

MINUTES OF THE MEETING  
HUMAN SERVICES AND AGING COMMITTEE  
50TH LEGISLATIVE SESSION  
HOUSE OF REPRESENTATIVES

The meeting of the Human Services and Aging Committee was called to order by Chairman R. Budd Gould at 12:30 p.m. on Tuesday, January 20, 1987 in Room 312-D of the State Capitol.

ROLL CALL: All members were present.

CONSIDERATION OF HOUSE BILL 114:

REP. KELLY ADDY, district 94, introduced HB114. He discussed the establishment of the state mental health plan. He said that under the present law the county commissioners in the region are entitled to name one designee to the board who is a voting member on that board for each of the mental health centers in the state. Most counties participate financially in the obligation to the mental health center. Some counties either do not have the resources or would rather provide the services themselves. In most cases, where they are not participating, they do not ask to have a voting member on the board. However, under the present law, it is possible for a county not to support the mental health center in their region financially and still have voting representation on the board. He explained that HB114 clarified if the county did not participate financially in supporting the mental health center in the region they would not be entitled to voting membership on the board.

PROPOSERS: There were no proposers.

OPPOSERS: There were no opposers.

REP. ADDY closed on HB114.

QUESTIONS FROM THE COMMITTEE:

REP. RUSSELL discussed a situation where a county did not participate and that clients were penalized and not allowed to be a part of the group home placements. She pointed out that this means individuals that need services may be excluded if the district chooses not to be a part of the mental health centers.

REP. ADDY said the issue was not in the bill and did not affect the centers obligation to serve residents from a nonparticipating county.

CONSIDERATION OF HOUSE BILL 116:

REP. JAN BROWN, House District 46, introduced HB116. She explained the bill repealed an existing statute that requires the Department of Health and Environmental Sciences to administer a health information center operated by a private corporation under contract to the department. She said the legislature in 1983 had created a health information center that was to be a centralized source of information. Because of lack of funds the Department of Health has not contracted for the center since 1984. The Legislative Auditor has recommended that if no funds were available that this be taken off the books. (Exhibit 1)

PROPOSERS:

JIM AHRENS, from the Montana Hospital Association, explained that the association was opposed to the 1983 law and the private corporation which had total nonperformance with expenditures to the state and there was no reason to continue.

RAY HOFFMAN, administrator of the financial management division of the Department of Health and Environmental Sciences, said the department supported the bill because it precluded them from taking any more audit exceptions.

OPPOSERS: There were no opposers.

QUESTIONS FROM THE COMMITTEE:

REP. CODY questioned Ray Hoffman about the demand for the health information system. Ray Hoffman replied the reason was an attempt by Five Valleys for seed money to replace the federal funding towards the health system.

EXECUTIVE ACTION ON HOUSE BILL 116:

REP. KITTSelman moved DO PASS on HB116.

REP. HANSEN commented that the Five Valleys Health Information Center in Missoula is still in operation and do the screening for the personal care attendants.

The question was called. The motion PASSED unanimously.

EXECUTIVE ACTION ON HOUSE BILL 114:

REP. MCCORMICK moved DO PASS on HB114.

REP. KITTSSELMAN said all the information was not available. He recommended extra time to determine why the bill was needed.

REP. MCCORMICK WITHDREW the motion.

EXECUTIVE ACTION ON HOUSE BILL 58:

REP. SANDS moved DO PASS ON HB58. Rep. Brown said she had one amendment that would include social workers so that they would have the ability to testify as expert witnesses.

REP. BROWN moved TO AMEND HB58.

REP. SANDS recommended waiting on this since the bill did not get into the issue of social workers.

REP. SIMON moved a substitute motion to DO NOT PASS on amendments to HB58. The question was called. The motion carried with Rep. Russell voting NO.

The question was called to DO PASS on HB58. Chairman Gould said this would allow both psychiatrists and psychologists to be expert witnesses. The motion PASSED unanimously.

CONSIDERATION OF HOUSE BILL 90:

REP. WHALEN, distributed proposed amendments to HB90. (Exhibit 2) He discussed the reason for the bill and described the county welfare department acting on behalf of SRS had removed children based on hearsay information. He said the portion of the act he was dealing with was the emergency proceeding if it appears that there is immediate or apparent danger or harm the children can be removed. He said the proposed amendment would insert the word "physical". He said this referred to the emergency statute which was not the same as a neglected child. The second amendment would insert after "harm" including "physical, sexual, abuse" and the remainder "based on evidence corroborating the reason to believe". He said the reason the language is important is it requires the people investigating these things to not just go and remove children based upon hearsay statements of an individual that often have motives of their own other than to protect children to have the children removed without the parents knowing. He mentioned a problem of getting records out of the county attorneys office. The proposed amendment for alteration of the present statute appears on page 2, line 9. This says records must be disclosed to the parents of a child who is a subject of the record or to an attorney representing a parent. SRS recommended that names of informants not be disclosed. Therefore an amendment that inserts on page 2,

line 9, "without disclosing the name of informants". He said it is not possible to defend on an order to show cause if the basis from which the children have been removed from the home is not known. He mentioned another problem in the present statute that notification of the parents does not come until they are served papers to show up in court. He said this can be as much as five days after the children have been removed. He pointed out the distress to have one's children missing and not know where they are. He said that on page 3, the proposed legislation inserts the requirement that the parents be notified within eight hours of removal. He said amendment 3 and 4 would make the time 24 hours with an additional proviso which states that failure to notify the parents within 24 hours shall give rise to the rebuttable presumption that the necessity for removal was not an emergency.

REP. WHALEN pointed out the importance of the amendment. He said that there is a present provision in the law that after the children have been removed a petition has to be filed in court within 48 hours. However, the SRS department purposefully remove the child on a Friday evening and have the intervening Saturday and Sunday but also the next Monday and Tuesday in order to put together a petition. He pointed out that extends the period of time that the parents would wonder what happened to their children. Amendment number 5, which is inserted on page 3, line 9, the way the present bill is drafted it says "notwithstanding intervening holidays and non working days". He pointed out the hardship of having to file a petition on a Sunday so amended to strike "intervening holidays and non-working days" and insert "except in the event of intervening weekends and holidays in which case said intervening weekends and holidays shall count 24 hours towards the 48 hour requirement". He said the purpose of adding that amendment is to discourage the purposeful going in and removing children on a Friday because there is a penalty of losing one day towards the filing of the petition but still provides the opportunity to have at least one full working day after the weekend in order to file the petition. He pointed out the importance of having the parents have some input in appointing guardians. He referenced page 5, where the provision was deleting stating there is no right to a jury trial in proceedings to terminate the relationship between a parent and child. He said the intention was to require that there be a jury trial. He offered amendment "A" that changes "no" to "a" which would modify it to read that there is a right to a jury trial. He said the way the reads now is the over zealous enforcement of the law leaves a great deal of area for abuse when only being sensitive to the rights of children and insensitive to the rights of parents.

PROPOSERS:

RUSSELL SIAS, representing the national organization called VOCAL which stands for Victims of Child Abuse Law, spoke in favor of HB90. He pointed out that his organization receives 3 to 4 phone calls a week from people in Montana that have experienced this situation. He said his objection to the bill was the waiting period is far too long. He pointed out that SRS is in the business of helping families, supporting and protecting the children. He said if SRS picks up a child out of school it is unnecessary for a lawyer to be hired the next day by the parents to find out what happened to the kids. He said it would be better for SRS to contact the parent while the child is in school and take the parent to school to tell the child until the problem is solved to go with these people. Otherwise it is traumatic to children. (Exhibit 3)

OPPOSERS:

JOHN MADSEN, representing the department of SRS, opposed HB90. He noted the proposed amendments would allow unlimited access to the case record. He pointed out the problem that people would be less likely to report because of fear of retribution by parent's. Also there would be loss of federal funds for child welfare programs. Federal requirements state that states statutes must protect reporter's names. He said the department would propose in the area of access to records but still protect reporter's names. He discussed emergency removal would be impossible if prior to completion of an investigation a parent has stated an intent to flee with a young child. He pointed out the proposed eight hour notification would mean if the parents were not located within the eight hours the child would have to be returned to the dangerous situation. Other proposed amendments would make it technically difficult to comply (See Exhibit). He presented testimony from The Deputy County Attorneys, and a Social Worker from the Casey Family Program (Exhibit 4).

DIANE MORIN, the area representative from the Missoula County Child Resource Council, discussed the prevention of child abuse and neglect. She testified in opposition to HB90. She said the bill would restrict the ability of law enforcement, child protective services, and the county attorney to safeguard the lives of children. (Exhibit 5)

BARBARA ARCHER, Women Lobbyist Fund, spoke in opposition to the bill. She said that the bill would be a step in the wrong direction in protecting victims of domestic violence. She pointed out the assurance of confidentiality must be maintained for those who report child abuse. She said that

anyone that reports abuse could be subject to abuse themselves.

REP. BILL STRIZICH, from House District 41 in Great Falls, opposed the bill as a member of the Cascade County Child Protection Team.

MAXINE JACOBSON, director of the Sexual Assault Treatment Program in Helena, testified in opposition to the bill. She pointed out the harm that would result. She pointed out that sexual abuse would not leave visible marks on the child. She said that in therapy psychological damage could be seen. She said that many cases of sex offenders their behavior progresses towards actual physical damage with their children and that intervention occurs just prior to actual intercourse or physical damage taken place. She pointed out that it was much easier to intervene on the offender before those kinds of behavior takes place.

NOEL LARABY, an attorney from Missoula, discussed representing parents and being a guardian in more than 65 cases in the last six years. He said he opposed the bill in its entirety. He pointed out that the law was misstated and distorted the process by which the cases are handled. The attorney representing the parents have an absolute right to the records that are filed with the court and have access but not to the informant. He said the cases are difficult and no easy determination of who the culpable party is.

JOHN FARROW, principal in Helena at the Jefferson School, discussed the opposition to the bill by the Montana Association of School Principals. He said the school standpoint was that reporting a parent for suspected child abuse the parents could figure out who reported them. He said if it was not the case of abuse then the parents had to be worked with. He pointed out a provision in the law that says educator suspecting child abuse must report it or be subject to a \$500 fine. Educators do not report unless there has been abuse. The law proposed would weaken the position.

CAROLYN CLEMENS, Deputy County Attorney in Lewis and Clark County, stated her opposition to HB90. She pointed out that the intention of the abuse and neglect statutes were passed by the legislature to protect children. She said the amendments proposed attempted to provide protection to the parents. She said that the law protected children who were unable to talk, with no access to people outside of their homes to report these things to. She pointed out that the parents have access to attorneys and to courts, but that the children did not have that privilege but were at the mercy of the system and their parents. She said it was necessary to protect the referrals that were closest to the kids

because they are in a position of having revenge taken against them or fear of reporting those things if their identity is disclosed.

JANE KOSTER, a social worker at the mental health center, said that working with both sex offenders and victims she opposed the bill.

ANN BARTOS, an attorney for the Montana Medical Association, said the association opposed HB90. She pointed out the problems in the bill. The association is concerned with the new language that requires mandatory disclosure of the records to the parents. She said if the child is returned to the home of the abusive parent there may be retaliation taken against that child. A jury trial would delay the system and would not be in the best interest of the child.

JERRY EIKER, a pediatrician in Great Falls, spoke in opposition to HB90. He read a statement by Dr. Jeffrey Strickler who is chairman of Montana Chapter of American Academy of Pediatrics. He expressed opposition to the bill as the needs of the child are poorly served. He said that children, the victims of abuse, are unrepresented as minors and vulnerable to repeated episodes of abuse (Exhibit 6). He cited statistics from abuse, including 5,000 deaths and 300,000 children each year with some sort of permanent handicap disability or retardation secondary to abuse.

REP. RUSSELL discussed her former work as a child protection worker in Yellowstone County and her opposition to the bill. She said concern for the people reporting a case of abuse should be regarded. She pointed out that social workers did have training in a lot of different areas. She suggested that special concerns could be met with a peer review committee.

REP. WHALEN closed on HB90. He addressed the statement made in testimony that he had misstated the law. He said that the Deputy County Attorney, Carol Clemmens, stated that there is a provision to obtain the confidential records where it had been previously stated by the other attorney that the law was misstated and that parents have an absolute right to the information. He said that an attorney named Mr. Wise from Missoula was disbarred for revealing that information to parents. He referred to Section 41-3-205 MCA concerning the case records of SRS and County Welfare Department and County Attorney being confidential. He said the primary provisions of the bill and proposed amendments are addressed to the proceedings to go and remove children and does not prevent the department from ultimately removing children if there is a basis but prevents the department from unreasonably removing children prior to a hearing. He

pointed out that there was abuse by county attorneys and SRS that have a vested interest in the present system. He said if under an emergency proceeding of taking the drastic step of taking the children from the home before there has been any kind of hearing or notice to parents there should be more substantial. He pointed out that in criminal law a person has the right to be confronted by the accusers. He said the bill would provide some protection to the parents without compromising the ability of county welfare to protect children. Parents are powerless under the Youth Court Act.

QUESTION FROM THE COMMITTEE:

REP. NELSON asked Mr. Sias to give examples that prompted the necessity to sponsor the VOCAL organization.

MR. SIAS responded that he had a day care business and felt that accusals were out of line. He cited an example of an ex-wife's attempt to end joint custody and the damage that resulted even to his second wife and their children. The children had been taken by welfare, placed in foster care homes, and the mother and grandparents were denied access to the babies for over four months. The damage to the accused person was severe in exorbitant attorney fees and loss of career. He pointed out that the laws created a traumatic situation in a family and should protect families as well as children.

REP. STRIZICH questioned Rep. Whalen about the existence of any constitutional challenges to the statute as it is written and to the quantity of documented cases of abuse of the law. Rep. Whalen replied there has been no figure. He discussed experiences with the system by attorneys who had handled youth court. He said that Kevin Sweeney, in Billings, Jeff Renz an attorney with ACLU, and Mr. Reynolds from Helena have had similar experience.

REP. CODY asked John Madsen from SRS about how long the law has been in place. John Madsen replied that the Child Abuse and Neglect law had major changes in effect since 1979. Rep. Cody asked about seminars conducted with social workers in welfare departments in regards to the child abuse laws. John Madsen cited examples about educating the staff after policy change. Rep. Cody commented that there was a problem of children be taken from the home without any notification. John Madsen clarified the process of emergency removal.

REP. SANDS questioned the access to records. John Madsen said access was not obtainable except in the case where there was a specific order to release information about records. He said there was legislation being drafted that



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would deal with administrative rules setting up hearings if parents don't agree with the decision the department makes. He said they generally want to disclose more information than the law allows.

ADJOURNMENT: There being no further business, the meeting was adjourned.

R. BUDD GOULD, CHAIRMAN

dt/1-20hs

## DAILY ROLL CALL

HUMAN SERVICES AND AGING COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date JANUARY 20, 1987

NAME	PRESENT	ABSENT	EXCUSED
REP. BUDD GOULD, CHAIRMAN	X		
REP. BOB GILBERT, VICE CHAIRMAN	X		
REP. JAN BROWN	X		
REP DUANE COMPTON	X		
REP. DOROTHY CODY	X		
REP. DICK CORNE'	X		
REP. LARRY GRINDE	X		
REP. STELLA JEAN HANSEN	X		
REP. LES KITSELMAN	X		
REP. LLOYD MC CORMICK	X		
REP. RICHARD NELSON	X		
REP. JOHN PATTERSON	X		
REP. ANGELA RUSSELL	X		
REP. JACK SANDS	X		
REP. BRUCE SIMON	X		
REP. CAROLYN SQUIRES	X		
REP. TONIA STRATFORD	X		
REP. BILL STRIZICH	X		

# STANDING COMMITTEE REPORT

January 20, 19 37

Mr. Speaker: We, the committee on HUMAN SERVICES AND AGING

report HOUSE BILL # 59

☒ do pass  
☐ do not pass

☐ be concurred in  
☐ be not concurred in

☐ as amended  
☐ statement of intent attached

REP. R. BUDD COULD,

Chairman

**LET PSYCHOLOGISTS EXAMINE PERSONS WHEN MENTAL DEFECT IS A CRIMINAL  
ISSUE**

FIRST reading copy ( WHITE )  
color

# STANDING COMMITTEE REPORT

JANUARY 20, 1987

Mr. Speaker: We, the committee on HUMAN SERVICES AND AGING

report HOUSE BILL # 116

☒ do pass  
☐ do not pass

☐ be concurred in  
☐ be not concurred in

☐ as amended  
☐ statement of intent attached

REP. R. BUDD GOULD,

Chairman

**ELIMINATING THE REQUIREMENT THAT DEES OPERATE A HEALTH INFORMATION CENTER**

**FIRST**

**WHITE**

reading copy ( )  
color

50-16-401 Repealed in HB 116.

#### Part 4

##### Health Information Center

**50-16-401. Health information services.** (1) There is a health information center, administered under the provisions of subsection (3) by the department of health and environmental sciences.

(2) The health information center shall provide a central access point to provide updated consumer-oriented information to lay persons and health care professionals regarding:

- (a) health problems of lay individuals in areas of specific diseases, disorders, and health choices;
- (b) assistance in accessing the existing health care delivery system;
- (c) health support groups, such as lay groups who organize to address widespread or unique health problems such as cancer or kidney disorders by providing patient counseling; and
- (d) other health service issues and problems.

(3) The health information center must be operated by a private nonprofit corporation under contract to the department of health and environmental sciences.

History: En. Sec. 1, Ch. 628, L. 1983.

## PROPOSED AMENDMENTS TO H.B. 90

By Sponsor: Timothy J. Whalen

## FIRST AMENDMENT

1. Page 2, line 11  
Following: "Parent"  
Strike: "."  
Insert: "without disclosing the name of informants."

## SECOND AMENDMENT IS:

2. Page 2, line 20  
Following: "harm"  
Insert: "including physical sexual abuse"

## THIRD AMENDMENT IS:

3. Page 3, line 3  
Following: "within"  
Strike: "8"  
Insert: "24"

## FOURTH AMENDMENT IS:

4. Page 3, line 4  
Following: "."  
Insert: "Failure to notify within 24 hours shall give rise to the rebuttal presumption that the necessity for removal was not an emergency and said fact shall govern future judicial action with regard to the removal proceedings thereafter."

## FIFTH AMENDMENT IS:

5. Page 3, line 9  
Following: "child"  
Strike: "notwithstanding intervening holidays or non-working days"  
Insert: "(except in the event of intervening weekends and holidays in which case said intervening weekends and holidays shall count 24 hours towards the 48 hour requirement)"

## SIXTH AMENDMENT IS:

6. Page 3, line 21  
Following: "account"  
Strike: "any"  
Insert: "a"

SEVENTH AMENDMENT IS:

7. Page 3, line 21  
Following: "parents"  
Strike: "."  
Insert: "which seeks to assure an objective, independent  
appointment."

EIGHTH AMENDMENT IS:

8. Page 5, line 20-22  
Insert: "(4) There is a right to a jury trial at proceedings  
held to consider the termination of a parent child  
legal relationship."

# vocal

## Victims of Child Abuse Laws

149 Bernard Road • Kalispell, Montana 59901 • (406) 752-1531

### Recommendations To Resolve Problems Created By Abusive Child Abuse Laws:

1. Montana state law should precisely define all terms used (abuse, neglect, investigative authority, etc., etc.) to eliminate the possibility that home schooling would be considered neglect, spanking would be considered abuse, and hearsay would be acceptable under the definition of "good faith;" and to insure that religious belief is not considered mentally unhealthy.
2. Parents accused of abuse should be informed promptly of their rights under the law and given the opportunity to respond in defense of their position.
3. The reporting party should be examined for underlying motives, and those motives should be taken into account in the investigation. The reporting party should be informed of this aspect of the investigation. This would preclude a good number of reports for the purpose of harassment, such as an ex-spouse attempting to end joint custody through accusations of this nature.
4. Parents must be presumed innocent until proven guilty by due process. Caution must be exercised in removing children from their parents to protect both the innocent parents and their children from family disruption. Seizure of children before due process must only be allowed when children are in immediate danger of being physically injured. This determination should be made by a law enforcement officer, preferably independent of the actual investigating authorities. The option of removing the offending parent from the home should be considered rather than seizing the child. Parents should be involved in this decision.
5. Every effort should be made to first place a child with a relative and allowed daily communication with their parents.
6. Parents should be (at the beginning of an investigation) informed of their rights and given the opportunity to have an advocate (on their side) in the CPS office whose purpose would be to assist the parents (and the family) to make the best of what is a very traumatic experience.
7. All investigative interviews with victims, suspected abusers, and those reporting should be video-taped. These tapes should be available to both sides of an investigation or case. This would tend to insure that brainwashing of children into believing themselves abused when in fact no abuse had taken place wouldn't occur. It would also preserve facts important to successful prosecution of guilty parties. An inherent conflict is that once the social worker has made a decision to remove the child, they must find (or conjure) enough evidence to support their action.
8. Better training of investigators, therapists and social workers. Acceptance by them of the concept that parents are the primary responsible party for the child - not the state.



TESTIMONY ON HB90

BY

DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

Chairman, Members of the Committee My name is John Madsen I represent the Department of SRS. We are opposed to passage of HB90.

I would like to go through the various changes proposed in this bill and state specifics for our opposition.

The first change (Pg 2 lines 9 - 11) deals with the confidentiality of case records. As proposed it would allow unlimited access to the case record by the parent and/or their attorney including access to names of reporters without requiring a court order. There are two problems with this. First, access in this manner will mean that few persons will be willing to report CA/N because of fear of retribution by parent's, second, and just as important, will be the loss of federal funds for child welfare programs. Federal requirements state that state statutes must protect reporter's names. The department will be offering its own changes in this area of access to CA/N records during the session. These changes will allow access in certain cases but will still protect reporter's names.

The second change (Page 2 lines 21 & 22) proposed would require a social worker to find physical harm prior to making an emergency removal. Many situations where an emergency removal is necessary there is not physical harm apparent. An example is the case where a parent has stated an intent to flee with a young child prior to completion of an investigation of a referral of a serious nature. Removal may be indicated but would be impossible because of this change.

The third change (Page 3 lines 2 - 4) proposed would require notification of the parent within 8 hours of the removal. The statute already states that the parent must be notified as soon as possible of removal. State SRS policy manuals require immediate notification or as soon as the parent can be located. As proposed in the bill, if parents were not located within the 8 hours, would this mean the child would have to be returned to the dangerous situation? It seems so.

The fourth change (Page 3 lines 9 - 10) would require filing of petitions with the clerk of the court on weekends and holidays or not making removals. The filing of petitions can only be done by the County Attorney or his deputies. This would mean that County Attorneys would have to be available. This is just not possible - especially in rural Montana. Also, county clerks of court would have to be available to open offices to file the petitions.

The fifth change (Page 3 lines 20 - 21) proposed would have parents influencing the appointment of a Guardian Ad Litem. GAL's are supposed to be an advocate for the child and should be independent of the parent and also the department. With this change, that would no longer be the case.

The sixth change (Page 5 lines 20 - 22) would allow for jury trials in those cases where termination of parental rights is the issue. Jury trials are not a Constitutional right in these cases as found by the Montana Supreme Court In re C.L.A. & J.A., 685 P.2d 931(1984).

Further, jury trials are going to cause delays in setting the case for trial which is not in the child's best interest because of their young age and their need for permanency.

I would also like to submit for testimony 3 letters received by our agency. Two of the letters are from Deputy County Attorneys, one in Flathead County, one in Yellowstone County. The third letter is from Janet Finn a Social Worker with the Casey Family Program.

For the reasons I have stated, the department urges a do not pass on this bill. I would be happy to answer questions from the committee.

Good afternoon - I am Diane Morin. I am here representing the Missoula Child and Family Resource Council.

The Child and Family Resource Council is a group of business and professional people as well as interested community people who are working to prevent child abuse and neglect. We are funded by United Way, the Missoula Exchange Club and Missoula County. Our purpose is to provide help for children and families who are suffering abuse and neglect problems. We accomplish this by supporting existing agencies who are dealing with this problem or by establishing new programs and projects to combat or prevent abuse and neglect.

I am here today to request that you do not support House Bill 90. It is the belief of the Missoula Child and Family Resource Council that this bill would restrict the ability of Law Enforcement, Child Protective Services and the County Attorney to safeguard the lives of children. We are of the firm belief that these agencies need flexibility in order to deal with families effectively. We also are firm in our belief that these agencies are very mindful of the rights of parents and the sanctity of the family unit. The changes that this bill proposes would place children in danger and damage laws that protect people who report child abuse and neglect.

I urge you to vote against passage of this bill.

Thank you.

American  
Academy of  
Pediatrics



20 January 1987

EXHIBIT #1  
DATE 1-22-87  
HB #90

To: Chairman Gould  
Members of the House Human Services Committee

From: Jeffrey H. Strickler, M.D.  
Chairman, Montana Chapter  
American Academy of Pediatrics

Re: H.B. 90

Montana Chapter  
Chairman  
Jeffrey H. Strickler, M.D.  
1300 N. Montana  
Helena, MT 59601  
(406) 443-5563  
Alternate Chairman  
James Feist, M.D.  
7 East Beall  
Bozeman, MT 59715  
(406) 587-5123  
Secretary-Treasurer  
Ralph Campbell  
# Third Avenue W.  
Bozeman, MT 59860  
(406) 883-2232

The Montana Academy of Pediatrics would like to express its opposition to H.B. 90. As pediatricians, we feel that we stand as advocates for children, and their needs are poorly served by this bill. Children, the victims of abuse, are unrepresented as minors, they are vulnerable to repeated episodes of abuse, and are totally dependent upon the State of Montana for their protection.

Certainly, parents have rights and these are well addressed in the present statutes. The State must never lose sight of the fact that the protection of children is its responsibility. H.B. 90 will erode the ability of the State to protect its children, and must, for the sake of the children, receive a do not pass recommendation.

We specifically object to the provisions:

- that require evidence of physical abuse.

Some of the most destructive problems of the abused child, such as sexual abuse and child neglect leave no physical scars.

- that require parental input into the selection of a guardian ad litem.

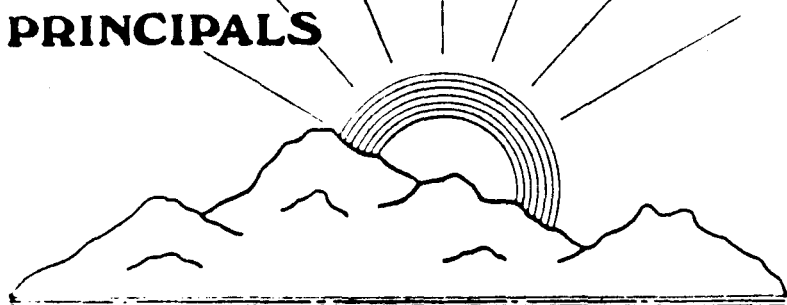
This must remain a totally independent, court appointed person to effectively represent the child's interests. These interests may be, for the child's safety, in direct opposition to the parents.

- that the parents be advised of the person making the complaint.

Complaints are not filed unless an investigation finds cause. Children are at the mercy of society in this situation, and society must allow an investigation upon the least, even anonymous, causes.

There are other aspects of the bill that are flawed, but these alone should justify your rejection of it in its entirety.

# MONTANA ASSOCIATION OF ELEMENTARY SCHOOL PRINCIPALS



NAESP

SAM

To: Montana House of Representatives - Human Resources  
and Aging Committee  
From: The Montana Association of Elementary School  
Principals  
Re: House Bill #90  
Date: January 20, 1987

The Montana Association of Elementary School Principals is in opposition to House Bill #90. As an association dealing with all the young people in Montana between the ages of 5 and 13, we feel that this bill would be harmful to the process of eliminating child abuse in the state of Montana. Our reasons are as follows:

- (1) We feel that revealing the name of the person who reported the suspected child abuse would seriously discourage people from reporting.
- (2) Evidence of physical harm cannot be detected in any sexual abuse cases without first having the child removed from the home and then taken to a physician for examination.
- (3) The inclusion of an eight hour limit for notifying parents after a child has been removed from the home is unreasonable and unworkable.
- (4) It is our feeling that when there is a child abuse case, that it is only reasonable that the court be the proper agency to assign a guardian to represent the child. We do not feel that the abusing parent should select or recommend who they want to represent the child.
- (5) We feel that in serious cases of child abuse there should be a trial by jury. We do not feel that this section should be removed when there is clear evidence that a parent has caused physical harm to a child.

Our association recommends that your Committee give this bill a "Do Not Pass" recommendation.

Members of the Committee:

EXHIBIT # 8

DATE 1-20-87

HB # 90

I am a social worker currently involved in the treatment of children who have been victims of severe abuse and neglect that resulted in their permanent removal from the custody of their parents. Prior to this I supervised a child abuse intake unit through Lewis and Clark County Office of Human Services. I am very concerned about the potential impact of House Bill 90 on children who are victims of abuse and neglect.

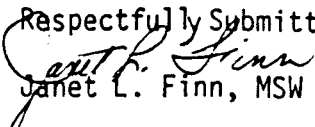
First, I am opposed to the complete disclosure of records to the parent. Such disclosure would wipe out the ability to allow concerned people to make anonymous reports in good faith concerning suspected child abuse or neglect. This is such a sensitive area that many people are often afraid to share their concerns about a child. However, without the reports of concerned members of our communities, many children would continue to be victims of tragic, damaging situations. I can assure you that many people would fail to report if they knew that their identity would not remain confidential.

I am also very concerned about the unrealistic expectations for filing a petition within 48 hours notwithstanding nonworking days or holidays. On those occasions where a protective service worker responds to a middle of the night emergency on a weekend, the first priority is to assure the safety of that child. That worker has very limited access to other professionals, legal counsel, or support staff necessary to file a petition.

Another point of concern for me is the amendment to section 41-3-303 regarding the guardian ad litem. This person often plays a very key role in child custody proceeding, serving as advocate for the child and, at times, acting as mediator between the parents and protective service staff by keeping the focus of the needs of the child. It is very important that that person truly be there to represent the rights of the child. To do so that person must have a neutral relationship with other parties in the proceeding. To violate that neutrality is to violate the rights of the child. Our justice system is a very adult arena. Children are often the victims of that system in addition to being the victims of abuse and neglect. Let us not undermine the one important opportunity for advocacy available to child victims.

The substance of this legislation is to limit the ability of a protective service worker to respond to the needs of a child at risk. Perhaps the writers of this bill feel that response has been too zealous. I wish you could spend a day with the children I see, the ones who will spend their lives trying to heal from the physical and emotional scars imposed at the hands of their adult caretakers. The children who are victims of rape; the five year old boy who tells me he wants to be a street, because "streets don't feel and feelings just hurt so bad." The ten year old who says she told her Mom about the abuse but "her ears didn't want to hear." The eight year old who says "I learned to hide my cries" These kids needed more protection.

Respectfully Submitted,

  
Janet L. Finn, MSW

# County of Yellowstone

BILLINGS, MONTANA 59101

COUNTY ATTORNEY'S OFFICE, YELLOWSTONE COUNTY COURTHOUSE, ROOM 508

(406) 256-2870

- ☐ Criminal Division
- ☐ Civil Division
- ☐ Deferred Prosecution

- ☐ Victim/Witness Assistance
- ☐ Child Support Enforcement



EXHIBIT #9  
DATE 1-25-87  
#90

RECEIVED

JAN 17 1987

SRS LEGAL UNIT

January 13, 1987

Leslie Taylor  
Director of SRS  
SRS Building, Room 301  
111 Sanders  
Helena, MT 59620

RE: proposed HB#90

Dear Leslie:

I object to all the changes proposed by Mr. Whalen in HB #90.

I disagree with the proposed amendment at section 41-3-205(4), MCA, for the reason that SRS case files often contain information that is not pertinent and which is often very private in nature that should not be disclosed to the parent or parents' attorney. I would change it to read:

- (4) Pertinent records may be disclosed to a parent of a child who is the subject of the record or to an attorney representing the parent.

I disagree with the proposed amendment of section 41-3-301(1), MCA, for the reason that it doesn't fit the Montana definition of child abuse and neglect in that it only refers to physical abuse, and does not allow a removal where there is danger of emotional or sexual abuse. I also disagree with its clause that there must be corroborating evidence. Often the reason for emergency services is based on hearsay which may or may not be admissible evidence, depending on the inclinations of the judge hearing the case. It should specifically provide that hearsay can provide a basis for removal. Also, requiring notification of a parent within 8 hours is often impossible (i.e., where parent can't be located), and it should provide that notice be given as soon thereafter as possible (as the statute now reads).

I disagree with the proposed amendment of section 41-3-301(3), MCA, for the reason that it is nearly impossible to file a petition within 48 hours after a late Friday placement of a child. We often don't have staff available to prepare a petition on Saturday or Sunday, and it takes time on Monday morning to prepare the papers and then locate a judge. In rural counties with multi-district judges who don't reside in that counties, this simply cannot be done without great inconvenience and expense.

I disagree with the proposed amendment of section 41-3-303(1), MCA, for the reason that the child is entitled to his/her own counsel for natural representation without regard to the parents' requests. The parents are entitled to their own counsel. In Billings, the court has contracted for the services of a very experienced guardian ad litem who represents the child neutrally. It often can't be expected that an attorney requested by the parents can represent the best interest of the child.

Also, I don't understand the need to delete section 41-3-607(4), MCA, in light of the Montana Supreme Court's ruling In re CLA & JA (1984), 685 P.2d 931.

Sincerely,



Greg S. Mallowney  
Deputy Yellowstone  
County Attorney

GSM:dg

cc: Harold F. Hanser  
Gary Huffmaster - SRS  
Damon Gannett



# Office of the County Attorney

## Flathead County

Kalispell, Montana 59903-1516

TED O. LYMPUS, County Attorney  
JONATHAN B. SMITH, Chief Deputy  
DENNIS J. HESTER, Deputy  
RANDY K. SCHWICKERT, Deputy  
THOMAS J. ESCH, Deputy  
EDWARD CORRIGAN, Deputy

January 12, 1987

P.O. Box 1516  
Courthouse Annex  
(406) 752-5300 - Ext. 241

Leslie C. Taylor, Attorney  
Office of Legal Affairs  
Dept. of Social & Rehab. Services  
Box 4210  
Helena, MT 59604

RE: HB-90

Dear Leslie:

Thank you for forwarding to me a copy of the HB-90 regarding amendments to the Child Abuse Neglect Law. I do have a number of concerns with the amendments as stated and will present them to you in this letter. I would appreciate hearing an opposing view to my thoughts on this in the event that I am misunderstanding the legislative intent.

The first amendment to the law allows a disclosure of records to a parent or the parents attorney. Generally I have no objection to this, however, I am concerned that the disclosure of the records will also disclose the identity of the person who reports to the Department allegations of abuse or neglect. Granted the identity will come out if that person is a witness at a trial; oftentimes their role as a witness is not necessary because their tip leads to the uncovering of information which is sufficient to establish a case without their testimony. Most people report on the condition that their identity not be revealed. Often the reporting parties are relatives or the victims themselves. The disclosure of their identity may well result in intimidation or the destruction of any relationship that might have otherwise existed. This destruction might occur even though the parent-child relationship will be strengthened by intervention as a result of the report.

Therefore, my recommendation would be that records may be disclosed, but the identity of reporting parties may not be disclosed without prior court order, upon a showing of necessity for resolving the issues of ~~the~~ <sup>a</sup> case.

The next concern I have is the eight hour limitation for notification to the parents of the removal of a child under emergency circumstance. I can envision circumstances where eight hours is simply an impractical limitation. This leads to the question of what if the eight hours is not complied with. Are we to return the child to the abusive home? Arbitrary time limits which are established for the benefit of

the parent oftentime will work against the benefit of the child whose interest is the principal concern of the law. Therefore, I would recommend that the law not be amended since the language, "as soon thereafter as possible," puts the burden on the Department to show why a prompt notification was not accomplished.

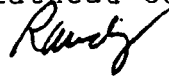
My next concern is based upon an uncertainty in my mind as to the meaning of the amending language. The language I am speaking of is in Subsection (3) of the Emergency Protective Service Section which states that, "a Petition will be filed within forty-eight hours, 'not withstanding intervening holidays or non-working days'." Does that mean that if a child is picked up on Friday night, a Petition must be filed by Sunday night? Or, can we consider as a result of this language, that the courthouse is not open for the filing of any Petition on Saturdays, Sundays, or holidays. Perhaps the replacement of the word, "notwithstanding" with the words, "not including", would be appropriate if it is intended that the weekends and holidays are not to be included. If it is intended that they are to be included within the forty-eight hour counting period, then I strongly object to the practicality of such a restriction.

Finally, the deletion of the language which removed the right to a jury trial causes me concern. Unless the amendment is being made because of constitutional reasons, I see no justifiable reason to allow a jury trial for these kinds of cases. There is too great a risk that the welfare of a child will be subject to the whims of random jurors who harbor undisclosed objections to intervention by the State in a family's life. I can envision difficulties in enforcing the state law which defines abuse as excessive corporal punishment to a jury whose philosophy may be, "spare the rod, spoil the child." If you have at your disposal the results from other states who may have experimented with the use of a jury trial at a termination proceeding, I would be very interested in seeing those results. If, on the other hand, there is no such evidence to support the propriety of the use of a jury trial for those proceedings, then I see no reason to change something that is not in need of being fixed.

I look forward to hearing from you.

Yours very truly,

OFFICE OF THE COUNTY ATTORNEY  
Flathead County, Montana



Randy K. Schwickert  
Deputy County Attorney

/bg

WITNESS STATEMENT

EXHIBIT # 12  
DATE 1-20-44  
HB # 90

NAME A. M. ... BILL NO. 11

ADDRESS ... DATE ...

WHOM DO YOU REPRESENT? ...

SUPPORT ... OPPOSE ✓ AMEND ...

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

WITNESS STATEMENT

#11  
1-20-87  
#90

NAME K. Russell S/H BILL NO HR 90  
ADDRESS 149 Bedford Rd KALISPELL DATE 1/20/87  
WHOM DO YOU REPRESENT? VOCAL  
SUPPORT V OPPOSE \_\_\_\_\_ AMEND \_\_\_\_\_

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

## VISITORS' REGISTER

HUMAN SERVICES AND AGING

COMMITTEE

BILL NO. HOUSE BILL # 90

DATE January 20, 1987

SPONSOR REP. WHALEN

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
John Madsen	SRS		X
Neil Larrivee	Missoula, MT		X
John Fero	Helena		X
Carolyn Mazurek	Helena		X
Diane Morin	Missoula		X
Florence Corne	Bozeman		
Russell Sias (DCAL)	Kalispell	✓	
Dr. Jeff Strickler	Helena		X
Carolyn Clemens	Helena		X
Mary Peterson	Helena	✗	X
Barbara Archer	Helena Women's Lobbyist Fund		X
Terroid Eichler	Great Falls		X
Senator M. H. G. G. G.	Missoula State Dist 28		X
Sandy Chaney	U.S. W. Lobbyist Fund		X
Annie Barrios	Montana Medical Assn		X
Steve Walker	Montana Council Mental Health		X
M. H. G. G.	Mental Health Services		X
Spencer	Mental Health Services, Inc.		X

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

## VISITORS' REGISTER

HUMAN SERVICES AND AGING

COMMITTEE

BILL NO. HOUSE BILL # 114

DATE JANUARY 20, 1987

SPONSOR REP. ADDY

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Steve Waldron	Council Mental Health	X	
Chris Villalobos	DD		
Margaret Brown	Portland, ME.		

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

## HUMAN SERVICES AND AGING COMMITTEE

DATE JANUARY 20, 1987

SPONSOR REP. JAN BROWN

[illegible]

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.