child-is-a-minor,--notice--shall
20 must be-given-to-the-minor-parent's-parents-or-guardian,--and
21 if-there-is-no-guardian-the-court-shall-appoint-one-

22 {7}--Any--person--interested--in--any--cause--under-this
23 chapter-has-the-right-to-appear-

24 {8}--Except-where when the-proceeding-is--instituted--or
25 commenced--at--the--request--of--the--department--of--family

1 services,--a-citation-shall must be-issued-and-served-upon-a
2 representative-of-the-department-prior-to-the-court-hearing-

3 {9}--The-petition-shall must-

4 {a}--state-the-nature-of-the-alleged-abuse,neglect,--or
5 dependency-

6 {b}--state--the-full-name,age,--and-address-of-the-youth
7 and-the-name-and-address--of--his the--youth's parents--or
8 guardian--or the person-having-legal-custody-of-the-youth,
9 and

10 {c}--state-the-names,addresses,--and-relationship-to-the
11 youth-of-all--persons--who--are--necessary--parties--to--the
12 action-

13 {10}--The-petition-may-ask-for-the-following-relief-

14 {a}--temporary--investigative--authority--and-protective
15 services-

16 {b}--temporary-legal-custody-

17 {c}--termination-of-the-parent-child-legal--relationship
18 and--permanent--legal--custody--with-the-right-to-consent-to
19 adoption, or

20 {d}--any-combination-of-the-above-or-such--other--relief
21 as-may-be-required-for-the-best-interest-of-the-youth-

22 {11}--The-petition--may-be-modified-for-different-relief
23 at-any-time-within-the-discretion-of-the-court-

24 {12}--The-court-may-at-any-time-on-its-own-motion-or--the
25 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."

Section 9. 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 relief that may be required for the immediate protection of the youth.

(b) The order, along with the petition and supporting documents, must be served by a peace officer or a representative of the department on the person or persons named 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 after placement as possible.

(c) The order must require the person served to comply immediately with the terms of the order or to appear before the court issuing the order on the date specified and show cause why 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. FAILURE TO CONDUCT A SHOW CAUSE HEARING WITHIN 20 DAYS RESULTS IN DISMISSAL OF THE UNDERLYING PETITION UNLESS THE HEARING DATE IS CONTINUED BY THE COURT OR IS WAIVED BY THE PARENT OR GUARDIAN OF THE CHILD NAMED IN THE PETITION.

The person filing the petition has the burden of presenting evidence establishing probable cause for the issuance of the order. Except as otherwise provided in this part, the rules of civil procedure apply. Hearsay evidence of statements

made by the affected youth is admissible at the hearing.

(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 until further order.

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

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

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

(c) requirement that the youth, parents, guardians, or person having legal custody receive counseling services;

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

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

(f) 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 requirement of a contribution for those costs pursuant to the requirements of 41-3-406(3) through (6);

(g) other temporary disposition that may be required in the best interest of the youth 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."

Section 10. Section 41-3-404, MCA, is amended to read:

"41-3-404. Adjudicatory hearing -- temporary disposition. (1) In the adjudicatory hearing on a petition under 41-3-401, the court shall determine whether the youth is a youth in need of care and ascertain, as far as possible, the cause.

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

(3) In all civil and criminal proceedings relating to abuse, neglect, or dependency, none of the privileges 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, apply.

(4) If a child is temporarily removed from the home, the department shall notify the family or a family member of any change in the child's residence within 4 hours of the change OR AS SOON THEREAFTER AS POSSIBLE.

(5) If a child is temporarily removed from the home, the family or a family member is entitled to an unencumbered AT LEAST ONE telephone call to the child EACH WEEK AND at least 3-days ONE PERSONAL VISIT WITH THE CHILD each week for a minimum of 1-hour each call. The family or family member is also entitled to at least one personal visit each week for a minimum of 3-hours, UNLESS THE DEPARTMENT DETERMINES THAT THE CONTACT WOULD BE DETRIMENTAL, NOT IN THE CHILD'S BEST INTERESTS, OR AGAINST THE CHILD'S WISHES.

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

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

Section 15. 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 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;

(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 family member 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

1 last-resort-after-all-family, insurance, and other resources
2 have-been-examined.

3 {e}--order-further--care--and--treatment--as--the--court
4 considers--in--the--best-interest-of-the-youth-that-does-not
5 require-an-expenditure-of-money-by-the-department-unless-the
6 department-is-notified-and-a--court-hearing--is--set--in--a
7 timely-manner-on-the-proposed-expenditure. The department-is
8 the--payor--of--last-resort-after-all-family, insurance, and
9 other-resources-have-been-examined.

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

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

22 {4}--(a)--Except--as--provided--in--subsection--{4}(b),
23 contributions--ordered--under--this--section--and--each
24 modification--of--an-existing-order--are--enforceable--by
25 immediate-or-delinquency-income-withholding, or-both,--under

1 Title--40,--chapter--5,--part-4,--An-order-for-a-contribution
2 that-is--inconsistent--with--this--section--is--nevertheless
3 subject--to--withholding-for-the-payment-of-the-contribution
4 without-need-for-an-amendment-of-the-support--order--or--for
5 any-further-action-by-the-court.

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

10 {i}--good--cause--not--to--require--immediate--income
11 withholding, or

12 {ii}--an--alternative--arrangement-between-the-department
13 and-the-person-who-is-ordered-to-pay-contributions.

14 {c}--A-finding-of-good-cause-not--to--require--immediate
15 income-withholding-must, at-a-minimum, be-based-upon:

16 {i}--a--written--determination--and--explanation--by-the
17 court-of-the-reasons-why--the--implementation--of--immediate
18 income--withholding--is--not--in--the--best-interests-of-the
19 child, and

20 {ii}--proof--of--timely--payment--of--previously--ordered
21 support-in-cases--involving--modification--of--contributions
22 ordered-under-this-section.

23 {d}--An-alternative-arrangement-must:

24 {i}--provide--sufficient--security--to-ensure-compliance
25 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-B of the Social Security Act;

(b) The department of social and rehabilitation services may collect and enforce a contribution order under this section by any means available under law, including the remedies provided for in Title 40, chapter 5, parts 2 and 4.⁴

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 may, 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(8)(d)(10)(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

1 approved-by-the-court-has-not--been--complied--with--by--the
 2 parents-or-has-not-been-successful; and
 3 (ii)-the--conduct--or-condition-of-the-parents-rendering
 4 them-unfit-is-unlikely-to-change-within-a--reasonable--time;
 5 or
 6 (d)-the--parent--has--failed-to-successfully-complete-a
 7 treatment-plan-approved-by-the-court-within-the-time-periods
 8 allowed-for-the-child-to-be-in-foster--care--under--41-3-410
 9 unless---it--orders--other--permanent--legal--custody--under
 10 41-3-410;
 11 (2)-in-determining-whether-the-conduct-or-condition--of
 12 the--parents-is-unlikely-to-change-within-a-reasonable-time;
 13 the-court-must shall enter-a-finding--that--continuation--of
 14 the--parent-child--legal--relationship-will-likely-result-in
 15 continued-abuse-or--neglect--or--that--the--conduct--or--the
 16 condition--of-the-parents-renders-the-parents-unfit; unable;
 17 or-unwilling-to-give-the-child-adequate--parental--care--in
 18 making--such-determinations; the-court-shall consider-but-is
 19 not-limited-to-the-following:
 20 (a)-emotional--illness;--mental--illness;--or--mental
 21 deficiency--of--the--parent-of-such-duration-or-nature-as-to
 22 render-the-parent-unlikely-to-care-for-the-ongoing-physical;
 23 mental-and-emotional-needs-of-the-child-within-a-reasonable
 24 time;
 25 (b)-a-history-of-violent-behavior-by-the-parent;

1 (c)-a-single-incident-of--life-threatening--or--gravely
 2 disabling--injury-to-or-disfigurement-of-the-child-caused-by
 3 the-parent;
 4 (d)-excessive--use--of--intoxicating--liquor--or--of--a
 5 narcotic-or-dangerous-drug-that-affects-the-parent's-ability
 6 to-care-and-provide-for-the-child;
 7 (e)-present-judicially-ordered-long-term-confinement-of
 8 the-parent;
 9 (f)-the-injury-or-death-of--a--sibling--due--to--proven
 10 parental-abuse-or-neglect; and
 11 (g)-any--reasonable--efforts--by--protective--service
 12 agencies-that-have-been-unable-to-rehabilitate-the-parent;
 13 (3)-in-considering-any-of-the-factors-in-subsection-(2)
 14 in-terminating--the--parent-child--relationship;--the--court
 15 shall--give--primary--consideration-to-the-physical; mental;
 16 and-emotional-conditions-and-needs-of-the-child;--The--court
 17 shall--review--and; if-necessary; order-an-evaluation-of-the
 18 child's-or-the--parent's--physical;--mental;--and--emotional
 19 conditions;
 20 (4)-A--treatment--plan--is-not-required-under-this-part
 21 upon-a-finding-by-the-court-following-hearing-if;
 22 (a)-two--medical--doctors--submit--testimony--that--the
 23 parent-is-so-severely-mentally--ill--that--such the person
 24 cannot-assume-the-role-of-parent;
 25 (b)-the-parent-is-incarcerated-for-more-than-1-year-and

such a treatment plan is not practical considering the incarceration or

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

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

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

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

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

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

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

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

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

(i) the breakdown of youth in need of care, youth in

need of supervision, and delinquent youth by category in out-of-home care facilities;

(ii) the cost per facility for services rendered;

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

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

(v) a profile of public institutional placements; and

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

(2) The department may:

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

(b) accept gifts, grants, and donations of money and property from public and private sources to initiate and maintain community-based services to youth;

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

(3) The department shall pay for room, board, clothing, personal needs, transportation, and treatment in youth

1 foster-care-homes-and-youth-group-homes-for-youths-committed
 2 to-the-department-who-need-to-be-placed-in-such--facilities.
 3 Payments--for--the--clothing--of--a--child-placed-in-a-youth
 4 foster-home-must-be-provided-to-the-extent-the-child-needs-a
 5 basic-wardrobe-or-has--a--special--clothing--need.--However,
 6 payments-for-clothing-may-not-exceed-\$300-a-year-per-child.
 7 (4)--if--a--child--temporarily--removed-from-the-home-is
 8 placed-in-foster-care--the--department--shall--provide--the
 9 child's--family--or--a-family-member-with-information-on-the
 10 background-of-the-home,any--complaints--filed--against--the
 11 home--and--the--record--of-disposition-of-children-from-the
 12 home--The-family-or-a-family-member-is-entitled-to--petition
 13 the--court--for--placement--in--another--foster--home--if
 14 dissatisfied-with-the-original-placement."

15 NEW SECTION. Section 11. Effective date. [This act] is
 16 effective July 1, 1994.

-End-