MINUTES OF THE MEETING
LOCAL GOVERNMENT COMMITTEE
50TH LEGISLATIVE SESSION
HOUSE OF REPRESENTATIVES

March 3, 1987

The meeting of the Judiciary Committee was called to order by Chairman Earl Lory on March 3, 1987, at 8:00 a.m. in Room 312-D of the State Capitol.

ROLL CALL: All members were present.

SENATE BILL NO. 11: Senator Mazurek, District No. 23, amends the Uniform Transfer to Minors to provide custodial property be created when a security is transferred to a custodial account. This amendment is merely a clarification of existing policy to eliminate the restriction that existed in the old Gifts to Minors Act (repealed in 1985) to allow use of broker or street name accounts for the establishment of custodianships under the Uniform Transfers to Minor Act. Senator Mazurek stated as background, the old Gifts to Minors Act (a uniform law) was repealed and replaced with the Uniform Transfers to Minors Act (also a uniform law). The purpose of the change was to facilitate the use of securities in creating custodianships for minors. The old Gifts to Minors Act required the use of registered securities only.

There were no proponents, no opponents and no questions from the committed.

Senator Mazurek closed the hearing on Senate Bill No. 11.

SENATE BILL NO. 229: Senator Mazurek, District No. 23, stated Senate Bill No. 229 prohibits a district court from ordering the placement of or delivery of services to a developmentally disabled person in community-based services. He stated that this is a necessary bill and must be seriously looked at. The procedure that is in place for placement in certain institutions allows for mandatory court ordered placement for treatment and services. The problem this bill addresses concerns circumstances where people have attempted to use mandatory placement provisions to get placed into a community based services program and the programs are full. A concern at this point is that people with means will essentially use this process to get preferential treatment in getting developmentally disabled persons placed in community-based services. The bill prevents the direct placement by the district courts into specific community-based programs. The courts can continue to identify people for community-based services but it would

then be developmentally disability provision working together with local placement committees to determine who goes into the community-based services.

PROPONENTS: Mike Hanshaw, staff person for the Developmental Disabilities Division, Department of Social and Rehabilitation Services, testified in support of this bill stating currently there are 740 people identified as eligible for but waiting for community-based services in Montana. He feels if this bill should not pass and the courts be allowed to order placement of individuals, we would be allowing a situation where our current practices of local committees representative of service providers in the department making selection decisions will be invalid. He stated if the courts should order placements and there are no further resources available, we might be creating a situation where our program becomes an entitlement program which it has not been so far. He feels the program, in existence currently by the department, has worked for ten years and should be kept as it is.

Dennis M. Taylor, Administrator of the Developmental Disabilities Division, Department of Social and Rehabilitation Services, submitted written testimony. (Exhibit A). He stated SRS has developed a fair and rational system for eligibility and priority placement which is instituted on a statewide basis. The threat in the past of court ordered placement in community-based services, has caused SRS to treat the complaining individuals as if they were of the highest priority for placement when they may not have been so. If adopted as proposed, SB #229 will ensure that Montana's commitment laws will not apply to placement in the community-based system.

There were no opponents.

QUESTIONS (OR DISCUSSION) ON SENATE BILL NO. 229: Rep. Rapp-Svrcek asked Mr. Hanshaw if any individuals of means have tried to push their cases through the court system. Mr. Hanshaw answered recently there have been two attempts but so far no court has ordered such a placement.

Senator Mazurek closed the hearing on SB #229.

SENATE BILL NO. 24: Senator Halligan, District No. 29, stated this is the civil side of the child abuse and neglect hearing. A doctor or teacher usually reports a case which he feels is possibly abuse or neglect, to a social worker which is required by law to be investigated. The first stage of a child abuse, neglect, civil procedure is a petition submitted to a judge, for a temporary investigative authority and is just the investigatory stage. Currently,

hearsay is used in talking to the judge about the case. Within 20 days of filing the petition, a hearing must take place. Senator Halligan pointed out that hearsay evidence is already used in court by the state and this bill clarifies that hearsay testimony is allowed at temporary investigative authority hearings in these cases.

PROPONENTS: John Madsen, Department of Social and Rehabilitation Services, stated he felt this bill is necessary to clarify hearsay evidence be admissible at this point in child abuse and neglect decision.

Mike McGrath, Lewis and Clark County Attorney, stated he spoke on behalf of two organizations; the Montana County Attorney's Association and the Montana Chapter of the National Committee for the prevention of child abuse. Both organizations support this bill.

Mary Petersen, representing herself, stated she supports this bill because it supports the children.

OPPONENTS: Robert Flesh, former police officer, stated he is opposed to this legislation because a petition for temporary investigative authority is a petition for protective services. When a hearing is set, the child is taken out of the home for the 20 days before the hearing and is placed in a secret place. He pointed out that social workers are SRS employees and are not investigators. He said this is the most dangerous law in the state of Montana.

Dan Dusoleil, Pastor from Liberty County, disapproved of the bill and stated this represents the disintegration of parent's rights. He submitted written testimony. (Exhibit A).

Dorothy Duncan, from Liberty County, stated the philosophy that the state is the ultimate parent is against family life and all that we in America have been taught to believe. She submitted written testimony. (Exhibit B).

Monica Smith, of Liberty County, opposed this bill in its entirety because families have already been severely eroded and this would further the erosion. She submitted written testimony. (Exhibit C).

Doug Kelley, Attorney, Helena, stated he often represents parents who have been accused of abusing their children. He felt this bill is trying to get more hearsay evidence admitted into court and there is nothing worst than false acquisitions. It is a constitutional right to confront the accuser.

Eudola Peterson, went on record in opposition to the bill.

Jim Burns, representing the national organization of V.O.C.A.L., Victims of Child Abuse Legislation, stated the national organization has discovered that 65% of the reported cases of child abuse are false. He felt that child abuse was a serious problem nationwide but that SRS and social welfare organizations have over reacted in many cases and it has been used by children against parents, neighbors and family members.

Willis Hodges, stated the bill is like putting the wolf in the sheep's pen to protect the sheep.

Don Kelley, Pastor of the Community Church, Helena, stated he is a former law officer and is now an administer of a school. He opposed the bill because the change suggested opens the door to an intrusion into the home and the family. He believed the existing laws are presently enough protection for the children.

QUESTIONS (OR DISCUSSION) ON SENATE BILL NO. 24: Rep. Rapp-Svrcek asked Mr. McGrath if hearsay was already admissible in the preliminary hearings. Mr. McGrath stated some judges allow it and some do not. Mr. McGrath pointed out the bill clarifies that hearsay is admissible. Rep. Rapp-Svrcek asked him if the majority of judges accept hearsay and he stated that two out of three accept it.

Rep. Miles asked Senator Halligan what the courts are currently doing in terms of evidence being allowed. He stated that in order to get into court, a petition or application must be used. Rep. Miles asked Senator Halligan to explain what he feels is good for children. He stated the whole goal of the bill is to get the family back together again and to protect the children.

Rep. Rapp-Svrcek asked Doug Kelley to speak for the opponents and asked him about the concerns voiced regarding potential abuses of this law stating the amendments being made in this bill has no bearing one way or another in regard to the potential abuses you have concerns with. Mr. Kelley stated he did not totally agree with him and explained that ultimately this law will become a part of Montana and there is a division among the judges as to if they will require more hearsay evidence at the temporary report.

Senator Halligan closed the hearing by stating that it is a critical time in the process. He pointed out the goals of the act are extremely severe and the constitutional protections of the right to privacy in families are not changed.

He said the very limited scope is only at the temporary investigative authority stage and does not apply to temporary legal custody.

SENATE BILL NO. 25: Senator Gage, District No. 5, provides that a parent or guardian cannot give his child or ward an alcoholic beverage in a bar. Any person who invites a person under the age of 19 years into a public place where an alcoholic beverage is sold and treats, gives, or purchases an alcoholic beverage for such person shall be guilty of a misdemeanor.

No proponents or opponents and no questions.

EXECUTIVE SESSION:

ACTION ON SENATE BILL NO. 11: Rep. Brown made the motion that SB #11, BE CONCURRED IN. Question was called and a voice vote was taken. The motion carried unanimously. SB #11, BE CONCURRED IN.

ACTION ON SENATE BILL NO. 229: Rep. Daily made the motion that SB #229, BE CONCURRED IN. Question was called and a voice vote was taken. The motion carried unanimously. SB #229, BE CONCURRED IN.

ADJOURNMENT: There being no further business to come before this committee, the hearing was adjourned at 10:00 a.m.

Earl Lory

Earl Lory, Chairman

DAILY ROLL CALL

JUDICIARY COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date March 3, 1987

NAME	PRESENT	ABSENT	EXCUSED
JOHN MERCER (R)	✓		
LEO GIACOMETTO (R)	✓		
BUDD GOULD (R)	✓		
AL MEYERS (R)	✓		
JOHN COBB (R)	✓		
ED GRADY (R)	✓		
PAUL RAPP-SVRCEK (D)	✓		
VERNON KELLER (R)	✓		
RALPH EUDAILY (R)	✓		
TOM BULGER (D)	✓		
JOAN MILES (D)	✓		
FRITZ DAILY (D)	✓		
TOM HANNAH (R)	✓		
BILL STRIZICH (D)	✓		
PAULA DARKO (D)	✓		
KELLY ADDY (D)	✓		
DAVE BROWN (D)	✓		
EARL LORY (R)	✓		

STANDING COMMITTEE REPORT

March 3, 19 87

Mr. Speaker: We, the committee on JUDICIARY

report [redacted] SB. 11

☐ do pass
☐ do not pass

☒ be concurred in
☐ be not concurred in

☐ as amended
☐ statement of intent attached

Chairman

THIRD reading copy (BLUE color)

STANDING COMMITTEE REPORT

March 3, 19 87

Mr. Speaker: We, the committee on JUDICIARY

report [redacted] BILL NO. 229

☐ do pass
☐ do not pass

XX ☐ be concurred in
☐ be not concurred in

☐ as amended
☐ statement of intent attached

Chairman

THIRD reading copy (BLUE color)

EXHIBIT A
DATE MARCH 3, 1987
SB # 24

Dear Sir,

I am Pastor Dan DuSoleil of Liberty County. I disapprove of SB 24 and what it represents — the disintegration of Parents rights. If what I read and hear from others is true the People of this country already fear the power that has been given to SRS this bill would exacerbate an already dangerous situation. I have spoken to lawyers (Craze + Gibbs) who have enumerated case after case where children have been wrongly taken from their parents. This must not be allowed. Hearsay evidence cannot be allowed as a basic for taking children from parents and violating their civil rights.

Enlarge
Not Criminal - Taking Children - Doctor
Jefferson 1817

EXHIBIT D
DATE MARCH 3, 1987
SB #24

I am Dorothy [illegible] of [illegible] County. I would like to speak in opposition to SB 24. The philosophy that the State is the ultimate parent is against family life and all that we in America have been taught to believe. I realize that there must be provisions and safeguards so that the children who really need protection can find it. But there must be a line drawn so that there is also protection for the innocent families. I believe that making the admission of hearsay evidence legal puts the innocent family in a dangerous position. Hearsay is much too flimsy evidence to [illegible] the integrity of a family [illegible], for it can so easily be ruined. The SRS already has the means they need for investigating suspected abusive situations. Making hearsay legal gives them unnecessarily [illegible] unfair advantage in the courts that gives them unfair advantage over possible innocent families that might be charged.

I am Monica Smith of Liberty Co.
I would like to speak in opposition to
SB 24.

EXHIBIT C
DATE March 3, 1987
SB # 24

I am opposed to the entire measure but since it has already been enacted I will speak to the proposed addition. I am well aware that there is child abuse and even a little is to much but Gentlemen ~~Ladies~~ we need to be careful that the witch hunts of Salem are not repeated. The addition to this measure could become just that — hard feelings between neighbors could percipitate declarations of suspected abuse without caring to come forward and be identified. Our families have already been severly eroded and I feel this addition would only further than erosion. Thank you for your attention.

DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

EXHIBIT A
DATE 3-3-87
SB 229

TED SCHWINDEN, GOVERNOR

P.O. BOX 4210

STATE OF MONTANA

HELENA, MONTANA 59604

March 3, 1987

TO: Representative Earl Lory
Chairman
House Judiciary Committee

FROM: Dennis M. Taylor DMT
Administrator
Developmental Disabilities Division

RE: SB 229 - By request of the Department of Social and Rehabilitation Services - To clarify that Part 1, Chapter 20, Title 53 of the Montana Codes Annotated may not be used as authority for district courts to order placement of persons with developmental disabilities in community-based services.

SB 229 simply seeks to clarify the original legislative intent that Part 1 of Title 53, Chapter 20, MCA, providing the legal process for commitment of developmentally disabled persons to the Montana Developmental Center and Eastmont Human Services Center, does not apply to community services. Commitment to state institutions unlike placement in the community-based service system, involves significant restrictions on the rights of the resident. The community-based service system serves to protect and promote to the greatest extent possible the rights of the participants.

On behalf of individuals in need of services, attorneys are seeking to use Part 1 of Title 53, Chapter 20, MCA, as authority by which district courts could order SRS to serve a particular individual with services and placement specified in a court order. Currently, there are two legal actions for commitment of individuals to the Montana Developmental Center wherein attorneys are seeking such results. By these legal actions the individuals petitioning can circumvent the SRS placement system to "hop over" individuals on the long waiting lists and attempt to reduce the delays in placement caused by a system with greater demand than available resources.

SRS has developed a fair and rational system for eligibility and priority placement of individuals with developmental disabilities in available community-based services. That placement process, instituted on a statewide basis, is based on the systematic application of common criteria (such as, availability of placements, individuals in need of services, and availability of appropriate services for individuals in need) to determine the individual who

most needs the available placement. This selection process has been used by SRS since the community-based service system was developed in the mid-1970's and was statutorily mandated by the Legislature in 1985. SB 229, amending the commitment process language, will clarify that the commitment process may not be used to commit persons to community services.

The community-based service system for individuals with developmental disabilities is predicated on the philosophy that individuals voluntarily or with the consent of their guardian participate in the program. The placement process is likewise predicated on this voluntary philosophy. Where the authority of the courts is imposed on individuals in settings that are designed and maintained to respect the rights and privileges of the recipients of services, the administration of the system becomes difficult, if not impossible. The courts are dictating the daily routines of recipients and directing SRS to impose the court's restrictions upon recipients. The community-based services system for individuals with developmental disabilities is composed of a comprehensive array of residential, day and support services serving over 2,100 individuals in 32 communities in Montana. Competition for placement in the community-based system is keen with over 740 individuals on the community waiting list and approximately 40 individuals in state institutions who have been jointly identified by SRS and the Department of Institutions as "priority for placement" in the community. People on the waiting list must wait up to 2 or 3 years for an opening in the community.

The threat in the past of court ordered placement in community-based services has caused SRS to treat the complaining individuals as if they were of the highest priority for placement when they may not have been so. Manipulation of the placement system by the courts disrupts the existing placement processes and gives unfair advantage to any potential recipient of services who has legal counsel. With available placements limited, any court interventions may threaten the placement goals developed by the Legislature and the Executive.

If adopted as proposed, SB 229 will ensure that Montana's commitment laws will not apply to placement in the community-based system.

VISITORS' REGISTER

JUDICIARY COMMITTEE

SENATE BILL NO. 24 DATE March 3, 1987

SPONSOR

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
Daniel L Dunfield			X
Willis Hodges			X
John Madsen	SRS	X	
Mary Peterson	self	X	
Monica Smith	self		X
Dorothy Duncan	self		X
Eudora Peterson			X
MIKE McGRATH	CNTY ATTYS ASSN/NCCA	X	
DON KELLEY	Self		X
Doug Kelley	self		X
JIM BURNS	VOCAL		X
Tom Steber	IMN NEWS		

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

CS-33

VISITORS' REGISTER

JUDICIARY COMMITTEE

SENATE BILL NO. 229 DATE March 3, 1987

SPONSOR _____

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
Dick Hunter	CPA	X	

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

CS-33