

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
February 11, 1977

The meeting of this committee was called to order by Senator Turnage, Chairman, at 9:30 a.m. on the above date in Room 442 of the State Capitol Building.

ROLL CALL:

All members of the committee were present with Senators Towe and Murray arriving late from other meetings.

WITNESSES PRESENT TO TESTIFY:

Joseph P. Mazurek - attorney with law firm of Gough, Booth.

Shanahan & Johnson - Helena, representing Catholic Charities
Allen Cain - Helena attorney, representing the Montana
Children's Home

Russ McKenzie - Great Falls attorney, representing the
Lutheran Social Services

Robert Weber - attorney for SRS

Tom Honzel - Deputy County Attorney, Lewis & Clark County
Hutchinson - attorney, Montana Legal Services

CONSIDERATION OF SENATE BILL 311:

Since Senator Turnage, Chairman of this committee, had introduced this bill, he had Senator Roberts, Vice-Chairman, preside over this meeting at this time.

Joseph Mazurek, an attorney with the law firm of Gough, Booth, Shanahan & Johnson, who represent Catholic Charities, Inc., was the first proponent to testify. He read a prepared statement in support of this bill. (See Exhibit 1)

The next proponent was Allen Cain, a Helena attorney who represents the Montana Children's Home, who said that their chief interest is in placing a child for adoption as soon as possible after birth in a home for the good of the child. He suggest an amendment to page 7, lines 10, 11 and 12. (See Exhibit 2)

The next proponent was Russ McKenzie, a Great Falls attorney, representing the Lutheran Social Services, who said that this bill will eliminate the problem of waiting too long for the father to say if he is interested in giving the child parental care.

The next proponent to testify was Richard Weber, an attorney for the department of SRS, who said that they are satisfied that this bill will solve many of the problems encountered by the agency in these matters.

Tom Honzel, Deputy County Attorney for Lewis & Clark County, said that they handle most of the adoptions in this county and that

they believe that this bill will eliminate many of the problems encountered due to the rights of fathers.

There being no more proponents of S.B. 311 to testify, the opponents were allowed to begin their testimony. The first opponent was William D. Hutchison, attorney, Montana Legal Services, who said that he felt the question of parental rights might be challenged by state agencies. He said that he recognized that there are problems being faced by adoption agencies at the present time and that his main objection is to the standard set forth which imposes upon the courts the implementing and determining of the father's rights. He further said that the problem is in utilizing this to the best interest of the child and that he fears that the courts will look at who is more likely to provide parental care. He also said that custody is not the issue; it is whether the father wishes to retain his parental rights.

Mr. Allen Cain was allowed by the Chairman to respond to the last comment of Mr. Hutchison and he said that he knows of only one instance in which the father came in and actually sought parental rights since this law became effective. He further said that not many fathers are interested in claiming parental rights and that he believes the only workable standard is to allow the courts to make the decision on parental rights.

At this time, 10:15 a.m., Senator Murray arrived in committee from another meeting.

Mr. Hutchinson, the opponent of S.B. 311 who had last testified, said that this bill is better than the current law.

CONSIDERATION OF SENATE BILL 356:

This bill was also sponsored by Senator Turnage, Chairman of this committee, so Senator Roberts, Vice-Chairman, again was acting Chairman. He asked Greg Morgan, representing the Montana Bar Association, to explain the bill.

John Larson, a Butte attorney, testified as a proponent of S.B. 356, saying that through this bill they hoped to obtain the right to pursue the legal code of ethics. However, he said that many states do not allow attorneys right out of law school to be covered by malpractice insurance.

At this time, Senator Roberts allowed the committee to question the witness. It was brought out during the questioning that medical malpractice is 5 years after discovery and that architectural malpractice is 10 years after discovery. Greg Morgan told the committee that the State Bar does not want to change the present law regarding minors.

There being no further business, the committee adjourned at 11:00 a.m.. An executive session was set for adjournment on Monday, February 14, 1977, by the Chairman.

Chairman

ROLL CALL

JUDICIARY COMMITTEE

45th LEGISLATIVE SESSION - - 1977

Date 11/11

2/10/77
(Ex. 1)

TESTIMONY OF JOSEPH P. MAZUREK
IN SUPPORT OF SENATE BILL 311

Senate Bill 311 represents a year-long effort by representatives of the three licensed adoption agencies in the State of Montana and the Department of Social and Rehabilitation Services to supplement and clarify the provisions of the Uniform Parentage Act. The proposal adds new procedural provisions to the Act in order to resolve some confusion and codify a fair and workable process. It also represents an attempt by adoption agencies to resolve practical problems which have arisen in the course of implementation of the Uniform Parentage Act.

The existing provisions do not provide a means for terminating the parental rights of a mother who proposes to release custody of her child for adoption without resorting back to the abused, neglected and dependent youth provisions of Title 10. As a result, an agency is required to go through two separate hearings in order to obtain custody of a child. It must first terminate the rights of the natural father; and, thereafter, request the county attorney to petition the court to have the child declared dependent and terminate the rights of the natural mother. The latter process requires the agency and the court to engage in a fiction because the mother generally relinquishes her right to the child on the basis of her love for the child and her concern for its best interests.

The most significant problem with the existing law is that it does not provide a mechanism for the court to terminate the parental rights of a natural father whose identity is known but who cannot be located, or whose identity cannot be determined. This bill will allow the termination of the rights of a natural father where it can be shown that he has failed to provide support to the mother or otherwise show interest in the child. It will also free county attorneys from involvement in adoptions and allow early placement where the father concurs in the mother's decision. The bill is designed to establish an orderly procedure for the termination of parental rights and at the same time guarantee due process to both the mother and the father of the child.

Over the past eighteen months, I have personally handled seventy proceedings. I have encountered difficult, factual problems under the Uniform Parentage Act which the existing provisions offered no solution. I believe Senate Bill 311 provides us with those solutions. In order to understand the inter-workings of the proposed bill, it may be helpful to consider the procedure which would be followed by an agency to obtain legal custody of a child proposed to be released for adoptive placement. If a mother decides to

release custody of her child, she may execute a voluntary release before a notary public. Upon filing the release with the court, her parental rights are automatically terminated. If both the mother and father of the child voluntarily execute releases, the court may immediately issue an order terminating their parental rights and awarding custody of the child to the agency. In the vast majority of cases, this is the only provision which will be utilized. It will expedite adoptive placements to the benefit of the child. If the father does not execute a voluntary release, the agency to whom the mother releases the child must file a petition for custody. A hearing must then be conducted by the district court to terminate the father's rights to the child. If the mother reaches her decision to place early in her pregnancy, she may file a notice of intent to release which will be served upon the father. It will advise him that he has been named as the father, that he has right to file a notice of intent to claim paternity before the birth of the child, and that his failure to do so will result in a waiver of his right to notice of the hearing and termination of his parental rights. This notice is given before the child is born, and enables the father to protect his interest in the child!

If the mother did not file a notice of intent to release during her pregnancy, the court must ask her to identify the father. The person identified is then given notice of the hearing. If no person is identified, the court may require publication in a newspaper if it believes that would lead to the father's identification. The name of the mother may be included only with her consent. The mother's right to privacy has been retained in the proposed legislation, and she cannot be compelled to testify to or divulge the identity of the father.

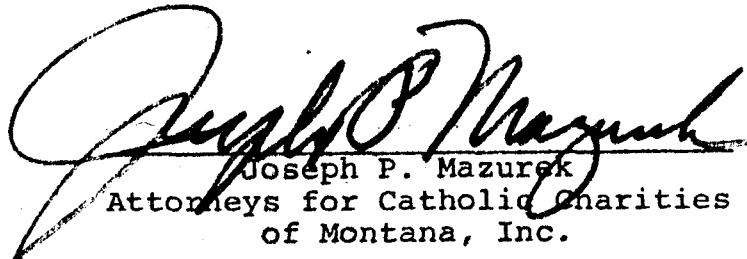
Once the court has identified the father, it may then proceed to terminate his parental rights. It may do so only if the person identified as the father acknowledged paternity but denied his interest in the child, filed a denial of paternity, was served with notice of intent to release but failed to file a notice of intent to claim paternity, or was given proper notice of the hearing but failed to appear. If any of those conditions is met, the father's rights are terminated and custody is awarded to the adoption agency.

Section 61-333(2) provides a solution to who critical problems faced by adoption agencies. It will allow the court to terminate the parental rights of a putative father whose identity is unknown if he has not made provision for the child's care nor provided support for the mother during her pregnancy. It will also enable the court to terminate the rights of a putative father whose identity is known but whose whereabouts are unknown if that person has not provided support for the mother, has not shown any interest

in the child and has not made provision for the child's care for at least ninety days preceding the hearing. In any event, the court may terminate the rights of a putative father only if the evidence shows that a reasonable effort has been made to identify and locate the father. *Emphasized*

Section 7 of the Act gives a licensed adoption agency standing vis-a-vis the natural father in the event the natural father appears to claim custody of the child. The adoption agency stands in the shoes of the mother representing her interest in having the child placed for adoption. If the father appears and claims custody, the court must determine whether the best interests of the child will be served by granting custody to him or to the agency.

As I stated previously, this bill represents a cooperative effort on the part of all of the adoption agencies to resolve practical, procedural problems encountered during the past eighteen months of working with the Uniform Parentage Act. We recognize and respect the rights of both parents to due process of law. The bill guarantees notice of all proceedings and an opportunity to be heard. At the same time, it establishes an orderly procedure for the termination of parental rights without involvement of the county attorney and without the necessity of accusing the mother of abuse, neglect or abandonment of the child. The bill will give the agencies a reasonable means to deal with the difficult problem of the unknown or unlocatable father, and will insure the early adoptive placement of newborn children. On behalf of Catholic Charities of Montana, Inc., and the other licensed adoption agencies, I respectfully urge your passage of this bill.



Joseph P. Mazurek
Attorneys for Catholic Charities
of Montana, Inc.

THIS SECTION SHALL NOT BE APPLICABLE IF THE FATHER IS A PERSON WHOSE CONSENT
TO ADOPTION IS NOT REQUIRED UNDER 61-205.

(Ex. 2)

Kain, MT Children's Home