

## **MINUTES**

### **MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON JUDICIARY**

**Call to Order:** By Chairman Dick Pinsoneault, on February 5, 1991,  
at 10:05 a.m.

#### **ROLL CALL**

**Members Present:**

Dick Pinsoneault, Chairman (D)  
Robert Brown (R)  
Bruce Crippen (R)  
Steve Doherty (D)  
Lorents Grosfield (R)  
Mike Halligan (D)  
John Harp (R)  
Joseph Mazurek (D)  
David Rye (R)  
Paul Svrcek (D)  
Thomas Towe (D)

**Members Excused:** Bill Yellowtail (D)

**Staff Present:** Valencia Lane (Legislative Council).

**Please Note:** These are summary minutes. Testimony and discussion  
are paraphrased and condensed.

**Announcements/Discussion:** none

#### **EXECUTIVE ACTION ON HOUSE BILL 25**

**Motion:**

**Discussion:**

Senator Harp asked if there were any amendments to HB 25.  
Chairman Pinsoneault replied there are none.

Senator Mazurek commented that this is the practice with the  
agency anyway. Senator Mazurek made a motion that HB 25 BE  
CONCURRED In.

Senator Grosfield asked if a couple could actually bring a  
baby home right from the hospital, if all legal arrangements were

made prior to birth. Chairman Pinsoneault advised the Committee that if a relinquishment were signed prior to birth that it does raise the possibility of the mother objecting to the adoption during that 72-hour period. He commented that 95 percent of cases are handled by attorneys and that such a situation would probably never slip through.

Amendments, Discussion and Votes:

Recommendation and Vote:

The motion made by Senator Mazurek carried unanimously. Chairman Pinsoneault asked Senator Grosfield to carry HB 25.

EXECUTIVE ACTION ON HOUSE BILL 26

Motion:

Discussion:

Valencia Lane advised the Committee that the bill, as originally drafted, would require that the birth mother involved in a direct adoption, go through counseling and would also require a home study for the adoptive parents. She stated that the House removed this language, so the bill is not much different than existing law.

Senator Mazurek stated a lot of work has been done in this area, and he believes the whole purpose is to put direct adoptions on the same plane as private adoptions. He said he believes the bill is almost a joke now. Valencia Lane added that this issue is not even addressed in court until an application to adopt is made after the birth.

Senator Mazurek suggested that the bill either be returned to its original status or be tabled. Valencia Lane speculated that the House removed the language as they may have viewed it as a burden on the mother. She added that counseling was required before birth in the bill as originally written.

Chairman Pinsoneault said the bill would suggest that direct adoptions are not doing the job. Valencia Lane reminded the Committee that the bill was drafted at the request of private adoption agencies, as those agencies appear to be disturbed that 80 percent of babies are adopted with no control or regulation.

Valencia Lane reported that currently DFS does home studies after placement by the birth mother. Senator Mazurek added that he

believes the bill is a reaction to advertising in the paper. He advised the Committee that in Montana, lawyers and doctors can't engage in arranging placements without a license. He further commented that these private agencies never contacted their counsel before the bill was drafted, and said he believes it is a policy choice which doesn't have merit.

Valencia Lane said she believes it was contemplated that DFS can contract to do home studies, and that the perception is that young mothers are being abused as most are not being represented by counsel, while most adoptive parents are.

Bill Driscoll, Catholic Social Services, stated the birth mother can get counseling from a licensed social worker or psychiatrist, according to language in the bill. He commented that there was a feature requesting that relinquishment in a private situation be signed in front of a judge. Mr. Driscoll reported that he got the agencies to leave this language out of the bill.

Chairman Pinsoneault commented he was sympathetic with Representative Cody. Senator Harp added that he was, too.

Senator Grosfield asked for the number of problem adoptions. Valencia Lane replied she did not know, as did Bill Driscoll. Mr. Driscoll commented that the bill is strictly a policy decision, and that as a matter of public policy, the Committee might want legislation concerning non-agency adoptions.

#### Amendments, Discussion, and Votes:

Senator Harp made a motion that HB 26 be amended to its original state, with the exception of deleting lines 12-18 on page 5.

Senator Grosfield said he as concerned with "shall" and "must" language in the bill. He stated it is too strong and allows no discretion. Valencia Lane addressed Senator Grosfield's concerns, and replied that on page 6, lines 2-4, language states the court can issue any order appropriate to the child.

The motion made by Senator Harp carried unanimously.

Senator Towe made a motion that language include "granting temporary custody to proposed adoptive parents or issuing final decree t adopt", following "child" on page 6, line 4.

The motion made by Senator Towe carried unanimously.

#### Recommendation and Vote:

Senator Harp made a motion that ~~WB~~ 26 BE CONCURRED IN AS AMENDED. The motion carried unanimously.

Senator Mazurek commented that the original House version of the bill could be obtained for inserting the changes.

EXECUTIVE ACTION ON HOUSE BILL 24

Motion:

Discussion:

Valencia Lane provided copies of the amendments proposed by Senator Grosfield (Exhibit #1). She stated the Human Rights Commission decision in Wheeler allows no discriminatory practices in any form, and that because of this ruling files are "sanitized" after preliminary screening. Ms. Lane stated that the prospective mother then could not know the religion, age, marital status, or religion of the adoptive family, and that DFS quit offering infant adoptive services because of this ruling.

Valencia Lane advised the Committee that the Wheeler ruling had the opposite effect of its intent. She stated the bill allows consideration of age, marital status, and religion. She said religion is a fundamental issue and the state cannot interfere without compelling interest, and that this applies to private adoption, as well.

Ms. Lane told the Committee the private agencies are requesting exemptions from the bill. She commented that LDS and Catholic Social Services have an age 40 cut-off.

Senator Grosfield explained he was only interested in amendments 6 and 7 of those he originally proposed. He stated that the effect of amendment 6 is that the DFS or other agencies can discriminate on the basis of age, marital status or religion. He said he believes the basis should be to make adoptions as easy as possible for the birth mother.

Senator Towe asked Senator Grosfield if he were trying to remove the latitude put into the bill. Valencia Lane replied that lines 17-19 were a House amendment, and that a religion-affiliated adoption agency can discriminate on the basis of religion if that is part of the religious policy. She explained that the House amended the bill to clarify original language concerning "non-arbitrary", but that amendment does not change the bill. Valencia Lane advised the Committee the amendment on page 2 is a "kind of flip-flop of that", and is not as good an amendment as it leaves out religious agencies.

Senator Towe said he would like to delete language on page 6 and leave the language at the bottom of page 3 and the top of page 4.

Senator Doherty provided copies of his proposed amendments (Exhibit #2), and said he was concerned about compelling state interest in allowing discrimination based on religion. He explained the amendment would strike the remainder of lines 19 and 20 on page 2, following "religion". He said he was concerned that adoptive parents might not use private agency services if religion cannot be considered.

Senator Crippen said he believes Senator Doherty's amendments more narrowly try to define the scope of the issue, but are not consistent with the wishes of the sponsor of the bill. He commented that he liked the wording of the bill and felt it should be expanded.

Senator Towe stated he liked Senator Doherty's language and hope the Committee would "not give up on this".

Senator Doherty explained he was concerned with not blocking moral people who don't belong to a religion.

Senator Mazurek stated DFS needs to be in the business of adoption to accomplish Senator Doherty's wishes.

Senator Towe proposed deleting lines 17-19 on page 2, leaving lines 19-21, and leaving Senator Doherty's amendment concerning preferences of the natural mother. He further proposed not accepting amendments 3 and 4, but accepting the balance of amendment 5 and the remainder of Senator Doherty's amendments. Senator Towe stated the effect would be to allow religion to be considered as a factor.

Senator Crippen stated preference should be followed when the mother belongs to a religious denomination.

Senator Towe suggested putting "." after "denomination". Valencia Lane advised Senator Towe he needed to clarify the intent of the amendment as it seems to be that the religious affiliation of the private agency should be able to address religious preference. She commented that the bill already allows this.

Valencia Lane asked Senator Towe if he were saying information can be gathered and used only when the mother expresses a desire concerning religion. She stated that if this were so, he was "way late in the game".

Senator Towe commented he liked the idea of specifying the preference of the mother.

Senator Doherty made a motion that his amendments be approved as originally proposed.

Senator Mazurek asked if the amendments would preclude LDS from asking for any religious information from LDS parents. Valencia Lane replied it would not.

Senator Crippen asked what would happen if the amendments are not adopted. Valencia Lane replied that if HB 24 were approved as it came out of the House, it can consider religion on a non-arbitrary basis.

Senator Crippen said he was concerned with the Human Rights Commission and what is arbitrary in one setting and what is not in another. Valencia Lane replied that was a valid concern. She added that "there is a balance test here, and it is a problem".

Senator Doherty advised the Committee he did not want the state to get into the business of discrimination unless there were a compelling state interest. He said the private agencies have a good argument about free exercise and that he did not believe this to be arbitrary.

Senator Crippen commented that a strict, standard test must apply in both public and private adoptions. Valencia Lane added that the question is whether religion is a relative factor in adoptions.

The Committee adjourned to hear Chief Justice Turnage's joint address, and no further action was taken on the bill this date.

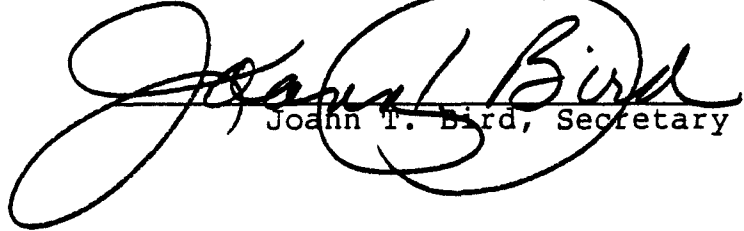
Amendments, Discussion and Votes:

Recommendation and Vote:

ADJOURNMENT

Adjournment At: 11:20 a.m.

  
\_\_\_\_\_  
Senator Dick Pinsonault, Chairman

  
\_\_\_\_\_  
Joahn T. Bird, Secretary

DP/jtb

ROLL CALL

SENATE JUDICIARY

COMMITTEE

52<sup>nd</sup> LEGISLATIVE SESSION -- 1991

Date 5 Feb 91

NAME	PRESENT	ABSENT	EXCUSED
Sen. Pinsoneault	✓		
Sen. Yellowtail	✓		
Sen. Brown	✓		
Sen. Crippen	✓		
Sen. Doherty	✓		
Sen. Grosfield	✓		
Sen. Halligan	✓		
Sen. Harp	✓		
Sen. Mazurek	✓		
Sen. Rye	✓		
Sen. Svrcek	✓		
Sen. Towe	✓		

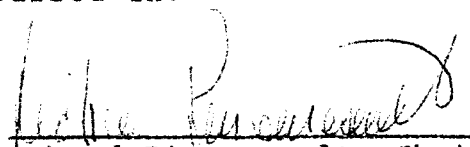
Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT


Page 1 of 1  
February 6, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 25 (third reading copy -- blue), respectfully report that House Bill No. 25 be concurred in.

Signed:   
Richard Pinsoneault, Chairman

 2-6-91  
And. Coord.

 2-6-91  
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

Page 1 of 4  
February 6, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 26 (first reading copy -- white), respectfully report that House Bill No. 26 be amended and as so amended be concurred in:

1. Title, line 8.

Following: "~~HOME~~,"

Insert: "REQUIRING COUNSELING FOR THE BIRTH MOTHER IN AN ADOPTION BY A NONRELATIVE; REQUIRING A PREPLACEMENT INVESTIGATION OR HOME STUDY OF A NONRELATIVE, PROSPECTIVE ADOPTIVE PARENT AND HOME;"

2. Page 3, lines 14 and 15.

Following: "state" on line 14

Strike: remainder of line 14 through "AND" on line 15

3. Page 4, line 2.

Strike: "AND"

4. Page 4, line 4.

Following: "and"

Insert: "(e) that the requirements of [sections 2 and 3] have been met; and"

5. Page 4, line 5.

Strike: "(E)"

Insert: "(f)"

6. Page 5, line 4.

Strike: "(A)"

Insert: "(i)"

7. Page 5, line 7.

Strike: "(B)"

Insert: "(ii)"

Following: "study"

Insert: "or home study"

8. Page 5, line 8.

Strike: "SUBSECTION (3)"

Insert: "[section 2]"

9. Page 5, line 9.

Strike: "(C)"

Insert: "(iii)"

Strike: "ANY"

10. Page 5, lines 10 and 11.

Following: "~~[section 3]~~" on line 10

Strike: remainder of line 10 through "COURT" on line 11

Insert: "in accordance with [section 3]"

11. Page 6, line 4.

Following: "child"

Insert: ", including granting temporary custody to the prospective adoptive parents or issuing a final decree if a petition for adoption has been filed under 40-8-121"

12. Page 8, line 7.

Following: line 6

Insert: "NEW SECTION. Section 2. Placement for adoption by parent -- adoption by nonrelative -- preplacement investigation or home study required of prospective adoptive parent. (1) A prospective adoptive parent who wishes to adopt a child under 46-8-109 shall initiate the nonagency adoption process by requesting an investigation or home study by the department or a licensed child-placing agency. During the investigation or home study process, the department or agency shall provide the prospective adoptive parent information regarding the nonagency adoption process and a copy of [section 3] and this section.

(2) The prospective adoptive parent and the home of the prospective adoptive parent must be studied and evaluated according to the department's or child-placing agency's standards for placement of a child.

(3) The department or child-placing agency that conducts the investigation or home study shall prepare a written report containing the results of the investigation or home study. The report must be attached to and made a part of the report required by 40-8-109(3).

**NEW SECTION.** Section 3. Placement for adoption by parent -- adoption by nonrelative -- birth mother counseling required. (1) In an adoption subject to 46-8-109, counseling of the birth mother is required. Counseling must also be offered to the birth father, if he is known and available.

(2) Counseling must be done by a staff person from the department or a licensed child-placing agency designated to provide this type of counseling.

(3) Counseling must consist of:

(a) an explanation and consideration of alternatives to adoption that are available to birth parents to assist them in determining the best course of action;

(b) detailed information regarding the nonagency adoption process, including reviewing and providing a copy of [section 2] and this section;

(c) a thorough explanation and consideration of the legal and personal impact of terminating parental rights and of adoption; and

(d) the completion of birth parent social and medical history forms.

(4) The counselor shall prepare a written report containing a description of the topics covered and the results of the counseling, including his opinion indicating whether or not the birth parent understood all issues and was capable of informed consent. This report must be completed and filed with the court no later than the date the relinquishment of parental rights is executed.

(5) The counselor's report must be attached to and made a part of the report required by 40-8-109(3)."

Renumber: subsequent sections

13. Page 10, line 13.

Following: "study"

Insert: "or home study"

14. Page 12, line 4.

Following: line 3

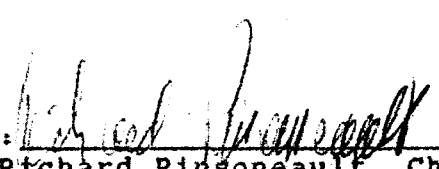
Insert: "(9) 'Home study' means the process of assisting the prospective adoptive parent or family to assess its own readiness to adopt and a determination by the department or a licensed child-placing agency of the compliance of the parent or family and its residence with applicable standards."

Renumber: subsequent subsections

15. Page 12, line 15.  
Strike: "2"  
Insert: "4"

16. Page 12, line 18.  
Strike: "SECTION"  
Insert: "Sections"  
Following: "4"  
Insert: "through 4"  
Strike: "IS"  
Insert: "are"

17. Page 12, line 21.  
Strike: "SECTION"  
Insert: "sections"  
Following: "4"  
Insert: "through 4"

Signed:   
Richard Pinsoneault, Chairman

1-26-91  
Amd. Coord.

SB 2-6  
Sec. of Senate

4:50

LA 00111  
5 Feb 91  
HB 24

Amendments to House Bill No. 24  
Third Reading Copy (Blue)

Requested by Senator Grosfield  
For the Committee on Judiciary

Prepared by Valencia Lane  
February 4, 1991

1. Page 2, line 2.  
Strike: "interdependent"

2. Page 2, line 3.  
Following: "of"  
Insert: "the birth mother or, when both are available, the"  
Following: "birth parents"  
Insert: "and with due consideration to the interdependent needs  
and interests of the birth parents"

3. Page 2, line 6.  
Following: "proceeding"  
Strike: ". Factors"  
Insert: ", including factors"

4. Page 2, lines 8 and 9.  
Following: "stability" on line 8  
Strike: remainder of line 8 through "considered" on line 9

5. Page 2, line 11.  
Following: "may"  
Insert: "also"  
Following: "considered"  
Insert: ", especially when recognized to be consistent with the  
needs and interests of the birth mother or, when both are  
available, the birth parents"

6. Page 2, lines 17 through 19.  
Following: "(c)" on line 17  
Strike: remainder of line 17 through "AGENCY," on line 19

7. Page 3, line 5.  
Strike: "natural"  
Insert: "birth"

EXHIBIT 2  
Doherty  
Amend.  
5 Feb 91  
HB 24

Amend House Bill 24 (third reading copy) as follows:

1. Page 1, lines 11-12.

Following: "CONCERNING"

Strike: "FACTORS THAT MIGHT OTHERWISE BE PROHIBITED"

Insert: "AGE, MARITAL STATUS, AND RELIGION"

2. Page 2, line 19.

Following: "religion,"

Strike: the remainder of lines 19 through 21 in their entirety

Insert: "as it relates to the express preference of a natural parent to have a child placed or of a child to be placed with adoptive parents of a particular religious faith or denomination when the natural parent or the child expressing the preference is a member of that faith or denomination."

3. Page 3, line 1.

Following: "age"

Strike: ", "

Insert: "and"

Following: "status"

Strike: ", and religious beliefs"

4. Page 3, lines 5-6.

Following: "age"

Strike: ", "

Insert: "or"

Following: "status"

Strike: ", or religious beliefs"

5. Page 3, lines 7-10.

Strike: Lines 7-10 in their entirety.

Insert: "The department and licensed child-placing agencies that are not affiliated with a particular religious faith are authorized to gather and use information concerning the religious beliefs of prospective adoptive parents only when a natural parent or a child who is a member of a particular religious faith or denomination has made an express preference to have a child placed or to be placed with adoptive parents of that faith or denomination. Licensed child-placing agencies that are affiliated with a particular religious faith or denomination are not prohibited by this section from considering the religious beliefs of prospective adoptive parents or other religious factors."

6. Page 3, line 16.

Following: "shall"

Strike: "must include"

Insert: "includes"

Following: "but"

Insert: "is"

Following: "not"

Strike: "be"

7. Page 3, line 23 through page 4, line 3.

Following: "proceedings of"

Strike: the remainder of line 23 through page 4, line 3 in its entirety.

Insert: "information authorized by [section 1]."

8. Page 5, lines 14-16.

Following: "proceedings of"

Strike: the remainder of lines 14 through 16 in their entirety.

Insert: "information authorized by [section 1]."

9. Page 6, lines 5-10.

Following: "proceedings to"

Strike: the remainder of lines 5 through 10 in their entirety.

Insert: "information authorized by [section 1]."

10. Page 7, lines 11-12.

Following: "proceedings of"

Strike: the remainder of lines 11 through 12 in their entirety.

Insert: "information authorized by [section 1]."

ROLL CALL VOTE

SENATE COMMITTEE

JUDICIARY

Date 2-5-91 Bill No. HB 24 Time 11:15am

NAME	YES	NO
Sen. Brown		✓
Sen. Crippen		✓
Sen. Doherty	✓	
Sen. Grosfield		✓
Sen. Halligan	✓	
Sen. Harp		✓
Sen. Mazurek		✓
Sen. Rye		✓
Sen. Svrcek	✓	
Sen. Towe		✓
Sen. Yellowtail	Excused - no vote	
Sen. Pinsoneault		✓
	3	8

Jody Bird  
Secretary

Sen. Dick Pinsoneault  
Chairman

Motion:

Doherty - amendments

motion failed