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House BILL NO. 186

Donnie Martinez

INTRODUCED BY

BY REQUEST OF THE DEPARTMENT OF FAMILY SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATED TO CHILD PROTECTIVE SERVICES; DELETING REFERENCES TO "DEPENDENT YOUTH"; ADDING A CHILD'S GUARDIAN OR ADVOCATE AS MANDATORY REPORTERS OF SUSPECTED CHILD ABUSE OR NEGLECT; ADDING PERSONS TO WHOM CONFIDENTIAL RECORDS MAY BE DISCLOSED; PROVIDING FOR LIMITED IMMUNITY FOR A PERSON WHO PROVIDES OR USES EMPLOYMENT-RELATED CHILD ABUSE INFORMATION; CLARIFYING THAT A CHILD'S HEARSAY STATEMENTS MAY BE USED AT A CONTESTED HEARING; CLARIFYING PROVISIONS REGARDING POTENTIAL COURT-ORDERED PLACEMENTS; REVISING LIMITED EMANCIPATION OPTIONS FOR YOUTH; LIMITING ACCESS OF RECORDS TO PARENTS WHOSE PARENTAL RIGHTS HAVE BEEN TERMINATED; CLARIFYING THAT CERTAIN FACILITIES MAY BE REGISTERED INSTEAD OF LICENSED; AMENDING SECTIONS 20-5-321, 20-7-422, 40-6-125, 40-6-126, 40-8-111, 41-3-102, 41-3-103, 41-3-201, 41-3-203, 41-3-205, 41-3-401, 41-3-402, 41-3-403, 41-3-404, 41-3-406, 41-3-408, 41-3-602, 41-3-603, 41-3-607, 41-3-609, 41-3-611, 52-1-103, 52-2-101, 52-2-112, 52-2-113, AND 52-2-211, MCA; REPEALING SECTION 41-3-1112, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 20-5-321, MCA, is amended to read:

"20-5-321. Attendance with mandatory approval -- tuition and transportation. (1) An out-of-district attendance agreement that allows a child to enroll in and attend a school in a Montana school district that is outside of the child's district of residence or in a public school district of a state or province that is adjacent to the county of the child's residence is mandatory whenever:

- (a) the child resides closer to the school that the child wishes to attend and more than 3 miles from the school the child would attend in the resident district and:
 - (i) the resident district does not provide transportation; or
 - (ii) the district of residence provides transportation and is not within the same county as the child's

1 school district of choice;

2 (b) the child resides in a location where, due to road or geographic conditions, it is impractical to
3 attend the school nearest the child's residence;

4 (c) the child is a member of a family that is required to send another child outside of the elementary
5 district to attend high school and the child of elementary age may more conveniently attend an elementary
6 school where the high school is located, provided that the child resides more than 3 miles from an
7 elementary school in the resident district or that the parent is required to move to the elementary district
8 where the high school is located to enroll another child in high school;

9 (d) the child has been adjudicated by a court of competent jurisdiction to be an abused, or
10 neglected, ~~or dependent~~ child, as defined in 41-3-102, or a youth in need of supervision or a delinquent
11 youth, as defined in 41-5-103, and has been placed in a licensed youth care facility that is approved by the
12 department of family services and, as a result of the placement, is required to attend school outside of the
13 child's district of residence; or

14 (e) the child is required to attend school outside of the district of residence as the result of a
15 placement by a state agency or parent in a group home licensed by the state or an order of a court of
16 competent jurisdiction.

17 (2) (a) Whenever a parent or guardian of a child, an agency of the state, or a court wishes to have
18 a child attend a school under the provisions of this section, the parent or guardian, agency, or court shall
19 complete an out-of-district attendance agreement in consultation with an appropriate official of the district
20 the child will attend.

21 (b) The attendance agreement must set forth the financial obligations, if any, for costs incurred for
22 tuition and transportation as provided in 20-5-323 and Title 20, chapter 10.

23 (c) The trustees of the district of choice may waive any or all of the tuition rate, but any waiver
24 must be applied equally to all students.

25 (3) Except as provided in subsection (4), the trustees of the resident district and the trustees of
26 the district of choice shall approve the out-of-district attendance agreement and notify the county
27 superintendent of schools of the county of the child's residence of the approval of the agreement within
28 10 days. The county superintendent shall approve the agreement for payment under 20-5-324(5).

29 (4) Unless the child is a child with disabilities who resides in the district, the trustees of the district
30 where the school to be attended is located may disapprove an out-of-district attendance agreement

1 whenever they find that, due to insufficient room and overcrowding, the accreditation of the school would
2 be adversely affected by the acceptance of the child."

3

4 **Section 2.** Section 20-7-422, MCA, is amended to read:

5 **"20-7-422. Out-of-state placement of children with disabilities -- payment of costs.** (1) In
6 accordance with a placement made by persons determining an individualized education program for a child
7 with disabilities, the trustees of a district may arrange for the attendance of the child in a special education
8 program offered outside of the state of Montana.

9 (2) Except as provided in subsection (3), when the persons determining the individualized education
10 program of a child with disabilities who is in need of special education recommend placement in an
11 out-of-state private residential facility, the trustees of the district of residence shall negotiate the amount
12 and manner of payment of all costs associated with the placement.

13 (3) Whenever a child with disabilities who is in need of special education and related services is
14 adjudicated by a court of competent jurisdiction to be an abused, or neglected, ~~or dependent~~ child as
15 defined in 41-3-102 or a youth in need of supervision or delinquent youth as defined in 41-5-103 and is
16 placed by a state agency in an out-of-state private residential facility, the superintendent of public
17 instruction shall negotiate with:

18 (a) the provider for the amount and manner of payment of education fees consistent with the
19 individualized education program determined for the child under the provisions of 20-7-402; and

20 (b) the state agency that makes the placement for the portion of the placement costs that
21 represents the child's education program.

22 (4) Payments for a child with disabilities as negotiated in subsection (3) must be paid by the
23 superintendent of public instruction from the state special education appropriation."

24

25 **Section 3.** Section 40-6-125, MCA, is amended to read:

26 **"40-6-125. Children born out of wedlock -- relinquishment -- consent.** (1) If the mother of a child
27 born out of wedlock proposes to relinquish the child for adoption and the relinquishment or consent of the
28 birth father cannot be obtained, the child may not be placed for adoption until the parental rights of the
29 father are terminated by the court as provided in this part, by the court pursuant to Title 41, chapter 3, or
30 by a court of competent jurisdiction in another state or country.

1 (2) Pending the termination or other disposition of the rights of the father of the child born out of
 2 wedlock, the mother may execute a relinquishment, in accordance with 40-6-135(2) through (5),
 3 terminating ~~her~~ the mother's rights to the child. If the mother relinquishes the child, the agency of the state
 4 of Montana, a licensed adoption agency, or the person to whom the child is relinquished may file a petition
 5 under this part or a petition of ~~dependency or~~ neglect pursuant to Title 41, chapter 3. Pending disposition
 6 of the petition, the court may enter an order authorizing temporary care of the child.

7 (3) At the request of the mother, ~~her~~ the mother's execution of a relinquishment must be delayed
 8 until after the court has determined the identity of the father and has awarded custody of the child to the
 9 father or terminated ~~his~~ the father's rights under this part."

10
 11 **Section 4.** Section 40-6-126, MCA, is amended to read:

12 **"40-6-126. Notice of intent to claim paternity.** (1) Before the birth of a child born out of wedlock,
 13 a person claiming under oath to be the father of the child may file a verified notice of intent to claim
 14 paternity with the district court in any county of this state. The form of the notice ~~shall~~ must be prescribed
 15 by the director of the department of health and environmental sciences and supplied to the clerks of the
 16 district courts. The notice ~~shall~~ must include the claimant's address. On the next business day after
 17 receipt of the notice, the court shall transmit the notice to the records and statistics bureau of the
 18 department of health and environmental sciences. If the mother's address is stated on the notice, the
 19 records and statistics bureau shall send a copy of the notice by first-class mail to the mother of the child
 20 at the stated address.

21 (2) A person filing a notice of intent to claim paternity or acknowledging paternity in accordance
 22 with 40-6-105 ~~shall be~~ is presumed to be the father of the child for purposes of this part unless the mother
 23 denies that the claimant is the father. ~~Such~~ The notice is admissible in a paternity proceeding under
 24 40-6-107 and creates a rebuttable presumption as to the paternity of that child for purposes of that section.
 25 ~~Such~~ The notice creates a rebuttable presumption as to paternity of the child for purposes of a ~~dependency~~
 26 ~~or~~ neglect proceeding under Title 41, chapter 3.

27 (3) A person who makes a timely filing of notice of intent to claim paternity or who formally
 28 acknowledges paternity under 40-6-105 is entitled to notice of any hearing to determine the identity of the
 29 father of the child and any hearing to determine or terminate ~~his~~ the person's paternal rights to the child."

1 **Section 5.** Section 40-8-111, MCA, is amended to read:

2 **"40-8-111. Consent required for adoption.** (1) An adoption of a child may be decreed when there
3 have been filed written consents to adoption executed by:

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

6 (i) adjudged guilty by a court of competent jurisdiction of assault on the child, as provided in
7 45-5-201; endangering the welfare of children, concerning the child, as provided in 45-5-622; or sexual
8 abuse of children, toward the child, as provided in 45-5-625;

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

11 (iii) who has, in the state of Montana or in any other state of the United States, willfully abandoned
12 the child, as defined in 41-3-102~~(8)(d)~~(7)(d);

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

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

20 (vi) whose parental rights have been judicially terminated;

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

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

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

1 petition.

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

5

6 **Section 6.** Section 41-3-102, MCA, is amended to read:

7 **"41-3-102. Definitions.** As used in this chapter, the following definitions apply:

8 (1) "A person responsible for a child's welfare" means:

9 (a) the child's parent, guardian, or foster parent;

10 (b) a staff person providing care in a day-care facility;

11 (c) an employee of a public or private residential institution, facility, home, or agency; or

12 (d) any other person legally responsible for the child's welfare in a residential setting.

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

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

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

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

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

25 (i) harm to a child's health or welfare, as defined in subsection ~~(9)~~ (7); or

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

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

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

30 (7) ~~"Dependent youth" means a youth:~~

- 1 ~~(a) who is abandoned;~~
 2 ~~(b) who is without parents or guardian or not under the care and supervision of a suitable adult;~~
 3 ~~(c) who has no proper guidance to provide for necessary physical, moral, and emotional well-being;~~
 4 ~~(d) who is destitute;~~
 5 ~~(e) who is dependent upon the public for support; or~~
 6 ~~(f) whose parent or parents have voluntarily relinquished custody and whose legal custody has~~
 7 ~~been transferred to a licensed agency.~~

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

- 10 (a) inflicts or allows to be inflicted upon the child physical or mental injury;
 11 (b) commits or allows to be committed sexual abuse or exploitation of the child;
 12 (c) causes failure to thrive or otherwise fails to supply the child with adequate food or fails to
 13 supply clothing, shelter, education, or adequate health care, though financially able to do so or offered
 14 financial or other reasonable means to do so;
 15 (d) abandons the child by leaving the child under circumstances that make reasonable the belief
 16 that the parent or other person does not intend to resume care of the child in the future or by willfully
 17 surrendering physical custody for a period of 6 months and during that period does not manifest to the child
 18 and the person having physical custody of the child a firm intention to resume physical custody or to make
 19 permanent legal arrangements for the care of the child; or
 20 (e) is unknown and has been unknown for a period of 90 days and reasonable efforts to identify
 21 and locate the parents have failed.

22 ~~(9)~~(8) "Limited emancipation" means a status conferred on a ~~dependent~~ youth by a court after a
 23 dispositional hearing in accordance with 41-3-406 under which the youth is entitled to exercise some but
 24 not all of the rights and responsibilities of a person who is 18 years of age or older.

25 ~~(10)~~(9) "Mental injury" means an identifiable and substantial impairment of the child's intellectual
 26 or psychological functioning.

27 (10) "Parent" means a biological or adoptive parent or stepparent.

28 (11) "Physical injury" means death, permanent or temporary disfigurement, or impairment of any
 29 bodily organ or function ~~and~~. The term includes death, permanent or temporary disfigurement, and
 30 impairment of a bodily organ or function sustained as a result of excessive corporal punishment.

1 (12) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent,
2 indecent exposure, deviate sexual conduct, or incest, as described in Title 45, chapter 5, part 5.

3 (13) "Sexual exploitation" means allowing, permitting, or encouraging a child to engage in a
4 prostitution offense, as described in 45-5-601 through 45-5-603, or allowing, permitting, or encouraging
5 sexual abuse of children as described in 45-5-625.

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

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

10 (16) "Withholding of medically indicated treatment" means the failure to respond to an infant's
11 life-threatening conditions by providing treatment (including appropriate nutrition, hydration, and
12 medication) that, in the treating physician's or physicians' reasonable medical judgment, will be most likely
13 to be effective in ameliorating or correcting the conditions. However, the term does not include the failure
14 to provide treatment (other than appropriate nutrition, hydration, or medication) to an infant when, in the
15 treating physician's or physicians' reasonable medical judgment:

16 (a) the infant is chronically and irreversibly comatose;

17 (b) the provision of treatment would:

18 (i) merely prolong dying;

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

20 (iii) otherwise be futile in terms of the survival of the infant; or

21 (c) the provision of treatment would be virtually futile in terms of the survival of the infant and the
22 treatment itself under the circumstances would be inhumane. For purposes of this subsection (16), "infant"
23 means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously
24 hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The
25 reference to less than 1 year of age may not be construed to imply that treatment should be changed or
26 discontinued when an infant reaches 1 year of age or to affect or limit any existing protections available
27 under state laws regarding medical neglect of children over 1 year of age.

28 (17) "Youth in need of care" means a youth who is ~~dependent~~, abused, or neglected as defined in
29 this section."
30

1 **Section 7.** Section 41-3-103, MCA, is amended to read:

2 **"41-3-103. Jurisdiction and venue.** (1) In all matters arising under this chapter, the youth court
3 ~~shall have~~ has concurrent jurisdiction with the district court over:

4 (a) ~~all youths~~ a youth who ~~are~~ is within the state of Montana for any purpose;

5 (b) ~~any~~ a youth or other person subject to this chapter who under a temporary or permanent order
6 of the court has voluntarily or involuntarily ~~removed himself from~~ left the state or the jurisdiction of the
7 court; or

8 (c) ~~any~~ a person who is alleged to have abused, ~~or neglected, or caused the dependency of~~
9 who is in the state of Montana for any purpose.

10 (2) Venue ~~shall be~~ is determined pursuant to 41-5-204."

11

12 **Section 8.** Section 41-3-201, MCA, is amended to read:

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

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

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

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

23 (c) Christian Science practitioner and religious healers;

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

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

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

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

29 (h) clergy; or

30 (i) an advocate or guardian ad litem who is authorized to investigate a report of alleged abuse or

1 neglect.

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

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

6 (b) A clergyperson or priest is not required to make a report under this section if:

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

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

11 (iii) the person who made the statement or confession does not consent to the disclosure by the
12 clergyperson or priest.

13 (c) A clergyperson or priest is not required to make a report under this section if the communication
14 is required to be confidential by canon law, church doctrine, or established church practice.

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

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

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

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

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

25

26 **Section 9.** Section 41-3-203, MCA, is amended to read:

27 **"41-3-203. Immunity from liability.** (1) ~~Anyone~~ A police officer, department employee, or county
28 attorney investigating or reporting any incident of child abuse or neglect under 41-3-201 or 41-3-202,
29 participating in resulting judicial proceedings, or furnishing hospital or medical records as required by
30 41-3-202 is immune from any liability, civil or criminal, that might otherwise be incurred or imposed, unless

1 the person acted in bad faith or with malicious purpose. There is a rebuttable presumption that the person
 2 acted in good faith and with no malicious purpose.

3 (2) A person who provides information pursuant to 41-3-201 or a person who uses information
 4 received pursuant to 41-3-205 to refuse to hire or to discharge a prospective or current employee,
 5 volunteer, or other person who through employment or volunteer activities may have unsupervised contact
 6 with children is immune from civil liability unless the person acted in bad faith or with malicious purpose."

7

8 **Section 10.** Section 41-3-205, MCA, is amended to read:

9 **"41-3-205. Confidentiality -- disclosure exceptions.** (1) The case records of the department of
 10 social and rehabilitation services, the department of family services and its local affiliate, the county welfare
 11 department, the county attorney, and the court concerning actions taken under this chapter and all records
 12 concerning reports of child abuse and neglect must be kept confidential except as provided by this section.
 13 ~~Any~~ A person who permits or encourages the unauthorized dissemination of their contents is guilty of a
 14 misdemeanor.

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

18 (3) Records may also be disclosed to the following persons or entities in this state ~~or~~ and any other
 19 state or country:

20 (a) a department, agency, or organization, including a federal agency, military enclave,
 21 or Indian tribal organization, that is legally authorized to receive, inspect, or investigate reports of child
 22 abuse or neglect and that otherwise meets the disclosure criteria contained in this section;

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

25 (c) a ~~licensed~~ health or mental health professional who is treating the family or child who is the
 26 subject of a report in the records;

27 (d) a parent or guardian of the child who is the subject of a report in the records or other person
 28 responsible for the child's welfare, without disclosure of the identity of any person who reported or
 29 provided information on the alleged child abuse or neglect incident contained in the records;

30 (e) a child named in the records who was allegedly abused or neglected or the child's legal guardian

1 or legal representative, including the child's guardian ad litem or attorney or a special advocate appointed
2 by the court to represent a child in a pending case;

3 (f) the state protection and advocacy program as authorized by 42 U.S.C. 6042(a)(2)(B);

4 (g) approved foster and adoptive parents who are or will be providing care for a child;

5 (h) a person about whom a report has been made and that person's attorney, with respect to the
6 relevant records pertaining to that person only and without disclosing the identity of the reporter or any
7 other person whose safety may be endangered;

8 (i) an agency, including a probation or parole agency, that is legally responsible for the supervision
9 of an alleged perpetrator of child abuse or neglect;

10 (j) a person, agency, or organization that is engaged in a bona fide research or evaluation project
11 and that is authorized by the department to conduct the research or evaluation;

12 ~~(k)~~ (k) the members of an interdisciplinary child protective team authorized under 41-3-108 for the
13 purposes of assessing the needs of the child and family, formulating a treatment plan, and monitoring the
14 plan;

15 ~~(l)~~ (l) the coroner or medical examiner when determining the cause of death of a child;

16 (m) a child fatality review team recognized by the department;

17 (n) a department or agency investigating an applicant for a license or registration that is required
18 to operate a youth care facility, day-care facility, or child-placing agency if the investigation is based on a
19 substantiated report and the applicant is notified of the investigation;

20 (o) a person or entity who is carrying out background, employment-related, or volunteer-related
21 screening of current or prospective employees or volunteers who have or may have unsupervised contact
22 with children through employment or volunteer activities. Disclosure under this subsection (o) is limited
23 to information that indicates a risk to children posed by the person about whom the information is sought,
24 as determined by the department.

25 (p) the news media if disclosure is limited to confirmation of factual information regarding how the
26 case was handled and if disclosure does not violate the privacy rights of the child or the child's parent or
27 guardian as determined by the department;

28 ~~(q)~~ (q) an employee of the department or other state agency if disclosure of the records is necessary
29 for administration of programs designed to benefit the child;

30 ~~(r)~~ (r) an agency of an Indian tribe or the relatives of an Indian child if disclosure of the records is

1 necessary to meet requirements of the federal Indian Child Welfare Act;

2 ~~((s))~~ a youth probation officer who is working in an official capacity with the child who is the
3 subject of a report in the records;

4 ~~((t))~~ a county attorney ~~or~~, peace officer, or attorney who is hired by or represents the department,
5 if disclosure is necessary for the investigation, defense, or prosecution of a case involving child abuse or
6 neglect;

7 ~~((u))~~ a foster care review committee established under 41-3-1115 or, when applicable, a local
8 citizen review board established under Title 41, chapter 3, part 10;

9 ~~((v))~~ a school employee participating in an interview of a child by a social worker, county
10 attorney, or peace officer as provided in 41-3-202;

11 ~~((w))~~ a member of a county interdisciplinary child information team formed under the provisions
12 of 52-2-211 who is not listed in subsection (3); or

13 ~~((x))~~ members of a local interagency staffing group provided for in 52-2-203; or

14 (y) a member of a youth placement committee formed under the provisions of 41-5-525.

15 (4) A person who is authorized to receive records under this section shall maintain the
16 confidentiality of the records and may not disclose information in the records to anyone other than the
17 persons described in subsection (3)(a).

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

20

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

22 **"41-3-401. Abuse, and neglect, ~~and dependency~~ petitions.** (1) The county attorney, attorney
23 general, or an attorney hired by the county ~~welfare department or office of human services shall be is~~
24 responsible for filing all petitions alleging abuse, or neglect, ~~or dependency~~. The county attorney, ~~or the~~
25 attorney general, or an attorney hired by the ~~county welfare department or office of human services~~
26 department with the written consent of the county attorney or the attorney general, may require all state,
27 county, and municipal agencies, including law enforcement agencies, to conduct ~~such~~ the investigations
28 and furnish ~~such~~ reports ~~as~~ that may be necessary.

29 (2) Upon receipt of a petition, the court shall set a date for an adjudicatory hearing on the petition.

30 ~~Such~~ The petitions ~~shall~~ must be given preference by the court in setting hearing dates.

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

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

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

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

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

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

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

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

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

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

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

25 (a) temporary investigative authority and protective services;

26 (b) temporary legal custody;

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

29 (d) any combination of the ~~above~~ provisions of subsections (10)(a) through (10)(c) or such any other
30 relief ~~as that~~ that may be required for the best interest of the youth.

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

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

4
5 **Section 12.** Section 41-3-402, MCA, is amended to read:

6 **"41-3-402. Petition for temporary investigative authority and protective services.** (1) In cases
7 ~~where a case in which~~ it appears that a youth is abused or neglected or is in danger of being abused or
8 neglected, the county attorney, the attorney general, or an attorney hired by the county ~~welfare department~~
9 ~~or office of human services~~ may file a petition for temporary investigative authority and protective services.

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

13 (3) The petition for temporary investigative authority and protective services ~~shall~~ must be
14 supported by an affidavit signed by the county attorney, the attorney general, or an attorney hired by the
15 county ~~welfare department or office of human services~~ or must be supported by a department of family
16 ~~services~~ report stating in detail the facts upon which the request is based."

17
18 **Section 13.** Section 41-3-403, MCA, is amended to read:

19 **"41-3-403. Order for immediate protection of youth.** (1) (a) Upon the filing of a petition for
20 temporary investigative authority and protective services, the court may issue an order granting relief that
21 may be required for the immediate protection of the youth.

22 (b) The order, along with the petition and supporting documents, must be served by a peace officer
23 or a representative of the department on the person or persons named in the order. When the youth is
24 placed in a medical facility or protective facility, the department shall notify the parents or parent, guardian,
25 or other person having legal custody of the youth, at the time the placement is made or as soon after
26 placement as possible.

27 (c) The order must require the person served to comply immediately with the terms of the order
28 or to appear before the court issuing the order on the date specified and show cause why the person has
29 not complied with the order. The show cause hearing must be conducted within 20 days of the issuance
30 of the order by the judge or a master appointed by the judge. The person filing the petition has the burden

1 of presenting evidence establishing probable cause for the issuance of the order. Except as otherwise
2 provided in this part, the rules of civil procedure apply. Hearsay evidence of statements made by the
3 affected youth is admissible at the hearing or at a contested case proceeding held pursuant to Title 2,
4 chapter 4, part 6, that results from adverse licensing action taken by the department.

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

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

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

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

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

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

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

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

19 (g) other temporary disposition that may be required in the best interest of the youth that does not
20 require an expenditure of money by the department unless the department is notified and a court hearing
21 is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all
22 family, insurance, and other resources have been examined."
23

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

25 **"41-3-404. Adjudicatory hearing -- temporary disposition.** (1) In the adjudicatory hearing on a
26 petition under 41-3-401, the court shall determine whether the youth is a youth in need of care and
27 ascertain, as far as possible, the cause.

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

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

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

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

10
 11 **Section 15.** Section 41-3-406, MCA, is amended to read:

12 **"41-3-406. Dispositional hearing -- contributions by parents or guardians for youth's care.** (1) If
 13 a youth is found to be a youth in need of care under 41-3-404, the court may enter its judgment, making
 14 any of the following dispositions to protect the welfare of the youth:

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

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

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

20 (i) the department;

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

24 (iii) a relative or other individual who, after study by ~~a social service~~ the department or a licensed
 25 child-placing agency designated by the court, is found by the court to be qualified to receive and care for
 26 the youth;

27 (d) order any party to the action to do what is necessary to give effect to the final disposition,
 28 including undertaking medical and psychological evaluations, treatment, and counseling that does not
 29 require an expenditure of money by the department unless the department is notified and a court hearing
 30 is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all

1 family, insurance, and other resources have been examined.

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

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

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

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

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

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

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

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

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

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

- 1 (d) An alternative arrangement must:
- 2 (i) provide sufficient security to ensure compliance with the arrangement;
- 3 (ii) be in writing and be signed by a representative of the department and the person required to
- 4 make contributions; and
- 5 (iii) if approved by the court, be entered into the record of the proceeding.

6 (5) Upon a showing of a change in the financial ability of the youth's parents or guardians to pay,

7 the court may modify its order for the payment of contributions required under subsection (3).

8 (6) (a) If the court orders the payment of contributions under this section, the department shall

9 apply to the department of social and rehabilitation services for support enforcement services pursuant to

10 Title IV-D of the Social Security Act.

11 (b) The department of social and rehabilitation services may collect and enforce a contribution order

12 under this section by any means available under law, including the remedies provided for in Title 40,

13 chapter 5, parts 2 and 4."

14

15 **Section 16.** Section 41-3-408, MCA, is amended to read:

16 **"41-3-408. Limited emancipation.** (1) The court, ~~after the dispositional hearing provided for in~~

17 ~~41-3-406,~~ may, upon the request of a youth who is 16 years of age or older, the youth's parent, or the

18 department, enter an order granting limited emancipation to the youth.

19 (2) Limited emancipation may be granted only if the court has found:

20 (a) that limited emancipation is in the youth's best interests;

21 (b) that the youth desires limited emancipation;

22 (c) that there exists no public interest compelling denial of limited emancipation;

23 (d) that the youth has, or will reasonably obtain, money sufficient to pay for financial obligations

24 incurred as a result of limited emancipation;

25 (e) that the youth, as shown by prior conduct and preparation, understands and may be expected

26 to responsibly exercise those rights and responsibilities incurred as a result of limited emancipation;

27 (f) that the youth has graduated or will continue to diligently pursue graduation from high school,

28 unless circumstances clearly compel deferral of education; and

29 (g) that, if it is considered necessary by the court, the youth will undergo periodic counseling with

30 an appropriate advisor.

1 (3) An order of limited emancipation must specifically set forth the rights and responsibilities that
2 are being conferred upon the youth. These may include but are not limited to one or more of the following:

3 (a) the right to live independently of in-house supervision;

4 (b) the right to live in housing of the youth's choice;

5 (c) the right to directly receive and expend money to which the youth is entitled and to conduct
6 his youth's own financial affairs;

7 (d) the right to enter into contractual agreements and incur debts;

8 (e) the right to obtain access to medical treatment and records upon the youth's own authorization;

9 and

10 (f) the right to obtain a license to operate equipment or perform a service.

11 (4) An order of limited emancipation must include a provision requiring that the youth make periodic
12 reports to the court upon terms prescribed by the court.

13 ~~(5) If the court determines that a youth to whom limited emancipation is granted does not have
14 sufficient funds to finance transition to limited emancipated status, the court may order the department to
15 provide such funds, not to exceed \$500, directly to the youth. The youth shall account to the court for
16 the disposition of such funds and shall repay all such money to the department within 1 year of the order
17 of limited emancipation unless the court for cause orders an extension.~~

18 ~~(6)~~ The court, on its own motion or on the motion of the county attorney or any parties to the
19 dispositional hearing, may modify or revoke the order upon a showing that:

20 (a) the youth has committed a material violation of the law;

21 ~~(b) the youth is failing to diligently pursue graduation from high school;~~

22 ~~(c)~~ the youth has violated a condition of the limited emancipation order; or

23 ~~(d)~~ (c) the best interests of the youth are no longer served by limited emancipation; ~~or~~

24 ~~(e) the youth has discontinued periodic counseling with approved advisors.~~

25 ~~(7) The department shall mail a copy of this part to all high school counseling offices."~~

26

27 **Section 17.** Section 41-3-602, MCA, is amended to read:

28 **"41-3-602. Purpose.** This part provides procedures and criteria by which the parent-child legal
29 relationship may be terminated by a court if the relationship is not in the best interest of the child. The
30 termination of the parent-child legal relationship provided for in this part is to be used in those situations

1 ~~where~~ when there is a determination that a child is abused, ~~or neglected, or dependent,~~ as defined in
 2 41-3-102."

3

4 **Section 18.** Section 41-3-603, MCA, is amended to read:

5 **"41-3-603. Definitions.** As used in this part, unless the context otherwise requires, the following
 6 definitions apply:

7 (1) "Guardian ad litem" means a person appointed to represent a child who is the subject of a
 8 petition for the termination of the parent-child legal relationship.

9 (2) "Parent-child legal relationship" means the legal relationship that exists between a child and ~~his~~
 10 the child's birth or adoptive parents as provided in Title 40, chapter 6, part 2, unless that relationship has
 11 been terminated by competent judicial decree as provided in this part or in 40-6-135 or in 40-6-234.

12 (3) "Treatment plan" means a written agreement between the department or court and the parents
 13 that includes action that must be taken to resolve the condition or conduct of the parents that resulted in
 14 the need for protective services for the child. The treatment plan may involve other parties, if necessary,
 15 for protective services.

16 (4) "Youth in need of care" means a youth who is ~~dependent,~~ abused, or neglected as defined in
 17 41-3-102."

18

19 **Section 19.** Section 41-3-607, MCA, is amended to read:

20 **"41-3-607. Petition for termination -- separate hearing -- right to counsel -- no jury trial.** (1) The
 21 termination of a parent-child legal relationship ~~shall~~ may be considered only after the filing of a petition
 22 pursuant to 41-3-401 alleging the factual grounds for termination pursuant to 41-3-609. ~~Termination~~ If
 23 termination of a parent-child legal relationship ~~shall be considered at a dispositional hearing held pursuant~~
 24 ~~to 41-3-406, following or together with an adjudicatory hearing held pursuant to 41-3-404, within 180 days~~
 25 ~~after the filing of the petition~~ is ordered, the court may transfer permanent legal custody of the child, with
 26 the right to consent to the child's adoption, to:

27 (a) the department;

28 (b) a licensed child-placing agency; or

29 (c) another individual who has been approved by the department and has received consent for the
 30 transfer of custody from the department or agency that has custody of the child.

1 (2) After ~~the county attorney, attorney general, or an attorney hired by the county welfare~~
 2 ~~department or office of human services files~~ a petition for termination of a parent-child relationship is filed
 3 ~~pursuant to this part~~, parents ~~shall~~ must be advised of the right to counsel, and counsel ~~shall~~ must be
 4 appointed in accordance with 41-3-401(12).

5 (3) A guardian ad litem ~~shall~~ must be appointed to represent the child's best interests in any
 6 hearing determining the involuntary termination of the parent-child legal relationship. The guardian ad litem
 7 shall continue to represent the child until the child is returned home or placed in an appropriate permanent
 8 placement. If a respondent parent is a minor, a guardian ad litem must be appointed to serve the minor
 9 parent in addition to any counsel requested by the parent.

10 (4) There is no right to a jury trial at proceedings held to consider the termination of a parent-child
 11 legal relationship."

12
 13 **Section 20.** Section 41-3-609, MCA, is amended to read:

14 **"41-3-609. Criteria for termination.** (1) The court may order a termination of the parent-child legal
 15 relationship upon a finding that any of the following circumstances exist:

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

17 (b) the child has been abandoned by ~~his~~ the parents as set forth in 41-3-102~~(8)(d)~~(7)(d);

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

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

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

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

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

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

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

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

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

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

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

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

13 (3) In considering any of the factors in subsection (2) in terminating the parent-child relationship,
14 the court shall give primary consideration to the physical, mental, and emotional conditions and needs of
15 the child. The court shall review and, if necessary, order an evaluation of the child's or the parent's
16 physical, mental, and emotional conditions.

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

19 (a) two medical doctors submit testimony that the parent is so severely mentally ill that ~~such~~
20 ~~person~~ the parent cannot assume the role of parent;

21 (b) the parent is incarcerated for more than 1 year and ~~such a~~ a treatment plan is not practical
22 considering the incarceration; or

23 (c) the death of a sibling caused by abuse or neglect by the parent has occurred."
24

25 **Section 21.** Section 41-3-611, MCA, is amended to read:

26 **"41-3-611. Effect of decree.** (1) An order for the termination of the parent-child legal relationship
27 divests the child and the parents of all legal rights, powers, immunities, duties, and obligations with respect
28 to each other as provided in Title 40, chapter 6, part 2, and Title 41, chapter 3, part 2, except the right
29 of the child to inherit from the parent.

30 (2) An order or decree entered pursuant to this part may not disentitle a child to any benefit due

1 ~~him~~ the child from any third person, including but not limited to any Indian tribe, agency, state, or the
2 United States.

3 (3) After the termination of a parent-child legal relationship, the former parent is neither entitled
4 to any notice of proceedings for the adoption of the child nor has any right to object to the adoption or to
5 participate in any other placement proceedings held pursuant to 41-3-610."

6

7 **Section 22.** Section 52-1-103, MCA, is amended to read:

8 **"52-1-103. Powers and duties of department.** The department shall:

9 (1) administer and supervise all forms of child and adult protective services;

10 (2) act as the lead agency in coordinating and planning services to children with multiagency
11 service needs;

12 (3) provide funding for and place youth alleged or adjudicated to be delinquent or in need of
13 supervision who are referred or committed to the department;

14 (4) provide the following functions, as necessary, for youth in need of care:

15 (a) intake, investigation, case management, and client supervision;

16 (b) placement in youth care facilities;

17 (c) contracting for necessary services;

18 (d) protective services day care; and

19 (e) adoption;

20 (5) administer youth correctional facilities;

21 (6) provide supervision, care, and control of youth released from a state youth correctional facility;

22 (7) register or license youth care facilities, child-placing agencies, day-care facilities, community
23 homes for developmentally disabled persons, community homes for severely disabled persons, and adult
24 foster care facilities;

25 (8) act as lead agency in implementing and coordinating child-care programs and services under
26 the Montana Child Care Act;

27 (9) administer interstate compacts for children and delinquent youth;

28 (10) (a) administer child abuse prevention services funded through child abuse grants and the
29 Montana children's trust fund provided for in Title 41, chapter 3, part 7; and

30 (b) administer elder abuse prevention services;

- 1 (11) (a) make a written evaluation of each plan developed by the local family services advisory
2 councils, as provided in 52-1-203, indicating those portions of each plan that will be implemented by the
3 department, those portions that will not be implemented, and the reasons for not implementing those
4 portions;
- 5 (b) develop a statewide youth services and resources plan that takes into consideration local needs
6 as reflected in plans developed by the local family services advisory councils;
- 7 (12) administer services to the aged;
- 8 (13) provide consultant services to:
- 9 (a) facilities providing care for needy, indigent, handicapped, or dependent adults; and
10 (b) youth care facilities;
- 11 (14) utilize at maximum efficiency the resources of state government in a coordinated effort to:
- 12 (a) provide for children in need of temporary protection or correctional services; and
13 (b) coordinate and apply the principles of modern institutional administration to the institutions in
14 the department;
- 15 (15) subject to the functions of the department of administration, lease or purchase lands for use
16 by institutions in the department and classify those lands to determine which are of such character as to
17 be most profitably used for agricultural purposes, taking into consideration:
- 18 (a) the needs of all institutions in the department for the food products that can be grown or
19 produced on the lands; and
- 20 (b) the relative value of agricultural programs in the treatment or rehabilitation of the persons
21 confined in the institutions in the department;
- 22 (16) utilize the staff and services of other state agencies and units of the Montana university
23 system, within their respective statutory functions, to carry out its functions under this title;
- 24 (17) propose programs with specific goals and objectives to the legislature to meet the projected
25 long-range needs of institutions in the department, including programs and facilities for the diagnosis,
26 treatment, care, and aftercare of persons placed in institutions in the department;
- 27 (18) contract, as necessary, with the county board of welfare for administration of child and adult
28 protection services for that county; and
- 29 (19) adopt rules necessary to carry out the purposes of 41-3-1126, 41-5-527 through 41-5-529,
30 and this chapter."

1 **Section 23.** Section 52-2-101, MCA, is amended to read:

2 **"52-2-101. Definitions.** As used in this part, the following definitions apply:

3 (1) "Child welfare services" means the establishing, extending, and strengthening of child welfare
4 services, especially in predominantly rural areas, for the protection and care of abused, ~~dependent,~~ or
5 neglected children.

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

7 (3) (a) "Emotionally disturbed child" means a child determined by a psychologist, psychiatrist,
8 licensed social worker, or special education child study team (established under rules adopted by the
9 superintendent of public instruction to implement Title 20, chapter 7, part 4) to have:

10 (i) an identifiable mental health problem as identified in a nationally recognized classification system
11 or as defined in 20-7-401(8); and

12 (ii) a substantial impairment, evident for a reasonable length of time, that is characterized by a
13 dysfunction in any of the following areas:

14 (A) relationships;

15 (B) behavior;

16 (C) cognition; or

17 (D) education.

18 (b) The nationally recognized classification system referred to in subsection (3)(a)(i) must be one
19 recognized by rules established by the department.

20 (4) "Public assistance" or "assistance" means any type of monetary or other assistance furnished
21 under this title to a person by a state or county agency, regardless of the original source of the assistance."
22

23 **Section 24.** Section 52-2-112, MCA, is amended to read:

24 **"52-2-112. Duty to strengthen child welfare services.** The department shall make provision for
25 establishing and strengthening child welfare services, including protective services, and for care of children
26 in registered or licensed family foster homes, child care agencies, group homes, or treatment facilities.
27 Payment provided under this section is made under the provisions of 41-3-1122 and 41-3-1115."
28

29 **Section 25.** Section 52-2-113, MCA, is amended to read:

30 **"52-2-113. Child rehabilitation -- duties of department.** The department shall:

1 (1) enforce all laws pertaining to children and take the initiative in all matters involving the interest
2 of abused, ~~or dependent, and~~ neglected children;

3 (2) use funds allocated or appropriated to the department for the purpose of providing for the
4 special medical or material needs of developmentally disabled or physically handicapped children who are
5 eligible for department programs;

6 (3) cooperate for the purposes ~~hereof~~ of this part with all reputable child-helping and child-placing
7 agencies; and

8 (4) inspect and register or license youth care facilities, child-placing agencies, and adoption
9 agencies."

10
11 **Section 26.** Section 52-2-211, MCA, is amended to read:

12 **"52-2-211. County interdisciplinary child information team.** (1) The following persons and
13 agencies operating within a county may by written agreement form a county interdisciplinary child
14 information team:

- 15 (a) the youth court;
16 (b) the county attorney;
17 (c) the department of family services;
18 (d) the county superintendent of schools;
19 (e) the sheriff;
20 (f) the chief of any police force; and
21 (g) the superintendents of public school districts.

22 (2) The persons and agencies signing a written agreement under subsection (1) may by majority
23 vote allow the following persons to sign the written agreement and join the information team:

- 24 (a) physicians, psychologists, psychiatrists, nurses, and other providers of medical and mental
25 health care;
26 (b) entities operating private elementary and secondary schools;
27 (c) attorneys; and
28 (d) a person or entity that has or may have a legitimate interest in one or more children that the
29 information team will serve.

30 (3) The members of the information team or their designees may form one or more auxiliary teams

1 for the purpose of providing service to a single child, a group of children, or children with a particular type
2 of problem or for any other purpose. Auxiliary teams are subject to the written agreement.

3 (4) The purpose of the team and written agreement is to facilitate the exchange and sharing of
4 information that one or more team members may be able to use in serving a child in the course of their
5 professions and occupations, including but not limited to abused, neglected, ~~dependent~~, and delinquent
6 children and youth in need of supervision. Information regarding a child that a team member supplies to
7 other team members or that is disseminated to a team member under 41-3-205, 41-5-602, or 41-5-603
8 may not be disseminated beyond the team.

9 (5) The terms of the written agreement must provide for the rules under which the team will
10 operate, the method by which information will be shared, distributed, and managed, and any other matters
11 necessary to the purpose and functions of the team."
12

13 **NEW SECTION. Section 27. Repealer.** Section 41-3-1112, MCA, is repealed.

14
15 **NEW SECTION. Section 28. Effective date.** [This act] is effective on passage and approval.

16 -END-

1 HOUSE BILL NO. 186

2 INTRODUCED BY MARTINEZ

3 BY REQUEST OF THE DEPARTMENT OF FAMILY SERVICES
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATED TO CHILD
6 PROTECTIVE SERVICES; DELETING REFERENCES TO "DEPENDENT YOUTH"; ADDING A CHILD'S
7 GUARDIAN OR ADVOCATE AS A MANDATORY REPORTERS REPORTER OF SUSPECTED CHILD ABUSE
8 OR NEGLECT; ADDING PERSONS TO WHOM CONFIDENTIAL RECORDS MAY BE DISCLOSED; PROVIDING
9 FOR LIMITED IMMUNITY FOR A PERSON WHO PROVIDES OR USES EMPLOYMENT-RELATED CHILD
10 ABUSE INFORMATION; CLARIFYING THAT A CHILD'S HEARSAY STATEMENTS MAY BE USED AT A
11 CONTESTED HEARING; CLARIFYING PROVISIONS REGARDING POTENTIAL COURT-ORDERED
12 PLACEMENTS; REVISING LIMITED EMANCIPATION OPTIONS FOR YOUTH; LIMITING ACCESS OF
13 RECORDS TO PARENTS WHOSE PARENTAL RIGHTS HAVE BEEN TERMINATED; CLARIFYING THAT
14 CERTAIN FACILITIES MAY BE REGISTERED INSTEAD OF LICENSED; AMENDING SECTIONS 20-5-321,
15 20-7-422, 40-6-125, 40-6-126, 40-8-111, 41-3-102, 41-3-103, 41-3-201, 41-3-203, 41-3-205, 41-3-401,
16 41-3-402, 41-3-403, 41-3-404, 41-3-406, 41-3-408, 41-3-602, 41-3-603, 41-3-607, 41-3-609, 41-3-611,
17 52-1-103, 52-2-101, 52-2-112, 52-2-113, AND 52-2-211, MCA; REPEALING SECTION 41-3-1112, MCA;
18 AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

19
20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
21

22 Section 1. Section 20-5-321, MCA, is amended to read:

23 "20-5-321. **Attendance with mandatory approval -- tuition and transportation.** (1) An
24 out-of-district attendance agreement that allows a child to enroll in and attend a school in a Montana school
25 district that is outside of the child's district of residence or in a public school district of a state or province
26 that is adjacent to the county of the child's residence is mandatory whenever:

27 (a) the child resides closer to the school that the child wishes to attend and more than 3 miles from
28 the school the child would attend in the resident district and:

29 (i) the resident district does not provide transportation; or

30 (ii) the district of residence provides transportation and is not within the same county as the child's

1 school district of choice;

2 (b) the child resides in a location where, due to road or geographic conditions, it is impractical to
3 attend the school nearest the child's residence;

4 (c) the child is a member of a family that is required to send another child outside of the elementary
5 district to attend high school and the child of elementary age may more conveniently attend an elementary
6 school where the high school is located, provided that the child resides more than 3 miles from an
7 elementary school in the resident district or that the parent is required to move to the elementary district
8 where the high school is located to enroll another child in high school;

9 (d) the child has been adjudicated by a court of competent jurisdiction to be an abused, or
10 neglected, ~~or dependent~~ child, as defined in 41-3-102, or a youth in need of supervision or a delinquent
11 youth, as defined in 41-5-103, and has been placed in a licensed youth care facility that is approved by the
12 department of family services and, as a result of the placement, is required to attend school outside of the
13 child's district of residence; or

14 (e) the child is required to attend school outside of the district of residence as the result of a
15 placement by a state agency or parent in a group home licensed by the state or an order of a court of
16 competent jurisdiction.

17 (2) (a) Whenever a parent or guardian of a child, an agency of the state, or a court wishes to have
18 a child attend a school under the provisions of this section, the parent or guardian, agency, or court shall
19 complete an out-of-district attendance agreement in consultation with an appropriate official of the district
20 the child will attend.

21 (b) The attendance agreement must set forth the financial obligations, if any, for costs incurred for
22 tuition and transportation as provided in 20-5-323 and Title 20, chapter 10.

23 (c) The trustees of the district of choice may waive any or all of the tuition rate, but any waiver
24 must be applied equally to all students.

25 (3) Except as provided in subsection (4), the trustees of the resident district and the trustees of
26 the district of choice shall approve the out-of-district attendance agreement and notify the county
27 superintendent of schools of the county of the child's residence of the approval of the agreement within
28 10 days. The county superintendent shall approve the agreement for payment under 20-5-324(5).

29 (4) Unless the child is a child with disabilities who resides in the district, the trustees of the district
30 where the school to be attended is located may disapprove an out-of-district attendance agreement

1 whenever they find that, due to insufficient room and overcrowding, the accreditation of the school would
2 be adversely affected by the acceptance of the child."
3

4 **Section 2.** Section 20-7-422, MCA, is amended to read:

5 **"20-7-422. Out-of-state placement of children with disabilities -- payment of costs.** (1) In
6 accordance with a placement made by persons determining an individualized education program for a child
7 with disabilities, the trustees of a district may arrange for the attendance of the child in a special education
8 program offered outside of the state of Montana.

9 (2) Except as provided in subsection (3), when the persons determining the individualized education
10 program of a child with disabilities who is in need of special education recommend placement in an
11 out-of-state private residential facility, the trustees of the district of residence shall negotiate the amount
12 and manner of payment of all costs associated with the placement.

13 (3) Whenever a child with disabilities who is in need of special education and related services is
14 adjudicated by a court of competent jurisdiction to be an abused, or neglected, ~~or dependent~~ child as
15 defined in 41-3-102 or a youth in need of supervision or delinquent youth as defined in 41-5-103 and is
16 placed by a state agency in an out-of-state private residential facility, the superintendent of public
17 instruction shall negotiate with:

18 (a) the provider for the amount and manner of payment of education fees consistent with the
19 individualized education program determined for the child under the provisions of 20-7-402; and

20 (b) the state agency that makes the placement for the portion of the placement costs that
21 represents the child's education program.

22 (4) Payments for a child with disabilities as negotiated in subsection (3) must be paid by the
23 superintendent of public instruction from the state special education appropriation."
24

25 **Section 3.** Section 40-6-125, MCA, is amended to read:

26 **"40-6-125. Children born out of wedlock -- relinquishment -- consent.** (1) If the mother of a child
27 born out of wedlock proposes to relinquish the child for adoption and the relinquishment or consent of the
28 birth father cannot be obtained, the child may not be placed for adoption until the parental rights of the
29 father are terminated by the court as provided in this part, by the court pursuant to Title 41, chapter 3, or
30 by a court of competent jurisdiction in another state or country.

1 (2) Pending the termination or other disposition of the rights of the father of the child born out of
 2 wedlock, the mother may execute a relinquishment, in accordance with 40-6-135(2) through (5),
 3 terminating ~~her~~ the mother's rights to the child. If the mother relinquishes the child, the agency of the state
 4 of Montana, a licensed adoption agency, or the person to whom the child is relinquished may file a petition
 5 under this part or a petition of ~~dependency or~~ neglect pursuant to Title 41, chapter 3. Pending disposition
 6 of the petition, the court may enter an order authorizing temporary care of the child.

7 (3) At the request of the mother, ~~her~~ the mother's execution of a relinquishment must be delayed
 8 until after the court has determined the identity of the father and has awarded custody of the child to the
 9 father or terminated ~~his~~ the father's rights under this part."
 10

11 **Section 4.** Section 40-6-126, MCA, is amended to read:

12 **"40-6-126. Notice of intent to claim paternity.** (1) Before the birth of a child born out of wedlock,
 13 a person claiming under oath to be the father of the child may file a verified notice of intent to claim
 14 paternity with the district court in any county of this state. The form of the notice ~~shall~~ must be prescribed
 15 by the director of the department of health and environmental sciences and supplied to the clerks of the
 16 district courts. The notice ~~shall~~ must include the claimant's address. On the next business day after
 17 receipt of the notice, the court shall transmit the notice to the records and statistics bureau of the
 18 department of health and environmental sciences. If the mother's address is stated on the notice, the
 19 records and statistics bureau shall send a copy of the notice by first-class mail to the mother of the child
 20 at the stated address.

21 (2) A person filing a notice of intent to claim paternity or acknowledging paternity in accordance
 22 with 40-6-105 ~~shall be~~ is presumed to be the father of the child for purposes of this part unless the mother
 23 denies that the claimant is the father. ~~Such~~ The notice is admissible in a paternity proceeding under
 24 40-6-107 and creates a rebuttable presumption as to the paternity of that child for purposes of that section.
 25 ~~Such~~ The notice creates a rebuttable presumption as to paternity of the child for purposes of a ~~dependency~~
 26 ~~or~~ neglect proceeding under Title 41, chapter 3.

27 (3) A person who makes a timely filing of notice of intent to claim paternity or who formally
 28 acknowledges paternity under 40-6-105 is entitled to notice of any hearing to determine the identity of the
 29 father of the child and any hearing to determine or terminate ~~his~~ the person's paternal rights to the child."
 30

1 **Section 5.** Section 40-8-111, MCA, is amended to read:

2 **"40-8-111. Consent required for adoption.** (1) An adoption of a child may be decreed when there
3 have been filed written consents to adoption executed by:

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

6 (i) adjudged guilty by a court of competent jurisdiction of assault on the child, as provided in
7 45-5-201; endangering the welfare of children, concerning the child, as provided in 45-5-622; or sexual
8 abuse of children, toward the child, as provided in 45-5-625;

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

11 (iii) who has, in the state of Montana or in any other state of the United States, willfully abandoned
12 the child, as defined in 41-3-102~~(8)(d)~~(7)(d);

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

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

20 (vi) whose parental rights have been judicially terminated;

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

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

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

1 petition.

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

5

6 **Section 6.** Section 41-3-102, MCA, is amended to read:

7 **"41-3-102. Definitions.** As used in this chapter, the following definitions apply:

8 (1) "A person responsible for a child's welfare" means:

9 (a) the child's parent, guardian, or foster parent;

10 (b) a staff person providing care in a day-care facility;

11 (c) an employee of a public or private residential institution, facility, home, or agency; or

12 (d) any other person legally responsible for the child's welfare in a residential setting.

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

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

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

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

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

25 (i) harm to a child's health or welfare, as defined in subsection ~~(8)~~(7); or

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

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

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

30 (7) ~~"Dependent youth" means a youth:~~

- 1 ~~(a) who is abandoned;~~
 2 ~~(b) who is without parents or guardian or not under the care and supervision of a suitable adult;~~
 3 ~~(c) who has no proper guidance to provide for necessary physical, moral, and emotional well-being;~~
 4 ~~(d) who is destitute;~~
 5 ~~(e) who is dependent upon the public for support; or~~
 6 ~~(f) whose parent or parents have voluntarily relinquished custody and whose legal custody has~~
 7 ~~been transferred to a licensed agency.~~

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

- 10 (a) inflicts or allows to be inflicted upon the child physical or mental injury;
 11 (b) commits or allows to be committed sexual abuse or exploitation of the child;
 12 (c) causes failure to thrive or otherwise fails to supply the child with adequate food or fails to
 13 supply clothing, shelter, education, or adequate health care, though financially able to do so or offered
 14 financial or other reasonable means to do so;
 15 (d) abandons the child by leaving the child under circumstances that make reasonable the belief
 16 that the parent or other person does not intend to resume care of the child in the future or by willfully
 17 surrendering physical custody for a period of 6 months and during that period does not manifest to the child
 18 and the person having physical custody of the child a firm intention to resume physical custody or to make
 19 permanent legal arrangements for the care of the child; or
 20 (e) is unknown and has been unknown for a period of 90 days and reasonable efforts to identify
 21 and locate the parents have failed.

22 ~~(9)~~(8) "Limited emancipation" means a status conferred on a ~~dependent~~ youth by a court after a
 23 dispositional hearing in accordance with 41-3-406 under which the youth is entitled to exercise some but
 24 not all of the rights and responsibilities of a person who is 18 years of age or older.

25 ~~(10)~~(9) "Mental injury" means an identifiable and substantial impairment of the child's intellectual
 26 or psychological functioning.

27 (10) "Parent" means a biological or adoptive parent or stepparent.

28 (11) "Physical injury" means death, permanent or temporary disfigurement, or impairment of any
 29 bodily organ or function ~~and~~. The term includes death, permanent or temporary disfigurement, and
 30 impairment of a bodily organ or function sustained as a result of excessive corporal punishment.

1 (12) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent,
2 indecent exposure, deviate sexual conduct, or incest, as described in Title 45, chapter 5, part 5.

3 (13) "Sexual exploitation" means allowing, permitting, or encouraging a child to engage in a
4 prostitution offense, as described in 45-5-601 through 45-5-603, or allowing, permitting, or encouraging
5 sexual abuse of children as described in 45-5-625.

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

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

10 (16) "Withholding of medically indicated treatment" means the failure to respond to an infant's
11 life-threatening conditions by providing treatment (including appropriate nutrition, hydration, and
12 medication) that, in the treating physician's or physicians' reasonable medical judgment, will be most likely
13 to be effective in ameliorating or correcting the conditions. However, the term does not include the failure
14 to provide treatment (other than appropriate nutrition, hydration, or medication) to an infant when, in the
15 treating physician's or physicians' reasonable medical judgment:

16 (a) the infant is chronically and irreversibly comatose;

17 (b) the provision of treatment would:

18 (i) merely prolong dying;

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

20 (iii) otherwise be futile in terms of the survival of the infant; or

21 (c) the provision of treatment would be virtually futile in terms of the survival of the infant and the
22 treatment itself under the circumstances would be inhumane. For purposes of this subsection (16), "infant"
23 means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously
24 hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The
25 reference to less than 1 year of age may not be construed to imply that treatment should be changed or
26 discontinued when an infant reaches 1 year of age or to affect or limit any existing protections available
27 under state laws regarding medical neglect of children over 1 year of age.

28 (17) "Youth in need of care" means a youth who is ~~dependent~~, abused, or neglected as defined in
29 this section."
30

1 **Section 7.** Section 41-3-103, MCA, is amended to read:

2 "**41-3-103. Jurisdiction and venue.** (1) In all matters arising under this chapter, the youth court
3 ~~shall have~~ has concurrent jurisdiction with the district court over:

4 (a) ~~all youths~~ a youth who ~~are~~ is within the state of Montana for any purpose;

5 (b) ~~any~~ a youth or other person subject to this chapter who under a temporary or permanent order
6 of the court has voluntarily or involuntarily ~~removed himself from~~ left the state or the jurisdiction of the
7 court; or

8 (c) ~~any~~ a person who is alleged to have abused, or neglected, ~~or caused the dependency of~~ a youth
9 who is in the state of Montana for any purpose.

10 (2) Venue ~~shall be~~ is determined pursuant to 41-5-204."

11

12 **Section 8.** Section 41-3-201, MCA, is amended to read:

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

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

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

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

23 (c) Christian Science practitioner and religious healers;

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

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

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

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

29 (h) clergy; or

30 (i) ~~an advocate or~~ A guardian ad litem who is authorized to investigate a report of alleged abuse

1 or neglect.

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

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

6 (b) A clergyperson or priest is not required to make a report under this section if:

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

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

11 (iii) the person who made the statement or confession does not consent to the disclosure by the
12 clergyperson or priest.

13 (c) A clergyperson or priest is not required to make a report under this section if the communication
14 is required to be confidential by canon law, church doctrine, or established church practice.

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

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

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

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

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

25

26 **Section 9.** Section 41-3-203, MCA, is amended to read:

27 **"41-3-203. Immunity from liability.** ~~(1) Anyone A police officer, department employee, or county~~
28 ~~attorney~~ ANYONE investigating or reporting any incident of child abuse or neglect under 41-3-201 or
29 41-3-202, participating in resulting judicial proceedings, or furnishing hospital or medical records as required
30 by 41-3-202 is immune from any liability, civil or criminal, that might otherwise be incurred or imposed,

1 unless the person WAS GROSSLY NEGLIGENT OR acted in bad faith or with malicious purpose. ~~There is~~
 2 ~~a rebuttable presumption that the person acted in good faith and with no malicious purpose.~~

3 (2) A person who provides information pursuant to 41-3-201 THAT IS SUBSTANTIATED BY THE
 4 DEPARTMENT BY INDEPENDENT CORROBORATION or a person who uses information received pursuant
 5 to 41-3-205 THAT IS SUBSTANTIATED BY THE DEPARTMENT BY INDEPENDENT CORROBORATION to
 6 refuse to hire or to discharge a prospective or current employee, volunteer, or other person who through
 7 employment or volunteer activities may have unsupervised contact with children is immune from civil
 8 liability unless the person acted in bad faith or with malicious purpose."

9

10 **Section 10.** Section 41-3-205, MCA, is amended to read:

11 **"41-3-205. Confidentiality -- disclosure exceptions.** (1) The case records of the department of
 12 social and rehabilitation services, the department of family services and its local affiliate, the county welfare
 13 department, the county attorney, and the court concerning actions taken under this chapter and all records
 14 concerning reports of child abuse and neglect must be kept confidential except as provided by this section.
 15 ~~Any~~ A person who permits or encourages the unauthorized dissemination of their contents is guilty of a
 16 misdemeanor.

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

20 (3) Records may also be disclosed to the following persons or entities in this state ~~or~~ and any other
 21 state or country:

22 (a) a department, agency, or organization, including a federal agencies agency, military enclave,
 23 or Indian tribal organization, that is legally authorized to receive, inspect, or investigate reports of child
 24 abuse or neglect and that otherwise meets the disclosure criteria contained in this section;

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

27 (c) a ~~licensed~~ health or mental health professional who is treating the family or child who is the
 28 subject of a report in the records;

29 (d) a parent or guardian of the child who is the subject of a report in the records or other person
 30 responsible for the child's welfare, without disclosure of the identity of any person who reported or

1 provided information on the alleged child abuse or neglect incident contained in the records;

2 (e) a child named in the records who was allegedly abused or neglected or the child's legal guardian
3 or legal representative, including the child's guardian ad litem or attorney or a special advocate appointed
4 by the court to represent a child in a pending case;

5 (f) the state protection and advocacy program as authorized by 42 U.S.C. 6042(a)(2)(B);

6 (g) approved foster and adoptive parents who are or will be providing care for a child;

7 (h) a person about whom a report has been made and that person's attorney, with respect to the
8 relevant records pertaining to that person only and without disclosing the identity of the reporter or any
9 other person whose safety may be endangered;

10 (i) an agency, including a probation or parole agency, that is legally responsible for the supervision
11 of an alleged perpetrator of child abuse or neglect;

12 (j) a person, agency, or organization that is engaged in a bona fide research or evaluation project
13 and that is authorized by the department to conduct the research or evaluation;

14 ~~(k)~~ (k) the members of an interdisciplinary child protective team authorized under 41-3-108 for the
15 purposes of assessing the needs of the child and family, formulating a treatment plan, and monitoring the
16 plan;

17 ~~(l)~~ (l) the coroner or medical examiner when determining the cause of death of a child;

18 (m) a child fatality review team recognized by the department;

19 (n) a department or agency investigating an applicant for a license or registration that is required
20 to operate a youth care facility, day-care facility, or child-placing agency if the investigation is based on a
21 substantiated report and the applicant is notified of the investigation;

22 (o) a person or entity who is carrying out background, employment-related, or volunteer-related
23 screening of current or prospective employees or volunteers who have or may have unsupervised contact
24 with children through employment or volunteer activities. Disclosure under this subsection (o) is limited
25 to information that indicates a risk to children posed by the person about whom the information is sought,
26 as determined by the department.

27 (p) the news media if disclosure is limited to confirmation of factual information regarding how the
28 case was handled and if disclosure does not violate the privacy rights of the child or the child's parent or
29 guardian as determined by the department;

30 ~~(q)~~ (q) an employee of the department or other state agency if disclosure of the records is necessary

1 for administration of programs designed to benefit the child;

2 ~~((r))~~ an agency of an Indian tribe or the relatives of an Indian child if disclosure of the records is
3 necessary to meet requirements of the federal Indian Child Welfare Act;

4 ~~((s))~~ a youth probation officer who is working in an official capacity with the child who is the
5 subject of a report in the records;

6 ~~((t))~~ a county attorney ~~or~~, peace officer, or attorney who is hired by or represents the department,
7 if disclosure is necessary for the investigation, defense, or prosecution of a case involving child abuse or
8 neglect;

9 ~~((u))~~ a foster care review committee established under 41-3-1115 or, when applicable, a local
10 citizen review board established under Title 41, chapter 3, part 10;

11 ~~((v))~~ a school employee participating in an interview of a child by a social worker, county
12 attorney, or peace officer as provided in 41-3-202;

13 ~~((w))~~ a member of a county interdisciplinary child information team formed under the provisions
14 of 52-2-211 who is not listed in subsection (3); or

15 ~~((x))~~ members of a local interagency staffing group provided for in 52-2-203; or

16 (y) a member of a youth placement committee formed under the provisions of 41-5-525.

17 (4) A person who is authorized to receive records under this section shall maintain the
18 confidentiality of the records and may not disclose information in the records to anyone other than the
19 persons described in subsection (3)(a).

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

22

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

24 **"41-3-401. Abuse, and neglect, and dependency petitions.** (1) The county attorney, attorney
25 general, or an attorney hired by the county ~~welfare department or office of human services shall be~~ is
26 responsible for filing all petitions alleging abuse, or neglect, or dependency. The county attorney, ~~or the~~
27 attorney general, or an attorney hired by the ~~county welfare department or office of human services~~
28 department with the written consent of the county attorney or the attorney general, may require all state,
29 county, and municipal agencies, including law enforcement agencies, to conduct ~~such~~ the investigations
30 and furnish ~~such~~ reports ~~as~~ that may be necessary.

1 (2) Upon receipt of a petition, the court shall set a date for an adjudicatory hearing on the petition.
2 ~~Such~~ The petitions ~~shall~~ must be given preference by the court in setting hearing dates.

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

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

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

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

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

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

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

21 (a) state the nature of the alleged abuse, ~~or neglect, or dependency~~;

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

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

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

27 (a) temporary investigative authority and protective services;

28 (b) temporary legal custody;

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

1 (d) any combination of the ~~above~~ provisions of subsections (10)(a) through (10)(c) or such any other
 2 relief ~~as~~ that may be required for the best interest of the youth.

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

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

6
 7 **Section 12.** Section 41-3-402, MCA, is amended to read:

8 **"41-3-402. Petition for temporary investigative authority and protective services.** (1) In ~~cases~~
 9 ~~where~~ a case in which it appears that a youth is abused or neglected or is in danger of being abused or
 10 neglected, the county attorney, the attorney general, or an attorney hired by the county ~~welfare department~~
 11 ~~or office of human services~~ may file a petition for temporary investigative authority and protective services.

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

15 (3) The petition for temporary investigative authority and protective services ~~shall~~ must be
 16 supported by an affidavit signed by the county attorney, the attorney general, or an attorney hired by the
 17 county ~~welfare department or office of human services~~ or must be supported by a department of family
 18 ~~services~~ report stating in detail the facts upon which the request is based."

19
 20 **Section 13.** Section 41-3-403, MCA, is amended to read:

21 **"41-3-403. Order for immediate protection of youth.** (1) (a) Upon the filing of a petition for
 22 temporary investigative authority and protective services, the court may issue an order granting relief that
 23 may be required for the immediate protection of the youth.

24 (b) The order, along with the petition and supporting documents, must be served by a peace officer
 25 or a representative of the department on the person or persons named in the order. When the youth is
 26 placed in a medical facility or protective facility, the department shall notify the parents or parent, guardian,
 27 or other person having legal custody of the youth, at the time the placement is made or as soon after
 28 placement as possible.

29 (c) The order must require the person served to comply immediately with the terms of the order
 30 or to appear before the court issuing the order on the date specified and show cause why the person has

1 not complied with the order. The show cause hearing must be conducted within 20 days of the issuance
2 of the order by the judge or a master appointed by the judge. The person filing the petition has the burden
3 of presenting evidence establishing probable cause for the issuance of the order. Except as otherwise
4 provided in this part, the rules of civil procedure apply. Hearsay evidence of statements made by the
5 affected youth is admissible at the hearing or at a contested case proceeding held pursuant to Title 2,
6 chapter 4, part 6, that results from adverse licensing action taken by the department.

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

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

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

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

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

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

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

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

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

25

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

27 **"41-3-404. Adjudicatory hearing -- temporary disposition.** (1) In the adjudicatory hearing on a
28 petition under 41-3-401, the court shall determine whether the youth is a youth in need of care and
29 ascertain, as far as possible, the cause.

30 (2) The court shall hear evidence regarding the residence of the youth, the whereabouts of the

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

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

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

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

12

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

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

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

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

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

22 (i) the department;

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

26 (iii) a relative or other individual who, after study by ~~a social service~~ the department or a licensed
 27 child-placing agency designated by the court, is found by the court to be qualified to receive and care for
 28 the youth;

29 (d) order any party to the action to do what is necessary to give effect to the final disposition,
 30 including undertaking medical and psychological evaluations, treatment, and counseling that does not

1 require an expenditure of money by the department unless the department is notified and a court hearing
2 is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all
3 family, insurance, and other resources have been examined.

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

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

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

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

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

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

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

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

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

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

3 (d) An alternative arrangement must:

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

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

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

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

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

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

16

17 **Section 16.** Section 41-3-408, MCA, is amended to read:

18 **"41-3-408. Limited emancipation.** (1) The court, ~~after the dispositional hearing provided for in~~
19 ~~41-3-406,~~ may, upon the request of a youth who is 16 years of age or older, the youth's parent, or the
20 department, enter an order granting limited emancipation to the youth.

21 (2) Limited emancipation may be granted only if the court has found:

22 (a) that limited emancipation is in the youth's best interests;

23 (b) that the youth desires limited emancipation;

24 (c) that there exists no public interest compelling denial of limited emancipation;

25 (d) that the youth has, or will reasonably obtain, money sufficient to pay for financial obligations
26 incurred as a result of limited emancipation;

27 (e) that the youth, as shown by prior conduct and preparation, understands and may be expected
28 to responsibly exercise those rights and responsibilities incurred as a result of limited emancipation;

29 (f) that the youth has graduated or will continue to diligently pursue graduation from high school,
30 unless circumstances clearly compel deferral of education; and

1 (g) that, if it is considered necessary by the court, the youth will undergo periodic counseling with
2 an appropriate advisor.

3 (3) An order of limited emancipation must specifically set forth the rights and responsibilities that
4 are being conferred upon the youth. These may include but are not limited to one or more of the following:

5 (a) the right to live independently of in-house supervision;

6 (b) the right to live in housing of the youth's choice;

7 (c) the right to directly receive and expend money to which the youth is entitled and to conduct
8 ~~his~~ the youth's own financial affairs;

9 (d) the right to enter into contractual agreements and incur debts;

10 (e) the right to obtain access to medical treatment and records upon the youth's own authorization;

11 and

12 (f) the right to obtain a license to operate equipment or perform a service.

13 (4) An order of limited emancipation must include a provision requiring that the youth make periodic
14 reports to the court upon terms prescribed by the court.

15 ~~(5) If the court determines that a youth to whom limited emancipation is granted does not have
16 sufficient funds to finance transition to limited emancipated status, the court may order the department to
17 provide such funds, not to exceed \$500, directly to the youth. The youth shall account to the court for
18 the disposition of such funds and shall repay all such money to the department within 1 year of the order
19 of limited emancipation unless the court for cause orders an extension.~~

20 ~~(6)~~ The court, on its own motion or on the motion of the county attorney or any parties to the
21 dispositional hearing, may modify or revoke the order upon a showing that:

22 (a) the youth has committed a material violation of the law;

23 ~~(b) the youth is failing to diligently pursue graduation from high school;~~

24 ~~(c)~~ the youth has violated a condition of the limited emancipation order; or

25 ~~(d)~~ (c) the best interests of the youth are no longer served by limited emancipation; ~~or~~

26 ~~(e) the youth has discontinued periodic counseling with approved advisors.~~

27 ~~(7) The department shall mail a copy of this part to all high school counseling offices."~~

28

29 **Section 17.** Section 41-3-602, MCA, is amended to read:

30 **"41-3-602. Purpose.** This part provides procedures and criteria by which the parent-child legal

1 relationship may be terminated by a court if the relationship is not in the best interest of the child. The
 2 termination of the parent-child legal relationship provided for in this part is to be used in those situations
 3 ~~where~~ when there is a determination that a child is abused, or neglected, ~~or dependent~~, as defined in
 4 41-3-102."

5

6 **Section 18.** Section 41-3-603, MCA, is amended to read:

7 **"41-3-603. Definitions.** As used in this part, unless the context otherwise requires, the following
 8 definitions apply:

9 (1) "Guardian ad litem" means a person appointed to represent a child who is the subject of a
 10 petition for the termination of the parent-child legal relationship.

11 (2) "Parent-child legal relationship" means the legal relationship that exists between a child and ~~his~~
 12 the child's birth or adoptive parents as provided in Title 40, chapter 6, part 2, unless that relationship has
 13 been terminated by competent judicial decree as provided in this part or in 40-6-135 or in 40-6-234.

14 (3) "Treatment plan" means a written agreement between the department or court and the parents
 15 that includes action that must be taken to resolve the condition or conduct of the parents that resulted in
 16 the need for protective services for the child. The treatment plan may involve other parties, if necessary,
 17 for protective services.

18 (4) "Youth in need of care" means a youth who is ~~dependent~~, abused, or neglected as defined in
 19 41-3-102."

20

21 **Section 19.** Section 41-3-607, MCA, is amended to read:

22 **"41-3-607. Petition for termination -- separate hearing -- right to counsel -- no jury trial.** (1) The
 23 termination of a parent-child legal relationship ~~shall~~ may be considered only after the filing of a petition
 24 pursuant to 41-3-401 alleging the factual grounds for termination pursuant to 41-3-609. ~~Termination~~ If
 25 termination of a parent-child legal relationship ~~shall be considered at a dispositional hearing held pursuant~~
 26 ~~to 41-3-406, following or together with an adjudicatory hearing held pursuant to 41-3-404, within 180 days~~
 27 ~~after the filing of the petition~~ is ordered, the court may transfer permanent legal custody of the child, with
 28 the right to consent to the child's adoption, to:

29 (a) the department;

30 (b) a licensed child-placing agency; or

1 (c) another individual who has been approved by the department and has received consent for the
 2 transfer of custody from the department or agency that has custody of the child.

3 (2) After ~~the county attorney, attorney general, or an attorney hired by the county welfare~~
 4 ~~department or office of human services files~~ a petition for termination of a parent-child relationship is filed
 5 ~~pursuant to this part~~, parents ~~shall~~ must be advised of the right to counsel, and counsel ~~shall~~ must be
 6 appointed in accordance with 41-3-401(12).

7 (3) A guardian ad litem ~~shall~~ must be appointed to represent the child's best interests in any
 8 hearing determining the involuntary termination of the parent-child legal relationship. The guardian ad litem
 9 shall continue to represent the child until the child is returned home or placed in an appropriate permanent
 10 placement. If a respondent parent is a minor, a guardian ad litem must be appointed to serve the minor
 11 parent in addition to any counsel requested by the parent.

12 (4) There is no right to a jury trial at proceedings held to consider the termination of a parent-child
 13 legal relationship."
 14

15 **Section 20.** Section 41-3-609, MCA, is amended to read:

16 **"41-3-609. Criteria for termination.** (1) The court may order a termination of the parent-child legal
 17 relationship upon a finding that any of the following circumstances exist:

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

19 (b) the child has been abandoned by ~~his~~ the parents as set forth in 41-3-102~~(8)(d)~~(7)(d);

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

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

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

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

28 (2) In determining whether the conduct or condition of the parents is unlikely to change within a
 29 reasonable time, the court must enter a finding that continuation of the parent-child legal relationship will
 30 likely result in continued abuse or neglect or that the conduct or the condition of the parents renders the

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

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

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

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

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

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

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

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

15 (3) In considering any of the factors in subsection (2) in terminating the parent-child relationship,
16 the court shall give primary consideration to the physical, mental, and emotional conditions and needs of
17 the child. The court shall review and, if necessary, order an evaluation of the child's or the parent's
18 physical, mental, and emotional conditions.

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

21 (a) two medical doctors submit testimony that the parent is so severely mentally ill that ~~such~~
22 ~~person~~ the parent cannot assume the role of parent;

23 (b) the parent is incarcerated for more than 1 year and ~~such~~ a treatment plan is not practical
24 considering the incarceration; or

25 (c) the death of a sibling caused by abuse or neglect by the parent has occurred."
26

27 **Section 21.** Section 41-3-611, MCA, is amended to read:

28 **"41-3-611. Effect of decree.** (1) An order for the termination of the parent-child legal relationship
29 divests the child and the parents of all legal rights, powers, immunities, duties, and obligations with respect
30 to each other as provided in Title 40, chapter 6, part 2, and Title 41, chapter 3, part 2, except the right

1 of the child to inherit from the parent.

2 (2) An order or decree entered pursuant to this part may not disentitle a child to any benefit due
3 ~~him~~ the child from any third person, including but not limited to any Indian tribe, agency, state, or the
4 United States.

5 (3) After the termination of a parent-child legal relationship, the former parent is neither entitled
6 to any notice of proceedings for the adoption of the child nor has any right to object to the adoption or to
7 participate in any other placement proceedings held pursuant to 41-3-610."

8

9 **Section 22.** Section 52-1-103, MCA, is amended to read:

10 "**52-1-103. Powers and duties of department.** The department shall:

11 (1) administer and supervise all forms of child and adult protective services;

12 (2) act as the lead agency in coordinating and planning services to children with multiagency
13 service needs;

14 (3) provide funding for and place youth alleged or adjudicated to be delinquent or in need of
15 supervision who are referred or committed to the department;

16 (4) provide the following functions, as necessary, for youth in need of care:

17 (a) intake, investigation, case management, and client supervision;

18 (b) placement in youth care facilities;

19 (c) contracting for necessary services;

20 (d) protective services day care; and

21 (e) adoption;

22 (5) administer youth correctional facilities;

23 (6) provide supervision, care, and control of youth released from a state youth correctional facility;

24 (7) register or license youth care facilities, child-placing agencies, day-care facilities, community
25 homes for developmentally disabled persons, community homes for severely disabled persons, and adult
26 foster care facilities;

27 (8) act as lead agency in implementing and coordinating child-care programs and services under
28 the Montana Child Care Act;

29 (9) administer interstate compacts for children and delinquent youth;

30 (10) (a) administer child abuse prevention services funded through child abuse grants and the

1 Montana children's trust fund provided for in Title 41, chapter 3, part 7; and

2 (b) administer elder abuse prevention services;

3 (11) (a) make a written evaluation of each plan developed by the local family services advisory
4 councils, as provided in 52-1-203, indicating those portions of each plan that will be implemented by the
5 department, those portions that will not be implemented, and the reasons for not implementing those
6 portions;

7 (b) develop a statewide youth services and resources plan that takes into consideration local needs
8 as reflected in plans developed by the local family services advisory councils;

9 (12) administer services to the aged;

10 (13) provide consultant services to:

11 (a) facilities providing care for needy, indigent, handicapped, or dependent adults; and

12 (b) youth care facilities;

13 (14) utilize at maximum efficiency the resources of state government in a coordinated effort to:

14 (a) provide for children in need of temporary protection or correctional services; and

15 (b) coordinate and apply the principles of modern institutional administration to the institutions in
16 the department;

17 (15) subject to the functions of the department of administration, lease or purchase lands for use
18 by institutions in the department and classify those lands to determine which are of such character as to
19 be most profitably used for agricultural purposes, taking into consideration:

20 (a) the needs of all institutions in the department for the food products that can be grown or
21 produced on the lands; and

22 (b) the relative value of agricultural programs in the treatment or rehabilitation of the persons
23 confined in the institutions in the department;

24 (16) utilize the staff and services of other state agencies and units of the Montana university
25 system, within their respective statutory functions, to carry out its functions under this title;

26 (17) propose programs with specific goals and objectives to the legislature to meet the projected
27 long-range needs of institutions in the department, including programs and facilities for the diagnosis,
28 treatment, care, and aftercare of persons placed in institutions in the department;

29 (18) contract, as necessary, with the county board of welfare for administration of child and adult
30 protection services for that county; and

1 (19) adopt rules necessary to carry out the purposes of 41-3-1126, 41-5-527 through 41-5-529,
2 and this chapter."

3
4 **Section 23.** Section 52-2-101, MCA, is amended to read:

5 **"52-2-101. Definitions.** As used in this part, the following definitions apply:

6 (1) "Child welfare services" means the establishing, extending, and strengthening of child welfare
7 services, especially in predominantly rural areas, for the protection and care of abused, ~~dependent,~~ or
8 neglected children.

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

10 (3) (a) "Emotionally disturbed child" means a child determined by a psychologist, psychiatrist,
11 licensed social worker, or special education child study team (established under rules adopted by the
12 superintendent of public instruction to implement Title 20, chapter 7, part 4) to have:

13 (i) an identifiable mental health problem as identified in a nationally recognized classification system
14 or as defined in 20-7-401(8); and

15 (ii) a substantial impairment, evident for a reasonable length of time, that is characterized by a
16 dysfunction in any of the following areas:

17 (A) relationships;

18 (B) behavior;

19 (C) cognition; or

20 (D) education.

21 (b) The nationally recognized classification system referred to in subsection (3)(a)(i) must be one
22 recognized by rules established by the department.

23 (4) "Public assistance" or "assistance" means any type of monetary or other assistance furnished
24 under this title to a person by a state or county agency, regardless of the original source of the assistance."
25

26 **Section 24.** Section 52-2-112, MCA, is amended to read:

27 **"52-2-112. Duty to strengthen child welfare services.** The department shall make provision for
28 establishing and strengthening child welfare services, including protective services, and for care of children
29 in registered or licensed family foster homes, child care agencies, group homes, or treatment facilities.
30 Payment provided under this section is made under the provisions of 41-3-1122 and 41-3-1115."

1 **Section 25.** Section 52-2-113, MCA, is amended to read:

2 **"52-2-113. Child rehabilitation -- duties of department.** The department shall:

3 (1) enforce all laws pertaining to children and take the initiative in all matters involving the interest
4 of abused, ~~or dependent, and~~ neglected children;

5 (2) use funds allocated or appropriated to the department for the purpose of providing for the
6 special medical or material needs of developmentally disabled or physically handicapped children who are
7 eligible for department programs;

8 (3) cooperate for the purposes ~~hereof~~ of this part with all reputable child-helping and child-placing
9 agencies; and

10 (4) inspect and register or license youth care facilities, child-placing agencies, and adoption
11 agencies."

12

13 **Section 26.** Section 52-2-211, MCA, is amended to read:

14 **"52-2-211. County interdisciplinary child information team.** (1) The following persons and
15 agencies operating within a county may by written agreement form a county interdisciplinary child
16 information team:

17 (a) the youth court;

18 (b) the county attorney;

19 (c) the department of family services;

20 (d) the county superintendent of schools;

21 (e) the sheriff;

22 (f) the chief of any police force; and

23 (g) the superintendents of public school districts.

24 (2) The persons and agencies signing a written agreement under subsection (1) may by majority
25 vote allow the following persons to sign the written agreement and join the information team:

26 (a) physicians, psychologists, psychiatrists, nurses, and other providers of medical and mental
27 health care;

28 (b) entities operating private elementary and secondary schools;

29 (c) attorneys; and

30 (d) a person or entity that has or may have a legitimate interest in one or more children that the

1 information team will serve.

2 (3) The members of the information team or their designees may form one or more auxiliary teams
3 for the purpose of providing service to a single child, a group of children, or children with a particular type
4 of problem or for any other purpose. Auxiliary teams are subject to the written agreement.

5 (4) The purpose of the team and written agreement is to facilitate the exchange and sharing of
6 information that one or more team members may be able to use in serving a child in the course of their
7 professions and occupations, including but not limited to abused, neglected, ~~dependent~~, and delinquent
8 children and youth in need of supervision. Information regarding a child that a team member supplies to
9 other team members or that is disseminated to a team member under 41-3-205, 41-5-602, or 41-5-603
10 may not be disseminated beyond the team.

11 (5) The terms of the written agreement must provide for the rules under which the team will
12 operate, the method by which information will be shared, distributed, and managed, and any other matters
13 necessary to the purpose and functions of the team.”

14

15 NEW SECTION. **Section 27. Repealer.** Section 41-3-1112, MCA, is repealed.

16

17 NEW SECTION. **Section 28. Effective date.** [This act] is effective on passage and approval.

18

-END-

1 HOUSE BILL NO. 186

2 INTRODUCED BY MARTINEZ

3 BY REQUEST OF THE DEPARTMENT OF FAMILY SERVICES

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATED TO CHILD
6 PROTECTIVE SERVICES; DELETING REFERENCES TO "DEPENDENT YOUTH"; ADDING A CHILD'S
7 GUARDIAN OR ADVOCATE AS A MANDATORY REPORTERS REPORTER OF SUSPECTED CHILD ABUSE
8 OR NEGLECT; ADDING PERSONS TO WHOM CONFIDENTIAL RECORDS MAY BE DISCLOSED; PROVIDING
9 FOR LIMITED IMMUNITY FOR A PERSON WHO PROVIDES OR USES EMPLOYMENT-RELATED CHILD
10 ABUSE INFORMATION; CLARIFYING THAT A CHILD'S HEARSAY STATEMENTS MAY BE USED AT A
11 CONTESTED HEARING; CLARIFYING PROVISIONS REGARDING POTENTIAL COURT-ORDERED
12 PLACEMENTS; REVISING LIMITED EMANCIPATION OPTIONS FOR YOUTH; LIMITING ACCESS OF
13 RECORDS TO PARENTS WHOSE PARENTAL RIGHTS HAVE BEEN TERMINATED; CLARIFYING THAT
14 CERTAIN FACILITIES MAY BE REGISTERED INSTEAD OF LICENSED; AMENDING SECTIONS 20-5-321,
15 20-7-422, 40-6-125, 40-6-126, 40-8-111, 41-3-102, 41-3-103, 41-3-201, 41-3-203, 41-3-205, 41-3-401,
16 41-3-402, 41-3-403, 41-3-404, 41-3-406, 41-3-408, 41-3-602, 41-3-603, 41-3-607, 41-3-609, 41-3-611,
17 52-1-103, 52-2-101, 52-2-112, 52-2-113, AND 52-2-211, MCA; REPEALING SECTION 41-3-1112, MCA;
18 AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

19
20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 22, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration HB 186 (third reading copy -- blue), respectfully report that HB 186 be amended as follows and as so amended be concurred in.

Signed: 
Senator Bruce Craypen, Chair

That such amendments read:

1. Page 9, line 30.

Following: "ad litem"

Insert: "or a court-appointed advocate"

2. Page 11, line 4.

Page 11, line 5.

Following: "DEPARTMENT"

Strike: "BY INDEPENDENT CORROBORATION"

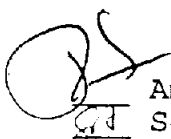
3. Page 12, line 24.

Following: "activities."

Insert: "A request for information under this subsection (o) must be made in writing."

-END-

HB 186


Amd. Coord.
Sec. of Senate


Senator Carrying Bill

SENATE

1 HOUSE BILL NO. 186

2 INTRODUCED BY KASTEN

3 BY REQUEST OF THE DEPARTMENT OF FAMILY SERVICES
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATED TO CHILD
6 PROTECTIVE SERVICES; DELETING REFERENCES TO "DEPENDENT YOUTH"; ADDING A CHILD'S
7 GUARDIAN OR ADVOCATE AS A MANDATORY ~~REPORTERS~~ REPORTER OF SUSPECTED CHILD ABUSE
8 OR NEGLECT; ADDING PERSONS TO WHOM CONFIDENTIAL RECORDS MAY BE DISCLOSED; PROVIDING
9 FOR LIMITED IMMUNITY FOR A PERSON WHO PROVIDES OR USES EMPLOYMENT-RELATED CHILD
10 ABUSE INFORMATION; CLARIFYING THAT A CHILD'S HEARSAY STATEMENTS MAY BE USED AT A
11 CONTESTED HEARING; CLARIFYING PROVISIONS REGARDING POTENTIAL COURT-ORDERED
12 PLACEMENTS; REVISING LIMITED EMANCIPATION OPTIONS FOR YOUTH; LIMITING ACCESS OF
13 RECORDS TO PARENTS WHOSE PARENTAL RIGHTS HAVE BEEN TERMINATED; CLARIFYING THAT
14 CERTAIN FACILITIES MAY BE REGISTERED INSTEAD OF LICENSED; AMENDING SECTIONS 20-5-321,
15 20-7-422, 40-6-125, 40-6-126, 40-8-111, 41-3-102, 41-3-103, 41-3-201, 41-3-203, 41-3-205, 41-3-401,
16 41-3-402, 41-3-403, 41-3-404, 41-3-406, 41-3-408, 41-3-602, 41-3-603, 41-3-607, 41-3-609, 41-3-611,
17 52-1-103, 52-2-101, 52-2-112, 52-2-113, AND 52-2-211, MCA; REPEALING SECTION 41-3-1112, MCA;
18 AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

19
20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:21
22 **Section 1.** Section 20-5-321, MCA, is amended to read:

23 **"20-5-321. Attendance with mandatory approval -- tuition and transportation.** (1) An
24 out-of-district attendance agreement that allows a child to enroll in and attend a school in a Montana school
25 district that is outside of the child's district of residence or in a public school district of a state or province
26 that is adjacent to the county of the child's residence is mandatory whenever:

27 (a) the child resides closer to the school that the child wishes to attend and more than 3 miles from
28 the school the child would attend in the resident district and:

29 (i) the resident district does not provide transportation; or

30 (ii) the district of residence provides transportation and is not within the same county as the child's

1 school district of choice;

2 (b) the child resides in a location where, due to road or geographic conditions, it is impractical to
3 attend the school nearest the child's residence;

4 (c) the child is a member of a family that is required to send another child outside of the elementary
5 district to attend high school and the child of elementary age may more conveniently attend an elementary
6 school where the high school is located, provided that the child resides more than 3 miles from an
7 elementary school in the resident district or that the parent is required to move to the elementary district
8 where the high school is located to enroll another child in high school;

9 (d) the child has been adjudicated by a court of competent jurisdiction to be an abused, or
10 neglected, ~~or dependent~~ child, as defined in 41-3-102, or a youth in need of supervision or a delinquent
11 youth, as defined in 41-5-103, and has been placed in a licensed youth care facility that is approved by the
12 department of family services and, as a result of the placement, is required to attend school outside of the
13 child's district of residence; or

14 (e) the child is required to attend school outside of the district of residence as the result of a
15 placement by a state agency or parent in a group home licensed by the state or an order of a court of
16 competent jurisdiction.

17 (2) (a) Whenever a parent or guardian of a child, an agency of the state, or a court wishes to have
18 a child attend a school under the provisions of this section, the parent or guardian, agency, or court shall
19 complete an out-of-district attendance agreement in consultation with an appropriate official of the district
20 the child will attend.

21 (b) The attendance agreement must set forth the financial obligations, if any, for costs incurred for
22 tuition and transportation as provided in 20-5-323 and Title 20, chapter 10.

23 (c) The trustees of the district of choice may waive any or all of the tuition rate, but any waiver
24 must be applied equally to all students.

25 (3) Except as provided in subsection (4), the trustees of the resident district and the trustees of
26 the district of choice shall approve the out-of-district attendance agreement and notify the county
27 superintendent of schools of the county of the child's residence of the approval of the agreement within
28 10 days. The county superintendent shall approve the agreement for payment under 20-5-324(5).

29 (4) Unless the child is a child with disabilities who resides in the district, the trustees of the district
30 where the school to be attended is located may disapprove an out-of-district attendance agreement

1 whenever they find that, due to insufficient room and overcrowding, the accreditation of the school would
2 be adversely affected by the acceptance of the child."

3

4 **Section 2.** Section 20-7-422, MCA, is amended to read:

5 **"20-7-422. Out-of-state placement of children with disabilities -- payment of costs.** (1) In
6 accordance with a placement made by persons determining an individualized education program for a child
7 with disabilities, the trustees of a district may arrange for the attendance of the child in a special education
8 program offered outside of the state of Montana.

9 (2) Except as provided in subsection (3), when the persons determining the individualized education
10 program of a child with disabilities who is in need of special education recommend placement in an
11 out-of-state private residential facility, the trustees of the district of residence shall negotiate the amount
12 and manner of payment of all costs associated with the placement.

13 (3) Whenever a child with disabilities who is in need of special education and related services is
14 adjudicated by a court of competent jurisdiction to be an abused, or neglected, ~~or dependent~~ child as
15 defined in 41-3-102 or a youth in need of supervision or delinquent youth as defined in 41-5-103 and is
16 placed by a state agency in an out-of-state private residential facility, the superintendent of public
17 instruction shall negotiate with:

18 (a) the provider for the amount and manner of payment of education fees consistent with the
19 individualized education program determined for the child under the provisions of 20-7-402; and

20 (b) the state agency that makes the placement for the portion of the placement costs that
21 represents the child's education program.

22 (4) Payments for a child with disabilities as negotiated in subsection (3) must be paid by the
23 superintendent of public instruction from the state special education appropriation."

24

25 **Section 3.** Section 40-6-125, MCA, is amended to read:

26 **"40-6-125. Children born out of wedlock -- relinquishment -- consent.** (1) If the mother of a child
27 born out of wedlock proposes to relinquish the child for adoption and the relinquishment or consent of the
28 birth father cannot be obtained, the child may not be placed for adoption until the parental rights of the
29 father are terminated by the court as provided in this part, by the court pursuant to Title 41, chapter 3, or
30 by a court of competent jurisdiction in another state or country.

1 (2) Pending the termination or other disposition of the rights of the father of the child born out of
 2 wedlock, the mother may execute a relinquishment, in accordance with 40-6-135(2) through (5),
 3 terminating ~~her~~ the mother's rights to the child. If the mother relinquishes the child, the agency of the state
 4 of Montana, a licensed adoption agency, or the person to whom the child is relinquished may file a petition
 5 under this part or a petition of ~~dependency or~~ neglect pursuant to Title 41, chapter 3. Pending disposition
 6 of the petition, the court may enter an order authorizing temporary care of the child.

7 (3) At the request of the mother, ~~her~~ the mother's execution of a relinquishment must be delayed
 8 until after the court has determined the identity of the father and has awarded custody of the child to the
 9 father or terminated ~~his~~ the father's rights under this part."

10
 11 **Section 4.** Section 40-6-126, MCA, is amended to read:

12 **"40-6-126. Notice of intent to claim paternity.** (1) Before the birth of a child born out of wedlock,
 13 a person claiming under oath to be the father of the child may file a verified notice of intent to claim
 14 paternity with the district court in any county of this state. The form of the notice ~~shall~~ must be prescribed
 15 by the director of the department of health and environmental sciences and supplied to the clerks of the
 16 district courts. The notice ~~shall~~ must include the claimant's address. On the next business day after
 17 receipt of the notice, the court shall transmit the notice to the records and statistics bureau of the
 18 department of health and environmental sciences. If the mother's address is stated on the notice, the
 19 records and statistics bureau shall send a copy of the notice by first-class mail to the mother of the child
 20 at the stated address.

21 (2) A person filing a notice of intent to claim paternity or acknowledging paternity in accordance
 22 with 40-6-105 ~~shall be~~ is presumed to be the father of the child for purposes of this part unless the mother
 23 denies that the claimant is the father. ~~Such~~ The notice is admissible in a paternity proceeding under
 24 40-6-107 and creates a rebuttable presumption as to the paternity of that child for purposes of that section.
 25 ~~Such~~ The notice creates a rebuttable presumption as to paternity of the child for purposes of a ~~dependency~~
 26 ~~or~~ neglect proceeding under Title 41, chapter 3.

27 (3) A person who makes a timely filing of notice of intent to claim paternity or who formally
 28 acknowledges paternity under 40-6-105 is entitled to notice of any hearing to determine the identity of the
 29 father of the child and any hearing to determine or terminate ~~his~~ the person's paternal rights to the child."
 30

1 **Section 5.** Section 40-8-111, MCA, is amended to read:

2 **"40-8-111. Consent required for adoption.** (1) An adoption of a child may be decreed when there
3 have been filed written consents to adoption executed by:

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

6 (i) adjudged guilty by a court of competent jurisdiction of assault on the child, as provided in
7 45-5-201; endangering the welfare of children, concerning the child, as provided in 45-5-622; or sexual
8 abuse of children, toward the child, as provided in 45-5-625;

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

11 (iii) who has, in the state of Montana or in any other state of the United States, willfully abandoned
12 the child, as defined in 41-3-102~~(9)(d)~~, (7)(d);

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

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

20 (vi) whose parental rights have been judicially terminated;

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

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

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

1 petition.

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

5

6 **Section 6.** Section 41-3-102, MCA, is amended to read:

7 **"41-3-102. Definitions.** As used in this chapter, the following definitions apply:

8 (1) "A person responsible for a child's welfare" means:

9 (a) the child's parent, guardian, or foster parent;

10 (b) a staff person providing care in a day-care facility;

11 (c) an employee of a public or private residential institution, facility, home, or agency; or

12 (d) any other person legally responsible for the child's welfare in a residential setting.

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

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

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

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

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

25 (i) harm to a child's health or welfare, as defined in subsection ~~(8)~~ (7); or

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

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

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

30 (7) ~~"Dependent youth" means a youth:~~

1 ~~(a) who is abandoned;~~

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

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

4 ~~(d) who is destitute;~~

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

6 ~~(f) whose parent or parents have voluntarily relinquished custody and whose legal custody has~~
 7 ~~been transferred to a licensed agency.~~

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

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

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

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

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

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

22 ~~(9)(8)~~ "Limited emancipation" means a status conferred on a ~~dependent~~ youth by a court after a
 23 dispositional hearing in accordance with 41-3-406 under which the youth is entitled to exercise some but
 24 not all of the rights and responsibilities of a person who is 18 years of age or older.

25 ~~(10)(9)~~ "Mental injury" means an identifiable and substantial impairment of the child's intellectual
 26 or psychological functioning.

27 (10) "Parent" means a biological or adoptive parent or stepparent.

28 (11) "Physical injury" means death, permanent or temporary disfigurement, or impairment of any
 29 bodily organ or function ~~and~~. The term includes death, permanent or temporary disfigurement, and
 30 impairment of a bodily organ or function sustained as a result of excessive corporal punishment.

1 (12) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent,
2 indecent exposure, deviate sexual conduct, or incest, as described in Title 45, chapter 5, part 5.

3 (13) "Sexual exploitation" means allowing, permitting, or encouraging a child to engage in a
4 prostitution offense, as described in 45-5-601 through 45-5-603, or allowing, permitting, or encouraging
5 sexual abuse of children as described in 45-5-625.

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

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

10 (16) "Withholding of medically indicated treatment" means the failure to respond to an infant's
11 life-threatening conditions by providing treatment (including appropriate nutrition, hydration, and
12 medication) that, in the treating physician's or physicians' reasonable medical judgment, will be most likely
13 to be effective in ameliorating or correcting the conditions. However, the term does not include the failure
14 to provide treatment (other than appropriate nutrition, hydration, or medication) to an infant when, in the
15 treating physician's or physicians' reasonable medical judgment:

16 (a) the infant is chronically and irreversibly comatose;

17 (b) the provision of treatment would:

18 (i) merely prolong dying;

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

20 (iii) otherwise be futile in terms of the survival of the infant; or

21 (c) the provision of treatment would be virtually futile in terms of the survival of the infant and the
22 treatment itself under the circumstances would be inhumane. For purposes of this subsection (16), "infant"
23 means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously
24 hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The
25 reference to less than 1 year of age may not be construed to imply that treatment should be changed or
26 discontinued when an infant reaches 1 year of age or to affect or limit any existing protections available
27 under state laws regarding medical neglect of children over 1 year of age.

28 (17) "Youth in need of care" means a youth who is ~~dependent~~, abused, or neglected as defined in
29 this section."
30

1 **Section 7.** Section 41-3-103, MCA, is amended to read:

2 **"41-3-103. Jurisdiction and venue.** (1) In all matters arising under this chapter, the youth court
3 ~~shall have~~ has concurrent jurisdiction with the district court over:

4 (a) ~~all youths~~ a youth who ~~are~~ is within the state of Montana for any purpose;

5 (b) ~~any~~ a youth or other person subject to this chapter who under a temporary or permanent order
6 of the court has voluntarily or involuntarily ~~removed himself from~~ left the state or the jurisdiction of the
7 court; or

8 (c) ~~any~~ a person who is alleged to have abused, or neglected, ~~or caused the dependency of~~ a youth
9 who is in the state of Montana for any purpose.

10 (2) Venue ~~shall be~~ is determined pursuant to 41-5-204."

11

12 **Section 8.** Section 41-3-201, MCA, is amended to read:

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

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

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

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

23 (c) Christian Science practitioner and religious healers;

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

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

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

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

29 (h) clergy; or

30 (i) ~~an advocate or~~ A guardian ad litem OR A COURT-APPOINTED ADVOCATE who is authorized

1 to investigate a report of alleged abuse or neglect.

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

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

6 (b) A clergyperson or priest is not required to make a report under this section if:

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

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

11 (iii) the person who made the statement or confession does not consent to the disclosure by the
12 clergyperson or priest.

13 (c) A clergyperson or priest is not required to make a report under this section if the communication
14 is required to be confidential by canon law, church doctrine, or established church practice.

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

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

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

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

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

25

26 **Section 9.** Section 41-3-203, MCA, is amended to read:

27 "**41-3-203. Immunity from liability.** (1) ~~Anyone A police officer, department employee, or county~~
28 ~~attorney~~ ANYONE investigating or reporting any incident of child abuse or neglect under 41-3-201 or
29 41-3-202, participating in resulting judicial proceedings, or furnishing hospital or medical records as required
30 by 41-3-202 is immune from any liability, civil or criminal, that might otherwise be incurred or imposed,

1 unless the person WAS GROSSLY NEGLIGENT OR acted in bad faith or with malicious purpose. ~~There is~~
 2 ~~a rebuttable presumption that the person acted in good faith and with no malicious purpose.~~

3 (2) A person who provides information pursuant to 41-3-201 THAT IS SUBSTANTIATED BY THE
 4 DEPARTMENT BY INDEPENDENT CORROBORATION or a person who uses information received pursuant
 5 to 41-3-205 THAT IS SUBSTANTIATED BY THE DEPARTMENT BY INDEPENDENT CORROBORATION to
 6 refuse to hire or to discharge a prospective or current employee, volunteer, or other person who through
 7 employment or volunteer activities may have unsupervised contact with children is immune from civil
 8 liability unless the person acted in bad faith or with malicious purpose."

9

10 **Section 10.** Section 41-3-205, MCA, is amended to read:

11 **"41-3-205. Confidentiality -- disclosure exceptions.** (1) The case records of the department of
 12 social and rehabilitation services, the department of family services and its local affiliate, the county welfare
 13 department, the county attorney, and the court concerning actions taken under this chapter and all records
 14 concerning reports of child abuse and neglect must be kept confidential except as provided by this section.
 15 ~~Any~~ A person who permits or encourages the unauthorized dissemination of their contents is guilty of a
 16 misdemeanor.

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

20 (3) Records may also be disclosed to the following persons or entities in this state ~~or~~ and any other
 21 state or country:

22 (a) a department, agency, or organization, including a federal agencies agency, military enclave,
 23 or Indian tribal organization, that is legally authorized to receive, inspect, or investigate reports of child
 24 abuse or neglect and that otherwise meets the disclosure criteria contained in this section;

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

27 (c) a ~~licensed~~ health or mental health professional who is treating the family or child who is the
 28 subject of a report in the records;

29 (d) a parent or guardian of the child who is the subject of a report in the records or other person
 30 responsible for the child's welfare, without disclosure of the identity of any person who reported or

1 provided information on the alleged child abuse or neglect incident contained in the records;

2 (e) a child named in the records who was allegedly abused or neglected or the child's legal guardian
3 or legal representative, including the child's guardian ad litem or attorney or a special advocate appointed
4 by the court to represent a child in a pending case;

5 (f) the state protection and advocacy program as authorized by 42 U.S.C. 6042(a)(2)(B);

6 (g) approved foster and adoptive parents who are or will be providing care for a child;

7 (h) a person about whom a report has been made and that person's attorney, with respect to the
8 relevant records pertaining to that person only and without disclosing the identity of the reporter or any
9 other person whose safety may be endangered;

10 (i) an agency, including a probation or parole agency, that is legally responsible for the supervision
11 of an alleged perpetrator of child abuse or neglect;

12 (j) a person, agency, or organization that is engaged in a bona fide research or evaluation project
13 and that is authorized by the department to conduct the research or evaluation;

14 ~~(k)~~ (k) the members of an interdisciplinary child protective team authorized under 41-3-108 for the
15 purposes of assessing the needs of the child and family, formulating a treatment plan, and monitoring the
16 plan;

17 ~~(l)~~ (l) the coroner or medical examiner when determining the cause of death of a child;

18 (m) a child fatality review team recognized by the department;

19 (n) a department or agency investigating an applicant for a license or registration that is required
20 to operate a youth care facility, day-care facility, or child-placing agency if the investigation is based on a
21 substantiated report and the applicant is notified of the investigation;

22 (o) a person or entity who is carrying out background, employment-related, or volunteer-related
23 screening of current or prospective employees or volunteers who have or may have unsupervised contact
24 with children through employment or volunteer activities. A REQUEST FOR INFORMATION UNDER THIS
25 SUBSECTION (O) MUST BE MADE IN WRITING. Disclosure under this subsection (o) is limited to
26 information that indicates a risk to children posed by the person about whom the information is sought, as
27 determined by the department.

28 (p) the news media if disclosure is limited to confirmation of factual information regarding how the
29 case was handled and if disclosure does not violate the privacy rights of the child or the child's parent or
30 guardian as determined by the department;

1 ~~(h)(q)~~ an employee of the department or other state agency if disclosure of the records is necessary
2 for administration of programs designed to benefit the child;

3 ~~(h)(r)~~ an agency of an Indian tribe or the relatives of an Indian child if disclosure of the records is
4 necessary to meet requirements of the federal Indian Child Welfare Act;

5 ~~(h)(s)~~ a youth probation officer who is working in an official capacity with the child who is the
6 subject of a report in the records;

7 ~~(h)(t)~~ a county attorney ~~or~~ peace officer, or attorney who is hired by or represents the department,
8 if disclosure is necessary for the investigation, defense, or prosecution of a case involving child abuse or
9 neglect;

10 ~~(h)(u)~~ a foster care review committee established under 41-3-1115 or, when applicable, a local
11 citizen review board established under Title 41, chapter 3, part 10;

12 ~~(h)(v)~~ a school employee participating in an interview of a child by a social worker, county
13 attorney, or peace officer as provided in 41-3-202;

14 ~~(h)(w)~~ a member of a county interdisciplinary child information team formed under the provisions
15 of 52-2-211 who is not listed in subsection (3); or

16 ~~(h)(x)~~ members of a local interagency staffing group provided for in 52-2-203; or

17 (y) a member of a youth placement committee formed under the provisions of 41-5-525.

18 (4) A person who is authorized to receive records under this section shall maintain the
19 confidentiality of the records and may not disclose information in the records to anyone other than the
20 persons described in subsection (3)(a).

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

23
24 **Section 11.** Section 41-3-401, MCA, is amended to read:

25 "**41-3-401. Abuse, and neglect, ~~and dependency~~ petitions.** (1) The county attorney, attorney
26 general, or an attorney hired by the county ~~welfare department or office of human services shall be is~~
27 responsible for filing all petitions alleging abuse, or neglect, ~~or dependency.~~ The county attorney, ~~or the~~
28 attorney general, or an attorney hired by the ~~county welfare department or office of human services~~
29 department with the written consent of the county attorney or the attorney general, may require all state,
30 county, and municipal agencies, including law enforcement agencies, to conduct ~~such~~ the investigations

1 and furnish ~~such~~ reports ~~as~~ that may be necessary.

2 (2) Upon receipt of a petition, the court shall set a date for an adjudicatory hearing on the petition.

3 ~~Such~~ The petitions ~~shall~~ must be given preference by the court in setting hearing dates.

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

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

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

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

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

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

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

22 (a) state the nature of the alleged abuse, ~~or~~ neglect, ~~or~~ dependency;

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

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

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

28 (a) temporary investigative authority and protective services;

29 (b) temporary legal custody;

30 (c) termination of the parent-child legal relationship and permanent legal custody with the right to

1 consent to adoption;

2 (d) any combination of the ~~above~~ provisions of subsections (10)(a) through (10)(c) or such any other
3 relief ~~as that~~ may be required for the best interest of the youth.

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

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

7

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

9 **"41-3-402. Petition for temporary investigative authority and protective services.** (1) In ~~cases~~
10 ~~where a case in which~~ it appears that a youth is abused or neglected or is in danger of being abused or
11 neglected, the county attorney, the attorney general, or an attorney hired by the county ~~welfare department~~
12 ~~or office of human services~~ may file a petition for temporary investigative authority and protective services.

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

16 (3) The petition for temporary investigative authority and protective services ~~shall~~ must be
17 supported by an affidavit signed by the county attorney, the attorney general, or an attorney hired by the
18 county ~~welfare department or office of human services~~ or must be supported by a department of family
19 ~~services~~ report stating in detail the facts upon which the request is based."

20

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

22 **"41-3-403. Order for immediate protection of youth.** (1) (a) Upon the filing of a petition for
23 temporary investigative authority and protective services, the court may issue an order granting relief that
24 may be required for the immediate protection of the youth.

25 (b) The order, along with the petition and supporting documents, must be served by a peace officer
26 or a representative of the department on the person or persons named in the order. When the youth is
27 placed in a medical facility or protective facility, the department shall notify the parents or parent, guardian,
28 or other person having legal custody of the youth, at the time the placement is made or as soon after
29 placement as possible.

30 (c) The order must require the person served to comply immediately with the terms of the order

1 or to appear before the court issuing the order on the date specified and show cause why the person has
 2 not complied with the order. The show cause hearing must be conducted within 20 days of the issuance
 3 of the order by the judge or a master appointed by the judge. The person filing the petition has the burden
 4 of presenting evidence establishing probable cause for the issuance of the order. Except as otherwise
 5 provided in this part, the rules of civil procedure apply. Hearsay evidence of statements made by the
 6 affected youth is admissible at the hearing or at a contested case proceeding held pursuant to Title 2,
 7 chapter 4, part 6, that results from adverse licensing action taken by the department.

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

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

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

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

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

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

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

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

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

26
 27 **Section 14.** Section 41-3-404, MCA, is amended to read:

28 **"41-3-404. Adjudicatory hearing -- temporary disposition.** (1) In the adjudicatory hearing on a
 29 petition under 41-3-401, the court shall determine whether the youth is a youth in need of care and
 30 ascertain, as far as possible, the cause.

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

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

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

9 (b) If the court determines that the youth is an abused, or neglected, ~~or dependent~~ child, the court
10 shall set a date for a dispositional hearing to be conducted within 30 days and order any necessary or
11 required investigations. The court may issue a temporary dispositional order pending the dispositional
12 hearing. The temporary dispositional order may provide for any of the forms of relief listed in 41-3-403(2)."
13

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

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

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

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

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

23 (i) the department;

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

27 (iii) a relative or other individual who, after study by ~~a social service~~ the department or a licensed
28 child-placing agency designated by the court, is found by the court to be qualified to receive and care for
29 the youth;

30 (d) order any party to the action to do what is necessary to give effect to the final disposition,

1 including undertaking medical and psychological evaluations, treatment, and counseling that does not
2 require an expenditure of money by the department unless the department is notified and a court hearing
3 is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all
4 family, insurance, and other resources have been examined.

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

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

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

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

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

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

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

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

30 (i) a written determination and explanation by the court of the reasons why the implementation of

1 immediate income withholding is not in the best interests of the child; and

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

4 (d) An alternative arrangement must:

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

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

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

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

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

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

17

18 **Section 16.** Section 41-3-408, MCA, is amended to read:

19 "**41-3-408. Limited emancipation.** (1) The court, ~~after the dispositional hearing provided for in~~
20 ~~41-3-406,~~ may, upon the request of a youth who is 16 years of age or older, the youth's parent, or the
21 department, enter an order granting limited emancipation to the youth.

22 (2) Limited emancipation may be granted only if the court has found:

23 (a) that limited emancipation is in the youth's best interests;

24 (b) that the youth desires limited emancipation;

25 (c) that there exists no public interest compelling denial of limited emancipation;

26 (d) that the youth has, or will reasonably obtain, money sufficient to pay for financial obligations
27 incurred as a result of limited emancipation;

28 (e) that the youth, as shown by prior conduct and preparation, understands and may be expected
29 to responsibly exercise those rights and responsibilities incurred as a result of limited emancipation;

30 (f) that the youth has graduated or will continue to diligently pursue graduation from high school,

1 unless circumstances clearly compel deferral of education; and

2 (g) that, if it is considered necessary by the court, the youth will undergo periodic counseling with
3 an appropriate advisor.

4 (3) An order of limited emancipation must specifically set forth the rights and responsibilities that
5 are being conferred upon the youth. These may include but are not limited to one or more of the following:

6 (a) the right to live independently of in-house supervision;

7 (b) the right to live in housing of the youth's choice;

8 (c) the right to directly receive and expend money to which the youth is entitled and to conduct
9 ~~his~~ the youth's own financial affairs;

10 (d) the right to enter into contractual agreements and incur debts;

11 (e) the right to obtain access to medical treatment and records upon the youth's own authorization;

12 and

13 (f) the right to obtain a license to operate equipment or perform a service.

14 (4) An order of limited emancipation must include a provision requiring that the youth make periodic
15 reports to the court upon terms prescribed by the court.

16 ~~(5) If the court determines that a youth to whom limited emancipation is granted does not have
17 sufficient funds to finance transition to limited emancipated status, the court may order the department to
18 provide such funds, not to exceed \$500, directly to the youth. The youth shall account to the court for
19 the disposition of such funds and shall repay all such money to the department within 1 year of the order
20 of limited emancipation unless the court for cause orders an extension.~~

21 ~~(6)~~ The court, on its own motion or on the motion of the county attorney or any parties to the
22 dispositional hearing, may modify or revoke the order upon a showing that:

23 (a) the youth has committed a material violation of the law;

24 ~~(b) the youth is failing to diligently pursue graduation from high school;~~

25 ~~(c)~~ the youth has violated a condition of the limited emancipation order; or

26 ~~(d)~~ (c) the best interests of the youth are no longer served by limited emancipation; ~~or~~

27 ~~(e) the youth has discontinued periodic counseling with approved advisors.~~

28 ~~(7) The department shall mail a copy of this part to all high school counseling offices."~~

29

30 **Section 17.** Section 41-3-602, MCA, is amended to read:

1 **"41-3-602. Purpose.** This part provides procedures and criteria by which the parent-child legal
 2 relationship may be terminated by a court if the relationship is not in the best interest of the child. The
 3 termination of the parent-child legal relationship provided for in this part is to be used in those situations
 4 ~~where~~ when there is a determination that a child is abused, or neglected, ~~or dependent~~, as defined in
 5 41-3-102."

6
 7 **Section 18.** Section 41-3-603, MCA, is amended to read:

8 **"41-3-603. Definitions.** As used in this part, unless the context otherwise requires, the following
 9 definitions apply:

10 (1) "Guardian ad litem" means a person appointed to represent a child who is the subject of a
 11 petition for the termination of the parent-child legal relationship.

12 (2) "Parent-child legal relationship" means the legal relationship that exists between a child and ~~his~~
 13 the child's birth or adoptive parents as provided in Title 40, chapter 6, part 2, unless that relationship has
 14 been terminated by competent judicial decree as provided in this part or in 40-6-135 or in 40-6-234.

15 (3) "Treatment plan" means a written agreement between the department or court and the parents
 16 that includes action that must be taken to resolve the condition or conduct of the parents that resulted in
 17 the need for protective services for the child. The treatment plan may involve other parties, if necessary,
 18 for protective services.

19 (4) "Youth in need of care" means a youth who is ~~dependent~~, abused, or neglected as defined in
 20 41-3-102."

21
 22 **Section 19.** Section 41-3-607, MCA, is amended to read:

23 **"41-3-607. Petition for termination -- separate hearing -- right to counsel -- no jury trial.** (1) The
 24 termination of a parent-child legal relationship ~~shall~~ may be considered only after the filing of a petition
 25 pursuant to 41-3-401 alleging the factual grounds for termination pursuant to 41-3-609. ~~Termination~~ If
 26 termination of a parent-child legal relationship ~~shall be considered at a dispositional hearing held pursuant~~
 27 ~~to 41-3-406, following or together with an adjudicatory hearing held pursuant to 41-3-404, within 180 days~~
 28 ~~after the filing of the petition~~ is ordered, the court may transfer permanent legal custody of the child, with
 29 the right to consent to the child's adoption, to:

30 (a) the department;

1 **(b) a licensed child-placing agency; or**

2 **(c) another individual who has been approved by the department and has received consent for the**
 3 **transfer of custody from the department or agency that has custody of the child.**

4 (2) After ~~the county attorney, attorney general, or an attorney hired by the county welfare~~
 5 ~~department or office of human services files~~ a petition for termination of a parent-child relationship is filed
 6 pursuant to this part, parents shall must be advised of the right to counsel, and counsel shall must be
 7 appointed in accordance with 41-3-401(12).

8 (3) A guardian ad litem shall must be appointed to represent the child's best interests in any
 9 hearing determining the involuntary termination of the parent-child legal relationship. The guardian ad litem
 10 shall continue to represent the child until the child is returned home or placed in an appropriate permanent
 11 placement. If a respondent parent is a minor, a guardian ad litem must be appointed to serve the minor
 12 parent in addition to any counsel requested by the parent.

13 (4) There is no right to a jury trial at proceedings held to consider the termination of a parent-child
 14 legal relationship."
 15

16 **Section 20.** Section 41-3-609, MCA, is amended to read:

17 **"41-3-609. Criteria for termination.** (1) The court may order a termination of the parent-child legal
 18 relationship upon a finding that any of the following circumstances exist:

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

20 (b) the child has been abandoned by ~~his~~ the parents as set forth in 41-3-102~~(8)(d)~~(7)(d);

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

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

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

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

29 (2) In determining whether the conduct or condition of the parents is unlikely to change within a
 30 reasonable time, the court must enter a finding that continuation of the parent-child legal relationship will

1 likely result in continued abuse or neglect or that the conduct or the condition of the parents renders the
 2 parents unfit, unable, or unwilling to give the child adequate parental care. In making ~~such~~ the
 3 determinations, the court shall consider but is not limited to the following:

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

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

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

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

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

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

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

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

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

22 (a) two medical doctors submit testimony that the parent is so severely mentally ill that ~~such~~
 23 ~~person~~ the parent cannot assume the role of parent;

24 (b) the parent is incarcerated for more than 1 year and ~~such~~ a treatment plan is not practical
 25 considering the incarceration; or

26 (c) the death of a sibling caused by abuse or neglect by the parent has occurred."
 27

28 **Section 21.** Section 41-3-611, MCA, is amended to read:

29 **"41-3-611. Effect of decree.** (1) An order for the termination of the parent-child legal relationship
 30 divests the child and the parents of all legal rights, powers, immunities, duties, and obligations with respect

1 to each other as provided in Title 40, chapter 6, part 2, and Title 41, chapter 3, part 2, except the right
2 of the child to inherit from the parent.

3 (2) An order or decree entered pursuant to this part may not disentitle a child to any benefit due
4 ~~him~~ the child from any third person, including but not limited to any Indian tribe, agency, state, or the
5 United States.

6 (3) After the termination of a parent-child legal relationship, the former parent is neither entitled
7 to any notice of proceedings for the adoption of the child nor has any right to object to the adoption or to
8 participate in any other placement proceedings held pursuant to 41-3-610."

9

10 **Section 22.** Section 52-1-103, MCA, is amended to read:

11 "**52-1-103. Powers and duties of department.** The department shall:

12 (1) administer and supervise all forms of child and adult protective services;

13 (2) act as the lead agency in coordinating and planning services to children with multiagency
14 service needs;

15 (3) provide funding for and place youth alleged or adjudicated to be delinquent or in need of
16 supervision who are referred or committed to the department;

17 (4) provide the following functions, as necessary, for youth in need of care:

18 (a) intake, investigation, case management, and client supervision;

19 (b) placement in youth care facilities;

20 (c) contracting for necessary services;

21 (d) protective services day care; and

22 (e) adoption;

23 (5) administer youth correctional facilities;

24 (6) provide supervision, care, and control of youth released from a state youth correctional facility;

25 (7) register or license youth care facilities, child-placing agencies, day-care facilities, community
26 homes for developmentally disabled persons, community homes for severely disabled persons, and adult
27 foster care facilities;

28 (8) act as lead agency in implementing and coordinating child-care programs and services under
29 the Montana Child Care Act;

30 (9) administer interstate compacts for children and delinquent youth;

- 1 (10) (a) administer child abuse prevention services funded through child abuse grants and the
2 Montana children's trust fund provided for in Title 41, chapter 3, part 7; and
- 3 (b) administer elder abuse prevention services;
- 4 (11) (a) make a written evaluation of each plan developed by the local family services advisory
5 councils, as provided in 52-1-203, indicating those portions of each plan that will be implemented by the
6 department, those portions that will not be implemented, and the reasons for not implementing those
7 portions;
- 8 (b) develop a statewide youth services and resources plan that takes into consideration local needs
9 as reflected in plans developed by the local family services advisory councils;
- 10 (12) administer services to the aged;
- 11 (13) provide consultant services to:
- 12 (a) facilities providing care for needy, indigent, handicapped, or dependent adults; and
13 (b) youth care facilities;
- 14 (14) utilize at maximum efficiency the resources of state government in a coordinated effort to:
- 15 (a) provide for children in need of temporary protection or correctional services; and
16 (b) coordinate and apply the principles of modern institutional administration to the institutions in
17 the department;
- 18 (15) subject to the functions of the department of administration, lease or purchase lands for use
19 by institutions in the department and classify those lands to determine which are of such character as to
20 be most profitably used for agricultural purposes, taking into consideration:
- 21 (a) the needs of all institutions in the department for the food products that can be grown or
22 produced on the lands; and
- 23 (b) the relative value of agricultural programs in the treatment or rehabilitation of the persons
24 confined in the institutions in the department;
- 25 (16) utilize the staff and services of other state agencies and units of the Montana university
26 system, within their respective statutory functions, to carry out its functions under this title;
- 27 (17) propose programs with specific goals and objectives to the legislature to meet the projected
28 long-range needs of institutions in the department, including programs and facilities for the diagnosis,
29 treatment, care, and aftercare of persons placed in institutions in the department;
- 30 (18) contract, as necessary, with the county board of welfare for administration of child and adult

1 protection services for that county; and

2 (19) adopt rules necessary to carry out the purposes of 41-3-1126, 41-5-527 through 41-5-529,
3 and this chapter."

4
5 **Section 23.** Section 52-2-101, MCA, is amended to read:

6 **"52-2-101. Definitions.** As used in this part, the following definitions apply:

7 (1) "Child welfare services" means the establishing, extending, and strengthening of child welfare
8 services, especially in predominantly rural areas, for the protection and care of abused, ~~dependent,~~ or
9 neglected children.

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

11 (3) (a) "Emotionally disturbed child" means a child determined by a psychologist, psychiatrist,
12 licensed social worker, or special education child study team (established under rules adopted by the
13 superintendent of public instruction to implement Title 20, chapter 7, part 4) to have:

14 (i) an identifiable mental health problem as identified in a nationally recognized classification system
15 or as defined in 20-7-401(8); and

16 (ii) a substantial impairment, evident for a reasonable length of time, that is characterized by a
17 dysfunction in any of the following areas:

18 (A) relationships;

19 (B) behavior;

20 (C) cognition; or

21 (D) education.

22 (b) The nationally recognized classification system referred to in subsection (3)(a)(i) must be one
23 recognized by rules established by the department.

24 (4) "Public assistance" or "assistance" means any type of monetary or other assistance furnished
25 under this title to a person by a state or county agency, regardless of the original source of the assistance."
26

27 **Section 24.** Section 52-2-112, MCA, is amended to read:

28 **"52-2-112. Duty to strengthen child welfare services.** The department shall make provision for
29 establishing and strengthening child welfare services, including protective services, and for care of children
30 in registered or licensed family foster homes, child care agencies, group homes, or treatment facilities.

1 Payment provided under this section is made under the provisions of 41-3-1122 and 41-3-1115."

2

3 **Section 25.** Section 52-2-113, MCA, is amended to read:

4 **"52-2-113. Child rehabilitation -- duties of department.** The department shall:

5 (1) enforce all laws pertaining to children and take the initiative in all matters involving the interest
6 of abused, ~~or dependent, and~~ neglected children;

7 (2) use funds allocated or appropriated to the department for the purpose of providing for the
8 special medical or material needs of developmentally disabled or physically handicapped children who are
9 eligible for department programs;

10 (3) cooperate for the purposes ~~hereof~~ of this part with all reputable child-helping and child-placing
11 agencies; and

12 (4) inspect and register or license youth care facilities, child-placing agencies, and adoption
13 agencies."

14

15 **Section 26.** Section 52-2-211, MCA, is amended to read:

16 **"52-2-211. County interdisciplinary child information team.** (1) The following persons and
17 agencies operating within a county may by written agreement form a county interdisciplinary child
18 information team:

19 (a) the youth court;

20 (b) the county attorney;

21 (c) the department of family services;

22 (d) the county superintendent of schools;

23 (e) the sheriff;

24 (f) the chief of any police force; and

25 (g) the superintendents of public school districts.

26 (2) The persons and agencies signing a written agreement under subsection (1) may by majority
27 vote allow the following persons to sign the written agreement and join the information team:

28 (a) physicians, psychologists, psychiatrists, nurses, and other providers of medical and mental
29 health care;

30 (b) entities operating private elementary and secondary schools;

1 (c) attorneys; and

2 (d) a person or entity that has or may have a legitimate interest in one or more children that the
3 information team will serve.

4 (3) The members of the information team or their designees may form one or more auxiliary teams
5 for the purpose of providing service to a single child, a group of children, or children with a particular type
6 of problem or for any other purpose. Auxiliary teams are subject to the written agreement.

7 (4) The purpose of the team and written agreement is to facilitate the exchange and sharing of
8 information that one or more team members may be able to use in serving a child in the course of their
9 professions and occupations, including but not limited to abused, neglected, ~~dependent~~, and delinquent
10 children and youth in need of supervision. Information regarding a child that a team member supplies to
11 other team members or that is disseminated to a team member under 41-3-205, 41-5-602, or 41-5-603
12 may not be disseminated beyond the team.

13 (5) The terms of the written agreement must provide for the rules under which the team will
14 operate, the method by which information will be shared, distributed, and managed, and any other matters
15 necessary to the purpose and functions of the team.”

16

17 **NEW SECTION. Section 27. Repealer.** Section 41-3-1112, MCA, is repealed.

18

19 **NEW SECTION. Section 28. Effective date.** [This act] is effective on passage and approval.

20

-END-