

MINUTES OF THE MEETING
HUMAN SERVICES AND AGING COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

February 8, 1985

The meeting of the Human Services and Aging Committee was called to order by Chairperson Nancy Keenan on February 8, 1985 at 3:00 p.m. in Room 312-2 of the State Capitol.

ROLL CALL: All members were present.

HOUSE BILL NO. 605: Hearing commenced on House Bill No. 605. Representative Connolly, District #8, sponsor of the bill said that an act to allow the department of institutions to establish standards for and approve chemical dependency educational courses provided by state-approved treatment programs and certify course instructors was needed. Representative Connolly also supplied a statement of intent.

Proponent Robert Anderson, representing the Montana Department of Institutions stated that the Department wanted the authority to establish the rules. Larry Majenus associated with the Montana Department of Motor Vehicles indicated that school programs would be beneficial. Mike Murray, representing the Chemical Dependency Program indicated his support. Albert Goke, representing the Montana Department of Justice, High Traffic Safety Division said his division supplied this concept.

There being no further proponents or opponents, Representative Connolly was then excused by Chairperson Keenan.

Representative Hansen then questioned as to whether the Indian reservations would be covered in the program and Robert Anderson indicated they would not.

There being no further discussion the hearing was closed.

HOUSE BILL NO. 301: Hearing commenced on House Bill No. 301. Representative Bradley, District #69, stated that an act providing regulation and licensing of preschool programs, requiring that preschool programs meet basic health and safety standards and other requirements was needed. Representative Bradley also indicated that periodic inspections of day-care facilities would be beneficial.

Proponent Jim Jenson of the Montana Day-care Association indicated that basic public health standards would be the main objective of the bill. Nancy Charackles, a day-care director said there were no figures of how many day-care centers were in operation and also said that the

\$375.00 registration figure was too high. Representative Bradley then interjected that the \$375.00 was not a definite amount - this could be different. Connie Flaherty Erickson, representing the Montana Lobbyist Fund said the care of preschool children was of the utmost importance. Exhibit 1 was supplied by Erickson. Cathryn Campbell indicated that 43,000 children under the age of six have working mothers. Billie Warford, representing the Montana Center for Early Childhood, supplying Exhibit 2 as testimony, said that no state agency has legislated responsibility for the supervision of programs for preschool children in Montana. Ruth Long, representing the American Association of University Women and Kathy Karp representing the same organization support this bill. Gary Walsh, representing the Montana Department of Social and Rehabilitation Services did indicate that more staffing would be necessary. Written testimony was supplied by Marcia Barfknecht in Exhibit 5.

Opponents included Bargar Goll who opposed this bill. Beverly Glueckert, supplying Exhibit 3 said that SRS should not be funded for this program but mothers of young children should be aided financially to care for their own children. Betty Johnson wants the term "other requirements" deleted. Lauretta Shekitka said the state should not be involved in this program.

There were no further proponents or opponents present. Representative Bradley was then excused by the Chair.

Questions by Representative Simon regarding amendments was discussed by Representative Bradley. Representative Gilbert questioned the regulation of babysitting in the home. Representative Phillips questioned the inspection of day-cares and Representative Wallin asked if the leadership of the Montana Department of Social and Rehabilitation Services was necessary.

There being no further discussion, the hearing was closed.

HOUSE BILL NO. 489: Hearing commenced on House Bill No. 489. Representative Waldron, District #58, sponsor of the bill stated that an act to generally revise the laws relating to residential youth care facilities; to allow transfer of legal custody to the Department of Social and Rehabilitation Services for youths requiring placement in out-of-state youth care facilities was needed.

Proponent Dave Lewis, director of SRS stated that the court system in Montana was referring troubled youth to out-of-state facilities instead of using the facilities

in Montana. Norma Harris, Community Services Division, Department of SRS supplied Exhibit 4. Ms. Harris proposed several amendments which would clean up the inconsistencies; require courts to place children in Montana facilities and assist SRS to manage the foster care budget more effectively. John Shontz a Jefferson County Commissioner indicated that the courts should confer with SRS regarding placement. Loren Soft, administrator of the Yellowstone Boys and Girls Ranch indicated that the courts were using many out-of-state facilities when beds are available at the Yellowstone Ranch. Curt Chisholm, deputy director of the Department of Institutions indicated his support of this bill.

Opponent Jerry Johnson, a juvenile probation officer indicated that out-of-state facilities were only used when facilities in Montana were either not available or did not meet the needs of the juvenile offender. Craig Anderson also indicated his opposition. Mr. Anderson is also a juvenile probation officer.

There being no further proponents or opponents, Representative Waldron was excused by Chairperson Keenan. Representative Darko questioned the over spending. Representative Gould questioned the out-of-state problem in placement. Representative Gilbert questioned the eastern Montana facilities. Representative Simon asked what the usual facility for room and board on a monetary basis was. Representative Bergene asked what type of offense would require out-of-state treatment.

There being no further discussion on House Bill No. 489, the hearing was closed.

EXECUTIVE SESSION

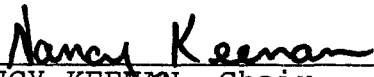
ACTION ON HOUSE BILL NO. 605: Representative Darko made a motion that was seconded by Representative Phillips that House Bill No. 605 DO PASS. A unanimous vote to pass this bill was made.

ACTION ON HOUSE BILL NO. 579: Representative Darko made a motion which was seconded by Representative Hansen on House Bill No. 579 to DO PASS. A vote was taken with all in favor except Representative Gould voting no. A statement of intent was then voted upon with a unanimous vote to DO PASS.

ADJOURN: There being no further business before the Com-

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February 8, 1985
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mittee, the meeting was adjourned at 5:44 p.m.



NANCY KEENAN, Chair

DAILY ROLL CALL

HUMAN SERVICES AND AGING COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date February 8, 1985

NAME	PRESENT	ABSENT	EXCUSED
NANCY KEENAN	X		
BUDD GOULD	X		
TONI BERGENE	X		
DOROTHY BRADLEY	X		
JAN BROWN	X		
BUD CAMPBELL	X		
BEN COHEN	X		
MARY ELLEN CONNELLY	X		
PAULA DARKO	X		
BOB GILBERT	X		
STELLA JEAN HANSEN	X		
MARIAN HANSON	X		
MARJORIE HART	X		
HARRIET HAYNE	X		
JOHN PHILLIPS	X		
BRUCE SIMON	X		
STEVE WALDRON	X		
NORM WALLIN	X		

STANDING COMMITTEE REPORT

February 8

19 85

Page 1 of 3

MR. Speaker

We, your committee on Human Services and Aging

having had under consideration House Bill No. 579

first reading copy (white)
color

Certification for voluntary admission of mental patient to state hospital

Respectfully report as follows: That House Bill No. 579

Amendments and Statement of Intent Attached

WITH AMENDMENTS AND STATEMENT OF INTENT

DO PASS

Human Services and Aging Committee
House Bill 579

AMENDED AS FOLLOWS:

- 1) Title, line 8.
Following: line 7.
Strike: "CERTIFICATION"
Insert: "CONFIRMATION"
- 2) Title, line 11.
Following: "COMMUNITY"
Insert: "; AND PROVIDING RULEMAKING AUTHORITY"
- 3) Page 2, lines 6 and 7.
Following: "disorder"
Strike: "and certification"
Insert: ". The professional person must then obtain confirmation"
- 4) Page 2, line 14.
Following: "region."
Insert: "The department shall adopt rules to establish a procedure whereby a professional person shall obtain the confirmation from a community mental health center as required in this section."
- 5) Page 3, lines 1 through 4.
Strike: section 2 in its entirety

Human Services and Aging Committee
House Bill 579

STATEMENT OF INTENT

A statement of intent is required for this bill because it contains a delegation of authority, as defined in section 5-4-403, MCA, providing the department of institutions statutory authorization to adopt rules to implement the provisions of the bill requiring confirmation that adequate treatment and evaluation are unavailable in the community.

The legislature contemplates that the department's rules will define the confirmation process in such a way as to provide adequate screening of voluntary admissions to the state hospital without creating an undue delay in meeting the needs of patients.

Specifically, the department should adopt rules that will address:

- (1) the qualifications of community mental health staff who may confirm voluntary admissions;
- (2) the procedure to be used in receiving confirmation from a community mental health center;
- (3) the information about the patient and his treatment needs that must be communicated to the community mental health center by the professional person seeking confirmation;
- (4) the method used by the mental health center to document the confirmation provided; and
- (5) any other reasonable consideration not inconsistent with the purpose of this bill.

STANDING COMMITTEE REPORT

February 8

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Page 1 of 2

MR. Speaker

We, your committee on Human Services and Aging

having had under consideration House Bill No. 605

first reading copy (white)
color

Department of Institutions authority over chemical dependency courses.

Respectfully report as follows: That House Bill No. 605

STATEMENT OF INTENT ATTACHED

DO PASS WITH STATEMENT OF INTENT

Human Services and Aging Committee
House Bill No. 605

STATEMENT OF INTENT

This bill requires a statement of intent because it grants the department of institutions rulemaking authority to develop standards for chemical dependency educational courses, provided by state-approved treatment programs, for driving under the influence and minors in possession offenders who are sentenced by law to complete these courses. The bill will also allow the department to certify course instructors and inspect these courses to ensure compliance with standards.

These courses are presently being provided by state-approved chemical dependency treatment programs, but without consistent standards or approval processes. The rules should address the following:

- (1) minimum training and certification standards for course instructors;
- (2) procedures to justify costs of courses and fees charged;
- (3) minimum screening, assessment, and evaluation criteria;
- (4) minimum criteria for course curriculum content;
- (5) minimum required hours and length of participation to complete the courses;
- (6) minimum recordkeeping and reporting requirements;
- (7) policies and procedures for the operation of the courses, including a course evaluation process; and
- (8) evaluation and recommendation suggestions that the courts may use for initial and repeat offenders.

WOMEN'S LOBBYIST FUND

JAN 1985
Helena, MT 59624
449-7017



TESTIMONY ON BEHALF OF HB301

My name is Connie Flaherty Erickson and I represent the Women's Lobbyist Fund. I am here today to speak in support of House Bill 301.

For working mothers, the care of their pre-school children during the day is of the utmost importance. To this end they seek out quality child-care programs. The benefits of quality child-care are great. Children tend to be more successful in school, more socially and emotionally competent, and have improved opportunities for good health. Mothers experience an increased feeling of competency and a greater earning power. Communities see lower rates of delinquency and decreased special education costs. Therefore, it is extremely important that the State insure quality child care programs for the young children of Montana.

Currently day care centers are regulated and licensed by the Department of Social and Rehabilitation Services. But there are some child care programs which, although considered "educational" by SRS, are not regulated. These are the pre-school programs. While there are no statistics as to the number of Montana children enrolled in pre-schools, it is estimated that 5,000 young children may be in these programs. These children and their parents need the assurance that their pre-schools meet current building regulations, and that the programs meet all the health and safety standards as well as appropriate adult/child ratios. HB301 will do just that by revising the current day care center standards to include pre-school programs. Our children are Montana's greatest natural resource. Therefore, the Women's Lobbyist Fund urges your support of this legislation to protect our children during their most formative years.

Thank you.

Secretary

PRESCHOOL LICENSING FACT SHEET

Rationale:

Findings from the 1980 Census show that nationally nearly 5 million 3 to 5 year old children are enrolled in preschool programs. This figure does not include children enrolled in day care settings, as compared to preschools. The Census report also indicated that approximately 82% of the 5 year olds are enrolled in kindergartens, 46% of the fours and 27% of the three year olds are enrolled in some type of preschool program. It is difficult to estimate the number of Montana children enrolled in preschools since there exists no system of registration or regulation in Montana; however, using the above statistics, it is estimated that 5,000 young children may be in unregulated programs. The Department of Social and Rehabilitative Services has developed standards for registration and licensing of day care centers and homes. However, Montana has no legislation mandating registration and licensing of preschool settings, which SRS considers "educational programs". The Office of Public Instruction has not been mandated to provide services for children under five years of age, except for those children with special learning needs. Thus, no state agency has legislated responsibility for supervision of programs for preschool children in Montana. The goal for preschool regulation would be to insure the health and safety of these children and to assure basic quality of these programs.

Legislative Request:

Representative Dorothy Bradley will sponsor legislation calling for the regulation of preschool programs by revision of current day care center standards to include preschool programs. There is a need to revise the current SRS day care center regulations and considerations must be made for preschool programs which have been operated in church facilities which would not meet current building regulations. It is expected that preschool programs must meet all health and safety standards as well as appropriate adult/child ratios. In order for SRS to be able to meet the increased demand imposed by the regulation of preschools, additional staff will be needed by the department.

P.S. HB 301 has now been introduced!

MONTANA CENTER FOR EARLY CHILDHOOD
Herrick Hall
Montana State University
Bozeman, Montana 59717

CHILD CARE RESOURCE AND REFERRAL FACT SHEET

Rationale:

Child care is an economic consideration for families throughout Montana. Based on 1980 Census projections, approximately 40,000 children under the age of 6 have parents who work outside the home. In a survey conducted by the Women in Employment Advisory Council to the governor, child care was listed as the number one concern among working women. Montana currently has approximately 7,000 registered or licensed day care slots available in day care homes or centers. A shortage of an estimated 33,000 child care places reflects a critical need for Montana families. A system of child care resource and referral with state leadership would help meet this need.

Legislative Request:

In response to parent and community needs for a source of updated information about child care services available in their community a new type of child care assistance program is proposed. Child Care Resources and Referral (CCR&R) services will be based on the assumption that parents can make good child care arrangements for their children if they are presented with a range of alternatives and encouraged to work out child care suited to their family needs.

To develop the child care resource and referral system, one full-time state coordinator will be needed. In order to provide services to meet diverse community needs and be as cost effective as possible, interagency cooperation will be stressed. Contracts will be made with various programs currently providing some child care services: Child care food programs; Day care associations; County Extension agents (especially in eastern Montana) and other programs communities decide are appropriate. Child Care Resources and Referral programs will maintain up to date information about the supply of child care services available in their community and provide a unique documentation of child care needs.

The supply of child care in most communities is inadequate to meet the diverse needs of the parents. Frustration with the inadequate supply of child care leads to the second major focus of Child Care Resources and Referral services: provision of information, technical assistance, and training to potential and existing providers of care. This assistance helps to stimulate the development of new sources of care in the community, and to maintain and improve existing services.

Senator Dorothy Eck will be sponsoring legislation relative to this issue.

LEGISLATIVE FACT SHEET

MONTANA CENSUS INFORMATION - 1980

Total population: 786,690

Total number of children 5 and under: 86,416 (50% of whom live in families where mothers work outside the home)

Total number of families: 207,525

Total number of female headed households: 20,117
(no husband present)

Total number of male headed households: 6,201
(no wife present)

Median Income

All married couples \$19,558

All families \$18,413

Families with children \$19,130

Female headed households
with children under 6 \$ 4,931

In the Labor Force

Female headed household
employed or in labor force 4,704

Married couples with children
under 18 with working mother 220,504

Married couples with children
under 6 with working mothers 47,231

Poverty Level

All families below poverty
level 19,019

Families with children
under 18 24,241

Female headed household
with children under 18 5,483

Female headed household
with children under 6 3,074

Determining Poverty Level

2 person family \$5,000

3 person family \$5,844

IMPLICATIONS FOR MONTANA:

- Female head of households with children under 6 often live below the poverty level. (25% of total.)
- Approximately 50% of female head of households have mothers who work outside the home. These wages are often at poverty level.
- Approximately 50% of married couples with children under 6 have mothers who work outside the home.

Estimates indicate as many as 50% of the children under 6 in Montana (43,208) may be involved in some kind of day care situation. These placements must be supervised and regulated to protect the health, safety and future of Montana's children.

Prepared by: Billie Warford, Montana Association For The Education of Young Children

agument "AB-301".

This bill, essentially says we, the State government, can do a better job than you, the parents, in deciding what is best for your child. I parent is the father or mother, not the State, government, and a child rearing is the responsibility of the parent.

Bill number 301 is on the shoulders of those who introduced this bill to show that he or she school is better than government intervention than intervention. And all know how our public school system has failed our children, parents, taxpayers over the past 20 years despite the intervention - "help" given by the government and its generous and pouring of our tax dollars. Competition in the market place is healthy. Parents will be free to choose for their children good schools with full, responsible, happy parents in the watch-dogging, thank you. When will we get done with the American people - Montanans, are enjoying and voting! Let us have and deregulated no, over-looked at measure! Regulations, get more regulations, that's tangential! (and costs big-packet). The bill is repugnant to the principle of a free society. Please note no. 301, please, I think you will find it in the Montana State Constitution.

Exact action not defined but then it never is when government "helps" muddled in our lives!

Montana Dad, provide the best quality day care service!

Use the money that it would take to initiate and implement this proposed program to mothers who stay at home with their children. What encouragement - a bonus! Thank you.

Helen Hamenaker - Beverly Bluecher
1529 Chateau St.
Helena, MT, 59601

TESTIMONY HB 489
SUBMITTED BY NORMA HARRIS
COMMUNITY SERVICES DIVISION
DEPARTMENT OF SOCIAL AND REHABILITATIVE SERVICES

This bill will generally revise the laws related to residential youth care facilities. This bill is being introduced at the request of Social and Rehabilitation Services. The intent of this bill is to accomplish three things.

First, some of the revisions amount to clean-up language and deal with inconsistencies which came about with the passage of HB 24 last session. These changes are not substantive. Second, other revisions would require courts to place children in Montana youth care facilities if there is an appropriate placement within the state. Third the revisions will assist the Department to manage the foster care budget more effectively. While the Department is responsible and accountable for the foster care funds, we do not presently have the authority to manage it effectively. I would like to go through the bill indicating the specific sections we wish to have changed and indicate when the Department feels they are substantive changes. I have provided a copy of the bill with the amendments proposed today for your reference.

First I would like to briefly describe the "clean up" on housekeeping amendments which do not amount to a substantive change in the law.

On page 2 line 8

Subsection (4) is amended to provide internal consistency with the format of the definitional section. There is no substantive change.

Subsection (6) is amended to repeal the reference to treatment facilities. There is no reference to treatment facility in any other section of these statutes. Therefore a definition is unnecessary.

Page 2 line 21

The definition of youth care facility is amended to remove references to youth in need of care, youth in need of supervision and delinquent youth. This section removes these references because these terms are defined by statute as children who are adjudicated by the court either under the dependency and neglect statutes or the youth court act. As it is currently worded, the statute may suggest that only those facilities which care for children who have been adjudicated by the court need to be licensed by the Department. The Department wishes to make clear that any facility which care for youth on a residential basis must be licensed by the department whether the children in the facility are adjudicated or not. There are currently some facilities in the state which provide residential care for children who are not placed by court and who are not adjudicated. These facilities need to be licensed by the Department as are all other youth care facilities.

Page 3 line 3

The definition of youth foster home is amended to clarify that relative foster homes must be licensed. A home must be licensed before the department can make a foster home payment to the home. For these reasons the Department seeks to amend the definition of youth foster homes to remove the exception of children related by blood, marriage, adoption or wardship and to include an exception for the foster parents' own children, stepchildren or wards.

Page 5 line 4 & 5

Subsection (3) is amended to clarify the relationship between the Department of Institutions, the Youth Court and SRS with regard to placement of children in residential facilities. The reference to district youth guidance homes and shelter care programs is removed because the definition of district youth guidance home was specifically repealed from the original House Bill 24 and there is no other reference to shelter care programs.

Page three

Page 5 line 23 clarifies that aftercare facilities are licensed by SRS rather than Institutions. SRS has always licensed these facilities but when HB24 was modified this section identified Department of Institution as the licensing authority.

Next I would like to summarize those changes which would encourage in-state placements.

Page 9 line 9 - 20 Constitutes a substantive change in existing law and includes amendments to the original bill as drafted.

The amendments clarify that if the youth may receive appropriate treatment in Montana, the youth court must place the youth in an in-state facility. This will encourage youth courts to use in-state facilities for residential placements. This is believed to be in the youth's best interest and would facilitate any treatment with the family and visitation with the family.

Page 11 line 20 - - This section is amended in the same way as the previous section. It again requires the court to seek an in-state placement. It should be pointed out that we are only talking about placements in the larger facilities which offer more intensive treatment. We have not encountered problems with youth foster homes or youth group home placements.

The Department has had several discussions with the Intermountain Deaconess Home and Yellowstone Boys and Girls Ranch, the two private child care agencies which provide care for severely emotionally disturbed children. While there have been contract disputes with Yellowstone Boys and Girls Ranch in the past, SRS shares a good relationship with this facility, as well as with the Intermountain Deaconess Home. These two facilities will complement the services which will be provided by the Youth Treatment Center facility since their focus will be on treating younger children as well as treating families. Representatives from these two agencies

Page four

are present and can speak about their programs. We believe these facilities, public and private, can meet the needs of most Montana children needing residential care.

On page 8 line 3, we are asking that section 3 be deleted. This section as originally proposed would have transferred custody of children to SRS if an out of state placement was needed. SRS proposed to drop this section after discussion with some youth court staff. In its place and as a compromise SRS proposes an amendment to the bill which would require the court to provide notice and opportunity to be heard to SRS prior to placement. This amendment would allow the department the opportunity to appear before the judge and provide realistic input regarding appropriate placements and budget considerations.

Other amendments which will assist the department in controlling the budget are found on page 5 line 7 - 13.

SRS's prior approval of all residential placements is requested but the amendment we propose today would allow the court to overrule only if the courts find that the departments' failure to approve is arbitrary or capricious or characterized by abuse of discretion or a clearly unwarranted exercise of discretion. We feel that this amendment would give the court recourse if it does not agree with the department.

Currently SRS has a screening committee which reviews all referrals for residential placement. The screening committee currently is advisory in nature. The approval required in this amendment would come after the case has been screened. This amendment would formalize the function and purpose of the screening committee. If passed, the Department would add a representative from youth courts and a representative from the residential child care association to the screening committee. The purpose of the screening committee is to assure that the placements are appropriate and that they meet the needs of the children.

Page five

In addition this amendment would allow the Department some input in the selection of residential placements prior to placement. Currently, the Department pays for 14 children in out-of-state facilities which were court ordered without any involvement of the Department or the court decisions were contrary to the recommendations of the screening committee.

Under the present practice, SRS often only receives notice of most youth court placements after they are made and the Department is held financially responsible regardless of where the child is placed. It is hoped that this section and the amendment to pages 9 and 11 will at least provide SRS, the bill payer, access to the court prior to the court ordered placement.

Finally on page 6 .. line 20 through page 7 .. This section is amended to clarify the Department's responsibility for the payment of foster care for youth in need of care, youth in need of supervision and delinquent youth. The amendment seeks to clarify that the Department shall pay only within the limits of its appropriation and that such payment shall be at a rate established by the Department. The existing wording of the statutes seems to suggest that the Department has responsibility to pay "the entire amount agreed upon" for the child's care in the facility. In at least 4 cases, this section was cited by courts as justification for SRS to pay for children who did not come through the dependency and neglect system or the Youth Court Act. It has also been used as an argument in favor of the Department paying an amount higher than the rate established by the Department for particular facilities. The amendments are directed at clarifying those misconceptions.

We are pointing out to you that there are problems in the state with residential placements of youth. With regard to youth court placements, the placement power and the financial responsibility are separate. We feel with that the amendments

page six

we are proposing will better enable us to manage the budget but it will not necessarily solve all the problems. We had considered other options to this bill. Since there is no centralized administration of youth courts, it is not possible to appropriate funds for foster care directly to youth courts. This bill as amended will formalize a communication process with the youth courts and should address the communication problems which have existed in some situations. These amendments will not slow down the placement process. Again, we are only speaking to the residential placements.. either Yellowstone Boys and Girls Ranch or the Intermountain Deaconess Home public facilities, YTC, Pine Hills and Mountain View or out-of-state facilities.

These changes will not solve all of the problems in residential care. Many thought the passage of HB 24 would eliminate the problems. HB 24 was intended to be a modest attempt to deal with residential care problems this is an attempt to further that effort. Essentially, this will enable SRS to fulfill our legal obligations set forth by the legislature.

1 HOUSE BILL NO. 489
2 INTRODUCED BY Waldman
3 BY REQUEST OF THE DEPARTMENT OF
4 SOCIAL AND REHABILITATION SERVICES
5
6 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
7 LAWS RELATING TO RESIDENTIAL YOUTH CARE FACILITIES; ~~TO ALLOW~~
8 ~~TRANSFER OF LEGAL CUSTODY TO THE DEPARTMENT OF SOCIAL AND~~
9 ~~REHABILITATION SERVICES FOR YOUTHS REQUIRING PLACEMENT IN~~
10 ~~OUT-OF-STATE YOUTH CARE FACILITIES;~~

To require prior approval of SRS
for placement in residential care
facilities;

AND AMENDING SECTIONS

11 41-3-1102 THROUGH 41-3-1104, 41-3-1121, 41-3-1122, 41-5-205,
12 41-5-403, AND 41-5-523, MCA."
13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
15 Section 1. Section 41-3-1102, MCA, is amended to read:
16 "41-3-1102. Definitions. For the purposes of this
17 part, the following definitions apply:
18 (1) "Child-care agency" means a youth care facility in
19 which substitute care is provided to 13 or more children or
20 youth.
21 (2) "Department" means the department of social and
22 rehabilitation services.
23 (3) "Operator of a youth care facility" means any
24 person owning or operating a youth care facility into which
25 he takes any child or children for the purpose of caring for

1 them and maintaining them and for which care and maintenance
2 he receives money or other consideration of value, and which
3 child is neither his son, daughter, nor ward, except that
4 this part shall not apply when any person accepts such care
5 and custody of such child on a temporary basis and simply as
6 a temporary accommodation for the parent or parents,
7 guardian, or relative of such child.

8 (4) ~~The word "person" shall include~~ "Person" means any
9 individual, partnership, voluntary association, or
10 corporation.

11 (5) "Substitute care" means full-time care of youth in
12 a residential setting for the purpose of providing food,
13 shelter, security and safety, guidance, direction, and if
14 necessary, treatment to youth who are removed from or
15 without the care and supervision of their parents or
16 guardian.

17 ~~{6}--"Treatment--facility"--is--a---child-care---agency~~
18 ~~providing-the-appropriate-level-of-care.~~

19 ~~{7}~~(6) "Youth care facility" means a facility,
20 licensed in accordance with 41-3-1141 through 41-3-1143, in
21 which substitute care is provided to youth in-need-of-care,
22 ~~youth-in--need--of--supervision,--or--delinquent--youth~~ and
23 includes youth foster homes, youth group homes, and
24 child-care agencies.

25 ~~{8}~~(7) "Youth foster home" means a youth care facility

INTRODUCED BILL

HB 489

1 in which substitute care is provided to one to six children
2 or youth to--whom--the--foster--parents--are--not--related--by
3 blood, marriage, adoption, or wardship other than the foster
4 parents' own children, stepchildren, or wards.

5 +9+(8) "Youth group home" means a youth care facility
6 in which substitute care is provided to 7 to 12 children or
7 youth."

8 Section 2. Section 41-3-1103, MCA, is amended to read:

9 "41-3-1103. Powers and duties of department. (1) The
10 department shall:

11 (a) administer all state and federal funds allocated
12 to the department for youth foster homes, youth group homes,
13 and child-care agencies for youth in need of care, youth in
14 need of supervision, and delinquent youth;

15 (b) exercise licensing authority over all youth foster
16 homes, youth group homes, and child-care agencies;

17 (c) collect and disseminate information relating to
18 youth in need of care, youth in need of supervision, and
19 delinquent youth;

20 (d) provide for training of program personnel
21 delivering services;

22 (e) in cooperation with the department of institutions
23 and youth care facility providers, develop and implement
24 standards for youth care facilities;

25 (f) apportion and allocate placement budgets to all

- 1 judicial districts;
- 2 (g) seek public input on the plan prior to its
- 3 adoption and implementation; and
- 4 (h) maintain adequate data on placements it funds in
- 5 order to keep the legislature properly informed of the
- 6 following:
 - 7 (i) the breakdown of youth in need of care, youth in
 - 8 need of supervision, and delinquent youth by category in
 - 9 out-of-home care facilities;
 - 10 (ii) the cost per facility for services rendered;
 - 11 (iii) the type and level of care of services provided
 - 12 by each facility;
 - 13 (iv) a profile of out-of-home care placements by level
 - 14 of care; and
 - 15 (v) a profile of public institutional placements.
- 16 (2) The department may:
 - 17 (a) enter into contracts with nonprofit corporations
 - 18 or associations to provide facilities and services for youth
 - 19 in need of care, youth in need of supervision, and
 - 20 delinquent youth;
 - 21 (b) accept gifts, grants, and donations of money and
 - 22 property from public and private sources to initiate and
 - 23 maintain community-based services to youth;
 - 24 (c) adopt rules to carry out the administration and
 - 25 purposes of this part.

1 (3) The department shall pay for room, board,
2 clothing, personal needs, transportation, and treatment in
3 ~~district-youth-guidance-homes, shelter--care--programs,--and~~
4 youth foster care homes and youth group homes other than
5 aftercare homes for youths committed to the department of
6 institutions who need to be placed in such facilities.
7 Youths committed to the department of institutions and or
8 placed by the court in residential facilities other than
9 those described above shall not be the financial
10 responsibility of the department of social and
11 rehabilitation services unless such placements have been
12 approved in-advance prior to placement by the department of
13 social and rehabilitation servicesx"

unless the court specifically finds that
the department's failure to approve is
arbitrary or capricious or characterized
by abuse of discretion or a clearly unwarranted
exercise of discretion.

14 Section 3. Section 41-3-1104, MCA, is amended to read:

15 "41-3-1104. Aftercare facilities. (1) The department
16 of institutions may establish, maintain, and administer
17 youth correction facilities, evaluation facilities, mental
18 health facilities and services, aftercare programs, and
19 aftercare facilities for the care, custody, and treatment of
20 youth who have been committed to the department of
21 institutions.

22 (2) Aftercare facilities are under the licensing
23 authority of the department of institutions social and
24 rehabilitation services."

25 Section 4. Section 41-3-1121, MCA, is amended to read:

1 "41-3-1121. Foster care payments for youth court
2 placements. (1) The youth court may establish procedures for
3 finding, maintaining, and administering shelter care and
4 foster homes approved by the court for youth within the
5 provisions of this part.

6 (2) Pursuant to 41-3-1122, the department shall make a
7 foster care payment for a child placed by the youth court
8 if:

9 (a) the child is placed in a youth care facility
10 licensed by the department ~~or by an appropriate licensing~~
11 ~~authority from another state;~~

or by an appropriate licensing
authority from another state;

12 (b) the youth court enters into an agreement according
13 to federal regulations with the department for the placement
14 of children;

15 (c) the placement of the child is reviewed as required
16 by 41-3-1115; and

17 (d) the youth court retains supervision of the child
18 in placement."

19 Section 5. Section 41-3-1122, MCA, is amended to read:

20 "41-3-1122. Payment for support of youth in need of
21 care, youth in need of supervision, or delinquent youth --
22 reimbursement by county. (1) ~~Whenever agreements are entered~~
23 ~~into by the department or the court for placing a youth who~~
24 is a youth in need of care, a youth in need of supervision,
25 or a delinquent youth is placed by the youth court or the

1 department in a youth care facility, the department shall
2 pay, ~~by its--check--or--draft--each--month--from--any--funds~~
3 ~~appropriated--for--that--purpose--the--entire--amount--agreed--upon~~
4 within the limits of the appropriation for that purpose, a
5 foster care payment to the youth care facility at a rate
6 established by the department for board, clothing, personal
7 needs, treatment, and room of the youth.

8 (2) On or before the 20th of each month the department
9 shall present a claim to the county of residence of the
10 youth for no more than one-half the payments so made during
11 the month. The county must make reimbursement to the
12 department within 20 days after the claim is presented.

13 (3) The department shall conduct or arrange for the
14 review required under 41-3-1115 of a youth placed in a youth
15 care facility if the youth is placed under the supervision
16 of the department or placed by the department or the
17 department pays for the care of the youth as set forth in
18 this section."

19 Section 6. Section 41-5-205, MCA, is amended to read:

20 "41-5-205. Retention of jurisdiction. Once a court
21 obtains jurisdiction over a youth, the court retains
22 jurisdiction unless terminated by the court or by mandatory
23 termination in the following cases:

24 (1) at the time the proceedings are transferred to
25 adult criminal court;

1 (2) at the time of commitment of the youth to the
2 custody of the department of institutions;

3 ~~(3) at the time of commitment of the youth to the~~
4 ~~custody of the department of social and rehabilitation~~
5 ~~services;~~

6 (3) ~~(3)(4)~~ in any event, at the time the youth reaches the
7 age of 21 years."

8 Section 7. Section 41-5-403, MCA, is amended to read:

9 "41-5-403. Disposition permitted under informal
10 adjustment. (1) The following dispositions may be imposed by
11 informal adjustment:

12 (a) probation;

13 (b) placement of the youth for substitute care into a
14 youth care facility as defined in 41-3-1102 or into a home
15 approved by the court;

16 (c) placement of the youth in a private agency
17 responsible for the care and rehabilitation of such a youth;

18 (d) transfer of legal custody to the department of
19 institutions for a period of 6 months, which period may be
20 extended for 6 months upon further order of the court after
21 notice and hearing;

22 (e) restitution upon approval of the youth court
23 judge.

24 (2) In determining whether restitution is appropriate
25 in a particular case, the following factors may be

1 considered in addition to any other evidence:

- 2 (a) age of the youth;
3 (b) ability of the youth to pay;
4 (c) ability of the parents or legal guardian to pay;
5 (d) amount of damage to the victim; and
6 (e) legal remedies of the victim; however, the ability
7 of the victim or his insurer to stand any loss may not be
8 considered in any case.

9 (3) If the court finds that placement in a youth care
10 facility other than a youth group home or youth foster home
11 is necessary and in the best interests of the youth and the
12 community, the court shall determine if the youth can
13 receive appropriate treatment in a youth care facility
14 located in Montana, as follows:

15 (a) If the court finds the youth can receive
16 appropriate treatment in a youth care facility located in
17 Montana that will accept the youth, the court may not place
18 the youth in a youth care facility located outside this
19 state.

20 ~~(b) If the court finds the youth cannot receive~~
21 ~~appropriate treatment in a youth care facility located in~~
22 ~~Montana, the court shall transfer legal custody to the~~
23 ~~department of social and rehabilitation services, which is~~
24 ~~responsible for the selection of an appropriate placement~~
25 ~~for the youth in a youth care facility located outside this~~

1 ~~state. The transfer of legal custody must be for a period of~~
 2 ~~6 months and may be extended for an additional 6 months upon~~
 3 ~~further order of the court after notice and hearing.~~

(b) If the department of social and rehabilitation services will be financially responsible for the costs of caring for the child in a youth care facility other than a youth foster home or youth group home, the court shall provide the department with at least five days written notice and opportunity to be heard before ordering the placement of the youth.

4 †3†(4) If the youth violates his aftercare agreement
 5 as provided for in 53-30-226, he must be returned to the
 6 court for further disposition. No youth may be placed in a
 7 state youth correctional facility under informal adjustment.

8 †4†(5) If custody is given to the department of
 9 institutions under subsection (1)(d), the youth may not be
 10 committed to the Montana youth treatment center unless the
 11 commitment provisions of 53-21-505 are followed."

12 Section 8. Section 41-5-523, MCA, is amended to read:

13 "41-5-523. Disposition of delinquent youth and youth
 14 in need of supervision. (1) If a youth is found to be
 15 delinquent or in need of supervision, the court may enter
 16 its judgment making the following disposition:

17 (a) place the youth on probation;

18 (b) place the youth for substitute care into a youth
 19 care facility as defined in 41-3-1102 or a home approved by
 20 the court;

21 (c) place the youth in a private agency responsible
 22 for the care and rehabilitation of such a youth;

23 (d) transfer legal custody to the department of
 24 institutions; provided, however, that in the case of a youth
 25 in need of supervision, such transfer of custody does not

1 authorize the department of institutions to place the youth
2 in a state youth correctional facility and such custody may
3 not continue for a period of more than 6 months without a
4 subsequent court order after notice and hearing;

5 (e) such further care and treatment or evaluation that
6 the court considers beneficial to the youth; or

7 (f) order restitution by the youth.

8 (2) At any time after the youth has been taken into
9 custody, the court may, with the consent of the youth in the
10 manner provided in 41-5-303 for consent by a youth to waiver
11 of his constitutional rights or after the youth has been
12 adjudicated delinquent or in need of supervision, order the
13 youth to be evaluated by the department of institutions for
14 a period not to exceed 45 days of evaluation at a reception
15 and evaluation center for youths, except that if the
16 evaluation is to be done at the Montana youth treatment
17 center, the commitment provisions of 53-21-505 must be
18 followed and no evaluation of a youth may be done at Montana
19 state hospital.

20 (3) If the court finds that placement in a youth care
21 facility other than a youth group home or youth foster home
22 is necessary and in the best interests of the youth and the
23 community, the court shall determine if the youth can
24 receive appropriate treatment in a youth care facility
25 located in Montana as follows:

1 (a) If the court finds the youth can receive
 2 appropriate treatment in a youth care facility located in
 3 Montana that will accept the youth, the court may not place
 4 the youth in a youth care facility located outside this
 5 state.

6 ~~(b) If the court finds the youth cannot receive~~
 7 ~~appropriate treatment in a youth care facility located in~~
 8 ~~Montana, the court shall transfer legal custody to the~~
 9 ~~department of social and rehabilitation services, which is~~
 10 ~~responsible for the selection of an appropriate placement~~
 11 ~~for the youth in a youth care facility located outside this~~
 12 ~~state.~~

(b) If the department of social and rehabilitation services will be financially responsible for the costs of caring for the child in a youth care facility other than a youth foster home or youth group home, the court shall provide the department with at least five days written notice and opportunity to be heard before ordering the placement of the youth.

13 ~~†3†(4)~~ No youth may be committed or transferred to a
 14 penal institution or other facility used for the execution
 15 of sentence of adult persons convicted of crimes.

16 ~~†4†(5)~~ Any order of the court may be modified at any
 17 time. In the case of a youth committed to the department of
 18 institutions ~~or the department of social and rehabilitation~~
 19 ~~services~~, an order pertaining to the youth may be modified
 20 only upon notice to the department and subsequent hearing.

21 ~~†5†(6)~~ Whenever the court vests legal custody in an
 22 agency, institution, or department, it must transmit with
 23 the dispositional judgment copies of a medical report and
 24 such other clinical, predisposition, or other reports and
 25 information pertinent to the care and treatment of the

1 youth.

2 †6†(7) Except as provided in 53-21-507, if the custody
3 of a youth is transferred to the department of institutions
4 under subsection (1), the youth may not be committed to the
5 Montana youth treatment center unless the commitment
6 provisions of 53-21-505 are followed.

7 †7†(8) The order of commitment to the department of
8 institutions shall read as follows:

9 ORDER OF COMMITMENT

10 State of Montana)

11) ss.

12 County of)

13 In the district court for the Judicial District.

14 On the day of, 19...,, a minor of this
15 county, years of age, was brought before me charged
16 with, Upon due proof I find that is a suitable
17 person to be committed to the department of institutions.

18 It is ordered that be committed to the department
19 of institutions until

20 The names, addresses, and occupations of the parents
21 are:

22	Name	Address	Occupation
23
24

25 The names and addresses of their nearest relatives are:

LC 1401/01

1

2

3 Witness my hand this day of, A.D. 19...

4

5 Judge"

6 NEW SECTION. Section 9. Extension of authority. Any

7 existing authority of the department of social and
8 rehabilitation services or the department of institutions to
9 make rules on the subject of the provisions of this act is
10 extended to the provisions of this act.

-End-

Human Services and Aging Comm.
Rep. Nancy Keenan, Chairman
Feb. 11, 1985

I, Marcia Barfknecht, am submitting written testimony against passage of HB 301. I have been actively involved in early childhood education for twelve years. First, obtaining my Montessori training and certification to work with 2½-6 year olds, securing my M.A. in education, and now as a "working" mother of two preschoolers.

All concerned and responsible adults share the desire to insure that our tots are placed in clean, safe, and caring environments, but regulatory laws are not the answer. A seemingly innocuous bill, HB301 can lead to a "Pandora's Box" of over regulation.

The problems I foresee which are likely to occur with the passage of HB 301 come from my previous experiences complying with health and safety codes in the states of Colorado and Hawaii.

In Arvada, CO, I helped establish and taught in a Montessori school servicing 80 children. In Hawaii, I was administrator of a preschool for some 200 children. In both states responsible child caregivers were thwarted by state bureaucrats arbitrarily interpreting too general and vague laws, attempting to cover all situations.

I cite these examples: 1) No child could bring food from home let alone be allowed to cook at school as the health departments of both states deemed these foods as unsanitary. Every piece of food served had to be individually and pre-wrapped from the store, and only plastic, disposable cups could be used. This taught nothing but waste and a total disregard for our environment. Complying with these food regulations was a direct conflict with the Montessori philosophy of instruction as we encourage the children to prepare their own snacks as part of the curriculum.

A colleague in New York reports that he had to hang coat hooks 12 inches apart in order "to prevent the spread of germs." The health department representative spent his time measuring the spaces between the hooks!! 2) Often state and city agencies do not coordinate their "regs" and mass confusion occurs at the expense of the licensee. In CO, we were told by the state that all graveled areas must be grassed. We complied. The city agency then came in and said that we would have to tear up the sod and pave a drive and offer

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so many parking spaces per parent and staff. We did this after much time and cost were involved. What do parking spaces have to do with the health and safety of tots? 3) Then comes the sticky question of children/adult ratios in the class. Most traditional type nursery schools say 1 adult per 5 children. However, in a Montessori class, where independence from the adult is the primary goal, 1 per 10 children is the optimum. Already an instructional conflict arises through "safety control". 4) In order to get liability and fire insurance schools must now meet basic safety and fire standards---fenced yards(at least 4 ft. high), safe play equipment, so many fire exits, and strategic placement of fire extinguishers in the class. Thoughtful, purposeful regulations are necessary but will the fine line between that and indiscriminate control always be drawn?

By mandating a \$370.00 licensing fee, the bill would eliminate centers under 10 children from opening and will close the small, good quality schools operating at a marginal profit now. The effect: even less responsible child care for working parents. The present bill is discriminatory because it does not include charging a licensing fee for day care homes, day care centers, church affiliated programs, denominational or non-denominational. Why should church affiliated programs be exempt from the whole regulatory process? Licensing and more regulating by the state will not prevent the horrendous abuses we've read about. Case in point, the infamous school under litigation now in both New York and Calif. passed yearly health, safety, fire, and curriculum inspections.

Thank you for your concern and cooperation in this matter.

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