

MINUTES

**MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION**

FREE CONFERENCE COMMITTEE ON SENATE BILL 206

Call to Order: By **CHAIRMAN JIM BURNETT**, on April 10, 1995, at
10:38 AM

ROLL CALL

Members Present:

Sen. James H. "Jim" Burnett (R)
Sen. Larry L. Baer (R)
Sen. Steve Doherty (D)
Rep. Loren L. Soft (R)
Rep. Richard D. Simpkins (R)
Rep. Matt McCann (D)

Members Excused: None

Members Absent: None

Staff Present: John McMaster, Legislative Council
Karolyn Simpson, Committee Secretary

Discussion: SB 206

SENATOR BURNETT said he wanted to work with the original bill, and wanted the bill to go through in some form, but doesn't want to make it into a form the Governor would probably veto. He recognizes there is child abuse and doesn't want to interfere with the Department of Family Services efforts, but is unhappy with the way the case workers in the field are performing, and wants the Department to more closely monitor their activities.

REP. McCANN asked for an explanation of the intent of the bill.

SENATOR BURNETT said the intent of the bill is bring some accountability to DFS, the case workers, and protect the civil rights of the family.

REP. McCANN asked for an explanation of the amendments put on the bill in the Senate.

SENATOR BURNETT said the House amendments are different from the version of the Senate amended bill. He said DFS indicated during the hearing they didn't understand the meaning of various words, and he wanted to put in some word definitions. He read a list of words and definitions. **EXHIBIT 1.**

REP. SIMPKINS said this was a Free Conference Committee and would be dealing with the whole bill.

SENATOR BURNETT said he did not want to upset the balance with the Department.

SEN. DOHERTY requested an explanation of the reason and purpose of the House amendments.

REP. SOFT said the amendments were put on so the bill would go to this Conference Committee. He had a list of issues and concerns that need clarification on the bill. He said these were issues that came up both in the Senate and Judiciary Committee.

EXHIBIT 2.

REP. SIMPKINS said the House had concerns about the video taping and said DFS thought some statements in the bill went too far. He told of a problems that had occurred in Great Falls and said DFS has too broad authority, and wondered if there was anything that could be put into the bill to remedy the situation.

SENATOR BURNETT asked **REP. SOFT** to explain the issues on his list and explain the House amendments.

REP. SOFT referred to issue #1 (page 3, section 2) procedures of removing a child from a home and redress by the parent toward the Department. He said this a concern both by the Department and the Senate.

SENATOR BURNETT said the Senate ruled that section out of the bill, and asked **SENATOR BAER** and **SENATOR DOHERTY** to make comments as to why that was ruled out.

SENATOR BAER said the Senate amendments were **SENATOR HALLIGAN's** amendments, he presented them to the Senate for action.

SENATOR DOHERTY said they provide legal redress for unlawful interference with the family's right to remain intact. It was recommended to delete this because if there is an unlawful interference or if there's an improper removal, the family does have some redress and they have the right to sue the Department. This amendment was offered because the right to sue the Department for improper removal already exists.

REP. SIMPKINS said the problem is the family has to get a lawyer because they had no say in the matter until then. The case is not investigated until they go to court to show cause for removal. He said there needs to be some type of hearing before the child is removed.

SENATOR BURNETT said he had discussed that issue with some family counselors. He wanted to add an amendment to this portion of the bill requiring a family EIS (estimated impact statement) to be developed by the Department which would address the affects of

intrusion into the family and its affects before taking the child out of the home. This EIS would be done by DFS and someone who is not an employee of DFS. The family needs to know what they are being investigated for, because many of the communications he has received from families indicated they didn't know where the children were, some were taken from school, and didn't know why.

SENATOR DOHERTY said he agreed, but Section 2 is about the policy, and the policy is to try to achieve unity and welfare of the family whenever possible. When the Department determines a youth is in need of care and removal is necessary, it is essential that the mechanics of operation, notice, notification, etc. are being done.

REP. SIMPKINS asked how can it be insured an investigation takes place before the child is removed.

SENATOR BURNETT said a referral is made to DFS, and the family has no idea of the charges against them before children are removed. He said all of the letters he has received state the same problems.

John McMaster referred to Section 9, 41-3-301, page 13, lines 20-30, Emergency protective service, saying when a child is taken out of the home immediately, it's an emergency situation.

SENATOR BURNETT said DFS should make a determination the children are in immediate danger before removing them from the home. He said he has many examples, in letters, where children have been removed from homes when they were in no immediate danger, and he doesn't know if a case worker even evaluated the home situation thoroughly. He said when the Department reviews the case, it's the case worker's report, and for that reason wanted to direct DFS to develop a EIS, which will add some checks and balances, none of which exist now for the field case workers.

REP. McCANN asked **SENATOR BURNETT** if he simply wants a statement of intent of why the child is being removed from the home.

SENATOR BURNETT said he wants a statement proving it is a fact.

REP. McCANN asked about the EIS.

SENATOR BURNETT said the EIS is a statement about the family, information from family friends and even children in the family, and there must be a definite concern that abuse has occurred.

REP. McCANN asked about the time necessary to develop an EIS and what is an emergency.

SENATOR BURNETT said if there is abuse and the child is injured, the child should be taken, but the abuse didn't just happen overnight. In an EIS, the case worker could determine if there have been previous problems where the police had to be called, or

called on more than one occasion, then it could be assumed there is a problem of abuse. He said friends and neighbors should be interviewed to determine if there is a problem, but this does not happen.

REP. McCANN asked if an EIS presently exists.

SENATOR BURNETT said he is recommending that an EIS be developed.

REP. SIMPKINS said there overuse or misuse of Section 41-3-301, Emergency protective service, and related a Great Falls case of misconduct by DFS. He said there is overuse of this section.

SENATOR BAER said there must be procedural due process mechanism to protect against this overuse, and unless a child is in danger, law enforcement officers could use their discretion to evaluate the situation. He said there needs to be procedural safeguards against the misuse of this section using the existing code or adding to it.

SENATOR DOHERTY referred to Section 41-3-301, saying the trigger is someone believes a youth is in immediate or apparent danger of harm resulting in the immediate removal, but once removed, a petition must be filed under 41-3-401, within 48 hours of emergency placement. Unless they do that, they can't keep the child in that emergency placement. If they want to continue to keep the child in that placement, they must reveal the reasons for their actions. If they don't follow this procedure, then the child must be returned to the family.

SENATOR BURNETT said he wishes things were actually like that, but in reality, it's not. He related a case where a child was taken when there was no physical threat to anyone. He said the Department is doing a job that is essential, but case workers must be held responsible or accountable for their actions.

REP. SOFT referred to lines 16-17, asked if there should be an addition to the law to give parent redress when an inappropriate action has taken place, or whether this is covered in another part of the law. The asked if this section would provide that protection if it is left in the bill.

John McMaster said he can't see that it's too harmful, because the redress is already there, but as a declaration of policy, it could lead people to think there's something being added to give them more legal redress.

REP. SIMPKINS said there are 2 extremes, one is to do nothing or over reaction, and it's the over reaction that's causing parents to get legal assistance to find the case in court. He asked if there is something in-between where the Department has to follow through and the parents will have access without having to go to court.

SENATOR DOHERTY said the Senate amendments were reasonable and the amended version of the bill was what the Senate wanted.

SENATOR BURNETT said he wants to require certain responsibilities from the Department, not so much the Department in Helena, but the field personnel.

SENATOR DOHERTY asked **SENATOR BURNETT** if he wanted to go through all the Senate amendments. He said he didn't want to give the Department a free hand, and wondered if there was specific language in the bill that is objectionable and could be changed.

SENATOR BAER said he voted against the amendments in the Senate Judiciary Committee because they struck a substantial portion of the entire bill. He recommended using **REP. SOFT's** outline to come up with language that can be inserted into the bill.

SENATOR BURNETT suggested **REP. SOFT** clarify each issue on his list.

REP. SOFT asked about the legal redress issue, whether the Committee felt that had already been covered or take it out.

SENATOR BURNETT said he wouldn't object because **John McMaster** said it is covered in other parts of the bill, so it could be left out.

REP. SIMPKINS asked if "preserve the unity or welfare of the family wherever possible" shouldn't be the first priority of family services, or if "wherever possible" is strong enough language (line 16). He said that should be strengthened so that is the ultimate objective, and wondered if there was any legal language to make that a stronger statement.

SENATOR BAER suggested "the primary directive would be to preserve the unity and welfare of the family" to make that the major emphasis.

SENATOR DOHERTY said there were 2 subsections of policy, but they have not been prioritized so each one is important in the policy directive.

REP. SIMPKINS asked why should "whenever possible" be left in.

SENATOR DOHERTY said if the policy is to protect family unity, taking out "whenever possible" dilutes the ability to take a child out in a dangerous situation when the desire is not for family unity, but simply to get the child out.

REP. SOFT asked if there was agreement to take out "and" after "possible" on line 15.

REP. SIMPKINS said it's out already.

REP. SOFT referring to page 3, lines 18-21, said there are 2 issues there. The first, removing the child based solely on allegations of abuse, and second, filing a criminal versus civil complaint. He said he likes that statement as written, but knows it's a major change going from civil to criminal.

REP. SIMPKINS said when spousal abuse was changed from civil to criminal charges, there was a tremendous drop of spousal abuse in the State, and asked if this is the appropriate place to address that issue.

REP. McCANN said it would depend on what the Committee's intent of the bill, and asked whether the table should tip toward the child or back toward the authority of the parents.

SENATOR BURNETT said a completed EIS from the Department and an independent party, such as law enforcement or county attorney, could make that determination.

REP. McCANN asked whether the code already exists and whether the intent is for the EIS to be done before or after the removal of children from the home.

SENATOR DOHERTY said a responsible official cannot make a move unless there is reason to believe there is an immediate threat to the health and safety of the youth, they must have some basis for this belief, and it must be documented. There must be some reasonable basis to believe there is a threat before they intervene in a family's life. Once they have intervened, they have to return the child unless they have filed a petition alleging abuse or neglect. Then the statements, facts, evidence, and the basis is for suspecting abuse must be made. He said it may be an imperfect system and if there are workers who are abusing it, the Department should fire them.

REP. McCANN said that is a point of contention with the Committee, because there is abuse of the system and the workers are not being fired, but doesn't want to jeopardize the integrity of the bill because it's set up for the protection of children.

SENATOR BURNETT said it is necessary to require the Department to make a determination, beyond a reasonable doubt, there was abuse. He said nobody wants to keep the Department from acting where there is child abuse, but the Department should not enter in when there is no abuse or suspected abuse.

REP. SIMPKINS said the new definition of abuse is "any action taken that left a physical mark." Therefore, a swat on the buttocks constitutes abuse. He suggested "insure there is no forced removal of a child from a family because of suspected abuse." He said there must be more than just a suspicion.

SENATOR BAER referred to Section 2, 41-3-101, saying it talks about policy and in 41-3-401 it refers to current procedures. He

said he didn't they should be mixed and he agreed with the suggested wording.

SENATOR BURNETT said family counselors thought this is where an EIS should be involved, and presented to the judge for a TIA (Temporary Investigative Authority). At present, the case workers continue the TIA after discovery, and he thinks that is wrong. The discovery should determine whether abuse is a fact or not.

SENATOR BAER said the focus should be on a proposal to ensure there is no forced removal of the child because of suspected abuse.

SENATOR BURNETT said the language could be removed, if it was agreeable with the Committee.

SENATOR DOHERTY said it's his understanding if a teacher or any provider suspects abuse, they are obligated to report it. The Department does a preliminary investigation, and with information gathered and the report to DFS has a reasonable basis in fact there was abuse, they act on the information. But, taking that language out, "ensure there is no forced removal of a child because of suspected abuse," when there is an instance of suspected abuse, it says the child should remain in the family even though there is suspected abuse.

REP. SIMPKINS asked **SENATOR DOHERTY** if his statement nullifies 41-3-301, the emergency protective services. If there is a strong suspicion of imminent danger, they have a right, under 41-3-301, to take the child out of the home immediately. There must be more than just a suspicion of abuse, and if it is felt there is endangerment, then the rights can be exercised under 41-3-301. The policy should not just say remove on suspicion, and policy needs to be developed for that. The Department would have to develop their own rules to preserve the unity and welfare of the family whenever possible. He suggested instead of providing legal redress, maybe provide a hearing process for the parents, rather going to court.

SENATOR DOHERTY said he thinks they do that now.

REP. SIMPKINS said under emergency procedure, within 48 hours of a child being removed from a home, a petition must be filed to the court, just for suspicion. He said the parents should be allowed some type of recourse without having to hire a lawyer, and the case should be reviewed by someone in the Department above the caseworker, and asked if there could be a hearing with the parents within 48 hours.

Ann Gilkey said do have that in their policy manuals.

REP. SIMPKINS asked where is it located in the law, and said **SENATOR BURNETT** wants the case reviewed by someone above the caseworker, who has authority to go ahead or drop it.

Ann Gilkey said the supervisor does review.

REP. SIMPKINS said language could be put into the policy statement that procedures exist for a supervisor review. He said the emergency procedure should only be done in a drastic situation, and the Department should be well-prepared to defend in court for exercising the provisions of the emergency procedure.

Ann Gilkey agreed and referred to the suspected abuse provision, saying, there are a lot of stories about inappropriate removal of children, and related a story of a Wolf Point child killed by parents because the mothers' explanation of how the child sustained injuries could not be disproved, and the child remained with the parents until killed.

REP. SIMPKINS talked about a case in Great Falls where a DFS caseworker exercised an abuse of their powers, and asked if there is a system, when there is no history of child abuse, where the parents can appeal or have the case reviewed.

Richard Kerstein said he can't imagine a situation where a child had been spanked, DFS declaring there is an imminent risk to the child's life, and the child removed. He asked if someone knows about those cases and can't imagine a case worker removing a child for just being spanked. He said they notify the parents in writing, that it was substantiated, tell of appeal process, and they notify parents when child is removed. He related a case about a woman who was angry her 4 children were removed and didn't know why, but the reality of story is, she was passed out when police came to the home. He said that's reality and doesn't know how to deal with that.

SENATOR BURNETT said there are extremes, but if a directive is put into this bill so the Department makes every effort, such as developing an EIS, to create a system of checks and balance. At present, the case worker becomes judge and jury and Department backs them up, and that's it. An EIS could be developed for the family to understand the charges, and the caseworker do a thorough investigation and come up with facts and figures. He said in the Judiciary Committee hearing, there was some question from the department about definitions of various words. He read a list of definitions. **EXHIBIT 1.**

REP. SOFT suggested wording "ensure there is no forced removal from a family based solely upon an allegation of abuse or neglect." and asked **Ann Gilkey** if that would bring balance without weakening the DFS's ability to act.

Ann Gilkey said she understood what the Committee is trying to do, and that wording is closer than allegation, and suggested adding "anonymous" before allegation.

REP. SIMPKINS said he didn't think anonymous is needed, but would leave it as "based solely upon allegation."

REP. SOFT talked about using "unsubstantiated allegation".

SENATOR BAER said "unsubstantiated allegation" might make it more precise.

John McMaster referred to page 9, line 17, and said that change was put in by the House. He said a policy statement is very different from giving a directive, such as "you will do." He said the policy to ensure there is no forced removal of a child from the family because of suspected abuse, then referred to section 41-3-301, saying "because of suspected abuse" is close to current law, which is reason to believe.

{Tape: 1; Side: 2; Comments: some comments difficult to understand due to room noise, mumbling, and several people talking at the same time.}

REP. SOFT referred to page 3, lines 18-19, and asked what was the Committee's decision about these lines, "ensure there is no forced removal of a child from the family based solely upon an unsubstantiated allegation of abuse."

John McMaster suggested different terminology to eliminate misinterpretation.

SENATOR BURNETT said definitions need to be added in the definition section.

REP. SIMPKINS said policy should put it in as any kind of report, whether anonymous or not

REP. SOFT moved Section (e), lines 18-21, remain "ensure there is no forced removal of a child from the family based solely upon an unsubstantiated allegation of abuse and neglect."

SENATOR DOHERTY suggested using the word "alleged."

REP. SIMPKINS said strike "unsubstantiated" and insert "alleged."

REP. SOFT read the changed statement: ensure there is no forced removal of a child from the family based solely upon an alleged abuse and neglect.

John McMaster said using the word "alleged" could mean there are 12 people alleging it. He suggested the wording: based solely upon an unsubstantiated allegation, because that is referring to just one allegation.

REP. SOFT again read the statement: ensure there is no forced removal of a child from the family based solely upon an unsubstantiated allegation of abuse or neglect.

SENATOR BURNETT asked if the Committee agreed with that wording. All agreed.

REP. SOFT read lines 26-27, page 3, and said he agreed with that, but suggested changing to: maintain ethnic, cultural, and religious heritage whenever appropriate.

SENATOR BURNETT asked for the Committee's approval for the change. All agreed.

REP. SOFT suggested deleting lines 12-16, page 6, because the term is no longer being used.

SENATOR BURNETT asked for the Committee's approval for the change. All agreed.

SENATOR BURNETT said he would like to insert the list of definitions into section 3. **EXHIBIT 1.**

REP. SIMPKINS asked where the definitions would be used in the bill.

SENATOR BURNETT said it needs to be in the identification portion, page 9, and needs to be in the code.

SENATOR BAER said these are terms used in the bill, and there needs to be definition of what the terms mean in order to understand.

REP. SOFT referred to page 4, lines 1 and 2, and suggested striking "and provide legal redress for interference with the family." He said lines 6-10 were deleted in the Senate and has no problems leaving it that way.

All agreed to delete (8) and (9).

REP. SOFT said he agreed with the Senate's striking "knownly" from lines 13-14, page 5. All agreed. He referred to lines 16 and 17, which were stricken in the Senate, and wondered why.

SENATOR BURNETT said he thought it is a brain-washing situation and is necessary to be included.

REP. SOFT said he would interpret that as emotional abuse, and asked **Ann Gilkey** to comment.

Ann Gilkey talked about the various types of abuse, including the emotional abuse.

SENATOR BURNETT moved to restore lines 16-17, page 5, in the bill. All agreed.

REP. SIMPKINS reviewed the changes agreed on, for clarification: page 5, strike 28-30, page 6, line 12-16, and referred to page 6, lines 20-22.

REP. SOFT said that portion was stricken by the Senate.

REP. SIMPKINS said page 6, lines 19-22, said that was changed to prevent someone being charged with abuse for changing a diaper.

All agreed with the Senate's amendment to lines 19-22.

SENATOR BAER said he thought there could be a better definition for unfounded information.

REP. SIMPKINS asked if it is needed.

SENATOR DOHERTY said some of these may be in rules, and suggested asking the Department.

Ann Gilkey said unfounded and unsubstantiated are defined in rules, but unfounded and substantiated are not in the bill, and they are definitions they have been working with.

SENATOR BURNETT asked if the Department has discipline, independent, or corroborative information.

Ann Gilkey said they do not have discipline, independent, corroborative information, or attributable information.

REP. SOFT asked how detention would be defined.

SENATOR BURNETT said detention is confining to an area.

SENATOR DOHERTY said the word discipline is not used in the bill.

SENATOR BURNETT said physical discipline such as spanking is not abuse. Discipline should not be abuse.

SENATOR DOHERTY said some of these terms are not needed. He said corroborative is a legal term developed in case law.

REP. SIMPKINS said the terms already in law do not need to be redefined in the bill, because they are universal law.

SENATOR BURNETT asked about the terms independent and attributable.

SENATOR DOHERTY asked where attributable is used.

John McMaster said it is used on page 9, line 19.

SENATOR BURNETT said in the House Judiciary Committee, they wanted to know what the term meant.

SENATOR BAER said it should be as defined in the dictionary.

SENATOR BURNETT said attributable comes from an identified source.

SENATOR BAER said attribute something to its source, or identify its source, but didn't think it needed to be included in the bill.

All agreed to drop the definitions discussed.

REP. SOFT asked if Section 4 was original language, but was stricken.

Ann Gilkey said 41-3-301 is not from the statute.

REP. SOFT suggested adding definitions for a social worker. He said there were questions in the House Committee meeting about the education and training for a social worker, and whether they have the training to do the investigations.

SENATOR DOHERTY said social worker is defined on page 6, lines 26-27.

REP. SOFT said he wanted that deleted and insert another definition, and add investigator.

Ann Gilkey said they have a hiring criteria for a social worker, but wondered if there would be problems with changing it in the bill.

REP. SOFT said the suggested definition came from Bob Torres.

REP. McCANN asked what the definition would be.

REP. SOFT referred to line 26, a social worker means, then add the new definition.

Ann Gilkey said there the statutes refer to a social worker being employed by the Department, and possibly the new definition for a social worker is too broad.

REP. SIMPKINS asked if adding "a person who works for the Department" is acceptable.

Ann Gilkey suggested using either "has the equivalent verified experience or by training" instead of and.

REP. SOFT read the change, line 26: social worker means an employee of the Department who has been educated, etc., then equivalent verified experience or training. He said he wanted to add a new subsection "Investigator" an official who has training verified by the Department and meets specific qualifications established by the Department to investigate child abuse and life

endangerment. He said the bill talks about these individuals being able to do investigations.

REP. SIMPKINS asked if investigator is in this section of law.

John McMaster said he can't find it in the Act.

SENATOR BAER said an investigation would involve an investigator.

REP. SIMPKINS referred to page 9, line 11. He suggested changing line 10 to read: an investigator shall properly conduct an investigation, then add the definition. Referring to line 10, he asked **Ann Gilkey** if there should be further definitions.

SENATOR DOHERTY asked if an investigator has to have training verified by the Department, does any police officer or deputy county attorney who investigates they have training verified by the department.

REP. SOFT asked what qualifies a police officer to do a child abuse investigation.

SENATOR DOHERTY said usually someone from DFS talks to the deputy county attorney saying they have the facts and know what is going on, and you have to file the charges. The deputy county attorney has training in law and would know there is enough evidence for a case, but they may not know social work.

REP. SOFT asked **Ann Gilkey** how often do police officers and county attorneys get involved in or do the investigation.

Ann Gilkey said county attorneys become involved with a social worker goes to them in a civil case or if it's a criminal case, law enforcement would be involved as well. The county attorney would verify what is going on but would not go out to do an investigation.

REP. SIMPKINS said this issue should be left alone.

REP. SOFT said there was a question about video taping in a particular place.

Ann Gilkey said there are many problems with mandatory video taping.

SENATOR BURNETT said it is important to video tape the initial interview with the child.

REP. SIMPKINS asked where the video taping could be done.

Ann Gilkey said it could be done anywhere and they are willing to share the video tape.

REP. SIMPKINS suggested leaving lines 1-4, page 10 as is because the family would have access to the video tape.

SENATOR BURNETT suggested leaving the charges civil for now.

REP. SIMPKINS agreed and said abuse didn't just happen overnight, and can't be changed overnight.

REP. SOFT said section 17, page 24, #4 was stricken.

Laurie Koutnik said it was stricken because of the concern of confidentiality by foster parents, that as foster parents, they do not want the family to know your location.

SENATOR BURNETT said it's important the victim family have some background about the foster parents.

Laurie Koutnik said all foster care parents have to go through training and licensing procedures.

SENATOR BURNETT told of a case where a 15-year old girl was placed in a foster home where there was a 17-year old boy, and he raped her 3 times, and as far as he knew, the Department did nothing.

Laurie Koutnik said another bill allows for children to be placed with family if possible, and thinks that is what the Department tries to do.

REP. SIMPKINS suggested leaving section 17 out. All agreed.

SENATOR BURNETT referred to section 18 which was stricken by the House, but he thinks it is important for this to be included.

Ann Gilkey said there are already provisions in the law if a foster child causes damage, the Department is liable up to \$2,500. She didn't think they should assume responsibility or liability for any action of any child in temporary custody by the Department.

REP. SOFT asked if the child is in custody, what happens when a child does cause damage.

Ann Gilkey says the Department is sued, but the liability is determined in the courts, and doesn't think assuming liability should be included in the bill.

SENATOR BURNETT said he would agree to some change providing the parent had some authority in the situation, but they do not.

Laurie Koutnik asked about the purpose.

SENATOR BURNETT said it was suggested when the bill was drafted.

SENATOR BAER asked it's for strict liability or negligence by the Department.

REP. SIMPKINS said who is responsible for the actions of a child placed in a foster home, because the child is not in the parents custody. If that child is abused in the foster home, can the Department sue them and who has the rights.

SENATOR DOHERTY said the kid who is abused in a foster home can bring suit against the Department for their not providing a protective environment. Language saying the Department assumes all liability means a strict liability standard. If the does something negligent and the child is hurt or hurts someone else, then the Department should be liable. But, to say, the Department has all liability when a child is in custody, is not good policy.

SENATOR BURNETT asked if it could be reworded to say the child's parents no longer are liable. He said he wants to relieve the parents of any liability.

REP. SIMPKINS suggested liability as a result of actions taken by the Department or temporary home.

SENATOR BAER said if the parents have no control or dominion over the child, they can't be found liable.

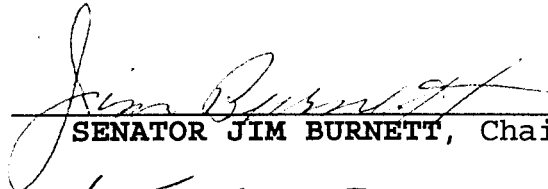
Ann Gilkey said is care should be taken not to take away any rights the court does not specify to be taken from the parents. They don't want to take rights away from the parents unless the parental rights are terminated.

REP. SIMPKINS said there are no votes to put it back in.

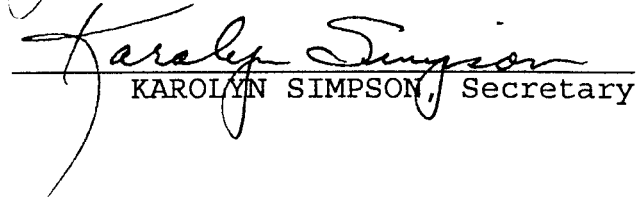
John McMaster reviewed the amendments for conformation of the Committee.

ADJOURNMENT

Adjournment: 12:35 PM



SENATOR JIM BURNETT, Chairman



KAROLYN SIMPSON, Secretary

JB/ks

ROLL CALL

FREE CONFERENCE or CONFERENCE COMMITTEE

ON BILL NO. SB 206

DATE 4/10/95

| NAME | PRESENT | ABSENT | EXCUSED |
|-----------------|---------|--------|---------|
| Senator Burnett | X | | |
| Senator Baer | X | | |
| Senator Doherty | X | | |
| Rep. Soft | X | | |
| Rep. Simpkins | X | | |
| Rep. McCann | X | | |
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Free Conference Committee
on SB 206
Report No. 1, April 10, 1995

Page 1 of 2

Mr. President and Mr. Speaker:

We, your Free Conference Committee on SB 206, met and considered:

SB 206 (reference copy - salmon) in its entirety

We recommend that SB 206 (reference copy - salmon) be amended as follows:

1. Page 3, line 15.

Strike: "AND"

2. Page 3, line 21.

Following: "associate"

Insert: "; and

(e) ensure that there is no forced removal of a child from the family based solely on an unsubstantiated allegation of abuse or neglect"

3. Page 3, line 27.

Strike: "free from proselytism"

Insert: "whenever appropriate"

4. Page 5, line 18.

Following: line 17

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

5. Page 6, lines 12 through 16.

Strike: subsection (12) in its entirety

Renumber: subsequent subsections

6. Page 6, lines 26 and 27.

Strike: "whose" on line 26 through "both" on line 27

Insert: "who, prior to the employee's field assignment, has been educated or trained or is receiving education or training in a program of social work or a related field that includes cognitive and family systems treatment or who has equivalent verified experience or verified training in the investigation of child abuse, neglect, and endangerment. This definition does not apply to any provision of this code that is not in this chapter"

ADOPT

REJECT

821501CC.SPV

7. Page 7, line 14.
Strike "(17)"
Insert "(16)"

And that this Free Conference Committee report be adopted.

For the Senate:

Burnett
Jim Burnett
Chair

Baer
J J Baer

Doherty
Steve Doherty

Amd. Coord.
Grs
Sec. of Senate

For the House:

Simpkins
Mike Simpkins
Chair

Soft
Joan Soft

McCarthy
Matt McCar

SB 206

Page 4. Sec 3 41-3-102.

DEFINITIONS:

UNFOUNDED INFORMATION - IT PROBABLY HADN'T HAPPENED OR IS FALSE INFORMATION.

DISCIPLINE - A METHOD OF TEACHING SELF CONTROL, TRAINING AND CORRECTION. (THIS CAN INCLUDE DETENTION AND PHYSICAL CONTACT THAT DOES NOT AND WILL NOT CAUSE PHYSICAL INJURY)

INDEPENDENT - INFORMATION (CAN INCLUDE, BUT NOT LIMITED TO, ATTRIBUTABLE STATEMENTS, PHYSICAL EVIDENCE, STATEMENTS FROM OTHER THAN THE FAMILY OR FAMILY ASSOCIATES) OBTAINED FROM A SOURCE THAT IS DIFFERENT OR SEPARATE FROM THE ANONYMOUS REPORT.

CORROBORATIVE INFORMATION - (CAN INCLUDE, BUT NOT LIMITED TO, ATTRIBUTABLE EVIDENCE, STATEMENTS FROM THE CHILD, STATEMENTS FROM THE ACCUSED, STATEMENTS FROM OTHER FAMILY MEMBERS OR FAMILY ASSOCIATES) THAT SUPPORT THE ANONYMOUS REPORT AND IS NOT CONTRADICTORY OF THE ANONYMOUS REPORT.

ATTRIBUTABLE INFORMATION - THAT COMES FROM AN IDENTIFIED SOURCE. THE INFORMATION AND THE SOURCE ARE SUBJECT TO DISCOVERY IN LEGAL PROCESS AND SUBJECT TO CROSS-EXAMINATION IN A LEGAL PROCEEDING.

unsubstantiated information is it probably happened but can't be proven

SB. 206
BURNETT

Re: Free Conference Committee
Issues/Considerations

1. Clarifying Policies/Procedures for removal of a child from the home. (Section 2)
2. Clarifying the issue of appropriate ethics, cultural and religious heritage availability to children placed in foster care. (Sections 2,3)
3. Clarifying the issue of legal redress for inappropriate interference with the family (Section 2)
4. Clarifying definition of a "family." (Section 3)
5. Clarifying definition of physical, mental, emotional abuse. (Section 3)
6. Clarifying the definitions and qualifications of social workers (new section)
7. Clarifying the definition and qualifications of the abuse investigator. (new section)
8. Clarifying the immunity of clergy in reporting abuse. (Section 4)
9. Clarifying the issue of videotaping interview with the child and the admissibility of same in court proceedings. (Sections 5, 6)
10. Clarifying the issue of criminal vs civil proceedings for persons charged with abuse of child/children. (Sections 9, 11, 12, 13)
11. Clarifying what information is available to the parents after child is removed from home and appropriateness/frequency of contact with the child (Section 17)

Section 3 (Definitions)

12 Section 18 - In.

- (1) Social worker means a person who has been educated or trained and/or is receiving education or training in a program of social work or a related field that includes cognitive and family systems treatment or who has equivalent/verified experience and who has verified training in the investigation of child abuse, neglect and endangerment prior to their field assignment.
- (2) Investigator means an official who has training verified by the Department and who meets specific qualifications established by the Department in the investigation of child abuse, neglect and endangerment. Investigators can be but are not limited to social workers, case workers, officials in the county attorney's office and peace officers.

Loren L. Soft
Representative, HD #12