

MINUTES FOR THE MEETING
JUDICIARY COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

February 22, 1985

The meeting of the Judiciary Committee was called to order by Chairman Tom Hannah on Friday, February 22, 1985 at 7:00 a.m. in Room 312-3 of the State Capitol.

ROLL CALL: All members were present with the exception of Rep. Brown who was previously excused.

CONSIDERATION OF HOUSE BILL NO. 686 and 665: Rep. Nancy Keenan, House District #66, chief sponsor of these bills, testified. House Bill 686 revises the procedures relating to the filing and conduct of child abuse, neglect, or dependency proceedings. Section 1 provides for an extension allowing that petitions can be filed not only by the county attorneys but by the attorney general or an attorney hired by the county welfare department. She said that oftentimes, a county attorney cannot handle his heavy caseload, and this provides a safety valve proceeding. She went over the other provisions that the bill provides. House Bill 665 is an act to revise the procedures involved in terminating the parent-child legal relationship.

Noel Larrivee, an attorney from Missoula, testified as a proponent to HB 686 and HB 665. He described some of the problems that he has observed with regards to allowing only the county attorney to be able to file these petitions. He briefly addressed the rest of the changes as provided in HB 686 which he described as mostly housekeeping measures.

John Madsen, representing the Department of Social and Rehabilitation Services, stated that the department supports all the changes requested in HB 686. He said the changes made on page 1, lines 24 and 25, are for the benefit of the protection of the child. Also, on page 5, the changes made are not only a protection for the child, but more importantly the protection of the parent to fully understand what the allegations are that have been brought against him and what the court has required them to do.

Warren Wright, representing the Missoula Child and Family Resource Council who has also worked for the Department of S.R.S. for 11 years as an investigator and treater of child abuse and neglect, testified as a proponent. One of the three areas he wished to concentrate on has to deal with the ability to hire an attorney to represent local offices. The second issue deals with a time limit which is absolutely

necessary. He feels that there are certain incidences when the court should have the leeway to say that a treatment plan is not appropriate in a particular case.

There being no further proponents or opponents, Rep. Kennan closed.

The floor was opened for questions.

Rep. Keyser feels that the amendment proposed by Mr. Larrivee to amend page 1, line 13 by inserting following "department" the words "or office of human services" would grant some of the broadest powers he has ever seen granted to a state agency. They may require all state agencies, all county and municipal agencies including law enforcement agencies to conduct such an investigation and furnish the department reports as may be necessary. He has never heard of such a broad-sweeping request in the name of an act to protect youth. He hopes that by adopting this language, we are not creating a monster. In response, Mr. Larrivee doesn't feel that a monster is being created. He doesn't feel there will be a problem with an attorney telling law enforcement how to do their jobs. You have a situation where if one person doesn't act, nothing happens, and the child is left in an environment that is either abusive or neglectful. If no action is taken, unless some sort of safety valve is provided for that, social workers will be able to go and have the petition filed, the abuse of these children will continue by leaving those children in that particular home. There simply isn't any other method available besides the method being proposed here, stated Mr. Larrivee.

Rep. Keyser argued that the law, the way it is written with Mr. Larrivee's proposed amendment, absolutely gives an attorney hired by the county welfare department and/or the office of human services the right to do exactly that. He has no problem with allowing the attorney general to do this, but when referring to the county welfare department and the office of human services, he sees a big problem.

Rep. Hannah asked Mr. Larrivee if he was, in fact, telling this committee that county attorneys are not taking child abuse cases seriously by not filing petitions thereby requiring that authority be given to the county welfare department. Mr. Larrivee said that you can go to any county and talk with any front-line social worker, and they will give you instance after instance of where they have gone to the county attorney's office, and for whatever reasons, the case was not filed.

Rep. Krueger has a concern with regards to the time frame of 60 days on page 2, line 16 of SB 665. He wanted Mr. Larrivee to comment on this. Mr. Larrivee said that Rep. Krueger indicated

that it is legally possible to go into court and file just a petition for termination of parent/child legal relationship under Chapter 6 of this particular section. What this particular change would do then is mandate a hearing within 60 days if that were to occur. The chances of that occurring is actually remote. In terms of a time period of 60 days versus 180 days, Mr. Larriuee stated that he is not sure where the magical figure is. He feels that the answer lies somewhere in-between.

There being no further questions, hearing closed on HB 665 and 686.

CONSIDERATION OF HOUSE BILL NO. 793: Rep. Nancy Keenan, House District #66, chief sponsor of HB 793, testified in support of the bill. She said this is an act defining domestic violence. Section 46-6-401 is being amended to include domestic violence as reasonable grounds in that particular section, defining what domestic violence is and requiring that a written report of the peace officers be submitted. When she was researching this issue, she found no documentation on how many cases law enforcement was called to and if it was documented domestic violence. It was documented as disturbance. There are not statistics in this state that can be drawn from other than when a case is filed as a homicide. She stated that 60% of all married women are subject to domestic violence at one time during their life. Twenty percent of women are beaten regularly. She feels that this bill provides a deterrent.

Amy Pfeifer, representing the Women's Law Caucus at the University of Montana School of Law, testified as a proponent to this legislation. She said that family violence occurs in this country at staggering proportions. Each year thousands of men, women, and children must deal with the tragedy of family violence. She urged the committee to support HB 793.

Caryl Wickes Borchers, representing the Montana Coalition Against Family Violence, testified as a proponent to HB 793. A copy of her written testimony was submitted and marked Exhibit B and attached hereto.

Melinda (she gave no last name) from Great Falls, testified in support of this bill. A copy of her written testimony was marked Exhibit C and attached hereto.

(Rep. Brown came in.)

Boyce Fowler, program manager of domestic violence, Department of S.R.S. urged the committee to pass HB 793. Although this bill does not affect the operation of the Domestic Violence Program, it does affect the client/clientele certified shelters and the programs.

Janet Schmidt, a counselor of the Great Falls Mercy Home, testified in support of this bill. A copy of her written testimony was marked D and attached hereto.

Nancy Chaleen, volunteer from the Friendship Center, testified as a proponent. A copy of her written testimony was marked Exhibit E and attached.

Nancy (she didn't give her last name) from Great Falls told the committee that she was another victim of violence. A copy of her written testimony was marked Exhibit F and attached.

Marti Adrian from Missoula, testified as a proponent. She informed the committee that she has served several years as a counselor working with battered spouses. She has also served as a task force member of the State Task Force for Spouse Abuse. She feels this legislation is important for three reasons: The law needs clarification and enhancement. We also need statistics and need to help define this problem even further in this state. People need to be able to back up their claims when they do bring legal recourse to their situations of domestic violence.

Susan Cottingham, representing the American Civil Liberties Union, spoke in support of the bill.

Gail Kline, representing the Women's Lobbyist Fund, testified in support of this bill. A copy of her written testimony was submitted and marked Exhibit G.

Rep. Montayne wished to go on record as supporting this legislation.

There being no further proponents or opponents, Rep. Keenan closed.

The floor was opened to questions and discussion.

Rep. Mercer feels that there is a loophole in the language on page 2, the new section of the bill dealing with the language, "When a peace officer believes that he has legal grounds . . .". Rep. Keenan has no problem with the suggestion of changing the language.

There being no further questions, the hearing closed on HB 793.

CONSIDERATION OF HOUSE BILL NO. 799: Rep. J. Melvin Williams, House District #85, testified in support of HB 799 as its chief sponsor. A copy of his written testimony was submitted and marked Exhibit H.

Larry Herman, city judge of Laurel, testified as a proponent to HB 799. He said this piece of legislation is merely a housekeeping bill. This bill raises jurisdiction where it

should have been all along. Under this bill, city courts will have to maintain records, and there is no provision in the statute that applies to this issue at present.

Jim Jensen, representing the Montana Magistrate's Association, wished to go on record as supporting this bill.

There being no further proponents or opponents, Rep. Williams closed.

There being no questions from the committee, hearing closed.

CONSIDERATION OF HOUSE BILL NO. 889: Rep. J. Melvin Williams, House District #85, testified in support of HB 889 as its chief sponsor. This is an act to generally revise laws concerning justices' courts. Rep. Williams addressed the provisions as outlined in the bill.

Jim Jensen, representing the Montana Magistrate's Association, went over some of the changes that are provided in the bill.

Larry Herman, city judge of Laurel, also testified as a proponent.

There being no further proponents or opponents, Rep. Williams closed. He informed the committee that it was Gordon Morris' (representing the Montana Association of Counties) desire to go on record as supporting this legislation.

There being no questions from the committee, hearing on HB 889 closed.

CONSIDERATION OF HOUSE BILL NO. 862: Rep. Gary Spaeth, House District #84, sponsor of HB 862, testified. This is an act requiring courts of limited jurisdiction to serve notice of summons by mail to jurors for criminal trials. He submitted a copy of amendments to this bill which he urged the committee to adopt. A copy of his amendments was marked Exhibit I and attached hereto. This bill is designed to address a problem that he feels can exist in a city court and the justice of the peace court. He mentioned a few incidents he was aware of dealing with this particular problem. He feels that if we expect to have good trials, some of the procedures should be tightened up. This bill will essentially eliminate law enforcement agencies from calling in jurors to serve for trials.

Jim Jensen, representing the Montana Magistrate's Association, wished to go on record as supporting this bill.

Larry Herman, city judge of Laurel, also testified as a proponent to HB 862.

There being no further proponents or opponents, Rep. Spaeth closed.

The floor was opened to questions.

Rep. Keyser stated that one of the reasons why smaller counties use officers to call in jurors is because of the cost factor involved. Rep. Keyser asked what kind of additional cost will be involved. Rep. Spaeth doesn't feel it will add any additional cost be requiring courts of limited jurisdiction to serve notice of summons by mail to jurors for criminal trials.

Rep. Keyser said that he assumed that some in the clerk of the court's office may apply the same prejudices that law enforcement officers may have. Rep. Spaeth said that he realizes that could be the case, but the largest abuse area involves law enforcement officers. This proposed act would just make the system fairer.

There being no further questions, hearing closed on HB 862.

CONSIDERATION OF HOUSE JOINT RESOLUTION NO. 37: Rep. Tom Hannah, House District #86, chief sponsor of this resolution, testified. This joint resolution was introduced at the request of the House Judiciary Committee. It is a resolution requesting that the Montana Supreme Court study the question of use in a criminal prosecution of out-of-court statements of an alleged victim of the sexual abuse of children.

There being no further proponents or opponents, Rep. Hannah closed.

There being no questions asked by the committee, hearing closed on HJR 37.

CONSIDERATION OF HOUSE BILL NO. 911: Rep. Tom Hannah, House District #86 and chief sponsor of this bill, testified. House Bill No. 911 was introduced at the request of the House Judiciary Committee. This bill deals with criminal trespass, and was introduced by this committee as a result of discussions held on HB 17. Rep. Hannah said he has mixed emotions with presenting this bill because of his own personal feelings relating to this subject. The first line of the title of HB 17 says "An act eliminating the requirement that notice be posted . . ." You don't have to post notice -- that it is the responsibility of the sportsmen to obtain permission to go on the land. The first line of the title of HB 911 says, "An act providing specific requirements for posting . . ." He feels that HB 911 goes 180 degrees away from HB 17 that says that it is now the responsibility of the landowner to post his land so that the sportsman can know where he is going.

Dan Heinz, representing the Montana Wildlife Federation, stated that he supports the bill in its present form. He informed members that Mary Wright, representing Trout Unlimited, Inc., who was present at the hearing earlier, intends to support the bill.

OPPONENTS:

Conrad Fredricks, an attorney from Big Timber representing the Sweetgrass County Preservation Association, testified against this bill. He feels this bill is much worse as far as protecting the rights of the landowner than the current law, and he gave the reasons for feeling that way. He said the thing that really bothers him about the bill the way it is drafted is subsection (4). It says that a person is only guilty of trespass if he enters at the point where that red post is stuck. He told the committee if they are unable to pass HB 17, at least leave landowners with the protection they have in the current law as weak as it is.

Lorents Grosfield, a rancher from Big Timber, stated that he agrees with everything that Mr. Fredricks said. He feels this bill will do great harm to the landowner - sportsmen relations. He said that HB 911 does exactly the opposite of the intent of HB 17. He stated that he will submit amendments to this bill to make it much less objectionable. A copy of his written testimony was marked Exhibit J and attached hereto. He did not have his proposed amendments in final form, but attached to his testimony is a copy of HB 911 which reveals his suggested amendments.

There being no further proponents or opponents, Rep. Hannah closed. Rep. Hannah said the important questions that need to be carefully considered here is "who should have the responsibility?"

The floor was opened to questions.

Rep. Montayne wanted to know if there ever will be legislation that will meet everyone's approval. Mr. Conrad said that he is biased. He feels that anyone who wishes to be on his property should seek his permission first.

In response to a question asked by Rep. Keyser, Mr. Conrad said that he has not had a chance to review Mr. Grosfield's amendments; thus, he doesn't know if he supports them entirely. Also Mr. Conrad said that his first preference is to see the adoption of HB 17; second, leave the law as it is currently written; third, pass HB 911 with amendments.

In response to a question asked by Rep. Grady, Mr. Heinz said that our intent was to develop a posting requirement that would reduce the posting of absolute minimum but still have a posting requirement left in the bill.

Following further general questions concerning the intent of Mr. Grosfield's amendments, hearing closed on HB 911.

CONSIDERATION OF HOUSE JOINT RESOLUTION NO. 24: Rep. Bob Raney, House District #82, testified as chief sponsor of this bill. This is a joint resolution of the Senate and House of Representatives expressing support for South Dakota's challenge to the constitutionality of the federally mandated legal drinking age and urging the Attorney General of the State of Montana to render assistance to South Dakota in pursuing its litigation on the issue. He said the legislators from South Dakota, Montana, Wyoming, and Idaho, which are a mixture of Democrats and Republicans, all oppose this national mandated law.

Don Larson, chairman of the board of the Montana Tavern's Association and also the president of the National License to Beverage Association, testified as a proponent to HJR 24. He informed the committee that these two associations have always supported the 21-year-old drinking age. They do not like the interference of the federal government in state's rights.

Mike Males, representing himself, testified as a proponent to HJR 24. A copy of his written testimony was marked Exhibit J and attached hereto.

Also wishing to go on record as supporting this legislation were Reps. Keyser, Brown, Montayne, Krueger and Grady.

There being no further proponents or opponents, Rep. Raney closed.

The floor was opened to questions from the committee.

Rep. Hannah asked if this legislation just applies to the area dealing with the drinking age. Rep. Raney said that the South Dakota lawsuit is centered around the federally-mandated drinking age, but just one issue has been chosen to challenge the federal government. This issue is one we can take on from Montana with no appropriation -- South Dakota is spending the money.

EXECUTIVE SESSION:

Chairman Hannah called an executive session to take action on some of the bills that were heard this morning.

ACTION ON HOUSE JOINT RESOLUTION NO. 24: A DO PASS motion was moved by Rep. Keyser. The motion was seconded by Rep. Brown and carried unanimously.

ACTION ON HOUSE JOINT RESOLUTION 37: Rep. Mercer moved that HJR 37 DO PASS. The motion was seconded by Rep. Keyser, and the committee discussed the bill.

It was brought out that there is no provision in this resolution requiring the Montana Supreme Court to report back its findings to the legislature. Brenda Desmond, the committee researcher, said no provision was placed in the bill requiring the supreme court to report back to the legislature because she felt it might be interpreted as an encroachment upon the supreme court.

Rep. Rapp-Svrcek feels that the supreme court ought to report its findings back to the legislature; therefore, he moved an amendment on page 3, line 12, following "children" by inserting ", and that the Court report the results of its study to the 50th Legislature". The motion was seconded by Rep. Gould.

Rep. Krueger spoke against the amendment.

The question was called, the motion carried on a voice vote with Reps. Krueger, Eudaily, Mercer, and Addy dissenting.

Rep. Brown moved that HJR 37 DO PASS AS AMENDED. The motion was seconded by Rep. Keyser and carried unanimously.

ACTION ON HOUSE BILL NO. 799: Rep. Gould moved that HB 799 DO PASS. The motion was seconded by Rep. Hammond and discussed.

Rep. Mercer moved to amend those places in the bill showing a \$3,500 figure by decreasing said amount to \$1,500. The motion was seconded by Rep. Eudaily.

Rep. Gould made a substitute motion to decrease the figures from \$3,500 to \$2,500. The motion was seconded by Rep. Hammond. The question was called, and the substitute motion carried with Rep. Mercer dissenting.

Rep. Keyser further moved that HB 799 DO PASS AS AMENDED. The motion was seconded by Rep. Hammond and carried unanimously.

ACTION ON HOUSE BILL NO. 889: Rep. Darko moved that HB 889 DO PASS. The motion was seconded by Rep. Hammond. There being no discussion, and the question having been called, the motion carried unanimously.

CONSIDERATION OF HOUSE BILL NO. 918: Hearing commenced on HB 918. Rep. Jack Ramirez, chief sponsor of HB 918, testified. He said this bill regulates actions for wrongful termination of employment. He outlined each of the sections in the bill. Rep. Ramirez said that it is very important that the employment compensation fund remains solid.

George Allen, representing the Montana Retail Association, told members that this bill is an extremely important piece of legislation to the retail industry. He said that in the retail business, there is great fluctuation in the volume.

The present law creates real problems for the retail industry. During different times of the year, people must be laid off because of a slow season. Mr. Allen sees this bill as being good for both the employer and the employee.

Chip Erdmann, representing the Montana School Board Association, spoke in favor of the bill. It will provide the employers of the school board a reasonable certainty as to what the rules are.

There being no further proponents, Chairman Hannah invited the opponents to testify.

Karl Englund, representing the Montana Trial Lawyers Association, testified as an opponent. He informed the committee that this is a very complicated subject of the law. He is unprepared to comment on all the issues this bill raises because the bill was posted for hearing so quickly. He commented on several sections of the bill as to the problems each section raises. Because of the significant problems he feels this bill has, he urged the committee to kill the bill.

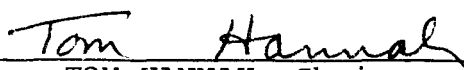
There being no further opponents, Rep. Ramirez closed. He commented on the objections raised by Mr. Englund.

The floor was opened to questions from the committee.

In response to a question asked by Rep. Krueger, Rep. Ramirez said he couldn't answer the question right off the top of his head, but he is sure that there are instances where certain statements are privileged. We want to create a privilege because we want to know the truth in that unemployment compensation. We want people to go in without fear that the statements that they make there are going to be used against them on either side.

Rep. Krueger followed up by saying that he doesn't understand why we should say that it is okay to lie in one proceeding but it is not okay to bring it up as an inconsistent statement in another. Rep. Ramirez said that what he is saying is that we are getting employers who just go ahead and say, "let the person get unemployment, because I don't want to get sued for wrongful termination; so I'm not going to create a problem for this employee." Rep. Ramirez said this is one of the practical problems that is presently happening. We have people who are getting unemployment who should be, because employers won't oppose it because they are afraid that it may precipitate a wrongful termination case.

ADJOURN: A motion having been made by Rep. Keyser and seconded, the meeting adjourned at 10:05 a.m.


Rep. TOM HANNAH, Chairman

DAILY ROLL CALL

HOUSE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 2/22/85

NAME	PRESENT	ABSENT	EXCUSED
Tom Hannah (Chairman)	✓		
Dave Brown (Vice Chairman)			✓
Kelly Addy	✓		
Toni Bergene	✓		
John Cobb	✓		
Paula Darko	✓		
Ralph Eudaily	✓		
Budd Gould	✓		
Edward Grady	✓		
Joe Hammond	✓		
Kerry Keyser	✓		
Kurt Krueger	✓		
John Mercer	✓		
Joan Miles	✓		
John Montayne	✓		
Jesse O'Hara			
Bing Poff	✓		
Paul Rapp-Svrcek	✓		