

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
February 13, 1979

The thirty-sixth meeting of the Senate Judiciary Committee was called to order on the above date by Senator Everett R. Lensink in room 331 of the capitol building at 9:34 a.m.

ROLL CALL:

All members were present.

CONSIDERATION OF SENATE BILL 301:

Senator Lensink turned the chair over to Senator Olson, Vice-Chairman, as he was sponsor of this bill, which is an act to generally revise the state laws relating to child abuse, neglect and dependency. Senator Lensink gave an explanation of this bill and he stated that this bill grew out of a task force on child abuse. He introduced Dr. Clayton McCracken.

Dr. McCracken gave a statement in support of this bill. (See Exhibit A.)

Dr. Jeff Strickler from the Helena Medical Clinic, P.S.C., gave a statement in support of this bill. (See Exhibit B.)

Norma Vestre, Chief, Social Services Bureau of the Social and Rehabilitation Services, gave a statement in support of this bill. (See Exhibit C.)

Also offered to the committee was further written testimony. (See Exhibits C and D.)

John Mallard, representing the Montana Coalition of Human Services, gave a statement in support of this bill.

There was some testimony from Beverly Gorme, representing the Junior League of Billings, in support of this bill.

Tom Honzel, representing the County Attorneys Association, stated that they are in favor of this legislation and he said that the most difficult case to handle is the child abuse case and that the child is not able to tell you very much himself.

Phil Campbell, representing the Montana Education Association, stated that they were in support of this bill.

Ange Hansen, representing the Association for the Developmentally Disabled, stated that anything that we can do to prevent child abuse will help prevent mental retardation also.

William Hutchison, representing the Montana Legal Services, stated that they find themselves in the position of representing parents in these cases, and he felt the danger of the bill is that it makes it too easy to remove the child from the home. He also said that the privacy rights of the parents are impaired, and once a child is removed from a family, there is much trauma and this affects the future roles of the child and as an adult as well. He also said that on page 5, line 14 the language "adequate health care" is too broad a term; and on line 15 page 5, that he wondered about the language "threatened harm" and on page 6, he wondered if the definition of dependent would be inclusive of the child who is totally dependant on the state for support. He also questioned the ramifications of the provision on page 12, lines 20 to 23, which provides for removal of any other child who was under the care of the same parent of the child who was abused. He stated there are serious problems with that especially with lowering the standards of removal of a child. He also was concerned with the cost of removing a child to a home under an emergency.

There were some questions asked by Senator Towe to Burt Annin.

Senator Anderson asked if it was typical that where one child in a family is abused that the rest are not. Dr. Strickler said that one child is often the scapegoat, and he is the one who is abused, and when that child is removed, the stress is still there and another child is then abused. He stated that this is the leading cause of death and the leading cause of retardation. Dr. Strickler also stated that when it is determined that a child should be removed, the law states that you have to have a hearing within 72 hours and he feels very strongly that all potentially damaged children should be removed.

Mr. Honzel stated that one of the problems is that once the child is removed and the parent is threatened with action, the parents frequently relinguish the child and they are afraid of losing all the children for a long time.

Senator Brown stated that this should be a civil matter instead of a criminal, and Senator Lensink stated that we do want to amend this to civil.

There being no further comments or questions, the hearing on this bill was closed.

CONSIDERATION OF SENATE BILL 346:

Senator Towe stated that this bill arose from the concern of a number of people. This bill is an act to provide more equal access to the courts of Montana by requiring the allowance of costs and attorney's fees to successful plaintiffs and defendants who are natural persons or small businesses and who are successful in a law suit against a government entity, etc. He gave an example of a case in which he was involved.

Larry Huss, an attorney practicing in Helena with Scribner law firm, and appearing for himself, gave a statement in support of this bill.

J. C. Weingartner, representing the State Bar of Montana, gave a statement in support of this bill.

Jim Beck, representing the Department of Highways, explained many problems he felt were in this bill.

Mike Young, representing the Department of Administration, gave a statement in opposition to this bill.

There were no further proponents and no opponents.

Senator Brown state that there was a problem in subsection 3, line 11, page 4, and he questioned the words "frivolous" and "Without a reasonable basis". He thought this would cause problems.

There were no further questions or comments and the hearing on this bill was closed.

CONSIDERATION OF SENATE BILL 348:

Senator Van Valkenburg gave an explanation of this bill, which is an act to provide for damages in wrongful death actions. He stated that if you have a child or a spouse who are killed instantaneously through wrongful action of another person, in essence, they are not entitled to recover damages for their sorrow and mental anguish. He stated that the decedents also are not entitled to any damages for the pain and suffering they have gone through, but if they survived for any appreciable period of time, then it was something else.

Mike Meloy, representing the Montana Trial Lawyers Association, stated that, if a person was killed instantaneously, what is not available is the sorrow, anguish, grief of the survivors. He stated that in the 1800's, the Lord Campbell Act was enacted and that is the basis of our present law.

Vince Bosh, representing himself and his family, stated that within the last six or seven years, he had lost his only two sons - one who lived 19 months in a coma and one who was killed instantly. He said they were both around twenty years of age. He told how this affected his family adversely, how they suffered much anguish and grief, and because the second boy was killed instantly, there was no way they could collect for suffering and grief.

J. C. Weingartner, representing the Montana Bar Association, gave a statement in support of this bill.

Senator Van Valkenburg said that money will never adequately compensate a person for the suffering they go through in these situations, but it is all that society can offer.

Senator Towe questioned if there was a problem putting those parts 2, 3 and 4, in, is there any problem with double recovery with a survival action. Mike Meloy answered that he did not know how this could happen.

Senator Towe questioned how this should be made effective - actions brought after effective date or applied to actions occurring after the effective date. Mike Meloy said that this is not clear and he would rather see it apply to accidents or injuries that may have occurred prior to the date of this bill but have not been brought to trial.

There being no further questions or comments, the hearing on this bill was closed.

Senator Lensink said that there would be a meeting on Sunday at 10:00 a.m. to dispose of the bills that have not been acted on by this committee.

There being no further business, the meeting was adjourned at 10:53 a.m.



SENATOR EVERETT R. LENSINK, Chairman
Senate Judiciary Committee

Date Feb. 13, 1979

ROLL CALL

JUDICIARY COMMITTEE

46th LEGISLATIVE SESSION - 1979

NAME	PRESENT	ABSENT	EXCUSED
Lensink, Everett R., Chr. (R)	✓		
Olson, S. A., V. Chr. (R)	✓		
Turnage, Jean A. (R)	✓		
O'Hara, Jesse A. (R)	✓		
Anderson, Mike (R)	✓		
Galt, Jack E. (R)	✓		
Towe, Thomas E. (D)	✓		
Brown, Steve (D)	✓		
Van Valkenburg, Fred (D)	✓		
Healy, John E. (Jack) (D)	✓		

Each Day Attach to Minutes.

Senate Bill 301

In March 1977, Governor Judge, recognizing the problem of providing services to families in which your neglect occur, appointed the Task Force of Child Abuse and Neglect. The Task Force heard testimony from a number of individuals who daily work with abused and neglected children. Drafts of the recommendation have been widely discussed.

Child abuse and neglect is a cycle. Parents whose children were abused and neglected find it difficult to raise their own children in a healthy manner. When parents are abusive or neglecting, society must intervene to break that cycle. When the abusive parents are neurotic, proper therapy for them and the child often rehabilitates the family to the point that the environment will be safe for the child.

These essential tasks can only be accomplished locally. The state level some actions can facilitate care of these families. These actions were recommended in our report to the Governor. Copies of the report are available to the committee. Included in our recommendations are proposed changes in the state law which have been incorporated in Senate Bill 301.

In 1974, the U.S. Congress passed the Child Abuse, Prevention and Treatment Act, Public Law 93247, which provides some funds to qualifying states. Montana does not qualify because of inadequate definition, no requirement for guardian ad litem, no provision for an independent investigation of institutional abuse and failure to make unauthorized disclosure of records a crime. Senate Bill 301 would correct these discrepancies. Even without federal incentives, we should recommend these changes because they represent the best legal thinking today and would improve services here in Montana. Obtaining federal funds is not our objectives.

The Task Force is concerned about the problem of providing services to Indian reservation families because of the

Robert A.

confusion over jurisdiction. The Task Force has encouraged Indian reservations to adopt codes for child abuse and neglect. For this purpose, we secured a small federal grant for the Montana Intertribal Policy Board. If Senate Bill 301 is passed, we can then point out to the reservation communities that Montana has a good law and we can encourage them to model their codes after the state law.

CH McCracken MD

Helena Medical Clinic, P.S.C.

1930 9TH AVE.
HELENA, MONTANA 59601
TELEPHONE 442-9523

February 12, 1979

DAN SMELKO
Business Manager

INTERNAL MEDICINE:
B. SPAULDING, M.D.
D.R. WIESTERMAN, M.D.
D.W. JORDAN, M.D.

OBSTETRICS AND
GYNECOLOGY:
J.J. DRYNAN, M.D.
E. NICKEL, M.D.
F.C. COOPER, M.D.

PEDIATRICS:
E.P. GUNDERSEN, M.D.
B.C. RICHARDS, M.D.
J.H. STRICKLER, M.D.

PLASTIC SURGERY:
W.J. HOOPES, M.D.
K.J. WRIGHT, M.D.

TO: Senator Everett R. Lensink and Members of the Senate
Judiciary Committee

FROM: Jeffrey H. Strickler, M.D.

RE: Senate Bill #301

As a practicing Helena Pediatrician, a member of the American Academy of Pediatrics, Montana Chapter Committee on Child Abuse, a member of local and State Task Forces on the Prevention of Child Abuse and as a member of the steering committee for The National Center on the Prevention and Treatment of Child Abuse and Neglect, I would like to speak in strong support of Senate Bill #301.

As you are probably aware, child abuse and neglect is a relatively recently recognized problem that only began to receive attention in the 1960's. Good and well intentioned laws were passed at this time, including our own statutes, to attempt to deal with this problem. Our experience of the last decade, however, has brought forth some problems that need correction; and has seen the development of new modes of therapy that need legal sanction. Other people will be testifying on specific points. I see as critical, however, such changes as altering the word possible to appropriate (page 3, line 5) to allow for the best placement of children. In the past Judges have been constrained by statute to put a child back in a family when this was "possible" but clearly inappropriate. I also see as critical the new section (page 7, line 22) and new section (page 8, line 10) that mandate interagency cooperation and child protection teams. Experience in Montana as well as other parts of the country have shown that such interdisciplinary activity has led to the best solutions for difficult problems. These teams and cooperative efforts have been tried with varying success in different parts of Montana but have been limited in their effectiveness because of a question of the legality of such a group effort. By giving legal sanction to such common efforts and pooling of expertise and resources, the children of Montana will be best served.

As a contributing author to a recent HEW publication on the Management of Child Abuse and Neglect in Hospitals, I would like to speak specifically to the new wording on page 12, line 11, regarding the obtaining of photographs and evidence in a hospital. It is common medical ethics not to allow the photographing of patients without their consent and to protect the privacy of patients while in hospitals. With this on one hand and the moral and legal obligation to report and assist in cases of child abuse and neglect, hospital administrators presently are placed in a dilemma. If the legislature can place in the statutes a paragraph of freeing hospitals from the ethical problems of privacy, while participating in a legitimately authorized investigation, the handling of child abuse and neglect cases will be greatly facilitated, and hospital cooperation will be easily obtained.

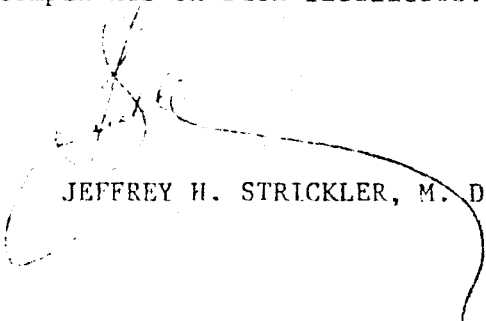
Page 2

Further, on page 13, line 16, is the addition of a sentence requiring the furnishing of hospital or medical records for a legitimate investigation. Many hospitals in Montana have refused to release records, except upon court hearing and subpoena and yet it is just these records that document the need for the investigation. This sentence reinforces 41-3-202 and facilitates investigations by allowing access to records as required by law.

Finally, page 14, line 10, and the following are very important statements that will allow physicians or others caring for a child or those who are investigating a case of child abuse and neglect, to obtain the necessary documentation that such injuries actually did take place and the extent of those injuries.

Finally I would like to speak briefly on the problem of institutional neglect. This has been the subject of several newspaper articles and a recent large monograph published by HEW. It is tragic to think that such problems actually do exist in our institutions but since the State of Montana is the guardian of these people, it seems only appropriate to have a paragraph allowing for and encouraging the reporting and investigation of complaints on such facilities.

JHS:jz1



JEFFREY H. STRICKLER, M. D.

Exhibit B
11 21

TESTIMONY BEFORE THE SENATE JUDICIARY COMMITTEE
TUESDAY, FEBRUARY 13, 1979

Senate Bill 301 --- A Bill for an Act Entitled: "AN ACT TO GENERALLY REVISE THE STATE LAWS RELATING TO CHILD ABUSE, NEGLECT, AND DEPENDENCY; AMENDING SECTIONS 41-3-101, 41-3-102, 41-3-104, 41-3-105, 41-3-201 Through 41-3-205, 41-3-301, and 41-3-302, MCA."

Mr. Chairman and members of the Committee. The Department of Social and Rehabilitation Services supports the passage of Senate Bill 301 in its entirety, but we would like to limit our comments to one specific section today. Section 6 provides for the creation of child protection teams to coordinate and strengthen the efforts of various agencies in helping children and their families obtain counselling and treatment.

Under present law when a social worker investigates a report of abuse, he or she often finds that the family is already working with several other agencies. In order to consolidate these efforts and to allow various agencies to share relevant information on child abuse cases, Senate Bill 301 proposes the creation of interdisciplinary child protection teams.

Currently, there are 12 teams operating throughout the state. Under the present law, they have encountered some confusion over their ability to share information in order to assess the needs of the child and his or her family. It is our hope that SB 301 would eliminate that confusion by statutorily authorizing a county attorney or county welfare department to set up these teams. The proposed legislation states that the supervisor of a county's child protective services would act as the team's coordinator. We have proposed tha SB 301 be amended to require each team to consist of a social worker, a member of a local law enforcement agency, a representative from the county attorney's office and a representative of the medical profession, as well as representatives of appropriate health, mental health, social service and law enforcement agencies as the need arises. This amendment would ensure that all these agencies would work together to best serve the child and family.

C. B. H. C.

With the support of the Yellowstone County Attorney, Yellowstone County currently has a successful child protection team. The success of Yellowstone County's team is largely because of the County attorney's support. We would like to see all counties benefit from this type of operation.

We believe Section 6 could achieve that goal. SRS supports the creation of these teams as a means to strengthen and to streamline the county's efforts to help these children and to encourage interaction and close collaboration among diverse community resources that provide the various legal, social, educational, medical and psychological services.

Testimony on Senate Bill #301

We also support Senate Bill #301 and particularly want to stress the importance of a new section (15) which requires the court to appoint a guardian ad litem for the child who is brought to the attention of the court and alleged to be abused or neglected. For purposes of clarification, let me point out that we are not speaking here of the child who is relinquished at birth and brought into court under a dependency action; we are speaking only of children alleged to be abused or neglected. It is our position that the provision of a guardian ad litem for each child is further protection for each child.

It has long been the right of parents to be represented by counsel in court. The county attorney's office represents the county social worker. Frequently, other interested parties are also represented. This leaves the child, who has the most to lose or gain, with no one to speak for him. He must, instead, depend upon the good will of others who may have concerns other than the best interests of the child.

until the last few years, it has generally been felt that the social worker and the county attorney's office speak for and represent the child in these actions. The problem is that the social worker usually works intensively with the families involved in these actions, and it is possible to lose perspective. There may be many conflicts and pressures within the family unit with a result that the child's needs become less clear, particularly when tangled among the needs of all other family members. It is the county attorney's responsibility to represent the county social worker. This may result in the court's receiving biased informa-

tion. Additionally, parents and their attorneys may represent a different, but equally biased point of view. A guardian ad litem however, offers a neutral evaluation of the child's situation. He has no other responsibilities. The guardian ad litem can see to it that all information relevant to the best interest of the child is presented.

It is our personal belief that the current system works very well when the social worker, county attorney, and judge are trained, experienced, and have good practical judgment. Unfortunately, this is not always the case. The addition of a guardian ad litem provides further protection that our system work effectively to meet the needs of children.

Exhibit C

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TUESDAY, FEBRUARY 13, 1979

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E. L. ...

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tion. Additionally, parents and their attorneys may represent a different, but equally biased point of view. A guardian ad litem however, offers a neutral evaluation of the child's situation. He has no other responsibilities. The guardian ad litem can see to it that all information relevant to the best interest of the child is presented.

It is our personal belief that the current system works very well when the social worker, county attorney, and judge are trained, experienced, and have good practical judgment. Unfortunately, this is not always the case. The addition of a guardian ad litem provides further protection that our system work effectively to meet the needs of children.

The Junior League of Billings, Inc
Billings, Montana

119 Clark Avenue
Billings, Montana, 59101
February 7, 1979

The Honorable Everett R. Lensink
Chairman, Senate Judiciary Committee
Senate Chambers, State Capitol
Helena, Montana, 59601

Dear Senator Lensink and Judiciary Committee Members:

The Junior League of Billings, Inc. would like this position paper to be entered into the record as testimony in support of Senate Bill No. 301.

The Junior League of Billings, Inc, a private non-profit organization composed of volunteers, has been concerned with children and child related issues for a number of years. Over the past six years, The Junior League of Billings has provided monies, sponsored workshops, published brochures, sponsored in-service training for the teachers of School District #2 and conducted a massive public awareness campaign utilizing trained volunteers in the area of Child Abuse and Neglect. We contend that the cycle of Child Abuse and Neglect can best be broken with a preventative program such as preparation for parenthood but realize that children and families presently in crisis situations involving Child Abuse and Neglect must be helped.

Therefore, The Junior League of Billings, Inc. favors Senate Bill No. 301 for the following reasons:

1. Senate Bill No. 301 gives a more cohesive force to the child welfare area by streamlining the investigative process and by providing better services for the families and children involved.
2. Senate Bill No. 301 increases the responsibility for those who must report suspect Child Abuse and Neglect and imposes a penalty on those who fail to do so as well as providing immunity for those who do report suspect Child Abuse and Neglect in good faith.

Everett R. Lensink

The Junior League of Billings, Inc.
Billings, Montana

Page 2 (Continued testimony by The Junior League of Billings, Inc.
in support of Senate Bill No. 301)

3. Senate Bill No. 301 establishes a time limit that requires the agency to complete its investigation within 60 days of commencing an investigation which will provide the family with the necessary services as soon as possible.
4. Senate Bill No. 301 provides for a guardian ad litem in judicial proceedings who will be concerned with the child's best interest.

The Junior League of Billings, Inc. asks that the Senate Judiciary Committee support the passage of Senate Bill No. 301 so that we can more adequately protect the health and safety of Montana's children.

We thank you for taking the time to read our testimony.

Sincerely yours,

Ann L. Overturf

Ann L. Overturf, Chairman
Public Affair Committee
The Junior League of Billings

Shelly H. Bell

Shelly H. Bell, Chairman
Child Abuse and Neglect
Focus Committee
The Junior League of Billings

Beverly M. Gormley
645 O'Malley Drive
Billings, Montana, 59102
February 7, 1979

The Honorable Everett R. Lensink
Chairman, Senate Judiciary Committee
Senate Chambers, State Capitol
Helena, Montana, 59601

Dear Senator Lensink and Judiciary Committee Members:

I, Beverly M. Gormley, am in favor of Senate Bill No. 301 and ask that this position paper be entered into the record as personal testimony. My reasons for support include the following:

1. Senate Bill No. 301 strengthens the responsibility of necessary reporting in order to make sure reports are made before injuries reach tragic proportions.

Changing language to include suspect and harm vs excessive injury or believe abused, increasing the list of those reporting, assuring full immunity, and imposing a penalty for failure to report all make earlier and more responsible reporting likely to occur.

2. Senate Bill No. 301 streamlines the reporting and investigative process in order to provide for the protection of children whose health and welfare are or may be in danger.

Requiring an investigative report within 60 days, supporting the use of photos and x-rays when necessary, and appointing a guardian ad litem will help minimize delay and speed up the crisis intervention process.

3. Senate Bill No. 301 promotes a total system of better service delivery from the initial report throughout the entire treatment process.

Encouraging the use of child protection teams, inter-agency cooperation, requiring welfare workers to respond 24 hours a day, 7 days a week, and allowing homemaker placement in the homes will improve services and help preserve the totak family unit whenever possible.

I ask your support of this bill and thank you for taking the time to consider my testimony.

Sincerely yours,

Beverly M. Gormley
Beverly M. Gormley, Representative
Task Force on Child Abuse/Neglect

Everett R. Lensink

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The parents, when confronted by Welfare, reacted in a very formal manner with a very formal letter which was to the effect that they would be willing to deal with Welfare if Welfare had any real proof of ~~the~~ ^{the} allegations. (All very "formally" angry and the "stiff upper lip" type of retaliation which here in Montana is not customary and could be misconstrued for guilt!)

For whatever reasons, the S.R. department did not answer the letter, and it was not until September when the child was entered into the kindergarten of their district school that the next "incident" occurred. So the story goes- the sheriff was told by someone in his office who had a little eleven year old sister who baby sat for the family that the family should be watched because they abuse their children. (I can't tell you the "coverup" story here because the local Sheriff, the Attorney General, the department of Social Rehabilitation child abuse officers, the school authorities, etc., somehow must have felt tongue-tied when the parents later approached them for more information to clear their reputation.) Anyhow- a deputy from the sheriff's office went to the school and told the principal and teacher to look out for evidence of child abuse on the kindergartener of this family. The teacher did as requested, noting bruises, and then by the end of the year came upon a scene in her room which convinced her that the deputy had been right, and she called the Welfare department and told them that the **parents** were abusers. (By the way, she also had not talked with or bothered to not to know the parents, and the "scene" involved a black eye, and she asked the child if his daddy had given it to him, and the little boy said, "yes", and so she too assumed.... !)

Next, the welfare officer and the law officers tried to gain entry into the home of my friends, but were thwarted in their efforts by the mother who refused to let them enter. Then came the summons for them to appear in court to defend their rights to keep their child. My husband and I were witnesses at that trial, by the way, and were there to hear the judge dismiss the case and say that it should never have come to trial. He concluded that the welfare department and the defendants were possibly both at fault for their failure to communicate with each other.

If you have read this far and also see the implications of the legislature allowing more power for Social Rehabilitation, I plead with you to read this or any bills like it which would facilitate same, change it or forget it until you come up with a better idea.

Sincerely,

Martha Anne Walker

(Mrs.) Martha Anne Walker

Please sign and return to secretary

DATE Feb. 13, 1979

COMMITTEE ON

Judiciary

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppos
J. Brent Amrin	SRS/OLA	301	✓	
JEFF STEICKLER	Task Force on Child Abuse	301	✓	
Clayton McCracken	Task Force C/N/ Health	301	✓	
Tom Mallard	Mt. Coalition of Human Services	301	✓	
Kim Lutter	Senate Aide	301	✓	
Norma Vestre	SRS	301	✓	
Magi Hansen	Assoc for Deaf/DeafBlind	301	✓	
WD Hutchison	Mont Legal Services	301		✓
Larry Aron	Self	348	✓	
Tom Hough	County Attorneys	301	✓	
Phil Campbell	Mont. Ed. Assoc	301	✓	
Mike Meloy	MONT. TRIAL LAWYERS ASS.	348	✓	
NEWCOMER	State Bar of Mont	348	✓	
Robert Vastanti	Operating Engineers #400	348	✓	
Lyle G. Eggum	Office of Public Instr	301	✓	
Vincent J. Bosh	My Family	348	✓	