

MINUTES

MONTANA SENATE 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Bill Yellowtail, on January 15, 1993, at 10:00 a.m.

ROLL CALL

Members Present:

Sen. Bill Yellowtail, Chair (D)
Sen. Steve Doherty, Vice Chair (D)
Sen. Sue Bartlett (D)
Sen. Chet Blaylock (D)
Sen. Bob Brown (R)
Sen. Bruce Crippen (R)
Sen. Eve Franklin (D)
Sen. Lorents Grosfield (R)
Sen. Mike Halligan (D)
Sen. John Harp (R)
Sen. David Rye (R)
Sen. Tom Towe (D)

Members Excused: Sen. Harp, Sen. Grosfield

Members Absent: NONE

Staff Present: Valencia Lane, Legislative Council
Rebecca Court, Committee Secretary

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

Committee Business Summary:

Hearing: SB 23
SB 70
Executive Action: NONE

HEARING ON SB 23

Opening Statement by Sponsor:

Senator Aklestad, District 6, opened stating SB 23 deals with investigation in the removal of children when there is suspected child abuse or neglect. The child's wellbeing is the prime concern and SB 23 adheres to that, but also takes into consideration the good parents throughout the state of Montana. In some cases, parents and children have been unduly harmed by the situation of taking a child out of the home. Senator Aklestad told the Committee about the changes in SB 23. SB 23

strikes the language from "reasonable cause to suspect" and inserts "reasonable grounds to believe" on page 2 line 5. Also, on page 5 line 19 we add a third party during an audio or video interview. This person would already be involved in the case and would alleviate the problem of getting someone else involved. Page 7 line 24 deals with notifying parents within four hours after the child is taken.

Proponents' Testimony:

Harley Warner, Montana Association of Churches, stands in support of SB 23 for various reasons. Mr. Warner stated that the Montana Association of Churches not only supports the prevention of child abuse and neglect, but also promotes the strengthening of families. When children are removed from a home without reasonable cause it may tear a family apart, especially if there was not reasonable cause to begin with. SB 23 will help in protecting the family while still protecting the children. Mr. Warner rose in support of SB 23.

Opponents' Testimony:

NONE

Questions From Committee Members and Responses:

Senator Halligan asked Senator Aklestad which department SB 23 refers to. Senator Aklestad told the Committee it is the Department of Family Services.

Senator Halligan asked Senator Aklestad about page 2 line 8. Senator Aklestad said striking "Family Services" clarifies SB 23.

Senator Halligan asked Ann Gilkey about striking "reasonable cause to suspect" and inserting "reasonable grounds to believe." Ms. Gilkey told the Committee "believe" is different from "suspect" and it could raise the level of suspicion of when someone reports.

Senator Halligan asked Ann Gilkey about page 5 line 19 through 24. Ms. Gilkey replied in a video tape situation there is now a law enforcement officer or someone else in the room during an interview. The audio tape is not widely used, but would require a third party to be present.

Senator Halligan asked Senator Aklestad who the third party would be. Senator Aklestad replied someone beside a parent who is directly involved would be the third party. This would involve less people in a private matter.

Senator Halligan questioned Senator Aklestad about clarifying who the third party was. Senator Aklestad stated that SB 23 is flexible in saying who the third party is and would leave it up

to the Department to decide. The main concern of SB 23 is having a third party at the interview.

Senator Doherty asked about the confidentiality and the cost of the videotaping. Ann Guilkey said the law enforcement agencies keep the tapes. Statutes protect the videotapes from anyone seeing those tapes except those who need them for treatment reasons. Law enforcement has confidentiality statutes that protects the tapes. The cost would vary depending on the type of videotaping, who wants it, and for what purpose.

Senator Blaylock asked if SB 23 is a result of problems in Montana. Senator Aklestad replied a few problems have arisen. This is not a problem of magnitude, but the Legislators should try to strengthen the law to protect the people who are innocent.

Senator Blaylock asked Senator Aklestad to clarify the strongest reasons of changing SB 23. Senator Aklestad replied the strongest changes in SB 23 is changing the language to read, "reasonable ground to believe," notifying parents four hours after a child is taken, and "having a third party present at the interview."

Senator Halligan stated that by changing the standard to "reasonable cause to believe" a person would have to see a sign of abuse themselves rather than reporting on hearsay. There are differences in terms of the standard of care that the professionals are required to report and will have to follow those standard. There has to be enough reasonable cause to intervene in families and we have to have a higher standard for a reasonable cause to believe.

Closing by Sponsor:

Senator Aklestad stated the child's wellbeing is still the main concern. SB 23 would take care of the concerns of good parents that are being treated under the law but unduly prosecuted. Senator Aklestad further stated that in Montana we are not dealing with a lot of people, but enough to warrant the changes found in the bill.

HEARING ON SB 70

Opening Statement by Sponsor:

Senator Brown, District 2, stated that SB 70 provides that a court may not make a disposition in a child abuse, neglect, or dependency proceeding that requires an expenditure of money by the Department of Family Services, unless the Department approves of the expenditure. The state is facing tight budget restraints and the Department of Family Services is concerned that it may be required by court order to do things that are beyond its mission. Budgeting problems arise when the Department of Family Services is required to pay for services that are not necessary, or when

there are alternative resources available.

Proponents' Testimony:

Ann Gilkey, Department of Family Services, read from written testimony. (Exhibit #1)

Opponents' Testimony:

Ed McLean, District Judges Association and Judge of the Fourth Judicial District, stated there is a problem with legislation that limits the costs for the Department of Family Services. The concerns and objections, are that if a youth needs treatment, we must be able to provide that treatment. If someone brings in a youth who needs care, we can not allow the Department of Family Services to say they can not treat that youth, outside of these parameters without approval.

Jim Smith, Juvenile Probation Officers and Montana Residential Child Care Association, said the concern of SB 70 is the children who are involved in abusive or neglectful situations that would not receive services that they are entitled to. Half way through the fiscal year the Department of Family Services might adopt restrictive policies because of funding. For example one child will not receive care until another child comes out of care. In other words, the Department will not spend a dollar on a child until it quits spending money on another child. These are the realities we have been living with and do not feel SB 70 would help the children.

Richard Meeker, Chief Probation Officer of the first Judicial District, stated that SB 70 will have a future impact on the children that are abused or neglected because they will not receive appropriate services at the earliest possible moment. If the department runs low on funds it would restrict services to needy children. If the money is not available to treat a child who has been abused or neglected, we would have to find another alternative to effectively treat that child.

Joe Connell, Juvenile Probation Officer, stated the interest in SB 70 is that consideration be given to specific language to insure that the mandate given to the Department of Family Services protects the service workers in conjunction with County Attorneys in District Courts. Mr. Connell said that a recommendation that an agency work with the judges in the district courts and have assurance that when the legislation passes the department could refer the children for an opportunity to receive protective services. These services would be recommended by field workers and the professionals doing the evaluating after being decided upon by a district court judge.

Questions From Committee Members and Responses:

Senator Doherty asked Judge McLean if Judge Warner was opposed to SB 70. Judge McLean answer that he was.

Senator Doherty asked Judge McLean about the abuses in the Court. Judge McLean said he is not aware of any abuse. However, it would be an abuse if the Court was ordering the Department of Family Services to pay for services that should not be required or sending out impossible orders because of certain constraints.

Ann Gilkey responded to the same question. When the Department of Family Services receives an order from the District Court they have to carry out the order even if it conflicts with Montana Statutes. With the passage of SB 70 the Department of Family Services could not ignore an order from a District Court Judge, but it would allow the Court and the Department to negotiate on the treatment of a youth.

Senator Doherty asked Ann Gilkey how much so called abuses by the Court have been costing. Ann Gilkey said she could not give a dollar amount. Ann Gilkey stated examples from (Exhibit #1).

Senator Rye asked Senator Towe about Tribal Courts. Senator Towe said on the reservation the tribal court would take precedent over a district court's order. If the parties are subject to tribal court jurisdiction there would not be jurisdiction in a district court.

Senator Rye asked Senator Towe if the state legislature has the authority to dictate to a Tribal Court. Senator Towe said that Indian tribes are a separate sovereign nation from a jurisdictional standpoint.

Senator Blaylock asked Senator Brown why the SB 70 was before the legislature. Senator Brown replied the Department of Family Services is trying to protect its budget in this time of crises and it has less money to spend to accomplish its mission. The Department of Family Services wants to be a party in deciding what services should be in their department. Senator Brown said SB 70 would not be before the legislature if it was not for the budget crises which the State of Montana faces.

Senator Halligan asked Hank Hudson, the Director of Family Services, about the training of the social workers. Mr. Hudson said the Department of Family Services recognizes that treatment plans must be designed realistically so there is a reasonable chance of success. Training is one activity the department has set aside money for. The department needs to stop diverting money that is used to train people, and develop alternative tools for social workers to use so that every case does not end in a treatment plan or a child in foster care.

Senator Halligan asked Mr. Hudson about his thoughts in bringing agencies involved with children together. Mr. Hudson said the

mission of all the agencies that deal with children need to be to keep families together. The coordination of the juvenile justice system has been an issue since the department was created. The best hope in keeping the agencies working together is not by overpowering one, but through cooperation.

Senator Halligan asked Mr. Hudson about a separate notice given to the judges concerning the families financial situation. Mr. Hudson replied that should be done, so if a family has the resources to pay, they would.

Senator Towe asked Ann Gilkey if she would accept a proposed amendment that would read, "any action that requires the expenditure of money by the department may not be ordered without first consulting the department regarding the required expenditures." Ann Gilkey replied that the amendment would help.

Senator Towe asked Ann Gilkey whether the concern was being able to participate in a discussion with a judge so the Department could explain the problems before an order takes place. Ann Gilkey replied that is the main concern. Ms. Gilkey also stated that if a judge ordered something that the department did not think was appropriate they would not have any recourse if SB 70 does not pass.


Senator Towe asked Ms. Gilkey if the Department of Family Services could appeal. Ms. Gilkey replied that the Department can appeal, but has to stay within its budget.

Closing by Sponsor:

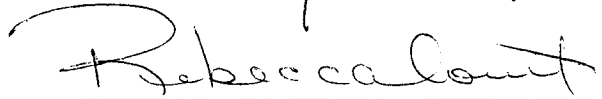
Senator Brown told the Committee that Judge McLean would work with the Department of Family Services and Valencia Lane on amendments that Senator Towe proposed.

ADJOURNMENT

Adjournment: 11:23 a.m.



BILL YELLOWTAIL, Chair



REBECCA COURT, Secretary

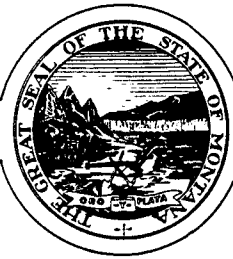
BY/rc

ROLL CALL

SENATE COMMITTEE Judiciary DATE 1-15-93

NAME	PRESENT	ABSENT	EXCUSED
Senator Yellowtail	X		
Senator Doherty	X		
Senator Brown	X		
Senator Crippen	X		
Senator Grosfield	X		X
Senator Halligan	X		
Senator Harp			X
Senator Towe	X		
Senator Bartlett	X		
Senator Franklin	X		
Senator Blaylock	X		
Senator Rye	X		

DEPARTMENT OF FAMILY SERVICES



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STATE OF MONTANA

HANK HUDSON, DIRECTOR
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January 15, 1993

DEPARTMENT OF FAMILY SERVICES TESTIMONY IN SUPPORT OF SB 70

Submitted by Ann Gilkey, Legal Counsel

Although great strides have been made, the Department of Family Services continues to struggle as an underfunded, understaffed agency charged with the monumental task of providing protective services to youth, the elderly, and Montanans with developmental disabilities while staying within its limited budget. Scarce resources and skyrocketing caseloads make budget management a nightmarish task for the agency's administrators. Any additional control over the budget would not only be welcomed by the administrators, but should also be encouraged by the public, to whom the agency is accountable.

SB 70 is a budget management bill. It prohibits the court from making ad hoc decisions regarding services for department clients and then ordering the agency to pay for those services without the agency's approval.

Examples of the types of expenditures that this amendment would address include: orders to pay for evaluations, therapy or alcohol treatment of people who have insurance or other resources; orders to pay for expert witness fees that are statutorily charges to the county; paternity testing; and transportation for parents to attend hearings.

Nothing in HB 70 prohibits negotiations regarding payment of some of these types of services. In fact, the agency frequently offers payment when there is no other source for payment, or the agency has an interest in having the service provided. The intent of SB 70 is NOT to deny necessary services to needy clients, but is simply to provide the agency a tool to help it manage its budget.

On behalf of the Department of Family Services, I strongly urge your support of SB 70.

CLERK JUDITH

1-15-93

SB 70

Department of Family Services
Proposed Amendment to SB 70

1. Page 4, line 15.

Following "counseling"

Insert: "that does not require an expenditure of money by the
department unless the department approves the expenditure"

DEPARTMENT SECRETARY

DATE 2
1-15-93
SB 70

DATE 1-15-93

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: SB 23 - ^{Serv.} Akkstad
S.B. 70 - ^{Serv.} Brown

Name	Representing	Bill No.	Check One	
			Support	Oppose
Ann Gilling	DFS	SB 70	X	
M. Mark ^{Leh}	LPS Soc Sec	SB 23	X	
HARLEY WARREN	ASSOC. OF CHURCHES	SB 23		
Ed McLean	District Courts	SB 70		X
Dick MECKER	Juv. Prob.	S.B. 70		X
Jim SMITH	Juv. Prob. & MRCCA	SB 70		X
JUDITH CARLSON	MT CHD; N.A. Sec LK	SB 23		
J. Joe CONNELL	Juv PO	SB 70		X

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY