

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By SEN. RIC HOLDEN in the absence of CHAIRMAN BRUCE CRIPPEN AND VICE CHAIRMAN LORENTS GROSFIELD, on April 7, 1997, at 9:37 a.m., in Room 108.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Sharon Estrada (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter L. McNutt (R)

Members Excused: Sen. Bruce D. Crippen, Chairman (R)

Members Absent: None

Staff Present: Valencia Lane, Legislative Services Division
Jody Bird, Committee Secretary

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

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 163; Posted 4/4/97
Executive Action: HB 100 BE CONCURRED IN AA

EXECUTIVE ACTION ON HB 100

Amendments: Valencia Lane explained when HB 100 was first heard, Amendments HB010004.ASF (**EXHIBIT 1**) were adopted; however, HB 559 had already been sent to the Governor and it was necessary to coordinate HB 100 with HB 559. She said Susan Fox, Legislative Services Division, and Brenda Nordlund, Department of Justice, had new Amendments HB0100005.ASF (**EXHIBIT 1**) which were substantively the same as those adopted in the HB010004.ASF amendments. **Ms. Lane** requested the 010004 Amendment be stripped and the 010005 be added to HB 100 and reminded the Committee substantively they were the same but procedurally they created a new section of law as opposed to amending an existing section -- it was believed to be a better and cleaner way to do it.

Motion/Vote: SEN. SHARON ESTRADA MOVED AMENDMENTS HB010004.ASF BE STRIPPED FROM HB 100. Motion CARRIED UNANIMOUSLY 8-0.

Motion: SEN. SHARON ESTRADA MOVED DO PASS ON AMENDMENTS HB010005.ASF.

Discussion: Susan Byorth Fox, Legislative Services Division, said Amendments Hb010005.ASF were attempting to coordinate HB 559 with HB 100 and went through and recodified the same sections of law, explaining, for example, 61-8-714 and 61-8-722 were virtually the same language. She said HB 559 reorganized the bill so this amendment struck Subsection (4) but created NEW SECTION in Amendment #3. She said the language in the brackets in #3 (c) was from TABLED HB 208 and would not be included unless HB 208 came off the table, and said #3(2)(c) referenced HB 559.

Ms. Fox reiterated how the amendments rearranged the concepts in Amendments HB010004.ASF -- the language was carried into this but it helped the coordination instruction. She stated NEW SECTION, Section 4, said the coordination instruction in HB 559 indicated it had not yet made it to the Governor's Office.

SEN. RICK HOLDEN asked **Brenda Nordlund**, Department of Justice, how the Department was feeling about HB 100 and was told it hadn't taken a position on the bill, explaining the County Attorneys Association was "carrying the ball."

REP. SUE BARTLETT commented "supervised release" was first seen in HB 100 and HB 559, and wondered if it was comparable to "probation." **Susan Fox** said there was a distinct and separate supervised release program, but the way it was used in this bill was similar to probation.

SEN. BARTLETT said HB 125 repealed the supervised release program because it was too narrow and never used. She asked why, if it was comparable to probation, the term wasn't used. **Susan Fox** said she didn't know why they chose to use "supervised release."

Vote: Motion DO PASS ON AMENDMENTS HB010005.ASF CARRIED UNANIMOUSLY 8-0.

SEN. SUE BARTLETT said she would prefer either "probation" or "parole" (currently-used terms) be used instead of "supervised release", explaining wherever the term was used, either "probation" or "parole" (whichever was appropriate) be inserted. She suggested **Valencia Lane** be asked to clarify which term was appropriate.

Motion: SEN. SUE BARTLETT MOVED "SUPERVISED RELEASE" BE STRICKEN AND REPLACED WITH EITHER "PROBATION" OR "PAROLE", WHICHEVER WAS APPROPRIATE.

SEN. RIC HOLDEN asked what might be done to the amendment with the above language changes. **SEN. BARTLETT** said "supervised release" wasn't used in current statutes but "probation" and

"parole" were; therefore, it would be a language change. She explained the issue of "probation" and "parole" was to the extent if someone was released, the status was considered "parole" and if someone had a suspended sentence or was never sent through the prison, the term would be "probation."

SEN. HOLDEN asked **Brenda Nordlund** the same question and was told the way Corrections originally set up the bill (Page 2, Subsection (4)(b), to the provisions of Title 46, Chapter 23), governing "probation" applied to "supervised release"; therefore, the appropriate reference would be to "probation."

SEN. STEVE DOHERTY contended if the codes were going to be "junked up" with words people said meant the same thing, the precise language should be used. He stated there was something to be said for consistency.

SEN. MIKE HALLIGAN referred to Page 2, Subsection (4)(b), and said the language said "supervised release." He didn't feel the change would be substantive and it would be a good idea to return to "probation" or "parole." He didn't see a reason why it shouldn't be done.

SEN. RIC HOLDEN said he felt the amendments defined "supervised release". **SEN. HALLIGAN** said if one didn't go to prison, he or she was on probation and if one was released from prison, he or she was on parole; therefore, he wondered why "supervised release" was used.

SEN. ESTRADA asked if perhaps the language change was done because they assumed the Sentencing Commission might still be in effect and might do away with probation and/or parole. **SEN. BARTLETT** said she didn't see any reason for it, explaining a sentence to a pre-release center or intensive supervision could be additions onto a probation sentence.

SEN. WALTER MCNUTT asked if Corrections took care of probation. **SEN. BARTLETT** said they did for felony offenses.

SEN. AL BISHOP asked if the probation or parole could extend beyond the length of the sentence. **SEN. BARTLETT** said she understood the sentence had two parts. **SEN. BISHOP** asked if there was conflict in the language. **SEN. BARTLETT** said she didn't believe it did, explaining Page 1, Subsection (1)(a)(b), of the amendments said the person was guilty and shall be punished by imprisonment from six to thirteen months. If current statute language was substituted (a probation term of not less than one year or more than four years), the change would not be substantive.

Brenda Nordlund referred to the definitions in the code, suggesting they were trying to create a hybrid because 46-1-202 currently defined "parole" to mean "the release to the community of a prisoner by a decision of the Board of Pardons and Parole

prior to the expiration of the prisoner's term, subject to the conditions imposed by the Board of Pardons and Parole and supervision by the Department of Corrections." She said she understood they would not be eligible for parole, as the bill was currently amended; therefore, they would serve the entire term of their imprisonment sentence.

Ms. Nordlund gave the definition of "probation" as "released by the Court without imprisonment of a defendant found guilty of a crime. The release is subject to the supervision of the Department of Corrections upon direction of the Court." She said the distinction between "parole" and "probation" appeared to be in who set the conditions for the release period; however, the bill wanted the Court to set the conditions for term after imprisonment.

She referred to 46-23-101 and said "parole" was defined as a release by the Court without imprisonment, except as otherwise provided by law. She suggested this might be a case where probation would otherwise be provided by law to be after imprisonment.

Vote: Motion TO STRIKE "SUPERVISED RELEASE" AND REPLACE IT WITH "PAROLE" OR "PROBATION", WHICHEVER WAS APPROPRIATE FAILED 3-5, WITH SEN. RIC HOLDEN, SEN. MIKE HALLIGAN, SEN. WALTER MCNUTT, SEN. SHARON ESTRADA AND SEN. REINY JABS VOTING NO, AND SEN. STEVE DOHERTY, SEN. SUE BARTLETT AND SEN. AL BISHOP VOTING YES.

Motion: SEN. SHARON ESTRADA MOVED HB 100 AS AMENDED BE CONCURRED IN.

Discussion: SEN. STEVE DOHERTY said when someone in the future wanted to interpret the hybrid term the Department of Corrections had introduced and not defined, a court case or someone dealing with some type of problem would be required.

{Tape: 1; Side: A; Approx. Time Count: 10:00 a.m.}

SEN. SHARON ESTRADA said the amendments which were on HB 100 were removed and replaced by others which basically said the same thing but were rearranged in a different way; however, there was concern about the language, "supervised release", "probation" or "parole." **Rick Day, Department of Corrections**, said "supervised release" was differently contemplated in the bill; however, not substantially enough. He referred to Page 2, Subsection (4)(b), of the amendments and interpreted it as meaning "supervised release" contemplated the same procedures as "probation"; therefore, he didn't think the bill would be affected by changing the terms. **Mr. Day** said the key was it was a set period of supervision following the incarceration period.

SEN. STEVE DOHERTY commented a new term, "supervised release", was being introduced which appeared to be "probation", subject to Title 46, Chapter 23, Part 10; therefore, also subject to Court

decisions on decisions. He wondered why a new phrase was used, instead of using the old one which was defined in statute and by Supreme Court decisions so everyone knew what was being dealt with. He contended when a new phrase was introduced, it needed to be defined clearly in the statute and inevitably it would be interpreted in court cases. He asked why a new phrase was necessary, when it would give our already overburdened courts more work in defining the phrase; especially, when the intent was "probation." **Rick Day** said HB 100 as introduced was set in a different direction, i.e. a sentenced incarceration period followed by a judge's sentence to a specific period of supervision; hence, it was "supervised release" as opposed to "probation" in its true terms. However, the language, "supervised release", almost said it equaled "probation." He said the drafter intended that to resolve the definitions and arguments around what "supervised release" was. He reiterated if the Committee wished to change the terms, the affect of what was trying to be accomplished would not be changed.

SEN. MIKE HALLIGAN said he didn't think the hybrid term was different, explaining if it was changed to "probation", the original meaning of "probation" could be confusing. He said this was intended to be a separate period of hold over the defendant under these particular conditions, and was not intended to be a "probation" or "parole" situation.

SEN. SUE BARTLETT asked why it would be confusing. **SEN. HALLIGAN** said the period of probation couldn't last any longer than the original sentence, and he understood it was the intent of the release period to be supervised for longer than that; therefore, it was a separate sentence, of sorts, which was added to the period of incarceration, i.e. a separate penalty.

SEN. BARTLETT asked **Rick Day** to address the points raised by **SEN. HALLIGAN**. **Mr. Day** said he concurred with what he said, explaining the intent of the bill was a separate identified supervised release period; in other words, it was an incarceration period and a supervised release period, both imposed by the judge. He said the definition came back in as revocation, etc., to tie in probation to try to take care of the procedural aspects as to how it compared to probation. He maintained that was the intent of the bill and it provided clarity to the bill; therefore, he believed "supervised release" was the best way to approach the procedural definition.

SEN. BARTLETT asked if someone was convicted of a fourth or subsequent DUI, would there be three parts to their sentence -- imprisonment, supervised release or probation and a fine. **Rick Day** said it would be all three.

SEN. BARTLETT asked if "supervised release" were changed to "probation", would it make much difference. **Mr. Day** said he believed there would be somewhat of a change, though not dramatic; however, the clear language in the bill seemed to take

care of the problem. He stated he didn't think it was necessary to make further changes in order to accomplish what was intended.

SEN. BARTLETT asked from where the concept of supervised release came. **Rick Day** said several states with sentencing guidelines used a supervised release period while others had a pure truth in sentencing approach; Montana used a form of supervised release.

SEN. BARTLETT asked if this was the Department's first attempt to initiate a guidelines system of sentencing in Montana. **Rick Day** said it wasn't; it was the Department's intent the bill clarify what was provided for by imprisonment under current statute, to bring down the total exposure to the system from ten to five years, to provide a real truth in sentencing so what was imposed was actually what the offender got.

SEN. BARTLETT asked how that would differ from a guidelines system. **Mr. Day** said a guidelines system had a structured grid through which a large variety of penalties set; much more, this was a direct approach to a particular law.

Vote: Motion HB 100 AS AMENDED BE CONCURRED IN CARRIED 7-3 ON A ROLL CALL VOTE. **SEN. B.F. "CHRIS" CHRISTIAENS** will carry HB 100.

{Tape: 1; Side: A; Approx. Time Count: 10:15 a.m.}

HEARING ON HB 163

Sponsor: REP. JOHN JOHNSON, HD 2, Glendive

Proponents: Hank Hudson, DPHHS
Ann Gilkey, DPHHS
Sharon Hoff, Montana Catholic Conference
Kimberly Kradolfer, Private Citizen
Marilyn McKibben, Catholic Social Services
REP. TRUDI SCHMIDT, HD 42, Lutheran Social Services
Mark Ricks, LDS Social Services

Opponents: None

Opening Statement by Sponsor:

REP. JOHN JOHNSON, HD 2, Glendive, said the 1995 Legislature, through SB 150, directed the DPHHS to conduct a study regarding adoption laws. The volunteer committee, consisting of the Catholic Social Services director, Lutheran Social Services director, the LDS Social Services director, an adoptive parent, an adoptee, an attorney from DPHHS, DPHHS program director and an attorney in private practice, met over 20 times to form the legislation in HB 163. He said HB 163 revised and reorganized current Montana statutes from throughout the code so persons involved in different types of adoptions knew how to proceed; however, it retained the types of adoptions currently allowed under current Montana law, i.e. direct parental placement,

licensed child-placing agency, step parent, Department adoption and adoption of adults. **REP. JOHNSON** said HB 163 provided for balance for all parties' rights and greater protection than current law, was the result of two years' work by a voluntary task force and was thoroughly reviewed by the House Subcommittee which was assigned to review the bill.

He stated the premise of HB 163 was every child had the right to be cared for and supported by parents who were willing to provide consistent care, either by the birth parents or adoptive parents, both of whom were willing to assume responsibility for the child. Birth parents' rights to a child should be protected when the parents were willing to take the responsibility for the care and support of the child. Those rights should not be terminated unless they were done voluntarily after appropriate counseling was offered, or upon waiver of parental rights, or a failure to establish a parent-child relationship or upon judicial finding of unfitness. **REP. JOHNSON** said the State of Montana had an interest in promoting the stability and finality in adoption and adoptive parents had an interest in not having an adoption disrupted and a child displaced. He urged favorable support of HB 163.

Proponents' Testimony:

Hank Hudson, DPHHS, Child & Family Services Division, said they supported the bill during the 1995 Legislative Session which created the committee and called for the study of the adoption laws. He echoed what **REP. JOHNSON** said in that a great deal of work had been done by a committee, composed of a balanced group of people, to produce HB 163. He said one of the first things the committee noticed was the adoption laws were not ordered in a way to be easily understood, nor were they located together; in fact, in a couple of instances the references were conflicting and confusing. Therefore, the bill was a reordering and consolidation of laws, which should be more useful to attorneys and understandable for family members or agency people.

Mr. Hudson said one of the problematic issues addressed in HB 163 was how to deal with rights of fathers whose whereabouts weren't known or who weren't participating in the parenting process. He explained they wanted to ensure the rights of the putative fathers were respected, yet they didn't want to hold adoptions hostage or delay them. He said the Putative Father Registry balanced those rights but still allowed the proceeding of timely and permanent adoptive arrangements.

Mr. Hudson explained some of the things HB 163 did was consolidate the standards for the termination of parental rights, establish the methods which would be used to protect the rights of birth parents, address the way in which challenges could be made to adoptions and ensure the best interests of the child by guaranteeing the challenges were handled in a timely manner, prohibit "baby brokering" (adoption arrangements made by

unlicensed organizations) and support openness to the extent all parties agreed upon.

Ann Gilkey, DPHHS, distributed copies of her written testimony (**EXHIBIT 2**) but said she wanted to veer from it because much of it had already been said; therefore, she wanted to inform the Committee of the process involved from the original hearing to the bill as it appeared before them. She said a House Subcommittee was formed after a two-hour hearing with no opponents; however, HB 163 was tabled for two months while the Subcommittee met. The reason the Subcommittee met was they had some concerns, one of which was the understanding the bill was all new law; however, it wasn't.

{Tape: 1; Side: B; Approx. Time Count: 10:24 a.m.}

She said existing law both in Montana and nationally had been upheld repeatedly by the U.S. Supreme Court that all individuals had a right to privacy and a woman could not be forced to name a father of a child; therefore, the committee's struggle was to encourage the disclosure of identifying information of the birth father. **Ms. Gilkey** explained HB 163 gave the putative father more rights than existing law and defined him as a man who was not married to the mother of the child. In those situations, the Putative Father Registry would allow him, if he wanted to take responsibility for that child, to send notice to the Bureau of Vital Statistics; thereby, he would be entitled to any right of proceeding to terminate his parental rights. The Subcommittee added he would be entitled to know if he was on the child's birth certificate, if he was adjudicated as the father for child support or if he was living with the child or child's mother.

She said one of the concerns of the Subcommittee was (and it was true) that if he didn't know the mother was pregnant and didn't sign up at the Registry, he lost his rights to the child because the primary focus of HB 163 was the stability for the child through finality of the adoption process. **Ms. Gilkey** explained they hoped, through HB 163, to give the putative father more protection through encouraging him to sign up at the Bureau of Vital Statistics for his rights, even if he wasn't sure the woman was pregnant. She stressed that wasn't currently possible because the Registry didn't exist.

Ms. Gilkey addressed another area of Subcommittee concern, and that was release of records and explained after its effective date, HB 163 would allow the adopted child, after age 18, to get the original birth certificate just by asking for it. She said currently the release had to be a court order, but many judges issued them. She noted this was a national as well as international trend; in fact, the United States was one of the few countries which still had closed records. She said HB 163 was a compromise because it would allow a child who was adopted under existing laws to stay under them; also, before the child reached 18 years of age, the birth mother could notify the Bureau

of Vital Statistics to not release the original birth certificate.

Linda Fagenstrom, Lutheran Social Services of Montana, supplied her written testimony, though she couldn't attend in person. (EXHIBIT 3)

Darcy M. Crum, Private Attorney, supplied her written testimony, though she couldn't attend in person. (EXHIBIT 4)

Sharon Hoff, Montana Catholic Conference, said they totally supported HB 163, noting there had been some concern about the Registry; however, she encouraged continued support of it because it was a real benefit for the alleged father if he made the effort to register. She said one reason they were involved in public policy work was they believed so strongly in life issues, explaining it was important to them to say, "No abortion," as well as to say, "When a child is born, there is a whole life there and we need to journey with that child and adult into old age"; therefore, life from beginning to end was very sacred to them. **Ms. Hoff** reminded the Committee many people had their fingerprints on the bill and she encouraged their support.

Kimberly Kradolfer, Private Citizen, said she was an adoptive parent as well as a member of the committee which studied the adoption laws. She urged the Judiciary Committee's support of the bill because it was balanced and didn't reflect the position of any individual; rather, the positions were a result of compromise. She maintained the bill protected the rights of all parties and provided stability for the child.

Marilyn McKibben, Catholic Social Services, said they felt HB 163 contained many improvements over existing adoption laws in Montana. She said her agency had been providing adoption services since the 1950's, had counseled approximately 3,200 pregnant women and teens and had been involved in the adoption of approximately 1,700 children. **Ms. McKibben** stated their focus was the best interest of children, or balancing rights and responsibilities of parents as well as adoptive parents. She said the most compelling aspect of HB 163 was its fairness, even to the extent of being sensitive to the vulnerability of all parties while safeguarding the integrity of the adoption process. She contended no set of laws could possibly meet all circumstances but the scope of HB 163 was wide enough to accommodate even the most unusual circumstance. She said in some ways, HB 163 made the adoption requirements more easily accomplished without disregarding the rights of anyone concerned. Also, it clarified some confusing areas of existing law and established exact procedures. **Ms. McKibben** encouraged the bill's passage because it would serve as a balanced, broad-based, sensitive and fair law to protect the interests of all Montana citizens. She addressed the Putative Father Registry and said current law made dealing with the rights of the putative father very difficult if the birth mother was serious about choosing

adoption because sometimes he was married to someone else or there could be a possibility of multiple birth fathers. She said putting some of the responsibility onto the possible father seemed a reasonable thing to do, explaining HB 163 took into consideration the birth father's circumstances but didn't give him the right to block the adoption process just because he was angry or trying to get even with the birth mother, or felt the government or world was trying to take his other rights away; therefore, he would hang onto the rights at all cost even though he had no intention of caring for or supporting the child.

Ms. McKibben said if a birth mother was forced to parent a child even if she was neither prepared to nor wanted to because the birth father(s) didn't cooperate, it would be very difficult; also, to expect the birth mother to be responsible for finding and notifying the birth father was not a reasonable expectation. The putative father could simply register and protect his own rights through the Putative Father Registry.

REP. TRUDI SCHMIDT, HD 42, Great Falls, said she worked at Lutheran Social Services for over 14 years as a pregnancy adoption counselor as well as the Great Falls area coordinator and had worked with adoptive parents, had done searches and worked with the adoption process. She said the birth father's rights had always been terminated but the addition of the Putative Father Registry gave protection to the interested birth father and allowed the birth mother to name the birth father who could register in the Registry if he was interested in the possibility of parenting as well as participating in the adoptive process as much as the birth mother. She encouraged the Committee's support because it was a good bill which put all the adoptive statutes into one place in the books.

Mark Ricks, LDS Social Services, reminded the Committee the issue of birth fathers had been addressed in HB 163 and the Registry was most helpful because in many ways, the birth father was an obstacle to the birth mother if she was making plans for adoption. He said many times, because of the birth father's disappearance, control or unwillingness to cooperate, the mother was left alone to raise the child as a single parent, or many times the birth mother's parents raised the child. He said they felt the birth fathers should come forward to take the responsibility, which was demonstrated in HB 163.

He stated the bill provided rights and privacy for birth parents who wished confidentiality and had high representation for the interest of the child. He urged the Committee's support.

Opponents' Testimony: None.

{Tape: 1; Side: B; Approx. Time Count: 10:45 a.m.}

Questions From Committee Members and Responses:

SEN. SHARON ESTRADA asked if the father's rights were taken away if he wasn't in the Registry but showed up, maybe three, four or twenty years later. **Ann Gilkey** said if, during this length of time, he didn't know he was the father, he needed to sign up with the Registry within five days of the hearing which would terminate his parental rights. At the hearing, he would have to tell the judge why his rights shouldn't be terminated but and why he should be allowed to parent the child. However, if he didn't do that, his legal rights to the child would be terminated and the adoptive parents would become the legal parents.

SEN. ESTRADA asked if HB 163 hampered an adopted child in searching for his birth father for the purpose of establishing a relationship. **Ms. Gilkey** said the bill didn't address that issue and didn't change what he or she could do under existing law.

SEN. ESTRADA commented if a person was looking for an adopted child or sibling, he or she would have to get a court order to open the case and hire a confidential intermediary who would visit with the individual to determine whether he or she would like to be contacted. She wondered if HB 163 changed that procedure. **Ann Gilkey** said non-identifying information (indirect identification) could be released without a court order. She said the changes were small but helped clarify the confusion on the part of the people implementing the statutes. She said if both parties mutually agreed to be contacted, the information should be shared.

SEN. ESTRADA asked if HB 163 hampered siblings from finding each other if both birth parents were deceased. **Ms. Gilkey** said it wouldn't make it more difficult.

SEN. ESTRADA referred to Page 66, Line 16, of HB 163 and asked why the date of 1967 was chosen. **Ms. Gilkey** said before that date records were opened in Montana; therefore, the committee determined from that date until the effective date of HB 163, actions would have to be made under existing laws.

SEN. ESTRADA asked for affirmation if a sibling born after July 1, 1967, could request a copy of an original birth certificate. **Ann Gilkey** said the adoptee could get the original birth certificate if he or she was born and placed for adoption after the effective date; however, the sibling of the adoptee would not have the same rights to the original birth certificate. **SEN. ESTRADA** asked if the adoptee could request it and **Ms. Gilkey** said he or she could unless the birth mother specifically requested it not be opened.

SEN. STEVE DOHERTY identified Section 13 and Page 61 as the sections which dealt with the Indian Child Welfare Act; he wondered if there any other sections in the bill which dealt with the Act. **Ann Gilkey** said there was one on Page 30, but specific

language from the Act was not included because if it was amended, it would have to be redone.

SEN. DOHERTY commented his experience was the Montana courts and social services seemed to be very aware of the Act; however, in other states there were instances where the Act hadn't been followed. He explained sometimes the child had been placed for one or two years but balancing the best interests of the child with compliance with the Indian Child Welfare Act became very difficult. He wondered if HB 163 was adopted, would early notification be promoted to the tribes so they could comply with the requirements; also, he believed there were instances in some western states where notification wasn't done in order to tip the balance away from the tribes so the children could remain with the placement parents. **Ms. Gilkey** said she hoped references to the federal act in HB 163 would encourage people to notify tribes right up front because it was a whole new political arena for Indian children. Adoptions could be overturned by federal law, thereby not serving anybody's best interests, particularly those of the child if the tribe competed with an adoptive parent for the child.

SEN. REINY JABS asked what happened if two fathers signed the Putative Father Registry and **Ms. Gilkey** said both would receive notice and DNA testing would have to be done to determine the father.

SEN. JABS asked about language that said an unmarried individual who was at least 18 years old could adopt. **Ann Gilkey** said it was existing law which was moved and explained sometimes single people adopted and often it was a situation where the couple divorced but had a foster child for a long time; therefore, one of the persons (usually the mother) wanted the child. She said sometimes a single mother wanted to take a special needs child and they didn't want to prohibit that; however, the policy said the interests and needs of the child should be looked at, so that was used in making the decision as to where the child should go.

SEN. JABS asked what happened if the adoption failed. **Ms. Gilkey** said HB 163 addressed that by saying it depended on the type of adoption and where the child was; in other words, if the agency was involved, the state would resume custody and if it was a private placement the child would return to the birth parent unless the situation was not in the child's best interest. The child would then be placed in another adoptive family.

SEN. SUE BARTLETT asked if the Technical Notes in the fiscal note were addressed in the amendments which were added in the House. **REP. JOHN JOHNSON** said \$75 was the adoption fee petition; \$70 remained with the agency (DPHHS) and the other \$5 with the Clerk of Court in which the petition was filed. **Ms. Gilkey** said the amendment was inserted at the top of Page 8 to ensure the \$70 from the filing fee from the petition for adoption would be used to educate the public during this registry. **SEN. BARTLETT** wanted

to know if the amendment clearly stated the account could be used to fund the Putative Father Registry was told it did.

SEN. MIKE HALLIGAN asked how the revocation of consent had been changed from existing law. **Ann Gilkey** said existing law said the birth mother had to wait at least 72 hours before she could sign rights, but birth fathers were not under the same restriction; however, HB 163 would require them to wait at least three days, just like the birth mother.

SEN. RIC HOLDEN asked where the section on the woman's right to privacy was located and was told Page 6.

SEN. HOLDEN commented the Registry sounded complicated and asked for clarification. **Ann Gilkey** said if the birth father's name wasn't on the birth certificate, was not living with the birth mother, was not paying any child support under any order, but thought or heard the woman may be pregnant, he needed to send notice to the Registry; however, if he didn't register or meet any of the other criteria, his rights would be terminated and he would have the regular appeal time if he found out about the child. **Ms. Gilkey** said if he didn't find out about the child and it was two years old, he could sue the mother civilly for damages.

SEN. HOLDEN asked how a young man would handle the situation if he found out his girlfriend was pregnant. **Ms. Gilkey** said information and instructions would be posted at various places in order to inform the public; in other words, he would take care of it at the local level.

SEN. HOLDEN asked where the section was located which talked about producing records after age 18. **Ms. Gilkey** said Page 66, Section 146.

SEN. HOLDEN asked if the information was given automatically or if the adopted child had to request it. **Ms. Gilkey** said the child would have to request it.

SEN. HOLDEN asked if HB 163 contained statutes which would say who could not adopt a child. **Mr. Gilkey** said Page 4, Section 6, and Page 41, Section 85, covered it, explaining anyone who was going to adopt would be studied by an agency authorized to do home studies and who would recommend if the people were appropriate to adopt; in other words, they would have to meet more than the criteria mentioned.

SEN. HOLDEN commented Section 85 listed the criteria potential adoptive parents had to meet. **Ann Gilkey** said it listed what the adoptive parents' evaluation had to include, so in effect, she agreed with **SEN. HOLDEN**.

{Tape: 2; Side: A; Approx. Time Count: 11:10 a.m.}

SEN. LORENTS GROSFIELD asked if the \$75 was sufficient and **Ann Gilkey** said it was, explaining it was determined \$70 was enough for the education of the public and as for the \$5 for the Clerk and Recorder, currently they usually charged nothing for the petitions for adoption; therefore, they were OK with the \$5.

SEN. GROSFIELD commented the Department would supply the forms used for the Registry and wondered if that wouldn't entail some cost. **Ms. Gilkey** said existing staff would do that, and they thought the biggest expense would be the education campaign for the Registry and the forms. She said there were about 600 petitions for adoption per year, and at \$70 each, it would amount to about \$42,000 per year which should cover what they needed to do.

SEN. GROSFIELD asked about the other \$5 and **Ms. Gilkey** told him the Clerks of Court asked for the amendment to ensure they could put the money into the District Court Fund or the General Fund for their use.

SEN. GROSFIELD asked about the expense of including the notices with license renewals, etc. **Ms. Gilkey** said they had already checked on that and were told if they kept the notice to a certain size, it could be included at no extra cost.

SEN. GROSFIELD commented vehicle registration currently came on a postcard and wondered how the Registry notice could be included, and if the County Treasurers would be forced to reformat the cards to include the notice, significant expense would be involved. **Kim Kradolfer** said if people mailed their vehicle license renewals in, the notices would be included with the return tags and if they paid in person, the forms would be available at the renewal spot.

SEN. MIKE HALLIGAN asked if attorneys could accomplish adoption without involving the Department. **Ms. Gilkey** said they could; it would be a private parental adoption and the mother would select the adoptive family, an attorney would be hired and the process would happen without the Department or agency.

SEN. HALLIGAN asked how relinquishments were handled in that case. **Ms. Gilkey** said [tape too garbled to hear].

SEN. HOLDEN asked referred to Page 41, Section 85, Line 17, and asked about the social history and the obligations of the agency to find responsible parents. **REP. SCHMIDT** said when the adoptive couples applied for adoption, they had to supply three reference letters from friends and pastor or priest, they had to go through checks with police and Child Protective Services, a current medical report, complete a 10-or 11-page adoptive home study which responded to questions the agency asked them to ensure there was no chemical dependency or anything unusual or abnormal. The information would be addressed in an initial visit to the home. If they seemed to qualify at that point, the agency would

meet with them individually in their community; in other words, they have to go through a lot before they're approved. **REP. SCHMIDT** said they then attended a three-day workshop where they spent time with three counsellors to address issues relating to adoption.

SEN. HOLDEN asked if Lutheran Social Services had experienced lawsuits if they turned down an adoptive parent. **REP. SCHMIDT** said they hadn't, explaining the basic problems they had were in the requirements they had to be married at least three years, must be part of a Christian or Catholic congregation or the age limit (it was removed in the last ten years).

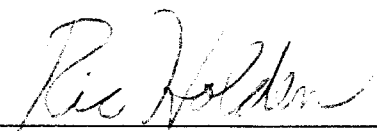
SEN. HOLDEN asked about gays or lesbians being allowed to adopt children. **REP. SCHMIDT** said Lutheran Social Services said the adoptive parents had to be a man and woman married couple.

Closing by Sponsor:

REP. JOHN JOHNSON referred to (EXHIBIT 5) and said it explained which statutes were new and which were old. He said it was such a comprehensive bill which dealt with a vital interest to all Montanans, explaining it considered the best interests of the child, detailed how birth certificates might be obtained, had a detailed section on the confidential intermediary and counseling requirements for both adoptive parents and relinquishing parents, described the Indian Child Welfare Act, dealt intrastate and international adoptions, told about the licensing of the agencies and the Putative Father Registry. He urged the Committee's acceptance of HB 163. **REP. JOHN JOHNSON** said **SEN. MIGNON WATERMAN** would carry the bill.

ADJOURNMENT

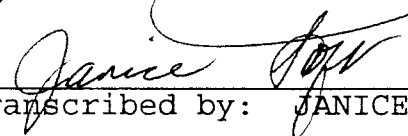
Adjournment: The meeting adjourned at 11:23 a.m.



SEN. RIC HOLDEN, Acting Chairman



JODY BIRD, Secretary



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BC/JB