

MINUTES

**MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By Sen. Bill Yellowtail, on January 29, 1993, at 10:05 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: NONE

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: HB 66
HB 67
SB 41

Executive Action: NONE

HEARING ON HB 66

Opening Statement by Sponsor:

Representative Cocchiarella, District 59, told the Committee that HB 66 protects law enforcement, social workers, and other professionals who investigate child abuse and neglect from liability for investigative work that they perform. HB 66 does not take away the persons right to make a claim that an investigation or a report was done in bad faith or maliciously. It requires that a person has grounds for making such allegations

when an investigation is done.

Proponents' Testimony:

Ann Guilkey, Department of Family Services, read from prepared testimony. (Exhibit #1)

Opponents' Testimony:

NONE

Questions From Committee Members and Responses:

NONE

Closing by Sponsor:

Representative Cocchiarella closed.

HEARING ON HB 67

Opening Statement by Sponsor:

Representative Cocchiarella, District 59, told the Committee that section 2 would be amended out and the original language would be put back into the bill. HB 67 asks that the courts not assign the Department of Family Services to represent a child if they already have been investigating the family in an abuse or neglect situation. That causes a conflict of interest for that person who has been appointed by the Department of Family Services. The amended section in HB 67 prohibits the court to order the Department of Family Services staff to conduct home studies for divorce or custody proceedings. The Department of Family Services is overburdened with reports of child abuse and neglect. The reports are not being taken care of because the courts are ordering the Department of Family Services to conduct investigations for divorce proceedings.

Proponents' Testimony:

Ann Guilkey, Department of Family Services, read from prepared testimony. (Exhibit #2)

Opponents' Testimony:

NONE

Questions From Committee Members and Responses:

Senator Blaylock asked Ann Gilkey about section 2. Ms. Gilkey said the Department is requesting that the language in the original bill be put back in.

Senator Blaylock asked Ms. Gilkey who would investigate divorce

proceedings. Ms. Gilkey said that presently the agency is being ordered to conduct home studies for divorcing people and are allowed to charge \$250 per home. That money is most often waived, and the Department is ordered to conduct the investigations for free. The people who would be available to conduct investigations would be a licensed social worker who would be paid by the person who has the home study done.

Senator Blaylock asked Ms. Gilkey if the court could force social workers to do an investigation for free. Ms. Gilkey said she did not know if a court could hire a private individual to conduct an investigation for free. The court can order a state agency to do it for free, but not a private individual.

Senator Bartlett asked Representative Cocchiarella why section 2 was amended out. Representative Cocchiarella said that poor people could not have a home investigation for child custody. There are alot of abuse and neglect cases that are not being investigated because the Department is being ordered to do home studies for custody or divorce situations.

Senator Bartlett asked Ann Gilkey about investigations with divorce proceeding when abuse or neglect is also a consideration. Ms. Gilkey said that the language prohibits the agency from conducting home studies, even if the agency is involved in an abuse or neglect case. The agency should not do the home study because it would be a conflict of interest.

Senator Bartlett asked Ms. Gilkey about resources concerning the home studies. Ms. Gilkey said the Department of Family Services only gets paid for approximately half of the home studies that are done.

Senator Blaylock asked Representative Cocchiarella about striking Section 2. Representative Cocchiarella said section 2 needs to be put back in HB 67 with the new language.

Chair Yellowtail asked Ann Gilkey to work with Senator Blaylock and Senator Bartlett on an amendment for section 2.

Closing by Sponsor:

Representative Cocchiarella told the Committee that HB 67 talks about a conflict of interest and that it makes it hard for the Department of Family Services to do their job. Section 2 needs to be amended with the new language.

HEARING ON SB 41

Opening Statement by Sponsor:

Senator Burnett, District 42, said that SB 41 is not to destroy the Department of Family Services, but to strengthen it. Senator Burnett told the Committee the Department of Family Services has the compassion of the Internal Revenue Service. The intent of SB

41 is to change child abuse from a civil action to being a criminal action. Child abuse is a crime and at the present time the Department of Family Services is not looking at the evidence to prove child abuse or neglect.

Proponents' Testimony:

John Foster, a licensed professional counselor in private practice, has worked in the youth courts system for twelve years. Mr. Foster deals with child abuse regularly. Child abuse has come into the forefront of our society over the last few years. To cope with child abuse, laws have been made and the Department of Family Services was created. The Department of Family Services has the authority to investigate claims made concerning child abuse. Individuals are being abused by the Department of Family Services in these investigations when there is no evidence to back up the claim of child abuse. With the present law anyone can report child abuse which is causing panic and grief that is not necessary. SB 41 is an attempt to deal with the abuses that are occurring with false allegations. Mr. Foster told the Committee that 20% to 30% of allegations are done so out of spite. Mr. Foster said that the Department of Family Services places children in foster homes purely on allegations of abuse. Mr. Foster said evidence needs to be required in order to take the children away. SB 41 requires the Department of Family Services to find evidence of child abuse before they act. There are too many people who are abused by the system without the proper evidence to support child abuse.

Richard Clark is a victim of Department of Family Services. Mr. Clark is a single parent who had his child taken away because of a false allegation of abuse from an ex-girlfriend, which was later retracted. Mr. Clark told the Committee that the Department of Family Services has never had any evidence against him, however he underwent all the classes that were required of him in order to get his son back. Mr. Clark still does not have his son.

Quintons Hahn, Montana Clinical Mental Health Council Association, works with the Department of Family Services with parents who have been accused of abuse and neglect. Mr. Hahn told the Committee that the system is being abused. Mr. Hahn told the Committee about cases where the parents are accused of child abuse, and there was no evidence to support those claims. If someone accuses an individual of abuse, the child can be taken from the home. If a person sees a parent spanking a child the parent could be accused of child abuse and the child taken away. Mr. Hahn told the Committee about a case involving a little boy who fell down and scratched his body. The child was taken away from the home and examined. The doctors found there was no evidence of child abuse, yet the child was still not able to return home. Mr. Hahn said that even when a person is accused of child abuse and it proves to be false, they would still go on record as being a potential abuser. These cases continue to go

on so we need to change the law to help the innocent victims.

Sara Lipscomb, a private counselor in Missoula, supports SB 41. Ms. Lipscomb said private practices are moving away from fixing family problems and moving towards empowering families to address concerns and priorities. This is done by increasing the family sense of power. Families that are young, families that are economically disadvantaged, families that have children with disabilities, families with parents with disabilities, families struggling with parenting often feel powerless when working with the Department of Family Services. SB 41 clarifies and revises the procedure the Department of Family Services would use when removing a child from a home. SB 41 outlines the rights of the Department of Family Services and the rights of the families. By expanding the rights of the families, families have become empowered. An empowered family is least likely to be reliant on available resources. A decreased reliance on these resources will assist Montana with balancing the budget. Learned helplessness is a survivor mechanism that fosters dependent behavior. Learned helplessness is a very difficult behavior to change. Families that learn dependent behavior are more likely to remain reliant on state funded resources. Ms. Lipscomb urges the passage of SB 41.

Vicki Vincent told the Committee that her daughter was taken by the Department of Family Services for alleged sexual abuse by the daughters father. Ms. Vincent was accused of abuse for not stopping the sexual abuse. Neither was charged. Ms. Vincent told the Committee that visitations with her daughter were supervised and taped. She was told not to tell her daughter about what happened or visitation would be terminated. Ms. Vincent said that the social workers lied and threatened both her daughter and herself concerning the events that happened. Ms. Vincent told the Committee she was concerned for other parents who are falsely accused.

Debra Taylor read from prepared testimony. (Exhibit #3)

Jerry O'Neil, Vocal of Montana, told the Committee that many of the members of Vocal of Montana have had their families torn apart because of false accusations of child abuse. Families accused of abuse have no due process rights, but murderers and other defendants have those rights. That is wrong. Families deserve protection.

Bernice Seminole told the committee that her kids were taken away and she was not granted due process rights. Ms. Seminole said even though there was a court order for visitation, they were denied visitation. Ms. Seminole said that she did alot of advocating for welfare mothers against a state social worker who alleged that she had sexually abused her children. Through retaliation her kids were taken away. Ms. Seminole's children have been taken away a second time because of allegations of sexual abuse against her husband. Ms. Seminole said the

Department of Family Services is abusing the system by not having to prove that allegations of sexual abuse exist. Ms. Seminole said that she speaks for the majority of the people in Montana who have been abused by staffers of the Department of Family Services. Ms. Seminole feels that the Department of Family Services needs to be held accountable for the mistakes of those who have had children taken away on false allegations.

John Rice told the Committee that he was abused by the Department of Family Services. His children were taken away because of allegations that were never substantiated. Mr. Rice said there is a need for laws pertaining to child abuse. However, before a child is taken away from a home, proof of child abuse needs to be established.

Gary Spaeth supports SB 41.

Opponents' Testimony:

Hank Hudson, Department of Family Services, read from prepared testimony. (Exhibit #4)

Kay Kalidja read from prepared testimony. (Exhibit #5)

Gary Beaudry, Fort Peck Tribes, opposed SB 41. Mr. Beaudry said if anonymity is abolished it would hinder the reunification process. Without disclosure the Department may not acquire evidence in cases where abuse takes place. Mr. Beaudry told the Committee about cases, which if it were not for the anonymity of the informer, the abused child may not have been reported, and the child could have ended up dead or further injured. Mr. Beaudry said that allowing an alleged offender to see the victim could cause trauma to that victim. Mr. Beaudry feels that there should be no visitation between the accused child abuser and the victim.

Craig Winter is a foster parent. Mr. Winter feels SB 41 is wrong in the way it is written because foster parents do need confidentiality. Mr. Winter said that if a parent knows where a child is, the parent will most likely go after the child, and that could cause emotional trauma for that child.

Jim Smith, Juvenile Probational Association, said the Department of Family Services has extensive regulations and policies when taking a child away from a home. Children can't protect themselves in an abuse case, so the Department has to rely on the allegations of the people.

Bryce Johnson, a juvenile probation office, said that over the last few years child abuse has been identified in Montana. Many years ago children purposely committed offenses to get out of their homes. There was not a system set up for many years to deal with child abuse, so the people ignored the abuse. With the passage of SB 41, it would bring Montana back to that way of

thinking many years ago.

Bobby Curtis, Montana Foster Adoption Association of Montana, said the section of giving up anonymity to the birth family is a big concern. Ms. Curtis said that the birth family should have a right to see the child, but only when the foster family feels it is alright or necessary to have contact with the child. It should be the foster families choice when they think the child is ready to see their birth family. The child has to be ready.

Colleen Lippke read from prepared testimony. (Exhibit #6)

Gary Loshesky, a juvenile probation office, told the Committee that kids are not being represented in SB 41. Mr. Loshesky is opposed to SB 41 because of that fact.

Dennis Rardin is a foster parent and pastor. Mr. Rardin opposed SB 41 because the reporting requirement for foster parents and clergy are demanded by law in Montana. In SB 41, reporting child abuse would become public.

Senator Jacobson said that she is not speaking as an opponent or proponent for SB 41. Senator Jacobson will be presenting a bill that would deal with citizen review boards. Senator Jacobson's bill will go a long way in giving some kind of a review system and a place for those people who are frustrated with the system. Senator Jacobson asked the Committee to look at SB 41 and to also keep her bill in mind.

Trish Tothill opposes SB 41. Ms. Tothill handed in prepared testimony. (Exhibit #7)

Questions From Committee Members and Responses:

Senator Towe asked Mr. Hudson if he could assure that the authority that has been granted to the department will not cause further traumatization to families. Mr. Hudson said he is aware of the damage that is done to the children when mistakes are made. The Department of Family Services needs resources to work with families so there is an option other than taking children away. Mr. Hudson said he is appreciative of the seriousness of the mistakes that are made.

Senator Rye asked Mr. Foster about the opponents testimony. Mr. Foster said that testimony from Ms. Seminole changed his mind concerning a child being able to see the natural parents while in foster care. Mr. Foster said that when a child is placed in a foster home, the child should be left there without the natural parents coming in. Mr. Foster said he does not have a problem with that, but there needs to be evidence of child abuse before a child is taken away. Mr. Foster said there are many people who are being falsely accused of child abuse.

Senator Doherty asked Mr. Hudson if there is any sort of review

for the staff of the Department of Family Services. Mr. Hudson said the Department of Family Services is limited in what they can do. If mistakes are made, the person is supervised. The actions of the Department of Family Services are reviewed in court. The cases are subject to approval by those courts. If the Department of Family Services has acted out of their limited authority, then people can sue.

Senator Grosfield asked Mr. Hahn about the availability of foster care if SB 41 passes. Mr. Hahn said he does not advocate giving information on the foster family. Mr. Hahn told the committee that we are talking about what happens when children are taken out of homes. Once a child has been taken from a home, and abuse has not been proven, the children should be returned home. Mr. Hahn said he agrees that a foster family has a right to decide if a child should visit the natural family under supervision.

Senator Towe told Mr. Hudson that when an allegation comes in concerning child abuse, a child should not be taken away immediately. Those reactions cause serious problems. Senator Towe asked Mr. Hudson if there was a system in place for review of decisions that are made on the removal of children from a home. Mr. Hudson said there is a mandatory review of the foster care placement, and an internal review. Mr. Hudson said that Senator Jacobson's bill may address the review. The Department needs to get resources so placing the child is not the first reaction.

Senator Towe asked Ann Gilkey, Department of Family Services, about the safety procedures between the decisions of the social worker and the decisions to take action by the Department of Family Services. Ms. Gilkey said social workers have to complete a risk assessment when investigating cases. The level of risk indicates whether a child needs to be taken away from the home or left in the home. The supervisors review every case. Every six months there is a formal review of the cases. The reviews make sure all procedures have been followed appropriately. If a child is removed from a home on an emergency basis, they have to go to court within 20 days, then the judges would make a decision whether there is enough evidence to continue with the investigation.

Senator Towe asked Ms. Gilkey about reviews of emergency actions. Ms. Gilkey said the supervisors review every case. The director does not.


Senator Halligan asked Senator Burnett to address the portion of the bill that talks about criminal charges that must be filed against family members or family associates who allegedly commit sexual abuse. SB 41 does not address a stranger who commits these acts. Senator Halligan told the Committee that SB 41 only talks about sexual abuse and not physical abuse. Senator Halligan said there are loopholes in SB 41.

Closing by Sponsor:

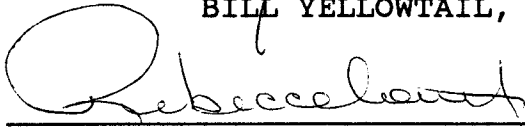
Senator Burnett told the Committee that SB 41 deals with sexual abuse. SB 41 does not eliminate ability of the Department of Family Services to deal with. Senator Burnett told the Committee that everything involved with these cases are confidential. He believes in confidentiality, but no one listens to what anyone has to say concerning these cases. Many cases should not have happened if there was an investigation. Senator Burnett feels the courts fall in line with what the case workers want, therefore giving the case workers the power of the law. Senator Burnett said SB 41 provides protection for those people who are falsely accused of child abuse.

ADJOURNMENT

Adjournment: 12:01 p.m.



BILL YELLOWTAIL, Chair



REBECCA COURT, Secretary

BY/rc

ROLL CALL

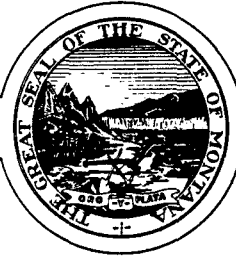
SENATE COMMITTEE

Judiciary

DATE 1-29-93

NAME	PRESENT	ABSENT	EXCUSED
Senator Yellowtail	X		
Senator Doherty	X		
Senator Brown	X		
Senator Crippen	X		
Senator Grosfield	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

DATE 1-29-93BILL NO. HB 66(406) 444-5900
FAX (406) 444-5956

MARC RACICOT, GOVERNOR

STATE OF MONTANA

HANK HUDSON, DIRECTOR
JESSE MUNRO, DEPUTY DIRECTORPO BOX 8005
HELENA, MONTANA 59604-8005

January 28, 1993

DEPARTMENT OF FAMILY SERVICES TESTIMONY IN SUPPORT OF HB 66

Submitted by Ann Gilkey, Legal Counsel

Last year there were 24 claims and three lawsuits filed against the Department of Family Services. Some of these involve allegations of wrongful conduct by the 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.

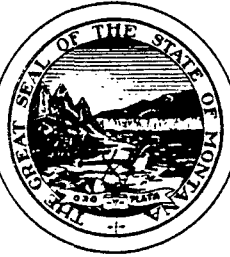
HB 66 amends 41-3-203 which already extends limited immunity to anyone reporting child abuse or neglect, or investigating a report of child abuse or neglect. HB 66 clarifies that the reporters referred to in this statute specifically include the professional people (health professionals, counselors, law enforcement, clergy, school personnel, social workers) who are required to report any suspected child abuse or neglect under section 41-3-201, or anyone else who has reasonable cause to suspect child abuse and makes a report to DFS. HB 66 will provide a bit more protection to these people who are required by law or conscience to report suspected child abuse or neglect.

HB 66 clarifies further that the investigators referred to in 41-3-203 are the social worker, county attorney or peace officer who are legally required by 41-3-202 to "promptly conduct a thorough investigation" of all reports 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 to immunity will still exist, but such an allegation will have to be supported by the evidence.

I urge you to support HB 66 as a bill that will help protect all 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



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DEPARTMENT OF FAMILY SERVICES Testimony regarding HB 67

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 2

Submitted by Ann Gilkey, Legal Counsel

DATE 1-29-93

BILL NO. HB 67

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.

The House Judiciary amended HB 67 to delete Section 2 which prohibits the court from ordering DFS to conduct home studies on divorcing parents. Taking staff time to conduct home studies for the divorcing population creates a significant negative impact on the agency's ability to address its legal mandate of providing protective services to Montana's abused and neglected children,

elderly and persons with developmental disabilities. There are other professionals, such as licensed private social workers, available who can provide this service. Field staff have estimated that conducting custody home studies takes up to 5000-6000 hours/yr of social worker time. This equates to approximately 2.5 - 3 FTE. In this time of fiscal cut backs and staff reductions, every hour of every social worker's day is critical toward getting the agency's protective services mandated duties accomplished. The state can no longer afford to provide this public service to people otherwise not involved with the agency.

Department of Family Services needs your support in passing HB 67, amended to include the original language contained in Section 2.

On the last day of March, 1990, my daughter failed to come home from school. This was my first indication that the Department of Family Services had concerns about my family. By that time, there was little my husband and I could say or do. Although the social workers had never met us, in their minds, my husband was considered a pervert, and I was a negligent mother who endangered her daughter.

I know that sick people do exist, and that they do terrible harm to their children. I also know that the (DFS) as it operates is not the answer to this problem.

When frivolous accusations and baseless conjecture are the normal style of operation, as they are now with the DFS, accounts of the actions of real child abusers loses all credibility. The trauma suffered by the real victims is cheapened.,

Do we need to relearn the lessons taught by the McCarthy era, when the stigma of communism attached to a person could utterly ruin their life? "Communist" was the evil buzz word of the 50's. Will words like "molester" and "abuser" be the new ones for the 90's?

The most destructive characteristics of the DFS as it now operates is its'seeming delight in subjecting clients to "the mushroom" treatment. By keeping parents in the dark and feeding them generous amounts of fertilizer, the DFS intentionally presents parents with the illusion that it has more power than it really does.

There are few experiences more devastating for a parent than having their children ripped from their home without notice, or prior contact. It is confusing, heartbreaking and needlessly cruel for a parent in such a vulnerable situation to rely on the DFS as a useful source of information. Instead of help or information, parents are given two choices by the DFS

SENATE JUDICIARY

EXHIBIT NO. 3

PAGE 1-29-93

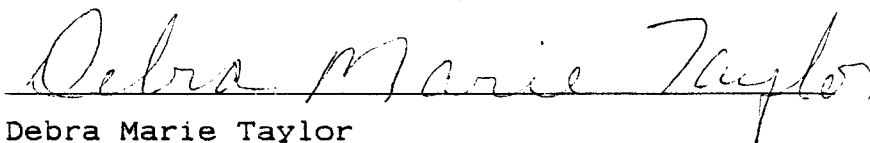
~~not~~ intentional misinformation, or no information at all. Soon, parents are forced to mistrust the DFS or anyone who might be affiliated.

The current system would be a better system if parents had access to an advocate for their interests, who might serve either at the parents' expense or at a minimal public expense. Such an advocate must be independent and not beholding or responsible to the DFS. It is also important that this advocate have some practical life experience such as having had their child taken away at some time. The advocate would not need to be an attorney or a psychologist, but would need access to the names of people in these fields who have records demonstrating quality work and ethical treatment of parents "accused" of child abuse. A knowledge of applicable laws and regulations the DFS are required to follow would also be necessary.

For all intents and purposes my family has now completed our/ordeal with the DFS. This process took over two years and cost our family almost \$4,000.00. Still, it will never be truly over because our lives will never be the same.

To show how our ordeal affected my daughter, when we were at the fair 1st summer, she accidentally became separated from us. As it turned out, she had become frustrated with trying to find us, and had went home with some friends. My husband and I searched for hours not knowing that she had left the fair. Had my daughter not been so afraid of being taken away again, she would have asked one of the police officers at the fairgrounds for help when she became lost.

DATED this 28th day of January, 1993.


Debra Marie Taylor

3
1-29-93
SB 41

DEPARTMENT OF FAMILY SERVICES



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STATE OF MONTANA

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SENATE JUDICIARY

EXHIBIT NO. 4

January 29, 1993

DATE 1-29-93
TO NO SB 41

DEPARTMENT OF FAMILY SERVICES TESTIMONY IN OPPOSITION TO SB 41

Submitted by Hank Hudson, Director

The Department of Family Services opposes SB 41. There are many issues of concern regarding the bill, but I will focus my comments on the central points that the agency believes are causes for alarm if the bill were to pass.

The first issue is the cost of implementing HB 41. The fiscal note estimates an increased cost to DFS of \$245,360 for FY 94 and \$115,360 for FY 95. These costs are associated with the bill's requirement that all interviews of children who are alleged to be abused or neglected be videotaped. The costs imposed by this bill would go beyond the expense of purchasing video equipment. Section 16 on page 37 requires the supreme court to convene a tribunal of judges to conduct an expedited review of any temporary custody hearing, if requested by the family's attorney. I do not know what these reviews would cost, but the department has temporary custody of between 550-600 youth/yr. If even a portion of the parents involved in these cases ask for a review of their case, the expenses associated with the reviews will be astronomical.

The department is sensitive to its duty to balance the rights of parents while fulfilling its mandate to protect children from abuse or neglect. The overriding concern of this agency with SB 41, however, is its seeming emphasis on the protection of the alleged perpetrator and not the abused or neglected children. If passed, SB 41 will leave children at risk of serious harm or even death. Provisions in the bill that will result in leaving children at extreme risk are as follows:

- a child may not be removed or kept out the home if criminal charges are not filed against the alleged perpetrator in the home. (Pgs 4, 15, 23, 24, 26 and 29) For many reasons, there are often no criminal charges filed against an alleged perpetrator. The agency may be trying to work with the family and rehabilitate the alleged perpetrator because it believes that reunification is possible and a better way to deal with the family's problems than incarcerating a parent - or a child witness may not be able to testify against the perpetrator and the county attorney cannot

prosecute without a witness;

• the family has the right to all information regarding the investigation of alleged child abuse or neglect, including all reports relating to the alleged abuse (Pgs 16 and 22) and the name of the person making the report (Pgs 16 and 28, 29), a videotape of any interview of the child by a social worker (Pg 15), all written, photographic or radiological evidence related to the investigation (Pg 18), and all information about the placement of the child including location (Pg 32) and background information on the foster family where a child is placed (Pg 42).

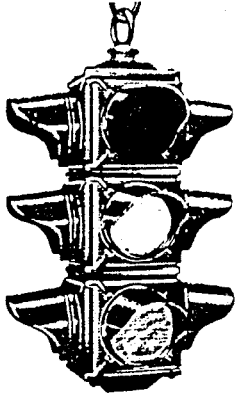
The parents of an abused or neglected child already have access to department records. Sometimes, however, there is sensitive information that, if released, may pose a risk to the child, or the whereabouts of a child must be kept confidential from the parents to ensure the safety of the child or the foster family. The name of the reporter of child abuse or neglect is kept confidential so that people will feel more comfortable making that very difficult call to the agency. If their anonymity cannot be protected, there will be many individuals who will not report abuse, thereby leaving that child at risk.

The department appreciates Sen. Burnett's concern with the protection of the parent's rights when being investigated for possible child abuse. SB 41, however, goes much too far and will leave Montana's most vulnerable citizens, its children, at risk. I urge your careful consideration of the impact of SB 41.

There are other problems with this bill that I did not specifically address. Other department staff are here to answer questions regarding either the points I raised, or other sections of SB 41.

4
1-29-93
SB 41

Education



STOPS
SEXUAL
ABUSE

Kay Kalidja

P.O. Box 3432

Missoula Mont

59806

W. phone 721-6133

Leave message

In Biblical days, purple meant something of great value. I wear a purple ribbon to remind all of us, that "OUR CHILDREN IS OUR MOST VALUABLE RESOURCE. Montanans have the responsibility to nurture, ameliorate and protect ~~and protect~~ their children.

EDUCATION STOPS SEXUAL ABUSE.

SECRETS ACCELERATE SEXUAL ABUSE.

I'm the mother of nine children. I have fourteen grandchildren. My occupation is "NANNY." Reading Senate Bill 41 as it would affect the lives of children. I wondered who is lobbying to get this bill passed.

I'm going to read a letter my 16 year old daughter wrote to her father. Keep in mind, Ten years ago, Jan. 28, my then husband was arrested for incest.

I want you to imagine you are the non-abusing parent and this is your daughter. I want you to try and figure out how to protect your daughter within the guidelines of this bill.

SENATE JUDICIARY

EXHIBIT NO. 5

DATE 1-29-93

FILE NO. SB41

This document is stored at the Historical Society at 225 North Roberts Street, Helena, MT 59620-1201. The phone number is 444-2694.

SENATE JUDICIARY
EXHIBIT NO. 6
DATE 1-29-93
BILL NO. SB41

I am Colleen Lippke and I am testifying against Senate Bill 41 on behalf of the National Association of Social Workers Montana Chapter. I am testifying today on my own time. I am an employee of the Department of Family Services (DFS). I supervise the social workers in Lewis & Clark County that investigate child abuse and neglect referrals. I have worked in the child protection field for 12 years in Montana.

This bill could be labelled one that protects the rights of the child abuser rather than protecting the rights of children. This bill perpetuates the stereotype that all child protective social workers do is remove children and place them in foster care; this bill also perpetuates the myth that social workers have children lie about their family circumstances so that they can place them in care.

Social workers understand the importance of families to children. Social workers by law and policy must provide services to a family so their children will not be removed from their care. In order for a social worker to remove a child and place that child in foster care and keep that child in foster care, they must either have parental permission or have enough evidence to file petitions requesting temporary investigative authority or temporary custody. Once a child is placed in foster care, the social worker must work with the parents addressing the problems that cause a child to be placed in care. Deciding to place a child in foster care is one of the most difficult decisions a social worker must make. There are few resources available to assist children once they are removed from their parental home.

In the vast majority of the cases where DFS is involved, children are not removed from their home, rather the family is offered assistance to help them stop abusing and neglecting their children.

In spite of social workers attempting to solve problems without removing children, there are many circumstances that cause social workers to place children in care. Immature children are left alone, children are seriously physically abused, children are sexually abused, children are seriously neglected and children are killed. In many cases criminal charges are filed against the perpetrator of the violence. However, often the kids are too young to make viable criminal witnesses. If children are left in these family circumstance they may die.

People who have violent tendencies are difficult to deal with. Social workers daily confront people who have bruised their children, and who have caused them other harm. Some of the clients we deal with go after those that they suspect reported them even though that information is kept confidential. In the majority of cases the families know where their child is placed. However, there are some very violent and dangerous individuals that this information is not given to. As a social worker and a social work supervisor, my life has been threatened by the clients I have dealt with. Social workers have been shot and assaulted while on the job.

Most people do not want to abuse and neglect their children. Many families are grateful for the assistance they receive from the department to stop the cycle of abuse or neglect. Many of these families would not receive guidance if they were not reported to the department. This bill would cause many people not to report suspected child abuse and neglect because they would fear the retribution. Private practice social workers and other mandatory reporters might choose to ignore their reporting requirement because they would be fearful of being sued for family interference.

NASW strongly urges you to oppose SB 41.

EXHIBIT 6
1-29-93
SB 41

Mr. Chairman & Committee Members
I am Frank Tordella from San River. I
am a foster and adoptive parent. I
believe strongly in the family unit. But
our first obligation is to protect children.
Children that have been removed for
good reason should be protected. Our
social workers are over worked. They do
not go looking for problems where they do
not exist. Children who are abused
should not be forced to visit abusive
parents. The eight year old boy who lives
with us wants to kill his father. He should
not have to go through the trauma of
seeing the father until both have recovered
counseling and are ready to deal with
situation.

Also a 10 day time frame to go to
court is unreasonable. We have three
foster children who were sexually abused.
The girls' abuse has been documented
by a medical doctor. These children
have been with us since March 92. They
have been going for counseling all this
time. They still do not feel enough trust
to confide in the councilor or us. We get
information in dribs and drabs. We have
never tried to "put words" in their mouths.
They volunteer things voluntarily and sporadically
and at odd moments.

In the book "When Children Kill" even
children ~~who~~ charged with murder are
hesitant to reveal abuse. These children
and other abused children are torn between
love and hate. Also they are ashamed and
feel whatever happened to them was their
fault. The child believes he is the bad
person and not the parent.

With all this conflict in their emotions and minds these children need time to develop, trust and come to terms with their abuse. Not a 60 day time limit.

We need to protect these children and the people who help them. This bill in effect ties the social workers hands and endangers caring foster homes.

NAME Trish Tathill

ADDRESS Box 3 Sun River Mt 59482

HOME PHONE 264-5304 WORK PHONE 264-5304

REPRESENTING self

APPEARING ON WHICH PROPOSAL? #41

DO YOU: SUPPORT OPPOSE X AMEND

COMMENTS:

this bill does not recognize any
childrens rights These children in
foster care have already been let down
by the system which is designed to
protect them. This bill does not
in effect tie the social workers hands
to help those children. Children
should be the priority. The parents rights
should take second place; as they have
already abused their position as protector
of those children.

WITNESS STATEMENT

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

NAME Bobbie Jean Curtis

ADDRESS Marony Loop #20

HOME PHONE 453-1129 WORK PHONE 453-1129

REPRESENTING Mont. St. Foster Adoptive Assoc

APPEARING ON WHICH PROPOSAL? S Bill 41

DO YOU: SUPPORT OPPOSE X AMEND

COMMENTS:

We feel that this bill steps over the
line at the expense of children -
+ Foster Parents -

Annominity should be afforded to
the Foster Home - Visitation +
phone contact should be part of
the case plan + not dictated by
a legislative law -

Sexually Abused Children have been
tramatized each case is individualized -
putting Kids back home in such a short
time before the case has had time
to be sorted out could cause extreme
harm - 20 to 60 days court time is not practical
WITNESS STATEMENT

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

Foster Home Information should NOT
be given out to everyone—
please feel free to call me—

NAME Bernice Seminole

ADDRESS P.O. Box 12

HOME PHONE Ø WORK PHONE Ø

REPRESENTING myself & family

APPEARING ON WHICH PROPOSAL? SB 41

DO YOU: SUPPORT X OPPOSE _____ AMEND _____

COMMENTS:

The abuse laws today give unlimited police power to social services whether the program is state or tribal. My children were taken away in Glasgow, Mt. because I tried to protect my children from a D.S. worker. It was messy, we were never told what we were being charged with, now the Title 4-F program contracted with the N. Cheyenne tribe has my children again. Nothing was ever proven and my kids are still are still gone. Due to the separation, my children may never be normal again. Change the abuse laws to make the social workers accountable - change "preponderance of evidence" to "beyond a reasonable doubt supported by clear & convincing evidence." To protect parents & children

WITNESS STATEMENT

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 1-29-93

SENATE COMMITTEE ON JUDICIARY

BILLS BEING HEARD TODAY: HB 66, 67, SB 41

Name	Representing	Bill No.	Check One Support Oppose	
Sara Lipscomb	Self	41	<input checked="" type="checkbox"/>	
Rae Childs	Mont. Collision Repair Assn	153	<input checked="" type="checkbox"/>	
Jim Ruppert	SD #41	41	<input checked="" type="checkbox"/>	
Luc Jackson	SRS	41 67 66		
Ann Gilley	DFS	SB 41 HB 66 +67	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
ELLEN CHASSSE		41	<input checked="" type="checkbox"/>	41
Phyllis A. Dandrea		41	<input type="checkbox"/>	41
John Rice		41	<input checked="" type="checkbox"/>	41
Ann Gilley	DFS	SB 41		<input checked="" type="checkbox"/>
Gary Zalesky	Juvenile Probation	SB 41		<input checked="" type="checkbox"/>
Marlyn Shorlin	Juvenile Probation	SB 41		<input checked="" type="checkbox"/>
Bryce Johnson	Juvenile Probation	SB 41		<input checked="" type="checkbox"/>
Debra Taylor	Self	41	<input checked="" type="checkbox"/>	
Terry O'Neil	Local of Montana	SB 41	<input checked="" type="checkbox"/>	
BILL LEINWEBER	" " "	SB 41	<input checked="" type="checkbox"/>	
Colleen Lippke	NASW			<input checked="" type="checkbox"/>

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 1-29-93

SENATE COMMITTEE ON JUDICIARY

BILLS BEING HEARD TODAY: HB 66, 67 & SB 41

Name	Representing	Bill No.	Check One	
			Support	Oppose
Hicki C Weida	self	41		X
Bobbie J. Curtis	Mont. St. Foster Adopt	41		X
Trish Tohill	" " " "	41		X
D. Mark Pikes	IDS Soc. Sec.	41	X	
Helen White	Mont St Foster Adopt	41		X
Manny White	" "	41		X
Twila Costigan	self	41		X
Lethy Eaton	Self.	41		X
Steve Eaton	Self	41		X
SUSAN WOODCOCK	SELF	41		X
Dawn Z. Enzle	Self	41	?	?
Dennis & Becky Rardin	self	41		X
JUDITH CARLSON	MT CH. NASW	41		X
Dick Pfeiffer	Juv. Prob. Officers	41		✓
Jim Smith	Juv. Prob. Assoc.	41		✓
Rayne Johnson	Juvenile Probation	41		✓

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 1-29-93

SENATE COMMITTEE ON Finance

BILLS BEING HEARD TODAY: SB41, HB67, HB66

Name	Representing	Bill No.	Check One	
			Support	Oppose
GARY BEAUDRY	FORT PECK TRIBES	41		✓
BERNICE & MARENCE SEMINOLE	LAME DEER MT.	41	✓	
BETTY BURNETT	LUTHER, MT.	41	✓	
John R. Foster	MCMHCA	41	✓	
Dwight R. Hehn	DRO Hehn/MCMHCA	41	✓	
Richard L. Clark	Missoula	41	✓	
Pauline L. Kinton	Helena, MT	41	✓	
Kay Kaldjian	Missoula	41		✓
Linda Lindquist	Helena	41	✓	
Craig Winter	Deer Lodge	41		✓
L. E. Fargue	Helena	41		✓
Jessie Rogers	Great Falls	41		✓
Julie Wall	Great Falls	41		✓
Deborah E. Egan	Great Falls	41		✓
Randy & Nancy Reishus	Graig	41		✓
Kelly Simmons	Helena	41		✓

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 1-29-93

SENATE COMMITTEE ON JUDICIARY

BILLS BEING HEARD TODAY: HB 66, 67 & SB 41

Name	Representing	Bill No.	Check One	
			Support	Oppose
Carolyn Clemens	Lewis & Clark Co Atty	41		✓

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY