

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
MARCH 23, 1981

The fiftieth meeting of the Senate Judiciary Committee was called to order by Mike Anderson, Chairman, on the above date in Room 331, at 10:00 a.m.

ROLL CALL:

All members were present.

CONSIDERATION OF HOUSE BILL 815:

TO PROVIDE PROCEDURES AND GUIDELINES
FOR TERMINATING THE LEGAL RELATIONSHIP
BETWEEN PARENT AND CHILD.

The bill was presented by Rep. Kemmis, District 94, as having the purpose of bringing uniformity and coherence to the laws governing the termination of the relationship between parent and child.

John Madsen, representing the S.R.S., said that this bill would strengthen the rights of parents and children, and that it is patterned after a Colorado law. His written testimony is attached.

David Stewart supported the bill as shown on his attached written testimony, and suggested an amendment to the bill which would give a child's natural parents the "right of first refusal" to adopt their child if their rights were previously terminated.

Russell Cater, representing the Montana Legal Services, supported the bill because it is fair to the parties concerned. He said that a Colorado judge thinks the bill works very well in Colorado.

Senator Crippen asked Rep. Kemmis about the proposed amendment raised by Mr. Stewart, and was told that it may present problems in the interests of the children. He felt the bill contained sufficient safeguards along the line raised by the amendment, but said that he would not oppose it.

CONSIDERATION OF SENATE JOINT RESOLUTION 30:

REQUESTING AN INTERIM STUDY OF DELAYS
OF APPEALS IN CRIMINAL CASES.

Senator Aklestad, District 6, presented the resolution,

pointing to abuses in the present system which would hopefully be corrected by the law which would emerge from this study.

Senator Turnage supported the resolution, saying that though it may never result in a one-step appeal, it might hopefully result in consolidated appeals. He said the procedural red tape in the system lends itself to abuses.

Senator S. Brown suggested the possibility of broadening the authority of Senator Van Valkenburg's bill studying the juvenile justice system to include this topic.

John Maynard, Assistant Attorney General, supported the study on behalf of the Attorney General's office, and said it would give them an opportunity to present to the legislature in a more complete form the problems they face and the steps they have taken to try to speed up the process.

In closing, Senator Aklestad said the people of Montana are demanding a change, and they deserve a change. He added that if this study became joined to the study of the juvenile justice system, he wanted to make sure that this one would not get lost in the shuffle.

Senator Crippen urged that the study be conducted publicly, in a fair and impartial way, not with an eye to swinging the pendulum too far the other way from leniency.

Senator Anderson opened discussion of the committee bill on reinstituting the small claims court. He said that two bills have been drafted -- one which would allow for a de novo appeal to the district court, and another which would provide for a removal provision from the small claims court of the justice's court, and would allow the defendant to stop the proceedings and transfer them to the justice's court.

Janet Jensen, a Missoula justice of the peace, supported the bill which offered the transfer over the one with the de novo provision, because she said that it would leave the small claims court a court of record, and would shorten the time required for decisions.

Senator S. Brown agreed with Mrs. Jensen that the appeal de novo is a burden which should not be placed on the district courts.

Senator Halligan suggested possibly amending the bill to raise the limit to \$1,500 which could be heard in small claims court.

A majority of the committee wanted for both bills to be printed and submitted for consideration in an effort to decide which one should be passed out of committee.

DISPOSITION OF HOUSE BILL 758:

Senator Tveit moved that the bill BE CONCURRED IN. Senator Mazurek was in the House at the time of the motion, and committee members felt he should be allowed to vote on this bill. Chairman Anderson ruled that whenever matters which have received a tie vote are brought up again in committee, any member not present will be allowed to cast his vote upon returning to the room. A roll call vote was then taken, which, when Senator Mazurek's vote was added, revealed that the motion failed on a six to four vote, with Senators O'Hara, Tveit, S. Brown, and Berg voting in favor of the motion. It was unanimously decided to reverse the roll call vote and bring the bill out on an adverse committee report.

DISPOSITION OF SENATE JOINT RESOLUTION 30:

Senator S. Brown moved that the bill BE CONCURRED IN, and his motion passed unanimously.

DISPOSITION OF HOUSE BILL 5:

Senator O'Hara moved to reconsider action taken on the bill Saturday, and his motion carried unanimously. He then moved that the bill be amended as decided on Saturday, and that the two amendments which are numbered "4" and "6" on the Committee Report (attached to the minutes of March 21), be added. His motion passed unanimously. Senator Berg moved that the bill BE CONCURRED IN AS AMENDED, and his motion passed unanimously.

DISPOSITION OF HOUSE BILL 761:

Senator S. Brown moved to amend the bill as shown on the attached Committee Report, and his motion passed unanimously. Senator S. Brown then moved that the bill BE CONCURRED IN AS AMENDED, and his motion passed unanimously.

DISPOSITION OF HOUSE BILL 813:

Chairman Anderson submitted some proposed amendments which had been suggested by the School Board Association through Chad Smith (as shown on attached Committee Report). Senators S. Brown and Mazurek stated that such officials are already sufficiently protected, and that there is no widespread need for such a bill. Senators Tveit and Anderson discussed instances of suits illustrating the need for the bill. Senator S. Brown said that if such a law passed, it should apply to teachers and public officials other than school board members rather than covering just one segment. Senator Tveit moved that the proposed amendments be adopted, and his motion carried over the objection of Senators Berg, S. Brown and Olson. Senator Tveit moved the the bill BE CONCURRED IN AS AMENDED, and his motion passed over the objection of Senators

Mazurek, Olson, Berg and S. Brown.

DISPOSITION OF HOUSE BILL 538:

Senator Mazurek moved to amend the bill as shown on the attached Committee Report, and his motion passed unanimously. Senator Halligan moved that the bill BE CONCURRED IN AS AMENDED, and his motion passed over the objection of Senators Olson, Anderson, and Crippen.

DISPOSITION OF HOUSE BILL 480:

Senator Mazurek moved to amend the bill as shown on the attached Committee Report, and his motion passed unanimously. Senator S. Brown moved that the bill BE CONCURRED IN AS AMENDED, and his motion passed unanimously.

DISPOSITION OF HOUSE BILL 300:

Senator S. Brown moved to reconsider the committee's action of March 21, and his motion passed unanimously. It was pointed out that while several amendments had been discussed on different occasions, never has specific amendments been moved or acted upon. Senator Mazurek moved that the bill be amended as shown on the attached Committee Report, and his motion passed unanimously. Senator S. Brown moved that the bill BE CONCURRED IN AS AMENDED, and his motion carried over the opposition of Senator Halligan.



Mike Anderson
Chairman, Judiciary Committee

ROLL CALL

JUDICIARY COMMITTEE

47th LEGISLATIVE SESSION - - 1981

Date MARCH 23, 1981

NAME	PRESENT	ABSENT	EXCUSED
Anderson, Mike, Chr. (R)	✓		
O'Hara, Jesse A. (R)	✓		
Olson, S. A. (R)	✓		
Brown, Bob (R)	✓		
Crippen, Bruce D. (R)	✓		
Tveit, Larry J. (R)	✓		
Brown, Steve (D)	✓		
Berg, Harry K. (D)	✓		
Mazurek, Joseph P. (D)	✓		
Halligan, Michael (D)	✓		

Each day attach to minutes.

NAME :

DATE :

ADDRESS :

PHONE :

REPRESENTING WHOM?

APPEARING ON WHICH PROPOSAL:

DO YOU :

SUPPORT?

AMEND?

OPPOSE?

COMMENTS :

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There is no handwriting or other markings on the paper.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

TESTIMONY ON HOUSE BILL 815

PRESENTED BY: John J. Madsen, Protective Services Consultant

REPRESENTING: Montana Department of Social and Rehabilitation
Services

During the course of providing protective services to children it sometimes becomes apparent that parental rights must be terminated. The Department of Social and Rehabilitation Services at the present time can petition thru the county attorney, to have parental rights terminated. The Agency is not seeking new authority with this bill.

The Department of Social and Rehabilitation Services is requesting this bill because the Agency wishes to strengthen the rights of parents and children and to make consistant the procedures under which parents rights to children can be terminated.

This bill is modeled after Colorado statute which was drawn up by a group of child advocates working outside of the agency structure. Although it was not generally supported by the Colorado Human Services Agency due to increased workload the Colorado legislation was passed.

House Bill 815 sets down minimum criteria for courts to consider when considering termination of parental rights. Presently there are no such standards in statute and therefore inconsistency occurs across the state. The bill will cause the Department and the courts to use the same standards statewide. At present the same case which might result in termination in Missoula could be a long term foster care case in Miles City.

The two most important parts of this bill are found in Sections 5 and 6.

In Section 5 (c) (1) the bill says that before a court may consider termination of parental rights the Department must have attempted a treatment plan approved by the court. The parents must have failed, or not complied with the treatment plan. Treatment plan is defined in Section 2 (4). That means that the Department and the parent must have been before the court at least once before, and that the judge must have approved the plan which the Department and parents have agreed to work on to change the situation which is dangerous to the child.

Section 6 of this bill sets up a review process by the courts after termination of parental rights. This section is designed to prevent children from drifting in foster care after termination. It allows the judge to continue involvement in the case until a permanent placement is made for the child.

The Department of Social and Rehabilitation urges your approval of House Bill 815.

DATE: 3/23/81

ADDRESS: 2315 National Ave. Helena

PHONE: 442-0677

REPRESENTING WHOM? Self

APPEARING ON WHICH PROPOSAL: H B 815

DO YOU: SUPPORT? _____ AMEND? ✓ _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

It is a sad day when a family situation deteriorates to the point that would require the intervention by the state as this bill will permit. On the other hand we would be less than responsible if we do not recognize that it must be done.

I would like to offer a suggestion that I believe would lessen the impact in some cases. This would only affect adopted children..

Following the determination that the relationship should be terminated (as on page 5 line 16), I suggest that you include the provision that the natural parent of the adopted child be contacted to determine if they would want to again assume the responsibility for the child. The Judge could make an initial determination as to whether or not this is desirable based on the circumstances of the adoption. It is conceivable that the natural parent from whom the child was adopted may want the child back. This would lessen the impact of leaving what may have been the only home the child ever knew regardless of how bad it was. It could also result in putting the child in a home where it would know the love and security it needed.

It is also conceivable that it could result in substantial savings of tax dollars since the state may in the end wind up supporting the child.

I would like to call on a person's experience if I may in support of this change.
I adopted two children several years ago, my oldest son and daughter. It has been a very rewarding experience. I also had a daughter adopted against my will and without my consent. My ex-wife and her husband and I will be in court on a rehearing on that adoption this year or early next year, in Ohio. I believe I can prove that it was not only obtained by the use of fraud and perjury but that their Attorney knew it before they had the hearing. I mentioned this only to illustrate the point that there are times when the natural parent would want the child that was adopted.

I believe our own state law provides for adoption without the consent of the natural parent under certain circumstances. We therefore may be open to the same things occurring here.

David W. Stewart

NAME: Russell Carter DATE: 3/23/31

ADDRESS: C/o Montana Lead Service 301 Stearns St. Helena, MT 59601

PHONE: 442-9300

REPRESENTING WHOM? Montana Lead Service

APPEARING ON WHICH PROPOSAL: - 1 -

DO YOU: SUPPORT? Yes AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME :

DATE :

ADDRESS :

PHONE :

449-3865

REPRESENTING WHOM?

5728

APPEARING ON WHICH PROPOSAL:

HB 815

DO YOU:

SUPPORT?

X

AMEND?

OPPOSE?

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

DATE: 3/23/81

ADDRESS: Rm 225 - Capitol

PHONE: 449-2026

REPRESENTING WHOM? Attorney General

APPEARING ON WHICH PROPOSAL: SJR 30

DO YOU: SUPPORT? ✓ AMEND? OPPOSE?

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: JANET JENSEN DATE: 3-23-81

ADDRESS: MISSOULA COUNTY COURTHOUSE

PHONE: 721-5700

REPRESENTING WHOM? MISSOULA COUNTY JUSTICE COURT

APPEARING ON WHICH PROPOSAL: SMALL CLAIMS

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: LC 1524/01 Support

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

March 22, 1981

Senate Judiciary Committee

Attention: Senator Joseph Mazurek

Gentlemen:

I regret that I was unable to testify personally regarding the bill proposing that joint custody be the legal first choice, when the future of children involved in a divorce situation is the consideration. I was unable to attend the hearing, because I was teaching a class, not coincidentally called Human Behavior. Human beings, and especially children, are my business. To provide some background, I worked in Child Welfare Services for seventeen years, beginning at line level and ending my public service years as Chief of the Child Welfare Services Bureau. I do private counseling around divorce, custody and parent-child problems, and I have been used frequently by the court and by attorneys in Helena to evaluate and recommend custody plans and to intervene in parental battles over custody and visitation. I also am consultant to three children's programs in Helena, and am currently on the governing board of Child Welfare League of America, the standard-setting agency, on a national level, for children's services and advocacy for children.

I cannot state too strongly my support for the joint custody position. It is essential to the healthy growth and development of the child to feel that he/she ^{has} ~~feels~~ the ongoing love and support of both parents, whatever differences those parents may have with each other. Neither law or parent can sever a parent-child relationship, only the child can do that - and usually the child doesn't. ~~Step-~~ ^{for which} parents do not fill the void, and whatever the reason a parent may eliminate him/herself from the child's life, the child sees it as rejection and lack of love. These children show severe depression and build funds of anger, which they often take out on all of us in adolescence, when kids, by nature, "let it all hang out". The child who doesn't know the reality of a parent is a prime candidate for developing a fantasy parent. I have dealt with these kids in treatment, trying to help the custodial parent cope with a rival who is a perfect parent - because the child has created that parent out of the dreams of what a child would like a parent to be - or, to cope with the severe acting-out of a child who has identified with all of the negative

aspects of the absent parent, since negatives are all he/she has heard.

Joint custody is a legal tool, but it is also a message to embattled parents that you may divorce your spouse, but you can't divorce your children. It encourages both parents to remain involved, and we know many parents who drift away, do so because they feel that they no longer have any say in their children's lives. It prevents a parent, in the heat of initial anger, from withholding all contact so that a base for communication is never reached. I have recommended joint custody when at least one parent is completely opposed, and they have found that when they have to communicate about their child, they are able to do so.

The most significant study of children and divorce to date was recently completed by Judith Wallerstein and Joan Berlin Kelley. This was an exhaustive study, done over a five-year period, and the results are now published in their book "Surviving the Breakup" (Basic Books, 1980). The authors state, "Taken as a whole our findings point to the desirability of the child's continuing relationship with both parents during the postdivorce years...joint legal custody may provide the legal structure of choice. Although the influence of legal structure on the fabric of family life may be considerably less than many persons believe it to be, nevertheless there is some evidence that legal accountability may influence and shore up financial and psychological responsibility." In their summary, the authors state they take, "a position in favor of flexibility and encouragement of joint legal custody where feasible, as a symbol of society's recognition of the child's continuing need for both parents."

As a divorced parent myself, and as a professional who has spent twenty-six years working with troubled children and their bewildered parents, I earnestly plea that you recommend passage of the joint custody bill. I do this in behalf of the children, who have a right to both of their parents; the parents, who love their children, but often blight their lives out of anger and ignorance; and the society in which we all live and which ultimately has to try to cope with the anger and depression of our children.

Sincerely,



Margaret Stuart, Director
Social Work Program
Carroll College

DATE _____

March 23, 1981

COMMITTEE ON

BILL NO.

HB 815

SJR 30

VISITOR'S REGISTER

[illegible]

(Please leave prepared statement with Secretary)

STANDING COMMITTEE REPORT

March 23, 19 81

MR. PRESIDENT:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 480

SENATE (UNRECORDED)

Respectfully report as follows: That HOUSE Bill No. 480,
third reading copy, be amended as follows:

1. Title, line 14.
Following: "41-5-511,"
Insert: "AND"
Following: "41-5-806,"
Strike: "AND 41-5-806,"

2. Page 1, line 20.
Following: line 19
Strike: "shall"
Insert: "may"

3. Page 3, line 17.
Following: "history"
Insert: "with youth court"

4. Page 14, line 16 through line 20 on page 15.
Strike: Section 3 in its entirety.

~~DO PASS~~ so amended.
BE CONCURRED IN

STANDING COMMITTEE REPORT

March 23, 1931

MR. PRESIDENT:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 813

KEYSER (ANDERSON)

Respectfully report as follows: That HOUSE Bill No. 813,

third reading copy, be amended as follows:

1. Title, line 6.

Following: "EMPLOYEES"

Strike: "ELECTED OFFICIALS"

Insert: "SCHOOL DISTRICT TRUSTEES"

2. Line 14.

Following: "and"

Strike: "their ELECTED OFFICIALS"

Insert: "school district trustees"

And, as so amended,

~~DO PASS~~
BE CONCURRED IN

P.C.

STANDING COMMITTEE REPORT

March 23, 1981

MR. PRESIDENT:

We, your committee on JUDICIARY

having had under consideration SENATE JOINT RESOLUTION Bill No. 30

RESOLVED

Respectfully report as follows: That SENATE JOINT RESOLUTION Bill No. 30

~~DO PASS~~

BE CONCURRED IN

9.0

STANDING COMMITTEE REPORT

March 23, 1981

MR. PRESIDENT:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 758

Respectfully report as follows: That HOUSE Bill No. 758

~~DO PASS~~
BE NOT CONCURRED IN

STANDING COMMITTEE REPORT

March 23, 1931

MR. PRESIDENT:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 532

SENATORS (MAZUREK)

Respectfully report as follows: That HOUSE Bill No. 535,
third reading copy, be amended as follows:

1. Title, line 5.
Following: "TO"
Strike: "PROVIDE"

2. Page 1, line 23.
Following: "or the date of"
Strike "a violation"
Insert: "filing the return, whichever is later"

3. Page 2, line 4
Following: "until"
Strike: "determination"
Insert: "discovery"

And, as so amended,

~~DO PASS~~

BE CONCURRED IN

STANDING COMMITTEE REPORT

March 23, 1981

MR. PRESIDENT:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 751

FABREGA (S. BROWN)

Respectfully report as follows: That HOUSE Bill No. 751.

third reading copy, be amended as follows:

1. Title, Lines 8 and 9.

Following: "REQUIRE" on line 8

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

Insert: "NOTIFICATION TO"

2. Title, Lines 9 and 10.

Following: "LIEN" on line 9

Strike: remainder of line 9 through "FEZ" on line 10.

3. Page 1, line 15.

Following: "owner"

Strike: "fee"

~~DOHAGS~~
~~CLERK~~

continued

March 23, 1981

4. Page 1, line 22 through line 6 on page 2.

Following: "(2)" on line 22

Strike: remainder of line 22 through line 6 on page 2.

Insert: "The clerk shall not file the lien unless there is attached thereto a certification by the lien claimant or his agent that a copy of the lien has been served upon each owner of record of the property named in the lien. Service shall be made by personal service on each owner or by mailing a copy of the lien by certified or registered mail to each owner's last known address. The certification shall state whether service was made by delivery of certified or registered mail."

And, as so amended,
BE CONCURRED IN

SENATE COMMITTEE JUDICIARY

Date March 23, 1981 House Bill No. 758 Time 10:58

NAME	YES	NO
Anderson, Mike		✓
O'Hara, Jesse A.	✓	
Olson, S. A.		✓
Brown, Bob		✓
Crippen, Bruce D.		✓
Tveit, Larry J.	✓	
Brown, Steve	✓	
Berg, Harry K.	✓	
Mazurek, Joseph P.		✓
Halligan, Michael		✓

Robin Campbell
Secretary

Dirk Anderson
Chairman

Motion: Be Concurred In

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