

MINUTES

MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON PUBLIC HEALTH, WELFARE, & SAFETY

Call to Order: By SENATOR BOB DePRATU, on March 21, 1997, at
3:17 PM, in Room 410.

ROLL CALL

Members Present:

Sen. Steve Benedict, Chairman (R)
Sen. James H. "Jim" Burnett, Vice Chairman (R)
Sen. Larry L. Baer (R)
Sen. Chris Christiaens (D)
Sen. Bob DePratu (R)
Sen. Dorothy Eck (D)
Sen. Sharon Estrada (R)
Sen. Eve Franklin (D)
Sen. Fred Thomas (R)

Members Excused: None

Members Absent: None

Staff Present: Susan Fox, Legislative Services Division
Karolyn Simpson, Committee Secretary

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

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 386, HB 146, 3/7/97
Executive Action: HB 502, HB 333, HB 129, HB 558

HEARING ON HB 386

Sponsor: REP. BRAD MOLNAR, HD 22, Laurel

Proponents: Charles Lorensen, self
Helen Barbara Lange, self
Verdell Jackson, self
Betty Asplin, Family for Families
Kenneth Haugen, Family for Families
Glen Hage, self
Casey George, self
Frank Fitzgerald, self

Opponents: Hank Hudson, Department of Health
Jean Whittinghill, Court Assessment Program
Mary Alice Cook, Lobbyist for Children & Families

Opening Statement by Sponsor:

REP. BRAD MOLNAR, HD 22, Laurel, said this will be a new program and he has been working with the parents who have brought many concerns to him and other Representatives and Senators, and he also has worked with the Division of Family Services (DFS), to craft something that will benefit both sides. He gave a hypothetical situation where a sheriff goes to a home late at night and takes the children because of a complaint filed of suspected child abuse. By law, DFS can't tell you, even if they wanted to, who made the allegation or what the situation is, and in 48 hours the parents are supposed to be in court to defend themselves from the allegation and stop the investigation. Faced with a huge, billion-dollar rolling government machine, parents are not given an attorney, many unfamiliar terms are thrown at them and they have no idea what is going on. HB 386 allows a parent to choose a person of their choice to stand in for them to get information about the situation.

Proponents' Testimony:

Charles Lorensen, self, Kalispell, urged the committee to pass HB 386, saying a family advocate would create a balance because one family against the state is an unfair situation. **(EXHIBIT 1)**

Helen Barbara Lange, self, testified in support of HB 386 because she had difficulties with the Department of Family Services. This bill will help improve the communications between the parent and the State because parents are on an unequal footing with the State, because the State has unlimited resources and lawyers and the parents do not. She told what had happened to her and her family when her ex-husband used the system against her. She didn't know much about the system and felt she had been wronged because it caused a lot of expenses, plus emotional distress for the children. This bill could prevent the mistakes made against her, and someone could explain to her how the system operates and how to deal with it. **(EXHIBIT 2)**

Verdell Jackson, self, said he is a retired teacher and school administrator and strongly supports HB 386. In his position, he saw many shattered families and there are not many resources available to families to resolve the problem and the Department of Family Services is not considered to be a help in resolving the problem. The attitude among the teachers was, when the Department of Family Services got involved with a family, it's all over and the family will never get back together. HB 386 will introduce a positive component and will put somebody in the system to get information. As a superintendent of schools, he couldn't even get information on teachers and other people that have things in their background. He was unable to do background checks on people because you can't get information unless you're in the system. HB 386 will help people get information for the family. By law, teachers and administrators must report anything they think is suspicious and may be abuse. Because they are scared and don't want to go to court for negligence, they report things that are not true. What constitutes abuse is vague and

goes into the area of discipline. Parents can't even discipline their own children without being accused of abuse. The definition of abuse has changed dramatically in the 30 years he has been a teacher and administrator. Many times the solution is expensive and, looking at HB 386, it will not be expensive for an advocate to go in and get information. It opens up the opportunity for people to volunteer their time to be an advocate.

Betty Asplin, Family for Families, said she supports HB 386 because since July 1995 she has been talking with people who have been adversely affected by the system. They are all telling her they are not represented and no one listens to them, but only listen to the Department of Family Services. The Department is operating opposite to their written policies and families need protection because the system becomes a web and they get caught in it and can't get out. She has been personally touched by this and knows what it is about and how it feels. This must stop. Everybody has a right to have protection.

Kenneth Haugen, Family for Families, spoke in support of HB 386 and said because the way things are now, parents don't have a leg to stand on when their children are taken. It is very tough to get children back and when the parent does what DFS tells them they should do, but it isn't good enough for DFS, so they keep the children and keep parents jumping through more hoops. HB 386 will help parents get the information they need. (EXHIBIT 3)

Glen Hage, self, Big Fork, encouraged the committee to support this bill because it could really make a difference in the lives of a lot of families. Families need whatever help that is available.

Casey George, self, Kalispell, said he supports the passage of HB 386 and it addresses accountability for the Department of Family Services (DFS). His wife works with Flathead county doing visitations and she has experienced many difficulties with the employees of the Department for the way they treat the families. With an advocate present to record orders as they are given, there is accountability if there is a change later on. No one listens to families and DFS is not respectful of families.

Frank Fitzgerald, self, Billings, said supports this bill and had it's grassroots in a number of communities. **REP. MOLNAR's** feelings about this bill are the same as many families in Montana. If HB 386 is signed into law, you will see an organization of family advocates who will gather information for possible future changes in the statutes. He related his experiences with the Department of Family Services and his daughter. He submitted three booklets as evidence of what he had been through and the need for this bill to be passed to enable parents to have an advocate. Had he been able to have had an advocate, his daughter probably wouldn't have ended up in foster care for 12 years. He said his daughter was abused in foster care

and the petitions are an attempt to get his daughter out of foster care. (EXHIBITS 4 - 6)

Opponents' Testimony:

Hank Hudson, Department of Health, said they would not oppose HB 386 if their amendments are accepted. (EXHIBIT 7) People who find themselves involved in an abuse and neglect proceeding need an advocate, but what they really need is an attorney. His department feels no one should go through this process without having an attorney from the very first action with DFS. He agrees a family is not in a good position, and without an attorney, the county and state have a lot more experience and knowledge of the process. They believe there is nothing at present to stop someone from having an advocate to go through the process with you. You can give them all the information you have and this bill will not give an advocate access to any more information than the family can get at present. The bill would provide standing for advocates to appear at some of the proceedings. Their problem with the bill is in the title. This is an act creating a program and he doesn't think anyone wants the Department to be running a family advocacy program. This bill also applies to actions of youth court, delinquency, youth in need of supervision proceedings and counties would bear the costs of running this program. The people who can notify the Department about possible cases of abuse are the county attorney, district court judge, guardian ad litem, citizen review boards, foster care review, attorneys who represent defendants. The Department has a right to be sued if they deviate outside their policies.

Jean Whittinghill, Coordinator Court Assessment Program, said they support early representation of parents but can't support HB 386 as written. She explained court assessment program, saying they received a 4-year federal grant to study how the court system handles child abuse and neglect cases. Children are entitled to representation and the State is represented by the county attorney, but the parents are not entitled to council until termination stage, so the field is not equal. They would like to see early representation of parents by an attorney, but that cost would have to be borne by counties and could be very expensive. The term "family advocate" should be changed to "parent advocate" because the parents' and children's interests are going to be different. This bill does not specify any qualifications for the person chosen to be an advocate. This individual will have access to confidential information and there is no screening mechanism. Referring to page 2, line 26, she said it appears the advocate is given attorney's duties and doubt that an advocate could file appellate brief, line 27, and doesn't think persons without some sort of legal training would be able to do this and would not have the ability to cross examine witnesses. Parents should have early representation by an attorney and she supports a family advocate, but thinks advocates should have some sort of qualifications.

Mary Alice Cook, Independent Lobbyist for Children & Families, said HB 386 there are no qualifications to be an advocate.

Questions From Committee Members and Responses:

SENATOR CHRIS CHRISTIAENS asked about the qualifications to be an advocate and fear the Department will, by rule, set them.

REP. MOLNAR said he hopes they won't. There are two processes to go through, the child protective service, which is the court services. At the moment, there is no one to represent the family and wondered if qualifications for an advocate are really necessary. The important thing is to not miss the 30-day deadline to answer the letter, otherwise you are automatically guilty. At one point the family counselor would be appropriate, but at the next step an attorney is recommended.

SENATOR CHRISTIAENS referred to page 3, line 14, ensuring that foster care money is paid to that person in a timely, and asked why this is in the bill.

REP. MOLNAR gave an example to answer **SENATOR CHRISTIAENS'** question.

SENATOR CHRISTIAENS referred to page 5, section 10, compensation for family advocate services, and asked what is looked for in the area of an unconditional grant from the private sector and who is going to be in charge of the money.

REP. MOLNAR said if there is a foundation who wants to put up money, that's alright.

{Tape: 1; Side: B; Approx. Time Count: 4:02 PM; Comments: some words unintelligible in questions and responses.}

REP. MOLNAR said an advocate should be allowed to be paid because it isn't necessarily all volunteer, but the money does not come to the State.

SENATOR CHRISTIAENS asked about an advocate's qualifications.

Hank Hudson said qualifications are not one of their objections and they don't want to be responsible for who people select because that's a decision for the parents, plus the Department doesn't have the authority to write rules regarding this and they don't want to be held liable for mistakes made by an advocate in a legal proceeding. They don't think they should compensate for this, but there may be funds available elsewhere.

SENATOR CHRISTIAENS asked if the committee on children and families does any kind of oversight of these kinds of issues.

Hank Hudson said there has been some review by that committee of child protective and adult protective issues and thinks the

committee issued a report and the Department welcomes continual review of their work.

SENATOR SHARON ESTRADA asked **REP. MOLNAR** if he had seen the Department's amendments and if he was agreeable.

REP. MOLNAR said they are in the some agreement. Referring to page 2, lines 15-20, he said he offered them a compromise to change "without regard to confidentiality" to "with regard to confidentiality" because there are laws that protect people. They moved line 6, page 9 to subsection C, line 25, page 8, and would like it to be back on line 6, page 9, because this stuff is taking place and, hopefully, can be resolved before the youth court.

SENATOR ESTRADA asked **REP. MOLNAR** if the amendments were agreeable to him with the exception of tweaking a few.

REP. MOLNAR said yes, but if the confidentiality issue amendment is accepted by the committee, the bill will need to go to a conference committee.

SENATOR ESTRADA asked **Hank Hudson** if he had said they would not support the bill without the amendments, but hadn't said he would support the bill.

Hank Hudson talked about the two amendments they want in the bill.

SENATOR ESTRADA said she had called **Hank Hudson** for a constituent who had a problem and is wondering about some things he had said earlier in the hearing. She asked about the steps that the DFS people in the field go through before going to a residence to a remove a child.

Hank Hudson said they can go to a home and make an emergency removal, then they have 48 hours in which to petition the court on the reason they would need to have an ongoing relationship with that family. At that time, the county attorney has to agree to file that petition and everyone has an opportunity to tell their side of the story. Unfortunately, it's a difficult time for families to get there to tell their side of the story, because they have to understand the process and be comfortable enough to go into court. This is a harder time than usual for the family to do this, at this time. At that time, DFS can ask the court for continued involvement with the family and generally they are granted a temporary involvement. DFS must provide the family with a treatment plan, which is a set of conditions the family must meet or do to have the child returned. Then, in 90 days or more, the judge will ask DFS if the family has complied with the conditions and asked if there is an ongoing reason for DFS to remain involved. Children must be appointed a guardian ad litem to represent their interests.

SENATOR ESTRADA asked **REP. MOLNAR** if the 48 hour period is the reason for this bill.

REP. MOLNAR said the 48 hours and the show-cause in 20 days. The 48 hours is almost a rubber stamp because a judge doesn't have to rule, but a clerk can rubber stamp it. Regarding the youth court act, by the time the kid gets to court, it may be his third or fourth felony, and it's a bit late for this. When the first informal consent decree comes up, the parents can have it explained to them or be aware of a treatment program.

SENATOR LARRY BAER said to **Hank Hudson**, when you have this emergency situation of removal of children from homes, what kind of probable cause must be shown to do this?

Hank Hudson said they cannot remove a child simply on a report.

Ann Gilkey, Department of Health, said the statute that addresses emergency protective services is 41-3-301. If there is a referral after an investigation, a social worker goes out, and if it is believed the youth is in imminent danger of harm, children may be removed and placed in protective custody, then DFS has 48 hours in which to file. By policy, children are typically not removed under this unless they find abandoned children, which is the most frequent situation, or the child has a serious injury.

SENATOR BAER asked if they had to have substantial evidence or cause before DFS can remove the children from the family, in the presence of the mother and father or other adult supervision.

Ann Gilkey said she would certainly hope so and that is a Helena policy.

SENATOR DOROTHY ECK asked **Hank Hudson** if there is a possibility of using the family or parent advocate in lieu of some of the programs he had said we can't afford, such as the Healthy Start Program. The family preservation program in Bozeman has provided real help to families that are at risk of losing their kids.

Hank Hudson said he doesn't see these as similar efforts, but one of the biggest disadvantages families have is a lack of information and one of the most frightening things is to be confronted by an action of the government or action over which they have no control, and they have no information about it. The family advocate could explain the process and help them understand the actions they need to take. Most people have no knowledge of this system until they bump up against it, and having good information and having someone help who has been through it would be valuable.

SENATOR ECK asked what kind of organization would need to be set up to serve as a family advocates.

REP. MOLNAR said there could be phone numbers posted in various public locations that people could call for crisis intervention, similar to the suicide hot line.

SENATOR ECK said it could be appropriate for a number of organizations in the community to do this.

REP. MOLNAR said he would like to see public service announcements for this.

SENATOR ECK said the plan for public service announcements is to focus on family help and needs.

REP. MOLNAR said he would like to see grandparents work with young families.

SENATOR JIM BURNETT said he has been disturbed by the actions of field people (case workers) and asked why couldn't they be under oath for every statement they make about the family. There have been many statements made where the case worker did not have the information or did not tell the truth.

Hank Hudson said if a worker is dishonest and it comes to the Department's attention and it is documented, disciplinary action will be taken.

SENATOR EVE FRANKLIN said she agrees that people are in a vulnerable situation and need a support person, but this can be a double-edged sword. The advocate chosen by the family may not be the person who has information and can work the system.

REP. MOLNAR said at present they have nothing and they need someone they can trust to go in and find out what is going on and what needs to be done next.

SENATOR FRANKLIN asked about the immunity from the liability issue (page 2, line 6).

REP. MOLNAR said if the family picked an attorney or professional counselor who is acting within the scope of their license and they are being paid, they are liable but a volunteer can't be sued.

SENATOR BAER said to REP. MOLNAR that he and the Department were in agreement with these amendments, and asked him to get together with the Department and come to a consensus on the amendments.

REP. MOLNAR said Hank Hudson's wording on the first amendment is fine and had no objections to the placement of the youth court act in the bill.

SENATOR BAER asked REP. MOLNAR to make sure the committee receives the amendments before executive action is taken on the bill.

REP. MOLNAR said the wording **Hank Hudson** gave for new section 6 is alright, and thinks they agree on the placement of page 9, line 6.

Hank Hudson said their amendments don't address new section 6, disclosure, so the committee would need a copy of what he and REP. MOLNAR had agreed on.

SENATOR BAER asked if REP. MOLNAR and **Hank Hudson** would get together as soon as possible.

REP. MOLNAR said regarding the youth court act item, he does know the people who represent probation officers don't agree with this.

SENATOR ECK asked **Jean Whittinghill** at what point is a guardian ad lidum named for a child.

Jean Whittinghill said from the time the initial petition is filed.

SENATOR ECK asked if it is possible or appropriate to develop a program where an advocate for the parent could be named at that time.

Jean Whittinghill said most guardian ad lidums are attorneys that are paid by the county. A few counties use volunteer guardian ad lidums but they have access to council.

SENATOR ECK said probably attorneys would not be named for this person, and wondered if it would be possible to have a volunteer program where the volunteer has access to council.

SENATOR FRANKLIN asked if the family uses poor judgement in their choice of an advocate, who is not serving the interests of the family or is unable to do the job, is there some mechanism for the advocate to be terminated?

REP. MOLNAR said the advocates are volunteers and there is no contract so the family can terminate the services at any time. He said the Uncle Bubba amendment is in the bill. It says, if the person is totally inappropriate, the Department has the authority to say no, and the amendments tighten that up even more.

SENATOR FRANKLIN asked REP. MOLNAR to point out where the Uncle Bubba amendment is.

Closing by Sponsor:

REP. BRAD MOLNAR said he has been surprised at the cooperation of the DFS. There is the Board of Visitors who act as ombudsmen for the mentally ill and the State pays for that, and there are ombudsmen for the elderly and the State pays for that. These family advocates are volunteers and the State will not pay for them. They perform a valuable function for society because they

want to help. He asked if it is possible that a case worker in one county will consider something as good parenting while, for the very same thing, another will think it is abuse. There is no way around it, yet a parent can get caught up in the Dr. Spock regimen. There is going to be confusion and this bill may help clarify and straighten things out. There is no way this will slow down or stop an investigation if there is abuse or suspected abuse, but an advocate can get information for the family during the investigation.

SENATOR BURNETT will carry the bill.

CHAIRMAN BENEDICT resumed the chair.

HEARING ON HB 146

Sponsor: REP. ROYAL JOHNSON, HD 10, Billings

Proponents: Hank Hudson, Department of Health
Lawrence Hubbard, State Conservation Insurance Fund
Jacqueline Lenmark, American Insurance Assn.
Mark Barrett, writer

Opponents: None

Opening Statement by Sponsor:

REP. ROYAL JOHNSON, HD 10, Billings, said HB 146 is a result of a situation that came out of the contractors act from the last session. The Department of Labor lawyer suggested foster care parents could be classified as an employee. There would be tremendous ramifications because foster parenting is not a 9 AM to 5 PM job, but is 24 hours a day. The Internal Revenue Service considers people who work in that capacity to be volunteers and they do not pay taxes on money they receive for the child, because they are not employees and are not covered under Workers Comp. This bill is an attempt to take care of those people who will be doing those services for the State and providers, to be covered by Workers Comp, if that is appropriate. There are some amendments that have been agreed to by the Department of Family Services. To make sure people working in the FAIM program are covered under Workers Comp, if employers wanted to hire that person, the State would pick up the Workers Comp premium, based on the employer having a Workers Comp policy.

{Tape: 2; Side: A; Approx. Time Count: 5:00 PM}

Susan Fox explained the amendments. The title will be clarified by taking out "child foster care provider" (page 1, line 7) and inserting language; 39-3-406 is the minimum wage and overtime compensation, then referring to page 2, she said both the public assistance participants and the foster parents are excluded from that; on page 13 is the definition of employee, and now subsection D will be taken out as an exemption from being an employee and place that language on page 10, line 14, as a new 8;

page 21, title 53 which is the welfare reform section, sub-sections 8 and 10 can be stricken because as employees they must be covered by Workers Compensation; sub-section 9 will be amended to work a little better by adding, on line 2, local government employer; then elective coverage is taken out because now it is a requirement; then change "job training" to language that talks about developing employment skills.

Note: see 3/24/97 Executive action for complete copy of amendments to HB 146.

Proponents' Testimony:

Hank Hudson, Department of Health, said this bill should be viewed as two separate issues, the foster parent issue and clarification is needed that foster families are unique because there are no independent contractors nor employees, so wage and hour laws and Workers Comp are not appropriate for them. FAIM is a welfare reform issue and the participants in community service are not employees and are not paid a wage nor receiving benefits, but are getting training. This bill clarifies the worksites that will be covered, the state can reimburse the employer at the worksite, and the premiums will be calculated on the premiums at that worksite. This will cost about \$2.7 million out of the block grant from the federal government.

Lawrence Hubbard, Legal Council for the State Conservation Insurance Fund, said it is important for the committee to consider all of the amendments outlined by **Susan Fox** because, as the bill came out of the House, all requirements for Workers Compensation were placed in title 53, not in the Workers Compensation Act, and they feel that is the wrong place for that to go to find out what the Workers Compensation insurance obligations are. He said the amendments lists participants under title 53 programs as employees for Workers Compensation purposes, leaves in title 53 the power of the Department to reimburse private worksites and the local governments for premiums for that coverage, and makes clear the site employer is the employer of record for Work Comp purposes.

Jacqueline Lenmark, American Insurance Association, said they support HB 146 with the amendments.

Mark Barrett, artist, writer, intelligence agent, made several incoherent remarks and was asked to leave the hearing.

Opponents' Testimony: None

Questions From Committee Members and Responses:

SENATOR CHRIS CHRISTIAENS said this bill has a pretty hefty fiscal note and asked, if it is tied to the TANF block grants, and if that does not pass, what will happen to this bill.

Hank Hudson said the block grant is a sum of money not contingent on the passage of any bill except for SB 374, and if that does not pass, Montana will not receive the block grant and lose \$45

million, which is more than 70% of the money Montana spends to provide assistance.

SENATOR CHRISTIAENS said SB 374 was heard in Finance and Claims and said Montana will still have welfare reform without the block grant and wondered if there should be coordinating language that HB 146 is contingent on TANF funding.

Hank Hudson said if SB 374, the child support enforcement bill, doesn't pass and if federal funds are denied, they probably would not operate the program where individuals are placed in the worksites for training purposes.

SENATOR CHRISTIAENS said this resembles project WORK and asked if there were the same kinds of issues with people on welfare going working in community service, and how were they handled under Workers Comp.

Lawrence Hubbard said he was not familiar with project WORK, but understands there were some issues dealing with purchasing Workers Compensation coverage, but workers employed solely for subsistence, aid, and sustenance are excluded under Workers Comp. This is a particular program, under title 53, dealing only with the FAIM project, so any other program would be excluded and not under this bill.

SENATOR BAER said **Hank Hudson** was talking about a block grant this program would utilize, then he asked about the origin of block grant, from which bill or which law.

Hank Hudson said the block grant, at the federal level, Personal Responsibility and Work Responsibility (PRWORA) is a federal law authorizing these block grants.

SENATOR BAER asked what connection does SB 374 has to these previously granted monies, by way of another law.

Hank Hudson said he is in an unfamiliar area, but they must provide assurance, to the federal government, that they have a child support enforcement system that meets the requirements of the federal child support enforcement law. That assurance is one of the conditions for receiving the block grant.

CHAIRMAN BENEDICT asked if that was in title 53.

Hank Hudson said that's federal money.

CHAIRMAN BENEDICT said they were straying from HB 146, which just deals with title 53, the FAIM program.

SENATOR BAER said he wanted to establish where the funding would be coming from, and if it will come from SB 374.

Hank Hudson said this bill would be funded through the block grant and not SB 374.

Closing by Sponsor:

REP. ROYAL JOHNSON said the amendments take care of the problem.

EXECUTIVE ACTION ON HB 502

Motion: SENATOR CHRIS CHRISTIAENS moved HB 502 BE CONCURRED IN.

Motion: SENATOR CHRISTIAENS moved the AMENDMENTS (HB 050202.asf) to HB 502 DO PASS. (EXHIBIT 8)

Discussion: SENATOR CHRISTIAENS explained the amendments. This bill gives the individual, who going to appear for an involuntary commitment, time to receive the information.

CHAIRMAN BENEDICT asked if REP. SOFT agreed with these amendments.

SENATOR CHRISTIAENS said he didn't know.

Beda Lovitt, Department of Health, said she had spoken with REP. SOFT about this amendment, and he has no objection.

CHAIRMAN BENEDICT said he and SENATOR THOMAS had had communication from their county attorney about the amendments.

Beda Lovitt said the County Attorneys Association has no objections.

Vote: The DO PASS motion for the AMENDMENTS to HB 502 CARRIED UNANIMOUSLY.

Motion/Vote: SENATOR CHRISTIAENS moved HB 502 BE CONCURRED IN AS AMENDED. The motion CARRIED with SENATOR ESTRADA voting NO.

SENATOR MIGNON WATERMAN will carry HB 502.

EXECUTIVE ACTION ON HB 333

Motion: SENATOR CHRIS CHRISTIAENS moved HB 333 BE CONCURRED IN.

Motion: SENATOR CHRISTIAENS moved the AMENDMENTS (HB033301.ASF) to HB 333 DO PASS. (EXHIBIT 9)

Discussion: SENATOR CHRISTIAENS said as the bill was presented to the committee, it excluded Native Americans on Indian reservations and he felt they needed to be included.

SENATOR FRED THOMAS asked if REP. SOFT had agreed to these amendments.

Christina Litchfield said she had spoken to REP. SOFT and he had agreed to the amendments.

Vote: The DO PASS motion for the AMENDMENTS to HB 333 CARRIED UNANIMOUSLY.

Motion/Vote: SENATOR CHRISTIAENS moved HB 333 BE CONCURRED IN AS AMENDED. The motion CARRIED UNANIMOUSLY.

SENATOR FRED THOMAS will carry the bill.

EXECUTIVE ACTION ON HB 129

Motion: SENATOR CHRIS CHRISTIAENS moved HB 129 BE CONCURRED IN.

Discussion: CHAIRMAN BENEDICT said the Christian Science amendment was not requested by any member of the Legislature and asked if the committee had any desire to discuss it.

SENATOR EVE FRANKLIN said she didn't work on it, and if any work will be done on it, she will have to do it on the floor.

Vote: The BE CONCURRED IN motion for HB 129 CARRIED UNANIMOUSLY.

SENATOR JIM BURNETT will carry the bill.

EXECUTIVE ACTION ON HB 558

Amendments: CHAIRMAN BENEDICT said there are amendments to the bill. They were requested by REP. SMITH, and are revised.

SENATOR CHRISTIAENS said the Department of Health had some amendments.

Motion: SENATOR FRED THOMAS moved HB 558 BE CONCURRED IN.

Motion: SENATOR CHRISTIAENS moved the Department of Health AMENDMENTS (HB558-5.AMD) to HB 558 DO PASS. (EXHIBIT 10)

Discussion: CHAIRMAN BENEDICT said these amendments conflict with one another, so would have to make a decision on these amendments or REP. SMITH's amendments.

Motion/Vote: SENATOR SHARON ESTRADA made a substitute motion to use REP. SMITH'S amendments (HB055801.asf) first. (EXHIBIT 11) The motion CARRIED with SENATORS BAER, CHRISTIAENS, FRANKLIN and ECK voting NO.

Motion/Vote: SENATOR ESTRADA moved REP. SMITH'S AMENDMENTS to HB 558 DO PASS.

Discussion: SENATOR FRANKLIN asked REP. LIZ SMITH to explain the amendments.

REP. SMITH explained the amendments which were prepared before the initial hearing of the bill and she has been working with the Department and came to a reasonable agreement to support the amendments drafted by them. HIV is a communicable disease that includes sexual transmission. The whole gestic of the bill is to increase that ability to identify and treat immediately, because now we are treating full blown AIDS. Referring page 1, line 14, clarifies that the Department can continue just as they have been doing and will ensure confidentiality.

CHAIRMAN BENEDICT read a note (EXHIBIT 12) and asked Kathleen Martin, Department of Health, if they would support these amendments.

Kathleen Martin, Department of Health, said they had told REP. SMITH they would support these amendments to the bill, but can't speak as supporters of the bill as a whole.

SENATOR ECK asked if the first amendment would contradict the amendments presented by the Department.

Kathleen Martin said no because they had asked REP. SMITH to present all of the amendments.

SENATOR ECK asked if both sets of amendments could be adopted.

Kathleen Martin said this does not conflict with the informed consent amendment.

SENATOR BAER asked how does one amendment conflict with the other, and if they were looking at amendment #2, " by adopting the most currently accepted public health practices," and would that conflict with the fact that informed consent has been removed from the bill?

SENATOR FRANKLIN asked which amendment was being considered.

CHAIRMAN BENEDICT said HB055801.asf. He then asked REP. SMITH if she agreed with the Department of Health amendments.

REP. SMITH said the reason for this is, in the present codes, this language does give permission for consent through these modes. Any medical provider would work within their scope of practice, and that's already in code, so didn't think this necessary.

{Tape: 2; Side: B; Approx. Time Count: 5:47 PM}

SENATOR BAER said it appears the bill removes written informed consent and informed consent. By adopting amendment HB055801.asf, the bill will exclude informed consent of any kind, and he

opposes the amendment because of that. He can support the Department amendment, which leaves in oral informed consent, but doesn't see the logic in removing informed consent for a medical procedure. Under legal liability, it's required. The patient has a right to know what the procedure is, what side effects or complications could arise, before any medical procedure is performed on anyone. He doesn't think informed consent should be removed but does not believe it must be written.

SENATOR CHRISTIAENS requested **Jerry Loendorf** explain the position paper from the Montana Medical Association, "June, 1996, Physicians should ensure HIV testing be conducted in a way that respects patient autonomy and assures patient confidentiality as much as possible. The physician should secure the patient's informed consent specific for HIV testing before testing is performed. Because of the need for pretest counseling and potential consequences of an HIV test on the individual's job, housing, insurability, and social relationships, the consent should be specific for HIV testing. Consent for HIV testing cannot be inferred from a general consent to treatment." He asked **Jerry Loendorf** if the Montana Medical Association has changed it's position.

Jerry Loendorf said he is not familiar with that statement. He said their position is to support the Department amendments and, it was his understanding, they were going to be offered and had been accepted by everybody, but when he arrived at the hearing he found that was not the case, so, at the hearing, he supported the bill as they had done in the previous hearing. They had agreed to accept the Department amendments they received yesterday morning, but number 2 and 3 of the present amendments (HB055801.asf) were part of those amendments. With regard to the informed consent amendment that the Department submitted, they agree to it. They support informed consent, and case law requires informed consent be obtained before every medical procedure is performed.

Susan Fox said the amendments (HB055801.asf) are a slight modification of the Department's amendments (HB558-4.AMD) because they were altered by **REP. LIZ SMITH**, so they are slightly different from the version the Department presented, but are now the way **REP. SMITH** wished them to be. The second set are the informed consent amendments, so there are only two sets of amendments being discussed.

SENATOR BAER asked if the committee adopts the amendments excluding current language on written informed consent, and also excluding informed consent from the statutes, which would conflict with case law and cause agony in the legal circles.

CHAIRMAN BENEDICT asked if informed consent, of any kind, and written informed consent are being removed.

Susan Fox said if the short amendment is passed and the bill as written, then **SENATOR BAER** is correct.

SENATOR THOMAS said there is nothing stopping the committee from adopting the other, more lengthy amendment (HB558-5.AMD) as well.

Susan Fox said, it is her understanding these are two different issues and they should not conflict, so both sets could be adopted.

SENATOR THOMAS asked **Susan Fox** to address the amendment HB055801.asf and its general purpose.

Susan Fox explained the amendment, saying on page 1 is the Legislature's intent on how HIV testing and conditions be treated, saying it should be treated in the same manner as other communicable diseases. This amendment would change it to "communicable diseases, including sexually transmitted diseases." It's a slight semantic change. The more substantive difference is amendment number 3, that clarifies that some reporting has to be by name for certain other communicable diseases. The HIV testing and reporting can still be done anonymously, which is separate from AIDS reporting and testing. This amendment deals with section 1, and the Legislature's intent of how AIDS/HIV-related conditions and HIV infection be treated.

SENATOR THOMAS asked if the other amendment, number 5, is intended to reinsert informed consent into the bill, and asked if that was correct.

Susan Fox said yes.

SENATOR ECK said she has questions about the second amendment (HB055801.asf). She said she heard a lot of public health officials saying that just didn't make sense because, when talking about communicable diseases, there is not one common practice for all.

SENATOR BAER said if it had been concluded the amendments don't conflict, then he will withdraw his opposition to this amendment, and thinks it is essential to retain informed consent.

Motion/Vote: **SENATOR BAER** moved the second set of **AMENDMENTS** (HB558-5.AMD) to HB 558 from the Department of Health **DO PASS**. (**EXHIBIT 12**) This amendment reestablishes informed consent in oral manner and does not provide for written informed consent. The motion **CARRIED** with **SENATOR ECK** voting **NO** by **ROLL CALL VOTE**.

Motion: **SENATOR BAER** moved HB 558 **BE CONCURRED IN AS AMENDED**.

Discussion: **SENATOR FRANKLIN** said, with the amendments, this is a better bill because there is duly executed oral or written grant of information, but doesn't think anything has really changed.

SENATOR CHRISTIAENS said he is concerned that this will frighten people who are getting tested now and drive them underground. As

self-reporting kits become more available, public health is not going to see those people, and people think this bill is going to add more protection, but he thinks it will do just the opposite. People are not going to know who is and who is not infected, and those partners are not going to be informed.

SENATOR ESTRADA asked for clarification of the amendments (HB055801.asf), if number 2 and 3 are going to conflict.

Susan Fox said amendments 1 and 2 together would read, "removing the requirement from the AIDS prevention act," that consent is going to be in writing.

SENATOR ESTRADA quoted **SENATOR FRANKLIN** saying "nothing has really changed," yet **SENATOR CHRISTIAENS** said we're forcing people underground, and wonder which it is.

SENATOR FRANKLIN explained the amendments saying, if informed consent has been redefined and the written requirement is removed, it does change practice.

SENATOR BAER said, if you apply for insurance, the company's condition for approval of your insurance is blood tests for HIV and there is a signed consent with the insurance company. The individual who draws blood for the test will explain the procedure and you give an oral consent for it to be done. He said he would not support the bill unless he thought it would expedite the process, cause more people to be tested, detect the HIV infection at an earlier stage and give a better chance of prolonging life, and thinks that is the intent of **REP. SMITH** and that will be the result of the bill.

SENATOR ECK said her problem with the bill is the intention to treat AIDS/HIV-related conditions and HIV infection as other communicable diseases are treated. Over a period of years, methods that really work have been developed. People come in for testing, and if they test positive, the Department has had exceptionally good results in identification of partners. This is based on procedures that have been sensibly developed. Informed consent is not nearly as important as being able to continue the kind of work that has been done.

SENATOR CHRISTIAENS said what drives this underground is the huge increase in heterosexual HIV and, if anyone thinks a promiscuous married man or woman will forward and identify those partners, we're only fooling ourselves. Passage of this bill is a backward step and that is not the direction we want to go.

SENATOR THOMAS said he doesn't think we know that for sure and will not disagree with **SENATOR CHRISTIAENS's** statement, but well developed procedures withhold this health data from practitioners. It is scary that any practitioner does not have data and this is a disease like any other except there is no cure. Potentially, this bill will take a small step forward to

bring us out of "let's keep this completely in the dark ages," and behind closed doors, so no one knows. It is a disease, regardless how it is transmitted and is not special because of how you can get it. It's a deadly disease and should be treated as such.

SENATOR CHRISTIAENS said a bill was passed during the last legislative session, and is in current law, to protect practitioners.

SENATOR FRANKLIN said a form must be signed for testing for insurance and it is not a contractual thing as much as consent to a medical provider.

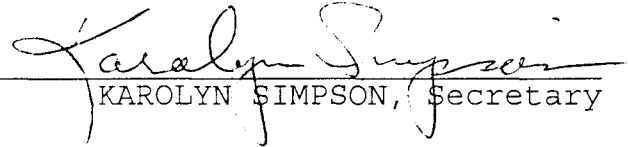
Vote: The BE CONCURRED IN AS AMENDED for HB 558 CARRIED BY ROLL CALL VOTE with SENATORS CHRISTIAENS, ECK, and FRANKLIN voting NO.

ADJOURNMENT

Adjournment: 6:19 PM



SEN. STEVE BENEDICT, Chairman



KAROLYN SIMPSON, Secretary

SB/ks