

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 53rd LEGISLATURE - SPECIAL SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Russell Fagg, on December 17, 1993,
at 2:45 p.m.

ROLL CALL

Members Present:

Rep. Russ Fagg, Chairman (R)
Rep. Randy Vogel, Vice Chairman (R)
Rep. Ellen Bergman (R)
Rep. Jody Bird (D)
Rep. Bob Clark (R)
Rep. Duane Grimes (R)
Rep. Jim Rice (R)
Rep. Liz Smith (R)
Rep. Bill Tash (R)

Members Excused: Rep. Vivian Brooke, Rep. Diana Wyatt, Rep.
Debbie Shea, Rep. Scott McCulloch, Rep. Angela Russell, Rep.
Tim Sayles, Rep. Howard Toole, Rep. Tim Whalen, and Rep.
Karyl Winslow

Members Absent: None

Staff Present: John MacMaster, Legislative Council
Karmen Tuttle, 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 SB 33

Tape No. 1 Side 1

Opening Statement by Sponsor:

Sen. Jim Burnett, said that SB 33 is intended to help family services protect and service children and families. SB 33 reflects the input of a great many clients to the Department of Family Services. It makes those in the system responsible for their actions. DFS started with about \$30 million General Fund

money and it is now running on about \$60 million. There has been an 87% jump in the gross funds. There are about 3,300 children in foster care in the state of Montana. The rate of removal in the state is 3.6% and the foster care budget is about \$16 million. **Sen. Burnett** prepared amendments for the hearing. Exhibits 1 & 2

Proponents' Testimony:

None

Opponents' Testimony:

None

Informational Testimony:

Mr. Hudson said he does not support or oppose this bill.

Questions From Subcommittee Members and Responses:

Rep. Randy Vogel asked whether **Sen. Burnett** would be amenable to have the committee take the bill and look it over with the department so it would be possible to bring it out again next year during the session. **Sen. Burnett** said he would work with the committee.

Rep. Vogel said that the employees who hold the public trust with the power that they do have should be held to a little higher standard. They need to be above reproach in a lot of areas and work well within the system to their own benefit.

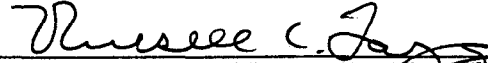
Sen. Burnett asked the committee to try and do something with this bill.

Rep. Vogel said that there aren't enough people on the committee to make a motion or vote on this bill

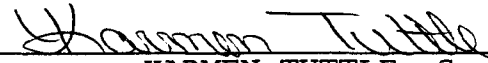
Rep. Russell Fagg closed the hearing on SB 33.

ADJOURNMENT

Adjournment: 3:30 p.m.



REP. RUSSELL FAGG, Chairman



KARMEN TUTTLE, Secretary

RF/KT

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL

DATE December 17, 1993

NAME	PRESENT	ABSENT	EXCUSED
REP. RUSSELL FAGG, CHAIRMAN	x		
REP. RANDY VOGEL, VICE CHAIRMAN	x		
REP. JODY BIRD	x		
REP. VIVIAN BROOKE			x
REP. ELLEN BERGMAN	x		
REP. DIANA WYATT			x
REP. DEBBIE SHEA			x
REP. ROBERT CLARK	x		
REP. DUANE GRIMES	x		
REP. SCOTT MCCULLOCH			x
REP. JIM RICE	x		
REP. ANGELA RUSSELL			x
REP. TIM SAYLES			x
REP. LIZ SMITH	x		
REP. HOWARD TOOLE			x
REP. BILL TASH	x		
REP. TIM WHALEN			x
REP. KARYL WINSLOW			x

HR:1993
wp:rollcalls.man
CS-10

December 17, 1993

DATE 12/17/93

A complete copy of this bill is stored at the Historical Society at 225 North Roberts Street, Helena, MT 59620-1201. The phone number is 444-2694.

53rd Legislature
Special Session 11/93

SB 0033/02

SB 0033/02

1 SENATE BILL NO. 33

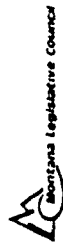
2 INTRODUCED BY BURNETT, SWIFT, AKLESTAD,

3 GRINDE, BENEDICT, SIMPKINS, HAGER

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS
6 RELATING TO THE INVESTIGATION AND REMOVAL OF A CHILD FROM
7 THE HOME; IN--A-CASE-OF--SUSPECTED--SEXUAL--ABUSE--OR
8 ENDANGERMENT--OF--THE-CHILD'S-WELFARE;--PROHIBITING-ANONYMOUS
9 REPORTING--OF--SUSPECTED--SEXUAL--ABUSE--OR--ENDANGERMENT;
10 REQUIRING--CRIMINAL--CHARGES--TO--BE--FILED-AGAINST-A-PERSON
11 SUSPECTED-OF-SEXUAL-ABUSE-OR-ENDANGERMENT-PRIOR-TO-FILEING--A
12 PETITION--FOR--REMOVAL-OF-THE-CHILD-FROM-THE-HOME;--REQUIRING
13 EVIDENCE--OF--SUSPECTED--SEXUAL--ABUSE--OR--ENDANGERMENT
14 AUTHORIZING CERTAIN INFORMATION TO BE GIVEN TO THE FAMILY;
15 GUARANTEEING--A--FAMILY'S AUTHORIZING CERTAIN FAMILY
16 COMMUNICATION WITH A CHILD REMOVED FROM THE HOME; REQUIRING
17 INFORMATION--ON--FOSTER--HOME--PLACEMENT--TO--BE-GIVEN-TO-THE
18 FAMILY-OF-A-CHILD-REMOVED-FROM-THE-HOME; AMENDING SECTIONS
19 40-8-111, 41-3-101, 41-3-102, 41-3-201, 41-3-202, 41-3-204,
20 41-3-205, 41-3-206, 41-3-301, 41-3-303, 41-3-401, 41-3-402,
21 41-3-403, AND 41-3-404, 41-3-406, 41-3-409, 41-3-609, AND
22 41-3-1103, MCA; AND PROVIDING AN EFFECTIVE DATE."

23
24 WHEREAS, the legislature finds it necessary to restore
25 public confidence in the system and provide protection of

1 individual and family civil rights as guaranteed by the
2 state and federal constitutions; and
3 WHEREAS, present Montana law arguably allows the
4 Department of Family Services to circumvent the
5 constitutional rights of individuals and families; and
6 WHEREAS, Montana law should require that the burden of
7 proving allegations of child abuse or neglect be on the
8 Department and that those allegations be proved beyond a
9 reasonable doubt, which would reduce the incidence of false
10 charges of alleged abuse resulting in a corresponding
11 savings to the general fund; and
12 WHEREAS, there is no room for error in the removal of
13 children from the home and extreme care must be taken to
14 avoid ruining a family, or individual through
15 government intrusion or mistake; and
16 WHEREAS, it is necessary to restore the sacred principle
17 of "innocent until proven guilty" to the process of removal
18 of a child from the home in cases of alleged abuse or
19 neglect; and
20 WHEREAS, child abuse and neglect is a crime and should
21 be addressed as a crime; and
22 WHEREAS, delaying the effective date of this legislation
23 until July 1, 1994, will allow the Department of Family
24 Services time to establish criteria to implement the changes
25 necessary to apply this legislation to cases of alleged



Amendments to Senate Bill No. 33
Third Reading Copy (blue)

Requested by Senator Burnett
For the Committee on Judiciary

Prepared by Valencia Lane
December 16, 1993

1. Title, line 18.

Following: "~~HOME~~;"

Insert: "REQUIRING INFORMATION ON FOSTER HOME PLACEMENT TO BE
GIVEN TO THE FAMILY OF A CHILD REMOVED FROM THE HOME;"

2. Title, line 21.

Strike: "AND"

3. Title, line 22.

Following: "~~41-3-1103~~,"

Insert: "AND 41-3-1103,"

Following: "AN"

Insert: "IMMEDIATE"

4. Page 3, line 3.

Following: line 2

Insert: "WHEREAS, the Legislature finds it necessary to restore
public confidence in the system and provide protection of
individual and family civil rights as guaranteed by the
state and federal constitutions; and

WHEREAS, present Montana law arguably allows the
Department of Family Services to circumvent the
constitutional rights of individuals and families; and

WHEREAS, there is no room for error in the removal of
children from the home, and extreme care must be taken to
avoid ruining a family, parent, or individual through
government intrusion or mistake; and

WHEREAS, it is necessary to restore the sacred
principle of "innocent until proven guilty" to the process
of removal of a child from the home in cases of alleged
abuse or neglect; and

WHEREAS, child abuse and neglect is a crime and should
be addressed as a crime; and

WHEREAS, an immediate effective date will allow the
Department of Family Services time to establish criteria to
implement the changes necessary to apply this legislation to
cases of alleged child abuse or neglect and to ensure that
those cases are addressed by this legislation."

5. Page 5, line 25.

Following: "associate"

Insert: "and provide legal redress for the unlawful interference
with the family's right to remain intact"

6. Page 6, line 15.

Strike: "AND"

7. Page 6, line 17.

Following: "family"

Insert: ", and provide legal redress for interference with the family"

8. Page 9, line 7.

Following: line 6

Insert: "(c) induces or attempts to induce a child into giving untrue testimony that the child or another child was abused or neglected by a parent or person responsible for the child's welfare;"

Renumber: subsequent subsections

9. Page 17, line 3.

Following: line 2

Insert: "(2) An initial investigation into the home of the child may be conducted when an anonymous report is received. However, the investigation must within 48 hours develop independent, corroborative, and attributable information in order for the investigation to continue. Without the development of corroborative and attributable information, a child may not be removed from the home."

Renumber: subsequent subsections

10. Page 17, line 22.

Following: "unencumbered"

Strike: "PRIVATE"

11. Page 18, line 7.

Following: "family"

Insert: "and the family"

12. Page 18, line 17.

Following: "report"

Insert: ", and the family of the child who is the subject of the report"

13. Page 21, line 18.

Strike: "WITHOUT"

Insert: "with"

14. Page 26, line 18.

Following: "They"

Insert: "must be a nonprofessional person chosen from a roll of volunteers who have undergone a background check and who have parental experience. They"

15. Page 45, line 15.

Following: line 14

Insert: "Section 11. Section 41-3-1103, MCA, is amended to read:
"41-3-1103. Powers and duties of department. (1) The department shall:
(a) administer all state and federal funds allocated to the

department for youth foster homes, youth group homes, and child-care agencies for youth in need of care, youth in need of supervision, and delinquent youth, as defined in 41-5-103;

(b) exercise licensing authority over all youth foster homes, youth group homes, and child-care agencies;

(c) collect and disseminate information relating to youth in need of care, youth in need of supervision, and delinquent youth;

(d) provide for training of program personnel delivering services;

(e) in cooperation with youth care facility providers, develop and implement standards for youth care facilities;

(f) maintain adequate data on placements it funds in order to keep the legislature properly informed of the following:

(i) the breakdown of youth in need of care, youth in need of supervision, and delinquent youth by category in out-of-home care facilities;

(ii) the cost per facility for services rendered;

(iii) the type and level of care of services provided by each facility;

(iv) a profile of out-of-home care placements by level of care; and

(v) a profile of public institutional placements; and

(g) administer all funds allocated to the department for residential alcohol and drug abuse treatment for indigent youths in need of care, indigent youths in need of supervision, and indigent delinquent youths who require such treatment.

(2) The department may:

(a) enter into contracts with nonprofit corporations or associations or private organizations to provide substitute care for youth in need of care, youth in need of supervision, and delinquent youth in youth care facilities;

(b) accept gifts, grants, and donations of money and property from public and private sources to initiate and maintain community-based services to youth;

(c) adopt rules to carry out the administration and purposes of this part.

(3) The department shall pay for room, board, clothing, personal needs, transportation, and treatment in youth foster care homes and youth group homes for youths committed to the department who need to be placed in such facilities. Payments for the clothing of a child placed in a youth foster home must be provided to the extent the child needs a basic wardrobe or has a special clothing need. However, payments for clothing may not exceed \$300 a year per child.

(4) If a child temporarily removed from the home is placed in foster care, the department shall provide the child's family or a family member with information on the background of the home, any complaints filed against the home, and the record of disposition of children from the home. The family or a family member is entitled to petition the court for placement in another foster home if dissatisfied with the original placement."

Renumber: subsequent section

Strike: "July 1, 1994"

Insert: "on passage and approval"