MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **BRUCE D. CRIPPEN, CHAIRMAN**, on February 6, 1995, at 10:00 A.M.

ROLL CALL

Members Present:

Sen. Bruce D. Crippen, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Larry L. Baer (R)
Sen. Sharon Estrada (R)
Sen. Lorents Grosfield (R)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Linda J. Nelson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Council
Judy Feland, Committee Secretary

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

Committee Business Summary:
Hearing: SB 206

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Executive Action: None.

HEARING ON SB 206

Opening Statement by Sponsor:

SENATOR JIM BURNETT, Senate District 12, Luther, sponsored SB 206. He presented the bill that he said had been in the making for the past four years. He gave the committee a packet of information **(EXHIBIT 1)** which included a list of more than 200 people who had contacted him during that time. The telephone

numbers were included for contacts if desired. The need for change is astronomical in this particular department, he said. He read from prepared testimony on Page 1 of the packet. **SENATOR BURNETT** said that he thought there was no impact, but the Department of Family Services issued a note that indicated a $500,000 cost. He disagreed with that figure and issued his own response **(EXHIBIT 2).** He read the bill's intent from Page 1 of the bill. He maintained that there cannot be abuse if there is no abuser. He read the underlined sections of the bill that had been significantly changed.

In two instances he wanted to change "civil action" to "criminal action" in this bill, but he told the committee he had failed to do this.

Proponents' Testimony: **REPRESENTATIVE LARRY GRINDE, House District 94, Lewistown,** spoke in favor of SB 206. He said that in most cases the Department of Family Services (DFS) does a good job, but some things needed attention. He said that most of the calls he received at home concerned the area of child and family services. He gave a brief history. In Lewistown a woman died laying in her own feces from malnutrition, he said. This was reported on several occasions and nothing was done. Nobody took responsibility. The family was tried and found innocent, although he felt they were negligent. He thought that DFS could have prevented this. In another case, a young woman was living with her family. She gave birth to a baby one morning and that night, DFS representatives were there to take the baby away. He said maybe there was a need. He told the committee that they had to start using some common sense.

He had some items to address on the subject:

1) The qualifications of social workers: he said when workers are hired, the only criteria is a college education in some related field. He asked the committee to review hiring criteria to make sure of qualifications. There is no liability for the people in the field. He said everyone should be liable for their actions, and the duties they perform.

2) Rotation of social workers: He did not want to uproot their lives, but he said but it may help the workers to separate themselves from some of the cases if they did not know the players involved and heard rumors, innuendoes and accusations that are rampant in small towns.

3) Anonymous reporting: He thought people could make phone calls to the Family Services because of personal vendettas. The workers, then, are forced to go and investigate, he said. He thought the accused should have the right to face accusers. He said people making complaints should have to come forward and tell why.

4) Videotaping: He recognized the objections to this portion of

the bill, but said it was only fair. If there was no videotape, there should be other family members there, he said. The fiscal note said that in each case, a tape would have to be made, but that was wrong. He said other people should be at the table when interviews are given and not just the people from the social worker area.

There are other related bills introduced, he said. One had to do with the purging of files. This needs to be done when Family Services investigates a case and no problems are found. That file still sits there, even though it is without reason. He said everyone wanted to protect the children. He said there has to be some rights for families on recourse. Families do not have a way to get a court date, or see their children. He hoped for a resolution to include his recommendations, the bill, and some suggestions from Family Services which they had consulted during the prior week. He said that nothing had changed when he took his concerns to the DFS for the past four years.

Paul Befumo, representing himself and Montanans for Due Process, spoke in support of SB 206. He said current law resembles laws of many states, but it was not enforced in the same way. What Montana had claimed to do through their legislative and judicial branches, is to take children from their homes and give temporary custody to DFS only on a showing of probable cause. However, the way the Montana Supreme Court defined, "temporary" is until the child reaches 18 years of age. So, he maintained, if the State of Montana takes a child, they have claimed the authority to give temporary custody to DFS, and never afford the people who have been accused of abuse and neglect an adjudicatory hearing. All they have to show is a probable cause hearing. This bill would force DFS, if they wish to hold onto children, to have some sort of hearing where there can be findings of fact and conclusions of law that will justify the taking of the children.
What the bill won't do, he said, is to prevent DFS from going in in an emergency situation where a child is in imminent danger. But once DFS goes in to do that, it sets specific time limits wherein they must justify the allegations made. DFS cannot handle this situation of their own, he said, as evidenced in the case of **Marcia Kirchner (contained in EXHIBIT 1).** A statement is made that she quit her job, which is incorrect. Within three days after the affidavit was filed, she was grilled by two higher authorities in DFS and the next day was dismissed from her position without cause and without any compensation. They fired her. This is how DFS handles their own caseworkers, he said. He said that the legislative and judicial branches are terminating parental rights without going through the statutes that dictate how parental rights are supposed to be terminated. If that agency takes a child for temporary custody, and that custody lasts until the child in 18 years old, the parental right has been terminated. He said legislation is needed to change that. Parents need the opportunity for an adjudicatory hearing to establish whether or not the underlying allegations are true or not.

William V. Fowler, Missoula, representing himself, said he had been enmeshed in the DFS situation for four years. In July of 1991 the Department of Family Services removed from his home a child over which he had custody. The reason for the removal was allegations from a half-brother, age 3, stating that his 7-year-old son had tried to put a toy up his "hindy-butt." **Mr. Fowler** was accused of teaching him how to do that. He had not been allowed to see his son, nor speak to him on the phone for the four years. He had hired different attorneys and spent $35,000 and has never had a show-cause hearing. He now has a case in federal court to appeal. They said he had to exhaust his remedies, but he could not get the show-cause hearing after four years. It has to be changed, he said. Parental rights have been taken away and he told the committee that they would not get away with it for very long. He presented court petitions. **(EXHIBITS 3 and 4).**

Dan Newman, Missoula, representing himself, asked that where criminal law is violated, charges be prosecuted. He said that no immunity should be granted anyone working for the state, either in judiciary or an attorney. He said that ethical standards are abused in the state by the conduct of professionals including psychologists, social workers, and attorneys. The duty to clients and the idea of right and wrong is all 'who can put who in office and out of office,' he said. He ran for Justice of the Peace in Missoula and got 5,000 votes as opposed to 23,000 for his opponent. He said he was proud that there were 5,000 people in Missoula County who would stand with him to prosecute criminals. He said he was for law and order and bringing down organized crime, which he said ran the County of Missoula and perhaps other counties.

Fred Rushton, Vaughn, represented himself and spoke in favor of the bill. He told the committee about his son who lost his children to DFS because of an anonymous call that accused him of drunkenness and of beating his children. An investigation showed that he had no record and never drank in his life. The children were given back. However, he contended that Social Services don't like to be proven wrong and have done everything they could for the last three or four years to prove him an unfit father. Teachers at the childrens' schools had been enlisted to quiz the children about abuses and would call the social workers and police if they could get the children to say anything. For these reasons, his son moved out of the state to Arizona, leaving a $50,000-a-year job. The family is doing well there now, he said.

David Brinley, from Central Montana, speaking for himself, supported SB 206. He read from a written statement. **(EXHIBIT 5)**

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Vicki Vincent, representing herself and her daughter, Amanda Henderson, appeared to support SB 206. She said she was lucky and got her daughter back after five weeks. Her daughter had

been taken from school by Child Protective Services acting on an anonymous call in which abuse was involved. The Protective Services decided she had been sexually molested by her dad on top of all else, she said. **Ms. Vincent** refused to speak to the social workers because she realized she needed a lawyer, but that refusal was held against her. When she went for a meeting with the social worker and the daughter, she was not allowed to ask questions, only to say that she loved her and supported her in everything. She wasn't allow to ask what happened. She did try to ask, however, and the social worker got very nasty and terminated the visit. Due to the allegations of sexual molestation, her husband was evicted from the house the following night. The social worker claimed he was still there, but did not bother to come and find out, she said. **Ms. Vincent** called everyone she could, legislators, papers, television stations, etc. The advise she garnered was that she would be lucky to ever get her daughter back. She heard nothing but bad reports about DFS. She finally talked to her daughter on a fluke and the daughter reported that the social worker had cautioned her not to talk to her mother about what had happened, or she would be moved so far away that she would never see her mother again. They had told the daughter that the mother hated her and did not want her at home. They divided and conquered, she contended. She found out later that the social workers had talked to the daughter for 30 minutes in school and 45 minutes after school before she was ever videotaped. In the videotape it was evident that words were clearly put into the daughter's mouth to make it appear that she had been molested. She repeatedly asked to go home, and was told if she played the game for the social workers, she would be allowed to go home. The daughter later realized the social workers had lied. **Ms. Vincent** wondered how many children were taken under the same circumstances and brainwashed into thinking that their parents don't want them. She did not know how Social Services could be allowed to keep kids for several months without the parents being charged with anything, but on accusations. She said that she was held responsible, as a nurse, for any mistakes she made. She could not understand why people who are messing with other people's lives are not held responsible.

She did not support the rotation of social workers. She said they would only have new prey to work on. She did support changing the anonymous reporting law. Anyone could call in with a personal vendetta, she said. Videotaping should be done in the first interview with no leading questions. It should be done by someone other than the social worker that initiated the case, perhaps a third party. She also supported SB 270 which deals with purging the files if no criminal charges are filed. She introduced her daughter.

Amanda Henderson spoke to the committee. The social worker had put words into her mouth, she said, to say she was sexually abused. She said the worker promised if she told her what she wanted to hear she would go home that night. She said she was in custody for five more weeks, and she later found out they were

lying to her as well as to her family. The first foster home she was placed in the foster mother was good friends with the social worker. The foster mother was an alcoholic who constantly verbally abused her own son and another child in the home at the time. **Ms. Henderson** was moved to a second home wherein her parents knew the family. She said the social workers had screwed up her life, causing her nightmares about being kidnapped, as she contends she was. She does not trust strangers because she is fearful of what happened would happen again. She gets sick to her stomach every time she hears the words, "DFS." She said the bill needs to pass because there could be many families "messed up" by the social workers.

Penny Bernhardt, Belgrade, spoke for herself in favor of SB 206. She read written testimony. **(EXHIBIT 6)**

Mindy Mistic, Grass Range, represented herself. She told the committee that in 1991 her ex-husband had made false accusations against her because she was planning to re-marry and he did not want her to. He decided to take the love of her life, her kids, she said. She went through three court hearings and all they found against her was that her daughter had not been enrolled in a speech class. The child had accidentally knocked her teeth out previously and the dentist told the mother not to worry about mispronunciation because of the missing teeth. The judge reinstated the children. The ex-husband along with the DFS re-opened the divorce decree to contest custody and took the children in 13 subsequent cases. She said that DFS later admitted to wrongdoing to re-open the divorce case. She had not seen or had her children for four years, she said. She had sneaked into school and basketball games to watch them and sneaked around church to give them gifts. She stated that she lost herself when she lost her children and said her insides were taken, leaving only the body to walk with. Four years later her ex-husband called her and asked her to take the youngest daughter, age 12, because he did not want her. He kept two older children, ages 14 and 18. She maintained the DFS had interfered in her life, assisting her ex-husband in untrue accusations. She felt the DFS had too much control. She also said the background check should be put into effect. The social worker who took her children was restricted from seeing his own child because of sexual, mental and physical abuse. **Ms. Mistic** thought the videotaping would be good idea. She said she tape-recorded sessions with social workers where they called her names, but they are not admissible, whereas a video would be. She asked for help in passing the bill.

Joan Austad, Great Falls, represented herself. She read from written testimony. **(EXHIBIT 7)**

Al Nerling, Sun River, representing himself, spoke on behalf of SB 206. He said he'd been fighting DFS for 12 years for his granddaughter. He finally got her when she was 16 years old, when, he said, the damage was done. He said when Gene Huntington

started Family Services, he was supposed to close the cracks. But 1988, he maintained, it had doubled instead. His granddaughter asked him to keep fighting so that other kids would not have to go through what she had been through. All he wanted is for DFS to abide by the laws we have, which they were not presently doing. He said they were the 'rudest, nastiest, lyingest people' he'd ever met.

John Schubert, Missoula, spoke for himself and his wife, Tammy, in support Sb 206. He submitted a letter he had written to the Governor in September, 1994. **(EXHIBIT 8)** He said there was a real need for checks and balances within the system. He felt that videotaping was very important.

Karen Kowalczyk, Roundup, represented her fiancé, Larry Lekse, in support SB 206. She spoke to the committee and submitted written testimony. **(EXHIBIT 9)**

Jerry O'Neil, representing Vocal of Montana, spoke on behalf of Sb 206.

Gary Wilson, Alberton, gave his name in support of SB 206.

Kenneth E. Haugen, Missoula, rose to support the bill. **(EXHIBIT 10)**

Gerald Bartow, Roundup, also spoke in favor of SB 206.

Wanda Harris, Kalispell, stood in support of the measure.

Michael Billedeoux, Missoula, favored the bill. **(EXHIBIT 11)**

Frank Fitzgerald lent his name in support of the legislation.

Opponents' Testimony:

Hank Hudson, Director, Department of Family Services, appeared to respectfully oppose SB 206. He said the proposal of checks and balances are the debate and struggle the department members go though daily on every case they hear. They must decide how to balance the legal responsibility they have to protect children and adults with the right that citizens have to be left alone by their government and not be dictated to unnecessarily. He said that the bill has been heard three or four times that he could remember, and each time their department members ask themselves how they could be more careful and cautious in dealing with families while recognizing the effect that removing a child from a family might have on those members of the family. However, they must avoid the tragedy of child abuse and death that occur all too frequently. He said they had tried to safeguard against any social worker "running away with the program", lacking sense and being unfair. During the last hearing of the bill, they presented a chart showing how many people would have to be convinced that it was the right thing to remove a child from a

home for more than the 48-hour emergency proceeding. Not only the social worker would have to agree, but also the supervisor, the Child Protective Service Team, which is made up of a number of people who do not work for the DFS, the County Attorney, the guardian *ad litum*, an attorney for the parents if they have one, the judge and eventually the Foster Care Review Committee. They have made some changes, he said. They have moved some of the scarce resources they have into family-based services.

He told the committee that the best protection a child can have is being home with their families and whenever that is possible, that's what they try to accomplish. He also said they had changed their legal process for notification which informs everyone who had a substantiated case of abuse that will describe the appeal process of the department. Another problem previously stated was the shortage of workers and unreturned calls. They have asked for more helpers and more training than ever before, he stated. They have probably taken more disciplinary actions than any state department in the last two years, he said without relish.

They support the Foster Care Review Pilot, reviewing children in foster care. They endorsed and welcomed a legislative review during the interim. The results of that review read, "in short, it would appear that Montana's statutes for providing emergency child protective services are Constitutional because they do allow the state to intervene in an emergency situation to protect a child's best interest. . . and do allow a process of notification and hearing for parents in consideration of due process rights." They are painfully aware of what a mistake can do in their department. He said in **Representative Grinde's** example of the woman dying from abuse, the family was charged with neglect and found innocent. In that case their department would have had to return that woman to the home, and it would not have prevented the situation.

He said HB 186 by **Representative Kasten** would provide more information to families and provide greater access to records for those accused of abuse and neglect. The department was willing to add a provision to prevent the removal of a child based on an anonymous report. He said he would also support the immediate notification of parents if children are removed.

Mr. Hudson said their department had a large number of people who advise them (made up of citizens who are not a part of the department) and it was his preference to work with more people for a major change in structure like this bill.

The biggest objection the department had to the bill was the provision that criminal charges had to filed in 20 days. It is not a realistic understanding of how the system works, he said. Not all child abuse and neglect is criminal, many are dealing with people with developmental disabilities and also mental illnesses. These people would not be guilty of a crime to charge

them with. They did not want to put them in jail. Secondly, he said, charging everyone with a crime or doing nothing would destroy the department efforts at family preservation, which has been the major focus of the past. The criminal process is slow, he added, and county attorneys are faced with the decisions of what they can afford to prosecute every day, whether or not it's winnable, whether or not they have the staff. Kids may be sent back into danger to wait for a year for a trial when they could be working on family re-unification instead. He said there are two different systems: 1) the criminal system, to assess guilt and punishment and 2) the civil system used to protect children and to take quick, immediate action.

The videotaping issue is a very expensive item, he said.

The guardian *ad litem* issue in the bill suggested "being friends and retrieving things from the home," but he said he was unsure if they would be paid or used in that function, but he thought they could be volunteers.

The psychological testing question would require a doctor at every interview and would carry a heavy fiscal note.

The qualifications of the people hired are set at the point at which the pay can attract applicants. **Mr. Hudson** said. He was comfortable with the qualifications of the employees. Anyone who deviates from the policies or the laws of the state as an employee is personally liable, he said, in response to that portion of the bill. If they are following the rules of the department and something happens, the department is liable.

Of the rotation provision of the employees, he said he would rather the employees be a part of the community and would reject the management practice of moving them around the state.

He agreed with the anonymous reporting provision of the bill. He stated current law makes it a criminal offense to report child abuse in less than good faith or in a dishonest manner. Being faced by an accuser was also current law, he said.

He told the committee that the department gets placed in the middle of many divorces, the worst activity they face. If there is a bill this session, there should be one to tell people how to behave in custody matters and how inappropriate behavior can damage their children. He felt many of the provisions of the bill grew out of mean-spirited custody proceedings.

The DFS would support **SENATOR BURNETT'S** other two bills with amendments pertaining to the destruction of files and placement of children with kin.

Ann Gikley, attorney, Department of Family Services, presented written testimony. **(EXHIBIT 12)** She also told the panel that the flow chart **Mr. Hudson** made reference to regarding the current

checks and balances could be found of Page 3 of her hand-out.

Noel Larrivee, Executive Director, Montana Council for Families, said that he spoke for the statewide non-profit agency that serves the National Committee for the Prevention for Child Abuse and Parents, Anonymous, Inc. He is also an attorney and had been involved in child advocacy issues for approximately 16 years. He had written seven bills since 1985 considered in this committee. This is a bad bill, he said. He said the DFS is involved in these cases initially, then they are filed through petition by the county attorney, an independent entity apart from DFS. After the petition is filed, it's heard by a district court judge. These proceedings are confidential, in order to protect the child and family members that are the subjects of the proceedings. Some of this bill would undo that, he said. If there are problems, there are mechanisms existing now to deal with that.

He listed the following objections:

Page 1. Lines 19-20. Nowhere, he said, does existing law allow DFS to circumvent the Constitutional rights of persons or families.

Page 1. Lines 21-22. The burden of proof is on the state. The standard of proof has been established by the Supreme Court, which is, "clear and convincing evidence." Changing the burden does not alter the incidence of false charges; they are two separate charges. These types of proceedings are civil proceedings. The concept of "innocent until proven guilty" is a criminal concept, he said. The burden of proof is always on the state, he alleged.

Section 1. Line 12. He said the language is redundant.

Page 2. Section 2. Lines 19-21. He read, "no removal of the children without a criminal complaint." He said this is the single worst provision in the bill. There are many good reasons why the department does not have a criminal prosecution, as the Director had pointed out.

Page 4. Lines 1 and 2. This deals with interference. His interpretation was that this would preclude formulation of a treatment plan, one of the express provisions of child protective service intervention.

Page 5. Section 3. Lines 13-14. This imposes the requirement of, "acting knowingly." Negligent harm is just as harmful, he said. He gave an example of a child put in scalding water and the caretaker said he did not know the water was too hot. Under the new provision, this conduct would be excused.

Page 6. Lines 18-22. No person has ever been prosecuted for sexual abuse for attending to a child's hygiene or sanitary needs.

Page 9. Lines 17-20. He said he did not know what the term, "attributable information," would mean, as it has no legal significance.

Page 11. Section 6. Lines 3-5. This pertains to evidence obtained without a videotape. This would significantly hamstring many cases, he said, particularly infants and statements made to school counselors.

Page 12. Lines 29-30. Regarding the family member keeping the proceedings secret or allowing them to disseminate information, he said that confidentiality is designed to protect the child. It is also designed to protect the family members. Any aspect that is removed could do damage to the child.

He said the sections on news organizations and "under oath" requirements are unnecessary. Concerning guardians, he said not all counties have volunteer persons in place for that position.

The telephone legislation would be traumatic to children, he told the committee. The bill itself would be regressive, setting back child protective service efforts 20 years. He invited the committee to visit professionals on this bill.

Erinne Haskett, mother, founder of Majority Against Child Molestation (MACem), testified against SB 206. She took exception to Lines 21 and 22 on Page 6 under "definitions". She said her two-year-old was molested by the child's father. She described the on-going abuse. The father's actions would be protected under Line 21, "as considered by a reasonable person to be comforting of the toddler by a loving parent." These two lines afford a child raper a loophole in their defense. These people are wily and manipulative, she said, and use threats against the lives of family members to achieve their goals. She thought many little lives would be left unprotected if the bill would pass. She submitted two hand-outs. **(EXHIBITS 13 and 14)**

Connie Griffin, member of MACem and mother, spoke against SB 206. She said her two girls had been raped and molested by their father, causing injuries. She described a horrifying story. The DFS was contacted immediately by the doctor and visitation was suspended. The girls were interviewed by DFS and videotapes taken, which, they said, were inadmissible in court because cross-examination was impossible. She said all the evidence was collected and still sits in a county attorney's office under piles of other more important cases. At one time, the county attorney's office had granted the husband visitation against all professional advice. She called **Hank Hudson,** and within four hours the visitation had been cancelled. Only civil charges will be filed against the father, if any, she said, and the only thing that keeps the girls from being raped, tortured and violated is something called "dependency neglect." If it was not for DFS, she felt the children would be subject to harm. She said the county attorney offices are understaffed and tried to maintain a

quota system, which precludes "baby rape." She strongly opposed the bill.

Sharon Bakerson, L.P.N., spoke in opposition to the bill. She said she opposed Lines 17-20 on Page 9 of the bill. She said these lines will ensure that the victim will remain in the torture chamber as professional social workers will attest to the fact that it will take sometimes six months to years to get enough evidence to prosecute a molester. She said in Lewis and Clark County, if the county attorney and five deputies process 250 felony cases in one year, they consider it a good year. The child molestation cases were difficult, she quoted the sheriff as saying. She said local police officers were given on-going techniques in child abuse cases. She said the bill would be detrimental to many children.

Nina M. Pullman, East Helena, mother of three, Department of Revenue employee and a member of MACem, spoke against SB 206. She said she had been sexually molested as a child, as was her daughter. An abused child needs immediate and professional care, she said, and she thought DFS had been doing their job to capacity. If the bill passed, she said it would bring problems and heartache for everyone involved. She did not see the system as being broken and saw no reason to fix it.

John Connor, appearing on behalf of the Montana County Attorneys' Association, said that the 56 County Attorneys in Montana have frequent disagreement with the DFS, but they were mostly because of good faith mistakes. The legislature (through the division of criminal and civil codes in the area of child abuse) does not require proof beyond a reasonable doubt in every instance in which a child needed to dealt with, cared for, or even removed from a home because of some immediate problem or inadequate medical care. In the majority of cases where they are involved as prosecutors, he said, the child is left in the home and treatment programs are worked out with the parents in an attempt to try to maintain family unity. If the whole process in criminalist he thought it would have the ironic effect of further distancing the child as a victim from the family as criminal perpetrators. And ironically, again, would allow additional notification to the parents such as where the child is living, etc., even after the parent has been charged with the crime. He said it is not a perfect system, but does the best it can to protect the welfare of children. The bill would do serious harm to child protection services.

Tiana J. Pullman, member of MACem, also a victim of child molestation, spoke against the bill. She said the bill would allow children no rights. DFS protects children, she maintained, and the bill would not. She told the committee that molesters are sick people who do not think like normal people. She said if anonymous phone calls were not allowed, nobody would report the abuse cases if their lives were in danger. If the children knew they had to return to an abusive home and have further contact,

they would not report the abuse. Children cannot defend themselves against this kind of abuse, she contended.

Bob Torres, representing the National Association of Social Workers, spoke against the bill. He submitted three hand-outs. **(EXHIBITS 15, 16, and 17)**

Dennis Paxinos, Yellowstone County Attorney, testified against SB 206. He said in private practice he had represented many parents whose children had been removed. The vast majority cases the DFS works with are neglect cases, many times resulting from alcohol and drug problems. The bill does not address these cases. There are two types of abuse from a prosecutors point of view: 1) abuse where a child has been burned or physically harmed, easily identifiable, and 2) sexual abuse, which is very difficult to prove. The criminal charges required in the bill will re-victimize the victims. In his county, they had organized a Child Protective Study Team made up of volunteers who meet and determine how to handle these difficult cases. He recommended this program to the committee for other communities. In all cases, there is an independent judge making decisions, he said, and he urged the panel to opposed SB 206.

Laurie Koutnik, Executive Director, Christian Coalition of Montana, the state's largest family advocacy organization and a former foster care parent, said **SENATOR BURNETT'S** concerns for the children were sincere, but she could not support the measure as written. She read from written testimony. **(EXHIBIT 18)**

Steve Shapiro, appearing for the Montana Nurses Association, numbering 1,400 members, presented written testimony. **(EXHIBIT 19)**

Informational Testimony:

The following documents were presented for inclusion in the minutes without testimony:

(EXHIBIT 20) - Randy Mills, Helena.
(EXHIBIT 21) - Gary Marks.
(EXHIBIT 22) - Bud Rist, Billings.
(EXHIBIT 23) - Collection of letters from MACeM members.
(EXHIBIT 24) - Collection of signatures in support of SB 206.

Questions From Committee Members and Responses:

SENATOR MIKE HALLIGAN asked **SENATOR BURNETT** about the criminal charge provision. In that all the people in the room who had testified for the bill would have been charged with criminal offenses(as they would have under his 1993 bill), did he still believe that it would be a productive avenue in an attempt to handle the issue?

SENATOR BURNETT said, "yes." He said under civil law, they have

no recourse unless they want to spend money. He said sometimes people have spent $100,000 trying to get their children back. If it was a criminal charge, they would have recourse and would be able to face their accusers.

SENATOR HALLIGAN said that if a person were charged with a criminal offense, the county attorney would file a no-contact provision for the duration of the proceeding. He said there may be a situation that the judge in a criminal proceeding prevents the people from visiting their children. Was he trying to do that in this legislation, and would it be counterproductive to their intent?

SENATOR BURNETT said there may be a problem with the county attorneys, but that was their problem and they could cope with it.

SENATOR HALLIGAN stated that if, as **County Attorney Paxinos** testified, they cannot necessarily prove abuse without photos, (for example in the case of a young child), this bill would leave the child at home with the abuser.

SENATOR BURNETT said the bill was for family values. In many cases and there are better than 200 names (on a signature page in his exhibits), he said, the people were unable to get any response. The Governor told him judges could protect the people, but he did not believe the judges were protecting any of the people.

SENATOR STEVE DOHERTY asked **Mr. Hudson** if mistakes were made by the Department in taking children without proper justification, would the department be liable in a civil proceeding? In the last five years, how many civil proceedings have been brought against them? How many were successful, he asked, and have they paid out any money as a result?

Mr. Hudson said he did not know, but they do keep track of it. The Department has paid some, he said, in accusations of being too aggressive and not aggressive enough; for removing children too quickly, and for not removing children. The majority of cases, they win, he said. He promised the exact figures to the panel.

SENATOR DOHERTY asked **Mr. Befumo** about a case in his hand-out pertaining to two youths, and he wanted to know if it was from a court file that was currently sealed.

Mr. Befumo said he did not know. He said the issue was more of the question of adjudicatory hearings that are not usually afforded people.

William A. Fowler answered the question. He said he had given the document to **Mr. Befumo.** He said the contents were not sealed.

SENATOR REINY JABS asked **SENATOR BURNETT** if he consulted the DFS and county attorneys in putting the bill together over the last four years?

SENATOR BURNETT said that a number of attorneys had input into the bill, in addition to psychologists and many people who wanted to see an end to the tyrannical actions of some case workers. He said in most cases, they did a good job, but had some workers had a disregard for the people they served.

SENATOR JABS asked if he thought the children would be adequately protected under his bill.

SENATOR BURNETT said they would be. He said sometimes records are sealed and social workers, judges and the DFS hide behind the law of confidentiality, not allowing a hearing. He said when the law was changed from civil to criminal law on spousal abuse, it cut down the crimes drastically.

CHAIRMAN CRIPPEN asked **Mr. Hudson** to give his reaction to **Mr. Befumo's** comments on the hearing process.

Mr. Hudson said that for the Department to have continued custody beyond the 48-hour emergency process, they needed to appear before a judge and show probable cause. At that time, family members or anyone involved can argue their point. A time limit is set to return to court if extended rights are sought by the Department. His view of the hearings process is that it is set before an independent decision-maker which allows for contradictions and questions of the Department's actions. He said the courts could give them custody of children to age 18, and there were other opportunities for families to challenge that in court and frequently they do, he said.

CHAIRMAN CRIPPEN said some of the proponents were concerned they did not have opportunity for a hearing, and that they had no opportunities to speak to their children and grandchildren. What is the procedure on this?

Mr. Hudson said that the decision is made in the best interest of the child. The judge may give on-going orders and families are allowed input. With persons accused of sexually abusing a child, there is fear of unencumbered access. He said a gradual, safe reintroduction is usually arranged in proscribed treatment plans.

CHAIRMAN CRIPPEN asked if there was a procedure where the parents could speak to their children, other than, "I love you," as they had heard in testimony.

Mr. Hudson said they met with parents before visitations and go over ground rules of appropriate conversations. Any effort to change the testimony of the child is not allowed. He did not think the example would have been appropriate. In a further

inquiry about qualifications of caseworkers, he said specific discussion would be at the discretion of the caseworker. He said the suggestion of the **Chairman** that more definitive guidelines would be well worth looking into.

SENATOR LINDA NELSON asked about Page 9, Section 5, Subsection 2, in which the bill would stipulate that the initial investigation must be conducted within 48 hours, and she asked **Mr. Hudson's** reaction.

Mr. Hudson stated that 48 hours may be too restrictive, but he thought the point being made was that they should have more than an anonymous phone call to respond to an allegation and then to proceed in a timely manner.

Closing by Sponsor:

SENATOR BURNETT told the committee that many attorneys could give different opinions on this issue. Much of what was said, isn't what was happening, he said. He wanted the DFS to cease in breaking bonds between parents and children. Sometimes children are placed beyond the distance of where the family could reasonably go to visit them, he said. In one case in Lewistown, a woman was accused of being an unfit mother and the hearing was taken to Livingston. References in her favor were not allowed to testify. **SENATOR BURNETT** tried to intervene in the case and received a hard reprimand from the judge.

He said people had no recourse and could not bring suit against the DFS who had county attorneys, judges and the state behind them. He thought they abused that privilege. His main interest was not to disseminate the department, he said, but to end the dysfunctional caseworker problems. He said that the change to criminal law would bring more openness and eliminate a lot of confidentiality. He pointed to his written testimonials and asked the committee's consideration of those materials.

ADJOURNMENT

Adjournment: **CHAIRMAN CRIPPEN** adjourned the hearing at 12: 07 p.m.

BRUCE D. CRIPPEN, Chairman

JUDY FELAND, Secretary

BDC/jf

MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE

ROLL CALL DATE 2-6-95

NAME	PRESENT	ABSENT	EXCUSED
BRUCE CRIPPEN, CHAIRMAN	✓		
LARRY BAER	✓		
SUE BARTLETT	✓		
AL BISHOP, VICE CHAIRMAN	✓		
STEVE DOHERTY	✓		
SHARON ESTRADA	✓		
LORENTS GROSFIELD	✓		
MIKE HALLIGAN	✓		
RIC HOLDEN	✓		
REINY JABS	✓		
LINDA NELSON	✓		

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SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 2-6-95
BILL NO. SB 206

TESTIMONY

SENATE BILL 206

"If you don't get the facts right, you will come up with the wrong decision."

In the November election the voting public indicated they definitely wanted a change as to how the Departments were functioning. After a meeting last week with the Department of Family Services personnel, plus listening to their testimony in the Finance and Claims Subcommittee, I am convinced they only intend to make moderate changes. Another indication that makes me believe they are not interested in substantial change is that they have no legislation in this session to do so.

Several years ago I requested several different District judges to empanel a grand jury to investigate this Department. The judge that did respond to my request indicated that what I wanted would be better achieved through legislation. He also said that in his opinion, possibly two out of three child removal cases should never have occurred, this ruined two families. This is what this legislation is all

about. It also gives me resolve to make the effort that substantive changes that are needed in DFS in how they protect families and children.

It is obvious by the numbers of people here, those who have corresponded with me and those testifying here today, that something is wrong in this Department.

There is no doubt in my mind and those of many who have come to this hearing, some having come from a great distance, to support change in the direction of DFS, as we know today.

SB 206 will be a step in returning some public confidence in this Department, and government in general.

5

EXHIBIT 1
DATE 2-6-95
SB 206

STEPHEN C. MOSES
Attorney at Law
P.O. Box 23337
Billings, Montana 59104
Phone: (406) 259-5804

February 2, 1995

Re: Senate Bill 206

TO WHOM IT MAY CONCERN:

I am a practicing attorney in Billings, Montana. The power of DFS has caused me great concern. It is important that there be an agency that protects children, but not dictates the decisions of parents. As we are all aware, there is no blue print on how a child should be raised. We all do the best we can with what we have to deal with. No one wants the tragedies that occur, and few deal with them as much as DFS. However, DFS has taken the position that they can decide the fate of children and in the name of children, rip families apart.

I have had DFS file papers and take children that are only a day or so old. The basis is that in the past the mother was a problem. She has no other children, but because her life was difficult, she will abuse any child she might have. Taking the child is the only thing the department knows. They prepare an affidavit, present it to a busy Judge who signs it as following the statute, and the parent is left alone, confused and facing serious allegations, having never had even the chance to establish herself as a good mother. In the cases I have had, the child was returned and the mothers have turned out to be quality mothers.

Older children are pulled from their family because the single mother, working to make ends meet, doesn't have a spotless home, or has a poor choice for a boyfriend, or simply can't provide the things "normal" kids have. Bad parent, probably not. But the Department takes the child, imposing a far greater burden on the parent. Isolation, foster parents who can provide more material things, and refusal to provide information to the parent leads to distrust and hatred. All this based on an affidavit carefully prepared to have the correct allegations to establish a prima facie indication of abuse. Judges schedule 10 minutes for the hearing called for in the TIA. Most parents are confused and only want what is best for the child. Only a small percentage fight the TIA, believing the Department is there to help. The Department has little burden to maintain total authority over the parent. Visitation is almost non-existent. Parents who insist on seeing their children are labeled trouble makers. Only then do they come to seek an attorney

If family is important, and it surely is, then the Department needs to change its child snatching tactics. Most problems can be worked out with the parents while the child is left in the home. Few problems involve violent threats to the child. If that is the case, the criminal statutes and bail conditions can keep an abuser away. The child does not have to be torn from their home. The innocent parent, who may not know what is happening, does not have to be punished. In this situation, the abuser wins, not the innocent parties DFS helps the abuser obtain what they want, misery for the family.

When a child is taken, the child usually feels they have done something wrong. The Department helps this feeling by keeping the child out of the house. Children understand punishment. If they can't see mommy or daddy or both, someone is being punished. Their entire value system is destroyed. Most children will contact their parents, even if the Department tells them not to do so. If there are problems, helping to work them out while the child maintains their support system in the family, is far better for the child then ripping them from their home. A bad parent, under supervision, is better than no parent at all

As I understand the bill, the Department will have to establish beyond a reasonable doubt that there is abuse and neglect. Access to records and documents will be provided. Both are very good things. The vast majority of parents are not dangerous to their children and not guilty of abuse or neglect. The key, however, is keeping the family together This is something the Department has failed to do.

I would urge the passage of this bill and next session a complete overhaul of the system. If the Department had to keep the families together, the costs would be reduced, the focus could be on family counseling and people would be more agreeable to working with the Department.

If I can be of any assistance, please contact me.

Sincerely Yours,

Stephen C. Moses

EXHIBIT 1
DATE 2-6-95
SB 206

Martha Adolph
#4 Camp 3 Road
Roundup, MT 59072

Senator Jim Burnett
Capital Building
Helena, MT 59604

February 2, 1995

Dear Senator Burnett:

I am writing this letter in the interest of my daughter's and all the other children that I hope will be helped by Senate Bill 206.

My daughters were removed from my home on November 22,1993 for neglect. The Department of Social Services had received a call that my girls ages then 16 & 13 were being left alone. The Department removed my girls and let them stay with friends until Monday when I went into the office and signed the necessary papers to place them in Foster Care. I signed these papers because I was told I did not have a choice, that the girls would be taken either way.

I was very cooperative at the beginning of this nightmare. I started a chemical dependency program, that was in my TIA stated I needed to do. I was unable to complete it because I did not feel comfortable in a group setting. I went to the Social Worker and also the Counselor and asked if I could do this on a one on one basis. I was told and I quote "If you want your kids back you'll finish this class, otherwise you can kiss them Goodbye". Since the others in the group didn't keep things confidential, I didn't want to discuss the issues that I had with them. Because of this I never went back. Then my visits with my girls were getting cancelled time after time for various reasons and then I was told I could no longer see the oldest one at all. I have not seen her since June 28, 1994 and that's tearing me apart because of the closeness I felt with my daughters. I felt then and still do now that the Department was making me choose one daughter over the other.

Now yesterday, January 31, 1995, was the day I was suppose to see my youngest daughter. I have also been requesting to see my oldest daughter. I picked up the phone and called the Department to find out before I went to see if my oldest daughter was going to be there for the visit. The secretary told me she would have Vicki, the social worker, get back to me. Vicki Fawcett, the case worker returned my call and asked if I had received her letter. I said I had not and she proceeded to then inform me that the visits have been stopped. I was shocked. Why I asked? She said it was because the visits are non-productive. I said they would be productive if you would let us talk, but you don't. Vicki then reminded me that I had refused to sign two (2) treatment agreements and we would be going back to court soon and this time Vicki said it's not going to be for the TIA to continue, it's going to be for permanent custody. I told over my dead body are you getting custody of my girls. Then Vicki told me that the abuse charge still stands. You see DFS is charging me with abuse because 12 years ago the girls were molested by a family

member, who was also a child at the time and because I didn't remove the girls from the home they say I did not protect them and I still can't protect them for that happening. I have left that home which was in Colorado and moved to Roundup to try and start a new life for myself and my girls but what happened in the past is still haunting me. At this time Vicki stated that she had another report come into her office that I have been in contact with two (2) other children and I was endangering these children because my girls were taken for abuse. Never have I been told that I could have no contact with children. Well I didn't have to ask who made the call I already knew. It was my new husbands ex-wife. She was mad at him so to get back at him she made a call to DFS. The Department doesn't check out these rumors, they take everything they hear and turn it into whatever they want. The credibility of the people that call are never checked out. In most cases that I have heard of it seems like you are guilty no matter what you say. I am so hurt by all of this. I love my stepchildren like my own. I would never hurt these children or any other child for that fact. This is not only punishing me but also my husband. He doesn't deserve this, his children don't deserve this and neither do I.

Because of another false report I still feel this is one of the reasons I lost my visits. One other is because I'm speaking up. The Department wants you to be quite and be led around by the nose. I wrote to the Governor and also wrote a letter to the editor of our local paper and The Billings Gazette. These letters were used against me in court. I was told that I was an unfit mother and should never have my girls back. This was told to me by the girls Guardian Ad Litem.

I am being told over and over that the whole purpose of the Department of Family Services is to bring families back together but all I see in my case and many others is that they tear them apart and never intend to help reunite these families.

Maybe these social workers don't understand what it does to mother to be separated from their children and I wouldn't wish it on my worst enemy. I cry at the drop of a hat. I've had to quit two (2) jobs because I couldn't work around all the meetings, classes and whatever else it was that DFS came up with for me to do. I still get up in the mornings and go to wake my girls. When it's time for them to come home from school I still hear them saying "HI, MOM, I'M HOME. It's been so long since I heard them really say anything of any importance, because they are afraid to talk in front of the social worker. They don't want to get in trouble or want me to get in trouble for something they might say. I try to tell them this isn't their fault but I can see it in their eyes that they don't believe me. They think since they got taken away that they must have done something wrong. My girls are being hurt too. My oldest one has been tested for everything under the sun including HIV. I'm sure that is very scary when your mom isn't allowed to be there to hold your hand and support you through all of it.

I just want my girls home with me so I can start to heal the wounds that all of this has caused, not only for myself but also for my girls. I know I can't stand the pain of being away from them so if I feel this way, I know that my girls are hurting. I have a big whole in my heart and that won't go away until my girls are home where they belong.

So please get Senate Bill 206 passed. Make DFS h[illegible]

EXHIBIT 1
DATE 2-6-95
SB 206

stands, DFS has way to much power and they abuse it over and over again.

Thank you for your time in listening to my case and for trying to stop these kinds of nightmares before they happen to someone else.

I'm just one MOTHER OF MANY WHO WANTS HER CHILDREN HOME.

Martha Adolph

Martha Adolph

Senator Jim Burnett
Capitol Building
Helena, Montana

TO WHOM IT MAY CONCERN:

This letter is written in support of Senate bill 206, by Senator Jim Burnett. I wish to express to you the problems I and others in my small community have had with the Department of Family Services.

I am the mother of two children. My husband and I were divorced in 1979 and I was left to raise the two children. I had very little education but worked several jobs and did the very best I could, with the help of my parents. We lived in Roundup, Montana and the kid's father moved out of the State. The Department of Family Services were never involved in my life.

In 1989 my prior boyfriend, who was living with myself and the kids, was charged with Sexual Assault of my daughter, then 12. My son was 15. I knew nothing about the charges. When I was told of the charges, I immediately went to see my daughter, who was in the control of Family Services. I also told my prior boyfriend to leave until I could find out what had happened. I went to find out what happened and was told by DFS that I could not talk to the children about what had happened. I was told that if I did not do what they wanted, I would not be allowed to see or be with my children. After all these arrangements, I got both children back. It was only the start of the nightmare.

I made arrangements for my ex-husband to take my daughter for a short period of time. The Department said they placed my daughter out there. My son was "placed" with my folks. DFS, without notice, then placed my son in an unlicensed foster home. A TIA was filed by the Department on the basis that I was neglecting and abusing my children. I was not allowed to see my children, except with the consent and supervision of DFS. Visits were few and far between. I had done nothing wrong. No one would talk to me. my family was spread all over and DFS specifically got my ex-husband involved with rumors of wrong doing. The man accused wasn't even around. As the trial approached, no one would talk with me. When my daughter came to visit DFS got the police and charged into my parent's residence and wanted her because they had not allowed any visits. I had not seen her for several months, no one was around, my Ex-husband and I had made the arrangements and she was asleep on the couch. An attorney personally came to the house at 10:00 p.m. and virtually threw the DFS person out of the house, after she informed him she could do anything she wanted to with the children. After this incident, my ex-husband was told never to allow me or my parents, access to the child. We were allowed almost no visits with the children.

EXHIBIT 1
DATE 2-6-95
SB 206

The TIA also brought my parents into the case. The DFS alleged that they were also abusive and neglectful. My parents are very good people and have always been involved with my children and most of the children in the community. They go to almost every event, whether it be sporting or otherwise, that involves Roundup children. My father takes pictures for the annual, which they do free of charge, just to support the local kids. My mother has and still does help the Justice of Peace and Youth Probation with kids that have gotten in trouble for one thing or another. She supervises these kids while they are on Community Service. She finds the work that needs to be done and makes sure that the kids follow through with getting their hours completed so their fines are paid. We have all helped the children in this community who at times are troubled due to divorce or problems in their families. My father is on the City Counsel. Both were very involved with the kids and are now actively involved with the kids. Despite this, DFS included my parents, who did not live with me, in the TIA, obtained with just an allegation. Neither my mother nor father knew anything about the alleged abuse of my daughter. They did know that things DFS was saying were inaccurate, but DFS didn't want to hear that and accused my folks of terrible things which were totally false.

In the end, my prior boyfriend was acquitted of the charges against my daughter. He left the State shortly thereafter for good. DFS did not stop. My son, who was told to have no contact with me was forced to sneak over to see me and get money because he needed lunches and things at school. I have always tried to teach my children not to go against the authorities, but in this case DFS was not providing for him. He risked punishment, but he came to me because I would help him and he knew that. DFS is teaching children to lie and sneak around. A custody battle raged over my daughter. I could not get reports from DFS without legal assistance. My son finally told DFS to get lost and left town to avoid all the hassle. After getting the reports, most of the reports were false. I had done what they wanted and the reports were inaccurate and slanted against me. I had done nothing wrong and my family, that I had worked so hard to get together, were forced out of town, it cost a fortune to fight the custody battle that really was not needed, and misinformation cost me my children, until now.

My son and I have a good relationship. My daughter has now returned home to live with me. It is sure funny that the kids are back to live with the person that DFS said was abusive and neglectful. DFS never once attempted to put my family back together. They decided to destroy my family and I did not have anything to do with the charges against the prior boyfriend, had done nothing wrong, but was blocked from seeing my children at all. In addition, my parents were not allowed to see the kids after being a very important part of their life for 13 years. Even my folks were punished.

This whole thing could have been avoided if the kids had been left with me. If there was a problem with the prior boyfriend, my kids are far more important than any man. DFS was so involved in the criminal charges that they refused to see the truth or determine what was in the best interest of the kids or my family. Taking the kids was done without any input from me and based on inaccuracies, speculations and accusations, not facts. As noted, if they would have had to prove their case, they would have lost. The

kids had been told lies about me by DFS, they made a very bad situation in to a nightmare, left the family in shambles and walked away. **I DIDN'T DO ANYTHING, WAS NEVER TOLD ANYTHING, I WAS JUST PUNISHED BY NOT SEEING MY CHILDREN. BEING ABLE TO TALK TO MY CHILDREN OR BEING TOLD ANYTHING ABOUT MY CHILDREN.** DFS intentionally attempted to destroy my family.

An isolated case? No! Since my experience, children of friends have been taken because the house is too dirty for the DFS people. If they are poor, many things can be found to be wrong about. Children are placed with relatives who have no events the children are involved in, are told the wrong date if the child tells about the

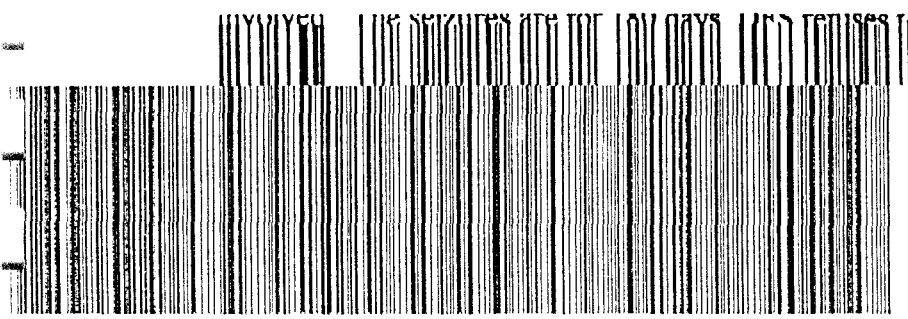

EXHIBIT 1
DATE 2-6-95
SB 206

MONTANA STATE SENATE

SENATOR JAMES H. "JIM" BURNETT
SENATE DISTRICT 42
HOME ADDRESS:
P.O. BOX 4460
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WHERE IS OUR CONSTITUTIONAL RIGHTS

Is the "New World Order" being programmed for these United States by the Congress and the United Nations. The recent U N convention the "civil rights" of the child would overturn both the federal and state laws if ratified by the Congress. Those nations that ratify this treaty would accept granting to children a list of rights, radical in nature and could be enforced with increased police powers to an already powerful bureaucracy that has powers far beyond what the general public can imagine at the present time. The treaty would also position the state as parent by transferring to the state much of the responsibility for health and needs of the child, thus further negating family values.

My concern intensifies when state sovereignty and personal civil rights are threatened or authority is being usurped by the federal government or World Order. Federal mandates take several different approches. A state can participate in certain programs provided they follow certain guidelines and usually provide matching funds. In some instances the state must enact laws that would enable certain programs to be implemented and in some instances the federal program will just be implemented without state participation.

It is a real concern when the attitude of Congress begins to develop the mentality and desire to enforce and usurp the sovereignty of the state and the civil rights of it's citizens in the theory that it is the government's obligation to care for all citizens from the cradle to the grave. This can an will bankrupt our country's morality, financiality and creatively. We still have a certain amount of sovereignty in the state as guaranteed by the constitution if we have the fortitude to resist the encroachment of the federal agencies. we can determine our own standards.

One mandate I've followed very closely is the requirement of PL 96-272 which for all practical purposes caused the creation of the "Department of Family Services". As you will see this Department was intended to keep families together and should the need be, place children in foster care and protected from abusive situations. Abuse is a crime whether child or adult and the abuser should be criminally charged (but not in Montana).

In the last six months I have written both the Director of DFS and the Governor in regards of what I believe is a Department out of control. A petition from Fergus and Ravalli County citizens asking the Governor for an outside investigation of the DFS for what they feel is wrong doing by personnel of that Department or possibly from some other responsible official of government. I have also in this period of time requested two different district judges for a grand jury investigation and have received no response

The Lewistown incident involving Agness James is a good example why an investigation by and outside source is of such a great need. Not only should the investigation be of this incident but should be broad enough to cover any and all complaints of wrong doing. In the Lewistown incident, there is probably other officials of government of State and County involved. the Governor rejected the suggestion, believing the judge off protection from the wrong doing of State and County officials. I am of the opinion that there was a great wrong committed and there should be a criminal charge be made. There certainly was mismanagement and poor judgement within the Department. the support group from Ravalli County believes as I do, that not only in that area, but all over Montana there poor judgement and a lack of common sense by management over the field personnel's conduct and actions.

I don't believe anyone would not agree that there is abuse within a family that should not be tolerated and that when proven beyond a reasonable doubt, the State should intervene. But when there is a lack of integrity of the social worker, it becomes a real concern. In the many cases that have been made known to me, there is little doubt in my mind that in a large percentage of the clients of DFS that "justice has been denied". I don't believe there is one case I know of where the social worker made a courteous and friendly contact with the prospective client The majority are treated in arrogant and degrading fashion. there seems be no guideline the family can rely on as to how and what to expect from DFS.

If DFS really wants to add credibility to their Department they will have to clean up their act by absolute honesty in all reporting. Limit use of confidentiality to a point that would really have an effect on the client. Had the social worker discussed the Lewistown incident with the city council or elected officials of state and county, the outcome of this situation would have been very different. Likewise in many other cases many problems could be solved without ruining a family.

Getting back to how the DFS has gotten to where they are today, an Agency out of control. In 1973, just two decades ago, Congress amended the Social Security Act by passing PL 96-272 which they hoped would correct the imbalance in the Act. These corrections varied widely in emphasis and effectiveness. The implementation by the Agency resulted in a negative effect. In an effort to keep from uprooting established procedures that had already taken hold, Congress left some sections rather vague. the social bureaucrats by this time were well entrenched and enjoying their extraordinary powers and since no one in the states would risk the cut-off of federal funds by blatantly ignoring the federal procedures as recommended, every state seized on the loopholes or vague expression in PL 96-272 in order to reduce their compliance to <u>mere</u> paperwork.

It is obvious, the 1973 law was well intended but disastrously flawed Members of Congress failed to notice that the combination of total confidentiality, unlimited police powers and little or no judicial supervision was a one-way ticket to zeal by case workers. In past history these combinations have turned people into bigoted inquisitors and people seeking revenge when really there is no abuse. How could Congress make such errors to believe social workers with this kind of power under the

would be fair and just and caring, using common sense and not abuse the tremendous police powers granted them. The average American citizen just does not believe this Agency has this tremendous kind of powers until it happens to them or someone they know.

It goes without saying that the passage of 96-272 (Title IV) virtual discredited those people that claim that social workers would not, could not abuse their extensive powers and that a bureaucracy composed of such people would always be benign. further more, those that set up the progr under Title Iv were well aware that the states would be virtually helples if the problems centered around the Constitutional provision of civil rights of the accused and to know what was said. the authors of Title IV required various manipulations to be engaged in to minimize Constitutiona guarantees. What ever Congress had in mind, the net result was that the Agency was given privilege to intervene in families on suspicion and coul hold family members, especially children many times in communicado so tha testimony and public awareness is withheld. They also provided the Agenc with a cloak of secrecy as to the source of their information and it's contents, plus they removed the legal system from all meaningful participation in planning the case, that is, selecting what services woul be offered.

I believe the sovereign State of Montana should exercise it's own constitutional right and proscribe what is right and wrong in abuse withi the family. Only a socialistic nation has no civil rights for it's citizens. The present socialistic laws in the Montana Code should be changed.

EXHIBIT 1
DATE 2-6-95
SB 206

Another side of sexual abuse

False memory syndrome is source of concern

By PAT RHODES

There is a growing concern among psychiatrists in America today regarding what many of them are referring to as "false memory syndrome" and a foundation has been established to help those who have been hurt by the problem.

"While our awareness of childhood sexual abuse has increased enormously in the last decade and the horrors of its consequences should never be minimized, there is another side to this situation, namely that of the consequences of false allegations where whole families are split apart and terrible pain inflicted on everyone concerned," according to an introduction to a publication printed by the FMS Foundation in 1991. "This side of the story needs to be told, for a therapist may, with the best intentions in the world, contribute to enormous family suffering."

> "These critics liken the wave of such cases to the hysteria and false accusations of the Salem witch trials."
>
> **Writer Daniel Goleman**

FMS can happen to anyone, especially if certain elements are present, according to the foundation. A patient is well on the way to suffering from FMS if he or she goes to a therapist who already assumes that most patients have been sexually abused in childhood and if the therapist believes that most memories of abuse are repressed. If the patient reads books that make the same assumptions or has joined a group made up of individuals (usually women) who all believe they have been sexually abused and tell their horrible stories.

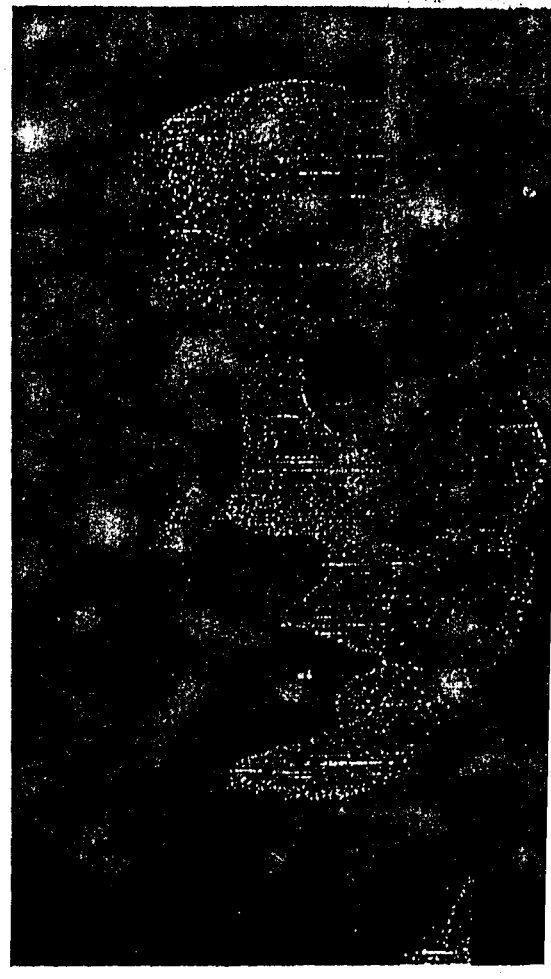
Patients with suggestible personalities are more susceptible to FMS as they are if they are led to believe by therapists and books that healing can take place only when abuse is recognized and the perpetrator identified, according to the foundation.

"Beware. It can happen to you. Accusations of child sexual abuse based on repressed memories that are decade-delayed discoveries are running rampant — an epidemic is emerging. This is the mental health crisis of the decade — if not of the century," foundation information states.

Remembrance of things past can be a "mysterious process, with realities and myths blending into a vivid picture," according to a 1991 Time Magazine article on FMS. "People — not to mention juries — place unwavering trust in the human ability to recall events, especially those that have had a strong emotional impact," the magazine story said. But such confidence is often misplaced. "Our memory is not like a camera in which we get an accurate photograph," says psychologist Henry Ellis of the University of New Mexico.

"Memory integrates the past with the present: desires,

See Abuse, page 5



Attn: Senator Jim Burnette

EXHIBIT 1
DATE 2-6-95
SB 206

(2)

Montana:
The Last Best Place?

In their fiscal year 1992, the Montana State Department of Family Services removed over 3300 children from their homes and placed them in state funded foster homes. With the state child population less than 180,000, this raises some very disturbing questions. Coupled with the fact that Montana, listed among the lowest states in crime and population, is ranked 2nd in the nation in reported child abuse cases. Is this a state of child abusers and molesters? Or is this a state whose children and families are pawns in a political power game?

In 1992, San Antonio, Texas, 12th largest city in the nation, with a population comparable to the state of Montana, reported a child population of over 360,000 - twice Montana's child population. Their Department of Family Services investigated 8,302 cases of reported child abuse involving almost 13,000 children. With the 6th highest crime rate in the nation, they 'constitutionaly' - in accordance with due process of the law - substantiated 3,524 cases of abuse, involving 5,414 children. Yet they only removed 945 If, as the Montana State Department of Family Services claims - that they are 'about average' in the percentage of children removed from the home - then according to these 'average' statistics, DFS had to have investigated 29,057 cases, involving 44,674 children, finding 12,334 cases of substantiated abuse involving 18,949 children.

	Montana	San Antonio
Total Population	@800,000	@873,000
Child Population	@189,000	@367,000
# Cases Investigated	29,057	8,302
Children involved	44,674	12,764
Cases substantiated	29,057	3,524
Children involved	18,949	5,414
Children removed	3310	945
Removal rate	3.6%	.43%
Foster care budget	16+ million	7 million
Total Budget	101 million	40 million

According to these statistic, almost 20% of families with children in the state of Montana could fall suspect through investigation by the Department of Family Services. The question again: is this a state of child abusers and molesters? Or is this a horrible example of a department out of control; a department that stands alone in it's dealings - free to operate beyond the safeguards guaranteed by the Contitution of The United States? In America, could you be removed from your home and placed under confinement for an indefinite amount of time, unaware of the charges against you and powerless to seek recourse? Of course not. Unless you are dealing with the Montana State Department of Family Services. Then the freedoms and rights that this country were built upon are lost. Is Montana truly the last, best place? Not if you love your family.

January 25, 1993

Senator Jim Burnett
P. O. Box 20
State Capitol
Helena, MT. 59620

Dear Mr. Burnett:

This letter is written in support of your presentation on Senate Bill 41.

Our family has been a victim of DFS. Until it happens to them or someone they know, the public remains unaware of the power of this department and how it is destroying families. I believe it is time that some control is placed on this department and the people are given some rights. Whatever happened to "Innocent Until Proven Guilty"? In no way should parents stand accused and children be removed from the home, strictly on hearsay with no evidence and no investigation. It is now coming to light, not only in Montana but throughout the United States, just how much power agencies such as this have been welding against innocent people, who have had no recourse. It is not unlike having the Gestapo appear at your door.

People employed by this agency are not above fabricating lies and then compounding them, with the victim never having access to where this information originated and without DFS ever having to supply proof. Instead of trying to keep the family intact and act in a supportive manner, they are known to pit child against parent, parent against child and parent against parent. They believe that they can rip families apart and then later bring them together and everything can be "better than it was before." Once this happens to a family, the scars are carried forever and the family is never the same again.

From our experience, I can verify that you are correct in the information that you are presenting. Safeguards must be placed to protect <u>all</u> members of a family. Families must have the opportunity to be protected from being wrongfully destroyed by the State as a result of <u>mistakes</u>, which from my observation, are tipping the scales on the opposite side of justice. You are right about an industry fostered by DFS referrals. Too many people are in the pockets of DFS. Also, I believe the system is corrupt in its placing of foster care. In our case, the "foster family" happened also to have one member employed by DFS--"double dipping", if you will. Parents and other family members should not be denied the right to see their children. Being removed from the home is traumatic enough without adding the burden of not being able to speak to those people who love and care for them the most. Any

OVER

EXHIBIT 1
DATE 2-6-95
SB 206

questioning of the children, most emphatically, should have a third party present and a transcript of that meeting available. Wronged parents are being denied the right to defend themselves.

The system as it exists is an outrage! We appreciate the opportunity to speak out and see legislation enacted to correct this growing problem. If it can keep one family from being destroyed, it will be well worth the effort.

Included with this letter is some information that might be helpful in showing how psychology professionals are perpetuating these problems.

Any information on the progress of SB41 would be appreciated.

Thank you, Mr. Burnett, for addressing this most important matter.

Sincerely,

Kathy Peterson

Kathy Peterson
500 So. 6th St.
Hamilton, MT 59840

Senator James Burnett
Montana Legislature
State Capital
Capital Street
Helena, MT 59620

2-2-95

Dear Senator Burnett,

Please accept this letter as a written testimony and endorsement for Senate Bill 206.

This bill clears the air of misleading intentions on how to protect our States children. By the laws that are intended to provide safety and the well being of abused children, the bill shows a conscienous and moral effort and obligation to maintain a healthy family unit for children. It provides the family and the various agencys that may be involved with a guide to maintain and protect everyone's civil rights.

Although, I personally have not been subjected to the trauma of having my children placed into the court and foster care system due to abuse or endangerment, myself and my girls still have been affected by the disregard for family rites my friends and fellow families have had to endure in this state. I see and my daughters see, the pain and anger and mistrust brought on

EXHIBIT 1
DATE 2-6-95
SB 206

by the communities and states obliviousness to the children people go well as the families. And what disturbs me the most, is what seems to be the absolute, dictorial power of the Dept of Family Services.

I realize the enormity of caring for children, especially those who are abused is an overwhelming task. But I feel we must not let agencys or "good intentioned" citizens take it upon themselves, solely, to dictate the outcome of our childrens welfare.

It is with these feelings that I endorse Senate Bill 206.

Thank you very much

Gail Jacobson
312 11th Ave W. #206A
Polson, MT. 59860

Frank B. Fitzgerald
412 Hallowell Lane
Billings, MT 59101-5011

Senator James H. Burnett
Route 1 Box 4460
Luther, MT 59051
406-446-2489

December 2, 1994

Dear Senator:

Congratulations on your re-election to the state senate. Please note my new address. It is the same house but a new house number.

I received your letter of November 15th and whole-heartedly endorse your letter.

As I said I would, I did file my Specific Human Rights Petition with the Inter-American Commission on Human Rights of the Organization of American States. I can make available an unabridged copy if you desire one. As Exhibit 6, I included, Richard Wexler's book, "Wounded Innocents". In Chapter 11, Wexler has recommendations of interest.

I also filed my General or Collective Human Rights Petition, to represent others, in which are included many exhibits of articles and transcripts dealing with Rights of the child and State agencies including the LA foster care scandal.

I have stated to the Commission I was presenting the experiences of many persons named and unnamed in the articles and transcripts as my representation. That included the Waco Massacre of innocent children and the murdered children in LA foster care. I also included 3 video tapes. One deals with the foster care murder of Jesus Castro in LA. Another deals with the Nazi "Lebensborn" program I have suggested is being copied here in the USA and exported to other members of the OAS. The 3rd tape is about black market babies.

I have suggested the USA has a very real image problem of Human Rights of children and their families when the State interfers.

I am enclosing a copy of my recommendations to the Commission for its beginnings of offering the US Government friendly conciliation, not hostle confrontation.

Your suggest of "Beyond a reasonable doubt" is by far the most fair standard to aim for. "Preponderance of the evidence" is purely a civil procedures standard, whereas, "beyond a reasonable doubt", is a criminal procedures standard. The involuntary termination of Parental Rights should be a criminal proceeding with Rights of trial by jury, to counsel, discovery, visitation and a cooperative Guardian Ad Litem until the parent is proven guilty of some crime against the child. The Guardian Ad Litem duties should by statute include his guarding Rights of his client, the child, from encroachment by the State until both parents are proven guilty. If only one is proven guilty

EXHIBIT 1
DATE 2-6-95
SB 206

then the other parent should not be discriminated against by the court, the agencies, the Guardian Ad Litem, or the State.

I believe in returning fundamental Family Human Rights to the family where it belongs. Legislation which prevents the State from being a parent, parens patriae, must be passed to over-ride Montana's Supreme court decisions which so say the State is a parent.

The "beyond a reasonable doubt" is the standard used in USC Title 25 dealing with termination of Indian parents in federal courts--so why not all others--by amending MCA Title 41, Chapter 3, the abuse, neglect and dependency provisions for use in state courts.

I do have many more recommendations based upon my extensive studies and on personal experience. If I could just reach the necessary forum. I did ask the Commission to hold hearings and issue summons to appear and bring documents. I suggested somewhere in Montana, Texas, and LA.

Yours sincerely,

Frank B. Fitzgerald

Frank B. Fitzgerald

Frank Boring Fitzgerald, Petitioner
412 Hallowell Lane
Billings, MT 59101-5011 USA
Phone: 406-259-5866

Copy

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BEFORE THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
OF THE ORGANIZATION OF AMERICAN STATES
Washington, D.C. 20006 USA

*****

FOR ALLEGED VIOLATION OF FUNDAMENTAL HUMAN RIGHTS, AND, FOR ALLEGED "CRIMES AGAINST HUMANITY"

*****

Case Number _____

*****

FRANK BORING FITZGERALD, Petitioner,	)	
	)	
and,	)	**RECOMMENDATIONS**
	)	
United States of America, et al,	)	
Respondents	)	

*****

RECOMMENDATIONS FOR THE COMMISSION TO INVESTIGATE, STUDY, COMMENT, AND SUGGEST TO THE UNITED STATES GOVERNMENT AS A POTENTIAL RESOLUTION TO PETITIONER'S HUMAN RIGHTS PETITION:

*****

COMES NOW Petitioner, Frank Boring Fitzgerald, in support for his Human Rights Petition, makes the following:

I

RECOMMENDATIONS

1 Petitioner recommends to the Commission it investigate and study his Fundamental Family Human Rights questions raised in his Petition and then formally or informally offer to the United States Government a set of proposed solutions to those questions,

EXHIBIT 1
DATE 2-6-95
SB 206

as peers-to-a-peer.

2 All serious Human Rights questions need answers and Petitioner, because of his experience, has suggestions for answers to problem areas of Family Human Rights in the USA. Most, if not all, of Petitioner's Human Rights questions have arisen over the years as a direct or indirect result of failure of USA common law and failure of the statutes upon which common law was based to uphold Human Rights.

3 To exact respect for fundamental Family Human Rights requires a bold new approach to systems of dispensing family justice because Petitioner, and others, have gotten no where within the political system. No one has either the time or can devote the effort to put into effect remedial recommendations. Petitioner has been to all 3 branches of the US government and Montana government with his pleas for change all the while his Family Human Rights were being destroyed by the State.

4 If one suggests making changes in a system, one must be sure changes are both needed and rightfully accomplished, consistent with a minimum impact upon society. Change is necessary.

5 Petitioner suggests, not one iota of change needs to be made in the US Constitution in order to effect what he considers are a necessary and desired change in procedures of dispensing family services and justice in the USA so as to comply with Human Rights provisions of international law to which the USA is signator.

6 One example of necessary change flows from the present US Constitutional mandate: The US Supreme Court has,

> "...appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make". Article III, Section 2, US Constitution.

But the principle problem is, Congress allows the "exceptions"; Congress allows the US Supreme Court to, by discretion, summarily deny 90% of those cases coming before it without the Court ever really giving due consideration to and acting upon them. Their disposal actions are tantamount to a lottery. A case of utmost importance to all citizens can be simply suppressed in summary denial.

7 If Congress believes the US Supreme Court is overloaded with cases coming up on appeal, Congress ought to expand the one US Supreme Court into departments, or chambers, so the one Court can judiciously dispose of 100% of cases coming before it and thereby comply fully with the mandate of the US Constitution in regards the Constitutional requirement of appellate jurisdiction.[1]

8 Rejection and suppression of appeals in summary denial are neither fundamentally fair nor attributable to what could be called an "independent judiciary" specified in international law. That is, the Court is biased towards, and has a propensity to, and has discretionary power to, suppress the 90% of cases, some of which from time to time involve questions of fundamental Family Human Rights[2], and "Civil Rights" {Human Rights} in general.

9 Congress has the Constitutional authority to expand the US Supreme Court into departments or chambers through appropriate legislation signed by the President, doing so it would amend United States Code Title 28. By further amending Title 28, Congress may direct the Court to handle all appellate cases in the various departments or chambers.

10 Congress should create the ability of citizens to bring

"Civil Rights" suit in federal district court they presently cannot do, in citizen attempts to exhaust their domestic remedies, against **State entities**, and/or **private entities**, and/or **persons** who act for and in behalf of the State in the state of residence by doing seven things:

a First, Congress should specify, and affirm, by joint resolution of both houses, the various Civil Rights Acts, adopted over the years since the Civil War, are intended by Congress to allow citizens to implement the First Amendment to the US Constitution, which prohibits Congress from making laws abridging the right of the people to petition the government for a redress their grievances, by specifying in the joint resolution, it is the intent of Congress a citizen's "Civil Rights Complaint" may be filed in federal district court against alleged violators of Civil Rights and to include **State entities**, and/or **private entities**, and/or **persons** who act for and in behalf of the State of the state of residence without having to first file in state court[3]; the Congress should specify, and affirm, in the joint resolution, the various Civil Rights Acts are not intended to convey a due process right of the State to treat Civil Rights as merely or solely "property interest rights" but as Human Rights when it comes to a citizen attempting to exercise Civil Rights but is confronted by a State challenge in court[4].

b Second, the joint resolution should state it is the intent of Congress, "Civil Rights" are Human Rights, reserved in the people by the 9th and 10th Amendments to the US Constitution not requiring laws of the legislatures or decisions of courts or decrees of the executive to make such Rights valid and effec-

tive. This would be the USA way of implementing and giving recognition and credence to the many Human Rights provisions of international law respecting those Rights as fundamental to which conventions the USA is a signator.[5]

c Third, Congress should amend USC Title 42, Section 1983, the Civil Rights Act, to implement the meaning and intent of the Joint Resolution. That would include amending the Act by changing the word **"person"** to include **a State entity, a private entity, and a person**, and specify no person, State entity, private entity, has implied, partial, quasi-, total, or qualified immunity from Civil Rights suit. But in a Civil Rights suit against a person and/or State entity and/or private entity, the burden of proof lies with Complainant in a pretrial hearing solely intended to more closely define legal questions presented; jury trial would be a matter of right by demand of Complainant[6]; a Civil Rights suit filed by a citizen ought to be a civil suit whereas filed by the State against a citizen ought to be a criminal suit; a civil suit filed by a citizen joined by the State against another citizen ought to be a criminal suit.

d Forth, Congress should also amend USC Title 42, section 1983, to include a time limitation:

i which exempts concealed Civil Rights violations from a time limitation until the discovery is complete;

ii which is begun with each and every violation event which can be proved, with older violations permitted into evidence to show propensity;

iii to begin running when enough proof can sustain prosecution in a court of law, and once before the court, the burden of proof

rests with the Complainant to prove the time-frames involved were necessary;

iv which specifically exempts provable "crimes against Humanity" with adequate definition thereon, from any time limitation;

v which specifically permits sequential litigation[7], which are each intended to exhaust remedies prior to filing a Civil Rights suit, before beginning to run a time limitation[8];

e Fifth, Congress should specify by amending Title 42 Section 1983, no penalty, punishment, or sanction can be exacted against a citizen for his having filed a Civil Rights Complaint a first and second time but if filed and denied twice then the denial the third time should cause sanctions to be invoked. Three strikes and you are out.

f Sixth, Congress should also amend Title 42 Section 1983:

i to disallow appeals by State entities of Civil Rights case decisions[9] unless the State and citizen complainants were originally co-prosecutors against other citizens and/or entities; this would not preclude the State filing as an amicus curiae.

ii to incorporate the concepts of citizens having the Right to prove allegations of violations of their Civil Rights[10] caused by Respondents be they officials, judges, prosecutors, other citizens, or State or private entities. No person, no private entity, no State entity, should be allowed by color of local law to work violations of Civil Rights {Human Rights} above laws of the land prohibiting the violations without fear of retaliation in court.

iii to allow citizen access to federal grand juries for investigation of their Civil Rights Complaints in conjunction with

domestic Human Rights Commissions as advocates of Complainant's Civil Rights in federal courts. This would not require a new mandate from Congress only modification of existing mandates.

g Seventh, Congress should amend Title 42 to include the following concepts in language of sections 670, et seq. dealing with families and Child Protection Services care situations:

i All federal monies granted to the State and its advocates in all states for restoring families and/or for maintenance of CPS care situations must be monitored for compliance with terms of acceptance of those monies[11]. This presently is not adequately done leaving only Maryland and Iowa to 70% comply. All other states, including Montana, are in 0% compliance with no effective federal watchdog agency on their backs to comply.

ii The State and its advocates must recognize, respect, and protect fundamental Family Human Rights.

iii The State and its advocates must consider family members innocent until proven guilty in a court of law.

iv The State and its advocates must consider any allegation of parental act of commission and/or omission upon their child only within the context of a criminal proceeding requiring a priority one trial by jury upon a priority one indictment of a local grand jury[12].

v At the very same time as a first Temporary Investigative Authority and Child Protection Order is issued, a Guardian Ad Litem shall be appointed to represent the child as an alleged victim and the duty of the GAL is to guard the Rights of the child from enchroachment by the State or any of its other advocates.

EXHIBIT 1
DATE 2-6-95
SB 206

The GAL shall consider the parent or parents innocent and work with them until proven guilty in a court trial by jury at which time the GAL shall guard the child's Rights also from enchroachment from its parent or parents found guilty; the GAL shall have access to any information, to the State and its other advocates, to the child, to the parent or parents, to the court but not as prosecutor or co-prosecutor for or on behalf of the State or any of its other advocates, to the foster care review committee, to any interested party, so as to aid in the process of remedies beneficial to the family as a unit until guilt is adjudged.

vi The State and its advocates must allow parents full discovery through a requirement at all times to provide information developed[13] and an adequate opportunity afforded to parents to dispute in a priority one foster care review committee hearing established under jurisdiction of the court[14] which committee acts as a mediator or referee. Local court rules may need to be changed.

vii An alleged child victim may not be removed from its family by the State or its advocates for less than a criminal allegation against one or both parents.

viii The State or its advocates may not place a removed child in a CPS care situation removed from its family by more than a few miles, nor giving a new name, nor giving a new religion, nor withhold visitation by a parent except in suspected "crimes against Humanity" alleged to have been committed against the child by that parent[15], then the visitation must be brief and continuously monitored.

ix The State or its advocates may not remove a child from its family if only one parent is alleged to have committed a criminal action and/or inaction upon that child, and no other child may be removed at the same time who was not also alleged to be a victim[16] or is alleged to be in imminent danger if left with its family.

x The alleged perpetrator must remove voluntarily or be removed by order of the court with opportunity to rebut within 72 hours;

xi The State or its advocates shall not hold a child, alleged victim of a parentally caused crime, in a CPS care situation longer than 72 hours without further order from the court based upon rebuttable evidence.

xii The State and its advocates must accept an order of priority in consideration of where to place an alleged victim child removed from its family in CPS care situation to include: relatives, godparents, friends, and neighbors or other interested partie.

xiii 72 hours after a child has been removed from its family, a petition for a writ of habeas corpus filed by or on behalf of a parent, or on behalf of a child by its Guardian Ad Litem, must be respected by the court as priority one and cannot be denied summarily by anyone in or out of court. To process, it must not require more than a few hours.

The habeas corpus filed by or on behalf of a parent takes the form, "The State and/or its advocates have my child which by Right belongs with me in my family--the State must charge me with a crime or return my child to me."

EXHIBIT 1
DATE 2-6-95
SB 206

The habeas corpus filed on behalf of the child by its Guardian Ad Litem takes the form, "The State and/or its advocates have the child which by Right belongs with its family--the State must charge the parent with a crime or return the child to its family."

11 Additional recommendations are to be found in **"WOUNDED INNOCENTS"**, by Richard Wexler, at Chapter 11 "Making Changes" see **Exhibit 6.**

NOTES TO RECOMMENDATIONS

1. An ideal example of such a departmental, or chambered, court is the Supreme Court of Costa Rica, which handles 100% of cases coming before it in the various Salas.

2. as was Petitioner's second of two appeal cases

3. This would have the effect of settling, once and for all, the various arguments and decisions of the federal courts on the federal question of the 11th amendment bar to a citizen suing their state of residence in federal district court where some courts have held it impossible and other courts have held it possible for citizens to sue their state in federal court.

4. At present in the USA, the State treats Civil Rights as property interest rights conferred upon citizens by statutes and decisions of the courts much like property rights are conferred or created by contract. Such conference of rights by statutes has the meaning in court of: the State may withdraw by challenge, rights at any time under the due process clause of the 14th Amendment to the US Constitution. This interest right concept has been in and out of the courts for well over a century and needs to be finally laid to rest by action of the Congress in joint resolution of intent and meaning.

5. At present there are no Human Rights recognized in the US Constitution as such fundamental. In practice, the US Constitution has been considered by the courts to grant powers to the legislatures to enact laws which laws recognize or grant people their Civil Rights. It must be point out to the Commission, these Civil Rights can be withdrawn at any time by whim and caprice of the legislatures without infringing the US Constitution.

6. The judge decides questions of law; the jury decides all other matters.

7. appeals would be sequential litigation

8. now the Civil Rights suit must begin as if in parallel to other kinds of litigation with no chance at sequential suits because most often the other litigation takes longer than the statute of limitations for Civil Rights cases allows

9. decided in favor of citizen complainants

10. in a federal court beyond a shadow of a doubt as the standard of evidence

11. The terms of acceptance are written into USC Title 42, Sections, 670 et seq.

12. Presently, allegations of misconduct are handled, according to state statutes, as "adversarial **civil procedures**" using rules of civil procedure in a court of law **without benefit of a trial**

EXHIBIT 1
DATE 2-6-95
SB 206

by jury. It would not be enough to require a trial by jury in a civil proceeding because, among other things, the verdict of a civil trial jury does not need to be unanimous and they would weigh the evidence, according to weight instructions, on basis of a "clear and convincing" test. Now, in state court it is the judge who weighs the evidence according to a "preponderance" test. Upon appeal, the appellate court will instruct the judge to use the "clear and convincing" test. The highest test of weighing the evidence should be that used in 1st degree murder trials, "beyond a shadow of a doubt", because we are talking about the potential destruction of families. And, in order to arrive at "beyond a shadow of a doubt" test will require criminal procedures substituting civil procedures in court. Criminal procedures required of trials to terminate Parental Rights in some courts may require amending local court rules.

13. In Richie v. Pennsylvania, US Supreme Court, Richie was not able to defend himself because the State and its advocates withheld information vital to his defense. The US Supreme Court held he was not entitled to that information. Thus Congress can over-ride that decision and others of a similarity.

14. Currently, foster care review committees are closed to parents.

15. Presently, a child is often removed from its home when only one parent is alleged to cause abuse, neglect or dependency.

16. Currently, a child and any or all other siblings are removed when only one parent is at fault. The law should specify the offender parent shall be removed from the home and the children left with the other parent.

ERSONS INTERESTED IN OR HAS BEEN EFFECTED BY THE DEPARTMENT OF FAMILY SERVICES:

AME	ADDRESS	TOWN	ZIP	PHONE
shcraft, Teresa	Box 1224	Thompson Falls	59873	827-3046
ssay, Donna		Frenchtown	59834	626-4558
lake, Dorothy	7830 2 Augg Dr.	Missoula	59802	258-2864
Brown, Rick	Box 471	Phillipsburg	59858	
Buckman, Spring		Missoula	59802	251-2926
uffington,Tim	Box 104	Miltown	59851	523-6399
Gibson, Meg	1919 Strand	Missoula	59801	251-6392
Hansen, Fred	Box 5718	Missoula	59801	251-6392
cAdams, Steve		Clinton	59825	825-6938
McDermott,Rena	5569 Cottonwood Dr.	Florance	59833	273-2527
McKinstry, Mike	Box 1172	Lolo	59847	273-6865
Rasmussen, Linda	1336 Sherwood	Missoula	59802	728-1686
Rice, Debbie	Box 908	Lolo	59847	273-3167
Rice, John	Box 5700	Missoula	59806	721-0103
Taylor, Debbie	2046-S 11 W	Missoula	59801	542-0153
Weiley, Becky	774 Milty Ln.	Hamilton	59840	363-5383
Weaver, Roxy	Box 871	Miles City	59301	
Whitelatch, Bob	300 Dearborn	Missoula	59801	549-9619
Wikstrom, Kay	740 Turner #14	Missoula	59802	721-3068
Wilkenson, Mim	Box 73	St. Ignatius	59865	745-2300
Williams, Ray		Stevensville	59870	777-2873
Wilson, Gray	Box 623	Frenchtown	59834	
Bowshi, Norm	1009 Palmer	Missoula	59802	543-1907
Sandau, Valinda(Ken)	838 N 5W	Missoula	59802	549-5340
Chrestensen, Bob		Lolo	59847	543-6193 273-0820
Bersuch, Brian & Marian	305 Hilger	Lewistown	59457	538-7832
Peterson, Cathy	500 S 6th	Hamilton	59804	363-3551D 363-3545N
Goodyear, Gena	2028 Custer	Billings	59102	656-7112
Fitzgerald, Frank	3000 Hollowell Ln.	Billings	59101	259-5866
Barth, Kay	Box 186	Alberton	59820	626-4451D 722-4473N
Steele, Nikki & Carl	406 5th Ave N	Lewistown	59450	538-2347D
Miller, Ed	903 Lane II	Powell, Wyo	82435	307-754-3858
Vincent, Vikey	104	Fort Harrison	59636	443-2730
Peterson, Sue	219 S 8th St	Hamilton	59840	538-2347
Kolpin, Norm	2012 Forest Park	Billings	59102	656-6244
Miller, Morris Sharon	2212 4th Ave N	Great Falls	59401	761-0482

EXHIBIT 1
DATE 2-6-95
SB 206

NAME	ADDRESS	TOWN	ZIP	PHONE
Garrick, Dennis D.	306 Highland Ave	Plentywood	59254	765-1545
Seminole, Bernice		Lame Deer		
Hargen, Kenneth E.	1831 Stoddard	Missoula	59802	543-6193
Squires, Charles & Norma	Box 350061	Grantsdale	59835	
Henderson, Jerry	Box 5722	Helena	59601	443-2730
Bartows,Mr. & Mrs. Gerold	217 Ave E	Roundup	59072	323-2533
Rist, Bud & Vonnie	410 N 33rd St.	Billings	59101	252-2071
Raugh, Richard	208 Caroline Rd	Roundup	59901	756-6529
Sandou, Kenneth & Valinda	838 N. 5th W	Missoula	59802	
Clark, Richard	Box 3566	Missoula	59806	728-1475
Belledaux, M.W., Sr.,	15420 TeyerRd #3	Lolo	59847	273-0196
Etter, Valorie	1814 Hauser	Helena	59601	443-6331
Dye, Penny		Lewistown	59450	538-5128& 538-5782
Latham, Rosetta		Park City	59063	628-2991
Espelin, Betty		1703 Pinyon Dr	Laurel	628-8096
Henderson, Jerry	Box 5722	Helena	59604	443-2730
Owens, C P	4235 McGillen	Red Lodge	59068	446-3933
Red Firm, Pascal	Box 3228	Missoula	59806	
Fisher, John & Eva	RR #1 Box 4	Joliet	59041	
Morris, Bob & Yvonne--3208	Maser Dome Rd	Silesia	59041	
Damian, Marcus	3030 Market St	San Diego, Calif.	92101	619-236-0994
Austad	Riverview C	Great Falls	59044	
White, Catland	Box 350008	Grantsdale	59385	363-5383
Wiley, Rebecca	Box 91	Grentsdale	59383	363-5363
McKay, Marvin	401 N 10th Apt.304	Hamilton	59840	
Kruger, Yvonne	411 1/2 W. Main, Apt. #7	Lewistown	59457	

NAME	ADDRESS	TOWN	ZIP	PHONE
Fellows, Charles		Sun River	59483	
Fellows, Mae		Sun River	59483	
Avery, Judy		Sun River	59483	
Cogillis, Vivian		Sun River	59483	
Miller, Brenda		Sun River	59483	
McBurrey, Ethel		Sun River	59483	
Keeder, Hudd		Vaughn	59487	
Mancello, Colleen		Sun River	59483	
Tucker, Trish		Sun River	59483	
Schroechl, Evan S.		Fort Shaw	59401	
Dougherty, W. A.		Great Falls	59401	
Jensen, Cliff		Vaughn	59487	
Poff, Tim		Sun River	59483	
Schroechl, Eric		Fort Shaw	59443	
Donnelly, Faye		Sun River	59483	
Feeler, Peggy		Vaughn	59487	
Crown, Candi		Vaughn	59487	
Borly, Sharon		Sun River	59483	
Volkman, James		Sun River	59483	
Jones, Jamie		Vaughn	59487	
Benning, Andy		Sun River	59483	
Phillips, Jason		Sun River	59483	
Nirling, Al		Sun River	59483	
Misko, Connie		Sun River	59483	
Nirling, Ruby		Sun River	59483	
Peterson, Cliff				
Bradbury, Ray				
Meier, James R.		Sun River	59483	
Aavces, Keith				
Towry, Carol		Sun River	59483	
Meier, Myra		Sun River	59483	
Johns, Alan M.		Fairfield	59436	
Spraggs, Rita		Vaughn	59487	
Glaze, Duane E.		Cascade	59421	
Glaze, Fran		Cascade	59421	
Nielson, George				
Powell, Shirley		Great Falls	59401	
Walker, Russ		Belt	59412	
McClendon, Jodi		Great Falls	59401	
Johnson, Maxine		Vaughn	59487	
Johnson, Maryanne		Vaughn	59487	
Thompson, George		Vaughn	59487	
Nielsen, Denni		Cascade	59421	
Nielsen, Mary		Cascade	59421	
Kuntz, Mike		Great Falls	59401	
Lane, Casandra		Great Falls	59401	

EXHIBIT 1
DATE 2-6-95
SB 206

NAME	ADDRESS	TOWN	ZIP	PHONE
Mr. & Mrs. Bruce A. McAuley	1005 2nd Avenue N. #26	Great Falls	59401	
Keiser, Starla	927 7th Ave. N.W.	Great Falls	59401	
Hover, Jeffery	6081/2 Central Ave#310	Great Falls	59401	
Baker, Edyth	602 Park Dale	Great Falls	59401	
Schawier, Charles	66 St. So. Apt. 418	Great Falls	59401	
Coon, Karyne	605 7th Ave. North	Great Falls	59401	
Coon, Charles		Great Falls	59401	
Matschenlade, Daisey	1604 Aoasis Ct.	Great Falls	59401	
Linef, Harvey,	903 8th Steet	Great Falls	59401	
Linef, Raylene		Great Falls	59401	
Marsh, Ray	4600 4th Ave.	Great Falls	59401	
Van Gorden	P. O. Box 533	Valier	59486	
Horrall, Arthur M.	723 Broadway	Denton	59433	
Baker, Raymond	P. O. Box 244	Stanford	59479	
Uhrs, Milton	Route 1-Box 62	Coffee Creek	59424	
Bolstad, Alvin				
English, James B.	P. O. Box 148	Roy	59471	
Finch, William	P. O. Box 539	Roundup	59072	
Stapleton, Wayne	P. O. Box 533	Harlowton	59036	
Peccia, John	P. O. Box 511	Harlowton	59036	
Holze, Paul	P. O. Box 236	Starburst	59036	
59479Fulton, Clarence	P. O. Box 436	Harlowton	59036	
Morley, Loren	P. O. Box 652	Harlowton	59036	
Ballard, Vernon	P. O. Box 13	Lavina	59046	
Burger, Jack L.	P. O. Box 3	Lavina	59046	
McCanas, Arthur	P. O. Box 285	Harlowton	59036	
Patterson,	P. O. Box 1017	Denton	59430	
Krause, Harold	P. O. Box 666	Harlowton	59036	
Beck, Marvin	509 6th Ave. South	Lewistown	59457	
Perry, Jack	R.R.	Judith Gap	59452	
Broch, James	P. O. Box 54	Judith Gap	59453	
Corbett, Ralph	P. O. Box A	Winnett	59087	
Munson, Joe	P. O. Box 101	Teigen	59084	
Ingalls, C. & L.	104 Silver Dr.	Lewistown	59459	
Bradley, S. L.	P. O. Box 126	Park City	59063	
Peterson, John	4421 Stone St.	Billings	59101	
Hruska, A. L.	2526 Miles Ave.	Billings	59102	
Smith, R.	928 W. 4th	Laurel	59044	
McComos, Larry M.	3231 Central Ave.	Billings	59102	
Loyming, Sam	Star Rt. Box 30	Belfry	59008	
Vanderburg, Jim	44 Silver (?)	Billings	59102	
Childers, Don	1235 Custer Ave.	Billings	59102	
Frey, Ralph M.	2213 Elizabeth St.	Billings	59102	

NAME	ADDRESS	TOWN	ZIP	PHONE
Thomas, Odelta A.	1302 Wicks Lane	Billings	59105	
oskam, Victor H.	2719 4th Ave.	Billings	59102	
nsen, James W.	460 Swan Hill Dr.	Big Fork	59911	
ong, LeRoy L.	P. O. Box 1073	Big Fork	59911	
rman, Harry L.	728 - 8th St. W.	Kalispell	59901	
rr, Ralph T.	862-4807	Whitefish	59937	
rnard, David H.	149 Ferndale Dr.	Big Fork	59511	
Walters, Gordon R.	130 Yarrow Ave.			
	P. O. Box 1965	Whitefish	59937	
uzof, Richard E.	804 - 8th Ave. W.	Kalispell	59901	
Schmidt, Vivian	22 Meadowlark	Kalispell	59901	
Nordhaper, Darrell	621 Sapphire Ave.	Billings	59105	
e g P. ?	Montana Vets.Home	Columbia Falls	59912-0256	
Kaush, Ronald	12157 Hy 212	Charlo	59824	
Meadows, Robert	General Del.	Charlo	59824	
oughty,Phillip H.	P. O. Box 332	Augusta	59410	
isano, John R.	P. O. Box 145	Augusta	59410	
Thompson, Bruce O.	P. O. Box 89	Geraldine	59446	
ause (?),Thomas A.	P. O. Box 173	Geraldine	59446	
au?...Glen C.	P. O. Box 95	Geraldine	59446	
Atchison, Russell M.	Box 242	Geraldine	59446	
Sanders, Gordon H.	Box 331	Geraldine	59446	
anks, Tom	Rte 1 -Box 160	Fairfield	59436	
Stockinger, Gil	3020 5th Ave. So.	Great Falls	59405	
Linssen, Verne P.	1808 32nd St. So.	Great Falls	59405	
ollick, C.F. Cholly				
	8th - 14th St. So.	Great Falls	59405	
Spaulding, Ronald	P. O. Box 154	Power	59468	
Brown, Dean B.	P. O. Box 308	Cascade	59421	
rownwell, Robert	P. O. Box 463	Dutton	59433	
Anderson, James	P. O. Box 318	Power	59468	
Bakke, Emil G.	P. O. Box 175	Power	59468	
chultz, William	P. O. Box 246	Power	59468	
Bremer, Otto	Rte 1 Box 127	Fairfield	59436	
Richter, William	P. O. Box 201	Choteau	59422	
nbody, Roy	Rte 2 Box 136	Choteau	59422	
etzel, LeRoy R.	Rte 1 Box 31A	Fairfield	59436	
Goodmundson, Darrell				
	P. O. Box 235	Dutton	59433	
eilly, Diana	36 Willington Ln.	Cascade	59421	
Jenkins, Paul K. (?)	221 36 St. So.	Great Falls	59404	
McNess	256 22nd Ave NW	Great Falls	59405	
ull, Ardell		Fort Shaw	59443	
Haffner, Dolores		Great Falls	59401	
Haffner, Bob L.		Great Falls	59401	

EXHIBIT 1
DATE 2-6-95
SB 206

AME	ADDRESS	TOWN	ZIP	PHONE
.ahn, Gene		Lincoln	59639	
:ahn, Carol R.		Lincoln	59639	
Haffner, Alan G.		Great Falls	59404	
Johnson, Ella		Great Falls	59401	
)lsen, Edith		Great Falls	59401	
'ohn E.		Great Falls	59401	
rutosky, Boyce A.		Sun River	59483	
David Rogstad		Sun River	59483	
Toman, Emma F.		Sun River	59483	
Quinsey, Joan		Vaughn	59487	
Rogstad, Marcy		Sun River	59483	
Johnson, Donald		Vaughn	59487	
Peterson, Cliff		Vaughn	59487	
Pozder, Steven		Vaughn	59487	
Secrist, Robert M.		Great Falls	59401	
Ripper, Rifer		Dupuyer	59442	
Eisler, Ruby		Dupuyer	59442	
Green, Karen		Sunburst	59482	
DeBolt, Georgann		Vaughn	59487	
DeBolt, Elmer R.		Vaughn	59487	
Anderson, Lyla		Vaughn	59487	
Meyer, Dan J.		Great Falls	59401	
Anderson, John W. (Bill)		Choteau	59422	
Zgoda, Iona		Choteau	59422	
Obermatte, Wilbur R.		Choteau	59422	
Plummer, Ramona		Choteau	59422	
White, Jesse		Choteau	59422	
Reiner, Dorothy		Choteau	59422	
Anderson, Sue		Choteau	59422	
Malone, Sr. (Jesse)		Choteau	59422	
Schroder, Frieda R.		Choteau	59422	
Strickland, Julia		Vaughn	59487	
Nerling, Krystina		Sun River	59483	
Steele, H. Larry		Great Falls	59401	
Schmidt, Gideon		Fairfield	59436	
Friesen, Henry D.		Simms	59477	
Graf, Ervin D.		Fairfield	59436	
Malenda, James C.		Fairfield	59436	
Buffington, Donald J.		Helena	59601	
Pemburton, Donald		Browning	59417	
Jones, Rodney D.	2919 4th Ave. So.	Great Falls	59405	
Davis, Wayne	136 Riverdrive	Great Falls	59404	
Thurba, Delmont R.	3815 5th Ave. South	Great Falls	59405	
Shay, Morton I.	Box 275	Chester	59522	
Garden, Ralph L.	Rt. 3 - Box 3010	Lewistown	59457	

AME	ADDRESS	TOWN	ZIP	PHONE
lsen, Leon R.	Starroute-Box 58	Vaughn	59487	
smay, David M.	Box 63	Fort Shaw	59443	
Wohlgmuth, Joyce G.	Box 9	Vaughn	59487	
Gasmoda, Dick		Sun River	59483	
enger, Daisy		Fairfield	59436	
lson, Margaret		Fairfield	59436	
Konen, Amelia		Fairfield	59436	
ink, Ruth		Fairfield	59436	
ike, Donna		Fairfield	59436	
King, Karen		Fairfield	59436	
jelsrud, Robert	P. O. Box 606	Lincoln	59639	
rescott, Gordon	P. O. Box 787	Lincoln	59639	
Misfeldt, Otis				
Robbins, Ken	585 Highland	Helena	59601	
airclough, Mike		Helena	59601	
Savoy, Walter		Fort Shaw	59443	
Williams, K.F.	P. O. Box 2413	Great Falls	59403	
elly, Larry		Fort Shaw	59443	
an't distinguish name		Fort Shaw	59443	
Schrock, Robert		Fairfield	59436	
Walston, Terri A.		Fort Shaw	59443	
ffelberg, Brenda		Fort Shaw	59443	
Greiting, Carol		Fort Shaw	59443	
Olsen, Norma		Fort Shaw	59443	
iller, David L.		Fort Shaw	59483	

EXHIBIT 1
DATE 2-6-95
SB 206

Montanans For Due Process
3700 South Russell, B-101
Missoula, MT 59801
(406) 728-7566
FAX 728-3988

Paul Befumo, JD, Pres.
Robert G. Steele, JD, CPA, V.P.

January 27, 1995

FROM: Paul Befumo

TO: Senator Burnett (Barnett)
Senator Simpking
Senator Grinde
Senator Baer
Senator Alkstad
Senator Beneuit
Senator Clark

RE: S.B. 206

Dear Senators:

I would like to express my gratitude to you for sponsoring S.B. 206. I have been involved in mostly futile attempts to help people abused by DFS for the past several years. I would appreciate if you would notify me of any public hearings on your proposed bill.

I have accumulated a voluminous amount of evidence of DFS abuses, which I am more than willing to share with you. I am enclosing two documents which I feel support the contention that DFS, the county attorneys, and courts have been depriving Montana parents of their rights:

a) The first is an order written by Judge Harkin of Missoula in which he asserts the court's right to take children from their parents under "temporary" authority ("temporary" means until they reach age 18, according to the Montana Supreme Court), and further asserts that the only process required is a showing of probable cause to conduct an investigation. (p. 5, ¶ 2). Harkin asserts that a parent need never be given an adjudicatory hearing at which to challenge allegations of abuse. The Montana Supreme Court has endorsed Harkin's assertion.

b) The second is an affidavit from a DFS social worker in which speaks for itself. Two days after the affidavit was filed in case No. 94-545, the affiant was interrogated in a threatening manner by Anne Gilke and Richard Kirstein, two DFS henchman directly under the supervision of Hank Hudson, head of DFS. The day after the interrogation, Ms. Kirchner was suspended from her DFS job without pay.

Douglas G. Harkin, District Judge
Department 4
Fourth Judicial District
Missoula County Courthouse
200 West Broadway Street
Missoula, MT 59802-4292
(406) 523-4774

FILED AUG 23 1994
KATHLEEN D. BREUER, Clerk
By [signature] Deputy

MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY

IN THE MATTER OF DECLARING CHRISTOPHER FOWLER and JONATHAN FOWLER, YOUTHS IN NEED OF CARE.	Cause No. J-2689/83 MEMORANDUM AND ORDER

This matter comes before the Court upon William Fowler's motions: (1) to dismiss the youths in need of care proceedings or, in the alternative, to set an adjudicatory hearing pursuant to §41-3-401(2), M.C.A.; (2) to implement a treatment plan; and (3) to prevent the State of Montana from financing the divorce/custody proceedings. All parties have briefed the motions and the matter is deemed submitted and ready for ruling.

BACKGROUND

This action was initiated on June 14, 1991 when the State of Montana petitioned the Court for temporary investigative authority and protective service. The petition and the affidavit provided by a social worker for Department of Family Services [hereinafter, DFS] alleged abuse within the meaning of §41-3-102, M.C.A. Judge Jack Green found probable cause to believe that the children were youths in need of care and in

8-1062

EXHIBIT 1
DATE 2-6-95
SB 206

need of temporary investigative services, and he granted temporary investigative authority to DFS. An order to show cause hearing was scheduled for June 24, 1991. Both counsel for DFS and Mr. Fowler appeared and advised this Court that a stipulation had been reached. Thereafter, this Court issued a restraining order granting DFS temporary investigative authority on July 17, 1991. Mr. Fowler was restrained and enjoined from any personal or telephone contact with the two minor children or their mothers.

Thereafter, numerous motions were filed by the State of Montana and Mr. Fowler. There have been numerous show cause hearings upon the motions. A brief chronological review of the course of this case reveals the following:

(1) On July 26, 1991, the State moved for clarification of psychological exams. On July 29, 1991, the Court ordered that either Dr. Scolatti or Dr. Walters were to complete a psychological evaluation of Mr. Fowler.

(2) On August 15, 1991, Mr. Fowler moved for supervised visitation pending the examinations. On August 21, 1991, the State moved to approve placement of the youth and to withhold visitation until the visitation was complete. On August 22, 1991 this Court heard and granted the State's motion for placement of Chris Fowler with his natural mother, and granted the State's motion to withhold visitation. The Court denied Mr. Fowler's motion to move Chris Fowler to foster care in Missoula. The Court ordered a supervised Christmas visitation. During this hearing, the State moved the Court to take judicial notice of a transcript from a divorce proceedings by Dana Fowler in which she detailed abuse at the hands of Mr. Fowler. The Court heard and granted this motion.

(3) On January 22, 1992, Mr. Fowler moved again for supervised visitation. On February 13, 1992 he filed a motion to dismiss the proceedings

because Dr. Scolatti had not finished his report. In a memorandum and order dated March 5, 1992 this Court denied that motion.

(4) Dr. Scolatti completed his psychological evaluation on March 27, 1992. He recommended that: (a) Mr. Fowler have no unsupervised contact with the children, (b) that the custody of Chris Fowler be transferred to his natural mother, Janet Schofield, (c) that Chris Fowler was in need of counseling, and (d) that Mr. Fowler needed long-term counseling with a therapist of his choice to work on issues of anger management and parenting skills.

(5) On August 19, 1993, Mr. Fowler moved to set visitation and to obtain a second opinion of Dr Scolatti's psychological evaluation. In a hearing on September 20, 1993, this Court granted the motion for a second opinion, ordered that the State disclose all raw test data used by Dr. Scolatti in his psychiatric evaluation, and ordered that Dr. Walters should formulate a visitation plan.

(6) In a hearing scheduled October 4, 1993, the Court granted Ms. Schofield and Ms. Sutherland's entry into this case. The Court denied Mr. Fowler's motion for visitation during interviews to be conducted by Dr Walters. The Court ordered Mr. Fowler to obtain a written proposed treatment plan in regard to visitation from Dr. Walters.

(7) On November 15, 1993, Mr. Fowler again moved for temporary visitation. After a hearing, the Court issued an order denying this motion based upon: (a) the remaining unproven sexual abuse allegations, (b) the potential for damage that continued to exist with unsupervised visitation, (c) the recent evaluation of Chris Fowler by Thomas Hearn which supported Dr. Scolatti's initial determinations, and (d) the failure of Mr. Fowler to obtain long-term counseling.

(8) On November 24, 1993, Mr. Fowler moved to bifurcate the property settlement issues from the custody issues in the divorce proceedings. On February 24, 1994, this Court assumed jurisdiction over both divorce proceedings and the motion to bifurcate was found to be moot.

EXHIBIT 1
DATE 2-6-95
SB 206

As stated *supra*, the present motions pending before this Court are Mr. Fowler's motions: (1) to dismiss the youths in need of care proceedings or, in the alternative, to set an adjudicatory hearing pursuant to §41-3-401(2), M.C.A.; (2) to implement a treatment plan; and (3) to prevent the State of Montana from financing the divorce/custody proceedings.

DISMISSAL OF THE YINC PROCEEDINGS

Under a Rule 12(c), Mont. Rules Civ. Pro. motion, in order to dismiss a claim, the defendant must show beyond a doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Fraunhofer v. Price, 182 Mont. 7, 12, 594 P.2d 324, 327 (1979). Clearly, Mr. Fowler has not shown beyond a doubt that there is a basis for dismissal of this temporary investigative authority and protective services action at this juncture.

HEARING PURSUANT TO §41-3-401(2), M.C.A.

Mr. Fowler argues that his "property" (i.e. children) have been taken away from him without due process of law. He contends that he has never had his "day in court" to contest the merits of the initiating petition for temporary investigative authority, and that the State of Montana has never addressed the serious allegations that were originally made against him.

A review of the record in this case reveals that a portion of the delay in bringing this case to a conclusion has been as a result of the actions of Mr. Fowler. This Court has maintained numerous show cause hearings in this matter. As stated *supra*, at the most recent hearing, after listening to the

evidence, this Court found that Mr. Fowler had not complied with Dr. Scolatti's recommendations for long-term and intensive counseling. It was not until Mr. Fowler's pending motions were fully briefed and before this Court that Mr. Fowler filed the "Notice of Voluntary Compliance" with Dr. Scolatti's recommendations.

In addition, although Mr. Fowler was granted his motion to seek a second opinion of Dr. Scolatti's evaluation, he has never provided substantive information to either the DFS or this Court that would support re-unification of his family.

A review of the case law interpreting Title 41, Chapter 3, Part 4 reveals that a show cause hearing is the only hearing required when a petition for temporary investigative authority is filed. In Re J.W. & J.C., 226 Mont. 491, 736 P.2d 960 (1987). The legislature never intended to consolidate a petition to have youths declared in need of care (§41-3-401, M.C.A.) and a petition for temporary investigative authority. (§41-3-402, M.C.A.) Id. at 497-498. This Court's continued authority in this case has been pursuant to the temporary investigative authority statutes. Under those statutes, this Court has the authority to require that Mr. Fowler undergo psychological evaluation (§41-3-403(2)(c), M.C.A.), and it has the authority to require that Mr. Fowler receive counseling services. (§41-3-403(2)(c), M.C.A). The State has never filed a petition pursuant to §41-3-401, M.C.A. which would necessitate that this Court set a date for an adjudicatory hearing. There has never been an attempt by DFS to permanently remove the

EXHIBIT 1
DATE 2-6-95
SB 206

children from the custody of Mr. Fowler. There has only been a petition for temporary investigative authority and protective services. The District Court has acted at all times pursuant to §41-3-403, M.C.A. This statute gives the Court the authority to provide immediate protective services, and it also authorizes the District Court to use broad power to make continuing arrangements for the children's protection. Matter of H.D., 256 Mont. 70, 76, 844 P.2d 114 (1992). The reason that Mr. Fowler has never had his "day in court" to contest the allegations of abuse or, as required in this case, his initial show cause hearing, is because he reached a stipulation with DFS and the initial show cause hearing was cancelled. This case has proceeded thereon based upon the initial decisions of Mr. Fowler to forego a show cause hearing which would have required the State to present evidence establishing probable cause for the issuance of the order for immediate protection. Now, three years later, Mr. Fowler has decided that he wants his "show cause" hearing whereby the State is required to establish probable cause for the issuance of an order for immediate protection.

This Court has the authority to continue to provide temporary protective services to Mr. Fowler's children, and Mr. Fowler should not be allowed to take this case back to square one each time he hires a new attorney. Therefore, Mr. Fowler has 10 days from the date of this order to submit: (1) substantive information regarding a second psychological evaluation which differs from the psychological evaluation

provided by Dr. Scolatti, and (2) substantive information regarding his long term counseling on parenting skills and anger control.

TREATMENT PLAN

Mr. Fowler contends that the State of Montana has never implemented a treatment plan or attempted to reunify his family. In this Court's Order which resulted from the November 15, 1993 hearing, explicit reasons were given why family re-unification was not in the best interest of the children, and an explanation was provided under what circumstances that temporary visitation would be allowed in the future.

Although it is true that the policy of this State is to preserve the unity of the family (§41-1-101(1)(c), M.C.A.), it is also the policy of this State to protect children whose health and welfare are being adversely affected by the conduct of those responsible for their care (§41-3-101(2), M.C.A.). This Court will continue to provide protective services to those children until the issues addressed in this Court's Order have been resolved. Family unity will not be preserved at the expense of the best interest of the children. In Re. M.N., 199 Mont. 407, 649 P.2d 749 (1982). As it is now Mr. Fowler's contention that he is complying with Dr. Scolatti's recommendations, this Court orders that Mr. Fowler file a written proposed treatment plan within 10 days of the date of this order. The DFS has 10 days thereafter in which to file its written proposed treatment plan. Thereafter, a hearing will be scheduled upon request of the parties.

EXHIBIT 1
DATE 2-6-95
SB 206

FINANCING A DIVORCE PROCEEDINGS

Mr. Fowler has failed to explain how the State of Montana is financing this divorce custody dispute.

ORDER

Based upon the foregoing, Mr. Fowler's motion to dismiss is DENIED.

Mr. Fowler is hereby ordered to submit (1) a second psychological evaluation, and (2) substantive information surrounding the counseling he has received on parenting skills and anger control.

Mr. Fowler is further ordered to submit a written, proposed treatment plan within 10 days of the date of this order. DFS has 10 days thereafter in which to submit its written proposed treatment plan. A hearing will then be scheduled upon the request of the parties.

Mr. Fowler's motion to prevent the State from financing the divorce custody proceedings is without merit and DENIED.

DATED this 23rd day of August, 1994.

Douglas G. Harkin
District Judge

cc: Patrick Flaherty
Attorney for William Fowler

Carol Everly
Attorney for Janet Pedersen

Kerry Newcomer
Attorney for Kelly Ball

Leslie Halligan
Deputy County Attorney

Margaret Borg
Attorney for Christopher and Jonathan Fowler

Marsha Marcia Kirchner
415 N. Higgins
Missoula, MT 59801
(406) 721-3000

AFFIDAVIT

STATE OF MONTANA)
: ss.
County of Missoula)

I, MARCIA KIRCHNER, being a person of legal age, being first duly sworn, deposes and says:

1. I, MARCIA KIRCHNER, have resided in the Missoula area for approximately five and one half years. For the last Four years, I have worked for the Department of Family Services (DFS). My current position is that of Community Social Worker II, and I work in the Missoula Department of Family Services office. I also have a private practice as a counselor ~~psychologist~~. I typically work predominantly with youths in the intake portion of the investigative processes initiated through DFS.

2. During the course of my work I regularly interact with the county attorney's office, and advocate for youths through the District Court system. Specifically, I regularly generate reports containing information that I have gathered during my investigations of cases referred to DFS. When my investigations indicate that intervention is necessary, I contact the Missoula County Attorney's office, and the County attorney then represents DFS before the court, usually petitioning the court for some necessary action, which includes but is to limited to removing a child from an environment which may pose a threat to the child's health and safety. Such actions are taken under state laws dealing with Youths in need of care, M.C.A. Title 41.

3. The usual manner in which cases proceed is for me to provide information to a deputy county attorney, and for the county attorney to generate an affidavit containing the information I provide, and to then use that affidavit to support the action requested from the court. For example, in cases where I would seek Temporary Investigative Authority (TIA) is sought under M.C.A. §41-3-102, the information I would provide would be incorporated into an affidavit of probable cause supporting the necessity for the (TIA). In my experience, the county attorney incorporates information into such affidavits, and seldom if ever does any further investigations as to the truth or falsity of the factual matters contained in such affidavits, prior to them being presented to the court. Thereafter, there is one Deputy County Attorney who sometimes does further investigation to determine the truth or falsity of the information contained in affidavits. In my

EXHIBIT 1
DATE 2-6-95
SB 206

experience, other attorneys in the County Attorney's office do no further investigations, and any factual matters presented in affidavits are allowed to stand unless a discrepancy is brought to their attention by some outside party.

4. In my experience, due to the work load and resources at the disposal of DFS workers, it is simply not possible to do a thorough investigation of cases prior to representing the county attorney with information that is later incorporated into affidavits of probable cause. In my experience, erroneous information is ~~often~~ sometimes true presented to the court by the county attorney's office.

5. After intervention by DFS, and under DFS's investigatory authority, a case worker routinely seeks to have a professional psychologist or psychiatrist become involved i the case, interview any necessary parties, and present a report to the court regarding their findings. This procedure ostensibly functions as a safeguard, allowing for an outside opinion to either support or rebut a caseworker's investigations, conclusions and recommendations. In practice, however, my experience and observations lead me to conclude that some professionals tend to support the position presented to them by the case worker and/or the county attorney. As a result, erroneous information ~~often~~ sometimes gets endorsed by clinical professionals. I have personally experienced this happening in various cases.

6. In practice, the authority of the state to intervene and take action in emergency situations has been and is being abused in the Fourth Judicial District. This abuse involves DFS, Youth Court, the county attorney's office, the public defenders office, and judges. The nature of the abuse entails the state using its authority to intervene in emergency situations, then postponing any substantive hearing on the truth or falsity of the underlying allegations that led t the intervention for extended periods, often exceeding several months. Often, lawyers appointed to represent the interests of youths as their guardians ad litem do not actually represent their wards. I personally have witnessed hearings at which guardians ad litem have failed to show up to represent their wards at critical hearings, have shown up without having ever met their wards or reviewed their files, or have had others show up in their stead who were totally unprepared to act as guardian. Judges typically are aware of these abuses, and look the other way. It should be noted that these abuses aren't intentional, but a deficit in an overloaded system.

7. In my experience, individual DFS employees can potentially abuse the system by presenting ~~unsubstantiated~~ information to the county attorney, having the defective information ~~invalid~~ endorsed by a clinical professional, and then having the court ratify the whole process. Although erroneous factual assertions are sometimes corrected in subsequent hearings, in my experience the system can be and is manipulated in such a manner as to postpone fair, on the record judicial hearings for extended periods of time. I personally can relate specific examples of such abuse.

8. The potential and actual abuses in the system, and the tacit cooperation in such abuse between DFS, the county attorney's office, and the court, are common knowledge among

all those involved. The potential and actual abuses that take place in the system are a ~~common~~ topic of conversation among DFS workers. At least one judge has specifically recognized the problem, and sought to address it, thus far ~~unsuccessfully~~ with limited success. The potential for abuse of authority by DFS and other state agency workers is present and acknowledged by the individuals involved in DFS, the county attorney's office, the public defender's office, and the court. The policies and customs of the agencies involved allow for and in some cases foster such abuses. Actual abuses are known to individuals who are engaged in the system, and are ignored, most often because the persons involved do not know what avenues exist to remedy the situation.

9. Due to issues of confidentiality, I can not disclose specific names or discuss specific cases for the public record. I am prepared to disclose information regarding specific names, places, dates, and individuals involved if ordered to do so by the court, and/or in camera with provisions that steps be taken to preserve the confidentiality of my clients.

10. The non-specific nature of the information contained in the forgoing affidavit is based partially on issues of confidentially, but primarily on time constraints imposed by the nature of the process of which it is a part. More specific statements regarding this situation are forthcoming, and the affiant will make herself available to the court should the court desire to question her further on these matters.

11. Further the Affiant saveth not.

By Marcia Kirchner
Marcia Kirchner

On the 15th, day of November, 1994, before me, Martha Brown, a notary public for the State of Montana, personally appeared Marcia Kirchner, known to me, and stated under oath that the matters and things herein set forth are true to his own knowledge, and acknowledged to me that he executed the same, in witness wherefore I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

{SEAL}

Martha Brown
Notary Public for the
State of MONTANA
My Commission expires
on March 19, 1996

EXHIBIT 1
DATE 2-6-95
SB 206

February 2, 1995

State Capital
Capital Station - Box 14
Attn: Senator Jim Burnett
Helena, MT 59620

Dear Senator Burnett:

Pursuant to our telephone call of February 1, 1995, enclosed are articles my finance' and I wrote to the Roundup Record Tribune as well as other articles which have appeared regarding the Department of Family Services. Following is the scenario which happened to me, my daughter and my finance'. We believe it is about time DFS was made to stand accountable for their actions and support your Senate Bill 206. If we can be of any further help please feel free to call us at (406) 323-1451.

A verbal exchange occurred on May 8th between Kara, my daughter, and myself. My fiance', Karen Kowalczyk, was also present. We had gone out for "Mother's Day Dinner" around 3:00 p.m. After dinner and returning home, I told Kara we were going to finish fencing the dog kennel. Karen and I had already started the kennel, setting the posts in concrete and stringing part of the cyclone fence for the dogs. I told Kara that beings it was for her dog, as well as Karen's, that she could help and with three of us working on it, it wouldn't take very long to complete it. Kara then proceeded to pout all the way home making for a very tense and uncomfortable atmosphere. Upon arriving at home, Kara and I exchanged words because she didn't want to help with the fence. Kara went to her room, slamming the door. We went in to change clothes. Before we got changed, Kara tore out of the house, got in my pickup and was gone. We had no idea where she was headed, but figured she was headed out to Curtis Goffena's , her boyfriend, because that is where she wanted to go. Karen and I went out to work on the dog kennel. Later that day, around 5:30, we got a telephone call from Vicki Fawcett, of Department of Family Services, saying Kara was up at the Sheriff's Office and had filed a complaint against me alleging child abuse. We have yet to see a copy of the complaint. There was absolutely no abuse involved in this whole exchange. I also asked that Kara be returned home so we could sit down and discuss the whole situation and that was denied by Vicki Fawcett.

Because Kara is a minor (16), Department of Family Services was called. DFS called me and indicated that Kara could come back home after a 48 hour "cooling off" period. However, after 48 hours I was told to come up and sign papers to place Kara in foster care. I questioned why she was not being returned home after the 48 hours and was told "because we feel it is a threatening situation." No investigation was ever done. To our knowledge, the Department of Family Services did not appear in District Court within 48 hours to show cause why the child had to be removed from the family home. No investigation was ever done in our home to find out if the child was telling the truth. I went up to DFS and talked to Michelle Sobonya and she explained to me that it was in Kara's best interest to be placed in a foster home.

When I questioned the choice of foster home, I was told Kara had requested she be placed with Betty Goffena and that is where DFS was placing her. I questioned the placement of Kara at Betty Goffena's because Betty Goffena was not a licensed foster care home and that Curtis Goffena, Kara's boyfriend, has a mobile home and lives on the same property approximately 50 yards from Betty's back door. I felt this was not a safe or healthy situation that Kara had expressed wanting to live with Curtis, however DFS did not see anything wrong with this as this is where Kara wanted to be. I then told DFS I was holding them totally responsible for my daughter.

I did not admit to any of Kara's allegations of abuse. I admitted to having an argument with Kara regarding the building of the dog kennel and that we had exchanged words in this regard. But not once was there any abuse - just an exchange between myself and my daughter.

I am self employed and have my own construction building business. I was scheduled to be out of town most of the summer. I did come home, however, on weekends to see my family and take care of business. I had told DFS what my situation was and asked that they keep Karen apprised of the situation as I would be talking to her in the evening. DFS

agreed at that time to this arrangement. Karen contacted DFS on several occasions to find out if an appointment could be made so I could call in or if I could reach a counselor after hours as I was up in the mountains, away from a telephone from 7:00 a.m. until 6:00 - 6:30 p.m. every day. I was informed of the office hours and that I would have to call in at that time. Karen explained to DFS that this was impossible, that I was concerned about Kara and wanted to find out how she was doing, but again was INFORMED that these were the hours and I could call collect during that time. Karen told them the collect call part wasn't the problem - the hours were because I was at least a 1/2 hours drive away from a telephone and could not leave my partner on the job by himself because of the risk factor of an accident. DFS was not willing to make any concessions so I could talk to them.

Within 20 days after Kara was removed from home, I have no knowledge of DFS returning to District Court to show cause why the separation must continue.

Only one mediation meeting was ever set up for me and my daughter. Present at that meeting were Michelle Sobonya, social worker for DFS, Curtis, Kara's boyfriend, Kara and myself. This meeting was supposed to be between only myself, Kara and Michelle so we could work on getting Kara back in the family home. Having Kurt there made the meeting very uncomfortable. Some 10 to 15 minutes into the meeting Michelle Sobonya was called away on an "emergency". Kara, Curtis and I were left to finish the meeting on our own. If I was such a threat to my daughter, why was it okay to leave us alone in an unsupervised situation? No attempt was made to set up further meetings between my daughter and I.

Michelle signed an agreement, on behalf of DFS saying that we would be informed of any medical or dental attention Kara needed and it was "by chance" that we found out she had her wisdom teeth out. We were never even informed of that fact that she needed this work done. Kara was at her Grandfather's house and Karen happened to stop in to talk to my sister who was visiting from Minneapolis. Kara had gone to change some gauze in her mouth. Karen asked Kara what was wrong and Kara told her about her oral surgery. We were <u>never</u> contacted by DFS about the dental work Kara had done. She also later found out that Kara had a mole removed and there were some telltale signs of possible cancer so she had to go back for more tests. We were never told about this either. We found out about it through one of Kara's teachers in whom she had confided.

In July, Kara was allowed to take a trip out of state with the approval of DFS. We were never told about the trip and found out about it only after someone asked if Kara had gotten back from Idaho. Again DFS had signed an agreement stating we would be kept informed of what was going on and yet she went to Idaho without our knowledge.

I had also asked for periodic progress reports on meetings Kara was having with Donna Johnson, a counselor, over in Billings. This was never done. I were told she was going, but was never told of the outcome or when we might be able to meet as a family unit so as to resolve any issues that may be present.

In August I was served with a "Petition for Temporary Investigative Authority and Protective Services". This is the first document through this whole ordeal I had ever seen regarding the charges which were being held against me. Due to the lack of communication on behalf of DFS, I refused to sign the documents and hired an attorney, Randy Spaulding. I decided to try and settle this without the help of DFS. Vicki Knudsen, Musselshell/Golden Valley County Attorney, Floyd Brower, Guardian at Litem for Kara, our attorney Randy Spaulding, myself and my fiance' Karen Kowalczyk, met and reviewed a document drafted by Floyd Brower to keep Kara at the Goffena Ranch. I again questioned the fact of Kara living with her boyfriend with Floyd Brower admitting that Kara and Curtis were in fact sleeping together. Kara being 16 years old and her boyfriend being 21. Floyd Brower and Vicki Knudsen didn't seem concerned even though I was objecting to my daughter being out there. I signed the document as I was threatened to be taken to court and it was in Kara's best interest that I signed it.

Things seemed to go along fine until Kara and her boyfriend Curtis Goffena split up. On October 28th, Kara asked Bette Goffena if she could spend that Friday night in town with one of her friends. To this Bette agreed. Evidentially, Bette didn't give Kara a specific time to return home and began to worry about her. On Saturday, October 29th, Bette sent Kurt, now the ex-boyfriend, in to town to find Kara. Evidentally Kurt said some nasty things to Kara and an argument ensued. The local police were called and things were broke up. Later Vicki Knudsen picked Kara up and took her to the jail. Kara was taken into custody and Kurt was allowed to leave. According to Kara and in front of Kara's friends, Vicki swore at her and told her how inconvenient it was to be called as she was in the middle of fixing a hole in her daughter's waterbed

and because she had to take Kara to Billings, she would miss her daughter's ball game and took Kara to the jail where

EXHIBIT 1
DATE 2-6-95
SB 206

she sat for approximately four hours. Kara was taken to Billings and placed in a Youth Detention Center. I was never informed about her being sent to the facility, or being held in jail, and it was not until my sister-in-law called the following day, October 30th, did we find out that she was over there. I still, to this date, do not know what charges were placed against her to warrant her time at the detention center. I was never told when she would be allowed to leave. I told my attorney, who contacted Vicki, Donna and Floyd that I wanted Kara to come back home rather than being locked up in the center. I was never told what the rules as far as telephoning and visiting with Kara while at the facility. Kara finally found out the only people who could call her were myself, my father and his new wife, and her mother. Kara indicated she needed some clothes, shoes and miscellaneous personal items. We asked her if she was permitted to leave the facility and she said yes but it had to be arranged 24 hours in advance.

On November 2nd I contacted Donna Marmon, County Probation Officer, requesting to take Kara out of the facility to get her the clothing items she needed. Donna indicated she would have to talk with Floyd Brower, Guardian at Litem for his approval. I had not heard from her by Friday, November 4, and our 24 hours was drawing to a close. I tried to reach Donna at home but only got her answering machine so left a message seeking permission. Because of the 24 hour window, I called Floyd Brower myself. Floyd said Donna Marmon had not contacted him but as far as he was concerned he didn't have a problem with my taking Kara shopping. Donna Marmon then called back and said she would not give me permission to take her out of the facility, but would not offer an explanation as to why.

On November 12th, Kara called home and talked to Karen as I was helping at a Rotary Auction. Kara indicated that "a friend of my mom's" was taking her on Sunday and she needed some money. She said Donna Marmon was coming to Billings to take Kara to the Girls Basketball Tournament and would she get hold of her and send some money over with her. Karen called Donna Marmon at home and tried to explain the situation, however was met with a very rude and belligerent "You don't have telephone privileges and I won't talk to you" from Donna Marmon. Donna then slammed the receiver down. Karen tried to call her back within a few minutes to see what the problem was and only got her answering machine.

Kara was finally released on Tuesday, November 15th. Even though I had told my attorney, Vicki Knudsen and Donna Marmon, I wanted Kara to come back to the family home, Kara was told that was not an option for her. Her options were to either go live with the mother who abandoned her at age 11 or go to another youth detention facility. Not wanting to go to another facility, Kara agreed to go live with her mother in Boise, Idaho. Brenda Lekse, had to pick Kara up at the Youth Facility and bring her to Roundup. Donna and Vicki would not let Kara even stay in town overnight. She had to be driven back to Billings and then come back on Wednesday for a meeting with Donna. Brenda was included in the meeting with Donna Marmon, however, I was not. Kara claims that Donna wrote some additional stipulations into the Petition after everyone else had signed, however, we have been unable to get a copy of this document to find out if in fact Donna did write things in there. Kara claims Donna and Vicki told her she could not come back to Roundup to even visit with her family until Spring break and she could not come back to live in Roundup until after she reached 18. She cannot graduate with her class in the spring of 95, nor can she even attend the graduation exercises of her classmates because of this stipulation.

On October 31st, Karen called the Department of Family Services and spoke with the secretary. She requested names and telephone numbers of supervisors over DFS in Roundup and was given these. She then called Hank Hudson, the State Director at Helena and explained what I had been through. Mr. Hudson said he wouldn't get involved until "all other people had been contacted" and I should follow the chain of command. Mr. Hudson informed Karen that she should contact Jim Moe in the Lewistown office and have him investigate the matter and if all else failed to call him back.

November 1, 1994 - Karen spoke with Jim Moe's receptionist. Jim was in Harlowton but she would give him the message. She also indicated he was scheduled to come to Roundup the following week.

November 3rd - Karen spoke with Jim Moe and explained the situation with Kara. Gave Jim names and telephone numbers of people to talk to. He indicated he would like to meet with us with November 10th or 15th. He said

... He indicated he would like to meet with us with November 10th or 15th. He said he would investigate the matter and get back to us to set up the meeting.

November 7th - Talked to Jim Moe. He will meet with us at 3:00 on Thursday November 10th at our home. I called Randy Spaulding, my attorney to ask him to attend the meeting also. Jim took down all the information and said he would investigate the matter and get back to us.

EXHIBIT 1
DATE 2-6-95
SB 206

December 5th - Called Jim Moe regarding status of case. He was on another call but would be given the message.

December 6th - Talked with Jim Moe. He indicated no major thing was done wrong. He felt the case had been handled properly, however it should have been handled as a "Child in Need of Supervision" vs. "Child in Need of Care".

Jan. 10, 1995 - Wrote a lengthy letter to the editor. It was published on January 11th. Consensus of people in town was case was handled very improperly and have heard numerous other horror stories along the same lines. (See attached copy of article).

Senator, hope this helps support your bill. Wish we could be their in person to testify on your behalf. Even though this bill will not help us a whole lot, if we can prevent other families from living through the nightmare we have this last year, we will have accomplished something.

We also heard that DFS is asking for an additional $8 million to finance their department. Until they are held accountable and can justify the $8 million right up front, we vote that their request be denied.

Thank you very much for keeping us informed. Please put us on your mailing list so we can keep abreast of what is going on with DFS. We are on your side.

Sincerely,

Larry Lekse
Karen Kowalczyk

Larry Lekse
Karen Kowalczyk
P. O. Box 373
Roundup, MT 59072
1-406-323-1451

OPINION & LETTERS PAGE

Letter to the Editor

After attending a meeting last month with the topic of what we, the community, can do for our children, we felt it was our duty to write this letter and let people know what is going on in our community in reference to our children and the way families are being treated. These are the facts, along with an explanation, as to the situation which happened in our family starting last May.

FACT: Teenagers in this community have more rights than the parents.

An exchange in May occurred between my daughter and I over responsibilities she had agreed to relating to her dog and helping with building a dog kennel. After an exchange of words, my daughter went up to the police station and filed a complaint alleging verbal abuse. Kara is a minor, therefore, the Department of Family Services (DFS) was called. DFS called my finance' and me and informed us of the charges. We asked Kara be returned to the family home. That the discussion was just that and nothing more—no threats, verbal or physical abuse or anything—just an argument. However, the department felt a 48 hour "cooling off" period was in order—to this we agreed.

FACT: After 48 hours and NO investigation, your child(ren) can be placed in a non-foster care home.

After the "cooling off" period, we were told we had to come up and sign papers to put Kara in foster care. We to the family home and were told it was a "threatening" environment. The home environment was NEVER investigated, therefore, how could it be determined it was a "threatening" environment?

FACT: A child can request what home they wish to be placed in.

Kara had talked about moving in with her boyfriend, Curtis Goffena, a couple of weeks before this incident took place. Being only 16, we told her we were very much against it. However, she requested to be placed in Betty Goffena's home and was granted her request by DFS. DFS was not at all concerned about the fact Curtis lived in a mobile home on the same property as Betty. Even after we expressed our concerns about the situation and told them of the conversation we had relative to her moving in with Curtis, they still let her remain there. We were assured, that as long as the two of them were at Betty's house, nothing was going on. However, we were also told that she spent "many late nights" with her boyfriend. We were recently told that if DFS had checked the situation out, 80% of Kara's stuff was at Curtis' not Betty's.

FACT: Even though DFS claims to be a mediator between family members, nothing will be done to reunite the family.

We were told that DFS would set up meetings between us and Kara so we could once again be a family. In the three months DFS was involved, there was only one meeting set up. The meeting which should have been between immediate family members, as well as Michelle Sobonya from DFS, also included Curtis. About 10-15 minutes into the meeting, Michelle Sobonya was called away on "an emergency" and my daughter and I were left there to mediate on our own. Even though I requested additional meetings they were not set up.

FACT: If you are working in an out of the way place and are unable to easily get to a telephone, DFS will not make concessions as to office hours.

I was building a cabin in the mountains and was approximately 30-45 minutes one way from a telephone. We tried to get DFS to set up an evening and time I could call in and get periodic updates on the status of being reunited with my daughter, only to be told that the office hours were 8:00 a.m. to 5:00 p.m. and I would have to get to a telephone at that time.

FACT: Even though you request a specific person as a contact person, DFS WILL NOT honor your request.

Because I was working in the mountains and away from a telephone, I asked DFS to keep my finance', Karen Kowalczyk, informed of Kara's progress and any needs she may have. DFS was always requesting things of Karen, i.e. letting Kara come get her personal belongings, stereo, etc. but would not tell her what was going on with the case. It was not until we refused to sign further papers to continue the foster care and started asking questions as the lack of communication on their part, were we told there was a "special form" which needed to be signed in order for DFS to give her this information because she was not a "legal family member."

FACT: Once your child(ren) are placed in foster care, DFS can request as many personal belong-

DFS called and asked if we would bring all of Kara's personal items up to the office. To this we agreed. After transporting all her clothing, make-up, etc. we were then asked for such items as a daybed, telephone, television, horse, piano, etc. Had I not put my foot down and started saying "NO" I feel they would have almost emptied my entire home.

FACT: If your child(ren) need medical attention while in the care of DFS, you will not be told about it.

Kara had doctors appointments and her wisdom teeth pulled while she was in the care of DFS and even though they had signed an agreement stating I would be informed of any and all medical attention she was to receive I found out about everything "through the grapevine."

FACT: DFS can give your child permission to go out of state without your knowledge or approval.

Kara, with the permission of DFS, was allowed to take a trip to Boise, Idaho. I was not aware of this until a family member mentioned she had gone. I would have approved it anyway as she went to visit her mother, but shouldn't I have been consulted first or at least been told she was going, after all that was the agreement with DFS?

FACT: The County Attorney, Vicki Knudsen and Youth Probation Officer, Donna Marmon, can send your child to a Youth Detention Facility and they do not have to tell you about it.

Kara was sent to the Billings Youth Service Facility on Saturday, October 29, after an altercation with Curtis. We were NEVER called and told about this decision and found out about it after a telephone call from a family member. When we asked Kara why she didn't call us, she indicated they told her she couldn't call. However, she could call her Grandfather or another family member and tell them. Normally a child being sent to a Youth Services Facility has to be charged with some sort of violation. However, to date, we have never been told exactly what that violation was. Curtis Goffena was never reprimanded even though, according to witnesses, he started the whole altercation. Upon the County Attorney, Vicki Knudson," being called, Kara, in front of witnesses, was sworn at and told how inconvenient it was for Mrs. Knudson to come down because her daughter had a hole in her waterbed which needed fixing and she was also going to miss her daughter's ball game. When a person files for a county job and the county is paying their wages, since when did a person have to consider what family problems were going on and whether or not is convenient for them to do their job? Besides, it was not Kara's choice to have Vicki Knudson called, someone else made that decision for her, so why was Vicki taking this out on her? Is there a personality conflict here, or should this person even have been representing the county?

FACT: The County Attorney and Youth Probation Office can "dictate" who your child can see and talk to once they are placed at a Youth Correction Facility.

I was told the only people who could call Kara were her Grandfather and his wife, myself, and her Mother. Even though Kara and Karen got along really well, Karen was denied

otherwise. I requested a four hour outing with Kara to go shopping and out for dinner as it was Karen's birthday and Kara needed some clothes and personal items. I was told I needed to make arrangements 24 hours in advance, so on Wednesday, November 2, I called Donna Marmon to see if she would make the arrangements. I was told she would consult with Floyd Brower, the guardian ad litem for Kara, and get back to me. I had not heard back from Donna Marmon on Friday and was unable to reach her by phone so a message was left on her answering machine. I then called Floyd Brower. He indicated that Donna Marmon had not contacted him but as far as he was concerned, we COULD go shopping with Kara on Sunday. When Donna finally returned my telephone call, she told me I COULD NOT take my daughter out of the facility. I was not given a reason as to this decision. However, the following Sunday, a "friend" of Kara's mother (not a family member) was allowed to take her out shopping for four hours.

FACT: Even though your child(ren) is placed in a Youth Facility and you tell the County Attorney, Probation Officer and Guardian Ad Litem that you would like them back home, your child will not be given that option.

Kara was in the Youth Facility for several days without being told when she would be able to leave. In the meantime, her homework was being brought over to her so she would not get behind on her assignments. When the County Attorney and Probation Officer talked to her, the only options she was given in order to leave was to go live with her mother in Boise, Idaho, or get moved to another correction facility. The option of coming back to the family home, even though there would be 24 hour supervision, was not an option.

Probation Officer Donna Marmon, County Attorney Vicki Knudson and Floyd Brower decided Kara was "A child in need of Supervision." After all this time, six months to be exact, these three "wise" people have come to a conclusion. Isn't it amazing!!! This is exactly what Kara rebelled against from the beginning. Kara had supervision at home and she didn't like it. She wanted more freedom and less supervision. The circle is now complete. Kara has been sent to live out of state with rules and guidelines set by the court. The three "wise" people have reached a conclusion and we, the family, have been put through undo hardship and pain.

Questions remaining unanswered by the "three wise people" are:

—Were these three "wise" people working together? If so, why weren't we able to get the same answers from all three instead of being handed the run around?

—Did telephone calls actually take place between the three "wise"

ing in Roundup?

—Did the probation officer or county attorney have a personal conflict with Kara?

—Why weren't the parents allowed to help decide what was best for the child?

—Why didn't the county investigate the living arrangements and work schedules of both parents and make a decision based on facts, not hearsay.

—Did the county actually consider what was best for the minor child or did someone who is in a position with a little authority, let that authority go to their head and appoint themselves as the decision maker?

—Was it in the child's best interest to uproot her from a community she lived in and loved, take her away from friends and a school she looked forward to graduating from in the spring, as well as the security of a supervised home, immediate family and close friends and place her in the home of the mother who had abandoned her only 7 years earlier?

My fiance', Karen, and I would like to thank everyone for their words of concern while we have been dealing with this. We have nothing to gain from writing this letter other than to make people aware of what is going on in our community and with our children and possibly preventing others from having to go through the same. We have lived through a lot of heartache and tense times due to the Department of Family Service, the County Probation Officer, Donna Marmon, the County Attorney, Vicki Knudson, and Attorney, Floyd Brower. We hope that someday they will have to endure the same sort of heartache, stress and humiliation they have put us through. Maybe then they can be a little more compassionate and understanding towards their fellow citizens.

Larry Lekso

SPONSOR'S FISCAL NOTE

Form BD-15S

There is hereby submitted a Sponsor's Fiscal Note for: _____, Version: _____

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 2
DATE 2-6-95
BILL NO. SB206

FISCAL NOTE FOR SB 206

Description of proposed legislation:

A BILL CHANGING THE CODE RELATING TO CHILD REMOVAL BY THE DEPARTMENT OF FAMILY SERVICES.

ASSUMPTIONS:

(1) This legislation will reduce the number of refferals that have resulted in removing children from the family and placing them in foster care by probably 25% (Page 1, Line 24)

(2) SECTION 5 (41-3-202) ACTION ON REPORTING: Page 9, Line 28 AND 29
A video tape is not necessary unless the social worker makes the initial interview without someone representing the family. Sheriff and police department could take and maintain the video tape of the department negotiated with them to do so.

FISCAL IMPACT: NONE

Jim Burnett 3 February 1995
PRIMARY SPONSOR DATE

Fiscal Note for: SB 206 Version: _____

SB 206

Filed Jan. 3, 1995
FB

William V. Fowler, *pro se*
3700 South Russell, Suite B-101
Missoula, Montana 59801
(406)728-4334

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA

WILLIAM V. FOWLER,

Plaintiff,

v.

THE STATE OF MONTANA,
JOSEPH MAZURIK, Attorney
General for the State of Montana,
DEPARTMENT OF FAMILY
SERVICES, MISSOULA COUNTY,

Defendants.

Civil Action No. CV 95-1-M-CCL

COMPLAINT

42 U.S.C. 1983 VIOLATION OF CIVIL RIGHTS
UNDER COLOR OF STATE LAW (M.C.A. §§41-3-402, 41-3-403)

Comes now the Plaintiff, and in his complaint against the defendants states as follows:

JURISDICTION

I.

This the action arises under the civil rights statutes, Title 42, United States Code, Section 1983;

II.

Jurisdiction is conferred on this Court by Title 28, United States Code, Section 1331;

III.

The plaintiff is a resident of Missoula, Montana which is included in the judicial district of Missoula, Montana in which this action is brought;

IV.

The plaintiff is an injured party in this matter;

V.

Defendant State of Montana is a member state of the United States of America. Defendant Joseph Mazurek is the chief law enforcement official of the State of Montana, who, in enforcing the statute challenged herein, acted in his individual capacity. Defendant Department of Family Services is an agency of the state of Montana; Missoula County is a county in the state of Montana.

BACKGROUND FACTS

VI.

On June 14, 1991, the state of Montana petitioned the Montana Fourth Judicial District Court for temporary investigative authority and protective services over the Planitff's children,

Christopher Fowler and Johnathan Fowler, alleging child abuse. Temporary investigative authority was granted to the Montana Department of Family Services (hereinafter DFS), and a hearing to show cause why said authority should not continue was scheduled.

VII.

In the more than 42 months since the state court assumed "temporary" investigative authority the Plaintiff has never been afforded a hearing in which to challenge the allegations in the affidavit of probable cause that began the proceeding in state district court. All parties in the Plaintiff's case reached an oral agreement to postpone the show cause hearing until a psychological evaluation of Mr. Fowler could be made. It was agreed by the parties that the evaluation could be completed within approximately 30 days. At a hearing on June 24, 1991, Leslie Halligan, representing DFS, described the agreement as "somewhat of a stipulation." (6/24/91 Tr. at 3, transcript exerpts attached, EXHIBIT 'A') The court ordered any agreement to be reduced to writing an entered in the record. No such stipulation to waive or postpone a probable cause hearing was ever entered in the record. Nevertheless, no probable cause hearing has yet been held.

VIII.

The Plaintiff has never been afforded any type of adjudicatory hearing in which to challenge the mass of hearsay allegations on which the state has relied in continuing its 'temporary' authority. The court has never made any findings of fact or conclusions of law relative to the underlying accusations levelled against the Plaintiff. Most importantly, the state has restrained the Plaintiff from having any contact with his sons in the years since it assumed its "temporary" authority.

IX.

DFS, the state court, and the Missoula County attorney have asserted that under state law, specifically under §§41-3-402 and 41-3-203 M.C.A., they can remove children from their parents until they reach the age of majority. The full text of M.C.A. §§ 41-3-401 through 41-3-404 are attached as EXHIBIT 'B'. The state further asserts that the only due process to which a parent is entitled after a child is removed from their custody is a show cause hearing at which the state has the *de minimus* burden of establishing probable cause to do an investigation. In the Plaintiff's case, the court contends that the Plaintiff inadvertently waived even this degree of due process.

X.

According to the state, depriving the Plaintiff of all contact with his sons has been continued under "temporary investigative authority and protective services." Judge Douglas G. Harkin's Memorandum and Order,[1] Cause No. J-2689, In the Matter of Declaring Christopher Fowler and Jonathan Fowler Youths in Need of Care, at 4 (attached, EXHIBIT 'C' , hereinafter referred to as Harkin Order). Apparently, a forty-two month period of deprivation of citizens' children qualifies as being a "temporary" measure under the youth in need of care statutes according to the defendants.

XI.

---

[1] It should be pointed out that Judge Harkins order is not supported by any findings of fact, since no fact finding process has ever ocurred in the Plaintiff's state court case.

EXHIBIT 3
DATE 2-6-95
SB 206

The state contends that a showing of probable cause is all that is necessary while they are acting under their "temporary" (i.e., indefinite) authority: "A review of the case law interpreting Title 41, Chapter 3, Part 4 reveals that a show cause hearing is the only hearing required when a petition for temporary investigative authority is filed." [citations omitted] (Harkin Order at 5).

XII.

The state contends that "the legislature never intended to consolidate a petition to have youths declared in need of care (41-3-401, M.C.A.) and a petition for temporary investigative authority (41-3-402, M.C.A.)," (Harkin Order at 5), despite that fact that all of the sections in Part Four of Chapter Three, Title 41 M.C.A. are interelated, and cover abuse, neglect, and dependency proceedings.

XIII.

Although cases initiated under the temporary investigative authority Statute (§41-3-402) are characterized as "Youth in Need Of Care" proceedings the state denies that it is constrained by Youth in Need of Care Satutes. Reasoning that it acted under § 41-3-402 rather than §41-3-401, the ~~court~~ state denied the requirements of a statutory adjudicatory hearing mandated by §41-3-401:

> §41-3-401. Abuse, neglect, and dependency petitions. . . . . (2) Upon receipt of a petition, the court shall set a date for an adjudicatory hearing on the petition.

XVI.

The state's purpose in asserting authority under the section of the code that makes no reference to procedure (§41-3-402) is to absolve it of the need to afford parents any degree of due process: "The State has never filed a petition pursuant to §41-3-401, M.C.A. which would necessitate that this court set a date for an adjudicatory hearing. There has never been an attempt by DFS to permanently remove the children from the custody of Mr. Fowler. There has only been a petition for temporary investigative authority" (Harkin Order at 5,6). The state's strategy in circumventing due process requirements is to define any length of time (for example, over 42 months in the Plaintiff's case) as "temporary" rather than "permanent."

XV.

The state contends that its authorization to provide immediate protective services gives it the authority to effect a *de facto* termination of parental rights without the need of any adjudication: "The District Court has acted at all times pursuant to §41-3-403, M.C.A. This statute gives the Court the authority to provide immediate protective services, and it also authorizes the District Court to use broad power to make continuing arrangements for the children's protection." (Harkin Order at 6).

XVI.

The state asserts that it may act indefinitely under "temporary" authority granted to it by statue: "This Court's continued authority in this case has been pursuant to the temporary investigative authority statutes. . . . The state has never filed a petition pursuant to §41-3-401,

EXHIBIT 3
DATE 2-6-95
SB 206

M.C.A. which would necessitate that this Court set a date for an adjudicatory hearing." (Harkin Order at 5). The state's strategy is clear: first, allege abuse and neglect; second, file for "temporary" investigative authority under §41-3-402, M.C.A. rather than file an abuse, neglect and dependency petition under §41-3-401, M.C.A., which mandates an adjudicatory hearing; third, extend the "temporary" authority for months and even years, while denying the necessity of an adjudicatory hearing mandated by §41-3-401, M.C.A.

XVII.

In a ruling on a Petition for Writ of Supervisory Control filed by the Plaintiff (Montana S.Ct. Order in Cause No. 94-459, attached, EXHIBIT 'D') the Montana Supreme Court endorsed all of the conclusions regarding the implementation of the child abuse, neglect, and dependency statutes that were reached by the state district court. In that ruling, the Montana Supreme Court stated that "While this case has been pending for some time, it must also be noted that the allegations in the underlying proceedings involve child sexual abuse . . . . It also appears that the District Court is acting within its jurisdiction and is attempting to protect the best interest of the children involved." S.Ct. Order in Cause No. 94-459 at 2.

XVIII.

Montana justifies its implementation of the law in the Plaintiff's case based upon the fact that the initial "allegations . . . involve child sexual abuse," *Id.* The State makes no attempt to justify its circumvention of §41-3-401 (the abuse, neglect and dependency statute). Further, the state acknowledges that by circumventing §41-3-401, it need not provide parents with an adjudicatory hearing before removing their children for periods of up to eighteen years. According to the Montana Supreme Court, decisions to remove children from their

parents for the remainder of the childrens' minority are based solely on the fact that child sexual abuse is *alleged*, rather than on findings of fact indicating that abuse has actually occurred.

COUNT I.

CIVIL RIGHTS VIOLATION UNDER COLOR OF STATE LAW.

XIX.

Under the guidance of the courts, the Montana attorney general, the DFS, and other officials charged with enforcement of laws governing child abuse, neglect and dependency, routinely and as a matter of policy, violate parents rights to due process of law. Specifically, under the authority of M.C.A. §§41-3-402 and 403 the defendants remove children from their natural parents for indefinite and prolonged periods of time, often until the child has reached the age of majority, without affording parents the opportunity of a hearing at which the allegations against them can be fairly challenged and adjudicated.

XX.

Under the authority of M.C.A. §§41-3-402 and 403, the defendants boldly assert the authority to remove a child from its home and refuse visitation to a custodial parent (in the instant case for a period approaching four years) and to afford the parents nothing more than a hearing at which the state must establish probable cause to conduct an investigation. In the Plaintiff's case, even this probable cause hearing was denied. The defendants' use of this authority is part of their policy of law enforcement, as well as part of the customary practice of Missoula County, the county attorney's office, DFS, and the state courts, acting in concert

with each other. It is further the custom and policy of Missoula County, the Missoula county attorney's office, DFS, and the public defender's office, to file false and unsubstantiated affidavits, or to knowingly allow false and unsubstantiated affidavits to be filed, as part of the scheme to remove children from their parents without due process of law. The result is a continuing violation of fundamental Constitutional rights which will persist until this court takes declaratory and injunctive action.

XXI.

The acts complained of by the Plaintiff violate citizens' Fifth and Fourteenth Amendment rights to due process of law guaranteed by the U.S. Constitution generally, and violated the Plaintiff's Fifth and Fourteenth Amendment right to due process of law in particular. Specifically, the defendants have deprived the Plaintiff of a most fundamental, natural right: that of parenting and consorting with his children. Said deprivation was accomplished without even the most basic component of due process of law: that of notice and hearing at which the allegations underlying the state's claim can be adjudicated.

XXII.

The acts complained of were performed under color of state law, specifically §§41-3-402 and 403 of Title 41, Chapter 3, part 4 of the Montana Code Annotated.

XXIII.

The Plaintiff has exhausted all remedies available to him under State law to obtain relief from the unconstitutional implementation of state law complained of.

DAMAGES

XXIV.

The acts described in paragraphs one through twenty-one have resulted in the Plainitff being deprived of his children for over three and one half years. There is no adequate remedy at law for such a loss.

RELIEF REQUESTED

WHEREFORE, Plaintiff requests on the first six claims for relief:

1. That the Defendants be ordered to immediately desist in their application of the statutory scheme governing youths in need of care so as to deprive citizens of their right to a hearing prior to having their parental rights terminated or diminished;

2. To declare §41-3-402 and §41-3-403 as interpreted by the Montana Supreme Court and as applied by the State of Montana through the Attorney General and the DFS to be unconstitutional due to said statutes, as applied, depriving parents of fundamental, constitutional rights without due process of law.

Respectfully submitted this 3 day of January, 1995.

By: William V. Fowler

William V. Fowler, *pro se*
3700 South Russell, Suite B-101
Missoula, Montana 59801

EXHIBIT "A"

EXHIBIT 3
DATE 2-6-95
SB 206

MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY

IN THE MATTER OF:
DECLARING CHRISTOPHER, FOWLER and JONATHAN FOWLER,
Youths in Need of Care.

CAUSE NO. J-2689

Taken at the Missoula County Courthouse
Missoula, Montana
Monday, June 24, 1991

TRANSCRIPT OF PROCEEDINGS

Before the Honorable Douglas G. Harkin, District Judge

Reported by Sharon L. Gaughan, RPR, CM, Official Court Reporter for the Fourth Judicial District and Notary Public for the State of Montana, residing in Missoula, Montana.

A P P E A R A N C E S

LESLIE HALLIGAN, Deputy County Attorney, Missoula County, Missoula County Courthouse, Missoula, Montana, 59802, appearing on behalf of the Department of Family Services.

MARGARET BORG, Chief Public Defender, Missoula County, 317 Woody Street, Missoula, Montana 59802, appearing as guardian ad litem.

ARTHUR AGNELLINO, Esq., 138 West Broadway, Missoula, Montana 59802, appearing on behalf of William Fowler.

MONDAY, JUNE 24, 1991

(WHEREUPON, the following proceedings were had and entered of record.)

THE COURT: J-2689, Fowler.

MR. AGNELLINO: Your Honor, we've entered into a stipulation.

MS. HALLIGAN: Somewhat of a stipulation; there's a few little bones, and Art's client has agreed to continue the temporary investigative authority and to undergo evaluations. We have asked Phil Bornstein to do those evaluations of the father and of Christopher, and he has agreed to do those.

Jonathan's mother is Kelly Ball (phon.) and she's trying to arrange for Lindsay Clodfelter to do the evaluation of Jonathan. If that doesn't work out because Lindsay's been unable to return a phone call, apparently, we would ask that Sarah Baxter be asked to do the evaluation, and if Art has a different suggestion --

THE COURT: Why are we splitting up these evaluations?

MS. HALLIGAN: Well, at this point, it was just because we couldn't agree on Chris.

THE COURT: I can help you agree. I'm going to get two different evaluators giving me conflicting

EXHIBIT 'B'

M.C.A. §§ 41-3-401 through 41-3-404:

41-3-401. Abuse, neglect, and dependency petitions. (1) The county attorney, attorney general, or an attorney hired by the county welfare department or office of human services shall be responsible for filing all petitions alleging abuse, neglect, or dependency. The county attorney or attorney general, or an attorney hired by the county welfare department or office of human services with the written consent of the county attorney or attorney general, may require all state, county, and municipal agencies, including law enforcement agencies, to conduct such investigations and furnish such reports as may be necessary.

(2) Upon receipt of a petition, the court shall set a date for an adjudicatory hearing on the petition. Such petitions shall be given preference by the court in setting hearing dates.

(3) A petition alleging abuse, neglect, or dependency is a civil action brought in the name of the state of Montana. The rules of civil procedure shall apply except as herein modified. Proceedings under a petition are not a bar to criminal prosecution.

(4) The parents or parent, guardian, or other person or agency having legal custody of the youth named in the petition, if residing in the state, shall be served personally with a copy of the petition and summons at least 5 days prior to the date set for hearing. If such person or agency cannot be served personally, the person or agency may be served by publication in the manner provided by the Montana Rules of Civil Procedure for other types of proceedings.

(5) In the event personal service cannot be made upon the parents or parent, guardian, or other person or agency having legal custody, the court shall appoint an attorney to represent the unavailable party where in the opinion of the court the interests of justice require.

(6) If a parent of the child is a minor, notice shall be given to the minor parent's parents or guardian, and if there is no guardian the court shall appoint one.

(7) Any person interested in any cause under this chapter has the right to appear.

(8) Except where the proceeding is instituted or commenced at the request of the department of family services, a citation shall be issued and served upon a representative of the department prior to the court hearing.

(9) The petition shall:

(a) state the nature of the alleged abuse, neglect, or dependency;

(b) state the full name, age, and address of the youth and the name and address of his parents or guardian or person having legal custody of the youth;

(c) state the names, addresses, and relationship to the youth of all persons who are necessary parties to the action.

(10) The petition may ask for the following relief:

(a) temporary investigative authority and protective services;

(b) temporary legal custody;

(c) termination of the parent-child legal relationship and permanent legal custody with the right to consent to adoption;

(d) any combination of the above or such other relief as may be required for the best interest of the youth.

(11) The petition may be modified for different relief at any time within the discretion of the court.

(12) The court may at any time on its own motion or the motion of any party appoint counsel for any indigent party.

41-3-402. Petition for temporary investigative authority and protective services. (1) In cases where it appears that a youth is abused or neglected or is in danger of being abused or neglected, the county attorney, attorney general, or an attorney hired by the county welfare department or office of human services may file a petition for temporary investigative authority and protective services.

(2) A petition for temporary investigative authority and protective services shall state the specific authority requested and the facts establishing probable cause that a youth is abused or neglected or is in danger of being abused or neglected.

(3) The petition for temporary investigative authority and protective services shall be supported by an affidavit signed by the county attorney, attorney general, or an attorney hired by the county welfare department or office of human services or a department of family services report stating in detail the facts upon which the request is based.

41-3-403. Order for immediate protection of youth. (1) (a) Upon the filing of a petition for temporary investigative authority and protective services, the court may issue an order granting relief that may be required for the immediate protection of the youth.

(b) The order, along with the petition and supporting documents, must be served by a peace officer or a representative of the department on the person or persons named in the order. When the youth is placed in a medical facility or protective facility, the department shall notify the parents or parent, guardian, or other person having legal custody of the youth, at the time the placement is made or as soon after placement as possible.

(c) The order must require the person served to comply immediately with the terms of the order or to appear before the court issuing the order on the date specified and show cause why the person has not complied with the order. The show cause hearing must be conducted within 20 days of the issuance of the order by the judge or a master appointed by the judge. The person filing the petition has the burden of presenting evidence establishing probable cause for the issuance of the order. Except as otherwise provided in this part, the rules of civil procedure apply. Hearsay evidence of statements made by the affected youth is admissible at the hearing.

(d) Upon a failure to comply or show cause, the court may hold the person in contempt or place temporary legal custody of the youth with the department until further order.

(2) The court may grant the following kinds of relief:

(a) right of entry by a peace officer or department worker;

(b) medical and psychological evaluation of the youth or parents, guardians, or person having legal custody;

(c) requirement that the youth, parents, guardians, or person having legal custody receive counseling services;

(d) placement of the youth in a temporary medical facility or a facility for protection of the youth;

(e) requirement that the parents, guardian, or other person having custody furnish services that the court may designate;

(f) inquiry into the financial ability of the parents, guardian, or other person having custody of the youth to contribute to the costs for the care, custody, and treatment of the youth and requirement of a contribution for those costs pursuant to the requirements of 41-3-406(3) through (6);

(g) other temporary disposition that may be required in the best interest of the youth that does not require an expenditure of money by the department unless the department is notified and a court hearing is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all family, insurance, and other resources have been examined.

41-3-404. Adjudicatory hearing -- temporary disposition. (1) In the adjudicatory hearing on a petition under 41-3-401, the court shall determine whether the youth is a youth in need of care and ascertain, as far as possible, the cause.

(2) The court shall hear evidence regarding the residence of the youth, the whereabouts of the parents, guardian, or nearest adult relative, and any other matters the court considers relevant in determining the status of the youth.

(3) In all civil and criminal proceedings relating to abuse, neglect, or dependency, none of the privileges related to the examination or treatment of the child and granted in Title 26, chapter 1, part 8, except the attorney-client privilege granted by 26-1-803, apply.

(4) (a) If the court determines that the youth is not an abused, neglected, or dependent child, the petition shall be dismissed and any order made pursuant to 41-3-403 shall be vacated.

(b) If the court determines that the youth is an abused, neglected, or dependent child, the court shall set a date for a dispositional hearing to be conducted within 30 days and order any necessary or required investigations. The court may issue a temporary dispositional order pending the dispositional hearing. The temporary dispositional order may provide for any of the forms of relief listed in 41-3-403(2).

EXHIBIT 'C'

EXHIBIT 3
DATE 2-6-95
SB 206

Douglas G. Harkin, District Judge
Department 4
Fourth Judicial District
Missoula County Courthouse
200 West Broadway Street
Missoula, MT 59802-4292
(406) 523-4774

FILED AUG 23 1994
KATHLEEN D. BREUER, Clerk
By Deputy

MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY

IN THE MATTER OF DECLARING CHRISTOPHER FOWLER and JONATHAN FOWLER, YOUTHS IN NEED OF CARE.	Cause No. J-2689/83 MEMORANDUM AND ORDER

This matter comes before the Court upon William Fowler's motions: (1) to dismiss the youths in need of care proceedings or, in the alternative, to set an adjudicatory hearing pursuant to §41-3-401(2), M.C.A.; (2) to implement a treatment plan; and (3) to prevent the State of Montana from financing the divorce/custody proceedings. All parties have briefed the motions and the matter is deemed submitted and ready for ruling.

BACKGROUND

This action was initiated on June 14, 1991 when the State of Montana petitioned the Court for temporary investigative authority and protective service. The petition and the affidavit provided by a social worker for Department of Family Services [hereinafter, DFS] alleged abuse within the meaning of §41-3-102, M.C.A. Judge Jack Green found probable cause to believe that the children were youths in need of care and in

6-1062

need of temporary investigative services, and he granted temporary investigative authority to DFS. An order to show cause hearing was scheduled for June 24, 1991. Both counsel for DFS and Mr. Fowler appeared and advised this Court that a stipulation had been reached. Thereafter, this Court issued a restraining order granting DFS temporary investigative authority on July 17, 1991. Mr. Fowler was restrained and enjoined from any personal or telephone contact with the two minor children or their mothers.

Thereafter, numerous motions were filed by the State of Montana and Mr. Fowler. There have been numerous show cause hearings upon the motions. A brief chronological review of the course of this case reveals the following:

(1) On July 26, 1991, the State moved for clarification of psychological exams. On July 29, 1991, the Court ordered that either Dr. Scolatti or Dr. Walters were to complete a psychological evaluation of Mr. Fowler.

(2) On August 15, 1991, Mr. Fowler moved for supervised visitation pending the examinations. On August 21, 1991, the State moved to approve placement of the youth and to withhold visitation until the visitation was complete. On August 22, 1991 this Court heard and granted the State's motion for placement of Chris Fowler with his natural mother, and granted the State's motion to withhold visitation. The Court denied Mr. Fowler's motion to move Chris Fowler to foster care in Missoula. The Court ordered a supervised Christmas visitation. During this hearing, the State moved the Court to take judicial notice of a transcript from a divorce proceedings by Dana Fowler in which she detailed abuse at the hands of Mr. Fowler. The Court heard and granted this motion.

(3) On January 22, 1992, Mr. Fowler moved again for supervised visitation. On February 13, 1992 he filed a motion to dismiss the proceedings

EXHIBIT 3
DATE 2-6-95
SB 206

because Dr. Scolatti had not finished his report. In a memorandum and order dated March 5, 1992 this Court denied that motion.

(4) Dr. Scolatti completed his psychological evaluation on March 27, 1992. He recommended that: (a) Mr. Fowler have no unsupervised contact with the children, (b) that the custody of Chris Fowler be transferred to his natural mother, Janet Schofield, (c) that Chris Fowler was in need of counseling, and (d) that Mr. Fowler needed long-term counseling with a therapist of his choice to work on issues of anger management and parenting skills.

(5) On August 19, 1993, Mr. Fowler moved to set visitation and to obtain a second opinion of Dr. Scolatti's psychological evaluation. In a hearing on September 20, 1993, this Court granted the motion for a second opinion, ordered that the State disclose all raw test data used by Dr. Scolatti in his psychiatric evaluation, and ordered that Dr. Walters should formulate a visitation plan.

(6) In a hearing scheduled October 4, 1993, the Court granted Ms. Schofield and Ms. Sutherland's entry into this case. The Court denied Mr. Fowler's motion for visitation during interviews to be conducted by Dr Walters. The Court ordered Mr. Fowler to obtain a written proposed treatment plan in regard to visitation from Dr. Walters.

(7) On November 15, 1993, Mr. Fowler again moved for temporary visitation. After a hearing, the Court issued an order denying this motion based upon: (a) the remaining unproven sexual abuse allegations, (b) the potential for damage that continued to exist with unsupervised visitation, (c) the recent evaluation of Chris Fowler by Thomas Hearn which supported Dr. Scolatti's initial determinations, and (d) the failure of Mr. Fowler to obtain long-term counseling.

(8) On November 24, 1993, Mr. Fowler moved to bifurcate the property settlement issues from the custody issues in the divorce proceedings. On February 24, 1994, this Court assumed jurisdiction over both divorce proceedings and the motion to bifurcate was found to be moot.

As stated *supra*, the present motions pending before this Court are Mr. Fowler's motions: (1) to dismiss the youths in need of care proceedings or, in the alternative, to set an adjudicatory hearing pursuant to §41-3-401(2), M.C.A.; (2) to implement a treatment plan; and (3) to prevent the State of Montana from financing the divorce/custody proceedings.

DISMISSAL OF THE YINC PROCEEDINGS

Under a Rule 12(c), Mont. Rules Civ. Pro. motion, in order to dismiss a claim, the defendant must show beyond a doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Fraunhofer v. Price, 182 Mont. 7, 12, 594 P.2d 324, 327 (1979). Clearly, Mr. Fowler has not shown beyond a doubt that there is a basis for dismissal of this temporary investigative authority and protective services action at this juncture.

HEARING PURSUANT TO §41-3-401(2), M.C.A.

Mr. Fowler argues that his "property" (i.e. children) have been taken away from him without due process of law. He contends that he has never had his "day in court" to contest the merits of the initiating petition for temporary investigative authority, and that the State of Montana has never addressed the serious allegations that were originally made against him.

A review of the record in this case reveals that a portion of the delay in bringing this case to a conclusion has been as a result of the actions of Mr. Fowler. This Court has maintained numerous show cause hearings in this matter. As stated *supra*, at the most recent hearing, after listening to the

EXHIBIT #3
DATE 2-6-95
SB 206

evidence, this Court found that Mr. Fowler had not complied with Dr. Scolatti's recommendations for long-term and intensive counseling. It was not until Mr. Fowler's pending motions were fully briefed and before this Court that Mr. Fowler filed the "Notice of Voluntary Compliance" with Dr. Scolatti's recommendations.

In addition, although Mr. Fowler was granted his motion to seek a second opinion of Dr. Scolatti's evaluation, he has never provided substantive information to either the DFS or this Court that would support re-unification of his family.

A review of the case law interpreting Title 41, Chapter 3, Part 4 reveals that a show cause hearing is the only hearing required when a petition for temporary investigative authority is filed. In Re J.W. & J.C., 226 Mont. 491, 736 P.2d 960 (1987). The legislature never intended to consolidate a petition to have youths declared in need of care (§41-3-401, M.C.A.) and a petition for temporary investigative authority. (§41-3-402, M.C.A.) Id. at 497-498. This Court's continued authority in this case has been pursuant to the temporary investigative authority statutes. Under those statutes, this Court has the authority to require that Mr. Fowler undergo psychological evaluation (§41-3-403(2)(c), M.C.A.), and it has the authority to require that Mr. Fowler receive counseling services. (§41-3-403(2)(c), M.C.A). The State has never filed a petition pursuant to §41-3-401, M.C.A. which would necessitate that this Court set a date for an adjudicatory hearing. There has never been an attempt by DFS to permanently remove the

children from the custody of Mr. Fowler. There has only been a petition for temporary investigative authority and protective services. The District Court has acted at all times pursuant to §41-3-403, M.C.A. This statute gives the Court the authority to provide immediate protective services, and it also authorizes the District Court to use broad power to make continuing arrangements for the children's protection. Matter of H.D., 256 Mont. 70, 76, 844 P.2d 114 (1992). The reason that Mr. Fowler has never had his "day in court" to contest the allegations of abuse or, as required in this case, his initial show cause hearing, is because he reached a stipulation with DFS and the initial show cause hearing was cancelled. This case has proceeded thereon based upon the initial decisions of Mr. Fowler to forego a show cause hearing which would have required the State to present evidence establishing probable cause for the issuance of the order for immediate protection. Now, three years later, Mr. Fowler has decided that he wants his "show cause" hearing whereby the State is required to establish probable cause for the issuance of an order for immediate protection.

This Court has the authority to continue to provide temporary protective services to Mr. Fowler's children, and Mr. Fowler should not be allowed to take this case back to square one each time he hires a new attorney. Therefore, Mr. Fowler has 10 days from the date of this order to submit: (1) substantive information regarding a second psychological evaluation which differs from the psychological evaluation

EXHIBIT 3
DATE 2-6-95
SB 206

provided by Dr. Scolatti, and (2) substantive information regarding his long term counseling on parenting skills and anger control.

TREATMENT PLAN

Mr. Fowler contends that the State of Montana has never implemented a treatment plan or attempted to reunify his family. In this Court's Order which resulted from the November 15, 1993 hearing, explicit reasons were given why family re-unification was not in the best interest of the children, and an explanation was provided under what circumstances that temporary visitation would be allowed in the future.

Although it is true that the policy of this State is to preserve the unity of the family (§41-1-101(1)(c), M.C.A.), it is also the policy of this State to protect children whose health and welfare are being adversely affected by the conduct of those responsible for their care (§41-3-101(2), M.C.A.). This Court will continue to provide protective services to those children until the issues addressed in this Court's Order have been resolved. Family unity will not be preserved at the expense of the best interest of the children. In Re. M.N., 199 Mont. 407, 649 P.2d 749 (1982). As it is now Mr. Fowler's contention that he is complying with Dr. Scolatti's recommendations, this Court orders that Mr. Fowler file a written proposed treatment plan within 10 days of the date of this order. The DFS has 10 days thereafter in which to file its written proposed treatment plan. Thereafter, a hearing will be scheduled upon request of the parties.

FINANCING A DIVORCE PROCEEDINGS

Mr. Fowler has failed to explain how the State of Montana is financing this divorce custody dispute.

ORDER

Based upon the foregoing, Mr. Fowler's motion to dismiss is DENIED.

Mr. Fowler is hereby ordered to submit (1) a second psychological evaluation, and (2) substantive information surrounding the counseling he has received on parenting skills and anger control.

Mr. Fowler is further ordered to submit a written, proposed treatment plan within 10 days of the date of this order. DFS has 10 days thereafter in which to submit its written proposed treatment plan. A hearing will then be scheduled upon the request of the parties.

Mr. Fowler's motion to prevent the State from financing the divorce custody proceedings is without merit and DENIED.

DATED this 23rd day of August, 1994.

Douglas G. Harkin
District Judge

cc: Patrick Flaherty
Attorney for William Fowler

Carol Everly
Attorney for Janet Pedersen

Kerry Newcomer
Attorney for Kelly Ball

Leslie Halligan
Deputy County Attorney

Margaret Borg
Attorney for Christopher and Jonathan Fowler

EXHIBIT 'D'

EXHIBIT 3

DATE 2-6-95

SB 206

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. 94-459

WILLIAM V. FOWLER,

Petitioner,

v.

THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF MONTANA, IN AND FOR THE COUNTY OF MISSOULA, and THE HONORABLE DOUGLAS G. HARKIN, Presiding Judge,

Respondents.

ORDER

Petitioner, William V. Fowler (Fowler), by counsel, has filed herein his Petition for Writ of Supervisory Control and supporting brief requesting that this Court issue a writ "directing the District Court to dismiss the case or to set a Hearing [sic] within 30 days on Mr. Fowler's right to contest the underlying allegations that resulted in the ex parte removal of his children from his home." Fowler's Petition is vigorously opposed by the District Court, by each of the mothers of the two children involved and by the Department of Family Services.

While this case has been pending for some time, it must also be noted that the allegations in the underlying proceedings involve child sexual abuse. It also appears that the District Court is

acting within its jurisdiction and is attempting to protect the best interests of the children involved; is not acting under any mistake of law; has already held various hearings at which Fowler has appeared personally and by counsel; has entered various orders to move this case along toward a final resolution; and has scheduled further proceedings to that end. Moreover, it appears that Fowler himself has not complied fully with certain court orders. Finally, there is an adequate remedy of appeal from any and all final judgments of the District Court. Accordingly, there being no basis for this Court's assumption of original jurisdiction of this cause, Fowler's petition should be denied.

IT IS ORDERED that Mr. Fowler's Petition for Writ of Supervisory Control should be and the same is, hereby, DENIED.

IT IS FURTHER ORDERED that the Clerk of this Court forthwith give notice of this order by mail to all counsel of record and to the Hon. Douglas G. Harkin, Presiding.

DATED this 29th day of November, 1994.

J. A. Turnage
Chief Justice

John Conway Harrison

Karla M. Gray

William E. Hunt Sr.

Fred J. Weber

Terry N. Trieweiler

Justices

William V. Fowler, *pro se*
3700 South Russell, Suite B-101
Missoula, Montana 59801
(406)728-4334

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF MONTANA

WILLIAM V. FOWLER Plaintiff, vs. STATE OF MONTANA, JOSEPH MAZUREK, Attorney General for the State of Montana, DEPARTMENT OF FAMILY SERVICES, Defendants.	No. CV95-1-M-CCL

APPLICATION FOR TEMPORARY RESTRAINING ORDER

COMES NOW the Plaintiff, William V. Fowler, and hereby moves the court, pursuant to 28 U.S.C. §2201 and Rule 65(b) of the Federal Rules of Civil Procedure, for an Order restraining the Defendants, the State of Montana, Joseph Mazurik, Attorney General for the State of Montana, and the Department of Family Services, or their attorneys, from enforcing M.C.A. §§41-3-402, 41-3-403 in a manner that deprives Montana parents generally, and the Plaintiff in particular, of notice and hearing before having their parental rights terminated or diminished, until Plaintiff's Motion for Preliminary Injunction can be heard and determined,

and for an Order setting a date for such hearing.

The unconstitutional application by the defendants of the statutes challenged in the Plaintiff's Complaint in the instant action is imminent and continuing, and the Plaintiff has no adequate remedy at law other than to petition this Court on an emergency basis for a Temporary Restraining Order pending a determination of his application for preliminary Injunction.

The Defendants have been notified by personal service of the Plaintiff's intention to seek injunctive relief.

This application is made on the grounds that the Plaintiff will suffer immediate and irreparable loss, damage or injury before the defendants or thier attorneys can be heard in opposition to this Application, and that the defendants have illegally and unconstitutionaly effected a continuing *de facto* termination of the plaintiff's parental rights, as is described in the attached affidavit, and as is more fully recounted in the COMPLAINT filed in this case, and in the Plaintiff's MOTION FOR INJUNCTION and the supporting memorandum, copies of which have been filed herewith.

Dated this 10 day of Jan, 1995.

William V. Fowler

William V. Fowler, *pro se*
3700 South Russell, Suite B-101
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(406)728-4334

EXHIBIT 4
DATE 2-6-95
SB 206

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IN THE UNITED STATES DISTRICT COURT

DISTRICT OF MONTANA

WILLIAM V. FOWLER Plaintiff, vs. STATE OF MONTANA, JOSEPH MAZUREK, Attorney General for the State of Montana, DEPARTMENT OF FAMILY SERVICES, Defendants.	No. CV95-1-M-CCL

AFFIDAVIT

STATE OF MONTANA }
: ss.
COUNTY OF MISSOULA }

I, William V. Fowler am the Plaintiff in the above-entitled action and do hereby make the following declaration, under oath, in support of my complaint:

1. That I was adjudicated a joint custodial parent of Jonathan and Christopher Fowler, and that Christopher Fowler were in my care and custody as primary custodial parent and caregiver until June 14, 1991.

2. That on June 14, 1991 the Missoula County Attorney, at the behest of the Montana Department of Family services, filed an affidavit alleging probable cause to assume temporary investigative authority, specifically alleging abuse of Jonathan by Christopher Fowler.

3. That based solely on the affidavit mentioned in paragraph 2, above, and solely under their temporary investigative authority, Christopher Fowler was removed from my custody, and my right to have any contact with either of my sons was terminated.

4. That under the guise of a "temporary" investigative authority, I have been deprived of all of my parental rights in Jonathan and Christopher Fowler for almost four years.

5. That throughout the nearly four years since the State took my children from me, I have continually insisted upon, but have never been afforded, any hearing at which I could challenge the underlying allegations that were asserted in order for the state to assume its "temporary" investigative authority.

6. That, as evidenced by the order of the district court, and the opinion of the Montana Supreme Court, (copies attached) the State has acted solely pursuant to its authority to assume temporary investigative authority under M.C.A. §§41-3-402 and 41-3-403.

7. That the acts of the State of Montana, and the Department of Family Services, under the authority of Joseph Mazurek, the State Attorney General, have effectively terminated my parental rights without affording me notice and a hearing at which I could challenge the myriad of allegations made against me, said unsubstattiated allegations being the sole basis for the State preventing me from seeing my children.

8. That the acts of the defendants are continuing, and have caused and continue to cause me irreparable harm in that I have lost valuable years of the potential relationship between myslf and my sons that can never be recovered.

9. That I have personal knowledge that the state has not only acted in excess of its authority to violate my personal parental rights, but that it is the policy of the state, as ratified by the Montana Supreme Court, to violate parental rights generally by exercising statutorily "temporary" authority for periods of time in excess of years.

EXHIBIT 4
DATE 2-6-95
SB 206

Further the affiant sayeth not.

Signed this 10 day of Jan, 1995.

William V. Fowler
3700 Russell, Suite B-101
Missoula, MT 59802
(406) 728-4334

On this 10th day of January, 1995, before me, the undersigned Notary Public, in and for the State of Montana, personally appeared William V. Fowler, and proved to me on the basis of satisfactory evidence, to be the person whose name is subscribed to the within Affidavit and acknowledged to me that he executed the same.

WITNESS my hand and official seal.

Notary Public in and for
the State of MT
Residing at: Missoula
My commission expires:
5/20/98

William V. Fowler, *pro se*
3700 South Russell, Suite B-101
Missoula, Montana 59801
(406)728-4334

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MONTANA

WILLIAM V. FOWLER Plaintiff, vs. STATE OF MONTANA, JOSEPH MAZUREK, Attorney General for the State of Montana, DEPARTMENT OF FAMILY SERVICES, Defendants.	No. CV95-1-M-CCL

NOTICE OF APPLICATION FOR TEMPORARY RESTRAINING ORDER

TO: Joseph Mazurek
Attorney General for the State of Montana
215 N. Sanders
P.O. Box 201401
Helena, MT 59620-1401

Notice is hereby given that the Plaintiff will seek a Temporary Restraining Order on the ___ day of _____, 1995, at the hour of _____o'clock___.m., or as soon thereafter as the parties may be heard, at which time the Defendants shall appear to show cause, if any they have, why the relief requested in their request for a Temporary Restraining Order and Complaint, copies of which are attached hereto, should not be granted.

Dated this 10 day of Jan, 1995.

William V. Fowler, *pro se*
3700 South Russell, Suite B-101
Missoula, Montana 59801
(406)728-4334

EXHIBIT 4
DATE 2-6-95
SB 206

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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MONTANA

WILLIAM V. FOWLER Plaintiff, vs. STATE OF MONTANA, JOSEPH MAZUREK, Attorney General for the State of Montana, DEPARTMENT OF FAMILY SERVICES, Defendants.	No. CV95-1-M-CCL

NOTICE OF APPLICATION FOR TEMPORARY RESTRAINING ORDER

TO: Joseph Mazurek
215 N. Sanders
P.O. Box 201401
Helena, MT 59620-1401

Notice is hereby given that the Plaintiff will seek a Temporary Restraining Order on the ___ day of _____, 1995, at the hour of _____o'clock___.m., or as soon thereafter as the parties may be heard, at which time the Defendants shall appear to show cause, if any they have, why the relief requested in their request for a Temporary Restraining Order and Complaint, copies of which are attached hereto, should not be granted.

Dated this 10 day of Jan, 1995.

William V. Fowler

William V. Fowler, *pro se*
3700 South Russell, Suite B-101
Missoula, Montana 59801
(406)728-4334

William V. Fowler, *pro se*
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Missoula, Montana 59801
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IN THE UNITED STATES DISTRICT COURT

DISTRICT OF MONTANA

WILLIAM V. FOWLER Plaintiff, vs. STATE OF MONTANA, JOSEPH MAZUREK, Attorney General for the State of Montana, DEPARTMENT OF FAMILY SERVICES, Defendants.	No. CV95-1-M-CCL

NOTICE OF APPLICATION FOR TEMPORARY RESTRAINING ORDER

TO: Department of Family Services
602 Woody
Missoula, MT 59801

Notice is hereby given that the Plaintiff will seek a Temporary Restraining Order on the ___ day of _____, 1994, at the hour of _____o'clock___.m., or as soon thereafter as the parties may be heard, at which time the Defendants shall appear to show cause, if any they have, why the relief requested in their request for a Temporary Restraining Order and Complaint, copies of which are attached hereto, should not be granted.

Dated this 10 day of Jan, 1995.

William V. Fowler

William V. Fowler, *pro se*
3700 South Russell, Suite B-101
Missoula, Montana 59801
(406)728-4334

EXHIBIT 4
DATE 2-6-95
SB 206

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MONTANA

WILLIAM V. FOWLER Plaintiff, vs. STATE OF MONTANA, JOSEPH MAZUREK, Attorney General for the State of Montana, DEPARTMENT OF FAMILY SERVICES, Defendants.	No. CV95-1-M-CCL ORDER

The Court, having been presented with a Complaint, Affidavit, Application for Injunction or Declaratory Relief and supporting Memorandum, and an Application requesting a temporary order restraining the State of Montana, Attorney General Joseph Mazurek, the Montana Department of Family Services, their agents, or their attorneys, from enforcing the provisions of M.C.A. §41-3-402 and §41-3-403 so as to deprive Montana parents of their right to due process prior to having their parental rights diminished or terminated, until Plaintiff's Motion for Preliminary Injunction can be heard and;

The Court being of the opinion that the Plaintiff's motion is supported by good and sufficient cause,

IT IS ORDERED that the above named defendants, their agents and attorneys be temporarily enjoined from removing children from their custodial parents without affording them prompt hearings to determine the probable cause for such removal, and an adjudicatory hearing to determine the truth or falsity of any allegations on which the State relies in asserting its authority to remove children from their custodial parents, pending further action of the Court.

IT IS FURTHER ORDERED that Defendants appear before this Court on the ___ day of _____, 1995, at the hour of _____o'clock___.m., or as soon thereafter as the parties may be heard, to show cause, if any they have, why the relief requested in the Complaint should not be granted.

Dated this ____ day of _____, 1995.

_____
U. S. DISTRICT COURT JUDGE

William V. Fowler, *pro se*
3700 South Russell, Suite B-101
Missoula, Montana 59801
(406)728-4334

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MONTANA

WILLIAM V. FOWLER Plaintiff, vs. JOSEPH MAZUREK, Attorney General for the State of Montana, et al., Defendants.	No. CV95-1-M-CCL

MOTION FOR PRELIMINARY INJUNCTION

COMES NOW the Plaintiff, moves this court for an Order preliminarily enjoining the defendant, Joseph Mazurek, his agents, and subordinates, and the Department of Family Services, from enforcing or taking any action pursuant to M.C.A. §41-3-402 and §41-3-403 until such time as this court has reviewed and made a final decision regarding the constitutionality of said statutes. Alternatively, the Plaintiff requests that this court issue an order requiring the State of Montana to hold an adjudicatoryhearing to determine the underlying accusations of abuse and/or neglect within a reasonable period of time (perhaps 60 ot 90 days) after the state seizes children pursuant to a "temporary investigative authority." In support of his Motion, the Plaintiff states as follows:

EXHIBIT 4
DATE 2-6-95
SB 206

1. The defendant, Joseph Mazurek, through his agents and subordinates, particularly the Department of Family Services, is charged with enforcing the laws of the State of Montana, including M.C.A. §41-3-402 and §41-3-403.

2. In enforcing M.C.A. §41-3-402 and §41-3-403 out of the context of the statutory framework in which it appears, Joseph Mazurek is acting in pursuance of an unconstitutional statute (or more accurately, enforcing an apparently valid statute in an unconstitutional manner), and is thus acting in his individual capacity.

3. This court has jurisdiction to enjoin the enforcement of M.C.A. §41-3-402 and §41-3-403 pending its determination of the Plaintiff's challenge to the constitutionality of said statutes pursuant to 28 U.S.C. §1651(a) and F.R.C.P Rule 65.

4. Failure of the court to enjoin defendant Mazurek from enforcing the challenged statutes will result in immediate irreparable harm to the Plaintiff, as well as other affected parents in the state of Montana.

5. The Plaintiff has no adequate remedy at law, and thus seeks to avail himself of this court's equitable jurisdiction.

WHEREFORE, the Plaintiff prays that this court issue the requested injunction, as is more fully supported by the accompanying memorandum of law.

SUBMITTED this 10 day of Jan 1995.

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Missoula, Montana 59801
(406)728-4334

William V. Fowler, *pro se*
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IN THE UNITED STATES DISTRICT COURT

DISTRICT OF MONTANA

WILLIAM V. FOWLER Plaintiff, vs. JOSEPH MAZUREK, Attorney General for the State of Montana, et al., Defendants.	No. CV95-1-M-CCL

MEMORANDUM IN SUPPORT OF
MOTION FOR PRELIMINARY INJUNCTION

In support of his motion for a Preliminary Injunction enjoining defendant Joseph Mazurek from enforcing M.C.A. §41-3-402 and §41-3-403 until such time as this court has reviewed and made a final decision regarding the constitutionality of said statutes, the Plaintiff states as follows:

I.

This Court Has Jurisdiction To Issue The Requested Injunction.

EXHIBIT 4
DATE 2-6-95
SB 206

This court has jurisdiction to entertain suits seeking to enjoin a state official from enforcing an unconstitutional statute pursuant to 28 U.S.C. §1651 and F.R.C.P. Rule 65. Such a suit is not a suit against the State of Montana, but is a suit against a state official, Joseph Mazurek, in his individual capacity, since the unconstitutional nature of the statute renders the enforcement thereof an illegal act, which is outside the scope of official duty. *Osborn v. Bank of the United States*, 9 Wheat 728 (1824); *Board of Liquidation v. McComb*, 92 U.S. 531 (1876); *Poindexter v. Greenhow*, 114 U.S. 270 (1885); *Reagan v. Farmers' Loan & Trust Co.*, 154 U.S. 362 (1894); *Smyth v. Ames*, 169 U.S. 466 (1898); *Ex parte Young*, 209 U.S. 123 (1908); *Truax v. Raich*, 239 U.S. 33 (1915); *Public Service Co. v. Corboy*, 250 U.S. 152 (1919); *Sterling v. Costantin*, 287 U.S. 378 (1932); *Davis v. Gray*, 16 Wall. 203 (1873); *Tomlinson v. Branch*, 15 Wall. 460 (1873); *Litchfield v. Webster Co.*, 101 U.S. 773 (1880); *Allen v. Baltimore & Ohio R. Co.*, 114 U.S. 311 (1885); *Gunter v. Atlantic C. L. R. Co.*, 200 U.S. 273 (1906); *Prout v. Starr*, 188 U.S. 537 (1903); *Scott v. Donald*, 165 U.S. 58; *also* 165 U.S. 107 (1897).

This court has jurisdiction to issue an injunction enjoining the enforcement of M.C.A. §41-3-402 and §41-3-403 until such time as this court has reviewed and made a final decision regarding the constitutionality of said statutes as applied. *Ex parte Young, supra.*

II.

The Challenged Statutes Have Been Interpreted By The Montana State Courts..

Even if the Montana State Courts had not previously interpreted M.C.A. §41-3-402 and §41-3-403, and even if defendant Mazurek had not enforced said statutes in a manner so as to

violate the constitutional rights of the citizens of Montana, this court would have jurisdiction to preemptively interpret said statutes, especially in light of the manifest oppression that has resulted from the enforcement of said statutes . *Ex parte Young, supra; Home telephone & Telegraph Co. v. Los Angeles*, 227 U.S. 278 (1913); *Traux v. Raich,* 239 U.S. 33 (1915); *Cavanaugh v. Looney*, 248 U.S. 453 (1919); *Terrace v. Thompson*, 263 U.S. 197 (1923); *Hygrade Provision Co. v. Sherman*, 266 U.S. 497 (1925); *Massachusetts State Grange v. Benton,* 272 U.S. 525 (1926); *Hawks v. Hamill*, 288 U.S. 52 (1933); *Georgia R. v. Redwine*, 342 U.S. 299 (1952). However, this court need not preemptively interpret the challenged statutes, because the Montana Supreme Court has already done so, as shall be illustrated herein. The Plaintiff bases his claims of unconstitutionality on the challenged statutes as they have been interpreted by the Montana Supreme Court.

The Plaintiff relies on the interpretation of M.C.A. §41-3-402 and §41-3-403 by the Montana Courts to support his contention that the challenged statutes are unconstitutional. Although said statutes are not unconstitutional on their faces, the statutes are violative of fundamental constitutional rights as they are interpreted by the courts and applied by defendant Mazurek. M.C.A. §41-3-402 and §41-3-403 read as follows:

> **41-3-402. Petition for temporary investigative authority and protective services.**(1) In cases where it appears that a youth is abused or neglected or is in danger of being abused or neglected, the county attorney, attorney general, or an attorney hired by the county welfare department or office of human services may file a petition for temporary investigative authority and protective services.
>
> (2) A petition for temporary investigative authority and protective services shall state the specific authority requested and the facts establishing probable cause that a youth is abused or neglected or is in danger of being abused or neglected.
>
> (3) The petition for temporary investigative authority and protective services shall be supported by an affidavit signed by the county attorney, attorney general, or

an attorney hired by the county welfare department or office of human services or a department of family services report stating in detail the facts upon which the request is based.

41-3-403. Order for immediate protection of youth. (1) (a) Upon the filing of a petition for temporary investigative authority and protective services, the court may issue an order granting relief that may be required for the immediate protection of the youth.

(b) The order, along with the petition and supporting documents, must be served by a peace officer or a representative of the department on the person or persons named in the order. When the youth is placed in a medical facility or protective facility, the department shall notify the parents or parent, guardian, or other person having legal custody of the youth, at the time the placement is made or as soon after placement as possible.

(c) The order must require the person served to comply immediately with the terms of the order or to appear before the court issuing the order on the date specified and show cause why the person has not complied with the order. The show cause hearing must be conducted within 20 days of the issuance of the order by the judge or a master appointed by the judge. The person filing the petition has the burden of presenting evidence establishing probable cause for the issuance of the order. Except as otherwise provided in this part, the rules of civil procedure apply. Hearsay evidence of statements made by the affected youth is admissible at the hearing.

(d) Upon a failure to comply or show cause, the court may hold the person in contempt or place temporary legal custody of the youth with the department until further order.

(2) The court may grant the following kinds of relief:

(a) right of entry by a peace officer or department worker;

(b) medical and psychological evaluation of the youth or parents, guardians, or person having legal custody;

(c) requirement that the youth, parents, guardians, or person having legal custody receive counseling services;

(d) placement of the youth in a temporary medical facility or a facility for protection of the youth;

(e) requirement that the parents, guardian, or other person having custody furnish services that the court may designate;

(f) inquiry into the financial ability of the parents, guardian, or other person having custody of the youth to contribute to the costs for the care, custody, and treatment of the youth and requirement of a contribution for those costs pursuant to the requirements of 41-3-406(3) through (6);

(g) other temporary disposition that may be required in the best interest of the youth that does not require an expenditure of money by the department unless the department is notified and a court hearing is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all family, insurance, and other resources have been examined.

To understand the impropriety of the Montana Court's interpretation of these two sections, it is helpful to examine the statutory context in which they appear. Viewing Part 4 of Chapter 3, Title 41, M.C.A. as a whole, the above two sections would appear to be an integral part of the statutory scheme dealing with youths who are in need of care. Title 41 pertains to minors generally, and Chapter 3 covers child abuse, neglect and dependency. Parts 3 and 4 of Chapter 3 deal with emergency protective care of children who are alleged to be abused and/or neglected. Part 3 specifies the situations in which emergency protective services are called for, the state's responsibility in providing such services, and representation of affected youths by a guardian *ad litem*. Part 4 covers the process for implementing emergency protective services of youths in need of care.

On its face, Part 4 would seem to encompass sufficient procedural safeguards to ensure that a parent received due process prior to having his or her children permanently seized by the state. The first section in Part 4 appears to cover all petitions filed by the state which allege abuse, neglect, or dependency of a minor child. It states in pertinent part:

> **41-3-401. Abuse, neglect, and dependency petitions.** (1) The county attorney, attorney general, . . . shall be responsible for filing all petitions alleging abuse, neglect, or dependency. The county attorney or attorney general, . . . may require all state, county, and municipal agencies, including law enforcement agencies, to conduct such investigations and furnish such reports as may be necessary.
>
> (2) Upon receipt of a petition, the court shall set a date for an adjudicatory hearing on the petition.
>
> * * * * *
>
> (10) The petition may ask for the following relief:
> (a) temporary investigative authority and protective services;
> (b) temporary legal custody;
> (c) termination of the parent-child legal relationship and permanent legal custody

EXHIBIT 4
DATE 2-6-95
SB 206

* * * * *

M.C.A. §41-3-401 [emphasis added]. Following this section, §41-3-402 further explains the use and procedure for obtaining the temporary investigative authority specified in §41-3-401. Section 41-3-402 makes no reference whatsoever to any type of notice or hearing. It does specify that "the petition for temporary investigative authority shall be supported by an affidavit of probable cause." Following section 41-3-402, section 41-3-403 guides the court's immediate action after the filing of a petition requesting temporary investigative authority. Section 41-3-403 requires that a probable cause hearing to establish the necessity of assuming temporary investigative authority be conducted within 20 days of the issuance of the order granting temporary investigative authority.

On its face, the statutory scheme dealing with the state's intervention where child abuse is alleged would seem to protect the rights of parents as well as children. **The plaintiff emphasizes that the following description is based on how the law plainly reads, rather than how the courts have implemented the law.** If a situation of alleged abuse is serious enough for the state to intervene and remove a child from a dangerous environment, a petition detailing the situation and the intended intervention must be filed within 48 hours (M.C.A. §41-3-301). Said petition must conform to the requisites of M.C.A. §41-3-401. If the petition seeks temporary investigative authority, it must be supported by an affidavit an of probable cause in which the county attorney personally verifies the reasons that a temporary investigative authority is needed. (M.C.A. §41-3-402). In all cases where abuse is alleged, the court must set a priority date for an adjudicatory hearing (M.C.A. §41-3-401(2)), and if temporary investigative authority is sought, the court must set a date for a probable cause

hearing within 20 days of the filing of the petition (M.C.A. 41--3-403(1)(c)). This scheme allows the state to intervene when there is reason to believe a youth is in danger and in need of care. At the same time, it allows a parent an initial hearing in which he or she can challenge the allegations of probable cause for state intervention, and a prompt adjudicatory hearing at which the matters alleged by the state can be disputed according to the rules of evidence and civil procedure. Further, the statutes provide for the allegations leading to state intervention to be reviewed at least three times prior to temporary investigative authority being authorized: first, under M.C.A. §41-3-301, a case worker from the Department of Family Services makes an initial determination that a youth is in immediate or apparent danger of harm; second, a county attorney, attorney general, or other independent attorney must personally sign an affidavit confirming the results of the DFS caseworker's investigation (§§41-3-401, 402); third, a judge must review the conclusions of both the DFS caseworker and the attorney who has filed the supporting sworn affidavit, and determine if an order for the immediate protection of the youth is warranted (§41-3-403).

The above description and analysis of the statutory scheme dealing with youths alleged to be in need of care is based on the wording and structure of the law itself.[1] However, this is not how Montana courts and enforcement authorities view these statutes. Montana courts do not read the statutes dealing with minors as a coherent whole. Rather, the courts and

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[1] This interpretation of the statutory scheme is not based solely on the plaintiff's opinion. Relatively similar statutory frameworks exist in other states, one of which is the State of Connecticut. Excerpts of the Connecticut statutes are juxtaposed with the Montana Statutes in EXHIBIT III, attached hereto, and incorporated herein by reference. The Connecticut Supreme Court's analysis of said statutes is included in the Annotation attached as EXHIBIT IV, and incorporated herein by reference (*In Re Juvenile Appeal*, 189 Conn 276, 455 A.2d 1313, 38 ALR 4th 736 (Conn. 1983)).

enforcement authorities admittedly view M.C.A. §§41-3-402 and 41-3-403 as isolated grants of authority by which the State can and does remove children from their custodial parents without due process of law, as the following statements by the Montana courts indicate.

The Montana district court has stated that the cessation of parental rights can continue for periods of many years under the state's "temporary investigative authority and protective services" John Harkin's Memorandum and order, Cause No. J-2689, In the Matter of Declaring Christopher Fowler and Jonathan Fowler Youths in Need of Care (attached as EXHIBIT I and referred to hereinafter as Harkin Order), at p. 4. How do the Montana courts circumvent the requirement of M.C.A. §41-3-401(2) that an adjudicatory hearing be given priority on the court docket? They hold that "the legislature never intended to consolidate a petition to have youths declared in need of care (§41-3-401, M.C.A.) and a petition for temporary investigative authority (§41-3-402, M.C.A.)." Harkin Order at p. 5.

In holding that §41-3-401 and §41-3-402 are unrelated , the courts ignore the following facts: first, that it is §41-3-401(10)(a) and (b) that give the authority to request the temporary investigative authority and protective services under section 41-3-402; second, on its face §41-3-401 applies to all petitions alleging abuse, neglect or dependency; and third, the filings in Cause No. J-2689, as well as every other petition requesting temporary investigative authority, indicate on their faces that they are indeed "Youth In Need Of Care" proceedings, as described in §41-3-401.

Despite the fact that §41-3-401 mandates an adjudicatory hearing, the Montana courts hold that by denying the integral nature of the statutes dealing with youths in need of care, it can avoid an adjudicatory hearing ever being held, even though the underlying allegations

allege child abuse and neglect: "The state has never filed a petition pursuant to 41-3-401, M.C.A. which would necessitate that this Court set a date for an adjudicatory hearing." Harkin Order at p. 5. Montana state courts further hold that so long as the state characterizes its actions as temporary, it can effect a *de facto* termination of parental rights without an adjudicatory hearing: "There has never been an attempt by DFS to permanently remove the children from the custody of Mr. Fowler. There has only been a petition for temporary investigative authority" Harkin Order at p. 6. "A review of the case law interpreting Title 41, Chapter 3, Part 4 reveals that a show cause hearing is the only hearing required when a petition for temporary investigative authority is filed." Harkin Order at p. 5. How long is "temporary" according to Montana courts? In the Plaintiff's case the State has taken his children, and terminated all contact with them for over three and one half years. *In the matter of F.H., J.K., and B.K.*, 51 St.Rep. 0649 (1994), "temporary" was thirteen years. In fact, Montana courts hold that any length of time necessary for the state to maintain custody until a minor reaches age 18 is "temporary." *Id.* [2]

The State of Montana contends that M.C.A. §§41-3-402 and 41-3-403 each stand independently from the rest of the Montana Code. This flies in the face of statutory accepted interpretation, which requires that these statutes be read in conjunction with other statutes dealing with state intervention for the protection of the children. *In Re Juvenile Appeal*, 189 Conn 276, 455 A.2d 1313, 38 ALR 4th 736 (Conn. 1983). Pursuant to the challenged statutes,

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[2] *In the Matter of F.H., J.K., and B.K.*, the court contended that it "did not terminate S.T.'s parental rights . . ." but instead merely "granted DFS temporary custody until B.K. and F.H. reached age eighteen." This is a blatant, disingenuous, and hypocritical way for the state to steal children without troubling itself with the requirement of notice and hearing to determine whether the facts warrant terminating parental rights.

the defendant has exercised the authority to take children from their parents indefinitely without the necessity of a hearing on the underlying reasons for the state's intervention: "The District Court has acted at all times pursuant to 41-3-403, M.C.A. This statute gives the Court the authority to provide immediate protective services, and it also authorizes the District Court to use broad power to make continuing arrangements for the children's protection." Harkin Order at p. 6. The court contends that under the authority of §41-3-403, which on its face covers only court orders ensuing from petitions for temporary investigative authority, it can effect permanent custody of children under the guise of "continuing arrangements" resulting from a request for immediate protective services. How long can these "continuing arrangements" last? According to Montana courts, the state can continue to "protect" children without an adjudicatory hearing for as long as an individual judge pleases. "This court has the authority to continue to provide temporary protective services to Mr. Fowler's children." Harkin Order at p. 6.

The interpretation of M.C.A. §§41-3-402 and 41-3-403 related above is not the construction of an individual renegade judge; it is the holding of the Supreme Court of the State of Montana. Shortly after Judge Harkin extolled his power and authority to order children removed from their parents without the necessity of ever having any adjudicatory hearing, the Plaintiff presented Harkin's reasoning to the Montana Supreme Court, requesting that they exercise their supervisory jurisdiction over the lower court. In response, the Montana Supreme Court ratified Judge Harkin's interpretation of the law and adopted it as their own. The Montana Supreme court held that the lower courts are within their jurisdiction when they remove children from their parents for indefinite periods of time

without affording the affected parents the opportunity to be heard at an adjudicatory hearing. The Montana Supreme Court held that when the district court removed the Plaintiff's children, restrained any contact with them, and did so without any opportunity for the Plaintiff to be heard, it was "acting within its jurisdiction." Montana Supreme Court Opinion in Case No. 94-459 at p. 1-2. (attached as EXHIBIT II). It further held that in acting pursuant to authority purportedly granted by the challenged statutes (M.C.A. §§41-3-402 and 41-3-403), the district court "was not acting under any mistake of law." *id.*

The state's position on M.C.A. §§41-3-402 and 41-3-403 is clear: The state contends that pursuant to the authority granted in those sections standing alone, it can take children from their parents based solely on the allegations of a DFS bureaucrat, which are then rubber stamped by a county attorney. After a hearing establishing nothing more that probable cause[3] to conduct further investigation, the state can retain custody of the children until the child reaches age 18. Parents are <u>never</u> entitled to an adjudicatory hearing in which to challenge the underlying allegations of abuse, so long as the state purports to be acting under the authority of §§41-3-402 and 41-3-403, rather than under §41-3-401. When the state removes a child from their parents, and terminates all contact between parent and child until the child reaches 18, they have <u>in fact</u> terminated the parental rights of the parent. According to the state, they can effect such a termination with nothing more than demonstrating probable cause to conduct an investigation. The state's assertion of authority to take children from their parents without the opportunity of a hearing is given effect by the defendant Joseph Mazurek, utilizing the police power of the State of Montana.

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[3] In the Plaintiff's case, even a probable cause hearing was denied.

EXHIBIT 4
DATE 2-6-95
SB 206

III.

The Challenged Statutes Violate A Fundamental Constitutional Right.

The rights of parents to raise their own children is a fundamental liberty interest recognized at common law and protected by the Constitution. "The rights to conceive and to raise one's children have been deemed 'essential,' 'basic civil rights of man,' and 'rights far more precious . . . than property rights. . . . The integrity of the family unit has found protection in the Due Process Clause of the Fourteenth Amendment, the Equal Protection Clause of the Fourteenth Amendment, and the Ninth Amendment." (Citations omitted.) *Stanley v. Illinois*, 405 U.S. 645, 651, 92 S.Ct. 1208, 1212, 31 L.Ed.2d 551 (1972). A parent's liberty interest in their own children is a natural and legal right. *Moss v. Vest et al.*, 262 P.2d 116 (Idaho, 1953). Although the right to parent one's children is burdened with concomitant responsibilities, and although the state has a legitimate interest in protecting children from abuse, it is still the state that has the burden of overcoming the *prima fascia* case favoring parental custody once the parent-child relationship is established. *Id.* at 119.

Once it is established that a fundamental right is being affected, the following question arises: what procedural process is necessary before the state can remove a child from its parents? In the Plaintiff's case, this issue need not be addressed, because the state afforded the Plaintiff no notice, no hearing, and what amounts to no procedural due process whatsoever. However, the Plaintiff's case notwithstanding, the state of Montana claims that the only

procedural due process necessary for it to remove a child from its parents, and maintain custody of that child with the state Department of Family Services, is that of establishing probable cause to do an investigation. The courts in Montana are absolutely clear on this point. The state can assume "temporary" authority under M.C.A. 41-3-402, and the only hearing necessary is a preliminary probable cause hearing. At that hearing, the common practice in Montana is for a county attorney to ratify a DFS worker's allegation of abuse. No investigation whatsoever need be done on the part of the county attorneys, who sign their names to sworn affidavits without personally ascertaining the truth or falsity of the allegations made therein. Once probable cause to conduct an investigation is established, the state claims the authority, again under §§41-3-402 and 41-3-403, to grant "temporary" custody to DFS until the child reaches age 18.

IV.

The Necessity For An Injunction To Issue.

The defendant continues to proceed in enforcing the challenged statutes, in violation of the due process rights of parents, and will continue to do so unless stopped. Every day that the defendant is allowed to proceed under the unconstitutional authority of the challenged statutes, Montana families, both parents and children, are harmed. The state has made its final determination regarding the application of the challenged statutes, and its interpretation is clear: children can be taken from their parents and made wards of the state until they reach eighteen years of age, with no more than a showing of probable cause to

EXHIBIT 4
DATE 2-6-95
SB 206

SUBMITTED this 10 day of Jan, 1995.

William V. Fowler

William V. Fowler, *pro se*
3700 South Russell, Suite B-101
Missoula, Montana 59801
(406)728-4334

CERTIFICATE OF SERVICE

I hereby certify that on this day I placed a true and correct copy of the foregoing Motion for Preliminary Injunctio and Supporting Memorandum in the U.S. mail, postage prepaid, addressed as follows:

Joseph Mazurek
Attorney General for the State of Montana
215 N. Sanders
P.O. Box 201401

Department of Family Services
602 Woody
Missoula, MT 59801

Dated: Jan 11, 1995

By: Paul Bafus

conduct an investigation into alleged abuse. According to the state, no finding of abuse is necessary. A preliminary injunction is warranted because of the continuing, imminent and irreparable nature of the damage being caused based on the enforcement of the challenged statutes. This harm will continue if a preliminary injunction does not issue.

The Plaintiff has already suffered irreparable injury at the hands of the defendant due to the loss of consortium between himself and his sons. There is no remedial measure that can restore the time and experience lost between a parent and child when the state wrongly steals a child from the parent. The potential harm caused by the state's oppressive practice whereby it swoops down and snatches children, with no due process safeguards whatsoever, eclipses the state's alleged motives to protect the best interests of children. The state's warped, fascist-like actions have the potential of causing more harm than they prevent. Every day that the state is allowed to break up families and effect *de facto* terminations of parental rights under the challenged statutes, results in irreparable injury to the people of Montana. Without an injunction issuing from this court, the defendants will continue to overstep their bounds, operating on their own *ex ante* conclusions, rather than findings of fact and conclusions of law that would result if the state of Montana subscribed to the concept that citizens are entitled to due process of law.

V.

CONCLUSION

The defendants' assertion of power is admitted and absolutely clear: they claim the authority to take a child from their parents and terminate their parental rights, with nothing more than a showing of probable cause to investigate allegations of abuse. This scheme violates the most fundamental concepts of due process. It is a scheme worthy of the most despicable tyrants and treasonous usurpers of basic human rights, a description that aptly describes judge Harkin in particular, and the members of the Montana state judicial system and their executive branch cohorts generally. Without the intervention of this court, the usurpation of rights and rule by the whim of bureaucrats, rather than by rule of law, will continue unimpeded.

A parent who has lost his or her children has little else left to lose. There are few situations which would cause a law abiding citizens to exercise their first prerogative of self government: that right which was exercised to the detriment of many a British soldier in the year 1776. Having one's children kidnapped by gestapo-like government agents is one such situation. The federal courts are the next-to-last resort that citizens have to remedy the actions complained of herein. It is imperative that this court act, so that We, the People, need not reach that last resort.

Ladies and Gentlemen I am here today to speak in support of Senate Bill 206. I have no intentions of speaking poorly or against the Child Protective System of Montana. I do however, have a story to tell all of it fact!

I have a friend who came from a home in Central Montana where he was raised with traditional Christian values and beliefs by his mother and grandmother and, the home was in my opinion abuse free. My friend attended University of Montana in Missoula at age 18. Briefly before dropping out to pursue his true career love " Law Enforcement". He applied to several agencies in the area but, due to poor economic conditions at this time he was unable to find work. During this period he met a girl and fell in love and got married at age 19. Due to the added responsibility of a wife they moved to Billings Mt. Where he figured they had a better chance of being financially able to support a family. He worked at various jobs including starting his own company yet still testing for any Law Enforcement positions that came along. In April 1987 he was 20 when their first child was born, this was the proudest moment of his lifetime. But due to the added responsibility of a child he became even more diligent in finding a means of support for his family.

He soon realized that if he was going to make it in Law Enforcement that he needed some formal training. So he received his Associate of Applied Science Degree in Law Enforcement in June 1990 . He was 22years of age.

During this two year period his wife began showing a severe lack of responsibility as well as disclosing memories of past abuse from both her father and older sister of sexual and physical

~~abuse~~. My friend and his wife attended numerous counseling sessions to address her anger,pain; abuse and their marital problems, however, his wife was apparently unwilling to address the problems, or at best unable too. Subsequently they divorced in Febuary 1990. She was given primary custody of the child. In March 1990 she called her ex-husband threatening suicide(because she had broken up with a boyfriend.) Her ex-husband advised her to get some professional help. He also volunteered to help by taking the child early(before his summer visits) so as she could get her problems worked out with out the pressure and responsibility of raising and caring for a child, she agreed.

Soon after he took custody he saw some glaring signs of physical abuse on his daughter. After numerous phone visits with her sister who she (ex-wife) had lived with, he confirmed that not only abuse was going on but, his ex-wife was also using illegal drugs. Which resulted in the sister kicking her out, his ex-wife was now living in her car. Due to all these circumstances my friend returned to court to gain full custody of his daughter, it was granted. During the time of custody in Glendive he continued school and provided the best of daycare and babysitters for his daughter when he was away. He and his daughter had a relationship that rivaled any father - daughter relationship I've ever seen. She was ecstatic when he would pick her up from daycare. They often played in the yard, at the park,and played games in the house before her bedtime. They also attended church on sundays.

During this time her mother never called to visit or to talk to her daughter. Her mother wrote two cards of which were read to his daughter although his daughter showed no interest nor

EXHIBIT 5
DATE 2-6-95
SB 206

did she ever inquire or ask about her mother.

In August 1990 my friend and a classmate moved to Lolo, Mt to put their college degrees to work either as security guards or police officers. However,nothing was available at this time so they both went to work at a retail store in Missoula. This arrangement worked out well at first as one would work during the day the other at night. My friends daughter was always with a responsible adult. Soon however, their work schedules became the same and the need for daycare arose. As funds were extremely tight and all daycare center's rosters full, my friends ex-wife's parents volunteered to watch his daughter for a few hours every day when he worked. He was of course extremely sceptical because of all the stories he had heard but, after several visits that were monitored by my friend. He felt more at ease leaving his daughter with the maternal grandparents. At about this time the mother moved back into the area and my friend and his ex-wife began talking reconciliation, after a lot of convincing conversation from his ex-wife and her family.

In September 1990 his daughter had blood in her urine which was noticed by the maternal grandmother during an extra visit. My friend immediately took his daughter to a clinic where she was diagnosed with a urinary tract infection. The doctor did not alert <u>anyone</u> to the possibility that a three year old girl with a urinary tract infection may have been sexually abused. So no action was taken except typical treatment of the infection.

In October 1990 they found out that they were going to be blessed with their second child. Again my friend diligently pursued his career and volunteered for more hours at his current job. His ex-wife for no apparent reason quit her job.

Approximately 1 week before Thanksgiving 1990 my friend and his ex-wife went over to the grandparent's house to pick-up their daughter. When they arrived they found there daughter sitting on the floor in what I would describe as a listless state; she appeared to have had her personality completely removed. She wasn't happy to see her father or mother, she wasn't interested in any kind of activity: play,eating sleep,television, nothing. When my friend inquired as to the reason for this behavior or rather the lack of behavior, the grandparents responded "SHE'S BEEN LIKE THIS ALL DAY". When mother and father questioned their daughter at home; she stated that her grandfather had hurt her. When asked how she was unable to state how, just that he said bad things about her dad. Mom and dad were to say the least OUTRAGED. However , after a visual exam by mom and dad no signs of physical abuse were found. So to prevent any further instances they wrote a letter to the grandparents condemning their actions and denying any further visits with their granddaughter. That was the end, so they thought.

Soon after my friend and ex-wife moved to California (approx. June 1991) his daughter now 4 years old and my friend now 24 years old. He got a job as a security guard and advanced through the ranks rapidly, he worked many 16-18 hour days due to his training and level head.

His daughter spent time with her father but most was spent with her mother at home. In August 1991 my friends ex-wife gave birth to a boy. Both were very happy. however, problems soon arose. Their daughter who had developed a stuttering problem early

EXHIBIT 5
DATE 2-6-95
SB 206

(5)

~~problems early~~ IN 1991; this became so bad that the child was unable to say two words with out stuttering. This was assumed to be a typical developmental problem that she should out grow.

The main issue was his daughter's behavior problem. It was reported to him by his ex-wife, that his daughter would: Get up in the night and wander off, play with kitchen knives, break glass hide it, and most disturbing of all she had allegedly attempted suicide and spoke of going to heaven. My friend never saw any of this behavior but, took his ex-wife at her word and made arrangements for a visit with a counselor. After the visit with the counselor she was unable to draw any positive conclusions but, recommended "intensive therapy" 3-4 times a week. Which was more than acceptable to my friend. ~~Of course~~ At this time their daughter was yelling and screaming at both her mom and dad saying " she hated both of them and did not want to go with them". This shocked them both. As they all left the counselors office their daughter tried to jump out of the moving car. This was the first time my friend saw any suicidal intentions by his daughter. Immediately they returned to advise the counselor of the incident. The counselor admitted the child to the county PSYC WARD.

Two days later my friend was called to the CRIMES AGAINST CHILDREN DIVISION OF THE SHERIFFS DEPT. on suspicion of sexually abusing his daughter. When he asked the detective how and where he got this information. He told my friend that his daughter had told the detective and counselors that her had molested her.

The detective told my friend that 4 year olds dont lie so he knows she is telling the truth. My friend spent 3 hours trying to convince the detective that he didn't do this horrid act and

advised him of the previous suspicions he had of the grandfather as well as other possible scenario's including coaching. This proved to be a futile attempt as his daughter was immediately removed from his custody and placed in a less than acceptable foster home. Here his daughter was told that daddy was bad and daddy did bad things to her and himself and to mommy. To make matters worse my friends daughter was not examined for abuse for almost a month after placement. My friend had to schedule supervised visits with his daughter and son at the DEPARTMENT of PUBLIC SOCIAL SERVICES/ CHILD PROTECTIVE SERVICES office for a hour a week. He further had to move out of his apartment and live in a hotel as he was under a restraining order by his ex-wife. Approximately twice a month my friend was in court but, court was always continued as " new evidence" kept surfacing, such as my friend was a cross dresser ,used drugs,tied his children up, cut parts of his children's bodies off, and the list goes on and on. This subjected my friend to random drug test which was no problem for him as his illegal drug use was a complete joke ; He is however , a insulin dependent diabetic he takes medication for that, he gets headaches and takes some aspirin, occasionally he gets an allergy attack which he takes a pill for and, last he smokes cigarettes. This drug use was not investigated or sustained or even inquired about ,nor were any of the other ludicrous allegations investigated, he was presumed guilty.

My friend was forced to put his pursuit of being a cop on hold, until this ordeal was over and he was cleared . My friend then took some very poor legal advice and took his all time pet peav . A plea bargain which was that he had knowledge

EXHIBIT 5
DATE 2-6-95
SB 206

of abuse and neglect but did not know the perpetrator. With the guarantee of his attorney that in 6 months he would have his kids back. Now his son was removed and placed in a separate foster home because his ex-wife was suspected of physically abusing their son.

The DEPARTMENT of PUBLIC SOCIAL SERVICES/ CHILD PROTECTIVE SERVICES reunification plan required both parties to attend sexual abuse group therapy, parenting classes, and private counseling to address sexual abuse issues as well as participate in co-counseling, with his daughter. My friend ~~complied~~ COMPLETED all of the above requirements except co-counseling with his daughter because his daughters counselor would not allow this to happen.

My friends ex-wife didn't attempt to complete anything. My friend during this time had to deal with four different social workers two of which presumed him guilty with out investigation. Two foster homes for his son one of which purposely sabotaged visits by scheduling doctor appointments, picture appointments ect. during visits. One foster home for his daughter in which the foster parent manipulated his daughter to what they wanted and to quote the social worker " is using her for her (the foster mother) own selfish needs". This was accomplished by coaching his daughter to say anything damning about her dad, sending spies to monitor private visits between social worker and child , giving birthday and christmas gifts from dad to the less fortunate, dreaming up negative behaviors from his daughter after visits with father (I say dreaming because none of the social workers witnessed any unusual behavior from his daughter even hours after the visits with dad were concluded. These dreams (lies) resulted in the termination

of visits with her father , because they were detrimental to her well being.

My friend had to drive to another town to visit his son once a week. He had to drive approximately 85-90 miles to court one way. He had to drive 95 miles one way to see a counselor. 40 miles to group therapy and still hold a full time job and sleep. All these trips were of course on different days and times AND repeated over again each and every week.

My friend went so far as to subject him self to a polygraph test at his own expense, to prove beyond a doubt he was innocent. The results " no signs of deception".

The initial intake interview in the hospital PSYC WARD was video taped however , when the counselor wanted a yes answer he/she would nod there head. When a no answer was required they would shake their head. None of the subsequent interviews were taped . All "new evidence" was gained from a 4 year old at the foster home with foster parent present or some neutral spot with foster parent present. It doesn't seem to me to be fair to a child or parent to conduct a so called investigation this way.

Sexual abuse of a child or any living person is a very serious crime and should be severely dealt with. However, sexual abuse has turned into a modern day witch hunt, which is wrong why do we punish parents and children that don't deserve this? Why take such a drastic measure such as removal of ones children on unsubstanciated allegations ? I feel that the social workers of child protective agencies nation wide have a huge and stressful responsibility as they can make or break a family unit in the blink of an eye. I don't want to talk poorly about

EXHIBIT 5
DATE 2-6-95
SB 206

the numerous workers or agencies in fact I want to compliment and commend all of them for protecting those children who were truly in dangerous situations but, maybe, just maybe some became over zealous or power hungry and DID something wrong. This is why I support Senate Bill 206 it creates a few more checks and balances to prevent a terrible mistake. I further feel that social workers, law enforcement, counselors and medical personal need to have more investigative training and abuse / neglect recognition training. These hopes and desires of mine now become your responsibility please take it upon yourselves as law makers and professionals to fill in the gaps.

Well in conclusion let me finish this story. After three plus years of fighting for his children my friend in the social workers eyes didn't do enough therefore , her recommendation was this : My friends daughter is now 7 soon to be 8 will remain in the same foster home until she is a legal adult (18 yrs). No visits or contact from her father . Even though this is not a good spot for his daughter. The social worker states " THE GOOD OUT WEIGHS THE BAD. SHE'S BONDED TO THE FAMILY".

My friends son, now 3½ years old is an adoptable child. Even though none of the allegations were found to be true; in the eyes of the court. "If he were returned to his father he would be at risk " Therefore on January 23rd 1995 my friends parental rights were terminated. Thus taking any contact what so ever away from father and son.

My friend, well, that's me I lived this nightmare!!! I moved back to Montana with my new fiance' who has been my strength through almost all of this whole ordeal. I have had severe close calls with my diabetes requiring hospitalization. I have

lost 30% of my kidneys due to the stress and, several run-ins with severe depressions. Now we'll try to start over, my fiance' Ida and I.

The mother went to only 5 or 6 of the court dates. Left the state moved in with a boyfriend left him, moved back home with her mom and dad, moved back to California for about 1 month, fell in love got married moved to Texas, got divorced, moved back in with mom and dad's to go with her new boyfriend who drives trucks across country. It is unknown if she has attempted to contact the children in the last year.

This all happened in the state of CALIFORNIA how ever it can happen anywhere

THANK YOU FOR THIS OPPORTUNITY AND YOUR TIME!

MR Chairmen / Members of the Committee

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 6
DATE 2-6-95
SB 206

On Dec 2 1992 I spent the day sledding and building snowmen with my five year old daughter Ashley Christine after a good dinner and a hot bath we spent the evening reading her favorite book "Bunny Numbers" and I kissed her goodnight and watched over her as we fell asleep.

The next day Dept of Family Services took my daughter away in a police car and the reason was they said she was in danger of being neglected abused or in danger.

For the next 19 months my daughter and I were put through everything from shrinks eval, individual counseling family counseling to parenting classes, numerous meetings to AA & Alon two thirds my case worker Michele Sobeyno

knew nothing about.
I was accused without proof of all kinds of things including not loving my child. Ms. Sobolina of Roundup MT D.F.S. turned into not the helpful person she was made out to be but self serving lawyer then thou self appointed judge & jury.
I was given 1 hour a week supervised visit. this included not letting us swim because she couldn't monitor our conversations do not letting me take her do bathroom unsupervised.
Even after getting sparkling reports from physicians & counselors my child remained out of the home full time after 9 year. She (a six year old) was packed up & moved between my home & my ex-husbands every 2 weeks. They would never

EXHIBIT 6
DATE 2-6-95
SB 206

ask a adult do do this
But in Reup my child
didint have a choice.
Only after 19 months
and a Cost do me of more
the $10,000 Dollars and lost
time with my child, a judge
decided that their ~~it~~ was
never a Reason she ~~was~~ should
have been taken from me.
But its too late, after
having a child taken a
brand is put on you as
a Bad mom.
My daughter will never
understand why.
when they took my
child they took her trust
and from me they took my
confidence, my self worth
when they took Ashley they
took my life!!
But my love was
never shaken.

I have her back now and we are a family again but when DFS walked out just as abruptly as they walked in. They left me to rebuild what they had taken away.

There's one hope I have Please Please before you take a child from its mother think twice, ask question's, give us a chance before you change our lives forever.

Thank You for Supporting Bill 206

Penny Bernhardt
401 W Central Apt A
Belgrade MT
59714

1-406-388-7195

EXHIBIT NO. 7
DATE 2-6-95
SB NO. SB 206

RON AND JOAN AUSTAD
100 RIVERVIEW C
GREAT FALLS, MT 59404
452-5804 work
761-4192 home

TO OUR FRIENDS AND FAMILY:

WE ARE WRITING TO ASK FOR YOUR SUPPORT ON NOV. 28TH. AT 9:00 AM IN JUDGE LARSON'S COURT (CASCADE COUNTY COURT HOUSE IN GREAT FALLS).

THIS IS A BRIEF BACKGROUND OF WHAT HAS TRANSPIRED:

IN APRIL OF 1992, TERRY MURRAY, (INVESTIGATOR FOR DEPARTMENT OF FAMILY SERVICES) CALLED OUR SON, KEN BAILEY, AND SAID HE NEEDED TO BRING HIS TWO CHILDREN, BRITTNEY, 2 1\2 YEARS OLD, AND JACOB, 4 1\2 MONTHS OLD, UP TO HER OFFICE. TERRY MURRAY FELT THAT BECKY, 4 YEARS OLD, AND NOT KEN'S NATURAL CHILD HAD BEEN MOLESTED. SHE STATED THAT BECKY HAD NAME KEN AS THE PERPETRATOR. ALSO, AT THAT TIME THEY TOOK GINGER'S, (KEN'S WIFE) CHILDREN CARRIE AND ANDY. KEN OFFERED TO LEAVE THE HOME SO CARRIE AND ANDY COULD REMAIN WITH THEIR MOTHER, BUT TERRY MURRAY SAID SHE WAS CO-DEPENDENT, SO THEY REMOVED THEM AND PLACE THEM WITH HER PARENTS. KEN'S CHILDREN WERE PLACED IN A FOSTER HOME ALONG WITH BECKY.

KEN WAS FIRST ORDERED TO TAKE A SEXUAL EVALUATION WHICH INCLUDED BOTH A WRITTEN AND ORAL EVALUATION, POLYGRAPH AND PLETHYSMOGRAPH. THERE HAS SINCE BEEN SEVERAL OTHER COURT ORDERS ASKING FOR PARENTING CLASSES, ANGER MANAGEMENT CLASSES, AND A SUBSTANCE ABUSE EVALUATION. ALL OF THESE TESTS AND CLASSES HE HAS COMPLETED AND PASSED.

IT HAS BEEN TWO YEARS SINCE KEN HAS SEEN HIS DAUGHTER, AND HAS NOT SEEN HIS SON SINCE JANUARY OF 1994.

KEN WAS SERVED WITH PAPERS TO SEVER HIS PARENTAL RIGHTS AND PUT THE CHILDREN UP FOR ADOPTION IN MAY OF 1994.

JOAN HAS REQUESTED UNSUPERVISED VISITATION WITH OUR GRANDCHILDREN ON SEVERAL OCCASIONS AND HAS BEEN DENIED BECAUSE WE BELIEVE OUR SON IS NOT A PEDOPHYLE AND THEY DO NOT FELL SHE WILL PROTECT THEM.

FAMILY SERVICES TOOK OUR GRANDCHILDREN ON THE PRESUMPTION THAT OUR SON HAD MOLESTED THEM. HE HAS NEVER BEEN CHARGED, AND ALL OF HIS EVALUATIONS ORDERED BY THE COURTS HAVE CAME BACK TO IMPLY THAT NO GUILT EXISTS. YET, AFTER TWO AND A HALF YEARS WITHOUT OUR CHILDREN, THOUSANDS OF DOLLARS IN COURT ORDERED EVALUATIONS AND ATTORNEY FEES, THE FIGHT FOR OUR CHILDREN GOES ON. NOW THEY WANT OUR SONS PARENTAL RIGHTS SO THAT THE STATE CAN PUT THEM UP FOR ADOPTION.

THEY HAVE HELD OUR GRANDCHILDREN HOSTAGE FROM US, OUR SON, AND OTHER FAMILY MEMBERS WHILE WE'VE JUMPED THROUGH THEIR HOOPS AND SPENT THOUSANDS OF DOLLARS. BUT MOST OF ALL IS THE PAIN THAT THE CHILDREN HAVE HAD TO GO THROUGH BY BEING REMOVED FROM THEIR FAMILY AND HOME AND PUT WITH STRANGERS, AS WELL AS THE ANGUISH WE HAVE GONE THROUGH DOING WITHOUT OUR CHILDREN AND HAVING SOMEONE ELSE MAKING THE DECISION AS TO HOW THEY SHOULD BE RAISED, PLUS HAVING

TO LEAVE THE CHILDREN AFTER A ONE HOUR VISITS KNOWING IT WILL BE AT LEAST ANOTHER MONTH BEFORE WE CAN SEE THEM AGAIN.

I THOUGHT WE LIVED IN A FREE COUNTRY, YET, WE'VE BEEN AFRAID TO SAY OR DO ANYTHING THAT WOULD GO AGAINST FAMILY SERVICES FOR FEAR THAT IT MIGHT JEOPARDIZE THE RETURN OF OUR GRANDCHILDREN TO THEIR HOME.

HOW CAN THIS HAPPEN? WE ARE LAW ABIDING CITIZEN WHO ARE ONLY GUILTY OF LOVING OUR CHILDREN AND GRANDCHILDREN AND WE CAN'T SIT STILL ANY LONGER WHILE FAMILY SERVICES DESTROY FAMILIES IN THE NAME OF PROTECTING CHILDREN AND WE THE TAX PAYERS PAY THEM TO DO IT. WE CAN NOT UNDERSTAND THE POWER THAT FAMILY SERVICES HAS, AND WHY THEY ARE IMMUNE TO THE LAW WE MUST ABIDE BY, "OF INNOCENT UNTIL PROVEN GUILTY."

OUR FIGHT IS ALSO FOR MANY OTHER FAMILIES WHO WE DON'T KNOW, BUT WHO TOO HAVE FELT THE INJUSTICE OF OUR SYSTEM. IF YOU ARE ONE OF THESE FAMILIES OR IF YOU JUST FEEL LIKE THE SYSTEM HAS GONE AMUCK, WE NEED YOUR SUPPORT TO BALANCE THE SCALES OF JUSTICE.

WE WILL BE GOING TO COURT TO FIGHT THE DEPARTMENT OF FAMILY SERVICES FOR THE RIGHT TO HAVE OUR GRANDCHILDREN REMAIN IN OUR FAMILY. IF YOU ARE UNABLE TO ATTEND THIS COURT HEARING A LETTER STATING YOUR OPINION WOULD BE GREATLY APPRECIATED.

THANK YOU FOR YOUR SUPPORT AND YOUR PRAYERS

YOURS TRULY

RON AND JOAN AUSTAD AND FAMILY

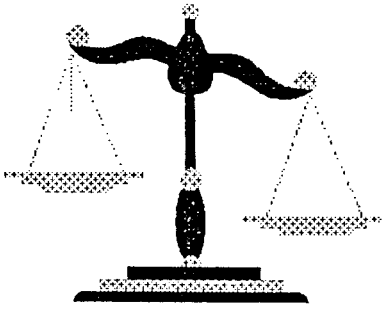


EXHIBIT 7
DATE 2-6-95
SB 206

Montana

The Last Best Place?

In their fiscal year 1992, the Montana State Department of Family Services removed over 3,300 children from their homes and placed them in state funded foster homes. With the state child population less than 180,000, this raises some very disturbing questions. Coupled with the fact that Montana, listed among the lowest states in crime and population, is ranked 2nd in the nation in reported child abuse cases. Is this a state of child abusers and molesters. Or is this a state whose children and families are pawns in political power games?

In 1992, San Antonio, Texas, 12th largest city in the nation, with a population of over 360,000, twice Montana's child population, their Department of Family Services investigated 8,302 cases of reported child abuse involving almost 13,000 children. With the 6th highest crime rate in the nation, they "constitutionally", in accordance with due process of the law, substantiated 3,524 cases of abuse, involving 5,414 children. Yet, they only removed 945. If, as the Montana State Department of Family Services claims, that they are "about average" in the percentage of children removed from the home, then, according to these "average" statistics, DFS had to have investigated 29,057 cases, involving 55,674 children, finding 12,334 cases of substantiated abuse involving 18,949 children.

	Montana	San Antonio
Total Population	@800,000	@873,000
Child Population	@189,000	@367,000
#Cases Investigated	29,057	8,302
Children involved	44,674	12,764
Cases substantiated	29,057	3,524
Children involved	18,949	5,414
Children removed	3,310	945
Removal rate	3.6%	.43%
Foster care budget	16+ million	7 million
Total budget	101 million	40 million

According to these statistics, almost 20% of families with children in the state of Montana could fall suspect through investigation by the Department of Family Services. The question again: is this a state of child abusers and molesters? Or is this a horrible example of a department out of control; a department that stands alone in its dealings, free to operate beyond the safeguards guaranteed by the Constitution of The United States? In America, could you be removed from your home and placed under confinement for an indefinite amount of time, unaware of the charges against you and powerless to seek recourse? Of course not. Unless you are dealing with the Montana State Department of Family Services. Then the freedoms and rights that this country were built upon are lost. Is Montana truly the last best place? Not if you love your family.

September 6, 1994
John and Tammy Schubert
636 Brooks St.
Missoula, MT 59801
(406) 549-7372

Marc Racicot
Governor State of Montana
Governors Office
State Capital Building
Helena, MT 59620

Dear Governor Racicot:

We are writing to you because we feel that our family is being harassed by actions of the Department of Family Services. In brief DFS received a referral from our sometime babysitter, who is also a Foster Care parent of kissing and toilet training problems with our children (Eric 2 yrs. and Shannon 4 yrs.) in September of 1993. Eighteen days after the referral and without any notice or attempting to make any contact with either parent the children were removed (on October 5th) from the day care center (Rainbow End) and placed into Foster Care. As part of the removal Shannon was questioned by the case worker Marsha Kurshner in her office for 15 minutes. Kurshner said in a sworn statement to the court that Shannon told her that "daddy had poked her in the butt (rectum) with a pencil when he gives me a bath". This assertion was not made in the original referral. In fact Shannon says that Kurshner (she calls her the fat lady) told her "Daddy pokes you here doesn't he" and pointed to her virginal area. When Shannon told her no she persisted with intimating tactics and game playing. Whatever happened in that office it is clear that Shannon was intimidated and coerced at best or that Kurshner simply lied in order to justify her actions. In any event this coerced statement has never been heard again. Shannon was placed in the home of the referer for Foster Care (no mention of any abuse of any kind), she was given a physical exam by a Pediatrician (no signs of any abuse past or present), she was interviewed by a Child Psychologist eight times (no mention of any abuse). The children were returned to the home on October 31th on the condition that John move out of the house. Since that time in an effort to prove that no abuse has occurred John has seen Dr. Michael Scolatti (specializes in criminal sexual behavior and set up the sex offender program for the Montana State Prison). Dr. Scolatti says in his report "John Schubert did not appear to posses many of the traits I have observed in admitted or convicted sexual offenders". In addition John underwent a computerized polygraph exam relating to sexual abuse. The results were over 99% truthful indicating no sexual abuse had occurred. The entire family has undergone a family evaluation with Dr. Philip Bornstein. Dr. Bornstein concluded in essence that while he could observe no problems with Shannon she should undergo continued evaluative therapy for one year or longer until we can understand why Shannon may have made the alleged statement to Kirshner. This recommendation is abhorrent to us, that Shannon or any member of our family undergo never ending treatment until DFS gets the desired results. In the past year we have done every thing we could to prove that no abuse occurred ever. Every good report we give to DFS they claim is inclusive. It is hard to prove something that never happened didn't occur. This is like the Spanish Inquisition, they knew you were a heretic or demon the only question was which form of torture would make you confess.

In summary the Department of Family Services has kept John out of the home (which is also my business location) since November of 1992, forced us to spend all of our savings and go into massive debt to pay for lawyers and doctors, put severe stress on the children all because of a claim that hasn't been substantiated. The harassment began when they broke their own guidelines as contained in the DFS Child and Family Services Policy Manual (March 1994) by keeping this case open for a year without substantiation. The manual states on page 201-6 lof4 "Notice of substantiation of abuse or neglect will be sent". This notice was never sent because abuse was not substantiated (in fact the current case worker Jackie Kurtz admits this). During a July phone conversation Tammy had with the Director of Family Services he stated that "if a case of abuse has not been substantiated the case should be closed". Our problem is that the case worker and her immediate supervisor want to keep this case open with no end in sight. We can only conclude that we are not alone, and that these abusive practices extend to other families as well. Four changes are needed: 1. Interviews with children need to be videotaped for future reference. It would be difficult to coerce children if you later had to justify your actions. 2. Emergency removal is being abused (we were available any time prior to the sneak abduction). This action should be a last resort after careful investigation (no investigation was done prior to removal in our case). 3. Workers should be willing take a polygraph and the State should require it in cases where the workers testimony contradict either the children or parents testimony and there is no evidence to support the workers position (we believe some people in positions of power have a self interest or glee in there ability to wield and abuse such power). 4. Workers and the State should be legally liable for negligence as well as malice of intent. The current legal system makes it all but impossible to recover expenses or damages if a person is falsely accused. In some states a person may recover legal expenses from the state if the state fails to prove its' case.

We await your response, feel free to contact Tammy at the above number or John at 344-1811.

Sincerely,

John M Schubert

John M. Schubert Tammy Schubert

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 9
DATE 2-6-95
BILL NO. SB 206

February 2, 1995

State Capital
Capital Station - Box 14
Attn: Senator Jim Burnett
Helena, MT 59620

Dear Senator Burnett:

Pursuant to our telephone call of February 1, 1995, enclosed are articles my finance' and I wrote to the Roundup Record Tribune as well as other articles which have appeared regarding the Department of Family Services. Following is the scenario which happened to me, my daughter and my finance'. We believe it is about time DFS was made to stand accountable for their actions and support your Senate Bill 206. If we can be of any further help please feel free to call us at (406) 323-1451.

A verbal exchange occurred on May 8th between Kara, my daughter, and myself. My fiance', Karen Kowalczyk, was also present. We had gone out for "Mother's Day Dinner" around 3:00 p.m. After dinner and returning home, I told Kara we were going to finish fencing the dog kennel. Karen and I had already started the kennel, setting the posts in concrete and stringing part of the cyclone fence for the dogs. I told Kara that beings it was for her dog, as well as Karen's, that she could help and with three of us working on it, it wouldn't take very long to complete it. Kara then proceeded to pout all the way home making for a very tense and uncomfortable atmosphere. Upon arriving at home, Kara and I exchanged words because she didn't want to help with the fence. Kara went to her room, slamming the door. We went in to change clothes. Before we got changed, Kara tore out of the house, got in my pickup and was gone. We had no idea where she was headed, but figured she was headed out to Curtis Goffena's , her boyfriend, because that is where she wanted to go. Karen and I went out to work on the dog kennel. Later that day, around 5:30, we got a telephone call from Vicki Fawcett, of Department of Family Services, saying Kara was up at the Sheriff's Office and had filed a complaint against me alleging child abuse. We have yet to see a copy of the complaint. There was absolutely no abuse involved in this whole exchange. I also asked that Kara be returned home so we could sit down and discuss the whole situation and that was denied by Vicki Fawcett.

Because Kara is a minor (16), Department of Family Services was called. DFS called me and indicated that Kara could come back home after a 48 hour "cooling off" period. However, after 48 hours I was told to come up and sign papers to place Kara in foster care. I questioned why she was not being returned home after the 48 hours and was told "because we feel it is a threatening situation." No investigation was ever done. To our knowledge, the Department of Family Services did not appear in District Court within 48 hours to show cause why the child had to be removed from the family home. No investigation was ever done in our home to find out if the child was telling the truth. I went up to DFS and talked to Michelle Sobonya and she explained to me that it was in Kara's best interest to be placed in a foster home.

When I questioned the choice of foster home, I was told Kara had requested she be placed with Betty Goffena and that is where DFS was placing her. I questioned the placement of Kara at Betty Goffena's because Betty Goffena was not a licensed foster care home and that Curtis Goffena, Kara's boyfriend, has a mobile home and lives on the same property approximately 50 yards from Betty's back door. I felt this was not a safe or healthy situation that Kara had expressed wanting to live with Curtis, however DFS did not see anything wrong with this as this is where Kara wanted to be. I then told DFS I was holding them totally responsible for my daughter.

I did not admit to any of Kara's allegations of abuse. I admitted to having an argument with Kara regarding the building of the dog kennel and that we had exchanged words in this regard. But not once was there any abuse - just an exchange between myself and my daughter.

I am self employed and have my own construction building business. I was scheduled to be out of town most of the summer. I did come home, however, on weekends to see my family and take care of business. I had told DFS what my situation was and asked that they keep Karen apprised of the situation as I would be talking to her in the evening. DFS

agreed at that time to this arrangement. Karen contacted DFS on several occasions to find out if an appointment could be made so I could call in or if I could reach a counselor after hours as I was up in the mountains, away from a telephone from 7:00 a.m. until 6:00 - 6:30 p.m. every day. I was informed of the office hours and that I would have to call in at that time. Karen explained to DFS that this was impossible, that I was concerned about Kara and wanted to find out how she was doing, but again was INFORMED that these were the hours and I could call collect during that time. Karen told them the collect call part wasn't the problem - the hours were because I was at least a 1/2 hours drive away from a telephone and could not leave my partner on the job by himself because of the risk factor of an accident. DFS was not willing to make any concessions so I could talk to them.

Within 20 days after Kara was removed from home, I have no knowledge of DFS returning to District Court to show cause why the separation must continue.

Only one mediation meeting was ever set up for me and my daughter. Present at that meeting were Michelle Sobonya, social worker for DFS, Curtis, Kara's boyfriend, Kara and myself. This meeting was supposed to be between only myself, Kara and Michelle so we could work on getting Kara back in the family home. Having Kurt there made the meeting very uncomfortable. Some 10 to 15 minutes into the meeting Michelle Sobonya was called away on an "emergency". Kara, Curtis and I were left to finish the meeting on our own. If I was such a threat to my daughter, why was it okay to leave us alone in an unsupervised situation? No attempt was made to set up further meetings between my daughter and I.

Michelle signed an agreement, on behalf of DFS saying that we would be informed of any medical or dental attention Kara needed and it was "by chance" that we found out she had her wisdom teeth out. We were never even informed of that fact that she needed this work done. Kara was at her Grandfather's house and Karen happened to stop in to talk to my sister who was visiting from Minneapolis. Kara had gone to change some gauze in her mouth. Karen asked Kara what was wrong and Kara told her about her oral surgery. We were never contacted by DFS about the dental work Kara had done. She also later found out that Kara had a mole removed and there were some telltale signs of possible cancer so she had to go back for more tests. We were never told about this either. We found out about it through one of Kara's teachers in whom she had confided.

In July, Kara was allowed to take a trip out of state with the approval of DFS. We were never told about the trip and found out about it only after someone asked if Kara had gotten back from Idaho. Again DFS had signed an agreement stating we would be kept informed of what was going on and yet she went to Idaho without our knowledge.

I had also asked for periodic progress reports on meetings Kara was having with Donna Johnson, a counselor, over in Billings. This was never done. I were told she was going, but was never told of the outcome or when we might be able to meet as a family unit so as to resolve any issues that may be present.

In August I was served with a "Petition for Temporary Investigative Authority and Protective Services". This is the first document through this whole ordeal I had ever seen regarding the charges which were being held against me. Due to the lack of communication on behalf of DFS, I refused to sign the documents and hired an attorney, Randy Spaulding. I decided to try and settle this without the help of DFS. Vicki Knudsen, Musselshell/Golden Valley County Attorney, Floyd Brower, Guardian at Litem for Kara, our attorney Randy Spaulding, myself and my fiance' Karen Kowalczyk, met and reviewed a document drafted by Floyd Brower to keep Kara at the Goffena Ranch. I again questioned the fact of Kara living with her boyfriend with Floyd Brower admitting that Kara and Curtis were in fact sleeping together. Kara being 16 years old and her boyfriend being 21. Floyd Brower and Vicki Knudsen didn't seem concerned even though I was objecting to my daughter being out there. I signed the document as I was threatened to be taken to court and it was in Kara's best interest that I signed it.

Things seemed to go along fine until Kara and her boyfriend Curtis Goffena split up. On October 28th, Kara asked Bette Goffena if she could spend that Friday night in town with one of her friends. To this Bette agreed. Evidentally, Bette didn't give Kara a specific time to return home and began to worry about her. On Saturday, October 29th, Bette sent Kurt, now the ex-boyfriend, in to town to find Kara. Evidentally Kurt said some nasty things to Kara and an argument ensued. The local police were called and things were broke up. Later Vicki Knudsen picked Kara up and took her to the jail. Kara was taken into custody and Kurt was allowed to leave. According to Kara and in front of Kara's friends, Vicki swore at her and told her how inconvenient it was to be called as she was in the middle of fixing a hole in her daughter's waterbed and because she had to take Kara to Billings, she would miss her daughter's ball game and took Kara to the jail where

EXHIBIT 9
DATE 2-6-95
SB 206

she sat for approximately four hours. Kara was taken to Billings and placed in a Youth Detention Center. I was never informed about her being sent to the facility, or being held in jail, and it was not until my sister-in-law called the following day, October 30th, did we find out that she was over there. I still, to this date, do not know what charges were placed against her to warrant her time at the detention center. I was never told when she would be allowed to leave. I told my attorney, who contacted Vicki, Donna and Floyd that I wanted Kara to come back home rather than being locked up in the center. I was never told what the rules as far as telephoning and visiting with Kara while at the facility. Kara finally found out the only people who could call her were myself, my father and his new wife, and her mother. Kara indicated she needed some clothes, shoes and miscellaneous personal items. We asked her if she was permitted to leave the facility and she said yes but it had to be arranged 24 hours in advance.

On November 2nd I contacted Donna Marmon, County Probation Officer, requesting to take Kara out of the facility to get her the clothing items she needed. Donna indicated she would have to talk with Floyd Brower, Guardian at Litem for his approval. I had not heard from her by Friday, November 4, and our 24 hours was drawing to a close. I tried to reach Donna at home but only got her answering machine so left a message seeking permission. Because of the 24 hour window, I called Floyd Brower myself. Floyd said Donna Marmon had not contacted him but as far as he was concerned he didn't have a problem with my taking Kara shopping. Donna Marmon then called back and said she would not give me permission to take her out of the facility, but would not offer an explanation as to why.

On November 12th, Kara called home and talked to Karen as I was helping at a Rotary Auction. Kara indicated that "a friend of my mom's" was taking her on Sunday and she needed some money. She said Donna Marmon was coming to Billings to take Kara to the Girls Basketball Tournament and would she get hold of her and send some money over with her. Karen called Donna Marmon at home and tried to explain the situation, however was met with a very rude and belligerent "You don't have telephone privileges and I won't talk to you" from Donna Marmon. Donna then slammed the receiver down. Karen tried to call her back within a few minutes to see what the problem was and only got her answering machine.

Kara was finally released on Tuesday, November 15th. Even though I had told my attorney, Vicki Knudsen and Donna Marmon, I wanted Kara to come back to the family home, Kara was told that was not an option for her. Her options were to either go live with the mother who abandoned her at age 11 or go to another youth detention facility. Not wanting to go to another facility, Kara agreed to go live with her mother in Boise, Idaho. Brenda Lekse, had to pick Kara up at the Youth Facility and bring her to Roundup. Donna and Vicki would not let Kara even stay in town overnight. She had to be driven back to Billings and then come back on Wednesday for a meeting with Donna. Brenda was included in the meeting with Donna Marmon, however, I was not. Kara claims that Donna wrote some additional stipulations into the Petition after everyone else had signed, however, we have been unable to get a copy of this document to find out if in fact Donna did write things in there. Kara claims Donna and Vicki told her she could not come back to Roundup to even visit with her family until Spring break and she could not come back to live in Roundup until after she reached 18. She cannot graduate with her class in the spring of 95, nor can she even attend the graduation exercises of her classmates because of this stipulation.

On October 31st, Karen called the Department of Family Services and spoke with the secretary. She requested names and telephone numbers of supervisors over DFS in Roundup and was given these. She then called Hank Hudson, the State Director at Helena and explained what I had been through. Mr. Hudson said he wouldn't get involved until "all other people had been contacted" and I should follow the chain of command. Mr. Hudson informed Karen that she should contact Jim Moe in the Lewistown office and have him investigate the matter and if all else failed to call him back.

November 1, 1994 - Karen spoke with Jim Moe's receptionist. Jim was in Harlowton but she would give him the message. She also indicated he was scheduled to come to Roundup the following week.

November 3rd - Karen spoke with Jim Moe and explained the situation with Kara. Gave Jim names and telephone numbers of people to talk to. He indicated he would like to meet with us with November 10th or 15th. He said he would investigate the matter and get back to us to set up the meeting.

November 7th - Talked to Jim Moe. He will meet with us at 3:00 on Thursday November 10th at our home. I called Randy Spaulding, my attorney to ask him to attend the meeting also. Jim took down all the information and said he would investigate the matter and get back to us.

December 5th - Called Jim Moe regarding status of case. He was on another call but would be given the message.

December 6th - Talked with Jim Moe. He indicated no major thing was done wrong. He felt the case had been handled properly, however it should have been handled as a "Child in Need of Supervision" vs. "Child in Need of Care".

Jan. 10, 1995 - Wrote a lengthy letter to the editor. It was published on January 11th. Consensus of people in town was case was handled very improperly and have heard numerous other horror stories along the same lines. (See attached copy of article).

Senator, hope this helps support your bill. Wish we could be their in person to testify on your behalf. Even though this bill will not help us a whole lot, if we can prevent other families from living through the nightmare we have this last year, we will have accomplished something.

We also heard that DFS is asking for an additional $8 million to finance their department. Until they are held accountable and can justify the $8 million right up front, we vote that their request be denied.

Thank you very much for keeping us informed. Please put us on your mailing list so we can keep abreast of what is going on with DFS. We are on your side.

Sincerely,

Larry Lekse
Karen Kowalczyk

Larry Lekse
Karen Kowalczyk
P. O. Box 373
Roundup, MT 59072
1-406-323-1451

OPINION & LETTERS PAGE

EXHIBIT 9
DATE 2-6-95
SB 206

Letter to the Editor

After attending a meeting last month with the topic of what we, the community, can do for our children, we felt it was our duty to write this letter and let people know what is going on in our community in reference to our children and the way families are being treated. These are the facts, along with an explanation, as to the situation which happened in our family starting last May.

FACT: Teenagers in this community have more rights than the parents.

An exchange in May occurred between my daughter and I over responsibilities she had agreed to relating to her dog and helping with building a dog kennel. After an exchange of words, my daughter went up to the police station and filed a complaint alleging verbal abuse. Kara is a minor, therefore, the Department of Family Services (DFS) was called. DFS called my finance' and me and informed us of the charges. We asked Kara be returned to the family home. That the discussion was just that and nothing more—no threats, verbal or physical abuse or anything—just an argument. However, the department felt a 48 hour "cooling off" period was in order—to this we agreed.

FACT: After 48 hours and NO investigation, your child(ren) can be placed in a non-foster care home.

After the "cooling off" period, we were told we had to come up and sign papers to put Kara in foster care. We asked why she wasn't being returned to the family home and were told it was a "threatening" environment. The home environment was NEVER investigated, therefore, how could it be determined it was a "threatening" environment?

FACT: A child can request what home they wish to be placed in.

Kara had talked about moving in with her boyfriend, Curtis Goffena, a couple of weeks before this incident took place. Being only 16, we told her we were very much against it. However, she requested to be placed in Betty Goffena's home and was granted her request by DFS. DFS was not at all concerned about the fact Curtis lived in a mobile home on the same property as Betty. Even after we expressed our concerns about the situation and told them of the conversation we had relative to her moving in with Curtis, they still let her remain there. We were assured, that as long as the two of them were at Betty's house, nothing was going on. However, we were also told that she spent "many late nights" with her boyfriend. We were recently told that if DFS had checked the situation out, 80% of Kara's stuff was at Curtis' not Betty's.

FACT: Even though DFS claims to be a mediator between family members, nothing will be done to reunite the family.

We were told that DFS would set up meetings between us and Kara so we could once again be a family. In the three months DFS was involved, there was only one meeting set up. The meeting which should have been between immediate family members, as well as Michelle Sobonya from DFS, also included Curtis. About 10-15 minutes into the meeting, Michelle Sobonya was called away on "an emergency" and my daughter and I were left there to mediate on our own. Even though I requested additional meetings they were not set up.

FACT: If you are working in an out of the way place and are unable to easily get to a telephone, DFS will not make concessions as to office hours.

I was building a cabin in the mountains and was approximately 30-45 minutes one way from a telephone. We tried to get DFS to set up an evening and time I could call in and get periodic updates on the status of being reunited with my daughter, only to be told that the office hours were 8:00 a.m. to 5:00 p.m. and I would have to get to a telephone at that time.

FACT: Even though you request a specific person as a contact person, DFS WILL NOT honor your request.

Because I was working in the mountains and away from a telephone, I asked DFS to keep my finance', Karen Kowalczyk, informed of Kara's progress and any needs she may have. DFS was always requesting things of Karen, i. e. letting Kara come get her personal belongings, stereo, etc. but would not tell her what was going on with the case. It was not until we refused to sign further papers to continue the foster care and started asking questions as the lack of communication on their part, were we told there was a "special form" which needed to be signed in order for DFS to give her this information because she was not a "legal family member."

FACT: Once your child(ren) are placed in foster care, DFS can request as many personal belongings as they feel inclined to get.

DFS called and asked if we would bring all of Kara's personal items up to the office. To this we agreed. After transporting all her clothing, make-up, etc. we were then asked for such items as a daybed, telephone, television, horse, piano, etc. Had I not put my foot down and started saying "NO" I feel they would have almost emptied my entire home.

FACT: If your child(ren) need medical attention while in the care of DFS, you will not be told about it.

Kara had doctors appointments and her wisdom teeth pulled while she was in the care of DFS and even though they had signed an agreement stating I would be informed of any and all medical attention she was to receive I found out about everything "through the grapevine."

FACT: DFS can give your child permission to go out of state without your knowledge or approval.

Kara, with the permission of DFS, was allowed to take a trip to Boise, Idaho. I was not aware of this until a family member mentioned she had gone. I would have approved it anyway as she went to visit her mother, but shouldn't I have been consulted first or at least been told she was going, after all that was the agreement with DFS?

FACT: The County Attorney, Vicki Knudsen and Youth Probation Officer, Donna Marmon, can send your child to a Youth Detention Facility and they do not have to tell you about it.

Kara was sent to the Billings Youth Service Facility on Saturday, October 29, after an altercation with Curtis. We were NEVER called and told about this decision and found out about it after a telephone call from a family member. When we asked Kara why she didn't call us, she indicated they told her she couldn't call. However, she could call her Grandfather or another family member and tell them. Normally a child being sent to a Youth Services Facility has to be charged with some sort of violation. However, to date, we have never been told exactly what that violation was. Curtis Goffena was never reprimanded even though, according to witnesses, he started the whole altercation. Upon the County Attorney, Vicki Knudson, being called, Kara, in front of witnesses, was sworn at and told how inconvenient it was for Mrs. Knudson to come down because her daughter had a hole in her waterbed which needed fixing and she was also going to miss her daughter's ball game. When a person files for a county job and the county is paying their wages, since when did a person have to consider what family problems were going on and whether or not is convenient for them to do their job? Besides, it was not Kara's choice to have Vicki Knudson called, someone else made that decision for her, so why was Vicki taking this out on her? Is there a personality conflict here, or should this person even have been representing the county?

FACT: The County Attorney and Youth Probation Office can "dictate" who your child can see and talk to once they are placed at a Youth Correction Facility.

I was told the only people who could call Kara were her Grandfather and his wife, myself, and her Mother. Even though Kara and Karen got along really well, Karen was denied any and all contact with Kara at the facility even though Kara requested otherwise. I requested a four hour outing with Kara to go shopping and out for dinner as it was Karen's birthday and Kara needed some clothes and personal items. I was told I needed to make arrangements 24 hours in advance, so on Wednesday, November 2, I called Donna Marmon to see if she would make the arrangements. I was told she would consult with Floyd Brower, the guardian ad litem for Kara, and get back to me. I had not heard back from Donna Marmon on Friday and was unable to reach her by phone so a message was left on her answering machine. I then called Floyd Brower. He indicated that Donna Marmon had not contacted him but as far as he was concerned, we COULD go shopping with Kara on Sunday. When Donna finally returned my telephone call, she told me I COULD NOT take my daughter out of the facility. I was not given a reason as to this decision. However, the following Sunday, a "friend" of Kara's mother (not a family member) was allowed to take her out shopping **for four hours.**

FACT: Even though your child(ren) is placed in a Youth Facility and you tell the County Attorney, Probation Officer and Guardian Ad Litem that you would like them back home, your child will not be given that option.

Kara was in the Youth Facility for several days without being told when she would be able to leave. In the meantime, her homework was being brought over to her so she would not get behind on her assignments. When the County Attorney and Probation Officer talked to her, the only options she was given in order to leave was to go live with her mother in Boise, Idaho, or get moved to another correction facility. The option of coming back to the family home, even though there would be 24 hour supervision, was not an option.

Probation Officer Donna Marmon, County Attorney Vicki Knudson and Floyd Brower decided Kara was "A child in need of Supervision." After all this time, six months to be exact, these three "wise" people have come to a conclusion. Isn't it amazing!!! This is exactly what Kara rebelled against from the beginning. Kara had supervision at home and she didn't like it. She wanted more freedom and less supervision. The circle is now complete. Kara has been sent to live out of state with rules and guidelines set by the court. The three "wise" people have reached a conclusion and we, the family, have been put through undo hardship and pain.

Questions remaining unanswered by the "three wise people" are:

—Were these three "wise" people working together? If so, why weren't we able to get the same answers from all three instead of being handed the run around?

—Did telephone calls actually take place between the three "wise" people or is it a case of CYA?

—What was wrong with Kara living in Roundup?

—Did the probation officer or county attorney have a personal conflict with Kara?

—Why weren't the parents allowed to help decide what was best for the child?

—Why didn't the county investigate the living arrangements and work schedules of both parents and make a decision based on facts, not hearsay.

—Did the county actually consider what was best for the minor child or did someone who is in a position with a little authority, let that authority go to their head and appoint themselves as the decision maker?

—Was it in the child's best interest to uproot her from a community she lived in and loved, take her away from friends and a school she looked forward to graduating from in the spring, as well as the security of a supervised home, immediate family and close friends and place her in the home of the mother who had abandoned her only 7 years earlier?

My fiance', Karen, and I would like to thank everyone for their words of concern while we have been dealing with this. We have nothing to gain from writing this letter other than to make people aware of what is going on in our community and with our children and possibly preventing others from having to go through the same. We have lived through a lot of heartache and tense times due to the Department of Family Service, the County Probation Officer, Donna Marmon, the County Attorney, Vicki Knudson, and Attorney, Floyd Brower. We hope that someday they will have to endure the same sort of heartache, stress and humiliation they have put us through. Maybe then they can be a little more compassionate and understanding towards their fellow citizens.

Larry Lekse

OPINION & LETTERS PAGE

To the Taxpayers of Musselshell County:

Do you know what is going on in your community when it involves your children? Here is an incident that happened to me a couple of months ago and I feel it is time these kind of things are brought to people's attention. After all, it is our tax dollars that are paying these people's wages. Don't you think we deserve better treatment than this? I do...

On Saturday, November 12th my fiance's daughter, Kara, called our home and asked to speak with her Dad. Her Dad was helping with the Rotary Auction, so Kara and I visited for quite some time on the phone. You see, Kara was placed in the Youth Services Facility in Billings by Mrs. Donna Marmon, Youth Probation Officer, and Mrs. Vicki Knudson, County Attorney, the end of October. In our conversation, Kara mentioned that she was in need of some money and Mrs. Marmon was coming over to take her to the Girls Basketball Tournament that evening. Kara asked if I would call Mrs. Marmon and arrange to get the money to her. Not knowing whether or not Mrs. Marmon had already left for the game, I called her home to explain our situation and see if she would help. Before I could explain the whole conversation, Mrs. Marmon rudely and belligerently INFORMED me, "You DO NOT have telephone privileges and I will not talk to you." The phone was then slammed down on the receiver. I tried to call her back immediately, in hopes of obtaining her help, and all I was able to get was her answering machine.

I have two children of my own ages 18 and 21. I know their needs haven't always happened between the hours of 8:00 a.m. and 5:00 p.m. Monday thru Friday. I have always been led to believe a probation officer's job was to help a family who's child was in need, whether it was 3:00 p.m. or 3:00 a.m.

After this exchange a lot of questions have crossed my mind:

* Since when does a citizen need to be granted "telephone privileges" to talk a youth probation officer—especially since the child involved is a family member?

*Isn't it the duty of the Youth Probation officer to work with the parents and/or step parents, as well as the child, to help the child get back on the right path in life?

*Why was I treated so rudely? Mrs. Marmon was going to see Kara anyway. Was I asking too much when I needed her to take money to her?

*If Mrs. Marmon treats me in this manner, how is she treating children and young adults in this community?

*What have I ever done to Mrs. Marmon to deserve treatment like this?

*Is the Youth Probation Officer position a 5 day a week 8 to 5 position?

*If a child gets into trouble, must it be between 8 a.m. and 5 p.m. Monday thru Friday? If so, shouldn't all the children/young adults in this county be given a set of rules to follow so they are sure not to need the Youth Probation Officer between 5:01 p.m. and 7:59 a.m. each day and, heaven help them if they get in trouble on the weekend! Guess they will just have to sit it out in jail until Monday morning because the probation officer is only available 8 - 5 Monday thru Friday.

*Because I am engaged to Kara's Father, why couldn't I talk to or go see her while she was in the Youth Services Facility? Why was Kara able to call me, however, I couldn't call her. I never did anything but try to be a "mother" figure to her after her own mother walked out on her when she was 11 years old.

If anyone in the community can answer any of the above questions I would love to talk to them. Obviously, I cannot go to Ms. Marmon even though they do involve her position, because "I do not have telephone privileges." Or, if someone in the community is authorized to give me these privileges so I could speak to Ms. Marmon, I would be greatly indebted to them.

Just for the record, I would not know Mrs. Marmon if I met her face to face on the street. They say a first impression is a lasting impression. If this turns out to be so, she and I could be off to a very bad start. The only things I may be guilty of are:

*falling in love with Kara's Dad, Larry, and accepting a proposal of marriage from him;

*making a house into a home for Larry and his family;

*good home cooked meals and another adult for Kara to come home from school to ask for guidance to everyday problems and situations;

*offering Kara and her brother Jason the same kind of love, affection and respect I have given my own two children; and

*making plans with my future "step-daughter" to take riding lessons from her in exchange for my teaching her how to cook, sew and use a computer.

Karen Kowalczyk

EXHIBIT 9
DATE 2-6-95
SB 206

Letter to the editor:

Please parents, take notice!! Beware of D.F.S.!!! It has been our experience that no matter what the families go through, the children are hurt the worst.

Think of yourself as a small child, not in school yet, his only exposure to the outside world has been through his parents. Some strange woman and police officers (who children are to go to for help) come into your safe and secure life. They take you away without mommy and daddy. Mommy and Daddy are crying and are upset. You are taken to a place you have never been before, left with people you don't know. Everything you know and love are far away. You don't know why you can't be with mommy and daddy. You don't know why you can't go home. If you are lucky you might get to see mommy and daddy for a few minutes. Just to see them leave crying without you!! You wonder if you did something and mommy and daddy don't want you anymore.

When you get back home (if you get back) then you never trust anyone (police officers or not). You are terrified that mommy and daddy will disappear again. It will affect your entire life.

Isn't it about time we think of these children as part of a family.

It has been my opinion on what I have seen and heard, D.F.S. was named wrong. Department of Family Services are no longer for the families, they are for job security. They have no care of the damage they do to children or the family unit. All they care for is how to keep their jobs and how to get more funding from the government.

If you care about children, it is time to speak up and stand up to D.F.S. We need this to stop.

Here is a phone number to call for your opinions, personal experiences and as concerned citizens: 1-800-222-4446. Call now!!!

Parents for Happy and Healthy Children,
Larry Anderson
Lisa Melton

Letter to the editor:

A mother's cry for help!!

I never once in my wildest dreams, ever thought the joy and the miracle of giving birth, becoming a mother, could or would ever come to this, a nightmare.

For five years, we have been fighting D.F.S.—our crime is not being rich.

Last Thursday, January 5th, around 2:30 p.m., D.F.S. came to our door. They took our two youngest children ages 4 years and 18 months. They informed us that our other children; 13, 11, 10, 6, and 5 years had already been picked up and placed. The reason was they had two more calls; it was the last straw for D.F.S.

We have met with D.F.S. and others, trying to get our children home. We were informed that if we had our own home, we would probably (not promised), get our children back. We were told 75 % of our problem was not having a home.

My husband, Bill Anderson, has always worked hard for our family. He has always helped anyone who needed help, if he could, sometimes even when he couldn't.

Some history on my husband: (1) Has worked since 15 years old full time—ranch work, five years in the oil field, tearing up railroad track here in Roundup, three years at Foster ranch and feedlot. He hurt his back which cost him his job at Foster's. He settled and bought his family a home, which was lost due to circumstances out of his control. (2) No doctor has yet found what is wrong with his back—quit smoking, lose weight and learn to live with the pain. (3) Health problems are still there, still untreated and doctors ask if he could work would he—is he really hurt or is he trying to get someone else to pay the bills? (4) His problems have worsened. (5) Bill started a firewood business and became self-employed. He loves his work, he can take time off when he can't work, he would take the family with him to make family time when time was hard to come by. (6) He never took A.F.D. until he had no other choice, without so his family could have.

Now he watched his children today cry, brokenhearted, asking him to take them home.

Our children now are split up in five different homes. One is in a youth home in Billings.

All because we need a five bedroom home. We need a (low cost) house to rent or buy with low cost. We need to be able to do this in less than three months. We are not financially able to do this, especially this quick.

We have eight children in all. Between probation and D.F.S., Helena has had our 12 year old for three years.

Please if anyone can help my husband to accomplish this let us know. Why does money mean more than love?? FOR OUR CHILDREN, PLEASE!!!

Kim Anderson
119 Quail Drive
Roundup, MT 59072
Message phone: 323-3989

1/25/95

Dear Editor:

I am writing in regard to Roundup's D.F.S. system

The D.F.S. in Roundup has put me, my brothers and sisters in foster care and is the Youth Services Center for reasons unknown to us at this point. Now they are thinking about putting me and one of my brothers in Roy for foster care. I think that it is all a crock and that they should leave our family alone and pick on someone who is in danger or needs help.

The head of D.F.S. has requested that I have a chemical dependency test done on me. Not that I mind, but I'm not into drugs and she knows it. She also had put on my contract that I was very poor. This proves my belief that she is picking on us because we have little money.

I think that we should be home with our family and hope that anyone willing to help will write to us at 119 Quail Drive, Roundup, MT 59072. My parents can be reached at phone number 323-3989.

The others are younger than me and one's a baby.

William Anderson
13 year old kid taken from family

several medleys of songs done by Elvis, the Beatles, and others of that era.

There is a trumpeter and a trombonist who are looking for some more brass instrument players to do a little Tijuana Brass music. Calypso music

Letter to Editor,

As I read the letter written by Mr. Lekse in the *Roundup Record* last week, I was frustrated, saddened, and shocked. How any parent could write all of this information about their own child in a public forum is beyond me. And after all the time we spent on this case, and how long I have known Mr. Lekse, I was also very disappointed.

Although I am no longer County Attorney, I do still practice law in Roundup and plan to for a long time, and therefore felt the personal attacks by Mr. Lekse had to be addressed. There is no way to respond to all of the allegations he makes under the guise of "FACT" because he and others like him conveniently attack the people he knows cannot respond or defend themselves with any detail because of the confidentiality laws. These laws were passed to protect families, and especially the Youth, but are being used by angry people so only their hearsay and personal views of the facts can be printed in places like this editorial. I can, however, address the specific details Mr. Lekse has already decided to make public through his letter.

Several "facts" were left out of Mr. Lekse's little story. One is that he was represented by an attorney, Mr. Spaulding, during this case from at least the time documents were filed in Court. Another is that the Youth was represented by an attorney, Floyd A. Brower. The third is that Mr. Lekse signed an agreement in order to avoid going to Court and consented in writing to the placement of his daughter with the Goffenas.

Mr. Lekse's detailed description of what happened on October 29, 1994, was very interesting, since he was no where to be found when problems started that day and therefore has NO IDEA what happened. The conversation that day between his daughter and I were in reference to a meeting just the day before about everyday common courtesy, keeping your word, thinking of others, and selfish behavior that could result in removal from her current placement. But I guess the story sounds better to him as written and he didn't find it necessary to talk to any officials to get more accurate information. Attempts were made to contact everyone when the placement was changed, but only the mother of the Youth could be reached. Mr. Lekse was not able to be reached, but we did contact has attorney as soon as we were able.

As far as the "great relationship" between the Youth and her father's "fiance," talk to any junior or senior at the Roundup High School and you will hear all about that relationship. It was discussed by the Youth often and clearly, and may have nothing or everything to do with the state being involved in the lives of this family.

For clarification, I will try to explain some of the mystery that seems to surround the Department of Family Services (DFS) and Youth Probation. These departments only get involved in cases where a problem already exists, and has been reported by someone. The main goal is always to reunite the family, but all members of the family must want to be reunited or it cannot be done. This is sometimes difficult when older children are involved.

Youth Services is located in Billings and is a placement facility for people who are under 18 years of age. There are two "sides" to the facility. One is referred to as "lock-up" and the other is the "open side." Those who have committed felony offenses, are determined to be dangerous, or are a flight risk are placed in lock-up, also known as detention. The open side is used for placement of those who cannot be placed elsewhere for a temporary period of time, but are not "locked up" and can walk out the unlocked doors at any time. There are consequences if they do walk, but they are not locked up. The Youth in this case was on the "open side" and the outing Mr. Lekse complains was denied to him was due to reasons I am not free to discuss because of confidentiality restrictions.

I want to thank everyone who supported me and asked me to run for County Attorney again. I tried to explain as best I could why the job was just not worth it. Everyone who read the slanted, inaccurate, and vicious letter written by Mr. Lekse in a father's CYA will hopefully understand now that it was numerous cases like this that influenced me to not run again, and why it is so very hard to get people to stay in the public services jobs he attacks. Wouldn't life be better if everyone took responsibility for their own actions instead of just blaming everyone else? And we wonder where our children learn it!?!

/s/ Vicki Knudsen

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 10
DATE 2-6-95
BILL NO. SB 206

NAME KENNETH E. HAUGEN

ADDRESS 1831 STODDARD MSLA, MT. 59802

HOME PHONE 543-6193 WORK PHONE 728-5460

REPRESENTING

APPEARING ON WHICH PROPOSAL? S.B. 206

DO YOU: SUPPORT X OPPOSE _____ AMEND _____

COMMENTS:

WITNESS STATEMENT

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

I AM HERE TODAY TO STAND IN SUPPORT OF SB 206
A BILL TO CURB THE ABOVE THE CONSTITUTION. POWERS
OF DFS. AN AGENCY OUT OF CONTROL TO QUOTE SEN
BURNETT. I HAVE BEEN HERE WITH A GRASS ROOTS GROUP
TIMES & TALKED ABOUT DFS TO RACICOT & THE REST
YOU ONLY TO HAVE OUR COMMENTS FALL ON DEAF EARS.
WHY IS DFS SUCH A SACRED COW? ONE SENATOR TELL
ME YOU HATE TO TINKER WITH DFS BECAUSE OF THE
MONEY INVOLVED. TRY TELLING THAT TO THE FAMILIES
WHOSE LIVES HAVE BEEN DESTROYED BY DFS. ANOTHER
ENATOR TELLS ME DFS HAS NO ONE TO ANSWER TO BU
ASN'T ENOUGH MONEY TO DO THEIR JOB. DFS CLAIMS TH
ONLY SPENT 15 MIL. LAST YEAR. WE KNOW BETTER THAN THAT.
LAST AUDIT DISCLOSED 24.3 MIL LOST BY DFS. WHY HASN'T
ONE RAISED A STINK ABOUT THIS? MR GAMBLE LOST HIS JOB
OVER THE RED LOBSTER INCIDENT, LEGISLATORS HAVE CALLED FO
THE FIRING OF THE HEAD OF THE WATER QUALITY BUREAU F
NOT DOING HIS JOB. NOW THERE'S AN OUTRAGE OVER THE
MEN RIVER ASSAULT, WILL HEADS ROLL? I DON'T SEE
HUDSON'S HEAD ROLLING OVER A 13YR OLD BOY BEING MOL
ESTED BY HIS UNCLE IN WHOSE CARE DFS HAD PUT HIM. O
WOMEN DYING IN HER OWN FILTH IN LEWISTOWN, OR A
BEING RAPED BY THE COUPLE DFS HAD DECIDED WERE GO
ENOUGH TO KEEP HER, I FIRMLY BELIEVE THE VOLUNTE
STAND OFF COULD HAVE BEEN AVOIDED IF DFS HAD NOT TAKEN
CHILDREN IN THE MANNER IN WHICH THEY DID IT. THE
DONNA BUTLER TRAGEDY WOULD NOT HAVE HAPPENED IF S
HAD KEPT THE CHILDREN THEY HAD TAKEN FROM THE
HOME TWICE BEFORE. AS THEY WERE SUPPOSED TO DO.
ETHICS BILLS ARE BEING INTRODUCED NOW. I DON'T SEE
ANYTHING ETHICAL ABOUT IGNORING OUR PLEAS TO STOP BE
FROM DESTROYING FAMILIES. IT IS AN OUTRAGE NO ONE
WILL LISTEN TO US. I CALL FOR A GRAND JURY INVES
GATION OF DFS.

THANK YOU,

KENNETH E. HAUGEN

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 11
DATE 2-6-95
BILL NO. SB 206

NAME Michael V Billedeaux, Sr

ADDRESS 1831 Stoddard, Missoula, Mt. 59802

HOME PHONE 543-6193 WORK PHONE _____

REPRESENTING Family For Families & Self

APPEARING ON WHICH PROPOSAL? S.B. 206

DO YOU: SUPPORT / OPPOSE _____ AMEND _____

COMMENTS:

I am a member of the Blackfeet Nation, A VietNam Veteran and a victim of DFS. Since my Dealings with DFS I have Lost My Home, my Family, and My Children All Without a trial or proof of Allegations In my case the Allegations started with my 15 yr old Son, Went to My Wife, and Settled on My Shoulders. During the Course of My Wifes Children Being taken and Allegations Being Brought against me One of The Accusers was tried and Convicted of Sexual Intercourse w/out Consent of a 13 yr old Girl. To This Date.

WITNESS STATEMENT (over)

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

WITNESS.F11

I have no visitation though the allegations against me were never proven or sent to trial. None of my children or my step children have ever said any things bad against me. And yet the accuree is now a proven sex offender has visitation of not only his children, but mine as well,

This has gone on for over 3yrs. and I am still chastized for something the DFS deems to be true even tho all the children have told the DFS that I had never physically or mentally abused them.

Two yrs ago I separated from my wife, so she could get her children back. And that was made clear that that was the only way she would get them back.

Our family was completely destroyed by DFS and I know it can never be put back together. And I support S.B. 206 for the fact that I don't want any family to have to go through and lose what I have.

ann

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 12
DATE 2-6-95
BILL NO. SB206

DEPARTMENT OF FAMILY SERVICES

MARC RACICOT, GOVERNOR

(406) 444-5900
FAX (406) 444-5956

STATE OF MONTANA

HANK HUDSON, DIRECTOR

PO BOX 8005
HELENA, MONTANA 59604-8005

January 25, 1995

Department of Family Services Testimony
in Opposition to SB 206

The Department of Family Services respectfully opposes SB 206. If passed this bill would make it impossible for the state to adequately protect children in danger of abuse of neglect by the same individuals who are supposed to love and protect them.

Most problematic to the agency is the requirement that criminal charges be filed against a perpetrating caregiver if the agency is going to remain involved with the family through temporary investigative authority or removal of the child from an abusive home. This contradicts the agency's mission of protecting children through supporting family and community strengths. It would be detrimental to the families DFS works with to unnecessarily force a parent into the criminal law arena when it would be possible to provide support to the family, enabling a previously abused or neglected child to return home. The criminal justice system is not based upon family support, reunification or treatment. It is based on punishment. Families involved with DFS typically need help, not punishment. It would not serve the majority of these families to remove one parent in punishment when intervention could salvage the family unit.

Another area of great concern is the requirement that reporters of suspected abuse or neglect of a child must report their suspicions under oath. Frequently concerned citizens make valid reports of serious child abuse, but are reluctant to give their names for fear of retribution or revenge. The law currently protects the identity of these reporters of child abuse, but also requires that DFS have probable cause before it can obtain a court order to continue its involvement with a family. A requirement that exposes the identity of all reporters of suspected abuse will discourage valid reports of abuse and greatly increase the risk to children in Montana.

A third area of concern regarding this bill is the requirement that DFS videotape all interviews with children and be accompanied by psychologist or physician representing the family. DFS has no budget to provide each office with an adequate number of video cameras to tape each investigation conducted. Further, in emergency situations, there is no time to arrange for the family's choice of doctor or psychologist to be present. Physicians and psychologists generally have very busy schedules

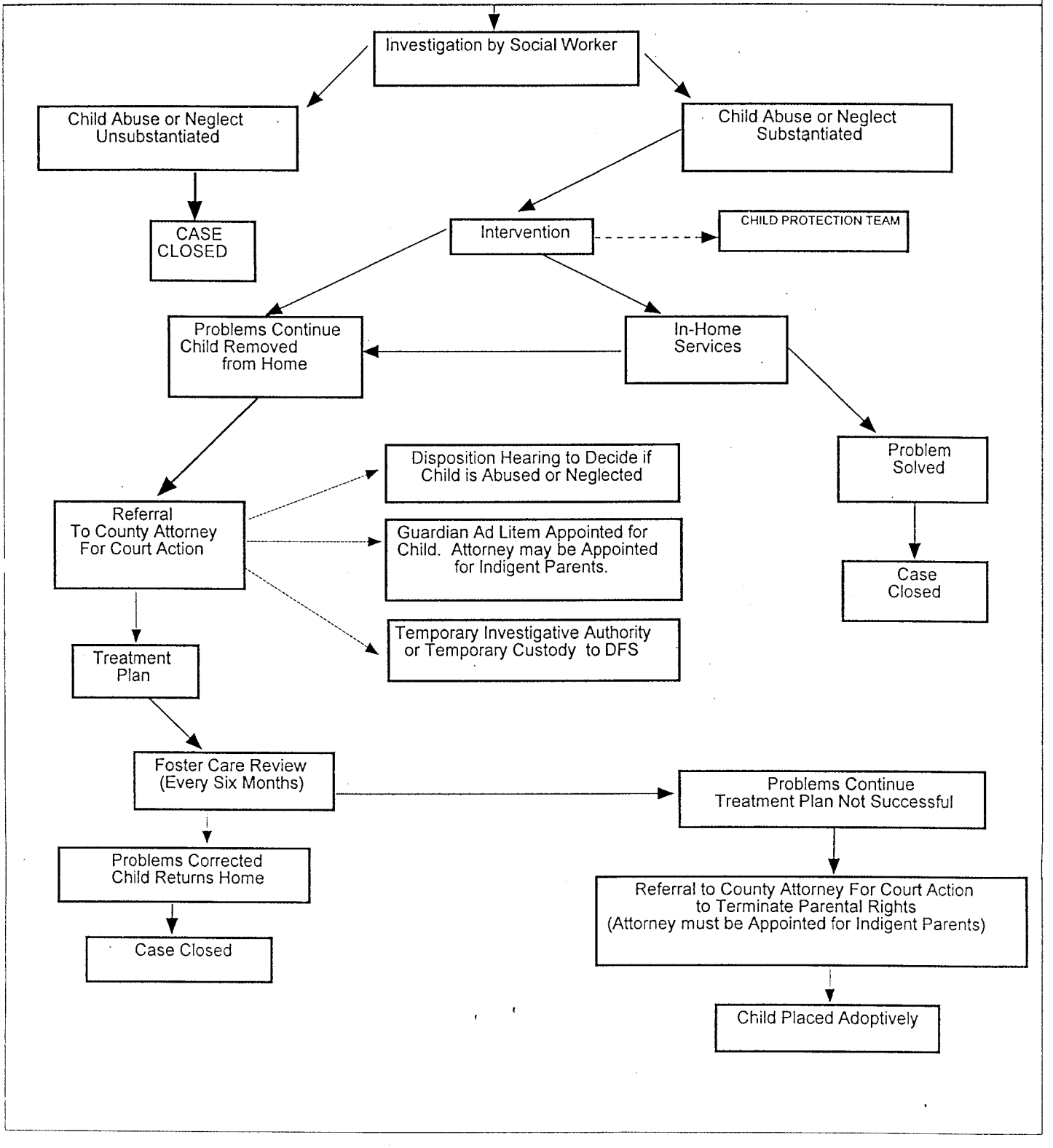
and could not get away on short notice to attend an interview of a child. Further, neither families nor the agency has the funds to pay for such a service. This requirement could not realistically be complied with and, if mandated, children could be left in risky or abusive situations.

Another major problem with the bill is that families of all children in temporary foster care have access and contact with the family and foster family. There are situations when this would be very damaging and dangerous to the child and foster family. The department makes every effort to keep children who are placed in temporary foster care in contact with their parents when feasible. Contact should not be mandated, but encouraged when appropriate.

There is a flow chart attached to this testimony to visually demonstrate the process of how a child abuse referral received by the Department of Family Services is handled through agency procedures and the civil legal system.

EXHIBIT 12
DATE 2-6-95
SB 206

REFERRAL OF CHILD ABUSE OR NEGLECT TO DFS



READERS' ALLEY

Molestation is rape

Child molestation is rape.

The definition of rape in the dictionary is: "A sexual act committed by force, usually with violence." The definition of molestation: "To disturb, as to cause injury; to make indecent sexual advances to."

When a child is "molested," this child is raped. The torment, pain, violence, fear and shame a child carries after being "molested" remains all of his or her life. It affects every aspect of a child's life into teenage, adulthood and old age. How he interacts with other children, siblings, parents and other relatives, dating partners, classmates of either sex, marriage partners, children and grandchildren will be based on the way his particular case is handled — once he has the courage to expose his "molester."

If a victim sees his offender prosecuted and punished, put away where he or she cannot commit this despicable crime again, the victim has a chance to become a whole person again, to heal. When the offender is slapped on the wrist and set free, how can the victim trust the judicial system? How can he trust anyone? How can he heal?

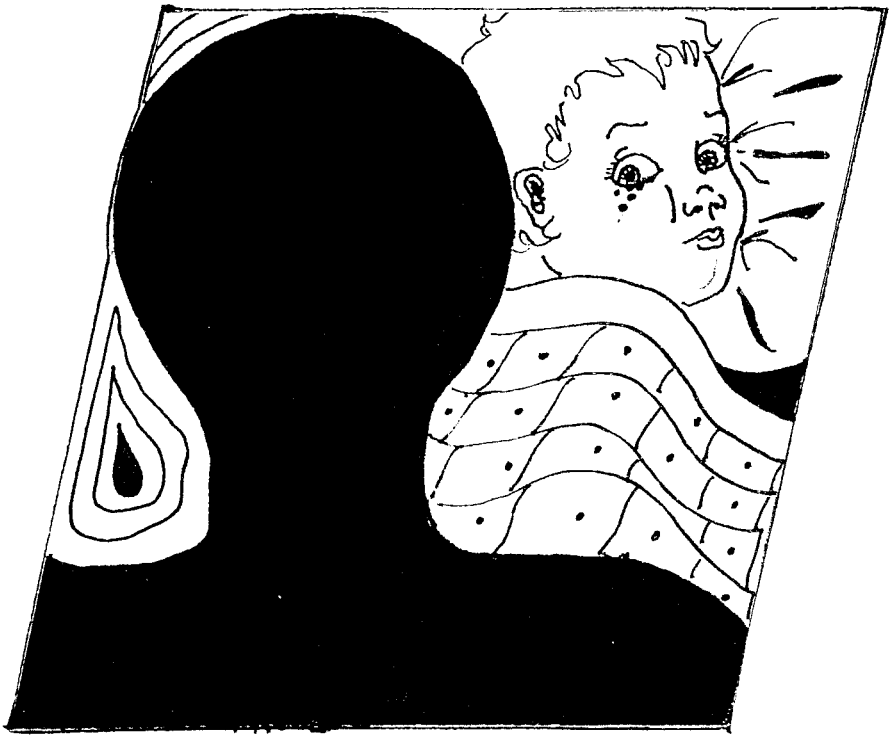
It is time to take the shame from the victims. Help them become whole again and place the blame on the offenders where it belongs and lock them away where they belong; where they will never have access to innocent children again.

Let's take away the rights of the offenders instead of the victims.

Sharon Bakerson, a member of MACEM
(Majority Against Child Molestation)
2912 Village Road

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 14
DATE 2-6-95
BILL NO. SB 206

The real MONSTERS



aren't under the bed

MACeM

MAJORITY AGAINST CHILD MOLESTATION

MESSAGE PHONE: 227-5173

CLUES TO POSSIBLE VICTIMIZATION

Sometimes children don't tell us they are in crisis, they show us. A change in a child's behavior could be due to the stress of being abused. These changes in behavior can alert adults to their problem.

Abuse and neglect can also sometimes leave physical marks on a child's body which adults can observe. Knowing both the physical and behavioral clues to abuse can help adults intervene on behalf of children.

Keep in mind that some clues can be normal behavior for a given child at a given time. Therefore it is important to be aware of new behaviors, extreme behaviors, or combinations of the following characteristics.

Abused children can not be identified by racial, ethnic, religious or socioeconomic class. Abuse crosses these lines.

Abused Children Are Often	• fearful of interpersonal relationships or overly compliant • withdrawn or aggressive, hyperactive • constantly irritable or listless, detached • affectionless or overly affectionate (misconstrued as seduction)
Physical Symptoms	• bruises, burns, scars, welts, broken bones, continuing or unexplainable injuries • urinary infections (particularly in young children) • sexually transmitted diseases • chronic ailments, stomachaches, vomiting, eating disorders, vaginal or anal soreness, bleeding, or itching
Activity and Habit Clues	• nightmares • inappropriate masturbation • a child afraid to go home or to some other location, running away • delinquency • fear of being with a particular person • lying • prostitution
Age Inappropriate Behavior	• an onset of thumb sucking • sexually active or aware • promiscuity • bed wetting • alcohol/substance abuse • older child assaulting younger children • child takes on adult responsibilities
Educational Concerns	• extreme curiosity, imagination • academic failure • sleeping in class • inability to concentrate
Emotional Indicators	• depression • phobias, fear of darkness, public restrooms, etc. • chronic ailments • self-inflicted injuries • injuring/killing animals • excessively fearful • lack of spontaneity, creativity

EXHIBIT 14
DATE 2-6-95
SB 206

February 9, 1994

My name is Sharon Brown Bakerson. L.P.N.

I am writing this statement because of my concern regarding my twenty-eight month old grandaughter, Autumn S. Haskett and her relationship with her father, Wm. (Bill) Haskett.

Autumn was eight months old when my daughter, Erinne M. Haskett left her husband and she and Autumn moved in with me. She was introverted and would respond only to her mother. If her mother left the room, the baby would cry hysterically, until her mother picked her up and held her.

The total dependency on her mother was so strong, I would sit in the bathroom holding Autumn while her mother bathed. It took approximately 3-4 months before Autumn trusted me enough to be alone with me while her mother went to doctor appointments, etc.

Judge McCarter gave sole custody of the child to her mother. Mr. Haskett was granted four hours a week visiting rights with supervision.

Because there is a restraining order on Haskett and he is not allowed near Erinne or her home, we set up a schedule for Hasketts' visits.

I would transport Autumn to Hasketts' mothers' home and his step-sister, Dawn Wilson, would be the visit supervisor. His mother, Judy Wilson, would call me to set up the visits every week-Thursdays from 4 p.m. until 8 p.m. was agreeable to all parties. This was not a regular schedule as Haskett didn't want her every week, only when he "felt" like it. Sometimes he would want her only for an hour at a time.

Before his surgery, he wanted her pretty regularly and we complied with his wishes.

One day in November when I changed Autumn's diaper, I observed a slit on the baby's genital area between her vagina and anus. This was the day after her paternal visit.

Autumn had constant urinary tract infections and was under a doctor's care. I baby sit Autumn regularly and know her well.

On the days Autumn visited Haskett, there are highly noticeable changes in her personality and general humor. On the way to the visits, she became extremely quiet. She would not sing with me or even answer me on simple questions which she knew. She would sit with her head down, not looking out the windows, a complete 90 degree turn in personality. When she came out to the car after visits, she walked with her head down and would'nt show interest in anything until we drove away and the complete change in her demeanor was startling, she would sing and point out the windows.

For three to four days after a visit, she was hostile and angry and acting out what is apparently frustrations.

She would kick and slap and hit my dog and cat, slam toys on the floor , scream and be physically abusive to her stuffed animals. Only her mother could hold her and handle her. On Christmas Eve, I was buckling her in preparation to an hour visit with her father. She said, not to me, but as a statement, "Be nice to Daddy and you'll get presents". When I tried to question her, for example, "Are you going to see Santa at Daddys?" She put her head down and would not respond.

Christmas was spent at the home of Autumn's aunt Donna Gregg. This is family tradition. Family get togethers are frequent. On Christmas she clung to her mother, cried, screamed at her cousings who she usually plays with and was extremely hostile all day. The whole family-14 persons- all commented on her behavior and asked if she had seen Haskett lately as it was totally out of her character for Autumn and she only acted out like that after a paternal visit.

I babysit Autumn when her mother works and I will now list my observances after these visits.

1. One day I was playing with her and tickling her ribs, knees and feet and said "Do you want to tickle my pee?" I said that knees were more fun and passed her remark over.

2. She used a toy hammer handle and pressed it, (jabbed) into the genital area of her stuffed animal saying, "it's okay if I hurt you there because I love you."

3. After visits, she won't let me wipe after going potty, saying "Don't hurt my pee Gramma, it's got an owie." Her genital area was red and inflamed.

4. It usually takes 3 days after a visit for Autumn to calm down and become an outgoing happy little girl again.

Autumn has not seen Haskett (his choice) since Christmas Eve and there is no hostility or anger apparent except a little temper tantrum once in a while which is normal for her age. If she is asked anything about Haskett she clams up and refuses to answer then seems withdrawn into herself.

It is my opinion that there is a very unhealthy relationship between Haskett and Autumn. After one hour with him the changes in the character and behavior of this child are questionable and apparent to everyone who knows her.

Respectfully submitted,

Sharon Brown Bakerson L.P.N.
2912 Village Road
Helena, Montana 59601
(406) 227-7043

EXHIBIT 14
DATE 2-6-95
SB 206

1/11/94

TO WHOM IT MAY CONCERN,

My name is Nina Marie Pullman. I am the mother of 3 children, Levi, Clint and Tiana Pullman. The purpose of this letter is to inform the proper authorities about a person named William Joseph Haskett aka Bill. In my opinion, Bill should definitely not have any kind of visitation with his 2 year old daughter, Autumn. I am basing this opinion on personal experience. Bill sexually molested my daughter, Tiana, from the time she was 9 - 11. I know this actually happened because my daughter, Tiana, kept a diary during part of this time span.

I read what she wrote and believed what she told me about everything that Bill did to her. Again, I stress the fact that Bill should definitely not have any kind of contact with his own natural daughter, Autumn. He is a very sick person. My family was subjected to numerous times of abuse in all forms, including mental, physical, emotional, verbal and sexual to my daughter, Tiana.

At this point in time, Tiana is ready to press charges against Bill for sexually molesting her. I feel that she is strong enough now to successfully prosecute him and get a conviction. Hopefully, with the help of everyone involved in this situation, he will finally get what he deserves.

It is my understanding that he is in contempt of court right now for not attending alcohol treatment. I would think that would be enough to cancel his visitations with his daughter, but apparently it isn't. I would truly love to see the right thing done for the sake of a 2 year old child that needs to be protected from her own father.

It is very had to put into words with enough emphasis that will convince the proper authorities to take whatever action is needed to prevent Bill from ever seeing his daughter again for any reason. He is a very sick, deranged, vile, uncontrollable, evil maniac. I realize those are very strong words, but they describe him exactly as he is. Lies, deceptions, cons, guilt trips, mood swings and betrayal are a few of his better qualities. Please excuse me for sounding so rude, but that is the only way I can be when it comes to Bill. He stole my daughters innocence and put the fear of man in her. No one should have to live in fear of anyone else. What kind of life is that? Not a very happy one.

Bill told my daughter, Tiana, that he would kill me if she told me or anyone else about the things he was doing to her. She was scared to death. The one person that could help her, me, couldn't because she would be dead if Tiana told her. What a terrible thing for a child to have to live with for 2 whole years!

Bill was responsible for that terrible thing, and I certainly do not want him to hurt his own daughter, Autumn. Not every child is fortunate to have the best of all material things, but no matter what station in life a child has, they are all entitled to their innocence and to be protected from anyone who dies them any kind of harm.

As I have already stated, Bill is capable of and has caused harm to myself and my family in many different ways and more than once. If this person, Bill, is allowed to see his daughter, then there is definitely something wrong with our laws concerning the protection of our children from perverts.

I know that without some long range psycho-therapy and maybe not even then, that Bill will not get any better. He will only get worse. I am very sure that pushed enough, he would actually kill someone. I am afraid of him and so is my daughter. But not to the point of not fighting back, the right way in a court of law. I sure hope justice shows up that day.

I know what Bill is capable of and none of it is good. I can see no good reason why he should ever see his daughter, Autumn, again. All he will do is hurt her more than he already has. Children aren't here for anyone who chooses to hurt them. They are here to be loved and cared for by their families. by sexually molesting or "grooming" his daughter, Autumn, Bill is not showing any kind of love or care for his daughter, Autumn. Again, I stress that in my opinion, bill should not ever have any kind of contact with his daughter, Autumn, ever, ever again.

I know that I have not gone into any great detail about any particular events concerning Bill. Most of my memories of him are very painful and hard to talk or write about. I am just about mentally and emotionally exhausted from writing this. I am more than willing, however, to write anything else that may be needed to keep Bill away from his daughter Autumn. If you need this statement notarized or if anyone has any questions or wants me to elaborate on anything I've written here, I would be happy to do so.

I realize that Bill needs a lot of help that his family and friends can't give him, but the one that needs the most help right now, is Autumn.

I truly hope that what I have written on these pages will help accomplish what is in the best interest for all concerned.

Sincerely,

Nina M. Pullman

EXHIBIT 14
DATE 2-6-95
SB206

In Feb. '94 my divorce was final. We took joint custody on our two girls 3 & 7 years old. I wanted joint custody because I have always believed children should have equal time with both parents. He wanted joint custody only because he didn't want to pay any child support to me. Never the less, we agreed on joint custody; 3 days with one 4 days with the other.

From the start there were problems. Both girls cried every time that it was time to go to his house. The oldest was constantly angry and confused on where "home" was. The 3 year old would hide when it was time to go she cried and ran from me. Basically didn't want to go. But there was nothing I could do, they had to go. About 3 weeks after these visitations started, I noticed my 3 yr olds vaginal & anal area was bloody red, bleeding very irritated when she came home from his house. I thought this was because she was not wiping after going to the bathroom. I put medicine on her and never had a second thought about it.

April 24th, my daughter was in the bathroom going to the bathroom. She suddenly screamed. I ran back to the bathroom where she told me her pee-pee hurt and she couldn't go to the bathroom all the way. I told her to bend over and let me see, she bent over and not to my surprise, she was fire rent and bleeding.

A friend of mine was sitting in my living room, I yell at her to come look at Jerika. She saw exactly what I saw. Rhetta (my friend) asked her "Does anyone ever touch you down there?" Jerika got the most terrified angry look on her face and said, "no, nobody but my daddy Randy."

I left it at that. At the same period of time, the night before I caught my older daughter Shandi laying completely naked on top of her friend that was at our house. (They were separated and told I would talk to them in the morning.)

When Rhetta (the mother of my daughters friend) came the next morning, we sat both Shandi (my 7 yr old) and her child (7 yrs old) down and told them that we wanted to talk about this with them and they were not in trouble.

I asked Shandi if she knew what she was doing, what it meant. She stated, well yes, Daddy, Randy, does that to me all the time. She was then asked when does this happen and where.

She said it happens when we go to Daddy Randy's house to stay with him. She was also asked where Janice (Randy's new wife) was when this was happening. She stated that most of the time she was gone getting her back fixed at the hospital but sometime she was in the living room while they were in the bedroom. She said she saw him a couple of times because she got mad at him.

I immediately called Terry Taylor (the girls counselor) and asked her what I should do. She stated call the doctors office immediately. so I called Dr. Keefe at Childrens Clinic. She told me to bring Jerika in. I did immediately!

She didn't have time to do a complete sexual abuse exam but she took a little time to check her briefly to see if she could see anything out of the ordinary. She saw some very unusual things and told me she wanted to see both girls on Monday morning first thing. I returned Monday morning first thing.

she first started to take to Jerika, when Jerika started talking, Shandi jumped up and looked very scared and started to cry. The doctor immediately stopped talking to Jerika and started talking to Shandi and asked Shandi what she was upset and crying about. Shandi stated, Randy was going to get mad and smack her if Jerika told. she was reassured that she was safe now and she needed to tell what was happening to them.

Jerika continued with her story, then Shandi was fully interviewed. After the interviews, she did the sexual exam on Jerika where she discovered she has been penetrated both vaginally and anally. Jerika is 3 years old.

She then did the sexual exam on shandi, while doing the exam, she was talking to shandi about the places that were touched. She found that Shandi was not penetrated but there was fondling, rubbing, simulated sex with her. The doctor immediately called the Department of Family Services.

I took the girls immediately to the counselors office. She then interviewed the girls where I heard in more detail things that had happened at Randys house. I had never in my life felt the way I did that day. It felt as if my heart was being ripped out of my chest. A mothers worst nightmare.

That day, CPS informed the county attorney's office, Carolyn Clements, and made an official report. They immediately took all visitation away. During the period of the next 3-4 weeks, Carolyn Clements never contacted me once. Never returned my phone calls. One of her comments to Jeff Aldridge at CPS was she had the idea that this was just a ploy for a custody battle.

A week after that, I received a phone call from Jeff Aldridge stating he had received a call from Carolyn Clements and Randy had contacted her and requested a visit and she ok'd it.

I immediately called Hank Hudson State Directors Office at CPS and informed him of what was happening. He immediately called a supervisor at CPS and stopped the visit. The girls were video taped by DFS (CPS) both separately and different days also.

EXHIBIT 14
DATE 2-6-95
SB 206

I made a call to Mike McGrath and did not tell him who I was, but asked him. I explained the case. If this was his case would he order a visit or OK a visit, even with the psychologist recommendations, CPS recommendations very much against this. He said "absolutely not. Who would do something like this?" I then told him his deputy county attorney did that. I told him I had called the state directors office and they absolutely would not OK this.

I then also told him if something was not done, I was going to the media public about this because this was not right. Two days after that phone call, I received information that Mike McGrath had taken over my childrens case.

It is now January 1995 and this man that totally violated his own little girls has never even been charged. I have called requesting responses from Mike McGrath and I never get any answers, they keep telling me they haven't heard anything and nothing was happening with this yet. It takes time. We have all the information we could possibly need; doctors interviews, doctors sexual exams, cps interviews, CPS video tapes, psychologist interviews.

The County Attorney, Mike McGrath himself told me there was no doubt in his mind that Randy is guilty. also DFS informed me the girls are very reliable, they believe them. The counselor supports the girls story totally and has made written reports to the County Attorneys office stating they are very believable.

But yet he is <u>still not charged.</u> He's free on the street to do this to another child. He has complete access to his common law wifes grandchildren because they are at his house daily, also his sisters children are left there daily.

My girls were appointed an attorney, Randi Hood, in May or June. My girls don't even know who this lady is. she has never even met my girls. How can she represent my girls if she does not even know them? I don't understand this so I finally called a meeting with her on December 21st, to find out what was going on. The meeting took place and she also could not understand why he (Randy) has not been charged.

These people at the county attorneys office are supposed to be here for my children, yet they suggest to his attorney an expert witness for them to call. Whos side are these people on?

Randy Renn the criminal that goes around violating little girls, his own little girls, has more rights than these two little girls do ages 3 & 7.

How can I the mother tell these precious little girls of mine that they are safe now and they won't have to worry about going back to him and have them be hurt for telling what happened to them. If I can't even get the court system (Mike McGrath) to take action against him for violating his own little girls when all the proof they need is there.

Connie Griffin
5940 Aaron Dr.
Helena, MT
458-4754

EXHIBIT 14
DATE 2-6-95
SB 206

February 8, 1994

This is my statement regarding my suspicions about my daughter's times spent with her father, Bill Haskett.

In the past, Bill had never shown any interest in Autumn (my daughter). When I filed for divorce, I made every effort for Autumn to spend time with Bill. I wanted her to know her Dad and his parents. He was given supervised custody every Thursday from 4:30 to 8:00 p.m., at our divorce hearing, which he did not bother to attend.

The supervision was ordered because of Bill's alcohol abuse and temper. His step-sister, Dawn, provided the supervision at his mother's house, where he and Dawn both lived.

Dawn has been ill for some time now and at times when she got home from work, she was extremely tired. There were times when she had to lie down. Bill did have some time alone with Autumn although I am not sure how much.

Autumn's behavior around her father was strange. He did not see her every week-only when he felt like it. I know for a fact several times he did not take her because he was hung-over.

When Autumn was with Bill, she would have nothing to do with anyone else there. Dawn has babysat Autumn for me on several occasions and as long as Bill wasn't around, Autumn played with Dawn and talked to her. Dawn told me several times of Autumn's behavior when he was there. Autumn's behavior was different at home, also, for 2-3 days after a visit with him. Immediately after she came home, she was angry. For the next couple of days she was belligerent, angry-out of control. She was not my Autumn-totally different. Then in August and September Bill saw her frequently. He was going into heart surgery and wanted to spend time with her. At that time I let him have her at his convenience. Sometimes he only wanted her for an hour because she was "too much for him". After his surgery, he didn't see her for about a month. The he started seeing her pretty steady again until November, 1993. At that time, he was ordered into treatment in Butte by Judge Jewell. He went overnight and walked out of treatment. Since then he has been living in Butte to avoid contempt of court charges.

In October 1993 I started working 3 days a week at the Bullseye Casino. My Mom babysat for me at these times. I got home from work one day and Mom told me Autumn had told her to "tickle my pee". I didn't worry too much about it at that time. Autumn had a bladder infection around mid-September. It took me awhile to catch on to the symptoms. I took her to the doctor on September 30 and she was diagnosed with an urinary tract infection. She had one again in October and then in November 1993. Dr. Keefe ordered some tests on her in November. These tests came back normal. During this time Autumn had told me to "tickle my pee" also.

Once she climbed up into the chair with me, put my hand between her legs and said the same thing. She was rubbing her genital area on everything also. One day while playing with her stuffed animals she was talking to them and popped off with "I'm sorry this hurts, but I love you". At this time Autumn was potty-trained, except at night she wore a diaper. Several times when I took her diaper off in the morning, there was a tan colored spot about 1/4 inch long in the area of the diaper that touched the vaginal area. I also remember one time on a Friday after Autumn had seen Bill, she had a bowel movement and when I wiped her bottom she said "ow, you hurt me". She never said that before or since. I know it was the day after one of their visits because I remember thinking "she saw Bill yesterday" and some warning bells went off in my head but I just couldn't believe it. I put it in the back of my mind. When Dr. Keefe diagnosed her third urinary tract infection she examined Autumn's bottom because there was some irritation there. She found a small split in the skin at the base of the vagina (epesiotomy area). My first thought was Bill. But the doctor said it was fresh and Autumn hadn't seen Bill for 2 weeks. Dr. Keefe said it could have been caused by a fall. I put it in the back of my mind. Then Autumn didn't see Bill again until Christmas Eve. During that time, she got back to her usual self. She would play alone in her room again and didn't have to be with me all the time.

When Bill and I were together Autumn was tiny. I left him shen she was 8 months old. While we were together, Bill drank a lot. He would stay out until 2 or 3 a.m., then come home mad and drunk and slam things around, all the time yelling at me. This, of course, would wake her up-she was very nervous. When I left him, I stayed with my Mom for awhile. I couldn't get out of Autumn's sight without her getting hysterical. It took about 3-4 months before she trusted Mom enough for me to even leave the room.

Well, after Autumn's visits with BIll in 1993, she got that way again. For those 2-3 days after a visit, she would cling to me. We live in a trailer and I couldn't even walk down the hall without her chasing me crying "Mommy's finger". She had to hold onto me.

I should have put this all together but I didn't until Christmas Day. Autumn saw Bill Christmas Eve for 2 hours. Christmas Day she hung on me all day. I could hardly put her down and she would be screaming at me, "carry me". She was behaving terrible all day and the next 2 were almost the same. My whole family commented on it.

The Monday night after Christmas Autumn was up all night. I took her to Dr. Reynolds Tuesday, he found ear infections. I talked to him about my concerns and he referred me to Dr. Gunderson he said she specialized in the area of molestation. I talked to Dr. Gunderson on the telephone that afternoon and told her everything. She said Autumn's comments were not normal for her age. She had to have heard them somewhere. She told me to contact Family Services and we set up an appointment for her to examine Autumn.

October 6, 1994

I am writing this letter and enclosing a newspaper article from the Independent Record date October 3, 1994.

Hopefully, after reading the article and what I have to say, the lawmakers of the State of Montana will wake up and take notice of this crucial problem.

The problem of children being sexually molested by anyone is something that nobody wants to deal with. It's been a problem for many years. How many more years do children have to live in fear of child molesters being treated too leniently by the law that is supposed to serve and protect us all? I certainly hope not one more year goes by without our laws being changed.

Child molesters in my mind are just as bad as someone who kills someone else. When a child is molested a part of that child dies. No-one really knows what part is dead and gone, but something inside of that child is taken away and can never be replaced.

I am appalled and dismayed by the lack of laws to protect our children from child molesters. There are more child molesters out in the world than people care to think about. Well, this person cares because I have to think about one everyday until he's arrested and brought to court. I don't like to have to look over my shoulder every waking moment of my life and to sleep with a gun under my pillow and I shouldn't have to if the laws were more severe against child molesters. My daughter will have nightmares for the rest of her life. There is nothing anyone can do about that. But, if you as a group change our laws to be more severe, then maybe, just maybe, it would deter some of these sick people to not commit that crime in the first place.

I understand that there is a problem with prison over-crowding. Build more. Criminals are supposed to be in prison, not free to commit crimes again. Child molesters are the worst kind of criminal there is. They pick on helpless, defenseless children who can't fight back. What cowards they are. They torment their victims not only physically but mentally too. My daughter was told by her molester that if she told <u>anyone</u> about what he was doing that he would kill me (her mother) and her 2 brothers. We were all she had! What a horrifying thing for a child to live with. Be molested and be quiet about it or your mom and brothers are dead and gone forever. Child molesters are the sickest most vile people in this world. Something has to be done to change the way our laws deal with them. I am sickened every day by another news report of another child being sexually molested. I'm sure a lot of other people are too. Hence, the reason this letter is being sent to you.

You are a person in a position to change the laws. Make them tougher than they are now. A child molester is allowed out of jail on their own recognizance. I think not. My plea to you as a member of the Lawmakers of this State is to please do whatever you can to change our laws as they are now to laws that are firm, hard and will carry a jail sentence for life <u>without</u> the possibility of parole. There is no-one who will ever

EXHIBIT 14
DATE 2-6-95
SB 206

I called the Department of Family Services and talked to Don Thompson. I laid it all out for him along with the accusations made against Bill by Tiana Pullman. Mr. Thompson told me that Autumn's comments were definitely abnormal. He said it sounded as if something were going on. He said there may not be any physical signs on Autumn but BIll could be grooming her. He said she's too young to interview and they basically couldn't do anything.

I talked to Dawn and asked if Bill had been alone with Autumn during Christmas Eve. She said he had taken Autumn downstairs at one point for 10-15 minutes. She said "and that's really strange, Rinne, because there's nothing down there but bedrooms-nothing to show her". She also told me that Bill carried Autumn the whole time she was there. Don Thompson said that wasn't normal and who knew what he did while he carried her.

We went to see Dr. Gunderson and the only physical thing she saw was the scar tissue where she'd had the split.

All of these things put together point to the same thing-Bill has been messing with my (his) daughter. Dr. Reynolds, Dr. Gunderson, Don Thompson and my counselor, Bailey Molineaux all agree that something has been happening. But, because of Autumn's age, (2 years) no one can help me protect her. My lawyer Vivian Marie at Legal Aid Services says I don't have enough evidence to take before a Judge and get Bill's visitation pulled.

Autumn's behavioral change, her comments, the bladder infections and visits coinciding, her regression-no one can tell me that Bill is not molesting my 2-year old daughter. I will do whatever it takes to stop him. I just wish I could protect any of the unknown children to come, if he isn't stopped.

ERINNE MARIE HASKETT
Erinne Marie Haskett

You should also know that Bill is very violent when angered. Nina and I both have restraining orders against him. He can be dangerous.

EXHIBIT 14
DATE 2-6-95
SB 206

convince me that these people can be rehabilitated and be able to function normally in society. It has already been proven time and again that they keep on doing it whenever and wherever they get a chance to. How many more of our children have to be subjected to a "cured" child molester? I certainly hope not one more. One is too many. Adults are supposed to love and protect children, so lets see how many adults we have in our Legislature who care what happens to children. I want to see a change in our laws that will do that and I am sure any loving parent wants the same thing.

I understand that it is hard to relate to this problem unless it affects you personally. Please listen when I say that this problem does affect us all as a society in more than one way. If something drastic isn't done soon, people will see more and more child molesters. Children live what they learn. It is a proven fact that most molesters were at some time in their life molested also. If this vicious cycle of child molesting does continue you will also see more angry parents taking the law into their own hands and dealing with these criminals on their own. That is one way of dealing with this problem but it is not the right way. Please, please help our children to be protected as much as is humanly possible. That means, don't let them out on their own recognizance for any reason at any time. They are a danger to our society which does include our minor children. If we as parents now can't raise our children in a safe environment, what kind of a world will it be when they are ready to earn their way? Not good, I would suspect.

You are where you are to provide us as citizens with laws to serve and protect us. I would really appreciate seeing some changes in our laws that do that, serve and protect us better than they do now, especially for our children.

Sincerely,

Nina
MACem Member

Tiana

Hello, my name is Tiana Jolene Pullman. Most friends and family members call me T.J. I am your average teenage American student. I go to school, I have a job, have friends, do the occasional mishaps that kids will do etc. However, there is one thing that makes me different from a lot of my peers. I was sexually, emotionally and mentally violated from the time I started kindergarden to my sixth grade year. The person that did this to me is Bill Haskett. This is hard for me to write about, but I am stronger now and I know that this needs to be done. I need to lay it to rest, so that I can hopefully, for once in my life, be at peace with myself.

Bill Haskett is a danger zone for anyone that comes into contact with him. I can now finally face what he did to me, but I can't live with myself if I don't help stop him now before he hurts someone else. He is very good at making people think he is the one who is the poor soul in any situation. If he doesn't get stopped now he'll keep doing this and it's about time I've told my story.

First of all, let me explain my relationship to Bill. Bill was my Mom's Nina M. Pullman, boyfriend. He lived with us. I have two older brothers as well, Clint A. Pullman and Levi A. Pullman who will also be mentioned in my story. There will also be another person whom I will mention, Aaron LaPierre, that was my brother Levi's best friend who lived with us for awhile. The person that can best help us out is Jeni M. Apperson, she was my best friend from the 4th-6th grade. She was there during the different times of different things happening.

I will not start off by saying and telling about things that happened to me personally. He (Bill) hurt my mom and my brothers in various occasions. Then I will tell my own story.

While reading this please keep in mind that I do not think of myself as a hateful person. I believe all people are special in their own way. Bill Haskett, in my opinion, is a scum and definitely, not a human being in my eyes. I hate him and I believe I have the right to hate him. He took away my childhood, my innocence, and for the rest of my life I will have nightmares and even with the man I love I get scared at times. I know that they don't hang child molesters but God how I wished they did. My nightmare of him coming after me will never go away until he's dead or locked up in prison where he belongs. I just don't want him to have the opportunity to do what he did to me to someone else. I think he should go to prison and have counseling while in prison. I think that if he continues to be able to see his daughter, supervised or not, he'll find a way to do the same things to her that he did to me. In other words, let that child have a chance in life and keep him away from her permanently.

The first thing I want to tell about is my Mom. I love my Mom. She's my best friend in the world. It took me a long time to find that out, but I finally have. My Mom struggled to make the best life possible for my brothers and I. She worked long hours at whatever job she had at the time. Bill didn't believe in a job for himself. He was an "artist". Even when he did get a job, he thought he was worth his weight in gold or something because he never had one for very long. He drank and smoked away every damn penny he got his damn hands on. Bill was a very mean drunk. The littlest things would set him off and he would always take them out on my Mom. If I had a penny for all the times he beat my mom, I could go on one hell of a shopping trip. The thing he liked to do the most was back her into a corner and just start punching her. He didn't slap, he punched. He thought she was his own God-damn punching bag or something. I remember one time, I think it was second grade or something, he was having a fit and he broke one of these flower things we made in school for my mom. Mine was one of the prettiest. I'll never forget that. One time I heard my mom screaming and then the next thing I heard was Bill screaming and gasping, she threw hot tea all over his neck to protect herself. All I have to say about is good for her. I don't think the physical pain was half as bad for her as the mental and emotional strain he put on her. It hurts to even remember all of this. I know that she really was in love with Bill. Obviously, he knew her weak spots left and right. No matter what he did to her, he could always get her to take him back. Somehow he could always make her to feel bad when it was him who should feel like the shit that he really is. I don't really know everything that he put her through because I was young and for a long time I blocked that whole part of my life out. It's hard to just wake up one day and have to tell about a part of me that I'd just like to forget. I think with that part you would have just had to be there to see what he did to her.

Levi and Clint were my life when I was younger. I thought my older brothers were God. Sure we fought. What normal siblings don't. But, I love my brothers and when it comes right down to it, I'd die for either one of them. Bill drove Levi away in a big way. I hate him for that. One time, Levi was probably 13 or 14, they were having a poker party and the music just shook the whole house, it was a school night and it was late. Levi went upstairs and turned it down, Bill freaked and cranked it up louder than before. Well of course that set things right off. I was in my room so I didn't see anything but I heard a struggle. Another time Levi went to help my Mom when Bill was beating her and then Bill started in on Levi. That time Clint and I both snuck upstairs to see. I was terrified, I though he was really going to hurt him. I don't remember what happened at the end of that. The scariest thing I remember about Bill and Levi, still makes me shiver to this day. Levi had broken his jaw and it was wired shut.

EXHIBIT 14
DATE 2-6-95
SB 206

He had just gotten it unwired and I remember Bill and Levi had been fighting about something. Levi and Aaron were in their room talking to Mom about Bill and Bill walked in. I wasn't there at that time but then I heard yelling, so I ran downstairs to see what was going on. Bill had Levi down on the floor and was just about to punch him in the mouth when Aaron jumped on Him. God, if Aaron wouldn't have been there that could have done some serious damage. I don't remember all what happened afterwards, but Bill left for awhile. Shortly after that Levi got a job. He was helping a guy cut wood and whatnot. Levi did not like people using his things. One night he came home, something of his had been moved or gone or something, I wasn't there and I don't remember everything that I was told but at any rate, Levi got kicked out and was staying with my Mom's Mom and her husband. Next thing I knew he was moving to Texas to live with our dad. The night he came to say good-bye to me I started crying. He thought it was just because he was leaving. But when he left a part of me died. Levi was protection for all of us and he was leaving. The more people I had, the more protection I had. Clint was rarely home after that. Before that he was with Levi and his friends a lot. Anyways, they had paper routes and were older so they could leave more, whereas I always had to be home with Bill. Clint and I are so close in age that it caused a lot of conflicts. I don't remember a lot of him. He was there, but I didn't cling to him like I did Levi. I loved Clint just as much as I loved Levi, but we had a much different relationship. I've never talked to Clint about any of this. I don't know why but I just never did. I don't even remember Bill hitting Clint, he was just more the type to leave other than stay around and get into it. He still is that way. He played sports and band, had a lot of friends, etc. I think that was his escape after Levi left. Clint left after Bill was gone for good, but I do know with all my heart and soul that if he would have left when Bill was still there I would have lost the little bit of sanity that I had left at that point in time. Just to point out Clint's calmness in situations I can recall the Christmas of my 6th grade year. I had told my Mom and Bill was out for good. I think it was the evening of Christmas Day. Mom, Clint and myself were at the table in the kitchen playing rummi-kube. We heard a knock at the back door and Mom went to answer it. It was Bill and he wanted to come in and talk. Mom stayed calm and told him to please leave. He wouldn't leave and then he proceeded to try and knock the door down. There was a butcher knife sitting on the counter and I immediately jumped up and grabbed it. I've never been filled with so much hatred in my life than in that point of time. All I wanted to do was run down those three stairs and plunge that knife right into his heart and then twist it a bit. Through all of this Clint sat there and looked calm as a cucumber. He told me in a low voice calm and steady to just sit down and relax. Then he took my knife away. Bill finally left and Mom immediately call over to Bill's Mom's house and told her to keep her son away from our house. Then Jim (Bill's brother) got on the phone and said she was crazy because Bill had been home all night and hadn't left to go anywhere. Whatever.

After that night I slept with that butcher knife for a long time. Even now I sleep with a knife. I don't think I've ever exactly felt safe. I hope someday I do. But I have a feeling that that day will only come when I know he's in prison where he belongs behind bars or dead.

EXHIBIT 14
DATE 2-6-95
SB 206

To write about what Bill did to me is very hard for me. I felt embarrassed and ashamed for my whole life. I not only feel anger because things that happened should have been saved for me for when I was with the man I love and want to be with. He took away that innocence and no matter what I do, did, or thought about I could and never can change that.

I don't remember a lot of things that happened. I'll see or hear something and I'll have this "flashback" it doesn't matter where I am. It's very scary and I'm glad in one way that I can remember but on the other hand I just wish that I could forget all of it forever. Maybe writing this will help me, but I guess only time will tell. I feel that one reason I don't remember a lot is because I was so young. But the real reason is mainly because, as things escalated I put myself in this shell. I would just go to this far off land and not think about what was happening. I guess I'll just start by telling about different incidents that happened.

When things first started it would start out with Bill saying "give me a back-rub". That was fine. Then it would start with "rub me all over". He told me not to be afraid to touch his penis because it was just skin. That went on for the first few years.

I started to develop at an early age, on top of that I was fat, so that made it even more so noticeable. Bill started to grab my butt and breasts when no-one was around whenever he could. I think I was about nine or ten when he grabbed once and I told him "you best keep your hands off of me!" Then he told me that if I ever said a word of this to anyone that he would kill my Mom and my brothers. What was I supposed to do? That was all I had in my entire life. So, I continued to do whatever he wanted, whenever he wanted.

A short time after that I came home from school one day. Bill told me to come into his room. He was in bed, naked, and he told me to rub him. I did and he started to ejaculate. It scared me so I ran down to my room and backed up in my closet. Bill ran downstairs after me and grabbed me and told me to grab him on the penis. I was so scared. I remember crying and screaming, but he wouldn't leave. I did what he told me until he ejaculated again. He made me taste it. I threw-up after that. That was definitely the most degrading thing in the world.

I remember another time Bill made me stay home from school two days in a row. He made me take off my shirt and he would straddle me and just rub and rub. Both days I was to act like nothing was wrong and just pretend I went to school when my Mom found out she thought I'd skipped school, so she grounded me. That one I'll never forget.

I remember one time my Mom found my shoes in her room. She asked me what they were doing in there. I was so scared. What would she do, better yet, what would Bill do? I told her that I just kicked them off in there while Bill was talking to me I don't remember what happened that day, but I do remember how much I just wanted to hug her and tell her everything.

One of the most scariest times of all, and that will always stick in my mind was the day he showed me "what Mommy likes," that's

EXHIBIT 14
DATE 2-6-95
SB 206

exactly what he said. He made me strip down and then he got on top of me. He licked me from my throat all the way down to my vagina. That was the first time he had oral sex with me. THen we heard a knock on the door. It was a police officer. Bill made me go answer the door and say he wasn't there. I had been crying and the officer asked me what was wrong. I don't remember what I said to him, but I remember he wasn't, or at least didn't seem to be, convinced. I wanted to scream at the top of my lungs, "He's in the bedroom!", but I didn't. God knows what would have happened if I did.

I remember hiding behind the furnace a lot. You had to be really small to fit back there and I knew he couldn't get back there. It was the safest place in the whole house for me. I remember it being kind of like my "sanctuary".

I know I didn't write a whole lot about the things that Bill did to me, but the things I do remember I live with "24-7". The things I don't, come alive every night. Now so more than ever. I just want this to be done and over with. Mainly so that I can go on with my life and definitely so that he can be stopped. He's hurt enough people for one lifetime.

I'm not doing this to hurt anyone or cause anyone problems, except, Bill deserves this. I've never got to confront him myself and I really think that that is something I need to do in order to move on with my life.

To anyone whom may read this, please remember I was just a child when all of this occurred. I never said anything until the beginning of my sixth grade year in school. Please also remember that writing this was the hardest thing I have ever done in my whole life. I will come back there whenever I need to for whatever reason. Whether it is for Erinne's case or my own. We all need to come together and stop this man. It's never too late. I am going to be fine, but he doesn't need to be on the loose and able to harm anyone else ever again.

T.J. Pullman
01/30/94

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 15
DATE 2-6-95
BILL NO. SB 206

AMENDMENTS TO SB 206 AS INTRODUCED

PAGE 3:

AMENDMENT 1) **LINE 18-** FOLLOWING: "because"; INSERT: "of an allegation"
(SEE ISSUE 1)

AMENDMENT 2) **LINE 26-** FOLLOWING: "whenever"; INSERT: "temporary"
(SEE ISSUE 2)

PAGE 5:

AMENDMENT 3) **LINE 14-** FOLLOWING:"(b)"; STRIKE:: "knowingly"; FOLLOWING: "commits or"; STRIKE:: "knowingly";
(SEE ISSUE 3)

PAGE 6:

AMENDMENT 4) **FOLLOWING LINE 2:** INSERT: "(13) **"Investigator"** means an official trained by, or who has had training verified by the department and who meet definite qualifications set by the department in the investigation of child abuse, neglect and endangerment. Investigators can be, but are not limited to being social workers, officials of the county attorney's office, and peace officers." - RENUMBER SUBSEQUENT SUBSECTIONS
(SEE ISSUE 4)

AMENDMENT 5) **FOLLOWING LINE 16:** INSERT: **"Treatment Professional"** means any physician or mental health practitioner who has knowledge, training or experience in the diagnoses and treatment of child abuse, neglect or endangerment cases."
(SEE ISSUE 5)

AMENDMENT 6) **LINE 21-** FOLLOWING: "person"; INSERT: "who has not been involved in a verified sexual offense,"
(SEE ISSUE 6)

AMENDMENT 7) **LINES 26 AND 27-** FOLLOWING: "(20)"; STRIKE: ENTIRE SUB-SECTION; INSERT: **""Social worker"** means a person who has been educated or trained or is receiving education or training in a program of Social Work; and who has had verifiable training or who has specific training by the department in the investigation of child abuse, neglect and endangerment."
(SEE ISSUE 7)

PAGE 8:

AMENDMENT 8) **LINE 27-** FOLLOWING: "(5)"; INSERT; " Except if the person is a minor or a family member of the subject of the report;" FOLLOWING: "must be made under oath"; INSERT: "to the best of their knowledge"
(SEE ISSUE 8)

AMENDMENTS TO SB 206 AS INTRODUCED (CONT.)

PAGE 9

AMENDMENT 9) **LINE 5-** FOLLOWING: "~~believe~~"; INSERT: "believe to the best of their knowledge and"
(SEE ISSUE 8).

AMENDMENT 10) **LINE 10-** FOLLOWING: "neglected," ; STRIKE: "a social worker or the county attorney or a peace officer"; INSERT: " an investigator"-
(SEE ISSUE 4)

AMENDMENT 11) **LINE 14-** FOLLOWING: "section," ; STRIKE: "a social worker"; INSERT: " an investigator"
(SEE ISSUE 4)

AMENDMENT 12) **LINE 20-** FOLLOWING: "home"; INSERT: "except as provided for in 41-3-301, or for the purpose of an examination at a health facility to corroborate evidence of abuse, neglect or endangerment suspected by the investigator pursuant to subsection 4 of this section.
(SEE ISSUE 9)

AMENDMENT 13) **LINE 21-** FOLLOWING: "(3) The" ; STRIKE: "the social worker"; INSERT: " the treatment professional"-
(SEE ISSUE 5)

AMENDMENT 14) **LINE 22-** FOLLOWING: "facility," ; STRIKE: "the social worker , county attorney or peace officer"; INSERT: " the investigator"-
(SEE ISSUE 4)

AMENDMENT 15) **LINE 25-** FOLLOWING: "by" ; STRIKE: "the social worker , county attorney or peace officer"; INSERT: " the investigator"
(SEE ISSUE 4)

AMENDMENT 16) **LINE 28 and 29-** FOLLOWING: "by" ; STRIKE: " the independent examining psychologist or physician"; INSERT "an examining treatment professional not employed by the state";
(SEE ISSUE 10)

AMENDMENT 17) **LINE 29-** FOLLOWING: "child" INSERT: "is taken to a medical facility for the purpose of determining whether there is evidence of abuse, neglect or endangerment of the child"
(SEE ISSUE 10)

AMENDMENT 18) **LINE 29-** FOLLOWING BOTH OCCURRENCES OF: "by"; STRIKE: "the social worker"; INSERT: "the investigator"
(SEE ISSUE 4)

EXHIBIT 15
DATE 2-6-95
SB 206

AMENDMENTS TO SB 206 AS INTRODUCED (CONT.)

AMENDMENT 19) LINE 30- FOLLOWING: "family"; INSERT: "or a treatment professional representing the family or both."
(SEE ISSUE 5 and 10).

PAGE 10:

AMENDMENT 20) LINE 11- FOLLOWING: "report" INSERT: "pursuant to 41-3-205."
(SEE ISSUE 11)

PAGE 11:

AMENDMENT 21) LINES 3 THROUGH 5- STRIKE ENTIRE SUBSECTION (5). RENUMBER SUBSEQUENT SUB-SECTION.
(SEE ISSUE 12)

AMENDMENT 22) LINE 30- FOLLOWING: "~~without~~"; STRIKE: "with"; INSERT: "without"
(SEE ISSUE 13)

PAGE 12

AMENDMENT 23) LINES 21 AND 22- FOLLOWING: "by" ; STRIKE: "a social worker , county attorney or peace officer"; INSERT: " an investigator"-
(SEE ISSUE 4)

PAGE 13

AMENDMENT 24) LINES 20- FOLLOWING: "protective" ; STRIKE: "social worker"; INSERT: " investigator"
(SEE ISSUE 4)

PAGE 15:

AMENDMENT 25) LINE 15-FOLLOWING: "~~The~~"; STRIKE: "After filing criminal charges alleging abuse or endangerment against a family member or family associate, the"; INSERT: "The"
(SEE ISSUE 14)

PAGE 16:

AMENDMENT26) LINE 22-FOLLOWING: "adoption"; INSERT: "only after having filed criminal charges alleging abuse or endangerment against a family member or family associate"
(SEE ISSUE 14)

PAGE 17

AMENDMENT 27) LINES 20- FOLLOWING: "protective" ; STRIKE: "social worker"; INSERT: " investigator"
(SEE ISSUE 4)

AMENDMENTS TO SB 206 AS INTRODUCED (CONT.)

PAGE 18:

AMENDMENT 28) **LINE 29**-FOLLOWING: "child's"; STRIKE: "residence within 4 hours of the change"; INSERT: "whereabouts as soon as possible where appropriate pursuant to 41-3-205 and 41-3-301."
(SEE ISSUE 15)

AMENDMENT 29) **LINE 30**-FOLLOWING:"(5)"; INSERT: "(a)"
(SEE ISSUE 15)

PAGE 19:

AMENDMENT 30) **FOLLOWING LINE 1** INSERT: "(b)"
(SEE ISSUE 15)

AMENDMENT 31) **FOLLOWING LINE 3** INSERT: "(c) The entitlements and in (5) (a) and (5) (b) may be expanded where deemed appropriate by the department and do not apply or may be restricted if criminal charges have been filed or if deemed inappropriate by the department or the court pursuant to 41-3-205 and 41-3-301."
(SEE ISSUE 15)

PAGE 22

AMENDMENT 32) **LINE 20**- FOLLOWING: "two" ; STRIKE: "medical doctors"; INSERT: "treatment professionals"
(SEE ISSUE 5)

PAGE 24:

AMENDMENT 33) **LINE 1**- FOLLOWING: "department"; STRIKE: "shall" INSERT: "may"
(SEE ISSUE 15)

AMENDMENT 34) **LINE 2**- FOLLOWING: "with"; INSERT: "appropriate"
(SEE ISSUE 15)

AMENDMENT 35) **LINE 2**- FOLLOWING: "home"; INSERT: "pursuant to 41-3-205 and 41-3-301."
(SEE ISSUE 15)

Torres

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 16
DATE 2-6-95
SB 206

CONCERNS ABOUT SB 206 AS INTRODUCED

There is a sentiment that the pendulum of concern- erring on the side of child protection- now has to swing back- to err on the side of protecting family rights.

Perhaps, while this is unavoidable, the degree of the "swing" might be dampened. There is a claim that overzealous protection of our children has needlessly violated the rights of too many families. There is an element of truth to this, but the degree of the problem is difficult to determine.

Let us hope that we have learned by this. So that we stem the degree of potentially overzealous protection of family rights. That way, we may keep too many children from needlessly suffering and dying.

ISSUE 1) CLARIFYING ALLEGATIONS FROM SUSPICIONS IN AN INVESTIGATION.

ISSUE 2) CLARIFYING AVOIDING PROSELYTISM WHEREVER PRACTICAL.

ISSUE 3) SUSPENDING "KNOWLINGLY" WHEN SUSPECT IS POSSIBLY IN DENIAL.

ISSUE 4) SPECIFYING THAT INVESTIGATORS NEED SPECIAL TRAINING.

ISSUE 5) TREATMENT PROFESSIONALS WITH SPECIFIC EXPERTISE ARE NEEDED.

ISSUE 6) CLARIFYING APPROPRIATE EXPRESSIONS OF CONCERN AND LOVE.

ISSUE 7) CLARIFYING DEFINITION AND QUALIFICATIONS OF SOCIAL WORKERS.

ISSUE 8) WHO IS NOT APPROPRIATE TO BE REQUIRED TO RENDER OATH'S.

ISSUE 9) CLARIFYING RESTRICTIONS FOR REMOVING THE CHILD FROM THE HOME.

ISSUE 10) CLARIFYING EQUAL REPRESENTATION FOR THE FAMILY IN AN EXAMINATION.

ISSUE 11) CLARIFYING THAT CONFIDENTIALITY STATUTES ARE FOLLOWED.

ISSUE 12) RESTRICTIONS ON HEARSAY EVIDENCE OF THE INVESTIGATORS.

ISSUE 13) PRESERVING CONFIDENTIALITY OF REPORTERS OF ABUSE.

ISSUE 14) WHEN CRIMINAL CHARGES ARE APPROPRIATE.

ISSUE 15) PROTECTING FAMILY RIGHTS TO CHILDREN AND RELIEVING DISTRESS.

CONCLUSIONS: There is a need to protect both the rights of the family as well as the safety of the vulnerable individual. It is accepted practice wisdom that families as well as children are best treated as part of a system- a family unit- to break cycles of abuse that are visited upon succeeding generations. Yet it serves no one to disrupt families needlessly, for obvious reasons. We can ill afford to diminish the confidence of the public, waste the time and resources of the state and its workers and increase the potential for errors in an area of public protection where "there is no room for error".

ISSUES DESCRIBED TO SB 206 AS INTRODUCED

ISSUE 1) CLARIFYING ALLEGATIONS FROM SUSPICIONS IN AN INVESTIGATION.

This amendment would help clarify the intent of the bill- that is to protect both the family AND an abused child, as well as free the investigator's time to focus on legitimate cases.

(SEE AMENDMENT 1)

ISSUE 2) CLARIFYING AVOIDING PROSELYTISM WHEREVER PRACTICAL.

Clearly, whenever a TEMPORARY placement is made, this seems only fair and wise. It seems impractical that a PERMANENT placement could ever realistically achieve this measure.

. As a matter of policy, it is questionable whether the state should create impractical burdens on limited resources that provide for the shelter, safety and well being of seriously threatened children. We should avoid discouraging. foster care or group home services.

However, it could depend upon the LENGTH of a temporary placement as determined by a treatment plan or other recommendations.

(SEE AMENDMENT 2)

ISSUE 3) SUSPENDING "KNOWLINGLY" WHEN SUSPECT IS POSSIBLY IN DENIAL.

A predominant characteristic of sexual offenders is that they are under the burden of personal DENIAL. This internal conflict produces a web of deceit and secrecy which is so profound that it prevents the persons involved from admitting any history of sexual abuse or sexual victimization they have to THEMSELVES , as well as others.

To them, they may never have committed these acts "KNOWINGLY". Unless they receive an intervention coupled with treatment for their disorder, they may never even know that they don't know.

It is similar to the dilemma of a chronic alcoholic, who compares themselves to other practicing alcoholics. The association with other alcoholics makes voluminous drinking, constant hangovers, DUI's and horrendous behavior while intoxicated actually seem only normal.

(SEE AMENDMENT 3)

ISSUE 4) SPECIFYING THAT INVESTIGATORS NEED SPECIAL TRAINING.

Training and qualifications would provide for consistent practice and application of the mission of "FAMILY" services, in accord with state policy, and would further the intent of this bill.

(SEE AMENDMENTS 4, 10, 11, 14, 15, 18, 23, 24, 27)

ISSUE 5) TREATMENT PROFESSIONALS WITH SPECIFIC EXPERTISE ARE NEEDED.

CERTAIN health professionals have specialized knowledge and experience vital to the identification of the symptoms and APPROPRIATE diagnoses of child abuse, neglect, or endangerment. Abuse is sometimes very difficult to diagnose, even by a competent health professional who otherwise may not have this knowledge.

This knowledge is critical in determining a need for further action; where the best treatment should be, or whether there should be a separation, temporary or otherwise, for the safety and treatment of the of the child and the appropriate treatment of the family.

As important, this knowledge would expedite an investigation help re-unite families as quickly as possible.

Within the intent of this bill, the state will decide that "there is no room for error" in the enactment of child protective services. So the state must use qualified professionals to provide the critical information needed to get the most accurate results from these investigations as possible.

(SEE AMENDMENTS 5, 13, 19 AND 32)

EXHIBIT 16
DATE 2-6-95

ISSUES DESCRIBED TO SB 206 AS INTRODUCED SB 206

ISSUE 6) CLARIFYING APPROPRIATE EXPRESSIONS OF CONCERN AND LOVE.

Sexual offenders and their chronic victims are struggling with personal DENIAL and could never be expected to decide what is a "REASONABLE" contact with another persons genitalia.

Issues about appropriate expression of "concern" or "love" are confused by persons with this disorder and may never get this straight by reasonable community standards.

(SEE AMENDMENT 6)

ISSUE 7) CLARIFYING DEFINITION AND QUALIFICATIONS OF SOCIAL WORKERS.

Proper training and qualifications are vital to protect the rights and safety of families and especially children. The state sets the criteria with which it can hold itself, and the professionals it employs reasonably and legitimately ACCOUNTABLE for the public good.

Law enforcement officials operate within strict guidelines and standards determined by the state. They are extensively trained in matters specific to their mission. They are generally recognized by the community as there to enforce the law and to be of assistance. That is consistent with their mission "to protect and to serve."

Social workers in child protective services TODAY are in the unenviable position of having to address cases in which their actions are open to legitimate criticism REGARDLESS of what they do. They are at times put in direct conflict with their own professional ethics within the guidelines of current statute. THEY must choose whether to potentially harm a family, or potentially leave children at risk of being harmed. The public, the community and the state allow little room for error.

If the intent of this bill is to "restore public confidence in the child protective system AND to provide protection of individual and family civil rights" within constitutional guidelines, then proper knowledge and training is a critical. This should be a necessary requirement clarified in statute before the state sends officials out to intervene in a crisis or perhaps needlessly interfere in peoples lives.

(SEE AMENDMENT 7)

ISSUE 8) WHO IS NOT APPROPRIATE TO BE REQUIRED TO RENDER OATH'S.

Persons cited UNDER THESE SECTIONS perhaps should be held accountable for their allegations. This might reduce the number of incidences of "vindictive", "harassing" or "trivial" reports. Investigators, who by law must investigate each case, might be freed to spend their time completing the more substantiable investigations in their caseload and hasten the return of children to their families wherever possible.

But there is a need to protect real victims and members of their family, and allow them to make reports that could reveal imminent danger to a child. Threats of violence and retribution are a predominant way that perpetrators sustain the veil of silence about abuse within the family. The mandate of having to testify under oath can only deter such reports.

We must ask ourselves what it would mean if the report is from the victim who is a child?

However, it is necessary to avoid prohibitively restricting mandated reporting, hence the additional clause "to the best of their knowledge" has been added along with the oath wherever applicable.

(SEE AMENDMENTS 8,9)

ISSUE 9) CLARIFYING RESTRICTIONS FOR REMOVING THE CHILD FROM THE HOME.

This amendment would allow for greater consistency for the dual goal of this bill.; protecting the child and the family. It also accounts for emergencies and would allow for an investigation to proceed with the removal of a child from the home ONLY to provide for corroboration if necessary.

(SEE AMENDMENT 12)

ISSUES DESCRIBED TO SB 206 AS INTRODUCED

ISSUE 10) CLARIFYING EQUAL REPRESENTATION FOR THE FAMILY IN AN EXAMINATION.

These amendments clarify that there is a qualified professional observing the examination on behalf of the family, insuring that the family is represented equally AND FAIRLY.

In the case where a representative of the family can not be made available, at least there is recourse for the family. Again, the investigator can seek corroboration to continue the investigation if necessary.

(SEE AMENDMENTS 16,17,19)

ISSUE 11) CLARIFYING THAT CONFIDENTIALITY STATUTES ARE FOLLOWED.

This would clarify that such reports would not have to be made in violation of the law and of the ethics of those individuals who are responsible for the care of children in these institutions.

(SEE AMENDMENT 20)

ISSUE 12) RESTRICTIONS ON HEARSAY EVIDENCE OF THE INVESTIGATORS.

There are some serious concerns about this section. The court should have all the available evidence possible to make an informed decision about this serious and complicated issue. Presumably there would have already been a taping of examinations of the child pursuant to amendments in section 5 of this bill of 41-3-202.

(SEE AMENDMENT 21)

ISSUE 13) PRESERVING CONFIDENTIALITY OF REPORTERS OF ABUSE.

This is unnecessary risk to investigators and community members who are mandated to report. Among the individuals suspected in these cases are the mentally ill and violent.. If the subject of the report is charged and the reporter is among those who would have taken an oath, then the defendant would be allowed to know his accuser in the criminal proceeding. If the subject is not charged then there are other parts of this bill and in statute which should allow for appropriate remedy

(SEE AMENDMENT 22)

ISSUE 14) WHEN CRIMINAL CHARGES ARE APPROPRIATE.

Experts in criminal law must review this issue thoroughly.

The point of making abuse, neglect and endangerment always criminal, (which may vary from misdemeanor to felony charges), can actually be a detriment to keeping families together. However criminal penalties can also help facilitate treatment by mandating it, and providing consequences when treatment plans are not followed. This set of amendments is one compromise available.

Having to file criminal charges against a person for TEMPORARY investigative authority (TIA) could virtually eliminate the ability of officials to investigate cases of alleged suspected abuse properly.

But, it would seem that termination of parental legal rights should not be done without at least the filing of a specific charge against someone. If there are extraordinary circumstances in the case the courts will still have discretion to provide (TIA).

(SEE AMENDMENTS 25 AND 26)

EXHIBIT 16
DATE 2-6-95
SB 206

ISSUES DESCRIBED TO SB 206 AS INTRODUCED

ISSUE 15) PROTECTING FAMILY RIGHTS TO CHILDREN AND RELIEVING DISTRESS.

These amendments would at least help mitigate some of the distress experienced by the family, protect the family's rights and be consistent with current law and statutes.

Some allow for guaranteed visitation without unduly threatening the safety of a child or the integrity of an investigation.

It would be helpful for the families comfort and the preservation of their rights and responsibilities toward their children to be given as much information as possible in regards to the whereabouts of their children, and the characteristics of their caregivers as is reasonable and lawful.

(SEE AMENDMENTS 28,29,30,31,33,34 AND 35)

CONCLUSIONS:

There is a need to protect both the rights of the family as well as the safety of the vulnerable individual. It is accepted practice wisdom that families as well as children are best treated as part of a system- a family unit- to break cycles of abuse that are visited upon succeeding generations. Yet it serves no one to disrupt families needlessly, for obvious reasons. We can ill afford to diminish the confidence of the public, waste the time and resources of the state and its workers and increase the potential for errors in an area of public protection where "there is no room for error".

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 17
DATE 2-6-91
BILL NO. SB 206

NASW standards for social work practice in child protection

(brochure)

Koutnik 206

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 18
DATE 2-6-95
BILL NO. SB206

Mr. Chairman, members of the Senate Judiciary Committee:

For the record, my name is Laurie Koutnik, executive Director of Christian Coalition of Montana, our state's largest family advocacy organization, and a former foster care parent.

I have visited with Sen. Burnett on his measure, SB206, and understand the desire he has to protect families and advocate sound policy regarding the removal of children. His concerns are genuine and most admirable. I, too, am concerned for the protection of families and the loving care of children removed from their homes. But I cannot support this measure as it is written.

No matter how well intentioned this legislation is, it will have devastating effects on those it is designed to help. From my perspective, it is not in the best interest of families, children, foster care families, or the social service agency, Dept.of Family Services, who is compelled by law to investigate every report of abuse or neglect.

If we truly want to help families, then we must have a law flexible enough to allow DFS to meet the unique circumstances of each case. To require the filing of criminal charges may be counter productive to working with a family to return the child back home. Having to outfit every DFS office with enough video cameras and television sets for viewing is expensive and impractical. In some cases, it takes time for a child to develop a relationship with a social worker, psychologist, guardian ad litem, or foster parent, to have enough trust to tell what happened to them. To expect children to be able to verbalize their abuse or ongoing neglect does not happen in one setting in front of a video camera. In fact, my guess is most kids would be intimidated or too ashamed to talk in front of a camera at all. Most of the children in my care were experiencing deep pain of being violated or unloved to talk about it. They simply internalized a lot of emotions, Some cases come to others attention because of drastic changes in behavior patterns, not because the child has visible bruises. Let's not try through "one-size-fits-all law" to cure what takes sensitivity and a delicate balance of law and loving concern for those families we so badly want to help.

Confidentiality is a must for foster care families. With the shortage of placement homes now, why discourage current or future foster care families by violating their confidentiality. It is impractical to think you can move kids at will simply because a natural family would object to a foster home. We don't have enough now to meet the demand. Current licensing procedures and foster care training ensure us some of the best prepared and qualified families in local communities who are dedicated to the love and nurture of the children they serve.

The current process can use some improving, yes, we all agree, but it is my understanding much of what concerns Sen. Burnnett and other legislators will be addressed in legislation sponsored by Rep. Betty Lou Kasten HB 186 later this week. Workable solutions for all parties involved will best serve the children. Therefor I recommend a do not pass on SB 206. Thank you.

Submitted: 2-6-95
Laurie Koutnik, Executive Director
Christian Coalition of Montana

TESTIMONY OF MONTANA NURSES ASSOCIATION
ON SENATE BILL 206
REGARDING CHILD ABUSE INVESTIGATIONS

I am Steven Shapiro appearing for the Montana Nurses Association which represents 1400 registered professional nurses in the State of Montana. As health care professionals, our members frequently discover and care for children who have been subjected to abuse or neglect.

The Montana Nurses Association opposes Senate Bill 206. The bill is based on the erroneous premise that the State's existing child protective system is not functioning properly and causes unfounded accusations of abuse. It asserts that the correction to this problem should be requiring that child abuse allegations be charged as crimes and proven beyond a reasonable doubt before action is taken to protect children who appear to be victims of abuse.

The existing child protective laws are based on the principle that children should be protected first, and disputes over legal technicalities should follow. It already requires immediate action for review by the district court when a child is taken into the State's protective custody. If the court finds reasonable cause, a child may remain in protective custody and the process will begin to treat and ultimately reunite the family.

SB 206 would require that a crime be investigated and charged before a child may be removed from an abusive home. The facts proving the existence of physical or emotional abuse are not always readily apparent or available at an instant. The only direct witness may be a child who has been battered for years, and who has withdrawn into a shell so he cannot speak for himself or let others know of his plight. It may be years, or never, before a county attorney may be able to gather enough evidence for a criminal charge and longer to process through the court system. Meanwhile, a child may remain under the roof and in the hands of his abusers, perhaps suffering further and being convinced not to testify about what has occurred.

SB 206 appears to be part of a trilogy to weaken the child protective system in this state, including: SB270 proposes the destruction of reports of child abuse and neglect within 20 days of being unable to confirm the report. This will result in professionals being unable to track a pattern of child abuse that develops over time. SB271 proposes to require that an abused child removed from his own home must be placed with his extended family before being placed in other foster care. However, the child may not be adequately protected in this setting, and it ignores the fact that abusive environments frequently include extended families. Together, these three bills would be a great backward step in the protection of the children in our state from abuse and neglect.

We speak in support of the safety and welfare of all of the children of this state. We urge you to protect the children of Montana by voting DO NOT PASS on SB 206.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 20
DATE 2-6-95
BILL NO. SB 206

STATEMENT OF RANDY MILLS
ON SENATE BILL 206
BEFORE THE SENATE JUDICIARY COMMITTEE
MONDAY, FEBRUARY 6, 1995

Mr. Chairman, members of the committee, my name is Randy Mills, I live here in Helena, and I don't lobby for anyone. As a survivor of child abuse, I am strongly opposed to this bill.

In reading this bill, it is clear that the intent is to reduce the number of false allegations of abuse. I feel badly for any family that has to go through the agony of child abuse or the false allegation of child abuse. This bill may well reduce the number of cases of false allegations, but I fear it will increase the number of prosecutions for child assault and even child murder.

At the very least, this bill will have a chilling effect on something that's already phenomenally difficult: getting a child to speak up when they're being abused by a family member or relative. I believe that for every child who does speak up, there are several more who do not or can not. This bill will guarantee that this silent suffering by children will continue not only unabated, but with the blessing of the law.

Child abuse is a very difficult crime to prosecute, and prosecutors do not file charges in cases in which the outcome is unclear. This bill's requirement of a hands-off policy by DFS until the filing of those charges will guarantee that, once charges are filed, they will be for a more severe crime than if DFS could have stepped in earlier.

This state, to its credit, has good laws on the prevention of and response to spousal abuse and even elder abuse. This Legislature is considering bills that would make those laws on spousal abuse and elder abuse even tougher. But as regards abused children, we're considering **this** bill, which will roll back protection for children, the citizens who are least able to protect and speak out for themselves.

Under current Montana law, when peace officers respond to a report of domestic abuse, arrest of at least one party is the preferred response when violence, the threat of violence or the use of a weapon is suspected or just threatened. This bill would chill that law as regards abused children, but will leave abused adults protected.

Current law requires that a peace officer, at the very least, make a written report when responding to domestic abuse calls, and, if the victim is present, give the victim a list of options, including local safehouses, violence hotlines and so forth. The peace officer is further required to tell the victim of their rights under the law, including the right to get restraining orders and so forth.

This bill would have a chilling effect, again, on peace officers performing that legally required duty.

I suggest that the domestic abuse prevention and response laws at 46-6-311 (and following) and at 46-6-601 (and following) will be at conflict with the provisions of SB 206, and that the clear "hands-off" tone of SB 206 will override any legal requirements found elsewhere in the law.

Mr. Chairman, members of the committee, parents and other adults who may be falsely accused of abuse have my deepest sympathies, however few they may be. How we respond as a society to false allegations is a serious issue that deserves serious consideration. However, children need protection from sexual, physical and emotional abuse, plain and simple. Sometimes, that protection must come in the form of removal from the home, and it must sometimes come swiftly and decisively.

I do not believe that the reputation of adults supposedly falsely accused should be protected at the cost of the silent suffering of our children.

I urge you to bury this bill, rather than watch more children be buried by the fists of abusers.

Thank you.

Please [illegible] Judiciary Committee before 10 a.m. 2-6-95 Thanks

Jack Jim 369 Judy

206

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 21
DATE 2-6-95
BILL NO. SB 206

Concerning SB 206 - Judiciary Comm.

Our concerns are;

1st - With regards to anonymous reporting of abuse etc. It is very hard to get people to report anything, even with anonymous reporting it would be next to impossible without the ability to remain anonymous. That is why Crime Stoppers Works.

2nd - Requiring criminal charges to be filed - This sounds good and probably is in most cases.

3rd - Guaranteeing a family communication with the child; this sounds good and is done in most cases, However in a lot of cases with mental, emotional, and sexual abuse; this would allow the parent to continue manipulating the child.

4th - Requiring information on the Foster Home. Generally this is alright; However there are times that this would be Dangerous for the foster Child and the Foster parent. Where are you going to find people that will put themselves, their family and their home in the position of danger and turmoil that this could cause for $10 to $14 per day?

If you have any questions or comments please call me.

Gary Marks

538-3141

— Please deliver by 9:00 A.M. – Room 325 —

January 5, 1995

TO: Members – Senate Judiciary Committee
Chair: Senator Bruce Crippen and Senators
Al Bishop, Larry Baer, Sharon
Estrada Torentz Grosfield, Ric
Holden, Reiny Jabs, Sue
Bartlett, Steve Doherty, Mike
Halligan, Linda Nelson
and
Senators Jim Burnett & Tom Keating
and Representative Royal Johnson.

EXHIBIT NO. 22
DATE 1-5-95
SB 206

From: Sevart "Bud" Rist
2639 Poly Drive, Billings – Call home: 656-3402
& work 252-2071, collect if you wish.

Please listen to Jim Barnett and the evidence he has to support S.B. 206. We, Bobbi, my granddaughter and granted us legal guardians by the Blackfeet Tribal Court, and Vonnie, grandmother & my wife of over 44 years, and myself a 1st generation American born in Brookston – M.A. + 1 year grad. work + with 28 years of teaching & school administration – have 3 legally married sons. Vonnie & I own a small business & 6 apts. & a home in Billings for 12½ years (& might add, the "Yonkers" own some of these also) – enough of that!
Bobbi, Vonnie & I have been terrorized & traumatized by the Dept. of Family Services ending in near death of Vonnie. (Please see letter of Tom Towe, Nov. 26, 1990). They abused us with no evidence (only their mind-set – often 2 & 3 social workers and 2 supervisors & the so called specialists & paid counselors & psychologist & the County attorneys office) – this lasted from ~~June~~ August 1989 ~~1990~~ – 10 months of sheer agony!
Please listen to Jim Burnett & others who recommend S.B. 206 & Act to stop the uncontrolled activities of Dept. of Family Services.
Thank you & & pray, Bud & Vonnie Rist

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 23
DATE 2-6-95
BILL NO. SB 206

Mr. Chairman & committee members,
Nina Pullman, currently residing in East Helena, Dept. of Revenue
Member of MACem - Majority Against Child Molestation.

I have a personal interest in this bill and any other legislation involving children who could be or are victims of abuse of any kind. I was sexually molested as a child & so was my daughter. Any child who is a victim of any kind of abuse needs immediate and professional care. I believe the DFS in this state have been doing their job in this capacity. If this bill passes and the process is changed on how these victims are cared for, I see nothing but problems for everyone involved & a lot more heartache than is already involved. The change does need to be made, but not under this bill. The courts can't handle the caseload they have now. The DFS have been taking care of the problems as they occur, in a timely manner, with people trained to

handle the special needs of abused children. My final thought on the subject of this bill is, if it isn't broke, why fix it?

Thank you all for your kind attention & I hope you will all seriously question the need for this bill at all.

Nina M. Pullman

Nina M. Pullman
Box 1003
E. Helena, MT 59635
444-7881

EXHIBIT 23
DATE 2-6-95
SB 206

Mister Chairman
members of the committee
My name is Connie Griffin
I reside here in Helena
and I am a mother and a memeber of MACEM I
I am the mother of two girls
3 & 7

One year ago a doctor
confirmed a story that my
girls had came forward
with. They were being
Raped and molested by their
very own father for
whom they loved and trusted.
Their father is a 6 foot 4
220 pound man,
The little 3 year old weighs
45 lbs at the most.
That little girls was penetrated
both ways causing Rips and
tears, and severe scarring
She was made to perform
some kind of oral sex.
From what we can understand
She was forced to Rub
his genitals until he ejaculated

The 7 yr old weighs maybe 65 lbs
soaking wet
By what we were told she was
being groomed

After bathing she was forced to
lie down on a bed naked while he
laped on top of her, Rubbing
his genitals against her small
little body, Simulating intercourse
Her privates were Rubbed with
sticks, toys and other foreign objects
She was penetrated with something
the size of a pencil.
Only because she had a voice
that could have been heard.

Dept of family services were contacted
immediately by the doctor
Visitation was suspended
The girls were interviewed again by
DFS and video tapes were taken
In fact we found out later by the
county attorney. Video tapes are
inadmissable in court, Because
you cant cross-examine a video tape
All evidence was collected and
given to the county attorneys office
Where it still sits in a file
stuck under hundreds of case
More important than 2 little girls lives.

EXHIBIT 23
DATE 2-6-95
SB 206

At one point he (ex-husband) petitioned the Court for visitation
I received a call from DFS stating. The county attorneys office had granted him a visit with the girls girls. After talking with the girls and seeing them crying and screaming because they were so afraid because they were told if they ever told anyone what he was doing to them. They would be hurt and that I would be hurt and go to jail There was no way I was going to see them go through that again.
I made a call to the DFS Central Office to speak to someone I explained what was going on. Needless to say within 4 hours I had a call from DFS telling me there was to be NO. ~~&~~ Contact because of the threats made to them if they were to tell what was happening

against all recommendation ~~to~~ all prof. involved

first Recommendations all prof. involved

It has been nearly One(1) year and this man has not had one criminal charge ~~[illegible]~~ filed against him.
And as the County Attorney reported to me. There will not be CRIMINAL Charges.
Only Civil charges if even that.
The only thing that is keeping the 2 little girls from that House & being Raped, tortured and violated is something called Dependency Neglect. And Actually he hasn't even been charged with that Dependency Neglect, is to deprive a child of food shelter clothing, & protection.
As far as the laws go and from what I have researched he has committed the following crimes against his own daughters
Sexual Assault 45-5-502
Sexual Intercourse without consent 45-5-503
Indecent Exposure 45-5-504
Incest. 45-5-507
endangering the welfare of children 45-5-622

EXHIBIT 23
DATE 2-6-95
SB 206

Sexual abuse against children 45-5-625.
I dont see where any of these
crimes fit under the
Dependency Neglect Category
This is NOT A criminal case
according to the County Attourney.
BABY RAPE is Not Something
criminal in their eyes.
Because the girls are to young
to testify
This man is able to be
free on the streets and has
complete access to several
children in his home.
because of childcare being
provided at his home (unlicenced)
If It wasnt for DFS ~~fighting~~ fighting for my
2 little girls, the would be back in
that house being RAPED, molested
and violated. because the county
attourneys office does not make
these top priority cases
because they are so hard to
~~they~~ prove!

And QUOTE "They dont have the manpower to handle all the cases Reported to them And QUOTE "They try to stay within a QUOTA Of 250 felony cases a year. If theirs Quota is full what happens to all the other children that are going through this? And Anyone that could do this to a child to does not have parental rights We strongly oppose and pray that all of you oppose this bill.
Just please consider what would you do if these little girls were yours.

Who's hands would you like your childs life in

Thank You for your time

Connie Griffin 458-4754
5940 Aaron Dr
Helena, MT 59601

EXHIBIT 23
DATE 2-6-95
SB 206

Feb. 6, 1995

In opposition to Senate Bill # 206
I testify to the following:
I am a member of the M A C e M group. "Majority Against Child Molestation".
The Lewis & Clark Co. Attorney accepted an invitation to speak at one of our meetings. He agreed to be audio-taped.
He informed us that his immediate staff consists of himself and five (5) deputy county attorneys.
If they manage to process 250 felony cases in a year, he considers it to have been a good year. However, there a some years where "major" felony cases, such as the present Meagher Case arise, therfore leaving some felony cases unprosecuted.
He went on to explain Child molestation cases are hard to prosecute due to the ages of the victims; also the number of these cases has ballooned in the past 5 to 10 years.
When asked if additional staff and more money would be an asset, he replied that would help.

In questions concerning procedure, he said evidence collected by the attending police officer who first questioned the victim played a major part in the prosecution. In answer to a question in regard to the education of the officers in molestation cases, he replied they were educated.

We have learned that 2 to 3 weeks ago Ms. Rebecca Valencia-Stencelli, a Victim Contact Specialist from Orangevale, Calif. conducted a seminar for local police officers to educate them on procedure. She was asked to return to conduct further seminars because the officers hadn't been properly educated in some procedures, for example their technique had been to look more for physical evidence, ~~which~~ of course as a rule a child molester usually won't leave bruises or apparent marks, therefore their initial evidence in these cases were lacking.

In this bill, the burdens placed on the offices, social workers and county attorneys, with their limited staff will leave many helpless, innocent children in the hands

of their molesters and rapists.
The time limits of 48 hrs in section 5 lines 17 through 20 page 9 of this bill will more or less insure the victim will remain in the torture chamber as professional social workers will attest to the fact it can take sometimes months in some cases to get enough evidence to prosecute a molester.
Please do not pass this Senate Bill #906 as is.

Respectfully submitted,
Sharon Powers Barberson L.P.N.
Member of MACeM
Majority Against Child Molestation

perpetrated by her daddy, whom she loves and trusts, and were pleasurable with the exception of one occasion of which I am aware, our daughter felt mommy should do this also. Her father's action of carrying her all the time would be protected under line 11 as, considered by a reasonable person to be comforting of the toddler by a concerned or loving parent.

These two lines afford a child rapist a loophole in their defense.

We all have to remember how wily and manipulative these people are. They will stop at nothing to achieve their ends, which in my case, would have been to groom our daughter from a very young age, to believe that what he was doing was normal. She believed, as all children do

Mr. Chairman
members of the Committee

EXHIBIT 23
DATE 2-6-95
SB 206

My name is Esme Haskett, I am a mother of and I am the founder of MACEM.

My testimony against Senate Bill 206 involves lines 21+22 on Page 6 under definitions.

My two year old daughter was a victim of her father's love and concern. She was being molested by her father in the presence of several reasonable people.

He has supervised visitation rights for 3 hours each week. The entire time our daughter was with him, he either carried her or had her sit next to him on the couch watching movies. Our daughter told me, indirectly, that daddy was masturbating her on these occasions. As she was only two years old, she thought this was perfectly normal. She would come sit by me on the couch and say "let me sit on your hand Mommy" or "tickle my pee, Mommy". Since these actions were

She also had 3 UTI's in 3 mos.

She also had 3 UTI's in 3 mos.

of a family member, that he would not harm her or teach her that something so horribly wrong is actually right. If I hadn't caught on to these signs and behavioral signals, our daughter would be well-groomed by now. Her thinking would be, perhaps irreparably, twisted.

These monsters also use whatever threats required to keep these victims silent. "I'll kill your mommy." "Mommy will go to jail." "No one will believe you" or in our case, "Daddy will go to jail if you tell".

At two years old, a child should not believe that "cops are bad". My child did. It's taken me one year to turn my daughter's beliefs around.

Beliefs that were instilled in her in a matter of months by a concerned and loving father whom

she saw only three hours per week, supervised.

This bill has some good points, but if passed as is- there will be a lot of little lines left unprotected.

ERINNE HASKETT
3375 WYLIE DR., #21
HELENA, MT 59601
Erinne Haskett

EXHIBIT 23
DATE 2-6-95
SB206

Volunteers find child when police wouldn't

WASHINGTON (AP) — Residents of a halfway house rescued a missing boy and captured his suspected kidnapper after the boy's mother, upset by the lack of police action, sought help from the ex-convicts in her own search.

A dozen District of Columbia halfway house residents discovered the 11-year-old boy and his alleged captor wrapped in a blanket in a wooded area about eight blocks from the boy's southeast Washington home.

The boy was naked and apparently had not eaten in the two days since he was abducted on Thursday while walking to his aunt's house, police said.

The boy's mother said she turned to the halfway house residents and other local volunteers after police officers told her they could not launch an immediate all-out search because the boy did not meet criteria for a critical missing person.

"They told me since he was over 6 and under 85, didn't have a mental condition or a disability and wasn't on medication, they couldn't search for him," she said.

Rahim Jenkins, a halfway house employee who helped organize the search, said that when they approached the pink blanket on the wooded hillside on Saturday, "that baby jumped out and said, 'Please don't leave me, help me.'"

The alleged kidnapper, identified by police as Contee Stevens, 36, of Washington, tried to flee, but was captured by the search party after a 100-yard chase.

The boy's mother, who was about 50 yards away when her son was discovered, witnessed the scene and had to be restrained by friends. A television news crew filmed the chase of the suspect.

Volunteers find child when police wouldn't

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Exhibit No. 24 consists of 16 pages of signatures. The original is stored at the Historical Society at 225 North Roberts Street, Helena, MT 59620-1201. The phone number is 444-2694

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 24
DATE 2-6-95
BILL NO. SB 206

NAME	ADDRESS	ALL	12345
Michael Coit	2109 6 Ave No		
Debra Claassen	1225-7th AV So.		
Charleen Dabler	#2 Trl. Terr. Gt. Falls, MT.		
J. DuBois	600 4th AVE	GF Mt.	
Jer DuBois	600 4th AVE N GF Mt		
R. MacWilliams	288 VINYARD RD. GT FALLS		
Bonnie Brown	820 1st ave S.W. #104 GF, MT		
Viki Schabarker	1513 9th Ave. So.	Gt. Falls, MT	
Candy Long	3521 6th Ave N.	Gt FAlls Mt	
Shadow Mogensen	506-5½ A S W	"	
Cathe Collier	1523 4th Ave N.	GT.F.S.	
Gregory C. [illegible]	615 22nd N.	Gt Falls	
Tanefa Shadrick	309 6th St No	GF 59401	
Becky Eiken	424 7th Ave So.	GF 59405	
Judy Eakins	815 - 13 ST. S.	G.F. 59405	
[illegible]	925 6TH ST NW	59404	
[illegible]	816 15 St No.	59401	
Sherrie K Bishop	1201 28th St So.	59405	
Shannon Klein	3805 7th St NE #84	59404	
[illegible]	608 6th AVE. N. #5		
[illegible]	221 4th AVE So.		
J. [illegible]	3514½ 1st AV. N.		
Shane Short	2011 1st Ave South		

DATE 2-6-95

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: SB 206

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Check One: Oppose
AL NERLING		206	✓	
Joan Austad		206	✓	
Steven Shapiro	MT Nurses Assn	206		X
Krystyna Merlins	Sunriver MT.	206	✓	
ERINNE HASKETT	MACeM	206		X
Velma Morris Fitzgerald	OUR FAMILY	206	X	
FRANK BORING FITZGERALD	OUR FAMILY	206	X	
Connie Griffin		206		✓
Laurie Kentnik	Christian Coalition of MT	206		✓
Dennis Paxinos	Yellowstone Co Atty	206		✓
Randy Mills	self	206		✓
Sterlin Nielsen	self	206	X	
Gigi Rosato	Golf	206	X	
Noel Larrivee	MT Council for Families	206		✓

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

REGISTER.F10

DATE 2-6-95

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: SB 206

Name	Representing	Bill No.	Check One Support	Oppose
Dick Vincent		206	✓	
Amanda Henderson		206	X	
Jennifer Henderson		206	✓	
Jenny O'Neil	Vocal of Montana	206	✓	
Wanda Harris		206	✓	
GARY WILSON		206	✓	
Bob Torres	NASW	206		✓
Andrée Larose	Self + family (2 children)	206		✓

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

F10

DATE 2-6-95

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: SB 206

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Oppose
Pascal Redfern		206	✓	
KAREN KOWALCZYK		206	X	
Gaetano Barlow		206	X	
Penny Bosnich		206	X	
Stan Barlow		206	X	
Shanon Bakerson		206		✓
Nina M. Pullman		206		✓
Tiana J. Pullman		206		✓
Lori Clark-Cary		206		✓
Ayn Stacey GILKEY	DFS	206		X
Paul Betsmo	Montana for Due Process	206	X	
WILLIAM V. FOWLER	" " " "	206	X	
KENNETH E. HAUGEN	[illegible]	206	X	
MICHAEL V. Billedeaux Sr.	Self	206	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

REGISTER.F10

DATE 2-6-95

SENATE COMMITTEE ON JUDICIARY

BILLS BEING HEARD TODAY: SB 206

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Check One: Oppose
John Schubert		206	✓	
Tammy Schubert		206	✓	
DAVE BRINLEY	SELF	206	✓	
IDA RAENEL		206	✓	
Mindy Mistin	Self	206	✓	
JOHN CONNOR	NE County Atty Assn			✓

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

REGISTER.F10