

Senate BILL NO. 283

CRUDS

INTRODUCED BY

AKLESTAD *Hargrove*

*Wahlum*

*Urbahn* *Bair*  
*Keating*

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING A SOCIAL WORKER IN CHILD ABUSE AND NEGLECT CASES TO INTERVIEW THE PARENTS BEFORE REQUESTING TEMPORARY INVESTIGATIVE AUTHORITY; REQUIRING THAT A PETITION FOR TEMPORARY INVESTIGATIVE AUTHORITY AND PROTECTIVE SERVICES IN CHILD ABUSE AND NEGLECT CASES MUST BE ACCOMPANIED BY THE PARENTS' STATEMENT OF THE FACTS OF THE CASE OR AN APPEARANCE BY THE PARENTS AT THE HEARING ON THE PETITION; AMENDING SECTIONS 41-3-101, 41-3-402, AND 41-3-403, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

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

**"41-3-101. Declaration of policy.** (1) It is the policy of the state of Montana to:

- (a) ensure that all youth are afforded an adequate physical and emotional environment to promote normal development;
- (b) compel in proper cases the parent or guardian of a youth to perform the moral and legal duty owed to the youth;
- (c) achieve these purposes in a family environment whenever possible;
- (d) preserve the unity and welfare of the family whenever possible; 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.

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

- (a) protect, whenever possible, family unity;
- (b) provide for the protection of children whose health and welfare are or may be adversely affected and further threatened by the conduct of those responsible for their care and protection; and
- (c) require a department social worker to interview the parents of a child to which a petition pertains before the state may file a petition for temporary investigative authority and protective services and to require that a judge may not issue an order granting the petition until the parents are given the

1 opportunity to appear before the judge or have their written statements presented to the judge for  
2 consideration before an order is granted; and

3 ~~(e)~~(d) ensure that whenever removal of a child from the home is necessary, the child is entitled to  
4 maintain ethnic, cultural, and religious heritage whenever appropriate.

5 (3) It is intended that the mandatory reporting of abuse or endangerment cases by professional  
6 people and other community members to the appropriate authority will cause the protective services of the  
7 state to seek to prevent further abuses, protect and enhance the welfare of these children, and preserve  
8 family life whenever appropriate.

9 (4) In implementing the policy of this section, whenever it is necessary to remove a child from the  
10 child's home, the department shall, when it is in the best interests of the child and when the home is  
11 approved by the department, place the child with the child's extended family, including adult siblings,  
12 grandparents, great-grandparents, aunts, and uncles, prior to placing the child in an alternative protective  
13 or residential facility. Prior to approving a home, the department shall investigate whether anyone living in  
14 the home has been convicted of a crime involving serious harm to children."  
15

16 **Section 2.** Section 41-3-402, MCA, is amended to read:

17 **"41-3-402. Petition for temporary investigative authority and protective services.** (1) In a case in  
18 which it appears that a youth is abused or neglected or is in danger of being abused or neglected, the  
19 county attorney, the attorney general, or an attorney hired by the county may file a petition for temporary  
20 investigative authority and protective services.

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

24 (3) The petition for temporary investigative authority and protective services must be supported  
25 by an affidavit signed by the county attorney, the attorney general, or an attorney hired by the county or  
26 must be supported by a department ~~of public health and human services~~ report stating in detail the facts  
27 upon which the request is based. The petition must also contain written statements prepared by the  
28 parents detailing the parents' statement of the facts of the case or must be presented to the court in the  
29 presence of the parents who must be given an opportunity to address the court before the court rules on  
30 the petition."

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

2           **"41-3-403. Order for immediate protection of youth.** (1) (a) Upon the filing of a petition for  
3 temporary investigative authority and protective services, the court, after consideration of the parents'  
4 statements included with the petition or of the parents' remarks in court in relation to the petition, may  
5 issue an order granting relief that may be required for the immediate protection of the youth.

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

11           (c) The order must require the person served to comply immediately with the terms of the order  
12 or to appear before the court issuing the order on the date specified and show cause why the person has  
13 not complied with the order. The show cause hearing must be conducted within 20 days of the issuance  
14 of the order by the judge or a master appointed by the judge. The person filing the petition has the burden  
15 of presenting evidence establishing probable cause for the issuance of the order. Except as otherwise  
16 provided in this part, the rules of civil procedure apply. Hearsay evidence of statements made by the  
17 affected youth is admissible at the hearing or at a contested case proceeding held pursuant to Title 2,  
18 chapter 4, part 6, that results from adverse licensing action taken by the department.

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

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

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

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

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

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

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

30           (f) inquiry into the financial ability of the parents, guardian, or other person having custody of the

1 youth to contribute to the costs for the care, custody, and treatment of the youth and requirement of a  
2 contribution for those costs pursuant to the requirements of 41-3-406(3) through (6);

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

7

8 NEW SECTION. **Section 4. Effective date.** [This act] is effective on passage and approval.

9

-END-

## SENATE BILL NO. 283

INTRODUCED BY BURNETT, GRINDE, ESTRADA, BAER, KEATING, AKLESTAD, HARGROVE, MAHLUM

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING A SOCIAL WORKER IN CHILD ABUSE AND NEGLECT CASES TO INTERVIEW ~~THE AVAILABLE~~ PARENTS BEFORE REQUESTING TEMPORARY INVESTIGATIVE AUTHORITY; REQUIRING THAT A PETITION FOR TEMPORARY INVESTIGATIVE AUTHORITY AND PROTECTIVE SERVICES IN CHILD ABUSE AND NEGLECT CASES MUST ~~BE ACCOMPANIED~~ INCLUDE STATEMENTS MADE, IF ANY, BY THE PARENTS' PARENTS STATEMENT OF THE FACTS OF THE CASE OR AN APPEARANCE BY THE PARENTS AT THE HEARING ON THE PETITION; AMENDING SECTIONS 41-3-101, 41-3-402, AND 41-3-403, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

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

"**41-3-101. Declaration of policy.** (1) It is the policy of the state of Montana to:

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

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

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

(d) preserve the unity and welfare of the family whenever possible; 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.

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

(a) protect, whenever possible, family unity;

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

(c) require a department social worker to interview the parents of a child to which a petition pertains, IF THE ARE REASONABLY AVAILABLE, before the state may file a petition for temporary

~~investigative authority and protective services and to require that a judge may not issue an order granting the petition until the parents are given the opportunity to appear before the judge or have their written statements presented to the judge for consideration before an order is granted; and~~

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

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

(4) In implementing the policy of this section, whenever it is necessary to remove a child from the child's home, the department shall, when it is in the best interests of the child and when the home is approved by the department, place the child with the child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, prior to placing the child in an alternative protective or residential facility. Prior to approving a home, the department shall investigate whether anyone living in the home has been convicted of a crime involving serious harm to children."

**Section 2.** Section 41-3-402, MCA, is amended to read:

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

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

(3) The petition for temporary investigative authority and protective services must be supported by an affidavit signed by the county attorney, the attorney general, or an attorney hired by the county or must be supported by a department of public health and human services report stating in detail the facts upon which the request is based. The petition must also contain written statements prepared, AFFIDAVIT, OR REPORT OF THE DEPARTMENT MUST CONTAIN INFORMATION REGARDING STATEMENTS, IF ANY, MADE by the parents detailing the parents' statement of the facts of the case or must be presented to the

1 ~~court in the presence of the parents who must be given an opportunity to address the court before the~~  
2 ~~court rules on the petition."~~

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

5 **"41-3-403. Order for immediate protection of youth.** (1) (a) Upon the filing of a petition for  
6 temporary investigative authority and protective services, the court, ~~after consideration of the parents'~~  
7 ~~statements included with the petition or of the parents' remarks in court in relation to the petition~~ **AND ANY**  
8 **ACCOMPANYING AFFIDAVIT OR REPORT TO THE COURT,** may issue an order granting relief that may be  
9 required for the immediate protection of the youth.

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

15 (c) The order must require the person served to comply immediately with the terms of the order  
16 or to appear before the court issuing the order on the date specified and show cause why the person has  
17 not complied with the order. The show cause hearing must be conducted within 20 days of the issuance  
18 of the order by the judge or a master appointed by the judge. The person filing the petition has the burden  
19 of presenting evidence establishing probable cause for the issuance of the order. Except as otherwise  
20 provided in this part, the rules of civil procedure apply. Hearsay evidence of statements made by the  
21 affected youth is admissible at the hearing or at a contested case proceeding held pursuant to Title 2,  
22 chapter 4, part 6, that results from adverse licensing action taken by the department.

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

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

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

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

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

- 1 (d) placement of the youth in a temporary medical facility or a facility for protection of the youth;  
2 (e) requirement that the parents, guardian, or other person having custody furnish services that  
3 the court may designate;
- 4 (f) inquiry into the financial ability of the parents, guardian, or other person having custody of the  
5 youth to contribute to the costs for the care, custody, and treatment of the youth and requirement of a  
6 contribution for those costs pursuant to the requirements of 41-3-406(3) through (6);
- 7 (g) other temporary disposition that may be required in the best interest of the youth that does not  
8 require an expenditure of money by the department unless the department is notified and a court hearing  
9 is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all  
10 family, insurance, and other resources have been examined."

11

12 **NEW SECTION. Section 4. Effective date.** [This act] is effective on passage and approval.

13

-END-



## SENATE BILL NO. 283

INTRODUCED BY BURNETT, GRINDE, ESTRADA, BAER, KEATING, AKLESTAD, HARGROVE, MAHLUM

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING A SOCIAL WORKER IN CHILD ABUSE AND NEGLECT CASES TO INTERVIEW THE AVAILABLE PARENTS BEFORE REQUESTING TEMPORARY INVESTIGATIVE AUTHORITY; REQUIRING THAT A PETITION FOR TEMPORARY INVESTIGATIVE AUTHORITY AND PROTECTIVE SERVICES IN CHILD ABUSE AND NEGLECT CASES MUST ~~BE ACCOMPANIED~~ INCLUDE STATEMENTS MADE, IF ANY, BY THE PARENTS' PARENTS STATEMENT OF THE FACTS OF THE CASE ~~OR AN APPEARANCE BY THE PARENTS AT THE HEARING ON THE PETITION~~; AMENDING SECTIONS 41-3-101, 41-3-402, AND 41-3-403, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

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

**"41-3-101. Declaration of policy.** (1) It is the policy of the state of Montana to:

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

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

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

(d) preserve the unity and welfare of the family whenever possible; 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.

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

(a) protect, whenever possible, family unity;

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

(c) require a department social worker to interview the parents of a child to which a petition pertains, IF THEY ARE REASONABLY AVAILABLE, before the state may file a petition for temporary

1 ~~investigative authority and protective services and to require that a judge may not issue an order granting~~  
 2 ~~the petition until the parents are given the opportunity to appear before the judge or have their written~~  
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4 (e)(d) ensure that whenever removal of a child from the home is necessary, the child is entitled to  
 5 maintain ethnic, cultural, and religious heritage whenever appropriate.

6 (3) It is intended that the mandatory reporting of abuse or endangerment cases by professional  
 7 people and other community members to the appropriate authority will cause the protective services of the  
 8 state to seek to prevent further abuses, protect and enhance the welfare of these children, and preserve  
 9 family life whenever appropriate.

10 (4) In implementing the policy of this section, whenever it is necessary to remove a child from the  
 11 child's home, the department shall, when it is in the best interests of the child and when the home is  
 12 approved by the department, place the child with the child's extended family, including adult siblings,  
 13 grandparents, great-grandparents, aunts, and uncles, prior to placing the child in an alternative protective  
 14 or residential facility. Prior to approving a home, the department shall investigate whether anyone living in  
 15 the home has been convicted of a crime involving serious harm to children."

16  
 17 **Section 2.** Section 41-3-402, MCA, is amended to read:

18 **"41-3-402. Petition for temporary investigative authority and protective services.** (1) In a case in  
 19 which it appears that a youth is abused or neglected or is in danger of being abused or neglected, the  
 20 county attorney, the attorney general, or an attorney hired by the county may file a petition for temporary  
 21 investigative authority and protective services.

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

25 (3) The petition for temporary investigative authority and protective services must be supported  
 26 by an affidavit signed by the county attorney, the attorney general, or an attorney hired by the county or  
 27 must be supported by a department of public health and human services report stating in detail the facts  
 28 upon which the request is based. ~~The petition must also contain written statements prepared,~~ **AFFIDAVIT,**  
 29 **OR REPORT OF THE DEPARTMENT MUST CONTAIN INFORMATION REGARDING STATEMENTS, IF ANY,**  
 30 **MADE by the parents detailing the parents' statement of the facts of the case or must be presented to the**

1 ~~court in the presence of the parents who must be given an opportunity to address the court before the~~  
2 ~~court rules on the petition."~~

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

5 **"41-3-403. Order for immediate protection of youth.** (1) (a) Upon the filing of a petition for  
6 temporary investigative authority and protective services, the court, ~~after consideration of the parents'~~  
7 ~~statements included with the petition or of the parents' remarks in court in relation to the petition~~ **AND ANY**  
8 **ACCOMPANYING AFFIDAVIT OR REPORT TO THE COURT,** may issue an order granting relief that may be  
9 required for the immediate protection of the youth.

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

15 (c) The order must require the person served to comply immediately with the terms of the order  
16 or to appear before the court issuing the order on the date specified and show cause why the person has  
17 not complied with the order. The show cause hearing must be conducted within 20 days of the issuance  
18 of the order by the judge or a master appointed by the judge. The person filing the petition has the burden  
19 of presenting evidence establishing probable cause for the issuance of the order. Except as otherwise  
20 provided in this part, the rules of civil procedure apply. Hearsay evidence of statements made by the  
21 affected youth is admissible at the hearing or at a contested case proceeding held pursuant to Title 2,  
22 chapter 4, part 6, that results from adverse licensing action taken by the department.

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

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

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

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

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

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

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3 the court may designate;

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

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

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12 NEW SECTION. **Section 4. Effective date.** [This act] is effective on passage and approval.

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2 INTRODUCED BY BURNETT, GRINDE, ESTRADA, BAER, KEATING, AKLESTAD, HARGROVE, MAHLUM

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING A SOCIAL WORKER IN CHILD ABUSE AND NEGLECT  
5 CASES TO INTERVIEW ~~THE AVAILABLE~~ THE PARENTS BEFORE REQUESTING TEMPORARY  
6 INVESTIGATIVE AUTHORITY; REQUIRING THAT A PETITION FOR TEMPORARY INVESTIGATIVE  
7 AUTHORITY AND PROTECTIVE SERVICES IN CHILD ABUSE AND NEGLECT CASES MUST BE  
8 ~~ACCOMPANIED INCLUDE STATEMENTS MADE, IF ANY, BE ACCOMPANIED BY THE PARENTS' PARENTS~~  
9 PARENTS' STATEMENTS STATEMENT OF THE FACTS OF THE CASE ~~OR AN APPEARANCE BY THE~~  
10 ~~PARENTS AT THE HEARING ON THE PETITION OR AN APPEARANCE BY THE PARENTS AT THE HEARING~~  
11 ON THE PETITION; AMENDING SECTIONS 41-3-101, 41-3-402, AND 41-3-403, MCA; AND PROVIDING  
12 AN IMMEDIATE EFFECTIVE DATE."

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15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:16  
17 **Section 1.** Section 41-3-101, MCA, is amended to read:18 **"41-3-101. Declaration of policy.** (1) It is the policy of the state of Montana to:19 (a) ensure that all youth are afforded an adequate physical and emotional environment to promote  
20 normal development;21 (b) compel in proper cases the parent or guardian of a youth to perform the moral and legal duty  
22 owed to the youth;

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

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26 unsubstantiated allegation of abuse or neglect.

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 2 ~~pertains, IF THEY ARE REASONABLY AVAILABLE, before the state may file a petition for temporary~~  
 3 ~~investigative authority and protective services and to require that a judge may not issue an order granting~~  
 4 ~~the petition until the parents are given the opportunity to appear before the judge or have their written~~  
 5 ~~statements presented to the judge for consideration before an order is granted AND TO REQUIRE THAT A~~  
 6 ~~JUDGE MAY NOT ISSUE AN ORDER GRANTING THE PETITION UNTIL THE PARENTS, IF THEY ARE~~  
 7 ~~REASONABLY AVAILABLE, ARE GIVEN THE OPPORTUNITY TO APPEAR BEFORE THE JUDGE OR HAVE~~  
 8 ~~THEIR WRITTEN STATEMENTS PRESENTED TO THE JUDGE FOR CONSIDERATION BEFORE AN ORDER~~  
 9 ~~IS GRANTED; and~~

10           ~~(d)~~ ensure that whenever removal of a child from the home is necessary, the child is entitled to  
 11 maintain ethnic, cultural, and religious heritage whenever appropriate.

12           (3) It is intended that the mandatory reporting of abuse or endangerment cases by professional  
 13 people and other community members to the appropriate authority will cause the protective services of the  
 14 state to seek to prevent further abuses, protect and enhance the welfare of these children, and preserve  
 15 family life whenever appropriate.

16           (4) In implementing the policy of this section, whenever it is necessary to remove a child from the  
 17 child's home, the department shall, when it is in the best interests of the child and when the home is  
 18 approved by the department, place the child with the child's extended family, including adult siblings,  
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28           (2) A petition for temporary investigative authority and protective services must state the specific  
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1           (3) The petition for temporary investigative authority and protective services must be supported  
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 3 must be supported by a department of public health and human services report stating in detail the facts  
 4 upon which the request is based. ~~The petition must also contain written statements prepared, AFFIDAVIT,~~  
 5 ~~OR REPORT OF THE DEPARTMENT MUST CONTAIN INFORMATION REGARDING STATEMENTS, IF ANY,~~  
 6 ~~MADE MUST ALSO CONTAIN WRITTEN STATEMENTS PREPARED~~ by the parents detailing the parents'  
 7 ~~statement of the facts of the case or must be presented to the court in the presence of the parents who~~  
 8 ~~must be given an opportunity to address the court before the court rules on the petition OR MUST BE~~  
 9 ~~PRESENTED TO THE COURT IN THE PRESENCE OF THE PARENTS, WHO MUST BE GIVEN AN~~  
 10 ~~OPPORTUNITY TO ADDRESS THE COURT BEFORE THE COURT RULES ON THE PETITION."~~

11  
 12           **Section 3.** Section 41-3-403, MCA, is amended to read:  
 13           **"41-3-403. Order for immediate protection of youth.** (1) (a) Upon the filing of a petition for  
 14 temporary investigative authority and protective services, the court, ~~after consideration of the parents'~~  
 15 ~~statements included with~~ THE PARENTS' STATEMENTS INCLUDED WITH the petition ~~or of the parents'~~  
 16 ~~remarks in court in relation to the petition AND ANY ACCOMPANYING AFFIDAVIT OR REPORT TO THE~~  
 17 COURT OR OF THE PARENTS' REMARKS IN COURT IN RELATION TO THE PETITION, may issue an order  
 18 granting relief that may be required for the immediate protection of the youth.

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

24           (c) The order must require the person served to comply immediately with the terms of the order  
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 30 affected youth is admissible at the hearing or at a contested case proceeding held pursuant to Title 2,

1 chapter 4, part 6, that results from adverse licensing action taken by the department.

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

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

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

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9 counseling services;

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

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

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

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

21 **NEW SECTION. Section 4. Effective date.** [This act] is effective on passage and approval.

22 -END-



## SENATE BILL NO. 283

INTRODUCED BY BURNETT, GRINDE, ESTRADA, BAER, KEATING, AKLESTAD, HARGROVE, MAHLUM

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING A SOCIAL WORKER IN CHILD ABUSE AND NEGLECT CASES TO INTERVIEW ~~THE AVAILABLE~~ THE PARENTS BEFORE REQUESTING TEMPORARY INVESTIGATIVE AUTHORITY; REQUIRING THAT A PETITION FOR TEMPORARY INVESTIGATIVE AUTHORITY AND PROTECTIVE SERVICES IN CHILD ABUSE AND NEGLECT CASES MUST ~~BE ACCOMPANIED INCLUDE STATEMENTS MADE, IF ANY, BE ACCOMPANIED BY THE PARENTS' PARENTS~~ PARENTS' STATEMENTS STATEMENT OF THE FACTS OF THE CASE OR AN APPEARANCE BY THE PARENTS AT THE HEARING ON THE PETITION OR AN APPEARANCE BY THE PARENTS AT THE HEARING ON THE PETITION; AMENDING SECTIONS 41-3-101, 41-3-402, AND 41-3-403, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

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

**"41-3-101. Declaration of policy.** (1) It is the policy of the state of Montana to:

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

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

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

(d) preserve the unity and welfare of the family whenever possible; 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.

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

(a) protect, whenever possible, family unity;

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

1           ~~(c) require a department social worker to interview the parents of a child to which a petition~~  
 2 ~~pertains, IF THEY ARE REASONABLY AVAILABLE, before the state may file a petition for temporary~~  
 3 ~~investigative authority and protective services and to require that a judge may not issue an order granting~~  
 4 ~~the petition until the parents are given the opportunity to appear before the judge or have their written~~  
 5 ~~statements presented to the judge for consideration before an order is granted~~ AND TO REQUIRE THAT A  
 6 JUDGE MAY NOT ISSUE AN ORDER GRANTING THE PETITION UNTIL THE PARENTS, IF THEY ARE  
 7 REASONABLY AVAILABLE, ARE GIVEN THE OPPORTUNITY TO APPEAR BEFORE THE JUDGE OR HAVE  
 8 THEIR WRITTEN STATEMENTS PRESENTED TO THE JUDGE FOR CONSIDERATION BEFORE AN ORDER  
 9 IS GRANTED; and

10           ~~(c)~~(d) ensure that whenever removal of a child from the home is necessary, the child is entitled to  
 11 maintain ethnic, cultural, and religious heritage whenever appropriate.

12           (3) It is intended that the mandatory reporting of abuse or endangerment cases by professional  
 13 people and other community members to the appropriate authority will cause the protective services of the  
 14 state to seek to prevent further abuses, protect and enhance the welfare of these children, and preserve  
 15 family life whenever appropriate.

16           (4) In implementing the policy of this section, whenever it is necessary to remove a child from the  
 17 child's home, the department shall, when it is in the best interests of the child and when the home is  
 18 approved by the department, place the child with the child's extended family, including adult siblings,  
 19 grandparents, great-grandparents, aunts, and uncles, prior to placing the child in an alternative protective  
 20 or residential facility. Prior to approving a home, the department shall investigate whether anyone living in  
 21 the home has been convicted of a crime involving serious harm to children."  
 22

23           **Section 2.** Section 41-3-402, MCA, is amended to read:

24           **"41-3-402. Petition for temporary investigative authority and protective services.** (1) In a case in  
 25 which it appears that a youth is abused or neglected or is in danger of being abused or neglected, the  
 26 county attorney, the attorney general, or an attorney hired by the county may file a petition for temporary  
 27 investigative authority and protective services.

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

1 (3) The petition for temporary investigative authority and protective services must be supported  
 2 by an affidavit signed by the county attorney, the attorney general, or an attorney hired by the county or  
 3 must be supported by a department of ~~public health and human services~~ report stating in detail the facts  
 4 upon which the request is based. ~~The petition must also contain written statements prepared, AFFIDAVIT,~~  
 5 ~~OR REPORT OF THE DEPARTMENT MUST CONTAIN INFORMATION REGARDING STATEMENTS, IF ANY,~~  
 6 ~~MADE MUST ALSO CONTAIN WRITTEN STATEMENTS PREPARED by the parents detailing the parents'~~  
 7 ~~statement of the facts of the case or must be presented to the court in the presence of the parents who~~  
 8 ~~must be given an opportunity to address the court before the court rules on the petition OR MUST BE~~  
 9 ~~PRESENTED TO THE COURT IN THE PRESENCE OF THE PARENTS, WHO MUST BE GIVEN AN~~  
 10 ~~OPPORTUNITY TO ADDRESS THE COURT BEFORE THE COURT RULES ON THE PETITION."~~  
 11

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

13 **"41-3-403. Order for immediate protection of youth.** (1) (a) Upon the filing of a petition for  
 14 temporary investigative authority and protective services, the court, ~~after consideration of the parents'~~  
 15 ~~statements included with~~ THE PARENTS' STATEMENTS INCLUDED WITH the petition ~~or of the parents'~~  
 16 ~~remarks in court in relation to the petition AND ANY ACCOMPANYING AFFIDAVIT OR REPORT TO THE~~  
 17 ~~COURT OR OF THE PARENTS' REMARKS IN COURT IN RELATION TO THE PETITION,~~ may issue an order  
 18 granting relief that may be required for the immediate protection of the youth.

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

24 (c) The order must require the person served to comply immediately with the terms of the order  
 25 or to appear before the court issuing the order on the date specified and show cause why the person has  
 26 not complied with the order. The show cause hearing must be conducted within 20 days of the issuance  
 27 of the order by the judge or a master appointed by the judge. The person filing the petition has the burden  
 28 of presenting evidence establishing probable cause for the issuance of the order. Except as otherwise  
 29 provided in this part, the rules of civil procedure apply. Hearsay evidence of statements made by the  
 30 affected youth is admissible at the hearing or at a contested case proceeding held pursuant to Title 2,

1 chapter 4, part 6, that results from adverse licensing action taken by the department.

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

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

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

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

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

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

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

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

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

20

21 **NEW SECTION. Section 4. Effective date.** [This act] is effective on passage and approval.

22

-END-



## CONFERENCE COMMITTEE

on Senate Bill 283  
Report No. 1, April 17, 1997

Page 1 of 2

Mr. President and Mr. Speaker:

We, your Conference Committee on Senate Bill 283, met and considered the House Standing Committee amendments.

We recommend that Senate Bill 283 (reference copy - salmon) be amended further as follows:

1. Title, line 5.

Following: "PARENTS"

Insert: ", IF AVAILABLE,"

2. Title, line 8.

Strike: "BE ACCOMPANIED"

Insert: "INCLUDE STATEMENTS, IF ANY, MADE"

3. Title, line 9.

Strike: "PARENTS' STATEMENTS"

Following: "STATEMENT"

Strike: "OF"

Insert: "PARENTS REGARDING"

4. Title, line 10.

Following: "OR"

Insert: "MUST ALLOW"

5. Title, line 11.

Following: "PETITION"

Insert: ", EXCEPT IN EMERGENCY CASES"

6. Page 2, line 2.

Following: "~~AVAILABLE,~~"

Insert: ", if they are reasonably available,"

7. Page 2, line 6.

Following: "PETITION"

Insert: ", except an order for immediate protection of the youth,"

ADOPT

REJECT

CCR#1  
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8. Page 2, line 8.

Strike: "WRITTEN"

Following: "STATEMENTS"

Insert: ", if any,"

9. Page 3, line 6.

Strike: "MUST ALSO CONTAIN WRITTEN STATEMENTS PREPARED"

Insert: ", affidavit, or report of the department must contain information regarding statements, if any, made"

10. Page 3, lines 8 and 9.

Following: "petition" on line 8

Strike: remainder of line 8 through "OF" on line 9

Insert: ". Except as provided in 41-3-403,"

Following: "PARENTS"

Strike: ", WHO"

11. Page 3, line 15.

Following: "STATEMENTS"

Insert: ", if any,"

12. Page 3, line 17.

Strike: "OR OF THE PARENTS' REMARKS IN COURT IN RELATION TO THE PETITION"

Insert: "and any accompanying affidavit or report to the court,"

And that this Conference Committee report be adopted.

For the Senate:

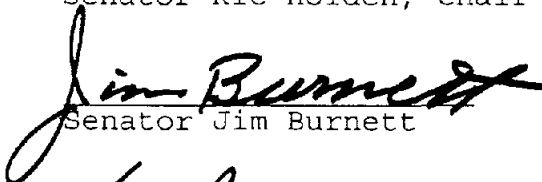
For the House:



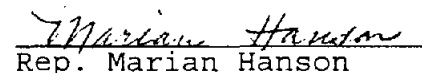
Senator Ric Holden, Chair



Rep. Larry Grinde, Chair



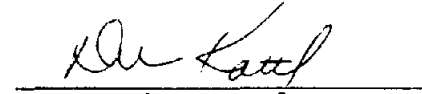
Senator Jim Burnett



Rep. Marian Hanson



Senator Sue Bartlett



Rep. Deb Kottel

TS  
Amd. Coord.

Sec. of Senate

## SENATE BILL NO. 283

INTRODUCED BY BURNETT, GRINDE, ESTRADA, BAER, KEATING, AKLESTAD, HARGROVE, MAHLUM

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING A SOCIAL WORKER IN CHILD ABUSE AND NEGLECT CASES TO INTERVIEW ~~THE AVAILABLE~~ THE PARENTS, IF AVAILABLE, BEFORE REQUESTING TEMPORARY INVESTIGATIVE AUTHORITY; REQUIRING THAT A PETITION FOR TEMPORARY INVESTIGATIVE AUTHORITY AND PROTECTIVE SERVICES IN CHILD ABUSE AND NEGLECT CASES MUST ~~BE ACCOMPANIED INCLUDE STATEMENTS MADE, IF ANY, BE ACCOMPANIED INCLUDE STATEMENTS, IF ANY, MADE BY THE PARENTS' PARENTS' PARENTS' STATEMENTS STATEMENT OF PARENTS REGARDING THE FACTS OF THE CASE OR AN APPEARANCE BY THE PARENTS AT THE HEARING ON THE PETITION~~ OR MUST ALLOW AN APPEARANCE BY THE PARENTS AT THE HEARING ON THE PETITION, EXCEPT IN EMERGENCY CASES; AMENDING SECTIONS 41-3-101, 41-3-402, AND 41-3-403, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

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

**"41-3-101. Declaration of policy.** (1) It is the policy of the state of Montana to:

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

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

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

(d) preserve the unity and welfare of the family whenever possible; 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.

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

(a) protect, whenever possible, family unity;

(b) provide for the protection of children whose health and welfare are or may be adversely

1 affected and further threatened by the conduct of those responsible for their care and protection; and

2 (c) require a department social worker to interview the parents of a child to which a petition  
 3 pertains, IF THEY ARE REASONABLY AVAILABLE, IF THEY ARE REASONABLY AVAILABLE, before the  
 4 state may file a petition for temporary investigative authority and protective services and to require that a  
 5 judge may not issue an order granting the petition, except an order for immediate protection of the youth,  
 6 until the parents are given the opportunity to appear before the judge or have their written statements  
 7 presented to the judge for consideration before an order is granted AND TO REQUIRE THAT A JUDGE MAY  
 8 NOT ISSUE AN ORDER GRANTING THE PETITION, EXCEPT AN ORDER FOR IMMEDIATE PROTECTION OF  
 9 THE YOUTH, UNTIL THE PARENTS, IF THEY ARE REASONABLY AVAILABLE, ARE GIVEN THE  
 10 OPPORTUNITY TO APPEAR BEFORE THE JUDGE OR HAVE THEIR WRITTEN STATEMENTS, IF ANY,  
 11 PRESENTED TO THE JUDGE FOR CONSIDERATION BEFORE AN ORDER IS GRANTED; and

12 ~~(e)~~(d) ensure that whenever removal of a child from the home is necessary, the child is entitled to  
 13 maintain ethnic, cultural, and religious heritage whenever appropriate.

14 (3) It is intended that the mandatory reporting of abuse or endangerment cases by professional  
 15 people and other community members to the appropriate authority will cause the protective services of the  
 16 state to seek to prevent further abuses, protect and enhance the welfare of these children, and preserve  
 17 family life whenever appropriate.

18 (4) In implementing the policy of this section, whenever it is necessary to remove a child from the  
 19 child's home, the department shall, when it is in the best interests of the child and when the home is  
 20 approved by the department, place the child with the child's extended family, including adult siblings,  
 21 grandparents, great-grandparents, aunts, and uncles, prior to placing the child in an alternative protective  
 22 or residential facility. Prior to approving a home, the department shall investigate whether anyone living in  
 23 the home has been convicted of a crime involving serious harm to children."  
 24

25 **Section 2.** Section 41-3-402, MCA, is amended to read:

26 **"41-3-402. Petition for temporary investigative authority and protective services.** (1) In a case in  
 27 which it appears that a youth is abused or neglected or is in danger of being abused or neglected, the  
 28 county attorney, the attorney general, or an attorney hired by the county may file a petition for temporary  
 29 investigative authority and protective services.

30 (2) A petition for temporary investigative authority and protective services must state the specific



1 authority requested and the facts establishing probable cause that a youth is abused or neglected or is in  
2 danger of being abused or neglected.

3 (3) The petition for temporary investigative authority and protective services must be supported  
4 by an affidavit signed by the county attorney, the attorney general, or an attorney hired by the county or  
5 must be supported by a department of ~~public health and human services~~ report stating in detail the facts  
6 upon which the request is based. ~~The petition must also contain written statements prepared, AFFIDAVIT,  
7 OR REPORT OF THE DEPARTMENT MUST CONTAIN INFORMATION REGARDING STATEMENTS, IF ANY,  
8 MADE MUST ALSO CONTAIN WRITTEN STATEMENTS PREPARED, AFFIDAVIT, OR REPORT OF THE  
9 DEPARTMENT MUST CONTAIN INFORMATION REGARDING STATEMENTS, IF ANY, MADE by the parents  
10 detailing the parents' statement of the facts of the case or must be presented to the court in the presence  
11 of the parents who must be given an opportunity to address the court before the court rules on the petition  
12 OR MUST BE PRESENTED TO THE COURT IN THE PRESENCE OF. EXCEPT AS PROVIDED IN 41-3-403,  
13 THE PARENTS, WHO MUST BE GIVEN AN OPPORTUNITY TO ADDRESS THE COURT BEFORE THE COURT  
14 RULES ON THE PETITION."~~

15

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

17 **"41-3-403. Order for immediate protection of youth.** (1) (a) Upon the filing of a petition for  
18 temporary investigative authority and protective services, the court, ~~after consideration of the parents'  
19 statements included with~~ **THE PARENTS' STATEMENTS, IF ANY, INCLUDED WITH** the petition ~~or of the  
20 parents' remarks in court in relation to the petition AND ANY ACCOMPANYING AFFIDAVIT OR REPORT  
21 TO THE COURT OR OF THE PARENTS' REMARKS IN COURT IN RELATION TO THE PETITION AND ANY  
22 ACCOMPANYING AFFIDAVIT OR REPORT TO THE COURT,~~ may issue an order granting relief that may be  
23 required for the immediate protection of the youth.

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

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

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

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

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

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

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

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

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

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

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

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

25

26 **NEW SECTION. Section 4. Effective date.** [This act] is effective on passage and approval.

27

-END-