

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
January 19, 1979

The eleventh meeting of the Senate Judiciary Committee was called to order by Chairman Everett R. Lensink in room 331 at 10:00 a.m. on the above date.

ROLL CALL:

All members were present with the exception of Senator Mike Anderson, who was excused.

CONSIDERATION OF SENATE BILL 104:

Senator Brown explained that he introduced this bill at the request of the department of social and rehabilitation services and explained that this bill is an act to revise the rulemaking authority of the department. He explained that many federal laws change almost overnight and SRS must adapt their rules to conform to these new federal rules and regulations. He introduced Jon Meredith who is chief legal council for the department. Mr. Meredith gave a statement, copy of which is attached. Mr. Meredith further explained that they were not asking for legislature to create any more authority and said this type of legislation is extremely necessary.

There were no further proponents and no opponents to this bill.

Senator Brown stated that in subsection 5, page 6, he was concerned about a general grant of authority. He felt that there may be a problem with respect to future enactment of legislation.

Senator Van Valkenburg wondered if they really do need this authority. He felt it would appear to an outsider that it is, from the list of present situations, already being done. Mr. Meredith explained that arrangements had been made with the staff that was present before the present staff came, but no one on his staff has been there for longer than four months.

Additional questions were asked of Mr. Meredith and Senator Brown suggested that we hold the bill until they have an opportunity to work out some of these questions with SRS for any amendments they might need. Senator Lensink closed the hearing on this bill.

CONSIDERATION OF SENATE BILL 137:

Senator Brown explained about the long-standing problem the department of social and rehabilitation services had

in connection with licensed adoption agencies having access to necessary birth records. He introduced Norma Vestre, chief of social services bureau of SRS who gave a statement, copy attached. He also introduced Susan Pitts, from the department of health, records and statistics division, who gave a statement in support of this bill.

There were no further proponents and no opponents.

Senator Brown offered some amendments. Senator Turnage asked questions of Ms. Vestre and Ms. Pitts. Ms. Pitts felt that an awful lot of people get frightened in getting a court order. She stated that they have to furnish an affidavit that each person is a natural parent.

Senator Brown stated that he had to agree with Ms. Pitts. He felt that it was presumptuous of the legislators to force people into court when they have a right of interest in that information. Ms. Pitts explained how the process works now. She stated that they are caught right in between now as they are not to disclose something that could be harmful to a person, but they also have to contend with the privacy act and the person's right to know.

Senator Brown offered the following amendments:

In the title, line 7, following "service", strike the word "and, and" and insert "," and also in line 8, following agencies, insert "a natural parent, or an adopted person," and on page 1, line 9, after the word "records", insert "in certain situations". These motions carried unanimously.

Senator Brown then moved on page 1, line 21, after the word "the" strike "need of the department of social and rehabilitation services to have the information" and insert "interest of the persons described in 50-15-206". He further moved on page 2, line 12 to strike "and" and insert "or" and on page 2, line 14, after the word "minority" to insert "unless the child has been placed for adoption."

The motions carried unanimously.

Senator Towe moved that the bill be amended on line 17, page 2, after the word "department", insert the new language, "proof of identity when appropriate; the need for the information, and" and on line 17 after "the" insert "specific" and to further amend on line 16, following "(2)", insert "Except when an order of the court is sought,". The motion carried unanimously.

Senator Brown moved that the bill do pass as amended. The motion carried unanimously.

Senator Towe moved to reconsider the action in this case. The motion carried unanimously.

There was considerable discussion about line 15, which reads "upon request of an adopted person if of legal age." Senator Towe moved to delete line 15 on page 2, and further moved to amend the bill on line 8 by striking ";" and inserting the new language "An adopted person of legal age may apply to the court for such an order.", following the word "rights".

Senator Brown stated emphatically that he thought a person of legal age has every right to find out about his legal birth and he did not feel that he should have to go to a court to exercise this right. He stated that he had an aversion to forcing people to go to court to find out that information when most courts will allow that information.

Senator Turnage summarized his thoughts on this matter and said he felt it made it much easier to embark on a search. He felt that the judge will usually allow a court order and that it should not cause too much expense.

Senator Brown summarized by stating that most adopted kids don't know what their rights are. To go pay a lawyer to find out what is in the file, he felt was unfair. He felt it was the right of that person to know.

Chairman Lensink called for a roll call vote and Senators Olson, Turnage, O'Hara, Galt and Towe voted yes, while Senators Lensink, Brown, Van Valkenburg and Healy voted no. The amendment offered by Senator Towe carried.

DISPOSITION OF SENATE BILL 137:

Senator Brown moved that the bill do pass as amended. The motion carried unanimously.

There being no further business, the meeting adjourned at 11:10 a.m.

Everett R. Lensink
SENATOR EVERETT R. LENSSINK, Chairman
Judiciary Committee

STANDING COMMITTEE REPORT

January 19,

19 79

MR. President:

We, your committee on Judiciary.....

having had under consideration Senate..... Bill No. 137.....

Respectfully report as follows: That Senate..... Bill No. 137..... introduced bill, be amended as follows:

1. Title, line 7.
Following: "SERVICES"
Strike: "AND"
Insert: ","

2. Title, line 8.
Following: "AGENCIES"
Insert: ", A NATURAL PARENT, OR AN ADOPTED PERSON"

3. Title, line 9.
Following: "RECORDS"
Insert: "IN CERTAIN SITUATIONS"

4. Page 1, lines 20 through 22.
Following: "to the"
Strike: "need of the department of social and rehabilitation services
to have the information"

XCAPASE

Insert: "interests of the persons described in 50-15-206"

(Continued)

5. Page 2, line 8.

Following: "rights"

Strike: ";"

Insert: ". An adopted person of legal age may apply to the court for such an order."

6. Page 2, line 12.

Following: "determinations,"

Strike: "and"

Insert: "or"

7. Page 2, line 14.

Following: "minority"

Strike: ";"

Insert: "unless the child has been placed for adoption."

8. Page 2, line 15.

Strike: subsection (d) in its entirety

9. Page 2, line 16.

Following: "(2)"

Strike: "Prior"

Insert: "Except when an order of the court is sought, prior"

10. Page 2, line 17.

Following: "department"

Insert: ":"

- (a) proof of identity when appropriate;
- (b) the need for the information; and
- (c) "

11. Page 2, line 17.

Following: "department the"

Insert: "specific"

And, as so amended,

DO PASS

JQ.

Please sign & return to Secretary

SENATE *Subcommittee* COMMITTEE

BILL 104
132

VISITORS' REGISTER

DATE 1/17/11

Please note bill no.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

SENATE COMMITTEE JUDICIARYDate January 19, 1979 Senate Bill No. 137 Time 11:05 A.M.

NAME	YES	NO
Lensink, Everett R., Chr. (R)		✓
Olson, S. A., V. Chr. (R)	✓	
Turnage, Jean A. (R)	✓	
O'Hara, Jesse A. (R)	✓	
Anderson, Mike (R)	<u>Excluded</u>	
Galt, Jack E. (R)	✓	
Towe, Thomas E. (D)	✓	
Brown, Steve (D)	✓	
Van Valkenburg, Fred (D)	✓	
Healy, John E. (Jack) (D)	✓	

Cherie Crumley
SecretaryEverett Lensink
Chairman

Motion: To delete line 15 on page 2, and on line 8 strike ";"
and following word, "right" insert "An adopted person of legal
age may apply to the court for such an order."

(include enough information on motion--put with yellow copy of committee report.)

Date 1/19/79

ROLL CALL

JUDICIARY COMMITTEE

46th LEGISLATIVE SESSION - 1979

Each Day Attach to Minutes.

TESTIMONY BEFORE SENATE JUDICIARY COMMITTEE
FRIDAY, JANUARY 19, 1979, AT 10 A.M.

SENATE BILL 104--"AN ACT TO REVISE AND CLARIFY THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES RULEMAKING AUTHORITY"

SENATE BILL 104 WOULD MORE PRECISELY DEFINE THE DUTIES OF THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES (SRS) IN RESPECT TO RULEMAKING FOR VARIOUS SOCIAL SERVICE PROGRAMS. IT IS A HOUSEKEEPING BILL FOR THE DEPARTMENT MANDATED BY THE ADMINISTRATIVE CODE COMMITTEE. UNDER THE PRESENT TITLE 53--WHICH IS THE BASIS OF OUR HUMAN SERVICE STATUTES--THE DEPARTMENT DOES NOT HAVE THE EXPRESS AUTHORITY TO MAKE RULES FOR CERTAIN PROGRAMS. SENATE BILL 104 WOULD RECTIFY THIS BY GIVING THE DEPARTMENT THAT AUTHORITY IN ONE SECTION OF THE MONTANA CODE ANNOTATED--SECTION 53-2-201. ALTHOUGH THE PRESENT LAW DOES GIVE THE DEPARTMENT EXPRESS RULEMAKING AUTHORITY IN SOME AREAS, THAT AUTHORITY IS SCATTERED THROUGHOUT TITLE 53 AND LEAVES GAPS IN THE DEPARTMENT'S ABILITY TO IMPLEMENT ALL PROGRAMS BY PROVIDING IT ONLY WITH IMPLIED AUTHORITY TO MAKE RULES FOR CERTAIN PROGRAMS.

THE MONTANA ADMINISTRATIVE PROCEDURE ACT, HOWEVER, REQUIRES EXPRESS RULEMAKING AUTHORITY BE GIVEN IN ORDER FOR THAT AUTHORITY TO BE VALID. SB 104 WOULD BRING SRS' RULE-MAKING AUTHORITY INTO CONFORMANCE WITH THE REQUIREMENTS OF THE MONTANA ADMINISTRATIVE PROCEDURE ACT. SRS ADVOCATES

PASSAGE OF THIS LEGISLATION IN DIRECT RESPONSE TO A REQUEST BY THE MONTANA ADMINISTRATIVE CODE COMMITTEE, WHICH RECOMMENDED SRS COMPLY WITH THE REQUIREMENTS OF THE ADMINISTRATIVE PROCEDURE ACT.

UNDER THE PRESENT STATUTES, SRS HAS EXPRESS AUTHORITY TO ADOPT RULES CONCERNING CHILD WELFARE SERVICES, AID TO FAMILIES WITH DEPENDENT CHILDREN PROGRAMS, SUBSIDIZED ADOPTION, ADULT PROTECTIVE SERVICES, MEDICAL ASSISTANCE PROGRAMS, SHELTERED WORKSHOP PROGRAMS, COMMUNITY HOMES AND PROTECTIVE SERVICES FOR THE DEVELOPMENTALLY DISABLED AND OTHER COMMUNITY-BASED SERVICES, AND VOCATIONAL REHABILITATION PROGRAMS. IN ADDITION TO THOSE PROGRAMS, SB 104 WOULD EXPRESSLY ALLOW THE DEPARTMENT TO ADOPT RULES CONCERNING ELIGIBILITY REQUIREMENTS FOR VARIOUS SERVICES, THE SCOPE OF SERVICES OFFERED, SPECIFIC QUALIFICATIONS FOR PROVIDERS OF SERVICE; PROCEDURES FOR APPLYING FOR AND RECEIVING AID THROUGH THE PROGRAMS THE DEPARTMENT ADMINISTERS, AND THE METHODS BY WHICH VARIOUS TYPES OF ASSISTANCE WILL BE OFFERED.

ANY RULEMAKING AUTHORITY GRANTED TO THE DEPARTMENT IS LIMITED BY THE REQUIREMENTS OF TITLE 53. THEREFORE, THE DEPARTMENT'S ABILITY TO MAKE RULES IS GOVERNED BY WHAT PROGRAMS THE LEGISLATURE DEEMS NECESSARY TO FULFILL THE STATE'S COMMITMENT TO HUMAN SERVICES. ALSO, ANY RULEMAKING ACTIVITY UNDERTAKEN BY THE DEPARTMENT MUST COMPLY WITH ALL FEDERAL STATUTES RELATED TO DEPARTMENT PROGRAMS THAT RECEIVE FEDERAL FUNDS.

THIS LEGISLATION WILL NOT ALTER THE LEGISLATURE'S MANDATE CONCERNING THE ADMINISTRATION OF SOCIAL SERVICE PROGRAMS--EXCEPT BY ENABLING SRS TO RESPOND TO THOSE MANDATES MORE QUICKLY AND EFFICIENTLY. THE FIELD OF HUMAN SERVICES IS SHAPED AND MOLDED AS PEOPLE'S NEEDS CHANGE. THE DEPARTMENT MUST BE ABLE TO COMPLY WITH CONTINUALLY CHANGING FEDERAL RULES AND REGULATIONS. OUR RULEMAKING AUTHORITY MUST ADHERE TO FEDERAL RESTRICTIONS AS WELL AS CONSTRAINTS PROVIDED BY STATE LAW.

BY CONSOLIDATING THE DEPARTMENT'S RULEMAKING AUTHORITY IN ONE SECTION, THE BILL ALSO ELIMINATES REDUNDANT LANGUAGE THROUGHOUT THE REST OF TITLE 53 IN ORDER TO CLARIFY THE DEPARTMENT'S AUTHORITY AND TO ENABLE US TO ADMINISTER OUR PROGRAMS MORE SMOOTHLY.

TESTIMONY BEFORE THE SENATE JUDICIARY COMMITTEE
FRIDAY, JANUARY 19, 1979

SENATE BILL 137--"AN ACT TO EMPOWER THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO HAVE ACCESS TO NECESSARY BIRTH RECORDS"

SENATE BILL 137 WOULD ALLOW THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES AND OTHER LICENSED ADOPTION AGENCIES TO HAVE ACCESS TO ALL BIRTH RECORDS TO VERIFY INFORMATION IT NEEDS FOR THE PURPOSES OF CUSTODY ACTIONS, SOCIAL SECURITY ELIGIBILITY DETERMINATIONS, OR INDIAN TRIBAL ENROLLMENT DETERMINATIONS.

IN THE PAST THERE HAVE BEEN PROBLEMS WITH THE EXCHANGE OF INFORMATION BETWEEN THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES AND THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES. THIS BILL, WHICH HAS BEEN REVIEWED BY THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES LEGAL STAFF, WOULD ALLOW THE DEPARTMENT OF HEALTH TO GIVE THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES THE INFORMATION IT NEEDS IN ORDER TO PROVIDE SERVICES UNDER ITS PROGRAMS.

OUR INABILITY TO OBTAIN THESE RECORDS IN THE PAST HAS HAMPERED OUR EFFORTS TO PROVIDE SOME OF THE SERVICES WE HAVE BEEN MANDATED TO GIVE. FOR INSTANCE, IN CUSTODY ACTIONS, WHEN WE GO TO COURT TO GAIN TEMPORARY CUSTODY OF A CHILD, WE NEED DOCUMENTED, FACTUAL INFORMATION ABOUT THE CHILD'S BIRTH DATE,

THE DEPARTMENT HAS OFTEN BEEN UNABLE TO GET THAT BIRTH CERTIFICATE. AT TIMES, WE HAVE RECEIVED ONLY SKETCHY INFORMATION FROM A MOTHER WHO THEN DISAPPEARS. OTHER TIMES, PARENTS DON'T REMEMBER THE EXACT DATE THE CHILD WAS BORN.

IN THE CASES OF SOCIAL SECURITY ELIGIBILITY DETERMINATIONS, OFTEN CHILDREN THAT HAVE BEEN ADOPTED ARE STILL ELIGIBLE FOR SOCIAL SECURITY BENEFITS SUCH AS DEATH BENEFITS FROM THEIR BIOLOGICAL PARENTS. ADOPTED CHILDREN CAN ALSO INHERIT FROM THEIR BIOLOGICAL PARENTS. BUT SRS MUST HAVE THE BIRTH CERTIFICATE TO PROVE THE CHILD IS ACTUALLY ELIGIBLE TO RECEIVE THOSE BENEFITS.

WE ALSO HAVE HAD INSTANCES WHERE BIRTH CERTIFICATES WERE NEEDED TO VERIFY THE PARENT'S ANCESTRY IN ORDER TO ENROLL A CHILD IN AN INDIAN TRIBE AT THE TIME OF HIS BIRTH. IN A RECENT SITUATION, WE WERE ATTEMPTING TO DETERMINE WHETHER A 17-YEAR-OLD BOY WITH A STRAIGHT-A GRADE AVERAGE HAD BEEN ENROLLED WHEN HE WAS BORN IN ORDER FOR HIM TO RECEIVE BENEFITS TO SEND HIM TO COLLEGE. HIS ADOPTED PARENTS WERE RETIRED AND COULD NOT AFFORD TO PAY FOR HIS COLLEGE EDUCATION. THE BUREAU OF INDIAN AFFAIRS INDICATED HE HAD NOT BEEN ENROLLED, BUT IF HE HAD BEEN ABLE TO OBTAIN THE BIRTH CERTIFICATE IT WOULD HAVE PROVEN THAT THE BOY HAD BEEN BORN TO AN ENROLLED TRIBE MEMBER. WE HAVE SINCE LEARNED THAT THE BOY IS ELIGIBLE TO BE ENROLLED AND COULD RECEIVE BENEFITS TO GO TO COLLEGE IF THE TRIBE COULD OBTAIN PROOF OF THE CHILD'S INDIAN PARENTAGE. THAT CAN ONLY BE PROVEN THROUGH THE BIRTH CERTIFICATE.

OTHER LICENSED ADOPTION AGENCIES HAVE SIMILAR NEEDS AND ALSO REQUIRE ACCESS TO THESE RECORDS.

THIS BILL WILL NOT THREATEN THE PRIVACY OF ADOPTIVE PARENTS OR THEIR CHILDREN BEFORE THE CHILDREN REACH THE AGE OF MAJORITY. IT ALLOWS FOR THE NATURAL PARENT TO OBTAIN A COPY OF THE BIRTH CERTIFICATE ONLY IF NO ADOPTION HAS TAKEN PLACE. AT THE SAME TIME, IT RECOGNIZES THE ADOPTED CHILD'S RIGHTS TO TRACE HIS OR HER FAMILY HISTORY WHEN OF LEGAL AGE.