

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

THE seventh meeting of the Human Services and Aging Committee was called to order by Chairman Budd Gould, on January 27, 1987, at 12:30 p.m. in Room 312-D of the State Capitol.

ROLL CALL: The roll call was read with all members being present.

CONSIDERATION OF HOUSE BILL NO. 223:

REP. FRANCIS BARDANOUVE, House District No.16, sponsor of the bill said the bill was a relatively simple bill that would put Montana, along with 33 other states into an interstate corrections compact. The way this will work is if Montana has a difficult prisoner or we don't have a facility for that particular prisoner, or perhaps he is in danger for his life, and for his own safety he has to be moved out of the system. This will not cost any money, the members of the Interstate Compact Commission will accept your prisoner without charge, however, they give you credit or they give you charge on the books and someday they may have a prisoner they would like to send to Montana. The only charge here is for transportation of the prisoner and the officer to the prison where he is being transferred to. Also, the prisoner may request to be transferred to another state if he has family there. This is not an attempt to reduce the prison population. Rep. Bradanouve noted there was a short amendment proposed on page 10, line 18, the word "courts" would be stricken because there is some concern that judges may commit prisoners to other states and remove the decision and control from the departments and institutions.

PROPOSERS:

CURT CHISHOLM, Deputy Director of the Department of Institutions, handed out copies of the proposed amendment, see EXHIBIT NO. 1. He reviewed the proposed amendments by first noting in section 2 on page 10, what is called the effectuation language of the compact. He stated he had not had an opportunity to review the amendment when it was in draft form, and it was not what he had recommended. He said in the best interest of having the concept work right, the bill should be amended to include the language. He stated there have been heated debates in the past with various courts around the state who would like to exercise what they think is their jurisdiction to negotiate their own interstate compact arrangement for inmates. He stated it is not good for the courts to negotiate directly with other state jurisdictions,

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and to clarify that the authority over the contracts should be limited to the department of institutions, which operates all of the adult correctional programs in the State of Montana. He said by joining this larger group of states called the Interstate Corrections Compact, it would give access to 23 new states, even though its membership has 28 members, some of them are duplicative of member states in the Western Corrections Compact which has 14 members. By having this interstate compact agreement codified into law, Montana would become a participating state and could send appropriate inmates from the State of Montana into other states. He advised the committee that Montana now has 24 inmates housed in other state jurisdictions and has custody within the State of Montana of 32 inmates from other states.

OPPONENTS:

TONI MARIE AUSTAD, Great Falls, stated she opposed passage of the bill as she had a brother, Gene Austad, who was paralyzed and brain-damaged, who was an inmate in Montana State Prison and she was concerned that he may be transferred to another institution out of state. See EXHIBIT NO. 2.

REP. BARDANOUVE closed by stating the bill was quite simple and Mr. Chisholm had verified his earlier remarks. He said he would like to briefly address the opponents opposition, in that he had followed the case from the day it happened until the present. He noted it is a tragic case where the trauma on the family involved has been very heavy but he would lose all faith in a department if they would be vindictive in such a situation as stated in the opponents written testimony. He said a prisoner could not choose where he wanted to be because when he was convicted of that crime he gave up his right to where he will be.

QUESTIONS FROM THE COMMITTEE:

CHAIRMAN Gould asked Mr. Chisholm as a point of clarification, if it would not be possible for the department to take it in mind to transfer Mr. Austad to one of the states that Montana already is in membership with under the Western Corrections Compact, and this bill just adds additional states? REP. BARDANOUVE replied that was correct, if there had been a serious question of moving Mr. Austad out of Montana he could have been moved to any one of the 14 member states in the Western Corrections Compact.

REP. CODY noted the State Administration Committee just eliminated the Department of Institutions last week, and

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asked Rep. Bardanouve how that decision would affect this piece of legislation. REP. BARDANOUE replied it put him in a difficult position, however he doubted that the bill would become law. REP. CODY then asked about a case where an inmate from Montana who had been transferred to another state and that inmate was paroled with no input whatsoever from the victim's family, from the state prison officials, and there was quite an outcry in the state of public opinion that this individual was released. How do you address that in this bill? REP. BARDANOUE said he was aware of that concern in that area, but it is not addressed in the bill.

REP. NELSON questioned Rep. Bardanouve regarding Mr. Chisholm's report to the committee that Montana had 24 prisoners in out-of-state institutions and was housing 32 out-of-state prisoners, for a deficit of 8 prisoners at a cost of \$1,000 per day. So would this bill bring some equality to those figures so we are not spending more money on out-of-state prisoners than is being spent for Montana prisoners? REP. BARDANOUE replied that it should balance out in the end.

CONSIDERATION OF HOUSE BILL NO. 200:

REP. JOAN MILES, House District No. 45 and sponsor of the bill, stated the bill was introduced at the request of the Department of Social and Rehabilitation services. She said the bill would amend one section of the law on child welfare services, in the section dealing with child rehabilitation. She noted that sections 1, 2 and 4 basically remove old language and insert new language which is currently used in the child services statutes. She explained in subsection 4, the department may have at one time supervised institutions but they now just inspect and license them. In subsection 2, besides clearing up language it also clarifies SRS's duties to provide services are limited to those children who are eligible for department programs.

PROPONENTS:

JOHN MADSEN, representing the Department of SRS, said the first reason for the bill was to replace the outdated language currently used elsewhere in the statutes, and second was to specify clearly that the department's duty is to provide services to children and is limited to those children who are eligible for department programs which have been funded by the legislature. He noted in subsection 1, the department removes the reference to illegitimate and delinquent youths. The department has no statutory

responsibility nor specific programs which are designed solely for illegitimate or delinquent youths. It is only when these youths are abused, neglected or dependent that the department assumes responsibility and therefore costs for their care. The department proposes removal of the phrase "where adequate provisions therefore have not been made by law" because the phrase has been read in the past to require the department to provide services for which we have no funds from the legislature. See Exhibit # 3.

OPPONENTS:

None.

REP. MILES stated she closed.

QUESTIONS FROM THE COMMITTEE:

REP. CODY asked Rep. Miles how this piece of legislation is related to the proposed new department of family services, would it have any affect? REP. MILES referred the question to Mr. Madsen. Mr. Madsen replied that this bill would have no affect on that legislation, if it would pass the language in the new bill would be incorporated as part of this bill.

REP. CORNE' asked in striking the language in line 18, that was a catchall phrase, what would happen without something like that in the statutes when a person doesn't neatly fit in any program? MR. MADSEN answered if kids don't neatly fit under the statutes of the youth court act of the child abuse and neglect act, the department can be given custody and then ordered to pay for the cost of care for those children.

CONSIDERATION OF HOUSE BILL NO. 327:

REP. TOM BULGER, House District No. 37, sponsor of the bill, said this bill is an act requiring the county coroner to investigate and perform an autopsy if an infant is alleged to have died from sudden infant death syndrome. He said the coroner already had the power to investigate suspicious deaths and this bill simply clarifies that one of the instances in which they may do so is when the cause of death is thought to be sudden infant death, and then on page 2, subsection 2, it says "if the alleged cause of death is sudden infant death syndrome, the coroner shall order to be performed an autopsy unless the parent of the infant objects and the infant's physician certifies the death was caused by sudden infant death syndrome.

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PROPONENTS:

DR. RON RIVERS, Chief State Medical Examiner, within the Department of Justice, stated there are three main reasons he supported the bill, one being his job is to detect murder in the State of Montana, and he believed in the thousands of deaths he had investigated from sudden infant death syndrome, he had uncovered two cases of child abuse with no external evidence of injury. He said parents are murdering their babies and covering it up as a crib death and convincing their doctor to sign a death certificate and the coroner is not called into the case. He said there are many crib deaths the coroners are missing throughout the state because there is no mandate to investigate nor to hold an autopsy. He said his most important reason is the fact that the parents of these sudden infant death syndrome babies have extreme guilt feelings about the death of their baby, what could they have done to prevent this, or worse, what did he or she do to cause the death of my baby. He finds out during an autopsy there was nothing they could have done to cause the death of the baby. In California, they have mandated an autopsy so these parents can get over these feelings of guilt. His third reason is that the law as it reads now opens for litigation against the coroner for ordering an autopsy on a sudden infant death.

MARK MURPHY, Assistant Attorney General, assigned to the County Prosecutor Services Bureau, stated the Attorney General's Office supported this legislation for the primary purpose to catch any of the deaths that occur in Montana that are caused by criminal means. He noted that there is a section which allows the parents, with the cooperation of an attending physician to avoid autopsy, but it allows the coroner to make an inquiry, and in the course of the inquiry if he discovers anything that makes him believe that the death was caused by criminal means, he can still order an autopsy, but in a straight SIDS death, the coroner will be limited to requesting and seeking the parents disapproval and a doctors examination of the baby to make sure the physician is satisfied by the cause of death. This is a piece of legislation that was drawn from California and has worked in California for years.

ROLAND D. PRATT, Executive Director for the Montana Funeral Directors Association, said in many counties the coroner is also funeral director and is subject to the provisions of this law. They had some questions concerning this, but when the bill was drafted and the provisions were put into

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it that allowed the parents and the physician to make the final decision on the autopsy we then supported this bill.

DENNIS DOLAN, Chairman of the Montana State Board of Morticians, Representative of the Montana Funeral Directors' Association, stated he supported the Justice Department in this legislation and that it is now drafted in the interest of the state to determine natural and unnatural type deaths.

SHARON PETTIT, Program Manager for the Handicapped Services Program of the Department of Health, rose in support of the bill and the need to autopsy cases reported as SID syndrome. A copy of her testimony is attached as EXHIBIT NO. 4 .

REP. DOROTHY CODY said she is the mother of a SIDS baby, and even after 27 years she wondered if she had had an autopsy if it would have relieved some of the guilt and pain of the death. She hadn't had the opportunity to have an autopsy performed until it was too late. She expressed it was not only the trauma and guilt that a parent suffers, but the unknowing what causes SIDS deaths. She said if the autopsies are performed, maybe sometime in the future somebody will come up with an answer to the question of the cause of death of these babies. She noted there had been some progress made such as monitoring devices for children, and perhaps that has prevented some deaths, but there is still no answer as to why you put a perfectly healthy child to bed and get up and find them dead, and in her case it was a twin. They were laying side by side and one child died and one didn't. She urged the committee's support of the legislation.

CHARLES GRAVELEY, representing the Montana Coroners' Association, said he was appearing neither as an opponent or a proponent of the bill but would like to make some comments regarding the bill and to make a request of the committee regarding the bill. He stated the bill revises generally the statute relating to county coroners and it also encompasses in that bill SIDS deaths. He requested that the committee hold taking action on HB # 327 until such time as LC # 679 is submitted to the legislature. With respect to the bill itself, there are a couple of problems with the bill. Number one, it appears to be mandatory, however there are provisions in subsection 2, of section 2, which remove the mandatory nature of the autopsy, and that particular language caused him to be concerned. He read the subsection as follows: "coroner shall within 24 hours perform an autopsy unless a parent, because in a situation where you have

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a divorced couple who have joint legal custody of the child, and one parent or the other having physical custody. There could be a fight if one parent wanted to have an autopsy and the other did not, and also had a physician who would agree the death was caused by SIDS. He pointed that out in an attempt to eliminate or at least minimize the problems for the coroners of this state. He questioned what would happen in a situation where a coroner believed it was a SIDS death and the bereaved parent would get a physician to certify that, there would be nothing gained to have an autopsy. He said he believed the purpose of the bill, which is to mandate autopsies in SIDS deaths, could be accomplished if section 2 were eliminated because it would then be up to the coroner to make that determination. He noted that Montana has between 40 and 50 SIDS deaths on an average per year, and it would be a problem mandating the funding that would be necessary to accomplish the autopsies.

OPPONENTS:

DEBI BRAMMER, Townsend, mother of a SIDS baby, rose in opposition to the bill. A copy of her testimony is attached as EXHIBIT NO. 5.

REP. LES KITSELMAN stated he had almost lost his son about a year and a half ago and had experienced emotional stress and strain through the time. He said HB# 327 changes the focus from the parent of the child to make certain decisions and forces it upon the clinician. If the subsection restores the right for a parent to object to any extraordinary means of autopsy on their infant, until that is clear in his mind, he said he would have to object to this legislation because it does excerpt parental rights.

REP. BULGER closed by saying the bill was presented not because it was clearcut that it had all the answers but that it did have several advantages. He said the purpose of the bill was to avoid, to the degree it was able to, deaths related to child abuse or foul play being dismissed as SIDS. In addition, there are deaths which are autopsied and not attributed to SIDS but are due to congenital familial malformations which is in the interest of the patients to know because some are treatable and some are avoidable and it would be very much in the interest of the living rather than of the dead. Secondly, the purpose of the bill is to reaffirm the authority of coroners to order these autopsies without fear of suits, as long as there is some discussion about whether or not this is a natural or unnatural death. Third,

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and perhaps most important, the purpose of the bill is to lessen in a time of great burden of the family, the further burden of uncertainty. He said if funding is a concern, he had an alternate amendment which would go at the end of the bill, on page , the bill was introduced at the request of the state and the state has the funds. The amendment would read "autopsies for sudden infant death syndrome shall be deemed to be at the request of the state medical examiner".

QUESTIONS FROM THE COMMITTEE:

CHAIRMAN GOULD asked Dr. Rivers how the 48-hour time period for doing an autopsy on a child who died from SIDS could be met in the outlying areas. DR. RIVERS replied there were three board certified forensic pathologists, Dr. Path in Great Falls, Dr. Miller in Billings, and himself in Missoula, who essentially perform all deaths in which there is suspected foul play. It would be conceivable that it might take longer than the 48 hours because the body would have to be brought into one of those communities for an autopsy to be performed. He noted that all the facilities had refrigeration available and the bodies would never be decomposed to the point that they could not be viewed.

REP. KITSELMAN queried Dr. Rivers about people who would have certain religious beliefs, which may not permit any medical aid whatsoever or the mutilation of the body by surgery or autopsy. If this were to be mandated would this not violate this persons religious rights? DR. RIVERS answered that question had been raised before but to his knowledge the only religion that objected to autopsies were Orthodox Judiasm, and even they would allow an autopsy on their relative if they thought it would serve the public a purpose in perhaps apprehending a murderer.

REP. KITSELMAN asked Dr. Rivers if he was saying it is the choice of the family, the parent or the guardian of that individual whether to order the autopsy or not, and does this bill change the focus of that by mandating in this case in SIDS, that that autopsy will be performed unless a physician were to certify, with the objection of the parent otherwise? DR. RIVERS replied that was correct, in fact, this bill would be the only death in which there is an acception made where the parents can say no, I don't want an autopsy and the physician will sign it.

REP. SIMON asked how much does it cost to perform an autopsy? DR. RIVERS said they vary from \$250 to \$1,000 depending on

the complexity of the investigation. REP. SIMON asked how much would it cost for a SIDS death? DR. RIVERS replied usually a SIDS death is the most nominal fee.

There was a lengthy question and answer period regarding the possibility of a parent causing a child's death and then being able to convince a physician that it was a SIDS death, and get away with it because of the subsection 2 where they can object to having an autopsy. Rep. Bulger stated the section was included in the bill as an attempt by the framers of the bill to try and weigh on one hand the concerns of the parents who might have a strenuous objection versus the needs of the state. It does have the control that the physician would have to agree to it being a SIDS death.

REP. PATTERSON questioned Dr. Rivers why the words legal guardians were not included in the bill along with parents? DR. RIVERS referred the question to Mark Murphy. MR. MURPHY answered that a number of the situations in which a legal guardian is appointed are situations in which the state already has control, and almost always if someone dies while in state custody or control an autopsy will be performed. REP. PATTERSON asked Dr. Rivers if there was not a lot of research in the medical community to come up with a cause for SIDS death. Dr. Rivers replied yes that in the major medical centers across the United States SIDS is 1-2 out of 1,000 births die from sudden infant death syndrome and the major research going on in these large medical universities unfortunately they have about 70 different theories now as to what is the cause as to SIDS deaths.

REP. KITSELMAN commented to Mark Murphy that he took objection to him saying the relationship between the guardian would not necessarily be that of the parent. He adopted his son, at three days of age, and during the SRS requirement before the adoption is finalized, was his guardian, so in that case the parent and guardian relationship are the same.

REP. BULGER asked to make one brief point which wasn't related. A member of the county coroners, suggested that perhaps this could be left to them, I would oppose that and Dr. Rivers would oppose that. I think this is an area of expertise that is well beyond their training or expertise. I work with coroners everyday in the emergency room. I think they do an invaluable job. This is a very specialized area in which I think the average physician is not well qualified, certainly the coroners wouldn't be able to make that judgment.

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REP. SANDS commented he would like to have a fiscal note on this bill before we take action.

REP. GOULD stated they would be checking up on amendments and wouldn't be taking action on this today. He closed the hearing on HB # 327.

EXECUTIVE SESSION:

ACTION ON HOUSE BILL NO. 114:

REP. MC CORMICK moved that HB # 114 do pass. There being no discussion on the bill, the question was called and the motion CARRIED unanimously.

ACTION ON HOUSE BILL NO. 200:

REP. SANDS moved a do pass on HB # 200. There were no further questions from the committee on the bill. The question was called; the motion CARRIED unanimously.

ACTION ON HOUSE BILL NO. 223:

REP. NELSON moved to pass on HB # 223. Rep. Mc Cormick moved the amendments do pass.

CHAIRMAN GOULD commented on the amendment that it is good in that one of the things we have tried to get away from is judges ordering people to places like Swan River Youth Camp, which really the judges don't know how many inmates might be at Swan River Youth Camp. So if they are remanded to the Department of Institutions, then they can decide when there's time to put them in Swan River, so I think it is a good amendment. Any discussion on the amendment? The question was called for; the motion CARRIED.

REP. MC CORMICK moved that HB # 223 do pass as amended. Chairman Gould asked if there was any further discussion.

REP. PATTERSON asked if Montana has an inmate who is transferred to Idaho because his relatives live there, does that inmate come under the control of the Idaho Parole Board.

REP. GOULD said he believed the person is still under the control of the State of Montana.

REP. CODY asked Rep. Sands a question. In the case that she cited that was in the paper, there was no input whatsoever

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into the parole process by anyone from the State of Montana, so you are saying that there is input and I'm saying there isn't, where is the line.

REP. SANDS responded the bill on page 6, line 4, "In the event such hearing or hearings are had before officials of the receiving state, the governing law shall be that of the sending state and a record of the hearing or hearings as prescribed by the sending state shall be made" and goes on to say on line 13 that "officials of the receiving state shall act solely as agents of the sending state and no final determination shall be made in any matter except by the appropriate officials of the sending state".

REP. CODY said this might correct the problem.

REP. PATTERSON said that would answer his question.

REP. SIMON said as a point of clarification for the committee, that wherever we send that prisoner, they would conduct those interviews rather than have the prisoner travel all the way back to Montana, and then if he were denied to send him back to the penal institution he was incarcerated in. Those interviews would be subject to the approval of the State of Montana.

The question was called for; the do pass as amended motion CARRIED with one opposing vote by Rep. Cody.

REP. KITSELMAN expressed his concern about HB # 327, about the constitutionality of it, certain rights of parents, adoptive parents. Would like Lee Heiman to do some of the research on that question, that it might save us some time in executive session.

REP. GOULD asked Lee to do that along with a fiscal note.


REP. SIMON moved to adjourn.

REP. GRINDE asked to rise to a point of personal privilege. Rep. Gould agreed. He then stated he wanted to go on record. During the testimony of the nurses, it was alluded to the fact that there is a possibility that Montana State is being discriminatory in accreditation and acceptance of nurses from other schools, and I don't know if this is happening but if it is, I think it's very, very poor for our state and our University System.

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CHAIRMAN GOULD stated Rep. Grinde's point was well taken and many of the committee heard some of the complaints and if these things can be documented, a letter written to the Board of Regents by anyone or all of the committee who would like to sign a letter certainly would be in order.

The meeting was adjourned at 2:15 p.m.



REP. R. BUDD GOULD, CHAIRMAN

DAILY ROLL CALL

HUMAN SERVICES AND AGING COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date JANUARY 27, 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 | | |
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STANDING COMMITTEE REPORT

JANUARY 27, 19 87

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

report HOUSE BILL NO. 114

☒ do pass
☐ do not pass

☐ be concurred in
☐ be not concurred in

☐ as amended
☐ statement of intent attached

REP. R. RUDD GOULD,

Chairman

FIRST

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STANDING COMMITTEE REPORT

January 27, 19 37

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

report HOUSE BILL # 200

☒ do pass
☐ do not pass

☐ be concurred in
☐ be not concurred in

☐ as amended
☐ statement of intent attached

REP. R. BUDD GOULD,

Chairman


FIRST

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STANDING COMMITTEE REPORT

January 27, 19 67

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

report HOUSE BILL NO. 223

☒ do pass
☐ do not pass

☐ be concurred in
☐ be not concurred in

☒ as amended
☐ statement of intent attached

R. BUDD GOULD,

Chairman

1. Page 10, lines 18 and 19.

Strike: "courts, departments, agencies, and officers of this state and its subdivisions"

Insert: "department of institutions"

2. Page 10, line 21.

Strike: "their respective"

Insert: "its"

3. Page 10, line 22.

Strike: "jurisdictions"

Insert: "jurisdiction"


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BEFORE THE HOUSE COMMITTEE ON HUMAN SERVICES
Amendment to HB 223, Introduced Bill

1. Lines 17 through 19
After the word "compact."
Strike: "The courts, departments, agencies, and officers of this state
and its subdivisions"
Insert: "The department of institutions"
2. Line 21
After the word "within"
Strike: "their"
Insert: "its"
3. Line 22
Strike: "jurisdictions"
Insert: "jurisdiction"

Date: January 27, 1987

Name: Toni Marie Austad

Phone: 452-8649

Address: 2216 5th Avenue S.W., Great Falls, MT 59404

Representing Whom: Myself, Gene Austad, Mr. and Mrs. Delmer Austad

Appearing before: House Bill 223

I oppose the passage of this bill.

Comments: In February, 1982, Gene Austad, paralyzed and brain-damaged, was confined to the Montana State Prison for the April, 1978 murder, rape, and robbery of an elderly Great Falls woman. Gene, who is my brother, was critically injured in an automobile accident the same night the victim was murdered. That night, he came as close to death as a person could come.

In upholding the conviction and sentencing of my brother, the Montana Supreme Court said (in spite of overwhelming evidence to the contrary) that Gene was only partially disabled. The court also ruled that it was premature to say that Gene couldn't be cared for at the prison or any other place the State chose to keep him.

In March, 1982, Gene was transferred to Galen State Hospital. Carroll South told the Associated Press that the decision was final and cited various problems with keeping Gene at the Prison. Later, the Department of Institutions changed their story to say that for "administrative" reasons, Gene was transferred to Galen.

In November, 1986 Gene was transferred back to the Montana State Prison; he is being kept in the infirmary there. Prison officials are proposing that he be transferred to a unit where another inmate would be paid to care for him.

Gene Austad is confined to a wheelchair. His vocal cords are partially paralyzed making it difficult for him to speak and be understood. His lungs are partially paralyzed leaving him predisposed to pneumonia and other respiratory ailments. He suffers severe neurological residuals of brain stem damage. He is often bed-ridden with chronic neck pain and is unable to turn his head more than a few degrees in each direction. He meets the definition of severely developmentally disabled except for the age criteria.

Gene spent four and one-half years in Galen State Hospital in a nursing care situation. Today he resides in the prison infirmary - removed from the list of those receiving medical care. The Department of Institutions cannot say that Gene Austad is in better physical and mental condition than he was when he was confined five years ago. They will not say he has deteriorated in their care, even though he has been confined with no opportunity for exercise, physical therapy, and little or no diversion aside from the television set.

Four years in Galen @ \$90 per day amounts to over \$131,000. In August, 1985, Gene contracted a "hospital-bred" disease called listeria. Before it was diagnosed and treated, he nearly died. The hospital bill alone was \$27,000. His prognosis was termed by one physician as "poor, long term." Now confined to the prison, it will cost at \$120 per day, over \$43,000 not counting extra-ordinary medical expenses.

There appears to be little hope that Gene will ever be released to the custody of his family. He was sentenced to Life plus 120 years and designated a dangerous offender. The presiding judge stated he was ignoring our State's constitutional principles of reformation and prevention in handing down the sentence. The only reason to confine Gene is to punish him - for a crime he will never remember.

The nightmare which began for my family the night of April 22, 1978 has not lessened. Shocked, horrified, and humiliated by the turn of events in Gene's life, we still could not walk away from him because this was not the Gene Austad we knew then or know now. It has been a constant struggle for us, dealing with the bureaucracy, living with our fears, trying to find some meaning in all of this.

It is not easy to accept and not repeat a doctor's verbal statement that there was pressure to let Gene die in the days following his automobile accident. It is not easy to contain the emotion and outrage when one doctor at Galen State Hospital says that Gene might not live while he is handcuffed and chained to his hospital bed. It is not easy to assume that your brother will be cared for appropriately when half the staff at Galen threaten to walk off their jobs because he is confined there. It is impossible for me to accept that after four and one-half years in a nursing care situation at Galen, that he can be cared for by another inmate in a regular part of the prison. The myth is that Gene caused his own disabilities and is not entitled to any consideration for his handicaps. His misfortune, even at the hands of others, is his own fault.

My relationship with the Department of Insitutions has not been harmonious. There have been repeated confrontations over Gene's care and treatment. I believe that were it not for Gene's family constantly advocating for him that he would not be alive today.

My fear is that if this bill is passed, Gene Austad will be among the first to be sent out of state - not for his welfare, but in retaliation for the way his family has advocated for him. Such a transfer will not be an economical move. We haven't seen him treated in a humane manner in Montana - what guarantee can there be that he will be treated better elsewhere. No where in this bill does it state that the prisoner who doesn't want to be transferred won't have to go. No where does it give the prisoner the opportunity to protest the transfer. Finally, what happens to the family who can't afford to assert their rights as outlined in paragraph "i." Article IV

I ask that you do not give the Department of Institutions a free rein in this issue.

"The mood and temper of the public with regard to the treatment of crime and criminals is one of the most unfailing tests of the civilization of any country. A calm dispassionate recognition of the rights of the accused, and even of the convicted criminal against the State - a constant heart-searching by all charged with the duty of punishment - a desire and eagerness to rehabilitate in the world of industry those who have paid their due in the hard coinage of punishment: tireless efforts towards towards the discovery of curative and regenerative processes: unfailing faith that there is a treasure, if only you can find it, in the heart of every man. These are the symbols which, in the treatment of crime and criminal, mark and measure the stored-up strength of a nation, and are sign and proof of the living virtue in it."

- Winston Churchill -

"To punish a man, you must injure him; to reform a man you must improve him; and men are not improved by injuries."

- George Bernard Shaw -

3
1-27-84
200

TESTIMONY BY DEPARTMENT OF SOCIAL & REHABILITATION SERVICES
ON HB200

Mr. Chairman - Members of the committee, my name is John Madsen. I represent the Department of Social & Rehabilitation Services. The Department requested this bill for two major reasons. First to replace out dated language with language used elsewhere in statute. Second to specify clearly that its duty to provide services to children is limited to those children who are eligible for departmental programs which have been funded by the Legislature.

In subsection (1), the reference to "illegitimate" and "delinquent" youths was removed. The Department has no statutory responsibility nor any specific programs which are designed solely for illegitimate or delinquent youth. Illegitimate children are not by reason of their illegitimacy alone in need of services. Delinquent youth are served primarily by the Department of Institutions or probation officers of the youth courts. It is only when these youths are abused, dependent or neglected that the Department assumes responsibility for their care. The Department proposes removal of the phrase "where adequate provision therefore has not been made by law" because this phrase can be read to require the Department to provide services for which the Department has not received funding from the Legislature.

Under subsection (2), the Department removed the reference to "subnormal" children and inserted "developmentally disabled", which is the more appropriate term for mentally retarded children. The Department revised subsection (2) to indicate that only those developmentally disabled and physically handicapped children who are eligible for Department programs which have been funded by the legislature may be served by the Department. Again, the Department removed the phrase "where it is not otherwise provided by law" for the same reasons stated under subsection (1).

Under subsection (4), the Department removed reference to "infants homes" and "child care agencies" because these terms are not defined anywhere else in the Montana statutes. The Department has responsibility in other sections of the law to license "youth care facilities", "child placing agencies" and "adoption agencies". Those terms were inserted in this section so that the terminology used in this section concides with the Department's licensing authority in other sections of the law. The Department also removed the term "supervise" from subsection (4) because the Department does not provide day-to-day supervision of these facilities and agencies. Most of these facilities and agencies are operated by non-profit private corporations who are responsible for the day-to-day supervision of these programs.

The Department urges a do pass from the committee.

I would be happy to answer questions.

TESTIMONY HB 327

Mr. Chairman, Members of the Committee, my name is Sharon Pettit. I am the Program Supervisor of the Handicapped Children's Program of the Department of Health and Environmental Sciences.

The Department of Health and Environmental Sciences collects and analyzes a variety of morbidity and mortality statistics that provide a picture of the health of the citizens of the State. Infant mortality is one of the standard items analyzed. Sudden Infant Death Syndrome is the most frequently listed cause of death in babies from one month to one year of age. However, the diagnosis of Sudden Infant Death Syndrome (SIDS) cannot be made without an autopsy. In Montana, from 1980 through 1984, 161 babies were reported to have died from SIDS but only 129 of those deaths were confirmed by autopsy (80%); 20% were undefined. Without autopsy confirmation of a death reported as SIDS, Montana is limited in its ability to generate valid data on the causes of infant death.

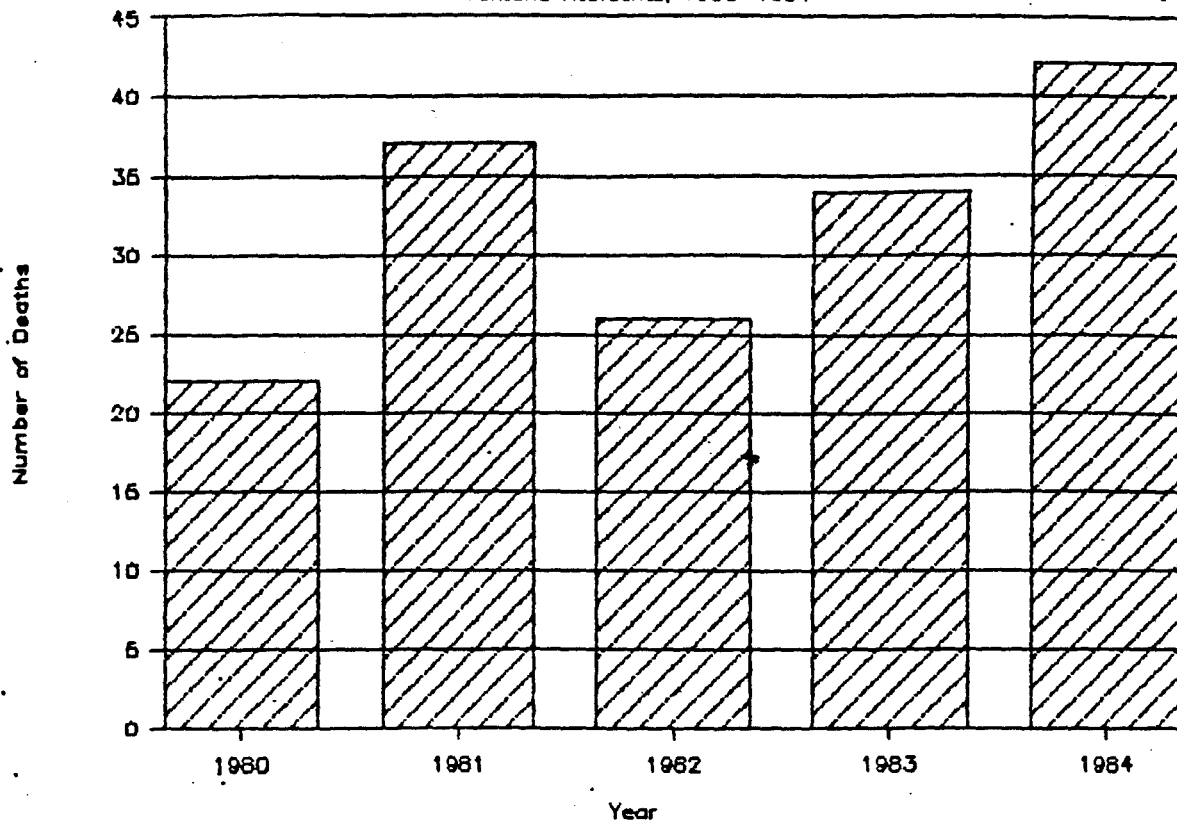
Unautopsied deaths may overlook cases of severe congenital or genetic problems that families need to know about in relation to their other children or their future children. Unautopsied SIDS deaths may also leave cases of homicide unidentified.

From the perspective of the Program I manage and its SIDS referral activities, it has been my experience that autopsy information is one of the most helpful pieces of information a family can have in the event of a death of a child from SIDS. The autopsy provides irrefutable evidence that the parents or care givers were not responsible for the death; that there was nothing that could have been done to predict or prevent the death. Without autopsy, these questions remain unanswered.

Thank you for your attention.

SIDS DEATHS BY YEAR:

Montana Residents, 1980-1984



| | |
|------|----|
| 1980 | 22 |
| 1981 | 37 |
| 1982 | 26 |
| 1983 | 34 |
| 1984 | 42 |

Number of Deaths Due to Sudden Infant Death Syndrome By Year: 1980-1984
(By Place of Residence)

COUNTIES

Total 1984 1983 1982 1981 1980

| | | | | | | | | | | | |
|---------------|------------|-----------|-----------|-----------|-----------|-----------|--|--|--|--|--|
| Beaverhead | 4 | 1 | | | 2 | 1 | | | | | |
| Big Horn | 4 | | 1 | 1 | 1 | 1 | | | | | |
| Blaine | 2 | | 1 | | | 1 | | | | | |
| Broadwater | - | | | | | | | | | | |
| Carbon | 2 | 1 | | | 1 | | | | | | |
| Carter | - | | | | | | | | | | |
| Cascade | 23 | 3 | 6 | 2 | 10 | 2 | | | | | |
| Chouteau | - | | | | | | | | | | |
| Custer | 3 | | 1 | | 1 | 1 | | | | | |
| Daniels | 1 | | | | 1 | | | | | | |
| Dawson | 2 | | | 1 | | 1 | | | | | |
| Deer Lodge | 2 | 1 | | | | 1 | | | | | |
| Fallon | - | | | | | | | | | | |
| Fergus | 1 | 1 | | | | | | | | | |
| Flathead | 11 | 3 | 1 | 3 | 1 | 3 | | | | | |
| Gallatin | 5 | 2 | 1 | 2 | | | | | | | |
| Garfield | - | | | | | | | | | | |
| Glacier | 9 | 2 | 3 | 1 | 3 | | | | | | |
| Golden Valley | - | | | | | | | | | | |
| Granite | - | | | | | | | | | | |
| Hill | 2 | | 1 | | 1 | | | | | | |
| Jefferson | 2 | | | 1 | 1 | | | | | | |
| Judith Basin | - | | | | | | | | | | |
| Lake | 8 | 5 | 2 | 1 | | | | | | | |
| Lewis & Clark | 7 | 1 | 2 | 1 | 1 | 2 | | | | | |
| Liberty | 1 | | 1 | | | | | | | | |
| Lincoln | 7 | 4 | 2 | | | 1 | | | | | |
| McCone | - | | | | | | | | | | |
| Madison | - | | | | | | | | | | |
| Meagher | 1 | | 1 | | | | | | | | |
| Mineral | 1 | 1 | | | | | | | | | |
| Missoula | 11 | 2 | 3 | 1 | 1 | 4 | | | | | |
| Musselshell | - | | | | | | | | | | |
| Park | - | | | | | | | | | | |
| Petroleum | - | | | | | | | | | | |
| Phillips | - | | | | | | | | | | |
| Pondera | 1 | 1 | | | | | | | | | |
| Powder River | 1 | 1 | | | | | | | | | |
| Powell | - | | | | | | | | | | |
| Prairie | - | | | | | | | | | | |
| Ravalli | 4 | 1 | | 1 | 2 | | | | | | |
| Richland | 5 | 1 | 1 | 2 | 1 | | | | | | |
| Roosevelt | 3 | 1 | 1 | | | 1 | | | | | |
| Rosebud | 4 | 1 | | 1 | 2 | | | | | | |
| Sanders | 1 | | | | 1 | | | | | | |
| Sheridan | 2 | 1 | | | 1 | | | | | | |
| Silver Bow | 8 | 3 | | 1 | 3 | 1 | | | | | |
| Stillwater | - | | | | | | | | | | |
| Sweet Grass | 1 | | | 1 | | | | | | | |
| Teton | 1 | | 1 | | | | | | | | |
| Toole | 2 | 1 | | 1 | | | | | | | |
| Treasure | - | | | | | | | | | | |
| Valley | 2 | | 1 | | 1 | | | | | | |
| Wheatland | - | | | | | | | | | | |
| Wibaux | - | | | | | | | | | | |
| Yellowstone | 17 | 4 | 4 | 5 | 2 | 2 | | | | | |
| TOTAL | 161 | 42 | 34 | 26 | 37 | 22 | | | | | |

EXHIBIT 5
DATE 1-27-87
HB # 327

WITNESS STATEMENT

NAME Nick Brammer ^{HB} BILL NO. 327
ADDRESS P.O. Box 567 DATE 1-27-87
WHOM DO YOU REPRESENT? self
SUPPORT _____ OPPOSE ☒ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

I oppose HB 327 as a parent who has lost a small child through accidental death. There was a mandatory autopsy performed on her - I could not let my family view her or have an open casket funeral - She did not look anything like herself - when they got done. I understand the want to learn through autopsy but what about a parent's feeling & the emotional stress that you are putting them through. I hope this is something the committee will consider strongly.

EXHIBIT # 6
1-27-87
327

WITNESS STATEMENT

NAME William A. Pitter BILL NO. HB 327
ADDRESS 1111 N. 1st St. - Phoenix, AZ DATE _____
WHOM DO YOU REPRESENT? CHES
SUPPORT HB 327 OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

VISITORS' REGISTER

HUMAN SERVICES AND AGING

COMMITTEE

BILL NO. HOUSE BILL # 200DATE JANUARY 27, 1987SPONSOR Rep. Miles

| NAME (please print) | RESIDENCE | SUPPORT | OPPOSE |
|---------------------|-----------|---------|--------|
| John Macdonald | Helena | X | |
| Paula C. Clark | Helena | | |
| Christine Clark | Helena | | |
| Chris Volchok | Helena | X | |
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IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

HUMAN SERVICES AND AGING

BILL NO. HOUSE BILL # 223

DATE JANUARY 27, 1987

SPONSOR REP. BARDANOUVE

[illegible]

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 # 327

DATE JANUARY 27, 1987

SPONSOR REP. BULGER

| NAME (please print) | RESIDENCE | SUPPORT | OPPOSE |
|-----------------------------|--------------------------------|---------|--------|
| <i>[Handwritten Name]</i> | <i>St. Francis Hospital</i> | ✓ | |
| <i>[Handwritten Name]</i> | <i>St. Francis Hospital</i> | ✓ | |
| <i>Dennis J. Nolan</i> | <i>State Board of Matrons</i> | ✓ | |
| <i>[Handwritten Name]</i> | <i>[Handwritten Address]</i> | ✓ | |
| <i>RON RIVERS</i> | <i>D.C.</i> | ✓ | |
| <i>M.E. "Mickey" Nelson</i> | <i>McC Co. Garage - M.C.A.</i> | | |
| <i>[Handwritten Name]</i> | <i>Townsend, Mt</i> | | ✓ |
| <i>[Handwritten Name]</i> | <i>[Handwritten Address]</i> | | |
| <i>Barb Becker</i> | <i>Townsend</i> | | ✓ |
| <i>[Handwritten Name]</i> | <i>Chester</i> | ✓ | |
| <i>DAVID LACKMAN</i> | <i>MT Public Health Assoc</i> | ✓ | |
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IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.