

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN RUSSELL FAGG, on January 7, 1993, at 8:00 a.m.

ROLL CALL

Members Present:

Rep. Russ Fagg, Chairman (R)
Rep. Randy Vogel, Vice Chairman (R)
Rep. Dave Brown, Vice Chairman (D)
Rep. Ellen Bergman (R)
Rep. Jody Bird (D)
Rep. Vivian Brooke (D)
Rep. Bob Clark (R)
Rep. Duane Grimes (R)
Rep. Scott McCulloch (D)
Rep. Jim Rice (R)
Rep. Angela Russell (D)
Rep. Tim Sayles (R)
Rep. Liz Smith (R)
Rep. Bill Tash (R)
Rep. Howard Toole (D)
Rep. Tim Whalen (D)
Rep. Karyl Winslow (R)
Rep. Diana Wyatt (D)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Council
Beth Miksche, Committee Secretary

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

Committee Business Summary:

Hearing: HB 66, 67, 90
Executive Action: HB 66, 67, 38

HEARING ON HB 66Opening Statement by Sponsor:

REP. VICKI COCCHIARELLA, HD 59, Missoula, said that HB 66 is being presented to protect those professionals who are making serious allegations about law enforcement personnel and their immediate superiors. It will provide some immunity in a lawsuit.

Proponents' Testimony:

Hank Hudson, Director, Department of Family Services. DFS investigates allegations of abuse and neglect with children and adults. It operates within its policies and the laws of the State.

Mr. Hudson also believes that there should be an understanding with those who are responsible for investigating these delicate issues. He feels very strongly that DFS employees shouldn't be subject to litigation while performing the task. If they operate outside the law, they should be held accountable for that.

Mr. Hudson introduced Ann Gilkey, Legal Counsel, DFS. EXHIBIT 1

Opponents' Testimony: None.

Informational Testimony: None.

Questions From Committee Members and Responses:

REP. HOWARD TOOLE asked Ms. Gilkey if HB 66 was presented to create absolute immunity. He also commented that he believes it adds little protection to what's already in the law. Ms. Gilkey agreed, but stated HB 66 does not create absolute immunity.

REP. RANDY VOGEL asked Ms. Gilkey how many claims and lawsuits have been made against DFS. Ms. Gilkey said three lawsuits and 24 potential claims and believes this number is too high for a state agency.

REP. TIM SAYLES asked Ms. Gilkey if the intent of this bill is to protect the person reporting child abuse or neglect. Ms. Gilkey said that the intent is to protect any reporter suspecting child abuse or neglect regardless of whether it's substantiated or not. The reporter should have immunity.

REP. TIM WHALEN asked Ms. Gilkey if anyone from the public has been sued due to the lawsuits presented to DFS. Ms. Gilkey is not aware of any public person being sued by the State for reporting a crime such as child neglect or abuse.

Closing by Sponsor:

REP. COCCHIARELLA believes this bill relieves an aggrieved party's right to file a claim, alleging that the reporter or investigator acted improperly.

HEARING ON HB 67Opening Statement by Sponsor:

REP. COCCHIARELLA opened HB 67. She said the bill addresses the appointment of an attorney as guardian where children are involved in legal proceedings. The bill clarifies that DFS staff are not appropriate representatives of children in certain instances. REP. COCCHIARELLA introduced Ann Gilkey, Legal Counsel, DFS, to continue with the statement.

Proponents' Testimony:

Ann Gilkey, Legal Counsel, DFS. EXHIBIT 2

Hank Hudson, DFS, said one of the main concerns of HB 67 is the increasing number of abuse and neglect reports, the increasing numbers of investigations, and the heavy workload the protective services workers have. Mr. Hudson recommended the rules be clarified to avoid conflicts of interest, and also to limit DFS' role to those areas clearly mandated under the bill. Mr. Hudson feels there's a conflict of interest involved in the part that represents the child. He also believes that, in divorce cases where there may not be any abuse or neglect, for example, that it's not proper for the State, nor DFS, to be given the responsibility as guardian.

Opponents' Testimony: None.

Informational Testimony: None.

Questions From Committee Members and Responses:

REP. TOOLE asked Ms. Gilkey how many cases will be affected if DFS is no longer appointed by the District Judges to do home studies. Ms. Gilkey said the number of cases varies from region to region, county to county, but it appears that it averages 10 to 15 cases a year with an estimate of 40 hours per case of the staff's time to conduct an investigation. REP. TOOLE was concerned that DFS doesn't have the resources to work with certain cases. Ms. Gilkey said that there are varying degrees of resources available in each county. If there is only one social worker from DFS in the outlying community, that social worker would work his case load on his own time and get paid for it.

Closing by Sponsor:

REP. COCCHIARELLA said the limited staff and resources of DFS are being spread too thin. HB 67 will help agency staff focus on their mandated responsibilities - to provide child protective services with no threat of a conflict of interest.

HEARING ON HB 90

Opening Statement by Sponsor:

REP. MARJORIE FISHER, HD 3, Whitefish introduced HB 90. She stated it is a bill clarifying a person's right to use deadly force in preventing rape. State law already permits use of lethal force to prevent commission of a forcible felony, a category that includes rape. But, because the bill allows deadly force to prevent the "imminent commission" of rape, critics said it might encourage people to use deadly force in situations where it would not be necessary or appropriate. Rep. Fisher said there's a "gray area" in the law, and the bill seeks to fix it.

Proponents' Testimony:

Diane Sands, Montana Women's Lobby. EXHIBIT 3

Opponents' Testimony: None.

Informational Testimony: None.

Questions From Committee Members and Responses:

REP. TOOLE asked Ms. Sands what the "gray area" really is. Ms. Sands said that the "gray area" in the bill may be interpreted as date rape, and that it should be clarified as such.

Closing by Sponsor:

There were no closing words from REP. FISHER.

EXECUTIVE ACTION ON HB 66

Motion/Vote: REP. BOB CLARK MOVED HB 66 DO PASS. Motion carried with REPS. VOGEL, WHALEN, BROWN, BIRD, WYATT voting no.

EXECUTIVE ACTION ON HB 67

Motion: REP. BROWN MOVED HB 67 DO PASS.

Discussion: REP. BROWN said he has varying degrees of confidence in some employees who work for DFS, and he is not overly supportive of this bill. He offered to amend the bill and strike Section 2 to provide rural areas with adequate coverage. The amendments would read:

1. Title, lines 7 through 9 Strike: "PROHIBITING" on line 7 through "INVESTIGATION;" on line 9
2. Title, line 10. Strike: "40-4-215,"
3. Page 2, line 1 through line 19 of page 3. Strike: section 2 of the bill in its entirety. Renumber: subsequent sections.

Vote: Motion carried with REP. BIRD voting no.

EXECUTIVE ACTION ON HB 38

Motion: REP. WYATT MOVED HB 38 DO PASS.

Discussion:

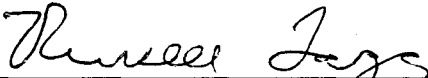
REP. TOOLE asked John MacMaster if we are penalizing ethics violations. Mr. MacMaster said that what the code of ethics 2-2-121 does is prohibit specific things. Mr. Seacat testified that there is no penalty in that chapter of the law right now. What this is going to do is penalize them by making them a misdemeanor. REP. TOOLE asked Mr. MacMaster what we are penalizing, and Mr. MacMaster said he would find out as we did not have the MCA books in the committee meeting room.

REP. VIVIAN BROOKE hopes the committee can add to HB 38. REP. JIM RICE thinks the bill needs a closer look, and REP. TOOLE also said it should be studied further.


Motion/Vote: REP. DAVE BROWN MOVED HB 38 BE TABLED. Motion carried.

ADJOURNMENT

Adjournment: 10:30 a.m.



RUSSELL FAGG, Chair



BETH MIKSCHÉ, Secretary

RF/bcm

HOUSE STANDING COMMITTEE REPORT

January 7, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 66 (first reading copy -- white) do pass.

Signed: _____

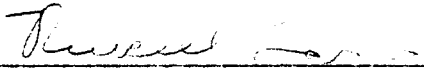
Russ Fagg, Chair

HOUSE STANDING COMMITTEE REPORT

January 11, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 67 (first reading copy -- white) do pass as amended .

Signed: 
Russ Fagg, Chair

And, that such amendments read:

1. Title, lines 7 through 9.

Strike: "PROHIBITING" on line 7 through "INVESTIGATION;" on line
9

2. Title, line 10.

Strike: "40-4-215,"

3. Page 2, line 1 through line 19 of page 3.

Strike: section 2 of the bill in its entirety

Renumber: subsequent sections

HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

ROLL CALL VOTE

DATE 1-7-93 BILL NO. HB 66 NUMBER 18

MOTION: COCCHIARELLA

DO PASS

NO AMENDMENTS

NAME	AYE	NO
Rep. Russ Fagg, Chairman	X	
Rep. Randy Vogel, Vice-Chair		X
Rep. Dave Brown, Vice-Chair	X	
Rep. Jodi Bird		X
Rep. Ellen Bergman	X	
Rep. Vivian Brooke		X
Rep. Bob Clark	X	
Rep. Duane Grimes	X	
Rep. Scott McCulloch	X	
Rep. Jim Rice	X	
Rep. Angela Russell	X	
Rep. Tim Sayles	X	
Rep. Liz Smith	X	
Rep. Bill Tash	X	
Rep. Howard Toole	X	
Rep. Tim Whalen		X
Rep. Karyl Winslow	X	
Rep. Diana Wyatt		X

HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

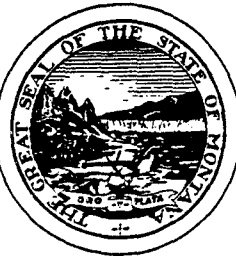
ROLL CALL VOTE

DATE 1-7-93 BILL NO. NB 67 NUMBER 18MOTION: DO PASS AS AMENDED

NAME	AYE	NO
Rep. Russ Fagg, Chairman	X	
Rep. Randy Vogel, Vice-Chair	X	
Rep. Dave Brown, Vice-Chair	X	
Rep. Jodi Bird		X
Rep. Ellen Bergman	X	
Rep. Vivian Brooke	X	
Rep. Bob Clark	X	
Rep. Duane Grimes	X	
Rep. Scott McCulloch	X	
Rep. Jim Rice	X	
Rep. Angela Russell	X	
Rep. Tim Sayles	X	
Rep. Liz Smith	X	
Rep. Bill Tash	X	
Rep. Howard Toole	X	
Rep. Tim Whalen	X	
Rep. Karyl Winslow	X	
Rep. Diana Wyatt	X	

EXHIBIT # 1
DATE 1-2-93
HB 66

DEPARTMENT OF FAMILY SERVICES



MARC RACICOT, GOVERNOR

(406) 444-5900
FAX (406) 444-5956

STATE OF MONTANA

HANK HUDSON, DIRECTOR
JESSE MUNRO, DEPUTY DIRECTOR

PO BOX 8005
HELENA, MONTANA 59604-8005

DEPARTMENT OF FAMILY SERVICES
Testimony regarding HB 66

Submitted by Ann Gilkey, Legal Counsel

The Department of Family Services is named in many lawsuits annually. Last year there were 24 claims and three lawsuits filed against the department. A portion of these involve allegations of wrongful conduct by an investigator during an investigation of suspected child abuse or neglect. The state is mandated to investigate all referrals of suspected child abuse or neglect, regardless of the community reputation of the alleged perpetrator, or the social worker's opinion of the severity of the situation. The constant threat of litigation for simply performing their duties makes an already stressful job nearly intolerable for some dedicated professionals.

HB 66 amends 41-3-203 which already extends limited immunity to a person reporting child abuse or neglect, or a person investigating a report of child abuse or neglect. HB 66 clarifies that the reporters referred to in this statute specifically include the professional people who are required to report any suspected child abuse or neglect under section 41-3-201. It clarifies further that the investigators referred to are the social worker, county attorney or peace officer who are legally required by 41-3-202 to promptly conduct a thorough investigation of any report of suspected abuse or neglect.

HB 66 also creates a rebuttable presumption of good faith and no malicious purpose for individuals who report or investigate child abuse or neglect. The existing statute allows an exception to immunity if the reporter or investigator acts maliciously or in bad faith. The bad faith exception will still exist, but such an allegation will now have to be supported by the evidence.

I urge you to support HB 66 as a bill that will help protect people who are required by law to report or investigate allegations of suspected child abuse or neglect. This bill in no way removes an aggrieved party's right to file a claim alleging that the reporter or investigator acted improperly, but simply puts the burden of proof for an allegation of bad faith or malicious intent on the claimant.

DEPARTMENT OF FAMILY SERVICES

EXHIBIT #2
DATE 1-7-93
HB 67



MARC RACICOT, GOVERNOR

(406) 444-5900
FAX (406) 444-5956

STATE OF MONTANA

HANK HUDSON, DIRECTOR
JESSE MUNRO, DEPUTY DIRECTOR

PO BOX 8005
HELENA, MONTANA 59604-8005

DEPARTMENT OF FAMILY SERVICES Testimony regarding HB 67

Submitted by Ann Gilkey, Legal Counsel

HB 67 is a piece of legislation that is important to the Department of Family Services. Existing law provides that children shall have representation in legal proceedings when their interests are affected. HB 67 does not impact that right, but clarifies that DFS staff are not appropriate representatives of children in certain instances.

Section 1 prohibits DFS staff from being appointed to represent the interests of a child in support, custody or visitation when his or her parents are involved in a divorce. Section 2 prohibits the court from ordering DFS from conducting home studies for divorcing parents, but allows DFS to share any information relevant to the best interests of the child with the person conducting the home study. Section 3 prohibits DFS staff from being appointed as guardian ad litem for a paternity action. Section 4 prohibits DFS staff from being appointed guardian ad litem in an abuse or neglect judicial proceeding.

These amendments to existing law will help the state avoid a conflict of interest when the department may have a legal responsibility to protect an abused or neglected child who may also be involved in his or her parent's divorce, paternity or abuse and neglect proceedings. Agency staff cannot adequately represent a child in a legal proceeding when wearing another, protective services hat.

The amendments in this bill also address the growing concern of the agency that it is having difficulty meeting its legally mandated responsibilities, such as investigating referrals of child abuse or neglect. Being ordered to perform these other services for the public, that may not be related to any child abuse or neglect, takes a tremendous amount of staff time away from the more critical needs of Montana's youth. The limited staff and resources of DFS are being spread too thinly. HB 67 will help agency staff focus on their mandated responsibilities to provide child protective services, with no threat of a conflict of interest.

HOUSE OF REPRESENTATIVES

WITNESS STATEMENT

PLEASE PRINT

NAME DIANE SANDS BILL NO. HB 90

ADDRESS _____ DATE 1/7/93

WHOM DO YOU REPRESENT? MT Women's Lobby

SUPPORT X OPPOSE _____ AMEND _____

COMMENTS: _____

1) reasonable clarification of existing allowable use of force - if there is any question - it was our understanding last session when a similar bill was introduced that use of force under these circumstances was already covered under (2) "the commission of a forcible felony"

2) Comments -
~~that~~ Sexual assault is a crime that by its nature has life long impacts on the victim. Attack on bodily integrity & spirit is devastating - & most victims will tell you that if they could have they would have killed their assailant.

More
Violence is not the solution to sexual violence. Punishing is not our idea of the solution. Attention to prevention & treatment of sex offenders is a necessity.

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Judiciary COMMITTEE BILL NO. 4066
DATE 1-7-93 SPONSOR(S) Cocchiarella

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Ann Gilkey	Dept. Law Services	X	
Marge Fisher	Rep.		
Hank Hudson	DFS	X	
Bill Gianonibus	RMTD	X	
Don Waldron	WREA	X	
Maryanne	no Clinical Medical Health Councils admin		

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Judiciary COMMITTEE BILL NO. 4667
DATE 1-7-93 SPONSOR(S) Cocchiarella

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Ann Gilkey	DFS	X	
Frank Hudson	DFS	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

**HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER**

Judiciary

COMMITTEE

BILL NO. 4290

DATE 1-7-93 SPONSOR(S) Fisher

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

[illegible]

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.