

MINUTES

MONTANA SENATE 53rd LEGISLATURE - SPECIAL SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Senator Yellowtail, on December 10, 1993, at
3:50 p.m.

ROLL CALL

Members Present:

Sen. Bill Yellowtail, Chair (D)
Sen. Steve Doherty, Vice Chair (D)
Sen. Sue Bartlett (D)
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: Senator Blaylock
Senator Brown
Senator Crippen

Members Absent: None

Staff Present: Valencia Lane, Legislative Council
Shari Briggeman, Committee Secretary

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

Committee Business Summary:

Hearing: SB 33
Executive Action: None

HEARING ON SENATE BILL 33

Opening Statement by Sponsor: Senator Burnett said there were several people who could not remain, had left testimony and he would give it to the secretary. He said he had given a packet to each member of his testimony and would not give it here. He did explain what he was trying to do in the bill. He read in the preamble "whereas the Legislature finds it necessary to restore public confidence in the system and provide protection of individuals and families civil rights as guaranteed by the state and federal constitution. Whereas, present Montana law" etc. He went through the bill to give the substantive changes to the committee and said there were a certain amount of housekeeping measures in the bill also. He mentioned that Peggy Oliver and Ed

Miller were denied a jury trial and therefore denied their civil rights.

Senator Doherty took over the Chair while Senator Yellowtail attended another meeting.

Proponents' Testimony: Kenneth E. Haugen spoke in favor of SB 33. It makes DFS (Department of Family Services) accountable for their actions and they cannot hide behind confidentiality. He said the outrageous actions contributed to DFS are happening nation wide. He handed in a sheet of testimony. (exhibit 5)

Debbie Taylor, Missoula, spoke in favor of SB 33 and handed in her written testimony. (exhibit 3)

Dave Thomas, Lewistown, said he was a victim of DFS policy. He handed in testimony. (exhibit 9)

Debra Rice, Missoula County, spoke in favor of SB 33. He handed in written testimony. (exhibit 7)

Wayne Hansen, Whitehall, said until September he and his wife were licensed foster parents. He had worked through and with the DFS in that capacity, but also his older brother had a divorce ten years ago and his wife, in a small community, had run into the system. His niece and nephew got into the system and he had assisted his brother since January in trying to deal with DFS to return his family to him. He said he had seen some of the things that are happening and did not like it. He said he had written reports on some of the events surrounding his ex-sister-in-law which were in contradiction to what other written reports from the Mental Health Center gave. There was proof of compliance as well as signed receipt of registered mail that was not acknowledged. He gave several examples of what he considered injustice on the part of DFS.

John Rice, Missoula Regional Coordinator for Montanans for Better Government, said they are continually receiving complaints of abuse of families from DFS in the Missoula area. He told of the abuse coming from one parent or another who suffers from what is commonly called parental alienation. This parent will continually call DFS and complain of mental or physical cruelty toward children and after receiving several complaints DFS will respond by taking the children from that parent or denying visitation from that parent. In many cases that parent will have to undergo an intense psychological examination, which causes problems to the children. If the person is proved to be innocent it has caused many problems. They recommend passage of this bill.

Penny Hadrava, Lewistown, said she has three little girls she has not seen since February. She said her welfare worker will not even call and let her know if her children are okay. She said she had been accused of things that are not true, and would

encourage favorable consideration of this bill.

Mike Billedeaux, a member of the Blackfeet Nation and a combat veteran, said under DFS he has lost his family, his home and everything. He hoped this bill would pass so this type of thing cannot happen to other people.

Dick Dennison, Lewistown, said he and his wife are former foster parents. He said they support SB 33, mostly because their experience with DFS, that if someone makes an accusation you have no legal recourse to combat it.

Kathryn Wickstrom, Missoula, spoke in favor of SB 33. (exhibit 6) She said she had found in her research of this problem over a number of years, that the arbitrary designation of abuse is totally matched by the arbitrary qualifications that placed many of the personnel into DFS, including and not limited to the head of DFS. She said they could find no qualifications upon which determinations and decisions of the social workers are made. They cannot find the qualifications by which they are hired. They cannot find the expertise by which they are selected to make determinations which have affected over 3,310 children in the state of Montana in this one fiscal year alone. She read a letter from Cateland White. (exhibit 4)

Senator Doherty said at this point the 20 minutes allowed for proponents has elapsed. He said if individuals would like to come forward, state their name and where they were from, it would be entered into the minutes.

Lanette Schrader, Missoula, said she was in favor of SB 33.

Sue Thomas, Lewistown, said she is in support of this bill.

Dan Poe Newman, candidate for Justice of Peace, Missoula County, proponent of SB 33.

Carla Dennison, Lewistown, said she supports this bill.

Alfred Soling, Lolo, supports this bill, handed in written testimony. (exhibit 8)

Lois Smallwood, Lewistown, supports the bill.

Senator Gary Aklestad, SD 6, said he would like to go on record in support of SB 33.

Senator Swift, SD 32, said for the record he is in full support of this bill.

Senator Burnett said Representative Benedict and Representative Grinde planned to be here, could not be, and wished to be on record in support of this bill.

Opponents' Testimony: Joe Thaggard, Assistant Attorney General for Montana, appearing in behalf of Montana County Attorney's Association in opposition to SB 33. The present statutory codes provides sufficient balance for the rights of both children and parents. The system is not broken and does not need to be fixed. This bill would impose a new set of rigid regulations on our present system of protection of children, will not benefit children, and he would urge the committee to reject this bill.

Hank Hudson, Director, DFS, said the department opposes SB 33. There are a number of issues within this bill that the department is concerned with. The department feels this bill will fail to adequately protect children from abuse and neglect. The current laws have been developed in all parts of the nation over a course of time trying to make a balance between the rights of children to be left alone by the state and the state's responsibility to protect people who can not protect themselves. He pointed out that people who were here from Lewistown could testify to the danger when DFS did not remove children from dangerous situations quickly enough. SB 33 imposes proof of criminal behavior before the department can remove children from their family. There is a number of reasons for keeping child abuse out of the criminal arena. The department tries to work with families in a voluntary manner by providing services to them in their home. He did not believe this possible if they needed to approach every family they work with in a criminal arena. He said there were 16,800 allegations of abuse and neglect in Montana in fiscal year '93, there were 5,700 substantiations, and that is 34% of the cases which were substantiated, and that is the national average for substantiation of allegations. He believed their work in response to abuse and neglect and substantiating those reports is not out of the main stream of what is going on in the rest of the nation. There are 3,400 children in foster care in Montana, and while they substantiated 5,700 cases, there are 3,400 in foster care. 240 of those children have been in foster care for 2 years or more and a number of those children entered through the juvenile justice system. Even in substantiated cases, there is a very large proportion of children that remain with their parents, and this is the goal of the department.

Mr. Hudson said another reason to keep these cases out of the criminal court is because it is not always possible to charge a perpetrator in these cases because the child will not be able to testify against his/her parent. Sometimes records must be kept confidential to ensure the safety of the child or the foster parent. He said the DFS is mandated by state law and policy to provide for the protection of children whose health and welfare may be adversely affected by the conduct of those responsible for their care and protection. He said the department tries to protect children by family preservation. There are presently adequate checks and balances imposed upon the department. He gave a hand out showing a chart of referral of child abuse or neglect. (exhibit 17). He said Montana, like many other states, has experienced a crisis in families and children. We do have a

lot of children in foster care and a lot of reports of abuse and neglect. The increase of Montana children involved in the investigation of child abuse increased in the last 11 years by 216%. During fiscal year '93 Montana had 3,442 children out on placement. That is a 1.5% decrease in the number of children in foster care and is the first decrease since records have been kept. In fiscal year '93 we also saw the first measurable decrease in the number of reports of abuse and neglect since records have been kept. He said perhaps the work that has gone on in this state for education, prevention and family preservation is beginning to come back and pay us rewards.

Angie (could not decipher name), Great Falls, said she opposed this bill because if she had been forced to stay with her parents she would probably not be alive now.

Chris Yde, President, Montana State foster/Adoptive Parents Association, Helena, said the association strongly opposes this bill. He handed in written testimony. (exhibit 12)

Linda Lockley, Foster parent and President of Montana State Foster Adoptive Parent Association, East Helena, spoke in opposition to SB 33. She handed in testimony. (exhibit 13)

Jessica Curtis, said she was an abused child and was taken from school. Her abuser had convinced her she was at fault and it took several weeks for her counselor to convince her it was not. She was opposed to this bill.

Bobby Curtis, Great Falls, Montana Foster Parent Association, and the Great Falls group of Foster and Adoptive Parents, handed in testimony. (exhibit 15)

Tricia Hill spoke in opposition to SB 33. (The tape quit here and there was no record of her testimony or address)

Ginger Yde, Helena, spoke in opposition to SB 33 and handed in testimony. (exhibit 14)

Chair Yellowtail returned at this point and took over the chair.

Informational Testimony: None

Questions From Committee Members and Responses: Senator Halligan said on page 39 where the Supreme Court is injected into the bill, doesn't this add at least \$200,000 to a fiscal note we don't have on the bill as yet. Senator Burnett said as far as he was concerned that section could be stricken and it would not make any difference because the Appeals process is there.

Senator Halligan said his second question was the mandatory requirement of filing criminal charges. Unless charges are filed for just sexual abuse or endangerment, a stranger could abuse and

not be charged, yet a family member would be. Senator Burnett said that comes under a different section of law which handles anybody who assaults or abuses another person. The section in the bill is under family law.

Senator Halligan said he had represented people who had been accused of abuse and would not like to have his client in criminal court which added notoriety from newspaper articles, etc. Senator Burnett said the intent for criminal charge is changing from civil law to criminal law and gives the family a recourse. At the present time they have no recourse, once a case worker makes a charge, that family often does not have the recourse to hire an attorney, often being low income. He believed they should have the recourse of the criminal court available.

Senator Halligan said by his reading of the statutes, as soon as a petition is filed, a hearing has to be held within 20 days. In the cases where he had worked as a prosecutor, if a client is indigent they requested an attorney and one was appointed for the parent who may have been the subject of the allegation, even if no criminal charges were filed. He believed there was availability of legal counsel and the requirement that a hearing be held within 20 days. He asked if it was still Senator Burnett's belief that a criminal charge should be filed before a child could be removed from the home.

Senator Burnett said no, a child could be removed, but if it was kept removed there should be a charge filed. He said the sad thing is that the family has no recourse. The child is taken away by DFS and he could point to many families that DFS has not worked with.

Senator Halligan referred a question to Mr. Hudson. He said people today have been concerned about confidentiality, accountability and due process. With respect to confidentiality some of the concerns he has heard in his own experience is that DFS is very unwilling to share reports with family members because of it. Parties should be given access immediately to information that affects their case and thought perhaps the DFS attorney might want to answer it. Attorney Ann Gilkey, DFS, said she was not sure she understood the questions. Senator Halligan said he believed the frustrations people have is that once a child has been taken, the child is put into foster care and an investigation done. They do not have any access to what has been substantiated, without the name of the reporter, what is the nature of the complaint and the name of the counselor. You should not have to sign a release to get a copy of allegation against you. Attorney Gilkey said the confidentiality is in the statutes, 41-3-205 and is the statutes the department is bound by. It lists people to whom the department may disclose information and one of those listed is the parent, guardian or the person responsible. The department has the legal authority to release information to the parent and we have a policy that

says we will release to the parent, unless there is a good reason not to, such as endangering the child. If an attorney wants information DFS might want a statement from the parent saying it was okay to release the records to this other person. If there is an evaluation from a doctor or a psychologist in the record, they often will ask the parent to go to that professional person to get the record directly from them. When we get those records they are stamped "confidential, do not release", they are not DFS work products and they feel they do not have the legal authority to release those documents. If it is this type of information you want us to release it should be written into the statute so we have the legal authority to do so.

The question was asked one of the witnesses about shaking her head when Senator Halligan talked about indigent people being provided attorneys even if no charges were made. The witness said she did not believe that works. The persons she has met throughout the state of Montana who have been victims of the department, were taken advantage of legally and psychologically by the department not giving them access to the manuals and not appraising them of their rights or their avenues of approach. As she understood this situation it is not a criminal law, it is not civil law and you do not have the right to file a cross action as in a civil suit and you do not have the right of protection that would be awarded to a common criminal. Attorneys are not being provided, and in many cases an attorney cannot be found who is either capable or willing to take on the DFS.

Mr. Hudson was asked about his reference to people from Lewistown knowing what happens if DFS does not act fast enough. Mr. Hudson said he was referring to an adult protection case where the person died.

Senator Bartlett said as she understood the process, when a report is made to DFS, a social worker does an initial investigation and makes a recommendation. She asked Mr. Hudson if anyone within the department such as another social worker or a supervisor review that report or is it exclusively that one individual or is there some review procedure to check to see if the conclusion the social worker draws from the investigation is one that an independent person might also make. Mr. Hudson said his understanding while not all investigations may be reviewed, investigations that will proceed to the next step, will be reviewed by a supervisor. That is the process the department provides to ensure that not just one person is single handedly working on a case.

Senator Towe asked Mr. Hudson if he disagreed with some of the things in the bill, like the efforts to make sure there is some ethnic contact with the child that is placed in another home. Mr. Hudson said he did not object, and a number of issues that are in this bill are policies of the department. He said what he objected to is that we need to address each child and each family as individuals and the statutory language can infringe on the

flexibility needed to do so.

Senator Towe said there is nothing that gets people more concerned than the possibility of the loss of their children. In some instances it is justified, but at the same time there are some cases when it is not justified and he has had some experiences that really bothered him. He does respect the professionalism of the department and has worked with them on a number of cases and had the utmost respect for all of them, but it is still a matter where human beings are making a decision that affects other human beings. He said with property rights, you cannot take someone else's property without due process of law, when we get into the family law we lost that. Because of the enormous impact that people in DFS have over other people's lives, he asked Mr. Hudson if there is some way we could develop some sort of better protection of due process. Mr. Hudson said first, it was his feeling that, unlike property issues, their mandate by the people of Montana is to protect people who are in an immediate risk and they perform that duty in an atmosphere that requires they act immediately and have that flexibility. Their responsibility is to investigate and remove people from a dangerous situation. He said he had thought a lot about due process, and many of the people here today, he had talked to on the telephone or in person. The department has to go before a judge and the family has the right to be there and to question. The decision maker is independent of the department. Likewise the child had to have a guardian appointed to protect their best interest. He believed if the department was running rough shod over the family, the representative of the child would speak out against that also. This is a form of due process. He believed it could be improved by more vigorous representation of the families' interest, but did not believe it could be improved by moving the process into the criminal court and forcing that resolution of the issues. This is a complex issue and deserves more time than it is being given here. He said it was his hope that the Legislature and committees would see fit to spend time during the interim to provide a more thorough review.

Senator Towe told Mr. Hudson he appreciated the answers and using the chart (exhibit 17), it is right there where it says intervention that we need some other review, and he was not sure he was satisfied with just the review of the social worker's superior, and believed that is all that happens at the present time. He agreed that it was not something that could be done immediately and asked Senator Burnett if this is something that might be better addressed in an interim study so there was time to go through this and do the right thing. Some of the things that are in this bill should be done and probably be done right away, but there are a lot of other things that could cause some real problems. Senator Burnett agreed, but said there are parts of this bill that should be passed now. There should be an interview before the child has been convinced to say something they would not have said.

Senator Doherty asked Mr. Hudson asked how many times and at what stages are attorneys involved. In looking at the chart it may be a long time between the requirement for court action for parental rights. Between that and intervention may be a long time. If some of these people cannot afford lawyers at those initial proceedings, do you have any information on how many people do get lawyers and in what stage do they appear. Mr. Hudson said he does not have the data, and would agree that people are probably at an advantage if they can obtain legal counsel from the first part of the case.

Senator Doherty told Mr. Hudson that one of the arguments he had against putting it into the criminal justice system is that it does require a certain amount of due process that automatically attaches and that would increase costs. He asked what kind of middle ground was available to provide administratively the process folks are due when their kids are taken. Mr. Hudson said it is not the initial due process that concerns him, it is the change in the nature and ability to protect people within that system. He said they had been discussing this issue of what they could offer people in the pre-substantiation and the following substantiation stage as far as due process. He said they had wrestled with it and they now offer a review within the department which still leaves a lot of confidence in the people who are doing the review. They have looked at other states and noted that no state has set up an independent sharing process on substantiation. If they move beyond substantiation and take action regarding a family, then the state has to go before a judge as does the family. He said they had not been able to resolve whether the substantiation issue was subject to appeal for a hearing outside the department.

Senator Doherty said in the normal civil suit, when you are in discovery and there are allegations on one side or the other and you have material relevant evidence, it is discoverable. You have to "cough it up"; you have to show the other side what is going on. He asked why that was not done in this instance. Mr. Thaggard said that is where he has been involved, as a county attorney. He said he could not recall an instance where he concealed any evidence from the opposing side, but had made it available to them. DFS may have some information on circumstances which they have not made available, but he believed that typically all those materials were made available to the opposing parties.

Senator Doherty said on page 20 of the bill where it says "at the time of the written confirmation report" ---" must be sent to the child's family", and asked if in practice, that is being done now or is it a part of the bill we should look at. Mr. Hudson said in his experience it is a practice. He said he could not speak for everyone, but believed it was generally in practice and assumed it would be possible to install some language along these lines with appropriate provisions for non-disclosure.

Senator Doherty said on page 5 of the bill where it refers to providing legal redress for the unlawful interference with the families right to remain intact, and asked if that was giving a cause of action to the family against the state and DFS. Mr. Hudson said that was his interpretation of it.

Senator Doherty asked if that cause of action exists now and Mr. Thaggard said he was not an expert on this subject, but it would be his understanding that sort of cause of action would not be available at this time. He suggested Ms. Gilkey might provide more detail on it.

Ms. Gilkey said they do have suits filed against them on a fairly regular basis alleging violation of civil rights, wrongful removal, etc. She said whether it is a cause of action she did not know, but they are sued with varying results.

Senator Doherty asked if Ms. Gilkey had a tally on results of the law suits she said no, but for those cases where a writ of habeas corpus for families sometimes filed for wrongful removal, typically they are not successful.

Senator Doherty asked if a writ of habeas corpus is the legal route that is usually taken by an aggrieved parent and Ms. Gilkey said that has been one route, and sometimes a wrongful removal for violation of civil rights.

Senator Doherty asked if it would be possible to find how many times DFS has been sued, sued and dismissed or sued and you prevailed or they prevailed, in the last couple years and Ms. Gilkey said there have been lots of different allegations against the department. Most of the suits filed are because a child was not removed from a home and injured or removed and allegations of subsequent injury. They are not called by parents for wrongful removal. She said she would try to get the information for the committee.

Senator Grosfield told Mr. Hudson he had said there were almost 17,000 reported cases and 5700 were substantiated. On the chart you are saying the top line is the almost 17,000 and 5700 is on the right hand column. He asked how long it takes before the 10,000 cases are closed and personal contact is made with the family in making that determination. Mr. Hudson said the determination of whether abuse is substantiated or not is usually made within a few days of the investigation so there is not a lot of waiting in that part of the process. If the child is removed from the home on an emergency basis then we have 48 hours to appear before a judge to show cause.

Senator Grosfield asked if he had any idea on the 11,000 or so that are found unsubstantiated. He asked how many of those cases are reported again later and perhaps substantiated. Mr. Hudson said he did not have data on that. He did find it interesting that with the unsubstantiated cases, many are cases where we can

provide referral and assistance to families who are struggling but not abusing their children. There are a number of those cases and there are an unfortunate number of cases in which parents are divorced and involved in custody disputes that have generated complaints to the department. He said those are particularly frustrating. There are some cases where, with the mandatory reporting laws we have, it is simply professionals who must report bruises. He said he was interested in developing sensitivity on the part of their workers where they do investigate every referral, but need to realize that the people we investigate deserve our respect and consideration and an appreciation of how difficult it is for them. Sometimes there is nothing there, and perhaps we need a third category, the substantiated, the unsubstantiated and those who have no basis whatsoever.

Chair Yellowtail asked the sponsor how this bill is before us in a Special Call without a fiscal note. Senator Burnett said there was a fiscal note, he would not sign it because it was erroneous, had an expert in to look at it and would have it before the executive session.

Senator Rye said in regard to the suits where DFS has prevailed, he is looking for a proponent to answer a question and asked Mr. Dennison about the article in the Missoulian which talked about some sort of a "sweetheart deal" between the Judges and DFS and asked if anyone thought, in fact, such an agreement was true. Senator Burnett said he did believe, in general, that two district judges for a grand jury investigation into the Lewistown allegations and to the allegations made in Missoula, indicate to him that it was not really a judicial problem, it was a legislative problem and he should come to the legislature. He said over the last year he has followed about 20 cases and any time a case worker comes before those judges and the county attorney, they prevail 99% of the time so he would presume that there is an intimidation by the DFS.

Senator Grosfield said, that being the case, if there is a case of suspected child abuse and you suspect sexual abuse of the child, isn't it better for the department to err on the side of taking the child out of the home while the investigation is done rather than to keep the child in that environment in that home during the investigation. Senator Burnett said they can remove the child and they can continue to have them removed if there is an admission and other evidence that the abuse does exist.

Closing by Sponsor: Senator Burnett said the department made some false allegations when they said the bill requires the name and location of the foster parents. That is not in the bill. It does say when a child is removed temporarily from the home and placed in a foster home, the department shall provide the child's family or the family members with information and a background on the families. If there are some complaints before the department on the foster families, those complaints are supposed to be known


to the parents. He had received several calls saying the bill is exposing foster parents and it is not doing so. He said his concern was with attorneys saying services were given and they are not. Anything the department wants to do they may do because they have a county attorney where the legal services causes them no hinderance to the department, but does to the members of the family. He believed everyone who was involved with these cases was emotionally charged because you have to have honesty and there is none.

ADJOURNMENT

Adjournment: 6 p.m.



SENATOR DOHERTY, Vice Chair



LINDA CASEY, WPC Supervisor

SD/11c

ROLL CALL

SENATE COMMITTEE JUDICIARY DATE 12/10/93

NAME	PRESENT	ABSENT	EXCUSED
SENATOR YELLOWTAIL, Chair	✓		
SENATOR DOHERTY, V. C.	✓		
SENATOR BARTLETT	✓		
SENATOR BLAYLOCK			✓
SENATOR BROWN			✓
SENATOR CRIPPEN			✓
SENATOR FRANKLIN	✓		
SENATOR GROSFIELD	✓		
SENATOR HALLIGAN	✓		
SENATOR HARP	✓		
SENATOR RYE	✓		
SENATOR TOWE	✓		
SENATOR Jergeson	x		

Attach to each day's minutes

Senator Burnett

This is a list of individuals who testified or offered written testimony on Senate Bill 33:

Proponents:

Kenneth Haugen
Debbie Taylor
Dave Thomas
Deborah Rice
Duane Hansen
John Rice
Penny Hadrava
Mike Billedeaux
Dick Dennison
Kathryn Wickstrom
Lanette Schrader
Sue Thomas
Dan Poe Newman
Carla Dennison
Alfred Solley
Lois Smallwood
Senator Aklestad
Senator Swift
Rick Jose
Walt Dupea
Cateland White
Katharine Wikstrom
Rick Harwood

Opponents:

Joe Thaggard
Hank Hudson
Angie Ligan
Chris Yde
Linda Lockley
Jessica Curtis
Bobby Curtis
Tricia Hill
Ginger Yde
Ann Gilkey
J

SENATE JUDICIARY
EXHIBIT NO.
DATE
BILL NO.

Senate Judiciary Committee

I respectfully request that you support SB 33 sponsored by Senator Jim Burnett.

It is imperative that the state recognize the parents as the authority in determining how the will ~~discipline~~ ^{Train} & nurture their children.

"The child is not the mere creature of the State: those who nurture him and direct his destiny have the right, coupled with the high duty to recognize and prepare him for additional obligations Pierce vs. Society of Sisters, U.S. Supreme Court (1925)

The Department of Family Services has abused its authority in numerous cases. Help preserve the integrity of the family by supporting SB 33.

Thank You

Rich Jones

5200 Cheff Lane

Ronan, MT 59864

644-2542

STATE JUDICIARY

EXHIBIT NO. 2

DATE 12-10-93

BILL NO. SB-33

Dear Jim Burnett:

I am for SB-33 as stated
in our T.E.A.M. Paper.
Sorry I had to leave -

Sincerely,

Walt Dupex

Box 608

Bingfork Mt 59911

Phone 837-5751

SENATE JUDICIARY
EXHIBIT NO. 3

DATE 12-10-93
BILL SB 33

NAME Debra Taylor

ADDRESS 2046 S. 11th W., Missoula, MT

HOME PHONE 542-0153 WORK PHONE 258-2155

REPRESENTING Self

APPEARING ON WHICH PROPOSAL? Senate bill #33

DO YOU: SUPPORT / OPPOSE AMEND

COMMENTS:

When labels such as "child abuser" or
"molester" are applied to honest, decent
parents ~~people~~ for the purpose of justifying
the existance of a bureaucracy, it is
no different than stealing. Innocent
parents are robbed of their reputations,
and the experiences and emotions of
real abuse survivors are robbed of
credibility.

WITNESS STATEMENT

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

Cateland A. White

P.O. Box 350008

Grantsdale, Montana

59835

(406) 363-0166

December 8, 1993

SENATE JUDICIARY
EXHIBIT NO. 4
DATE 12-10-93
BILL NO. SB 332

Everyone of you sitting here has at least one family in your district who have suffered abuse at the hands of the Department of Family Services (DFS). Some of you wish it was only *one* family. And some of you truly hope that very soon there will be no families caught up in a system that, to justify it's ever expanding budget, must remove children from their homes and families and place them in state-funded institutions and foster care program. Programs paid for with state tax dollars and, ~~as much of DFS's~~ *Additional Fed Funds* funding is equally matched at the federal level, federal funds.

I'm sure you have been or will be lobbied by DFS supporters who want to preserve their present system of operation. They fiercely want to protect their right to operate beyond the bounds of the Constitution of The United States; the right to act in complete secrecy; the right to disavow any responsibility for their actions. But what they will not tell you is that Grand Juries across this nation are deciding that these rights they claim are wrong.

In Alabama, the Grand Jury decided that social workers should be accountable for their actions - just like you and I and everyone else in this country. In Texas, a case of child abuse must be 'constitutionally' proven through the due process of law that this nation was founded upon. Unlike Montana, you are innocent until proven guilty in Texas. It takes more than the opinion of a single social worker to determine abuse. In Virginia, a case pending involves charges of kidnapping against a social worker who removed a child from it's home because, *in her opinion*, the child had been abused. This, despite a roomful of witnesses who saw the child fall and strike it's head against a table edge. The opinion of this social worker will cost the state millions of dollars in awarded damages.

If you allow
~~By allowing~~ the defeat of Senator Burnett's legislation you are not protecting the children and families of this state. You are protecting the Department of Family Services. And this department fears you because you have the power to say 'enough is enough'.

I say 'enough is enough'. My family has been beaten down by heartache and frustration caused by the Department of Family Services. For almost 4 years, my 9 year old daughter has been shuffled from foster home to foster home to mental hospital to foster home again. I haven't been allowed to see or speak to her for over a year yet I'm not under suspicion. Despite the fact that DFS's own experts - doctors, psychologists, therapists, county attorney and sheriff's department - couldn't say whether or not the child had been abused. The are people professionally trained to make these determinations. So why is Tiffany spending her fourth Christmas away from home? Because one social worker had an opinion. One social worker who's own notes reflect her emotional stability with comments in our case file such as: 'I cancelled his birthday visit - he's angry - I think he's going to go get a gun.' Or 'I saw their car parked in the vicinity of the Ponderosa Bar'. Of course, failing to mention that in the vicinity of the Ponderosa

pg 2
eth 4
Jared 12/11/93

Bar is also a restaurant, a drugstore, a title company and a mini-mall. This type of very leading and misrepresentative statements go on and on. This woman has built a case in her head. Our daughter was examined by a DFS physician the day after she was removed from the home. The doctor found no evidence of abuse. It should have ended there.

For almost four years Tiffany has maintained that her Dad ^{did NOT} hurt her. She told the social worker that she lied to the police because she was scared - she'd been told what to say. DFS says Tiffany is a liar but they also say children don't lie.

Ladies and gentlemen, carefully consider this bill. I'm not the only one who's fighting and it is no longer just a state issue. All across the country parents are fighting for the right to raise their children. I believe that children should be protected from abuse but I also as strongly believe that families deserve to be protected from the abuse of agencies like DFS. They will tell you what a fine job their department is doing and deny any wrongdoing, confident that the laws of confidentiality you empowered them with will stop you from finding out the truth. But if you will open your eyes and ears to the growing number of families across this state who's stories are too similiar to ignore you will find that through the smoke there is fire. If you won't listen there are others who will. We have found sympathy and outrage among members of the national press and within the Federal Court system. Someone will do something. And until Tiffany is returned home I will continue to fight for her; to tell this story. But you won't hear from our one social worker and her opinion. She's hiding. From what?

SENATE JUDICIARY

EXHIBIT NO. 5

DATE 12-10-93

BILL NO. SB 43

Dear _____,

Families For Families is a grassroots organization that has formed in Montana. We have compiled evidence of abuse committed by Department of Family Services throughout the State of Montana and violation of DFS Policy Manual Children's Services, January 1992 Sec. 201-1.

According to the information furnished by HB 0018/03 of the 53rd Legislature, "In the fiscal year 1992, 3310 Montana children and youth were removed from their families..at a cost of more than \$16 million" dollars.

Three Thousand, three hundred and ten children in a State with a population of approximate 800,000 people bears investigation. Were that high a percentage of children taken for example in Los Angeles County, be assured a United Nation Task Force would investigate as in Argentina "Where are the children"?

University of Montana Law research provides the following figures: The Dept. of Family Services operates with an annual budget of \$101,000,000.00. Federal Funding provides \$40,000,000.00. State of Montana General Funds provide \$61,000,000.00.

For the records of this organization, a complete list of all Agencies, Departments, Public Servants and individuals contacted is retained, to further evidence our sincere attempts to solve this problem at a local level and thereby avoid besmirching "Montana-The Last Best Place".

Sincerely,

Oct 14, 1993

Kenneth E. Haugen
Kenneth E. Haugen
1831 Stoddard
Missoula MT 59802
Telephone: 543-6193

P.S. For your convenience a self-addressed letter for your response is enclosed.

TO: DEPARTMENT OF FAMILY SERVICES and
TO WHOM IT MAY CONCERN:

HOW MANY TIMES HAS DEPARTMENT OF FAMILY SERVICES BEEN SUED?

1. Identify the number of Cases where a parent(s) received a Trial?
(To date, our organization has found no evidence of a single Trial).
2. Identify the number of Cases where the 48-Hour Rule (201-7) has been honored?
Why have not the County Attorneys been brought in to procure a Court Order as mandated by 201-7 Policy Manual)? (To date, our organization has found no evidence of compliance to State mandate).
3. Name(s) of Attorneys at Law who are qualified in Practice to afford competent legal representation to parent(s)? Names of Attorneys who have been successful in representation against Dept of Family Services (DFS)? Who are willing to represent, or even willing to consider representing a parent against DFS?
4. Furnish to our organization a budget breakdown of allocations by DFS?
How many persons are employed full and part-time by DFS?
Contracted by DFS? Salaries? Grants? Contracted personnel? Stipends?
Foster care providers? Amount and percentage of moneys spent for re-unification of families?
Total percentage of budget for staff personnel and contracted personnel?
Qualifications for employment by DFS in each and every job classification?
Names of Medical Providers? Psychiatric? Psychology, Therapy, Counselors?
Fees paid to each by contract and/or hourly schedule?
Total vehicle cost of DFS? Number of new vehicles purchased per year?
From whom these vehicle were purchased: Names of vendors?
To whom were service contracts awarded for service of vehicles?
From whom were business supplies purchased? Amounts? Who are the contractors who have received the service contracts for DFS business equipment?
Identify in particular all costs of computer, state of art technical data processing equipment and costs thereof?

Furnish all data by Case of cost per Child by DFS? Cost of Foster Care?
Cost of children transported to out of State of Montana Foster Care?
Number of Children who are now in out of State residency?
Cost of DFS allocated to restoration and preservation of Family as outlined in Montana State Constitution?
Number of Children who have been forcibly moved out of their County of residence?
5. Demographics of Children and their Families? Economic and Social background?
Low income? Middle income? High Income? Percentage of Native Americans? Percentage of Children of Parent(s) who had moved to Montana within five years of DFS action? Actual number of newly arrived (within five years)?
Percentage and actual number of Children "taken" that Cases originated via a "report" from an ex-spouse, divorced or separated Parent?
Percentage and actual number of handicapped, partially and permanently totally disabled Children who have been "taken"? (To date, we have found no evidence that handicapped Children are "taken". We have found that Children above average in health and mental ability are "taken". Are we to presume that all parents of handicapped Children are incapable of abuse?).
Ages of Children "taken"? How many Children have been taken in prior years to 1992? Where are they? How many are now incarcerated in penal institutions? How many of them have reported physical, mental and sexual abuse while in Foster Care? How many Professional persons? Sixth generation Montanans? Members of Chamber of Commerce? Law Enforcement has had Children "taken"? (Are they incapable of abuse?) What are the remedies of Law for abuses done via DFS?
What safeguards are in place to protect the lives of Law Enforcement who are AT RISK, EVERY DAY, via the mis-information of DFS?

SENATE JUDICIARY

EXHIBIT NO. 6

DATE 12/10/93

BILL NO. SB 37

NAME

Katharine E. Wikstrom

ADDRESS

P.O. 9884

HOME PHONE

721-3068

WORK PHONE

REPRESENTING

Self & Others

APPEARING ON WHICH PROPOSAL?

DO YOU:

SUPPORT

X

OPPOSE

AMEND

COMMENTS:

Attached Affidavit

✓ Letter from Catherine White

WITNESS STATEMENT

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

Call me I'll
be glad to talk with any of you
about fixing I support the Bill.

SENATE JUDICIARY

EXHIBIT NO. 7

DATE 12-18-93

BILL NO. SB 33

NAME

Debra L. Rice

ADDRESS

Cozy Court #1 Lolo MT 59847

HOME PHONE

(406) 273-3162

WORK PHONE

REPRESENTING

Parent

APPEARING ON WHICH PROPOSAL?

33

DO YOU:

SUPPORT

☒

OPPOSE

AMEND

COMMENTS:

I feel everyone should be protected But most
of all the safety of the family unit
that all parties involved with the family
should be secure with a solid belief of family
unity & those accused of a crime should be
prosecuted by all legal efforts. The family should
also be able to review & clarify any statements
made by children concerning religion sexually
or family emigration from it: movies & songs.
The children pay for the mistakes of everyone
& the inability to have funding from D.F. & and
or other available sources to receive needed help
with in the family unit - The Garden of Eden needs to
know the children as well as the family with mine never have
to wonder whether that **WITNESS STATEMENT**
only correct for 1 hour a week because they

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

Said they want to come home

WITNESS.F11

Allegations not legally addressed
Carlton of Lighter does not know the child
or any family members
information refused to be given

SENATE JUDICIARY

EXHIBIT NO. 8

DATE 12-10-93

BILL NO. SB 33

NAME Alfred J Solley

ADDRESS P.O. box 908 Lolo mt 59847-0908

HOME PHONE (706) (273-3167) WORK PHONE Same

REPRESENTING Parents

APPEARING ON WHICH PROPOSAL? 33

DO YOU: SUPPORT X OPPOSE AMEND

COMMENTS:

I support this bill because

It inforices the right to know your accuser
to be proven or disproven of any allagation
brought out on the parent or Garder

The right for A child's taughts to be free
to know the naratage of there family and
home there whole Family Grandparents uncles
Aunties are cut out Families that need a
little help pay the price for that need.

Being Low income or poor just poor
you have no right to your children

No love is Better than your mom & Dad
would you think Be a child & say how you would
feel ripped from your parents arms

WITNESS STATEMENT

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

SENATE JUDICIARY
EXHIBIT NO. 9
DATE 12-10-93
BILL NO. SB 33

THANK YOU FOR THE OPPORTUNITY TO
SPEAK -

THE SOLUTION IS SIMPLE SUPPORT
DUE PROCESS

- Support HB 33
- As a victim of DFS I would
liken the DEPT. OF FAMILY SERVICES
POLICY MORE CLOSELY TO THE GASTAPO
RATHER THAN RESPONSIBLE GOVERNMENT
This is a very serious charge to make
against a parent without having proof
beyond a doubt

1
DAVE AND SUE THOMAS
LEWISTOWN, MT

SENATE JUDICIARY
EXHIBIT NO. 10
DATE 12-10-93
BILL NO. SB 33

NAME RICHARD T. HARWOOD

ADDRESS Box 62, GALATHA MT, 59444

HOME PHONE 432-2778 WORK PHONE 432-2890

REPRESENTING SELF

APPEARING ON WHICH PROPOSAL? SB 33

DO YOU: SUPPORT X OPPOSE AMEND X

COMMENTS:

so long as only confidentiality of location
Safe Harbor is maintained all other
civil & legal rights of parents must be
maintained.

WITNESS STATEMENT

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

SENATE JUDGE
EXHIBIT NO. 11
DATE 12-10-93
BILL NO. SB 33

NAME Dan Poe Newman

ADDRESS PO Box 9331 Missoula, MT 59807

HOME PHONE WORK PHONE

REPRESENTING Self / Family to, Families

APPEARING ON WHICH PROPOSAL? Bill 33

DO YOU: SUPPORT OPPOSE AMEND

COMMENTS:

Fair treatment / Due Process / Justice

WITNESS STATEMENT

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

EXHIBIT NO. 12
DATE 12-10-93
BILL NO. SB 33

NAME Chris Yde, President, MT. State Foster / Adoptive Parents Asse.
ADDRESS 906 8th Ave, Helena, MT 59601
HOME PHONE 449-4587 WORK PHONE 444-4967
REPRESENTING MT. State Foster / Adoptive Parents Association
APPEARING ON WHICH PROPOSAL? SB 33
DO YOU: SUPPORT _____ OPPOSE X AMEND _____

COMMENTS:

Montana State Foster / Adoptive Parents Association opposes
this bill. While there are many good points developed
within this bill, there are several places ~~that are~~
which make this bill unacceptable to the association.

- Foster parents address and phone numbers would
have to be immediately disclosed to the child's family.
Because of many factors this can put the foster
parents in direct endangerment - Numerous foster
parents have been threatened or abused by parents
during a period of distress. ^{The Association believes the child and}
^{families should be effectively re-united}
- Provision which allow ^{abusive} parents ~~to~~ ^{in a safe family environment.}
~~are~~ to maintain control of the child. This would
be accomplished through unencumbered visits and

WITNESS STATEMENT

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

phone calls. Direct experience of my wife and I with several sexually abused children who have had unencumbered visits by the abuser has demonstrated how effectively the child can be manipulated.

- The clothing allowance of \$300.00/year is in contradiction to ~~the~~ fiscal provisions passed by the previous legislative session and of SB 23 which has been passed by the Senate and is currently being considered by the House.

The Association understands there are problems with the workings of DFS. We are currently working with the Department to try to correct these problems. We feel the interested parties should work together toward effective legislation and policies to adequately address the problems.

SENATE JUDICIARY
EXHIBIT NO. 13

DATE 12-10-93
BILL NO. SB 33

NAME Linda Lockley

ADDRESS 7 Fiesta Ct East Helena

HOME PHONE 227-8911 WORK PHONE 442-8032

REPRESENTING Big Sky Foster/Adopt. Parent Assn

APPEARING ON WHICH PROPOSAL? SB 33

DO YOU: SUPPORT OPPOSE ✓ AMEND

COMMENTS:

I provide a "safe home" for teenage girls who have been sexually abused, physically abused and mentally abused by a family member. If my name, address, & phone # were given out, my home would no longer be "safe". I had one birth father get a hold of a gun and was looking for "the judge, county attorney, his attorney, the social worker, and myself, to hunt someone." If this man had the info he would have showed up at my home. I received this call at 9:30 p.m. from the social worker. letting me know what was →

WITNESS STATEMENT

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

going on

I promised these young women one thing, a safe home. I can't promise that if these info is given out when it is appropriate, and the teenager, social worker, therapist, and my self are in agreement, I have had grand parents, sisters, relatives, come and visit in my home with the teenager. on the condition that the abusive relative isn't told where the teenager is living.

I have had one grandmother. (who came and visited) tell me to never let her daughter ~~know~~ (the abuser) know where the grand-daughter is living. ~~Because the daughter is a person who abuses alcohol and when she starts drinking becomes violent and she would seek me out. This grandmother told me that is what her daughter told her. "She wanted to beat me up."~~ Because the daughter is a person who abuses alcohol and when she starts drinking becomes violent and she would seek me out. This grandmother told me that is what her daughter told her. "She wanted to beat me up."

The teenagers who have lived with me have never told the abuser this info and to this day the abusers don't know where I live. Because the teenagers appreciate a "safe" home.

SENATE JUDICIARY
EXHIBIT NO. 14

DATE

BILL NO.

12-10-93
SB 33

NAME Ginger Yde
ADDRESS 906 5th AVE Helena MT.
HOME PHONE 449-4587 WORK PHONE 442-0117
REPRESENTING Foster Parent
APPEARING ON WHICH PROPOSAL? SB-33
DO YOU: SUPPORT _____ OPPOSE X AMEND _____

COMMENTS:

This bill has many good points but also many bad points. Foster parents lives can be put in great danger if Bio parents know to soon where we are located - Some sexual abused children do not want contact with Bio-parents and should not be made to do this - Great because charges are made doesn't mean the child will be kept safe if this abusive parent can see him along if have witnessed physical abuse while supervising a parent - Foster Child visit I believe the family is important I have every child that comes into my house will go home to his parents but they need to be protected to the full

WITNESS STATEMENT *until this can happen*

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

SENATE JUDICIARY

EXHIBIT NO. 15

DATE 12-10-93

BILL NO. SB 33

NAME Bobbie Jean Curtis

ADDRESS Morony Loop #20

HOME PHONE 453-1129 WORK PHONE 453-1129

REPRESENTING Mont. St. Foster Adopt. Parent Assoc.

APPEARING ON WHICH PROPOSAL? SB 33

DO YOU: SUPPORT ~~_____~~ OPPOSE X AMEND _____

COMMENTS:

- unsupervised 3hr min. visit could have damaging effect
- addresses + phone #s should be a case to case basis - not mandatory disclosure within 4hrs.
- 3 phone calls of 1hr per week is ludicrous
- birth parent moving a child from home to home
- foster parent profile being given out w/o confidentiality laws following it
- Videoing a child's bottom during examination with a stranger in room + then give it to the family is perverted
- reporting person's name be disclosed -

WITNESS STATEMENT

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

• The bill will not fix the problems -

if this passes - foster families will be forced
to end helping children -

we believe in helping children & their family
no destroy them

A sexually abused child who is terrified of
re-accusation from the abuser - 3 hrs of
unsupervised visitation would have destroyed
her self confidence

3 hours of phoning her would be devastating

We or shall I ~~say~~^{say} I have written a pilot
project - a Parenting Center to help families
before DFS, after DFS is involved + after
Kids either go home or enter adoption -

We have a great amount of expertise
gathered over many years that will
be put into effect in the center to
advocate for families, Birth, Foster +
Adoptive parents - A Partnership Parenting
Center -

SENATE JUDICIARY

EXHIBIT NO. 16

DATE 12-10-93

CALL NO. SB 33

NAME Joseph E. Thaggard

ADDRESS 215 N. Sanders Helena MT

HOME PHONE _____ WORK PHONE 444-2026

REPRESENTING MT. County Attorneys Association

APPEARING ON WHICH PROPOSAL? S.B. 33

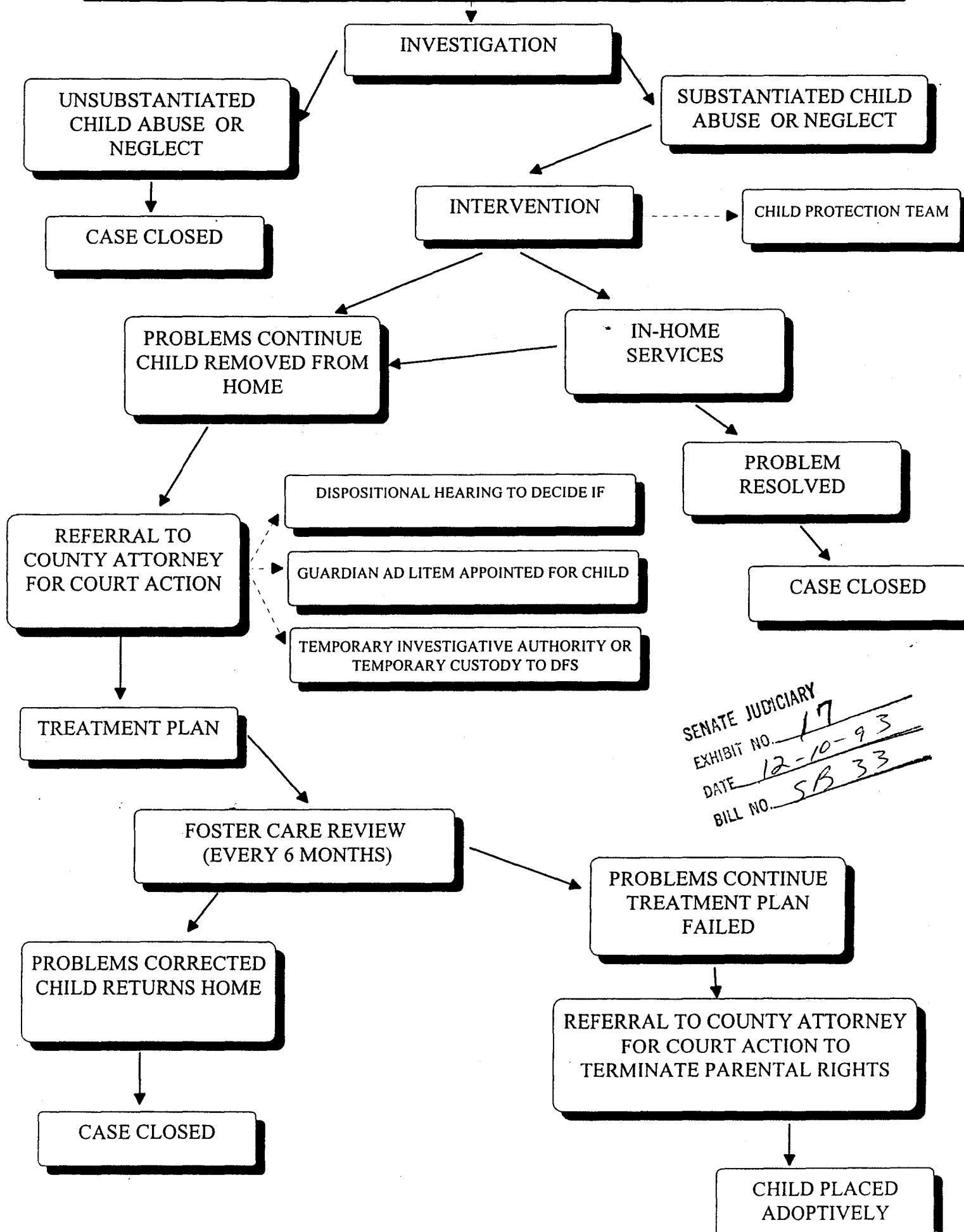
DO YOU: SUPPORT _____ OPPOSE X AMEND _____

COMMENTS:

WITNESS STATEMENT

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

REFERRAL OF CHILD ABUSE OR NEGLECT



SENATE JUDICIARY
EXHIBIT NO. 17
DATE 12-10-93
BILL NO. SB 33

DATE 12-10-93SENATE COMMITTEE ON JUDICIARYBILLS BEING HEARD TODAY: SB 33

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PLEASE PRINT

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Check One

Name	Representing	Bill No.	Support	Oppose
CARLA DENNISON	SELF	SB 33	X	
Brett Hardy	MEBG	"	X	
Debi Haessly	MEBG	SB 33	X	
Donnell Macfadden	DES Advisory Council	"		X
John Rice	Mont For Better Government	SB 33	✓	
Cornelius M. Andreadis	Missoula, Mt.	SB 33	✓	
Susan A. James Lewistown Mt.	Montanans for Better Gov.	"	✓	
Joseph Halderson	MONT. FOR BETTER GOV.	SB 33	✓	
DAVE THOMAS	MT. FOR BETTER GOVT	SB 33	✓	
Donna Harkness	Lewistown MT	SB 33	✓	
Loris Smallwood	" " Parents	SB 33	✓	
Linda Hockley	Big Sky Foster Ad Par	SB 33		✓
Chris Yde	MT. State Foster / Adaptive Hunts Assn	SB 33		X
Lynne Yde	Foster Parent	SB 33		X

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 12-10-93

SENATE COMMITTEE ON

JUDICIARY

BILLS BEING HEARD TODAY:

SB 33

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PLEASE PRINT

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Check One

Name	Representing	Bill No.	Support	Oppose
<i>Leanne Kortnik</i>	<i>former foster parent</i>	<i>33</i>		<input checked="" type="checkbox"/>
<i>Ken D. Smith</i>	<i>foster parent</i>	<i>33</i>		<input checked="" type="checkbox"/>
<i>Richard L. Rice</i>	<i>Parent</i>	<i>33</i>	<input checked="" type="checkbox"/>	
<i>Alfred Solley</i>	<i>Parent</i>	<i>33</i>	<input checked="" type="checkbox"/>	
<i>Kenneth E. Haugen</i>	<i>Family for Families</i>	<i>33</i>	<input checked="" type="checkbox"/>	
<i>Janetta Schrader</i>	<i>Parent</i>	<i>33</i>	<input checked="" type="checkbox"/>	
<i>Ollie B. Rice</i>	<i>Self</i>	<i>33</i>	<input checked="" type="checkbox"/>	
<i>Robert W. Rice</i>	<i>SELF</i>	<i>33</i>	<input checked="" type="checkbox"/>	
<i>Delra Taylor</i>	<i>Self</i>	<i>33</i>	<input checked="" type="checkbox"/>	
<i>Michael V. Billedeaux, Sr.</i>	<i>Family for Families</i>	<i>33</i>	<input checked="" type="checkbox"/>	
<i>Muane A. Hanson</i>	<i>Self & Family</i>	<i>33</i>	<input checked="" type="checkbox"/>	
<i>H.R. DENNISON</i>	<i>" "</i>	<i>33</i>	<input checked="" type="checkbox"/>	
<i>Bernie G. Swift</i>	<i>Leg. - Rusk County</i>	<i>33</i>	<input checked="" type="checkbox"/>	
<i>Dan Poe Newman</i>	<i>Candidate JP Mission Co.</i>	<i>33</i>	<input checked="" type="checkbox"/>	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 12-10-93SENATE COMMITTEE ON JUDICIARYBILLS BEING HEARD TODAY: SB 33

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PLEASE PRINT

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Check One

Name	Representing	Bill No.	Support	Oppose
Katharine E. Wikstrom	Self & Others	SB 33	X	
John Cochran	M.F.B.G.	SB 33	X	
Jessica Curtis	Self	SB 33		X
Angie Ziger	Self	SB 33		X
Norma R. Jester	M.F.B.G.	SB 33	X	
Richard Howard	SELF	SB 33	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY