

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30

SENATE BILL NO. 206

INTRODUCED BY

*Bernett Simpkins*  
*AKKESTAD* *Benedict* *Walt*

*GRINOE* *John*

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

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

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

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

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

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

WHEREAS, child abuse and neglect is a crime and must be addressed as a crime.

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

2

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

4 **"40-8-111. Consent required for adoption.** (1) An adoption of a child may be decreed when there  
5 have been filed written consents to adoption executed by:

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

8 (i) adjudged guilty by a court of competent jurisdiction of:

9 (A) assault on the child, as provided in 45-5-201;

10 (B) endangering the welfare of children, concerning the child, as provided in 45-5-622; or

11 (C) sexual abuse of children, toward the child, as provided in 45-5-625;

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

14 (iii) who has, in the state of Montana or in any other state of the United States, willfully abandoned  
15 the child, as ~~defined set forth~~ in 41-3-102~~(8)(d)~~(10)(e);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 (3) It is intended that the mandatory reporting of ~~such~~ abuse or endangerment cases by

29 professional people and other community members to the appropriate authority will cause the protective

30 services of the state to seek to prevent further abuses, protect and enhance the welfare of these children,

1 ~~and~~ preserve family life ~~wherever~~ whenever appropriate, and provide legal redress for interference with the  
 2 family."

3

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

5 **"41-3-102. Definitions.** As used in this chapter, the following definitions apply:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (a) who is abandoned;

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

- 1 (c) who has no proper guidance to provide for necessary physical, moral, and emotional well-being;  
2 (d) who is destitute;  
3 (e) who is dependent upon the public for support; or  
4 (f) whose parent or parents have voluntarily relinquished custody and whose legal custody has  
5 been transferred to a licensed agency.

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

8 (9) "Family associate" means a person who may or may not live within the household of a child  
9 but who is or has been granted unencumbered access to the child by a natural or adoptive parent,  
10 stepparent, or legal guardian of the child.

11 ~~(8)~~(10) "Harm to a child's health or welfare" means the harm that occurs whenever the parent or  
12 other person responsible for the child's welfare:

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

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

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

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

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

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

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

30 (12) "Infant or toddler" means a child who has yet to be trained in personal hygiene skills required

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

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

4 ~~(9)~~(14) "Limited emancipation" means a status conferred on a dependent youth by a court after a  
5 dispositional hearing in accordance with 41-3-406 under which the youth is entitled to exercise some but  
6 not all of the rights and responsibilities of a person who is 18 years of age or older.

7 ~~(10)~~(15) "Mental injury" means an identifiable and substantial impairment of the child's intellectual  
8 or psychological functioning.

9 ~~(11)~~(16) "Physical injury" means death, permanent or temporary disfigurement, or impairment of  
10 any bodily organ or function and includes death, permanent or temporary disfigurement, and impairment  
11 of a bodily organ or function sustained as a result of excessive corporal punishment.

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

17 ~~(12)~~(18) (a) "Sexual abuse" means the commission of sexual assault, sexual intercourse without  
18 consent, indecent exposure, deviate sexual conduct, or incest, as described in Title 45, chapter 5, part 5.

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

23 ~~(13)~~(19) "Sexual exploitation" means allowing, permitting, or encouraging a child to engage in a  
24 prostitution offense, as described in 45-5-601 through 45-5-603, or allowing, permitting, or encouraging  
25 sexual abuse of children as described in 45-5-625.

26 ~~(14)~~(20) "Social worker" means an employee of the department whose duties generally involve the  
27 provision of either child or adult protective services, or both.

28 ~~(15)~~(21) "Threatened harm to a child's health or welfare" means substantial risk of harm to the  
29 child's health or welfare.

30 ~~(16)~~(22) (a) "Withholding of medically indicated treatment" means the failure to respond to an

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

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

- 7 ~~(a)~~(i) the infant is chronically and irreversibly comatose;
- 8 ~~(b)~~(ii) the provision of treatment would:
- 9 ~~(i)~~(A) merely prolong dying;
- 10 ~~(ii)~~(B) not be effective in ameliorating or correcting all of the infant's life-threatening conditions;

11 or

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

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

20 ~~(17)~~(23) "Youth in need of care" means a youth who is dependent, abused, or neglected ~~as defined~~  
21 ~~in this section.~~

22  
23 **Section 4.** Section 41-3-201, MCA, is amended to read:

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

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

- 30 (a) a physician, resident, intern, or member of a hospital's staff engaged in the admission,

1 examination, care, or treatment of persons;

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

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

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

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

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

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

10 (h) a member of the clergy.

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

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

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

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

20 (ii) the statement was intended to be a part of a confidential communication between the  
21 ~~clergy person~~ member of the clergy or the priest and a member of ~~his~~ the church or congregation; and

22 (iii) the person who made the statement or confession does not consent to the disclosure by the  
23 ~~clergy person~~ member of the clergy or the priest.

24 (c) A ~~clergy person~~ member of the clergy or a priest is not required to make a report under this  
25 section if the communication is required to be confidential by canon law, church doctrine, or established  
26 church practice.

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

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

30 (b) to the extent known, the child's age, and the nature and extent of the child's injuries, including



1 any evidence of previous injuries;

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

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

7

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

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

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

21 ~~(2)(3)~~ (3) The social worker is responsible for assessing the family and planning for the child. If the  
22 child is treated at a medical facility, the social worker, county attorney, or peace officer ~~shall~~, consistent  
23 with reasonable medical practice, ~~have~~ has the right of access to the child for interviews, photographs, and  
24 securing physical evidence and ~~have~~ has the right of access to relevant hospital and medical records  
25 pertaining to the child. If considered appropriate by the social worker, county attorney, or peace officer  
26 conducting an interview of the child, an employee of the public school attended by the child involved may  
27 participate in any interview of the child if the child is enrolled in kindergarten through 8th grade.

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

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

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

8           ~~(5)~~(7) Any person reporting abuse or neglect ~~which~~ that involves acts or omissions on the part of  
9 a public or private residential institution, home, facility, or agency ~~shall be~~ is responsible for ensuring that  
10 the report is made to the department ~~of family services~~, its local affiliate, ~~and~~ the county attorney of the  
11 county in which the facility is located, and the family of the child who is the subject of the report."

12

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

14           **"41-3-204. Admissibility and preservation of evidence.** (1) In ~~any~~ a proceeding resulting from a  
15 report made pursuant to the provisions of this chapter or in ~~any~~ a proceeding ~~where~~ in which the report or  
16 its contents are sought to be introduced into evidence, the report or its contents or any other fact related  
17 to the report or to the condition of the child who is the subject of the report ~~shall~~ may not be excluded on  
18 the ground that the matter is or may be the subject of a privilege related to the examination or treatment  
19 of the child and granted in Title 26, chapter 1, part 8, except the attorney-client privilege granted by  
20 26-1-803.

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

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

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

1 or guardian. The cost of the x-rays ordered and taken under this section ~~shall~~ must be paid by the county  
2 child protective service agency.

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

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

10

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

12 **"41-3-205. Confidentiality -- disclosure exceptions.** (1) The case records of the department of  
13 social and rehabilitation services, the department ~~of family services~~ and its local affiliate, the county welfare  
14 department, the county attorney, and the court concerning actions taken under this chapter and all records  
15 concerning reports of child abuse and neglect must be kept confidential, except as provided by this section.  
16 ~~Any~~ Except as provided in subsections (4) and (5), a person who permits or encourages the unauthorized  
17 dissemination of ~~their~~ the contents of case records is guilty of a misdemeanor.

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

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

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

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, or person designated by a parent or guardian of the child who is the  
30 subject of a report in the records or other person responsible for the child's welfare, ~~without~~ with disclosure

1 of the identity of any person who reported or provided information on the alleged child abuse or neglect  
2 incident contained in the records;

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

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

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

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

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

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

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

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

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

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

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

26 (4) A person who is authorized to receive records under this section shall maintain the  
27 confidentiality of the records and may not disclose information in the records to anyone other than the  
28 persons described in subsection (3)(a). However, this subsection may not be construed to compel a family  
29 member who believes that the family is being victimized by an unfair or unwarranted process to keep the  
30 proceedings secret.

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

5           ~~(5)(6) Nothing in this~~ This section is not intended to affect the confidentiality of criminal court  
 6 records or records of law enforcement agencies."

7  
 8           **Section 8.** Section 41-3-206, MCA, is amended to read:

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

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

18  
 19           **Section 9.** Section 41-3-301, MCA, is amended to read:

20           **"41-3-301. Emergency protective service.** (1) ~~Any~~ A child protective social worker of the  
 21 department ~~of family services,~~ a peace officer, or the county attorney who has reason to believe that any  
 22 a youth is in immediate or apparent danger of harm may immediately remove the youth and place ~~him~~ the  
 23 youth in a protective facility. The department may make a request for further assistance from the law  
 24 enforcement agency or take appropriate legal action. The person or agency placing the child shall notify  
 25 the parents, parent, guardian, or other person having legal custody of the youth at the time the placement  
 26 is made or as soon ~~thereafter~~ after placement as possible.

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

29           (3) A petition ~~shall~~ must be filed pursuant to 41-3-401 within 48 hours of emergency placement  
 30 of a child unless arrangements acceptable to the agency for the care of the child have been made by the

1 parents. Criminal charges must be filed against a family member or family associate believed by a county  
 2 attorney, the attorney general, or an attorney hired by the department to have abused or endangered a  
 3 child. A family member or family associate charged with abuse or endangerment is entitled to a jury trial.

4 (4) If criminal charges are not filed within 20 days of emergency placement, the child must be  
 5 returned to the home unless clear and convincing evidence exists to support an allegation that the child,  
 6 if returned to the home, is in imminent danger of being abused or endangered by a family member or family  
 7 associate. If evidence of imminent danger exists, the child may be removed from the home only for a period  
 8 of time sufficient to allow the development of the required criminal complaint. In all cases, an emergency  
 9 placement of a child may not continue beyond 60 days without criminal charges being filed against the  
 10 person believed to have abused or endangered the child.

11 ~~(4)~~(5) The department of family services shall make such necessary arrangements for the youth's  
 12 well-being as are required prior to the court hearing."  
 13

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

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

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

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

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

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

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

29 (e) to appear and participate in all proceedings to the degree necessary to adequately represent the  
 30 child, testify regarding the guardian ad litem's observation of the child's needs and emotional state during

1 any period of separation from the family, and make recommendations to the court concerning the child's  
2 welfare; ~~and~~

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

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

7 (h) to retrieve from the family any personal property that the child desires to have during the  
8 separation period;

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

12 ~~{f}~~(j) to perform other duties as directed by the court."

13

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

15 "**41-3-401. Abuse, neglect, and dependency petitions.** (1) ~~The~~ After filing criminal charges alleging  
16 abuse or endangerment against a family member or family associate, the county attorney, the attorney  
17 general, or an attorney hired by the county welfare department or office of human services shall be is  
18 responsible for filing all petitions alleging abuse, neglect, or dependency. The county attorney, or the  
19 attorney general, or an attorney hired by the county welfare department or office of human services with  
20 the written consent of the county attorney or attorney general, may require all state, county, and municipal  
21 agencies, including law enforcement agencies, to conduct such investigations and furnish such reports as  
22 that may be necessary.

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

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

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

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

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

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

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

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

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

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

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

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

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

19 (a) temporary investigative authority and protective services;

20 (b) temporary legal custody;

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

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

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

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

28

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

30 **"41-3-402. Petition for temporary investigative authority and protective services.** (1) In cases



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

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

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

12  
13 **Section 13.** Section 41-3-403, MCA, is amended to read:

14 **"41-3-403. Order for immediate protection of youth.** (1) (a) Upon the filing of criminal charges and  
15 a petition for temporary investigative authority and protective services, the court may issue an order  
16 granting relief that may be required for the immediate protection of the youth.

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

22 (c) The order must require the person served to comply immediately with the terms of the order  
23 or to appear before the court issuing the order on the date specified and show cause why the person has  
24 not complied with the order. The show cause hearing must be conducted within 20 days of the issuance  
25 of the order by the judge or a master appointed by the judge. The person filing the petition has the burden  
26 of presenting evidence establishing probable cause for the issuance of the order. Except as otherwise  
27 provided in this part, the rules of civil procedure apply. Hearsay evidence of statements made by the  
28 affected youth is admissible at the hearing.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (5) If a child is temporarily removed from the home, the family or a family member is entitled to

1 an unencumbered telephone call to the child at least 3 days each week for a minimum of 1 hour each call.  
2 The family or family member is also entitled to at least one personal visit each week for a minimum of 3  
3 hours.

4 ~~(4)(6)~~ (a) If the court determines that the youth is not an abused, 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, 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~~ family member or other individual who, after study by a social service agency  
25 designated by the court, is found by the court to be qualified to receive and care for the youth;

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

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

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

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

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

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

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

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

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

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

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

30 (d) An alternative arrangement must:

- 1 (i) provide sufficient security to ensure compliance with the arrangement;
- 2 (ii) be in writing and be signed by a representative of the department and the person required to  
3 make contributions; and
- 4 (iii) if approved by the court, be entered into the record of the proceeding.
- 5 (5) Upon a showing of a change in the financial ability of the youth's parents or guardians to pay,  
6 the court may modify its order for the payment of contributions required under subsection (3).
- 7 (6) (a) If the court orders the payment of contributions under this section, the department shall  
8 apply to the department of social and rehabilitation services for support enforcement services pursuant to  
9 Title IV-D of the Social Security Act.
- 10 (b) The department of social and rehabilitation services may collect and enforce a contribution order  
11 under this section by any means available under law, including the remedies provided for in Title 40,  
12 chapter 5, parts 2 and 4."

13

14 **Section 16.** Section 41-3-609, MCA, is amended to read:

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

- 17 (a) the parents have relinquished the child pursuant to 40-6-135;
- 18 (b) the child has been abandoned by ~~his~~ the child's parents as set forth in 41-3-102~~(8)(d)~~(10)(e);
- 19 (c) the child is an adjudicated youth in need of care and both of the following exist:
- 20 (i) an appropriate treatment plan that has been approved by the court has not been complied with  
21 by the parents or has not been successful; and
- 22 (ii) the conduct or condition of the parents rendering them unfit is unlikely to change within a  
23 reasonable time; or
- 24 (d) the parent has failed to successfully complete a treatment plan approved by the court within  
25 the time periods allowed for the child to be in foster care under 41-3-410 unless it orders other permanent  
26 legal custody under 41-3-410.

27 (2) In determining whether the conduct or condition of the parents is unlikely to change within a  
28 reasonable time, the court ~~must~~ shall enter a finding that continuation of the parent-child legal relationship  
29 will likely result in continued abuse or neglect or that the conduct or the condition of the parents renders  
30 the parents unfit, unable, or unwilling to give the child adequate parental care. In making such

1 determinations, the court shall consider but is not limited to the following:

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

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

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

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

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

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

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

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

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

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

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

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

26 **Section 17.** Section 41-3-1103, MCA, is amended to read:

27 **"41-3-1103. Powers and duties of department.** (1) The department shall:

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

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

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

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

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

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

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

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

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

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

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

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

19 (2) The department may:

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

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

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

26 (3) The department shall pay for room, board, clothing, personal needs, transportation, and  
27 treatment in youth foster care homes and youth group homes for youths committed to the department who  
28 need to be placed in the facilities. Payments for the clothing of a child placed in a youth foster home must  
29 be provided to the extent the child needs a basic wardrobe or has a special clothing need. Payments under  
30 this subsection may not exceed appropriations for the purposes of this subsection.

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

6

7           NEW SECTION. Section 18. Liability for child under department protective custody. Whenever  
8 a child is under the temporary or permanent custody of the department, the department assumes all liability  
9 resulting from the actions of the child.

10

11           NEW SECTION. Section 19. Codification instruction. [Section 18] is intended to be codified as  
12 an integral part of Title 41, chapter 3, part 3, and the provisions of Title 41 apply to [section 18].

13

-END-



STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0206 as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act revising the laws relating to the investigation and removal of a child from the home in a case of suspected abuse or endangerment of the child's welfare; prohibiting anonymous reporting of suspected abuse or endangerment; requiring criminal charges to be filed against a person suspected of abuse or endangerment prior to filing a petition for removal of the child from the home; requiring evidence of suspected abuse or endangerment to be given to the family; guaranteeing a family's communication with a child removed from the home; requiring information on foster home placement to be given to the family of a child removed from the home.

ASSUMPTIONS:

1. Section 5 requires that all child abuse or neglect case interviews be recorded on video tape with audio track. It is assumed there will be 14,000 interviews each year of the biennium, each requiring an individual video cassette at an estimated cost of \$3.00 each. (\$42,000 per year)
2. Each social worker (180) will need a video camera at \$1,585 each. (\$285,300 for the first year of the biennium)
3. Approximately 25 DFS offices will require VCRs and TVs for playing the video tapes at \$600 each. (\$15,000 for the first year of the biennium)
4. The video cassettes would need to be stored for up to 20 years. Since one file cabinet will store 100 video tapes, 140 file cabinets per year at an average cost of \$515 each will be needed. (\$72,100 per year)
5. Section 5 requires an independent psychologist or physician representing the family and the social worker be in attendance at all examinations of the child. It is assumed this refers to medical examinations of the child and that there will be 250 per year. It is also assumed that the cost for the psychologist or physician will be the responsibility of DFS, at an estimated average cost of \$100 per hour. (\$25,000 per year)
6. Section 5 of the bill requires that copies of all written, photographic, or radiological evidence must be sent to the child's family. DFS staff could copy the written evidence, but the copies of the photographic and radiological evidence would have to be made outside the department. With 5,300 substantiated cases per year averaging 20 pages per file and copying costs of \$0.10 per page, copying costs would be \$10,600 per year plus \$2,500 per year for outside copying.
7. There will be no revenue generated by this bill.
8. Because these proposals are not related to federal child abuse or neglect statutes, the costs will be 100% general fund.

FISCAL IMPACT:

<u>Expenditures:</u>	<u>FY96</u>	<u>FY97</u>
	<u>Difference</u>	<u>Difference</u>
Operating Costs	80,100	80,100
Equipment	372,400	72,100
Total	452,500	152,200
 <u>Funding:</u>		
General Fund (01)	452,500	152,200

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Section 9 requires criminal charges be filed in cases in which the department believes there has been abuse or endangerment of a child. Currently DFS substantiates about 5,300 cases of abuse or neglect per year. This would require County Attorneys to file 5,300 more criminal charges per year.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

The fiscal impact will continue into future biennia because tapes, file cabinets and physician costs are an annual cost. As the video library expands, additional staff would be needed to maintain the filling and distribution of the tapes.

*David Lewis* 2-2-95  
 DAVID LEWIS, BUDGET DIRECTOR DATE  
 Office of Budget and Program Planning

JIM BURNETT, PRIMARY SPONSOR DATE

Fiscal Note for SB0206, as introduced

**SB 206**

SPONSOR'S FISCAL NOTE

Form BD-15S

There is hereby submitted a Sponsor's Fiscal Note for: \_\_\_\_\_, Version: \_\_\_\_\_

FISCAL NOTE FOR SB 206

Description of proposed legislation:

A BILL CHANGING THE CODE RELATING TO CHILD REMOVAL BY THE DEPARTMENT OF FAMILY SERVICES.

ASSUMPTIONS:

- (1) This legislation will reduce the number of refferals that have resulted in removing children from the family and placing them in foster care by probably 25% (Page 1, Line 24)
- (2) SECTION 5 (41-3-202) ACTION ON REPORTING: Page 9, Line 28 AND 29  
A video tape is not necessary unless the social worker makes the initial interview without someone representing the family. Sheriff and police department could take and maintain the video tape of the department negotiated with them to do so.

FISCAL IMPACT: NONE

*Jim Burnett*      *3 February 1995*  
\_\_\_\_\_  
PRIMARY SPONSOR      DATE

Fiscal Note for: SB 206 Version: \_\_\_\_\_

**SB 206**

## 1 SENATE BILL NO. 206

2 INTRODUCED BY BURNETT, SIMPKINS, GRINDE, BAER, AKLESTAD, BENEDICT, CLARK

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS RELATING TO THE INVESTIGATION AND  
5 REMOVAL OF A CHILD FROM THE HOME IN A CASE OF SUSPECTED ABUSE OR ENDANGERMENT OF  
6 THE CHILD'S WELFARE OR NEGLECT; PROHIBITING ANONYMOUS REPORTING OF SUSPECTED ABUSE  
7 OR ENDANGERMENT; REQUIRING CRIMINAL CHARGES TO BE FILED AGAINST A PERSON SUSPECTED  
8 OF ABUSE OR ENDANGERMENT PRIOR TO FILING A PETITION FOR REMOVAL OF THE CHILD FROM THE  
9 HOME; REQUIRING EVIDENCE OF SUSPECTED ABUSE OR ENDANGERMENT TO BE GIVEN TO THE  
10 FAMILY; GUARANTEEING A FAMILY'S COMMUNICATION WITH A CHILD REMOVED FROM THE HOME;  
11 REQUIRING INFORMATION ON FOSTER HOME PLACEMENT TO BE GIVEN TO THE FAMILY OF A CHILD  
12 REMOVED FROM THE HOME; AND AMENDING SECTIONS ~~40-8-111~~, 41-3-101, 41-3-102, ~~41-3-201~~,  
13 41-3-202, ~~41-3-204~~, 41-3-205, AND 41-3-206, ~~41-3-301~~, ~~41-3-303~~, ~~41-3-401~~, ~~41-3-402~~, ~~41-3-403~~,  
14 ~~41-3-404~~, ~~41-3-406~~, ~~41-3-609~~, AND ~~41-3-1103~~, MCA."

15  
16 WHEREAS, the Legislature finds it necessary to restore public confidence in the child protective  
17 system and to provide protection of individual and family civil rights as guaranteed by the state and federal  
18 constitutions; ~~and~~

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

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

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

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

29 WHEREAS, ~~child abuse and neglect is a crime and must be addressed as a crime.~~

30

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

2  
3 ~~Section 1. Section 40-8-111, MCA, is amended to read:~~

4 ~~"40-8-111. Consent required for adoption. (1) An adoption of a child may be decreed when there~~  
5 ~~have been filed written consents to adoption executed by:~~

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

8 ~~(i) adjudged guilty by a court of competent jurisdiction of:~~

9 ~~(A) assault on the child, as provided in 45-5-201;~~

10 ~~(B) endangering the welfare of children, concerning the child, as provided in 45-5-622; or~~

11 ~~(C) sexual abuse of children, toward the child, as provided in 45-5-625;~~

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

14 ~~(iii) who has, in the state of Montana or in any other state of the United States, willfully abandoned~~  
15 ~~the child, as defined set forth in 41-3-102(8)(d)(10)(e);~~

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

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

23 ~~(vi) whose parental rights have been judicially terminated;~~

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

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

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

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

7  
 8 **Section 1.** Section 41-3-101, MCA, is amended to read:

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

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

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

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

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

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

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

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

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

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

28 (3) It is intended that the mandatory reporting of ~~such~~ abuse or endangerment cases by  
 29 professional people and other community members to the appropriate authority will cause the protective  
 30 services of the state to seek to prevent further abuses, protect and enhance the welfare of these children,

1 and AND preserve family life ~~wherever whenever~~ appropriate, ~~and provide legal redress for interference with~~  
 2 ~~the family.~~"

3  
 4 **Section 2.** Section 41-3-102, MCA, is amended to read:

5 **"41-3-102. Definitions.** As used in this chapter, the following definitions apply:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (a) who is abandoned;

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

1 (c) who has no proper guidance to provide for necessary physical, moral, and emotional well-being;  
 2 (d) who is destitute;  
 3 (e) who is dependent upon the public for support; or  
 4 (f) whose parent or parents have voluntarily relinquished custody and whose legal custody has  
 5 been transferred to a licensed agency.

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

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

11 ~~(8)(10)(8)~~ "Harm to a child's health or welfare" means the harm that occurs whenever the parent  
 12 or other person responsible for the child's welfare:

13 (a) ~~knowingly~~ inflicts or ~~knowingly~~ allows to be inflicted upon the child physical or mental injury;  
 14 (b) ~~knowingly~~ commits or ~~knowingly~~ allows to be committed sexual abuse or exploitation of the  
 15 child;

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

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

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

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

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

30 ~~(12) "Infant or toddler" means a child who has yet to be trained in personal hygiene skills required~~

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

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

4 ~~(9)(14)(9)~~ "Limited emancipation" means a status conferred on a dependent youth by a court after  
 5 a dispositional hearing in accordance with 41-3-406 under which the youth is entitled to exercise some but  
 6 not all of the rights and responsibilities of a person who is 18 years of age or older.

7 ~~(10)(15)(10)~~ "Mental injury" means an identifiable and substantial impairment of the child's  
 8 intellectual or psychological functioning.

9 ~~(11)(16)(11)~~ "Physical injury" means death, permanent or temporary disfigurement, or impairment  
 10 of any bodily organ or function and includes death, permanent or temporary disfigurement, and impairment  
 11 of a bodily organ or function sustained as a result of excessive corporal punishment.

12 ~~(17)(12)~~ "Proselytism" means the change or attempted change through undue influence of the  
 13 religious beliefs or affiliation of a child who has been removed from the family to a religion other than that  
 14 affiliated with the child's race, culture, or heritage by an adult, other than a family member, in a position  
 15 of power over the child or by constant exposure of the child to dogma, tradition, or religious teachings and  
 16 practices preferred by the adult.

17 ~~(12)(18)(13)~~ (a) "Sexual abuse" means the commission of sexual assault, sexual intercourse without  
 18 consent, indecent exposure, deviate sexual conduct, or incest, as described in Title 45, chapter 5, part 5.

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

23 ~~(13)(19)(14)~~ "Sexual exploitation" means allowing, permitting, or encouraging a child to engage in  
 24 a prostitution offense, as described in 45-5-601 through 45-5-603, or allowing, permitting, or encouraging  
 25 sexual abuse of children as described in 45-5-625.

26 ~~(14)(20)(15)~~ "Social worker" means an employee of the department whose duties generally involve  
 27 the provision of either child or adult protective services, or both.

28 ~~(15)(21)(16)~~ "Threatened harm to a child's health or welfare" means substantial risk of harm to the  
 29 child's health or welfare.

30 ~~(16)(22)(17)~~ (a) "Withholding of medically indicated treatment" means the failure to respond to an



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

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

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

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

9 ~~(i)~~(A) merely prolong dying;

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

11 or

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

13 ~~(e)~~(iii) the provision of treatment would be virtually futile in terms of the survival of the infant and  
 14 the treatment itself under the circumstances would be inhumane. For purposes of this subsection ~~(22)~~ (17),  
 15 "infant" means an infant less than 1 year of age or an infant 1 year of age or older who has been  
 16 continuously hospitalized since birth, who was born extremely prematurely, or who has a long-term  
 17 disability. The reference to less than 1 year of age may not be construed to imply that treatment should  
 18 be changed or discontinued when an infant reaches 1 year of age or to affect or limit any existing  
 19 protections available under state laws regarding medical neglect of children over 1 year of age.

20 ~~(17)~~(23)(18) "Youth in need of care" means a youth who is dependent, abused, or neglected as  
 21 defined in this section."

22  
 23 ~~Section 4. Section 41-3-201, MCA, is amended to read:~~

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

29 ~~(2) Professionals and officials required to report are:~~

30 ~~(a) a physician, resident, intern, or member of a hospital's staff engaged in the admission,~~

1 examination, care, or treatment of persons;

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

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

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

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

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

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

10 ~~(h) a member of the clergy.~~

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

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

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

17 ~~(i) the knowledge or suspicion of the abuse or neglect came from a statement or confession made~~  
18 ~~to the clergyperson member of the clergy or the priest in his that person's capacity as a clergyperson~~  
19 ~~member of the clergy or a priest;~~

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

22 ~~(iii) the person who made the statement or confession does not consent to the disclosure by the~~  
23 ~~clergyperson member of the clergy or the priest.~~

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

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

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

30 ~~(b) to the extent known, the child's age, and the nature and extent of the child's injuries, including~~

1 ~~any evidence of previous injuries;~~

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

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

7

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

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

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

21 ~~(2)(3)~~ (3) The social worker is responsible for assessing the family and planning for the child. If the  
 22 child is treated at a medical facility, the social worker, county attorney, or peace officer shall, consistent  
 23 with reasonable medical practice, ~~have~~ has the right of access to the child for interviews, photographs, and  
 24 securing physical evidence and ~~have~~ has the right of access to relevant hospital and medical records  
 25 pertaining to the child. If considered appropriate by the social worker, county attorney, or peace officer  
 26 conducting an interview of the child, an employee of the public school attended by the child involved may  
 27 participate in any interview of the child if the child is enrolled in kindergarten through 8th grade.

28 ~~(4) All examinations of the child must be attended by the independent examining psychologist or~~  
 29 ~~physician representing the family and by the social worker. If the child is interviewed by the social worker~~  
 30 CHILD'S INTERVIEW IS VIDEOTAPED, an unedited videotape with audio track must be made available,

1 UPON REQUEST, for unencumbered review by the family.

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

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

9 ~~(5)(7)~~ Any person reporting abuse or neglect ~~which~~ that involves acts or omissions on the part of  
10 a public or private residential institution, home, facility, or agency ~~shall be~~ is responsible for ensuring that  
11 the report is made to the department ~~of family services,~~ its local affiliate, and AND the county attorney of  
12 the county in which the facility is located, ~~and the family of the child who is the subject of the report."~~  
13

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

15 ~~"41-3-204. Admissibility and preservation of evidence. (1) In any a proceeding resulting from a~~  
16 ~~report made pursuant to the provisions of this chapter or in any a proceeding where in which the report or~~  
17 ~~its contents are sought to be introduced into evidence, the report or its contents or any other fact related~~  
18 ~~to the report or to the condition of the child who is the subject of the report shall may not be excluded on~~  
19 ~~the ground that the matter is or may be the subject of a privilege related to the examination or treatment~~  
20 ~~of the child and granted in Title 26, chapter 1, part 8, except the attorney client privilege granted by~~  
21 ~~26-1-803.~~

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

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

28 ~~(4) A physician, either in the course of his providing medical care to a minor or after consultation~~  
29 ~~with child protective services, the county attorney, or a law enforcement officer, may require x rays to be~~  
30 ~~taken when in his the physician's professional opinion, there is a need for radiological evidence of~~

1 ~~suspected abuse or neglect. X rays may be taken under this section without the permission of the parent~~  
2 ~~or guardian. The cost of the x rays ordered and taken under this section shall must be paid by the county~~  
3 ~~child protective service agency.~~

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

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

11

12 **Section 4.** Section 41-3-205, MCA, is amended to read:

13 **"41-3-205. Confidentiality -- disclosure exceptions.** (1) The case records of the department of  
14 social and rehabilitation services, the department of family services and its local affiliate, the county welfare  
15 department, the county attorney, and the court concerning actions taken under this chapter and all records  
16 concerning reports of child abuse and neglect must be kept confidential, except as provided by this section.  
17 ~~Any~~ Except as provided in subsections (4) and (5), a person who permits or encourages the unauthorized  
18 dissemination of ~~their~~ the contents of case records is guilty of a misdemeanor.

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

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

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

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

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

30 (d) a parent, ~~or guardian,~~ or person designated by a parent or guardian of the child who is the

1 subject of a report in the records or other person responsible for the child's welfare, ~~without~~ with WITHOUT  
 2 disclosure of the identity of any person who reported or provided information on the alleged child abuse  
 3 or neglect incident contained in the records;

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

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

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

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

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

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

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

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

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

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

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

27 (4) A person who is authorized to receive records under this section shall maintain the  
 28 confidentiality of the records and may not disclose information in the records to anyone other than the  
 29 persons described in subsection (3)(a). However, this subsection may not be construed to compel a family  
 30 member who believes that the family is being victimized by an unfair or unwarranted process to keep the

1 ~~proceedings~~ ~~secret~~ CONFIDENTIAL.

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

6 ~~(5)(6) Nothing in this~~ This section is not intended to affect the confidentiality of criminal court  
 7 records or records of law enforcement agencies."  
 8

9 **Section 5.** Section 41-3-206, MCA, is amended to read:

10 **"41-3-206. Procedure in case of child's death.** (1) ~~Any~~ A person or official required to report by  
 11 law who has reasonable cause to suspect that a child has died as a result of child abuse or neglect shall  
 12 report ~~under oath~~ his the person's suspicion to the appropriate medical examiner or law enforcement officer.  
 13 Any other person who has reasonable cause to suspect that a child has died as a result of child abuse or  
 14 neglect may report ~~under oath~~ his the person's suspicion to the appropriate medical examiner or law  
 15 enforcement officer.

16 (2) The medical examiner or coroner shall investigate the report and submit ~~his~~ findings, in writing,  
 17 to the local law enforcement agency, the appropriate county attorney, the local child protective service,  
 18 the family of the deceased child, and, if the person making the report is a physician, the physician."  
 19

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

21 ~~"41-3-301. Emergency protective service.~~ (1) ~~Any~~ A ~~child protective social worker of the~~  
 22 ~~department of family services, a peace officer, or the county attorney who has reason to believe that any~~  
 23 ~~a youth is in immediate or apparent danger of harm may immediately remove the youth and place him the~~  
 24 ~~youth in a protective facility. The department may make a request for further assistance from the law~~  
 25 ~~enforcement agency or take appropriate legal action. The person or agency placing the child shall notify~~  
 26 ~~the parents, parent, guardian, or other person having legal custody of the youth at the time the placement~~  
 27 ~~is made or as soon thereafter~~ after placement as possible.

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

30 (3) ~~A petition shall~~ must be filed pursuant to 41-3-401 within 48 hours of emergency placement

1 ~~of a child unless arrangements acceptable to the agency for the care of the child have been made by the~~  
 2 ~~parents. Criminal charges must be filed against a family member or family associate believed by a county~~  
 3 ~~attorney, the attorney general, or an attorney hired by the department to have abused or endangered a~~  
 4 ~~child. A family member or family associate charged with abuse or endangerment is entitled to a jury trial.~~

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

12 ~~(4)(5) The department of family services shall make such necessary arrangements for the youth's~~  
 13 ~~well being as are required prior to the court hearing."~~

14  
 15 **Section 10.** ~~Section 41-3-303, MCA, is amended to read:~~

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

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

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

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

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

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

30 ~~(e) to appear and participate in all proceedings to the degree necessary to adequately represent the~~



1 ~~child, testify regarding the guardian ad litem's observation of the child's needs and emotional state during~~  
 2 ~~any period of separation from the family, and make recommendations to the court concerning the child's~~  
 3 ~~welfare; and~~

4 ~~(f) to be a friend and to provide for the daily nurturing needs of the child while separated from the~~  
 5 ~~family;~~

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

8 ~~(h) to retrieve from the family any personal property that the child desires to have during the~~  
 9 ~~separation period;~~

10 ~~(i) to report directly to the judge on a regular basis the guardian ad litem's observations regarding~~  
 11 ~~the needs and emotional state of the child during the separation period and the impact of the separation~~  
 12 ~~on the child; and~~

13 ~~(f)(ii) to perform other duties as directed by the court."~~

14  
 15 **Section 11.** Section 41-3-401, MCA, is amended to read:

16 ~~"41-3-401. Abuse, neglect, and dependency petitions. (1) The After filing criminal charges alleging~~  
 17 ~~abuse or endangerment against a family member or family associate, the county attorney, the attorney~~  
 18 ~~general, or an attorney hired by the county welfare department or office of human services shall be is~~  
 19 ~~responsible for filing all petitions alleging abuse, neglect, or dependency. The county attorney, or the~~  
 20 ~~attorney general, or an attorney hired by the county welfare department or office of human services with~~  
 21 ~~the written consent of the county attorney or attorney general, may require all state, county, and municipal~~  
 22 ~~agencies, including law enforcement agencies, to conduct such investigations and furnish such reports as~~  
 23 ~~that may be necessary.~~

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

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

29 ~~(4) The parents or parent, guardian, or other person or agency having legal custody of the youth~~  
 30 ~~named in the petition, if residing in the state, shall must be served personally with a copy of the petition~~

1 ~~and summons at least 5 days prior to the date set for hearing. If such the person or agency cannot be~~  
 2 ~~served personally, the person or agency may be served by publication in the manner provided by the~~  
 3 ~~Montana Rules of Civil Procedure for other types of proceedings.~~

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

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

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

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

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

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

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

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

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

20 ~~(a) temporary investigative authority and protective services;~~

21 ~~(b) temporary legal custody;~~

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

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

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

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

29  
 30 **Section 12.** ~~Section 41-3-402, MCA, is amended to read:~~

1           ~~"41-3-402. Petition for temporary investigative authority and protective services. (1) In cases~~  
 2 ~~where in which it appears that a youth is abused or neglected or is in danger of being abused or neglected,~~  
 3 ~~the county attorney, the attorney general, or an attorney hired by the county welfare department or office~~  
 4 ~~of human services, after filing criminal charges alleging abuse or endangerment, may file a petition for~~  
 5 ~~temporary investigative authority and protective services.~~

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

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

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

15           ~~"41-3-403. Order for immediate protection of youth. (1) (a) Upon the filing of criminal charges and~~  
 16 ~~a petition for temporary investigative authority and protective services, the court may issue an order~~  
 17 ~~granting relief that may be required for the immediate protection of the youth.~~

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

23           ~~(c) The order must require the person served to comply immediately with the terms of the order~~  
 24 ~~or to appear before the court issuing the order on the date specified and show cause why the person has~~  
 25 ~~not complied with the order. The show cause hearing must be conducted within 20 days of the issuance~~  
 26 ~~of the order by the judge or a master appointed by the judge. The person filing the petition has the burden~~  
 27 ~~of presenting evidence establishing probable cause for the issuance of the order. Except as otherwise~~  
 28 ~~provided in this part, the rules of civil procedure apply. Hearsay evidence of statements made by the~~  
 29 ~~affected youth is admissible at the hearing.~~

30           ~~(d) Upon a failure to comply or show cause, the court may hold the person in contempt or place~~

1 ~~temporary legal custody of the youth with the department until further order.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 ~~(4)(6) (a) If the court determines that the youth is not an abused, neglected, or dependent child,~~  
 6 ~~the petition shall must be dismissed and any order made pursuant to 41-3-403 shall must be vacated.~~

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

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

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

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

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

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

21 ~~(i) the department;~~

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

25 ~~(iii) a relative family member or other individual who, after study by a social service agency~~  
 26 ~~designated by the court, is found by the court to be qualified to receive and care for 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 must~~  
20 ~~be 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 ~~(e) 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 41-3-609, 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 child's parents as set forth in 41-3-102(8)(d)(10)(e);~~

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 shall enter a finding that continuation of the parent-child legal relationship~~  
30 ~~will likely result in continued abuse or neglect or that the conduct or the condition of the parents renders~~

1 ~~the parents unfit, unable, or unwilling to give the child adequate parental care. In making such~~  
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 a 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 the~~  
22 ~~person 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 17.** ~~Section 41-3-1103, MCA, is amended to read:~~

28 ~~"41-3-1103. Powers and duties of department. (1) The department shall:~~

29 ~~(a) administer all state and federal funds allocated to the department for youth foster homes, youth~~  
30 ~~group homes, and child-care agencies for youth in need of care, youth in need of supervision, and~~



1 ~~delinquent youth, as defined in 41-5-103;~~

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

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

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

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

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

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

13 ~~(ii) the cost per facility for services rendered;~~

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

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

16 ~~(v) a profile of public institutional placements; and~~

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

20 ~~(2) The department may:~~

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

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

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

27 ~~(3) The department shall pay for room, board, clothing, personal needs, transportation, and~~  
28 ~~treatment in youth foster care homes and youth group homes for youths committed to the department who~~  
29 ~~need to be placed in the facilities. Payments for the clothing of a child placed in a youth foster home must~~  
30 ~~be provided to the extent the child needs a basic wardrobe or has a special clothing need. Payments under~~

1 ~~this subsection may not exceed appropriations for the purposes of this subsection.~~

2 ~~(4) If a child temporarily removed from the home is placed in foster care, the department shall~~  
3 ~~provide the child's family or a family member with information on the background of the foster home, any~~  
4 ~~complaints filed against the foster home, and the record of disposition of children from the foster home.~~  
5 ~~The family or a family member is entitled to petition the court for placement in another foster home if~~  
6 ~~dissatisfied with the original placement."~~

7

8 ~~**NEW SECTION. Section 18. Liability for child under department protective custody.** Whenever~~  
9 ~~a child is under the temporary or permanent custody of the department, the department assumes all liability~~  
10 ~~resulting from the actions of the child.~~

11

12 ~~**NEW SECTION. Section 19. Codification instruction.** [Section 18] is intended to be codified as~~  
13 ~~an integral part of Title 41, chapter 3, part 3, and the provisions of Title 41 apply to [section 18].~~

14

-END-

## 1 SENATE BILL NO. 206

2 INTRODUCED BY BURNETT, SIMPKINS, GRINDE, BAER, AKLESTAD, BENEDICT, CLARK

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS RELATING TO THE INVESTIGATION AND  
5 REMOVAL OF A CHILD FROM THE HOME IN A CASE OF SUSPECTED ABUSE ~~OR ENDANGERMENT OF~~  
6 ~~THE CHILD'S WELFARE~~ OR NEGLECT; ~~PROHIBITING ANONYMOUS REPORTING OF SUSPECTED ABUSE~~  
7 ~~OR ENDANGERMENT; REQUIRING CRIMINAL CHARGES TO BE FILED AGAINST A PERSON SUSPECTED~~  
8 ~~OF ABUSE OR ENDANGERMENT PRIOR TO FILING A PETITION FOR REMOVAL OF THE CHILD FROM THE~~  
9 ~~HOME; REQUIRING EVIDENCE OF SUSPECTED ABUSE OR ENDANGERMENT TO BE GIVEN TO THE~~  
10 ~~FAMILY; GUARANTEEING A FAMILY'S COMMUNICATION WITH A CHILD REMOVED FROM THE HOME;~~  
11 ~~REQUIRING INFORMATION ON FOSTER HOME PLACEMENT TO BE GIVEN TO THE FAMILY OF A CHILD~~  
12 ~~REMOVED FROM THE HOME; AND AMENDING SECTIONS 40-8-111, 41-3-101, 41-3-102, 41-3-201,~~  
13 ~~41-3-202, 41-3-204, 41-3-205, AND 41-3-206, 41-3-301, 41-3-303, 41-3-401, 41-3-402, 41-3-403,~~  
14 ~~41-3-404, 41-3-406, 41-3-609, AND 41-3-1103, MCA."~~

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



## HOUSE STANDING COMMITTEE REPORT

March 21, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 206 (third reading copy -- blue) be concurred in as amended.

Signed: Bob Clark  
Bob Clark, Chair

Carried by: Rep. Simpkins

And, that such amendments read:

1. Page 9, line 18.

Following: "hours"

Insert: "within 48 hours"

Following: "independent,"

Insert: "independent,"

2. Page 9, line 19.

Following: "attributable"

Insert: ", and attributable"

3. Page 9, line 20.

Following: "home."

Insert: "Without the development of independent, corroborative, and attributable information, a child may not be removed from the home."

-END-

SB 206

Committee Vote:  
Yes 11, No 8.

HOUSE

SENATE BILL NO. 206

INTRODUCED BY BURNETT, SIMPKINS, GRINDE, BAER, AKLESTAD, BENEDICT, CLARK

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

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

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

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

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

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

WHEREAS, child abuse and neglect is a crime and must be addressed as a crime.



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

2

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

4 ~~"40-8-111. Consent required for adoption. (1) An adoption of a child may be decreed when there~~  
5 ~~have been filed written consents to adoption executed by:~~

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

8 ~~(i) adjudged guilty by a court of competent jurisdiction of:~~

9 ~~(A) assault on the child, as provided in 45-5-201;~~

10 ~~(B) endangering the welfare of children, concerning the child, as provided in 45-5-622; or~~

11 ~~(C) sexual abuse of children, toward the child, as provided in 45-5-625;~~

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

14 ~~(iii) who has, in the state of Montana or in any other state of the United States, willfully abandoned~~  
15 ~~the child, as defined set forth in 41-3-102(8)(d)(10)(e);~~

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

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

22 ~~or~~

23 ~~(vi) whose parental rights have been judicially terminated;~~

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

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

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

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

7  
 8 **Section 1.** Section 41-3-101, MCA, is amended to read:

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

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

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

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

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

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

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

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

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

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

28 (3) It is intended that the mandatory reporting of ~~such~~ abuse or endangerment cases by  
 29 professional people and other community members to the appropriate authority will cause the protective  
 30 services of the state to seek to prevent further abuses, protect and enhance the welfare of these children,

1 ~~and AND~~ preserve family life ~~wherever whenever~~ appropriate, ~~and provide legal redress for interference with~~  
 2 ~~the family."~~

3  
 4 **Section 2.** Section 41-3-102, MCA, is amended to read:

5 **"41-3-102. Definitions.** As used in this chapter, the following definitions apply:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (a) who is abandoned;

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



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

2 (d) who is destitute;

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

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

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

8 ~~(9) "Family associate" means a person who may or may not live within the household of a child  
9 but who is or has been granted unnumbered access to the child by a natural or adoptive parent,  
10 stepparent, or legal guardian of the child.~~

11 ~~(8)(10)(8)~~ "Harm to a child's health or welfare" means the harm that occurs whenever the parent  
12 or other person responsible for the child's welfare:

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

14 (b) ~~knowingly~~ commits or ~~knowingly~~ allows to be committed sexual abuse or exploitation of the  
15 child;

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

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

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

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

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

30 ~~(12) "Infant or toddler" means a child who has yet to be trained in personal hygiene skills required~~

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

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

4 ~~(9)(14)(9)~~ "Limited emancipation" means a status conferred on a dependent youth by a court after  
5 a dispositional hearing in accordance with 41-3-406 under which the youth is entitled to exercise some but  
6 not all of the rights and responsibilities of a person who is 18 years of age or older.

7 ~~(10)(15)(10)~~ "Mental injury" means an identifiable and substantial impairment of the child's  
8 intellectual or psychological functioning.

9 ~~(11)(16)(11)~~ "Physical injury" means death, permanent or temporary disfigurement, or impairment  
10 of any bodily organ or function and includes death, permanent or temporary disfigurement, and impairment  
11 of a bodily organ or function sustained as a result of excessive corporal punishment.

12 ~~(17)(12)~~ "Proselytism" means the change or attempted change through undue influence of the  
13 religious beliefs or affiliation of a child who has been removed from the family to a religion other than that  
14 affiliated with the child's race, culture, or heritage by an adult, other than a family member, in a position  
15 of power over the child or by constant exposure of the child to dogma, tradition, or religious teachings and  
16 practices preferred by the adult.

17 ~~(12)(18)(13)~~ (a) "Sexual abuse" means the commission of sexual assault, sexual intercourse without  
18 consent, indecent exposure, deviate sexual conduct, or incest, as described in Title 45, chapter 5, part 5.

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

23 ~~(13)(19)(14)~~ "Sexual exploitation" means allowing, permitting, or encouraging a child to engage in  
24 a prostitution offense, as described in 45-5-601 through 45-5-603, or allowing, permitting, or encouraging  
25 sexual abuse of children as described in 45-5-625.

26 ~~(14)(20)(15)~~ "Social worker" means an employee of the department whose duties generally involve  
27 the provision of either child or adult protective services, or both.

28 ~~(15)(21)(16)~~ "Threatened harm to a child's health or welfare" means substantial risk of harm to the  
29 child's health or welfare.

30 ~~(16)(22)(17)~~ (a) "Withholding of medically indicated treatment" means the failure to respond to an

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

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

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

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

9 ~~(i)~~(A) merely prolong dying;

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

11 or

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

13 ~~(c)~~(iii) the provision of treatment would be virtually futile in terms of the survival of the infant and  
 14 the treatment itself under the circumstances would be inhumane. For purposes of this subsection ~~(22)~~ (17),  
 15 "infant" means an infant less than 1 year of age or an infant 1 year of age or older who has been  
 16 continuously hospitalized since birth, who was born extremely prematurely, or who has a long-term  
 17 disability. The reference to less than 1 year of age may not be construed to imply that treatment should  
 18 be changed or discontinued when an infant reaches 1 year of age or to affect or limit any existing  
 19 protections available under state laws regarding medical neglect of children over 1 year of age.

20 ~~(17)~~(23)(18) "Youth in need of care" means a youth who is dependent, abused, or neglected as  
 21 ~~defined in this section.~~

22  
 23 ~~Section 4. Section 41-3-201, MCA, is amended to read:~~

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

29 ~~(2) Professionals and officials required to report are:~~

30 ~~(a) a physician, resident, intern, or member of a hospital's staff engaged in the admission,~~

1 examination, care, or treatment of persons;

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

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

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

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

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

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

10 (h) ~~a member of the clergy.~~

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

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

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

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

20 (ii) ~~the statement was intended to be a part of a confidential communication between the~~  
21 ~~clergy person member of the clergy or the priest and a member of his the church or congregation; and~~

22 (iii) ~~the person who made the statement or confession does not consent to the disclosure by the~~  
23 ~~clergy person member of the clergy or the priest.~~

24 (c) ~~A clergy person member of the clergy or a priest is not required to make a report under this~~  
25 ~~section if the communication is required to be confidential by canon law, church doctrine, or established~~  
26 ~~church practice.~~

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

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

30 (b) ~~to the extent known, the child's age, and the nature and extent of the child's injuries, including~~

1 ~~any evidence of previous injuries;~~

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

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

7

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

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

17 ~~(2) An initial investigation into the home of the child may be conducted when an anonymous report~~  
 18 ~~is received. However, the investigation must ~~within 48 hours~~ **WITHIN 48 HOURS** develop ~~independent,~~~~  
 19 ~~**INDEPENDENT, corroborative, and attributable, AND ATTRIBUTABLE** information in order for the~~  
 20 ~~investigation to continue. ~~Without the development of independent, corroborative and attributable~~~~  
 21 ~~**information, a child may not be removed from the home. WITHOUT THE DEVELOPMENT OF**~~  
 22 ~~**INDEPENDENT, CORROBORATIVE, AND ATTRIBUTABLE INFORMATION, A CHILD MAY NOT BE REMOVED**~~  
 23 ~~**FROM THE HOME.**~~

24 ~~(2)(3)~~ (3) The social worker is responsible for assessing the family and planning for the child. If the  
 25 child is treated at a medical facility, the social worker, county attorney, or peace officer ~~shall,~~ consistent  
 26 with reasonable medical practice, ~~have~~ has the right of access to the child for interviews, photographs, and  
 27 securing physical evidence and ~~have~~ has the right of access to relevant hospital and medical records  
 28 pertaining to the child. If considered appropriate by the social worker, county attorney, or peace officer  
 29 conducting an interview of the child, an employee of the public school attended by the child involved may  
 30 participate in any interview of the child if the child is enrolled in kindergarten through 8th grade.

1           ~~(4) All examinations of the child must be attended by the independent examining psychologist or~~  
 2 ~~physician representing the family and by the social worker. If the child is interviewed by the social worker~~  
 3 CHILD'S INTERVIEW IS VIDEOTAPED, an unedited videotape with audio track must be made available,  
 4 UPON REQUEST, for unencumbered review by the family.

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

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

12           ~~(5)(7)~~ Any person reporting abuse or neglect ~~which~~ that involves acts or omissions on the part of  
 13 a public or private residential institution, home, facility, or agency ~~shall be~~ is responsible for ensuring that  
 14 the report is made to the department ~~of family services, its local affiliate, and~~ AND the county attorney of  
 15 the county in which the facility is located, ~~and the family of the child who is the subject of the report."~~

16  
 17           ~~Section 6. Section 41-3-204, MCA, is amended to read:~~

18           ~~"41-3-204. Admissibility and preservation of evidence. (1) In any a proceeding resulting from a~~  
 19 ~~report made pursuant to the provisions of this chapter or in any a proceeding where in which the report or~~  
 20 ~~its contents are sought to be introduced into evidence, the report or its contents or any other fact related~~  
 21 ~~to the report or to the condition of the child who is the subject of the report shall may not be excluded on~~  
 22 ~~the ground that the matter is or may be the subject of a privilege related to the examination or treatment~~  
 23 ~~of the child and granted in Title 26, chapter 1, part 8, except the attorney client privilege granted by~~  
 24 ~~26-1-803.~~

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

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

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

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

10           ~~(5)(6) All At the time that the written confirmation report is sent or as soon after the report is sent~~  
 11 ~~as possible, all written, photographic, or radiological evidence gathered under this section shall must be~~  
 12 ~~sent to the local affiliate of the department and copies must be sent to the child's family at the time the~~  
 13 ~~written confirmation report is sent or as soon thereafter as is possible.~~"

14  
 15           **Section 4.** Section 41-3-205, MCA, is amended to read:

16           **"41-3-205. Confidentiality -- disclosure exceptions.** (1) The case records of the department of  
 17 social and rehabilitation services, the department of family services and its local affiliate, the county welfare  
 18 department, the county attorney, and the court concerning actions taken under this chapter and all records  
 19 concerning reports of child abuse and neglect must be kept confidential, except as provided by this section.  
 20 ~~Any~~ Except as provided in subsections (4) and (5), a person who permits or encourages the unauthorized  
 21 dissemination of ~~their~~ the contents of case records is guilty of a misdemeanor.

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

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

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

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

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

3 (d) a parent, ~~or~~ guardian, or person designated by a parent or guardian of the child who is the  
4 subject of a report in the records or other person responsible for the child's welfare, ~~without~~ with ~~WITHOUT~~  
5 disclosure of the identity of any person who reported or provided information on the alleged child abuse  
6 or neglect incident contained in the records;

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

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

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

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

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

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

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

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

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

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

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

30 (4) A person who is authorized to receive records under this section shall maintain the



1 confidentiality of the records and may not disclose information in the records to anyone other than the  
 2 persons described in subsection (3)(a). However, this subsection may not be construed to compel a family  
 3 member who believes that the family is being victimized by an unfair or unwarranted process to keep the  
 4 proceedings secret CONFIDENTIAL.

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

9 ~~(6)~~(6) ~~Nothing in this~~ This section is not intended to affect the confidentiality of criminal court  
 10 records or records of law enforcement agencies."

11  
 12 **Section 5.** Section 41-3-206, MCA, is amended to read:

13 **"41-3-206. Procedure in case of child's death.** (1) ~~Any~~ A person or official required to report by  
 14 law who has reasonable cause to suspect that a child has died as a result of child abuse or neglect shall  
 15 report ~~under oath~~ his the person's suspicion to the appropriate medical examiner or law enforcement officer.  
 16 Any other person who has reasonable cause to suspect that a child has died as a result of child abuse or  
 17 neglect may report ~~under oath~~ his the person's suspicion to the appropriate medical examiner or law  
 18 enforcement officer.

19 (2) The medical examiner or coroner shall investigate the report and submit ~~his~~ findings, in writing,  
 20 to the local law enforcement agency, the appropriate county attorney, the local child protective service,  
 21 the family of the deceased child, and, if the person making the report is a physician, the physician."  
 22

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

24 ~~"41-3-301. Emergency protective service.~~ (1) ~~Any~~ A ~~child protective social worker of the~~  
 25 ~~department of family services, a peace officer, or the county attorney who has reason to believe that any~~  
 26 ~~a youth is in immediate or apparent danger of harm may immediately remove the youth and place him the~~  
 27 ~~youth in a protective facility. The department may make a request for further assistance from the law~~  
 28 ~~enforcement agency or take appropriate legal action. The person or agency placing the child shall notify~~  
 29 ~~the parents, parent, guardian, or other person having legal custody of the youth at the time the placement~~  
 30 ~~is made or as soon thereafter~~ after placement ~~as possible.~~

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

3           ~~(3) A petition shall must be filed pursuant to 41-3-401 within 48 hours of emergency placement~~  
4 ~~of a child unless arrangements acceptable to the agency for the care of the child have been made by the~~  
5 ~~parents. Criminal charges must be filed against a family member or family associate believed by a county~~  
6 ~~attorney, the attorney general, or an attorney hired by the department to have abused or endangered a~~  
7 ~~child. A family member or family associate charged with abuse or endangerment is entitled to a jury trial.~~

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

15           ~~(4)(5) The department of family services shall make such necessary arrangements for the youth's~~  
16 ~~well-being as are required prior to the court hearing."~~

17  
18           ~~**Section 10.** Section 41-3-303, MCA, is amended to read:~~

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

25           ~~(2) The guardian ad litem is charged with the representation of the child's interests. The guardian~~  
26 ~~ad litem has the following general duties:~~

27           ~~(a) to conduct investigations that the guardian ad litem considers necessary to ascertain the facts~~  
28 ~~constituting the alleged abuse or neglect;~~

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

30           ~~(c) to have access to court, medical, psychological, law enforcement, social services, and school~~

1 ~~records pertaining to the child and the child's siblings and parents or custodians legal guardian;~~

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

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

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

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

11 ~~(h) to retrieve from the family any personal property that the child desires to have during the~~  
 12 ~~separation period;~~

13 ~~(i) to report directly to the judge on a regular basis the guardian ad litem's observations regarding~~  
 14 ~~the needs and emotional state of the child during the separation period and the impact of the separation~~  
 15 ~~on the child; and~~

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

17  
 18 ~~**Section 11.** Section 41-3-401, MCA, is amended to read:~~

19 ~~**"41-3-401. Abuse, neglect, and dependency petitions.** (1) The ~~After filing criminal charges alleging~~  
 20 ~~abuse or endangerment against a family member or family associate, the county attorney, the attorney~~  
 21 ~~general, or an attorney hired by the county welfare department or office of human services shall be is~~  
 22 ~~responsible for filing all petitions alleging abuse, neglect, or dependency. The county attorney, or the~~  
 23 ~~attorney general, or an attorney hired by the county welfare department or office of human services with~~  
 24 ~~the written consent of the county attorney or attorney general, may require all state, county, and municipal~~  
 25 ~~agencies, including law enforcement agencies, to conduct such investigations and furnish such reports as~~  
 26 ~~that may be necessary.~~~~

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

29 ~~(3) A petition alleging abuse, neglect, or dependency is a civil action brought in the name of the~~  
 30 ~~state of Montana. The rules of civil procedure shall apply except as herein modified in this part. Proceedings~~

1 ~~under a petition are not a bar to criminal prosecution.~~

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

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

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

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

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

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

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

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

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

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

23 ~~(a) temporary investigative authority and protective services;~~

24 ~~(b) temporary legal custody;~~

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

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

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

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

1 any indigent party."

2

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

4 ~~"41-3-402. Petition for temporary investigative authority and protective services. (1) In cases~~  
 5 ~~where in which it appears that a youth is abused or neglected or is in danger of being abused or neglected,~~  
 6 ~~the county attorney, the attorney general, or an attorney hired by the county welfare department or office~~  
 7 ~~of human services, after filing criminal charges alleging abuse or endangerment, may file a petition for~~  
 8 ~~temporary investigative authority and protective services.~~

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

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

16

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

18 ~~"41-3-403. Order for immediate protection of youth. (1) (a) Upon the filing of criminal charges and~~  
 19 ~~a petition for temporary investigative authority and protective services, the court may issue an order~~  
 20 ~~granting relief that may be required for the immediate protection of the youth.~~

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

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

1 ~~provided in this part, the rules of civil procedure apply. Hearsay evidence of statements made by the~~  
 2 ~~affected youth is admissible at the hearing.~~

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

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

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

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

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

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

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

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

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

21  
 22 ~~Section 14. Section 41-3-404, MCA, is amended to read:~~

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

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

29 ~~(3) In all civil and criminal proceedings relating to abuse, neglect, or dependency, none of the~~  
 30 ~~privileges related to the examination or treatment of the child and granted in Title 26, chapter 1, part 8,~~

1 except the attorney-client privilege granted by 26-1-803, apply.

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

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

8 ~~(4)(6) (a) If the court determines that the youth is not an abused, neglected, or dependent child,~~  
 9 ~~the petition shall must be dismissed and any order made pursuant to 41-3-403 shall must be vacated.~~

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

14  
 15 ~~Section 15. Section 41-3-406, MCA, is amended to read:~~

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

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

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

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

24 ~~(i) the department;~~

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

28 ~~(iii) a relative family member or other individual who, after study by a social service agency~~  
 29 ~~designated by the court, is found by the court to be qualified to receive and care for 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 payer 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 payer 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 must~~  
23 ~~be 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 41-3-609, MCA, is amended to read:~~

19 ~~"41-3-609. Criteria for termination. (1) The court may order a termination of the parent-child legal~~  
20 ~~relationship upon a finding that any of the following circumstances exist:~~

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

22 ~~(b) the child has been abandoned by his the child's parents as set forth in 41-3-102(8)(d)(10)(e);~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29  
 30 **Section 17. Section 41-3-1103, MCA, is amended to read:**

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

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

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

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

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

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

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

14           ~~(i) the breakdown of youth in need of care, youth in need of supervision, and delinquent youth by~~  
15 ~~category in out-of-home care facilities;~~

16           ~~(ii) the cost per facility for services rendered;~~

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

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

19           ~~(v) a profile of public institutional placements; and~~

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

23          ~~(2) The department may:~~

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

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

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

30          ~~(3) The department shall pay for room, board, clothing, personal needs, transportation, and~~

1 treatment in youth foster care homes and youth group homes for youths committed to the department who  
2 need to be placed in the facilities. Payments for the clothing of a child placed in a youth foster home must  
3 be provided to the extent the child needs a basic wardrobe or has a special clothing need. Payments under  
4 this subsection may not exceed appropriations for the purposes of this subsection.

5 ~~(4) If a child temporarily removed from the home is placed in foster care, the department shall~~  
6 ~~provide the child's family or a family member with information on the background of the foster home, any~~  
7 ~~complaints filed against the foster home, and the record of disposition of children from the foster home.~~  
8 ~~The family or a family member is entitled to petition the court for placement in another foster home if~~  
9 ~~dissatisfied with the original placement."~~

10  
11 ~~NEW SECTION. Section 18. Liability for child under department protective custody. Whenever~~  
12 ~~a child is under the temporary or permanent custody of the department, the department assumes all liability~~  
13 ~~resulting from the actions of the child.~~

14  
15 ~~NEW SECTION. Section 19. Codification instruction. [Section 18] is intended to be codified as~~  
16 ~~an integral part of Title 41, chapter 3, part 3, and the provisions of Title 41 apply to [section 18].~~

17 -END-

Free Conference Committee  
on SB 206  
Report No. 1, April 10, 1995

Page 1 of 2

Mr. President and Mr. Speaker:

We, your Free Conference Committee on SB 206, met and considered:

SB 206 (reference copy - salmon) in its entirety

We recommend that SB 206 (reference copy - salmon) be amended as follows:

1. Page 3, line 15.

Strike: "AND"

2. Page 3, line 21.

Following: "associate"

Insert: "; and

(e) ensure that there is no forced removal of a child from the family based solely on an unsubstantiated allegation of abuse or neglect"

3. Page 3, line 27.

Strike: "free from proselytism"

Insert: "whenever appropriate"

4. Page 5, line 18.

Following: line 17

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

Renumber: subsequent subsections

5. Page 6, lines 12 through 16.

Strike: subsection (12) in its entirety

Renumber: subsequent subsections

6. Page 6, lines 26 and 27.

Strike: "whose" on line 26 through "both" on line 27

Insert: "who, prior to the employee's field assignment, has been educated or trained or is receiving education or training in a program of social work or a related field that includes cognitive and family systems treatment or who has equivalent verified experience or verified training in the investigation of child abuse, neglect, and endangerment. This definition does not apply to any provision of this code that is not in this chapter"

ADOPT

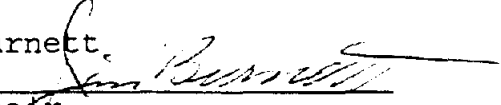
REJECT

SB 206  
FCOR#1  
821501CC.SPV

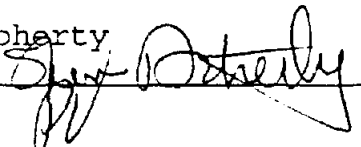
7. Page 7, line 14.  
Strike "(17)"  
Insert "(16)"


And that this Free Conference Committee report be adopted.

For the Senate:


Burnett  
  
Chair

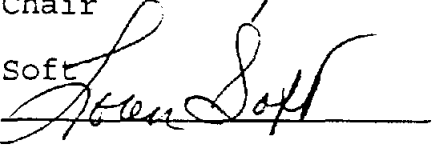
Baer  
  
\_\_\_\_\_

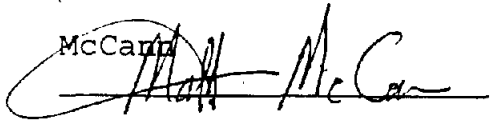
Doherty  
  
\_\_\_\_\_

Amd. Coord.  
  
Sec. of Senate

For the House:

Simpkins  
  
Chair

Soft  
  
\_\_\_\_\_

McCarthy  
  
\_\_\_\_\_

## 1 SENATE BILL NO. 206

2 INTRODUCED BY BURNETT, SIMPKINS, GRINDE, BAER, AKLESTAD, BENEDICT, CLARK

3  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS RELATING TO THE INVESTIGATION AND  
 5 REMOVAL OF A CHILD FROM THE HOME IN A CASE OF SUSPECTED ABUSE OR ENDANGERMENT OF  
 6 ~~THE CHILD'S WELFARE OR NEGLECT; PROHIBITING ANONYMOUS REPORTING OF SUSPECTED ABUSE~~  
 7 ~~OR ENDANGERMENT; REQUIRING CRIMINAL CHARGES TO BE FILED AGAINST A PERSON SUSPECTED~~  
 8 ~~OF ABUSE OR ENDANGERMENT PRIOR TO FILING A PETITION FOR REMOVAL OF THE CHILD FROM THE~~  
 9 ~~HOME; REQUIRING EVIDENCE OF SUSPECTED ABUSE OR ENDANGERMENT TO BE GIVEN TO THE~~  
 10 ~~FAMILY; GUARANTEEING A FAMILY'S COMMUNICATION WITH A CHILD REMOVED FROM THE HOME;~~  
 11 ~~REQUIRING INFORMATION ON FOSTER HOME PLACEMENT TO BE GIVEN TO THE FAMILY OF A CHILD~~  
 12 ~~REMOVED FROM THE HOME; AND AMENDING SECTIONS 40-8-111, 41-3-101, 41-3-102, 41-3-201,~~  
 13 ~~41-3-202, 41-3-204, 41-3-205, AND 41-3-206, 41-3-301, 41-3-303, 41-3-401, 41-3-402, 41-3-403,~~  
 14 ~~41-3-404, 41-3-406, 41-3-609, AND 41-3-1103, MCA."~~

15  
 16 WHEREAS, the Legislature finds it necessary to restore public confidence in the child protective  
 17 system and to provide protection of individual and family civil rights as guaranteed by the state and federal  
 18 constitutions; and,

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

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

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

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

29 ~~WHEREAS, child abuse and neglect is a crime and must be addressed as a crime.~~

30

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

2  
3 ~~Section 1. Section 40-8-111, MCA, is amended to read:~~

4 ~~"40-8-111. Consent required for adoption. (1) An adoption of a child may be decreed when there~~  
5 ~~have been filed written consents to adoption executed by:~~

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

8 ~~(i) adjudged guilty by a court of competent jurisdiction of:~~

9 ~~(A) assault on the child, as provided in 45-5-201;~~

10 ~~(B) endangering the welfare of children, concerning the child, as provided in 45-5-622; or~~

11 ~~(C) sexual abuse of children, toward the child, as provided in 45-5-625;~~

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

14 ~~(iii) who has, in the state of Montana or in any other state of the United States, willfully abandoned~~  
15 ~~the child, as defined set forth in 41-3-102(8)(d)(10)(e);~~

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

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

23 ~~(vi) whose parental rights have been judicially terminated;~~

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

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



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

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

7  
 8 **Section 1.** Section 41-3-101, MCA, is amended to read:

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

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

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

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

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

18 ~~(e) ensure that there is no forced removal of a child from the family because of suspected abuse~~  
 19 ~~or endangerment of the child's welfare by an immediate family member or family associate without the filing~~  
 20 ~~of a criminal complaint charging abuse or endangerment against that immediate family member or family~~  
 21 ~~associate; AND~~

22 (E) ENSURE THAT THERE IS NO FORCED REMOVAL OF A CHILD FROM THE FAMILY BASED  
 23 SOLELY ON AN UNSUBSTANTIATED ALLEGATION OF ABUSE OR NEGLECT.

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

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

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

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

30 (3) It is intended that the mandatory reporting of such abuse or endangerment cases by

1 professional people and other community members to the appropriate authority will cause the protective  
 2 services of the state to seek to prevent further abuses, protect and enhance the welfare of these children,  
 3 ~~and AND preserve family life wherever whenever appropriate, and provide legal redress for interference with~~  
 4 the family."

5  
 6 **Section 2.** 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~~ This chapter may not be construed to require or justify a finding of child abuse  
 19 or neglect for the sole reason that a parent, due to religious beliefs, does not provide medical care for a  
 20 child. However, ~~nothing in this chapter may not~~ be construed to limit the administrative or judicial authority  
 21 of the state to ensure that medical care is provided to the child when there is imminent or substantial risk  
 22 of harm to the child.

23 (4) "Child" or "youth" means any 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);~~ 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) "Family" means at least one natural or adoptive parent or legal guardian with at least one minor~~

9 ~~child.~~

10 ~~(9) "Family associate" means a person who may or may not live within the household of a child~~

11 ~~but who is or has been granted unencumbered access to the child by a natural or adoptive parent,~~

12 ~~stepparent, or legal guardian of the child.~~

13 ~~(8)(10)(8) "Harm to a child's health or welfare" means the harm that occurs whenever the parent~~

14 ~~or other person responsible for the child's welfare:~~

- 15 (a) ~~knowingly~~ inflicts or ~~knowingly~~ allows to be inflicted upon the child physical or mental injury;
- 16 (b) ~~knowingly~~ commits or ~~knowingly~~ allows to be committed sexual abuse or exploitation of the
- 17 child;

18 ~~(c) induces or attempts to induce a child into giving untrue testimony that the child or another child~~

19 ~~was abused or neglected by a parent or person responsible for the child's welfare;~~

20 (C) INDUCES OR ATTEMPTS TO INDUCE A CHILD INTO GIVING UNTRUE TESTIMONY THAT THE

21 CHILD OR ANOTHER CHILD WAS ABUSED OR NEGLECTED BY A PARENT OR PERSON RESPONSIBLE FOR

22 THE CHILD'S WELFARE;

23 ~~(d)(G)(D)~~ causes failure to thrive or otherwise fails to supply the child with adequate food or fails

24 to supply clothing, shelter, education, or adequate health care, though financially able to do so or offered

25 financial or other reasonable means to do so;

26 ~~(d)(e)(D)(E)~~ abandons the child by leaving the child under circumstances that make reasonable the

27 belief that the parent or other person does not intend to resume care of the child in the future or ~~by~~ willfully

28 ~~surrendering~~ surrenders physical custody for a period of 6 months and during that period does not manifest

29 to the child and the person having physical custody of the child a firm intention to resume physical custody

30 or to make permanent legal arrangements for the care of the child; or

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

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

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

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

9 ~~(9)(14)(9)~~ "Limited emancipation" means a status conferred on a dependent youth by a court after  
 10 a dispositional hearing in accordance with 41-3-406 under which the youth is entitled to exercise some but  
 11 not all of the rights and responsibilities of a person who is 18 years of age or older.

12 ~~(10)(15)(10)~~ "Mental injury" means an identifiable and substantial impairment of the child's  
 13 intellectual or psychological functioning.

14 ~~(11)(16)(11)~~ "Physical injury" means death, permanent or temporary disfigurement, or impairment  
 15 of any bodily organ or function and includes death, permanent or temporary disfigurement, and impairment  
 16 of a bodily organ or function sustained as a result of excessive corporal punishment.

17 ~~(17)(12) "Proselytism" means the change or attempted change through undue influence of the~~  
 18 ~~religious beliefs or affiliation of a child who has been removed from the family to a religion other than that~~  
 19 ~~affiliated with the child's race, culture, or heritage by an adult, other than a family member, in a position~~  
 20 ~~of power over the child or by constant exposure of the child to dogma, tradition, or religious teachings and~~  
 21 ~~practices preferred by the adult.~~

22 ~~(12)(18)(13)(12)~~ (a) "Sexual abuse" means the commission of sexual assault, sexual intercourse  
 23 without consent, indecent exposure, deviate sexual conduct, or incest, as described in Title 45, chapter  
 24 5, part 5.

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

29 ~~(13)(19)(14)(13)~~ "Sexual exploitation" means allowing, permitting, or encouraging a child to engage  
 30 in a prostitution offense, as described in 45-5-601 through 45-5-603, or allowing, permitting, or

1 encouraging sexual abuse of children as described in 45-5-625.

2 ~~(14)(20)(15)~~(14) "Social worker" means an employee of the department ~~whose duties generally~~  
 3 ~~involve the provision of either child or adult protective services, or both~~ WHO, PRIOR TO THE EMPLOYEE'S  
 4 FIELD ASSIGNMENT, HAS BEEN EDUCATED OR TRAINED OR IS RECEIVING EDUCATION OR TRAINING  
 5 IN A PROGRAM OF SOCIAL WORK OR A RELATED FIELD THAT INCLUDES COGNITIVE AND FAMILY  
 6 SYSTEMS TREATMENT OR WHO HAS EQUIVALENT VERIFIED EXPERIENCE OR VERIFIED TRAINING IN  
 7 THE INVESTIGATION OF CHILD ABUSE, NEGLECT, AND ENDANGERMENT. THIS DEFINITION DOES NOT  
 8 APPLY TO ANY PROVISION OF THIS CODE THAT IS NOT IN THIS CHAPTER.

9 ~~(15)(21)(16)~~(15) "Threatened harm to a child's health or welfare" means substantial risk of harm  
 10 to the child's health or welfare.

11 ~~(16)(22)(17)~~(16) (a) "Withholding of medically indicated treatment" means the failure to respond  
 12 to an infant's life-threatening conditions by providing treatment (including appropriate nutrition, hydration,  
 13 and medication) that, in the treating physician's or physicians' reasonable medical judgment, will be most  
 14 likely to be effective in ameliorating or correcting the conditions. ~~However, the~~

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

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

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

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

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

22 or

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

24 ~~(a)~~(iii) the provision of treatment would be virtually futile in terms of the survival of the infant and  
 25 the treatment itself under the circumstances would be inhumane. For purposes of this subsection ~~(22)(17)~~  
 26 (16), "infant" means an infant less than 1 year of age or an infant 1 year of age or older who has been  
 27 continuously hospitalized since birth, who was born extremely prematurely, or who has a long-term  
 28 disability. The reference to less than 1 year of age may not be construed to imply that treatment should  
 29 be changed or discontinued when an infant reaches 1 year of age or to affect or limit any existing  
 30 protections available under state laws regarding medical neglect of children over 1 year of age.

1           ~~(17)(23)(18)(17)~~ "Youth in need of care" means a youth who is dependent, abused, or neglected  
2 as defined in this section."

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

5           ~~"41-3-201. Reports. (1) When the professionals and officials listed in subsection (2) know or have~~  
6 ~~reasonable cause to suspect, as a result of information that they receive in their professional or official~~  
7 ~~capacity, that a child is abused or neglected, they shall report the matter promptly to the department of~~  
8 ~~family services or its local affiliate, which then shall notify the county attorney of the county where the~~  
9 ~~child resides.~~

10           ~~(2) Professionals and officials required to report are:~~

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

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

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

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

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

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

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

21           ~~(h) a member of the clergy.~~

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

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

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

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

1           ~~(ii) the statement was intended to be a part of a confidential communication between the~~  
2 ~~clergy person member of the clergy or the priest and a member of his the church or congregation; and~~

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

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

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

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

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

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

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

18  
19           **Section 3.** Section 41-3-202, MCA, is amended to read:

20           "**41-3-202. Action on reporting.** (1) Upon receipt of a report, as required by 41-3-201, that a child  
21 is or has been abused or neglected, a social worker or the county attorney or a peace officer shall promptly  
22 conduct a ~~thorough~~ an initial A THOROUGH investigation into the home of the child involved or any other  
23 place where the child is present, into the circumstances surrounding the injury of the child, and into all  
24 other nonfinancial matters ~~which~~ that in the discretion of the investigator are relevant to the investigation.  
25 In conducting an investigation under this section, a social worker may not inquire into the financial status  
26 of the child's family or of any other person responsible for the child's, care, except as necessary to  
27 ascertain eligibility for federal assistance programs or to comply with the provisions of 41-3-406.

28           (2) An initial investigation into the home of the child may be conducted when an anonymous report  
29 is received. However, the investigation must ~~within 48 hours~~ WITHIN 48 HOURS develop independent,  
30 INDEPENDENT, corroborative, ~~and attributable,~~ AND ATTRIBUTABLE information in order for the

1 ~~investigation to continue. Without the development of independent, corroborative and attributable~~  
 2 ~~information, a child may not be removed from the home. WITHOUT THE DEVELOPMENT OF~~  
 3 ~~INDEPENDENT, CORROBORATIVE, AND ATTRIBUTABLE INFORMATION, A CHILD MAY NOT BE REMOVED~~  
 4 ~~FROM THE HOME.~~

5 ~~(2)~~(3) The social worker is responsible for assessing the family and planning for the child. If the  
 6 child is treated at a medical facility, the social worker, county attorney, or peace officer ~~shall~~, consistent  
 7 with reasonable medical practice, ~~have~~ has the right of access to the child for interviews, photographs, and  
 8 securing physical evidence and ~~have~~ has the right of access to relevant hospital and medical records  
 9 pertaining to the child. If considered appropriate by the social worker, county attorney, or peace officer  
 10 conducting an interview of the child, an employee of the public school attended by the child involved may  
 11 participate in any interview of the child if the child is enrolled in kindergarten through 8th grade.

12 ~~(4) All examinations of the child must be attended by the independent examining psychologist or~~  
 13 ~~physician representing the family and by the social worker. If the child is interviewed by the social worker~~  
 14 CHILD'S INTERVIEW IS VIDEOTAPED, an unedited videotape with audio track must be made available,  
 15 UPON REQUEST, for unencumbered review by the family.

16 ~~(3)~~(5) If from the investigation it appears that the child suffered abuse or neglect, the department  
 17 shall provide protective services to the child pursuant to 41-3-301 and may provide protective services to  
 18 any other child under the same care. The department ~~will~~ shall advise the county attorney and the child's  
 19 family of its investigation.

20 ~~(4)~~(6) The investigating social worker, within 60 days of commencing an investigation, shall also  
 21 furnish a written report to the department and, UPON REQUEST, TO the family. The department shall  
 22 maintain a record system containing child abuse and neglect cases.

23 ~~(5)~~(7) Any person reporting abuse or neglect ~~which~~ that involves acts or omissions on the part of  
 24 a public or private residential institution, home, facility, or agency ~~shall be~~ is responsible for ensuring that  
 25 the report is made to the department ~~of family services~~, its local affiliate, and AND the county attorney of  
 26 the county in which the facility is located, ~~and the family of the child who is the subject of the report."~~

27  
 28 **Section 6.** ~~Section 41-3-204, MCA, is amended to read:~~

29 ~~"41-3-204. Admissibility and preservation of evidence. (1) In any a proceeding resulting from a~~  
 30 ~~report made pursuant to the provisions of this chapter or in any a proceeding where in which the report or~~



1 ~~its contents are sought to be introduced into evidence, the report or its contents or any other fact related~~  
 2 ~~to the report or to the condition of the child who is the subject of the report shall may not be excluded on~~  
 3 ~~the ground that the matter is or may be the subject of a privilege related to the examination or treatment~~  
 4 ~~of the child and granted in Title 26, chapter 1, part 8, except the attorney-client privilege granted by~~  
 5 ~~26-1-803.~~

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

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

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

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

21 ~~(5)(6) All At the time that the written confirmation report is sent or as soon after the report is sent~~  
 22 ~~as possible, all written, photographic, or radiological evidence gathered under this section shall must be~~  
 23 ~~sent to the local affiliate of the department and copies must be sent to the child's family at the time the~~  
 24 ~~written confirmation report is sent or as soon thereafter as is possible.~~"

25  
 26 **Section 4.** Section 41-3-205, MCA, is amended to read:

27 **"41-3-205. Confidentiality -- disclosure exceptions.** (1) The case records of the department of  
 28 social and rehabilitation services, the department of family services and its local affiliate, the county welfare  
 29 department, the county attorney, and the court concerning actions taken under this chapter and all records  
 30 concerning reports of child abuse and neglect must be kept confidential, except as provided by this section.

1 ~~Any~~ Except as provided in subsections (4) and (5), a person who permits or encourages the unauthorized  
2 dissemination of ~~their~~ the contents of case records is guilty of a misdemeanor.

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

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

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

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

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

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

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

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

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

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

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

30 (j) a youth probation officer who is working in an official capacity with the child who is the subject

1 of a report in the records;

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

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

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

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

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

11 (4) A person who is authorized to receive records under this section shall maintain the  
12 confidentiality of the records and may not disclose information in the records to anyone other than the  
13 persons described in subsection (3)(a). However, this subsection may not be construed to compel a family  
14 member who believes that the family is being victimized by an unfair or unwarranted process to keep the  
15 proceedings secret CONFIDENTIAL.

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

20 ~~(5)(6) Nothing in this~~ This section is not intended to affect the confidentiality of criminal court  
21 records or records of law enforcement agencies."  
22

23 **Section 5.** Section 41-3-206, MCA, is amended to read:

24 "**41-3-206. Procedure in case of child's death.** (1) ~~Any~~ A person or official required to report by  
25 law who has reasonable cause to suspect that a child has died as a result of child abuse or neglect shall  
26 report ~~under oath~~ his the person's suspicion to the appropriate medical examiner or law enforcement officer.  
27 Any other person who has reasonable cause to suspect that a child has died as a result of child abuse or  
28 neglect may report ~~under oath~~ his the person's suspicion to the appropriate medical examiner or law  
29 enforcement officer.

30 (2) The medical examiner or coroner shall investigate the report and submit ~~his~~ findings, in writing,

1 to the local law enforcement agency, the appropriate county attorney, the local child protective service,  
 2 the family of the deceased child, and, if the person making the report is a physician, the physician."

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

5 ~~"41-3-301. Emergency protective service. (1) Any A child protective social worker of the~~  
 6 ~~department of family services, a peace officer, or the county attorney who has reason to believe that any~~  
 7 ~~a youth is in immediate or apparent danger of harm may immediately remove the youth and place him the~~  
 8 ~~youth in a protective facility. The department may make a request for further assistance from the law~~  
 9 ~~enforcement agency or take appropriate legal action. The person or agency placing the child shall notify~~  
 10 ~~the parents, parent, guardian, or other person having legal custody of the youth at the time the placement~~  
 11 ~~is made or as soon thereafter after placement as possible.~~

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

14 ~~(3) A petition shall must be filed pursuant to 41-3-401 within 48 hours of emergency placement~~  
 15 ~~of a child unless arrangements acceptable to the agency for the care of the child have been made by the~~  
 16 ~~parents. Criminal charges must be filed against a family member or family associate believed by a county~~  
 17 ~~attorney, the attorney general, or an attorney hired by the department to have abused or endangered a~~  
 18 ~~child. A family member or family associate charged with abuse or endangerment is entitled to a jury trial.~~

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

26 ~~(4)(5) The department of family services shall make such necessary arrangements for the youth's~~  
 27 ~~well-being as are required prior to the court hearing."~~

28  
 29 ~~Section 10. Section 41-3-303, MCA, is amended to read:~~

30 ~~"41-3-303. Guardian ad litem. (1) In When a child is temporarily removed from the home and in~~

1 ~~every judicial proceeding, the court shall appoint for any a child alleged to be abused or neglected a~~  
 2 ~~guardian ad litem. The department or any of its staff may not be appointed as the guardian ad litem in a~~  
 3 ~~judicial proceeding under this title. When necessary the The guardian ad litem may must be a person chosen~~  
 4 ~~from a roll of volunteers who have undergone a background check and who have parental experience. They~~  
 5 ~~may serve either at their own expense or at public expense.~~

6 ~~(2) The guardian ad litem is charged with the representation of the child's interests. The guardian~~  
 7 ~~ad litem has the following general duties:~~

8 ~~(a) to conduct investigations that the guardian ad litem considers necessary to ascertain the facts~~  
 9 ~~constituting the alleged abuse or neglect;~~

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

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

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

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

18 ~~(f) to be a friend and to provide for the daily nurturing needs of the child while separated from the~~  
 19 ~~family;~~

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

22 ~~(h) to retrieve from the family any personal property that the child desires to have during the~~  
 23 ~~separation period;~~

24 ~~(i) to report directly to the judge on a regular basis the guardian ad litem's observations regarding~~  
 25 ~~the needs and emotional state of the child during the separation period and the impact of the separation~~  
 26 ~~on the child; and~~

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

28  
 29 **Section 11.** ~~Section 41-3-401, MCA, is amended to read:~~

30 ~~"41-3-401. Abuse, neglect, and dependency petitions. (1) The After filing criminal charges alleging~~

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

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

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

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

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

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

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

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

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

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

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

1 ~~(e) state the names, addresses, and relationship to the youth of all persons who are necessary~~  
 2 ~~parties to the action.~~

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

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

5 ~~(b) temporary legal custody;~~

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

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

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

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

13  
 14 ~~Section 12. Section 41-3-402, MCA, is amended to read:~~

15 ~~"41-3-402. Petition for temporary investigative authority and protective services. (1) In cases~~  
 16 ~~where in which it appears that a youth is abused or neglected or is in danger of being abused or neglected,~~  
 17 ~~the county attorney, the attorney general, or an attorney hired by the county welfare department or office~~  
 18 ~~of human services, after filing criminal charges alleging abuse or endangerment, may file a petition for~~  
 19 ~~temporary investigative authority and protective services.~~

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

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

27  
 28 ~~Section 13. Section 41-3-403, MCA, is amended to read:~~

29 ~~"41-3-403. Order for immediate protection of youth. (1) (a) Upon the filing of criminal charges and~~  
 30 ~~a petition for temporary investigative authority and protective services, the court may issue an order~~

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

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

7 ~~(c) The order must require the person served to comply immediately with the terms of the order~~  
 8 ~~or to appear before the court issuing the order on the date specified and show cause why the person has~~  
 9 ~~not complied with the order. The show cause hearing must be conducted within 20 days of the issuance~~  
 10 ~~of the order by the judge or a master appointed by the judge. The person filing the petition has the burden~~  
 11 ~~of presenting evidence establishing probable cause for the issuance of the order. Except as otherwise~~  
 12 ~~provided in this part, the rules of civil procedure apply. Hearsay evidence of statements made by the~~  
 13 ~~affected youth is admissible at the hearing.~~

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

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

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

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

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

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

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

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

28 ~~(g) other temporary disposition that may be required in the best interest of the youth and that does~~  
 29 ~~not require an expenditure of money by the department unless the department is notified and a court~~  
 30 ~~hearing is set in a timely manner on the proposed expenditure. The department is the payor of last resort~~



1 ~~after all family, insurance, and other resources have been examined."~~

2

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

4 ~~"41-3-404. Adjudicatory hearing—temporary disposition. (1) In the adjudicatory hearing on a~~  
 5 ~~petition under 41-3-401, the court shall determine whether the youth is a youth in need of care and~~  
 6 ~~ascertain, as far as possible, the cause.~~

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

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

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

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

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

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

25

26 ~~Section 15. Section 41-3-406, MCA, is amended to read:~~

27 ~~"41-3-406. Dispositional hearing—contributions by parents or guardians for youth's care. (1) If~~  
 28 ~~a youth is found to be a youth in need of care under 41-3-404, the court may enter its judgment, making~~  
 29 ~~any of the following dispositions to protect the welfare of the youth:~~

30 ~~(a) permit the youth to remain with the youth's parents or guardian, subject to those conditions~~

1 ~~and limitations the court may prescribe;~~

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

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

5 ~~(i) the department;~~

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

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

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

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

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

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

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

1 ~~nevertheless subject to withholding for the payment of the contribution without need for an amendment~~  
 2 ~~of the support order or for any further action by the court.~~

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

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

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

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

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

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

15 ~~(d) An alternative arrangement must:~~

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

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

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

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

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

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

28  
 29 **Section 16.** ~~Section 41-3-609, MCA, is amended to read:~~

30 **"41-3-609. Criteria for termination.** (1) The court may order a termination of the parent-child legal

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

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

3 ~~(b) the child has been abandoned by his the child's parents as set forth in 41-3-102(8)(d)(10)(e);~~

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

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

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

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

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

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

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

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

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

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

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

27 ~~(g) any reasonable efforts by protective service agencies that have been unable to rehabilitate the~~  
28 ~~parent.~~

29 ~~(3) In considering any of the factors in subsection (2) in terminating the parent-child relationship,~~  
30 ~~the court shall give primary consideration to the physical, mental, and emotional conditions and needs of~~

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

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

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

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

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

10

11 ~~**Section 17.** Section 41-3-1103, MCA, is amended to read:~~

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

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

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

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

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

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

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

25 ~~(i) the breakdown of youth in need of care, youth in need of supervision, and delinquent youth by~~  
 26 ~~category in out of home care facilities;~~

27 ~~(ii) the cost per facility for services rendered;~~

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

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

30 ~~(v) a profile of public institutional placements; and~~

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

4 ~~(2) The department may:~~

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

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

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

11 ~~(3) The department shall pay for room, board, clothing, personal needs, transportation, and~~  
 12 ~~treatment in youth foster care homes and youth group homes for youths committed to the department who~~  
 13 ~~need to be placed in the facilities. Payments for the clothing of a child placed in a youth foster home must~~  
 14 ~~be provided to the extent the child needs a basic wardrobe or has a special clothing need. Payments under~~  
 15 ~~this subsection may not exceed appropriations for the purposes of this subsection.~~

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

21  
 22 ~~**NEW SECTION. Section 18. Liability for child under department protective custody.** Whenever~~  
 23 ~~a child is under the temporary or permanent custody of the department, the department assumes all liability~~  
 24 ~~resulting from the actions of the child.~~

25  
 26 ~~**NEW SECTION. Section 19. Codification instruction.** [Section 18] is intended to be codified as~~  
 27 ~~an integral part of Title 41, chapter 3, part 3, and the provisions of Title 41 apply to [section 19].~~

28 -END-